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Alliance School of Law

LEX ET
MUTATIO

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LAW AND SOCIAL TRANSFORMATION

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Vol III

Volume III



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Volume III

EDITORS

Dr. Kiran D. Gardner
Dr. Devaiah N G
Dr. Gyanashree Dutta
Dr. Rashmi K. S.
Dr. Smita Satapathy
Dr. Upankar Chutia
Dr. Vedashree. A
Prof. Chakravarthy Naik
Prof. Mahantesh G. S.
Prof. Mamatha. R
Prof. Shreshth Bhatnagar
Prof. Sukanya Priyadarsini
Prof. Vishal Ranaware

LEX ET MUTATIO
LAW AND SOCIAL TRANSFORMATION
VOLUME III

Editors:

Dr. Kiran D. Gardner, Dr. Devaiah N G, Dr. Gyanashree Dutta,
Dr. Rashmi K. S, Dr. Smita Satapathy, Dr. Upankar Chutia, Dr. Vedashree. A,
Prof. Chakravarthy Naik, Prof. Mahantesh G. S, Prof. Mamatha.
R, Prof. Shreshth Bhatnagar, Prof. Sukanya Priyadarsini, Prof. Vishal Ranaware

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THE EDITORS



Dr. Kiran Gardner is the Dean of Alliance School of Law, Alliance University, Bengaluru. She holds two Doctorate Degrees, in Law and Education. Her areas of interest are Criminal Law, Constitutional Law, Gender Studies, and Research Methodology.



Dr. Devaiah NG is an Associate Professor at Alliance school of law, Alliance University. He holds a doctorate degree from the university of Madras. His area of interest is in constitutional law and governance.



DR. GYANASHREE DUTTA is an Assistant Professor at Alliance School of Law, Alliance University, Bengaluru. Dr. Gyanashree holds a Ph.D degree in Environmental Law from Alliance University, LL.M from Centre for Juridical Studies, Dibrugarh University, and B.A. LL.B from Bangalore University. Her areas of research interests include environmental law, human rights and law, constitutional law, international law, and contract law.



Dr. Rashmi K. S. is an Associate Professor at Alliance School of Law, Alliance University, Bengaluru. She has completed her Ph.D. from the University of Mysore. She is specialized in Business Law, Corporate and Commercial Law.



Dr. Smita Satapathy is an Assistant Professor in the School of Law, Alliance University, Bengaluru. She holds a Ph.D. in Law from Siksha 'O' Anusandhan, (Deemed to be University), Bhubaneswar, Odisha. Her areas of interest include Criminal Law, Human Rights, International Law, and Environmental Law.



Dr. Upankar Chutia is an Assistant Professor at Alliance School of Law, Alliance University, Bengaluru. He has completed Ph.D. from the Amity Law School, Amity University, UP. His area of interest are Biodiversity Protection Laws, Folklore Rights, Traditional Knowledge, and Intellectual Property Laws.



Dr. Vedashree A. is an Associate Professor at Alliance School of Law, Alliance University Bengaluru. She has pursued her graduation, Post-graduation, and Ph.D. at University Law College, Bengaluru. Her area of interest includes Administrative Law, Competition Law, International Trade Law, and Law of Contracts.



Prof. Chakravarthy Naik, is an Assistant Professor at Alliance School of Law, Alliance University. He holds his Master's in Law (LL.M) in Intellectual Property Rights from NALSAR UNIVERSITY OF LAW, Hyderabad, and along with a degree in law, and completed B. Pharmacy from Jawaharlal Nehru Technology University (JNTU) Hyderabad, India, pursuing PhD in law from National University of Study and Research in Law, (NUSRL) Ranchi, India.



Prof. Mahantesh G. S. is an Assistant Professor at Alliance University, School of law, Bangalore. He is currently pursuing Ph.D. in Law from Alliance University, Bangalore, Karnataka. His primary areas of interest are International Law, Human Rights Law, Corporate Law, RTI, and Competition Law.



Prof. Mamatha R. is an Assistant Professor at Alliance University, School of law, Bangalore. She is pursuing her Ph.D. from Alliance University. Her research interests include criminal law, constitutional law, women Jurisprudence, and Human resources.



Prof. Shreshth Bhatnagar is an Assistant Professor at Alliance University, School of Law, Bangalore. He is pursuing his Ph.D. that focuses on Child Labour and Child Rights. His research interests include Constitutional law and Administrative Law.



Prof. Sukanya Priyadarsini is an Assistant Professor at Alliance School of Law, Alliance University, Bengaluru. She is currently pursuing Ph.D. from NALSAR University on Animal Personhood. Her areas of interest are Animal Laws, Labour Laws, Gender Studies, and Intellectual Property Laws.



Prof. Vishal Ranaware is an Assistant Professor at the Alliance School of Law, Alliance University, Bengaluru. He is pursuing his Ph.D. from the Christ (Deemed to be University), Bengaluru. His areas of interest include Business Law, Criminal Law, Constitutional Law, Medical Jurisprudence and Cyber Law.



FOREWORD

Hon'ble Justice K.N. Phaneendra
Former Judge of Karnataka High Court
Upalokayukta of the Karnataka State

“Change does not roll in on the wheels of inevitability but comes through continuous struggle. And so, we must straighten our backs and work for our freedom. A man can't ride you unless your back is bent.”

— Martin Luther King, Jr.

The legal framework constitutes an indispensable tool for effecting societal metamorphosis, yet there are instances wherein societal shifts crystallize into legal precepts. The law assumes a momentous mantle in the orchestration of societal transmutation, engendering a direct and pronounced influence upon the social fabric. It stands as one of the paramount instruments through which the paradigm of societal alteration and evolution is effectuated.

The inexorable march of change manifests ubiquitously across myriad spheres encompassing democratic governance, technological advancement, financial intermediation, pedagogical pursuits within the legal domain, corporate architecture, economic contours, political Weltanschauung, and the preservation of public order, among others.

It should be born in mind that, A Sincere, dedicated and devoted, institutions like Alliance University will always thirst for rendering yeomen service to the society, and equipping itself with service motives, and to see its, best utilization, for the benefit of the mankind, legal and social development. The Judicial System which is committed to the cause of achieving constant growth to have an orderly society and good governance in a democratic set up, by implementing the noble and laudable objects of the Constitution of India. The endeavour of the Institution is to supplant the said laudable objectives of the Constitution.

Laudable number of great personalities and institutions has dedicated themselves as facilitators of solutions through their noble thoughts, high thinking with deep knowledge and impeccable qualities they really made laudable contribution to the societal development. Their sacrifice and dedicated efforts to the mankind should always be remembered, and we should lead our path in the light of their great virtues knowledge and great noble thoughts. This book is also seeking its path to reach such objective with the above values.

Within the annals of the meticulously curated compendium titled “LEX ET MUTATIO: LAW AND SOCIAL TRANSFORMATION,” a scholarly offering under the aegis of Alliance University, a conscientious endeavour crystallizes to coalesce the multifaceted process of societal metamorphosis across the entire spectrum of human endeavour.

This book concurrently accentuates the pivotal role assumed by the judicature, its apparent imprint in harmonizing the trajectory of transformation for the amelioration of the collective. The volume stands as an exposition of constant efforts undertaken by erudite students, esteemed academicians, fastidious editors, and other dedicated contributors who have offered their sagacity to this book. This edition serves as a discerning amalgam of erudition, representing the culmination of deliberation by legal personalities, scholastic luminaries, and legal practitioners comprehensively canvassing the array of transformations within the international societal matrix.

Warm Regards,
Hon’ble Justice K.N. Phaneendra



MESSAGE FROM PRO- CHANCELLOR

“The way things are, does not determine the way they ought to be.”

-Michael J. Sandel

In today’s world, determining and categorizing ‘things that are’ and ‘things that ought to be’ dictate the ongoing dialogue for social transformation. The objective of such transformation is to address the stigma attached to existing social issues, while furthering the welfare of the people, at large. Since law and society are interlinked, legal education provides for the base in identifying and specifying the crucial factors which spearhead ‘necessary social change’.

We believe that the book LEX ET MUTATIO: LAW AND SOCIAL–TRASFORMATION is a step towards being a part of the much-needed social transformation. This is an outcome of the selected research papers presented at International Conference on Law and Social Transformation, ICLS-23 organized by Alliance School of Law, Alliance University Bengaluru. Knowledge procurement and dissemination have always been the most effective means of venturing into change. This book brings together the perceptions, ideologies, and standings of an ensemble of key players from the legal fraternity. The members entail professionals from academia and industry, students, and members in all capacities from multi disciplines. The book is a reader’s delight which features inputs across varied themes highlighting niche issues dominating and corrupting the social fabric.

I appreciate the efforts of editors in putting together this book for the benefit of students, academicians, legal professionals, and the society at large. Alliance University has always advocated and furthered research based experiential learning as the standard form of teaching. Cataloguing the existing research pool and chalking out the prevailing social evils, while brainstorming about the remedial measures to these issues, is an extension of our standing in teaching methodology. Keeping at par with the phrase “change is the only constant”, it is pertinent that social advancement be pursued by a methodical shift in legal research and pedagogy. I hope that the book, adds substantially to the overall research mechanism and marks up to the expectations of every inquisitive soul, rooting for social change.

Mr. Abhay G. Chebbi
Pro- Chancellor
Alliance University, Bengaluru



MESSAGE FORM PRO VICE-CHANCELLOR- ACADEMIC AFFAIRS

“Law is an authoritative canon of value laid down by the force of politically organised society.”

- Roscoe Pound

Law acts as a catalyst for effecting societal change, establishing a robust interplay with both the community and its constituents. The law effectively commands the integration of nature within the societal milieu, a role that gains heightened significance with the evolution of economics, science, and technology. The utilization of law as an instrument for catalysing social change not only fosters the impartiality of attitudes and actions but also accentuates the conception of social transformation and fortifies the fabric of society. Imbedded within the framework of social constructs and economic interconnections, the law exerts influence over legislative reforms and propels modifications within the legal apparatus, thereby aligning with the broader contours of human activities to enhance the welfare of its populace.

While the present educational framework underscores the discrete categorization of law, politics, and society as distinct academic disciplines, researchers traversing these interdisciplinary domains often draw upon the insights garnered from one another’s realms. This interdependence mirrors the contemporary societal landscape, where these domains have become so intricately intertwined that the envisioning of society without law, or law devoid of societal interrelation, remains implausible. Legal and societal inquiries contribute to a heightened rigor in the scrutiny of existing laws, while simultaneously engendering a platform for innovative policy formulation that precipitates tangible social transformation.

LEX ET MUTATIO: LAW AND SOCIAL TRANSFORMATION - delineates an array of concerns and complexities germane to the nexus of law and social transformation. I hold optimism that the endeavours of the Alliance School of Law to convene experts from diverse domains shall indubitably furnish a substantive impetus to the domain of socio-legal research. My felicitations extend to the editors and authors of this publication.

Dr. Priestly Shan B
Pro Vice-Chancellor- Academic Affairs
Alliance University, Bengaluru



MESSAGE FROM THE DEAN

“Unless there is a personal transformation, there can be no social transformation”-

Deepak Chopra

Social transformation signifies progress that societies and their members ardently anticipate, as positive change is invariably embraced. Law assumes a vital role in driving this transformation for a society without which there will be a lack of harmony and peace. Laws function as the driving force, enabling society to surmount obstacles through legislation that fosters meaningful change in both present and future communities. While society has evolved over time with the aid of law, it is important to recognize that persistent societal issues continue to intensify, rather than fade away. Therefore, it is imperative for society to effectively leverage existing laws to bring about genuine social transformation. The focus of LEX ET MUTATIO lies in illustrating how different aspects of the law have facilitated shifts in societal behavior and how the legal system has addressed these changes. It offers a platform for discussing well-researched papers across various fields, such as Artificial Intelligence, Ethics, Social Transformation, Arbitration and Conflict Resolution, Banking and Digital Inclusions, and Challenges in Legal Education. LEX ET MUTATIO is the outcome of ongoing efforts by the School of Law, Alliance University, to promote excellence in legal research. The dedicated work of the organizing committee and editorial team, including data collection, validation, and compilation, is evident in the book. I am confident that these efforts will undoubtedly yield significant results in the years to come, fostering insightful expertise in the realm of socio-legal research. I extend my best wishes for productive discussions ahead.

Warm Regards

Dr. Kiran Dennis Gardner

Dean, Alliance School of Law,
Alliance University, Bengaluru

ACKNOWLEDGEMENT

The Editors of **LEX ET MUTATIO: LAW AND SOCIAL TRANSFORMATION**, Volume III, extend their gratitude to the Management of Alliance University, Bangalore, for enabling and fostering the School of Law in organizing the International Conference on Law and Social Transformation [ICLS]-2023. The Hon'ble Pro-Chancellor, Mr. Abhay G. Chebbi, and his office are acknowledged for their unwavering support, guidance, zealous involvement, and words of encouragement. We take this opportunity to thank Pro Vice- Chancellor Academic Affairs Dr. Priestly Shan Boaz, for his constant support and motivation which have resulted in the successful publication of this edition.

We would like to thank Dr. Prakash IN, and his extended library staff for their coordination and consistent efforts in facilitating research. As a collective team, we wholeheartedly acknowledge each individual mentioned herein for their role in this academic journey. The realization of our commitment to create this reservoir of knowledge would not have been achievable without the valuable contributions from the authors and co-authors cited in this edition. Their perseverance, dedication, and hard work are recognized and appreciated.

This academic endeavour was undertaken with the aim of fostering dialogue for social change. It is with pride that we affirm this work is a tangible step towards achieving quality research output. Furthermore, our heartfelt appreciation is extended to the Faculty Members and Administrative Staff of Alliance School of Law, whose tireless efforts have ensured the quality of this book. Lastly, but certainly not least, we express our gratitude to the Divine for blessing us, providing us with the courage and determination to contribute to the holistic advancement of the legal fraternity through academic research and finesse.

Editorial Committee,
LEX ET MUTATIO: LAW AND SOCIAL TRANSFORMATION

PREFACE

The publication titled “Lex Et Mutatio: Law and Social Transformation, Volume III” compiles an array of erudite scholarly papers spanning diverse legal domains. These papers collectively underscore the pivotal role of the law as a potent instrument for driving societal transformation within our contemporary context. The volume offers a discerning and incisive analysis of prevailing societal dynamics, encompassing a broad spectrum of subjects, including but not limited to Artificial Intelligence, Ethics, and Social Transformation; Criminal Justice and Human Rights; Arbitration and Conflict Resolution; Democracy and Judicial Activism; Banking and Digital Inclusions; Environment and Sustainable Development; and Challenges in Legal Education. The intricate interplay and dynamic interrelation between the law and society form a cornerstone for catalyzing social metamorphosis. Within the pages of this compendium, a myriad of nuanced socio-legal issues undergo meticulous re-examination and critical evaluation. Pertinent inquiries are thoughtfully raised, with the overarching objective of harmonizing our extant legal and social frameworks with the evolving ethos of our society. The discourse also presents practical resolutions that aptly cater to the ever-evolving societal landscape. This publication serves as an illuminating and authoritative guide, offering readers the opportunity to immerse themselves in the omnipresent socio-legal shifts that shape our era. It serves as a platform to rigorously assess the adaptability of our prevailing legal apparatus in accommodating transformative change. Moreover, it nurtures a comprehensive understanding the requisites of our society at large. The insights proffered herein are purposefully intended to stimulate innovative and scholarly perspectives, thereby motivating readers to embark upon further explorations and academic pursuits.

Sincerely,
Editorial Committee,
LEX ET MUTATIO: LAW AND SOCIAL TRANSFORMATION

INTRODUCTION

“The law can be an instrument of change and a shield for the oppressed.”

- Desmond Tutu

Welcome to **LEX ET MUTATIO: LAW AND SOCIAL TRANSFORMATION**, a distinguished platform serving as a cornerstone in the domain of legal scholarship and discourse. Within these pages, we embark upon an intellectual journey through the intricate fabric of law, wherein insightful analyses, pioneering research, and thoughtful commentary converge to shape and enrich the legal milieu. In an epoch defined by dynamic legal challenges and evolving jurisprudence, our publication stands as a beacon of erudition, fostering an environment where legal minds from diverse backgrounds convene to partake in meaningful dialogues. With an unwavering dedication to intellectual rigor and integrity, we strive to offer a forum for scholars, practitioners, and students to contribute to the ongoing discourse on legal theory and practice.

Each edition of **Lex Et Mutatio** encapsulates a mosaic of thought-stirring research papers that delve into an array of legal disciplines. From Constitutional Law to International Agreements, from cutting-edge technological advancements to timeless ethical predicaments, we traverse the expansive realm of legal contemplation, providing a comprehensive exploration of issues that mold societies and individuals. Our editorial board comprises esteemed legal authorities and academics who diligently curate and peer-review each submission, ensuring the utmost standards of quality and precision. As a purveyor of legal knowledge and innovation, we extend an invitation to authors worldwide to share their insights, fostering a global network of legal scholarship transcending boundaries and ideologies.

Lex Et Mutatio extends an open invitation to emerging practitioner, legal scholars, professionals, academicians or an enthusiast with an abiding curiosity in the law to join us in this intellectual odyssey. As we embark on this journey collectively, our aim is to illuminate the intricacies of legal theory, question prevailing norms, and stimulate discourse that charts the course for a more equitable and just future.

This volume holds a distinctive place as it sheds light on contemporary concerns across the spectrum of its study areas. We hold firm confidence that this book will continue to inspire readers to engage in socio-legal research, ultimately fostering enhancements for society at large.

Editorial Committee,
LEX ET MUTATIO: LAW AND SOCIAL TRANSFORMATION

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CHAPTER - 1
SOCIAL JUSTICE & CONSTITUTION;
DEMOCARCY & JUDICIAL ACTIVISM

ANALYSIS OF CASTE-BASED VIOLENCE IN INDIA CONCERNING NCRB REPORT 2021

Rohit Ranjan¹

INTRODUCTION

India is a country known for its cultural richness, extensive history, and enduring traditions. However, caste-based violence still exists today, hiding beneath this colourful tapestry. Indian civilization has been scarred by caste, a deeply embedded system of social division, for generations. Violence against Dalits and other vulnerable caste communities persists throughout the country despite ` protections and legal safeguards.

The Vedic period, roughly 1500–500 BCE, is when the caste system first emerged. The Rigveda, one of the four Vedas, mentions the varna system, in which society was divided into four *varnas*; i) the Brahmins, ii) Kshatriyas, iii) Vaishyas, and iv) Shudras. The varna system was based on occupation and labour. It was not based on birth.² and was fluid in nature. These groups were not rigid and allowed mobility.³ However, the structure eventually became more rigid and hereditary as time went on. The Hindu texts in the post-Vedic period including the two great epics of *Ramayana* and *Mahabharata*, and the *Manusmriti* (Law of Manu) concretised caste into a rigid birth-based system⁴ which separated society into tens of thousands of discrete endogamous groups, came to be known as the caste or jati system. The idea of purity and pollution, where lower castes were viewed as “polluting” to the upper castes, served to perpetuate this intricate structure.⁵

The British colonial administration reinforced the caste system even more by instituting the census, which required Indians to identify their castes. Their objective was to better administer India by knowing its social structure, but this process worsened caste differences.⁶ The British

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1. Ph.D. Research Scholar, Alliance School of Law, Alliance University, Bengaluru.
 2. Basham, A.L., *The Wonder That Was India: A Survey of the History and Culture of the Indian Subcontinent Before the Coming of the Muslims* (Grove Press 1954).
 3. Dumont, L., *Homo Hierarchicus: The Caste System and Its Implications* (University of Chicago Press 1980).
 4. Doniger, W., *The Hindus: An alternative history*. (Oxford University Press 2009).
 5. Srinivas, M.N., *Religion and Society among the Coorgs of South India* (Clarendon Press 1952).
 6. Dirks, N.B., *Castes of Mind: Colonialism and the Making of Modern India* (Princeton University Press 2001).

also included caste in their “divide and rule” policy, encouraging societal division to maintain control over India.

India in the post-independence era under the direction of Dr B. R. Ambedkar, a Dalit who was also the head of the drafting committee of the Indian Constitution, banned “Untouchability” under Article 17 of the Indian Constitution, which also guaranteed equality (Article 14). Reservations in employment, education, and legislative bodies for Scheduled Castes (SCs) and Scheduled Tribes were also established by the constitution as part of affirmative action policies to help historically oppressed castes (STs).⁷ Caste-based violence is a topic that the laws and regulations of the Indian legal system address in detail, offering both redress and mass education. The rights to equality and freedom from discrimination are protected under India’s Constitution’s Articles 14 and 15.

LEGAL REGIME AGAINST CASTE-BASED DISCRIMINATION

Discrimination against people based on their race, caste, gender, or place of birth is illegal and unconstitutional. Besides the constitutionally mandated protection, Although the Protection of Civil Rights Act of 1955 had harsh penalties for discrimination and prohibited access to public resources based on untouchability, the law was unable to infiltrate deeply enough into society to achieve its intended goal. To combat the rising number of atrocities committed against the scheduled castes and scheduled tribes, the parliament passed the Scheduled Castes and Tribes (Prevention of Atrocities) Act in 1989. This law had particularly strict requirements for the punishment of an offender, provisions for special courts to expedite case resolution and provisions for victim rehabilitation. The act underwent a significant amendment in 2015, adding a new set of offences such as garlanding with footwear, forcing someone to carry or dispose of human or animal carcasses or engage in manual scavenging, referring to SCs or STs by their caste in public, and attempting to incite animosity toward SCs or STs, among other things. Additionally, it established the possibility of compensating the victim based on the seriousness of the crime, the establishment of exclusive special courts, the appointment of an exclusive special public prosecutor, and the state’s obligation to take action to protect SC and STs’ rights. This includes defending their dignity, upholding their social, economic, cultural, and political rights, and avoiding any atrocities committed against them.

The Supreme Court ruled in *Subhash Kashinath Mahajan v. State of Maharashtra & Anr*⁸ that prior authorization is required for an arrest under the aforementioned legislation and that the police may undertake a preliminary investigation to determine whether the charges are true.

7. Galanter, M., *Competing Equalities: Law and the Backward Classes in India* (University of California Press 1984).

8. *Subhash Kashinath Mahajan v. State of Maharashtra & Anr*, (2018) 6 SCC 454.

This decision generated a great deal of criticism. In the case of *Prathvi Raj Chauhan v. Union of India & Ors*,⁹ the Supreme Court reversed the 2018 decision in the *Subhash Kashinath Mahajan* case and ruled that the police can file an FIR or a complaint under the Act without first conducting a preliminary investigation. Additionally, if no prima facie case is established or the complaint is determined to be prima facie false, anticipatory bail may be granted in cases covered by the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Court also made it clear that arresting an accused does not require permission from any authority. Many hailed the 2020 decision as a necessary course correction that gave a critical rule intended to prevent caste-based violence some much-needed teeth.

Nevertheless, despite all the initiatives taken and the regulations put in place, the caste system is still seen as having a substantial impact on Indian society, despite these constitutional protections. Caste-based judgments are still regularly made when it comes to marriage, employment, and social standing. Caste identities are crucial for energising voter bases in politics and are regularly used as electoral political tools.¹⁰

Indian social customs and religious practices from long ago are the root of caste-based violence. In a rigid vertical hierarchy created by the caste system, Dalits, who are frequently referred to as “untouchables” were placed at the bottom. It resulted in a cycle of oppression and marginalisation since they endured significant social prejudice and were forced to perform menial tasks without any exit from the cycle of oppression. The system was designed in a manner to maintain the status quo, any attempt to break out of this attracted social sanction and punishments. The fundamental cause of caste-based violence can be understood from the prisms of a definite social order which protects the rigid social hierarchy, the vast economic disparity, and political exploitation.

UNDERSTANDING CASTE-BASED VIOLENCE: NATURE AND EXTENT

Caste-based violence can be stated to be violence targeted specifically towards a member of a group by the reason of their caste identity. It originates from the caste system, a hierarchical social structure that divides people into different groups according to where they were born and what they did for a living. Physical assaults, social boycotts, sexual harassment and assault, verbal abuse, and economic discrimination are just a few of the various ways in which this violence manifests itself. It is intertwined with acts of discrimination and humiliation on a day-to-day basis like access to basic amenities of schools, religious places, public wells, and public places being curtailed or segregated. The divergence from these social rules may also lead to

9. Prathvi Raj Chauhan v. Union of India & Ors, (2020) SCC 4 727.

10. Jaffrelot, C., *India's Silent Revolution: The Rise of the Lower Castes in North India* (Columbia University Press 2003).

social ostracization. The extreme form of this identity-based violence ends up in physical and sexual assault, rape, and murder.¹¹

FACTORS CONTRIBUTING TO CASTE-BASED VIOLENCE

Multiple factors are propagating caste-based violence in the Indian social structure. Broadly these factors can be categorised into social, economic, and political.

The social factors are deeply ingrained in the social order; the hierarchical nature of caste identity and the social capital gained by membership in the upper castes, which ensures unrestricted access to resources, privileges, social respect, and power in society, serve as fuel to use violence and suppress and marginalise the underprivileged to maintain one's position of power in the society.¹² To maintain this power, endogamy and social exclusion is used as a tool.¹³ The idea to protect the purity of closed endogamous groups led to the usage of violence to reinforce caste boundaries.¹⁴ Caste-based violence might continue if lower-caste people aren't educated about their rights and the laws that are intended to protect them. Additionally, it makes it difficult for them to escape the cycle of economic and social exploitation.¹⁵

Caste-based violence in India is mostly perpetuated by economic considerations. Caste-based discrimination and violence are frequently employed as tactics to maintain the economic supremacy of the higher castes in instances where caste and economic status overlap. In India, distinct castes have historically been associated with particular occupations. The economic foundation for caste discrimination is often formed by occupational casteism, which frequently confines people to low-paying jobs. Lower-caste individuals frequently encounter violent retaliation when they seek to buck these established customs.¹⁶ In India, the higher castes have a disproportionate amount of power and land ownership. Due to the unequal distribution of land, there are economic and social power imbalances that can result in violence, especially

11. Desai, S., & Dubey, A., *Caste in 21st Century India: Competing Narratives*. 46(11) Economic and political weekly 40, 40–49 (2012).

12. Supra., note 2.

13. Ghurye, G.S., *Caste and Race in India* (1969); Chowdhry, P., *Political Economy of Production and Reproduction: Caste, Custom, and Community in North India* (2011).

14. Chowdhry, P., *Political Economy of Production and Reproduction: Caste, Custom, and Community in North India* (2011).

15. Nambissan, G. B., *Exclusion and Discrimination in Schools: Experiences of Dalit Children* (2009).

16. (Deshpande, A., *Caste at Birth? Redefining Disparity in India. Review of Development Economics*, (2001).

when people of lower castes rebel against the established norm.¹⁷ The traditional caste-based order is frequently threatened by economic mobility, which prompts retaliatory violence from upper-caste groups who believe their standing is in jeopardy. Economically, lower-caste people frequently depend on upper-caste people for jobs and pay. Because of this dependence, a power dynamic is fostered in which those of lower caste are more open to exploitation and violence.¹⁸

Caste-based violence in India is often influenced by various political factors, both at the local and national levels. These factors can include political parties' use of caste identities for electoral gains thereby reinforcing caste-based divisions and sometimes contributing to violence¹⁹, the politicization of caste-related issues such as reservations and caste-based census, which can exacerbate caste tensions and potentially contribute to violence²⁰, and the lack of political representation for lower caste groups, this lack of representation can hinder the effective implementation of laws against caste-based violence and result in lower accountability for such acts.²¹

The above-mentioned factors can be reinforced by the government-maintained record of caste-based violence. According to the National Crimes Records Bureau's (NCRB) 2021 report, there was a 1.2 per cent increase in violence against SCs and a 6.4 per cent increase against STs in 2021. A rise in this scale shows the persistence of deeply established bias and the failure of present measures to address root causes. An analysis of the NCRB 2021 report gives the following insights:

1. Total Recorded Crimes: In India, the number of reported crimes against SCs increased steadily from 45,961 in 2019 to 50,291 in 2020 and then 50,900 in 2021.
2. Crime Rate: The "*Rate of Total Crime against SCs (2021)*" shows how many crimes against SCs there are for every 100,000 SCs. As it takes into consideration demographic variations between states. The following table represents the top 10 states in terms of total number of crimes committed against the SC population.

Table 1: Number of cases committed against the SC population in the year 2021 as per NCRB.

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17. Banerjee, A., Iyer, L., & Somanathan, R., *History, Social Divisions, and Public Goods in Rural India*. Journal of the European Economic Association (2005)
 18. Thorat, S., & Newman, K., *Caste and Economic Discrimination: Causes, Consequences and Remedies*, (2007)
 19. Chandra, K., *Why Ethnic Parties Succeed: Patronage and Ethnic Headcounts in India*. Cambridge University Press, (2004)
 20. Supra., note 9.
 21. Nagaraj, A., *Persistence of Identity-based Voting in Indian Politics: Patterns and Possible Explanations*. Economic & Political Weekly, (2012)

State/UT	Cases (2021)	Actual Population of SCs (in Lakhs) (2011)	Rate of Total Crime against SCs (2021)	Charge sheeting Rate ²² (2021)
Uttar Pradesh	13146	413.6	31.8	85
Rajasthan	7524	122.2	61.6	50
Madhya Pradesh	7214	113.4	63.6	99.5
Bihar	5842	165.7	35.3	82.3
Maharashtra	2503	132.8	18.9	89.9
Odisha	2327	71.9	32.4	90.9
Andhra Pradesh	2014	84.5	23.8	75.6
Telangana	1772	54.3	32.6	75.5
Karnataka	1673	104.7	16	86
Haryana	1628	51.1	31.8	48.7

It is frequently stated that there are more crimes against the SCs in states like Uttar Pradesh, Rajasthan, and Madhya Pradesh. The state of Uttar Pradesh had the most cases, with 13,146 reported cases in 2021. In Uttar Pradesh, where there are 413.6 lakh SC people, there are 31.8 SC-specific crimes reported each year, with an overall charge sheeting rate of 85.0%. With 7,524 incidents, Rajasthan closely trails Uttar Pradesh in 2021. Its charge sheeting rate is 50.0 per cent and 122.2 lakh SCs are living there. In Bihar in 2021, 5,842 incidents of crime against SCs were registered. The state's charge sheeting rate of 82.3 per cent is comparatively high given its 165.7 lakh SC population. 7,214 incidents were reported in Madhya Pradesh in 2021.

Caste-based violence in society has many different manifestations. It is still an issue today since it has its roots in caste-based prejudice and attempts to uphold the dominant identity and the caste system as it currently exists. The caste identity-related violence is, at best, covert and blatant and, at worst, actual and targeted. Daily acts of humiliation and prejudice include everything from denying access to wells, temples, and other public amenities to social exclusion, assault, rape, and other physical abuse. Since Dalits are at the bottom of the caste structure, it is frequently observed that they are the group most negatively impacted by these societal standards beyond the purview of existing laws.²³ The act has long-term psychological trauma on the targeted group in addition to short-term physical harm. It serves to maintain the status quo of the targeted group's socioeconomic status by strengthening the caste difference and the

22. *This shows the percentage of cases in which charges have been filed in the court of law.*

23. *Supra.*, Note 10

social and economic marginalisation of that group.²⁴ In time, social and economic development is hindered by the disruption in social harmony and by economic marginalisation.²⁵ The lower caste has very little access to resources and land holding forcing them, to subsist, into low-wage menial jobs or bonded labour. The politicization of caste acts as a major factor for caste-based violence as it leads to a race of gaining political control and ceasing power.

CONCLUSION AND SUGGESTIONS

Comprehensive action must be taken to eliminate caste-based violence, and social change must be manifested on all levels—legal, societal, and policy. To reduce the occurrences of caste-based violence, the state must enforce stricter anti-discrimination laws with harsh punishment serving as a deterrent. For prompt justice delivery, a swift legal system must be constructed. For caste-based violence to be addressed and to ensure effective investigation and prosecution, the state must create specialised cells or units within the police force. To reach the intended beneficiaries, the reservation system must be deployed successfully, and its adherence must be tracked. The state must implement necessary steps to stop overt and covert caste discrimination in educational institutions by educating students and requiring them to attend a course on the caste structure and the prejudices that go along with it. To inform the students about the consequences of caste-based prejudice, the curricular framework needs to be inclusive. By engaging the community, using the media, and working with educational institutions, you may promote social integration, empathy, and respect for diversity. Encourage community-driven projects that give underprivileged castes more authority. To improve socioeconomic conditions, support self-help organisations, cooperative societies, and skill development initiatives. To promote understanding, compassion, and social cohesiveness between people of different castes, facilitate inter-caste discussion and reconciliation processes at the community level. Encourage efforts to overcome stereotypes and build bridges between various caste communities. To promote understanding, compassion, and social cohesiveness between people of different castes, facilitate inter-caste discussion and reconciliation processes at the community level. To genuinely realise the vision of an inclusive society where caste-based violence is eliminated and prejudice based on caste identity is denied, tremendous effort must be made to break stereotypes and develop bridges amongst various caste communities.

24. Thorat, S., & Newman, K. *Caste and Economic Discrimination: Causes, Consequences and Remedies*, 42 Economic and Political Weekly 4121, 4121-4122 (2007)

25. Jean Drèze & Amartya Sen. *An Uncertain Glory: India and its Contradictions*, Economics Books, (Princeton University Press, 2015)

LEGAL ENFORCEABILITY OF EMPLOYMENT BONDS IN INDIA

Girish Shetty ¹

INTRODUCTION

Article 23 of the Constitution of India prohibits any form of forced labor and Article 19 (1) (g)² of the Constitution of India provides a fundamental right to practice any profession or to carry on any occupation, trade, or business to all citizens. Art. 19 (6)³ provides that the State may impose reasonable restrictions upon the fundamental right of Article 19 (1) (g)⁴. Further, the apex courts of India recognized the right to livelihood under Article 21⁵ of the constitution of India. These fundamental rights should be tested, to determine the validity and enforcement of employment bonds.

A contract is an agreement enforceable by law. An employment bond is an agreement. The enforceability of employment bonds is one of the most contesting issues between employer and employee. In the contemporary world, the practice of signing the employment bond is being followed for various reasons. One of the legitimate reasons to sign an employment bond is that the employer has invested resources to train personnel on employee skill enhancement. In case of breach of a contract of employment bond, the employer is entitled to reasonable compensation.

One of the most important and frequent practical questions to be addressed on the employer and employee relationship in India is whether an employment bond is enforceable in a court of law. The employment bond with legal and reasonable contractual obligations does not create forced labor nor infringe the fundamental right of an employee to carry any occupation, trade, or business. However, an employment bond is only enforceable with reasonable contractual obligations and on fulfilling all essentials of the contract.

To understand the question of enforcement or non-enforcement of an employment bond, we need to discuss this elaborately by considering the applicability of some of the essentials of the contract to the employment bond.

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1. Ph.D. Research Scholar, Alliance School of Law, Alliance University, Bengaluru.
 2. INDIA CONST. art. 19, § 1, cl. g
 3. INDIA CONST. art. 19, § 6
 4. INDIA CONST. art. 19, § 1, cl. g
 5. INDIA CONST. art. 21

THE ESSENTIALS OF CONTRACT TO BE FULFILLED FOR ENFORCEABILITY OF EMPLOYMENT BOND

All the essentials of the Indian Contract Act of 1872 must be fulfilled, to enforce any type of agreement including employment bonds in India. The essentials of the contract are provided by Section 10⁶ of the Indian Contract Act of 1872. Section 10⁷ provides the following legal essentials to the contract: offer and acceptance, lawful object, lawful consideration, free consent, competent to contract and such an agreement shall not be declared void.

Considering the practical legal issues of enforceability of employment bonds in India requires elaborate discussion vis-à-vis with following legal aspects:

Consideration must be fulfilled in the employment bond

Section 2 (e) of the Indian Contract Act of 1872 defines an agreement. An agreement means a promise or a set of promises forming consideration for each other. Section 10⁸ and section 2 (d) of the Indian Contract Act of 1872 require that every contract must have a consideration.⁹ The absence of consideration will render the agreement void.

It is observed that several employers require their employees to sign an employment bond at the time of their joining or thereafter. Such an employment bond mentions that the employee shall work with the employer for a specific period. If an employee breaches this employment bond, is required to compensate the agreed amount mentioned in the employment bond. Now the question is whether such employment bonds are enforceable. It should be noted that such employment bonds to be valid requires to provide consideration. The remuneration paid or promised to be paid by the employer cannot form a valid consideration to the employment bond agreement, because the remuneration is paid or will be paid for the services rendered by the employee. The question to be asked is whether any increment or hike in salary provided to the employee by the employer at the time of joining or during the employment could be a valid consideration to enforce an employment bond. A remuneration to an employee is a consideration to the employee as employment compensation and such a remuneration should not be considered as a consideration to employment bond and to enforce such an agreement. By applying the same reason, the employee's increment is a consideration for recognizing the employee's performance in employment. Therefore, an increment to employees shall not be a valid consideration in the eyes of the law to enforce employment bonds.

6. Indian Contract Act, 1872 § 10, No 9., Acts of Parliament, (India).

7. Indian Contract Act, 1872 § 10, No 9., Acts of Parliament, (India).

8. Indian Contract Act, 1872 § 10, No 2 (e)., Acts of Parliament, (India).

9. *Id.*

In the case of a trainee, where the employer has invested resources and time in training or skill enhancement of the trainee, is a good consideration in the eyes of the law and such employment bonds could be valid subject to all the essentials of the contract and other laws are complied. It should be noted that the burden of proof of expenditure for the relevant training or skill enhancement of employees will be on the employer. However, mere the fact that the candidate is hired with the title of a trainee will not make the employment bond automatically valid and enforceable. There may be a situation where the employer hires a person as a trainee, for rendering the regular work for less remuneration under the guise of a designation of trainee. It is required that the trainee has received the training for skill enhancement and the employer has invested their resources in the training, which is a good consideration to employment bond.

EMPLOYMENT BONDS SHOULD NOT CONTRADICT SECTION 27 OF THE INDIAN CONTRACT ACT OF 1872

One of the important legal provisions to be considered to address the validity and enforceability of employment bonds is Section 27 of the Indian Contract Act of 1872.¹⁰ Section 27 of the Indian Contract Act of 1872 provides that the agreement which is in restraint of profession, trade, or business of any kind, is to that extent void. It should be noted that employment bonds do not restrain employees from working with some other employer or any profession or trade. In case of breach of employment bond, the employment bonds only create a monetary obligation on the employee under the agreement and the employee is free to undertake any profession or trade or business. If such obligation to compensate the employer under employment is legal and reasonable, will not be considered a restraint under Section 27 of the Indian Contract Act of 1872.¹¹ It is important to distinguish these monetary obligations in case of breach of employment bond against obligations of an employee not to compete clause. The non-compete clause will restrain employees from undertaking professions or trade or businesses for a specific period, in a specific geographical location. The enforceability and extent of validity of the non-compete clause is a different legal question compared to the enforcement of employment bonds and therefore, the enforceability of the non-compete clause is to be addressed separately and does not form part of this scope of research paper on the enforcement of employment bond.

EMPLOYMENT BOND MUST PASS THE TEST OF REASONABILITY

It is important to note that despite fulfilling the essentials of the contract, it is legally mandatory that the terms of the employment bond must be reasonable. Otherwise, the courts in India will hold such unreasonable employment bonds void. For instance, the employment

10. The Indian Contract Act, 1872, *supra* note 6.

11. *Id.*

bond obliges the employee for an unreasonably long period to work with the employer, for instance for 20 years of obligations to work with the employer. The courts will determine the reasonability based on the facts and circumstances of the case. The test of reasonability will be objective in nature. Considering the severability of unreasonable clauses of the employment bond and considering the facts and circumstances of the case, courts either will hold the entire employment bond as void or may hold it to be enforceable to the extent of reasonableness.

REASONABLENESS OF COMPENSATION UNDER AN EMPLOYMENT BOND

Generally, any breach of employment bonds requires certain liquidated compensation to be paid to the employer. The burden of proof to prove a breach on the employer. However, the employer doesn't need to prove the extent of the loss. If the breach is proven, the law considers it a legal injury. Therefore, it is not necessary to prove the extent of loss by the employer. Indian courts will not intervene on the liquidated damages mentioned under the employment bond unless such a liquidated compensation is mentioned as unreasonably high.

If the employment bond is enforceable, what will be the compensation entitled to pay by the employee to the employer? Section 73 of the Indian Contract Act of 1872 provides that compensation or damages are not to be given for any remote and indirect loss or damage sustained because of the breach. Therefore, indirect loss or remote damages also do not apply to employment bonds.¹²

Section 74 of the Indian Contract Act provides the following important legal aspects to be considered to understand to compensate in case of breach of contract where penalty stipulated under an agreement (employment bond).

1. Section 74 provides that if the agreement provides any amount or a stipulation in the form of a penalty.
2. It is not necessary that the party complaining of breach must prove actual damages nor there must be an actual loss that occurred to the claiming party. The Madras High Court in *Toshnial Brother Pvt. Ltd. v. E Eswarprasad & Ors.*¹³, held that the employer doesn't need to prove any post-breach damages separately. The breach constitutes legal injury resulting to the employer.
3. Such a stipulated amount or penalty for breach must be reasonable; and
4. Such stipulated amount or penalty to be paid for breach must not be in any case more than the amount agreed under the employment bond.

12. The Indian Contract Act, 1872, *supra* note 6.

13. *Toshnial Brother Pvt. Ltd. v. E Eswarprasad & Ors* 1997 LLR 500

5. This section 74 provides an exception whereby, any such agreement or any instrument entered under any law or, orders of central or state government, the test of reasonableness is not applicable and the party of committing the breach must pay the whole sum mentioned under the agreement.¹⁴

In Shah Singh v. State of Mysore,¹⁵ the apex court was dealing with a service contract, wherein a scholar obtained a scholarship for studies abroad and undertook to return and serve the Government for a period of five years, committing a breach of the contract. The apex court held that the penal clause provided under the bond shall be enforced. The defaulter must reimburse the Government the sum stipulated, which comprised of the amounts received by him as scholarship, passage money, and all other amounts that were advanced to him up to the date of his return from abroad.

CONCLUSION

It is observed that in India all the provisions of the contract require to be fulfilled to enforce employment bond. However, it should be noted that the inclination of Indian courts is not in favor of the enforceability of employment bonds. In India, courts will not issue injunctions against employees, who either work for an employer or remain idle. Generally, employment bonds are enforceable against trainees, provided all the essentials of the contract are fulfilled. Civil remedies are the only remedies available to the employer against the employee, in case of breach of employment bond. An employer should issue a legal notice to the employee to report back to duty immediately and thereafter, failing of which civil action could be initiated by an employer against the employee for breach of employment bond. Generally, an employee may take the defense that there was no training imparted to the employee, no consideration to employment bond, no free consent to sign the agreement, or an unreasonable restriction imposed on a person's trade or profession.

It is suggested that employment bonds should be required by the employer, only in situations where it is legally justifiable and enforceable. Unless the situation is legally justifiable to enforce employment bonds, the actions of employers to enforce unjustifiable employment bonds will lead to disputes between employer and employee. Such unjustifiable acts to enforce employment bonds will harm the image of the employer in the employment market and their highly skilled employees may not prefer to work with such employers. Therefore, attempting to enforce unreasonable and legally unjustifiable employment bonds will not only have legal consequences but also deprive skilled employees of joining employment with the employer and tarnishes the reputation of the employer in the market.

14. The Indian Contract Act, 1872, *supra* note 6.

15. *Shah Singh v. State of Mysore* AIR 1959 Kant 215

SECULARISM VS RELIGIOUS BELIEFS: AN ANALYSIS THROUGH THE LENSE OF SABRIMALA CASE

Snigdha Tadakanti¹

Pranav Agrawal²

INTRODUCTION

In discussing India as a country, it is important to recognize that our cultural values place immense respect upon women, although we don't always live up to these ideals. Hinduism, for example, regards women as Adi Shakti—meaning the supreme power and life-giving force. According to Hindu ideology, women should be highly revered for their unique ability to bring life into the world. Therefore, barring women from any location within the country, particularly a Hindu temple, contradicts the core principles of this belief system.

As for the Indian Constitution, the phrase every individual in Article 25³ it means that all everyone without any inclusions and Article 25³ is an individual right which is conferred to the conscience of an individual but the Article 25 in the constitutional order should be below other postulates of the constitution like liberty, equality and personal freedoms. The word morality used in the articles 25 and 26⁴ of the constitution is not to be defined as the popular opinion of the society or the prevalent thought of the people of the country but it should be considered as per the four percept's which have been highlighted in the constitution which are the justice which need to be served socially, economically and political, then the liberty of an individual in the topics of believe, faith, expression of these and worship, equality and fraternity among all the citizens. Thus, this gives an individual full liberty to believe or not to believe. The constitution believes in religion and the practices, but the main aim is human dignity and liberty and equality.⁵

However, there is another split side to the coin, rituals are present in diverse cultures worldwide, with India exhibiting a rich array of rituals and performative customs spanning

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1. B.B.A. LL. B (IP), Alliance School of Law, Alliance University, Bangalore.
 2. B.B.A. LL. B (Business Law), Alliance School of Law, Alliance University, Bangalore.
 3. INDIA CONST., art. 25
 4. INDIA CONST., art. 26
 5. *Indian Young Lawyers Association and Ors. vs. State of Kerala and Ors.* (2017) 10 SCC 689

different regions. Almost every week, divisive issues arise that deeply split public opinion.⁶ These range from distressing incidents like the lynching of Muslims, debates about Aadhar's impact on privacy, and discussions on the acceptance of homosexuality. Even matters concerning 'triple talaq' and showing 'respect' to our national flag become subjects of well-calculated controversies, often driven by political motives to secure votes. These specific topics may change, opposing ideologies clash vehemently, resembling an ongoing ideological conflict.

The recent Sabarimala dispute exemplifies this, where the media extensively covers the events, yet many struggle to grasp the core issue. Sabarimala, situated in the Pathanamthitta district of Kerala, is renowned as one of the world's major yearly Hindu pilgrimages. This sacred site is dedicated to Lord Ayyappa and has recently gained attention due to its 400-century old practice of prohibiting women aged 10-50 from entering. Its challenging when a significant number of women and men are challenged by entrenching patriarchy to enter a revered temple, while an equally sizable group of women, joined by men, reject the rights bestowed upon them by the highest court⁷. This latter phenomenon is perplexing, especially considering Kerala's reputation as a progressive state on terms of women's empowerment, literacy, and other indicators. The involvement of politics exacerbates the complexity of this situation. Hinduism is one of the very diverse and complex religions when compared to all other religions. Kerala, a state in India, is notable for its communities forming their identities around distinctive performative traditions and rituals. Among these is the Ayyappan Theeyattu, a prominent ritual. In Kerala, this ritual is a captivating subject, offering a glimpse into the diverse dimensions of rituals. In this context, the ritual has become a significant cultural marker for various communities in Kerala. Despite its importance, there are relatively less sources on this ritual. Delving into the ritual's symbolism and the underlying belief systems it draws upon is another avenue for exploration. This paper aims at investigating such religious beliefs, the history of such traditions and from where these were subscribed, myths, narratives intertwined with the ritual, and the origin of such traditions which are till date followed throughout centuries.

HISTORY BEHIND BIRTH OF LORD AYYAPPA

This narrative is rooted in the myth of the churning of the ocean of milk, a prominent tale from Hindu mythology. The story begins with the gods of being weakened by a curse placed on them by Sage Durvasa. To regain their power, they decide to churn the Ocean of Milk

6. Karan Kumar, *God in a Handful of Dust: The Ayyappan Theeyattuplacements*, Academia (10 August 2023, 12:30 PM), https://www.academia.edu/11889292/God_in_a_Handful_of_Dust_The_Ayyappan_Theeyattu#:~:text=This%20report%20was%20created%20for,the%20Theeyadi%20Nambiars%20in%20Kerala.

7. Jawahar Sircar, *Sabarimala*, Academia (10 August 2023, 12:30 PM), https://www.academia.edu/43219491/Sabari_malai.

with the assistance of their archenemies, the Asuras and Danavas. The churning aims to extract ambrosia, a divine substance that grants immortality and power. They chose Mount Mandara as the churning rod and enlist the help of Ananta, a powerful serpent, who lends his strength. The Kurmavata, an incarnation of the god Vishnu is in the form of a tortoise, serves as the base, while the serpent Vasuki acts as the churning rope. Gods and Demons hold the two ends of Vasuki and churn the ocean with vigor. This act causes Vasuki to lash around, emitting smoke and flames. As the ambrosia surfaces, both Gods and Demons strive to possess it for immortality.

The Demons managed to steal the nectar, prompting the Gods to seek help from Lord Vishnu. Vishnu transforms into the enchanting form of Mohini to lure the demons and cleverly retrieve the ambrosia from them. The demons, driven by lustful desires, agree to share the nectar with the Gods. Mohini takes the nectar, and she distributed among the Gods. Later, Mohini had showed her true form which was Lord Vishnu himself. Due to this reason, the demons were deprived of their share of the nectar. The story progresses as Shiva, deeply drawn to this transformation, visited Lord Vishnu, and requested to witness the splendid sight of Vishnu's Mohini form. Agreeing to Shiva's request, Vishnu transformed into the captivating Mohini. Shiva's fascination with Mohini led to a certain event resulting in the birth of Lord Ayyappa. It's said in mythology that Ayyappa's birth was either associated with Mohini's hand or thigh.⁸

AFTER THE BIRTH OF LORD AYYAPPA

In the land of Pandalam, there ruled a king named Rajasekara, a direct descendant of the Pandya Dynasty. His reign was marked by prosperity and success, yet his greatest concern was the absence of an heir to continue his legacy. Notably, some members of the Chempazhanattu Kovil in Sivagiri were granted authority to govern the Pandalam region around eight centuries ago by the king of Travancore. King Rajasekara, who was Lord Ayyappa's foster father, hailed from this particular dynasty.⁹ Seeking solace, both the king and queen fervently prayed to Lord Shiva, asking for his blessings for the gift of a child. In response to their prayers, Lord Shiva chose to grant their wish through Dharma Saastha, a divine being. It was decreed that Dharma Saastha would be born as an infant and raised in the Pandalam region. Accompanied by Mohini, Lord Shiva placed the baby in the lush forests along the banks of River Pampa, within the territorial boundaries of Rajasekara's domain.

8. Karan Kumar, *God in a Handful of Dust: The Ayyappan Theyyattuplacements*, Academia (10 August 2023, 12:30 PM), https://www.academia.edu/11889292/God_in_a_Handful_of_Dust_The_Ayyappan_Theyyattu#:~:text=This%20report%20was%20created%20for,the%20Theyyadi%20Nambiars%20in%20Kerala.

9. Sabrimala Shree Dharma Saastha Temple, <https://sabrimala.kerala.gov.in/about-lordayyappa> (Last accessed 9 August 2023, 11:00 AM)

On a particular day, as King Rajasekhara embarked on a hunting expedition, he paused to rest amidst the tranquil surroundings after a tiring pursuit. Amidst the stillness, the plaintive cries of a baby reached his ears. Intrigued, he ventured forth and discovered a magnificent male infant left alone in the heart of the forest. Astonishingly, the baby was adorned with a golden bell that hung delicately around its neck. Overwhelmed by uncertainty, the king grappled with what to do next. During this moment, a sage happened to pass by. Recognizing the king's bewilderment, the sage imparted profound wisdom. He revealed that the baby was not an ordinary mortal but a divine entity, an incarnation of God himself. He linked the appearance of the baby to the king's fervent powers to Lord Shiva for a child. The sage's words resonated deeply, affirming the extraordinary nature of the infant and its divine origin.

LORD AYYAPPA AND HIS CELIBACY

Ayyappa was also called Maniandan. He had chosen Naishtika Brahmacharya, which basically means that he had chosen to remain a celibate till his death. Mahishi, an evil spirit, caused trouble for the Devas in their heavenly abode. She possessed a boon that made her invulnerable to all except the child of Vishnu and Shiva. Manikandan, a being born of the union of these two powerful deities, defeated Mahishi during his quest to find tigress 'milk for his ailing foster mother. After Mahishi's defeat, a beautiful woman appeared and proposed marriage to Lord Ayyappa. However, due to his lifelong commitment to celibacy and his divine purpose, he declined the offer. Instead, he promised to marry her on the day when no first-time devotees, known as "Kanni swamis", would visit his pilgrimage site at Sabarimala, a sacred place established by his foster father in memory of his adopted son¹⁰. Since that very moment, this lady has patiently waited in the form of Devi Malikappurathamma at nearby shrine.

This entire history gives us an idea that the Travancore Devasom Board (Board dealing with the temple management) contended, "Since, the deity is in the form of a Naisthik Bramhachari, it is therefore believed that young women should not offer worship in the temple so that even the slightest deviation from celibacy and austerity observed by the deity is not caused by the presence of such women¹¹. These beliefs are thus, followed by the devotees who worship him.

10. Kishan Gupta, *Gender Equality in Relation to access to worship places*, Academia (10 August 2023, 12:30 PM), https://www.academia.edu/27462847/_GENDER_EQUALITY_IN_RELATION_TO_ACCESS_TO_WORSHIP_PLACES_

11. Sharma,S. Do gods discriminate? Sabarimala Board says Lord Ayyappa does not like Women in temple., First Post, <https://www.firstpost.com/india/do-gods-discriminate-sabarimala-board-says-lord-ayyappa-does-not-like-women-in-temple-2601986.html> (last accessed 9 August 2023 11:00 AM)

CAN THE JUDICIARY HAVE A RIGID STANCE IN RELIGIOUS MATTERS?

Dr. BR Ambedkar once stated in his speech in the Constituent Assembly about the Essential Religious Practices Test (herein referred to as ERP) regarding how Article 25 of the Indian Constitution had to be interpreted. In India, there is religion involved in every aspect of life but although, one must ensure that these religious practices don't violate fundamental principles of the people outrightly. This test draws a fine line between the Constitutional morality and religious beliefs¹². It makes sure that these religious practices go hand in hand with the Constitutional rights. Throughout the years, this test had evolved and had also brought many numbers of problems which directly pose a threat to Indian secularism, religious beliefs, and unity. The judiciary through these years also had done justice and protected fundamental rights of the people as guaranteed under Article 25 and 26 of the Constitution. However, when the judiciary is put to so much pressure to decide whether a particular practice is considered to be essentially religious practice or not, it puts so much onus on the judiciary to decide such cases.¹³ When judiciary has the power to decide whether a practice passes the ERP test, there should be a very strong reasoning and should not create furthermore chaos in the society. It should also make sure that collective rights are prioritized more than individual's rights as it strikes a social issue.

The way this test is used shows that the courts are quite involved in religious matters. Society and religion are two aspects which the Judiciary aims at achieving and thus, it is the need to find balance between not interfering too much and not ignoring religion completely. When the courts state that a particular practice or a belief isn't essential, it can upset the people who actually believe in that religion or tradition per say. Limiting a particular practice, knowing that it has been followed by the local people throughout the centuries and by prioritizing individuals' rights would not amount just to the society as a whole. When a particular practice is challenged, that particular practice is followed and believed by the people of that region and when the judiciary gives the judgment going against such a belief, it not only is disrespecting that particular religion or a tradition but also hurting the sentiments of the people who worship that god. The same is the case with Sabarimala temple. Therefore, when such questions relating to whether a women should be allowed or not arise, the judiciary needs to understand the customary practice of the temple and there is also need for it to understand the reason behind such a rule as not everything is connected to mensuration and it's not just if it directly jumps to the conclusion saying fundamental rights are violated. It needs to understand from where the principle is first subscribed from as they are many numbers of devotees to Lord Ayyappa.

12. Constituent Assembly Debates, Vol.ii 781, Thursday, 2nd December 1948

13. Commissioner of Police and Ors v. Acharya Jagadishwarananda Avadhuta and Ors. (2004) 12 SCC 808

Judiciary shall limit such religious practices, as long as they don't cause problems to public order, morality, or health, or even goes against idea of secularism in the constitution.

In *Syedna Thaer Saifuddin Saheb v. State of Bombay*¹⁴, the court emphasized that the Essential Religious Practices are to be determined according to the texts, scriptures and tenets of that religion. The court in *Shirur Mutt Case*¹⁵ held that the term "religion" in Art.25 encompassed not only religious beliefs but also practices that were an integral part of a religion. However, the court acknowledged that not all practices were essential to a religion and that only practices that were fundamental and integral could be protected under the constitution. In *Mohd Qureshi v. State of Bihar*¹⁶, the distinction between 'essentially religious' and 'essential to religion' becomes clear. The case was that the anti-cattle slaughter law had infringed their right to freedom of religion. The court held that sacrificing a cow does not appear to be obligatory and such an opinion means that it's not an obligatory duty.

In *Haji Ali case*¹⁷, the mosque had failed to give a proper reasoning on why women were not allowed. Their reasoning had no proper religious proof or evidence backing and thus, the court ended up saying women should be treated equally and thus, were allowed to enter the dargah.

One such example where court had given more importance to individual rights is 'the hijab case', the case was dismissed by the Apex court, the dismissal of the petitioner's plea illustrates that the Supreme Court realizes the sensitivity of the citizens on religious matters and like previous precedents have taken the approach of not show-casing a rigid stance on such matters as this may lead to chaos and commotion within the public. Such a claim would also consider the principle of reasonable accommodation, prompting an examination of how wearing a hijab might interfere with education in public institutions. Abandoning the current legal test in favor of a different approach would empower courts to protect the choices and independence of those making the claims.

It is to be understood that the judiciary in most of the cases applied the ERP test. When the people failed explaining the essentiality of such a practice, the judiciary had favored the individuals' rights by stating that such religious practices are not obligatory. In the *Sabarimala case*¹⁸, before the case had gone to the Supreme Court of India, the Kerala High Court clearly had

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14. *Sardar Syedna Taher Saifuddin v. State of Bombay.*, AIR 1962 SC
 15. *Commissioner, Hindu Religious Endowments, Madras v. Shri Laksmindar Thirtha Swamiyar of Shri Shirur Mutt* 1954 SCR 1005
 16. *Mohd. Hanif Quareshi & Ors. V. State of Bihar* 1959 SCR 629
 17. *The Durgah Committee, Ajmer v. Syed Hussain Ali & Ors.* 1962 1 SCR.
 18. *Indian Young Lawyers Association & Ors. V. State of Kerala & Ors.*, 2018 SCC Online SC 1690.

put a ban on women entering the temple. This judgment was properly blended into the society for 15 years till the matter had gone to the Supreme Court. The reason why no one had objected the High Courts' Judgment is because of the belief they had on the concept of Brahmacharya, and this concept was followed throughout the centuries. People who had worshipped the Deity had no issue with the judgment. However, when the case had gone to SC, the chief justice had opined that "*these compulsions, nonetheless, have led the court to don a theological mantle*". He also further stated that judges lack the required competence and legitimacy to decide whether a practice is essential to a religion. Justice Indu Malhotra, in the same case gave an opposing viewpoint, remarked that applying of rationality should not be relevant in religious affairs. She stressed upon that the "*judiciary should typically avoid interviewing in matters concerning religious beliefs, except when the certain segments of a faith are suffering due to societal issues such as Sati*". This highlighted the ongoing debate between religious principles and constitutional processes. Despite her dissent, Justice Malhotra's ideas had gained broad acceptance among the general public and scholars.

REASONING GIVEN BY THE SUPREME COURT

The first decision given by in Indian court regarding what should be considered as an essential of religious practices was given in the case of Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Shirur Mutt (1954)¹⁹ where the court basically used the Australian courts definition and came to a conclusion that both religious believes and the acts stemming out of them are essential and even hiring a priest if has been done is counted as a religious activity and not an economic one.

In the case of Ratilal Panachand Gandhi v State of Bombay (1954)²⁰ the court agreed that there is very thin line in the practices which can be considered religious and which can be considered secular and thus shifting the court's course from looking into the activites which are essential to the religious practices and only protecting those. In Durgah Committee, Ajmer vs Syed Hussain Ali²¹ the court drew a distinction among the superstitions and essential religious believes.

In the case of Tilkayat Shri Govindlalji Maharaj v State of Rajasthan (1964)²² the court's stance finally shifted from relying solely on adherents' determination of essential practice to they themselves determining what is an essential practice.

19. Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Shirur Mutt 1954 AIR 282

20. Ratilal Panachand Gandhi v State of Bombay AIR 1953 Bom 242

21. Durgah Committee, Ajmer vs Syed Hussain Ali 1987AIR 2213

22. Tilkayat Shri Govindlalji Maharaj v State of Rajasthan 1963 AIR 1638

In the case of *Sastri Yagnapurushadji v. Muldas Bhudardas Vaishya* (1966)²³, the Court dealt with whether the Swaminarayan sect could be exempted from a law allowing Dalits to worship in temples. The Court rejected the claim that Swaminarayan temples were exempt due to being a non-Hindu creed, emphasizing the misunderstanding of Hindu religion and its teachings. The Court quoted Tilak's description of Hinduism, highlighting its diversity and recognition of multiple paths to salvation.

In *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v State of Uttar Pradesh* (*Adi Visheshwara*, 1997)²⁴, the Court dealt with a temple management dispute. The Court cautioned against extending constitutional protection to practices that are purely secular but cloaked in religious form. It highlighted the challenge of distinguishing between religious and secular practices within Hinduism.

In *N Adithayan v Travancore Devaswom Board* (*Travancore Devaswom Board*, 2002)²⁵, the Court considered whether a non-Malayala Brahmin could be appointed as a priest. It rejected the idea that all practices arising from religion are constitutionally protected, emphasizing that practices violating human rights or social equality cannot claim constitutional protection.

In *Commissioner of Police v. Acharya Jagdishwarananda Avadhuta* (*Avadhuta II*, 2004)²⁶, a case revisiting the 'tandava dance,' the majority held that essential practices are core beliefs fundamental to a religion's character. If the removal of a practice results in a fundamental change in the religion's nature, that practice is considered essential. These cases demonstrate the Court's evolving approach to determining essential religious practices. The Court shifted from relying solely on adherents' views to evaluating whether practices were fundamental to a religion's character. The emphasis was placed on whether the removal of a practice would fundamentally alter the religion's nature. The Court also recognized the challenge of distinguishing between religious and secular practices, particularly within Hinduism, and cautioned against extending constitutional protection to practices conflicting with human rights or social equality.

In *Shayara Bano v Union of India* (*Shayara Bano*, 2017)²⁷, the Court dealt with the practice of triple talaq among Hanafi Sunni Muslims. The majority held that triple talaq was not an essential practice within the Hanafi school based on an examination of Islamic jurisprudence and theological sanctity. The minority view argued that the practice was integral to the religion

23. *Sastri Yagnapurushadji v. Muldas Bhudardas Vaishya* 1966 AIR 1119.

24. *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v State of Uttar Pradesh* (1997) 4 SCC 606.

25. *N Adithayan v Travancore Devaswom Board* AIR 1996 Ker 169.

26. *Commissioner of Police v. Acharya Jagdishwarananda Avadhuta* AIR 1984 SC 51.

27. *Shayara Bano v Union of India* AIR 2017 9 SCC 1 (SC).

due to its historical prevalence. Both views agreed that the belief of a religious denomination is considered in determining the essentiality of a practice. The Court's jurisprudence on religious freedom defines the freedom of religion and protects acts performed in accordance with religious beliefs. While religious denominations' views are considered, they aren't determinative of a practice's essentiality. The Court plays a central role in determining essential practices, distinguishing between religious and secular practices associated with religion. Essentiality depends on whether the absence of a practice would fundamentally alter the religion's character, emphasizing constitutional legitimacy. In determining essentiality, the practice's obligatory nature within the religion is crucial. If a practice is optional, it can't be deemed essential. An essential practice must be such that the religion's character changes without it. The process of distinguishing between religious and secular practices is complex, requiring judicial balancing. The Court has also harmonized denominational and individual rights under Articles 25 and 26, ensuring individual dignity isn't compromised by exclusionary claims. Therefore, the courts' approach to essential religious practices involves examining their historical existence, obligatory nature, and impact on the religion's fundamental character, while considering constitutional legitimacy and individual rights.

SUGGESTIONS

Navigating the intricate web of the Sabarimala case and other similar situations, where religious practices and constitutional rights clash, demands a thoughtful exploration of various perspectives and interests in order to address these issues successfully, here are some more detailed suggestions that could be taken into account:

Firstly, it is crucial to show respect for religious diversity by acknowledging India's rich tapestry of spiritual beliefs and practices. As there are multiple viewpoints on delicate matters such as the Sabarimala case, respecting the sentiments and traditions of the community is a vital while still ensuring that individual rights remain safeguarded.

Secondly, fostering open dialogue plays a significant role in resolving conflicts. By encouraging constructive conversations among all stakeholders-including religious leaders, scholars, activists, and affected community representatives- common ground can be discovered. This collaborative approach may reveal compromises that honour both religious beliefs and individual rights.

Thirdly, we must carefully weigh fundamental rights against one another-specifically balancing the right to exercise religious freedom with other essential rights like equality and non-discrimination. In doing so, it is essential to assess whether a certain practice disproportionately affects a specific demographic and if alternative means could achieve the same religious goals without impinging on fundamental rights.

Lastly, preserving traditions that form an integral part of a community's identity and culture should be prioritized, provided they do not violate fundamental rights or discriminate against particular groups. Honouring these practices maintains social harmony while ensuring that basic human rights remain respected.

Addressing complex issues like the Sabarimala case and other similar situations requires a multifaceted approach that respects religious diversity, fosters open dialogue, undergoes constitutional review, balances fundamental rights, preserves traditions, and promotes awareness and education. By adopting these measures, it is possible to manage the interplay between religious practices and constitutional rights effectively, ensuring that both the interests of various communities and the tenets of our Constitution are upheld.

CONCLUSION

There can be varied point of views in such sensitive issues like religion since it is a very subjective topic. Various individuals hold diverse beliefs regarding the nature of a higher power. While some conceptualize this power as an energetic force, others envision it in human-like form or seek its presence in statues. These viewpoints are entirely valid, as they reflect the personal rights and freedoms of each individual. But when these issues go in the court the judges don't have the choice to make all the factions happy, the judges are thus bound by the constitution and as we discussed earlier the main aim of constitution of India is overseeing that there is equality, dignity and liberty given to each individual and as we have seen in the judgement the court on the same line without looking into the religious sentiments of the affected sects have decided various cases and made the religions abide the constitution.

On the other hand, the Supreme Court has consistently displayed hesitance in adopting a rigid approach when dealing with religious matters throughout the years, as illustrated by landmark judgments like the Haji Ali case. This indicates recognition that certain social, private, and societal ideologies are highly specific and personal to individuals and society. Thus, adopting a rigid stance indicating that the judiciary has taken a single viewpoint can directly or indirectly affect individuals' ideologies, as they hold significant sentimental values. This is evident in personal and family laws, where practices aren't necessarily documented; rather, consistent practice is enough proof for legality. Considering this and previous judgments, the Supreme Court recognizes that religious matters cannot be interpreted for individuals or groups, but for society at large. The Apex Court adopts these positions because, in a country like India, religion and customs play a vital role in society. Customs and rituals can vary from household to household, having been practiced for generations. Creating a rigid stance may trigger emotions that could endanger public peace and order.

The Constitution is considered to be the supreme authority of the country under which the constitution itself gives us the fundamental right to profess, propagate and practice any religion of one's choice (Art.25-Art.28) and the judiciary, being the body, which has the power to interpret the laws can only work according to the constitution and never against it. The judiciary realizing the same that professing and practicing any religion of one's choice is a fundamental right given by the supreme authority and has to abide by the same, thus, the judiciary cannot make the mistake of having a rigid stance in religious matters as every case may have different sentiments, sensitivity, individuals, and religions and therefore, a precedent should not be the only onus of proof while deciding a particular religious practice or belief should be protected or not as that would be unconstitutional. Therefore, a fine line should be drawn by the judiciary, and it has to ensure the maintenance of balance in society.

SOCIAL JUSTICE FOR WOMAN IN RURAL INDIA: CASE STUDIES ON THE ROLE OF SOCIAL AWARENESS AND FAMILIAL TIES TO OVERCOME SOCIETAL BIAS

Anika Hingne¹

INTRODUCTION

In an article published in the 'Engage' a part of the EPW, an organisation known as "SWATI" emphatically stated that "domestic violence affects more than one- third of the women population in India, causing physical, mental, psychological trauma to the survivors." The authors of the article reiterate that intervention is wanting and lacking in rural India. There is a greater need for intervention through counselling, mediation, and legal recourse."² The focus of this paper is to bring out the narratives related to violence against women in rural India and describe and construct the role of individual agents, maybe we can use the phrase "charismatic individuals" who influence the societal change in attempting to end violence. According to the UN Women organisation, it says 83.3% of legal frameworks that promote gender equality and combat violence against women are in place.³ The reports published by UN in the year 2015 called for a national policy on zero tolerance towards violence against women.⁴

FAMILY AND VIOLENCE AND SOCIETAL BIAS

The narratives described in our case studies are an effort to bring out the discourses on the pertinent aspect of family as the ground where violence is manifested and the rehabilitation of victims take course through a change in the family structure. This paper uses the case studies to describe and bring out observations on some aspects like gender and violence and societal bias. It also attempts to describe effectively and construct and study phenomena of social change.

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1. B.A. III, Sri Sathya Sai Institute of Higher Learning
 2. Poonam Kathuria and Anagha Pradhan, SWATI, "Making Rural Healthcare System Responsive to Domestic Violence: Notes from Patan in Gujarat", Vol.55, Issue no.17, pg.no. 2, EPW, 25th April, 2020,
 3. India, Asia, UN WOMEN, WOMEN COUNT, <https://data.unwomen.org/country/india#:~:text=-Globally%2C%20some%20progress%20on%20women's,against%20women%2C%20are%20in%20place.>
 4. "Security Council Unanimously Adopts Resolution 2242 (2015) to Improve Implementation of Landmark Text on Women, Peace, Security Agenda", press.un.org, (Oct.13,2015), <https://press.un.org/en/2015/sc12076.doc.htm>

What are the efforts taken to end violence in a society? This paper will focus on the individual narratives of women in rural India.

Reports on women in Rural India

The UN Hub for women, the reports of the Ministry of women and child welfare and the UNDP reports on women and children make an argument that the status of women and children needs to be improved. This calls for ending violence against women. The social status of women is improved in the presence of active recourse to aid from society in varied forms such as financial aid, medical help, counsellors, and other families that promote mutual trust and wellbeing.

Theories on gender and social justice

Gender theories were brought to the fore in India by Dr. Bina Aggarwal. She has done extensive work on rural India and has also developed the theory of ecofeminism. In relation to this paper, it is best to revisit the past women movement in India which includes the anti-liquor movement that was the centre point of women's struggle to end violence. It is also known as the anti-arrack movement which evinced the complete prohibition of liquor. It is connected with social awareness and literacy and the broad vision to have a strong women's movement in Andhra Pradesh. While several institutions such as NCW, NHRC exist within in the purview of the constitution and democratic ideals in India, revisiting the role of the family is the focus of our study.

REHABILITATION OF THE VICTIMS OF VIOLENCE AND THE METHOD OF STUDY

Rationale for adopting this method of descriptive case study approach, is to break the myths and gain insights into the rehabilitation of victims of violence. The paper presents a use of the Descriptive Case Study Method. In this method we describe the narrative, and the individual experience of the victims. In doing so we gather the different aspects of causes of violence and the need for immediate and sustained rehabilitation. As each case is different, choosing a case study can be useful in the collection of qualitative data. Names of the victims and the protagonist have been changed to maintain and follow ethics in reporting and covering these stories or narratives.

Research methodology adopted for the study is qualitative research. This includes collection of qualitative data. The case study method is built by gathering the narrators experience and observing their expressions, their views. The qualitative research method interprets the phenomena of rehabilitation of victims of violence. All the 3 cases will tell us a different story, sadly the incident of violence and the course of the victim's life in an inescapable cycle of violence, crime, poverty, and trauma. The interpretation of the narrative and the painstaking wait for justice are part of the qualitative data.

OVERVIEW OF THE NARRATIVES

Case-1

Sheetal, born and brought up in the small village nearby town of Gadarwara in Madhya Pradesh, in a poor family of 4 members. She had one brother elder to her. Sheetal studied till 5th standard in a local government school. She was socialized from a young age into taking care of her home when her parents and brother went out for work. Sheetal got married when she was around 16-and-a-half-year-old to an adult farmer living in Narsinghpur district. Her new family practised agriculture as a profession. After forced into an early marriage, she was engaged into looking after her home as well as the fields along with her husband. Sooner, her husband started to mistreat her over small issues of household. Her husband used to hit her in front of her in-laws while being drunk.

For almost one and a half year of marriage she bore the sufferings and torture. She was provided no support from her in-laws. At last, she made up her mind and came back to her maternal home. Her parents did not accept her decision and soon they started to blame, taunt, and forced her to go back to her husband. Sheetal expressed her plight to her parents but it turned out to be more disastrous when her own parents started to beat and hit her for her opposition. Later, during the month of May 2020, less than two months after COVID-19 lockdown, her father became reluctant to send her back on the fields to work because their family was facing extreme financial problems.

Sheetal was left with no option other than to join with her parents to work on fields during the harvest season. No less than two weeks after Sheetal joined the work, her mother was approached by the farm owner. He gave her a proposal of increment in daily wages only if she would send her daughter to him to sleep with him. Her mother, surprisingly, fell into the trap of the farm owner in the greed of money and she started to persuade Sheetal to accept the proposal and give consent to him. Sheetal was completely taken aback. She denied to give her consent, but her denial was of no means as her father again beat her.

Things became worse when her parents verbally and physically abused and tortured her over this matter. This was not the end of her trauma. On one such night of May, Sheetal's father came home drunk. Her father and Sheetal got into a verbal fight. Her father then dragged her out in the fields and took her near a pit which he dug earlier. Her father wanted her to bury alive. Sheetal's mother and brother ignored her cries and howling while she fought for her life against her father. She was resisting until she used her full strength to push her father away. She escaped from the place and ran towards the town. Sheetal, luckily met a group of labourers passing from the nearby highway for town. She disguised herself among them and reached to Gadarwara.

Sheetal was able to recollect the address of one of her known person Prakash, who was also a senior journalist as well as an active social worker. He earlier met her parents to counsel them for Sheetal's admission into school for her higher education. Sheetal was fortunate enough to reach the house of the senior journalist, Prakash. She was happily welcomed and was given proper food, clothes, and protection in his home.

Sheetal took refuge in his house for several days. Meanwhile, Prakash planned for her rehabilitation with another single mother, Rakhi, who was working in a factory at Mandideep, Bhopal. Rakhi took Sheetal to her place safely amid lockdown. Rakhi helped Sheetal to start a new life by introducing her to a new family staying in her locality. Soon after Sheetal turned 18-year-old in January 2021, she got married into that family.

At present, Sheetal is living a happy married life and recently she gave birth to a son. After moving in with Rakhi, Sheetal broke all her ties with her parents and brother and started her new journey.

Case-2

Our next story is about Sonal's hardships which she faced in the year 2019. Sonal was married to a factory worker, working at Nagpur. Her husband was an alcoholic. Sonal used to stitch clothes as her hobby while staying in Nagpur. Sonal was blessed with a son and later with a girl child. Though, she had regular fights with her husband regarding his habit of drinking and beating her, she remained silent.

On one Sunday night, her husband came home extremely drunk. Sonal made her children sleep in the other room while her husband started to abuse her verbally. Her husband attacked her and thrashed on the floor. He even punched her into belly and face which led to the breaking of her front teeth. Her face was swollen and she had many internal injuries. He did not stop here, he again hit her head on the wall several times and tried to choke her neck. Eventually, after continuous punches, smacks and internal head injury Sonal fell unconscious on the floor. Thinking that Sonal might have died, succumbing to her injuries, her husband in the fear of getting caught by the neighbours and the police, started to tremble in fear. He could not think of any option in fear and decided to hang himself. He hung from the ceiling and died.

Sonal, after several hours, gained consciousness and found her husband's body hanging from the ceiling. She was taken to hospital by the locals, while her children stayed with the neighbours. Neighbours informed the police as well as her parents. Case was filed against her husband for attempt to murder and domestic violence. Sonal refused to complain against her in-laws as she was afraid for the image of her parents. Sonal was brought back to her native town. But this was not the end of Sonal's struggle. She was then burdened with taking care of her children and her old aged parents. Her father was already working hard regardless of his

old age to meet both the ends and to save money for the treatment of Sonal's paralysed mother. Later in the beginning of the year 2020, her elder sister became a widow, living with two children. Soon, they too shifted in their maternal home. Sonal's father was burdened to look after the family of 8 members with no proper means of income.

They met with more problems when the Covid-19 lockdown was imposed in the country. Sonal was then contacted by Prakash, after being informed about Sonal's tragedy. He knew their family from past several years. Prakash helped Sonal's father by providing financial support as well as other sources of help. He also encouraged Sonal to work for her children as well as for her family. Prakash also helped her to get her share in the inheritance of her husband's property. Their family saw a ray of hope and soon Sonal got the job of a nurse through the contacts of Prakash by applying her nursing diploma, which was awarded to her under governmental training scheme previously.

Sonal in guidance of Prakash started to work in a private clinic in the town. She was able to earn enough to send her son into kindergarten, also to afford treatment for her mother.

Currently, she is a proud single mother of two, working hard for their future.

Case-3

This the life story of Varsha, living in Gadarwara, Madhya Pradesh. Varsha lost her father while she was very young. She used to live with her mother and two elder sisters. She was forced into child marriage when she was a minor and had her first son at age of 19. She faced regular physical violence against her by husband. They had numerous verbal fights which often resulted in violence on Varsha. Her husband was very short-tempered person with uncontrollable anger. He used to vent out his anger on Varsha. One day, in the year 1995, Varsha got into a serious fight with her husband. Seeing Varsha being reactive towards him, in anger, he took the sword illegally kept in the home and attacked Varsha. While protecting herself, Varsha was severely injured and the attack led to almost cutting her forearms from limbs. In the critical situation she was referred to local Government Hospital. Varsha's financial condition was a barrier in her treatment. From the hospital this news of attack spread like fire of jungle, in the town. The news reached to Prakash, in whose house Varsha's mother worked as a helper. He immediately made the arrangements for her treatment at Netaji Subhash Chandra Bose (NSCB) Government Hospital at Jabalpur. He also collected money for her treatment through charity only in a few hours. She was referred to Hospital and at the same night she got her operation done. Doctors were able to join her forearms back to her limbs successfully in a very less time. Later, after her recovery Prakash guided her in filing a complaint against her husband in case of attempt to murder, domestic violence and abuse against her. Eventually, they both had their settlement in the court. Varsha divorced her husband later. She started to live with her mother. Varsha was then provided with a job of cook in the local catering services with the help of Prakash.

At present, she is a single mother and continues to work.

OBSERVATION, INSIGHTS AND FINDINGS

All the 3 cases are contextualized in rural India of Madhya Pradesh state. The stories of the women shared here as case studies reflect the abject poverty, cycle of violence and the perpetual denial of justice to women. The causes of violence remain grey and may be incoherent.

The study is preliminary and an attempt to put forth two important statements. First while family is the place where this violence occurs, the end of such perpetrated violence is possible when there is a provision for rehabilitation. In the above case studies, the violence reached an unbearable high after which the women in order to overcome the traumatic life have chosen either to start a new beginning or to live as single mothers. This is important there is change in the family structure and the idea of family itself has undergone a radical change.

Rehabilitation and complete well-being of the victims becomes possible through intervention of social actors of change and in our case individuals who have a positive influence in society. The nature of such intervention is critical to promote social justice in this case to end violence. The second important statement is violence can be ended through active, consistent efforts of the society to support social awareness, encouraging women to seek help. In all the above cases we see towards the end the breaking or ending of the violence structure existing in a family.

CONCLUSION

The big question this paper examined is how or what is the role of social awareness and familial ties to promote social justice to rural women caught in a vicious cycle of violence. Social awareness improves the prospects of rehabilitation and a society that welcomes and understands violence-stricken women need social justice either through the courts or through the social agents such as charismatic individuals and in our cases “Prakash” who become active agents of social justice and rehabilitation. The answer lies in the rehabilitation and rebuilding of confidence, handholding of victims and instilling and regaining and reclaiming the position of women in society. There are various national and international organisations working to improve conditions of women and girls, still a gap occurs when it comes to implement the measures on the ground level. At the grassroot level, the role and intervention of individual agents of social change is critical in our cases. The intervention of individuals resulted in revival in their confidence. ‘Family’ is an essential unit of society and in this case the single women households have become the consequence and common experience of women in rural India. Based on the stories of Sonal and Varsha, we saw that such a radical nuclearization of the family is the new sociological norm of not just urban India but now increasingly in rural India.

THE IMPACT OF LGBTQI+ SOCIAL MOVEMENTS ON LEGAL CHANGE: A COMPARATIVE ANALYSIS

Chelana Jain¹

Swathy Sasikumar²

INTRODUCTION

In 1861, the British added Section 377 to the Indian Penal Code, outlawing consensual “homosexual conduct.” But criminalising homosexuality more accurately represented European morality based on religious convictions—particularly Christian convictions—than Indian inclinations.

Different sexual orientations and transgender people’s identities were supported in ancient India. Pre-colonial India seems to have been far more accepting of owning one’s sexuality based on religious scriptures and history.

One of the main objections to homosexuality is that it goes against Indian traditional norms and morality, calling it unnatural. The history of homosexuality in India and its integration into Indian culture and values must thus be understood. In order to prove that India before invasion was not morally rigid, this essay will focus on a variety of incidents from ancient and mediaeval India.

In ancient India, the idea of gender fluidity for both humans and yakshas was accepted. From ancient epics and scriptures through mediaeval literature, poetry, art, and architecture, the history of queerness in India can be traced.

The following examples highlight the prevalence of homosexuality and the tolerance of homoeroticism in India.

In the Ramayana by Valmiki, it is said that Lord Hanuman witnessed rakshasa ladies caressing and cuddling women while he was travelling back to Lanka following his meeting with Goddess Sita. King Bhagiratha, who was born of two women, is described in the Krittivasa Ramayana.

1. B. A. LL. B (Hons.). Alliance School of Law, Alliance University, Bengaluru.

2. B. A. LL. B (Hons.). Alliance School of Law, Alliance University, Bengaluru.

King Dilip, according to the narrative, had two wives and perished without an heir. The queens then saw Lord Shiva in their visions, who informed them that they would have a child if they made love to one another. Following orders, one of the bereaved queens became pregnant and finally gave birth to King Bhagiratha. His claim to fame is that he transported the river Ganga from heaven to earth.

The legend of Shikhandini or Shikandi, who killed Deveratt Bhishma, is found in the Mahabharata. She was the daughter of King Drupad but was brought up as a male. Later in life, she used a yaksha's assistance to transform into a man so she could engage the battle of Kurukshetra and vanquish Bhishma. A fascinating tale from the Matsya Purana describes how Lord Vishnu changed into the lovely woman "Mohini." He planned to deceive the demons so that all of the Amrut (holy water) would be consumed by gods. Additionally, Lord Shiva fell in love with Mohini when he first saw her, and their marriage resulted in the birth of Lord Ayyappa. The oral sexual actions known as *auparashtika*, homosexuality, and sexual behaviour among transgender people are all covered in Chapter 9 of Vatsyayana's *Kamasutra*.

Svairini, an independent lady with a strong will who engages in sexual relations with other women, is also mentioned in the chapter *Purushayita*. Men who are drawn to people of the same gender are also mentioned in the book.

These people are referred to in the literature as *Tritiya-Prakriti*, or the third nature. *Kamasutra* also accepts eight different kinds of marriages. For instance, the phrase "*gandharva vivah*" recognised lesbian or homosexual marriage. Literally, it means a relationship or cohabitation without parental consent. The story of Varun and Mitra, also known as *Mitra-Varun*, is mentioned in the *Rig Veda*. They are a same-sex pair who are said to symbolise the moon's two parts.

According to *Shatapatha Brahmana*, Mitra implants his seed in Varuna on that night of the new moon, and his seed subsequently produces the waning of the moon. Similar to this, it is stated that Varuna plants his seed in Mitra on the full moon night to ensure its future waxing.

Although it is mentioned in other Hindu mythology texts, same-sex relationships are not encouraged. For example, the *Narada Purana*, *Manusmriti*, and *Arthashastra* outline the penalties for such behaviour. Whatever the case, it establishes that homosexuality existed at the time.

The Mughal Empire's founder himself experienced attraction to both sexes. Babur expresses his affection to a kid in Kabul named Baburi in his memoir, *Baburnama*.

Additionally, homoerotic, or same-sex allusions can be found in certain Sufi poetry. For instance, Sufi Saint Bulleh Shah depicted pre-modern views on religion and sexuality in his works. His poetry demonstrated his flexible sexuality and his affection for Shah Inayat, his *murshid*.

This has been regarded by historians and academics as a recognition of same-sex relationships and homosexuality in those times. These sculptures stand as an assertion of the sexual fluidity of men, women and the third gender.

The term “lesbian, gay, bisexual, and transgender community” (or “LGBT community”) refers to a large coalition of groups that are varied in terms of gender, sexual orientation, race/ethnicity, and socioeconomic level. The committee wants to emphasize how important it is to understand that the populations represented by “L,” “G,” “B,” and “T” are distinct groups, each with its own unique health-related concerns and needs, even though the focus of this report is the community that is encapsulated by the acronym LGBT.

Since these groups are frequently portrayed as a single population under catch-all labels like LGBT in certain modern scientific discourse and in the general media, the committee thinks it is crucial to highlight these distinctions at the opening of this study. As well, concurrently these groups have many experiences in common, key among them being the experience of stigmatization. (Differences within each of these groups related to, for example, race, ethnicity, socioeconomic status, geographic location, and age also are addressed later in the chapter.

LGBTQI+ social movements have recently assumed an active role in the fight for the inclusion, equality, and acceptance of sexual and gender diversity. These movements have inspired substantial law changes that have altered social norms, cultural attitudes, and political action through relentless work and unflinching devotion.

The equality principle, which holds that all persons have inherent value and ought to be treated equally, is the foundation of the concept of human rights. Any actions that undermine this dignity go against equality and open the door to discrimination. This bias is also directly opposed by the core principles of the Indian Constitution, which strongly emphasis justice and equality for all individuals in all spheres of life, including the social, economic, and political ones.

The importance of legislative changes cannot be overstated as long as society continues to grow and learn. These changes, which often resulted from prolonged wars and significant historical occurrences, have had a lasting impact on the lives of LGBTQI+ people and those who support them.

The first chapter of the research goes in-depth on the backdrop of LGBTQI+ social movements throughout history as well as the key moments that resulted in legislative change. We review significant judicial decisions, legislative successes, and advocacy campaigns that have affected the progress of LGBTQI+ rights.

The remaining chapters look at the many ways that changes in the law have impacted social dynamics. We look at the wide implications of legal recognition, including how it has fought back against engrained cultural norms and promoted public acceptance, ultimately resulting in a more welcoming and inclusive society.

Finally, the aim of this research is to explore the incredible legacy of legislative changes brought about by LGBTQI+ social movements. We want to contribute to a more complete and empathetic knowledge of the continuous journey towards equality, inclusion, and social justice for everyone by exposing the broad effect of these developments on the social, cultural, and political landscapes.

EXISTING LAWS AND LEGAL REFORMS RELATED TO LGBTQI+ MOVEMENTS

A comprehensive strategy spanning several legal realms is required to improve legislation to protect LGBTQI+ rights and advance equality. To guarantee that LGBTQI+ people are shielded from discrimination due to their sexual orientation, gender identity, and expression, anti-discrimination legislation must be strengthened³. Essential aspects of life including job, education, housing, healthcare, and access to public services should be covered by these regulations. These rules should include precise definitions of what constitutes discriminatory behavior that is illegal as well as efficient victim assistance programs.

Bans on conversion therapy are essential to protect LGBTQI+ people from dangerous and unsuccessful procedures intended to alter their gender identity or sexual orientation. To stop the spread of such treatments, a complete prohibition should include both licensed and unlicensed practitioners. Furthermore, it is crucial to pass legislation that recognizes gender identity and make it easier to do so⁴. Respecting the liberty and dignity of transgender and non-binary people requires streamlining the process of updating the legal gender markers on identity papers without imposing onerous medical criteria.

Laws promoting LGBTQI+ rights must also take into account the unique difficulties transgender people confront. This involves giving those who identify as a gender other than the one given to them at birth legal recognition⁵. Transgender people must be able to update their identity papers easily and without encountering any needless barriers, therefore providing this service is essential.

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3. McCann, B.J., 2011. Queering expertise: Counter publics, social change, and the corporeal dilemmas of LGBTQ equality. *Social Epistemology*, 25(3), pp.249-262.
 4. Kirsch, M.H., 2013. *Queer theory and social change*. Routledge.
 5. Russell, S.T., derand Fish, J.N., 2019. Sexual minority youth, social change, and health: A developmental collision. *Research in Human Development*, 16(1), pp.5-20.

Laws in the area of employment have to not only prohibit discrimination but also support inclusive work environments. This entails putting rules into place that shield workers from harassment based on their sexual orientation or gender identity as well as encouraging diversity in recruiting and sensitivity training. Giving same-sex couples the same rights and obligations as opposite-sex couples depends on legislative frameworks that provide marital equality⁶. These rules guarantee that everyone has access to the rights, privileges, and obligations that come with marriage, therefore recognizing the legitimacy of all relationships. It is equally crucial to defend the rights of LGBTQI+ parents, including parental recognition, adoption rights, and protection against prejudice on the part of adoption agencies.

Laws promoting healthcare equality are essential to eradicating prejudice against LGBTQI+ people in the healthcare system. Access to gender-affirming medical treatments and mental health assistance tailored to their particular needs should be guaranteed by these regulations. By requiring curriculum that correctly depict LGBTQI+ history, concerns, and accomplishments, inclusive education legislation may develop acceptance and counteract stereotypes while also promoting understanding and empathy.⁷

A thorough and nuanced approach is required when including LGBTQI+ topics into sex education in order to promote students' knowledge, empathy, and inclusiveness. First and foremost, it's important to acknowledge the different backgrounds of LGBTQI+ people. In order to do this, it is necessary to acknowledge that LGBTQI+ persons are members of a variety of racial, ethnic, and cultural groups, which may have a big influence on their issues and experiences⁸. Sex education may provide an authentic and comprehensive view of LGBTQI+ life by addressing these intersecting identities.

Beyond this, talks need to include a broad variety of subjects that speak to the unique needs of LGBTQI+ people. This involves addressing particular health issues, such as sexual health habits, mental health, and potential barriers to receiving the right medical treatment.

It is critical to acknowledge LGBTQI+ people as a vulnerable population requesting refuge because they are being persecuted because of their sexual orientation or gender identity. They may be shielded from further injury and prejudice by making sure that asylum processes are

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6. Nicol, N., Gates-Gasse, E. and Mule, N., 2014. Envisioning global LGBT human rights: Strategic alliances to advance knowledge and social change. *Scholarly and Research Communication*, 5(3).
 7. Harper, G.W. and Schneider, M., 2003. Oppression and discrimination among lesbian, gay, bisexual, and transgendered people and communities: A challenge for community psychology. *American journal of community psychology*, 31, pp.243-252.
 8. Gates, G.J., 2017. LGBT data collection amid social and demographic shifts of the US LGBT community. *American Journal of Public Health*, 107(8), pp.1220-1222.

sensitive and fair. In addition, policies that support LGBTQI+ inclusion in public service, politics, and media help to shatter stereotypes and broaden acceptance⁹.

Legislation that guards against discrimination in a variety of situations, including employment, healthcare, education, and public accommodations, is necessary to specifically address transgender rights. For transgender people to maintain their dignity and safety, it is crucial to have the freedom to use facilities according with their gender identification. Aside from preventing prejudice and injury, laws protecting privacy and personal information are required to stop the unauthorized revelation of an individual's LGBTQI+ status.

The introduction of non-binary and genderqueer identities into legal recognition recognizes the range of gender experiences. In order to abolish the binary model and promote inclusion, this acknowledgement needs to be included in official papers. Sex education may assist LGBTQI+ students in making educated choices about their health and well-being by offering pertinent and specialized information.

Another crucial area to explore is relationship dynamics. Beyond the confines of conventional romantic unions, sex education needs to look at the different kinds of alliances that LGBTQI+ people could develop. This encourages the growth of respectful and wholesome relationships by talking about consent, good communication, and establishing boundaries within various relationship models.

Furthermore, it is crucial to have discussions regarding coming out and the difficulties that come with it. Teaching kids about the process of coming out—to oneself and to others—can foster a welcoming environment.

To successfully formulate and implement these revisions, collaboration between LGBTQI+ advocacy organizations, legal professionals, lawmakers, and impacted communities is essential.

LGBTQI+ LAW REFORMS AND THEIR EFFECT ON THE CULTURAL, POLITICAL AND SOCIAL LANDSCAPE IN THE LONG TERM

LGBTQI social movements have incontrovertibly sparked significant legal reforms that have far-reaching counteraccusations for the social, artistic, and political geography. These movements haven't only concentrated on securing legal rights for LGBTQI individuals but have also acted as catalysts for broader societal changes. The long-term goods of these legal reforms are multifaceted, touching upon colorful aspects of society, culture, and politics. Legislative

9. Di Bernardo, G.A., Vezzali, L., Stathi, S., McKeown, S., Cocco, V.M., Saguy, T. and Dixon, J., 2021. Fostering social change among advantaged and disadvantaged group members: Integrating intergroup contact and social identity perspectives on collective action. *Group Processes & Intergroup Relations*, 24(1), pp.26-47.

advancements achieved through LGBTQI social movements have had a profound impact on the social fabric of nations.

By championing anti-discrimination laws, marriage equivalency, and legal recognition of gender identity, these movements have pushed societies to rethink their values and morals¹⁰. The very act of legal recognition for LGBTQI rights sends an important communication that LGBTQI individuals earn equal treatment and protection under the law. This shift in legal morals contributes to the normalization of LGBTQI individuals, challenging prejudices and impulses that have been deeply hardwired. Culturally, the influence of LGBTQI social movements is transformative.

These movements have encouraged open exchanges about sexual exposure, gender identity, and diversity in all corners of society¹¹. By pushing for inclusive education that directly represents LGBTQI history, struggles, and benefactions, these movements foster empathy and understanding among unborn generations. Similar artistic shifts promote acceptance and challenge traditional conceptions, breaking down walls that have eternalized demarcation.

As LGBTQI stories become more visible in media, literature, and the trades, society is impelled to fete the uproariousness of mortal diversity. The political impact of LGBTQI social movements extends beyond legislative changes. These movements have readdressed political converse and the veritably nature of representation.

By demanding equal rights and visibility, LGBTQI individuals and their abettors have forced political parties and policymakers to address their enterprises. LGBTQI issues have transcended prejudiced lines, getting central to debates on mortal rights and equivalency.¹² Involvement in politics by LGBTQI individuals and advocacy groups has redounded in devoted platforms that advance their interests, while also contributing to broader conversations about republic, justice, and citizenship. Likewise, the legal reforms performing from LGBTQI social movements have paved the way for intersectional activism. Feting the interconnectedness of individualities, these movements have underlined the significance of inclusivity, admitting that LGBTQI individualities come from different ethnical, ethnical, socioeconomic, and artistic backgrounds.

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10. Gates, G.J., 2017. LGBT data collection amid social and demographic shifts of the US LGBT community. *American Journal of Public Health*, 107(8), pp.1220-1222.
 11. Di Bernardo, G.A., Vezzali, L., Stathi, S., McKeown, S., Cocco, V.M., Saguy, T. and Dixon, J., 2021. Fostering social change among advantaged and disadvantaged group members: Integrating intergroup contact and social identity perspectives on collective action. *Group Processes & Intergroup Relations*, 24(1), pp.26-47.
 12. Misra, G., 2009. Decriminalising homosexuality in India. *Reproductive Health Matters*, 17(34), pp.20-28.

This intersectional approach challenges a one-size-fits-all narrative, pressing the unique struggles faced by LGBTQI individuals who also belong to marginalized communities. The ripple goods of these legal reforms have indeed reached into the field of public health. Access to healthcare, including gender-affirming treatments and internal health services, has been bettered due to the recognition of LGBTQI rights.

This demonstrates the far-reaching consequences of legal changes that not only cover civil liberties but also ameliorate overall well-being. Still, it's important to admit that the goods of LGBTQI social movements' legal reforms aren't widely positive or without challenges. While progress has been made, counterreaction and resistance persist, frequently in the form of discriminative programs or dangerous rhetoric¹³.

The battles fought in courtrooms are echoed in societal debates, reflecting the complexity of transubstantiating deeply settled beliefs. In conclusion, LGBTQI social movements' legal reforms have indelibly shaped the social, artistic, and political geography. The trip toward equivalency is marked by legislative palms that ripple through society, impacting artistic morals, political dynamics, and public health issues. These movements have propelled exchanges, challenged impulses, and empowered marginalized communities. Yet, the work is ongoing, as the long-term goods continue to unfold in a society that remains dynamic, evolving, and seeking for a more just and inclusive future.¹⁴

CONCLUSION

In conclusion, LGBTQI social movements' efforts to change the law have sparked a significant and ongoing transformation of society's social, cultural, and political landscape. These changes have affected more than just the law; they have sparked a paradigm shift with reverberations in cultural settings, creative expressions, and political dynamics. LGBTQI movements have pushed for anti-discrimination laws, gender identity recognition, marriage equality, and other issues, and have helped to move society closer to being just, inclusive, and indifferent.

The removal of barriers that historically prevented LGBTQI individuals from reaching their full potential demonstrates the societal impact of these legislative developments. Employers are becoming more diverse and inclusive as a result of anti-discrimination laws that advocate

13. Debnath, K., 2017. LGBT identity: the illustration of "othering" in India. *Sexuality, Gender & Policy*, 1(1), pp.89-100.

14. Chakrapani, V., Vijin, P.P., Logie, C.H., Newman, P.A., Shunmugam, M., Sivasubramanian, M. and Samuel, M., 2017. Understanding how sexual and gender minority stigmas influence depression among trans women and men who have sex with men in India. *LGBT health*, 4(3), pp.217-226.

fair treatment for all. The legalisation of same-coitus marriage represents a reinvention of relationships that goes beyond traditional norms and reflects a culture that celebrates love in all of its manifestations.

Legal changes for LGBTQI people have upended cultural norms and created new stories that value variety. A more truthful and welcoming representation of LGBTQI history and benefits is ensured via inclusive education programs for future generations. Authentic and complex delineations are increasingly replacing clichéd ones in media depictions, fostering a more nuanced knowledge of LGBTQI. These legislative reforms have had political repercussions that have spread into the governance sector. LGBTQI voices have gained prominence in political arenas, advocating for initiatives that take into account the needs and goals of their groups.

Societies are forced to adopt more inclusive policy frameworks that reflect the shifting geography of human rights as the recognition of LGBTQI rights develops.

It's critical that we solve the problems left behind by these judicial rulings as we go. Resistance and counteraction are still present, highlighting the necessity of constant advocacy and instruction. The long-term benefits of these reforms are under constant pressure to ensure that tangible improvements in the lives of LGBTQI individuals result from legislative changes.

Cooperative effort is necessary for sustained growth. To maximize the impact of these legal reforms, advocacy organizations, legal professionals, legislators, and society as a whole must collaborate. Continued educational initiatives and public awareness campaigns will help to prevent regression and sustain momentum. The topic of global mortal rights will continue to center on the rights of LGBTQI individuals as long as there is dialogue and involvement with various communities.

In the end, there is no disputing the legislative improvements brought about by LGBTQI social movements. Their positive effects on politics, culture, and society serve as a living example of the impact that group effort can have on the way things are done in the world. Let's celebrate the fact that, while legislative reforms are important, the journey is continuing and requires unshakable dedication and a commitment to building a more just and impartial future for everyone as we move towards reduced equivalence and addition.

UNIFORM CIVIL CODE: A MERE UNIFORMITY OR UNITEDNESS

Rev. Dr. Francis Assisi Almeida¹

INTRODUCTION

The Uniform Civil Code captured the attention of the civil society and religious communities when the 22nd Law Commission of India issued a notification dated June 14th, 2023 calling for their opinions². Ever since the Constitution's inception, it has become a bone of contention and especially, the judiciary has taken a keen interest in it whenever the issue of divorce among inter-faith couples appeared before it. It has a strong base that is couched in the history of India and before independence, despite feeling its prominence, no authorities including the British, dared to implement the same due to its deep roots in the history of different communities including Hindus. India, one of the most diverse countries, shelters communities with different customs, languages, cultures, and beliefs; therefore, it is highly impossible to implement laws or provisions that affect all communities uniformly. UCC is one such provision that draws the ire of different communities in its implementations.

By its very terminology, the Uniform Civil Code denotes uniformity in civil laws concerning property, inheritance, marriage, adoption, etc. irrespective of one's custom, culture, and religious beliefs. Though criminal law applies to all equally, provisions of civil law relating to properties, inheritance, marriages, divorces, adoptions, etc. are followed according to their personal laws. To bring uniformity among all, the UCC under the Constitution makes provisions to implement a common uniform civil code like criminal law.

Uniformity, no doubt, is one of the important traits that necessitates bringing unity between different aspects of society. But uniformity doesn't mean the conglomeration of different concepts that give adverse effects on the unity between various communities in society. Uniformity and unity are two different concepts and cannot be intermingled without having a common factor that merges them. Therefore, after sufficient deliberation on the point, the Constituent Assembly placed Art. 44 of the Constitution i.e., *"The State shall endeavour to secure for the citizens a*

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1. Advocate & Secretary, Karnataka Regional Commission for Education (KRCE). Bangalore.
 2. Uniform Civil Code – Public Notice, Law Commission of India, Ministry of Law and Justice, Government of India, <https://lawcommissionofindia.nic.in/notice/uniform-civil-code-public-notice/>, Last Visited on 19-08-2023

uniform civil code throughout the territory of India”³ under the Directive Principles of State Policy (DPSP). DPSP are non-justiciable rights as mentioned in Article 37; therefore, they merely aid and assist the State in implementing its welfare policies.

UNIFORM CIVIL CODE UNDER COLONIAL PERIOD

The Lexi Loci Report of 1840 emphasizes the necessity of uniformity in codifying the legal provisions of Indian law concerning criminal law, evidence and contract but excludes the personal laws of Hindus and Muslims while having such codification. In 1859, the Queen of England in her Proclamation promised the personal laws of Indians shall be kept outside the purview of such codification and they shall be guided by separate codes according to the norms of their communities⁴. Criminal law provisions were codified and applied to all the people of India irrespective of their religion or any other differences. However, personal laws were kept intact without codification.

Constituent Assembly Debates and UCC:

When the Constituent Assembly entrusted the task of drafting the fundamental rights to a sub-committee, the members of the sub-committee, namely, Dr Ambedkar, Munshi and Minoo Masani submitted the proposals for the Uniform Civil Code (UCC) while submitting their proposals under fundamental rights⁵. While deliberation in the sub-committee, it was proposed to split all the proposals into two parts, namely, justiciable rights and non-justiciable rights and finally, these proposals were submitted to the Advisory Committee, a parent Committee that was constituted to draft the provisions of the Constitution. The proposal for the UCC was found under non-justiciable rights. Despite the feeling of the majority members of the Committee to include the proposals for the UCC under the non-justiciable rights, members like M.R Masani, Hansa Mehta and Amrit Kaur presented their dissenting notes for the same and demanded them to be included under the justiciable rights, i.e., Fundamental Rights. In their dissenting note, they expressed their displeasure that giving prominence to personal laws based on religion over and above the common law could impact the development of nationhood. Further, they opined that even if they are given prominence over the common law, such prominence shouldn't be extended for long and within 5 or 10 years the UCC should be implemented.

3. INDIA CONST. art. 44

4. Insights into Editorial: Uniform Civil Code debate gains momentum, Insights Editor, April 7, 2022, <https://www.insightsonindia.com/2022/04/07/insights-into-editorial-uniform-civil-code-debate-gains-momentum/>, Last Visited on 22-06-2023

5. II, CONSTITUENT ASSEMBLY DEBATES, OFFICIAL REPORT, REPRINTED BY LOK SABHA SECRETARIAT, (New Delhi, Sixth Reprint, 2014)

Finally, when Dr Ambedkar presented the proposal of a Uniform Civil Code before the Constituent Assembly on November 4, 1949, it was placed under the Directive Principles of State Policy (non-justiciable rights), and numbered as Article 35 which read, “*The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India*”.

The Muslim Community members of the Constituent Assembly vociferously opposed the proposal of UCC when it was presented for discussion on November 23, 1948. They demanded two amendments to Article 35, first, the provisions are to be introduced to keep the personal laws out of the reach of UCC and second, UCC is to be operationalized with the prior assent of the community in question. Further, they argued that the UCC violates the freedom of religion guaranteed under the Constitution and it brings disharmony within the Muslim Community. Therefore, no interference must take place in the personal law without the assent of the community in question or the community that gets affected.

Whereas, K.M. Munshi, Alladi Krishnaswamy and Ambedkar defended the Uniform Civil Code. While addressing the issue, Dr. Ambedkar opined that UCC is an optional/voluntary one and State has no immediate obligation to bring UCC into effect. Further, he observed, it shall come into effect after obtaining the consent of the communities in question⁶. Finally, Article 35 was put to vote and the Constituent Assembly adopted the same and later it was renumbered as Article 44 of the Constitution.

A notable point in the Constituent Assembly deliberation was that there was a lack of absolute consensus about the formulation of the UCC and also the exact concept of the UCC. One of the opinions among the members of the Constituent Assembly was that UCC would prevail over the personal laws and similarly, another opinion was that both UCC and personal laws shall co-exist and UCC shall be followed by those who provide their assent for the same and others would follow their personal laws.

UCC in the post-Constitution Era

The provision for the UCC is included under Part IV of the Constitution. Article 37 of the Constitution mentions that provisions of Part IV of the Constitution are non-justiciable rights. It means they cannot be enforced by any court of law. They can only be used while enacting laws and formulating policies for better governance of the country. While inserting Article 44 under the Constitution (then it was Article 35), the framers of the Constitution did not emphasize its implementation mandatorily but as an aid to the government in formulating welfare policies or laws.

6. Id, 551

After the implementation of the Constitution, several attempts have been made to reform certain legal provisions concerning some communities in line with UCC. First among them was the introduction of Hindu Code Bills⁷. Even though the attempts were started prior to Indian independence to introduce the Hindu codes, they were carried out during the 1950s. Between 1955-58, several bills relating to Hindus, namely, the Hindu Marriage Act⁸, Hindu Succession Act⁹, Hindu Minority and Guardianship Act¹⁰, and Hindu Adoptions and Maintenance Act¹¹, saw wide reformation and included Jains, Buddhists, and Sikhs under their jurisdiction. But the personal laws relating to Muslims, Christians and Parsis were untouched. The Hindu Succession Act of 1956 further saw an amendment in the year 2005¹² with a provision to include a claim of daughters' share in their ancestral property. In 1954, the Special Marriage Act¹³ was introduced to provide avenues for couples to get married outside their respective personal laws.

JUDICIARY ON UCC

The genuine intention, as intended by the framers of the Constitution, to introduce the UCC was primarily to annihilate personal laws in all the communities irrespective of their custom, religion and beliefs, tradition etc. to bring unity and also to do away with gender inequalities that prevailed in the communities due to their personal laws. Similar points came before the Supreme Court and other High Courts regarding marriage and property matters. First among such cases was the Shah Bano Begum case¹⁴ where an elderly divorced lady under triple talaq approached the courts for not getting the maintenance from her husband and got orders in her favour. Feeling aggrieved by the High Court orders, her husband approached the Supreme Court and sought relief claiming that he had followed all the procedures according to his personal laws. The Supreme Court, while delivering the judgment, upheld the maintenance rights of Shah Bano Begum under section 125 Criminal Procedure Code and further, recommended the Centre for setting up the Uniform Civil Code.

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7. Kaushiki, Siingh, Hindu Code Bill And Ambedkar, Legal Service India, <https://www.legalserviceindia.com/legal/article-9181-hindu-code-bill-and-ambedkar.html>, Last visited on 19-08-2023
 8. The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India)
 9. The Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956 (India)
 10. Hindu Minority and Guardianship Act, 1956, No. 32, Acts of Parliament, 1956 (India)
 11. Hindu Adoptions and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956 (India)
 12. The Hindu Succession (Amendment) Act, 2005, No. 39, Acts of parliament, 2005 (India)
 13. Special marriage Act, 1954, NO. 43, Acts of Parliament, 1954 (India).
 14. Mohd. Ahmed Khan vs Shah Bano Begum And Ors. AIR 1985 SC 945

Subsequently, in *Daniel Latiff v. Union of India*,¹⁵ the Muslim Women's Act was challenged holding that it violates Articles 14, 15 and 21 of the Constitution. The Supreme Court while upholding the invalidity of the said Act, observed that divorced women are entitled to claim maintenance, under the laws of the land, irrespective of their religious affiliations.

In 1995, an issue relating to bigamy came before the Supreme Court in *Sarala Mudgal Case*¹⁶. The Supreme Court, in this case, observed that conversion to the Islam religion to contract a second marriage is bad in the eyes of the law and will not dissolve the first marriage contracted under Hindu Marriage Act. The Supreme Court, in this case too, urged the Government to formulate a Uniform Civil Code based on the model of the Hindu code to protect the victims in marriage cases and attain national solidarity.

In the *John Vallamattom case*¹⁷, when the validity of section 118 of the Indian Succession Act that imposed unreasonable restrictions on Christians in bequeathing their property in a donation to a religious or charitable purpose under a will was challenged, the Supreme Court struck down the section and held it to be unconstitutional.

In *ABC v. State (NCT of Delhi)*¹⁸, the Supreme Court upheld the right of a single mother to apply for sole guardianship of her child without the consent of the natural father under the Guardian and Wards Act of 1890. The said Act had not recognized the right of Christian single mothers to have guardianship. The Court observed the inconveniences caused due to the lack of a UCC and recommended the framing of a UCC.

In 2020, the Supreme Court interpreted the Hindu Succession Act to ensure gender equality by securing the right of women to inherit property and have equal coparcenary rights in ancestral property under the amended Act of Hindu Succession Act of 2005¹⁹. Further, in 2021, the Allahabad High Court while handling an issue regarding conversion and interfaith marriages, observed that the enactment of uniform family laws is necessary to allow all the citizens of the country to mingle freely without having any hindrances under different personal marriage laws and also for the national integration²⁰.

15. *Danial Latifi & Anr v. Union of India*. (2001) 7 SCC 740

16. *Smt. Sarla Mudgal, President ... v. Union of India & Ors*. AIR 1995 SC 1531

17. *John Vallamattom & Anr v. Union of India* on 21 July 2003

18. *ABC v. State (NCT of Delhi)* on 6 July 2015 (2015 SCC Online SC 609)

19. *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1

20. *Mayra Alias Vaishnvi Vilas ... vs State Of Up And Others* on 18 November, 2021,

UCC IS IN VOGUE TODAY

The Supreme Court directed to set up the Uniform Civil Code in the Shah Bano case in 1985 to facilitate national harmony and equality before the law by doing away with gender inequality, the Parliament, per contra, took a different stance and enacted a law i.e., Muslim Women's Protection of Rights on Divorce Act in 1986. In the subsequent cases, the apex court and the high courts have affirmed the same. The election manifesto (2014) of the Bharatiya Janata party which came to power at the Centre in 2014 specifically adopts that unless Uniform Civil Code is implemented, there cannot be gender equality, and further, it assures that a uniform civil code shall be drafted taking into account the best traditions by harmonising them with the modern times²¹. The focal point, as intended by all, is bringing gender equality, especially between men and women in society. In the general opinion, women, who normally come under the gender-discrimination, are considered to be the beneficiaries of the UCC.

Observation of 21st Law Commission on UCC

21st Law Commission, in its study paper on "Reform on Family Law", comes out with a conclusion that UCC may be required to eradicate the prevailing inequality between men and women under personal laws and further, it opined that it is discrimination and not a difference that lies at the root of inequality. The Commission had the opinion that before establishing equality between the communities, equality within the communities is much warranted and by bringing amendments to personal laws, the existing inequality within the communities may be remedied. Based on these proposals the government initiated its procedure and one among them is the prohibition of the triple talaq. Another issue pending before the government is the equal age of consent for marriage. In conclusion, the Law Commission also opined that the formulation of a Uniform Civil Code is neither necessary nor desirable at present²².

Critical Analysis Regarding the Enforcement of UCC

The secularism of India is well exemplified not merely in the preamble of the Constitution but flows throughout the draft. The Supreme Court, in the TMA Pai case²³, describes the notions of secularism and it observes that the kernel of secularism is to recognize and preserve the different types of people with their diverse languages and beliefs and to unite them together to have a united India. Unity doesn't mean oneness. Unity also can be brought among diverse people bringing them together by respecting their beliefs, customs, culture, traditions and other

21. Mehrotra, Abhinav, Uniform Civil Code (UCC) in India: An overview, (June 6, 2022), ORF (Observer research Foundation), <https://www.orfonline.org/expert-speak/uniform-civil-code-ucc-in-india-an-overview/>, Last Visited on 22-06-2023

22. 21st Law Commission's Report on the "Reform of Family Law", https://lawcommissionofindia.nic.in/report_twentyfirst/ Last Visited 19-08-2023

23. T.M.A Pai Foundation v. State of Karnataka and Ors. (2002) 8 SCC 481

aspects that differentiate one from another. United India can be formed by respecting the above-mentioned traits by considering the diversity implanted in different religious communities and harmonizing them for a common understanding. The government's stand to introduce UCC might have been the fulfilment of the long-standing desire of some selected categories of people or coloured with an idea of protecting the discriminated people in society. No doubt, it cannot be discarded that UCC may be a need of the time for some reasons but it is also important to know the methodology of its formulation and the purpose and intention of the implementing bodies.

THE POSITIVE SIDE OF THE UCC AS DEFENDED BY SOME

United and integrated India:

The brighter side of the UCC seems to be to form a united India, and to achieve the same the UCC can be a great help. Personal laws of different religious communities may hinder bringing unity and integrity among the people of India. Despite having different cultures, traditions, ways of living, etc. unity shall be achieved under UCC by incorporating them under one code respecting the diversity found in all the personal laws. Though it looks to be good at the peripheral level, difficult to achieve as India is a multi-religious, multi-cultural and multi-linguistic country.

A Great Help in the justice delivery system

Whenever matrimonial issues appeared before the judiciary, involving two different religious communities, unlike normal cases, the courts find it difficult to decide the matter as the personal laws of the parties hinder them to decide it amicably and speedily. The judiciary also felt such cases prolong unnecessarily and consume lots of time for the courts. Therefore, a uniform civil code may secure the rights of victims and also help the judiciary to adjudicate matters speedily.

Justice to the disadvantaged group of people or victims

Equality is one of the important fundamental rights under the Constitution of India. Some are of the opinion that under personal laws, there are provisions that discriminate and victimize women, and such provisions if allowed in this modern world, will surely amount to discrimination and negation of their fundamental rights guaranteed under the Constitution. To rectify those mistakes, it has warranted the necessity of the Uniform Civil Code that eradicates the disparity and discrimination sheltered under those personal laws. The assumptions are, what is bad in theology cannot be good in law and therefore, practices that affect equality within the community need to be repaired.

Real Secularism

The promoters of UCC assert that the UCC shall secure real secularism as it treats every person on an equal footing without giving any avenues for ill-treatment, irrespective of one's caste, creed, and religious background. Secularism, under Indian Constitution, is maintaining the diversity of all religious communities and building a united India. The view of the supporters of the UCC is that it would bring all the people under one umbrella without differentiating them based on their customs, beliefs, traditions etc. The final outcome of UCC would be equality among all.

A step towards building a Progressive Nation

Every nation, in this modern world, must do away with its negative aspects and get rid of caste and religious politics and must give prominence to the development in the fields of economy and technology. In the presence of personal laws, it seems to be, there are possibilities of their misuse for caste and religious politics and may hamper the growth of the nation.

Personal laws have nothing to do with religious practices

Some strongly argue that personal laws concerning marriages, divorce, adoption, inheritance, etc. have nothing to do with the religious practices of any community guaranteed under Article 25 of the Constitution. In the larger interests of the community, they are treated to be purely social aspects and solely related to mundane things of a community and considered not integral parts of any religious practices. Further, even if some practices attract religious rituals, reformation can be done under UCC by retaining them without harming their religious aspects.

THE CHALLENGES IN IMPLEMENTING THE UCC**Distortion of customs and traditions of India**

The primary question that haunts everyone is the format of UCC. If it is an amalgamation of personal laws retaining their present status, the question arises, what is the necessity of UCC despite having such a structure at present? Will it not be an additional burden or will it not become an impractical idea? If personal laws are thrashed to formulate a single code for individual issues like marriage, adoption, inheritance, divorce, etc. in common, the question would be, whose customs shall be taken into consideration while formulating the UCC. Presently, there are personal laws guiding their own religious communities in different aspects like marriage, inheritance, adoption, guardianship, etc. These laws are in existence for a quite long duration based on their customs, personal beliefs and faith aspects. When a community was in the practice of such personal laws for a long duration, the government in the name of enacting a uniform civil code, cannot nullify them and do away with those practices deeply rooted in their culture, beliefs and faith.

Imposition of Majoritarian Views

The first point leads to the second aspect namely, the imposition of majority views. The minority communities will, certainly, have apprehension regarding the possibility of imposition of majority views on minority communities annihilating their customary practices imbibed in their personal laws, if UCC is implemented discarding the customary practices rooted in their respective religions. India is one of the largest democratic countries and is ruled by majoritarian community members but according to the provisions of the Constitution and international law, majoritarians are bound to respect the views of minority communities. Every personal law has something to do with the religious practices that followed for generations. They cannot impose their views and customs on the minorities in the name of UCC intending to eradicate the existing evils in the personal laws. Murdering the conscience of religious communities, UCC cannot be enforced. The majority must secure the confidence of the minority communities and protect the rights of the minorities according to the spirit of the Constitution.

Possibilities of rectification within the existing personal laws

No doubt, every enactment will have loopholes to a certain extent and the government must set right the discrepancies in such laws and practices through rectifications in the existing laws. The courts, often, have come out saying that they find it difficult to decide certain cases where two religious people are involved in marriage cases to decide about their specific rights due to differences in their personal laws. In such cases either provisions may be made under special laws to that effect or amendments can be initiated for the existing personal laws without destroying them. Further, if there are any discriminations meted especially to women within the personal laws, they can be rectified by making amendments to them rather than interfering and eliminating the existing provisions of law.

The Parliament in the past took the suggestions given by various Law Commissions and rectified certain discrepancies that prevailed in the existing enactments. Some of them are the triple talaq or talaq-ul-biddat, the recognition of women as coparceners in 2005, the recognition of diverse customs within the Hindu Marriage Act (Madras Amendment) 1967²⁴ (incorporating priest-less marriages among many others), an amendment to Christian marriage and divorce laws in 2001 (where adultery coupled with cruelty considered to be ground for women to claim divorce but due to its amendment the women are at par with men to claim divorce under the adultery alone), an amendment was made to the Indian Succession Act regarding the probate of wills, and amendments were brought to the Hindu Adoption and Maintenance Act of 1956 and the Guardians and Wards Act of 1890.

24. Hindu Marriage (Tamil Nadu Amendment) Act, 1967, (Tamil Nadu Act 21 of 1967)

Enactment of a Special Law

If the government or the Centre finds some real difficulties within the personal laws and especially if the courts find any difficulties in settling special cases, the government, instead of enacting a UCC, can make special provisions for such exceptional cases without harming the personal laws. If there are any discriminations found in the personal laws about women, they can be rectified and set right under the special law and further, the special law can override the personal laws in such particular issues. The adoption law under the Hindu Adoption Act applies to Hindus but the State under Juvenile Justice Act has made special provisions for adoption to others besides Hindus. Further, Article 15 (5)²⁵ provides ample opportunities to enact laws to protect the rights of women. To give an instance, the Registration of Births and Death Register can be amended to include compulsory registration of marriages to protect the rights of minors or the age of consent can be fixed and made compulsory under criminal Acts to refrain from contacting marriages below the age of consent, provisions for property rights to women in the husband's property in the wake of their divorce, etc.

The death blow to the rights of Tribal and Specially recognized groups

Provisions have been made for tribal community members and other special groups in different parts of the country to protect their rights. In the event of enactment of UCC, the rights of those specially recognized groups will lose their rights and their special status shall be withdrawn. If the government makes any special provisions under the UCC to retain the status of those tribal and specially recognized community members, it would be nothing but additional provisions and the formulation of UCC will be a misnomer.

Consent of the communities in question

The Constituent Assembly upheld the arguments advanced by the Communities who had their personal laws and assurance was given to them that while enacting a UCC, the consent of the communities in question shall be taken into consideration. Based on the argument, the provision under Article 35 (renumbered as Article 44) is inserted within the Constitution. So unless and until the consent of the community in question is obtained, it may not be possible to enact a UCC. At present, providing a questionnaire and demanding the communities who have their personal laws in question to give their assent within 30 days (short notice) goes against the principle of audi alteram partem.

Fundamental Rights cannot be overridden by non-justiciable principles

Religious practices are protected under the Fundamental Rights guaranteed under Articles 25 to 28 of the Constitution. When the Constitution guarantees such rights, the State has an

25. INDIA CONST., art. 15

obligation and right to annihilate the inequality under Article 14²⁶ by setting right the existing personal laws through rectifications but it cannot override the Fundamental Rights guaranteed under the Constitution of India.

The difference between the communities is warranted under Democracy

The mere difference between various religious communities in their practice will not amount to discrimination. India being one of the major multi-religious and multi-linguistic democratic countries, need to respect the uniqueness of each community by protecting their practices. Undoubtedly, the religious identity of each community is important but at the same time, it has a bounden duty to restrict discriminatory practices implied in them. The government, though eager to interfere in the personal laws of the communities, shows its slackness in formulating protective discriminatory laws that apply to the government, namely, an enactment on equal representation of women in the legislature which is pending for years together.

CONCLUSION

To implement the UCC, the government is obliged to obtain the assent of the communities in question and must be drafted keeping in mind the diversity of Indian culture and traditions without harming the sentiments of religious communities who practice their personal laws enacted as per their customs, traditions and religious beliefs. The proposed idea of UCC, while its insertion in the Constitution, was intended not to gain political mileage by any political parties but to enact it with the intention of gaining true national integrity, eradication of gender inequalities and growth of the nation. If such intentions are exemplified in the formulation of the UCC, the real growth of the communities may take place. To do so, the government must take every community into confidence and try to enact the UCC without harming any religious practices, customs and beliefs.

Finally, the question remains unanswered at this stage, whether UCC includes the personal laws of every community keeping their substantial provisions existing at present and rectifying discrimination within them or each code for all the communities in respect of marriages, inheritance, adoptions, divorces, etc. To conclude, secularism, undoubtedly, is not contradictory to plurality but it is part and parcel of democracy.

26. INDIA CONST., art. 14

CHAPTER - 2

**CORPORATE GOVERNANCE AND
EMERGING ISSUES; BANKING AND
DIGITAL INCLUSION; ARBITRATION AND
CONFLICT RESOLUTION**

SUO MOTO COGNIZANCE ISSUES AND CHALLENGES - A GOOD GOVERNANCE PERSPECTIVE

A. Sujana¹

INTRODUCTION

Suo-moto cognizance is a power of the Indian courts to initiate action against perpetrators of injustice, lawlessness, violence. Suo moto powers give courts the legitimacy of issuing orders to the government. These suo moto powers of the Supreme Court and High courts in India are vast and ever expanding. The courts resort to this mechanism primarily to uphold judicial accountability and justice for all. The instances in which suo moto powers are used vary but the immediacy attached to it is primarily directed at the management of the issue at hand, upholding rights of citizens and maintain rule of Law. The paper begins with a brief introduction on the origins of suo moto powers in India. It comments on its increased use in the present times. The emphasis is to highlight frameworks that enforce judicial accountability and one such is a good governance framework. The efficacy of suo moto cognizance does reinforce the argument that judicial accountability is one of the most important traits of democracy. However, even for this to be sustained the existence of good governance is indispensable. Therefore, judicial accountability in the use of suo moto powers is possible only in the good governance framework.

On many occasions judiciary has been seen as the forerunner to establish the goals of governance that in turn promote a law-abiding society and a society which secures the rights of its citizens. This paper seeks to identify and discuss what are the “linkages” and “linkage institutions” which promote and uphold suo moto to be an effective law enforcing mechanism. These linkages are central to the good governance framework and perspective. Some of the popular linkage institutions are media, political parties, interest groups and pressure groups.

To bring out the linkages and comment on linkage institutions in India in this context we adopt the method of qualitative research. Qualitative research is directed in understanding these linkages and linkage institutions, to engage and explain and interpret social phenomena. In this case it would be for instance the phenomenal increased use of suo moto cognizance in the recent years in India. How do we interpret this phenomenon about rising use of these powers

1. Assistant Professor, Department of Political Science, Sri Sathya Sai Institute of Higher Learning, Anantapur

available to the Indian courts? What are the linkages and linkage institutions that better explain this phenomena or lead to us to an appropriate understanding of the role of linkage institutions?

ORIGINS OF SUO MOTO

In an article published by the Supreme Court Observer, it says the first instance when “suo moto” powers were used was in the year 1979.² In the following years the Supreme Court and High Courts have used it in different instances. “Suo moto simply means the court investigates the matter on its own and ensures initiation and restoration of the process of justice and rights. The sources of these suo moto powers are the Indian constitution, an epistolary jurisdiction and the courts have the powers to initiate action in respect of contempt of court.³ Institutions, individuals and governments are bound to enforce the orders of the courts.

INCREASED USE IN THE PRESENT TIMES

In August 2019, Mare Galanter and Vasujith Ram wrote a chapter titled “suo moto intervention and the Indian judiciary” published by the Cambridge University Press. The authors describe “suo-moto” as an extraordinary intervention of the court”.⁴ They describe its impact on social and political life and use the method of case study by looking at a particular case. Gauri Kashyap writing for the Supreme court observer argued that in 2020 itself there was “a historic rise of suo moto cases taken up by the supreme court”. Krishnadas Rajagopal writing for “The Hindu” reported that in the case of the Lakhimpur Kheri violence, the Supreme Court of India had taken suo moto cognizance.⁵ On October 21, 2022, it was reported that the Supreme court had direct state governments to take suo moto against hate speech.⁶

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2. Mihir. R., *Suo Moto Powers in Writ Jurisdiction: A South Asian Innovation*, SUPREME COURT OBSERVER (29th June 2021) <https://www.scobserver.in/journal/suo-moto-powers-south-asian-innovation/>
 3. Mihir. R., *Suo Moto Powers in Writ Jurisdiction: A South Asian Innovation*, SUPREME COURT OBSERVER (29th June 2021) <https://www.scobserver.in/journal/suo-moto-powers-south-asian-innovation/>
 4. Gauri Kashyap, *2020 Saw a Historic High of Suo Moto Cases at the SC*, SUPREME COURT OBSERVER (17th June 2022) <https://www.scobserver.in/journal/2020-saw-a-historic-high-of-suo-moto-cases-at-the-sc/>
 5. Krishnadas Rajagopal, *Supreme Court takes suo motu cognisance of Lakhimpur Kheri violence*, THE HINDU (6th Oct 2021, 10:25pm), <https://www.thehindu.com/news/national/supreme-court-takes-suo-motu-cognisance-of-lakhimpur-kheri-violence/article36866470.ece>
 6. Krishnadas Rajagopal, *don't wait for complaints to act against hate speech, Supreme court tells police*, THE HINDU, (Oct 21, 2022, 5:12pm), <https://www.thehindu.com/news/national/sc-directs-police-to-immediately-register-criminal-cases-and-take-action-against-hate-speeches/article66040163.ece>

Therefore, we can see that as “suo moto” powers are constitutional they became an essential aspect of democracy in India. In this regard moving forward by studying accountability, transparency and responsibility brought forth by judicial activism we can hopefully explore its ramifications for governance. On May 25th 2023, The Hindu newspaper reported the move of the NHRC which took suo moto cognizance and issued notice to the Odisha government to take immediate action to address dog menace in Cancer Hospital in Cuttack.⁷ Another instance where the Supreme Court took suo moto cognizance is in the case of contamination of rivers.⁸ The court issued a directive and order to the state reminding it of its duty and obligation to provide clean drinking water to the people.⁹ The most recent use of suo-moto cognizance has been during the “Manipur violence”. The Supreme court issued directions to the government to book the perpetrators.¹⁰ On May 26th 2020, the Supreme court came to the rescue of the migrant workers and directed the state governments to provide free travel and other essentials.¹¹

FRAMEWORKS THAT ENFORCE JUDICIAL ACCOUNTABILITY-GOOD GOVERNANCE FRAMEWORK

Good Governance seeks to bring about accountability, transparency, and responsibility of the government to the citizens. A good governance framework is quint essential to provide the environment for all mechanisms that seek to promote justice and Suo moto cognizance is one such mechanism. According to the International Monetary Fund, “Good Governance covers all aspects of how a country is governed, including its economic policies, regulatory framework,

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7. Krishnadas Rajagopal, *NHRC takes suo motu cognisance of dog menace in Odisha's Cancer hospital*, THE HINDU (May 25th, 2023, 08:35 pm), <https://www.thehindu.com/news/national/other-states/nhrc-takes-suo-motu-cognisance-of-dog-menace-in-odishas-cancer-hospital/article66893371.ece>
 8. Krishnadas Rajagopal, *Supreme Court takes suo motu cognisance of contamination of rivers*, THE HINDU (Jan 13th, 2021, 8: 11pm), <https://www.thehindu.com/news/national/supreme-court-takes-suo-motu-cognisance-of-contamination-of-rivers/article33569924.ece>
 9. Krishnadas Rajagopal, *Supreme Court takes suo motu cognisance of contamination of rivers*, THE HINDU (Jan 13th, 2021, 8: 11pm), <https://www.thehindu.com/news/national/supreme-court-takes-suo-motu-cognisance-of-contamination-of-rivers/article33569924.ece>
 10. Krishnadas Rajagopal, *Supreme Court 'deeply disturbed' orders centre, Manipur government to act*, THE HINDU (July 20th, 2023, 11:04 am), <https://www.thehindu.com/news/national/manipur-sexual-assault-using-women-as-instruments-of-violence-is-unacceptable-says-cji/article67100560.ece>
 11. Krishnadas Rajagopal, *Supreme Court orders Centre and States to immediately provide transport, food and shelter free of cost to stranded migrant workers*, THE HINDU, (May 26th, 2020, 6:13pm), <https://www.thehindu.com/news/national/supreme-court-takes-suo-motu-cognisance-of-migrant-workers-issue/article61652523.ece>

and adherence to rule of law”.¹²Kuldeep Mathur mentions India’s governance problems prior to the implementation of the Rti, where a weak Indian civil society struggled to pressurise government accountability.¹³Authors such as Brian C.Smith uphold the importance of good governance which leads to development. In the first chapter of his book “Good Governance and Development” Brian.C.Smith talks about “Political Conditionalities”.¹⁴ According to Brian.C.Smith, “Good Governance thus expresses approval not only for a type of government (usually) democracy and its related political values(for example for human rights) but also for certain kinds of additional compensations.” In another definition he defines governance as “a network (or patchwork) of private non-governmental bodies that have a role to play in the formulation and implementation of public policy and the delivery of public services”.¹⁵Good governance and governance as such is linked to changes in the political system of a country.

THEORIES USING LINKAGES AND LINKAGES INSTITUTIONS

The theory of linkages is more popular in the realm of international relations in which the theorists discuss about inputs and outputs. Commenting on the peculiarity and paradox of the Indian political system, Kuldeep Mathur mentions about the traits of an open political system.¹⁶ A responsive political system that can accommodate growing demands from the people to know about the functioning of the government.¹⁷ However the use of the concept of “linkages” and “linkage institutions” can help us in a certain way to understand to a possible extent the phenomena of “increased use of suo-moto cognizance in India” in recent times specifically 2020-2021.

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12. *IMF and Good Governance, Why Good Governance is Important?* INTERNATIONAL MONETARY FUND (International Monetary Fund April 2023), [https://www.imf.org/en/About/Factsheets/Sheets/2023/The-IMF-and-Good Governance#:~:text=The%20IMF%20promotes%20good%20governance,honesty%20in%20the%20IMF%20itself](https://www.imf.org/en/About/Factsheets/Sheets/2023/The-IMF-and-Good-Governance#:~:text=The%20IMF%20promotes%20good%20governance,honesty%20in%20the%20IMF%20itself).
 13. KULDEEP MATHUR, GUIDANCE FOR GOVERNANCE, COMPARING ALTERNATIVE SOURCES FOR PUBLIC ADVICE, 230(Japan Centre for International Exchange 2001)
 14. B.C. SMITH, GOOD GOVERNANCE AND DEVELOPMENT 4-5 (Palgrave Macmillan; 2007)
 15. *Id.*
 16. *Id.*
 17. *Id.*

THE “LINKAGES” AND “LINKAGE INSTITUTIONS” WHICH PROMOTE AND UPHOLD SUO MOTO IN INDIA IN THE GOOD GOVERNANCE FRAMEWORK

The concept of ‘Linkages’ has been used to explain different social and political phenomena. For example, there exist international linkages, state and society linkages, policy responsive linkages, traditional linkages, and selective linkages.¹⁸

Media

The media in India and worldwide has witnessed tectonic shifts in terms of the vast influence it has on people and their opinion. Media which includes the Press, radio, television, social media platforms, audio such as podcasts, online meets, webinars, social groups on social media are participating almost instantly at the break of the news or the decision of the courts, to engage in discussion on serious matters. In the most recent case of the Manipur sexual violence, the Supreme court took suo moto cognisance, issued warnings and orders to the centre and state governments to take immediate action against those perpetrators into law.¹⁹ An incident of immense tragedy, the public waited and watched for the institutions to be accountable. This brought on the discussion of a no-confidence motion. The restoration of justice was critical to the Indian democratic system. That is when the Supreme court responded with the power of suo-moto cognisance. There is no doubt that the powers are the decisive power of the courts alone. The point is “media” influences the political phenomena and the larger political system to the point of judicial accountability. Media is an important linkage that influences to certain extent ‘the phenomena of rising use of suo moto cognisance’. Hence the action, reaction by media and responsive and responsible measures to promote governance. Quintessentially the rapport between the citizens and the judiciary is in a flux because of these linkage institutions that have sadly become the site of erroneous conduct and behaviour. In a good governance framework, the freedom of press and media have become criteria of judgement of how free or unfree is our Indian democracy. India’s rank in freedom of Press Index stands at 161, this fundamental idea of a free press nation is what makes media an important linkage institution in the phenomena of a rising tide of judicial accountability with the use of suo moto cognisance by the courts.

18. ANDREW ROMMELE ET.AL., ROMMELE AND M. FARRELE, ON POLITICAL PARTIES AND POLITICAL SYSTEMS, THE CONCEPT OF LINKAGE REVISITED, viii, ix (Praeger, 2005).

19. Utkarsh Anand, *Initiate action else We Will Step in, Supreme Court Warns Centre and State*, HINDUSTAN TIMES (July 21st, 2023, 01:43 am IST) <https://www.hindustantimes.com/india-news/supreme-court-takes-suo-motu-cognisance-of-viral-video-of-assaulted-women-in-manipur-seeks-action-from-government-101689880716815.html>

Political Parties

Lip set, Rokan and Sartori discuss about the “linkage function” of political parties.²⁰ Kay Lawson popularised the concept of the linkage functions of political parties.²¹ Political parties perform several functions which include representing people’s views, proposing new laws in the legislature and seeking accountability from the (government) ruling party. Political parties in India have on several occasions urged either the Supreme court and or the police authorities to take *Suo moto* cognizance with a motive of seeking response from administration. In other words, political parties are an important linkage institution that urge and support, to be more accurate that facilitate the conditions by appealing to the judiciary to restore justice and rights. Some of those instances include the following. On August 8th, 2022, Smt. Supriya Shrinete in a press meet urged the Supreme Court to take *suo motu* cognisance of the ‘Ayodhya land scam’ issue.²² On 26th June, 2018 Mamata Banerjee urged the Police to take *Suo moto* cognisance against those who spread violence.²³ On July 18th, 2023 a lawyer urged the High Court of Calcutta to take *suo moto* cognisance for contempt of court against TMC General Secretary, Abhijit Banerjee.²⁴ However the High Court of Calcutta refused to take action.²⁵ The above examples suggest to us how political parties are very important linkages that deeply influence the rising phenomena of the intervention of courts with recourse to *suo moto* powers.

Interest groups and Advocacy groups in India

According to Encyclopaedia Britannica, interest groups are known by other names such special interest groups, advocacy groups or pressure groups. These groups are also known to be linkage institutions. Some of these include PUCL, People’s Union for Civil Liberties, Human

20. ANDREW ROMMELE ET.AL., ROMMELE AND M. FARRELE, ON POLITICAL PARTIES AND POLITICAL SYSTEMS, THE CONCEPT OF LINKAGE REVISITED, viii, ix (Praeger, 2005).
21. ANDREW ROMMELE ET.AL., ROMMELE AND M. FARRELE, ON POLITICAL PARTIES AND POLITICAL SYSTEMS, THE CONCEPT OF LINKAGE REVISITED, viii, ix (Praeger, 2005).
22. Congress Sandesh, Voice of the Nation, *Supreme Court to take Suo motu cognisance of the ‘Ayodhya land scam’ issue*, INDIAN NATIONAL CONGRESS, CONGRESS SANDESH (August 8th, 2022), <https://www.inc.in/congress-sandesh/press-briefing/sc-should-take-suo-motu-cognisance-of-ayodhya-land-scam>
23. As reported in the Hindustan Times, *Mamata Urges the Police to Take Suo Moto Cognisance*, HINDUSTAN TIMES (June 26th, 2018)
24. Shiv Sahay Singh, “Calcutta High Court Refuses to take Suo motu Action on remarks made by Abhishek”, THE HINDU (July 18th, 2023, 02:09am), <https://www.thehindu.com/news/national/hc-refuses-to-take-suo-motu-action-on-remarks-made-by-abhishek/article67091037.ece>
25. Shiv Sahay Singh, “Calcutta High Court Refuses to take Suo motu Action on remarks made by Abhishek”, THE HINDU (July 18th, 2023, 02:09am), <https://www.thehindu.com/news/national/hc-refuses-to-take-suo-motu-action-on-remarks-made-by-abhishek/article67091037.ece>

rights groups, women's groups etc that persuade the government and the courts to take up their cases for compensation and restoration of justice and rights. During the pandemic several groups such as journalists, human rights watch groups, several of advocates, media support compelled the judiciary to take suo motu cognisance and issue directives to centre and state governments.

CASE STUDY APPROACH

Case study of the judicial intervention for the Migrant Workers in the Pandemic

As the case study method is a robust method to gain insights, this paper would like to recap and analyse how the Supreme Court brought in the practise of Suo motu cognisance during the pandemic. In fact, one of the authors at the Supreme Court Observer writes, the increasing use of suo moto cognisance began with the pandemic year.²⁶ The suo moto was initiated with a momentous pause after the media played the reels of migrant workers walking unimaginable long distances with no essentials such as food or water. The media cried out loud and repetitively to seek justice for the migrant workers. The whole of India was watching during lockdown how the government is going to handle these issues.

In a matter of days, a group of senior advocates urged the Supreme Court to come to the rescue of migrant workers. It was a sad portrayal of the working class of India on the media and the web. The rights activists, the media, political parties all (linkage institutions) urged, even persuaded the answerability of the government at the centre and the states. It is only at this juncture that the Supreme Court intervened to restore justice for the migrant workers. The courts issued directives and warnings to the governments in charge to submit to it measures taken. Accordingly, the Supreme court used the power of suo moto to tackle issues of the migrant workers during the pandemic. It reminded, ordered, and persuaded the government to act in a just manner to protect the rights and lives of the weakest class in society.

Therefore the authors at the Supreme Court Observer, R.Mihir and Gauri Kashyap contend this episode of the pandemic set the ground for active judicial intervention. Such an impetus has reinvigorated judicial accountability to the weakest strata of our Indian society. The linkage institutions included the autonomous and constitutional bodies such as human rights commissions.

26. Gauri Kashyap, *2020 Saw a Historic High of Suo Moto Cases at the SC*, SUPREME COURT OBSERVER (17th June, 2022) <https://www.scobserver.in/journal/2020-saw-a-historic-high-of-suo-moto-cases-at-the-sc/>

Insights from this case study

It is not enough to merely state that the pandemic set the courts pressing governments for answers. When the linkage institutions are at work they tend to point to a *deeper malaise*. The nature of such a malaise could be an ailing or laxed citizen grievance redressal mechanism. The lockdown was a difficult moment for the nation, some people benefited they lived on safely, while others perished. The case of the pandemic tells us government mechanisms work differently in extreme situations. In the worst situation the country's poor faced, that was transformed into an opportunity to develop better health management systems. The government introduced new relief and welfare measures. Inclusivity in the provision of welfare during the pandemic became the criteria to judge the performance of the government. However, it is the courts alone that could urge governments to work with extra limbs and give necessary care to the poor of the nation. The case study which is descriptively narrated gives scope to analyse the heightened importance of information and technology that aid governance and in overcoming the challenges which emerged from the pandemic. The restoration of rights and justice happens in a good governance framework and the role of linkages and linkage institutions is critical to not merely delivery of justice but the achievement of the SDG's Sustainable Development Goals. No government in power took chances to ignore the orders of the courts. They were pretty sure about the consequences of political mileage.

Case Study of suo motu cognisance for intra-state migrant workers

In the previous case study, we saw the courts intervened after linkage institutions dynamics played out their part to bring accountability in the system. In this case study we will discuss how another instance when the focus was on Supreme Court intervention to look into the wellbeing of the migrant workers in Maharashtra. What happened then? This was after the pandemic. This case was also about the migrant workers. This case is unique because the media only brought to the public domain few unknown aspects.

In an article published by 'The Hindu', S.Irudaya Rajan and Kuldeepsingh Rajput write about violence perpetrated on intra-state migrant workers in Maharashtra.²⁷ In their case it was the Bombay High court that intervened to direct the state government to investigate their wellbeing. The reporters narrate the problems of the seasonal migrants and the exploitation of the workers from the Marathwada region is because of an exploitative "contractor-worker" relationship that is most oppressive for women and in turn affects the wellbeing of their children. In a series of articles, books, this part of India (Marathwada region) was extensively covered by P.Sainath who brought to the fore the real stories of India from hinterlands about drought,

27. S. Irudaya Rajan and Kuldeep Singh Rajput, Bitter Truths in Maharashtra's sugar fields, THE HINDU (July 31st, 2023, 12:08) <https://www.thehindu.com/opinion/op-ed/bitter-truths-in-maharashtras-sugar-fields/article67139495.ece>

misery, suffering, poverty, family challenges. Rural India has serious challenges. The High court intervention seeks to enforce welfare for the workers.

Insights into this case study

The media which played a mammoth role in the pandemic to come to the rescue of the migrant workers is almost lesser in degree and comparison in the second case study, yet it did make it known to the public eye. The comments, action reaction about regional and national political parties is not very clearly written about nor in the limelight. The article it is believed came as a shocker to the entire nation. Issues about migrant workers remain under covered and under reported and as the reporters opine there is no data to pull the facts together. Suffering alone is known and hence it was reported in the national daily, The Hindu. The recourse, remedy and the restoration of justice and basic rights will need to end the existing exploitative practices. The migrant workers themselves prefer honouring the contractor work wage income model. The judicial intervention even though undoubtedly restorative and compensatory yet the approach to migrant worker problems is stymied.

The” linkage institutions”, their presence is not as robust as in the case of the pandemic situation. The political system here is closed and as Kuldeep Mathur suggests an open political system alone enables the people to question the government. The previous case study has robust linkage institutions, and the second case study has slightly less robust linkages or linkage institutions. The entire problem of the migrant workers was known to the courts very recently. Even though media is a very important linkage institution it has been a challenge to present the complexity of the migrant workers issues. The larger malaise here is a neglected ‘Marthwada region’. The greater malaise is oppressive work wages factors.

Only in this case the nation was not watching, and the problem remained in the dark. The case becomes clearer that robust linkage institutions can speed up justice in a (governance) conducive framework, as in the previous case and in the second case there is a greater role in waiting for the media, political parties, rights groups to discuss these matters. The efficacy and outcome of judicial intervention is critically influenced by the role linkage institutions play. At present efforts are in place to address the problems of the migrant workers. This paper has asked one question primarily that is how could the rising incidence of suo moto cognisance especially in the year 2020 as reported by R. Mihir be explained? This phenomenon of increased judicial activism is rooted in judicial accountability that in turn is the result of the dynamics of linkage institutions in India. These linkage institutions which have been listed and discussed above have churned up a democratic space that calls for judicial accountability. The linkage institutions have created and spurned a dynamic and robust mechanism that upholds good governance traits such as media for freedom of press and press calling out for justice; political parties bent on seeking government answerability on issues such as the “farm laws”. Pressure groups and

advocacy groups demanding restoration of rights and justice have become quintessential traits of the Indian democracy in transition. The above argument is not to be mistaken as influence over the judiciary. The independence of the Indian judiciary is the crest jewel of our democratic constitution. It is free from political interference undoubtedly. The main argument is that linkage institutions in a good governance framework call for judicial accountability and the fall out of the dynamics of these linkage institutions could be a reasonable account on what made the courts come to a greater milestone of using suo moto cognisance to deliver judicial accountability.

BUILDING A SUSTAINABLE TOMORROW- UNMASKING ETHICS AND INTEGRITY'S DYNAMIC INFLUENCE IN CORPORATE GOVERNANCE

Prof. Mihir Dash¹

Nawvi K²

INTRODUCTION

As quoted by the famous Management Consultant and Author of the book 'The Effective Executive: The Definitive Guide to Getting the Right Things Done', Peter Drucker said "Management is doing things right; leadership is doing right things", this stands still unique though there are numerous quotations deliberated by great personalities because Drucker has always insisted upon doing things right that paves the way to choose the right direction not only for the upright living for human beings but also is an essential element for a sustainable and successful business. Setting these moral priorities first it fulfils the company's vision even before starting with the work.³ Corporate Governance can be understood as a set of rules and regulations to direct control of a particular organization to achieve the fundamentals such as accountability, fairness, responsibility, and transparency in the business. It also elaborates on designing the hierarchy and roles of various positions, and the decision-making process that is best suitable for running the organization more efficiently. It is perspicuous that a minor change in the organization's decision might heftily destroy the whole reputation and trust built among people which in turn could seek unbearable consequences like shutting down the organization. Ethical practices are at the forefront of guaranteeing sustainable and responsible business operations in the dynamic world of modern corporate governance. Organizational codes of conduct serve as the cornerstone of ethical behavior within those organizations. These extensive frameworks outline expected behaviors, beliefs, and principles that should inform stakeholders' decisions and actions. In the context of Corporate Governance in India, this paper meticulously examines the complex tapestry that Codes of Conduct and ethics have created.

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1. Interim Associate Dean - Alliance School of Applied Mathematics Alliance School of Applied Mathematics
 2. 3rd year BA LLB student, Alliance School of Law, Alliance University
 3. Peter F Drucker, The Effective Executive: The Definitive Guide to Getting the Right Things Done, Harper Collins Publication, June 2004

Although Corporate Governance and ethics have received a lot of scholarly attention, this study aims to shed light on a topic that has received less attention than others. This research, in contrast to earlier research, which frequently adopts a broader perspective, conducts a granular analysis by painstakingly scrutinizing each Code of Conduct of various companies. This study sets out on an ambitious journey to illuminate the complex aspects of business ethics in the Indian corporate environment. The study tries to identify subtle patterns, inequalities, and commonalities that arise across several sectors by conducting an extensive thematic mapping. The findings from this research have the potential to instruct and direct businesses, politicians, and academics alike as Corporate India increasingly understands the value of ethical governance in generating trust, accountability, and long-term success.

SIGNIFICANCE OF ETHICS AND INTEGRITY IN CONTEMPORARY CORPORATE GOVERNANCE AND ITS INCORPORATION

The word integrity is derived from the Latin word ‘integritas’ meaning purity, honesty, and probity.⁴ Ethics on the other hand is derived from the Greek word ‘ethos’ meaning character and the Latin word mores meaning customs.⁵ Corporate Governance has evolved as a result of the inclusion of ethics and integrity as a fundamental component as societies have come to understand the importance of establishing rules that promote moral behavior in businesses. Beyond personal virtues, the advent of industrialization, globalization, and complicated economic processes highlighted the significance of ethical behavior.

Integrity can be more precisely defined as the standards that adhere to morality, honesty, and ethical principles. In simpler words, Aldo Leopold, an American Author, and Philosopher “Doing the right thing when no one else is watching-even when doing the wrong thing are legal”, which means these values are universal and may put one in a situation that conflicts one’s personal interest if faced with an ethical dilemma. On the other hand, Ethics could be understood as a set of principles involved in making morally sound choices with the guide of behavior and decision-making principles. Incorporating ethics and integrity in any business model shall help to achieve remarkable results in any organization.

Differentiating these terms from a legal and business point of view shall elucidate their role in Corporate Governance. Ethics from a business perspective deals with a set of rules and regulations governing behavior, interactions, and decision-making of the organization however from a legal context may refer to answering a set of questions that deal with justice, fairness, and morality. Integrity on the other hand deals with moral principles, honesty, and consistency in an

4. Integrity Concept, Dictionary of Global Bioethics, Springer Link, pp 641, 2021

5. Legal Information Institute https://www.law.cornell.edu/wex/legal_ethics#:~:text=Overview,-standards%2C%20regulation%2C%20and%20liability. Last Visited (4 August 2023 4:25 PM.)

organization when compelled with challenges. From a legal perspective, it answers questions dealing with honesty, behavior, and truthfulness.

THEORETICAL FOUNDATIONS OF CORPORATE GOVERNANCE

Philosophical notions that direct moral decision-making within corporations serve as the theoretical underpinnings of ethics and integrity in Corporate Governance. These theories influence how governments are organized, promoting an ethical as well as accountable culture. Businesses may manage ethical complexity, foster stakeholder trust, and preserve ethical standards in their governance practices by comprehending these pillars.

- **Deontology:** Derived from Greek words *deon* meaning ‘duty’ and *logos* meaning ‘study of’. In the contemporary context, it is one of the normative theories whose choices are morally forbidden, required, or permitted.⁶ A company adopting to follow deontology theory of ethics encourages its company to operate with integrity so that it ensures all its decision are taken on par with ethical principles even if the company doesn’t yield favored outcomes.
- **Virtue Ethics:** Another approach that uses normative theory in determining the ethics and integrity of the organization. It is in contrast to the opinions of Deontology theory and Consequentialism. However, both of the above make room for virtue in place.⁷ The virtuous characteristic trait of a person or a company is reflected as it cultivates ethical leadership, and responsible decision-making, and promotes and integrity and welfare of the organization. Encourages leaders to exhibit fairness, empathy, and moral courage.
- **Ethical Relativism:** It shows that ethical standards vary because of two aspects one is a contextual factor and the other one is a cultural factor. This theory favors and encourages flexibility in governance while not giving up on ethical principles. The idea of ethical relativism is the assertion that, if there are any ethical truths at all, they depend on the environment or society in which they are made. The idea of moral subjectivism holds that moral judgments are evaluations of contingent and mutable aspects of our moral sensibility.⁸
- **Utilitarianism:** As proposed by Jeremy Bentham, this theory focuses on achieving the greatest happiness for the greatest number of people. Corporate utilitarian theory underlines that every decision benefits the majority of the shareholders and the

6. Deontological Ethics, Stanford Encyclopedia of Philosophy, 2020

7. Virtue Ethics, Stanford Encyclopedia of Philosophy, 2022

8. Relativism, Stanford Encyclopedia of Philosophy, 2020

stakeholders. It suggests encouraging the organization to put the Code of Conduct and ethics first in line so successful results are followed its way. Practicing this ensures to contribute to long-term sustainability and satisfaction of all.

- **Social contract theory:** This idea emphasizes the unspoken agreement between firms and society to follow moral standards and make beneficial contributions to Corporate Governance. This societal contract is fulfilled by ethical behavior within governance practices, as organizations pledge to be transparent, equitable, and accountable. Companies can increase their social legitimacy and keep stakeholders' trust by upholding ethical norms.
- **Stakeholder theory:** According to the stakeholder theory, businesses should take into account the interests of all parties involved, not just shareholders. This idea is quite compatible with Corporate Governance because it acknowledges the moral duty of businesses to balance the demands of many stakeholders.

LEGAL AND REGULATORY FRAMEWORKS

The recognition of legal and regulatory frameworks pertaining to ethics and integrity is a vital pillar that shapes the ethical landscape of organizations in the context of corporate Governance in India. These frameworks, which include laws, rules, and policies, create a thorough framework to guarantee openness, responsibility, and ethical behavior within organizations. These legislative frameworks are essential in maintaining a corporate ecosystem that upholds the highest levels of ethics and integrity by requiring ethical behavior, encouraging stakeholder protection, and setting strict criteria. Here are insights into a few such laws in India,

- **The Securities and Exchange Board of India (SEBI) Regulations:** Regulations introduced by the SEBI for the Governing of the organizations with the objective to enhance the true spirit of Governance and transparency. This board ensures to uphold integrity and ethics in the Indian market. Being a regulatory authority that oversees security markets, it extends its stringent norms with the ultimate aim to hold accountability, transparency, decisions benefitting companies and consumers, and responsible social behavior within the company.

SEBI emphasizes Robust Governance standards by implementing a Code of Conduct and regularly monitoring them. Its influence can be seen from the establishment of the Listing Obligations and Disclosure Requirements (LODR) regulations. The roles are clearly designed such that it oversees checks and balances by promoting ethical leadership. This bulwark cultivates ethical behavior by enforcing stringent norms and significantly contributes to fostering the work

environment of the corporate.⁹ The SEBI'S Insider Trading Regulations is another regulation with the object to prevent unethical trade practices.¹⁰

- **Companies Act, 2013:** The Companies Act, 2013, is a pillar in the fight against ethical and moral failings in Indian Corporate Governance. This comprehensive piece of legislation offers a solid legal framework that emphasizes openness, responsibility, and ethical conduct inside organizations. There are several important clauses in the Act that demonstrate its function in protecting ethics and integrity. The Act also imposes strict guidelines for related-party transactions, calling for openness in transactions that can result in conflicts of interest. By discouraging the misuse of corporate resources for private benefit, ethical behavior is improved.

Additionally, the Legislation places a strong emphasis on whistleblower protection, encouraging stakeholders and employees to disclose unethical behavior without worrying about facing consequences. This clause fosters an atmosphere where misconduct can be exposed and business operations can continue with integrity. The Companies Act of 2013 codifies ethical duty by introducing the idea of Corporate Social Responsibility (CSR). It requires that eligible businesses set aside money for social and environmental projects, highlighting their dedication to moral behavior that goes beyond producing a profit. The Act also includes clauses requiring disclosures, audit committees, and public financial reporting—all of which support accountability and moral behavior. Penalties for breaking the law serve to emphasize how crucial it is to uphold moral principles.¹¹

- **Competition Act, 2002:** A crucial regulatory framework in India, the Competition Act, is essential in safeguarding ethics and integrity in Corporate Governance. The Act promotes a level playing field for enterprises by outlawing anti-competitive practices and unfair commercial practices. Avoiding monopolistic tendencies, dishonest tactics, and market dominance misuse promotes moral behavior. The Act's enforcement

9. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 https://www.sebi.gov.in/legal/regulations/jan-2020/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015-last-amended-on-january-10-2020-_37269.html (Last visited on 9th August 2023)

10. SEBI Insider Trading Regulations, 2015 https://www.sebi.gov.in/legal/regulations/nov-2022/securities-and-exchange-board-of-india-prohibition-of-insider-trading-regulations-2015-last-amended-on-november-24-2022_65864.html (Last Visited on 9th August 2023)

11. Companies Act, 2013, <http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf> (last visited on 9th August 2023)

encourages transparency, competitive fairness, and moral behavior, helping to create a business atmosphere based on ethical standards and integrity.¹²

- **Corporate Social Responsibility:** A company's commitment to making beneficial contributions to societal and environmental well-being outside of its financial commitments is known as Corporate Social Responsibility or CSR. CSR has changed through time from a charitable act to a business imperative that aims to operate in accordance with moral, social, and environmental principles. CSR was given a lot of attention in relation to the Indian Companies Act 2013 (amendment). Certain businesses were required under the amendment to set aside a part of their profits towards CSR initiatives. This statutory requirement aimed to make sure that companies actively participated in socially beneficial initiatives.
- **Code of Conduct and Ethics:** It is a set of guidelines that outlines the ethical standards, behaviors, and values that an individual and a company as a corporate must adhere to in order to achieve the maximum benefit for all. It stands as a moral standard in navigating the decisions of the stakeholders, directors and employees in achieving the company's ethics and integrity. The government's acknowledgment of the corporate sector's contribution to social advancement and its obligation beyond profit-making is highlighted by the emphasis placed on CSR in the Companies Act.

The Act emphasized the significance of adopting a formal code, especially for businesses that satisfied specified requirements. With this amendment, corporations were to adopt a transparent, equitable, and accountable culture. In order to ensure effective compliance, it required the creation of vigil systems that encourage stakeholders and employees to report any unethical behavior. Codes of Conduct are an effective instrument for regulating the corporate environment. They direct choices, support moral conduct, and advance a unified organizational culture.

CHALLENGES AND EMERGING ISSUES

It can be difficult to ensure the ethical handling of huge data troves since ethical failures run the risk of undermining stakeholder confidence. Furthermore, environmental sustainability is crucial as businesses struggle with their moral obligations to the environment.

ESG (Environmental, Social, Governance) criterion integration, which aligns business behavior with societal and environmental well-being, is one of the upcoming themes. Stakeholder capitalism, as promoted by titans like BlackRock's Larry Fink, moves the emphasis from short-

12. Competition Act, 2002, <https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf> (Last visited on 9th August 2023)

term financial gain to long-term societal effect. The consideration of a “Data Dignity” paradigm by Microsoft emphasizes the value of user permission and control over personal data. A breach of ethics and integrity may result in financial loss, legal repercussions, and reputational harm. Companies must overcome these obstacles as governance requirements change if they are to maintain their sustainability and credibility in the more ethical global business environment.

METHODOLOGY

The data for the study was taken from a sample of twenty-five major corporate groups and companies operating in India. The sample units were as follows:

Corporate Groups:	Tata Group
	Reliance Industries Group
	ITC Group
	Future Retail Group
Banking:	HDFC Bank
	ICICI Bank
	Axis Bank
	Punjab National Bank
	Bank of Baroda
	Yes Bank
	Indus Ind Bank
Information Technology:	Wipro Technologies
	Infosys Technologies
	HCL Technologies
	Cognizant Technology Services
	Oracle Financial Services Software
	Larsen & Turbo Infotech
	Mphasis
Automotive:	Mahindra and Mahindra
	Ashok Leyland
	Bajaj Auto
	TVS Motors
Oil & Gas:	Bharat Petroleum
	Indian Oil Corporation
	Oil & Natural Gas Corporation

The variables considered for the study were based on the twenty themes covered in the Codes of Conduct identified by LeFebvre (2011). However, five of their themes were dropped. The final set of themes and their definitions are presented in the Appendix 1 and Appendix 2.

The Code of Conduct of the sample companies was downloaded from the official company websites, and the documents were examined for the coverage of the selected themes. Factor analysis was performed to examine the underlying dimensionality of the themes, and differences in the thematic emphasis between the groups were analyzed using one-way ANOVA.

ANALYSIS AND FINDINGS

The results of the thematic analysis are presented in the following table:

	Automotive	Banking	Information Technology	Oil & Gas	Conglomerate Groups	Overall
conflict of interest	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
confidentiality	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
adherence to law	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
use of company assets	75.00%	100.00%	85.71%	100.00%	100.00%	92.00%
protect environment	50.00%	85.71%	100.00%	100.00%	100.00%	88.00%
insider trading	75.00%	71.43%	100.00%	66.67%	100.00%	84.00%
anonymous reporting	50.00%	85.71%	85.71%	100.00%	100.00%	84.00%
gifts & entertainment	50.00%	85.71%	85.71%	66.67%	100.00%	80.00%
disclosure & transparency	50.00%	100.00%	85.71%	66.67%	50.00%	76.00%
public representation	50.00%	42.86%	85.71%	66.67%	75.00%	64.00%
workplace health & safety	50.00%	57.14%	71.43%	66.67%	75.00%	64.00%
penalties for violation	75.00%	42.86%	57.14%	100.00%	75.00%	64.00%
discrimination/ harassment	0.00%	71.43%	100.00%	0.00%	100.00%	64.00%
free & fair competition	25.00%	57.14%	100.00%	0.00%	100.00%	64.00%
whistleblower protection	50.00%	57.14%	71.43%	0.00%	75.00%	56.00%

Source: primary data analysis

The conglomerate groups were found to have the largest thematic coverage (90.0%), followed by the information technology sector (88.6%) and the banking sector (77.1%). The oil & gas and automotive sectors were found to have the least thematic coverage (68.9% and 60.0%, respectively). In terms of the themes, all of the sample companies were found to cover conflict of interest, confidentiality, and adherence to the law in their Codes of Conduct. Further, the use of company assets, protecting the environment, insider trading, anonymous reporting, gifts & entertainment, and disclosure & transparency were covered by more than 75% of the sample companies. On the other hand, the themes that were least covered included whistleblower protection, followed by public representation, workplace health & safety, penalties for violation, discrimination/harassment, and free & fair competition.

The results of factor analysis of the themes are as follows:

	Factor 1	Factor 2	Factor 3
free & fair competition	0.917		
discrimination/harassment	0.855		
whistleblower protection	0.798		
gifts & entertainment		0.840	
use of company assets		0.787	
disclosure & transparency		0.586	
workplace health & safety		0.541	
penalties for violation			0.824
public representation			0.689
anonymous reporting			0.633
Cumulative %age Variance Extracted	28.0%	49.7%	66.4%

Extraction Method: Principal Component Analysis.

Rotation Method: Varimax with Kaiser Normalization.

Source: primary data analysis

The first factor, loading highly on fair & free competition, discrimination/harassment, whistleblower protection, and insider trading, represents that of promoting fair treatment among employees. This factor explained the largest percentage of combined variation (28.0%) among the themes.

The second factor, loading highly on gifts & entertainment, use of company assets, disclosure & transparency, and workplace health & safety, represents promoting ethical, transparent behavior among employees. This factor explained the next largest percentage of combined variation (19.7%) among the themes.

The third factor, loading highly on penalties for violation, public representation, and anonymous reporting, represents that of ethical pubic behavior among employees. This factor explained the next largest percentage of combined variation (16.7%) among the themes.

The descriptive statistics of the factor scores are presented in the following table:

		Factor 1	Factor 2	Factor 3
Automotive	Mean	0.1208	0.6579	0.7682
	Std. Dev.	0.4024	0.6877	0.6093
Banking	Mean	0.5499	0.9433	0.5786
	Std. Dev.	0.5669	0.2267	0.4641
Information Technology	Mean	0.8370	0.8994	0.7526
	Std. Dev.	0.1402	0.3471	0.5369
Oil & Gas	Mean	-0.1016	0.8871	1.1259
	Std. Dev.	0.0021	0.5910	0.2095
Conglomerate Groups	Mean	0.8651	0.8679	0.8624
	Std. Dev.	0.2163	0.2574	0.3076
Overall	Mean	0.5339	0.8665	0.7687
	Std. Dev.	0.4852	0.3857	0.4646
	F. Stat	5.5714	0.3349	0.7461
	p-Value	0.0035	0.8512	0.5720

Source: primary data analysis

There was found to be a significant difference in the first factor between the groups, while there was found to be no significant difference in the second and third factors between the groups.

DISCUSSION

The results of the study suggest that conglomerate groups and sectors such as the information technology and banking sectors have a high thematic coverage in their Code of Conduct, while sectors such as the oil & gas and automotive sectors have a low thematic coverage in their Code of Conduct. Both of these sectors have scored very low on the first factor, particularly with respect to free & fair competition and discrimination/harassment. This may suggest that employees in these sectors may be more likely to use unfair practices and/or discrimination/harassment.

The results of the study also suggested that whistleblower protection is the least covered of the themes considered. This suggests that employees are not encouraged to report if they find any wrongdoings, which may lead to a culture of corruption. Similar considerations would hold for low coverage of penalties for violation in the Code of Conduct: wrongdoers may feel that they can get away with anything. In particular, many of the less-covered themes were found to be highly correlated, suggesting a possible nexus between them. This thematic gap may need to be studied in greater detail to better understand this nexus.

There are some limitations inherent in the study. The sample size for the study was relatively small, so the results of the study may not be generalizable. Also, the study has only considered fifteen of the themes suggested in the literature; other possible relevant themes may need to be identified, and there is great scope for further research to extend this study to other Southeast Asian countries.

APPENDIX 1

CODE OF ETHICS AND CONDUCT: CONCEPTS AND DEFINITION

S.No.	CONCEPT	DEFINITION
1.	Conflict of Interest	Conflict of interest management includes techniques like disclosure, oversight, or recusal/prohibition that aim to reduce the negative effects of a conflict of interest. Avoiding or disclosing personal or family interests that can influence company decisions is necessary.
2.	Confidentiality	Information that is private to the company must not be revealed. The requirement to keep certain information private or secret. Private information relating to human subjects, articles or study proposals submitted for peer review, employment records, proceedings from misconduct inquiries or investigations, and proprietary data are examples of confidential information in science.
3.	Public Representation	Public Representation Guidelines on communicating with the media and making public remarks on the company's behalf. Refers to the behavior and presentation of a person, employee, or representative of an organization when they interact with members of the public or external stakeholders. To protect the organization's reputation and principles, it specifies the guidelines and requirements for how people should act in public.
4.	Use of Company Assets	Utilize corporate resources effectively and solely for corporate needs. It encompasses the ethical and responsible use of resources that the organization owns or makes available, making sure they are put to good use and not utilized for nefarious or personal gain.
5.	Adherence to Law	Need to abide by all rules and legislation in every country where the firm operates. Following all applicable laws, rules, and legal requirements that are related to the organization's operations and activities, making sure that all business dealings are ethical and legal.

6.	Gifts and Entertainment	Guidelines for the limited giving and receiving of gifts in corporate settings in order to prevent undue influence. In order to avoid conflicts of interest and uphold the integrity of business relationships, it comprises transparent and moral business practices about providing and receiving gifts, favors, or entertainment from and to clients, partners, or stakeholders.
7.	Workplace Health and Safety	Maintaining a safe and/or healthy workplace is necessary. It highlights the company's dedication to maintaining a secure and healthy workplace where staff members follow safety procedures, foster wellness, and guard against risks to both themselves and their coworkers.
8.	Insider Trading	No private investing is based on proprietary corporate data. In order to ensure fairness, openness, and moral behavior in financial transactions, it refers to the restriction against utilizing non-public, confidential information to purchase or sell firm securities
9.	Penalties for Violation	Discipline may be taken if this code is broken. It clarifies the repercussions and disciplinary actions that people may experience if they fail to adhere to the ethical and behavioral norms established, enhancing responsibility and preserving the organization's integrity.
10.	Protect Environment	Environmental protection requires effort. To ensure ethical management of ecosystems and natural resources, it represents the organization's dedication to sustainable practices, reducing its ecological impact, and abiding by environmental laws.
11.	Disclosure and Transparency	Authentic communication to stakeholders in full. It denotes the organization's dedication to open communication, timely information delivery to stakeholders, and the promotion of trust, accountability, and moral business conduct.
12.	Discrimination/ Harassment	Obligation to uphold a hostile-free work environment free of harassment and/or discrimination. No one may be given a different treatment because of unimportant traits like gender, race, or skin tone. It signifies a dedication to fostering an environment that is respectful and welcoming, preventing any discriminatory or offensive behavior based on aspects like gender, ethnicity, religion, or other protected characteristics, and ensuring a secure and fair working environment for everyone.

13.	Free and Fair from Competition	Endorsing anti-trust laws and other forms of free and fair competition. In order to promote a level playing field and moral competition in the market, it denotes a commitment to conducting business activities free from unfair practices, collusion, or anti-competitive behavior.
14.	Whistle Blower Protection	A whistle-blower is someone who comes out with information on allegedly unlawful or unethical behavior, such as research misconduct or violations of laws governing the use of human subjects or animals. Whistleblowers are shielded from reprisal by a number of laws and institutional rules. whistleblower defense entails granting protection to those who disclose the code's infringement by others. also known as refraining from reprisal.
15.	Anonymous Reporting	Other methods for anonymous reporting of breaches include hotlines. It promotes open communication, ensures a culture of responsibility and integrity, and gives people the chance to anonymously and safely report any infractions, complaints, or ethical issues.

APPENDIX 2

COMPANIES AND LOCATION OF ITS CODE OF ETHICS AND CONDUCT

S.No.	COMPANY	URL
1.	TATA Group	https://www.tata.com/content/dam/tata/pdf/Tata%20Code%20Of%20Conduct.pdf
2.	Reliance Industries Group	https://www.ril.com/DownloadFiles/IRStatutory/Code-of-Conduct.pdf
3.	ITC Group	https://www.itc-holdings.com/docs/private/ITC_Code_of_Conduct.pdf
4.	Future Retail Group	https://futereretail.in/pdf/Code_of_Conduct_for_Directors_and_Senior_Management.pdf
5.	HDFC Bank	https://www.hdfcbank.com/personal/about-us/corporate-governance/codes-and-policies/code-of-ethics-conduct
6.	ICICI Bank	https://www.icicibank.com/managed-assets/docs/personal/general-links/code_of_business_conduct_ethics.pdf
7.	Axis Bank	https://www.axisbank.com/docs/default-source/quarterly-reports/03code-of-conduct-and-ethics-senior-mgt.pdf
8.	Punjab National Bank	https://www.pnbindia.in/model-code-of-conduct.html#:~:text=The%20Bank%20shall%20be%20committed,in%20its%20discharge%20of%20obligations.

9.	Bank of Baroda	https://www.bankofbaroda.in/-/media/Project/BOB/CountryWebsites/India/shareholders-corner/code-of-ethics-eng-a4-web-30-05.pdf
10.	Yes Bank	https://www.yesbank.in/pdf?name=Code_of_Business_Conduct_Ethics_for_the_Board_of_Directors_and_Senior_Management.pdf
11.	Indus Ind Bank	https://www.indusind.com/content/dam/indusind-corporate/investor-resource/PoliciesoftheBank/Code-of-Conduct-for-Directors-Senior-Management.pdf
12.	Wipro Technologies	https://www.wipro.com/content/dam/nexus/en/investor/corporate-governance/policies-and-guidelines/ethical-guidelines/code-of-business-conduct-and-ethics.pdf
13.	Infosys Technologies	https://www.infosys.com/investors/corporate-governance/documents/codeofconduct.pdf
14.	HCL Technologies	https://www.hcltech.com/sites/default/files/documents/code_of_business_ethics_conduct.pdf
15.	Cognizant Technology Services	https://www.cognizant.com/en_us/about/documents/code-of-ethics.pdf
16.	Oracle Financial Services Software	https://www.oracle.com/assets/cebc-176732.pdf
17.	Larsen and Turbo Infotech	https://investors.larsentoubro.com/pdf/Employee%20Code%20of%20Conduct.pdf
18.	Mphasis	https://www.mphasis.com/content/dam/mphasis-com/global/en/investors/governance/COBC_Policy_V1.6_9_Jun_2017.pdf
19.	Mahindra and Mahindra	https://www.mahindra.com/resources/investor-reports/governance/policies/Code-of-Conduct.pdf
20.	Ashok Leyland	https://www.ashokleyland.com/backend/in/wp-content/uploads/sites/2/2021/11/Ashok-Leyland-Code-of-Conduct-to-regulate-monitor-and-report-trading-by-Insiders.pdf
21.	Bajaj Auto	https://www.bajajauto.com/pdf/bal-code-of-conduct-final.pdf
22.	TVS Motors	https://www.tvsmotor.com/-/media/Feature/Investors/Communication/Files/CodeofBusinessConductandEthicspdf.pdf
23.	Bharat Petroleum	https://www.bharatpetroleum.in/images/files/CodeOf-Conduct_BPCL.pdf
24.	Indian Oil Corporation	https://iocl.com/download/code_of_conduct_for_board_members_&_smp.pdf
25.	Oil and Natural Gas Corporation	https://ongcindia.com/documents/77751/1767719/4994_248_Amcobm.pdf/9c-5b3c75-de33-855a-5cd5-40ae9a8cf18b

AN ANALYSIS OF LAWS REGARDING CREDIT DEFAULT SWAPS

Atul Balasubramaniam¹

Vaibhav V Murthy ²

INTRODUCTION

Credit Default Swaps (hereafter referred to as CDS) are basically agreements wherein a party agrees to compensate the other party if a credit default occurs to the latter. A CDS is an agreement between the protection supplier and the buyer. In this paper, the researchers are going to analyse the concept of credit default swaps in India and abroad and bring forth the implications and their effects on financial transactions. CDSs are not traded on exchanges; rather, they are exchanged on over the counter (OTC) ³marketplaces. They become opaque and illiquid as a result, which can make them riskier than other derivatives.⁴ In the 1990s, CDSs were originally developed and immediately gained popularity as a tool for hedging credit risk. They were especially helpful for protecting against the possibility of sovereign borrowers, such as governments, defaulting. Prior to the global financial crisis of 2008, CDS usage skyrocketed.

This was caused in part by the notion that CDSs were a secure method of risk hedging.⁵ However, many CDSs turned out to be worthless when the crisis came. The reason for this was that the protection vendors were unable to fulfil the protection buyers' claims. The use of CDSs has decreased because of the financial crisis. They continue to be crucial to the financial markets, nevertheless. To manage credit risk, banks, hedge funds, and other financial institutions utilize them.

The CDS market in India is still relatively modest. But it is expanding quickly. In 2011, the Reserve Bank of India (RBI) enacted rules for the CDS market. These rules seek to increase

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1. ⁵th Year BBA.LLB Student, Alliance School of Law, Alliance University
 2. ⁵th Year BBA.LLB Student, Alliance School of Law, Alliance University
 3. Definition: The markets where transactions are undertaken in any manner other than on exchanges and shall include electronic trading platforms (ETPs).
 4. Definition: A derivative contract whose value is derived from the credit risk of an underlying debt instrument.
 5. Definition: the activity of undertaking a credit derivative transaction to reduce the credit risk of a particular debt instrument or a portfolio of debt instruments.

market transparency and lessen the possibility of systemic instability. The use of CDSs in India can increase financial system effectiveness in the markets. It can help to reduce credit risk and to make it easier for businesses to raise capital.

CDSs can help to reduce credit risk by transferring it from one party to another. This can make it easier for businesses to raise capital and for investors to make informed decisions about where to invest their money.

CDSs can also be used to speculate on the creditworthiness of a particular entity. This can lead to volatility in the market, as investors buy and sell CDSs based on their expectations of the future. CDSs can be used to protect yourself from defaulting. This can be useful for banks and other financial institutions that have exposure to a particular borrower. This entails fusing a CDS with another financial product, like a stock or bond. A new investment product with distinct risk and return characteristics might be made using this.

Credit default swaps can be an effective instrument for controlling credit risk overall. However, it's crucial to use them sensibly and be aware of the dangers. Now, CDS in India as it is, did not have any explicit statute or laws governing it until recently. This paper focuses on the guidelines released by the RBI regarding the CDS and analysed it in comparison with its uses and laws in other countries.

CDS LAWS IN INDIA

As of the present scenario, CDS agreements are not illegal in India. As for governing or regulating the CDS agreements the RBI has released certain guidelines for the CDS. The CDS fall under the category of credit derivative transactions⁶, and they are governed by the same directions as credit derivative transactions. The Master Direction issued by the Reserve Bank of India (Financial Markets Regulation Department) for the Credit Default Swaps entailed 16 sections.⁷

Starting with a short title, scope, and commencement, the direction ⁸shall be applicable to all the over-the-counter markets and recognized stock exchanges, and it commenced on 9th May 2022. Section 2 of the direction gives the definitions for the direction in which the relevant definitions are as follows.

6. Paragraph 4 of the Statement on Developmental and Regulatory Policies

7. *Reserve Bank of India - master directions*. Available at: <https://www.rbi.org.in/Scripts/BSViewMasDirections.aspx?id=12226>.

8. Master Direction – Reserve Bank of India (Credit Derivatives) Directions, 2022

‘Cash settlement’ of CDS means a settlement process in which the protection seller pays to the protection buyer,⁹.

Section 3 says about the Eligible participants ¹⁰for the credit derivative markets which in turns means that they can participate in the credit default swaps agreements. These participants are:

- a. Residents; and
- b. Non-residents, who are eligible to invest in corporate bonds and debentures under the Foreign Exchange Management (Debt Instruments) Regulations, 2019 dated October 17, 2019, as amended from time to time.

Section 4 says about the products which are allowed in the OTC markets:

Market-makers and users may undertake transactions in single-name CDS contracts.

Section 5. Market-makers and users in the OTC market

Section 5.1 Market-makers

(i) The following entities shall be eligible to act as market-makers in credit derivatives:

- a. Scheduled Commercial Banks, except Small Finance Banks, Payment Banks, Local Area Banks, and Regional Rural Banks.
- b. Non-Banking Financial Companies (NBFCs¹¹), including Standalone Primary Dealers (SPDs) and Housing Finance Companies (HFCs), with minimum net owned funds of ₹500 crore as per the audited balance sheet as on March 31 of the previous financial year and subject to specific approval of the Department of Regulation, Reserve Bank; and
- c. Export-Import Bank of India, National Bank of Agriculture and Rural Development, National Housing Bank, and Small Industries Development Bank of India.

(ii) In case an NBFC, an SPD, or an HFC, fails to meet the eligibility criteria after the receipt of approval for acting as a market-maker, it shall cease to act as a market-maker. The NBFC, SPD, or HFC shall continue to meet all its obligations under the existing contracts till the maturity/termination of such contracts.

9. The estimated recovery value of the comparative obligation is subtracted from the nominal amount of the credit default swap contract.

10. Foreign Exchange Management (Debt Instruments) Regulations, 2019 dated October 17, 2019, as periodically modified.

11. Definition -(NBFC) is a company registered under the Companies Act, 1956 engaged in the business of loans and advances.

(iii) At least one of the parties to a credit derivative transaction shall be a market-maker or a central counterparty authorized by the Reserve Bank for the purpose.

Section 5.2 User Classification Framework

(i) Users shall be classified by market-makers either as retail or non-retail for the purpose of offering credit derivative contracts.

(ii) The following users shall be eligible to be classified as non-retail users:

- a. NBFCs, including SPDs and HFCs, other than market-makers.
- b. Insurance Companies regulated by the Insurance Regulatory and Development Authority of India (IRDAI);
- c. Pension Funds regulated by Pension Fund Regulatory and Development Authority (PFRDA).
- d. Mutual Funds regulated by the Securities and Exchange Board of India (SEBI).
- e. Alternative Investment Funds regulated by the Securities and Exchange Board of India (SEBI).
- f. Resident companies with a minimum net worth of ₹500 crore as per the latest audited balance sheet; and
- g. Foreign Portfolio Investors (FPIs) registered with SEBI.

(iii) Any user who is not eligible to be classified as a non-retail user shall be classified as a retail user.

(iv) Any user who is otherwise eligible to be classified as a non-retail user shall have the option to get classified as a retail user.

Section 6. Protection of buyers and sellers for Credit Default Swaps in the OTC market

(i) Retail users shall be allowed to buy protection only for the purpose of hedging.

(ii) Non-retail users shall be allowed to buy protection for hedging or otherwise.

(iii) The following non-retail users shall be eligible to act as protection sellers:

- a. Insurance Companies regulated by IRDAI.
- b. Pension Funds regulated by PFRDA.
- c. Mutual Funds regulated by SEBI.
- d. Alternative Investment Funds regulated by SEBI; and

e. Foreign Portfolio Investors (FPIs) registered with SEBI.

(iv) Insurance Companies, Pension Funds, Mutual Funds, and Alternative Investment Funds mentioned under Paragraph 6(iii) shall be permitted to act as protection sellers subject to the approval of their respective regulators.

(v) Participation by FPIs ¹²shall be subject to the Given provisions.

Section 7. Reference Entities and Obligations for Credit Default Swaps in the OTC Market

(i) The reference entity in a CDS contract shall be a resident entity that is eligible to issue any of the debt instruments mentioned under Paragraph 7(ii).

(ii) The following debt instruments issued in India shall be eligible to be a reference obligation in a CDS contract:

- a. Money market debt instruments.
- b. Rated INR corporate bonds and debentures; and
- c. Unrated INR corporate bonds and debentures issued by the Special Purpose Vehicles set up by infrastructure companies.

(iii) Bonds with call/put options shall be eligible to be reference obligations.

(iv) Asset-backed securities/mortgage-backed securities and structured obligations such as credit-enhanced/guaranteed bonds, convertible bonds, etc. shall not be permitted as reference obligations.

(v) The reference obligation/deliverable obligation shall be in dematerialized form.¹³

Section 8. Operational Directions for Credit Default Swaps in the OTC Market

Section 8.1 Buying, Unwinding, and Settlement

(i) Market participants shall not enter CDS transactions if the reference entity is a related party to either the protection buyer or the protection seller. However, two (or more) government-related entities shall not be deemed as related parties for the purpose of these Directions. Market-makers shall establish appropriate controls to ensure that transactions with related parties are carried out on an arm's length basis.

12. A.P. (DIR Series) Circular No. 23 dated February 10, 2022 on Transactions in Credit Default Swap (CDS) by Foreign Portfolio Investors – Operational Instructions.

13. Reserve Bank of India - master directions. Available at: https://www.rbi.org.in/Scripts/BS_View-MasDirections.aspx?id=12226

(ii) Market participants shall not buy/sell protection on reference entities if there are regulatory restrictions on such participants assuming similar exposures in the cash market or in violation of any other regulatory restriction, as may be applicable.

(iii) Market participants can exit their CDS contract by unwinding the contract with the original counterparty or assigning the contract to any other eligible market participant through novation subject to the provisions of the circular on Novation of OTC Derivative Contracts dated December 9, 2013, issued vide¹⁴.

(iv) Market participants shall settle CDS contracts bilaterally or through any clearing and settlement arrangement approved by the Reserve Bank.

(v) CDS contracts can be cash settled, physically settled, or settled through an auction. The procedure for a cash settlement and auction settlement shall be determined by the Credit Derivatives Determinations Committee as specified under Paragraph 9 of these Directions.

As we can see here the directions given by the RBI regarding the credit derivative transactions which entails the credit default swaps clearly mentions who can enter into the credit default swaps agreements and the markets which deal with the credit default swap agreements. Especially when we look at the user classification framework, we can see that the retail users and non-retail users are mainly financial institutions and not individuals which denotes that no one person can enter the credit default swaps agreements even though the person may be rich and be capable of entering into such agreements.

Also, the obligations which the entities entering into such agreements are given here which keeps a check on what such entities should do, and since due to delegated legislation these directions become laws that are enforceable, and the courts and tribunals can provide remedies to the affected people efficiently.

CDS LAWS ABROAD

The size and composition of the global credit default swap (CDS) ¹⁵market have significantly evolved during the past years. The outstanding amounts have decreased, central clearing has increased, and the makeup of underlying credit risk exposures has changed using data from the BIS derivatives statistics. The combination of a growing percentage of standardized index products and the clearing of such contracts through central counterparties has resulted in a rise in CDS contract netting. This has caused the counterparty risk to be further reduced as a result.

14. Notification No. DBOD.NO.BP.BC.76/21.04.157/2013-14. However, provisions under Paragraph 2, Paragraph 5.1 and Paragraph 5.2 of the above circular shall not apply to CDS transactions undertaken in terms of these Directions.

15. Bank for International Settlements (2021) and author's calculations

The reference security portfolios with higher credit ratings and sovereigns now carry most of the underlying credit risks.

The distribution of credit risks among different counterparty types has mostly not altered. One of the most quoted contracts in the sovereign sector of the global CDS market¹⁶ is one that refers to the sovereign debt of important emerging-market nations, such as Brazil, Mexico, and Turkey. However, growing worries around debt-to-GDP ratios and fiscal. Increased investor interest in CDS written on the sovereign debt of a much broader set of countries, including some advanced economies, is likely due to deficits in the wake of the GFC, which were related in part to the economic downturn that followed the crisis and the high budgetary costs of repairing national financial systems.

Calls for increased openness and resilience¹⁷ were made because of the magnitude of the market and the part it played in the crisis. The market has seen several significant adjustments since then. Participants in the market have cut back on their exposures and deleted unnecessary contracts, a process that began¹⁸ prior to the GFC but picked up speed in the immediate aftermath. Standardization of contracts, increased reporting requirements, mandated central clearing, and margin restrictions for a variety of derivatives have all been implemented as post-crisis changes.

The expansion of CCPs¹⁹ has had a significant role in influencing more recent market movements. The multi-name market has a greater clearing penetration rate, and clearing is heavily centralized among a small number of CCPs. The underlying hazards have changed, that claims increased clearing through CCPs²⁰, and a fast-increasing number of standard index products have reduced counterparty concerns.

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16. Cooper, A. *Explainer: What are credit default swaps and why are they causing trouble for Europe's banks* Reuters. Available at: <https://www.reuters.com/markets/what-are-credit-default-swaps-why-are-they-causing-trouble-europes-banks>
 17. There are other technical conditions that the replicating portfolio must satisfy, such as the requirement that it must constitute a self-financing investment strategy.
 18. Faruqi, U., Huang, W. and Takáts, E. (2018) *Clearing risks in OTC derivatives markets: The CCP-Bank Nexus, The Bank for International Settlements*. Available at: https://www.bis.org/publ/qtrpdf/r_qt1812h.htm
 19. Financial institution that takes on counterparty credit risk between parties to a transaction and provides clearing and settlement services for trades in foreign exchange, securities, options, and derivative contracts. CCPs are highly regulated institutions that specialize in managing counterparty credit risk.
 20. Barnes, C. and says: B.H. (2018) *Swaps regulations are changing – part Two, capital and ccps, Clarus Financial Technology*. Available at: <https://www.clarusft.com/swaps-regulations-are-changing-part-two-capital-and-ccps>

Credit default swap (CDS) contracts experienced a significant decline, going from \$61.2 trillion at the end of 2007 to \$9.4 trillion ten years later. This was driven by compression during the Great Financial Crisis (GFC²¹) and its aftermath, but it appears that in recent years, the rise of central clearing has been the driving force. The percentage of outstanding amounts cleared through central counterparties has increased quickly, and reporting dealers are still net purchasers of CDS insurance.

Hedge funds have significantly decreased the amount of protection they net buy from dealers. Compression of bilateral and multilateral portfolios contributed significantly to the fall in notional sums outstanding²² in the years leading up to and following the crisis. By using the compression technique, two or more counterparties can rip up their current contracts and replace them with new ones. This fixes net exposures while lowering the number of contracts and gross notional amounts. Compression outside of CCPs has become less common during the immediate post-crisis period because it significantly decreased from its high.

Laws on credit default swaps in the UK

On Wednesday, after Liz Truss became prime minister, the price of covering exposure to Britain's sovereign debt increased by 2 basis points, reaching levels last seen in June 2020 when markets were recovering from the COVID-19 crisis.

According to S&P Global Market Intelligence data, five-year credit default swaps increased to 27 basis points from Tuesday's closing price of 25 basis points. The worst sell-off of long-dated UK government debt since the COVID-19 crisis had preceded Truss' visit on Tuesday, with 10-year rates reaching their highest level since 2011 at about 3.15%.

Credit default swaps contracts governed by UK regulatory regime Article 10 of the Financial Services and Markets Act²³. According to the Markets Act 2000 (Regulated Activities) Order 2001 (the "RAO"), "effecting a contract of insurance as a principle" and "carrying out a contract of insurance as principal" are regulated activities that necessitate FSMA authorization. A bank in the UK may be in violation of the UK Financial Services and Markets Act 2000 (the "FSMA"²⁴) if it represents that it is offering credit protection under a "CDS" or "guarantee" when the contract is one for insurance. This is because banks are not permitted to conduct

21. *Financial crisis of 2007–08* (2023) *Britannica*. Available at: <https://www.britannica.com/money/topic/financial-crisis-of-2007-2008>

22. *Promoting U.S. access to U.S. swaps markets: A roadmap to reverse ...* Available at: <https://www.sifma.org/wp-content/uploads/2017/12/Non-US-Trading-Platform-and-CCP-White-Paper-12-14-2017.pdf>.

23. Markets Act 2000 (Regulated Activities) Order 2001 (the "RAO")

24. "FSMA"

insurance business by the Financial Services Authority (FSA), and companies are not allowed to engage in any business other than insurance business.

In the United States, where occasionally acrimonious debates over the federal government's statutory debt ceiling have resulted in technical default threats. For example, in 2011, amid heated discussions about the debt ceiling in Washington, DC, and a related. One-year CDS spreads on U.S. sovereign debt did noticeably expand following Standard & Poor's downgrading of U.S. government debt before narrowing back after the Budget Control Act of 2011 was passed, which contained provisions to lift the debt ceiling and cut future federal deficits.

It would be illegal for an insurance company with FSA authorization to conduct investment activity, including offering credit protection through a credit derivative. For the same reason, banks are not permitted to conduct insurance business because doing so would effectively forbid them from conducting banking business. Additionally, new laws that will apply to kinds of derivative contracts are now being issued in the European Union and other key jurisdictions, such the US. For instance, the planned EU Regulation on Short Selling and Credit Default Swaps, which defines "credit default swaps," will regulate the CDS of sovereign debt.

Additionally, new guidelines for clearing OTC derivatives, of which CDS are a subset and modifications to the Basel regulatory capital framework about OTC derivative exposures may lead banks to search for OTC derivative substitutes. The recharacterization of a CDS or guarantee as an insurance contract has the effect of imposing a responsibility of absolute good faith and full disclosure on the insured; if the insured breaches either duty, the insurer may be allowed to avoid the contract. Additionally, formal specifications only apply to specific kinds of contracts. While the 2011 occurrence and the subsequent years of U.S. debt ceiling discussions seem to have had some effect on U.S. sovereign CDS spreads, a 2020 study by Boychenko and Sachar hypothesizes a less direct connection in recent decades. According to that analysis, the investor

Interest in U.S. sovereign CDS has fallen over the past few years because of the market becoming less liquid and U.S. sovereign CDS spreads being a less accurate reflection of investors' estimates of U.S. technical default risk. If a guarantee or CDS were to be classed as an insurance contract, the protection costs paid by the protection buyer might be liable to insurance premium tax.

Finally, from an accounting standpoint, contracts that resemble insurance contracts and those that do not, including "normal" CDS, appear to be handled differently. Particularly, some financial contract types fall under unlike other contracts with insurance-like features, these contracts do not require mark-to-market or fair value accounting.

CDS COMPARED WITH INSURANCE CONTRACTS

The parties to the CDS concur that, with respect to an asset issued by a reference company (such as a corporate. When a “credit event” in relation to the protection seller will give the protection buyer a “credit protection payment” if the reference entity materializes. The reference entity’s nonpayment, bankruptcy, or restructuring are frequently included in the credit event. Throughout the duration of the CDS, the protection buyer makes a regular (usually quarterly) payment (essentially, a charge or premium) to the protection seller. According to the standard form agreements released by the International Swaps and Derivatives Association (‘ISDA’),²⁵ a CDS is documented.

If the protection seller would be required to pay the pertinent credit event, the protection buyer is still bound by the CDS’ conditions. (Such as the reference entity’s failure to pay) did not cause the protection buyer to suffer any loss or harm, the CDS should not be characterized as an insurance contract. As a result, since the release of the Potts opinion, the strategy used in CDS transactions a particular phrase declaring that the protection buyer is not required to own the reference asset or suffer a loss to lodge a claim under the CDS has been incorporated into the CDS’ structure.²⁶

Such a structural feature and provision are intended to show that the protection buyer might not be the holder of the reference asset at the time the credit event takes place, in which case the loss or harm resulting from the credit event may be experienced by someone other than the protection buyer who was holding the reference asset at the time the credit event took place. This is especially true for CDS that have been entered into for hedging reasons as opposed to speculative trading or capital arbitrage since the protection buyer is seeking credit protection under the CDS precisely because it holds the reference asset and has exposure to the reference firm.²⁷

Since the start of the global financial crisis, CDS ²⁸and other credit protection contracts have come under more scrutiny. Financial institutions are probably thinking more carefully than before about the issues covered in this article to avoid unintended and potentially undesirable

25. The International Swaps and Derivatives Association is a professional association that has been operating since 1985 to promote and improve the trading of swaps and derivatives.

26. *Loan-to-value ratio as a macro-prudential tool - Hong Kong dollar*. Available at: https://www.hkma.gov.hk/media/eng/publication-and-research/research/working-papers/HKMAWP11_01_full.pdf

27. *Credit default swaps, guarantees, and insurance policies: Same effect, different treatment? Insights* | Sidley Austin LLP. Available at: <https://www.sidley.com/en/insights/publications/2010/12/credit-default-swaps-guarantees-and-insurance-policies-same-effect-different-treatment>

28. Weinberg, J, *The great recession and its aftermath, Federal Reserve History*. Available at: <https://www.federalreservehistory.org/essays/great-recession-and-its-aftermath>

legal, regulatory, or accounting consequences due to the financial crisis, not just from regulatory but also from accounting bodies.

The U.S. Securities and Exchange Commission has tried Rule 9 before (j). 2010: SEC proposed a new Rule 240.9j-1 (the 2010 Rule). Critics noted that the 2010 Rule went beyond conduct “in connection with the ‘purchase’²⁹ and ‘sale’ of an SBS” and would “unintentionally prohibit... the legitimate exercise of rights and performance of obligations” such as those “dictated by the contract underlying the [SBS] and which bear no relation to the execution, termination, assignment, exchange, and transfer or extinguishment of rights.” The 2010 Rule never passed.

The Commission is back, and the Rule highlights many of the 2010 Rule’s issues. The Rule’s breadth is significant; it covers not only the purchase and selling of SBSs but almost any swap contract transaction, including periodic payments and deliveries. The Rule bans SBS transactions “in connection with” four types of fraud:

- Buying, selling, or trying to sell SBS.³⁰
- Any SBS transaction or attempt.
- Taking action to exercise a right or perform an obligation under an SBS, including payments, deliveries, rights, obligations, or modifications of rights; or terminating (other than on its planned maturity date) or settling an SBS.

Such transactions are forbidden in connection with four categories of fraud:

- Using or trying to use deception, ruse, or artifice.
- Making or attempting to make a false statement of a material fact or omitting a significant fact necessary to make the statements not misleading.
- Obtaining or attempting to obtain money or property by making a materially false statement or omitting a fact necessary to make the statement not misleading.

29. *Credit default swaps: A brief insurance primer - insurance laws and Products - United States Credit Default Swaps: A Brief Insurance Primer - Insurance Laws and Products - United States*. Available at: <https://www.mondaq.com/unitedstates/insurance-laws-and-products/68548/credit-default-swaps-a-brief-insurance-primer>

30. *Credit default swaps: A brief insurance primer - insurance laws and Products - United States* (no date) *Credit Default Swaps: A Brief Insurance Primer - Insurance Laws and Products - United States*. Available at: <https://www.mondaq.com/unitedstates/insurance-laws-and-products/68548/credit-default-swaps-a-brief-insurance-primer>

- Any act, practice, or business course that constitutes or would constitute fraud or deceit.

According to the Commission, the Rule combines antifraud and anti-manipulation measures in Rule 10b-5 that apply to all securities with Dodd-Frank-authorized authorities particular to SBSs. The first two categories of fraud are based on Rule 10b-5 and require proof of knowledge or recklessness. The third and fourth categories of fraud are based on Section 17(a) of the Securities Act and merely require negligence.

The Rule also bans altering “any [SBS] price or valuation, or any payment or delivery relating thereto.” This provision targets “opportunistic methods” in the CDS market, in which a CDS buyer or seller manipulates the reference company “to avoid, trigger, postpone, accelerate, lower, and/or enhance CDS pay-outs.” As the proposal notes, such practices have been a regulatory focus for the SEC and the CFTC for several years; in June 2019, the agencies issued a joint statement with the U.K. Financial Conduct Authority indicating that “manufactured credit events” may “affect the integrity, confidence, and reputation of the credit derivatives markets.”

The SEC is exploring new rules for security-based swaps that would mandate public position reporting and other requirements

On December 15, 2021, the SEC proposed three rules under the Securities Exchange Act to address misconduct and boost market transparency for security-based swaps (or “SBS”). The proposed regulations would enlarge the purview of antifraud measures, forbid some attempts to sway the chief compliance officer (“CCO”) of an SBS dealer (“SBSD”) and require disclosure of specific significant SBS positions. 45 days after a publication in the Federal Register, comments are due.

Additional Anti-Fraud and Anti-Manipulation Regulations

The SEC has used the scheme liability provisions of Rule 10b-5 to enforce laws against fraud and market manipulation on the securities markets, but these rules have had less success on the SBS and CDS markets. Authorities in the CDS markets have expressed concern over a few incidents that happened throughout the lifecycle of CDS transactions rather than at their “buy” or “sell” times.”

The SEC has revived and updated Drafted Rule 9j-1, which was initially put forth in 2010 but never put into effect, to address these flaws. The enforcement of any rights or performance of any obligations under SBS would be prohibited in accordance with this regulation, which also forbids fraud, manipulation, and similar behavior. Additionally, it would make it unlawful to manipulate the price or value of any SBS directly or indirectly or any related payment or delivery. Additionally, it would expand the federal securities laws’ present restrictions on insider

trading to transactions involving SBS when a party possesses relevant non-public information about the security or index of securities to which the SBS relates.

Prohibitions on Certain Behaviour

An SBSB or massive security-based swap participant (“MSBSP”) may not pressure, manipulate, deceive, or fraudulently influence the CCO of the SBSB or MSBSP in the performance of their duties, according to proposed Rule 15Fh-4.

New Revelations

Increasing market transparency and preventing market participants, particularly net short activists, from influencing markets without other market participants being aware of their true economic position are the goals of 10B-1. On the first business day after the date on which the SBS transaction that causes the SBS position to exceed the threshold was executed, the person or group with an SBS position that exceeds the specified threshold would be required to publicly publish a report (proposed Schedule 10B). The information provided by Schedule 10B would include, among other things: (i) the relevant SBS position; (ii) holdings in any security or loan that forms the basis of the SBS position; and (iii) any additional instruments related to the underlying security or loan, group of securities or loans, or index of securities or loans. Proposed Rule 10B-1 has distinct reporting thresholds for credit default swaps, securities-backed securities related to debt securities, and securities-backed securities tied to equity securities (typically, positions more than \$300 million notional, but less in some situations).³¹

CONCLUSION

Credit default swaps (CDS) have a major impact on financial transactions, as per the research on CDS in both Indian and international contexts. According to the analysis, CDS can present beneficial chances for risk reduction and hedging, but they also raise questions about systemic hazards, speculative activity, and the possibility of market manipulation. To ensure transparency, stability, and investor confidence in India, monitoring is required due to the regulatory environment’s constant change and the expanding CDS market. The experience with CDS elsewhere has emphasized the value of regulatory control, precise pricing models, and in-depth knowledge of counterparty risks. Policymakers and market participants must work together to achieve a balance between innovation and prudential regulation, supporting a resilient financial environment, as these financial instruments continue to play a crucial role. After looking at the laws abroad pertaining to credit derivative transactions with special

31. *Credit default swaps: A brief insurance primer - insurance laws and Products - United States Credit Default Swaps: A Brief Insurance Primer - Insurance Laws and Products - United States*. Available at: <https://www.mondaq.com/unitedstates/insurance-laws-and-products/68548/credit-default-swaps-a-brief-insurance-primer>

reference to credit default swaps along with the directions given by the RBI regarding the credit default swaps, we can get a clear perspective on the existing regulations on credit default swaps and it can be conclusively said that the hypothesis of the paper is proven and that the guidelines released by the RBI are sufficient for the current transaction being conducted in India relating to credit default swaps and as needed it may be amended in the future.

CONSUMER PROTECTION ACT 2019 AND E-COMMERCE IN INDIA

Harsh Maheshwari¹

INTRODUCTION

Consumer protection is a pressing concern in global e-commerce. E-commerce describes a system that facilitates sales of products and services through electronic exchange. Through cost reductions, competition, and a better production process organization, e-commerce boosts productivity and expands choice. The consumer-based corporate structure is reliant on them. Consumers are those who buy and use the goods and services that companies provide. The preservation of consumer rights is essential to the expansion of business. The ²virtuality, unlimitedness and diversity that make up e-commerce transactions are three distinguishing features that serve people in its commercial and business endeavors in several ways. Physical trade was replaced by E-Commerce (also known as online commerce) as technology advanced. E-commerce must be accessible to all consumers. In order, to prevent unfair, deceptive, and fraudulent online behavior is to create confidence among the consumer by Developing effective redress systems is something that all stakeholders—government, corporations, consumers, and their representatives—must pay particular attention to. Because of the increase in the trend of E commerce there is an increase in online fraud which is affecting the consumers' interest which in turn is losing trust and faith of the consumers.

To resolve this issue the consumer protection act 2019 came which replaced the consumer protection Act 1986 which included E commerce which serves to protect the interest of online consumers.

The Research objectives are to make consumers aware of the process and steps regarding the Act and to ensure that complaints be filed under the correct forum according to the jurisdiction for the speedy trial. The objectives of the consumer protection act are to protect the interest of the consumers. There are certain rights of the consumers like the right to be protected against hazardous goods. right to access goods and services at market rates etc.

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1. ^{2nd} year BA LLB student, Alliance School of Law, Alliance University, Bengaluru
 2. Zwass, V. (1996). Electronic Commerce: Structures and Issues. *International Journal of Electronic Commerce*, 1(1), 3–23. <http://www.jstor.org/stable/27750797>

NECESSARY TERMS AND CONDITIONS UNDER THE ACT

- **Consumer** –if a person buys goods, services, or avails any good or services will be termed as a consumer³
- **Product seller** –electronic service providers, are the product sellers under the act and have the same duties, responsibilities, and liabilities under the act⁴
- Unfair trade practice talks about producing fake goods or offering subpar services. not generating cash notes or bills for the products or services purchased rendered⁵

CONSUMER PROTECTION BILL 2019

On July 8, 2019, the Consumer Protection Bill, 2019 was tabled in the Lok Sabha with the intention of facilitating the prompt management and resolution of consumer issues that is effective. The Act of 1986, which was more than 30 years old, was intended to be replaced by the New Act (Act). Beginning on July 20, 2020, the Consumer Protection Act, 2019 went into effect. In addition to general regulations, this new Act contains regulations for the Appointment of President & Members of State/District Commissions, the Central Consumer Protection Council, the Consumer Disputes Redressal Commission, Mediation, Model Rules, and E-commerce, as well as regulations for Procedure, mediation, and administrative control over the State Commission and District Commission under the Consumer Commission.

CONSUMER PROTECTION ACT 2019 AND ITS SIGNIFICANCE

The Consumer Protection Act came to protect the interests of consumers, to ensure their rights are not violated and to ensure the smooth functioning of the various sectors where Consumer Protection Act is included. Previously there was the Consumer Protection Act 1986 which got replaced by the Consumer Protection Act 2019 because of certain loopholes in the Act of 1986. The purpose of this Act of 2019 was the same as the purpose of the Act of 1986, namely, to provide for the prompt and efficient administration of justice as well as the prompt resolution of consumer disputes and matters related to such disputes. The lacunas and inadequacy of the consumer protection act 1986 leads to enactment of consumer protection act 2019 because the laws have surged the. Insecurity which in turn leads to lack of trust among online consumers. so there is need to protect the consumers rights and to build sense of confidence among the online buyers.

3. Section 2 (7) of the consumer protection act 2019

4. Section 2(37) of the consumer protection act 2019

5. Section 2 (47) of the consumer protection act 2019

CONSUMER PROTECTION E-COMMERC RULES 2020

The first crucial criterion is that the e-commerce company, whatever it may be, must advise the customer/buyer of his options for returning or exchanging the product or items he intends to purchase. Additionally, they must disclose information about the product's warranty and guarantee, when they will deliver the item, how they will collect payment for it, what security method they will use to collect payment, what the redressal mechanism will be in the event of a default, and also the country of origin of that item. Secondly if the consumer has made any complaint, it should be addressed within 48 hours (about 2 days) and should be redressed within one month. A special officer has been appointed to redress the issue as soon as possible as it is of most interest to consumers.

If the product has been purchased online and it is unfit in terms of its quality, in terms of late delivery then no seller can refuse to take the product back. Companies involved in 'E commerce cannot manipulate the price of goods or services to make profit.

PECUINARY JURISDICTION UNDER CONSUMER PROTECTION ACT 2019

DISTRICT COMMISSION DISPUTE REDRESSAL COMMISSION-Cases involving the value of goods and services paid for as consideration do not exceed one crore rupees, provided that the central government may prescribe such value to exceed if it is deemed to be necessary will be addressed under this commission.

STATE COMMISSION DISPUTE REDRESSAL COMMISSION –Cases involving the value of goods and services paid for consideration do not exceed ten crores' rupees, provided that the central government may prescribe such value to exceed if it is deemed to be necessary will be addressed under this commission.

NATIONAL COMMISSION DISPUTE REDRESAL COMISSION –Cases involving the value of goods and services paid for consideration exceed ten crore rupees.

Any person aggrieved by the orders given by the national commission dispute redressal commission can approach the supreme court within a period of thirty days from the date of the order.

6. Adv. Umapathi Natarajan, *How Consumer Protection Law prevents unfair trade practices in e-commerce*, (Aug. 18, 2021), <https://www.ezylegal.in/blogs/how-consumer-protection-law-prevents-unfair-trade-practices-in-e-commerce>.

“Centre notifies rules for Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021.”

Revised ⁷pecuniary jurisdiction for entertaining consumers complaints -

Cases involving the value of goods and services not exceeding ₹50 lakhs will be entertained by the district commission.

Cases involving value of goods and services more than ₹ 50 lakhs but not exceeding 2 crores will be entertained by state commission.

Cases involving value of goods and services more than ₹2 crore will be entertained by national commission.

E-COMMERCE TRANSACTIONS UNDER CONSUMER PROTECTION ACT 2019

There was a need to change the consumer protection act 1986 as it does not cover E commerce which became in trend in today's era, there were lot of problems faced by the online consumers in different sectors like in placing order of food online in swiggy ,Zomato etc.in clothing sector like meesho ,Myntra.it became quite common for consumers to place order online instead of going to purchase in market by just clicking on one link. There are cases where these companies' provided goods and services to customers which are defective, spurious goods which results in deficiency of services. There is a need to protect the rights of the consumers and to build faith in shopping online and to help them in the smooth functioning of e commerce system. The organization for Economic Cooperation development Created the council all consumer protection in e-commerce and its recommendations it outlined the fundamental issues related to specific issues that are in ecommerce transactions. (i) Transparency in disclosure of information (ii) Data Security; (iii) Payment Security (iv) Responsible Endorsement and (v) Redress. The primary objective of e commerce is to ensure the same level of protection to consumers as in other forms of commerce. Under the new rules, E commerce business should provide all necessary information to its consumers about the products' quality. The consumer protection Act 2019 has filled the gaps in the consumer protection Act 1986 by making rules and prescribing guidelines to ensure that online consumers interest is protected by making them aware of the choices.

7. *Centre notifies rules for Consumer Protection (Jurisdiction of the District Commission, the State Commission, and the National Commission) Rules, 2021*, (Dec. 30, 2021), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1786342>.

CASES ON CONSUMER PROTECTION ACT 2019

There have been a lot of cases filed against various service providers in different consumer forums. Most of the cases cover defects in goods, deficiency in services, unfair trade practices, where misleading information about the quality of products was circulated on different sites which gave online consumers the wrong faith.⁸ **Manik sethi v amazon India** The case came before the district consumer dispute redressal commission where complainant ordered an Mi fitness band watch from amazon after receiving the product, he noticed that MRP on the price tag of the watch was 2499/-and he saw the MRP on websites as 1499/- and the supplier showed it as 1499/- with a discount up to 33%which means Rs 999/-when he enquired about the product manufacturer about the price he came to know that it was actually 799/-he filed a complainant to recover the extra amount that he paid .**the commission was of the opinion that as the seller indulged in unfair trade practices it allowed the complainant and ordered them to refund the extra amount paid to the complainant** .⁹**Yatra online pvt ltd v Rajesh Kumar Dathik and ors.** In case of yatra .com who is a plaintiff filed a complainant for permanent injunctions for the infringement of its copyrights in the plaint it is stated that through its website YATRA.COM, the plaintiff company does business offering information on availability, pricing, and booking capabilities for domestic and international air travel, bookings for trains and buses, hotels, and vacation packages. Learned counsel for the plaintiff states that the defendants have misappropriated the original literary work and photographs from the plaintiff's website, without any permission or approval of the plaintiff and are misrepresenting the same as being their own photograph and literary work. He emphasizes that the extent of infringement is massive as over 31,100 properties have been copied by the defendants. He further states that the defendants have also copied and misrepresented plaintiff's original coined terms and references like "**Yatra SMART**" as "HappyeasygoSMART."

There are lot of cases of unfair trade practices and deficiency in services, ¹⁰**Anurag v Biju's learning.** There is one case in which the complainant filed a case against the opposite party where the opposite party is engaged in the business of providing online tuition to the children's which consist a kit of tablet to be given and they use to supply this kit on trial basis where learning is at the option of a consumer at a scheme of 49000/-the opposite party also provided that the complainant can pay the amount in installments .complainant paid 1000 in advance and agreed to pay the rest 49000 in installments. But the complainant said that he can pay max 3000 as an installment not more than that otherwise the contract stands cancelled. the opposite party gave the letter to the complainant that there is an installment of 5000 to which

8. Manik Sethi vs Amazon India, /2016 SCDRC Haryana.

9. Yatra Online Private Limited vs Rajesh Kumar Dathik and Ors ,5 February 2019 Delhi HC

10. Anurag v Byju's learning district consumer redressal commission 2019.

complainant denied still the opposite party deducted the amount from his account without his consent. The district commission said that it is unfair trade practice by the defendant and allowed the agreement to be cancelled and ordered to refund the amount taken.

KEY POINTS UNDER CONSUMER PROTECTION ACT 2019

The ¹¹central consumer protection authority is created under the consumer protection act of 2019, and its main duty will be to defend and uphold consumers' rights. It has the authority to launch complaints and conduct investigations into rights violations, impose penalties on product manufacturers for misleading advertisements. Punishment for manufacture of spurious goods in case any manufacturer is involved in the sale of expiry products can be held liable, dealing in malicious practices like manipulation of weight of some goods by putting magnet on the bottom of the weight machine. as per the consumer dispute redressal forum there will be no fines for filing cases up to Rs 5 lakh.

CONSUMER PROTECTION IN THE INDIAN LEGAL PERSPECTIVE

In Indian legal standpoint we have consumer protection act 2019 to protect the basic rights of the consumers which got replaced with consumer protection act 2019 to provide more safer environment to the consumers. After receiving several complaints from different organizations over specific businesses' unethical business practices that cost their customers money and time, the act was passed. The act aims at protecting the interest of the consumer when they are building faith and confidence with the seller where they are not able to check the quality of the goods because of online shopping.

India's consumer rights are as follows:

- Right to information about the company's goods and services.
- Right to pick a company's goods or services.
- Right to decline an offer of a good or service and the ¹²freedom to choose not to purchase whatever they do not want.
- The right to replacement of damaged goods and the right to a refund if the product has any flaws.

11. *The Consumer Protection*, Ministry of Consumer Affairs Food and Public Distr (Nov. 1, 2022), <https://consumeraffairs.nic.in/acts-and-rules/consumer-protection>.

12. Prendergast, R. (2005). The concept of freedom and its relation to economic development—a critical appreciation of the work of Amartya Sen. *Cambridge Journal of Economics*, 29(6), 1145–1170. <http://www.jstor.org/stable/23601618>

- The right to compensation if a company's negligence results in a financial loss (company).

SAILENT FEATURES OF CONSUMER PROTECTION ACT 2019

- Provision of seeking compensation for injury
- Punishment by a competent court
- No fee to file complaints (that value up to ₹ 5 lac)
- Provision of hearing complaints
- Mandatory Acknowledgement

It works under the moto JAGO GRAHAK JAGO which implies to make consumers aware of their rights and to protect themselves by raising voices against wrongs and not to remain silent.to get complete information about E daakhil,¹³e daakhil handbook is provided on the site, an initiative by department of consumer affairs.

BENEFITS UNDER THE ACT OF 2019

Consumers have many benefits after the Act of 2019 came into force as now any consumer can file an online complainant from any part of the country without even going to the courts and it also ensures that no fee is applied to file a complaint ,the complaint gets registered within 24 hours and redressed as soon as soon as possible to provide justice to the consumers .consumer complaints can be addressed via video conferencing which helped a lot in the covid era.

RESEARCH FINDINGS

While doing the research many aspects came into the domain like how consumer protection Act of 1986 was ineffective which has to be replaced by the Act of 2019, where many advantages are there to the consumers which also ensures speedy justice ,also there is a portal of E daakhil made by the govt of India under department of consumer affairs to enable consumers to file complaints online with their conveniences .still there is a gap in consumer protection act 2019 its just about awareness ,still some people are hesitant to file complaints which is a major drawback .spreading awareness is needed to ensure protection of the interest of the consumers

CONCLUSION

Consumer protection Act 2019 came as a savior to the public interest where in today's era people are purchasing goods and services online where they are not able to check the

13. E-daakhil, <https://www.edaakhil.nic.in/>

quality of the product and believe on the online seller so here if the product quality comes to be cheap or low which is not meeting the standards of the consumer what they were expecting ,they can very well file a case through E daakhil where their problem will be solved in a few months ,it helped a lot in covid times. The route of appropriate regulations for e-commerce and consumer rights protection has been paved by India's march towards consumer protection. esteem for it. Thus, the purpose of the electronic commerce Regulations of 2020 is the year of information openness. provided to and disclosed to customers via e-commerce platforms. The rules additionally aim to end the practice of granting some unique treatment for dealers. Individual and small vendors now have a spot on such platforms and makes sure they receive equitable treatment. Moreover, it gets rid of the chance of large retailers using dishonest business tactics. Moreover, the E-commerce Regulations Regulate foreign-based ecommerce platforms in addition to Domestic ecommerce platforms. Overall, as e-commerce activity has increased, creating rules is a step in the direction of resolving consumer complaints about online shopping e-commerce websites and recommending certain best practices for platforms which adhere to in the interests of the customers.

SUGGESTIONS

It is suggested that there is a need to create awareness among the consumers towards consumer protection Act 2019 ,many consumers suffers harm and still they did not opt for filing a complaint .still many people are hesitant to file a complaint they majorly think that who will go for such a long process but in reality govt has did many initiatives like e daakhil to reduce the burden of consumers where they can file a complaint from any place they are living in ,even without hiring a lawyer they can fight by themselves. Such things should be communicated to the wider section of society to protect the consumer's interest.

NAVIGATING JUSTICE: ADVANCING ACCESS FOR ALL THROUGH ONLINE DISPUTE RESOLUTION AND PRO-BONO LEGAL SERVICES

Dr. Prashna Samaddar¹

Victor Nayak²

INTRODUCTION

A new legal protocol has been implemented because of the COVID-19 pandemic. A virtual courtroom has been set up so that cases may be heard and decisions will be taken in real-time. However, isolation and confinement have hindered Alternative Dispute Resolution to the point that it is only functioning at a fraction of its potential. The future of justice lies in utilising technology to adapt the dispute resolution ecosystem to new requirements. To the vanguard of this worldwide movement comes, the practice of resolving legal disputes using online forums, known as Online Dispute Resolution or electronic alternative dispute resolution. Over the past few years, various government agencies have been adopting Online Dispute Resolution programme after realising their potential. The Online Dispute Resolution manual, which was published by Niti Ayog, expands on the road map and the specifics that must be followed while implementing this form of conflict settlement.

Considering that access to justice is still a myth for the vast majority of the population in India, that leaves them either close to or below the poverty line. Even those who can afford it chose to avoid it due to the plethora of problems that the justice system in India faces. A lot of literature has been written in the context of the challenges of the Indian judicial system and the way can plug its problems. This paper, unlike its predecessors, chooses to bring together the most likely allies, which are yet not used so frequently, Online Dispute Resolution and pro bono legal services. The study will analyse the existing legal framework and policies that promote pro bono legal services in India and check whether they fulfil the Indian constitutional mandate or not. The study shall also analyse the integration of pro bono legal services with Online Dispute Resolution techniques by studying the policies and legal provisions that make this integration possible. Finally, the paper, based on the study, shall suggest some measures

1. Assistant Professor, Xavier Law School, St. Xavier's University, Kolkata.

2. Assistant Professor, Department of Law, University of Engineering and Management, Kolkata.

that can be taken to make this alliance a strong and ever-lasting one that helps us to achieve the goal of access to justice for all.

The Indian judicial system is overwhelmed by the volume of outstanding cases. Its risks include a slow judicial system and astronomical legal fees. People's trust in the legal system has eroded as a consequence of these issues. In the celebrated decision of *State of Maharashtra v. Praful B. Desai*³, the apex court in the land has approved of using a live conference to capture testimony. This means that the proceedings and the comments can be conducted electronically. To guarantee uniformity, it is imperative to adhere to the criteria set out by the International Chamber of Commerce. Among these are settling on a time zone and document style that both parties are comfortable with. Though effective in some cases, the conventional Indian judicial system as a whole has failed to resolve the widespread problems that plague the country.⁴

The pandemic and the ensuing problems necessitated implementing social distancing measures have further exacerbated the problems by limiting the scope and function of all the above modes of dispute settlement. The future of justice rests in modernising the dispute resolution system to meet the evolving needs of the judicial system. Online Dispute Resolution has emerged as a leading force in facilitating this global transformation.

In order to further the development of Online Dispute Resolution in India, the NITI Aayog recently hosted a virtual meeting with the participation of important stakeholders, including Agami and Omidyar Network India. The meeting's central focus was on getting multiple parties to commit to working together to boost Online Dispute Resolution in India.

Mr. Amitabh Kant, NITI Aayog's chief executive officer, during the International Development Research Centre (IDRC) Lexidem Webinar titled, '*Online Dispute Resolution - Opportunities and Challenges*'⁵ expressed the following statement in his keynote address:

"India is at a cusp of transformative change with use of Technology in the Judicial System and our Supreme Court is leading us in innovative ways. Government is committed to strengthen the Alternative Dispute Resolution System and Online Dispute Resolution so that it can lessen the burden on our Courts so that they can focus on more complex cases".

3. State of Maharashtra v. Praful B. Desai, AIR 2003 SC 2053.

4. Deepika Kinhal, Tarika Jain, Vaidehi Misra and Aditya Ranjan, *Online Dispute Resolution: The Future of Dispute Resolution in India*, (Jul. 28, 2020), VIDHI LEGAL POLICY, <https://vidhilegalpolicy.in/research/the-future-of-dispute-resolution-in-india/>.

5. LATESTLAWS, <https://www.latestlaws.com> (last visited Jul. 28, 2023).

ONLINE DISPUTE RESOLUTION

Online Dispute Resolution is said to have been pioneered by Professor Katsh. According to him:

*“Online Dispute Resolution is dispute resolution that’s supported, facilitated, helped by the use of technology.”*⁶

Kaufmann-Kohler a well-known authority in this domain and a professor at the Geneva University has defined ONLINE DISPUTE RESOLUTION as:

*“the use of assisted principally with ICT tools, although part of the doctrine incorporates a broader approach including online litigation and other sui generis forms of dispute resolution when they are assisted largely by ICT tools designed ad hoc.”*⁷

According to UNCITRAL Technical Notes on **Online Dispute Resolution 2016**:

*“Online Dispute Resolution is a mechanism for resolving disputes through the use of electronic communications and other information and communication technology”*⁸.

Therefore, Online Dispute Resolution is a developing idea that primarily employs information, communication and technology based tools to settle disputes between parties. The use of the Internet, websites, email communication, streaming media, and other forms of information technology within the framework of resolving disputes together falls within the encompassing concept known as “Online Dispute Resolution”, which also includes various forms of alternative dispute resolution .

In Online Dispute Resolution, the participants may never even have to interact physically with one another. Each Online Dispute Resolution technique makes use of a unique technical setup to enhance the overall flow of a specific operation.⁹ The three primary components or foundational elements of an Online Dispute Resolution system are:

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6. MOHAMED S. ABDEL WAHAB, ETHAN KATSH AND DANIEL RAINEY (EDS), ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE A TREATISE ON TECHNOLOGY AND DISPUTE RESOLUTION, (Eleven International Publishing 2001).
 7. Gabrielle Kaufmann-Kohler, *Online Dispute Resolution and its Significance for International Commercial Arbitration*, GLOBAL REFLECTIONS ON INTERNATIONAL LAW, COMMERCE AND DISPUTE RESOLUTION ICC PUBLISHING, 437, (2005),<https://lk-k.com/wp-content/uploads/Online-Dispute-Resolution-and-Its-Significance-for-International-Commercial-Arbitration.pdf>.
 8. 71/138. Technical Notes on Online Dispute Resolution of the United Nations Commission on International Trade Law; Resolution adopted by the General Assembly on 13 December 2016.
 9. Poonam Kumar and Dr. Geetika Sood, *Online Dispute Resolution: Methods and Effects*, VOLUME 8 ISSUE 4, IJSR, April 2019, 1594, (2018), <https://www.ijsr.net/archive/v8i4/ART20197195.pdf>.

1. Convenience;
2. Trust; and
3. Expertise¹⁰.

The concept of Online Dispute Resolution acknowledges the following parties:

1. First, there are the disputing parties;
2. Second, there is the neutral third party (the referee, arbitrator, or conciliator); and
3. Third, there is the technology (the “fourth party”).

The “Fourth Party” metaphor is used to highlight the significance of technology in the Online Dispute Resolution process, in which the use of this tool extends to *disagreements occurring in both online and offline contexts*.¹¹

Legal recognition of Online Dispute Resolution in India

The utilisation of ICT in tandem with methods gives rise to a phenomenon referred to as Online Dispute Resolution. Online conflict settlement which is seen through the lens of Online Dispute Resolution pertains to the utilisation of electronic methods for facilitating an alternate form of conflict settlement. In addition to electronic disputes, information and communication technology may also be employed in Online Dispute Resolution to address conventional conflicts, including commercial or social issues.

LEGISLATIVE AND JUDICIAL FRAMEWORK TO PROMOTE ONLINE DISPUTE RESOLUTION MECHANISM IN INDIA

Several Indian laws, such as the Arbitration and Conciliation Act of 1996, read with Section 89 of the Civil Procedure Code of 1908 as well as the concept of ‘Lok Adalat’ as provided under the Legal Services Authorities Act of 1987 expressly promote the use of techniques of alternative dispute resolution. In addition to these there are provisions under The Gram Nyayalayas Act of 2008, the Commercial Courts Act of 2015 as well as the Consumer Protection Act of 2019. Recently, the Parliament has passed the Bill on Mediation Bill, 2023¹² which

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10. MOHAMED S. ABDEL WAHAB, ETHAN KATSH and Daniel Rainey (Eds.), *Online dispute resolution: theory and practice a treatise on technology and dispute resolution* (Eleven International Publishing), [https://www.ombuds.org/Online Dispute Resolutionbook/Table_of_Contents.htm](https://www.ombuds.org/Online%20Dispute%20Resolutionbook/Table_of_Contents.htm).
 11. ETHAN KATSHIS AND PROFESSOR RIFKIN, *ONLINE DISPUTE RESOLUTION: RESOLVING CONFLICTS IN CYBERSPACE*, (Wiley Publications, 2001).
 12. Aiman J. Chishti, *Parliament Passes Mediation Bill*, LIVELaw(Aug. 8 2023 12:22 PM), https://www.livelaw.in/news-updates/parliament-passes-mediation-bill-234671?infinite_scroll=1.

further streamlines the process of institutional mediation in India along with setting up of a body to supervise the process as well as to increase the acceptability of online mediation in India¹³ is facilitated by the provisions outlined in Section 89 and Order X Rules 1A, 1B, and 1C of the Code of Civil Procedure, 1908. These provisions encourage the utilization of methods by the involved parties, instructing them to select any appropriate technique, including online conflict resolution, for the resolution of their issues. In the case of **Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.**, the Supreme Court made a ruling based on the interpretation of Section 89 of the Civil Procedure Code, 1908 and in consideration of Order 10 Rule 1-A CPC.¹⁴ the Supreme Court made a ruling that according to **Order 10 Rule 1-A** of the Code of Civil Procedure (CPC), 1908, it is mandated that the court should contemplate the referral of parties involved in a legal dispute to one of the Alternative Dispute Resolution processes. This referral should take place after the completion of pleadings, including the process of seeking admissions and denials, but prior to the formulation of issues.¹⁵ In *Afcons International*, it was further held that the judge must necessarily weigh the merits of the case to determine whether or not it is appropriate to refer the parties to . However, if a judge determines that a case is inappropriate for referral to, it is not required to do so under Section 89 CPC.

The Information Technology Act of 2000, which has been enacted, grants legal recognition of transactions undertaken using conducted through electronic methods of communication is granted by the Information Technology Act of 2000, which has been passed. It also provides legal acknowledgement to electronic signatures for the purpose of authentication purposes, streamlines the process of electronically submitting facilitates the electronic filing of documents and storing data, and creates the parity between establishes the equivalence of electronic records and there to physical counterparts.

Furthermore, the evidentiary significance of electronic contracts may be understood by examining the provisions outlined in comprehended by referring to various provisions of the Indian Evidence Act, 1872, which expressly pertain to specifically address the presumptions associated with related to electronic records¹⁶.

Additionally, Section 65B is concerned with the admissibility of electronic records as a valid form of evidence.

13. The Mediation Bill, 2021, No. XLIII, Acts of Parliament, 2021, (India).

14. *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

15. *Id.*

16. Indian Evidence Act, 1872, § 85A, § 85B, § 85C, § 88A, § 90A

“Any information contained in an electronic record which is stored, recorded or copied on optical or magnetic media produced by a computer shall be deemed to be a document... is admissible as evidence.”¹⁷

In addition to the aforementioned point, it is noteworthy that the Arbitration and Conciliation (Amendment) Act of 2015 has incorporated:

“arrangements for arbitration reached via electronic contact, giving legal standing to this form of dispute resolution.”

In the case of ***State of Maharashtra v. Praful B Desai***¹⁸, it was held that the videoconferencing of witness examinations is to be allowed given the present development of technology. And need of law to take advantage of the same. In the case of ***State NCT of Delhi vs. Navjot Sandhu***¹⁹, the highest court of law determined that mobile phone call records have admissibility and reliability as evidence. Similarly, in the case of ***State of Delhi v Mohd Afzal***²⁰, electronic papers were recognised as admissible evidence.

The Supreme Court has also noted in Moreover the judgment of the Apex Court in ***Grid Corporation of Orissa Ltd vs. AES Corporation***²¹ determined that if electronic media and remote conferencing can facilitate a productive consultation, it is not obligatory for the two individuals involved in the consultation to physically convene at the same place, unless mandated by legal requirements or the terms of their contractual agreement.

In the case of ***M/s Dhodha House vs S.K. Maingi***²², considering the technological advances and the rapid growth of new business models facilitated by the internet, the Supreme Court has observed that it is possible for an institution to have a virtual presence in a location distant from its physical location. According to this case, it was held that the complainant can file a lawsuit in any Indian jurisdiction where it has made sales. However, the applicability of this case is limited to instances of copyright and trademark infringement.

In the judicial decision ***Trimex International FZE Ltd vs Vedanta Aluminium Ltd.***²³ the highest court of the country recognized the establishment of a legally enforceable agreement through the exchange of electronic mails. It determined that a contract formed solely through

17. Indian Evidence Act, 1872 § 65B(1).

18. *State of Maharashtra v. Praful B Desai*, AIR 2003 SC 2053.

19. *State NCT of Delhi v. Navjot Sandhu*, AIR 2005 SC 3820.

20. *State of Delhi v. Mohd Afzal*, 2003(3) 11 JCC 1669.

21. *Grid Corporation of Orissa Ltd v. AES Corporation*, AIR 2002 SC 3435.

22. *M/s Dhodha House v. S.K. Maingi*, 2006 (9) SCC 41.

23. *Trimex International FZE Ltd vs Vedanta Aluminium Ltd.*, 2010 (3) SCC 1.

email correspondence can be considered valid, as it fulfilled the necessary requirements outlined in the Indian Contract Act, 1872 (ICA).²⁴.

In terms of their evidentiary value, therefore, e-contracts are virtually identical to paper copy contracts. As a result of the Information Technology Act, 2000, all e-contracts are valid contracts, and one may be held liable for any violation or the violation of the terms outlined in these contracts, so providing the legal foundation for Online Dispute Resolution in India..

Moreover, it is worth noting that in certain instances, parties have opted for arbitration via electronic communication, as exemplified in a number of judicial decisions.²⁵ In these cases the Supreme Court explicitly stated that²⁶:

“when an effective consultation can be achieved by resort to electronic media and remote conferencing, it is not necessary that the two persons required to act in consultation with each other must necessarily sit together at one place unless it is the requirement of law or of the ruling contract between the parties”.

As per the provisions outlined in Section 31 of the Arbitration Act, electronic transmission of scanned copies of the award is permissible subsequent to its declaration. Subsequently, the primary document might be dispatched through postal service. The procedure is now complete, with the only remaining step being the execution of the award, which may be easily obtained from the court.²⁷

Thus, Online Dispute Resolution is legal in India. In addition, the National Internet Exchange of India (NIXI) is presently utilising it for settlement of disputes relating to domain names. It is comparable to conventional arbitration, with the exception that it is conducted over the internet. Consequently, the law applicable must also apply to Online Dispute Resolution.

GOVERNMENT INITIATIVES TO PROMOTE ONLINE DISPUTE RESOLUTION IN INDIA – THE TIMELINE

SI No.	Time line	Event details
	2005	Supreme Court appointed an e-Committee on ICT use in Judiciary

24. Indian Contract Act, 1872 § 10.

25. Shakti Bhog Foods Ltd. v. Kola Shipping Ltd. Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.

26. Grid Corporation of Orissa Ltd. v. AES Corporation, AIR 2002 SC 3435.

27. Devashish Bharuka, *Online Alternative Dispute Resolution*, THE INDIAN COUNCIL OF ARBITRATION, (May 21, 2023, 11:20 AM), <http://www.icaindia.co.in/icanet/quterli/jan-march2002/ICA1.htm>.

	2006	the National Internet Exchange of India (NIE) which pertains to the implementation of the “.in” Domain Name Dispute Resolution Policy (INDRP) adopted Online Dispute Resolution as a part of policy.
	2016	Online Consumer Mediation Centre (OCMC) was established in NLSIU Bangalore at the behest of the Ministry of Consumer Affairs
	2018	SAMADHAN portal to deal with issues of late payment or payment related matter involving the MSMEs by the Ministry of MSME
	2019	The Reserve Bank of India (RBI) established the High-Level Committee on Deepening of Digital Payments, which is led by Nandan Nilekani, with the objective of formulating an Online Dispute settlement framework for the effective settlement of conflicts arising from digital payment transactions.
	2019	E-Alternate Dispute Resolution (E-): The purpose was to encourage creativity in the legal industry and to develop a solid platform merging with technology to expedite the resolution of legal disputes in India.
	2020	Vivad-Se-Vishwas Scheme to deal with tax disputes, interest as well as penalty disputes related to tax, and related disputes where Online Dispute Resolution mechanism was used to successfully resolve these issues and its second version has been also mentioned in the Budget 2023-24
	April, 2021	To encourage business executives to embrace Online Dispute Resolution and to settle conflicts outside of courts, NITI Aayog released an Online Dispute Resolution handbook where they can learn about bargaining, mediation, and arbitration in a digital setting. This was hailed by the present CJI of India Justice D. Y. Chandrachud as a historic moment for Indian dispute resolution system which will change the perception of justice delivery system in India.
	November, 2021	Justice (Retd.) A. K. Sikri prepared a Report titled “Designing the Future of Dispute Resolution - The Online Dispute Resolution Policy Plan for India” which laid down the blueprint of Online Dispute Resolution and its implementation in India.
	March 2023	SEBI has decided to use the Online Dispute Resolution method to cut down on expenses, speed up the redressal process, and give parties more options for resolving their complaints amongst its various stakeholders and investors.

Elaborating upon the most recent legislative development to regularise the use of Online Dispute Resolution in the Indian primary and secondary market, Securities Exchange Board of India (SEBI), the market watchdog, has established rules governing authorised *middlemen and controlled companies* so that investors could use the system. Thus, SEBI has expanded access to the conciliation and arbitration process run by the MII [Market Infrastructure Institution] to the

listed intermediaries/regulated companies and their investors/clients. In addition to simplifying the conflict settlement process and adopting other measures to improve implementation of judgments, it also permitted procedures to be conducted in a hybrid manner.²⁸

METHODS TO PROCEED WITH ONLINE DISPUTE RESOLUTION

The below-mentioned techniques represent the prevailing and notable approaches to conflict resolution utilised in Online Dispute Resolution (ONLINE DISPUTE RESOLUTION):

1. Blind Bidding or Automated Negotiation

The parties offer a settlement amount in cash to a computer one at a time. After comparing the offer and the demand, the program determines their arithmetic mean. It is also possible to combine online mediation with the blind bidding technique. This extremely creative type of Online Dispute Resolution is appropriate for financial claims settlements in which there is no disagreement over liability—just the amount of damages to be paid²⁹.

2. Assisted Negotiation

The parties engage in intercommunication through the utilization of internet-based platforms, such as electronic mail, web-based communication tools, or video conferencing³⁰. Initially, it is customary for each side to articulate their initial stance, refraining from making explicit demands, and instead focusing on identifying the fundamental interests at stake. The program compiles a comprehensive list of all issues, both qualitative and quantitative, in an unbiased manner. The primary purpose of the parties involved is to engage in a process that allows for a more detailed examination of their fundamental interests, priorities, and the relative significance of each item. In addition, they would like to lay out their hopes and fears regarding the consequences of any lawsuit and learn as much as possible about the alternatives to a negotiated settlement. (BATNA).³¹

3. Online Mediation

The mediator facilitates the resolution of conflicts by employing electronic communication methods such as email or dedicated online platforms that offer virtual spaces for parties to engage in online dialogue. Users of the Internet Neutral or Mediator platform have their pick of

28. SEBI BOARD MEETING, (PR No. 6/2023), https://www.sebi.gov.in/media/press-releases/mar-2023/sebi-board-meeting_69552.html.

29. World Arbitration, <https://www.worldarbitration.center/on-line-disputes> (last visited Sept. 22, 2022).

30. Assisted Negotiation, <https://www.civilpolitics.org/assisted-negotiation> (last visited Sept. 22, 2022).

31. Guhan Subramanian, *What Is BATNA?*, Harvard Law School (Sept. 22, 2022), <https://www.pon.harvard.edu/daily/batna/translate-your-batna-to-the-current-deal/>.

several different types of online mediation, including e-mail, instant messaging, chat conference rooms, and video conferencing.³²

4. Online Arbitration

The utilization of Information and Communication Technology facilitates the replication of the conventional offline fact-finding and decision-making procedures of arbitration. At present, the majority of Online Dispute Resolution providers let parties to engage in certain aspects of the arbitration procedure via digital means. For instance, parties have the ability to access and complete claim forms electronically, submit relevant documents by either regular email or a secure web interface, and participate in telephone hearings, among other online functionalities. One of the primary obstacles lies in the fact that the inclusion of judicial enforcement measures somewhat undermines the fundamental objective of establishing an online procedure.³³

TYPES OF ONLINE DISPUTE RESOLUTION PLATFORMS

In contemporary times, there has been an observable change in the approach to resolving conflicts, characterized by the increasing availability and utilization of Online Dispute settlement platforms inside the country. These platforms have emerged as facilitators of certain types of dispute settlement for several domestic and foreign corporations. The integration of alternative dispute resolution with contemporary technology has enabled Online Dispute Resolution systems to effectively streamline and expedite the dispute resolution process.

2. SAMA

SAMA, acknowledged by the Department of Justice, endeavours to efficiently and expeditiously address conflicts between customers and companies, employers and workers, as well as landlords and renters.³⁴ Disputes are efficiently and economically resolved using online platforms. In addition, ICICI is utilizing this technology to address over 10,000 disputes, with monetary values reaching as high as INR 20 Lakh.³⁵ The rules of SAMA lays down the procedure for the three most popular methods of alternative dispute resolution i.e. *arbitration, mediation and conciliation*³⁶ through its platform which is managed by ODRways Solutions

32. Anonymous, *Endispute Online Dispute Resolution (Online Dispute Resolution)*, JAMS (Sept. 22, 2022), <https://www.jams.com/endispute/>.

33. Derric Yeoh, *Is Online Dispute Resolution The Future of Alternative Dispute*, KLUWER ARBITRATION BLOG (Jul. 15, 2023), <http://arbitrationblog.kluwerarbitration.com>.

34. SAMA, <https://www.sama.live/> (last visited Aug. 4, 2023).

35. SAMA, <https://www.sama.live/sama-neutral-registration.php> (last visited Aug. 4, 2023).

36. SAMA, https://www.sama.live/rules_and_procedures-2021.php (last visited Aug. 4, 2023).

Pvt. Limited³⁷ and the rules have been drafted by some of the leading legal institutions such as Trilegal, CAMP Arbitration & Mediation Practice Pvt. Ltd. to name a few.³⁸

2. The Centre for Alternate Dispute settlement Excellence

The Centre for Alternate Dispute settlement Excellence (CE) offers a range of services pertaining to alternate dispute settlement. The centre places its emphasis on delivering services pertaining to peer-to-peer and small-scale conflicts of minimal value through the utilization of streamlined procedures, a technological platform, and arbitrators who possess accredited training. The scope of this study encompasses several aspects, including online arbitration, debt collection, and conflicts pertaining to tenant and rental contracts within the context of NestAway, a web-based home rental firm. The aforementioned procedure is conducted in accordance with the provisions outlined in the Arbitration and Conciliation Act of 1996.³⁹

3. Presolv360

Presolv360 is an online platform that focuses on business dispute resolution within the legal-tech domain. The company presents itself as a contemporary digital alternative to the outdated dispute settlement regulations of the 19th century. The organization offers arbitration and mediation services.⁴⁰

4. Law Wagon

The primary focus of their services lies in the provision of Online Dispute Resolution in situations pertaining to International Business Corporations (IBCs) and commercial disputes. However, it is necessary to bear the financial burden associated with the duration of the legal proceedings, including various activities such as meetings, hearings, and consultations with legal representatives outside the formal courtroom setting.

5. Centre for Online Dispute Resolution (CORD)

The platform presents itself as a digital platform that facilitates the management of cases through online means. Its primary focus lies in providing specialized training in arbitration, with future plans to expand its services to encompass comprehensive Online Dispute Resolution processes. The objective of this approach is to streamline the procedure and ensure the fair

37. SAMA, <https://www.sama.live/lokadalat.php> (last visited Aug. 4, 2023).

38. SAMA, https://www.sama.live/rules_and_procedures.php (last visited Aug. 4, 2023).

39. CE, <https://www.ceworks.org/> (last visited Aug. 4, 2023)

40. PRESOLV360, <https://www.presolv360.com>.

administration of justice by granting the client and their legal representative the authority to oversee the whole process.⁴¹

6. AGAMI

Agami is an organization that strives to enhance entrepreneurship within the field of law and justice. Agami commits to resolving one million conflicts through the utilization of Online Dispute Resolution mechanisms. They possess a distinct program that focuses on expediting the growth of Online Dispute Resolution throughout the nation. The initiative is progressing by actively promoting the growth of startups, generating demand within the corporate sector as well as among society and government entities.⁴²

7. SMART ODR

This platform has been launched in July 2023 by SEBI to solve disputes between investors and intermediaries in an amicable way and using the benefit of technology. The platform is being managed by the major institutions in the capital market such as Bombay Stock Exchange, National Stock Exchange, Metropolitan Stock Exchange to name a few. The platform targets to settle the dispute within 90 days.

8. Other institutions offering Online Dispute Resolution services

Following the onset of the pandemic, some prominent arbitration institutions have introduced novel regulations. The prominent arbitration institutions encompass the London Court of International Arbitration (LCIA), Singapore International Arbitration Centre (SIAC), Hong Kong International Arbitration Centre (HKIAC), International Chamber of Commerce (ICC), International Centre for Settlement of Investment Disputes (ICSID), and several more globally recognized arbitral bodies. The ICC guidance note has served as a fundamental resource, including a comprehensive checklist and a model procedural order that holds significant value for the broader dispute resolution community. Several significant organizations in India are involved in promoting Alternative Dispute Resolution and Online Dispute Resolution services. These organizations include the Construction Industry Arbitration Council (CIAC), Construction Industry Development Council (CIDC), Indian Council of Arbitration (ICA), International Centre for Alternative Dispute Resolution (IC), the Indian Chamber of Commerce (ICC), and the Bengal Chamber of Commerce and Industry.

41. ONLINE DISPUTE RESOLUTION, <https://cOnlineDisputeResolution.co.nz/about/> (last visited Jul. 28, 2023).

42. AGAMI, <https://agami.in/OnlineDisputeResolution/> (last visited July 28, 2023).

PRO BONO LEGAL SERVICES IN INDIA AND ITS NEXUS WITH ONLINE DISPUTE RESOLUTION

Pro bono legal services in India refer to the provision of legal assistance and representation to individuals or groups who cannot afford to pay for legal services. Many lawyers and law firms in India volunteer their time and expertise to offer pro bono services as a way to promote access to justice and support marginalized or underprivileged individuals. One such initiative is the *Pro Bono India Project*. In this initiative connects lawyers, law students, and legal professionals with individuals and organizations in need of legal assistance. They also conduct awareness campaigns and training sessions to promote pro bono work.

The project has been linked with the legal aid activities in India and in each state the State Legal Services Authority, created through the Legal Services Authorities Act 1897, which has been entrusted with the responsibility of providing free legal aid and assistance to those in need supervises and conducts the program. To make the initiative more productive *Pro-bono clubs* have been created to carry out these legal aid activities and pro bono legal services by engaging law students, under the guidance of experienced faculty members, to provide legal help to those who cannot afford a lawyer. Various non-governmental organizations and non-profit groups in India have also joined hands in this initiative by collaborating with lawyers and legal professionals to offer pro bono services to the clients in need of the same but cannot afford it due to economic challenges. Some law firms in India are also actively engaged in pro bono work by allocating a certain percentage of their resources to provide free legal services to those in need. These firms often take on cases related to human rights, social justice, and other public interest matters. Online Platforms such as include *Legal Aid Network and ProBono India* help establishing the important connection with people seeking legal advice with lawyers willing to provide pro bono assistance.

The scope of integrating the online dispute resolution with pro bono services is still developing but very dynamic which needs to be explored so that time and resources both can be saved as well as the ambit of online dispute resolution as is increasing day by with more and more institutions embracing the means to access justice through the use of technology.

Limitations of Online Dispute Resolution

1. This category encompasses all legal matters pertaining to trade, commerce, and contractual agreements, which includes the resolution of conflicts stemming from the following: -

- Contracts, including claims involving monetary compensation
- Requests for specific performance
- Disputes between suppliers and customers
- Disagreements involving bankers and consumers

The parties involved in the construction industry consist of developers/builders and customers. The first relationship to be discussed is that between landlords and renters, also known as licensor and licensees. This refers to the legal agreement where a landlord grants a tenant the right to occupy and use a property in exchange for rent payments.

The second relationship is between an insurer and the insured. This pertains to the contractual arrangement in which an insurance company provides coverage and financial protection to an individual or entity against specified risks or losses in exchange for certain sum of money.

This category comprises all legal disputes that arise from strained or damaged relationships, including conflicts related to the following areas:

- *Matrimonial matters include aspects pertaining to the dissolution of marriage, provision of spousal support, and determination of child custody;*
- *The division or partition of assets among family members, coparceners, or co-owners;*
- *Disputes arising within partnerships involving business partners.*

There are various instances in which the continuation of a pre-existing relationship is necessary despite the presence of disputes. These examples encompass conflicts between individuals over fundamental rights, encroachments, nuisances, and related issues. Additionally, they involve conflicts between employers and employees, as well as conflicts among members of societies, organisations, and flat owners associations.

The scope of tortious culpability encompasses all instances involving demands for compensation arising from vehicle accidents or other mishaps.

Consumer conflicts encompass situations where a trader, supplier, manufacturer, or service provider is particularly invested in safeguarding their commercial or professional reputation, credibility, or the popularity of their product.

CONCLUSION AND SUGGESTIONS

With technology permeating nearly every aspect of modern living, Online Dispute Resolution has become increasingly important. Although Online Dispute Resolution is still in its infancy in India, its widespread implementation cannot be far off. However, the backbone of any online arbitration—easy, cheap, and suitable computer and internet connections—is lacking. In India, online adjudication and conciliation are hindered by the country's patchwork of internet access.

Despite encountering obstacles, Online Dispute Resolution is gradually gaining momentum and acceptance in India. The changing dispute resolution practises in India may be discerned not only via the emphasis on arbitration under the Arbitration and Conciliation Act, 1996, but also through recent legislative endeavours pertaining to e-governance and e-commerce.

The second iteration of the Online Dispute Resolution platform has been developed by the Techno Legal Centre of Excellence for Online Dispute Resolution in India (TLCEODRI). It is now available for use in the settlement of disputes involving parties from India and around the world.⁴³

To effectively navigate the rapid growth of the internet market, it is imperative for Online Dispute Resolution to establish a robust groundwork of broad comprehension and endorsement. This can be achieved through grassroots initiatives encompassing various subjects, such as social media, education, street performances, advertising, conferences, seminars, and promotional endeavours.

Funding for Online Dispute Resolution initiatives and the creation of the technological and administrative infrastructure needed to establish an Online Dispute Resolution system rely heavily on government involvement. In order to optimise the potential benefits of technology-driven legal disputes, it is imperative to address apprehensions pertaining to privacy and confidentiality by employing various strategies aimed at enhancing privacy and bolstering security measures. These strategies encompass privacy design methodologies, privacy engineering, privacy self-synchronization, and other related approaches. Recognition and validity of the Online Dispute Resolution process on a national and international scale necessitates the standardisation of laws, consistent standards, and rules, including the consequences of conflict of law rules.

The basic requirement is to make sure that everyone can pay to get their day in court. By raising the literacy rate, Increasing communication and decreasing prejudice, as well as providing simple access to e-courts, we can ensure that justice is given in a timely and effective way to the greatest number of people possible. The development of Online Dispute Resolution will lessen the load on the judicial system, so efforts should be made on both the national and foreign levels. This means that advancing Online Dispute Resolution is crucial to promoting international relationships in cross-border conflicts and fostering global unity. To guarantee that Online Dispute Resolution can serve public institutions and cover a wide range of sectors, regions, and communities across the nation, private Online Dispute Resolution providers must be integrated into the system. For this reason, and because parties should not view Online Dispute Resolution as a simple formality, it should be required for certain conflicts and should consist of about three sessions. In order for the concept of online redressal procedures to reach the general public and for them to be able to use them, more recognition should be given to them.

43. INTERNATIONAL COMMERCIAL ARBITRATION AND DISPUTE RESOLUTION, <http://perry4law.co.in/blog/?p=135> (last visited Jul.28,2023).

WHISTLEBLOWERS – CAN THEY BE PROTECTED: A TOOL FOR GOOD CORPORATE GOVERNANCE FROM THE INDIAN PERSPECTIVE

Gaurav Jonnagadla¹

Spruha Mahale²

INTRODUCTION

Whistleblower is a person who provides vital information to the respective authorities on misconduct in a company. Whistleblowers and individuals who report misconduct within an organization have become increasingly important in recent times because of several factors. With the complexity of business operations, high transaction volumes, limited data integration across organizations, and outdated internal controls, detecting fraud and other wrongdoing through traditional audit and review methods can be challenging. Therefore, employees who are affected or third parties associated with the situation can notify authorities about questionable actions, acting as initial warning signs.

Despite facing retaliation and various challenges, whistleblowers continue to be the primary information providers regarding wrongdoing within any system, whether it's within public or private organizations. According to the Association of Certified Fraud Examiners (ACFE), tips by whistleblowers were responsible for detecting 40-50% of fraud cases globally in 2021, as consistently observed in previous ACFE reports. The Association of Certified Fraud Examiners delivers its report on Occupational Fraud and Abuse to nations.

The Companies Act of 2013 and SEBI (via revisions to Clause 49 of the Listing Agreement) have made it obligatory for specific companies to set up systems for receiving complaints pertaining to grievances or issues raised by directors or employees of an organization. In addition to it the Whistleblowers Protection Act of 2014, enacted by the Parliament, seeks to promote individuals to report potential misconduct and fraud within public sector organizations, with the backing of disclosures. Nevertheless, the Act does not permit anonymous complaints, which gives rise to worries about safeguarding the identity of whistleblowers. Retaliation against individuals who expose misconduct in both corporate and governmental settings is not

1. 4th Year Law Student at Alliance School of Law, Alliance University, Bangalore, India.

2. 4th Year Law Student at Alliance School of Law, Alliance University, Bangalore, India.

uncommon, and in some cases, these individuals have even lost their lives while advocating against fraud and corruption.

Prominent private sector companies have instituted methods for anonymous complaints and procedures to safeguard the anonymity of whistleblowers, while also maintaining confidentiality during investigative proceedings. The government should concentrate on these aspects by integrating measures outlined in the US Whistleblower Protection Enhancement Act of 2012.

Even though there are acts providing protection for the whistleblowers, it fails to provide sufficient clarity or establish comprehensive protection standards, resulting in inadequate safeguarding of whistleblowers. It is also pertinent to see that in many cases whistleblowers do not even disclose themselves in the fear of their lives, leading to lack of proper corporate governance practices. The scope of the Act is also limited to public servants and public sector undertakings.

WHISTLEBLOWER: TYPES AND CONCEPT

Whistleblowing consists of two words³: ‘Whistle’ and ‘Blowing’ which means blowing a whistle translating in terms of corporate language as, revealing some information in front of the public⁴. The information might pertain to any illicit, unethical, or deceitful activities occurring within public or private institutions. Those who reveal such misconduct are identified as whistleblowers.

Internal whistleblowers⁵ are those who report to the higher-ranking individuals within the organization where the wrongful act is being done. It is up to the organization to investigate and address the issue without external interference of government agencies or other parties. The government is not usually involved in these cases to investigate and rectify the fraud, since it is dealt and taken care internally.

External whistleblowers⁶ are those who report illegitimate ongoing work happening at an organisation or company to the outside parties such as media reporters or concerned government officials. The main reason for reporting to external authorities is to protect public safety and welfare. Another reason could be the lack of action taken within the organization to address the wrongdoing.

3. Anil K Sehgal, “Company Secretary Conscience Keeper or Whistleblower,” The Institute of Company Secretaries of India, <http://www.icsi.edu/docs/40nc/40%20NC-Souvenir.pdf> (last visited April 11, 2023)

4. *Id.*

5. The Economic Times,” s.v. “Whistleblower,” <https://m.economictimes.com/definition/whistleblower/amp> (last visited April 13, 2023).

6. *Id.*

In 2004, the government introduced the Public Interest Disclosure and Protection of Informers (PIDPI) Resolution, aimed at registering complaints concerning corruption or the improper use of authority by government officials or departments. The Central Vigilance Commission (CVC) was designated as the department to administer and regulate the complaints, which are then forwarded to the respective section that is relevant, after hiding the name of the whistleblower⁷.

WHISTLEBLOWER PROTECTION IN INDIA

India signed the UN Convention against Corruption in 2005, which mandates the reporting of corruption by either public or private entities and safeguards whistleblowers from retaliatory actions. However, presently there are no specific laws in India for guarding whistleblowers in private, unlisted companies or unincorporated entities⁸. Employers are left at their own discretion to choose and adopt a whistleblower policy to encourage reporting without fear of victimization or discrimination. Hence, the whistleblowing regulations in the private companies are largely policy-driven and discretionary⁹. India has not yet adopted regulations to improve the whistleblower protection across sectors in the economy. The government's efforts to create secure communication channels for whistleblowers to report incidents without facing concerns about disclosure, victimisation, or retaliation have been insufficient.

The Companies Act, 2013, has various sections that address inspection and inquiry matters, including empowering inspectors to examine records and recommend further investigation. Sections 206 to 229 of the Act address concerns related to inspections and inquiries, while Section 208 empowers an Inspector to examine the records of a company and authorize additional investigation when deemed necessary. Furthermore, Section 210 of the Act allows the Union Government the authority to initiate an investigation in cases of suspected unlawful activities, either based on a notification from the company's Registrar or the Inspector. The Companies Act also mandates a whistleblower policy but primarily for listed companies.

The Securities and Exchange Board of India mandates that all companies listed under its jurisdiction must possess a whistleblower policy and hold the responsibility of notifying their employees about it. SEBI has also introduced a reward mechanism for informants reporting insider trading violations.

7. M. Kurthalanathan, "Whistleblowing/Vigil Mechanism under Companies Act, 2013," <http://tax-guru.in/company-law/whistleblowing-vigil-mechanism-companies-act-2013.html> (last visited April 12, 2023).

8. Khaitan & Co, "Guide to Whistleblowing - India Chapter," <https://www.khaitanco.com/sites/default/files/2022-08/Guide%20to%20Whistleblowing%20-%20India%20Chapter.pdf> (last visited April 13, 2023).

9. *Id.*

The Whistleblowers Protection Act, 2014, seeks to safeguard individuals or informants reporting information relating to any sort of corruption, misuse of power, or criminal offences against public servants¹⁰. The complaints must include the complainant's identity, but the Vigilance Commission must keep it confidential and can disclose, if deemed necessary and required only to the head of the department. Any unauthorized revelation of identity may result in the individual being liable for penalties as prescribed by the Act.¹¹ However, the Act only applies to public servants and public sector undertakings¹², thereby limiting its scope.

COMPARISON WITH USA

USA laws on Whistleblowers¹³ - Whistleblower regulations in the United States of America are comprehensive and rigorous. Several statutes contain provisions to protect whistleblowers, encouraging them to report fraudulent activities as envisioned under the Indian Act. The exceptional attributes embedded in U.S. whistleblower laws have elevated them to be recognized as the most powerful and impactful on a global scale. The features laid down in the provisions are as follows:

Protection of Whistleblowers against Retaliation

One crucial aspect of the USA whistleblower laws is the protection of whistleblowers against retaliation. Retaliation occurs when an employer, via any administrator, takes adverse actions against an employee for engaging in illicit activity¹⁴. These actions may include firing, demotion, or termination from important meetings. These measures should not discourage a sensible and cautious employee from expressing concerns about potential violations happening within the company.

Whistleblowers in the USA can file complaints under the Occupational Safety and Health Act¹⁵ or other applicable acts. An independent and impartial investigator will examine the allegations and present conclusions, along with potential remedies. The involved parties retain the right to raise objections and appeal the findings before an administrative law judge.

10. National Whistleblower Center, "Whistleblower Protections and Rewards," <https://www.whistleblowers.org/whistleblower-protections-and-rewards/> (last visited April 14, 2023).

11. *Supra Note 7*.

12. ForumIAS Blog, "Whistleblower Protection in India," <https://blog.forumias.com/whistleblower-protection-in-india/> (last visited April 14, 2023).

13. U.S. Department of Labor, "Whistleblower Protection Programs," <https://www.dol.gov/general/topics/whistleblower> (last visited April 14, 2023).

14. Robinson Law Offices, PLLC, "Whistleblower Retaliation," <https://www.robinsonlawoffices.com/whistleblower-retaliation/> (last visited April 16, 2023).

15. *Id.*

At India, the appropriate figure to whom whistleblowers can report instances of victimization is typically a higher-ranking official within the organizational structure. This arrangement poses difficulties for whistleblowers in terms of reporting retaliation or obtaining sufficient protection.

Protection of Identity of the Whistleblower

In the United States, laws at both the state and federal level provide varying degrees of protection for the anonymity of whistleblowers. Under these laws, whistleblowers are often allowed to submit their claims through an attorney who can present the relevant documents and evidence to the appropriate investigative body while keeping the identity of the whistleblower confidential.

For example, under the False Claims Act, whistleblowers are allowed to maintain their anonymity during the initial stages of an investigation while the government conducts its review. Likewise, the Internal Revenue Service (IRS) adheres to stringent confidentiality regulations that treat all information as private. The Motor Vehicles Safety Act also allows the submission of confidential claims.

However, in India, whistleblowers are not permitted to submit anonymous complaints and any such complaints received are not investigated under the law.

Independent Reporting Channel

In order to ensure fair treatment for whistleblowers, it is standard practice to have an independent arbiter investigate their complaints¹⁶. This is typically achieved through the establishment of separate offices, each with neutral investigators, that are explicitly crafted for the purpose of receiving and investigating complaints from whistleblowers.

However, the situation in India is different. The nation's regulations stipulate that any complaints from whistleblowers must be presented to the Competent Authority as defined under the relevant Act. The Competent Authority varies depending on the person against whom the complaint is being made, but it is typically the senior official in the same hierarchy as that person. This means that the investigation may not be neutral, and the resulting findings may be biased.

Rewards Mechanism

In the United States, various laws offer different reward systems to whistleblowers¹⁷ who report valid complaints. This unique mechanism calculates the money saved or recovered by the authority as a result of the whistleblower's complaint and awards them a certain percentage of that amount, typically ranging from 10-30% under different acts. For example, the False

16. *Supra* Note 11.

17. *Supra* Note 12.

Claims Act offers a reward ranging from 15 to 30% of the financial penalties recovered by the government if the whistleblower aids in prosecuting fraud linked to government contracts or programs. Similarly, the Dodd-Frank Act permits a reward of 10 to 30% of the financial penalties collected if the whistleblower aids in prosecuting securities and commodities fraud. If the whistleblower helps prosecute tax fraud, the IRS whistleblower law mandates 15 to 30% payment of the monetary sanctions collected to be paid to him¹⁸.

This uncapped reward system has resulted in some significant payouts to whistleblowers, with the highest amounting to \$104 million awarded to Bradley Birkenfeld, an international banker who revealed the use of undeclared Swiss bank accounts by US taxpayers to avoid paying taxes to the IRS¹⁹. This revelation prompted a modification in the treaty between the United States and Switzerland, necessitating the disclosure of the identities of American individuals who possess offshore bank accounts.

In contrast, India's laws do not provide for any rewards to whistleblowers following the successful investigation of their claims. However, the Securities Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, at their sole discretion, offer payment of rewards equal to 10% of the monetary sanctions, with a maximum cap of Rs. 10 crores.

Penalties for False Information

In the United States, a system of generous rewards is in place to incentivize whistleblowers to report fraudulent activities while also imposing hefty penalties against the spread of false information. The False Claims Act establishes a fine of \$23,331 for each distinct violation of the law, in addition to tripling the damages incurred by the government. A sole fraudulent scheme could encompass numerous such violations.

In comparison, India's Whistle Blowers Protection Act, 2014 imposes a punishment of imprisonment for a maximum of two years and a fine of up to thirty thousand rupees is prescribed for violations. This inadequate punishment system does not effectively encourage whistleblowers to report fraud.

The United States has implemented various measures to facilitate the reporting of legitimate whistleblower complaints. These measures serve as an incentive for individuals to report any instances of wrongdoing while simultaneously penalizing those who make false allegations. Additionally, the country has implemented robust anti-retaliation policies to safeguard whistleblowers from any form of retaliation. On the other hand, the country also allows whistleblowers to remain anonymous when making their complaints.

18. National Whistleblower Center, "Whistleblower Protections and Rewards," <https://www.whistleblowers.org/whistleblower-protections-and-rewards/> (last visited April 16, 2023).

19. *Id.*

India, in-order for it to successfully attract whistleblowers to report fraudulent activities, it needs to re-examine the Whistle Blowers Protection Act, 2014 by adopting measures like those in the United States. This will incentivize people to report wrongdoings, while also penalizing them for making malicious complaints. Additionally, robust measures against retaliation should be implemented to ensure the safeguarding of whistleblowers, and anonymity should be permitted for those who report fraud. Without such measures, the Act will not be effective in addressing fraud at various levels.

WHISTLEBLOWERS AND CORPORATE GOVERNANCE

As previously discussed in the paper, whistleblowing entails reporting any misconduct within an organization to either internal or external entities. Whistleblowing is an important aspect of good governance²⁰ and promotes the exposure of wrongful acts or omissions that go against the values and interests of the organization. The objective is not to inflict harm on the organization, but rather to promote the broader public interest. In today's age of globalization, where economic motives often take precedence over traditional values, it is crucial to protect the public interest from corporate scandals. Corporate whistleblowing is one of the greatest ways to ensure that there exists good corporate governance in a company or organisation²¹. Whistleblower policies have been recognized as a fundamental aspect of corporate governance.

It is only due to the efforts of the informants, that more and more corporate frauds and wrongdoings are being exposed around the globe²². Whistleblowers are individuals within the workforce who exercise their right to express concerns, reporting cases of misuse of authority, unlawful actions, or unethical conduct within the organization that goes against the public interest. Whistleblowing promotes integrity and encourages employees to speak truthfully about what is right and wrong. It is a multifaceted approach that protects interests, asserts rights, and influences justice. Every whistleblower policy within a corporation should have a clear and specific definition and procedure for whistleblowing, as it promotes good corporate governance, which is essential for the growth of a corporation.

The 2005 Committee on Standards in Public Life highlights the significance of whistleblowing as a tool for promoting effective governance and as an expression of a more transparent organizational culture. It is said in the committee in the following manner:

20. Ajay Sharma, "Whistleblowing as a Tool to Corporate Good Governance-An Indian Perspective," *Research Journal of Humanities and Social Sciences* 9, no. 3 (2020)

21. *Id.*

22. Shilpi Thapar, "Whistleblowing An Important Aspect of Corporate Governance and Role of Company Secretary as Effective Whistleblower," <http://www.shilpithapar.com/whistle-blowing-an-important-aspect-of-corporate-governance-and-role-of-company-secretary-as-effective-whistle-blower/> (last visited April 15, 2023).

“Effective whistleblowing is a key component in any strategy to challenge inappropriate behaviour at all levels of an organization. It is both an instrument in support of good governance and a manifestation of a more open organizational culture.”²³

Employees frequently find themselves in a position to observe situations and occurrences within corporations that are morally or ethically questionable in their early stages. However, they might be hesitant to report these instances due to inadequate protection, as only a limited number of organizations have implemented whistleblower policies²⁴. Hence, for an organization aiming to elevate its standards and controls to achieve improved and more efficient corporate governance, the focal point should be on adopting and enforcing a robust whistleblower policy.

Therefore, Whistleblowing stands as a crucial instrument within an organization’s corporate governance strategy, enabling employees to address instances of misconduct and uphold a secure work environment, all while safeguarding the company’s reputation and financial standing.²⁵. Whistleblowing is a relevant and necessary aspect of implementing corporate governance practices²⁶. It is a critical part of maintaining good governance of the company.

COMMITTEE REPORTS ON WHISTLEBLOWING IN RELATION TO CORPORATE GOVERNANCE

Whistleblowing is been widely discussed and recognised as a tool for good corporate governance²⁷. Its’ presence and importance have impacted corporate world. This was first discussed in the Narayana Murthy Committee.

Recommendations of Narayana Murthy Committee report on Corporate Governance, 2003

SEBI once again set up the Murthy committee, led by N.R. Narayana Murthy, after the Enron scandal in the US, to review Clause 49 and enhance corporate governance standards. The committee recommended mandatory implementation of Naresh Chandra Committee’s suggestions related to corporate governance.

23. *Supra Note 18.*

24. The Law Communicants, “Whistleblowing: A Tool to Corporate Good Governance,” <https://thelawcommunicants.com/whistleblowing-a-tool-to-corporate-good-governance/> (last visited April 17, 2023).

25. EY, Whistleblowing: The Pillar of Sound Corporate Governance, [http://www.ey.com/Publication/vwLUAssets/EY-whistle-blowing-pillar-of-sound-corporate-governance/\\$FILE/EY-whistle-blowing-pillar-of-sound-corporate-governance.pdf](http://www.ey.com/Publication/vwLUAssets/EY-whistle-blowing-pillar-of-sound-corporate-governance/$FILE/EY-whistle-blowing-pillar-of-sound-corporate-governance.pdf) (last visited Apr. 17, 2023).

26. *Id.*

27. Kumar Mangalam Birla Committee Report, 1999, <https://www.gktoday.in/academy/article/key-recommendations-of-kumar-mangalam-birla-committee-report/> (last visited April 15, 2023).

Regarding the matter of whistleblowing, the committee stipulated that companies should incorporate clauses in their employment and personnel policies to shield whistleblowers against unjustifiable termination and discriminatory actions. Furthermore, companies are obligated to confirm annually that they have not obstructed any staff member's access to the audit committee and have ensured the protection of whistleblowers from prejudicial practices. This confirmation must be included in the Corporate Governance section of the Board report, which is a mandatory component of the annual report.

Dr. Jamshed J. Irani Expert Committee Report on Company Law, 2005

On December 2, 2004, the Indian government formed a specialist committee on Company Law, with Dr J.J. Irani serving as its chairperson²⁸. The committee's report, which was submitted in seven parts and consisted of thirteen chapters, included a section on "Offences and Penalties," which discussed protecting whistleblowers. The report recommended that the law should recognize and enable the protection of individuals who expose company offences, particularly those related to fraud. This protection should extend to normal terms and conditions of employment, as well as protection from harassment. Additionally, if such employees are implicated in the wrongdoing, their cooperation should result in reduced penalties.

SEBI Committee on Corporate Governance, 2017

In June 2017, the Securities and Exchange Board of India (SEBI) formed a Corporate Governance Committee headed by Uday Kotak.²⁹ The committee's objective was to elevate the benchmarks of corporate governance for listed entities in India. One of the recommendations put forth by the committee was the implementation of a leniency mechanism. This mechanism would encourage individuals connected to an infringement to come forward and disclose such violations to the regulatory authorities. In return for their assistance, these individuals would receive lenient treatment and protection against victimization.

The Competition Commission of India currently has the power to grant leniency to members of cartels who provide true, full, and vital information. The committee believed that implementing a leniency program would increase the effective detection of violations, simplify the investigation and enforcement process, and serve as a deterrent that could lead to overall compliance with securities regulations.

The committee suggested that SEBI should have the authority to offer leniency and safeguard whistleblowers in particular instances, to be assessed on case-by-case basis. To implement

28. Dr. Jamshed J. Irani, Report on Company Law, 2005, <http://www.primedirectors.com/pdf/JJ%20Irani%20Report-MCA.pdf> (last visited April 15, 2023).

29. Uday Kotak Committee, Report on Corporate Governance (2017), http://www.sebi.gov.in/sebi_data/attachdocs/oct-2017/1507200012576pdf (last visited April 16, 2023).

such a program, rules and regulations would need to be developed regarding the conditions for receiving benefits under the leniency program, the process for imposing reduced penalties or diminished liability, the waiver of penalties when leniency is granted, and the safeguarding of whistleblowers. Overall, the implementation of a leniency mechanism would benefit both SEBI and whistleblowers.

WHY IS THERE A REQUIREMENT TO STRENGTHEN THE WHISTLEBLOWER PROTECTION FRAMEWORK

There are various shortcomings in the protection of whistleblowers and hence there is a high need to strengthen the overall framework relating to the protection of whistleblowers³⁰. The reasons for strengthening the framework include:

Augmenting Transparency and Accountability: Strengthening the framework can guarantee that governments and their institutions adhere to a predefined code of ethics. This can motivate ethical employees to step up and unveil illicit activities within the organization, thus improving transparency and accountability. Furthermore, safeguarding whistleblowers can bolster effective corporate governance and serve as an early alert mechanism for potential crises, as evidenced by the IL&FS case in India.

Protecting Citizen Rights: Whistleblower protection is also essential to safeguard citizen rights, preventing the state from undermining them. In the US, robust protection laws enabled Edward Snowden to expose numerous illegal global surveillance programs, starting a cultural dialogue regarding national security and personal privacy.

Preventing Hardships to whistle blowers: The current regime often imposes hardships on whistleblowers, discouraging honest individuals from coming forward. These hardships may include loss of livelihood and death threats, as powerful individuals whose scams are about to be exposed may resort to extreme measures³¹. For example, Satyendra Dubey was purportedly killed in Gaya, Bihar, due to his efforts against corruption in the Golden Quadrilateral highway construction project. According to a 2015 study by the Accountability Research Centre, 50 Right to Information (RTI) activists were reported as murdered between 2007 and 2014, and numerous others encountered assault and intimidation.

Legislative Lacunas: There are legislative gaps that need to be addressed, as The Companies Act and SEBI regulations exclusively address listed companies, leaving unlisted

30. Shivam Goel, "Protection of Whistleblowers in India: A Corporate Perspective," https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2530397 (last visited April 16, 2023).

31. Hazlina Binti Shaik Md Noor Alam, "Whistleblowing and Corporate Governance: Accidental allies or Lifetime partners," ICCL, 2009, <http://repo.uum.edu.my/1139/1/Hazlina%20binti%20Shaik.pdf> (last visited April 15, 2023).

entities like unicorns and small and medium enterprises devoid of any whistleblower regulations. Additionally, the internal mechanism stipulated by the Companies Act is subordinate to the company's management, thereby rendering whistleblowers susceptible to the management's discretion.

Furthermore, the Whistle Blowers Protection Act 2014 only covers public servants and does not extend to private companies, leaving significant gaps in the protection provided³². The Act also has several other shortcomings, such as the lack of anonymous complaints, inadequate protection against retaliation, and the absence of a reward for whistleblowers upon successful investigation of their claims. Despite the government's endeavor to weaken the Act through a proposed Amendment Bill in 2015, the Bill expired in 2019, and as a result, the Act remains non-operational.

SUGGESTIONS - WHAT STEPS NEED TO BE TAKEN TO ENHANCE THE EFFICACY OF THE WHISTLEBLOWER PROTECTION FRAMEWORK

Whistleblower protection is crucial for promoting transparency and accountability in the public as well as private sectors. In India, the Whistleblower Protection Act was enacted in 2014 to provide protection to individuals who expose wrongdoing or corruption. However, the act has some limitations and gaps that need to be addressed to strengthen its effectiveness. Here are some suggestions for how to strengthen the whistleblower protection in India:

Expand the scope of the act: The current Whistleblower Protection Act in India only covers central government employees, excluding those employed by state governments, public sector undertakings, and private companies. To ensure universal protection, the act should be amended to include all employees. Various US states, such as Florida, Hawaii, and Minnesota, have already adopted whistleblower protection acts that covers public as well as private sector employees.

Strengthen the protection for whistleblowers: The act should provide more robust protection to whistleblowers, including measures such as anonymity, protection from retaliation, and compensation for damages suffered.

Freedom to Whistleblowers: Whistleblowers should have the option to report their concerns to impartial entities instead of senior personnel. Like the approach in the United States, India could set up dedicated offices under various regulations, staffed by neutral investigators tasked with examining reports brought forward by whistleblowers. These specialized offices could be designed to receive and probe whistleblower complaints, affording them enhanced protection and fostering an environment that encourages disclosure of relevant information.

32. *Supra* Note 10.

Establish an autonomous organization to receive and examine grievances: The act should establish an autonomous organization to receive and examine grievances of wrongdoing, with the power to prosecute those responsible for retaliation against whistleblowers.

Provide training and awareness programs: To promote a culture of reporting wrongdoing, the act should provide training and awareness programs for both whistleblowers and employers.

Increase penalties for retaliation: The act should increase the penalties for retaliation against whistleblowers, including fines, imprisonment, and disciplinary action against the responsible officials.

Create a reward system: The act should provide a reward system for whistleblowers who report wrongdoing, to encourage more people to come forward and at the same time there must also be fines imposed against false and frivolous complaints, provisions relating to which also has to be enhanced.

Strengthen the oversight mechanism: The act should establish an oversight mechanism to monitor the implementation of the act, investigate complaints of non-compliance, and recommend changes to improve the act's effectiveness. The Government in first instance must formulate the procedures and rules that are necessary to operationalize and standardise the Whistleblower Protection Act.

Overall, these suggestions can be traced from the US laws and help strengthen the Whistleblower Protection Act in India and provide more robust protection for whistleblowers who expose wrongdoing and corruption in the country.

CONCLUSION

It is assumed for the purpose of the research that, in India, the laws are not sufficient to provide adequate protection to the whistleblowers or that the whistleblowers feel that the laws are not strong enough to protect them. Ensuring an enabling ecosystem for whistleblowers is essential for the government to promote transparency and accountability in public institutions. Whistleblower protection mechanisms must be strengthened to incentivize disclosure of illegal practices in any organization, while avoiding threats and other forms of intimidation.

In today's business environment, Effective corporate governance practices are indispensable for companies striving to generate enduring value for shareholders and other stakeholders. Good corporate governance practices are sine quo non for companies and organisations that have the objective of surviving in the market for a longer period. Such practices enhance transparency and promote stakeholder satisfaction. Additionally, strong ethical behavior and fundamentals can help organizations overcome crises. Compliance with good corporate governance practices

should be seen as an opportunity and a value proposition, rather than merely a regulatory requirement.

As the U.K. Whistleblowing Commission³³ noted in the year 2013, effective whistleblowing arrangements are a crucial element of good governance. An open and healthy culture encourages individuals to speak out, confident that they will not face adverse consequences, and that appropriate action will be taken³⁴. Organizations should offer training and development initiatives to foster a more favourable corporate culture, simultaneously fortifying whistleblowers through the implementation of robust policies. This benefits organizations, individuals, and society.

In conclusion, the protection of whistleblowers in India is a crucial aspect of ensuring transparency and accountability in public and private institutions. Whistleblowing has emerged as a powerful tool in promoting good corporate governance, and companies that implement effective whistleblowing policies can benefit from a more open and healthy culture that encourages ethical behavior and fundamentals.

However, there is still much to be done to strengthen the whistleblower protection mechanisms in India. The government must take measures to incentivize whistleblowers and provide them with the necessary legal protections and support. Companies must also prioritize the creation of a safe and open culture that encourages individuals to speak out and report any wrongdoing without fear of retaliation. Efficient mechanisms for whistleblowing are a pivotal aspect of sound governance, and India stands to gain significantly from adopting this instrument. By offering suitable development programs and training, businesses can cultivate an improved and more positive corporate culture, all the while empowering whistleblowers and instilling in them the confidence to report wrongdoing. This, in effect, contributes not just to the advancement of organizations, but also to the well-being of individuals and society at large.

Therefore, it is time for India to take vital steps to strengthen whistleblower protections and promote whistleblowing as a tool for good corporate governance. By doing so, India can ensure greater transparency and accountability in its institutions, promote ethical behavior, and create a better and more just society for all its citizens.

33. *Supra Note 11.*

34. Dr. Uppugunduri Padmavathi, “Do Class Action Suits improve Quality of Corporate Governance,” *International Journal of Advance Research in Computer Science and Management Studies* 4 (1) (2016), <http://shodhganga.inflibnet.ac.in/bitstream/10603/7932/13/13chapter%204.pdf> (last visited April 16, 2023).

CHAPTER - 3

**ENVIRONMENT AND SUSTAINABLE
DEVELOPMENT; ARTIFICIAL INTELLIGENCE,
ETHICS AND SOCIAL TRANSFORMATION
AND INTELLECTUAL PROPERTY RIGHTS
IN THE CHANGING WORLD**

COPYRIGHT MANAGEMENT VIA BLOCKCHAIN: INDIAN IP LAW CONSIDERATIONS

Zeeshan Rahman¹

INTRODUCTION

India's copyright landscape is governed by the Copyright Act, of 1957, a comprehensive legal framework that aims to protect the rights of creators and promote artistic and literary endeavours. The Act is in place with international copyright standards, including those that have been set out in international agreements such as the Berne Convention. The Copy Right Act has been enacted to protect a variety of creative works, including literary, musical, cinematographic etc. The term of copyright protection varies from content to content depending on the nature of said content, it ranges from the lifetime of the copyright holder plus 60 years for literary, dramatic works etc, to 50 years for cinematographic works. The Act also highlights the various rights that the copyright holder holds, these include exclusive rights to reproduce, perform, distribute and adapt their works. These rights help the right holders to control how their content is used, They can even sell their rights to other individuals. India's copyright landscape has evolved to address contemporary challenges, including those posed by digital technologies and the internet. Digital rights management, anti-circumvention measures, and the protection of technological protection methods were all addressed by the 2012 modification to the Copyright Act. These modifications sought to bring Indian copyright law into step with the digital era, making it easier to safeguard digital property and thwart online piracy.

In India, collecting organisations are essential to the administration of copyright. For the public performance and transmission of their works, organisations like the Indian Performing Right Society (IPRS) and Phonographic Performance Ltd. (PPL) administer and collect royalties on behalf of the authors and rights holders. India's copyright law also includes multiple provisions dealing with fair use of the content for purposes such as criticism, education, review, news reporting and research, For these purposes' permission from the copyright holder. However, these provisions have certain limitations and all of the people who want to use copyrighted content must adhere to the principle of "fair use".² The copyright landscape in India has witnessed multiple high-profile cases related to copyright infringement. Experts for years have argued about the fine line between copyright protection and freedom of speech, the

1. B.A.LL. B (Hons) Student of Centre for Juridical Studies, Dibrugarh University

2. The Copy Right Act, 1957, § 52, No. 14, Acts of Parliament, 1952(India)

enforcement of digital rights etc. Overall, India's current copyright landscape is a dynamic field that strives to balance the interests of creators, rights holders, and the public in the context of rapid technological advancements. As the digital ecosystem continues to evolve, Indian copyright law is likely to adapt further to address emerging challenges and opportunities in the protection and management of creative works.

The Rapid advancement of technology in the last few decades has reshaped all the industries and minds of people alike. With the use of technology content creation has become so much more efficient and easier, But with the advancement of technology there arose multiple challenges in the field of copyright. Among these multiple technologies, blockchain has emerged as a major driving force in technological advancement. It has the inherent potential to revolutionize data storage, verification etc. There are multiple sectors which show promise for the application of blockchain technology, one area that holds tremendous promise is the Intellectual Property Sector. Blockchain technology³ has the potential to transform it into an evolutionary management system. This paper attempts to explore the fundamental tenets of blockchain technology and also examines its potential implementation in India.

At the centre of blockchain technology lies a foolproof ledger that transcends its initial use in cryptocurrency systems like Ethereum, Bitcoin etc. The establishment of a decentralised, open, and secure digital repository for transaction records is required by this unique technique. Blockchain networks are maintained by a decentralised network of users, often known as nodes, rather than a single authority. These nodes collectively validate and record transactions within blocks. Each block is linked to its predecessor cryptographically, forming a sequence of interconnected blocks, hence the term "blockchain". The Decentralized system used in blockchains eliminates the need for intermediaries, fosters transparency and also adds to the security of the copyright holders. The unalterable nature of stored data ensures that every transaction that takes place in the blockchain. As stated earlier the blockchain is made up of blocks and each block is unique. No changes can be made to the blockchain without the consensus of the network. These attributes of the system coupled with a few others, have paved the way for applications spanning well beyond cryptocurrency, with supply chain management, healthcare, finance, and especially intellectual property rights management at the forefront. The landscape of IP management has had multiple challenges from the beginning, particularly in this era of technological evolution in the field of the world wide web. The verification of ownership, tracking the utilization of content for fair use and the enforcement of copyright holders' right has never been more complex and difficult. India is one of the biggest hubs for start-ups in the world, it is distinguished by a thriving creative and technological ecosystem.

3. Ciriello, Blockchain-based digital rights management systems: Design principles for the music industry, Springer Link, www.link.springer.com, (Aug. 10, 2023, 10:00 PM)

The implementation of blockchain technology in India for Intellectual Property management holds immense promise.

Nevertheless, challenges persist. Regulatory frameworks in India must evolve to embrace blockchain-based Intellectual Property management systems. When implementing such a complicated system in India a few concerns arise relating to jurisdiction, the enforcement of said agreements and the admission of blockchain-based evidence in the legal proceedings. Concerns regarding data privacy and the protection of sensitive data inside a public blockchain network need to be reduced at the same time. The transformative potential of blockchain technology in the realm of intellectual property in a country such as India with its huge start-up ecosystem is undeniable. Its ability to provide us with transparent records, that are tamper-proof and an automated and quick process can resolve multiple problems associated with Intellectual Property Management. However the deployment of such a technology on a large scale still poses multiple challenges as stated earlier, One must keep in mind the legal, technical and regulatory aspects. We shall further dive into the use of blockchain technology in Intellectual Property Rights in India via in-depth analysis, case studies, and identification of multiple challenges that one shall face in implementing this system.

ADVANTAGES OF BLOCKCHAIN IN INTELLECTUAL PROPERTY RIGHTS MANAGEMENT

In this era of technological innovations, the integration of blockchain technology as stated earlier has a lot of potential in the Intellectual Property Management System, It has a multitude of advantages that show potential to bring about the evolution that the current IP management system requires. It can change the way creators, inventors and rights holders interact with one another and protect their creations. This section of the paper shall delve into the multiple benefits and advantages that blockchain brings to the domain of IP management in India and also globally.

Proof of Ownership and Authenticity

In this ever-evolving and complex landscape of Intellectual Property Rights, one of the most common and foundational challenges faced by copyright holders is to prove their ownership of the said content. With the evolution of digital platforms, the recreation and distribution of content have been so much easier, and this poses a huge challenge for copyright holders. This is where blockchain technology shines. At the core of this problem lies blockchain technology's remarkable ability to provide undeniable proof of ownership. Traditional methods of proving ownership such as time stamps and paper trails have been rendered ineffective on multiple occasions as they are prone to tampering and manipulation. Blockchain, on the other hand, operates on the principle of decentralization and hashing. When content let it be art, technological

innovation, literary creation etc is added to a blockchain it cannot be altered, as it is assigned a unique cryptographic hash, in simple terms a digital fingerprint.⁴ This cryptographic hash acts as a virtual seal of authenticity that only the copyright holders own. It represents a time at which the work was added to the blockchain and once added it cannot be altered without the consensus of the entire network. This advantage has broad implications for numerous businesses. Blockchain provides a sophisticated way to track the history of artworks, ensuring their legitimacy for buyers and sellers in the art market, where provenance is key. Blockchain can create a time-stamped record of innovation in the world of patents and innovations, protecting creators from allegations of prior art. This can also be put to use to transform digital content distribution. As online piracy and unauthorized sharing continue to plague the entertainment industry, blockchain's immutable ownership proof can help creators assert their rights. By registering or adding their digital content to the blockchain they can solidify their ownership and take swift legal action against copyright infringement. Moreover, the transparency of the blockchain ensures that all creators, license holders etc can check the validity of ownership on their own without the help of intermediaries and cumbersome processes. In a world where the integrity of intellectual property is vital for creators, investors, and consumers alike, blockchain's ability to provide proof of ownership and authenticity is nothing short of revolutionary.

Transparent and Tamper-Proof Recordkeeping

In the ever-evolving and complex landscape of intellectual property rights management, the need for a system of transparent and tamper-proof recording keeping system is of great significance. Traditional recordkeeping systems have failed in aspects of data opacity, vulnerabilities to alteration and the cumbersome long verification process. Blockchain technology promises to bring about a much-needed evolution to recordkeeping by combining transparency and security in an intricate manner that empowers creators, rights holders and stakeholders throughout the landscape. Transparent and tamperproof recordkeeping⁵ through blockchain brings about the creation of an incorruptible digital ledger that keeps a record of every transaction, modification or event related to an asset of IP recorded in the system. As a result, the historical development of an IP asset transforms into a timeless, unalterable, and accessible narrative. Moreover, the decentralized system used by blockchain guarantees that no single person or entity can alter records, which in turn can build an environment of trust.

4. Red Chalk Group, www.redchalk.com (Aug. 10, 2023, 10:00PM)

5. Alexandria, www.coinmarketcap.com (Aug. 10, 2023, 10:00 PM)

Automated Licensing through Smart Contracts

In the intricate landscape of intellectual property (IP) rights management, the sector of licensing agreements has often been faced with multiple complexities and potential pitfalls. This age of digital accelerated pace demands swifter and more efficient solutions that can make such processes faster while safeguarding the interests of all parties involved. This is where the smart contracts that are available through the blockchain come into play. Smart contracts⁶ promises a shift in the way in which licensing agreements are structured, negotiated and executed. At the heart of this transformation lies the concept of smart contracts, these contracts are different from traditional contracts. Smart contracts are self-executing digital contracts that automatically execute pre-defined actions on their own when certain conditions are met. Such contracts are coded into a blockchain, allowing them to operate autonomously and transparently, without the requirement of manual intervention. In an era characterised by the rapid growth in digital content and cross-border collaboration, the need for such a licensing system or mechanism is of utmost importance. Traditional licensing agreements can take a long time to negotiate, draft, and then go through a maze of monitoring and reporting to make sure that there are no violations and that royalties are being paid. These processes can many times fail due to human error, misinterpretation of terms and time-consuming administrative tasks. Smart contracts embedded in blockchain technology provide a secure, highly efficient and seamless system for licensing. Parties that are involved in the said agreement can define the terms of the agreement along with the triggers for payment within the smart contract's code. Once these conditions have been met, they are verified by the blockchain's decentralised network. The contract self-executes. This process not only eliminates the need for intermediaries to oversee the transaction and verify if the agreement is being complied with but it also helps in reducing the number of potential disputes that generally arise due to misinterpretation of terms etc. The traditional licensing process requires intermediaries each adding a level of complexity to the process. Smart contracts, operating on a trust less blockchain network, eliminate the need for intermediaries to automate the entire process. Via Smart Contracts blockchain is enhancing transparency, reduces administrative overheads and fosters trust among stakeholders. The potential of smart contracts is immeasurable with it having the capability of being applied in almost every industry. The power of automated licensing through smart contracts is poised to reshape the IP landscape as industries continue their digital transformation. By ensuring that agreed-upon terms are faithfully carried out, the integration of blockchain and smart contracts not only reduces the transactional aspects of licensing but also protects the interests of creators and rights holders. As a result, an ecosystem for licensing has been created that is distinguished

6. Finck, Copyright Law on Blockchains: Between New Forms of Rights Administration and Digital Rights Management 2.0, Springer Link, (Aug. 10, 2023, 10:00 PM), www.link.springer.com

by effectiveness, accuracy, and the potential for more amicable collaborations in the dynamic field of intellectual property.

Streamlined Royalty Distribution

The concept of royalty distribution is central to this ecosystem of Intellectual Property. Artists and innovators seek to protect their content while taking rewards for their hard work. Royalty is the mechanism by which creators receive compensation for the use of their intellectual creations. But traditional royalty distribution methods have often been filled with inefficiencies, delays and opacity. In industries such as music, film and literature there are multiple people or parties involved in the creation of content, and the royalty chain can become overcrowded. These complexities are then even more worsened by intermediaries such as publishers, distributors and collecting societies, who play a role in collecting and distributing royalties. This complex structure leads to delays in payments, disputes over revenue sharing may arise and there is a complete lack of transparency in the system. Imaging a situation in the music industry in which a musician writes a new song. Blockchain allows the artist to record the song's details, ownership rights, and royalty terms.⁷ Since the song is licensed for use in various media, including streaming platforms, radio, and advertisements, each usage creates a smart contract-driven transaction on the blockchain. According to the predefined terms, these intelligent contracts automatically calculate and pay the right royalties to the artist and other rights holders. As there are no intermediaries involved in the calculation and transfer of funds, this process is both transparent and instantaneous. This system has also the potential to reduce administrative costs. Traditional royalty distribution system comprises a complex web of agreement, paperwork and manual calculations often leading to higher costs. Blockchain reduces administrative costs and resources that can be utilized elsewhere. As evident blockchain technology can be used for royalty distribution in all industries ranging from music to art to literary to film. It ensures that every person gets every penny that they own and that they are being compensated fairly for the work they have done.

Prevention of Counterfeiting and Piracy

In such a complex digital landscape of new-age commerce, the issues of counterfeiting and piracy exist as a major hindrance to industries. They cast a shadow over industries and economies alike. These nefarious activities pose multifaceted threats, eroding trust, endangering consumer safety, undermining legitimate businesses, and siphoning revenue away from rightful creators and producers. Blockchain technology has emerged as a powerful ally in the fight against counterfeiting and piracy in an era of technological advancement and global networking. Counterfeiting goods and passing them on to innocent consumers as genuine has reached

7. Christopher H. Smith, Blockchain Eases Royalty Payment, The American Oil & Gas Reporter, www.aoger.com, (Aug. 10,2023, 10:00 PM)

staggering levels in the digital age. Piracy is also equally concerning, where unauthorized reproduction and distribution of copyrighted materials abound. These activities are found in various sectors, from luxury goods to software and entertainment. This is also seen at a large scale in the pharmaceutical industry, Imagine consuming a false medication under the pretence of it being real and then falling ill very badly. Plus the impact on the businesses this kind of practice is having economically is of huge proportions. Crores of rupees are stolen from legitimate businesses every year due to this. Blockchain has systems that can help in this aspect as well. The decentralized system that is at the heart of the blockchain ensures that records of transactions, manufacturing processes and supply chains cannot be falsified. By erecting such a transparent and tamper-proof barrier against counterfeiting and piracy, blockchain increases the trust of consumers. Consumers when having access to details of authenticity and also with the access to verify authenticity can verify the products themselves. With such information, they can make informed decisions. Furthermore, blockchain's global nature helps people around the world fight counterfeiting and piracy. Stakeholders from all over the world can access and contribute to the ledger due to its decentralized structure, which encourages international cooperation in the fight against these unlawful acts. This is especially important when counterfeiters take advantage of regulatory disparities between different countries. However, Adopting blockchain technology is not an easy task. Collaboration on a large scale between businesses and the government is required on a large scale. Also, public awareness in this field can enhance the product authenticity

Efficient Digital Rights Management (DRM)

Digital content from music and videos to software and literature, forms the majority of modern intellectual property. As the digital landscape evolves, the challenge of managing and protecting these assets is becoming increasingly complex. There is a need for Efficient Digital Rights Management (DRM) which is a crucial enabler of safeguarding copyright holders' rights, ensuring fair compensation and maintaining control over the distribution of their content. The main goal is to achieve a careful balance between allowing authorised use and preventing unauthorised access or piracy. In a digital setting where content can be easily copied and shared with the click of a button, this is especially important. DRM has faced a lot of criticism due to its limitations and a few instruments. Blockchain, with its transparent and tamper-proof ledger, provides an ideal foundation to lay a system for a DRM.⁸ Via a DRM system based on blockchain, the system can ensure that every transaction related to digital content is perfectly and timely recorded or added to the blockchain. Also, another aspect is the "smart contracts" that can be integrated with the DRM. Furthermore, the DRM system enables

8. Ciriello, Blockchain-based digital rights management systems: Design principles for the music industry, Springer Link www.link.springer.com, (Aug. 10, 2023, 10:00 PM)

copyright holders the discretionary power over who has access to and use of their content, They can regulate it with ease. They can establish rules like who can access content, what are the circumstances under which it can be done etc. If the content is being accessed beyond the terms set by the owner then the blockchain system can revoke access to the content without any manual intervention. Furthermore, DRM systems' risk of having a single point of failure or vulnerability is reduced by the decentralised nature of blockchain. Traditional DRM systems frequently rely on a central authority, which, in the event of a breach, could result in widespread content security breaches. With blockchain, the system's resilience and security are guaranteed by the distribution of data across numerous nodes.

Global Collaboration and Cross-Border Protection

In the digital era, the world is connected at such a level that innovations have to be made to extend the protection of the rights of the holders beyond national frontiers. The digital era provided unprecedented growth in collaboration between the creators. But with such opportunities also arrived the challenges that the creators had to face. Global collaboration is a cornerstone of the modern economy. Yet this creates many more complexities in IP, What may be protected under the IP law in one country may not be protected in another country. Blockchain technology can be applied in this aspect as well. The tamper-proof and decentralised system can be implemented globally with the digital footprint of contents being recognised globally. When it comes to cross-border protection of content blockchain's decentralized nature plays a vital role in doing so. Due to blockchain's widespread accessibility, it is possible to independently verify IP ownership and licencing history, enhancing consistency and reliability in international disputes.

Reduction of Litigation Costs

If blockchain technology is implemented it would reduce the legal expense of multiple creators and copyright holders by almost half. With blockchain, there can be hard proof regarding ownership that can be produced in the court of law which in turn reduces the time required to fight a case which in turn reduces the money that the creator has to pay the advocate

CASE LAWS

1. Bayer Corporation vs Union of India

Bayer Corporation patented a cancer medicine 'Nexavar'. Indian patent office exercised its rights and granted a compulsory license of Nexavar to Natco Pharma. Ltd. for producing a generic version of it. The patent office has also directed Natco to pay royalties to Bayer, to donate 6000 free medicine to the public, to manufacture the medicine locally, and to sell the medicine only in India and not to assign manufacturing of it to others. Meanwhile, Bayer was manufacturing the same medicine for a

comparatively higher price than what Natco offered to the public. Aggrieved by the patents controller's decision Bayer moved to IPAB (Intellectual property appellate board) and filed an application which got rejected. Bayer now filed an appeal before the board which was also rejected. Bayer Corp. then filed an appeal before The Bombay High Court which held that compulsory licensing of life-saving drugs falls within the right of the Indian patents office as well as the rule of making available patented drugs at an affordable price for the general public should be maintained as per section 82(1) (b) under The Patents Act, 1970. The judgment passed by The Bombay High Court was later upheld by The Supreme Court.

In this case, as we say that Bayer Corp licensed its patented medicine to Nacto Pharma Limited, But the company didn't abide by the terms that were set by Bayer Corp. If this were set up by blockchain then the smart contract feature along with the royalty feature would have made this a much smoother affair as the infringement of right would have been spotted sooner and Bayer Corp wouldn't have had to lose so much money in litigation.⁹

2. Star India Pvt. Ltd. v. Moviestrunk.com & Ors.

In this case, Plaintiff Star India was a film production and distribution company while the defendant owned online streaming websites. The case relates to the unauthorized streaming of the plaintiff's film on the defendant's streaming website. The plaintiff filed a suit for infringement of copyright. The Delhi High Court held the defendant liable for infringement of the copyright of the plaintiff's work for streaming its copyrighted content without the knowledge and consent of the plaintiff. The Court granted the injunction and damages and thus Plaintiff's exclusive right to exploitation was re-ensured.

In the same way in this case through blockchain technology, one could have gotten notified about this infringement of one's right faster.¹⁰

DRAWBACKS OF BLOCKCHAIN

Blockchain technology provides multiple advantages to the IP management system, But everything has a bad side as two sides to a coin, one must also acknowledge the challenges that one may face in the implementation of this system. The key drawbacks are as follows:

9. Bayer Corporation vs Union of India, (60) PTC 277 (Bom)

10. Star India Pvt. Ltd. v. Moviestrunk.com & Ors., MANU/DE/0585/2020

1. Technical Complexity

Blockchain technology is very complex and not so easy to use by the general public, A lot of expenditure will have to be incurred in educating the common man about this system. A system such as this requires extensive knowledge and expertise. For many organizations, this will not be possible and this can in turn become a serious barrier to the adoption

2. Scalability Issues

Blockchain networks, mainly the public ones face scalability challenges when there is a surplus of transactions. Networks such as Bitcoin and Ethereum have encountered multiple challenges relating to speed and higher fees for transactions during high demand. These hindrances can hinder the efficient management of data.

3. Energy Consumption

Blockchain technology uses a lot of electricity to operate. This is due to the various computational processes that take place to validate transactions and create new blocks.

4. Privacy Concerns

While blockchain offers transparency through its systems it also raises privacy concerns. Once data is added to the blockchain it cannot be removed or altered in any way. This creates a problem as striking a balance between transparency and data privacy can be a complex endeavour.

5. Loss of Control

Due to the decentralised nature of blockchain, network users each have a certain amount of control over data and transactions. This can result in a loss of control over the management of IP assets, even though it is a strength in terms of transparency and security. For those who are used to having centralised control over their intellectual property, this might be a cause for concern.

6. Irreversibility of Transactions

Once information is added to a blockchain, it cannot be changed. This feature improves security and prevents tampering, but it can also be problematic if mistakes happen. Errors in transactions or data entry are difficult to fix and may have expensive consequences.

CAN BLOCKCHAIN TECHNOLOGY BE IMPLEMENTED IN INDIA

The integration of blockchain technology into various sectors including intellectual property in India is very much possible. The Indian government's initiatives, such as the National Blockchain Strategy¹¹, reflect a growing interest in exploring the potential applications

11. Meity, www.meity.gov.in, (Aug. 10, 2023, 10:00 PM)

of blockchain technology. But to implement blockchain technology in India a few changes need to be made to the existing Copyright Act, 2012.

Required Amendments to the Copyright Act

1. Recognition of Digital Copyright Registration: The Act should be updated to acknowledge the validity of copyright registrations conducted through blockchain technology.

2. Validation of Smart Contracts: The Copyright Act could be changed to confirm the legal enforceability of smart contracts, enabling automated licencing and royalty distribution through blockchain.

3. Ownership Verification: The ability of blockchain to create unquestionable ownership records may be recognised by the Copyright Act. Offering a clear and unchangeable history of copyright ownership would make disputes regarding authorship and originality easier to resolve.

4. Blockchain as Legal Evidence: The changes should make it clearer whether blockchain-based data can be used as evidence in copyright-related court cases. This acknowledgement would highlight the function of blockchain in producing a permanent record of transactions, supporting the veracity of the evidence provided.

5. Public Domain Management: Blockchain technology could be incorporated into the Copyright Act to track copyright expiration dates. This would guarantee a precise transfer of works into the public domain, in line with the Act's goals of encouraging innovation and knowledge sharing.

6. Cross-Border IP Protection: The Act may be amended to deal with international disputes involving blockchain-recorded copyright transactions in light of blockchain's potential to facilitate international collaboration and the protection of IP rights. This would provide a legal framework for resolving disputes that cross national boundaries.

7. Data Privacy and Security: The changes should take into account the privacy issues raised by blockchain's transparency. Maintaining the confidentiality of sensitive data requires ensuring compliance with data protection laws while utilising the advantages of blockchain technology.

8. Establishment of an IP Registry: The creation of a formal blockchain-based IP registry is an important factor. By centralising copyright data, such a registry could make it easily available to creators, companies, and the general public. To acknowledge and support the use of such registries, the Copyright Act may be modified.

While the integration of blockchain technology into India's IP rights management system presents various possibilities, it requires careful consideration and a regulatory framework that considers its unique features, Amendments to the act are necessary to harness the true potential of blockchain technology.

CONCLUSION

It can be concluded that India is still a long way from implementing blockchain technology in the country. But with the implementation of blockchain, many possibilities open up. Blockchain technology provides us with multiple advantages but at the same time, there are multiple complications in implementing said technology. The Copyright Act, of 2012 needs to be amended on a large scale. But it can be seen that blockchain technology in India is a big possibility.

A CRITICAL LEGAL ANALYSIS ON THE EFFECTS OF PLASTICS IN MARINE POLLUTION IN INDIA

Shobha K V¹

Dr. Gyanashree Dutta²

INTRODUCTION

Marine pollution is a growing environmental concern that poses a significant threat to the world's oceans and marine ecosystems. Plastic waste has grown to be one of the most common and harmful causes to marine pollution, among other sources. A concerning amount of plastics garbage has accumulated in marine habitats all over the world as a result of the widespread use of plastic in contemporary civilization and poor waste management procedures.³

Plastics pollution is a major threat to the oceans and life. When garbage composed of plastic finds its way from land into the oceans, it may remain there for hundreds of years until slowly dissolving into fragments known as microplastics. When marine organisms consume these microplastics, it can result in internal damage, starvation, and even death. Larger plastic objects like fishing nets and plastic bags can also entangle marine life and cause breathing difficulties, restricted movement, and decreased reproductive success.⁴

Plastic pollution is a serious danger to the health of our seas and has devastating consequences on the marine environment. A wide range of negative consequences have been brought on by the worldwide calamity caused by the accumulation of plastic waste in marine areas. Here are a few outcomes of marine contamination caused by plastic waste⁵:

Wildlife Entanglement: Several kinds of marine creatures, especially sea turtles, seabirds, dolphins, and seals, become entangled in plastic wastes like fishing nets, ropes, and six-pack rings. Injury, asphyxia, and even death may occur from this entanglement. The capacity of

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1. Ph.D. Scholar, Alliance School of Law, Alliance University, Bangalore
 2. Assistant Professor, Alliance School of Law, Alliance University, Bangalore
 3. Rakesh Kumar, Anurag Verma, Arkajuoti Shome, Rama Sinha, Srishti Sinha, Prakash Kumar Jha, Rithesh Kumar, Pawan Kumar, Shubham, Shreyas Das, Prabhakar Sharama and P V. Vara Prasad, *Impacts of Plastic pollution on Ecosystem Services, Sustainable Development Goals, and Need to Focus on Circular Economy and Policy Interventions*, MDPI,1, 2-41(2021).
 4. DAWOON JUNG, *THE ENVIRONMENTAL RULE OF LAW FOR OCEANS* (Cambridge Press 2023).
 5. UNESCO, <https://oceanliteracy.unesco.org/plastic-pollution-ocean/> (last visited Jun. 25, 2023).

animals to survive, reproduce, and avoid predators may also be hampered while they are imprisoned or restricted from moving freely.

Internal Damage and Ingestion: Marine creatures often mistake plastic waste and microplastics as food. These tiny bits, which they swallow, may build up in their digestive tracts and create obstructions, malnutrition, and internal injuries. Small fish to huge whales are all impacted by swallowing plastic, which has an adverse effect on their general health and reproductive capabilities.⁶

Disruption of Food Chains: plastics has the potential to disturb the marine food chains and environments. Microplastics are consumed by small marine species before being transferred to larger animals through the food chain. Top predators, which include fish that human beings consume, may have increased toxin levels as a result of this process, called biomagnification. In addition, there could be worries to the well-being of humans.⁷

Chemical Pollution: A number of dangerous chemicals, including those used as manufacturing components and those that plastics take from their surroundings, are present in plastics. These compounds can be released into the ocean as plastic garbage break down into smaller fragments, potentially harming marine life and conflicting in their physiological processes.

Habitat Destruction: Plastic waste has the potential to cause damage and change marine environments like coral reefs, seagrass beds, and mangrove forests. These fragile environments may become choked and smothered with plastic trash, that will cause biodiversity to decrease and vital marine habitats to deteriorate.⁸

Economic Effect: Plastic waste in the oceans has serious negative economic effects. Entangled fishing gear produces equipment damage, reduced catch, and lost revenue to the aquaculture and fishing industries. The undesirable appears and ecological damage caused by pollution from plastic can also have a major effect on coastal tourism, which depends on clean beaches and robust marine ecosystems.⁹

Microplastics in the Food Chain: The marine food chain is polluted by microplastics, which are tiny plastic particles less than 5 mm. They have been found in a variety of human-eating

6. PETER G RYAN, INGESTION OF PLASTICS BY MARINE ORGANISMS 21(Hazardous Chemicals Associated with Plastics in the Marine Environment 2016).

7. APPL, https://applfoundation.in/sites/default/files/Mag/OG_Vol_16.pdf last visited Jun.26, 2023).

8. *Id.*

9. Madeleine Smith, David C, Love Chelsea M. Rochman and Roni A, *Microplastics in Seafood and the Implications for Human Health*, 5 CURR. ENVIRON. HEALTH REP. 375, 376-386 (2018).

seafood, including fish, crab, and even salt. While the long-term effects of microplastics on humans are not fully understood, they raise concerns about possible health problems.¹⁰

Furthermore, the environmental impacts of plastic pollution are significant. Plastic pollution in marine ecosystems disturbs natural processes and jeopardize biodiversity. As marine species consume microplastics that eventually make their way into human diets, it pollutes the food chain. Additionally, plastic garbage can suffocate coral reefs, restricting their ability to grow and thrive and altering entire marine ecosystems. At both the national and international levels, strong legislation is necessary in order to deal with the issue of pollution from plastic. Legislation governing the manufacture, consumption, and disposal of plastic products has been passed in many different countries. The objectives of these restrictions are to decrease plastic consumption, promote recycling, and advance eco-friendly alternatives. In addition, international agreements like the Basel Convention and the United Nations Convention on the Law of the Sea (UNCLOS) established a structure for addressing pollution in the oceans, bringing plastic trash into consideration.

There are still difficulties in efficiently addressing the issue of plastics pollution, regardless of these regulatory efforts. Since the issue is worldwide in scope, global collaboration and coordination are required because enforcement and compliance with existing legislation are frequently inadequate. In addition, combating plastics pollution requires an integrated approach which involves not only legal actions but also campaigns to raise awareness, educational campaigns, and technical advancements.¹¹

International Conventions like Basel Convention on the Control of Transboundary Movements of hazardous wastes and their disposal (1989), Stockholm Convention on Persistent Organic Pollutants (2001), and Global Partnership on Marine Litter (GPML), etc., and Indian Acts includes the Environmental (Protection) Act, 1986., the Plastic Waste Management and Handling Rules 2011, the Plastic Waste Management Rules 2016, the Plastic Waste Management (Amendment) Rules 2018, played a major influence within modern India to addressing the environmental concerns. However, there is no specific regulation in place for controlling plastic pollution or rules in India.

10. *Id.*

11. Giulia Carlini, Konstantin Kleine, *Advancing the international regulation of plastic pollution beyond the United Nations Environment Assembly resolution on marine litter and microplastics*, 27 EUR. REV. 234, 235-244 (2018).

LEGISLATIVE FRAME WORK WITHIN INDIA

The Plastic Waste Management Rules 2016:

The framework for regulating the usage, manufacturing, recycling, and disposal of plastic products in India is the Plastic Waste Management Rules, 2016. These regulations impose the responsibility for ensuring efficient plastic waste management practices on a number of parties, including producers, manufacturers, and municipal governments. They require the gradual phasing out of non-recyclable, multi-layered plastics and promote the use of environmentally suitable substitutes¹²

Ban on Single-Use Plastics: Several Indian states and union territory governments have adopted restrictions on the manufacture, distribution, and use of single-use plastics in an effort to reduce their widespread use. For instance, single-use plastic products such as plastic bags, cutlery, and packing materials were prohibited in Maharashtra, Tamil Nadu, and Himachal Pradesh. These restrictions aim to reduce the production of plastic trash and promote the adoption of eco-friendly products.¹³

Extended Producer Responsibility (EPR): To ensure that manufacturers are responsible for their products' complete lifecycles, including the manner in which they manage waste of previous consumers, the Extended Producer Responsibility (EPR) concept has been introduced. Producers and brand owners are liable for collecting and recycling the plastic waste produced by their products under the 2016 Plastic trash Management Rules. This approach encourages the creation of successful recycling facilities and provides manufacturers the incentive to design products which are more environmentally friendly.¹⁴

Coastal Regulation Zone (CRZ) Rules, 2019: India's coastlines and marine ecosystems are intended to be safeguarded by the Coastal Regulation Zone (CRZ) Rules, 2019, which were released by the Ministry of Environment, Forest, and Climate Change. These regulations limit the development of buildings, particularly those used to store and dispose of plastic trash, within the defined CRZ regions. The CRZ Rules help reduce plastic pollution in coastal areas by avoiding improper management of plastic trash near coastal areas.¹⁵

12. SBM, <http://swachhbharaturban.gov.in/writereaddata/SBM%20Plastic%20Waste%20Book.pdf> (last visited Jun. 26, 2023).

13. Emmy Nøklebye a, Hans Nicolai Adam a ,Avanti Roy-Basu b , Girija K. Bharat b , Eirik Hovland Steindal, *Plastic bans in India*, 139, ENVIRON. SCI. POLICY 219, 220-227 (2023).

14. *Id.*

15. Jitendra K. Panigrahi, Pratap Mohanty, *Effectiveness of the Indian coastal regulation zones provisions for coastal zone management and its evaluation using SWOT analysis*, 65, OCEAN COAST. MANAG. 34, 35-50 (2012).

International Convention on the Control of Harmful Anti-Fouling Systems on Ships Act, 2001:

The International Convention on the Control of Harmful Anti-Fouling Systems on Ships Act, 2001, has been ratified by India. The legislation prohibits the use of hazardous anti-fouling methods that contain tributyltin along with other chemicals which may contribute to marine pollution. India aims to stop the release of harmful compounds into marine habitats by complying to international standards.¹⁶

National Clean Air Programme (NCAP): Although primarily focused on reducing air pollution, the NCAP also contributes indirectly to lessen marine plastic pollution. Through the promotion of waste segregation, recycling, and the establishment of waste management facilities, the NCAP has initiatives to improve waste management practices, especially the treatment of plastic waste. These initiatives reduce the possibility of inland waterways could serve as a pathway for plastic garbage to reach coastal habitats.¹⁷

Indian cases related to marine pollution due to plastics

1. *M.C. Mehta v. Union of India* (1987): Despite being primarily worried with the Ganga River's pollution, this case established significant precedents for environmental protection in India. In its decision, the Supreme Court emphasized the importance of combating pollution from a variety of sources, including plastic trash, and of protecting marine life.

In this decision, the Supreme Court of India aimed on the societal, legal, and economic facets of the society, protecting both the environment and human rights. In order to build a better society, it is our responsibility to preserve every person's right to a safe and healthy environment.¹⁸

2. In the 2005 case of *Alang Sosiya Ship Recycling vs. Union of India*: The subject of shipbreaking and its effects on the environment, especially the improper disposal of hazardous goods, including plastics, in Gujarat's coastal areas, was raised in this case. Orders were made through the court of law to control shipbreaking operations and safeguard the marine environment.

3. *Union of India v. Indian Council for Enviro-Legal Action* (2011): This case involved the raw plastic garbage that was dumped into Delhi's Yamuna River. A strong enforcement of the

16. IMO, <https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-the-Control-of-Harmful-Anti-fouling-Systems-on-Ships>, (last visited Jun. 30, 2023).

17. NCAP, https://moef.gov.in/wp-content/uploads/2019/05/NCAP_Report.pdf (last visited Jun.30, 2023).

18. *M.C. Mehta v. Union of India* AIR 965 SC 1986.

rules controlling the use and disposal of plastics was among the steps the court ordered be put in place to avoid such dumping.¹⁹

4. *Goa Foundation v. Union of India* (2013): This case drew attention to the subject of unlawful withdrawal and its negative effects on the environment, such as the contaminating of water sources. Although it is unrelated to plastic garbage, it illustrates India's greater concern for environmental protection and the requirement for strict regulations to conserve natural resources.²⁰

The International Regulation Instruments and Policies for Plastic pollution

1. *United Nations Convention on the Law of the Sea (UNCLOS)*: UNCLOS is a wide-ranging international treaty which establishes the legal guidelines for using and protecting the oceans of the world. Although it doesn't deal with plastic waste specifically, it offers a foundation for additional agreements and initiatives to stop marine pollution. Regarding the use and protection of the oceans, UNCLOS specifies the duties and rights of states.²¹
2. *The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and on the Disposal of Hazardous Wastes*: The Basel Convention efforts to lower hazardous waste generation and manage its transboundary movements. This convention applies to all plastic garbage, including specific forms of plastic waste. It establishes a framework for managing plastic garbage in an environmentally responsible manner and restricts the movement of that substance globally.²²
3. *Stockholm Convention on Persistent Organic Pollutants (POPs)*: The Stockholm Convention seeks towards safeguard environments and continuously present pollutants impact on human health that are damaging to both. Some additives and pollutants in plastic fall under the umbrella of POPs, although they're not specifically related to plastic pollution. The convention controls and limits the manufacture, consumption, and discharge of such chemicals.²³

19. *Indian Council for Enviro-Legal vs Union of India and Ors.etc* AIR 1996 SC 1446.

20. *The Goa Foundation vs Sesa Sterlite Ltd and Ors. Writ Petition (C) No.711 OF 2015 and Writ Petition (C) No. 720 of 2015.*

21. UNCLOS, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf (last visited Jun. 30, 2023).

22. Pamela Chasek, *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, IISD (2023).

23. STOCKHOLMCONVENTION, https://www.env.go.jp/chemi/pops/treaty/treaty_en2009.pdf (last visited June.30th,2023).

Regional Agreements and Initiatives: A number of regional contracts and policies have been developed to fight marine pollution, particularly plastic pollution, in certain regions. For example, the Single-Use Plastics Directive, which establishes goals for reducing the use of specific single-use plastic items and provides extended producer responsibility programs, is being put into effect by the European Union. To combat marine pollution, additional areas, like the Caribbean, have also created regional action plans.

Internationally, there have been a number of court cases involving marine contamination caused on by plastic debris. Here are a few significant incidents

1. Taiwan's Evergreen Marine Corporation (2019): For illegally dumping plastic pellets into the ocean, Taiwan's Evergreen Marine Corporation was fined NT\$1 million (about US\$32,000) in 2019. Significant contamination along Taiwan's shoreline as a result of the incident prompted legal action and environmental cleanup measures.
2. R (on the application of Friends of the Earth Ltd and others) v. Secretary of State for Environment, Food and Rural Affairs (2015): Environmental non-governmental organizations (NGOs) challenged the UK government's decision to allow plastic microbeads to remain in cosmetic and personal care items in this particular case. The NGOs argued that the government breached its legal duty to safeguard the maritime environment by ignoring something. Considering that, the UK government announced a ban on the sale and production of goods containing plastic microbeads.²⁴
3. Torres Strait Islander v. Australian Government (2020): A group of Australian Torres Strait Islander citizens who are currently involved in this matter appealed to the UN Human Rights Committee. They claim that the Australian government has violated their rights to family, culture, and life by not taking action on climate change and its effects, such as rising sea levels and plastic pollution. The lawsuit draws attention to the link between plastic pollution and climate change as well as how this issue effects populations at risk.²⁵

CHALLENGES AND STRICT LEGAL SYSTEM PROBLEMS IN INDIA FOR PLASTIC BANS

Plastic Waste Trade: The trading in recyclable materials presents a big challenge. As a result of improper disposal and contamination, some nations may export their plastic trash to developing countries with laxer rules. Stricter controls on the export and import of plastic

24. R (on the application of Friends of the Earth Ltd and others) v. Secretary of State for Environment, [2022] EWHC 1841 (Admin).

25. Daniel Billy and others v Australia (Torres Strait Islanders Petition) CCPR/C/135/D/3624/2019

garbage, as well as improved waste management procedures globally, must be implemented to address this issue.²⁶

Technological and Financial Restrictions: Research, technology development, and infrastructure investments are necessary to come up with efficient solutions to plastic pollution. Accessing the resources and technology needed to effectively implement and uphold regulations can be challenging for developing nations. To overcome these constraints, international cooperation and support are essential.²⁷

EFFECTS OF PLASTIC POLLUTION ON INDIA'S MARINE BIODIVERSITY: AN ANALYSIS²⁸

The conservation of marine biodiversity is crucial for preserving the planet's ecological equilibrium. The presence of plastic is one of the biggest dangers to marine life, however. India faces an important issue in effectively handling plastic trash due to its extensive coastline and strongly inhabited coastal areas. This article examines the damage that plastic pollution has done on India's marine life.

One of the main sources of plastic pollution in the globe is India. Plastic consumption has greatly widened over time as a result of growing industrialization and urbanization. Plastic garbage is becoming increasingly common in India due to poor waste management practices, a lack of recycling infrastructure, and low awareness among the public. India is estimated to approximately 26,000 metric tonnes of plastic garbage are produced daily, the most of which is dumped into rivers and eventually into the seas.²⁹

In India, plastic pollution has a wide-ranging and devastating effect on marine biodiversity. Through entanglement and consumption, plastic trash directly harms marine species like turtles, seabirds, and marine mammals. Plastic bags and other garbage have been mistaken for food by these animals, resulting in internal bleeding, obstructions, and frequently death. Furthermore, the marine environment is contaminated with microplastics, which are tiny pieces of plastic

26. EUROPEAN ENVIRONMENT AGENCY, <https://www.eea.europa.eu/publications/the-plastic-waste-trade-in> (last visited Jul. 05, 2023).

27. Jefferson Hopewell, Robert Dvorak, and Edward Kosior, *Plastics recycling: challenges and opportunities*, 364, PMC, 2115, 2116-2126, (2009).

28. IUCN, <https://www.iucn.org/resources/issues-brief/marine-plastic-pollution> (last visited Jul. 05, 2023).

29. Subhrangshu Sekhar Sahoo, *Waste Management Issues and Rules in India*, (2021).

smaller than 5 mm. The plankton the base of the marine food chain, consumes them, which causes poisons to bioaccumulate as they migrate up the food chain.³⁰

Additionally, maritime environments are impacted by plastic pollution. Coral reefs can become choked with plastic debris, harming their fragile ecosystems and reducing their capacity to shelter and sustain a variety of marine creatures. In addition, mangroves, seagrass, and other coastal flora that is essential for marine life being are bound and suffocated by plastic garbage. Additionally, turtle's places of nesting are harmed by plastic debris on beaches, which also interferes with the success of turtle eggs hatching.³¹

In India, the following laws are vital in fighting towards marine loss of biodiversity and plastics pollution:

The Plastic Management Rules 2016

Rule 9: Certain plastic products, particularly carry bags, cutlery, and nonwoven polypropylene bags, are forbidden from being manufactured, sold, and used. Rule 17: Municipalities and governmental entities are responsible for controlling plastic garbage and establishing collection methods. Rule 18: Extended Producer Responsibility (EPR) for managing and recycling waste plastic by producers, importers, and brand owners.³²

The IPC (Indian Penal Code)

- Section 277: Handles offences involving contamination of water, such as the deposit of plastic garbage in water bodies.
- Section 278: Deals with the crime of discharging dangerous substances into the air, such as burning plastic garbage.³³
- The 1972 Wildlife (Protection) Act:
- Section 2(16): Species found in the sea are classified as protected creatures, and it is unlawful to harm or disturb them.

30. CENTER FOR BIOLOGICAL DIVERSITY, https://www.biologicaldiversity.org/campaigns/ocean_plastics/ (last visited Jul. 05, 2023).

31. *Id.*

32. CENTRAL POLLUTION CONTROL BOARD, <https://thc.nic.in/Central%20Governmental%20Rules/Plastic%20Waste%20Management%20Rules,%202016.pdf> (last visited Jun. 30, 2023).

33. IPLEADERS, <https://blog.ipleaders.in/indian-penal-code-encompass-environmental-pollution/> (last visited Jul. 09, 2023).

- Section 9: Prohibits the taking of marine animals or its accidental demise due to entanglement in plastic waste.³⁴
- The 1986 Environmental Protection Act
- Section 15: Gives the federal government the power to take action to protect and enhance the environment.
- Section 19: Defines penalties for violating environmental laws, such as improperly disposing of plastic garbage.³⁵

CONCLUSION AND SUGGESTIONS

Jurisdiction and Enforcement: Determining jurisdiction and executing rules in international waters is one of the greatest challenges in controlling marine pollution. Since no single state has sovereignty in international waterways, it is challenging to implement laws there. To overcome this problem, global collaboration and effective enforcement mechanisms are required.

Lack of Binding measurements: Although there are global agreements in place, some of them lack robust enforcement measures or may not be legally binding. This could hinder their capacity to mitigate marine pollution. To effectively tackle the problem, the legal frameworks must be enhanced and agreement adherence must be ensured.

Monitoring and Enforcement: To efficiently track compliance with plastic restrictions, there must be strong enforcement measures in place. The effectiveness of the bans is, however, hampered by the inadequate enforcement and sanctions. The complexity of monitoring and enforcement is further increased by the involvement of numerous government agencies.

Promoting Sustainable Alternatives: The promotion and backing of sustainable alternatives is essential to overcoming the difficulties brought on by plastic restrictions. This includes funding the creation of eco-friendly materials, promoting the use of biodegradable packaging, and supporting the development of cutting-edge waste management techniques.

Action must be taken right away towards discussion on the urgent environmental problem of plastic pollution in India. The government has set restrictions on single-use plastics in place, but there are still problems with how well they are being carried out. A multifaceted strategy comprising information campaigns, enhanced infrastructure, assistance for the unorganized

34. THEWILDLIFEPROTECTIONACT1972, <https://www.legalserviceindia.com/articles/wlife.htm> (last visited Jul.09, 2023).

35. TEAMLEASE, <https://www.teamleaseregtech.com/resources/acts/article/141/environment-protection-act-1986-and-hazardous-and-other-wastes-managem/> (Last visited Jul. 09, 2023).

sector, tough enforcement, and the promotion of sustainable alternatives is needed to address these issues. India can open the door to a future that is cleaner, more sustainable, and free of the problem of plastic pollution by working together to overcome these obstacles.

A STUDY INTO THE ROLE OF GI IN THE PROTECTION OF BIODIVERSITY AND NATIVE BUSINESSES OF THE KARNATAKA SPICES INDUSTRY

Pranathi Nandula¹

INTRODUCTION

Geographical Indications, hereafter referred to as GI, have evolved to be the safe haven for native businesses and biodiversity in Karnataka. As of December 2022, Geographical Indication Labels on products in India amount to 432. These products are distinctly identified by a GI Tag, which enables people to discern the authenticity of products, and additionally to boost export-grade material in the economy. The creation of GIs in the world of Intellectual Property has enabled cultures to control their heritage and protect the origins of various commodities.

With the onset of the Amrit Kaal, the GI tagging system is said to have boosted the Indian Economy, enabling local businesses in rural areas and other small industries to grow and contribute to the country's purse. Further, the WTO and WIPO back the idea of sustainable development and the shielding of Biodiversity through Geographical Indications, and actively encourage farmers to safeguard the surrounding ecosystem. This paper is an attempt to delve into a micro-level analysis of local farmers, including their attempts at promoting their businesses whilst maintaining the biodiversity of the area in the Karnataka Spice Industry. A noteworthy focus in this paper is dedicated to how GI tagged products fare in the home market (rather than just exports), how local vendors acquire these products, and whether biodiversity-friendly methods of production are used in the process.

As of June 2023, Karnataka grows three spices that have been given a Geographical Indication Tag^[2] -

S. No.	Name of Spice	District(s) Grown	Year of GI tag conferment
	Coorg Green Cardamom	Kogadu	2008
	Malabar Black Pepper	Kodagu, Dakshina Karnataka	2008
	Byadgi Chilli	Haveri	2011

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1. 1st year Law Student at B M S Law College.
 2. GEOGRAPHICAL INDICATIONS REGISTRY, DETAILS OF BYADGI CHILLI, <https://search.ipindia.gov.in/GIRPublic/Application/Details/129> (last visited May 10, 2023).

These spices have seen a gross increase in production in their respective regions. Further, exports of these spices have increased tremendously, with all three spices having a 200% increase in prices in 2023 as compared to 2011. These indicators propose that these spices have created a market for Local Businesses to prosper and improve their production.

ANALYSIS

Coorg Green Cardamom

The Coorg Green Cardamom (*Elettaria Cardamomum*) is a variation of Cardamom grown in the Kodagu District of Karnataka and some adjoining districts (Chikmagalur, Hassan, North Kannada). Known as the queen of spices, the spice is grown at around 3000-5000 feet above sea level, and is known for its aroma, taste and volatile oil content. It is grown under the shade in a warm and humid climate. It is usually grown on gentle or steep slopes having red loamy soil or mixed soil type with gravel land types^[3].

This type of cardamom is grown in the 'Kadu' regions or the forest regions of Kodagu, away from other plantations, but surrounded by a lot of natural vegetation useful for the crop's survival. Further, though this crop grows through extensive care, it's quite difficult to carry irrigation facilities, pesticides and fertilisers. Therefore, this crop is usually organic by default^[4].

As prescribed by GI Applications and other awareness programmes, the crop is planted facing east or north, given the ill-effects of the setting sun on the plants. It is the significant vaporous oil content in the Coorg green cardamom that distinguishes it from other indigenous varieties. The average produce in a quarter of an acre is estimated to be around 10 kilograms of dry cardamom^[5]. About 40.5 percent of the total produce in Karnataka is accounted for from the Coorg region. This is a highly labour-intensive crop consisting of a sizable portion of women in its workforce, at 71%, as compared to men.

Malabar Black Pepper

The Malabar Black Pepper (*Piper Nigrum*) is a type of Black Pepper grown in the Malabar Coast region of Kerala and Karnataka. As this paper specifically focuses on crop production from Karnataka, it is to be noted that the Kodagu and Dakshina Karnataka Districts of Karnataka are involved in the production of this spice. Being a perennial crop, the production takes place all year round. It grows well in clay, loamy and sandy types of soil with partial shade.

3. COORG GREEN CARDAMOM, <https://sahasa.in/2021/08/09/coorg-green-cardamom/> (last visited May 10, 2023)
4. Garcia, C., Marie-Vivien, D., Kushalappa, C. G., Chengappa, P., & Nanaya, K. M. *Geographical Indications and Biodiversity in the Western Ghats, India.*, 27 Mountain Research and Development 206–210 (2007). <https://doi.org/10.1659/mrd.0922>
5. *Supra* note [2]

This crop's medicinal qualities, and its aromatic and strong taste are widely acclaimed. As the crop requires a lot of nutrients, soil leaching can occur, and has to be rotated every 7 years if being cultivated outdoors. It grows well next to plants that offer it benefits like cocoa and trees with shaggy or rough barks. Being a highly demanding crop, not a lot of natural vegetation can exist alongside peppercorns. Therefore, it is not entirely competent for sustaining biodiversity.

Byadgi Chilli

The Byadgi Chilli is another variation of Chilli grown in Karnataka's Haveri District. The Chilli's deep red colour, with a minimal pungent taste has been the secret ingredient to South Indian Sambar for centuries. The trade surrounding this variety of chilli is said to have the second largest revenue among all chilli varieties in India^[6].

During the period of growth, the Byadgi Chilli crop requires a warm and sultry climate and dry weather conditions during the time of harvest. Though it can grow in varied soil types, it grows the best in the loamy type of soil.

Byadgi Chilli comes in two varieties - Dabbi and Kaddi. Byadi Dabbi is described to be 'small and plump', and is more popular for its taste and colour. It is generally considered to be less spicy compared to the Kaddi variety. The Kaddi type has fewer seeds, and is gnarled and long^[7].

Rights Conferred to Users through Registration of Geographical Indications

Geographical Indications, once registered, confer a party with certain rights and privileges. They are defined in Section 20 of The Geographical Indications of Goods (Registration and Protection) Act, 1999 as follows:

- a. *"Subject to the other provisions of this Act, the registration of a geographical indication shall, if valid, give,--*
 - a. *to the registered proprietor of the geographical indication and the authorised user or users thereof the right to obtain relief in respect of infringement of the geographical indication in the manner provided by this Act;*
 - b. *to the authorised user thereof the exclusive right to the use of the geographical indication in relation to the goods in respect of which the geographical indication is registered.*

6. Krishnamurthy, K., Murthy, K. B., & Pandit, P. *Study on price variability of Chilli at Byadgi market of Karnataka.*, 1(4) International Journal of Agriculture and Food Science, 25–28, (2019). <https://doi.org/10.33545/2664844x.2019.v1.i4a.22> (last visited May 15, 2023)

7. BYADGI CHILLI, <https://www.byadgichilli.in/> (last visited May 11, 2023)

3. *The exclusive right to the use of a geographical indication given under clause (b) of sub-section (1) shall be subject to any condition and limitation to which the registration is subject.*
4. *Where two or more persons are authorised users of geographical indications, which are identical with or nearly resemble each other, the exclusive right to the use of any of those geographical indications shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by anyone of those persons as against any other of those persons merely by registration of the geographical indications, but each of those persons has otherwise the same rights as against other persons as he would have if he were the sole authorised user.^[8]*

In other words, a GI Tag enables a user to maintain the sole authority to use geographical indications in correspondence to a good in that specific region. This enables local farmers and businesses to a great extent, enabling them to make use of this sole proprietorship to maintain the legitimacy of their plants. Further, the insignia of authentication as provided on the packaging enables consumers at large of the commodity's originality. In this sense, the tag not only protects a producer's ability to produce quality goods and reap their benefits but also protects consumers rights and acts as a method of ensuring trust among the two parties.

As the breach of these rights is actionable by law, the users of the Geographical Indications tag are also empowered to bring to test any form of adulteration of their products. This in specific was brought into light when the Coorg Green Cardamom was bestowed with the GI Tag in 2008, where it was noted by the Deccan Herald^[9], that prior to the ingress of the Tag, the Spice was mixed with Gwatimala Cardamom, and was simply sold as Indian Cardamom. As a result, it can be inferred that the GI tag also protects consumers against Adulteration of Products and therefore also acts as a major promoter of the spice internationally.

On promotion of Local Businesses

Local Businesses in the regions of production actively employ the sole right to cultivate the spices and the GI Tag to their advantage. The features of the GI Tag system grant trust in the product internationally and locally, enabling the producer to sell products with ease and confidence. The promotion of GI to Local Businesses incentivises their production levels, and

8. The Geographical Indications of Goods (Registration and Protection) Act, 1999 No.48 of 1999, <http://ipindia.gov.in/act-1999.htm> (Accessed May 4, 2023)

9. *Coorg cardamom gets Geographic Index status*, Deccan Herald (Aug. 5, 2009), <https://www.deccanherald.com/content/18104/coorg-cardamom-gets-geographic-index.html>.

given the enthusiastic market, which bagged around \$4.1 Billion in the financial year 2021-22^[10], plays a positive role in their evolution.

Further, the promotion of GIs directly affects the competitive aspects of the market for the product, creating a monopolistic competitive market situation due to increased product differentiation and market segmentation. The complete control over the supply, and thereby demand, this monopoly-like situation facilitates local businesses to remain as price-makers, and extends economic support and autonomy enormously. This also leads to higher incomes among the Local Businesses and increases their standards of living to a great extent.

In relation to the export market, export-grade consignments of these spices are being sold at INR 800-3040 rupees per kilogram in the market. Further, the government through the Department of Promotion of Industry and Internal Trade has been providing financial support to businesses in the form of “creating awareness about significance of GIs and its uniqueness, promoting registered Indian GIs, identifying potential GIs and encouraging stakeholders towards registration.”^[11] Further, it also said that it would be extending financial assistance to eligible agencies as 100 per cent grants in aid for undertaking initiatives for promotion of GIs.

The Agricultural and Processed Foods Products Export Development Authority (APEDA) has also proposed a Financial Assistance Scheme (FSA), meant to be undertaken in the bracket of the years 2021 to 2026. This scheme has provisions regarding the development of Export Infrastructure by the Assistance for the installation of Processing and Supply Chain Infrastructure, strengthening of Industrial and Managerial Skills and Assistance to National Referral Laboratories and other Government Sector Institutions for monitoring of agrochemicals, pesticides, aflatoxins and much more^[12].

With reference to the home market, around 15 vendor shops across Gandhi Bazaar and Rajarajeshwari Nagar in Bengaluru, Karnataka were enquired about the role of GI Tag in the sale of the spices to which a common reply was provided. Majority of the shops claimed to have acquired the products from their respective regional markets, but did not actively use the concept of GI Tags to promote their businesses or explain the grounds for the products’ high prices. Around 7 shops knew about Geographical Indications, but did not know of their benefits or uses in the export market. Further, 10 shops claimed to have purchased the spices

10. *Indian Spices, Spices Manufacturers and Exporters in India*, <https://www.ibef.org/exports/spice-industry-india>. (last visited May 03, 2023).

11. *Government to provide financial support to eligible agencies to promote GI*, The Indian Express (Mar. 12, 2023), <https://indianexpress.com/article/business/market/government-financial-support-eligible-agencies-promote-geographical-indications-8491890/>

12. *Financial Assistance Schemes*, Agricultural and Processed Food Products Export Development Authority https://apeda.gov.in/apedawebsite/trade_promotion/Financial_Assistance_Schemes.htm.

in loose quantities, thereby raising queries about their legitimacy and undefining the scope for adulteration.

Role of Women

A study into a group of women involved in Post-Harvest Activities of Byadgi Chilli in APMC Mandis was conducted by the Department of Extension and Communication in the Indian Research Journal of Extension Education and brought into light their socio-personal profiles and impediments faced by them. Most women respondents (73.33%) from the Byadgi APMC Mandis belonged to the medium income category. These women were married, lived in nuclear families, and had very little contiguity with extension workers, either due to lack of knowledge or the lack of need for, as most of these women were landless. Another piece of statistical data suggested that Women in Karnataka's Haveri District had a median level of social participation, but their organisational participation was quite low.

Variables	Categories	Number of Women	Percentage
Education	Illiterate (0)	32	64.00
	Primary Class (Grade 1-4)	18	30.00
	Middle School (Grade 5-7)	10	16.67
	High School (Grade 8-10)	-	-
Annual Income	Low (Up to Rs. 1,32,000)	16	26.67
	Moderate (Rs. 1,32,000 - Rs. 5,72,000)	44	73.33
Matrimonial Status	Married	56	93.33
	Widow	04	06.67
Land Holding	Landless/No Land	60	100.00
	Marginal Farmers (<2.5 acres of dry land)	-	-
Extension Participation	Low (0-6)	60	100.00
Mass Media Participation	Low (1-6)	54	90.00
	Medium (7-12)	6	10.00
	High (13-18)	-	-
Social Involvement	Low (1-5)	10	16.66
	Medium (6-10)	28	46.67
	High (11-15)	22	36.67

Organisational Involvement	Low (1-7)	60	100.00

Table: Highlights of profiles during post-harvest activities of Byadgi Chilli by Women in APMC Mandis (N=60) [2022]^[13]

Women in this business suffer from quite a lot of constraints. Less wages, inability to manage two lives - at work and at home - seasonal unemployment, deficiency of assistance from government, delay in payments, malpractices in the measuring of weights and so on are some of the many problems reported by them. Having worked only during the post-harvest seasons, these women find it difficult to support their families.

Constraints	Number of Women	Percentage
Reduced Wages	56	93.33
No off-season jobs	52	86.66
Inability to oversee time between household work and APMC work	36	60.00
High Cost of Transportation to reach APMC	46	76.66
Malpractices in the Measurement of Weight	04	06.66
APMC is too far away too reach	56	93.33
Detainment in payment due to middlemen	22	36.66
Others	36	60.00

Table: Highlights of profiles during post-harvest activities of Byadgi Chilli by Women in APMC Mandis (N=60) [2022]^[14]

This data proposes that though GI tags actively enable producers to sustain the sole right to produce, they do not maintain the sole right to sell due to systemic failures and deep rooted corruption. It is noticeable that there exists a rampant meagreness of awareness programmes and promotion of Geographical Indications and the rights they bestow upon producers.

On Overall Rural Development

The very purpose of a GI tag, as described by the European Union, is to create “a legal and commercial basis for development of rural areas, the preservation of cultural heritage

13. Jhansi B., *Socio-Personal Profile of APMC Women Involved in Post-Harvest Activities of Dry Chilli and Their Constraints – A Comparative Study.*, 22 Indian Research Journal of Extension Education 13–21 (2022). https://doi.org/10.54986/irjee/2022/oct_dec/13-21
14. Jhansi B., *Socio-Personal Profile of APMC Women Involved in Post-Harvest Activities of Dry Chilli and Their Constraints – A Comparative Study.*, 22 Indian Research Journal of Extension Education 13–21 (2022). https://doi.org/10.54986/irjee/2022/oct_dec/13-21

[and] the promotion of small and medium firms in the rural economies context^[15].” Another advantage of Geographical Indications is the strong territorial bond that the product shares with the area of production. This newfound importance being given to rural areas throughout the country therefore is in obedience with many of the Government initiatives at making India more inclusive to the rural economy by boosting it substantially. Therefore, the introduction of Geographical Indications plays an important passive role in the development of rural areas as well. The active promotion of GIs in a region, the spread of awareness about the same also invite indirect developmental activities relating to agro-tourism, employment, establishment of educational institutions and so on^[16].

On Biodiversity

The WTO and WIPO are of firm belief that Intellectual Property and Sustainable Development can walk hand in hand. The organisations are of firm opinion that the growth of the numbers of Geographical Indications is directly related to the growth for the need of better biodiversity. It is a necessity on part of the producers to ensure the environmental factors of Spices grown in areas as discussed earlier. The Western Ghats are strong mountain areas that consist of rich flora and fauna. Plantations for Cardamom, Chillies, and Pepper are therefore warranted and act in accordance to the maintenance of biodiversity already present in the areas. However, no positive increase in biodiversity cover has been noticed in the light of the GI Tag conferment.

Though the linkage to GI Tags is difficult to pinpoint, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation also enables parties to preserve the biodiversity of the regions of production. The rich biodiversity found in progressing States like India are effectively protected from the exploitation of resources by Multinational Corporations. Local cultural heritage, traditional know-hows and anti-bio-piracy movements are effectively protected^[17].

A research article entitled “Geographical Indications Associated Crops and Biodiversity in the Western Ghats, India”^[18] analysed the growth of the Coorg Green Cardamom in Kodagu

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15. Bramley, C., *A Review of the Socio-Economic Impact of Geographical Indications: Considerations for the Developing World.*, (2012).
 16. *Ibid.*
 17. *ROLE OF GEOGRAPHICAL INDICATIONS IN CONSERVATION OF BIODIVERSITY*, Indian Review of Advanced Legal Research, <https://www.iralr.in/post/role-of-geographical-indications-in-conservation-of-biodiversity> (last visited on May 19, 2023).
 18. Garcia, C., Marie-Vivien, D., Kushalappa, C. G., Chengappa, P., & Nanaya, K. M. *Geographical Indications and Biodiversity in the Western Ghats, India.*, 27 Mountain Research and Development 206–210 (2007). <https://doi.org/10.1659/mrd.0922>

District, Karnataka, India and the link with Biodiversity. It concluded that the growth of spices alongside other crops that the regions are usually famous for (in this case, Coffee) is a positive development in the conservation of biodiversity, given that Coorg Green Cardamom is a plantation grown in the forest regions of Kodagu with little to no human intervention. Further, the encouragement of biodiversity-friendly practices among farmers can lead to greater conservation of natural resources, as well as the ecosystems already in place.

However, the biggest issue with the current situation between GI and Biodiversity is that there are no specific provisions linking the two explicitly. The measures taken by local farmers, therefore, are simply measures taken up traditionally, and no actual initiatives educating farmers about eco-friendly practices and spreading awareness relating to biodiversity protection have not been taken up.

CONCLUSION

The Geographical Indications System, though first introduced in India in 2004, is still in its nascent stage of development. Improvement in the cultivation of spices in the International arena has much higher potential, if farmers are empowered to make decisions about their crop more efficiently. Further, there still exist substantial bottlenecks - ranging from a paucity of education about the picture of Geographical Indications to adulteration of weights and wages for the farmers. These issues cripple rural agricultural livelihoods, which defeats the very purpose of the GI tags.

In furtherance to the claim made above, it has also been interposed that the potential of GI Tags lies only within the Export market. Local trading businesses that supply to the home country markets face the brunt of the failure of an honest and unadulterated system to a much higher degree compared to the international market. On biodiversity, one can deduce that farmers tend to make decisions based on opportunity, though eco-friendly and conservationist policies are actively being deployed by the Government at a slow rate.

In addition, it is eminent that though there exist great economic benefits for the country, with the trade in the sector rising 36% percent from financial year 2020-21 to financial year 2021-22, the serious systemic fallacies that haunt the industry are extremely problematic. These faults, if unchecked, could lead to the exploitation of local businesses and the biodiversity in the regions. There is an urgent need to protect the regions from misuse and manipulation, and a requirement to educate the local businesses on their rights and responsibilities.

With this in mind, it is concluded that the role of GI in the protection of Local Businesses and Biodiversity is immense, given that it ought to be directed in the right direction - towards development and inclusivity.

FINDINGS AND SUGGESTIONS

Findings

1. The conferment of GI Tags in relation to the crops in the Karnataka Spice Industry has helped in the promotion of exports in the global market.
2. GI Tags have ensured the sole proprietorship of production with the farmers of the region.
3. GI Tags have created a platform for greater procurement of Spices for Export related activities by MNCs and the Government for both exports and local market sale.
4. GI Tags have provided employment opportunities, improved social and organisational interaction. Thereby, they have improved rural industries.
5. GI Tags have encouraged local farmers to practise more biodiversity-friendly farming methods.
6. The tags have enabled Agro-Tourism and other benefits to the burgeoning of the region.
7. The existence of the Indication has stopped adulteration in the varieties and has built consumer trust.
8. However, the same cannot be said for local market sales.
9. The conferment of GI Tag to the Spices has led to a positive trend in prices of the products.
10. Awareness of GIs, and the rights and processes as mentioned in the Geographical Indications of Goods (Registration and Protection) Act, 1999 are still largely unrecognised.
11. Women face a large amount of constraints in the production process of these spices.
12. The lack of government intervention, aid and awareness programmes has led to a loss of skill, absence of financial support, and low levels of standards of living.

Suggestions

1. There is an urgent need to spread awareness through programmes and provide vocational training to sections of the working population to ensure employment throughout the year.
2. The farmers must be taught the provisions of the Geographical Indications of Goods (Registration and Protection) Act, 1999 for a better understanding of the rights they own.

3. Farmers must be taught higher order biodiversity-friendly and ecological methods of cultivation.
4. Large amounts of financial aid is required for the promotion of this industry, as well as educational and recreational purposes.
5. There is a need to check Middleman Corruption in APMC Mandis and promote efficiency.
6. There is a need for clearer legal framework regarding the co-existence of Biodiversity and Geographical Indications in a region.
7. The Food Standards and Safety Authority of India must act more diligently in order to prevent the adulteration of spices in the local markets.

AN ANALYSIS ON SIGNIFICANCE OF ARTIFICIAL INTELLIGENCE IN LEGAL RESEARCH

Aman Shamsher¹

INTRODUCTION

Artificial Intelligence (AI) is a multidisciplinary field that focuses on creating intelligent machines capable of simulating human-like cognitive functions. These functions include learning, reasoning, problem-solving, perception, language understanding, and decision-making. AI technologies aim to develop systems that can analyze and interpret complex data, adapt to different situations, and perform tasks that usually require human intelligence.

AI can be categorized into two main types:

1. **Narrow or Weak AI:** This type of AI is designed for specific tasks and performs exceptionally well within its predefined domain. Examples include virtual personal assistants, recommendation systems, and image recognition applications.
2. **General or Strong AI:** This represents a level of AI where machines possess human-like cognitive abilities and can understand, learn, and apply knowledge across diverse tasks. Achieving strong AI remains a long-term goal and a subject of ongoing research.
3. AI is implemented through various techniques such as rule-based systems, expert systems, natural language processing, and machine learning.

Machine Learning (ML)

Machine Learning is a subset of AI that focuses on enabling machines to learn from data and improve their performance over time. ML algorithms allow computers to identify patterns, relationships, and insights in large datasets, without being explicitly programmed for each scenario. ML can be categorized into several types:

1. **Supervised Learning:** Algorithms learn from labeled examples to make predictions or decisions. Classification and regression are common tasks within supervised learning.
2. **Unsupervised Learning:** Algorithms analyze unlabeled data to find patterns and groupings, often used for clustering and dimensionality reduction.

1. 4th Year Student, B.A. LLB(H), Centre for juridical studies, Dibrugarh university.

3. Reinforcement Learning: Agents learn to take actions in an environment to maximize rewards, suitable for scenarios involving decision-making and learning from trial and error.
4. Deep Learning: A subset of ML that employs neural networks with multiple layers to automatically learn hierarchical representations of data, extensively used in tasks like image and speech recognition.

AI-POWERED TRANSFORMATION OF LEGAL RESEARCH: ENHANCING EFFICIENCY AND ACCURACY

The legal profession has long relied on thorough research to build strong cases and make informed decisions. However, traditional legal research methods have often been time-consuming and challenging due to the immense volume of legal data, intricacies of legal language, and the need for precise search queries. Artificial Intelligence (AI) is revolutionizing legal research by leveraging advanced technologies like Natural Language Processing (NLP) and machine learning to enhance efficiency, accuracy, and predictive capabilities.²

Challenges of Traditional Legal Research

Legal research involves sifting through vast databases of legal precedents to find relevant cases that can support legal arguments. The language used in traditional legal research queries can be rigid and unnatural, often leading to either too specific or too vague results. This problem becomes even more pronounced when searching for nuanced legal concepts or exploring alternative terminologies. Moreover, the sheer volume of available legal information can make it difficult for legal professionals to identify the most pertinent cases efficiently.

The Role of Artificial Intelligence

AI legal research tools are changing this landscape by harnessing the power of NLP and machine learning. These tools process human language in a more intuitive and conversational manner, akin to how legal professionals interact with colleagues. NLP allows AI to understand the context, semantics, and subtleties of legal language, enabling it to provide relevant results without the need for overly specific search queries.

Predictive Analytics for Legal Outcomes

Beyond efficient search capabilities, AI's machine learning capabilities offer predictive analytics that can assist attorneys in understanding how courts may rule on certain cases. The massive amount of legal documents available online, such as through PACER, is beyond the

2. Alison Wilkinson, *How AI is Revolutionizing Legal Research* KIRA SYSTEMS (2023), <https://kirasystems.com/learn/how-ai-is-revolutionizing-legal-research/> (last visited July 8, 2023).

practical scope for manual review. AI systems can swiftly categorize and analyze this data, providing insights into historical court decisions and trends. This predictive aspect of AI can aid attorneys in crafting more persuasive arguments and preparing for potential outcomes.

Unique Features and Benefits

One of the significant advantages of AI legal research tools is their ability to learn from previous user interactions. By building predictive models based on users' queries and results, AI systems can anticipate attorneys' needs and fill gaps in their search queries. This iterative improvement not only enhances the accuracy of results but also saves valuable time for legal professionals.

In conclusion, AI's integration into legal research is transforming the way legal professionals approach information retrieval and analysis. By leveraging NLP, machine learning, and predictive analytics, AI-powered tools streamline research processes, enhance search accuracy, and offer valuable insights into legal outcomes.

EMPOWERING LEGAL PRACTICE WITH ARTIFICIAL INTELLIGENCE

The legal industry, traditionally characterized by labor-intensive research, long hours, and information overload, is undergoing a revolutionary transformation through the integration of Artificial Intelligence (AI). This shift is alleviating the challenges faced by legal professionals, enhancing efficiency, improving client engagement, and reshaping the very nature of legal work.

Addressing Workload Challenges

The demanding nature of legal work often leads to extended work hours and a detrimental impact on lawyers' work-life balance. AI-driven tools are mitigating these issues by streamlining processes that were previously time-consuming. Legal research, a cornerstone of legal practice, has been significantly transformed. AI's ability to process and comprehend complex legal language enables rapid identification of relevant cases, statutes, and precedents, saving lawyers precious hours.

Unleashing Attorney Creativity

By automating repetitive tasks such as research and document review, AI allows attorneys to channel their energy into tasks that require human judgment, creativity, and strategic thinking. The ability to craft compelling arguments, strategize effectively, and engage with clients on a

deeper level becomes more achievable. As AI shoulders the burden of routine tasks, lawyers are better positioned to offer more insightful and innovative legal counsel.

Predictive Insights and Informed Decisions

AI's influence goes beyond mere efficiency. Predictive analytics, fueled by AI's machine learning capabilities, empower lawyers to anticipate judicial outcomes based on historical data. Access to vast repositories of online court documents, analyzed and categorized by AI, equips attorneys with invaluable insights that shape case strategies and negotiation approaches. This predictive power enhances decision-making and increases the likelihood of favorable outcomes.

Client-Centered Transformation

The benefits of AI extend to clients, enhancing the attorney-client relationship and redefining service delivery. Reduced time spent on research translates to more time dedicated to understanding client needs, tailoring legal solutions, and maintaining open communication. This client-centric approach fosters trust, loyalty, and a sense of value for clients seeking legal assistance.

AI's Versatility Across Legal Functions

AI's influence is pervasive across various legal functions. E-discovery, the process of identifying relevant electronic information in litigation, is expedited by AI tools, which swiftly scan and organize digital documents. Legal research software powered by AI ensures comprehensive searches, saving time while producing insightful results. Document management and automation powered by AI simplify data organization, document creation, and version control, contributing to streamlined collaboration.

The infusion of AI into the legal industry is driving a paradigm shift, offering attorneys relief from overwhelming workloads and enabling them to focus on higher-value tasks. The dynamic interplay between AI's capabilities and legal professionals' expertise is ushering in a new era of legal practice, marked by enhanced efficiency, client-centricity, and transformative outcomes.

ENHANCING LEGAL PRACTICE THROUGH AI: A COMPREHENSIVE OVERVIEW

The legal landscape is rapidly evolving with the integration of Artificial Intelligence (AI), reshaping the way legal professionals conduct their work and interact with clients. This transformation extends to various aspects of the legal field, from due diligence and document review to client-centered experiences and ethical considerations³. Let's delve into the nuanced dimensions of AI's impact on legal practice:

3. *The power of AI in Legal Research: Lexisnexis Community*. Available at: <https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/the-power-of-artificial-intelligence-in-legal-research> (last visited 14 July, 2023).

AI Streamlines Due Diligence and Document Review

Due diligence, a critical process involving meticulous document review, can be significantly expedited through AI-powered solutions. AI algorithms excel at identifying specific documents, clauses, and variations, resulting in a faster and more accurate assessment. While human review is still advisable, AI's efficiency saves legal professionals substantial time and effort, enabling them to focus on higher-value tasks.

Precision in Litigation Examination

In evaluating litigation viability and case value, AI's ability to swiftly analyze precedent-setting decisions empowers lawyers to craft precise and informed strategies. Machine learning algorithms can rapidly review past cases, aiding in drafting documents that align with historical outcomes, leading to more accurate predictions and successful representation.

Dual Benefits: Firm and Client

The integration of AI in law firms yields advantages for both legal professionals and clients. Leveraging AI automates routine tasks, thus boosting overall productivity. Time-consuming processes, such as contract retrieval and invoice preparation, become streamlined, allowing attorneys to dedicate more time to meaningful client interactions and value-driven work.

Broadening Access to Justice

AI has the potential to democratize access to justice by reducing the financial barriers associated with legal assistance. By enhancing efficiency in research and analysis, lawyers can offer cost-effective solutions, passing on savings to clients. This shift encourages a broader range of clients to seek legal aid, ultimately bridging the gap between legal services and those in need.

Elevating the Client Experience

AI's most impactful contribution might be its role in enhancing the attorney-client relationship. With AI handling routine tasks, lawyers can invest more time in cultivating connections, understanding client needs, and tailoring solutions. This client-centric approach cultivates trust, leads to better outcomes, and fosters loyalty.

Ethical Considerations

As AI becomes more integrated into legal practice, ethical concerns emerge. The American Bar Association's Model Rules emphasize the importance of technological competence for lawyers. While AI's benefits are evident in research and database queries, questions arise when AI ventures into predictive analysis. Unconscious bias, a concern in AI, demands vigilant monitoring to ensure equitable outcomes.

Legal Liability and Accountability

AI introduces complex questions of legal liability. If AI-generated advice leads to biased or inaccurate conclusions, who bears responsibility – the attorney, the AI tool, or its vendor? As AI tools expand, the boundaries of responsibility require clarification. Until then, questions persist regarding AI’s role in legal proceedings.

AI Tools for Enhanced Practice

Numerous AI-powered tools are transforming legal practice. Platforms like Smith.ai offer virtual receptionists and AI-driven chatbots. Gideon streamlines client interaction through efficient lead qualification. Casetext assists with legal research by quickly identifying relevant cases, while Diligen enhances due diligence by summarizing contracts.

AI’s integration into the legal domain is multi-faceted, offering efficiency gains, improved client engagement, and ethical considerations. Its potential to reshape the practice of law while enhancing access to justice underscores its transformative impact. While challenges persist, the collaboration between human expertise and AI innovation holds the key to an empowered and efficient legal future.

REVOLUTIONIZING LEGAL RESEARCH WITH ARTIFICIAL INTELLIGENCE IN THE 21ST CENTURY

The International Trademark Association (INTA) recognizes the transformative power of Artificial Intelligence (AI) in reshaping legal research and practice. From its inception by computer scientist John McCarthy in 1956 to its current status as a cornerstone of technological progress, AI has evolved from theoretical concepts to practical applications that can revolutionize legal operations.

AI: From Concept to Practicality

AI, once confined to the realm of “thinking machines,” has expanded into a significant branch of computer science. It encompasses various subsets, including machine learning, deep learning, natural language processing, computer vision, and neural networking. AI’s potential goes beyond mere buzzwords; it offers tangible solutions to tasks that traditionally require human intelligence.

AI’s Limited Penetration in Legal Practice

While AI’s potential is vast, its adoption in the legal profession lags behind other sectors. A 2019 report by Bain & Company revealed that only about 20% to 25% of legal departments utilize AI, compared to 40% in finance and 54% in human resources. Despite the evolution from hardcopy materials to internet research, attorneys continue to spend a significant portion of their time on legal research, as indicated by an American Bar Association poll.

AI's Cost-Effective Benefits

Clients' demand for cost efficiency propels the integration of AI into legal research. AI-driven solutions expedite research tasks, potentially saving valuable time and resources. A case cited from the Harvard Journal of Law & Technology demonstrated how AI located a critical case in seconds, a task that took a human attorney 10 hours. This efficiency not only reduces costs for clients but also raises questions about AI's reliability and quality.

Ethical Considerations and Quality Assurance

While AI enhances efficiency, concerns linger about the accuracy and reliability of AI-generated legal research. This uncertainty underscores the need for proper training in evaluating AI platforms and ensuring the maintenance of high-quality standards. Ethical considerations, including unconscious bias present in AI, highlight the necessity of vigilant monitoring and continual assessment.

AI's Potential in Trademark Cases

AI's potential extends to trademark oppositions and infringement cases. It can revolutionize trademark similarity comparison criteria and consumer perception analysis. Trademark offices worldwide are experimenting with AI tools that detect not only phonetic similarities but also graphic and conceptual resemblances. Such tools can enhance the efficiency of trademark examination and offer comprehensive insights to trademark analysts.

Practical Applications of AI Tools

Several AI tools are already assisting legal practitioners in various aspects:

Tool 1: A search engine enhanced by legal AI software that evaluates brief content, ranks strengths and weaknesses, and provides historical outcomes to aid legal drafting.

Tool 2: An analytical legal search engine focusing on law firms, courts, and judges. It offers insights into language patterns, opposing parties' experience, and related case work.

Tool 3: A US-focused search engine for lawyers, assisting in identifying relevant phrases and offering data on case citations.

Tool 4: Designed for hearings, this platform examines criteria like damages, lawyers, judges, and parties to aid litigation teams in strategic decision-making.

AI's Promise and Challenges

AI's integration into legal research holds immense promise for efficiency, cost-effectiveness, and improved outcomes. However, challenges like ethical considerations, bias mitigation, and quality assurance must be tackled to ensure AI's seamless incorporation into legal practice.

EMPOWERING LEGAL RESEARCH THROUGH AI INTEGRATION IN INDIA: LIVE LAW AND MANUPATRA

In the realm of legal research and knowledge acquisition, two prominent platforms in India, Live Law and Manupatra, have emerged as go-to sources for legal professionals and students alike. However, these platforms, while valuable, sometimes face limitations in providing comprehensive and relevant information. The integration of Artificial Intelligence (AI) could significantly enhance these platforms, addressing data insufficiency and refining search results, thereby revolutionizing the landscape of legal research.

Live Law: Navigating the Legal Landscape

Live Law⁴ recognizes the ongoing significance of accurate and factual information amidst the rise of social media. It caters to the thirst for legal knowledge by offering news that is rooted in facts, catering not only to general readers but also to lawyers and aspiring law students. In a dynamic field like law, staying informed about the latest developments is crucial, especially for legal practitioners. However, challenges such as data accuracy and search efficiency persist.

Manupatra: Pioneering Legal Research

Manupatra⁵ has carved a niche as a leading law publisher, offering a vast repository of Legal, Taxation, Corporate, and Business Policy content in India. Since its inception in 2000, it has been a trailblazer in online legal research. Manupatra boasts an extensive collection of primary documents and proprietary analytical content, encompassing commentaries, treatises, digests, and more. Its online database, launched in 2001, has grown to become a comprehensive resource of Indian legal materials.

AI Integration: Enhancing Legal Research

The integration of AI into platforms like Live Law and Manupatra can bring about transformative benefits:

1. **Improved Search Precision:** AI algorithms can understand user intent even when data is limited or ambiguous. By analyzing search patterns and user behavior, AI can offer more accurate search results, ensuring that users find the specific information they are seeking.
2. **Contextual Understanding:** AI can comprehend legal terminology and context, leading to better content recommendations and reducing irrelevant results. This assists both legal professionals and students in accessing precise information efficiently.

4. Livelaw *Read all latest news on and about who we are, Live Law*. Available at: <https://www.livelaw.in/who-we-are/> (last visited July 23, 2023).

5. *Manupatra*. Available at: <https://www.manupatrafast.com/default/CompanyInfo.aspx> (last visited August 1 2023).

3. **Personalized Insights:** AI can learn from user interactions, tailoring content recommendations based on individual preferences. This personalized approach ensures that users receive content aligned with their interests and requirements.

4. **Data Enrichment:** AI can augment existing content with relevant metadata, making it easier to categorize and retrieve information. This enrichment enhances the overall quality of the data available on the platform.

5. **Semantic Search:** AI-driven semantic search understands the meaning behind words, enhancing search accuracy and providing users with more comprehensive results.

6. **Predictive Analytics:** AI can predict user needs by analyzing historical search patterns, ensuring that users receive relevant recommendations even before they conduct a search.

FUTURE POSSIBILITIES AND ETHICAL CONSIDERATIONS

AI's integration could lead to an evolution in legal research methodologies. However, ethical considerations must be at the forefront of this transformation. Ensuring that AI-generated content is accurate, unbiased, and transparent is essential to maintain the integrity of legal research.

In conclusion, the integration of AI in platforms like Live Law and Manupatra holds the potential to revolutionize legal research in India. By overcoming data limitations and enhancing search precision, AI can offer legal professionals and students a more efficient and effective way to access the legal information they need.

The role of AI in the Legal Industry: Augmentation, Not Replacement

Artificial Intelligence (AI) has permeated various industries, including the legal field, prompting discussions about its potential to replace human professionals. While AI undoubtedly offers promising prospects for lawyers, it's essential to recognize that AI is more likely to augment rather than replace legal professionals. This augmentation can lead to improved efficiency, better client service, and enhanced legal work. However, ethical considerations and the unique qualities of human lawyering must be acknowledged in the integration of AI into the legal domain.

AI's Positive Impact on Legal Practice

1. **Efficiency Boost:** AI can automate routine tasks, such as document review, legal research, and contract analysis, saving lawyers valuable time. This allows legal professionals to focus on more complex and strategic aspects of their work.

2. **Enhanced Research:** AI-powered tools can quickly process vast amounts of legal information and offer insights that aid lawyers in building stronger cases and making informed decisions.

3. **Predictive Analytics:** AI can analyze historical case data to predict potential outcomes, enabling lawyers to offer more accurate advice to clients and devise effective legal strategies.

4. **Document Automation:** AI can streamline the creation of legal documents, reducing the chances of errors and speeding up the drafting process.

5. **Client Interaction:** Chatbots powered by AI can offer instant responses to clients' inquiries, ensuring that clients receive timely information and assistance.

Ethical Considerations and Human Expertise

1. **Ethical Use of AI:** Lawyers have an ethical responsibility to understand and supervise the AI tools they use. Ensuring that AI-generated advice aligns with legal standards and regulations is crucial to maintaining professional integrity.

2. **Complex Decision-Making:** AI lacks the human ability to consider complex emotional and ethical factors in decision-making. Legal professionals provide nuanced advice that goes beyond mere data analysis.

3. **Empathy and Judgment:** Legal matters often involve human emotions, empathy, and judgment, qualities that AI cannot replicate. Lawyers provide a human touch by understanding their clients' unique situations and needs.

4. **Interpersonal Skills:** Communication, negotiation, and advocacy require interpersonal skills that AI cannot replicate. Building rapport, understanding nuances, and navigating emotions are integral to lawyering.

5. **Legal Creativity:** AI can assist in legal research and analysis, but creativity in legal argumentation, strategy formulation, and problem-solving remains a distinct human trait.

The Future of AI and Legal Professionals

Rather than replacing lawyers, AI should be viewed as a tool that empowers them. Legal professionals should approach AI integration with a focus on augmentation and enhancement rather than displacement. AI enables lawyers to deliver better services, allocate more time to complex tasks, and improve overall efficiency. However, the human touch in legal practice remains indispensable, encompassing ethical considerations, empathy, critical thinking, and the ability to navigate nuanced legal scenarios.

In conclusion, while AI will reshape the legal landscape, the role of lawyers remains pivotal. Embracing AI can lead to a symbiotic relationship where AI complements lawyers' expertise, thereby creating a more efficient, client-focused, and technologically-advanced legal profession.

SUPACE :- A Pilot Project

SUPACE⁶, the Supreme Court Portal for Assistance in Court's Efficiency, was launched on April 6, 2021, by the Supreme Court of India. The inauguration ceremony was led by Justice SA Bobde and Justice Nageswara Rao. The primary purpose of SUPACE is to utilize artificial intelligence and machine learning to effectively manage the substantial amount of data associated with case filings in the Indian judicial system.

Described as a "hybrid system," SUPACE combines the strengths of human intelligence with machine learning capabilities. It is designed to assist judges in their decision-making process by processing and analyzing information related to cases. However, it's important to note that SUPACE does not play a role in the actual decision-making; its function is to provide relevant data to support judges' decisions.

In its initial stages, SUPACE is being tested as a pilot project. Only judges from the Delhi and Bombay High Courts, specifically those dealing with criminal cases, are using the system for experimental purposes. This controlled testing period allows for the evaluation of SUPACE's effectiveness and performance in a real-world context.

Justice L Nageswara Rao serves as the chairman of the Artificial Intelligence Committee of the Supreme Court, which oversees the implementation and integration of AI-related technologies within the judicial system. The establishment of this committee reflects the Indian judiciary's commitment to embracing technological advancements to improve its operations.

SUPACE's launch is part of a broader effort by the Indian judicial system to incorporate AI technology to streamline processes and enhance efficiency. Previous initiatives, such as SCI-Interact and E-Courts, have been introduced to digitize operations and reduce paperwork.

While AI technology is being integrated into various aspects of the judicial process, it's important to emphasize that SUPACE and similar tools do not engage in decision-making. Rather, they provide judges with information and insights to aid in their decision-making process.

6. *Supace* Available at: <https://www.jagranjosh.com/general-knowledge/supace-portal-use-of-artificial-intelligence-ai-in-indian-judiciary-1618316032-1> (last visited August 7, 2023)

One of the significant challenges facing the Indian judiciary is the backlog of cases. Data from the National Judicial Data Grid (NJDG) highlights the extensive number of pending cases, with a substantial portion being over 30 years old. The introduction of AI-driven tools like SUPACE aims to address this backlog by improving efficiency and supporting judges in processing cases more effectively.

In summary, SUPACE represents a notable step forward in leveraging AI technology within the Indian judicial system. By enhancing efficiency and providing judges with relevant information, SUPACE contributes to the broader efforts to address the challenges posed by case backlogs while maintaining the integrity of the decision-making process in the hands of human judges.

CONCLUSION

This selection of AI tools and platforms demonstrates the wide range of functions and features available to legal practitioners across a wide range of practice areas, including trademark filing and litigation. Using these techniques, especially when conducting legal research, can result in considerable time and accuracy gains.

However, practitioners will almost certainly need to invest time and money to learn how a particular AI solution might benefit them and their clients. AI vendors should work on educating practitioners about the benefits and, more significantly, the accuracy of such systems in order to obtain the appropriate level of confidence within legal teams. Only then will the use of AI tools and platforms become more widespread.

This paper focuses on how AI integrated system of legal research will help in making the lives of lawyers easy and also save time in the process. Lawyers are habituated with loads of work and the working conditions of these lawyers are most of the time depressing and in this world of fast paced action and severe competition, the fight of survival is the utmost priority of these lawyers and a system of this kind is necessary. The rekindled vigor of social media and the inflation of AI based operations will uplift the spirits and make the world easier one for them. At the heart of these systems are nothing but want of the makers to provide for better legal research options for the lawyers and no problem of it being subscription based, lawyers always make sure to utilize proper resources at the right time.

The question being will AI will replace lawyers of course not, as a machine learned system is not capable of grasping the gravitas of the human brain. Human beings as lawyers will always continue to exist as human supervision is necessary for the legal research. Human-made objects or software will continue to evolve but never surpass human ability but will make sure to make life easier. This paper provides for a descriptive study on how AI and Legal Research will

provide for a better legal research mechanism and a comprehensive system which will in turn provide for better understanding. Since it is a machine learning system it will shape itself into the form based on the users' input and act as a game-changer in the legal system. We have seen promising progress in other countries and in India we need a major overhaul. This paper also provides how AI will help lawyers in the long run.

ANALYSIS OF THE POLICIES GOVERNING LAW AND TECHNOLOGY IN INDIA

S.Chakravarthy Naik¹

Dr. Upankar Chutia²

“Scientific issues now permeate the law”

- Stephen Breyer

INTRODUCTION

Human civilization has changed periodically from stone-age to the industrial age and followed by the technological age. As deliberated by the Prime Minister of India “Convergence of technology and the judicial system is the need-of-the-hour. We need to go digital and adopt online analysis of legal cases. Dissemination of legal knowledge to the common man will also go a long way in improving the law-and-order situation in the country.”³ Technology is an integral part of modern society and has played a great impact and role in the nation’s development. It is one of the fastest growing industries in India and considerable growth in the economy has been witnessed since the past decades. Technology has created and helped in understanding the matrixes in a broader approach in every sector, from medical, banking, health, telecommunications, satellites, transportation, entertainment, education, security, etc. Law and technology go’s hand and hand to bring union form, transparent, privacy, secure to the users of technology to feel hassle free in their minds. Law provides rules and regulation in adopting technology and governance to safeguard the system to look into right path. The law changes as a need of the society and so does the technology advancement will also progress in the development of the society. The enormous growth in the law and technology interaction has expanded the scope as a sky is the limit. Law and technology are complex in relations to understand and to execution need the skills. In recent times there is a growing awareness in scientific and technological developments amongst legal scholars’ academicians, practitioners,

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1. Assistant Professor, Alliance School of Law, Alliance University, Bengaluru.
 2. Assistant Professor, Alliance School of Law, Alliance University, Bengaluru.
 3. Narendra Damodardas Modi, 14th Prime Minister of India.

and others in the legal domain. The present transformation is revolving around the computers and the emergence of new technology in this internet era.⁴

Law and technology interact with social, economic, and legal frameworks to establish the fundamental affordances and constraints of human action over time and to develop bedrock laws, particularly information and technology law, which serves as the eyeball and guiding factor for all legal issues concerning the internet and technology arena of cyber space. The Information and Technology law is also known as Cyber Law. Cyber law plays a vital role it covers all aspects of transactions and activities and which involving through the internet. Every action and reaction in cyberspace has some legal and cyber legal angles are associated. During from past two decades there is enormous development in public sector and private sector in utilisation of technology in the governance activities to meet the needs of the people. There is rise in digital era shown brought new entities in limelight by adopting the technologies such as Start-ups, MSMEs, MNC Companies emerged in India. India is one of the largest manpower utilisation domestically and internationally throughout the world⁵.

Technology law is one of the emerging areas of law that entangles with various fields of law such as cyber law, intellectual property law, corporate law, securities law. It is not restricted to that and also covers Artificial Intelligence, Crypto Currency, Smart Contracts, Data Protection, Data Privacy, OTT platforms, and other various licenses. It is no less important to compare its importance in the modern era. Technology law will continue to evolve and develop with new ideas and new technological developments with enormous potential. This is one of the niche areas that is exposed with greater potential, which can be exploited and cause immense loss to the people, society, and nation. To avoid such instances, it is necessary to develop a legal framework that helps in not altering the legal provisions to safeguard technological usage. The technology law policy plays an important role in providing appropriate rule and regulation to govern the system providing collective inputs by various entities such as department of Science and technology, Centre-State department of Science and Technology, R&D institutions, NGO organisation, In-house centre etc to develop technology laws. It is need of hour that our technology law need to be stringent, flexible and adaptable to use as well. There are novel legal issues that are raising by the advancement of technology in the virtual space surprising a new variety of disputes, new types of transactions and even new types of virtual property issues are

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4. Yochai Benkler, Technology, Law, Freedom And Development, Volume 1, The Indian Journal of Law And Technology, 2005.
 5. Paul E. Ceruzzi, Moore's Law and Technological Determinism Reflections on the History of Technology, Volume 46, The Johns Hopkins University Press and the Society for the History of Technology, 584-593, 2005.

taking place in the techno-centric world. The need for legal regulation in the technology usage and endeavour by providing with new of Indian law⁶.

HISTORICAL BACKGROUND OF TECHNOLOGY POLICY IN INDIA

Since India's independence, communication systems and digital technology have undergone dramatic changes in response to recommendations from national and international agencies. Internet and computers have become integral parts of administrative and business activities. In recent times e-commerce, electronic evidence, online business and other virtual platform has been recognised Indian in legal regime. India's technological importance has been recognised to varying degrees at various stages and in various instances, some of which are listed below.

The Scientific Resolution Policy -1958

This is one of the first policies after independence to bring science and technology in India. This policy mainly aims to nurture scientific enterprise and adaptability of science and technology, which is to bring a change in economic transformation and nation building. Scientific policy resolution is used to bridge the gap between the cultivation of scientific enterprise and applied science to research and capacity building, as well as to create new opportunities for scientific activities, discovery, and knowledge dissemination. It impacted on the emergence of several scientific organizations, national laboratories, strong foundations in R&D and technological based higher education.

The Role of Technology Policy -1983

The second phase of technology policy implementation by the government authorizes to imbibe certain changes by introducing technology into people's lives, and this phase also focuses on meeting the people's aspirations and technological development, strengthening technological self-reliance in new sectors, especially information, electronic, and bio-technological development, and the establishment of technological development funds created by the government for all the stake holders, and also establishing the technological forecasting and assessment. Developing indigenous technology is of greater importance.

The Role of Science and Technology Policy-2003

This is the third phase of development and recognition of S&T into various enterprises, which is intertwined and inextricably linked. To keep the pace in the utilization of S &T competitive with other leading countries, the government authorities primarily focused on promoting equitable and sustainable development. In this phase infrastructural and academic

6. Peter Brown* & Richard Raysman, PROPERTY RIGHTS IN CYBERSPACE GAMES AND OTHER NOVEL LEGAL ISSUES IN VIRTUAL PROPERTY, Volume 2, THE INDIAN JOURNAL OF LAW AND TECHNOLOGY, 2006

institution was modernized to meet the standards. A certain incentive is provided to the scientists and engineers who trained abroad to contribute to the Indian R&D ecosystem. This stage was one of the most successful compared to the others, with India showing significant growth in GDP, an increase in publication citations, a steady increase in institutional human capacity, and the establishment of new institutions.

The Role of Science, Technology Policy-2013

This phase is also known as the “Decade of Innovation. During this time, policy attempted to intend and synergize the country’s knowledge-based economy while also crawling to the top scientific power house. One more salient feature in the policy is that the government understood the importance of the private sector and its role in building the economy. Hence, it introduced several policies for private sector R &D and also built the link between the socio-economic and the private sector.

THE SIGNIFICANCE OF INFORMATION TECHNOLOGY LAW IN INDIA

Information Technology Act, 2000, which marked one of the watershed moments in the history of Indian law⁷. Despite fierce opposition to IT laws in India, India recognised electronic technology and its significance for the first time. Following the recommendation and adoption of the UNCITRAL model law by the UN in 1996, every nation is now required to implement it, and India is no exception. Law gave legal recognition to electronic transactions, information sharing, and data exchange through the medium of information technology. Several procedural and substantive laws have been recognised and implemented through the incorporation of relevant provisions such as in the Indian Evidence Act, the Indian Criminal Procedure Code, etc.

Information Technology law is most significant and quintessential law in this rapid development of globalised world where the technology is playing a vital role. There are several salient features of IT law as such legal recognition for the transactions making through the electronic means or through the Internet source. Indian governments recognition of electronic means of governance functioning regard to the filing, creating and retention of official documents in the digital format. Gave importance and legal recognition to digital signature for accepting any agreement and e-contracts agreements. To provide facility of any company can store their data in electronic storage is legally recognised. IT laws also gave importance to the upbringing or upcoming cybercrime and exploitation of privacy of the Internet users at larger mode and gave legal authentication to the computer crime based and to protect privacy of internet users. In addition to that it also gave more power to IPO, RBI and Indian Evidence act for restricting

7. Mansi Batra, Law And Technology, S. Bhambri & Associates, Accessed On 10.12.2022, <https://www.sbhambriadvocates.com/post/law-and-technology>

electronic crime. IT law also legalised recognition for keeping books of accounts by bankers and other companies in electronic form.

The IT Act, 2000; holds a paramount status within the jurisdiction of India. This legislation was devised in accordance with the UNCITRAL Model Law, with the primary objective of governing various aspects pertaining to electronic communications, storage of electronic information or data, electronic commerce and trade, as well as computer-related offences. The provisions encompass the various transgressions that may incur penal consequences as stipulated within the legislation, while also delineating the available recourses accessible to aggrieved parties in the event of a violation. The utilisation of this technology manifests itself across various domains, including but not limited to the storage and preservation of information, the mitigation of cyber threats to ensure the security of online platforms, the facilitation of international trade and commerce, and the augmentation of economic opportunities. The primary objective of this initiative is to effectively support the various branches of the government in the establishment and advancement of an autonomous and technologically driven framework. The IT Act of 2000 serves as a valuable tool for the government in the realm of electronic record-keeping, enabling extended and improved data retention, streamlined computation processes, and the seamless filing of electronic First Information Reports (e-FIR) through online platforms. Furthermore, this legislation plays a pivotal role in enhancing cross-border transactions, thereby fostering a more efficient and effective global exchange of goods and services. Therefore, it is imperative to establish regulatory measures to govern the intricate realm of advanced Communication technology, with the primary objective of mitigating any deleterious consequences arising from its potential misapplication.

ADVANTAGES OF INFORMATION TECHNOLOGY- IN TIMES OF COVID-19

The Information Technology has emerged as a paramount asset and consequential contribution to humanity, ranking second only to the field of medical technology. The utilisation of digital communication platforms has not only facilitated the amelioration of interpersonal disconnect, particularly during the advent of the pernicious coronavirus pandemic, wherein physical interaction was constrained due to prevailing protocols, but has also emerged as a commendable medium for amusement and fostering connectivity. The utilisation of this medium has proven to be an efficacious mechanism and instrumentality in disseminating vital information of potentially life-saving nature on a global scale, thereby rendering substantial assistance to numerous individuals. In contemporary times, technology has permeated even the most remote corners, thereby facilitating the mitigation of unanticipated adversities that have beset commercial enterprises and the broader community in the wake of the pandemic and ensuing turmoil.

The advent of virtual courts and hearings has significantly facilitated the administration of justice to individuals, even amidst contemporary challenges. In a recent observation, the esteemed judges of the Apex Court have astutely noted that the unprecedented global pandemic known as covid-19 has facilitated a paradigm shift within the Judiciary, enabling the adoption of advanced mechanisms for the resolution of disputes, such as the utilisation of video conferencing for hearings. It is noteworthy that these mechanisms were previously employed exclusively in exceptional circumstances. The Indian Judiciary was presented with a unique and exceptional occasion to safeguard its operational efficacy and preserve the societal ethos.

In response to the prevailing crisis, the judiciary has taken proactive measures by organising online platforms such as e-Courts and Zoom sessions. These initiatives have been implemented to effectively address the current demands and challenges faced by the legal system. Novel and advanced software applications have been devised with the objective of effectively engaging a wide-ranging audience. This is achieved through the utilisation of user-friendly interfaces and the incorporation of vernacular language, thereby maximising effectiveness and optimising results.

It has been duly noted that the utilisation of Information Technology as a means of resolving disputes has yielded several advantageous outcomes. Specifically, this approach has facilitated a simplified and expedient process, enhanced inclusivity, fostered environmental sustainability, and, of paramount significance, rendered the resolution accessible from the confines of one's abode.

The advent of technological advancements has facilitated the expeditious dissemination of information by the governing bodies to the general populace through round-the-clock helplines during the ongoing global health crisis, thereby efficaciously guaranteeing the inoculation of the entire population while maintaining meticulous documentation.

DISADVANTAGES OF INFORMATION TECHNOLOGY

Information Technology has conferred upon the human race the gift of "Social Media," a potent instrument capable of exerting significant influence over the masses. This platform has been observed to be subject to manipulation and misuse by certain individuals with the intention of instilling a climate of apprehension and distress. The proliferation of unverified and misleading information has emerged as a significant concern amidst the prevailing crisis. The empirical actuality was subjected to derision by numerous individuals on these digital platforms, and it was observed that certain individuals were also transgressing the justifiable limitations established by the fundamental Rights. Another notable drawback of information technology (IT) lies in the substantial array of risks that are inherently intertwined with its utilisation. These risks encompass the peril of compromising one's privacy, the jeopardy of financial devaluation,

and the peril of fraudulent impersonation, among others. A plethora of incalculable occurrences pertaining to white-collar offences or concomitant cyber offences have been duly observed. The perpetration of hacking, phishing, money-laundering, and card cloning represents a collection of prevalent transgressions that frequently manifest within this particular domain.

One must duly acknowledge the third demerit of information technology (IT) as its inherent complexity, which poses a formidable challenge for individuals with limited education or lacking formal education to effectively establish contact with the relevant authorities in instances of fraudulent activities or the perpetration of offences.

One additional drawback pertains to the intricate and specialised nature of Information Technology, which frequently presents challenges for individuals from underprivileged backgrounds to fully partake in the benefits derived from its advancements. The intricate web of information technology infrastructure poses significant challenges in identifying and apprehending competent perpetrators, frequently leading to the exploitation of uninformed users by these malefactors.

In light of the aforementioned statement, it is imperative to acknowledge that technology can be considered advantageous when employed judiciously and in accordance with the prescribed parameters. The potential ramifications of its exploitation or unlawful utilisation may be both deleterious and life-threatening.

Developments enshrining the connectivity in Fundamental Rights and Technology Laws in India

Law is a dynamic in nature it has wider scope to interact with other technology related areas such as cloud computing, intellectual property, contract law, privacy, data protection, jurisdiction, drafting of contracts, technology standards, ICT governance, Artificial Intelligence etc⁸. Apart from the intersection cited in these advanced areas, technology law and policy collide with basic fundamental rights. In the context of constitutional jurisprudence, it is noteworthy to acknowledge that the cherished right to freedom of speech and expression, as enshrined within the legal framework, may be subject to reasonable restrictions imposed by legislative enactments that govern the realm of online content. In a parallel vein, it is worth noting that the entitlement to privacy may be constrained by legislative measures pertaining to the gathering and monitoring of data. Nevertheless, it is imperative to acknowledge that the Indian Constitution encompasses a plethora of safeguards meticulously designed to counteract the potential misuse and exploitation of technological advancements. As exemplified, Article

8. Shreya Litoria, Fundamental Rights in India and Technology laws, Times of India, Accessed on 09.12.2022 at 1.03 am, Available at <https://timesofindia.indiatimes.com/readersblog/storyteller/fundamental-rights-in-india-and-technology-laws-45347/>.

19(2) duly provides for the permissibility of judicious limitations on the exercise of freedom of expression, so as to safeguard the paramount concerns of public order. In a similar vein, it is worth noting that Article 21 of the constitution serves as a safeguard for the preservation of the right to privacy, which is recognised as a fundamental right.

Hence, it is imperative to acknowledge the existence of a certain degree of tension between the realm of Fundamental Rights and the domain of technology laws within the Indian legal framework. However, it is equally crucial to recognise the presence of several safeguards that have been instituted to safeguard individuals from any unwarranted encroachment upon their rights. In recent years, India has witnessed a multitude of transformations in the realm of fundamental rights and legislation pertaining to technology. Several noteworthy advancements have transpired, which merit attention.

1. In the month of September in the year 2018⁹, the esteemed Supreme Court of India rendered a momentous verdict affirming the entitlement to privacy as an inherent and indispensable right enshrined within the constitutional framework of India. The aforementioned judicial decision has engendered extensive ramifications for diverse facets of existence within the territorial boundaries of the Republic of India, encompassing the governance of personal data and the realm of information technology.
2. In the month of March in the year 2019, the esteemed Supreme Court rendered a momentous decision wherein it acknowledged the entitlement to the cherished freedom of speech and expression within the realm of cyberspace as an inherent and indispensable right. The aforementioned judicial decision is anticipated to exert a substantial influence on the regulatory framework governing online content within the jurisdiction of India.
3. In the month of May in the year 2019, the esteemed Indian Parliament successfully enacted the Fugitive Economic Offenders Act, a legislative measure that aims to establish a robust framework for the implementation of rigorous measures against individuals who abscond from the nation's jurisdiction with the intention of evading prosecution for economic transgressions. The legislative enactment encompasses provisions pertaining to the seizure of assets belonging to said individuals, as well as the initiation of legal proceedings against them, even in their absence.
4. In the month of June in the year 2019, the esteemed Indian government unveiled a set of preliminary regulations aimed at governing the operations of social media platforms, such as the prominent entities Facebook and Twitter. The aforementioned regulations

9. Justice K S Puttaswamy v. Union of India, (2017) 10 SCC 1

would necessitate that social media corporations expeditiously remove illicit content within a span of twenty-four hours, inter alia.

5. Fundamental rights are inherent entitlements that are indispensable for the holistic advancement of an individual and to lead a life characterised by dignity. In the Indian jurisdiction, it is imperative to acknowledge that the fundamental rights are firmly entrenched within the Constitutional framework, specifically under Part III. The legislative framework in India has promulgated technology laws with the primary objective of safeguarding fundamental rights and preventing their infringement. The Information Technology Act of 2000 is an exemplary legislation that establishes penal ramifications in the event of any violation of the provisions enshrined therein. Therefore, it can be posited that the legislative framework governing technology laws in the jurisdiction of India serves as a protective barrier, safeguarding the inherent and inviolable rights bestowed upon the populace.

THE NEED FOR A CONCRETE LAW, TECHNOLOGY AND INNOVATION POLICY IN INDIA

The law, technology, and Innovation have emerged as the major driving force for the growth of national development at global scale. India to aspiring for the faster, sustainable and inclusive growth overall development in technological advancement, which shall be safeguard by the Law, and other legal instruments in terms of protection at larger scale, will be creating huge talent pool, will also plays an vital role in achieving the socio-economic development goals of the nation. The Technology, and Innovation Policy aim to foster and nurture to create a robust system in the history of science and technology in India. STI creates a platform to the planning, information, evaluation, and policy research and other activities in India. The policy emphasizing in identifies and addressing the strengths and weaknesses of the ecosystem need to stand at global scale.

The legal assortment of STI gave standardised legal protection and recognition from the Intellectual Property Rights especially under the policy of National Intellectual policy of Intellectual Property Right,2016 created a platform and protection for the scientific research and development, technological Invention and innovation of both organised and unorgised sector of knowledge resource. The IPR legal protection creates an objective of overcome of Infringement and passing off also reinforcement of adjudicatory action in terms of violation.

IP Polices emerged as a tool for the ecosystem and environmental impact for the protection of the technology and technological related innovation from the initiation of IP registration till end of the commercialisation of IP assets. IP polices creates the balance of Interest between the IP owner and other third parties. IP polices attempted to develop exclusive road map

covering wide range of IP value chain system and generation of commercialization activities by considering holistic development from both the stakeholder and other entities and to develop IP clusters and culture to enable in wealth creation and economic prosperity achievement.¹⁰

IP policies encourage Science and Technology in utilisation of modern standardization of infrastructure.

Role of technology in promoting efficacy of implementation of Laws

The gradual and incremental integration of technology has garnered significant significance within the realm of jurisprudence¹¹. Whether it be the electronic filing of legal documents or the efficacious bolstering of agricultural practitioners through direct monetary assistance via electronic transactions, or the facilitation of electronic commerce, technology has excelled in every conceivable facet of the legal domain. The advent of forensic science, with its invaluable techniques such as narco-analysis and fingerprinting, has undeniably bolstered the law enforcement's ability to apprehend perpetrators. Moreover, the proliferation of cyber-technology has ushered in a new era of social networking, thereby augmenting the legal landscape in multifarious ways. The implementation of this technological solution has effectively mitigated superfluous expenditures associated with paper-based filing systems, thereby yielding substantial cost savings. Furthermore, this innovative approach has significantly contributed to the preservation of the environment, underscoring its pivotal role in sustainable practises.

The democratisation of legal knowledge is a direct consequence of the efficacious integration of technological advancements within the field of jurisprudence. Advancements in technology have facilitated the enforcement of legal statutes through the utilisation of Artificial Intelligence (AI) systems, which effectively document instances of transgressions captured by Closed-Circuit Television (CCTV) surveillance mechanisms. Additionally, the deployment of speed-monitoring cameras has proven instrumental in guaranteeing the effective execution of traffic regulations. In contemporary society, the advent of technological advancements has undeniably facilitated expeditious adjudication processes and the expeditious administration of justice to those who have suffered harm. Furthermore, it has facilitated the process of digitalization in developing nations, enabling them to align their progress with that of developed nations.

Notwithstanding the advancements in legal technology aimed at alleviating the backlog and burdens faced by governmental institutions, it is regrettable that certain individuals with nefarious motives, such as hackers, exploit said technology to afflict innocent individuals and

10. Md.Zafar Mahfooz Nomani, Legal Dynamics of India's science technology and innovation policy 2013 and Intellectual property right policy 2016,manupatra Intellectual property report, 2017.

11. *Supra note 5*

ensnare them within pernicious cycles of scarcity and indebtedness. The unauthorised disclosure of privileged information through computer resources, the illicit infiltration of the entirety of a computer system and the subsequent disruption of its operations, as well as the deceptive manipulation of individuals through the guise of sophisticated technology, represent prevailing methods by which certain members of society exploit technology to attain unjust advantages over less technologically proficient segments of the population.

India has witnessed millennium changes, including rapid technological advancement and digital growth. It made a significant contribution to overall socio-economic development of the nation. It has fostered, promoted, and sustained the cultivation of science and scientific research in all its aspects, along with providing legal protection. India stood in a position as a global leader to enhance and leverage its Information Technology capabilities and technology has transformation process initiation taken by the Government of India at various intervals.

CHALLENGES IN TECHONOLOGY LAW IN INDIA

Internet and mobile association of India Vs RBI: In this case RBI has been the virtual currency cannot be traded volitation lead to offence has notified in form of circular as per the RBI norms. Now all Internet and mobile associated filed a case against RBI before supreme court. Supreme court gave judgement that RBI has power to govern the Virtual Currency but before banning the currency need to look into business entities concern as well as other damage pose against them it is not constitutional accepted. This discussion paved a path to emerge various technologies in India such as crypto-currency, bitcon companies. Legal framework is not well framed hence it is one of biggest challenges posed which can be addressed by technology law and its policies.

In the year 2019, the RBI enabling framework for regulatory sandbox The RBI mentioned a guideline to banks to improve their understanding of how new financial technologies work, which helps them to appropriately integrate such new technologies into their business plans. In the year 2019, NITI Aayog conducted a comprehensive discourse on the strategic considerations pertaining to the deployment of Artificial Intelligence (AI) within the Indian context. This discourse specifically focused on the utilisation of computer technologies, computer-controlled robots, and software systems to execute tasks that mimic human cognitive abilities. The phenomenon under examination pertains to the capacity of machines to execute cognitive functions such as ratiocination, perception, acquisition of knowledge, resolution of predicaments, and formulation of determinations. Within the overarching domain of artificial intelligence (AI), it is pertinent to acknowledge the existence of two distinct subsets, namely machine learning and deep learning. Machine learning is a computational methodology that encompasses the utilisation of sophisticated algorithms to effectively dissect vast amounts of

data and subsequently acquire knowledge and insights from this information. This facilitates the process of formulating a determination or prognostication. Deep learning is a sophisticated computational methodology utilised for the implementation of machine learning algorithms. For all these technological developments, there is no appropriate legal framework to safeguard them in India. Technological development will not stop to overcome this need to develop as soon as possible. Another big challenge in India is protection of data and privacy issues. This is one of the biggest loopholes due to the lack of technological law regulation in India. The protection data bill in the year 2022 was introduced, but due to certain technical recommendations, the bill was withdrawn. But it has been stated that they are bringing proper rules and regulations in to protect the data and cryptocurrency.

Internet penetration will be increase day by day and blockchain technology several other technological development will rapidly takes place. It is time to come certain accurate laws not to abuse and exploit.

E-Commerce platform is being abusing by the big giant companies due to their monopoly in the business this is happening because of technological usage by these e-platforms. There are no proper laws in governing and address the issues. Even though law are provided but not adequate.

CONCLUSION

Based on the preceding discussions, one can deduce that technology and law are inherently intertwined and cannot be disentangled from one another. The symbiotic relationship between technology and law has permeated their respective domains to such an extent that envisioning a world devoid of either entity appears inconceivable. The symbiotic interplay between technology and law is of paramount importance in facilitating the seamless and expeditious advancement of a nation.

It is imperative to acknowledge that akin to the dual nature of a coin, the intricate nexus between law and technology likewise possesses inherent advantages and disadvantages. Notwithstanding the potential drawbacks, it is crucial to underscore that the benefits derived from their interconnection far surpass any detriments that may arise. It is imperative to acknowledge that the interplay between technology and law constitutes an indispensable facet of the modern era. It can be posited that both disciplines mutually support one another within their respective domains, adeptly maintaining equilibrium between the two. The interdependence between these entities is regulated by the firmly established principle of Checks and Balances, wherein one entity facilitates and inhibits the progress of the other, ensuring development occurs within secure boundaries. These limitations can be regarded as judicious constraints imposed upon the interconnection between the aforementioned disciplines, with the primary objective of

fostering their progress and development. Simultaneously, these limitations aim to guarantee the judicious and secure utilisation of both disciplines, in the utmost interest of all stakeholders, while upholding ethical standards.

The advent of novel technological advancements has facilitated the digitalization of markets, societies, and nations. The exponential growth and widespread adoption of technological advancements, which was once regarded as a commendable achievement, has now emerged as a potential liability in contemporary society. The evolving landscape of tech-governance has witnessed a notable shift towards increased politicisation and socialisation, thereby deviating from the conventional regulatory approaches centred around permissions, standards, and tariffs.

India, as a nation, exhibits a commendable level of technological proficiency, owing to the populace's familiarity and ease with information technology (IT) products and services. Additionally, India has benefited from its advantageous position as a late entrant into the technological landscape. The present imperative necessitates the engagement of legal and regulatory frameworks with a diverse range of evolving exigencies. It is imperative to expedite population-scale opportunities and effectively mitigate pervasive risks. Three distinct categories of concerns arise in this context - comprehending the essence of risks associated with technology; evaluating the obstacles faced by governance mechanisms; and exhibiting ingenuity in adopting novel forms of regulation.

SUGGESTIONS

In order to efficaciously tackle the challenges and capitalise on the opportunities arising from technological advancements in India, it is imperative to fortify the existing legal framework.

1. Comprehensive Data Protection Legislation:

The constantly evolving technology necessitates the expeditious progression and subsequent enforcement of the Digital Personal Data Protection Bill, encompassing a comprehensive framework that adeptly harmonises the safeguarding of individual privacy rights with the facilitation of conscientious data-centric innovation. It is vital to establish robust data protection principles, consent mechanisms, and mechanisms for enforcement in order to ensure the preservation of privacy and security in the digital realm. The implementation of comprehensive data protection principles serves as a fundamental pillar in safeguarding individuals' personal information. These principles should encompass the fair and lawful collection, processing, and storage of data, as well as the minimization of data retention periods to mitigate potential risks. Moreover, consent mechanisms play a pivotal role in empowering individuals to exercise control over their personal data.

2. Enhance Cybersecurity Measures:

Facilitate the formulation and implementation of stringent cybersecurity regulations and standards, encompassing the realms of both public and private sectors, with the aim of fortifying the existing cyber defence mechanisms. It is highly advisable to promote the regular conduct of security audits, comprehensive risk assessments, and diligent incident reporting as essential measures to safeguard critical infrastructure and preserve the confidentiality of sensitive data against the omnipresent menace of cyber threats.

3. Advocate for the Advancement of Digital Literacy and Awareness:

Propose the implementation of comprehensive nationwide initiatives aimed at fostering digital literacy among the general population, with a particular emphasis on elucidating citizens' rights, obligations, and the inherent perils entwined with technological advancements. Promote heightened cognizance regarding the optimal techniques for safeguarding against cyber threats, preserving online confidentiality, and engaging in secure digital conduct.

4. Promote and foster technological research and innovation:

Establish a comprehensive framework that incentivizes and encourages scholarly pursuits in nascent fields of study such as artificial intelligence (AI), blockchain technology, and biotechnology. Promote synergistic collaboration among the academic, industrial, and governmental sectors to cultivate a propitious environment for technological advancements.

5. Harmonize Intellectual Property Laws:

The harmonisation of intellectual property laws as a means to effectively address the challenges posed by the ever-evolving technological landscapes. This necessitates the perpetual revision and refinement of existing legal frameworks governing patents, copyrights, trademarks, and trade secrets, with a particular focus on their application within the digital domain. By undertaking such measures, the efficient safeguarding of intellectual property rights can be achieved, thereby fostering an environment conducive to innovation and creativity in the digital era.

6. Regulatory Sandboxes:

The establishment of regulatory sandboxes, which would serve as controlled environments wherein technology startups can conduct rigorous testing of their innovative products and services. This approach shall facilitate the cultivation of

innovation whilst affording regulators the opportunity to comprehensively grasp the ramifications of novel technologies prior to the implementation of all-encompassing regulatory measures.

7. Open Data Initiatives:

Facilitate the dissemination of non-confidential governmental data via open data initiatives, thereby fostering an environment conducive to the generation of value-added services and solutions by entrepreneurs, researchers, and developers, all the while upholding the paramount importance of safeguarding data privacy.

8. Promoting a Collaborative Approach:

Facilitate the cultivation of synergistic partnerships among governmental entities, industrial stakeholders, academic institutions, and civil society organisations, with the aim of collectively tackling challenges arising from technological advancements. In order to optimise the formulation of technology policies, it is imperative to establish advisory bodies comprising erudite professionals hailing from diverse domains. These qualified experts shall be entrusted with the responsibility of proffering sagacious insights and well-founded recommendations, thereby augmenting the efficacy and comprehensiveness of said policies.

9. E-governance Adoption:

The pressing issue at hand pertains to the expeditious assimilation of e-governance solutions within the various governmental departments and agencies, with the overarching objective of ameliorating service provision, mitigating administrative complexities, and augmenting both transparency and accountability.

10. Ethical Artificial Intelligence (AI) Guidelines:

It is necessary to undertake the development and implementation of robust ethical guidelines that govern the deployment and operation of AI and automation systems. These guidelines should comprehensively address multifaceted concerns pertaining to bias mitigation, accountability mechanisms, transparency requirements, and the responsible utilisation of AI technologies.

11. Digital Inclusion:

Encourage the amelioration of the digital divide through the establishment of a comprehensive framework that guarantees fair and impartial availability of technological resources and internet services in rural and marginalised regions.

Propose and execute strategic measures aimed at establishing cost-effective and readily available digital infrastructure and tools.

12. Flexible Regulatory Framework:

Development of a regulatory framework that exhibits flexibility and adaptability, thereby enabling swift and efficient responses to the ever-evolving landscape of technological advancements and shifting circumstances. This approach is essential to ensure the perpetuity of legal efficacy and relevance.

13. International Collaboration:

Foster synergistic partnerships with esteemed international organisations and sovereign nations, thereby facilitating the dissemination of cutting-edge technologies, the reciprocal exchange of invaluable knowledge, and the concerted resolution of multifaceted transnational predicaments engendered by technological advancements.

ARTIFICIAL INTELLIGENCE AND LAW IN INDIA

– AN OVERVIEW

Jyothi M N¹

Dr. Rashmi K S²

INTRODUCTION

The trend in today's technologically advanced society is toward computer-based simulations of human intelligence. Artificial intelligence is the study and implementation of machine intelligence. Advanced web search engines, recommendation systems like OOT, shopping apps, YouTube, apps that comprehend human voice like Alexa and Siri, autonomous vehicles like Tesla, etc., all rely on Artificial Intelligence.

The development of digital tools does not occur in isolation. They have the potential to be an effective means of fostering development and making significant strides in the defense and promotion of human rights. The proliferation of AI and data-intensive technologies in today's digital landscape facilitates citizen monitoring and control by corporations and governments.

Information security is becoming increasingly dependent on the usage of machine learning and artificial intelligence. They have the ability to sift through mountains of data and spot potential dangers. The use of AI has gained widespread popularity around the world. In the future, it will be able to affect everyone in some way.

There are no data privacy regulations in India, but your information is protected by Section 43A and Section 72A of the country's Information Technology Act. Article 17 of the ICCPR guarantees individuals the right to be left alone and protection from unauthorized intrusion. If these technological advances are used without appropriate safeguards, they pose serious threats to people's privacy, freedom of expression, and other fundamental rights.

When the International Covenant on Civil and Political Rights went into effect in 1976, a flurry of new information technologies emerged, and in certain cases, commercial firms and governments used Artificial Intelligence without any legal framework or consideration for individual privacy.

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1. Research Scholar, Alliance School of Law, Alliance University, Bengaluru.
 2. Associate Professor, Alliance School of Law, Alliance University, Bengaluru.

The legislation of privacy has not evolved alongside the rapid advancements in surveillance and information technologies. As a result, this article centers on the need for all-encompassing legislation to govern how AI behaves.

Artificial intelligence (AI) infrastructure and operations require a greater commitment of time and money. In order to conduct more in-depth malware analysis and sophisticated attacks, Artificial intelligence (AI) can potentially be used by cybercriminals. Thus, the following are the goals of the research;

- To analyze the laws which regulate Artificial Intelligence.
- To examine the requirement of the Comprehensive law for regulating Artificial Intelligence.

EVOLUTION OF ARTIFICIAL INTELLIGENCE

The study of AI as we know it now is a relatively recent development. The advent of the modern computer in the 1940s and 1950s marked the beginning of AI in earnest, though some groundwork had been built earlier. With the advent of new electronic computers capable of storing vast quantities of data and processing it at lightning speed, scientists began to dream of creating systems that could mimic certain human talents.³

Many of the hopes of these pioneering scientists have come true during the past four decades. The size and cost of computers have decreased by several orders of magnitude in recent decades. The added memory in computers is equivalent to a huge chunk of the information storage capacity of the human brain. There is a dramatic increase in both system dependability and speed.⁴

Many clever computer systems are being introduced now that the early visionaries could never have imagined. Systems exist that are on par with or even more capable than humans, and we've grown to rely on them for a wide range of tasks in our personal, professional, and governmental lives.⁵

DEFINITION OF ARTIFICIAL INTELLIGENCE

Artificial intelligence (AI) is the study and development of computer systems that mimic human intelligence in some way, such as by learning new concepts and tasks, making inferences

3. Dan W. Patterson, Introduction to Artificial Intelligence and Expert Systems (Prentice-Hall of India Private Limited, New Delhi 2005) 1

4. *Id.*

5. *Id.*

and useful conclusions about the world, comprehending natural language, or perceiving and understanding the visual scene, or performing other such feats.⁶

Computers, electronic equipment, or computer-controlled robots carry out the tasks previously performed by sentient beings. Artificial intelligence refers to computer systems that can do such tasks automatically. The processing and application of human intelligence, including the abilities to reason, uncover meaning, and generalize the concept, are hallmarks of systems like Artificial Intelligence. Since their inception in the 1940s, digital computers have proven capable of performing a wide range of complex activities, including searching for mathematical theorem proofs and honing gaming prowess.

While advancements in computer processing speed and memory have allowed such programs to evolve, they still cannot match human adaptability in complex and expansive domains. An additional facet of IA is the degree to which computer programs are now able to mimic the performance of human experts and specialists at specific tasks, such as medical diagnosis, internet search, and handwriting or speech recognition software.⁷

IMPORTANCE OF ARTIFICIAL INTELLIGENCE

One of the most significant innovations of this century could be AI. By the turn of the century, it will have an impact on the majority of people in developed nations. And the countries that invest the most resources into developing AI will eventually become the world's most powerful nations.⁸

In the late 1970s, many of the world's most powerful nations realized the significance of artificial intelligence. Leaders in nations that saw the potential in AI were willing to lobby for the sustained financial support that would be required to sustain robust AI research and development efforts. The Japanese were the pioneers in proving their loyalty. They've begun an extensive artificial intelligence study. This strategy, dubbed the "Fifth Generation," was unveiled to the public in October 1981.

6. Dan W. Patterson, *Introduction to Artificial Intelligence and Expert Systems* (Prentice-Hall of India Private Limited, New Delhi 2005) 2

7. BRITANNICA <http://www.britannica.com/technology/artificial-intelligence> (Last Accessed on 3rd August 2023 at 10.30 p m.)

8. Dan W. Patterson, *Introduction to Artificial Intelligence and Expert Systems* (Prentice-Hall of India Private Limited, New Delhi 2005) 3

Artificial Intelligence was recognized as one of the academic disciplines from 1956⁹ but computers became a commercial reality¹⁰ and it evolved as a different stream of study during the year 1940s and 1950s. Artificial intelligence, or AI, is the transfer of human intelligence into technological systems. Machines exhibit the same kind of inherent intelligence that we see in animals and humans. Self-driving cars, voice-recognition software like Siri or Alexa, and other technologies have recently included this type of artificial intelligence. Examples include recommendation algorithms used on YouTube and Amazon-like web search engines.

In the field of artificial intelligence, learning, problem-solving, perception, and the use of languages are given primary attention. Psychologists see human intelligence not as a single trait but as the result of multiple interrelated traits.¹¹

ARTIFICIAL INTELLIGENCE AND LAW IN INDIA

In India Artificial Intelligence strategy with respect to various aspects:

The Indian government places a high value on AI research, implementation, and dissemination. The Union Government nearly doubled its prior spending on emerging technology research, education, and training. Aiming to create a “Digitally empowered society and knowledge economy,” the Union Government launched the Digital India program. As a result, E-Government can be implemented, and citizens of any nation can work towards making their ideal of a fully functional virtual world infrastructure a reality.¹²

India aims to get to the forefront of AI-driven economies by integrating AI into the country’s monetary, governmental, and judicial systems. In August 2017, the AI Task Force was established by the Union Ministry of Commerce and Industry.¹³ Legal, political, and civil society actors play a little role in shaping AI policy in India. The task force is primarily responsible for determining the direction of AI research and development. It recognizes that its greatest strength is in making technology easily accessible. The Department of Artificial Intelligence is a priority for the Union Ministry of Electronics and Information Technology. The Union Government established four committees to develop guidelines for the country’s AI initiative.

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9. BRITANNICA <http://www.britannica.com/technology/artificial-intelligence> (Last Accessed on 3rd August 2023 at 10.30 p m.)
 10. Dan W. Patterson, *Introduction to Artificial Intelligence and Expert Systems* (Prentice-Hall of India Private Limited, New Delhi 2005) 3
 11. *Id.*
 12. MAKE IN INDIA <http://www.makeinindia.com/about> (Last accessed on August 2, 2023 at 7.30 pm.)
 13. THE ROYAL SOCIETY PUBLISHING, <https://royalsocietypublishing.org/doi/10.1098/rsta.2018.0087> (Last accessed on 4 August, 2023 at 7.30 pm.)

The National Institute of Transforming India (NITI) Aayog has developed a national strategy for artificial intelligence (AI) to guide the government's AI initiatives. A partnership between the National Institution for Transforming India (NITI) Aayog and Google was announced in early May 2018 with the goal of educating and incubating start-ups that enhance and incorporate AI-based solutions into their business models.

LACK OF LEGAL FRAMEWORK FOR REGULATING ARTIFICIAL INTELLIGENCE

Information Technology Act 2008 is enacted for the purpose of regulating electronic conduct. When there is nexus between technology and freedom of expression was clarified by a Supreme Court in 2015¹⁴ ‘‘Section 66A of the Information Technology Act imposes criminal liability on online communications that were found to be grossly offensive, menacing, or annoying.’’

Insufficient policy guidance has prevented the growth of artificial intelligence in India. There is no overarching legal or regulatory agency charged with facilitating the responsible application of the technology. There are a number of programs designed to boost the economy's expansion and progress. While the NITI Aayog study does recognize a variety of societal demands, it does not conduct an in-depth analysis of them.

In general, AI creates new avenues for commercial activity. India's AI policy places heavy emphasis on the idea that AI-induced systems might fundamentally alter economic structures. However, AI is not only a factor for the resources and knowledge at large, but also the social, legal, and ethical implications on the daily lives of humans, which are equally weighted due to the irreversibility and difficulty of proving or detecting their impact.

As a second point, it would appear that the ongoing processes of developing and deploying artificial intelligence are driven by promoting innovation, occasionally giving in to the false choice between ethics and innovation. It is yet to be fully recognized and accepted that ethical choices may and should be a major part of innovation technologies.

Initiatives in artificial intelligence nowadays plan for participation from government and business, occasionally from academics, but seldom from the general public. These committees and processes have been appointed or nominated unilaterally, without anyone being asked to participate. Instead, of bringing social and ethical concerns closer to the forefront of the discussion, this risk moves them further away from the focus of AI development. The effectiveness and reach of India's AI strategy could be hampered as a result of the ecosystem's inherent complexity, interdependence, and demand for cooperation and partnership among its various players.

14. Shreya Singhal v. Union of India. AIR 2015 SC 1523.

PRIVACY AND AI

From advertising to law enforcement, artificial systems are being used to perform a variety of tasks that require inference, classification, and categorization. Our expectations of online and offline privacy and anonymity are profoundly affected by the profiling made possible by their use. The ability of AI systems to mine data for insights, spot patterns, and anticipate future developments allows for the discovery of information that would otherwise be both irrelevant and private.

A study titled ‘‘Eye in the Sky’’ was recently published by the University of Cambridge, detailing their ambitions to teach drones to recognize aggressive behavior in public settings, with initial testing to take place at music festivals in India.

The claimed program’s goals are to decrease crime rates, improve the safety of crowded public areas, and streamline police operations. However, as we’ve seen, machine learning systems, even when designed with the best of intentions, can have unintended consequences. The discussed systems are vulnerable to surveillance and privacy abuses since they function with questionable levels of accuracy and lack protections to avoid misuse. This may appear to be an advantage since, if intrusive facial recognition technology is unreliable, there is less likelihood that someone’s privacy will be invaded.

It’s already a problem that law enforcement in India is using applications that raise privacy concerns and increase the likelihood of false arrests, putting people from marginalized groups in an even more precarious position of having to prove their innocence. In addition, people’s public-facing behavior and facial features are recorded, kept, and possibly shared or accessed without their agreement, regardless of accuracy rates. How much privacy is protected or invaded depends in part on the legal environment in which AI technologies are used.

In a majority judgment from August 2017, the Supreme Court of India recognized the right to privacy as a basic right guaranteed by the Indian Constitution. This landmark ruling acknowledged the importance of protecting individuals’ personal information and highlighted the risks posed by increasingly sophisticated data analysis and machine learning. The judgment also highlighted the importance of data protection, autonomy, and identity, and the necessity for a ‘‘robust regime for data protection in the nation.’’

In particular, the Court observed,

The right to privacy includes protection of personal information. In today’s digital era, governments aren’t the only ones who can threaten individuals’ right to personal privacy. We applaud the Union Government for realizing the significance of investigating and establishing a

solid data protection system. The establishment of such a system calls for a careful juggling act between individual freedoms and state legitimacy.¹⁵

When combined with the state's deployment of AI apps that engage in surveillance and profiling, the current legislative framework effectively grants the state unbridled authority to process both personal and sensitive data. As a result, there is a systemic risk that AI-based application privacy risks will be negative.

FREEDOM OF EXPRESSION AND AI

The right to free expression is guaranteed by the Indian Constitution. The Indian Supreme Court has repeatedly cited it as a cornerstone of democracy, and it has also ruled that the right to information is an integral part of this freedom. Since more and more people are using smart assistants and mobile autocorrect technologies, as well as relying on these systems to moderate online material, it's clear that AI has a major impact on people's right to express themselves freely.

Artificial intelligence is being promoted by governments and internet corporations alike as the answer to difficult problems like online disinformation, violent extremism, and hate speech. This is a precarious trend because of how badly machine learning understands tone and context. There are legitimate fears that automated content removal could lead to a chilling effect on free expression and a general increase in censorship. The fact that it is carried out unilaterally by private firms, sometimes in response to government mandates, only heightens the level of anxiety surrounding the issue.

As we've seen, monitoring powered by AI has serious implications for privacy, but it also threatens our ability to express ourselves freely. Many people self-censor because they are unsure of the status and implications of their speech in a world where the lines between the public and private realms are blurred by AI-driven surveillance.

When it struck down Section 66A of the Information Technology Act in 2015, the Supreme Court issued the strongest declaration yet concerning the relationship between technology and free speech. Offensive, threatening, or unpleasant messages sent via the internet could result in criminal charges under this section. This legal provision was struck down by the court because it was overbroad, unclear, and restricted freedom of expression. While emphasizing the importance of democracy, educated citizens, and an open culture of discourse in India's tradition of free speech, it outlined the parameters of permissible constraints to free speech under constitutional law in the age of technology.

15. Shreya Singhal v. Union of India. AIR 2015 SC 1523.

CONCLUSION AND SUGGESTION

Future AI discourse, policymaking, and regulation must be equally influenced by different disciplines due to the complexities of handling the issues provided by AI systems. These should be grounded in ethical considerations, legal considerations, technical considerations, and philosophical considerations. Development is a swift process with murky underpinnings and far-reaching, often permanent consequences.

Artificial intelligence goes against the grain of common wisdom, which holds that one should build systems and implement technology before thinking about the consequences. The problems and opportunities of artificial intelligence (AI) vary depending on the specific application, and I hope this essay can help academics, policy-makers, attorneys, and technologies discuss, deliberate, and grasp these differences.

The right to privacy is enshrined in a wide variety of international human rights documents. This fundamental freedom is essential to the maintenance of human dignity and is the cornerstone of any free and open society. Freedom of expression, of the press, of information, and of association are all bolstered and strengthened by this right.

It is suggested to enact a comprehensive law for regulating AI. There are now only licensing authorities, but they have no power over how AIs actually behave. Since it is unclear who is responsible for the actions of a machine into which AI has been induced in the event of a malfunction or miscommunication, it is imperative that a law be passed to regulate AI's behavior. Does the licensor agree with the patent owner? Is it a user? Or the person who buys the machine. There has to be a broad law passed to govern the use of AI.

ARTIFICIAL INTELLIGENCE, ETHICS, AND SOCIAL TRANSFORMATION

Sankarana Narayanan B¹

P Gayathri Menon²

INTRODUCTION

The process of shift towards the change, from the traditional society to develop a new pattern of conduct in response to the new challenges of the new age is called as Modernization. Here, science and technology are the sole factors to attain betterment and more satisfying lifestyle. Every coin has two sides and so as modernization. People tend to notice the short-term betterment rather than focussing on the long run and since modernization offers immediate and ready-made solutions without any hardships, the shift towards this was spontaneous. But, this is where various aspects of deeds and ethics, like, good-bad, evil-righteousness, fact-values, truth-lies are compromised. This led to a major question that the technology and especially AI is a boon or bane?

With the advancement in 1990s, most societies in the world especially the Indian society entered a new period characterized by confusion and loss of direction. The facets of life in all civilizations have been profoundly altered in ways that have never been seen before in the tremendous changes brought in by the introduction of the Internet, and globalisation. Our world has entered a transitional phase that doesn't seem to be ending anytime soon as the forces of transformation have continued to gain momentum. At the same time, social and economic systems are becoming increasingly more intricate and interconnected, and global expansion is moving beyond the sphere of economics to engulf other aspects of life. Unconventional trends of change are slowly emerging as powerful forces affecting the people, pace, and direction of societal developments in general and sociocultural and economic conditions in particular³.

Since the early 90s, the IT and ITeS Sector in India has been of tremendous importance to its economy by transforming the Indian society to the next level of advancement. "Man meets

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1. B.B.A LL.B, VIT School of Law Chennai
 2. B.A LL.B, VIT School of Law Chennai
 3. Research Gate, https://www.researchgate.net/publication/351978419_artificial_intelligence_-social_transformation_special_reference_to_india (last visited Aug 01,2023)

machine” is the reality of unfolding several economic, social, juristic and other challenges. The application of AI with respect to the same has already been quite fruitful in several sectors which includes technology, banking, marketing, and most importantly to the legal system which stood as the custodian of social justice. Since the society was undergoing ceaseless transformation, the need to regulate and protect ethical values became the need of the hour. Thus, the legal system in order to keep check and balance in the society moulded itself to the adaptation of technological advancement.

SCOPE OF AI IN LEGAL PROFESSION

Over time, AI is attempting to establish its impact in a variety of fields by using the idea of teaching computers to learn and manage difficult and complex activities that were previously performed by humans with a great deal of tedious effort. With better precision, speed, efficiency and reliability, AI is helping lawyers to streamline their work processes which turned out to be one of the most important achievement of the legal system.

Legal AI can be envisaged as the exercise of technologies such as machine learning, natural language processing, legal robotics, planning, rules-based expert system, logic programming, artificial vision, neural networks etc with relation to legal issues. In the evolution stage of law, presence of analog materials such as textbooks, casebooks, case reporters, looseleaf services, law journals, and legislation were a part of every lawyer’s day to day activities. In order to manage these documents which includes storing, preserving, consulting, it required a lot of time and the lawyers themselves found it a bustling task as everything was in hard copy. Complexity in dealing with these materials and in order to save manual labour, the development of digital materials, digital libraries and other related technologies attracted the lawyers. The Indian system is vast and constantly changing and with the utilization of computer science, lawyers can get unparalleled insight into the legal domain within seconds. In particular, AI is expected to make over the understanding of clients, implementation of proper firm infrastructure and legal processes. The capacity to incarcerate and influence legal knowledge that helps in the lawyer’s as well as client’s decision making is a matter of delicacy. In such cases, these AI systems act as a legal warehouse in order to build up and to learn from their own understanding to improve the advice offered.

Ross intelligence, SUPACE, SUVAS, Casetext, Luminance, LegalZoom, Lex Machina, ContractPodAI etc are some of the new legal AI software, that provides effective dispute resolution, better legal understanding, superior admittance to justice and fresh challenges to conventional law firms which provide legal services along with natural language processing using leveraged cohort correlate model.

In spite of providing these many benefits, the legal profession is still hesitant to shift completely towards the AI technologies because of the following apprehensions;

- a. Exorbitant costs involved in adopting AI technology.
- b. Reliability and accountability of decisions given by AI.
- c. Complete reduction of man work, which in turn leads to unemployment.

Regarding accessing these tools, people should have both technical and economic powers to use it to their fulfilment. And most importantly the infrastructure to accommodate these tools is still not sufficient in India. With the current infrastructure, it would take at least 10 years to accommodate these AI tools. The problem of high installation cost also increases the gap between developing/ under-developed nations with that of developed nations as they are technologically weak. The chances that the developed countries might exploit the developing and under-developed countries are high. With the availability of high-end technologies, in the disguise of helping the needy country, they trade with AI. Even though this develops international trade, when its veil is removed, it is nothing but a business concern. Judiciary should be independent of any hindrances, but when we borrow these tools from the developed countries it will be like paying a price for justice which severely shatters the trust towards judiciary questioning its dependency on technology which is with business motive.

The simplest technique that can be used for analysis is machine learning which finds the best form out of the available training data such as legal documents, images, audio etc. While contemplating the idea of legal AI, one of the important part in delivering justice is selecting the right algorithm for classification and resolution of the legal issue. The concept of AI works as hand feeding i.e., It will repeat its performance repeatedly if no command is given. As a result of the same, it would not be possible for the machines to survive in this changing environment without the assistance of humans. If machines are used in place of judges to decide a case, they will give judgments based on precedents which may not be applicable in all circumstances because each case differs from the other with respect to its facts and circumstances or in some way or the other. Traditional legal practitioners are unwilling to use these technologies as most of them are not comfortable with it and therefore the efficiency of inputs given is under question and cannot be relied completely. Most importantly AI doesn't have their own judgment making skills as they don't know what is ethical and what's legal. This in turn reduces the faith of society in justice delivered by the legal system.

One of the most important reasons for lawyers not to adopt or rely upon AI is the risk of unemployment. Use of legal data analysis, predictive technologies, e-discovery, intelligent interfaces, triage services, and legal bots is challenging human knowledge and their expertise in legal services, despite the many obstacles that artificial intelligence faces. Legal data research

includes predictive systems that use legal artificial intelligence to forecast case outcomes based on certain themes and the inputs provided to it. Since machines are time saving and more efficient in performing low-skilled clerical jobs, people are willing to invest in machines rather than in humans, and as a result, the possibility that machines will replace humans in doing tedious tasks is high as most of their tasks can be done by machines.

AI, ETHICS AND INDIAN LEGAL SYSTEM

The question of whether the Indian legal system along with its professionals is prepared to adapt to the changes can be perceived through tremendous results it has achieved in different applications. Some of them includes case-based reasoning, document modelling, deontic logic, conceptual retrieval, intelligent tutoring and so on.

In a cultural and customary society like India, it is important to preserve its heritage, values and ethics in all regards. From the ancient times till today Indian society has been in such a way that, it values ethics above all aspects. This is also seen in the working environment. People often worship the instruments or tools which they use to work. But when it comes to science and technology, it is always seen in as an alien element. Ethics is seen as a funnier science element rather than a serious transformative element. People deny to understand that, the birth of technology and AI, it is slowly affecting our daily lives both in good and bad ways. One of the simple instances to prove this point is, we cannot move without using Google which is a search engine developed through technological advancement.

Slowly, this advancement paved its own way into all working classes and profession. One of the important sectors is legal sector which is still in a dilemma, whether to accept the change completely or not. The agitation or we can even say it as “fear” behind the dilemma is that, when AI takes over, what will happen to ethics. Will ethics be protected or not?

The reason why this question arise is that, people associate ethics with their daily life. It is seen in every aspect, which includes emotional, sentimental, religious as well as spiritual beliefs. All these beliefs are sculptured deeply in heart and minds of the Indian society, without which none can survive. When it's between people, all the connections can easily be communicated and transferred. But if AI tries take over humans, all these factors will be suppressed vehemently. That's why people are reluctant to trust AI.

The more powerful a tool becomes, the more it can be used as a weapon against another. AI is one of such tools, which constantly grows with the knowledge we feed in it. When there is too much of knowledge in one particular place, people start to use it with malicious intent. Over a period of time, it will become faster and more capable than humans. This is because, every 2 years, the processing power of a computer will double. The co-founder of Google predicted

that, by 2049, the average desktop computer will have more processing power than the humans combined all together⁴.

Now let us dwell into important factors which obstructs the people's shift towards AI. According to the authors observations, apart from the factors mentioned above, some of the other reasons, which obstruct the shift are:

- Fairness
- Transparency
- Privacy
- Security
- Flexibility

FAIRNESS

“Too many cooks, spoils the food”. The same goes with AI. When too much of knowledge is fed to AI, it becomes super imposed with too many information. Over a period of time, it will bite too much than what it can chew. So, this might lead to some biased decisions which may have got reinforced over a period of time. Also, if it is not updated on a frequent basis, this might lead to chaos rather than settling the dispute.

Another disagreement is that, parties can draft it in such a way that, it is acceptable by the AI but prima facie it is done just to deviate the AI and render judgement on their behalf. But this can be easily interpreted and found by humans. So, it is feared that, there might not be fairness in rendering justice.

TRANSPARENCY

The transparency can be seen in 2 different ways.

- i) With the AI itself
- ii) With the person or mode by which it is fed with information

What is with AI itself is that, we are able to witness only the feeding and end product but not the process in between or anything in between. Maybe a technician or an “expert” in that field might be knowing it, but a normal prudent man does not know about the intricacies and the working mechanism of AI. When it is done in usual course this is not a question of concern. But in a democratic nation like India, which depends on judiciary to a greater extent, people expect

4. P. Ishwara Bhat, Law And Social Transformation 663 (1st ed. *reprint* 2012)

transparency in delivery of justice. This can be even witnessed in N. S. Mirajkar case⁵, where to make the judicial proceedings transparent the court actually widened the scope of Art. 12 by including even the “media” under the ambit of Art. 12⁶. Since the proper structure and working mechanism is complicated and not quite transparent, people fear that it would deny their rights and remedies.

PRIVACY

As discussed, AI gains knowledge when we feed them with queries. So, when we feed them with information, what will happen to that information is the main concern. For example, if I have a sensitive issue, the fiduciary relationship between a client and his/her advocate is protected. Not just merely by words, but it is also a statutory mandate under Advocates Act⁷. Also, sections 126-128 of Indian Evidence Act⁸, comes in front to protect the confidentiality of information which is made with the official capacity. But whereas the same is absent in case if AI is employed as many parties have access to it, like internet service provider, the device which one uses, the browser or the software which one uses and many others etc.

SECURITY

The reason why security is questioned is that, will there be any data theft? Most importantly, in case if there is, who will be held accountable in case of data theft? Also, in case of any theft, it would be possible to deliver justice only if it is easily investigated. But in case of AI data theft, since many of them aren’t aware of the entire details and the mechanism by which AI works, even when the concerned authorities try to investigate, it would be in vain.

FLEXIBILITY

The flexibility here refers to both the legal procedural compliances and then with the ways to access these AI tools for rendering justice. As well all do know that in case of a suit, it extends over a long period of time. In many hearings the advocates would just come and seek adjournments. Even though many a times this is done just for trivial reasons, there are genuine reasons also. But, if AI comes to power, it might not consider all these things and the probability of AI not understanding the situation and just passing an ex-parte order is high.

Regarding accessing these tools, people should have both technical and economic powers to use it to their fulfilment. Also, most importantly the infrastructure to accommodate these

5. Naresh Shridhar Mirajkar And Ors vs State Of Maharashtra And Anr, 1 1966 SCR (3) 744

6. INDIA CONST. art. 2

7. The Advocates Act, 1961, No. 25, Act of Parliament, 1961 (India)

8. The Indian Evidence Act, 1872, No. 01, Act of British Parliament, 1872 (India)

tools is still not sufficient in India. with the current infrastructure, it would take at least 10 years to accommodate these AI tools.

From all these, it can be evidently inferred that, ethics is important and plays a vital role even in this scientific era. The importance to protect ethics in the Indian scenario and the agitation to not to shift completely to AI can also be understood through above mentioned observations.

JUDICIAL PRECEDENTS THAT SHAPED THE CONCEPT OF AI

“Tata Sky Limited v. National Internet Exchange of India (NIXI) & Ors”⁹(2019)

The facts of the case is that, “Tata Sky Limited had filed a suit seeking permanent injunction against an individual’s unauthorised use of its trademark ‘TATA SKY’ as part of trade mark, trade name, corporate name, domain name etc. In addition to the above relief, Tata Sky also arraigned the National Internet exchange of India (“NIXI”) and Go Daddy LLC as defendants seeking injunction against them from registering domain names which were identical/deceptively similar to its trademark ‘TATA SKY’”. The High Court of Delhi directed NIXI to put out the domain name specified in the dispute. However, it was just an dynamic injunction where it will not prevent NIXI to register any other names which might be similar to Tata Sky’s domain name. The reason behind this is that, NIXI being a government body, did not have any adjudicatory powers to suo moto determine if the domain name sought to be registered was identical/similar to Tata Sky’s trademark registration or not. The court also said that “Artificial Intelligence, can be suitably employed to, within the parameters defined by law and/or the Courts, prevent such repeated infringement and violations, eliminating the need for the grievants to repeatedly approach the Court and/or the dispute redressal mechanism and which may tire the grievants, opening the field for violators/infringers”.

Sri C. Shiva S/O Chikka Chowdappa v. The State of Karnataka¹⁰ (2006)

The background of this case is that, during 2006, in the Bangalore city, many people went missing (around 400) every month. Police officials and even citizens were left in bizarre after learning about this. In order to put an end for this, relevance of information technology was sought by several authorities at several stages of investigation.

The court actually accepted and appreciated when the authorities did measures with the assistance of technology. For instance, Police had actually set up a special Information Network to facilitate quick dissemination of information regarding missing persons.

9. Tata Sky Limited v. National Internet Exchange of India (Nixi) & Ors, CS(COMM) 1202/2016

10. Sri C. Shiva S/O Chikka Chowdappa v. The State of Karnataka, 2007 (3) KarLJ 148

Also, already existing information networks has been modified to centralised network. This was web-enabled information data bank and maintained thoroughly via web or internet portal. This was one of the first case where facial recognition software were installed along with CCTV Cameras at crowded places of the city. This was seen as such an revolutionary moment as to deliver justice technology assisted a lot.

In re Prajwala (2018)

In this case, “SLIC on behalf of Prajwala, an anti-trafficking organisation, filed a public interest litigation to the SC praying that, the Government should create a ‘victim protection protocol’ so as to protect the rights of victims of trafficking”. Many social media entities highlighted the possibility of using AI for auto-detect the contents amounting to child pornography to SC and the court ordered to implement the same.

To regulate the usage of AI and other technologies, the court advised the state to set up a committee to formulate best and transparent practices, which would also include public participation. Also, advised the committee to work alongside investigation officer as they were handling the situation at the ground level.¹¹

WILL AI REPLACE LAWYERS?

The apprehension whether the introduction and implementation of engineering and science in legal sector has the ability to replace the lawyer and legal counsel or whether these AI-based solutions and platform has the ability to increase the efficiency and productivity of firms and lawyers is high. AI was developed to assist humans with their daily lives and not to replace them. AI industry has come up with a number of milestone achievements in these past few years disregard of which people assumed the worst. Legal sector all over the world has witnessed various instances where, new solutions and technologies has improved the efficacy of lawyers in contract analysis, legal research and much more. All these software programmes are increasing the authenticity and accuracy of research and critical analysis. Legal profession is extremely driven by analysis, dynamic decision making, and representation which cannot be automated and performed without human existence. AI based software and programmes can considerably reduce a lawyer’s time and energy which in a way motivates the lawyers and firms to provide more authentic and result oriented suggestion to their clients. The Indian legal fraternity is evolving daily and is looking forward to increase AI based and automatic assisting tools and software. However, these AI-based assisting tools or software don’t seem to replace the lawyer job even though assistance is required in analysis, stratification and many other clerical tasks is required. Moreover, AI can assist only with tasks such as legal research and document review, as it lacks the ability to think dynamically that only a humans can do. In other words, it can be said that AI just provides the legwork as to support lawyers and judges in serving timely

11. Prajwala v. U.O.I & Ors, Writ Petition (C) No.56 Of 2004

justice to people by taking into consideration of the associated the ethical values also. It can also eliminate any bias connected with the judgment-making. Therefore, proper utilization of AI will make the professionals more productive, efficient, better, more accurate rather than making them unemployed and thus, this answers the question of whether AI has the power to completely replace lawyers as “No”.

CONCLUSION AND SUGGESTIONS

Within the short span of time, the boom of technology was manifold times all over the world and its adaptability is quite remarkable in all sectors. The only sector in which the penetration of technology is minimal is the legal sector. The reasons for the same is what we have discussed above.

The instances of AI can be traced back to the period of Plato, a renowned student of Socrates. Plato created the world’s first fictitious character named “Phaedrus” to converse with his master, Socrates. In Plato’s book of conversation between Socrates and Phaedrus, Phaedrus says that all modern means of knowledge should be accepted. But Socrates denies the same as he believed that it will make humans lethargic and make them use their brain less¹².

We, the authors also feel the same that, the role of AI should just be assisting and facilitating the lawyers and not to interfere. The reason behind this is that, AI cannot perform multiple functions as man performs. For example, an advocate can do clerical works, research works, drafting works, client counselling works and many other works all together. But if it is an AI tool, it can only perform functions for which it is programmed for. So in place of hiring a single person to do all these we have to rely on separate AI tools for separate functions. But, to catalyse the research works we can seek AI’s help.

Human brain is actually super complicated and super sufficient to perform any activities. It is the human brain which actually invented AI itself. Another notable comment made by the co-founder of Google is that, in order to make a super computer worth the human brain, it is a dynamic process and requires a large space i.e. the distance between the earth and the moon. That is how super-efficient and self-reliant we actually are. So it is to be understood that it is not that we are incapable of performing something remarkable, it is just that we are sluggish enough to perform the same. As said in the earlier parts of the paper, we seek for short-term benefits and ready-made solutions, which makes us lazy. This in turn affects our thinking capacity and drops down to certain level. That is why we feel like we need someone’s assistance and seek the help of AI.

12. Alexander Nehmas & Paul Woodruff, *Plato Phaedrus* 31 (Hackett Publishing Company Indiana 1995)

The AI's impact on Indian legal system is a subject of debate and conjecture. While some believe that AI can increase efficiency, others are concerned over its impact on employment. Also, others fear that it might lead to bias in decision making. This advancement in legal sector is thus changing in tandem with the social transformation thus increasing the trust and confidence of public. If ethical values are also upheld by AI, then people will completely accept the use of AI technologies in delivering timely justice to people.

To ensure AI's incorporation, we need to take a balanced approach. Here are few suggestions that the authors think will help:

- Shaping a solid and rigid regulatory framework which clearly defines and encounters the rights, liabilities, duties and all other related aspects.
- In order to protect the privacy of people, proper establishment of a data security framework to provide legal backing in respect to AI is necessary.
- Encourage AI developers to adhere to national as well as international standards so that the standard of assistance provided.
- Data Privacy Impact Assessment Tools should be used by AI developers and enterprises which helps them to undergo self-assessment test.
- Public awareness with respect to the association of AI in legal sector as well as legal profession shall be provided to increase their trust and confidence.
- Due to the diverse and fast changing nature of technology, enactment of sectoral frameworks will also act as additional protection.
- Framework for apportionment of damages need to be developed so that the involved parties also bear liability.

As the conclusion, the authors through this paper embrace the concept of AI in assisting legal professionals in order to provide better and efficient services as well as to deliver justice to the people without any arbitrariness. AI technology is neutral and neither a friend and nor a foe. It is the activities and the usage of humans which turn them either way. So we have to use it wisely and judiciously in order to bear a fruitful outcome from it without leaving AI to exploit us. This can be achieved through people's trust towards the concept of AI and through the implementation of proper legal frameworks.

When AI comes into picture, it should not deter the individual's belief on judiciary. Rather it should be in such a way that, it aims to mobilize law, so that the affected individuals shall with the scribe of AI can approach the doors of justice. Further even the court can set up AI such

as SUPAC(SC portal for assistance in court's efficiency) for clients who cannot afford lawyers so that they can represent themselves and can have a better chance of fighting for their justice.

As discussed above, just because people cannot interpret or does not have any knowledge about law, they hire lawyers and they charge huge amount of fees. Also, even when the order comes in favour of litigant, because of the complexities in the order, the litigant is not able to understand the order to its full extent. So, in these cases, when AI comes to assist, they can directly access justice which is also considered to be a fundamental right. This at a greater level can remove socio economic disparities in the society. Also, when this usage of technology is accessible to all, it would satisfy various sustainable development goals. That is the reason why the authors believe that it should assist and facilitate legal professionals and system rather than completely taking over it.

AUTONOMOUS VEHICLES TO SERVE AGED RESIDENTS IN JAPAN

Dr. Sivarama Krishna Prakash¹

INTRODUCTION

An autonomous vehicle as understood in common parlance is a driverless vehicle that can run on the roads and perform all manoeuvres that a vehicle can normally do, without human intervention. This is possible with the help of multiple sensors, lidars, cameras, and other gadgets fitted on these vehicles, which help them to sense their surroundings, road markings, and signals for safely plying on the roads as if a human was driving it. Compared to human-driven automobiles, autonomous vehicle technology offers many advantages. It increases safety on the roads, helps reduce accidents, helps reduce traffic congestion, helps old and disabled people to drive vehicles and lastly also helps in eliminating driving fatigue².

While permitting autonomous vehicles to drive on roads the main cause of concern would be on how to handle the violations or accidents or liabilities on account of any accident or incident caused by such vehicles. Any accident concerning a self-driving autonomous vehicle will normally have multiple actors responsible and liable for such accidents. Some of them are the maker or manufacturer of the autonomous vehicle, the developer, the team which manages quality control, the user of the self-driving vehicle, the software coder, the team or person responsible to roll out software patches or updates/upgrades, and lastly third-party hackers who hack these vehicles and create an accident or incident. Given the above, since conventional motor vehicle laws are inadequate in themselves to manage plying of self-driving automobiles, all jurisdictions where such vehicles are permitted to ply have either enacted special laws or have tweaked their existing laws to handle self-driving autonomous vehicles.

When you look at the history of autonomous vehicles, General Motors (GM) in the USA created an exhibit of future cities in 1939 called Futurama depicting smart cities and self-driving cars³. In 1958 they demonstrated a prototype car that had electrical pick-up coils and ran on a road that was fenced on either side with electrical coils. The electrical current in the coils

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1. Director Legal Zoom video communications India Pvt. Ltd. and Veteran Wing Commander.
 2. What is an autonomous vehicle? TWI, <https://www.twi-global.com/technical-knowledge/faqs/what-is-an-autonomous-vehicle> (last visited Jul 5, 2023).
 3. History of the Autonomous Car, TitleMax (2020), <https://www.titlemax.com/resources/history-of-the-autonomous-car/#:~:text=History of Autonomous Cars, made this concept a reality> (last visited July 5, 2023).

on the fence and that in the car were controlled to drive the car⁴. Two decades later in 1977, the Japanese improvised this by adding a camera to the car for transmitting data to a computer for processing photographs of the route followed by the car⁵. A decade later the Germans further improvised it with VaMoRs, a camera-equipped vehicle that could safely travel at 56 miles per hour⁶. One can safely conclude from the above, that apart from USA and Germany, Japan have also been equally interested in the development of self-driving cars, since the idea was conceptualised by GM.

SAE LEVELS

“Society of Automotive Engineers” (SAE) in the USA has provided six classifications for Autonomous Vehicles (AV) and it starts from Level zero to Level five. Level zero denotes complete automation and Level five, driverless systems⁷. Level four is also fully automated but requires a driver to be physically present in the vehicle, in most jurisdictions. The Society of Automotive Engineers defines level four autonomous vehicles as those that can operate manually as well as autonomously on highways where the speed limit is no more than 30 mph (48.28 km/h)⁸.

AUTONOMOUS VEHICLE TESTING

Most Western jurisdictions where self-driving cars are plying have well-disciplined traffic and better roads. This has facilitated the smooth introduction of such vehicles in many major cities in those countries. However, the culture, landscape, ecosystem, and mindset in the Asian region are different and hence the introduction of such self-driving cars has been thoughtfully done by many nations in Asia. Most of the countries either testing or plying self-driving cars in Asia are doing that in a restricted space as mentioned below. A 100 square kilometre enclosed area has been made operational by Shanghai to test AVs⁹. This is called the Pilot Zone for National Intelligent Connected Vehicles¹⁰. As per Chinese experts, piloting a self-driving

4. *Id.*

5. *Id.*

6. *Id.*

7. SAE Levels of Driving Automation [online] available at <https://www.sae.org/blog/sae-j3016-update> (last visited, July 5, 2023)

8. www.ETAuto.com, Japan to amend traffic laws to promote self-driving vehicles - et auto [ETAuto.com](http://www.ETAuto.com) (2022), <https://auto.economictimes.indiatimes.com/news/auto-technology/japan-to-amend-traffic-laws-to-promote-self-driving-vehicles/89984968> (last visited Jul 5, 2023).

9. Autonomous connected cars on their way, archive.shine.cn (2016), http://english.jiading.gov.cn/2020-04/09/content_37535207.htm (last visited July 5, 2023).

10. *Id.*

autonomous vehicle in China is more complicated than in the USA and hence if AVs achieve success in China, they can easily ply in the USA¹¹. Singapore-based NuTonomy, an initiative of MIT, USA has started a self-driving taxi service covering two and half square miles¹². In Japan, Toyota e-Palette, a self-driving vehicle was used to ferry athletes at the 2021 Japan Olympics and Tokyo Paralympic Games. During the Tokyo Paralympic games after one such self-driving vehicle collided with a visually impaired athlete, the running of a self-driving autonomous vehicle was stopped¹³. The whole impetus of such restricted testing and usage in Asia is mainly aimed towards the proper sinking of the culture and mindset in the local population before the introduction of self-driving autonomous vehicles on a large scale.

PERSONAL DELIVERY DEVICES (PDDs) OR LAST-MILE AUTONOMOUS DELIVERY ROBOTS

PDDs are autonomous, mobile machines known as personal delivery devices (or robots) designed for the last mile of a supply chain's final delivery of goods to customers. Pennsylvania in the USA approved the positioning of PDDs (Personal Delivery Devices) next to roadways, crosswalks, and sidewalks in October 2020¹⁴. The states which had PDD legislation approved earlier are Florida, Ohio, Utah, Arizona, Washington, Texas, North Carolina, Missouri, Colorado, and Tennessee, as well as Virginia, Idaho, Wisconsin. Details of various approved weight/speed limits and bill numbers of the above-mentioned states are in the table below¹⁵.

S No	State	Year Passed	Weight Limit (lbs)	Speed Limits		Senate / House Bill	Notes
				Sidewalk mph	Roads mph		
1	Virginia	2017	500	10	25	SB 1207, SB 758	1st state
2	Idaho	2017	200	10	n.a.	HB 566	2nd state
3	Wisconsin	2017	80	10	n.a.	SB 148	3rd state

11. Roadmap lays out path for connected vehicles [online] available at <https://www.chinadaily.com.cn/a/202011/16/WS5fb1d9c1a31024ad0ba94473.html> (last visited July 5, 2023).
12. MIT spinout NuTonomy just beat Uber to launch the world's first self-driving taxi [online available at <https://techcrunch.com/2016/08/24/mit-spinout-nutonomy-just-beat-uber-to-launch-the-worlds-first-self-driving-taxi/> (last visited July 5, 2023).
13. Toyota pauses Paralympics self-driving buses after one hit visually impaired athlete [online] available at <https://www.theguardian.com/technology/2021/aug/28/toyota-pauses-paralympics-self-driving-buses-after-one-hits-visually-impaired-athlete> (last visited July 5, 2023).
14. U.S. states that have legalized personal delivery devices (pdds) - 2020, RList, https://rlist.io/l/u-s-states-that-have-legalized-personal-delivery-d?utm_source=insights.rlist.io&utm_medium=referral (last visited Jul 6, 2023).
15. *Id.*

4	Florida	2017	80	10	n.a.	HB 1027	4th state
5	Ohio	2017	90	10	n.a.	n.a.	5th state
6	Utah	2018	n.a.	10	20	HB 217, HB 277	n.a.
7	Arizona	2018	120	10	n.a.	HB 2422	n.a.
8	Washington	2019	120	6	n.a.	HB 1325	8th state
9	Texas	2019	n.a.	10	20	SB 969	n.a.
10	N. Carolina	2020	500	12	20	SB 739	n.a.
11	Missouri	2020	200	10	n.a.	HB 2290	n.a.
12	Colorado	2020	n.a.	12	20	SB 20-092	n.a.
13	Pennsylvania	2020	550	12	25	SB 1199	n.a.
14	Tennessee	2020	n.a.	10	n.a.	SB 2836	n.a.

In most states in the USA, the typical regulatory approach is that PDDs have to follow the rules of the road and yield to pedestrians and cyclists. They must have adequate lighting for nighttime and low-light navigation, as well as excellent brakes that let PDDs stop in a controlled manner¹⁶. The majority of laws also stipulate that PDDs must be tracked by an operator who has remote control access and is labelled with a distinctive identifier (ID). Operators of PDDs are required to keep insurance policies with general liability limits covering each damage claim of at least \$100,000 resulting from PDD operation¹⁷. The law in Pennsylvania permits PDDs to travel at a speed of 25 mph while they are not in pedestrian areas or on the sidewalks¹⁸.

San Francisco based Starship Technologies has been developing and testing autonomous delivery robots in Europe since 2014. In 2017, the company introduced these robots for usage in specific regions of the world. Robots from Starship are designed for last-mile delivery and are capable of navigating through crowded areas without a human driver¹⁹. In a few of the early adopting states, Starship's delivery robots were the pioneers. Higher weight restrictions allowed larger delivery robots like Amazon and FedEx to enter the market²⁰. FedEx's Roxo, a

16. U.S. states that have legalized personal delivery devices (pdds) or last-mile autonomous delivery robots Insights by RList (2020), <https://insights.rlist.io/2020/12/states-that-legalized-pdds.html> (last visited Jul 6, 2023).

17. *Id.*

18. Ken Knickerbocker, Pennsylvania passes one of least restrictive autonomous delivery robot laws vista.today (2020), <https://vista.today/2020/12/pennsylvania-passes-one-of-least-restrictive-autonomous-delivery-robot-laws/> (last visited Jul 6, 2023).

19. Eli Stein, Autonomous Robot Delivery Legislation General Code (2022), <https://www.generalcode.com/blog/autonomous-robot-delivery-legislation/#:~:text=In%202021%2C%20a%20Pennsylvania%20state, and%20classified%20them%20as%20pedestrians.> (last visited Jul 6, 2023).

20. U.S. states that have legalized personal delivery devices (pdds) or last-mile autonomous delivery robots, *Supra* at 15.

four-foot-tall, 450-pound robot, utilises sensors to find sidewalks within a three-to-five-mile radius for deliveries. FedEx is testing Roxo, which has a carrying capacity of around 100 pounds, to deliver items like pizza, groceries, and auto parts to a doorstep without making human interaction with the recipient. Roxo is also capable of climbing steps and curbs. FedEx remote workers have access to screens, cameras, microphones, and speakers on each robot²¹. The Scout, an all-electric delivery robot from Amazon, resembles a tiny cooler in size, can travel at a walking speed along sidewalks, and can effortlessly avoid obstructions. In field tests, Amazon has used The Scout to deliver tens of thousands of parcels, but for the time being, a human must accompany the machine. The plan is for consumers to remove the package from the robot when they arrive once the robots are operating independently²². The Chinese start-up UDI has been experimenting with driverless trucks that rely on deep-learning algorithms, cameras, and light-detecting scanners to accomplish tasks. Alibaba, a major player in the eCommerce industry, wants to use this technology to handle more than a billion deliveries each day²³.

The variety of personal delivery systems available in the USA and other countries is in the table below²⁴.

Rank	Name	Function	Company	Country	Website	Pricing	Region
1	Sidewalk Delivery Robots	Community Delivery	Starship	USA	https://www.starship.xyz/	US\$1.99/order	North America
2	Roxo FedEx SameDay Bot	Community Delivery	FedEx	USA	https://newsroom.fedex.com/newsroom/thefuturefedex/	in-house use	North America
3	Marble Robot	Community Delivery	Marble	USA	https://www.marble.io/	Per-delivery fee	North America

21. Eli Stein, Autonomous Robot Delivery Legislation General Code, Supra at 18.

22. *Id.*

23. *Id.*

24. Personal delivery devices or last-Mile Autonomous Delivery Robots (updated 2020), RList, https://rlist.io/l/personal-delivery-devices-robots-updated-2020-?utm_source=insights.rlist.io&utm_medium=referral (last visited Jul 6, 2023).

4	Kiwibot	Community Delivery	Kiwibot	USA	https://kiwi-bot.com/	US\$3.80/delivery, US\$14.99/month	North America
5	Helloworld Robot	Community Delivery	Hel-loWorld Robotics	Malaysia	https://www.helloworld-robotics.xyz/	Per-delivery fee	Asia
6	Geoffrey	Community Delivery	Tiny Mile	Canada	https://tiny-mile.ai/	min \$2.99 delivery fee	North America
7	Eliport	Community Delivery	Eliport	Spain	https://eliport.com/	n.a.	Europe
8	Daxbot	Community Delivery	Daxbot	USA	https://dax-bot.com	n.a.	North America
9	Camello	Community Delivery	OTSAW Digital	Singapore	https://www.otsaw.com/delivery-robots.php	n.a.	Asia
10	Amazon Scout	Community Delivery	Amazon	USA	https://www.aboutamazon.com/news/transportation/whats-next-for-amazon-scout	in-house use	North America

ISO 4448

The currently under development ISO/4448 includes more detailed guidance on subjects like the direction of travel, the ideal shy distance between the robot and pedestrians (both walking and standing), the lights and sounds it should emit to alert deaf and blind people to its presence, and scheduling systems for multiple deliveries²⁵. This standard contains more than 120 data definitions for weight, size, speed, and cybersecurity. By 2025 at the earliest, ISO/4448 is anticipated to be completed²⁶.

CONCERNS FOR SENIOR CITIZENS IN JAPAN

More than thirty percent of Japanese citizens are over sixty-five years of age and due to financial constraints, most of them have moved from populated cities to depopulated small

25. Greg Noone, Delivery Robots are coming. the law isn't ready Tech Monitor (2022), <https://techmonitor.ai/technology/ai-and-automation/delivery-robots-coming-law-not-ready> (last visited Jul 6, 2023).

26. *Id.*

towns. These towns lack access to daily necessities and also do not have proper infrastructure or labourers to help such aged population with door-to-door delivery of daily need items including food²⁷.

JAPANESE RTA AMENDMENT

The current Japanese Road Traffic Act (RTA) allows level 3 driving, wherein during majority of the time the automobile is driven by a self-driving system, but the human driver who is mandatorily present, still takes emergency action (RTA art. 71-4-2; Road Transport Vehicle Act art. 41)²⁸. To tide over the above crisis, post adequate public consultations the Japanese government introduced an amendment to their Road Traffic Act (RTA) effective from 27 April 2023 (Act No. 32 of 2022²⁹, amending Road Traffic Act (RTA), Act No. 105 of 1960, as amended)³⁰. A framework for allowing Level 4 autonomous vehicles to operate on public roads in Japan was established by the amendment, in addition to other amendments, beginning in sparsely populated areas³¹. The main purpose behind this amendment is to permit the operation of PDDs in Japan mainly in depopulated areas to support the senior citizens living there. After Singapore and Malaysia, Japan is the next country in Asia to adopt PDDs. While all other countries primarily adopted PDDs to help corporates in delivering goods, the subtle difference here is that Japan has adopted PDDs to take care of its senior citizens. On lines of the regulatory framework for PDDs in various states of the USA, listed here are a few of the major pre-requisites which are required to be complied with in Japan, as per its latest RTA amendment, before plying a Level 4 autonomous vehicle:

- a. Prior approval from the Public Safety Commission with jurisdiction over the area where the stated autonomous operation will take place is necessary³².

27. Japan to tackle labour shortage and isolation with self-driving robots, euronews, <https://www.euronews.com/next/2023/02/12/japan-will-allow-self-driving-delivery-robots-to-roam-its-streets-to-combat-labour-shortage> (last visited Jul 5, 2023).

28. 法令検索, e, <https://elaws.e-gov.go.jp/document?lawid=326AC0000000185> (last visited Jul 5, 2023).

29. 法令検索, e, <https://elaws.e-gov.go.jp/document?lawid=326M50000800074> (last visited Jul 5, 2023).

30. Japan: Road traffic act and road transport vehicle act amended, The Library of Congress, <https://www.loc.gov/item/global-legal-monitor/2022-05-16/japan-road-traffic-act-and-road-transport-vehicle-act-amended/> (last visited Jul 5, 2023).

31. Rulemaking developments for level 4 autonomous driving, Legal Developments, <https://www.legal500.com/developments/thought-leadership/rulemaking-developments-for-level-4-autonomous-driving/> (last visited Jul 5, 2023).

32. *Id.*

- b. The application for permission must include a detailed plan including the type of vehicle, route to be followed, details of individuals involved in the vehicle operations, and information on processes to be followed for monitoring of these self-driving autonomous vehicles³³.
- c. There is also a need under the amended law to have an Autonomous Operation Manager. Such a person must not be blind or deaf, must be able to use the facilities and remote monitoring systems required to carry out the specified autonomous operation in accordance with the operation plan, and must not be viewed as being unfit to perform the duties of an Autonomous Operation Manager³⁴.
- d. Although the new law does not specifically state that the Autonomous Operation Manager must have a driver's licence, it is nonetheless a necessity, such a person must have some knowledge of Japanese traffic rules³⁵.
- e. Autonomous operations that have been given the go-ahead must have their vehicles monitored, either remotely or by an on-site Autonomous Operation Manager³⁶.
- f. The remote monitoring systems must have the following mandatory specifications³⁷:
 - i. Able to transmit clear video and sound of the inside of the vehicles, the roadways, the traffic around the vehicles, and the location of the vehicles during a specified autonomous operation;
 - ii. Screens, speakers, and/or other devices must be present so that the Autonomous Operation Manager can confirm the video and sound are being received;
 - iii. Must be equipped with a wireless phone or other means of communication so that the Autonomous Operation Manager can talk to persons both inside and outside of the vehicles;
 - iv. The systems in the vehicle must immediately notify the Autonomous Operation Manager, if the ability to communicate with passengers both inside and outside of the vehicles, as well as to collect audio, video, or location data, is compromised;

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

- v. It is required to properly record and retain all audio, video, position data, chats with passengers and pedestrians inside and outside moving vehicles, as well as any system failure information; and
- vi. Necessary systems to be in place for ensuring cybersecurity.
- g. The Autonomous Operation Manager or the Remote Monitoring System must take control of the vehicle if it gets stuck or collides with obstacles
- h. To reduce the risk of accident or injury, the laws also set a maximum speed of four miles per hour for delivery robots.
- i. Such robots must carry a mark showing that they are being remotely controlled and must be equipped with an emergency stop button³⁸.

DELIVERY ROBOT TRIALS

Robotic delivery trials have already been carried out in Tokyo with such robots delivering food and other daily necessities³⁹. Japan already has several autonomous robot concepts, such as ZMP's DeliRo and Panasonic's Hakobo robot, which is currently undergoing testing in Tokyo and Fujisawa⁴⁰. DeliRo Robot has successfully avoided people while delivering snacks on a roadway outside of Tokyo. It's set up to display a teary eye when obscured by onlookers⁴¹. According to Panasonic, the Hakobo robot can recognise obstacles and decide on its own when to turn and stop. The Fujisawa control centre, which is also keeping an eye on it, will be automatically warned via cameras anytime the robots become trapped or are halted by obstructions⁴². The delivery robots are slow speed small autonomous vehicles with very little space in the whole vehicle to carry items for delivery and hence they are monitored only by remote monitoring systems

CONCLUSION

Finally, on account of this change in Japanese RTA, there is an expectation in Japan that very soon passenger mobility services will also commence remotely monitored operations on

38. Fully automated driving under certain conditions allowed in Japan, The Japan Times (2023), <https://www.japantimes.co.jp/news/2023/04/02/national/level-4-fully-automated-driving-allowed-japan/> (last visited Jul 5, 2023).

39. Scarlett Evans, Japan to roll out traffic laws for Delivery Robots Japan to Roll Out Traffic Laws for Delivery Robots (2023), <https://www.iotworldtoday.com/robotics/japan-to-roll-out-traffic-laws-for-delivery-robots> (last visited Jul 5, 2023).

40. *Id.*

41. *Id.*

42. Japan to tackle labour shortage and isolation with self-driving robots, euronews, Supra 13 at 3.

predetermined routes in rural areas⁴³. Eiheiji, a town in Fukui Prefecture, is preparing to apply for such a permit soon. The town intends to run a transportation service with three electric carts that can fit seven people and go along paths for pedestrians and bikers, along with a watchful official. Since March 2021, Level 3 autonomy has been approved by Eiheiji., which allows humans to take over driving tasks in an emergency⁴⁴. Boldly, a division of SoftBank's telecoms business also intends to submit a permit application as soon as possible. Boldly plans to use a bus circling the corporate and commercial complex of Haneda Innovation City, which is close to Tokyo International Airport at Level 4 autonomous driving⁴⁵. By fiscal 2025, the Japanese government hopes to have at least 40 places offering Level 4 autonomous driving services.

Japan which has always been known as the leader of technology in Asia has with this change educated all nations that the adoption of Autonomous Vehicles need not be always in Tier 1 cities. This implementation educates other nations that sometimes the Bottoms Up approach works better than a Top-Down approach and also lays stress on the fact that technology can be creatively used to solve social problems.

43. Fully automated driving under certain conditions allowed in Japan, *Supra* Note 24 at 6.

44. *Id.*

45. *Id.*

CONTRIBUTION OF ARTIFICIAL INTELLIGENCE TOWARDS SOCIAL TRANSFORMATION A BOON OR A BANE

Garima Chakraborty¹

Shaik Sikander Vali²

INTRODUCTION

The human mind is capable of creating complicated problems as well as solving them as well as learn and unlearn from its past mistakes, and therefore people are also able to channelize it in the form of a virtual mind that can mimic its methodical procedures and strategic thinking. Artificial intelligence (AI) is the study of how the human brain functions, thinks, and solves problems. Robotics, which primarily focuses on automating manual processes, is different from AI. However, AI easily completes complex activities with huge volume that require human life intelligence. Although the overarching objective of artificial intelligence (AI) is to develop software that can match or even exceed the productivity of human intelligence, AI is considered better in a few aspects as compared to Human Brain especially tasks which are data driven and involves decision making factors, it in many ways makes varied calculations easy AI relies on machine learning more so because AI works on what is fed into the system and works likewise. One of the major differences is that AI only functions through simulations and commands, is not capable of feeling, is not capable of forming any intentions, and cannot potentially have beliefs. “Artificial intelligence” was defined by John McCarthy as “the science and engineering of creating intelligent machines, especially intelligent computer programmes.” With the newest of innovations coming up in terms of AI most likely to be driven by emotion as well, which will be further discussed in the paper.

Since AI is being used in a variety of industries, their regulatory framework that applies to AI is also changing quickly. Among other things, new data protection laws are being created or existing laws are being modified, and data ethics and data science have become very crucial in the current AI era. The purpose of this is to guarantee that AI is developed and deployed responsibly and promotes sustainable growth while paying due respect to the letter and spirit of the principles of natural justice, fairness, transparency, and accountability.

1. B.A LLB (Hons.) 2019-2024, Alliance School of law, Alliance University

2. BTech, CSE 2022-2026, Alliance School of Engineering, Alliance University

If artificial intelligence develops and delivers value directly to those who are most in need, rather than padding corporate profits, it has more of the potential to enhance the lives of billions of people and make it a better one. Today's upcoming set of entrepreneurs may create long-lasting, transformative change by using these technologies for social benefit.

The use of artificial intelligence in corporate and governmental decision-making is growing. Moreover, despite the fact that most organisations still use AI tools with a profit-first mentality, these innovative technologies may be just as effective in advancing and promoting social good and benefiting all the sectors of the society.

With a focus on the many ways AI has already had a positive as well as a negative influence and the promise it has to spur additional breakthroughs, this introductory research seeks to illuminate the crucial role AI plays in social development. The potential of AI technologies to solve previously unimaginable societal problems is becoming more and more clear as they develop and spread across a wide range of industries. Unquestionably, AI has had a major impact on social change, revolutionising entire industries, altering how people interact with one another, and opening up previously unimaginable possibilities. It has significantly improved economics, healthcare, and education while also empowering neglected areas. However, its transforming power also carries the possibility of adverse effects. Among the difficulties AI presents include job loss brought on by automation, discriminatory algorithms perpetuated by biased algorithms, privacy issues, and a loss of human connection. Furthermore, it is important to carefully assess cybersecurity threats, power concentration, moral quandaries, and economic disparities. Policymakers and developers must prioritise ethical standards, openness, and inclusion to ensure that AI is used responsibly, striving to maximise its potential for good while minimising possible risks.

Therefore, in this paper we aim to look into the fact that AI stands as a catalyst for social transformation, a potent tool that can reshape the world and empower individuals and communities alike. Alongside we continue to explore the vast possibilities of AI, and bringing forth the idea to embrace a responsible and inclusive approach, ensuring that its benefits extend to all corners of society and that its transformative potential becomes a beacon of hope and progress for generations to come and not the other way around.

UNDERSTANDING ARTIFICIAL INTELLIGENCE AND ITS HISTORICAL BACKGROUND

Artificial intelligence (AI) has its roots in the myths, legends, and whispers of long ago about man-made beings that were granted intelligence or consciousness by master artisans. Modern artificial intelligence was founded on philosophers' attempts to define human mind as the mechanical manipulation of symbols. This effort led to the development of the programmable

digital computer in the 1940s, a machine based on an intangible core of mathematical reasoning. This technology and the ideas that went into making it inspired a few scientists to begin seriously debating the practicality of developing an electronic brain at par with the human brain with equal intellect and capability. The development of Artificial Intelligence can be classified into 7 phases and further development of it with milestones hit by the tech industries in terms of incorporating AI in the usage of daily lives of people. The evolution of Artificial Intelligence (AI) can be traced through distinct phases, each marked by groundbreaking advancements and challenges. In the early years (1943-1952)³, pioneers like McCulloch, Pits, Hebb, and Turing laid the foundation for AI with neural models, Hebbian learning, and the Turing test. The birth of AI as an academic field was cemented in 1956 by McCarthy's introduction of the term "Artificial Intelligence" at the Dartmouth Conference.⁴ The Conference had gathered together scholars from seemingly unrelated disciplines of study, including computer science, mathematics, physics, and others, with the sole purpose of examining the potential of Synthetic Intelligence and particularly the name AI hadn't yet been created, the conference was the first of its kind. Participants at the conference explored a wide range of AI-related subjects, including machine learning, problem-solving, and natural language processing. They also outlined a research agenda for AI, including the creation of programming languages and machine-learning techniques.

The conference had then officially launched the field and gave rise to the term "artificial intelligence" which is seen as a turning point in the AI history, and it also marked the beginning of the field.

During the golden years of early enthusiasm (1956-1974)⁵, progress surged with the creation of the "Logic Theorist" and the first chatbot, ELIZA invented by Joseph Weizenbaum, which was typically used as a natural language processing program that worked as a psychotherapist. During the period of 1958 The Perceptron was created which is an Artificial neural network architecture designed by Psychologist Frank Rosenblatt. It helped popularise the so-called "Brain Inspired Approach to AI," in which scientists create artificial intelligence (AI) systems that resemble the working of the human brain. The Perceptron is understood as a binary classifier that can learn to divide input patterns into two groups, to use technical jargon. It operates by computing a weighted sum of a collection of input values, then using a threshold function to decide whether the output is 0 or 1. To improve the performance of the classifier,

3. Max Roser, The brief history of artificial intelligence: The world has changed fast – what might be next? Our World in Data (Dec. 6, 2022), <https://ourworldindata.org/brief-history-of-ai>.

4. *Ibid*.

5. History-of-artificial-intelligence. Tutorials, Javatpoint <https://www.javatpoint.com/history-of-artificial-intelligence> (Last visited 4 August 2023, 3:00 PM.)

the weights are modified throughout training. The Perceptron was considered as a significant AI turning point since it showed how machine learning algorithms could imitate human intellect. It demonstrated how automated systems could gain knowledge from experience and perform better with exceeding time just as the humans can do or more so as the proverb goes ‘practice makes a man perfect’⁶.

The 1980s’ “AI Winter” was marked by a sharp fall in financing for AI research and a general lack of enthusiasm among the investors and the general public. Due to a considerable decrease in the number of AI projects being created as a result, many of the ongoing research projects were unable to make meaningful progress. The 1980s also saw a boom in AI (1980-1987) with the development of expert systems emulating human decision-making. Still, another AI winter (1987-1993) ensued, as costs outweighed results, and interest waned⁷.

The emergence of intelligent agents (1993-2011) revitalized AI, evidenced by IBM Deep Blue defeating a chess champion and AI applications entering homes and businesses. The era of deep learning, big data, and artificial general intelligence (2011-present) witnessed Watson’s victory in Jeopardy, Google Now’s predictive capabilities, and the success of Chatbot “Eugene Goostman” in the Turing test. In 2018, IBM’s “Project Debater” showcased AI’s capacity for sophisticated debates, and Google’s “Duplex” demonstrated AI’s seamless interaction with humans. Generative AI can be viewed as a significant turning point in the development of AI that followed the emergence of deep learning⁸. In deep learning, which is a kind of machine learning, multiple-layered neural networks are used to assess and learn from vast volumes of data. It has excelled in tasks like speech and picture recognition, natural language processing, and even playing challenging video games like Go. It has the capacity to transform a variety of fields, including simulation, writing, and art, particularly with the aid of Transformers and big language models. Transformers provide more cogent and nuanced output by using self-attention mechanisms to study the links between various pieces in a sequence. This prompted the creation of expansive language models like GPT-4 (ChatGPT), which can produce writing that sounds like it was written by a human being on a variety of subjects. Another field where generative AI has made a substantial contribution is AI art. Generative AI can produce fresh, original works of art by training deep learning models on enormous databases of artwork. There has been debates over the ethics of utilising AI to make art as well as the character of originality and ownership which has been spurred by the usage of generative AI in art. Because AI-generated art lacks the deliberateness and psychological connection of human-made art, of which some do make the claim that it is not truly artistic. Whereas, some contend that the art

6. *Ibid.*

7. *Supra note 1*

8. *Ibid.*

produced by AI has its own worth and can be used to discover newer variations on creativity. While, there are still disagreements on the ethics of employing AI in these fields and the nature of innovation, it is obvious that generative AI is a potent instrument that will keep impacting both technology and the arts in the future.

Throughout the history of AI, innovations have ranged from neural models to intelligent agents and deep learning, shaping a transformative force that continues to influence diverse fields and shape the future of human-machine interaction.

IMPACTS OF ARTIFICIAL INTELLIGENCE ON SOCIAL TRANSFORMATION AS A WHOLE

There has been significant impact of AI on social transformation as a whole and particularly if we look into the purpose given to the AI for its functions in making the human lives better and contributing to the social transformation, the AI and ML can be understood on the basis of the capabilities and features they offer. AI functions as a brain of the machine and processes the given data and adapts to it like humans whereas ML is the application of AI which allows the machine to learn automatically from the data provided to it. The concept of AI can be traced into various forms on the basis of the work it provides and which is created to do out certain tasks for humans like internet searching, facial recognition, and self-driven car. Numerous systems currently in use that advertise that they use “AI” that are preferably enthralled on a task of singular and well-defined manner as explained above. Even while AI appears to benefit human life, there’s still a debate going on that AI could be dangerous since it could interfere with the electric grid or harm certain nuclear power plants if at all it malfunctions in the long run. In some cases, there can be a different perception of an AI which can be actually converted and programmed to work as efficiently as a human mind and which could also possess perceptive abilities that are typically only ascribed to humans, more so like perception, beliefs, and other cognitive abilities, and to be intelligent in anything it is instructed to try.

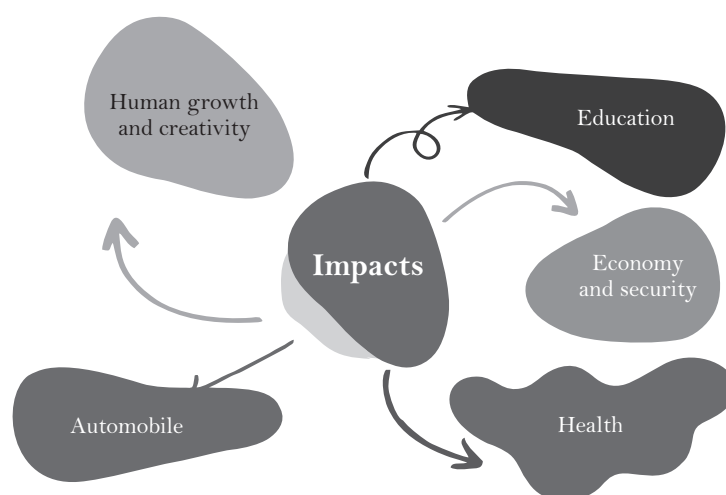
Moving further we can now understand more about the functions of the AI when it delivers its work, which can be enlisted as⁹:

1. Automation: What actually makes a system or process to function automatically
2. Machine learning and vision: Analog-to-digital conversion, digital signal processing, and deep learning are the scientific methods for training computers to perform tasks like analyse data, anticipate outcomes, and see through cameras.

9. Tai M. C. (2020). The impact of artificial intelligence on human society and bioethics. *Tzu chi medical journal*, 32(4), 339–343. https://doi.org/10.4103/tcmj.tcmj_71_20

3. Natural language processing: When a computer programme processes human language, it can do things like instantly translate across languages and detect spam.
4. Robotics: A branch of engineering that focuses on creating so-called machine men, or cyborgs, from scratch. They are employed to carry out jobs for human efficiency or those that are too risky or difficult for humans to carry out, and they can move continuously, like in production lines.
5. Self-driving car: It uses a combination of all the functions discussed above.

As we understand about the functions of the AI we now come to the impact that it has left on the society as a whole. Let us look into the positive impacts that AI has created towards the development of social transformation and contributed towards the well-being of mankind in the below listed sectors, which are here as follow:



POSITIVE IMPACTS

1. IMPACT IN THE AUTOMOBILE SECTOR

We have heard a lot about AI taking over the jobs of people especially in developing countries like India where there is an already existing problem of unemployment on top of that if there are probabilities that AI might replace our jobs than the over-populated unemployed sector faces more the hazard than it usually would do. We have no idea what future holds so we would like to relate this situation with automobile industries in the early 80s. In the start of automobile era we had no idea how it could impact the world later. Fortunately, it impacted in a good way as the people who learnt driving were employed as drivers for royal families at first, later owning a car became a mark of status, that influenced the production of cars, as the production was in demand and the man power was also in demand and therefore lots of people got employed. Though,

automobiles had a negative impact on nature for a while like depletion of the ozone layer and increase in various types of pollutions created by the automobiles and the industries contributing towards it. But, with more research and improvement we were able to overcome the negative impacts.

2. HUMAN GROWTH AND CREATIVITY

In a same way artificial intelligence can have a benefit of doubt and moved forward with calculated risk. What apart AI from human brain is algorithms. A human works on emotions logical thinking side by side whereas AI runs on algorithms programmed by the users follows the orders irrespective to the process of making it done and circumstances. AI is very beneficial in commercial and creative sector as AI tools can do the tasks very quickly compared to any human, it just needs a proper feeding of information. Currently AI tools like chatgpt and tome ai and many more are being used by the humans to enhance their creativity and also make sure to complete the task according to the user like writing mails, making calls, clicking photos, but it only follows the command given to it. It cannot write mails or make calls unless it is told to. According to PwC, 7 million existing jobs will be replaced by AI in the UK from 2017-2037, but 7.2 million jobs could be created like prompt engineering, AI trainer, Machine manages etc¹⁰. By providing easy access to abundance of information and even summarising the information according to the needs of the user. It also increases productivity with the use of certain AI tools. We humans are social animals leaning towards interacting and adapting according to the surrounding we thrive in but not everyone has the ability to socialise and interact with new people. Lot of the people in our world struggle with anxiety when attempting to interact and make friends and so the chatbots help and assist in such a process of doing so. How the chatbots assist this is because its programmed to interact with an individual also acting as a personal friend or an assistant which does the task given by the user and also has a scope of learning overtime. An individual can therefore use chatbots to develop the skills by taking feedbacks from the AI at the initial stage as he would have no fear of human interference or judgement and that would make the user to perform and to improve tasks initially, although the person per say cannot escape away from facing the actual human crowd to get the excellency in terms of interaction which would otherwise have been his major reason to be able to interact efficiently in the first place. For instance, the very recent development of the AI chatbot of Snapchat which was launched in

10. Bernard Marr, What Is The Impact Of Artificial Intelligence (AI) On Society? |, Bernard Marr (July 2, 2021), <https://bernardmarr.com/what-is-the-impact-of-artificial-intelligence-ai-on-society/>.

February 27th explains us the idea of an interactive chatbot specially making it easier for people to have conversations with and give guidance to a certain thing.

3. EDUCATION SECTOR

A cutting-edge strategy to improve student engagement at all educational levels is provided by artificial intelligence. AI is able to dynamically change course content, deliver real-time feedback, and assess student engagement through interactive learning techniques outside of traditional teaching methods adopted by the schools. AI gives a personalised learning experience to students through solving the problem from analysing the given data by the algorithm and making a virtual animation for the better understanding of the concept to the students. It very easily provides access to abundance of information very quickly and summarises the information according to the needs of the user by increasing the productivity with the use of certain AI tools fitted for this. However, there's a matter of fact which has been put to thought that this might end up replacing millions of jobs but on a positive note it can be seen that it has ample of scope to create new jobs for people. For an instance Soufiane Amzur from the UCLouvian said that the "Teacher cannot be replaced by AI but the teachers who doesn't know how to use AI will be replaced."¹¹

4. HEALTHCARE SECTOR

The healthcare industry has undergone an unprecedented transition as results of contribution of artificial intelligence (AI) to this sector. More precise diagnoses, individualised treatment plans, and better health outcomes are the results of its incorporation into numerous facets of healthcare and improvements in the medical research. AI enables medical personnel to quickly and effectively discover illness signs and trends through swiftly analysing enormous amounts of clinical data. The application of AI in healthcare spans a wide range of tasks, including using electronic health data to predict outcomes for patients and analysing radiological images as well for early disease diagnosis. This has led to the development of more sophisticated, quicker, and more effective healthcare systems that can offer the best possible care to millions of people worldwide. For example, Artelus and AI in India (uses AI-backed screening tool that uses deep learning to check for Diabetic Retinopathy, early onset of TB, lung and breast cancer)¹².

11. ARTIFICIAL INTELLIGENCE IN EDUCATION, UNESCO <https://www.unesco.org/en/digital-education/artificial-intelligence>. Lat visited (August 3, 2023 5:40 PM.)

12. RISE OF AI IN THE INDIAN ECONOMY, INDIAai (2020), <https://indiaai.gov.in/article/rise-of-ai-in-the-indian-economy>. Lat visited (August 5, 2023 3:00 PM.)

5. ECONOMIC SECTOR AND SECURITY

AI in the economic sector is considered to promote and help in the reduction of transposition time and costs alongside increase the efficiency in supporting functions. For examples, Indian AI's like using Nebulaa (with the help of AI and data from various agricultural markets in India for quick, accurate and cheap quality testing of the products) and Aspiring Minds which (blends AI with psychometric tests to help employers screen potential employees more efficiently)¹³.

AI's impact on security systems is profound, radically altering how we think about and apply security measures. Especially for usage like recognising, assessing, and responding to possible security concerns in the past, human interaction was necessary. These tasks are now being automated as a result of the development of artificial intelligence (AI), making security measures more effective and less prone to human error. Cameras can now evaluate video data in real-time, recognising possible threats including unauthorised entry, suspicious activity, and even using facial recognition to find known criminals. Cameras no longer only record events. This improvement makes it easier for security teams to react to occurrences quickly and capably, increasing overall security effectiveness. Cameras can now evaluate video data in real-time, recognising possible threats including unauthorised entry, suspicious activity, and even using facial recognition to find known criminals. Cameras no longer only record events. This improvement makes it easier for security teams to react to occurrences quickly and capably, increasing overall security effectiveness¹⁴.

NEGATIVE IMPACT

AI has undoubtedly made an impactful insight in many sectors, making the workload easier and thus contributing more towards how humankind evolves in their social transformation. However, it is a matter of fact that this too comes along with a lot of questions that are left unanswered or probably has an ambiguous answer. With the increase in the efficiency of how AI makes social life easier what are the potential consequences that with AI driven dehumanisation where there are increase in the number of human interactions controlled by machines and thus a drop impacting the basic social instinct of human that is empathy and social bond? With the invent of the most powerful and useful AI's excavating through a lot of both labour and manual work, get to a point where the jobs of most people are taken away especially in the cases of physical labour and create a hollow of unemployment? Or can the AI become the master of its own directions and dictate its own rule disagreeing to follow the orders of its master? Like these

13. *Ibid.*

14. *Ibid.*

there are many other questions that dwell in the minds of the people in hunt of the answers to it, however not much could possibly be excavated from the creators aiming to provide easier ways of leading a life. Moving forward, in any case of invention there are both good impacts and bad impacts likewise as earlier discussed in the case of positive impacts we now look forward to the negative impacts that AI has made through these year in the major sectors of life¹⁵.

Here are the list of negative impacts that AI had in various sectors and that could be understood as the followed:

1. Health is one of the most ponderous and non-negotiable factors of a person's life and healthcare sector is the major thriving sector amongst all which can never be neglected; therefore, it is expedient that the AI developed especially for the purpose of serving in the healthcare industry should be developed and programmed in a way considering potential threats that it can possess. There are a few follow up questions in this regard, more so like What is an AI is developed in such a manner that it starts to operate and interact with people? What if it makes some mistakes and the patient's life is at a risk? who will be responsible for the carelessness of AI then? who should we blame for the accident which might take place in the operation theatre? Can AI replace doctors in these cases? It is however a far-fetched idea that AI can replace doctors any soon. AI can be used as a tool to read the heartbeats and analyse it by providing accurate reasons and with that information doctors can find the cure for the disease easily. But further development of AI and interaction with the patients should be terminated and not promoted, keeping the calculated risk and challenges in consideration. AI should be used as it makes the operation easy and accurate but shouldn't be given control as it may have unforeseen consequences. For example, if an user orders the AI to operate some task, it will go to any limits to accomplish the task, even it could choose the destructive way as an option.

If an AI is ordered to cure a patient and the patient has lost a lot of blood, and the blood type is very rare for an example o(-ve), and there are no substitutes available in the blood bank as well and then if the AI takes that much amount of blood from another person eventually causing him a lot of blood loss and resulting him in being sick, the condition of the other person could have been severe, nonetheless, the AI was able to complete the given task no matter what the consequences could have been. It is not necessary that the AI will take the ways in the above discussed scenario only, it can find other possible alternatives, which will makes it reliable for the doctor to

15. Poonam Muttreja, Sanghamitra Singh, *Artificial intelligence for social change*, INDIA DEVELOPMENT REVIEW (August 8, 2023 2:30 PM.) <https://idronline.org/artificial-intelligence-for-social-change/>.

use it as a helping hand, thus in the healthcare sector it is a very important factor that the operatives are driven by emotions therefore it should be supervised in such a way that it should come up with ideas and inform the user about the possible consequences but shouldn't perform the operation without the permission. In simple terms, we can compare AI to drugs like weed and marijuana which can be used for medical purposes but in a limited quantity and only when it is prescribed, as it has life taking threats just like that AI should be used only for doing certain tasks and should always be under supervision.

2. The next factor is unemployment because a lot of jobs will get self-operated. The use of machines and robots in the auto assembly lines has resulted in the displacement of many conventional workers. For example at grocery stores, the store clerks will no longer be required because there are higher possibilities of the digital devices replacing the human labour.
3. In the case of military warfare's if there arises a situation where the use of AI is required to complete a task, it will perform the tasks irrespective of the consequences even if it requires to kill people who are its apparent users when it senses that they are a potential threat to it, and if for example the user unintentionally faces the gun towards the AI bot for the sake of cleaning the armour, there are major possible chances that the AI will detect that as a threat and kill its own crew members without any hesitation.
4. The human creators can develop AI's with an intention of racial biases or selfish goals in mind for incurring personal benefits or, harming particular individuals or objects. For instance, the United Nations has decided to restrict the development of nuclear power out of concern that it could be used indiscriminately to eliminate humanity or to target particular races or regions in order to establish dominance¹⁶. It is theoretically feasible for AI to target a certain race or some programmed objects in order to carry out the programmers' instructions to destroy them, resulting in global catastrophe¹⁷.

CASE STUDY AND REAL-WORLD EXAMPLES

There are various case studies and real-world examples that give us an insight about the impact that the AI has created and what future are we looking forwards in the evolution of mankind with the essence of technological advancements. Here is a list of a few of them especially the very recent developments in the AI terminology which is discussed as below:

16. Cheng, X., Lin, X., Shen, XL. *et al.* The dark sides of AI. *Electron Markets* **32**, 11–15 (2022). <https://doi.org/10.1007/s12525-022-00531-5>

17. *Ibid.*

1. DALL-E, an AI that can generate images from spoken prompts. Most of the people took pleasure in experimenting with the instrument and enjoying the freedom it provided them to create in novel ways. Others were concerned that AI would replace human ingenuity. It functions in a way that it may add, remove, or retouch particular portions of an image from a natural language description. It can also create realistic and context-aware adjustments. It can also use an image to generate new and inventive interpretations of the original. It employs a technique called diffusion, which begins with a pattern of randomly placed dots and progressively modifies that pattern to get the desired result. Furthermore, because DALL-E uses images from the internet, there is worry that those cultures with scant online representation will be excluded from these models and will consequently be underrepresented globally.
2. The next is the invention of ChatGPT. Unlike DALL-E it generates text and code. Newspaper articles, student essays, speeches, scientific papers, and other types of texts can be included. Once more, it does so in response to a written prompt that the users supply. OpenAI has created models which have been trained to comprehend both code and natural language like The GPT (generative pre-trained transformer). In response to their inputs, GPTs output text. “Prompts” is another name for the GPT inputs. In essence, creating a prompt is how you “programme” a GPT model. Prompts typically provide guidelines or some instances of how to execute a task correctly. Concerns about DALL-E also apply to ChatGPT because it is a “black box,” and we don’t know how it operates. But there is no denying that ChatGPT will be a crucial tool if efficiency increases and if it is used properly¹⁸.
3. Gato, dubbed a “generalist agent” by its creators DeepMind, is a significant advancement considering it can perform many tasks while other sophisticated algorithms can only do one or two tasks really well. This features Atari gaming, image captioning, user chat, robotic arm block stacking, and many more. With this advancement, there are fair chances from moving forward from narrow AI that can only perform one task towards an AI that can perform a variety of tasks¹⁹.
4. Tay is a 2016 Twitter AI bot. Tay was an experiment at the nexus of social networks, NLP, and ML. She was able to Tweet her “thoughts” and interact with her expanding fan base. Tay was created to learn more about English over time from its environment, which enables her to have talks about any subject, in contrast to earlier chatbots like

18. These were the biggest AI developments in 2022. Now we must decide how to use them, World Economic Forum (Jan. 23, 2023), <https://www.weforum.org/agenda/2023/01/davos23-biggest-ai-developments-how-to-use-them/>.

19. *Ibid.*

Eliza, who conducted conversations using limited scripts. Tay initially used amiable Tweets to interact innocuously with her followers. After a few hours, however, Tay began tweeting really nasty things, and as a result, she was taken offline sixteen hours after her launch. Henceforth, it is imperative to understand that it is very important what we feed into these bots for its usage, it can thus be compared to a child who can be moulded in a certain way and adapt accordingly similarly Tay moulded itself according to the tweets and adapted the same way of thinking and responding.

5. Tesla Car crash due to autopilot feature. After a Tesla Model S crashed north of Houston, killing two people, Elon Musk's Tesla found itself in difficulties. The vehicle crashed into a tree after missing a little curve in the road. Initial investigations and witness accounts indicate that the driver's seat was unoccupied at the time of the collision. It is assumed that Tesla's Autopilot or Full Self Driving (FSD) technology was activated at the time of the collision. The AI-based Autopilot function of Tesla can manage braking, acceleration, and steering. Musk claims that the AI is built to gradually learn from drivers' behaviour. However, a number of accidents involving the vehicle in recent months have raised concerns about the feature. There was another case where a Tesla Model Y in Michigan collided with a police car while it was in Autopilot. U.S. safety inspectors are currently looking into 30 Tesla crashes that occurred since 2016 and where advanced driver assistance technologies were allegedly present. Safety experts have majorly criticised Tesla for failing to do more to stop drivers from overly relying on its Autopilot features or for utilising them in circumstances for which they were not intended.

POLICIES AND REGULATORY MEASURES TAKEN UP BY THE COUNTRIES TO ADDRESS AI CHALLENGES

The expeditious advancement of artificial intelligence technology has expressed existential dread and panic amongst the industry experts, politicians as well as the commoners. Despite the enormous potential of AI, business insiders have frequently raised concerns about the risks of the technology and urged governments to take action by enacting restrictions. According to the Stanford University's 2023 AI Index, 37 laws relating to artificial intelligence were enacted globally in 2022²⁰. Others are putting national restrictions in place to oversee and restrain the usage and advancement of artificial intelligence technology, while some countries are currently debating this subject. In this aspect let us look in to the regulatory framework that has been

20. Theara Coleman, How countries around the world are trying to regulate artificial intelligence, The Week (July 4, 2023), <https://theweek.com/artificial-intelligence/1024605/ai-regulations-around-the-world>.

taken by countries like USA, European Union, India etc to mitigate the potentials challenges posed by AI.

UNITED STATES OF AMERICA

The White House and Congress have recently prioritised AI more, albeit there still seem to be a long way from establishing government restrictions on these aspects. The Blueprint for an AI Bill of Rights, a set of suggested guidelines for how to create or deploy AI technology in a way that safeguards the American public from harm, was published by the White House in the month of October 2022. The guide does not specifically enlist any penalties for businesses that do not follow the recommendations. It does, however, offer suggestions for ensuring that the technology was developed with the basic idea of civil rights protection and with a sense of freedom in consideration. Following subsequently, Sen. Chuck Schumer (D-NY) has developed a framework for AI regulation, hoping to provide lawmakers an exhaustive crash course in AI in a context where ideological rancour might be left behind before the enactment of the laws.²¹

EUROPEAN UNION

The EU has outpaced other Western nations in the global battle to establish AI laws, with the Artificial Intelligence Act going one step closer to becoming a law. A similar proposal known as the Artificial Intelligence and Data Act is presently being considered in Canada. The legislation was first put forth in 2021, but the recent rise of sophisticated generative AI, such OpenAI's ChatGPT, put greater demands on legislators to hasten the proposed regulations. On June 14, the European Parliament gave its approval to the text in the draught of the AI Act, which was a crucial step towards the proposal's eventual passage into law. The proposal's guidelines cover a wide spectrum of AI technology, including live face recognition, chatbots like ChatGPT, deepfake movies created by AI, and some drones. With the introduction of the Artificial Intelligence Act, the EU has adopted a multi-tiered risk-based strategy, classifying apps based on the level of public risk they entail. Before being made available to the general public, high-risk AI products that "negatively affect safety or fundamental rights" must undergo a risk assessment. Additionally, generative AI applications must make clear which protected works they employ as training data. By the end of the year, the EU hopes to have the bill ratified in its final form.²²

21. *Ibid.*

22. EU AI Act: first regulation on artificial intelligence, European Parliament (Aug. 6, 2023), <https://www.europarl.europa.eu/news/en/headlines/society/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence>.

INDIA

With the intent to “embed AI in our Economic, Political and Legal thought processes so that there is systemic capability to support the goal of India becoming one of the leaders of AI-rich economies,” the Union Ministry of Commerce and Industry established an Artificial Intelligence Task Force in August 2017²³. Their March 2018 research listed eleven sectors of relevance for AI in India, with the overall view of AI as a socio-economic problem solver at scale. Manufacturing, agriculture, health, technology for people with disabilities, national security, environment, public utility services, retail and consumer connections, and education are some of these. The report tried to investigate the proper role of the government and how artificial intelligence (AI) can solve problems at a larger scale. It thereby gives some recommendations on the making of the nodal agency that is the National Artificial Intelligence Mission that would communicate about the AI driven activities happening in India. AI has also drawn the attention of the Union Ministry of Electronics and Information Technology²⁴. It has established four committees in February 2018 to create a blueprint for a national AI programme. The four committees have been currently examining AI from the perspectives of legal, regulatory, and cybersecurity as well as citizen-centric services, data platforms, skilling, reskilling, and R&D. A national artificial intelligence policy is to be created in order to guide the government’s AI initiatives, by the National Institution for Transforming India (commonly known as “NITI Aayog”).²⁵ Early in the month of May 2018, Google and NITI Aayog joined up to provide instruction and nurture businesses looking to create and incorporate AI-based solutions into their business models with an attempt to increase economic efficiency in India.²⁶

CONCLUSION

Given its information architecture, AI has an extensive use and therefore can also be used in various aspects of lives. The chatbots and other bots powered by AI can help build linkages and provide for a better creative outcome which can be expected to be generated with the help of an organised and programmed recommendations and commands. AI can also be used as

23. Artificial Intelligence Task Force. Available from <https://www.aitf.org.in/>. 20. Agarwal, S. 2018 IT
24. Artificial Intelligence Task Force. Available from <https://www.aitf.org.in/>. 20. Agarwal, S. 2018 IT
25. Ministry has formed four committees for Artificial Intelligence: Ravi Shankar Prasad. The Economic Times. Available from <https://economictimes.indiatimes.com/news/economy/policy/it-ministry-forms-four-committees-for-artificial-intelligence-ravi-shankar-prasad/article-show/62853767.cms>.
26. Marda, Vidushi, Artificial Intelligence Policy in India: A Framework for Engaging the Limits of Data-Driven Decision-Making (August 29, 2018). Philosophical Transactions A: Mathematical, Physical and Engineering Sciences (2018), Available at SSRN: <https://ssrn.com/abstract=3240384> or <http://dx.doi.org/10.2139/ssrn.3240384>

a tool which can effectively guide peer educators, working professionals, doctors, artists and any professional for that matter to channelise the information in a correct path and work as a helping hand for them while making their work easy and more efficient and it can also not just share information, but also track and analyse information seeking behaviour and user responses with varied patterns to upgrade its usage for top notch work. Also Keeping in mind, the drastic development of the artificial intelligence and the possible negative impacts it can have on the human life in coming days, the regulation of AI and its usage becomes the top most priority of the makers and the protector of it. Also, the respective governments of the countries should not only restrict themselves in the position of regulatory authorities but also continuously keep a watch on the developments made in AI. Lastly, it can be said that AI like any other invention has certain negative aspects as well however with proper surveillance and fair and equitable use aiming to promote technological welfare and enhance the quality of lives of people, can be considered and relied on as a very beneficial tool for the future that holds before us.

DATA PROTECTION IN FINTECH: A LEGAL ANALYSIS OF THE RISK OF DATA THEFT AND MISUSE AND THE NEED FOR STRONGER DATA PROTECTION MEASURES

Radharaman Rajoriya¹

INTRODUCTION

Since previous years, the financial technology (fintech) industry has grown a lot, with the use of digital financial services becoming increasingly prevalent. However, with this growth comes an increased risk of data theft and misuse. The collection and use of personal and financial data are integral to fintech services, and the potential consequences of data breaches can be severe, including identity theft, financial fraud, and reputational damage to both consumers and fintech companies.²

Data protection is therefore a critical issue in the fintech industry, and the effectiveness of current data protection measures has been the subject of much debate. Regulatory bodies have introduced guidelines and standards to protect personal data in the fintech industry, but there are concerns about the adequacy of these measures, particularly as fintech companies continue to innovate and develop new services.

Data protection in the fintech industry is an increasingly important area of concern as the use of technology and online platforms continues to expand. This paper provides a legal analysis of the risks associated with data theft and misuse in fintech, as well as the need for stronger data protection measures to prevent such risks. The paper first examines the current regulatory framework governing data protection in fintech, including the relevant legislation and international standards. It then considers the specific risks associated with data theft and misuse in the fintech industry, including the potential for identity theft, financial fraud, and reputational damage.

The paper argues that current data protection measures in fintech are inadequate to address these risks and that stronger measures are needed to protect both consumers and businesses. It highlights the importance of effective data governance, including clear policies on data collection, use, and sharing, as well as robust data security protocols and regular audits. This

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1. Student at Alliance University Bengaluru, 2018-2023 Batch.
 2. Turner, Benjamin, The Role of RegTech in Strengthening Data Protection Measures in the Fin-Tech Industry, J. Regul. Technol. (2023) https://corpbiz.io/learning/challenges-faced-by-fintech-after-the-data-protection-bill-2022/#Challenges_Faced_By_Fintech_Companies

paper concludes and provide best suggestion to overcome from this situation by calling for a more comprehensive and proactive approach to data protection in the fintech industry, including increased regulation, industry standards, and consumer education. It emphasizes the need for a collaborative approach involving all stakeholders in the fintech ecosystem to ensure that data protection remains a top priority in the rapidly evolving financial technology landscape.

OVERVIEW AND IMPORTANCE OF DATA PROTECTION IN FINTECH

Financial technology, or Fintech for short, is a technical achievement that expands the existing means of delivering financial services. Fintech improves and handles financial operations such as trading and investing in financial markets via smartphones, purchasing cryptocurrencies online, and so on. Thus, fintech firms are those that offer financial services, financial management, and financial planning to customers or corporations via a digital platform. India's fintech market is the world's third largest. The Indian government's encouragement of digitalization, an increase in adept at using technology for humans, an increase in mobile users, the construction of digital networks, and the simplification of financial operations all have contributed to the country's rapid development of the fintech sector.³

Data security is critical in the fintech company, where the adoption of digital and technological platforms has transformed the field of finance. Banking via the internet, transaction processing, providing platforms, like e-wallets, and cryptocurrency exchanges are all examples of fintech operations. With these kinds of companies becoming more dependent on data, the absolute importance of strong security for data measures cannot be stressed out.

Fintech companies collect, store, process, and analyse vast amounts of sensitive customer data, including personal identification information, financial transaction details, credit history, and more. This valuable data, if mishandled, can lead to severe consequences, such as identity theft, fraud, and financial losses for customers.⁴ Additionally, the reputational damage that occurs due to data breaches can have long-lasting effects on the trust and confidence of customers in fintech services. In the case of *K.S. Puttaswamy v. Union of India (2018)*⁵ whereas Supreme Court of India directed the government to implement data protection regulations, including setting up a data protection authority and creating a data protection framework.

3. Sharma, Rajesh, Data Protection Challenges in the Indian FinTech Sector, publication J. Indian Law, (2022), <https://corpbiz.io/learning/challenges-faced-by-fintech-after-the-data-protection-bill-2022/>

4. Kumar, Rakesh, Data Misuse: Ethical Implications in the Indian FinTech Industry, J. Ethics & Tech. publication, (2022), <https://inc42.com/resources/why-indian-startups-must-prioritise-data-privacy-and-security/>

5. K.S. Puttaswamy v. Union of India, (2018) 10 SCC 1.

Another vital aspect of data protection in fintech is mitigating the risk of data theft and misuse. Whereas, fintech companies are attractive targets for cybercriminals due to the significant value of the data they possess. A successful data breach can lead to the compromise of customer accounts, financial fraud, and substantial financial losses. Consequently, fintech companies must implement strong security measures, including encryption, access controls, and periodic security assessments to minimize the risk of data theft.

Furthermore, data protection in fintech is crucial for regulatory compliance. Fintech companies are subject to various financial regulations, including anti-money laundering (AML), know-your-customer (KYC), and consumer protection laws. These regulations often require the secure handling and protection of customer data to prevent fraudulent activities, ensure accurate customer identification, and maintain transparency in financial transactions. Failure to comply with these regulations can result in severe legal and financial consequences, including regulatory penalties and reputational damage.⁶

DATA THEFT AND MISUSE IN FINTECH

Data theft involves unauthorized access to or acquisition of sensitive information. Cybercriminals employ various techniques such as hacking, phishing, or malware attacks to gain access to valuable data, including financial records, credit card details, and personally identifiable information. Once stolen, this data can be misused for identity theft, financial fraud, or sold on the black market.⁷

Fintech companies must also be cautious about internal threats, such as employees or insiders with malicious intent. Insider attacks can result in data breaches and unauthorized access to confidential information, leading to severe financial and reputational damage.

*Misuse of data in the fintech sector can involve unauthorized sharing or selling of customer data to third parties without proper consent. This can lead to privacy violations and erosion of customer trust. Additionally, inadequate data protection measures or weak cybersecurity practices within fintech companies can expose data to unauthorized access and increase the risk of data misuse.*⁸

Furthermore, fostering a culture of cybersecurity awareness, promoting strong data protection practices, and establishing incident response plans are crucial steps to prevent, detect,

6. Patel, Ankit, The Role of Encryption in Ensuring Data Security in Indian FinTech. J. Cybersec. Law, (2023), <https://zcybersecurity.com/fintech-cyber-security-in-india/>

7. Joshi, Pooja, The Need for Regulatory Reforms in Data Protection for Indian FinTech, publication by J. Banking Regul, (2023), <https://www.sconline.com/blog/post/2020/02/07/indian-data-protection-regime-the-future-of-fintechs-in-india/>

8. *Ibid.* 10

and mitigate data breaches and unauthorized data access in the fintech industry. Relationship with industry peers, sharing threat intelligence, and staying updated on emerging cyber threats are also important for safeguarding data in the rapidly evolving landscape of fintech.⁹

Mobile Device Vulnerabilities; As fintech services increasingly operate through mobile apps, the security of these devices becomes critical. Mobile devices can be compromised through malware, insecure Wi-Fi networks, or stolen devices, resulting in the theft of personal and financial data. *Data Trading and Dark Web Activities;* Stolen financial data can be sold on underground markets or the dark web, where cybercriminals trade in sensitive information for financial gain.¹⁰ This data can be exploited for identity theft, fraudulent activities, or further targeted attacks.

Consequences of data theft and misuse

Data theft and misuse can have severe consequences for individuals, businesses, and the fintech sector as a whole. Here are some of the key consequences:

1. **Financial Loss:** Data theft can result in significant financial losses for individuals and businesses. Stolen financial data can be used for fraudulent activities, including unauthorized transactions, identity theft, or opening new lines of credit in the victim's name. This can lead to direct monetary losses and damage to the individual's creditworthiness.

2. **Reputational Damage:** Data breaches and misuse erode trust in fintech companies. When customer data is compromised, it can damage a company's reputation, leading to customer attrition and loss of business.¹¹ Negative publicity and public perception of lax security measures can be difficult to recover from, affecting future growth and partnerships.

3. **Legal and Regulatory Ramifications:** Data theft and misuse can result in legal and regulatory repercussions. Fintech companies may face lawsuits from affected individuals or regulatory authorities, leading to financial penalties, reputational damage, and potential legal sanctions. Non-compliance with data protection laws and regulations can result in severe fines and legal consequences.¹²

9. Khan, Aamir, Data Theft Prevention Strategies for Indian FinTech Startups. Publication J. Entrepreneurial Fin. 14, (2022). <https://inc42.com/resources/5-ways-fintech-startups-can-detect-prevent-frauds/>

10. Agarwal, Mohit, The Impact of Data Breaches on Customer Trust in Indian FinTech Companies. Publication J. Consumer Prot. & Fraud 7, (2023). https://iaeme.com/MasterAdmin/Journal_uploads/IJM/VOLUME_12_ISSUE_1/IJM_12_01_016.pdf

11. *Ibid.* 14

12. Choudhury, Prakash, Data Privacy Laws and their Effectiveness in the Indian FinTech Sector. Publication J. Cybercrime L. 11, (2022). <https://inc42.com/resources/why-indian-startups-must-prioritise-data-privacy-and-security/>

4. **Loss of Competitive Advantage:** Fintech companies rely on innovation and customer trust to gain a competitive edge. Data breaches and misuse can lead to loss of intellectual property, trade secrets, and proprietary algorithms, undermining a company's competitive advantage. Competitors may exploit these vulnerabilities or gain insights into business strategies, negatively impacting market position.

5. **Damage to Customer Relationships:** Data breaches erode customer trust and can damage long-term relationships. Individuals may feel violated and lose confidence in the ability of the fintech company to protect their personal data. Rebuilding trust requires transparent communication, prompt incident response, and implementing stronger security measures to safeguard customer information.¹³

6. **Impact on the Fintech Industry:** Widespread data breaches and misuse within the fintech sector can have broader implications for the industry. It can lead to increased scrutiny from regulators, resulting in stricter data protection requirements and compliance burdens for all fintech companies. It may also erode consumer confidence in digital financial services, hindering the overall growth and adoption of fintech solutions.

Here are a few notable data breaches in the fintech sector that have occurred in India in recent years:

Juspay (2020): Juspay, a Bangalore-based payment processing platform, suffered a data breach in 2020. The breach affected millions of users and involved the exposure of customers' card data, including card numbers, expiration dates, and CVV codes. The breach occurred through a server weakness exploited by cybercriminals.

JPMorgan Chase (2014): While not a fintech company in the traditional sense, JPMorgan Chase, one of the largest banks globally, experienced a significant data breach in 2014. The breach compromised the personal information of around 76 million households and 7 million small businesses, including names, addresses, phone numbers, and email addresses.¹⁴

Zomato (2017): Zomato, a popular food delivery and restaurant discovery platform, experienced a data breach in 2017. The breach affected over 17 million user accounts, with stolen data including email addresses, usernames, hashed passwords, and delivery addresses. The incident served as a reminder of the importance of securing user data and implementing strong password hashing techniques.

13. *Ibid.* 16

14. Singhania, Deepa, *The Legal Implications of Data Misuse in Indian FinTech: A Case Study Analysis*, publication Technol. (2022). <https://amlegals.com/kyc-interplay-between-data-privacy-and-fintech-ii/#>

Chqbook (2020): Chqbook, a digital platform for financial services, encountered a data breach in 2020. The breach exposed personal and financial data of thousands of users, including names, email addresses, phone numbers, and bank account details. The incident emphasized the need for fintech companies to prioritize data protection and implement stringent security controls.

MobiKwik (2021): *MobiKwik, a popular digital payments platform in India, faced a major data breach in 2021. The breach exposed the personal information of over 100 million users, including their names, phone numbers, email addresses, and bank account details. Reports indicated that the breach resulted from an alleged failure to protect customer data and inadequate security practices.*¹⁵

It's important to note that data breaches can occur in any industry, and these incidents are not limited to the fintech sector alone. Data breaches highlight the need for strong data protection measures and heightened cybersecurity practices to safeguard sensitive customer information.

Regulatory response to data breaches in fintech

India has recognized the importance of addressing data breaches in the fintech industry and has taken regulatory measures to respond to such incidents. Here are some key regulatory responses to data breaches in fintech in India:¹⁶

1. **Personal Data Protection Bill:** The Personal Data Protection Bill, 2019, was introduced to provide ample regulations for the safety of personal data in India. It aims to set up a data protection framework, define the rights of individuals, and outline the obligations of entities processing personal data, including fintech companies. The bill includes provisions for reporting data breaches and sets out penalties for non-compliance.

2. **Data Breach Notification Requirements:** The Reserve Bank of India (RBI), the country's central banking institution, issued guidelines in 2011 requiring banks and other financial institutions, including fintech companies, to report any unauthorized access or leakage of customer information to the RBI and affected customers. These guidelines mandate prompt reporting and require companies to take appropriate actions to mitigate risks.

15. Douglas Arner, Ross Buckley, & Dirk Zetsche, *Governing FinTech 4.0: BigTech, Platform Finance, and Sustainable Development*, 27 *Fordham J. Corp. & Fin. L.* 1 (2022). <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1503&context=jcfl>

16. Gupta, Anushka, *The Impact of Data Protection Laws on Cross-Border Indian FinTech Operations*. *Publication Intel Bus. & L* (2022), <https://amlegals.com/compliance-with-regards-to-protection-of-consumer-data-in-the-fintech-sector/>

3. **Cybersecurity Framework for Banks:** The RBI has also established a cybersecurity framework for banks, which extends to fintech companies operating in the financial sector. The framework outlines requirements for technology infrastructure, cybersecurity controls, incident reporting, and response mechanisms.¹⁷ It aims to enhance the resilience of financial institutions against cyber threats, including data breaches.

4. **IT Act Amendments:** The Information Technology (Amendment) Act, 2008, introduced amendments to India's existing IT Act to address emerging cybersecurity challenges. The amendments include provisions related to data breach notifications, specifying penalties for unauthorized access, and the establishment of the Indian Computer Emergency Response Team (CERT-In) to coordinate responses to cybersecurity incidents.¹⁸

5. **RBI's Guidelines on Cybersecurity:** The RBI has issued guidelines on cybersecurity frameworks, cybersecurity policy, and information security practices for banks and other financial institutions, which are applicable to fintech companies as well. These guidelines provide recommendations on implementing security controls, conducting audits, and managing cybersecurity risks.

These regulatory responses demonstrate the Indian government's commitment to addressing data breaches and ensuring the protection of personal and financial data in the fintech sector. Fintech companies are expected to comply with these regulations, implement necessary security measures, and report any breaches or incidents promptly to the relevant authorities.¹⁹

CURRENT LEGAL FRAMEWORK FOR DATA PROTECTION IN FINTECH

In India, the current legal framework for data protection in the fintech sector primarily consists of the following regulations:

1. **Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011:** These rules were introduced under the Information Technology Act, 2000. They provide guidelines for the collection, storage, processing, and transfer of sensitive personal data. The rules define the obligations of entities handling sensitive personal data, including fintech companies, with regards to obtaining consent, implementing

17. Artie W. Ng, Benny K.B. Kwok, Emergence of Fintech and cybersecurity in a global financial centre: Strategic approach by a regulator, *Journal of Financial Regulation and Compliance*, ISSN: 1358-1988

18. IT Act, 2000.

19. Gupta, Anushka, The Impact of Data Protection Laws on Cross-Border Indian FinTech Operations. *Publication Intel Bus. & L* (2022), <https://amlegals.com/compliance-with-regards-to-protection-of-consumer-data-in-the-fintech-sector/>

security measures, providing access and correction rights to individuals, and specifying guidelines for data transfer to entities outside India.²⁰

2. Reserve Bank of India (RBI) Guidelines: The RBI, as the central banking regulatory authority, has issued various guidelines and regulations addressing data protection in the fintech sector. For instance, the Master Directions on Data Sharing and Data Privacy, issued in 2021, aim to ensure secure storage, sharing, and processing of customer data by regulated entities. These directions outline principles for consent, data localization, data access controls, and data sharing arrangements.²¹

3. Proposed Personal Data Protection Bill, 2019: **Although not enacted yet**, the Personal Data Protection Bill, 2019 is a significant proposed legislation that aims to enhance data protection across various sectors, including fintech. The bill introduces comprehensive provisions for data protection, consent, individual rights, data localization, cross-border data transfers, and penalties for non-compliance.²² It also suggests the formation of a data protection authority to oversee and enforce data protection regulations.

4. Indian Contract Act, 1872: The Indian Contract Act provides a legal framework for the enforceability of contracts, including contracts related to data protection. It defines the rights and obligations of parties involved in agreements, including those related to data protection, confidentiality, and non-disclosure.

Under the current legal framework in India, the data protection in the fintech sector is primarily governed by the following sections and rules:

Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011:

1. Rule 3: Obligations of body corporate handling sensitive personal data or information.
2. Rule 4: Consent requirements for collecting and disclosing sensitive personal data.
3. Rule 8: Security practices and procedures to be followed for sensitive personal data.
4. Rule 9: Reasonable security practices and procedures for body corporates.

20. IT Act, 2000

21. RBI guideline, On official website.

22. India: Personal Data Protection Bill, 2019 - Key Highlights of Reports of Joint Parliament Committee (Jpc) 16 Gulshan Rai. "Personal Data Protection Bill 2019 - Key Highlights of Reports of Joint Parliament Committee (JPC)." Published by Dua Associates on Mondaq: <https://www.mondaq.com/india/privacy-protection/1161678/personal-data-protection-bill-2019---key-highlights-of-reports-of--joint-parliament-committee-jpc>

Information Technology Act, 2000:

Section 43A: Compensation for failure to protect data.

Section 72A: Punishment for disclosure of information in breach of lawful contract.

Reserve Bank of India (RBI) Guidelines:

Master Directions on Data Sharing and Data Privacy (issued in 2021): These guidelines contain provisions related to consent, data localization, data access controls, data sharing arrangements, and security measures to be followed by regulated entities in the fintech sector.

*As the legal landscape is evolving, it is crucial for fintech companies to stay updated with the applicable sections and rules, comply with the data protection obligations, and ensure the security and confidentiality of customer data in accordance with the relevant provisions of the Information Technology Act, the IT Rules, RBI guidelines, and any other applicable laws and regulations.*²³

While these regulations form the foundation for data protection in the fintech industry, it is important to note that the legal framework is evolving. The proposed Personal Data Protection Bill, once enacted, is expected to significantly impact data protection in fintech by introducing more comprehensive provisions and increased penalties for non-compliance.

Additionally, the evolving nature of technology and the fintech landscape may necessitate the development of additional regulations, guidelines, or amendments to existing laws to address emerging risks and challenges. It is essential for fintech companies to stay updated with the evolving legal landscape and ensure compliance with the relevant regulations to mitigate the risks of data theft and misuse in India.

Challenges in implementing data protection laws in fintech

Implementing data protection laws in the fintech sector in India faces several challenges. Here are some key challenges:

1. **Lack of Awareness and Compliance:** Many fintech companies may lack awareness of the specific data protection laws and regulations in India. This can result in non-compliance and inadequate implementation of necessary data protection measures. Education and awareness programs are needed to ensure that fintech organizations understand their obligations and take appropriate actions to protect user data.

23. Reddy, Sujata, Data Breach Notifications and Reporting Obligations in the Indian FinTech Industry. Published by Cyber security Regul. & Compliance, (2022). <https://www.linklaters.com/en/insights/blogs/digilinks/2022/may/india-introduces-a-stringent-cybersecurity-framework-with-significant-breach-reporting-responsibilities>.

2. **Rapidly Evolving Technology:** Fintech is a fast-paced industry that constantly adopts new technologies and innovative business models. Implementing data protection laws in such an environment can be challenging, as the regulatory frameworks may struggle to keep pace with technological advancements. It requires regular updates to the laws and regulations to address emerging risks and protect user data effectively.

3. **Cross-Border Data Transfers:** Fintech companies often engage in cross-border data transfers, both within their organizations and with external service providers. Ensuring compliance with data protection laws while transferring data across jurisdictions can be complex, especially when different countries have varying data protection standards. Adequate safeguards, such as standard contractual clauses or data localization requirements, need to be implemented to address these challenges.

4. **Balancing Data Access and Privacy:** Fintech companies often require access to substantial amounts of user data to provide personalized services and improve their offerings. Balancing the need for data access with privacy concerns can be challenging. Data protection laws need to strike the right balance between enabling data-driven innovation and safeguarding individuals' privacy rights.

5. **Data Breaches and Cybersecurity Risks:** Fintech companies are attractive targets for cybercriminals due to the sensitive financial and personal data they handle. Data breaches can lead to significant financial and reputational damage. Ensuring robust cybersecurity measures and incident response plans is crucial to mitigate the risks associated with data theft and misuse.

Addressing these challenges requires a multi-faceted approach involving collaboration between regulatory bodies, industry stakeholders, and policymakers. It involves continuous monitoring and updating of regulations, fostering greater awareness and compliance, promoting cybersecurity best practices, and establishing a robust regulatory framework that balances innovation and data protection.

ANALYSIS OF THE STRONGER DATA PROTECTION IN FINTECH

In India, there are existing rules and regulations that govern data protection in the fintech industry. One of the primary legislations addressing data protection is the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (IT Rules). These rules were introduced under the Information Technology Act, 2000, and provide a framework for the protection and handling of sensitive personal data. The IT Rules outline specific obligations for entities handling sensitive personal data, including fintech companies. These obligations include obtaining consent for data collection and disclo-

sure, implementing reasonable security practices and procedures, providing individuals with the right to access and correct their data, and specifying guidelines for the transfer of data to entities located outside India.²⁴

Furthermore, the Reserve Bank of India (RBI), as the central banking regulatory authority, has issued various guidelines and regulations pertaining to data protection in the fintech sector. For instance, the RBI's Master Directions on Data Sharing and Data Privacy, issued in 2021, aim to ensure the secure storage, sharing, and processing of customer data by regulated entities.²⁵ These directions emphasize the need for explicit consent, data localization, and strict data access controls. In this case *Facebook, Inc. v. Duguid (2021)*²⁶ the court stated that, the definition of an automatic telephone dialing system (ATDS) under the Telephone Consumer Protection Act (TCPA). The US Supreme Court ruled that an ATDS must have the capacity to use a random or sequential number generator to store or produce telephone numbers to be dialed. This decision has implications for FinTech companies that use automated calling or messaging systems.

Additionally, the proposed Personal Data Protection Bill, 2019 (PDP Bill) is a significant step towards enhancing data security in India, including the fintech sector. The bill, currently under review, introduces principles such as data minimization, purpose limitation, and storage limitations. It also grants individuals the right to access, correct, and delete their data, enhances penalties for non-compliance, and establishes a data protection authority to oversee enforcement. While the existing data protection regulations provide a foundation for safeguarding data in the fintech industry, there are areas where further legal and regulatory changes may be necessary to address the unique risks involved.

Firstly, the current regulations could benefit from more specific provisions that directly address the specific risks associated with fintech. Fintech involves the use of emerging technologies, such as artificial intelligence, machine learning, and blockchain, which introduce new challenges for data protection. It is crucial to consider incorporating guidelines or regulations that account for the unique vulnerabilities and potential misuse of data in fintech applications. In the case of *Wyndham Worldwide Corp. v. Federal Trade Commission (2015)*²⁷ the court held that, the involvement of data breach at Wyndham Hotels and Resorts that exposed the

24. Shah, Rishi, The Role of Artificial Intelligence in Enhancing Data Protection Measures in Indian FinTech, AI & Law (2023), <https://www.iimb.ac.in/sites/default/files/inline-files/Privacy-Security-Governance.pdf>

25. Kumar, Praveen, The Relationship Between Data Protection Regulations and Innovation in the Indian FinTech Sector, Publication by Informist, Feb. (2023), <https://www.informistmedia.com/rbi-jain-says-indias-fintech-cos-need-self-regulatory-organisation/>

26. Facebook, Inc. v. Duguid, 141 S. Ct. 1163 (2021).

27. Wyndham Worldwide Corp. v. Federal Trade Commission (2015) no.14-3514

personal data of hundreds of thousands of customers. The FTC sued Wyndham, alleging that the company's data security practices were unfair and deceptive. The US Court of Appeals for the Third Circuit upheld the FTC's authority to regulate data security practices under Section 5 of the Federal Trade Commission Act. This case has implications for FinTech companies that collect and store personal data.

Secondly, there is a need for increased regulatory oversight and enforcement mechanisms to ensure compliance with data protection regulations. Regular audits, inspections, and penalties for non-compliance can play a vital role in promoting data protection practices and deterring potential data breaches. Strengthening the role of regulatory authorities, such as the RBI and the proposed data protection authority under the PDP Bill, can enhance supervision and enforcement in the fintech industry.²⁸

Moreover, collaborations between regulatory bodies, industry stakeholders, and technology experts could help in developing industry-specific standards and best practices for data protection in fintech. These standards would provide clearer guidance to fintech companies, ensuring they adopt robust security measures, conduct regular risk assessments, and implement adequate data protection protocols.

Additionally, promoting awareness and education about data protection among consumers and businesses is crucial. By enhancing knowledge and understanding of data protection practices, individuals can make informed decisions about sharing their personal information and be more vigilant about potential risks.²⁹

In supposition, while there are existing rules and regulations governing data protection in the fintech industry in India, there is room for improvement. The unique risks and challenges posed by fintech necessitate a tailored approach to data protection. Enhancing the current regulatory framework through specific provisions, increased oversight, industry-specific standards, and awareness campaigns can bolster data protection in the fintech sector and mitigate the risks of data misuse and reputational damage.

However, it is noted that while there are regulations in place, there may be a need for further legal and regulatory changes to address the exclusive risks connected with fintech.³⁰ This is particularly important due to the increasing use of emerging technologies in the fintech sector,

28. *Id.*

29. Patel, Manish, Data Governance Frameworks for Indian FinTech Organizations: A Comparative Analysis, Compliance, (2023), <https://medium.com/fsmk-engineering/data-governance-journey-at-seas-largest-digital-p2p-lending-platform-part-1-7a7e8f07b7f>

30. Paolo Giudici, 'Fintech Risk Management: A Research Challenge for Artificial Intelligence in Finance' Front. Artif. Intell., 27 November 2018, <https://doi.org/10.3389/frai.2018.00001>

which can introduce new challenges for data protection. Specific provisions and guidelines tailored to fintech can help address these risks effectively.

The analysis suggests that enhancing regulatory oversight, enforcement mechanisms, and collaboration between regulatory bodies, industry stakeholders, and technology experts are necessary. These efforts can lead to the development of industry-specific standards and best practices for data protection in fintech. Such standards would provide clearer guidance to fintech companies and promote compliance with data protection regulations.³¹

Furthermore, the analysis emphasizes the importance of promoting awareness and education about data protection among consumers and businesses. By enhancing knowledge and understanding of data protection practices, individuals can make informed decisions regarding the sharing of their personal information and be more vigilant about potential risks.

Overall, the analysis highlights the existing framework for data protection in the fintech industry in India and identifies areas where improvements can be made. Strengthening data protection measures, addressing fintech-specific risks, and fostering a culture of compliance and awareness are key factors in ensuring effective data protection and mitigating the risks of data misuse and reputational damage in the fintech sector.

CONCLUSION AND SUGGESTIONS

Conclusion

In conclusion, the analysis highlights the significant risks of data theft and misuse in the fintech industry and the pressing need for stronger data protection measures. Fintech companies handle sensitive customer data, making them attractive targets for cybercriminals. To reduce these threats, strong security measures like as the encryption method, multi-factor verification, and regular security inspections, are essential. Data information elimination and privacy protection methods should be adopted to limit the collection of unnecessary data and safeguard consumer privacy. Employee training and engagement with regulatory authorities also play a vital role in strengthening data protection. By implementing these measures, fintech companies can enhance data security, build customer trust, comply with legal obligations, and contribute to a safer and more secure fintech ecosystem.

31. Sumeet Gupta & Adarsh Agrawal, Analytical Study Of Fintech In India: Pre & Post Pandemic Covid-19, Indian Journal Of Economics And Business Vol. 20 No. 3 (December, 2021) Copyright@ Ashwin Anokha Publications & Distributions [Http://Www.Ashwinanokha.Com/Ijeb.Php](http://Www.Ashwinanokha.Com/Ijeb.Php) 33

Suggestions

Implement Multi-Factor Authentication: Fintech platforms should adopt multi-factor authentication mechanisms to add an extra layer of security. This can include a combination of passwords, security tokens, and biometric data to verify user identities. Strong authentication practices can significantly reduce the risk of unauthorized access and protect customer accounts.

Implement Privacy by Design and Default: Adopt a Privacy by Design and Default approach, integrating privacy measures into the development of fintech products and services from the outset. Implement privacy-friendly features, default settings, and data protection protocols that prioritize user privacy and minimize the collection of personal data.

Foster Transparency and Consent: Clearly communicate to users how their data will be collected, processed, and used. Obtain informed and explicit consent for data collection and processing activities. Implement user-friendly consent mechanisms and provide options for users to manage their privacy preferences easily. In the case of *Ratanlal C. Bafna v. Union of India (2013)*, stated that, the importance of obtaining consent from entities before collecting and processing their sensitive & personal information. The court ruled that obtaining consent is mandatory for data collection and that individuals have the right to know the purpose for which their data is being collected.

Create an effective Data Breach Response Plan: Create a complete information breach response plan outlining the measures to be done in the case of a data breach. This strategy should involve immediate identification, containment, investigation, communication of impacted persons, and working along with regulatory authorities. Test and update the response strategy on a regular basis to guarantee its efficacy. In this case *Doe v. India NIC Infotech Limited (2014)* stated that, the issue of data breaches and the liability of companies that collect and process personal data. The court held that companies are responsible for ensuring the security of the personal data they hold and that they can be held liable for damages in the event of a data breach.

Conduct regular third-party audits: Engage independent third-party auditors to do regular evaluations of data security processes and systems. These audits give an impartial assessment of the organization's data protection safeguards, highlighting areas for improvement and ensuring best practices are followed.

Monitor and Assess Developing Technologies: Keep up to date of new technologies and their consequences for data security. Analyse the potential hazards and advantages of technologies like machine learning, AI, and blockchain, and make sure that adequate measures are in place to secure user data. In this case *Google Spain v. AEPD and Mario Costeja González (2014)* held in this case involved a Spanish citizen who asked Google to remove search results about him

that he considered to be outdated and irrelevant. The ECJ ruled that individuals have the “right to be forgotten” and can request that search engines remove links to personal information that is inaccurate or outdated. ***This case has implications for FinTech companies that process and store personal data.***

Enable Strong Encryption: To safeguard sensitive data at rest as well as in circulation, use highly secure encryption methods. Encryption guarantees that even if data is hacked or stolen, it will remain inaccessible and useless in the absence of the encryption keys. Adhere to industry the most effective methods for safeguarding data and update encryption procedures on a regular basis as technology evolves.

Employee Education and Training: Conduct constant data protection training sessions for staff to improve knowledge of data privacy issues, best practices, and their roles in safeguarding customer data. Topics such as safe data handling, identifying scams, and incident reporting should be included in training.

Further, fintech should obtain necessary consents from individuals before collecting and processing their personal data and transferring it to others. Clearly communicate the purpose and scope of data collection, and provide individuals with the option to withdraw consent or exercise their rights regarding their personal data. Create and maintain detailed privacy policies that are in accordance with legal standards. Clearly describe the categories of data gathered, the way it will be used, and also with whom it could be shared. Maintain honesty and clarity.

By applying these legal and analytical recommendations, financial services companies may lay a solid basis for data security, reduce the risks of data theft and abuse, and keeping their customers’ privacy and trust.

GOVERNANCE OF AVIATION POLLUTION IN INDIA: A CRITICAL REVIEW OF INDIAN ECONOMIC AND ENVIRONMENTAL STATUS

Burra Bhavya Sri Goud¹

Arindam Shit²

INTRODUCTION

Aviation is one of the world's fastest growing sectors, and the fastest growing method of transportation in India. Aviation clearly contributes greatly to the economy and benefits society, but it also increases air pollution and climate change to a greater extent³. The Intergovernmental Panel on Climate Change (IPCC) addressed this issue for the first time in 1999. The Indian Aviation Industry is the third largest domestic air transport industry and one of the fastest growing markets in the world which is growing at almost 10% for last decades⁴. Due to its rapid development and utility, private players in the aviation market started investing more on aircrafts, and the recent purchases of Air India and Indigo is one of such instances.

The aviation sector as a source of pollution is considered to be one of the most unexplored and ignored sources of air pollution in India, even after the fact that it contributes a significant portion in causing the air pollution. While the Indian government for the economic benefit allows the airline companies to buy more aircrafts with the intent of welfare and development of the State, but in the whole process the government overrides the fundamental rights of the common people. The significant increase in the aviation pollution in recent years not only affecting the climatic conditions but also causing deadly diseases to human and animals directly. Due to varying climatic conditions the people of the country are already suffering a lot and the steps of the government are adding to it more which gives rise to certain questions like does

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1. Student, Pursuing BA LL. B (Criminal Law Hons.) 2019-24, Alliance School of Law, Alliance University.
 2. Student, Pursuing BBA LL. B (Constitutional Law Hons.) 2019-24, Alliance School of Law, Alliance University.
 3. Arushi & Stephen Drews, Aviation And Environment Center For Science And Environment https://cdn.cseindia.org/userfiles/aviation_paper.pdf (2011).
 4. Indian aviation market has huge potential waiting to be tapped: Top industry experts, THE ECONOMIC TIMES, (July 30, 2023, 11:00 AM) <https://economictimes.indiatimes.com/industry/transportation/airlines/-aviation/indian-aviation-market-has-huge-potential-waiting-to-be-tapped-top-industry-experts/articleshow/101857232.cms?from=mdr> (2023).

the State failed to ensure right to healthy environment to its citizen by focusing on economic developments? How a proper balance between economic developments through aviation sector can be achieved with the sustainability goals in India?

It is very concerning that the authority according to the law of the land who is responsible for granting the fundamental rights to its citizens, are forbidding those rights for economic benefits, and defining them as development for the country and its people. Therefore, this paper has been developed to analyze the role of Indian government with respect to protection of environment from aviation pollution and to evaluate the sustainability principle to justify balance between economic and environmental concerns. Further, the scope of this paper is extended to critically analyze the loopholes of the statutes which governs the aviation pollution in India.

AVIATION AND INDIAN ECONOMY

In India, recently Air India has placed an order for 470 aircrafts from Boeing and Airbus for \$70billion and Indigo has placed an order for 500 aircrafts from Airbus for \$50 billion.⁵ The instance of the purchase can be put into two frames of justifications with the intent to hold up the focal point of the Government that, it is more inclined towards the economic benefits, disregarding the consequence of it on environment. The consequences are explained in detail in the next chapter. One frame of justification is regarding carbon trading, the other is job creation, investments; and tourism boosts.

Economic focus on Carbon Trading

Voluntary carbon markets have existed for decades. These practices were well known for the dominance of a few countries and their irregular control over them. But these markets became a common place for countries across the world through Kyoto Protocol of 1997⁶ for which, US and China were not a signatory. The situation changed in 2015 when 196 countries at Co-operation of parties (COP 21) have assented for signing of the Paris Agreement.⁷

The key essence of the Paris Agreement is to have thresholds on the climate change, which has set the goals to limit the global emissions and even to hold countries responsible and accountable for their actions or abstinence from acting in regard of carbon footprints. To quantify the accountability, the government has set up a cap on emissions and has issued

5. DGCA gives Air India, indigo in-principle nod to import aircraft, The Economic Times (2023), (July 30,2023,9:4 5 PM) <https://economictimes.indiatimes.com/industry/transportation/airlines/-aviation/dgca-gives-air-india-indigo-in-principle-nod-to-import-aircraft/article-show/102283294.cms?from=mdr>.

6. UNFCCC.int, https://unfccc.int/kyoto_protocol (last visited July 30, 2023).

7. UNFCCC.int, <https://unfccc.int/process-and-meetings/the-paris-agreement> (last visited August 2, 2023).

allowance to certain quantity of emissions, which is in consistent with the cap. One such way to quantify is Emission Trading Systems (EMT), which is also known as allowance trading or cap and trade.

Since there is an addition of additional aircrafts to the air traffic, it adds additional carbon and non-carbon emissions influencing the atmosphere by releasing carbon dioxide, ozone (enhanced by NO_x levels), methane (CH₄), water vapor, contrails, cirrus clouds, sulphates, and soot aerosols. With the additional influx of these, the companies tend to cross the cap as set forth in accordance with the Paris Agreement. If the cap is exceeded by the companies, they can readjust their cap by buying additional carbon credits from the countries, which have under-utilized. The amount spent on this trading is subjected to tax @ 10% which facilitates the government to get additional funds.⁸

There exists an additional layer to it which is highly ignored; it is regarding the initial investment fund that the companies get by taking the loans, which is a part of consolidated fund. The companies i.e., Indigo and Air India are facing heavy debt. As of 31st March 2023, IndiGo has a total debt (including the capitalized operating lease liability) of Rs. 4,48,542 million in which capitalized operating lease liability accounts to 4,15,477 million with a total cash balance of Rs.2,34,243 million.⁹ And Air India has a total debt of Rs.153,000 million debt as of 2021-22 which was bought by Tata's after government settling around Rs.61,000 million debt.¹⁰

Irrespective of the debt, the airlines are bought at the cost of government money, whose probability to return the payment is very ambiguous, which makes it a risky move. In case of default, to recover the economy from the said loss, the government would charge the said amount proportionally from the general public in way of taxes, etc.

Economic focus on employment generation, investment and tourism boost

The undisputable result of the exp job of jotation industry is, it boosts the tourism¹¹ industry, investments and would also create the job opportunities. As per Aviation Benefits Report, Asia

8. The Income Tax Act, 1961, § 115BBG, No. 43, Acts of Parliament 1961 (India).

9. Indigo reported best ever fourth quarter net profit of ₹9,192 million ..., GOINDIGO.IN (2023), (Aug 3, 2023, 8:00 PM), <https://www.goindigo.in/press-releases/indigo-posts-net-profit-of-inr-9192-million-for-quarter-ended-march-2023.html>.

10. PTI, GOVT SETTLES OVER Rs 61,000 CR AIR INDIA DEBT, OTHER LIABILITIES BEFORE TRANSFER TO TATAS THE PRINT (2022), (Aug 3, 2023, 8:15 PM), <https://theprint.in/economy/govt-settles-over-rs-61000-cr-air-india-debt-other-liabilities-before-transfer-to-tatas/814586/>.

11. India Tourism Statistics 2019, <https://tourism.gov.in/sites/default/files/2020-04/India%20Tourism%20Statistics%202019.pdf> (last visited Aug. 3, 2023).

and Pacific alone creates 30.2 million new jobs by the foreign visitors who fly in.¹² The aviation industry as a whole directly employs 3,90,000 employees and indirectly sustains around

5,70,000 jobs through various supply chains.¹³ In aggregate, the aviation sector pushes India's GDP up by 8%, which in monetary accounts to \$72 billion.¹⁴ But there is a presumption of increase in air traffic, which has accounted to see a projected growth of over 25%.¹⁵ This would ultimately add on to the environmental concerns in regard of global warming which is dealt in detail in next chapter.

In addition to it, air travel is significantly acknowledged in India for its initiative of the private operators and their strategy planning in the significant drop in the rates of air tickets. Air travel also promotes investment and tourism. Currently, the public ownership of is being transformed into public-private partnership, in which the airport ownerships and administration rights are vested with and managed through a concession agreement on behalf of the owner and eventually becomes fully privately owned. Accordingly, there is a significant potential for the aviation industry in India to attract investments which enables the suppliers to expand their market share with both existing and new goods.

The Ministry of Civil Aviation introduced the National Civil Aviation Policy in June 2016, and by virtue of that the regional connectivity scheme has been launched. This is also famous in the name of UDAN (Ude Desh ki Aam Naagrik).¹⁶ This scheme specifically aimed to promote economic growth, and affordable flights for the people. The private players in the aviation industry got an opportunity to invest their capital in terms of a greater number of aircraft in the name of these policies. Although the tax rate for all the income and grants remains as it is, it is also evident that the Union government receives huge amount of money from the Airport Authority of India and some of the Airport in India like Delhi, Mumbai, Bangalore, acts as International hub.

Therefore, the aviation industry is a golden goose which is significantly profitable but there exists a downside to it that is mostly ignored. With these many possible economic boosts, the

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12. Aviation Benefit Report (2019), <https://www.icao.int/sustainability/Documents/AVIATION-BENEFITS-2019-web.pdf> (last visited Aug 3, 2023).
 13. Dr. Sanjay Jagdeo Rao Tale, *The Study of Contribution and Challenges of The Aviation Sector in The Indian Economy*, INTERNATIONAL JOURNAL FOR MULTIDISCIPLINARY RESEARCH (2023), [1-4], <https://www.ijfmr.com/special-issues/2/201.pdf>.
 14. *Id.* at 13.
 15. *Id.* at 13.
 16. Sayed Tamjeed & Rakhee Biswas, Tax Incentives to promote Regional Aviation Market (July 30, 2023, 8:00 PM) <https://www.lexology.com/commentary/aviation/india/spaviatech-law/tax-incentives-to-promote-regional-aviation-market>.

Government consents to the purchase of additional aircraft with a vision of bearing fruit. But the consequences of the said act results in unseen environmental damages, which makes it difficult to accomplish the set sustainable development goals.

AVIATION AND ENVIRONMENT

The aviation industry contributes to change in climatic condition by altering the compositions of atmospheric gases and other particles present in both the lower and upper stratospheres. CO₂ and water vapor are the primary emissions, accounting for roughly 70% from aircraft combustion processes, and is slightly less than 30% of the total emissions.¹⁷The remainder is made up of NO_x, CO, Sox, VOC, particulates, and other trace components like as HAPs. According to the Intergovernmental Panel on Climate Change, CO₂ is the most significant gas emitted by aircraft because of the combustion of fossil fuels, and it significantly contributes to the greenhouse effect and climate change. The level of CO₂ emission is predicted to rise in the future decade, and the level of poisonous components generated by this emission is quite high regardless of height, although the effect of this greenhouse gas is more harmful at higher altitudes than at lower altitudes.¹⁸The altitudes at which commercial airlines flies, the CO₂ released by the aircraft does not condense because the temperature ranges from -35 degrees Celsius to -50 degrees Celsius, which is warmer than the condensation point of CO₂(-56.6 degrees Celsius)and thus it will disperse slowly due to the pressure of the gas at that temperature.¹⁹

Impacts of CO₂ and Non- CO₂ on climate

When evaluating the total influence of aviation on climate change, it become essential to draw a distinction between effects of CO₂ and non-CO₂ gases arising out of aviation operations in the atmosphere, specifically at the level where the clouds are formed. To understand the ability of a greenhouse gas to alter the balance of energy in the atmosphere, the IPCC has developed the concept of Radiative Forcing (RF), or RF for short. Warming of the Earth's surface is caused by positive RF outcomes, whereas cooling is caused by negative results.²⁰The amount of CO₂ emissions by Indian scheduled passenger aircraft to and from domestic destinations is expected

17. Chemicoz, IOCL CHEMICOZ (2012), <https://chemicoz.wordpress.com/2012/08/31/iocl-company-profile/> (last visited Aug 3, 2023).

18. Kashmira Sahani, AVIATION POLLUTION AND ENVIRONMENTAL ISSUES, THE DAILY GUARDIAN (Jul 30, 2023, 10:00 PM) <https://theguardian.com/aviation-pollution-and-environmental-issues/>.

19. Ingrid Sunstad & Andres Austegard, FROZEN CARBON DIOXIDE (DRY ICE) SUBLIMATES DIRECTLY INTO A VAPOR. FROZEN CARBON DIOXIDE (DRY ICE) SUBLIMATES DIRECTLY INTO A VAPOR, U.S. GEOLOGICAL SURVEY (Aug 1, 2023, 8:30 PM) <https://www.usgs.gov/media/images/frozen-carbon-dioxide-dry-ice-sublimes-directly-a-vapor>.

20. *Id* at 16.

to be 50,854 kilotons from 2016 to 2020, while those to and from overseas destinations are 33,468 kilotons.²¹

It is quite debatable that whether the amount of CO₂ released from the aircrafts is significant enough to degrade the climatic condition but on the other hand it is pretty much clear that the Green House Gases released from the aircrafts contributes a significant portion to the total pollution and subsequently harm the climate of the country. Therefore, it can be concluded that not mere CO₂ is responsible for the ultimate damage but the role of other gases in the environment released by aviation industry is also prominent and is a matter of concern. Indian Airlines stands at seventh in terms of carbon footprint in the globe, with an estimated value of 127 lakh tons per year, according to a report exhibited by the Director-General of Civil Aviation (DGCA). While the aviation industry of India is growing at a pace of at least 10%, thus if appropriate mitigation measures are not implemented, the accompanying carbon footprint might significantly increase. Additionally, the DGCA data states that 95% of emissions are caused by air crafts, with the remaining 5% coming from activities associated to airports.²²

Current Regulatory Framework

In the Stockholm Conference, 1972, a resolution for environmental preservation and pollution prevention and control was adopted.²³ India was also a party to the Conference, and in response to the commitment made in the conference, the Government of India has enacted the Air (Prevention and Control of Pollution) Act, 1981²⁴ with an objective to prevent, control, and abatement of air pollution in India, and simultaneously, the Air (Prevention and Control of Pollution) Rules of 1982 has been drafted to implement the provisions of the Air (Prevention and Control of Pollution) Act.²⁵

According to the Air Act, the term “air pollution” can be defined as “the presence of any air pollutant in the atmosphere” while the term “air pollutant” includes any solid, liquid, or

21. ET ENERGYWORLD.COM, <https://energy.economictimes.indiatimes.com/news/oil-and-gas/air-lines-in-india-emitted-84322-kilotonnes-of-co2-between-2016-2020-govt/90501168> (last visited Aug 1, 2023).
22. Vasavi Thummala & Rahul B Hiremath, GREEN AVIATION IN INDIA: AIRLINE’S IMPLEMENTATION FOR ACHIEVING SUSTAINABILITY CLEANER AND RESPONSIBLE CONSUMPTION, Science Direct, (Aug. 1, 2023, 8:00 PM) <https://www.sciencedirect.com/science/article/pii/S2666784322000365>.
23. United Nations Conference on the Human Environment, 1972, <https://www.un.org/en/conferences/environment/stockholm1972> (Last Visited July 30, 2023).
24. Air (Prevention and Control of Pollution) Act, 1981, https://www.indiacode.nic.in/bitstream/123456789/9462/1/air_act-1981.pdf (Last Visited July 30, 2023).
25. Air (Prevention and Control of Pollution) Rules, 1982, https://upload.indiacode.nic.in/show-file?actid=AC_MP_74_308_00002_00002_1543231337750&type=rule&filename=air_rule_1982.pdf (Last Visited July 30, 2023).

gaseous substance, including noise, which is present in the atmosphere to an extent that can harm humans, other living beings, property, or the environment as a whole.²⁶ Further, the Air (Prevention and Control of Pollution) Act authorize the Central Pollution Control Board (CPCB) and the State Pollution Control Board (SPCB) to govern the air pollution in India.

In addition to that the Ministry of Civil Aviation (MoCA) is the top regulatory authority in India who is responsible for the creation of civil aviation policy and regulation. The said ministry supervises the development and implementation of policies for the extension of civil air transport, airport facilities, air traffic services, and air passenger and cargo carriage, and more specifically, the Directorate General of Civil Aviation (DGCA), which is one of the functioning authorities of MoCA, which implements legislations for civil aviation and regulates all air transport services, air safety, and airworthiness requirements in India.²⁷

The Aircraft Act of 1934 and the Aircraft Rules of 1937 oversees the manufacturing, possessions, use, operations, sales, import and export of aircraft, as well as the parameters for determining airworthiness, aircraft maintenance, general flying and safety conditions, aircraft registration, and the conduct of investigations, while the Civil Aviation Requirements (CAR) issued by the DGCA under Rule 133A of the Aircraft Rules²⁸ and provide the stipulations for aircraft registration. Aeronautical Information Circulars are also issued by the DGCA and provide explanatory or advisory information about flight safety, air navigation, technical, administrative, or legislative issues.

Despite of having respective authorities to uphold the existing regulatory framework in India, the provisions, and steps to reduce the emissions from aircraft are uncertain. It is prominent to note here that unless and until a law is enforced in an appropriate and prescribed manner, such a law is immaterial and the issues for which such laws are enacted continue to remain in existence. Pointing the government for every such instance is not a solution but it is the government and legislations which has authority to look after the actions and inactions of the administrative authorities delegated to govern the respective problems.

The Ultimate sufferers of climate change

Needless to emphasize the fact that it is often the people of the country who suffer the most whenever there is a tussle between supreme authority and delegated authorities. The right to a

26. Air (Prevention and Control of Pollution) Act, 1981, § 2(a), No. 14, Acts of Parliament 1981 (India).

27. Anand Shah, Harseena & Rishiraj Baruah, AVIATION LAWS AND REGULATIONS REPORT 2023 INDIA INTERNATIONAL COMPARATIVE LEGAL GUIDES INTERNATIONAL BUSINESS REPORTS, ICLG.COM (Aug 2, 2023, 6:30 PM) <https://iclg.com/practice-areas/aviation-laws-and-regulations/india>.

28. The Aircraft Rules 1937, Rule 133A, Acts of Parliament (India).

healthy life is not only a fundamental right of the people but certainly a need to protect several habitats and lifestyles. The right to health is not expressly mentioned under Article 21²⁹ of the Indian Constitution but is a facet of Directive Principles of State Policy. Articles 38, 39(e), 41, 42 and 47 together impose an obligation on the State to protect the health and other benefits of the citizens.³⁰

Indian Judiciary also pronounced some landmark decisions on this context by upholding the obligations of the State in terms of protecting the health as a fundamental right. The Supreme Court several time claimed that the right to health is an additional and crucial factor enshrined under Article 21 of the Indian Constitution.³¹ While in the case of *State of Punjab v. Ram Lubhaya*,³² the Apex Court observed that the issue of health as a right revolves around Article 21, 41 and 47 of the Indian Constitution and it has been held that right guaranteed under one of the Articles is requirement of the other. However, it has been stated by the Court that a claim for infringement of right to health for a specific reason can only be entertained if a significant population is involved in the matter.

The pollution from the aviation sector especially the air pollution affects the human and animal lives at large as the air transport connects the corners of the country and available at almost all states of India. Further in the case of *Ratlam Municipal Corporation case*³³ the Apex Court held that obligation imposed by Article 47 on State ensure a healthy environment and the same is backed by Article 21 of the Indian Constitution. Life with dignity and not a mere animal existence is a well-known fact which can be derived from several cases like in *Francis Coralie v. The administrator, Delhi*.³⁴ Whereas it is the state, in the end, who must ensure a healthy environment for its citizens, the State and other delegated authorities for the wealth benefits and for the purpose of string fiscal relations overrides the fundamental duties to its citizens. It is also to be considered that people also support such economic developments and ignore environmental welfare unless they understand the effects of such developments.

CONTRIBUTION OF JUDICIARY

The aircraft pollution as a tool of environmental degradation although not been challenged much before the Apex Court of India as the growth and development of economy always act as a defense against such claims, but it is also important that the Supreme Court and High

29. INDIAN CONST. art. 21.

30. Dr. J. N. Pandey, Constitutional Law of India 488-499 (Central Law Agency 2020).

31. Consumer Education and Research center v. Association of India, 1995 SCC (3) 42.

32. State of Punjab v. Ram Lubhaya Bagga, (1998) 1 SCR 1120.

33. Municipal Corporation, Ratlam v. Shri Vardhichand, 1981 SCR (1) 97.

34. Francis Coralie v. The administrator, Delhi, 1981 SCR (2) 516.

Courts from time and again decided in favor of environment when there is dispute between the environmental concern and other objectives of the society in India.

The principle of Inter-generational equity has been established by the Supreme Court of India to protect the natural resources and wildlife of the territory.³⁵ The emission from the aircrafts may not directly affect certain habitat but certainly affects the climatic conditions which is having direct connections to sustainability of those lives. It has also been held by the Apex Court that vehicle having emission more than the prescribed standard shall not be sold in the market,³⁶ then it is also to be taken in consideration purchasing huge number of aircrafts shall also need to be restricted by the respective authorities.

The Constitution of India being a living document growing with the time, and the Judiciary is the primary reason for its growth with the changing society. “A decent standard of living and pollution free environment is inherited in the Indian Constitution”³⁷ not only to showcase the responsible government, but it is certainly an essential human right impliedly inculcated under Article 21 of the Constitution.³⁸ In further circumstances, the Supreme Court has also recognized the fact that healthy environment falls under purview of Article 21.³⁹ A healthy environment is not only an essential of welfare state but also a fundamental duty under Article 51-A(g) of the Indian Constitution.⁴⁰ Hence questioning every time the responsibility of the government is not an appropriate solution, being a Indian Company and holding status of a legal person, it is the duty of the companies to look after the environmental aspects of their operations.

The Judiciary in later stage has also introduced “Precautionary Principle” and “Polluter Pay Principle”, to justify the liability of environmental degradation and these principles are considered to be the fundamentals to uphold the sustainability goals in India.⁴¹ But there are no particular judicial actions taken on behalf of the aircraft pollution and their liabilities. Now the question is whether the pollution rate is too low to consider or the actions of Airline Companies in support of government are more important than sustainability of the environment? Does the imposition of tax on the carbon trading by the Government affects the emission rate? Such questions remain unanswered due to lack of data and statistics. In other words, these fields are

35. State of Himachal Pradesh v. Ganesh Wood Products, AIR 1996 SC 149.

36. (Vehicular Pollution case) M.C. Mehta v. Union of India, WP (C) 13029/1985.

37. Pooja P. Vardhan, Environment Protection under Constitutional Framework of India, Press Information Bureau Government of India Special Services Features (Jun 4, 2014, 12:25 IST) <https://pib.gov.in/newsite/printrelease.aspx?relid=105411>.

38. *Id* at 28.

39. Rural Litigation and Entitlement Kendra v. State, AIR 1988 SC 2187.

40. INDIAN CONST. art. 51-A(g).

41. Vellore Citizen Welfare Forum v. Union of India, (1996) 5 SCC 647.

ignored by government in meeting the hunger of economy. It is true that airline companies meant to grow their business in a territory, but State shall not allow such companies to interfere with the environment, specifically the climate.

CONCLUSION AND SUGGESTIONS

Aviation industry is expanding significantly from last two decades. As a result, it became a lucrative option for the government to turn to; to boost the economy. On the other hand, the emissions from the aircraft are not only hampering the animal and human habitat but also affecting the climate and climatic conditions. The Government at one hand is focusing more on advancing the consolidated fund of India but simultaneously overlooking the major contributors to this fund, the citizens of India. The Income Tax Act by virtue of 2018 amendment inserted S.115BBG to tax @10% on the amount spent and received by carbon trading. And the same again deposited to the consolidated fund of India. Therefore, it is apparent that through both ways, the government is more concerned about fund and economic condition of India rather than the environmental concerns and natural habitats of the country. The State, being the authorized body as per the law of the land, is obligated to look after the wellbeing of the citizens, development, and wealth of the country.

The Ministry of Civil Aviation and Director General of Civil Aviation are entrusted with the authority to deal with various measures concerning with the aviation policies in India. But on keen observation, it is observed that the principle of Stockholm Declaration and Paris Agreement are not fully adhered to by these authorities while taking decisions regarding aviation industry. This can be evidenced from the non-objections given by the authorities irrespective of the fact that Indigo and Air India are in debt of Rs. 4,48,542 million and Rs.153,000 million debt respectively.

Therefore, it can be concluded that despite of having environmental concern alert with the increase in aviation traffic and its emission, balance between economy and environmental concern has not been achieved by the Indian government and subordinate authorities, although they have agreed to achieve specified goals by International Conventions.

The Union Government is not, single handedly responsible for such inactions rather the governance policies and causality from the subordinate authorities are also prominent in this context. Hence it is advisable for the government to look after the habitats and related concerns before granting permission to the private players of the aviation industry with respect to purchase of huge number of assets in the form of aircraft. Government shall take steps towards Airline Companies which is having emission rate more than the standard. And if such a standard is not made then respective authorities should frame it as early as possible. The major problem is the governance of such inactions and actions are done by soft laws and thus the judiciary also

cannot order strict action even if it is for the public interest. At the highest, they were asked to pay certain compensation for the loss they have made to the environment. Also, the complexity of Indian Judicial system becomes a bar to get a speedy remedy in environmental matters, as a result the continuous degradation results the climatic changes over the territory. These matters shall be dealt with in a manner to keep the public interest alive, and for that restriction from the base level shall be made so that in a dispute of economy and environment, the environment shall prevail. In other words, the balance between economy and environment shall be maintained to run an economically and environmentally healthy country.

INTERPLAY BETWEEN INTELLECTUAL PROPERTY RIGHTS AND HUMAN RIGHTS IN THE CONTEMPORARY SCENARIO

Ananya Pandey¹

Dr. Achyutananda Mishra²

INTRODUCTION

The discussion of exclusive ownership and rights to resources dates back as far as recorded human civilization. Human rights and intellectual property (IP) are two independent areas in the field of law that interact and occasionally clash because they have different goals and interests. Two traditionally unrelated areas of law ‘human rights and intellectual property’ are now developing close relationships.³ The two subjects practically developed independently of one another for many years. However, in recent times, international standard efforts have started to chart previously unexplored interrelationship between intellectual property law and human rights legislation.

Human rights and intellectual property (IP) are two independent areas of law that interact and occasionally clash because they have different goals and interests. When we state intellectual property, it means intellectual works like inventions, literary and creative creations, designs, symbols, names, and pictures that are employed in trade and commerce.⁴ IP is legally protected by patents, copyrights, trademarks, and trade secrets, which provide authors and innovators temporary exclusive rights to their works. By giving creators the means to exercise control over and make a profit from their works, IP legislation aims to promote innovation and creativity. On the other hand, regardless of colour, gender, nationality, or any other characteristic, everyone is entitled to the fundamental liberties and rights known as human rights. These rights are safeguarded by international law, which includes the Universal Declaration of Human Rights (UDHR) and various regional accords. Human rights also include civil and political rights,

1. Research Scholar, Christ University, Bangalore.

2. Professor, School of Law, Christ University.

3. Matthews, D., *Intellectual property, human rights and development: the role of NGOs and social movements*, Edward Elgar Publishing, (2011).

4. Coombe, R.J., *Intellectual Property, Human Rights & (and) Sovereignty: New Dilemmas in International Law Posed by Recognition of Indigenous Knowledge and the Conservation of Biodiversity*, Ind. J. Global Legal Stud., 6, p.59, (1998).

such as the right to free expression and the right to a fair trial, in addition to economic, social, and cultural rights.

History and evolution of the two regimes followed different trajectories. International human rights law changed during the span of fifty years as a result of the relatively swift codification, expansion, and creation of new international institutions. In order to protect a growing number of civil, political, economic, social, and cultural rights, states began ratifying a large number of legally binding treaties and nonbinding declarations in the late 1940s. Numerous of these rights were enshrined in national constitutions, laws, and court decisions, adding another level of legal protection.

However, in the middle of the 1980s, industrialised countries and their content and innovation sectors began a campaign to strengthen IP protection globally, particularly in developing countries. They worked primarily in these two places. The US and the EC were asked by these industries to take into account or adopt trade sanctions against nations with weak national IP protection. Poor nations attempted to get the rules controlling the Berne and Paris Agreements repealed or weakened at the WIPO on a global scale, but the US and EC resisted their efforts. Because of the economic pressure associated with the first method, stronger IP protection standards were received with grudging acceptance or even outright rejection in many emerging nations.

IP and human rights were separate legal areas up until the mid-1990s. However, they had one crucial thing in common: they were both made up of organisations and international legal standards that were often understated and discreet. The important multilateral conventions in each regime should be ratified by all the member nations recognising the legal duty on the part of the states. States which ratified the treaties might also credibly claim that they did not impose onerous legal duties or establish effective international adjudication or monitoring procedures to detect potential violations. This normative and institutional environment gave every nation wide latitude in choosing the municipal laws and policies that best supported its local welfare objectives.

INTERNATIONAL PERSPECTIVE TOWARDS THE NEXUS BETWEEN IPR AND HUMAN RIGHTS

Governments, international bureaucrats, related and non-governmental organisations, tribunals, and researchers have tried to show how human rights and intellectual property rights are intertwined since the creation of the World Trade Organisation (WTO) and the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

For instance, the U.N. Sub-Commission on the Promotion and Protection of Human Rights has lately called attention to the serious inconsistencies and conflicts between these two areas of legal rights. To avoid these conflicts, the Sub-Commission proposed “the primacy of human rights obligations over economic policies and agreements.”

The reality is more complicated despite the seeming simplicity of this hierarchy of rights since some elements of intellectual property rights are protected by local, national, or international human rights laws. For instance, Article 27(2) of the UDHR explicitly states that “everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author.” Article 15(1)(c) of the ICESCR, which closely echoes the Declaration, states that each member state party to the Covenant “recognises the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author.”

It is challenging to claim that, in the event of a disagreement, intellectual property rules and policies always take precedence over human rights commitments in light of these human rights instruments. Instead, a thorough examination of the numerous characteristics of intellectual property rights is required.⁵

Evolution of the interaction between IPR and human rights

This section gives a brief historical evolution of the Articles under UDHR and ICESCR that bring upon a nexus between the two independent regimes i.e. IPR and human rights. Recounting this significant but obscure period of history serves two main objectives. It begins by tracing the drawn-out and challenging process by which the right to the protection of intellectual property interests made it into human rights documents. The history of their drafting also aids us in better comprehending the character and extent of the in question right by elucidating the meaning of some unclear terms employed in the several clauses, such as “moral interests” and “material interests.”⁶

The protection of moral and pecuniary interests in intellectual contributions is mentioned in a number of international and regional human rights publications. Furthermore, as stated in Articles 27(2) of the UDHR and 15(1)(c) of the ICESCR, as well as Article 13 of the American Declaration on the Rights and Duties of Man, also known as the “Bogota Declaration,” every

5. Beiter, K.D., *Reductionist Intellectual Property Protection and Expansionist (and ‘Redevelopment’) Competition Rules as a Human Rights Imperative? Enhancing Technology Transfer to the Global South. In A Critical Mind: Hanns Ullrich’s Footprint in Internal Market Law, Anti-trust and Intellectual Property* (pp. 733-783), Berlin, Heidelberg: Springer Berlin Heidelberg, (2023).

6. Grosheide, F.W., *Intellectual property and human rights: a paradox*, Edward Elgar Publishing, (2011).

person has the right to the protection of his moral and material interests with regard to inventions or creations as well as any literary, scientific, or artistic works of which he is the original author”.⁷

The Vienna Convention on the Law of Treaties specifically states that “treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.” The “object and purpose” of the treaty should be emphasised by the parties in addition to the “ordinary and true meaning” of its terms. States parties shall narrowly construe the Covenant’s limitations and restrictions in the context of human rights treaties, particularly the ICESCR, and interpret the Covenant favourably for the individual in context of the “moral and material interest” of an individual. Although there may be some benefits from a textual analysis of the ICESCR, Professor Matthew Craven noted that “important questions are frequently left unanswered due to the obscure and imprecise nature of many of its terms.”⁸ Therefore, a thorough understanding of the history of the drafting process is essential to comprehend such nebulous, ethereal, and imprecise concepts. The utilisation of the drafting history is actually encouraged by the Vienna Convention, which states that “the preliminary process for the instrument and the situation at the time that led to its conclusion” could be used as a further form of interpreting for verifying the meaning of the treaty or to ascertain what comprehension “offers the significance unclear or hidden terms that and results in an outcome which is unambiguously absurd or unreasonable.”

However, it is crucial to be aware of the additional challenges brought on by the expansion of international agreements, particularly human rights treaties. Since the 1948 adoption of the UDHR, human rights treaties have undergone tremendous transformation. People may consequently think that the discussions held on a global scale throughout the UDHR and ICESCR drafting processes had little bearing on how we currently perceive the right to the protection of intellectual property rights. The International Court of Justice declared in the Namibia Advisory Opinion that an international document must be interpreted and carried out in accordance with the complete body of law that is in force at the time it is done. The Vienna Convention requires taking into account later interpretation and application.

Discussions that took place during the several international accords’ drafting procedures under both regimes are where the formation of international law regarding the link between human rights and intellectual property rights began. As a result, any potential tension or

7. Gupta, P., Wadhwa, S. and Chauhan, S., *Crossroad of intellectual property rights of technology innovators and human rights: a systematic literature review*, Digital Policy, Regulation and Governance, 25(3), pp.236-249, (2023).

8. Okediji, R.L., *Does intellectual property need Human Rights*, NYUJ Int’l L. & Pol., 51, p.1, (2018).

contradiction between intellectual property rights and human rights can be clarified. The process can also expose member nation interests, concerns, and trade-offs. Additionally, it foreshadows the challenges and difficulties in creating a human rights framework for that framework's intellectual property.⁹

Revisiting UDHR and ICESCR

In accordance with the UN Charter, which gave human rights basic standing for maintaining international peace, the UDHR was established in 1948 against the backdrop of international War II's aggression and atrocities. Although not specifically stated in the Declaration, the war and the Holocaust were frequently discussed during the writing process and are clearly what the drafters of the Declaration were motivated by.¹⁰ The first sentence of the preamble emphasises that the acknowledgement of all human family members' inherent dignity and their equal and unalienable rights is the "foundation of freedom, justice, and peace in the world."

During the UDHR's preparation, the adoption of Article 27(1), which protects the rights to cultural participation and development as well as the benefits of scientific progress, was largely unchallenged. According to Article 27(1) as written, "Everyone has the right to freely take part in community cultural life, to enjoy the arts, and to share in scientific advancement and its benefits."¹¹ Despite some participants in the General Assembly debate doubting the connection between Article 27(2) and intellectual property protection, the general field of intellectual property should be protected, keeping in mind the substantial impact that property protection has on culture and science. Despite intense discussion about the overall wording and a few particular phrases during the General Assembly session, the Third Committee affirmed Article 27. Some members may have voted in favour of the section due to the moral rights issue that Cassin and Chang raised, while others may have done the same because the set of rights was prominently mentioned in the American Declaration, especially by those from the Latin American states.¹² Given that they were outside the Berne Convention at the time, they might have also seen the positive vote "as a step towards the internationalisation of copyright law." Additionally, according to Audrey Chapman's theory, some members may have supported the clause "primarily because of their instrumental character in achieving other rights, which were perceived to have a stronger moral basis." In fact, the discussion of how the right will ultimately

9. Chon, M., *Intellectual Property, Human Rights and Development: The Role of NGOs and Social Movements*, IP L. Book Rev., 2, p.63, (2013).
10. Copelon, R., *The Indivisible Framework of International Human Rights: A Source of Social Justice in the US*, NY City L. Rev., 3, p.59, (2011).
11. Messer, E., *Pluralist approaches to human rights*, Journal of Anthropological Research, 53(3), pp.293-317, (1998).
12. O'Connell, R., Nolan, A., Harvey, C., Dutschke, M. and Rooney, E., *Applying an international human rights framework to state budget allocations: Rights and resources*, Routledge, (2014).

improve intellectual and creative freedom supports this viewpoint. No matter the motivating causes or voting margin, there was a “overlapping consensus” among the members, and the UDHR now expressly protects moral and financial interests in intellectual property creations.¹³

In 1948, shortly after it was founded, the Commission on Human Rights was strengthened to draught the International Bill of Rights, but the members couldn’t agree on whether it should be in the form of a proclamation or a legally enforceable agreement. The United States and the Soviet Union supported a proclamation that was mostly aspirational in character, whereas Britain, Australia, and many other smaller nations desired to construct a legally binding covenant. The Commission began trying again to create a Covenant on Human Rights after the UDHR was passed in 1948. After the United Nations Educational, Scientific, and Cultural Organisation (UNESCO) was established in 1951, the Commission on Human Rights was instructed to include economic, social, and cultural rights in the drafting of the rights.¹⁴ The UNESCO and other international treaties would have the effect of gradually bringing the legislation of the contracting countries in line with a minimum acceptable level, even if the majority of countries were already ahead of those criteria. Only countries that didn’t think they could handle the duty of gradually implementing creators’ rights tended to object to the amendment.

The existence of a right to protect one’s interests in intellectual property is far from evident. Unlike the rights to participation in and development of culture or the benefits of scientific achievement, the right to the preservation of interests and creations in intellectual creations has always been divisive. While some members felt it was undeserving of protection as a fundamental human right, others questioned if it overlapped with the protections already granted by the right to property ownership, the right to just recompense for work, or both. In fact, neither Article 27(2) of the UDHR nor Article 15(1)(c) of the ICESCR mentioned the right relating to IPR prior to extensive discussion and several reintroductions. The particular regime supporting “relatively weak claims of intellectual property” has a long history that is available on the nexus between the rights.¹⁵

13. Nesiah, V., *The specter of violence that haunts the UDHR: the turn to ethics and expertise*, Md. J. Int’l L., 24, p.135, (2008).

14. Welling, J.V., *International indicators and economic, social, and cultural rights*, Hum. Rts. Q., 30, p.933, (2008).

15. Sital, K., Getgen, J.E. and Koh, S.A., *Enhancing enforcement of economic, social, and cultural rights using indicators: A focus on the right to education in the ICESCR*, In *Economic, Social and Cultural Rights* (pp. 211-268), Routledge, (2018).

CONFLICT AND TENSIONS BETWEEN IPR AND HUMAN RIGHTS

While both the domains of intellectual property and human rights are significant areas of the law, disputes can occur when the exercise of IP rights injures human rights. Some major areas of conflict and tension include:

1.1 Access to medicines:

The industry of pharmaceuticals is home to one of the most noteworthy conflicts between intellectual property and human rights. Sometimes, especially in least developing nations, access to necessary medicines is hampered by patents on life-saving medications. It has been debated how to strike a balance between the need to encourage pharmaceutical innovation and the right to health.¹⁶

1.2 Cultural Expression:

Indigenous communities' rights to heritage preservation and protection may be infringed upon by intellectual property protections for traditional knowledge, folklore, and indigenous cultural manifestations.¹⁷

1.3 Freedom of Expression:

Stricter copyright enforcement may restrict people's ability to use, distribute, or adapt works protected by copyright for critical, creative, or educational purposes.

1.4 Education and Research:

Strict IP restrictions may make it more difficult to obtain educational materials, which may impede innovative scientific research and the advancement of knowledge.

1.5 Technology Transfer:

IP rights may have an impact on the transfer of technology, especially from industrialised to developing nations, which may limit the latter's capacity to create and profit from cutting-edge innovations.

1.6 Genetic resources and biotechnology:

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16. Hestermeyer, Holger, *Human Rights and the WTO: The Case of Patents and Access to Medicines*, International Economic Law Series, Oxford, 2008; (online edn, Oxford Academic, 1 Jan. 2009), (last visited, 9 Aug. 2023), <https://doi.org/10.1093/acprof:oso/9780199552177.001.0001>.
 17. Helfer, L.R., *Human rights and intellectual property: conflict or coexistence?* Minn. Intell. Prop. Rev., 5, p.47, (2003).

The ownership and sharing of natural resources and scientific information might be called into question by the patenting of genetic resources and biotechnological advances.¹⁸

BALANCING THE RIGHTS IN CONFLICT

Finding the ideal balance between IP protections and human rights calls for considerable thought and frequently entails debates about the law, morality, and public policy concerning the nexus and righteous balance between the two independently evolved regimes. International organisations, governments, and legal experts are constantly working to resolve these conflicts through a variety of strategies, including supporting technology transfer for development and allowing for exceptions to IP laws for educational and scientific objectives as well as public health situations.¹⁹ The emerging and least-developed nations must apply copyright limitations and exclusions in other works that address the use of the international copyright system for development. The difficulty ultimately resides in ensuring that the advantages of intellectual property protection promote human advancement, well-being, and cultural enrichment while upholding fundamental human rights and guaranteeing equitable access to the rewards of creativity and invention.

The legal areas of the two regimes—human rights and intellectual property rights—have significantly evolved independently. On the one hand, intellectual property rights are defended by the law and work to encourage private sector participation in particular industries in order to advance technological innovation. Monopoly rights and other forms of intellectual property protection are very similar. In return for a variety of concessions made by society, such as information transparency and a limited lifespan for the rights granted, this monopoly is granted. On the other hand, human rights are fundamental rights that the state upholds but which are unalienable rights related to human dignity and life and which cannot be restricted or restricted.

The articles of the UDHR that deal with science and technology provide as an example of the long-standing connections between intellectual property rights and human rights. But for a long time, real property rights—rather than intellectual property rights—have been the main subjects of conversations addressing the connections between human rights and property rights. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and its implications for developing countries have been the subject of intense controversy since its passage in the nations.²⁰

18. *Ibid.*

19. Helfer, Laurence R., *Toward a human rights framework for intellectual property*, UC Davis L. Rev. 40 (2006): 971, (2008).

20. Beiter, K.D., *Establishing conformity between TRIPS and human rights: Hierarchy in international law, human rights obligations of the WTO and extraterritorial state obligations under the*

It is important to stress this even though the relative isolation has ended as a result of the awareness that there is a direct link between the protection of intellectual property rights and the fulfilment of human rights in developing countries. The actual situation, though, is elsewhere. Despite the mention of welfare states and the wellbeing of its residents in both the Human Rights Convention and the Convention on Intellectual Property Rights, the idea of intellectual property rights does not advance the core objective of human rights.²¹

As it is stated that intellectual property rights are supposed to preserve and advance the moral and financial rights of the creator or inventor and also promoting the preservation of human rights:

1. To give legal expression to the moral and financial rights of artists in their works, as well as the public's rights to access such works
2. To stimulate fair commerce, which would support economic and social progress, as well as creativity, its diffusion, and application.
3. IPRs have an implied balance and a social perspective.
 - 3.1. To encourage the creator with rewards
 - 3.2. To advance society²²

USING HUMAN RIGHTS TO EXPAND IPR: A WAY FORWARD

The growth of intellectual property protection responsibilities at the price of other human rights and for the advantage of licensees, users, and customers is one potential future interaction between human rights and intellectual property. In this dystopian future, companies and interest groups who depend on intellectual property for their financial survival will utilise the author's rights and property rights clauses in human rights treaties to strengthen their current protection requirements. The criticism of the linkage mentioned in the UDHR and ICESCR by some observers of attempts to evaluate intellectual property issues in terms of human rights is somewhat explicable. It is therefore clear that a suitable and recognised method exists to discern between the independent existence of intellectual property rights and human rights when those rights are used to expand their application and existence. In this way, it is also obvious that the

International Covenant on Economic, Social and Cultural Rights, TRIPS plus 20: From Trade Rules to Market Principles, pp.445-505, (2011).

21. Helfer, L.R., *Adjudicating Copyright Claims Under the TRIPs Agreement: The Case for a European Human Rights Analogy*, Harv. Int'l. LJ, 39, p.357., (1998).

22. *Ibid.*

protection of intellectual property will prevent human rights from being sacrificed on the altar of growth of rights.²³

CONCLUSION

Given the growing expansion of intellectual property rights, a specific human rights framework for intellectual property needs to be created. Despite its importance, there are still substantial theoretical and practical challenges to be solved. Understanding the various traits of intellectual property rights, the relationship between the right to the protection of intellectual property interests and other human rights, and the various procedures that can be used to resolve conflicts between these various sets of rights will help overcome these challenges. The successful development of a human rights nexus for intellectual property will also enable governments to use the system of intellectual property to uphold human rights, in addition to giving people the justly deserved protection of their moral and material interests in intellectual contributions.

To challenge the laws that restrict or deny chances for human development and advancement is one reason why states and international organisations use human rights frameworks. The welfare factors driving IP concerns are no longer exclusive to the least-developed countries, increasing the intensity of the IP and human rights interaction. The nature and scope of human choices and the exercise of individual freedoms in all societies have been profoundly changed by the pervasive reach of digital technology and growing concerns over access to medications and healthcare and other industrial sectors in developed and developing countries. Arguments and strategies rooted in the human rights framework are crucial because they serve as a unifying counter-argument to the abuses of the IP system.²⁴ Given the widespread concerns of individuals around the world regarding the control that IP owners exercise over knowledge products that are essential to leading meaningful lives, it would seem that the IP and human rights interface is crucial to becoming even more critical.

The present IP and human rights interface cannot provide developing and least-developed countries with sustainable welfare benefits because it tends to prioritise values and issues that are relevant to the developed world. The IP and human rights regimes both purport to further objectives of human well-being that are ultimately connected to human and economic progress. Separately, both are inadequate. However, the IP status quo is protected by both regimes. The rights outlined in the UDHR and ICESCR provide significant impetus for advancing equality, security, human dignity, and freedom. Novel approaches in the IP and human rights legal spaces

23. Olwan, R.M. and Olwan, R.M., *Intellectual property and development* (pp. 1-31), Springer Berlin Heidelberg, (2013).

24. Petersmann, E.U., *From "Negative" to "Positive" Integration in the WTO: Time for Mainstreaming Human Rights' into WTO Law?*, Common Market Law Review, 37(6), (2000).

will be necessary to make progress towards achieving the highest levels of human flourishing.²⁵ IP flexibility is undoubtedly crucial in this scenario. But it's also crucial for countries to adopt various rules, select different innovation models, and adhere to their own values while using domestic norms to influence technological and cultural conditions that increase their capacity to participate actively in a globalised world.

Human rights frameworks must continue to have a moral influence on the direction and use of IP rights, how such rights are created and how states are compelled to accept them under local circumstances. Human rights rules, as they are now applied and understood, won't inevitably promote outcomes consistent with human flourishing in a way that resonates with communities struggling in different institutional, social, and cultural contexts. Intellectual property scholars need to be as aware of the human rights framework's inherent biases and distributive justice components as they are of the IP framework.²⁶ For each legal system to be shaped and used meaningfully to respond to the severe challenges that constitute barriers to human well-being, it is necessary to continuously evaluate the interaction between international IP laws and global human rights law through a positive and developing critical lens.

25. Vadi, V., *Balancing the human right to health and intellectual property rights after Doha*, The Italian Yearbook of International Law Online, 14(1), pp.195-223, (2014).

26. Mike, J.H.M., *Re-evaluating the relationship between patent rights and human rights for the enhancement of access to essential medicines*, AJLHR, 3, p.91, (2019).

PROTECTION OF FLUID TRADEMARK: ADVANTAGES, CHALLENGES, & STRATEGIES

Ssowmiya Narayan M¹

Rohan S Gowda²

INTRODUCTION

A trademark, as defined by Section (2) (zb) of the Trademarks Act, 1999³, is a mark capable of being represented graphically and capable of identifying one person's goods or services from those of another, and may include the shape of the goods, their packaging, and colour combination. Static trademarks are sometimes known as fluid trademarks, it has appeared as a dynamic and captivating branding strategy, continually evolving and adapting to different seasons, events, and traditions to capture and maintain human attention. These marks are in a state of perpetual motion, projecting themselves in varied dimensions, making them a magnificent tool for marketing and offering a diverse array of opportunities for capitalizing on the ever-changing landscape of trade and commerce⁴. In the realm of trademarks, it is the competence of the brands to modify and customize their trademarks to suit contemporary trends, cultural shifts, and consumer preferences. In recent times fluid trademarks have gained popularity across the world including India. Unlike normal static trademarks, fluid trademarks hold a well-defined advantage in their ability to stay relevant and attractive over time, captivating consumers in a visually driven world. In growing businesses like MSEs, SMEs these fluid trademarks usage will be more comprehensive because of their varied dimensions. However, in spite of their rising conspicuousness and significance in the Indian market, the existing Indian legal framework does not explicitly address fluid trademarks. As a result, these fluid trademarks are left unregistered or inadequately protected as they evolve, leaving business in jeopardy to potential infringement and disputes. The Trademark act of 1999⁵, which governs the protection and registration in India, lacks the specific provision and this should be rectified to accommodate the unique nature of these ever-changing trademarks. The aim of the paper is to

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1. B.A. LL. B, School of law Christ University, Bangalore
 2. B.A. LL. B, School of law Christ University, Bangalore
 3. Trademark Act, 1999 § 2(zb), No. 47, Acts of Parliament, 1999 (India).
 4. Fluid Trademarks, Sakshar Law Associates, <https://www.lexology.com/library/detail.aspx?g=f1077378-97b7-40c5-9eff-a82b444523ac>
 5. Trade Marks Act, 1999, No. 47, Acts of Parliament, 1999 (India)

delve into the lacuna present in the Indian Legal Framework to deal with fluid trademarks and interpret their significance in the country's branding landscape. This paper intends to highlight the challenges that businesses face in securing adequate protection for their dynamic changing marks by exploring the absence of the explicit provision of fluid trademarks in Trademarks Act 1999. Despite the absence of the explicit provision this article seeks to investigate how important is registration of fluid trademarks. It will analyse the benefits that trademarks owners will be gaining by registering and protecting it and how this registration can provide a competitive edge in India's dynamic and rapidly growing market? This paper will have a study of other countries' domestic legislatures and how they made progress in acknowledging and adapting the unique characteristics of the fluid trademark into their legal frameworks. By having insights from their experience, we can reap valuable standpoint on how India can likely improve its own approach towards these fluid trademarks. This paper will look into cases which are dealt in the field of trademarks. This paper will provide an insight into how courts have applied and interpreted trademark laws on fluid trademarks and how these decisions have shaped the landscape of fluid trademarks protection in different jurisdictions? Finally, this research will be exploring potentially, how trademarks can be protected in a cluster of ways possible?

The Indian trademark act 1999 governs the process of registration and protection of trademarks in India. It has replaced the old Trade and Merchandise Marks Act of 1958 and aligns with international trademark standards, including the TRIPS Agreement. The Act is designed to provide legal protection to distinctive marks used by business entities to differentiate their goods and services from those of others.

SIGNIFICANCE OF FLUID TRADEMARK IN INDIA

Fluid trademark holds a particular place in the Indian business landscape, offering a unique advantage that aligns with country's tradition, culture, economic growth and consumer's preference. India's rich tapestry of festivals, traditions, and cultural celebrations provides an ideal backdrop for fluid trademarks. Fluid trademarks are particularly well suited for Indian festivals like Diwali, and Holi; in these occasions brands like Amazon, Myntra, Flipkart, and Nykaa, change their logo according to the nature of the festival to grab attention from the people. India's dynamic market demands swift responses to evolving trends and consumer behaviour. Fluid trademarks empower brands to quickly adapt to changing market dynamics and roll out relevant campaigns without a complete rebranding. If we take note of social media, India's burgeoning social media presence makes fluid trademarks particularly effective. The visually captivating and shareable nature of these marks encourages user engagement and contributes to brand virality. As Indian businesses expand globally, fluid trademarks act as an unique and memorable identifier that showcases India's cultural vibrancy on the international platform. One notable example in India is Zomato, a food delivering platform that uses fluid trademarks where

it frequently modifies its logo to reflect various themes, festivals, and tradition. The company has also used its logo to show support for social causes and movements. For example, Zomato modified its logo during campaigns promoting gender equality and environmental awareness. By having fluid trademarks Zomato has more personal connection with the audience.

USE OF FLUID TRADEMARK DURING THE TIME OF COVID-19

The COVID-19 pandemic prompted organizations to adopt innovative coping mechanisms, leveraging fluid trademarks as a strategic tool. Faced with unprecedented challenges, businesses harnessed their creativity to raise awareness about the disease and promote preventive measures⁶.

Innovative Coping Mechanisms: The pandemic forced organizations to think outside the box, leading to the deployment of their best and most creative methods. In response to the crisis, they embraced unconventional strategies, including fluid trademarks, to navigate the uncertainties and engage with their audiences in impactful ways.

Creating Disease Awareness: Organizations recognized their unique position to influence public behaviour and health outcomes. Fluid trademarks provided a canvas for spreading crucial information about COVID-19. By modifying their trademarks to incorporate messages of hygiene, safety, and social responsibility, businesses became powerful agents of awareness.

Promoting Preventive Measures: Fluid trademarks became vehicles for conveying vital preventive measures. Brands integrated health guidelines into their logos, symbolizing unity in the fight against the pandemic. These dynamic adaptations effectively communicated the urgency of practices like wearing masks, social distancing, and hand hygiene.

Evident Use of Fluid Trademarks: The pandemic underscored the flexibility and impact of fluid trademarks. Organizations adeptly transformed their visual identities to reflect the gravity of the situation. Fluidity allowed trademarks to evolve alongside changing circumstances, making them poignant symbols of resilience and solidarity⁷

For example, brands like BMW, in which the logos was spaced and a message was written below “Thanks for keeping distance”

6. FLUID TRADEMARK AND ITS CHANGING DYNAMICS, <https://www.mondaq.com/india/trademark/1305990/fluid-trademark-and-its-changing-dynamics#:~:text=Fluid%20trademarks%20are%20a%20very,case%20is%20through%20common%20law.> (Last Visted 7 August 2023, 4:55 PM)

7. “THESE FAMOUS LOGOS HAVE BEEN REMADE FOR CORONAVIRUS AGE”, Media Marketing, <https://www.media-marketing.com/en/news/famous-logos-remade-coronavirus-age/> (Last Visted 7 August 2023, 5:25 PM)

The Google doodle is an excellent example of a fluid trademark. Google employs a version of its “Google” symbol, also known as a “doodle,” on its homepage to commemorate holidays or other significant events. On the 30th anniversary of the arcade game Pac-Man, for example, Google’s homepage featured an interactive Pac-Man game with a Pac-Man maze to construct the letters of the mark represented on the doodle. Starbucks mermaid was also wearing a mask to create a social awareness among the people to wear masks. The famous dairy brand AMUL logo the girl wearing a mask to create awareness among the people to wear masks. The famous brand McDonalds logo “M” had a split in between to show the people that social distancing is more important. Perrier the water bottle company on its own bottle of sparkling water transformed its trademark Perrier into various terms of similar length that ends with “ier” such as “Sassier”, “Riskier”, “Crazier”, “Prettier” and so on, the Infamous brand AUDI the ring had been separated to signify social distancing among the people. So, these are some examples that these brands used fluid trademarks to create awareness among the people.

Agility and Responsiveness: Fluid trademarks demonstrated an organization’s agility in responding to a rapidly changing environment. Businesses were able to promptly alter their branding to address emerging needs, reflecting their commitment to public health and community well-being.

LEGAL IMPLICATIONS

Individual registration of each such trademark is impossible and uneconomical for business owners due to the dynamic nature of fluid marks, which creates the risk of copying by other brands and difficulty in enforcing infringement or passing off actions against such brands for unregistered trademarks. Section 15 of the Trademark Act of 1999 addresses the registration of a group of marks. Where it deals with the registration of a set of anticipated marks, which is extremely difficult for brand owners to undertake because the objective of fluid trademarks is to go with the flow and have dynamic changes with the nature of customer interest. For example, if we take into consideration the Flipkart logos it will change according to the tradition for Diwali it will be having a logo and for big billion day it will be having a logo and for other things it keeps on switching to different themes. And furthermore, these logos are not predetermined so addition of these logos in section 15 would not be possible. And if we take a look at the logos of brands like BMW, Starbucks, AMUL, and McDonalds these are those companies which have modified their logo during covid time and these logos are also not predetermined. The logos got created in the flow so these logos also can’t be registered under section 15 of Indian Trademark Act 1999.

Lacunae In Trademark Act,1999

One of the critical gaps in the Indian trademark act 1999 is that, there is no explicit provision for registration and protection of fluid trademarks. Unlike static marks, fluid mark do not adhere to a single consistent representation. They change and adapt overtime making it a challenge to fit with the existing trademark registration and protection framework. As a result, businesses using fluid trademarks may encounter a difficulty in registration and protection process⁸.The absence of diligent regulations for fluid trademarks has several consequences.

Inadequate Protection

Section 28 of the Trademark Act 1999 deals with - Infringement of Registered Trademarks: This section defines what constitutes trademark infringement and the remedies available to the trademark owners in case of infringement, misuse, dilution of trademarks. This provision of the trademark act explicitly provides remedies and measures to protect the static marks but no provision in the trademark legislature provides remedies for the protection of fluid trademarks.

NEED TO REGISTER FLUID TRADEMARKS

Why should there be an immediate need to register these fluid trademarks?

Fluid trademarks can be rigid to enforce because they often don't look exactly like their registered versions. This can make them vulnerable to legal action that could cancel their registration if they are not used as intended. Also, when these trademarks change randomly, it can confuse people and make them wonder if the products or services are really from the original brand or just imitations. Even if a lot of effort goes into connecting a brand with consumers, it doesn't work well if people can't easily recognize the real brand. Since there aren't clear laws for protecting this kind of trademark yet, using new versions without using the original one could lead to the trademark being considered abandoned, even if it's officially registered.

Another issue is that if the different versions of the trademark aren't officially protected, the brand owner might not be able to claim that someone else is copying their trademark if they use a similar sign.

So, protecting these kinds of trademarks needs careful planning to avoid certain legal problems and the brand owners should make sure that people can still recognize and trust the brand, even if it's changing⁹

8. "FLUID TRADEMARKS A PRELUDE TO A TREND" <https://iprlawindia.org/fluid-trademarks-a-prelude-to-a-trend/> Last visited 8 August 2323 7:00 PM.)

9. FLUID TRADEMARKS,INTEPAT, <https://www.intepat.com/blog/fluid-trademarks/> Last Visited (7 August, 2023 8:25 PM)

SIGNIFICANT FACTORS AND CONSIDERATION FOR PROTECTION OF FLUID TRADEMARKS

Innovation and Differentiation: In today's competitive business landscape, standing out is crucial. Fluid trademarks give a unique and innovative way to differentiate a brand from its competitors. By constantly evolving and adapting, these marks capture attention, enhance memorability, grab consumers' minds and signal a brand's commitment to innovation.

Consumer Engagement: Fluid trademarks are inherently engaging. They capture the dynamic nature of modern consumer behaviour, especially in digital environments. Protecting fluid trademarks ensures that the brand's captivating and evolving visual identity remains exclusively associated with its offerings, driving sustained consumer engagement. By protecting these marks consumers will have a confusion of the brand identity.

Efficacious Communication: Fluid trademarks allow brands to convey messages, values, and even social or environmental initiatives dynamically. The ability to modify the trademark to reflect these aspects enables more impactful and relevant communication, fostering a stronger connection with consumers. Covid is an conspicuous example for the effective communication

Responsive Marketing: With rapidly changing trends and events, businesses need the flexibility to swiftly adjust their branding to stay relevant. Without protection, other companies might adopt fluid trademarks of the other companies, diluting the brand's distinctiveness and undermining its ability to respond quickly to market shifts. And destroying the goodwill of the company.

Preventing from exploitation: Without proper protection, the changing nature of fluid trademarks makes them vulnerable to misuse and imitation by unscrupulous entities. Unauthorized variations can confuse consumers, destroy brand value, and even dilute the brand's reputation.

Legal Protection: Having explicit legal protection for fluid trademarks provides a clear view on their scope, usage, and potential infringements. Clear legal guidelines help businesses sail across the complexities of trademark law while boosting the branding potential of fluid trademarks.

Brand Equity: Fluid trademarks contribute to building brand equity and recognition over time. By protecting these marks, businesses ensure that the investments made in brand development remain an asset. And this also increases the brand popularity by giving innovative and unique trademarks.

Global Competitiveness: As businesses expand across countries, fluid trademarks can serve as powerful tools for international marketing. Protecting these marks ensures a consistent, identifiable and adaptable brand identity in various markets.

COMPARISON OF INDIAN LAWS WITH OTHER COUNTRIES DOMESTICS LEGISLATURE

UNITED STATES OF AMERICA (USA)

Morehouse Manufacturing Corp. v. J. Strickland and Co.,¹⁰ as well as Section 43(a) of the Lanham Act, define fluid trademarks as marks that change over time (in comparison to the static or registered mark) in order to grab client consumer recognition and attention. The principal federal (Lanham act) statute in trademark law in the United States. This is the act that outlaws trademark infringement, trademark dilution, and misleading advertising.

Here is the analysis of how the United States Courts of Custom and Patent Appeals dealt with *Morehouse Manufacturing Corp. v. J. Strickland & Co*

Case Background: Morehouse Manufacturing Corp. (Morehouse) was a company which manufactured and sold pecan crackers, a device that has been used by Morehouse to crack and open pecan shells. Morehouse had been using the name “Universal Nutcracker” in association with its products for more than 70 years, creating a strong connection between the term and its pecan crackers. J. Strickland and Co. (Strickland), another company in the same industry, began selling pecan crackers under the name “Universal Nut Sheller.” Morehouse sued Strickland for trademark infringement, claiming that the use of “Universal Nut Sheller” was likely to cause confusion with Morehouse’s “Universal Nutcracker” mark.

Legal Issues: The main legal issue in this case was whether Strickland’s use of the term “Universal Nut Sheller” constituted trademark infringement and whether Morehouse’s unregistered trademark was entitled to get any protection under the Lanham trademark act?

Judgment: The court decided on the side of Morehouse Manufacturing Corp. and held that Strickland’s use of the term “Universal Nut Sheller” constituted trademark infringement. The court noted that Morehouse had established a strong connection between the term “Universal Nutcracker” and its products in the minds of consumers. As a result, Strickland’s use of a similar trademark, “Universal Nut Sheller,” for its competing product was likely to mislead customers. The court also ruled that Morehouse’s unregistered trademark was entitled to protection under the Lanham Act. It emphasized that the court will give protection to the unregistered mark if the derive a meaning from the original source

10. Morehouse Manufacturing Corp. v. J. Strickland & Co, 407 F.2d 881

Analysis: The case of *Morehouse Manufacturing Corporation. v. J. Strickland & Co.* underscores the importance of trademark protection, even for unregistered trademarks, under the Lanham Act. It establishes that unregistered trademarks with strong consumer recognition (secondary meaning) can be protected from infringement. Additionally, this case highlights the potential for confusion in cases where similar marks are used for products which are created in the flow of the original source, even if the mark is not registered.

Albeit the Lanham act does not have an explicit provision for protection of the fluid trademark but it does protect an unregistered mark coming from original sources or a mark that has a strong association with the original source. Mentioned in the case above.

EUROPEAN UNION

The EU's Regulation (EU) 2017/1001 of the European Parliament deals with the trademark protection and registration. The EUIPO allows for a range of non-traditional marks, including sound, motion, and multimedia marks in the registration process. While fluid trademarks are not specifically mentioned, the EU's progressive approach to trademark protection could provide a framework for certain aspects of fluid trademarks¹¹

Albeit it does not specifically protect the fluid trademark, the EUIPO protects it at the national level. Unregistered trademarks are often only protected on a national level and can include passing-off, company names, trade names, domain names, titles, and so on. Within its rules, the European Union Intellectual Property Office (EUIPO) has a list of recognized unregistered rights throughout the member states. The EUIPO rules specify the extent to which unregistered marks can be protected by the European Union Intellectual Property Office and the remedies available to those affected.

CANADA

Both statutory and common law trade mark rights are recognized in Canada, as is the common law tort of passing off. The federal Trade Marks Act (TMA) (together with the Trademarks Regulations (TMR)) defines the regulatory structure for registered trademarks in Canada, as well as codifies the common law tort of passing off in the case of unregistered trademarks.

How can the Canadian government protect the unregistered trademarks?

Canada's trademark system recognizes non-traditional marks, suggesting a potential framework for fluid trademarks. Section 7 (b) of the common law trademark act protects the unregistered trademark in Canada. That is stated in this section. A trade-mark that is not registrable

11. "WHAT CAN BE AN EU TRADEMARK", <https://euipo.europa.eu/ohimportal/en/what-can-be-an-eu-trade-mark>(Last Visted 8 August 2023, 8:25 PM)

under paragraph 12(1)(b) or subsection 14(1) or (2) is registrable if, at the time of filing an application for registration, it has been used in Canada by the applicant or his predecessor in title in such a way that it is adapted to distinguish wares or services manufactured, sold, leased, hired, or performed by him from those manufactured, sold, leased, hired, or performed by others. Fluid trademarks could be protected under this section.¹²

Albeit it doesn't have an explicit provision to protect unregistered trademarks under Trademark act but it does have a protection for unregistered trademarks under common law system.

CASE STUDY

*Louis Vuitton Malletier v. Dooney & Bourke, Inc*¹³

Facts:

Louis Vuitton Malletier is a well-known luxury brand especially for their handbags and purses. Dooney and Bourke is another fashion brand which manufactures handbags and purses. Dooney Bourke released a bag featuring a multicolored monogram which Louis Vuitton claimed is like their LV monogram trademark.

Issue:

Whether Dooney Bourke use of multicolored monogram caused trademark infringement ?

Court Decision:

The case was heard in the United States District Court for the Southern District of New York. On numerous issues, the court decided in favor of Louis Vuitton in 2004, concluding that the Dooney & Bourke multi colored monogram design was likely to induce consumer confusion with Louis Vuitton's trademarks. In addition, the court determined that Dooney & Bourke's use of the design weakened the distinctiveness of Louis Vuitton's trademarks.

However, because Dooney & Bourke's products were not precise reproductions of Louis Vuitton's products, the court did not determine them to be counterfeit.

Analysis:

The primary trademark should undergo continuous and unbroken commercial utilization, without any signs of abandonment. It's crucial for this base mark to possess a unique and well-established identity throughout the market. Similarly, the unregistered 'fluid mark' should

12. Trade Mark Litigation in Canada - [https://uk.practicallaw.thomsonreuters.com/w-010-8439?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-010-8439?transitionType=Default&contextData=(sc.Default)&firstPage=true)

13. Louis Vuitton Malletier v. Dooney & Bourke, Inc, 454 F.3d 108 (2d Cir. 2006) (United States)

possess inherent distinctiveness and must have gained a secondary significance within the public's perception

Proctor and Gamble v. Joy Creators

In the case of Proctor and Gamble v Joy Creators¹⁴, the Delhi High Court declared that it is not essential for a mark to be an exact replica of a registered trademark to prove infringement. According to the court, it will suffice if the plaintiff can demonstrate that the Defendant's trademark is substantially like its trademark due to extensive usage of the brand's main features. If the plaintiff establishes that the defendant's trademark bears some resemblance to the plaintiff's static mark, the defendant will be held accountable for trademark infringement.

Reebok India Company v Gomzi Active¹⁵

The Court held that to secure registration for their slogan or mark, individuals must show its uniqueness. In the case involving Reebok and Gomzi, Reebok argued that the slogan in question was a commonly used phrase and lacked distinctiveness for Gomzi's products. The High Court was on the side of Reebok, highlighting that there was not enough evidence to suggest that consumers would be confused. The court ruled that the two parties registered trademarks were distinct, and that just using the shared words "I am what I am" would not cause consumer confusion. As a result, the trial court's initial temporary order was reversed.

Stokely Van Camp Inc v Heinz India Pvt Ltd¹⁶

The plaintiff had trademarked the tagline "Rehydrate Replenish Refuel" alongside the "Gatorade" brand. Meanwhile, the defendant was utilizing the tagline "Rehydrates fluids; replenishes vital salts; recharges glucose" for an energy drink called Glucon D Isotonik. The court concluded that in the market for sports and energy drinks, using phrases similar to the plaintiff's registered slogan to describe the features of such products is widespread, if not required. As a result, even if a party owns a registered slogan mark, using the mark or a similar expression to identify a product's features in accordance with Section 30(2)(a) of the Trademarks Act does not constitute trademark infringement.

These cases dealt with the trademark infringement though they dealt with both the registered and unregistered mark, it has mentioned an indirect protection for fluid trademark. For example, if the unregistered mark comes from the source mark it can be protected. These judgements should be used as percent in future to avoid confusions in unregistered marks

14. Proctor and Gamble v. Joy Creators CS(OS) No. 2085/2008

15. Reebok India Company v. Gomzi Active, 2006 SCC OnLine Kar 371

16. Stokely Van Camp, Inc. v. Heinz India Private Ltd., 2010 SCC OnLine Del 3889

CONSEQUENCE FACED FOR NO HAVING EXPLICIT PROVISION FOR REGISTRATION AND PROTECTION OF FLUID TRADEMARKS

Lack of Legal Clarity: The absence of specific guidelines or regulations for fluid trademarks can lead to uncertainty and ambiguity in how these innovative branding strategies are legally recognized and protected. This lack of clarity can hinder businesses from effectively utilizing fluid trademarks and can potentially deter investment in such branding techniques. It puts a barrier to the brand owners.

Inadequate Protection: Without explicit provisions, fluid trademarks may not receive the same level of protection as traditional trademarks. This could expose businesses to a higher risk of infringement, dilution, or misappropriation of their fluid marks by competitors, as legal remedies might be limited or challenging to pursue.

Difficulty in Enforcement: The absence of clear legal provisions may make it more challenging for brand owners to enforce their rights against unauthorized use or infringement of fluid trademarks. This could lead to prolonged legal battles, increased costs, and reduced effectiveness in combating infringement.

Loss of Brand Value: Fluid trademarks are often carefully crafted to capture the essence of a brand's identity and values. Without proper legal protection, the distinctiveness and uniqueness of these marks could erode over time, diminishing their brand value and recognition in the marketplace.

Missed Branding Opportunities: Businesses might be hesitant to invest resources in developing and promoting fluid trademarks if they are uncertain about their legal protection. This could result in missed opportunities to leverage the dynamic and visually- engaging nature of fluid marks for effective brand communication and engagement.

Stifled Innovation: The lack of legal recognition and protection for fluid trademarks might discourage businesses from exploring creative and innovative branding strategies. This would make the brand owners limit the usage of fluid trademark

Global Competitiveness: As businesses operate in a globalized economy, the absence of robust protection for fluid trademarks could impact India's competitiveness on an international scale. Countries which have well defined legal framework for protection will attract foreign investments and will have a greater number of partnerships with international bands

Inhibiting Economic Growth: The inability to effectively protect fluid trademarks could hinder the growth of industries that heavily rely on innovative branding, such as fashion, entertainment, and technology. This will affect the economic growth of the country and it would also affect the creation of new jobs in this sector.

HOW INDIA CAN PROTECT FLUID TRADEMARKS

If India enacts an explicit provision through an amendment to protect the fluid trademark, India will be the first country in the world to have an explicit provision on the Registration and Protection of fluid trademarks. By implementing this India can stand on top of the world and can be a role model to other countries.

India can implement several strategies to effectively protect fluid trademarks within its legal framework. Given the dynamic nature of fluid trademarks, these strategies aim to balance innovation, brand protection, and consumer recognition. Here are some ways India can enhance the protection of fluid trademarks:

Legal Recognition and Definition: Introduce a clear legal definition of fluid trademarks within the Indian trademark act 1999 to provide a foundation for their recognition and protection. Enact a separate provision to avoid confusions. Separate bill should be passed by the parliament.

Non-Traditional Mark Registration: Amend the Trademarks Act to explicitly include fluid trademarks as a category of non-traditional marks eligible for registration, alongside sound, scent, color, and motion marks. Having separate guidelines for protection and registration.

Secondary Meaning Requirement: Establish a system that allows fluid trademarks to be registered and protected only if they have acquired secondary meaning through continuous and substantial use, ensuring consumer recognition.

Guidelines for Variations: Develop guidelines or rules for registering variations of fluid trademarks to ensure consistency in protection while allowing for creative evolution.

Adaptive Renewal Mechanism: Introduce a renewal system that acknowledges the evolving nature of fluid trademarks, allowing for periodic updates and adaptations during renewal processes.

Brand Management: Encourage businesses to adopt clear brand management strategies for fluid trademarks, documenting variations, and establishing guidelines for use.

Quality Control: Implement quality control measures to ensure that variations of fluid trademarks maintain a certain level of consistency and distinctiveness.

Dispute Resolution Mechanisms: Establish specialized dispute resolution mechanisms to address conflicts arising from fluid trademark infringement or misuse. Having a speedy remedy for the business' owners.

Public Awareness and Education: Conduct awareness campaigns to educate businesses and consumers about the concept of fluid trademarks, their protection, and the importance of accurate representation and how these marks help them grow their businesses at large.

Judicial Precedents: Develop a body of judicial decisions specifically addressing fluid trademarks to provide legal clarity and guidance for future cases.

International Harmonization: Collaborate with international trademark organizations like WIPO (World Intellectual Property Organization) and forums to ensure alignment with global best practices for protecting fluid trademarks. And protect Fluid trademarks all over the world by signing a common treaty which will benefit all the brand owners in different countries.

Regular Review and Amendment: Periodically review and update the legal framework to adapt to emerging trends in branding and technological advancements.

By implementing these strategies, India can create a supportive environment for businesses to explore fluid trademarks as a dynamic branding strategy while ensuring adequate legal protection and consumer trust.

CONCLUSION

The emergence of fluid trademarks marks a conspicuous shift in the intellectual property rights to have an explicit provision for protection and registration. In the current generation these business entities try to gather attention of the consumers by having new innovative creations on their trademarks. However, the current legal framework in India, as exemplified by the Trademarks Act, 1999, falls short in providing explicit provisions for the protection of fluid trademarks. This paper has discussed how these fluid trademarks are affected if we don't have a proper legal framework to protect them. By having a comparative international study and examining the case law of other jurisdictions such as the United States etc we came to know valuable insights into potential pathways that show how other countries are dealing with it. This paper has also discussed the need for the protection of these marks and suggested measures to protect these marks in an efficient way. By having an explicit provision, it not only protects the interest of the brand owners it also creates a new path for the growing field. By doing this India can fortify its position in the global marketplace and contribute to the ongoing discourse on the protection of intellectual property rights.

QUALITY EDUCATION AND THE JOURNEY TOWARDS SUSTAINABLE DEVELOPMENT GOALS IN INDIA

Subin Thomas¹

INTRODUCTION

The United Nations adopted the Sustainable Development Goals (SDGs) in 2015 as an ample and aspiring global agenda with the targets of eradicating poverty, ensuring environmental sustainability and promoting inclusive social and economic prosperity. The fourth of these goals underlines the need of providing all pupils with inclusive and fair quality of education.² This goal recognizes education not merely as a means to impart knowledge but as a catalyst for eradicating poverty, fostering gender equality, and igniting sustainable economic growth. In the pursuit of sustainable development, quality education stands as a cornerstone that not only imparts knowledge and skills but also moulds the future of nations. In the context of India, a country marked by its cultural diversity, economic dynamism, and demographic vibrancy, the quest for quality education takes on a profound significance. India understands that investing in education is investing in its own future. The nation's ability to provide every child, regardless of background, aptitude, or circumstance, with a quality education is inextricably linked to its efforts to achieve the SDGs. To make sure that education not only imparts knowledge but also empowers pupil to participate meaningfully to society and attain sustainable development goals, it is crucial to make efforts to close gaps, improve teacher training, improve infrastructure, and innovate pedagogical approaches. Furthermore, pursuit of high-quality education in India resonates well with the nation's own goals for social progress and economic development in addition to the SDGs global mission. The education system of the country faces a variety of difficulties due to the fast expanding population and its wide range of linguistic, cultural, and socio-economic backgrounds. The policies, procedures, and initiatives that influence the country's educational landscape must be thoroughly analyzed in order to address these difficulties. By examining the progress made thus far, identifying gaps, and highlighting success stories, this research paper aims to provide a holistic view of India's journey toward achieving inclusive and equitable quality education, both as an end in itself and as a powerful instrument for achieving broader sustainable development objectives. This research paper examines the complex relationship between Indian quality education and the Sustainable Development Goals, highlighting the challenges faced and the strategies employed to attain these goals. This paper

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1. Research Scholar, Alliance School of Law, Alliance University, Bangalore
 2. UNITED NATIONS, <https://sdgs.un.org/goals> (last visited Aug. 7, 2023).

examines in depth the educational rights and provisions for assuring a high-quality education under Indian law. The purpose of this paper is to add to the ongoing discussion on the role of education in sustainable development by providing insights that may be used to inform future policies and initiatives. And the paper will also examine important legal rulings and illustrations of innovative tactics used to improve the caliber and accessibility of education in India. Judicial decisions have had a wide-ranging impact on education, affecting everything from curriculum design and infrastructure to teacher training and non-discrimination.

SUSTAINABLE DEVELOPMENT GOALS

In 2015, as part of the 2030 Agenda for Sustainable Development, the United Nations Member States agreed to a set of seventeen global goals known as the Sustainable Development Goals (SDGs).³ These objectives pave the way for the development and welfare of all people. The SDGs address various issues such as poverty, inequality, climate change, environmental degradation, peace, and justice. They seek to go beyond the Millennium Development Goals (MDGs) by addressing the root causes and interconnectedness of these challenges. They are proposed to implement various action plans to eradicate poverty, to guarantee healthy environment and provide all to experience a sustainable development by 2030.⁴ Governments, enterprises, civil society, and individuals are all encouraged to collaborate in order to achieve these objectives and provide equitable environment for the forthcoming generations. SDG 4 articulates an ideology to make sure an equitable and inclusive standard of education for all.⁵

THE CONCEPT OF THE QUALITY EDUCATION

The standard of education is an important factor for eradicating gender discrimination, poverty, and other forms of backwardness. It can be considered as the medium of exchange for maintaining economic competitiveness and global prosperity.⁶ SDG 4 emphasizes the significance of high-quality education as a foundation for achieving sustainable development. It highlights the significance of accessible, equitable, and relevant education that equips individuals with the knowledge and skills required to effect positive change in their lives and communities.

3. UNDP, what are the Sustainable Development Goals? https://www.undp.org/sustainable-development-goals?gclid=Cj0KCQjwrMKmBhCJARIsAHuEAPRwRFqYdhqukWJPniLWJ_dx_6YuCygfLR4EquCybSKpX6kFbqrG3EwaAkQWEALw_wcB, (last visited Aug. 9, 2023).
4. Sue Webb, John Holford, Steven Hodge, Marcella Milana & Richard Waller, *Lifelong Learning For Quality Education: Exploring The Neglected Aspect Of Sustainable Development Goal 4*, 36 INT. J. LIFELONG EDUC. 509 (2017).
5. Elaine Unterhalter, *The Many Meanings of Quality Education: Politics of Targets and Indicators in SDG 4*, 10 GLOB. POLICY 39 (2019).
6. Arne Duncan, *Education: The Most Powerful Weapon for Changing the World*, USAID (Aug. 8, 2023, 08.10 PM), <https://blog.usaid.gov/2013/04/education-the-most-powerful-weapon/>.

Education is at the heart of 2030 agenda for sustainable development and identified as stand – alone – goal (SDG 4).⁷ The education with quality refers to an education system that provides knowledge, skills, and values along with opportunities to succeed both academically and in life of the pupil. It goes beyond simply attending school and passing exams, it encompasses a holistic approach to learning that equips individuals to think critically, solve problems, communicate effectively, and engage actively in society. ‘Quality education prepares the child for life not just for testing.’⁸ ‘UNICEF emphasizes five components of a quality education such as the learner’s outside experiences, the learning environment, the content of education, the learning processes, and the education outcomes.’⁹ VVOB, an NGO, describes the quality education as ‘one that provides all learners with capabilities they require to become economically productive, develop sustainable livelihoods, contribute to peaceful and democratic societies and enhance individual well-being. The learning objectives necessary at the end of the basic education cycle vary by context but must include threshold levels of literacy and numeracy, fundamental scientific knowledge, and life skills like disease awareness and prevention. Capacity development to strengthen teachers and other education stakeholders is vital throughout this process.’¹⁰

TARGETS OF SDG 4 ON QUALITY EDUCATION

SDG 4 features several particular targets that highlight its emphasis on high quality education. The following are these targets¹¹:

- i. Universal and Equal Access to Education: It ensures that all girls and boys complete free, equitable, and quality primary and secondary education.
- ii. Quality of Pre-Primary Education: It ensures that all children have access to quality early childhood development, care, and pre-primary education.
- iii. Technical, Vocational and University Level of Education: To guarantee equal access to affordable, quality technical, vocational, and tertiary education, including university without gender disparities.

7. GLOBAL CAMPAIGN FOR EDUCATION, *SDG 4 and Targets*, https://campaignforeducation.org/en/key-frameworks/sdg-4-and-targets?gclid=Cj0KCQjwiIOMBhDjARIsAP6YhSXGjjhe-rKW19aHKtsVf-fyi-rRTq-vXIl6XyXPz9ImCHEbRs3vOxt8aApPiEALw_wcB (last visited Aug.7, 2023).

8. K K VIJAYAN NAMBIYAR AND RAVULA KRISHNAIAH, *METHODS FOR QUALITY EDUCATION* 3, (Neelkamal 2021).

9. Anil Kumar Agnihotri, *Quality In Primary And Secondary Education*, 4] SRJHS&EL 4878 (2017).

10. *Id.* at 4879.

11. UNESCO, *Sustainable Development Goal 4 and Its Targets*, <https://en.unesco.org/education2030-sdg4/targets> (last visited Aug. 8, 2023).

- iv. **Skill Development Programs:** Provide skill based knowledge courses for the integral development and address global challenges.
- v. **Gender Disparity and Vulnerable Groups:** Expand effective and basic infrastructure for the integral development of students with disability and those belonging to other vulnerable groups.
- vi. **Literacy and Numeracy:** Aim to address issues associated with education quality, access, and outcomes, focusing on foundational skills such as literacy (reading and writing) and numeracy (basic mathematical abilities) and substantially reduce adult illiteracy.
- vii. **Comprehensive Education for Sustainable Development:** It ensures that all learners acquire the knowledge and skills needed to promote sustainable development, human rights, gender equality, peace, and non-violence, and aims to enhance skills for youth and adults linked to work.

The aforementioned aims have been formulated with the purpose of encompassing diverse facets of education and learning, with the ultimate aim of providing standard education and fostering the acquisition of skills necessary for individual growth and social advancement. Three additional targets have been developed in order to implement the quality and equality-related goals in addition to the aforementioned seven targets.

- i. **Inclusive and Safe Educational System:** Eliminates gender-based violence in schools and ensure safe and healthy atmosphere for embracing knowledge and inclusive learning environments for all.
- ii. **Scholarships and Financial Support for Higher Education:** Substantially increase the number of scholarships available to developing countries for enrollment in higher education, including vocational training, information and communications technology (ICT) programs.
- iii. **Teacher Quality:** High-quality teachers are endowed with the knowledge and skills necessary to employ effective teaching strategies that engage students, foster critical thinking, and improve learning outcomes. They cultivate conducive learning environments that foster active participation and enthusiasm for learning.

ROLE OF QUALITY EDUCATION IN SUSTAINABLE DEVELOPMENT

Education is the foundation for life improvement and sustainable development. The significance of quality education in sustainable development is significant as it influences the attitudes, skills, and behaviors of individuals. Access to inclusive and equitable education can

aid the development of innovative remedies to the world's most pressing issues.¹² Sustainable development is a process that meets the needs of the present without compromising the ability of future generations to meet their own needs (Brundtland Commission report on Environment and Development, 1987); therefore, sustainability is a paradigm for thinking about our future in which environmental, social, and economic factors are balanced in the pursuit of improved quality of life and development.¹³ Achieving sustainable development and the other SDGs requires a quality education. Beyond SDG 4, progress towards several other SDGs is accelerated by high-quality education. Enhanced gender equality (SDG 5), reduced poverty and inequality (SDG 1 and 10), better health outcomes (SDG 3), and increased economic growth and chances for decent work (SDG 8) are a few outcomes that are influenced by education. Here are some reasons why receiving a high-quality education is important¹⁴:

- i. Gender Equality: Education is a weapon to eradicate gender discrimination by providing equal opportunities to all.
- ii. Economic Development: Quality education equips individuals with the skills and knowledge needed to participate in the workforce, promote economic growth, and reduce poverty.
- iii. Eradication of Poverty: To address the issue of poverty eradication, a range of tactics are implemented. These strategies encompass boosting educational opportunities, facilitating vocational training, improving healthcare provisions, encouraging economic development, and executing focused social welfare initiatives.
- iv. Well-Being: Education contributes to better health outcomes by raising awareness about health issues and promoting healthy behaviors.
- v. Environmental Sustainability: Education fosters awareness of environmental challenges and promotes sustainable practices.
- vi. Peace and Stability: Education can promote tolerance, understanding, and peaceful coexistence, contributing to social harmony and stability.
- vii. Innovation and Progress: Education fuels innovation, critical thinking, problem-solving, and driving societal progress.

12. Erika Gonzalez Garcia, Ernesto Colomo Magana and Andrea Civico Ariza, *Quality Education as a Sustainable Development Goal in the Context of 2030 Agenda: Bibliometric Approach 4* (Aug.7, 2023, 9:20 PM) <https://www.mdpi.com/2071-1050/12/15/5884>.

13. Atasi Mohanty, *Education for Sustainable Development: A Conceptual Model of Sustainable Education for India*, 7 IJDS 2244 (2018).

14. THE GLOBAL GOALS, *The 17 Goals*, <https://www.globalgoals.org/goals/>, (last visited Aug. 6, 2023).

- viii. Global Citizenship: Quality education nurtures global citizens who are aware of global issues and can contribute positively to addressing them.

THE CONCEPT OF QUALITY EDUCATION IN INDIAN SCENARIO

Over the years, India has made considerable progress in increasing access to education. Since achieving independence, the nation has endeavored to tackle various significant obstacles in the field of education by implementing new educational policies and initiatives as part of its developmental agenda. These include initiatives such as the ‘Sarva Shiksha Abhiyan’, ‘Rastriya Madhyamik Shiksha Abhiyan’, and the ‘Right to Free and Compulsory Education Act’.¹⁵ The Right to Education Act (2009) made education a fundamental right for children between the ages of 6 and 14, contributing to an increase in primary school enrollment rates. There are a number of internationally acclaimed educational institutions in India. ‘The disparities in educational access have successfully been reduced by initiatives like the Digital India movement and the use of online learning platforms. The quality of education is still a major concern despite these improvements. Even among the neediest populations and in remote locations, learning outcomes consistently fall far short of expectations. A few of the problems include outdated curricula, a lack of qualified teachers, bad infrastructure, and socio-economic disparities.’¹⁶

Legal Frameworks in India Emphasizing Quality Education

The accessibility of quality education is very crucial for the integral development of all citizens. Therefore right to education is considered as a basic human right. Many regulatory frameworks in India protect the right to education, emphasizing fair access to education that enables students to realize their full potential.

Constitution of India

The Indian Constitution upholds the educational rights as a fundamental right and emphasizes the value of education.

- i. Right to Education (Article 21A): The Right to Education was made a fundamental right for children between the ages of 6 and 14 by the 86th Constitutional Amendment Act, 2002. It mandates the State to provide free and compulsory education to all children of this age.¹⁷

15. Atasi, *supra* note 12, at 2246.

16. Deepti Gupta & Navneet Gupta, *Higher Education in India: Structure, Statistics and Challenges*, 3 J. EDUC.PRACT. 17, 19 (2012).

17. INDIA CONST. art. 21 A, amended by The Constitution (Eighty Sixth Amendment Act), 2002.

- ii. Directive Principles of State Policy (Article 41, 45): The Directive Principles emphasize that the State shall endeavor to provide free and compulsory education to children and promote their educational and economic interests.¹⁸
- iii. Equality before Law (Article 14): This article ensures equal protection of laws, preventing discrimination in access to education based on factors like gender, caste, religion, or socio-economic status.¹⁹

Other Initiatives and Reforms in India

Several laws and policies have been passed to protect the right to education and make sure it is of good quality. Indian laws put quality education and educational rights at the top of the list because the country knows how important it is to give all of its people an education that is fair and easy to get. Several important laws and rules have been passed to protect the right to education and make sure that everyone has access to good learning chances. Here are a few of India's most important laws that show how important great education and educational rights are.

- i. Right of Children to Free and Compulsory Education Act, 2009: This landmark legislation lays down provisions for free and compulsory education for children aged 6 to 14 and emphasizes the importance of quality education. It outlines infrastructure norms, teacher-student ratios, and curricular requirements for schools.²⁰
- ii. Sarva Shiksha Abhiyan (SSA): It is an important project that focuses on enhancing infrastructure, teacher preparation, and curriculum development to achieve the goal of universalizing primary education.²¹
- iii. Rashtriya Madhyamik Shiksha Abhiyan (RMSA): This scheme was implemented in 2009 with the purpose of enhancing access to secondary education and improving its quality.²²

18. INDIA CONST. art. 41 & 45.

19. INDIA CONST. art. 14.

20. Right of Children to Free and Compulsory Education Act, 2009, No. 35, Acts of Parliament, 2009 (India).

21. All India Council for Technical Education, <https://www.aicte-india.org/reports/overview/Sarva-Shiksha-Abhiyan> (last visited Aug. 6, 2023).

22. Department of School Education & Literacy, <https://www.education.gov.in/rmsa> (last visited Aug. 7, 2023).

- iv. National Education Policy (NEP) 2020: This Policy proposes modifying and rebuilding all aspects of the educational structure to create a new system that adheres to SDG 4. It prioritizes the development of each individual's creative potential.²³
- v. Beti Bachao, Beti Padhao (BBBP): This scheme ensures girls participation in education and prevents sexual exclusion based on gender.²⁴

These legislations, policies and schemes exhibit the commitment of the nation to provide its citizens with a high-quality education and to preserve their educational rights, particularly those of children.

Challenges in Pursuit of Quality Education

India has made considerable progress in increasing its educational standards, but there are still several obstacles in the way of providing high-quality education. Some of these challenges are listed below.

- i. Related to accessibility: Differences in rural and urban areas, gender discriminations and a lack of education for vulnerable people all contribute to unequal access to education. And also economic disparities hinder access to education, leading to unequal opportunities for disadvantaged communities.
- ii. Teacher Shortages and Quality: Inadequate teacher training, low motivation, and high pupil-teacher ratios impact the quality of education imparted. There is a shortage of qualified and trained teachers, and those available often face challenges in keeping up with evolving teaching methodologies.
- iii. Curriculum Relevance: The curriculum often falls short in addressing current societal needs and global challenges, limiting students' ability to apply their knowledge effectively. Outdated curriculum and pedagogical approaches can hinder critical thinking, creativity, and practical skills development among students. There is a need to align curricula with real-world requirements and promote innovative teaching methodologies.
- iv. Inadequate Infrastructure and Technology: Insufficient infrastructure, especially in rural areas, coupled with limited integration of technology, hinders effective teaching and learning. Many schools, particularly in rural areas, lack proper infrastructure,

23. MHRD, https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf (last visited Aug. 8, 2023).

24. MINISTRY OF WOMEN & CHILD DEVELOPMENT, <https://wcd.nic.in/bbbp-schemes> (last visited Aug. 7, 2023).

affecting the learning environment. This hampers the overall learning experience and contributes to disparities in education.²⁵

The Road Ahead: Strategies for Enhancing Quality Education

Improving the quality of education in India necessitates the implementation of a comprehensive and multifaceted strategy that effectively addresses a variety of obstacles while capitalizing on available opportunities. The following strategies have the potential to contribute to the improvement of education in India:

- i. **Infrastructure and Resources:** Adequate funding must be allocated to improve school infrastructure to ensure healthy environment for students to ensure availability of relevant text books and other sources.
- ii. **Teacher Training and Development:** Continuous professional development programs must be implemented to enhance the skills of educators and equip them with modern teaching techniques.
- iii. **Curriculum Modernization:** Regular review and updating of curricula to align with changing societal needs, technological advancements, and global trends are crucial.
- iv. **Equity and Inclusion:** Targeted interventions are needed to ensure equal access to education for all, irrespective of gender, socio-economic status, or geographical location. It creates inclusive classrooms that accommodate diverse learning needs and promote respect for differences.
- v. **Assessment and Evaluation:** Shifting the focus from rote memorization to skill-based assessments and formative evaluation will foster holistic learning outcomes. It also includes the introduction of formative assessments that provide regular feedback to students and teachers for continuous improvement.
- vi. **Role of Civil Society and Collaboration:** Non-governmental organizations, community involvement, and collaborations with international partners play a crucial role in supplementing government efforts towards achieving quality education.
- vii. **Digital Initiatives:** The government's digital initiatives, such as the Digital India campaign and online education platforms, have widened access to educational resources and enabled remote learning, particularly during the COVID-19 pandemic.

25. Deepti, *supra note* 15, at 19.

- viii. Expand the use of technology to improve access to quality content and offer innovative teaching methods.
- ix. Skill Development: These programs aim to bridge the gap between education and employability, fostering a more job-ready workforce.

NOTABLE CASE LAWS RELATING TO QUALITY EDUCATION

The right to high-quality education in India has been the subject of several significant legal cases. These cases have been crucial in forming and defining the legal framework surrounding the right to education and ensuring that everyone has access to high-quality education. The following are some important judgments regarding the idea of high-quality education in India.

- i. *Unnikrishnan J.P v. State of Andhra Pradesh*²⁶: This case brought attention to the fact that under Article 21 of the Indian Constitution, education is both a fundamental right and a component of the right to life. It emphasized how crucial it is for educational institutions to deliver high-quality instruction without approaching it like a business.
- ii. *P.A. Inamdar & Others v. State of Maharashtra & Others*²⁷: This case addressed the significance of preserving educational standards while particularly focusing on the topic of reservation in private institutions of higher learning.
- iii. *Pramati Educational and Cultural Trust v. Union of India*²⁸: In this case, which also questioned the constitutional legality of the Right of Children to Free and Compulsory Education Act, 2009, it was emphasized the significance of high-quality education as a fundamental right.
- iv. *Modern School v. Union of India*²⁹: The Supreme Court made a point in this case to underline how crucial it is to have teachers who are educated and trained in order to provide high-quality instruction.
- v. *T.M.A. Pai Foundation v. State of Karnataka*³⁰: This case set some rules for preserving the independence of private educational institutions while ensuring that they deliver high-quality instruction and refrain from engaging in profit-making.

26. *Unnikrishnan J.P v. State of Andhra Pradesh*, (1993) 1 SCC 645.

27. *P.A. Inamdar & Others v. State of Maharashtra & Others*, (2005) 6 SCC 537.

28. *Pramati Educational and Cultural Trust v. Union of India*, AIR 2014 SC 2114.

29. *Modern School v. Union of India*, (2004) 6 SCC 537.

30. *T.M.A. Pai Foundation vs. State of Karnataka*, AIR 2003 SC 355.

CONCLUSION AND SUGGESTIONS

Quality education is the foundation of sustainable development, and India's progress towards reaching the SDGs depends significantly on its dedication to provide equitable and excellent education for all. Journey towards achieving sustainable development, quality education, is a dynamic process that requires continuous innovation, policy refinement and multi-stakeholder collaboration. By addressing access disparities, enhancing teacher quality, embracing technology, and fostering inclusivity, India can pave the way for a sustainable future, marked by informed citizens and empowered communities. As India progresses on this path, it contributes not only to its own development, but also to the global aspiration for a more equitable and prosperous world. By addressing the existing challenges, implementing effective reforms, and fostering inclusive policies, India can unlock the true potential of its citizens, ensuring a brighter and more sustainable future for the nation and the world. In the context of India, the pursuit of high-quality education is not merely a governmental objective, but rather a transformative process that is intrinsically linked to the nation's aspirations for progress and equitable social development. As a country characterized by a sprightly and dynamic population, India is cognizant of the need of making educational investments and is conscious that doing so is essential to protecting its long-term prospects. To achieve the Sustainable Development Goals (SDGs), the nation must be able to provide equitable access to high-quality education for all children, irrespective of socio-economic background, talent, or circumstance. The effective use of government resources is required and transparency must be preserved. The government should impose rules on educational institutions to make sure they uphold minimal educational standards and offer a conducive learning atmosphere. Thus, Article 21-A of the Constitution of India, by fostering on SDG 4 can bring in quality education in a developing country like India.

ROBOTIC SURGERY AND LEGAL COMPLIANCE IN INDIA

- A CRITICAL ANALYSIS

Dr. Kiran Dennis Gardner¹

Kavitha Christo Nelson²

INTRODUCTION

Technological advancements have enormously contributed to all sectors globally; the medical industry is no exception. Medical technology is vital in advancing the agenda of the United Nations (UN) Sustainable Development Goals (SDGs) 2030, mainly contributing to SDG 3, which focuses on Good-Health and Well-being. The development and advancements in medical technology drive innovation and foster infrastructure development supporting healthcare systems bridging the healthcare disparities between urban and rural areas that contribute to healthier and more sustainable communities.

The World Health Organization (WHO) promotes the integration of affordable and appropriate medical technologies in the healthcare system, especially in low-and-middle-income countries, as an initiative to access medicines and technology. The UN Technology Facilitation Mechanism (TFM) platform promotes using medical technology to address various health challenges and improve healthcare systems globally.

An emerging revolutionary medical technology promising improved surgical outcomes is Robotic surgery. Robotic Surgery or Robot-assisted Surgery is a minimally invasive surgical technique that combines advanced robotic surgery systems using robotic arms and instruments with the skills of a trained surgeon to perform precise, controlled movements with enhanced dexterity and precision. The robotic system provides a three-dimensional magnified view, and the robotic surgeon would have a more precise and detailed visualization of the surgical spot. The Robotic Surgeon sits at a console in the operation theatre and operates the robotic arms with hand controls and foot pedals. The robotic arms are equipped with surgical instruments such as scissors, scalpel blades, graspers, and suturing tools and perform surgery as controlled

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1. Dr. Kiran Dennis Gardner, Ph.D. in Law, Ph.D. in Education, Dean and Professor (Law), Alliance University, Bengaluru, Karnataka, India.
 2. Ms. Kavitha Christo Nelson, B.H.Sc. (*Food Science and Nutrition*), LL.M, Ph.D. (*Pursuing*) in Law, Research Scholar, Alliance University, Bengaluru, Karnataka, India.

by the robotic surgeon, mimicking the movements of the surgeon's hands with a high degree of accuracy.³

HISTORY OF ROBOTIC SURGERY

The idea of a robotic mechanism was designed by Leonardo da Vinci in 1498; later, in the 1940s, Nasa, with Defence Research Institutions, started as a telemanipulation or telepresence in which a person or soldiers remains in one location while doctors operate and cure soldiers from another safer place. At the same time, it completes complex tasks in hazardous and unhealthy environments such as the bottom of the ocean or outer space. Based on the science fiction film "Waldo" from the 1940s, significant advancements in robotics and telepresence were made in the 1980s. The first laparoscopy, a minimally invasive surgery, was performed using an endoscope-like device⁴.

The landmark operations, laparoscopic technology, and techniques continued to gain popularity into the 1990s. Although the word robotic systems for surgical applications are not actually 'robots' but 'remote performers' that work using the master-slave style, robotic telepresence began to flourish while laparoscopy was experiencing limitations.

The first use of robotics in abdominal surgery goes back to 1993 when Yulin Wang successfully created the first robotic system that the Food and Drug Administration (FDA) approved for general surgery. This evolution of first-generation robotic surgery systems gave way to the modern da Vinci®S™ and da Vinci®Si™ in 2009 that mimic the surgeon's hand movements as in open surgery.⁵

In 2001 Trans-Atlantic Robotic Surgery was approved by FDA. In Trans-Atlantic Robotic Surgery, the surgeon was in New York, the patient was in Strasbourg, and the robotic surgery was successful.⁶

ROBOTIC SURGERY IN HOSPITALS

Robotic surgery is performed in hospitals or specialized surgical centers with the necessary infrastructure and robotic surgical systems. Like traditional surgical procedures, patients undergo

3. VIPUL PATEL ET AL., ROBOTIC SURGERY: THEORY AND OPERATIVE TECHNIQUES, (Springer, 2012).
4. George, E. I., Brand, et al., *Origins of Robotic Surgery: From Skepticism to Standard of Care*. JSLS: JOURNAL OF THE SOCIETY OF LAPAROENDOSCOPIC SURGEONS, 22(4), e2018.00039.(2018). <https://doi.org/10.4293/JSLS.2018.00039>
5. Mavroforou, A., et al., *Legal, and ethical issues in robotic surgery*. INTERNATIONAL ANGIOLOGY: A JOURNAL OF THE INTERNATIONAL UNION OF ANGIOLOGY, 29(1), 75–79, (2010). <https://pubmed.ncbi.nlm.nih.gov/20224537/>. Last accessed 20.Jul. 2023.
6. Rose Eveleth, *The surgeon who operates from 400km away*. BBC News. 16.May 2014 <https://www.bbc.com/future/article/20140516-i-operate-on-people-400km-away>

a thorough preoperative evaluation and assessments in robotic surgery, including medical history, physical examination, diagnostic tests, and imaging studies. Before administering anesthesia, the surgeon determines whether the patient is suitable for robotic surgery. The patient is positioned near the robotic system docking the robotic arms and instruments after calibrating the system and connecting to the patient-side console.

The surgeon wears a specialized console-side interface that allows them to control the robotic arms and instruments and is seated at the console in the same operating room or a separate control room. The surgeon operates the robotic system, and small incisions are made in the patient's body through which trocars (thin tubes) are inserted; these trocars provide access points for the robotic arms and instruments to enter the patient's body.

The robotic system is calibrated to accurately align the movements of the surgeon's hands, replicating the robotic arms' movements. The surgeon controls the robotic arms and instruments from the console with hand controls and foot pedals. The surgical team, including assistant surgeons, nurses, and technicians, assists the surgeon in positioning the robotic arms and for other support during the surgery. The surgical team monitors the surgical site and the patient's vital signs throughout the procedure through the three-dimensional magnified view of the surgical site.

Once the surgical procedure is completed, the robotic instruments are removed, and any necessary closures of trocar incisions are done manually with sutures or adhesive bandages. Post-operative care is done in hospitals till the patient recovers before discharge. The surgical team follows established surgical protocols, safety measures, and best practices to ensure patient safety and successful outcomes.⁷

ARTIFICIAL INTELLIGENCE REVOLUTIONIZING ROBOTIC SURGERY

Artificial Intelligence and robotic surgery have revolutionized the healthcare field, bringing unprecedented precision, efficiency, and improved outcomes to surgical procedures. AI plays a vital role in robotic surgery by providing advanced algorithms and machine learning capabilities. AI systems can analyze medical data, including patient information, surgical images, and research studies, to extract insights that help surgeons in decision-making, preoperative planning, and real-time intraoperative guidance. AI identifies anatomical structures, detects abnormalities, and assists in predicting surgical outcomes, ultimately leading to more precise and personalized procedures.⁸

7. GIUSEPPE SPINOGLIO Editor, *ROBOTIC SURGERY: CURRENT APPLICATIONS AND NEW TRENDS*, 1-14 (SPRINGER, 2015)

8. Niyati Deo, Ashish Anjankar, *Artificial Intelligence With Robotics in Healthcare: A Narrative Review of Its Viability in India*, CUREUS (2023). DOI: 10.7759/cureus.39416. Last Accessed 21.

Artificial Intelligence (AI) is revolutionizing robotic surgery by combining algorithms and precision with surgical robots. AI can simplify the interaction between surgeons and robots, converting movements and patterns into actionable commands. AI collects data over time by watching surgeons perform, aiding in cognitive functions like decision-making, problem-solving, and speech recognition. It also assists in analyzing scans, detecting cancers, and facilitating instrument positioning.⁹

The use of robotic surgery has increased rapidly as robots can now more accurately replicate the patterns and movements of a surgeon. For instance, hair transplant techniques entail removing hair follicles and implanting them into the scalp. In contrast, robotic laparoscopy is used for kidney surgery to cause minor damage and hasten recovery. Furthermore, robotic surgery is recommended over traditional breastbone split heart surgery to treat cardiovascular illness due to the tiny incisions between the ribs.¹⁰

Integrating AI and robotic technologies in surgery provides numerous advantages for patients and surgeons. AI and robotic surgery are poised to reshape the future of healthcare as technology and research develop, offering patients globally safer, more efficient, and personalized surgical procedures and introducing ethical considerations and algorithmic biases, fairness, and equity that could impact patient care. Robotics and AI have become valuable tools for surgeons worldwide, improving surgical results and changing countless lives.¹¹

Advantages of Robotic Surgery in India

Minimally Invasive Technique: Robotic surgery permits smaller incisions than traditional open surgery, resulting in less stress to the surrounding tissues, less blood loss, less discomfort, and quicker recovery times.

Improved Visualization: The high-definition, enlarged, three-dimensional picture of the surgical site provided by the robotic system helps surgeons see complex anatomical elements more clearly to the extent of ten times that of a laparoscopic view.

Jul. 2023.

9. Michael Yip et. al., *Artificial intelligence meets medical robotics*, SCIENCE, VOL. 381, NO. 6654, <https://www.science.org/doi/10.1126/science.adj3312>. Last Accessed: Jul. 25, 2023.
10. Far North Surgery, *AI-Enabled Robotic Surgery: How Collaborative Robots Are Assisting Surgeons*. Surgery Center of Anchorage. (2020) <https://www.farnorthsurgery.com/blog/ai-enabled-robotic-surgery-how-collaborative-robots-are-assisting-surgeons>. Last Accessed Jul. 25, 2023.
11. Xiao-Yun Zhou, et. al., *Application of artificial intelligence in surgery*. FRONT. MED., 2020, 14(4): 417–430 <https://doi.org/10.1007/s11684-020-0770-0> or <https://journal.hep.com.cn/fmd/EN/10.1007/s11684-020-0770-0>. Last Accessed: 21. Jul. 2023.

Enhanced Precision and Dexterity: The robotic arms provide a more excellent range of motion and more precise control than human hands allowing surgeons to rotate a 540-degree rotation to carry out intricate procedures with increased accuracy.

Reduced Fatigue: Robotic surgery can reduce the physical strain and fatigue experienced by surgeons during long and complex surgical procedures, as the system assists in performing repetitive or strenuous tasks.

Shorter Hospital Stay: For patients, robotic surgery offers smaller incisions, reducing pain, decreasing the risk of infection, and shorter hospital stays. The enhanced precision of robotic systems ensures minimal damage to healthy tissues and blood vessels, resulting in faster recovery and improved postoperative outcomes.

A robotic system is an advanced tool that assists the surgeon with more precise control but does not perform the surgery autonomously. In addition, Dr. Lavanya Kiran, a Robotic Surgeon, added that as for the patient, there is no difference in the surgery except for a speedy recovery. Unlike any hospital stay, unlike any new technology, robotic surgery also poses a few disadvantages to patients.¹²

DISADVANTAGES OF ROBOTIC SURGERY

Device malfunctions: Robot-assisted procedures have gained popularity due to improved surgical results. However, device breakdowns can cause anxiety, prolong operation length, and sometimes require open or laparoscopic methods. A 2008 FDA study found only 168 da Vinci system faults, with instrument malfunction accounting for over half. A multi-institutional assessment showed only 0.4% serious failures in 8240 instances.¹³ According to the report on a retrospective study of the FDA from 2000 to 2013, robotic systems for minimally invasive surgery have resulted in 8,061 device failures, 1,391 patient injuries, and 144 fatalities (1.4 percent) in the US (74.9 percent). The injury, mortality, and conversion rates per surgery are lower in surgical specialties that often employ robots. Equipment and instrument failures, including system faults, electrical arcing, and falling objects, generally cause these events. Adopting advanced techniques and improved adverse event reporting could reduce these preventable incidents in the future.¹⁴

12. Interview: Dr. Lavanya Kiran. MBBS. MS. Obstetrics & Gynaecology. FRM- Laparoscopic Surgeon, Aesthetic Gynaecologist & Robotic Surgeon – Bangalore.

13. Andonian, S., Okeke, Z. et al., *Device failures associated with patient injuries during robot-assisted laparoscopic surgeries: a comprehensive review of FDA MAUDE database*. THE CANADIAN JOURNAL OF UROLOGY, 15(1), 3912–3916. (2008). <https://pubmed.ncbi.nlm.nih.gov/18304403/> Last Accessed 22. Jul.2023.

14. Alemzadeh, H., et al., *Adverse Events in Robotic Surgery: A Retrospective Study of 14 Years of FDA Data*. PLOS ONE, 11(4), e0151470. (2016). <https://doi.org/10.1371/journal.pone.0151470>.

Consumables' recurring cost: Robotic surgical equipment and its replacement accessories or consumables per se are very expensive, and very few healthcare institutions can afford this facility, which posits the question of affordability and accessibility for those patients in need.

Expert or technical assistance in handling: The docking and redocking of the robotic surgical equipment due to its bulky requires more prominent space, and frequent movements from one site to another operating site need additional technical assistance, which is expensive to healthcare institutions.¹⁵

The patient is examined thoroughly before admission for robotic surgery or whether they require traditional or laparoscopic surgery. But sometimes, due to contingencies or emergencies, traditional open surgery in the operation theatre becomes necessary.

Risk of infections: Robotic instruments increase disease risk due to their complex pulley system and thin wires. Studies have found higher protein and residue contamination levels in these instruments, necessitating new cleaning standards and novel classification. The increasing complexity of robotic devices poses a threat to patients for unknown organisms and prion-based diseases.¹⁶

While robotic surgery can offer various advantages, it also opens unique factors that may impact the liability landscape. When an Automated Driver Assistance Car has launched, the Society of Automotive Engineers (SAE) established a standard for autonomous driving, defining different levels of automation. Europe has legally allowed “driver assistance.” This is evident that Regulations are made proportionate to technological advancements. Similar attempts are in need to define the standards for automated surgical systems in the medical domain, and this again posits a question of whether there is a need for ‘Medical Product Law’ that would define the future of autonomous robotic surgery. Legal and ethical issues must be addressed before establishing a regulatory framework that effectively addresses medical device or computer-coded errors.¹⁷

or <https://pubmed.ncbi.nlm.nih.gov/27097160/> Last Accessed: 22. Jul. 2023.

15. Video reference: Dr. Lavanya Kiran, *Sewing machines aren't the only machines women use*, TEDxChristUniversity. <https://www.youtube.com/watch?v=WGewAko77Yg>. Last Accessed 21. Jul. 2023.
16. Saito Y, Yasuhara H, et al., *Challenging residual contamination of instruments for robotic surgery in Japan*. INFECT CONTROL HOSP EPIDEMIOL. 2017; 38:143–6. <https://pubmed.ncbi.nlm.nih.gov/27795211/>. Last Accessed 21. Jul. 2023.
17. Shane O'Sullivan et. al., *Legal, regulatory, and ethical frameworks for development of standards in artificial intelligence (AI) and autonomous robotic surgery*, JOURNAL: THE INTERNATIONAL JOURNAL OF MEDICAL ROBOTICS AND COMPUTER ASSISTED SURGERY, 2019, № 1, p. e1968 (Wiley). <https://doi.org/10.1002/rcs.1968>. Last accessed on 21. Jul. 2023.

LEGAL CHALLENGES IN ROBOTIC SURGERY

While robotic surgery offers various advantages, it also introduces unique factors that may impact the liability considerations associated with robotic surgery. Unintended events during robotic surgery can lead to legal debates and grey areas in the law, as human operators may argue inadequate software delivery or false testing statements. The distinction between surgical robots and other medical instruments raises questions concerning whether specific legal criteria should be enforced for medical professionals using these robots. Professional responsibility may provide robo-surgeons incentives to learn, but establishing ex-ante standards might be more suitable. Alternatively, if surgical robots differ considerably from traditional surgical robots, tailored legislation addressing difficulties would be preferable.

Surgeon responsibility: Robotic surgeons using robotic systems are ultimately responsible for the surgical procedure and patient care. They must have the requisite skills, specific training, credentials, and experience to operate the robotic system efficiently and safely. The surgeon may be liable for any negligence or deviation from the accepted standard of care if a surgical error or adverse outcome happens. Hospitals and healthcare institutions provide guidelines and criteria for robotic surgeons for robotic surgery.

Like any surgical procedure, robotic surgery can involve errors or complications that may harm the patient. For instance, surgical errors in robotic procedures may include instrument malfunction, improper use of robotic systems, any injury to organs or surrounding tissues, or failure to address complications either due to the surgeon's actions or omissions to deviate from the standard of care or due to malfunction of the robotic surgical systems¹⁸.

Malfunction of robotic surgical systems: Robotic surgical systems rely on technology, instruments, robotic arms, and computer software. The proper functioning of the robotic surgical systems is vital, as any software glitch or technical malfunction of the robotic systems during the surgical procedure may lead to surgical complications or adverse outcomes. Any technical malfunctions and liability may be attributed to the manufacturer if the malfunction resulted from a defect or inadequate maintenance of the robotic surgical systems.

Informed consent of patients: Surgeons must ensure the patient is aware of the procedures, with comprehensive information on the use of robotic technology, potential risks, benefits, and alternative treatment options before giving consent to the robotic surgery. Informed consent is an essential legal and ethical principle in any medical procedure, including robotic surgery. Informed consent ensures that patients can make decisions voluntarily, without coercion or

18. Mavroforou, A., et.al., *Legal and ethical issues in robotic surgery*. INTERNATIONAL ANGIOLOGY: A JOURNAL OF THE INTERNATIONAL UNION OF ANGIOLOGY, 29(1), 75–79. (2010). <https://pubmed.ncbi.nlm.nih.gov/20224537/>. Last Accessed Jul.26, 2023.

undue influence from healthcare providers. Informed consent requires that patients have the capacity and competence to understand the information provided to them. In case of failure to obtain proper informed consent may lead to allegations of negligence and lack of adequate disclosure. Hence proper documentation of the informed consent process is essential, and getting the patient's consent form serves as evidence in the event of any legal disputes.

Medical Malpractice: Like any surgical procedure, robotic surgery carries inherent risks and potential for complications and errors. Negligence or malpractice on improper usage of robotic systems may result in injury to surrounding tissues or organs or failure to address complications promptly. Establishing a medical malpractice case in robotic surgery typically requires demonstrating that the surgeon or medical practitioner deviated from the reasonable standard of care. A patient may file a medical malpractice lawsuit if the patient believes that negligence or improper use of robotic technology caused them injury.

Training and Credentialing: Surgeons performing robotic surgery must have adequate training and credentialing. In addition to training programs, surgeons may require performing a certain number of proctored cases under the supervision of experienced robotic surgeons or mentor who guides and assesses the surgeon's performance during the procedure. Hospitals and healthcare institutions have specialized training programs, demonstrating competence through proctored cases¹⁹ or obtaining certification from recognized robotic surgery training institutions.

Documentation and Record-keeping: Any traditional surgical procedure maintaining accurate records and detailed documentation of all aspects of robotic surgery is necessary for liability purposes, as evidenced in legal claims or disputes.

A study on the legal responsibility of autonomous surgical robots and AI on patients divided into accountability, liability, and culpability concludes that culpability remains to be determined due to the current technology level, as these aspects may require revision in cases where robots become citizens. Shortly, surgical robots, resembling autonomous cars, may learn and perform standard procedures under human supervision. In this case, a human stay in the "driving seat" as a "doctor-in-the-loop," protecting patients undergoing procedures backed by autonomous surgical robots.²⁰

19. *Proctored cases*- meaning - robotic surgery done under the supervision of experienced robotic surgeons or mentor who guides and assesses the surgeon's performance during the procedure.

20. Shane O'Sullivan et al., *Legal, regulatory, and ethical frameworks for development of standards in artificial intelligence (AI) and autonomous robotic surgery*, (2018) <https://doi.org/10.1002/rcs.1968> or <https://onlinelibrary.wiley.com/doi/epdf/10.1002/rcs.1968>. Last Accessed: 29. Jul. 2023.

Liability in robotic surgery cases is complex and requires the involvement of legal and medical professionals to assess the specific circumstances and determine liability per law. The law and regulations regarding robotic surgery are jurisdictional, and the surgeon, healthcare providers, and manufacturers need to be updated with the legal and ethical landscape and ensure compliance with their respective regions.

Ethical concerns in robotic surgery

Ethical considerations always open a debate for what is legally right may be ethically wrong or vice-versa. While on future realistic use, cases, for instance, may involve autonomous orthopaedic reduction techniques for open surgery or less invasive treatments. Wireless robots with digital radiography equipment can dissect tissue, reveal fractured bone fragments, and move fragments without exposing bones or joints. Robotics can also move bones or fragments using traction plates, screws, castings, and implants.²¹

Combining human and computer decision-making is advantageous, combining the best of both worlds. Humans are constrained by their surroundings and relationships, which can negatively impact patients and doctors. Robots, on the other hand, do not have these limitations. However, they typically require maintenance and are susceptible to malfunctions. The FDA's Manufacturer and User Facility Device Experience database shows many medical robot failures.²²

Informed Consent: Surgeons may have a high learning curve while performing robotic procedures, impairing patient safety and results. As patient autonomy assumes that the patient has the right to individual values, preferences, and competence to make a well-informed and voluntary decision on any healthcare treatment alternatives and interventions, it becomes a fundamental ethical principle.

Surgeon Training: Surgeons need specific training to use robotic surgical equipment properly. Ensuring that surgeons are adequately trained and maintaining their skills over time is vital to patient safety. Ethical considerations arise if a surgeon attempts an operation above their training and skill.

Affordability and Accessibility: Robotic surgery systems are expensive to acquire and maintain. This can lead to disparities in healthcare access, as not all hospitals or regions can afford such technology. Providing fair and equitable access to robotic surgery, particularly for marginalized people, presents significant moral concerns.

21. *Ibid.* 20.

22. *Ibid.* 20.

Excessive Dependence on Technology: Surgeons may become overly dependent on robotic devices, diminishing their surgical skills and decision-making powers. Striking the right balance is the significant ethical dilemma between accepting technology as a tool and retaining conventional surgical skills.

Human-Robot Interaction: The interaction between the surgeon and the robotic system raises ethical questions regarding the surgeon's level of control and the potential for errors caused by miscommunication or misinterpretation of commands, posing questions concerning the ethical implications of the surgeon and robotic system interaction that revolve around the issue of whether the surgeon ought to be held responsible for any errors that may arise as a direct result of the encounter.

Probability of Technological Fault: Robotic surgical systems can experience malfunctions or technical failures like all technology. The safety of the patients might be put in jeopardy due to these failures, which could also lead to undesirable results. Ethical considerations include formulating regulations for technical problems during surgery and maintaining a highly dependable system.

Data security and Privacy: Robotic surgery involves collecting and storing patient data, including medical records and photographs. Maintaining patient confidence and adhering to legal and ethical norms, ensuring the security and privacy of this sensitive information is critical in today's cybersecurity concerns.

Determining liability and accountability: In cases of surgical errors or complications involving robotic systems, questions may arise regarding the responsibility of the surgeon, the manufacturer of the robotic system, or other parties. This may be the case regardless of whether the error was caused by human or robotic intervention. Legal concerns and ethical complications can examine the processes of determining culpability and accountability in these scenarios.

Collaborative effort toward addressing these ethical concerns and challenges is necessary for medical professionals, technologists, regulatory bodies, and ethicists to ensure that adopting robotic surgery aligns implementation with the principles of patient safety, informed consent, and equitable access is a global challenge.

Robotic Surgery and Regulations: Global Scenario

In the United States, the Food and Drug Administration (FDA) is the primary regulatory authority responsible for approving and regulating medical devices, including robotic surgical

systems.²³ FDA regulates and scrutinizes robotic surgical procedures and provides pre-market approval based on their safety and effectiveness by reviewing the data from preclinical testing, animal studies, and clinical trials. The manufacturer is solely responsible for providing evidence demonstrating the device's safety and effectiveness for its intended uses. FDA assesses the Quality Systems Regulation establishing standards for device design, performance, labelling, and instructions for use and continues to monitor as post-market surveillance, where the manufacturer is mandated to report the adverse events, malfunctions, and other safety-related information to FDA.

The legal system should carefully choose technology and rules to support its policies and societal goals. Regulation must balance competing interests and consider how regulations affect the market. The promotion of socially acceptable conduct, the decrease in accidents, and the increase in safety investments are all significantly influenced by liability legislation. Product and enterprise liability standards have been implemented to safeguard customers and guarantee more investment in product safety. The US strategy resulting from the Second Restatement on Torts is analogous to the European solution, Directive 85/374/EEC on Defective Products.

Responsibility is divided into three categories: (1) Accountability, (2) Liability, and (3) Culpability. All three elements are addressed when considering accountability for AI and autonomous surgical robots, whether military or civilian patients. Today, American and European policies on AI responsibility are divergent, with the US prioritizing ethical design and self-regulation, while the EU emphasizes individual rights through the Personal Data Regulation. Regulatory standards are needed to address bias, discrimination, and safety concerns.²⁴ The insurance market for autonomous surgical robots is expected to be influenced by legal sanctions.

The European Medicines Agency (EMA) ²⁵and the European Commission regulate medical devices, including robotic surgical systems, within the European Union. *The Medical Devices Regulation (MDR)* ²⁶and the *In Vitro Diagnostic Medical Devices Regulation (IVDR)* establish

23. U.S. FOOD & DRUG ADMINISTRATION, *Computer-Assisted Surgical Systems*. <https://www.fda.gov/medical-devices/surgery-devices/computer-assisted-surgical-systems>. Last Accessed 21, Jul. 2023.

24. Pagallo U. *Algorhythms and the beat of the legal drum*. PHILOS TECHNOL.2017. <https://doi.org/10.1007/s133470170277z>. Last Accessed Jul. 22, 2023.

25. European Medicines Agency (EMA) <https://www.ema.europa.eu/en> Last Accessed Jul. 26. 2023.

26. FDA, *Medical Device Reporting (MDR): How to Report Medical Device Problems*. <https://www.fda.gov/medical-devices/medical-device-safety/medical-device-reporting-mdr-how-report-medical-device-problems> Last Accessed Jul. 26. 2023.

rules for the evaluating, approving, and post-market surveillance of medical devices, including safety, performance, and clinical evidence requirements²⁷.

Australian Government Department of Health and Aged Care enacted '*The Therapeutic Goods Administration (TGA)*' to regulate medical devices in Australia. The therapeutic goods include diagnostic tests, medical devices, and medicines, including robotic surgical systems.²⁸

The National Medical Products Administration (NMPA) in China²⁹ regulates and approves medical devices, including robotic surgical systems, that oversee the safety, quality, and efficacy of medical devices, pharmaceuticals, and other healthcare products in China.³⁰

In modern society, people manage their responsibility with insurance, such as medical malpractice insurance for a doctor. Humans must create responsibility by designing, manufacturing, or using the robot to obtain insurance under the current legal system. While there are disparities in the legal systems of different countries, the European resolution of 2017 may serve as the foundation for robotics legislation, and it is not enforceable in the US or other Asian or European countries. It has yet to be apparent whether it will be adopted as a de facto industry standard.³¹

Regulations on medical devices might differ from nation to nation; thus, manufacturers and healthcare providers must be aware of and compliant with the standards outlined by the regulatory authorities in each jurisdiction in which they operate.

RECOMMENDATIONS AND CONCLUSION

When there is a technological advancement, there mandates a new law or regulation to prevent the happenstances of the technology. For instance, drone and airspace regulations were enacted in India when Drone was invented. This is evident that as and when there is a new robotic technology, and human beings or animals are involved, there needs to be an associated

27. Damini Kunwar, *Robotic Surgeries Need Regulatory Attention*, THE REGULATORY REVIEW, 2020 <https://www.theregreview.org/2020/01/08/kunwar-robotic-surgeries-need-regulatory-attention>. Last Accessed Jul. 26. 2023.

28. Therapeutic Goods Administration (TGA) of Australia. <https://www.health.gov.au/contacts/therapeutic-goods-administration-tga>

29. National Medical Products Administration (NMPA) of China. <http://english.nmpa.gov.cn/>

30. GlobalData Thematic Intelligence, *Robotics in Medical (2021): Regulatory trends*, MEDICAL DEVICE NETWORK 2022. <https://www.medicaldevice-network.com/comment/robotics-in-medical-2021-regulatory-trends/>. Last Accessed Jul. 27. 2023.

31. *Ibid.* 20.

controlling authority with efficient rules, regulations, and monitoring systems ensuring the safety of the public at large.

The surgical technique and patient care are ultimately the responsibility of the surgeon employing robotic equipment. Although robotic surgery can potentially revolutionize healthcare in India, it also brings significant legal and regulatory challenges. India can fully use the benefits of robotic surgery while guaranteeing patient safety and upholding ethical standards by resolving these legal challenges. Establishing a comprehensive regulatory framework and ongoing research and monitoring will play a pivotal role in shaping the future of robotic surgery in India.

Legal regulations in the automobile sector do not hold robots accountable for their actions, although this may change in the future for practical reasons. When a surgical robot causes damage, the manufacturer, user, or person in charge of maintenance or modifications can be held accountable for any damage or patient deaths due to device failure. The operator may be wholly or partially exempt from liability for harm, but it can be determined depending on the facts and circumstances of the patient's fatalities.³²

Producing autonomous surgical robots is challenging, but addressing patient deaths and disabilities is crucial. A quick fix could involve allowing human interaction to support daily activities without granting full autonomy to the robot. "*Let the human do what the human can*" is the most effective solution.³³

32. *Ibid.* 20.

33. Andreas Holzinger. *Human-Computer Interaction and Knowledge Discovery (HCI-KDD): What Is the Benefit of Bringing Those Two Fields to Work Together?* 1st Cross-Domain Conference and Workshop on Availability, Reliability, and Security in Information Systems (CD-ARES), Sep 2013, REGENSBURG, Germany. pp.319-328. fhal-01506781f. [https://Human-Computer Interaction and Knowledge Discovery \(HCI-KDD\): What Is the Benefit of Bringing Those Two Fields to Work Together? HAL.SCIENCE.](https://Human-Computer Interaction and Knowledge Discovery (HCI-KDD): What Is the Benefit of Bringing Those Two Fields to Work Together? HAL.SCIENCE.) (Last Accessed Jul. 28. 2023).

THE INFLUENCE OF ARTIFICIAL INTELLIGENCE ON LAW AND SOCIO-ECONOMIC TRANSFORMATION

Krishna Subramanya Bhat¹

Shreya Machigad²

INTRODUCTION

The development of Artificial Intelligence and Machine Learning is exponentially advancing. An increasing number of competitors are entering the market, causing a burst of development in this field. Tech giants like OpenAI, Google, Microsoft, etc are all implementing their own versions of conversational chat-bots, which can help with requests ranging from a simple internet search to programming entire applications and websites. They can even be used to draft legal provisions and research, although not yet reliably. The uses of such programs have wide implications in this modern techbased world. The purpose of this research paper is to understand the positive or negative implications of advancing AI in the job market via reviewing the aftermath of the labour scenario post the several Industrial Revolutions. The paper will begin by providing a brief overview of the history of AI and its potential impact on the job market. The objective of this research paper is to investigate the positive and negative consequences of artificial intelligence (AI) development in the job market by reviewing the aftermath of the labour market following the several Industrial Revolutions. In order to study the impact of such events, we must study possible scenarios and predict a certain set of outcomes that may arise due to particular events. Such knowledge can help us prevent massive disruptions in the labour workforce. This can even help stabilise the international economy. The modern world has noticed that there is an international effort by people to prevent unfair practices carried out by Governments. This may create tensions and the fear of sanctions may have a convincing tone to make the Governments listen to their citizens.

The main objective of this research paper is not to speculate, instead to learn from humanity's mistakes and hope to prevent such mass protests and interruptions from occurring. The patterns are predictable to a certain extent and there is a need to analyse and prepare for any such future events as we may come across. One of the biggest advancement in the field of technology has been the latest improvements in the language models available in the market free of cost

1. BBA.LL.B , PES University Bangalore

2. BBA.LL.B , PES University Bangalore

today. The competition has caused an exponential increase in the development as everyone wants to be the first to provide new features. All the competitors would want to provide more services than the others, which has caused several improvements in all the available platforms. Boston Dynamics³ is one of the companies that has exclusively worked on building robots that use intelligent environmental scanning to study and perform activities and stunts. This technology can be extremely useful for building robots that can carry much more weight than a human can, and do it again and again without being tired. Elon Musk's Tesla has introduced a prototype humanoid robot Optimus, which is intended to help relieve dangerous repetitive tasks. Tesla's factory at Texas says that they intend to deploy this robot on a large scale in the production lines. The implementation of Artificial Intelligence in the daily operations replacing human labour may be helpful to large corporations. However, it is also extremely important to consider factors such as employment rates and the overall wellbeing of the hardworking part of the workforce. We must clearly understand what humanity has been through in the various phases until now, and use such knowledge to prevent any large-scale shifts that may occur in the employment sector.

PREDICTED IMPLICATIONS OF ANOTHER INDUSTRIAL REVOLUTION

Sam Altman, the creator of ChatGPT has once said to reporters that AI will definitely cause some jobs to be lost⁴. The creator of this conversational AI tool predicts that it is a guaranteed factor that jobs will be lost because of AI in the near future, and this does not just add to the credibility of the fact as to how important it is to be prepared for such events, but also to try and prevent such events from causing international economic unrest. The development of AI is now at full swing due to multiple competitors being actively deploying maximum resources into such processes, using manpower, tools, and funding that was never available to this extent before⁵. This can cause a burst of development which can disrupt the flow of the economy, and any such sudden disruptions on a global level may cause several irreversible problems in the global workforce and labour marketplace. The predictions made may soon become a reality, and we must collectively be prepared with possible remedies. It would be even more beneficial and efficient to prevent such sudden shifts in the first place. The most obvious way to control

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3. E. Guizzo, *By leaps and bounds: An exclusive look at how Boston dynamics is redefining robot agility*, IEEE Spectrum, vol. 56, no. 12, 34-39, (2019)
 4. Divyanshi Sharma, *Chatgpt creator Sam Altman says jobs will go away because of AI, it will not just be a supplement for humans*, INDIA TODAY, Aug. 02, 2023, 7:23 PM (<https://www.indiatoday.in/technology/news/story/chatgpt-creator-sam-altman-says-jobs-will-go-away-because-of-ai-it-will-not-just-be-a-supplement-for-humans-2412116-2023-07-26>).
 5. Rahaman, Md. Saidur and Ahsan, M. M. Tahmid and Anjum, Nishath and Rahman, Md. Mizanur and Rahman, Md Nafizur, *The AI Race is on! Google's Bard and OpenAI's ChatGPT Head to Head: An Opinion Article* (2023).

such outbursts seems to be via laws and restrictions. The possible options of restrictions include but are not limited to International Treaties / Conventions, local laws governing technological development, individuals fighting for their rights, enforcement of rigid safety protocols in the detection of breach of privacy, maintaining a competitive marketplace without limiting creativity, etc.

HISTORY REPEATS: INDUSTRIAL REVOLUTION 5.0

The human narrative has seen multiple global transitions in the progress of technology and industries. All the way from the invention of the Steam Engine, to the worldwide domestic supply of electricity and implementation of assembly lines, to the debut of electronics and computer technologies, and lastly, the digital transformation of information and communication technology, the four Industrial Revolutions have been monumental in shaping the history of industries in the world.

The past few centuries of exponential growth of industries have set a precedent for the predicted fifth IR. One common observation that may be noted among these past revolutions is the way that technology and machinery have proven to be a means to complement human labour.

The steam engine was known to have reduced the physical burden on labourers by making transportation easier and faster. Assembly lines encouraged more human labour to work on dedicated aspects of the manufacturing process, while promoting mass productions of goods at a faster pace. Management roles and concepts such as division of labour were developed, which helped increase efficiency, quality and productivity. The introduction of electronic and computer-based technology enabled the automation of industries, especially in hazardous work environments, which acted as a relief to labourers. Further developments in these technologies helped in the “Liberalisation, Privatisation and Globalisation” of industries, allowing them to expand from local bases to international spaces, through modern networking platforms.

With the unstoppable takeover of AI in our daily lives, it is an apparent conclusion that another Industrial Revolution could take place in the next few years. However, the implications of this revolution are uncertain because the extent of the influence of AI on industries and humans remains unimaginable. AI could potentially automate many jobs, leading to mass unemployment. Despite the risks, AI also has the potential to create new jobs and improve our lives in many ways. For example, AI could be used to develop new medical treatments, create more efficient transportation systems, and even help us to better understand various other aspects of science.

WHAT WINS? HUMAN ETHICS OR TECHNOLOGY

Human ethics and value systems have evolved over several centuries and millennia of civilization. The timelines around the occurrence of the four IRs is known to have changed these values and morals drastically, in order to keep up with changing times and economies. The world had to bear the brunt of calamities such as two World Wars and several economic ‘Depressions’, to reach this state of a complete makeover in the economy as well as societal ideologies and virtues.⁶

A look into the patterns of the previous IRs shows that humans still held an upper hand over the changes and progress that ensued. For example, the mechanisation of farming merely drove the farmers away from the fields into working in much secure manufacturing, processing and office jobs. The development of machinery and assembly lines encouraged the creation of more management positions, and newer organisational hierarchy structures were consolidated.

The main question in ponderance when it comes to Artificial Intelligence is whether or not this technology is sentient. AI functions as, simply put, a manifestation of humans and their thoughts. AI derives its intelligence from the learnings of human behaviour, thought processes and information. This further leads to the belief that AI can never be truly free from bias and prejudice as everything that it is, is from what it is fed by the particular set of humans working on such technology. This could mean that this technology could adopt a patriarchal thought process, just as society does. The repercussions could be harsh and indirect. This further begs to ask if AI and ethics go hand in hand. It is practically impossible to let the two function together. Trying to keep ethics relevant in society will eventually lead to a grinding halt in technological development, and vice versa, where fast paced advancements lead to a fade away of ethical values in society.⁷

To finally interpret whether ethics should play a role in considerations of AI and development, we need to generate ideas to ensure a safe balance between development and ethics. We cannot stop development in the name of ethics. However, we must also not continually develop to the extent of mass destruction. This problem has been prevalent in all the Industrial Revolutions. However, now that we have so much to learn from, we can understand and implement a few solutions as discussed in further questions.

6. Toby Walsh, *The AI Revolution*, EDUCATION: FUTURE FRONTIERS, 10-12 (2017), <https://saeon.com.au/toniedoc/ai-revolution.pdf>

7. Hendrik Schopmans & Jelena Cupać, *Engines of Patriarchy: Ethical Artificial Intelligence in Times of Illiberal Backlash Politics*, 35 Ethics & International Affairs 329–342 (2021).

POSSIBLE SOLUTIONS TO PREVENT MASSIVE DISRUPTION OF LABOUR WORKFLOW

The Industrial Revolutions I to IV were eras of great technological and social change. It is essential to study and comprehend the solutions that were predominantly used during the Industrial Revolutions I to IV in order to prepare for the possibility of a new Industrial Revolution. However, it is also important to note that we are only preparing for the possibility of a revolution, and that it is ignorant to make a definite statement awaiting a revolution.

Although, it is highly likely that there will be disruptions in the labour workforce if the pace of development continues in the field of improving capabilities and reducing the requirement for a human to complete repetitive tasks. As discussed earlier, we can already see robotics and other software-based Artificial Intelligence being implemented to replace human labour for conducting energy-consuming repetitive tasks. This proves to increase efficiency and reduce costs, which is extremely beneficial for adding to the outcome produced by a particular manufacturer/producer.

It is important to be aware of the potential disruptions that a new Industrial Revolution could cause, and to start planning for how we can mitigate these disruptions. Some potential solutions include:

- Investing in education and training so that workers can develop the skills needed to work in a changing economy.
- Providing support for workers who are displaced by automation.
- Investing in research and development to implement new technologies that can create new jobs.
- Working with governments to develop policies that will help workers and businesses adapt to a changing economy.
- Promote and incentivise development of technology, however with certain restrictions on implementation of such technology.

The government should promote innovation and compensate scientists for improving available technology, subject to certain restrictions. For example, new technologies should be implemented in stages to prevent sudden shifts in the labour workforce requirement. This will allow workers to adapt to new technologies and find new jobs that are compatible with their skills. It will also help to ensure that the benefits of new technologies are shared widely, rather than concentrated in the hands of a few.

The future of work is uncertain, but by being prepared, we can minimise the negative impacts of a new Industrial Revolution and maximise the opportunities it creates.

CONCLUSION

In conclusion, this research paper emphasises the vital importance of learning from humanity's historical mistakes and taking proactive measures to avert potential mass protests and disruptions. The predictable patterns highlight the need to analyse and prepare for future events that may impact society. The advent of advanced language models, driven by competitive innovation, has exemplified technological progress. Notably, Boston Dynamics' intelligent environmental scanning and Tesla's prototype humanoid robot Optimus signify transformative advancements in robotics that could revolutionise industries.

However, as we contemplate another potential Industrial Revolution driven by AI, it becomes crucial to balance the benefits of technological advancement with ethical considerations. The historical context of previous industrial shifts reminds us that human values have always adapted to evolving circumstances. The challenge lies in reconciling AI's potential biases with ethical concerns, ensuring development while safeguarding against unintended consequences.

In facing the potential implications of a new Industrial Revolution, a multifaceted approach is warranted. Solutions drawn from historical precedents include investing in education and retraining to equip the workforce for changing demands. A comprehensive strategy would be to address displacement through support mechanisms, fostering research and development for new job opportunities, and collaborating with governments to formulate adaptive policies.

Moreover, promoting technological innovation while imposing responsible restrictions can aid in managing the pace of change. Gradual implementation of new technologies can facilitate smoother transitions, allowing workers to adapt and share in the benefits. By learning from history and embracing a holistic approach that balances progress with ethics, we can navigate the uncertainties of an impending Industrial Revolution, harness its potential, and mitigate its adverse effects. Through collective efforts, we can shape a future that maximises opportunities and minimise disruptions, steering towards a balanced and prosperous society.

USE OF ARTIFICIAL INTELLIGENCE AND ITS IMPLICATIONS ON DATA PRIVACY

Hannah Divyanka Doss¹

Dr. Achyutananda Mishra²

INTRODUCTION

A time once existed where there lay a clear demarcation between the functionality of machines and that of human beings. The latter has always been preferred and considered superior to machines because of their cognitive senses. However, successive technological evolutions, developments and advancements have blurred such differentiation and understanding. Artificial Intelligence (AI) has been defined as, a branch of computer science where computer programs perform and complete human-related tasks. It can include developing an understanding, critical analysis, language absorption and also logical reasoning and deducing of problems.³ The aspect though predominately existent in today's world has been narrowly understood in terms of its implication.

In layman terms, AI is the combination of the intelligence of man with the efficiency of a machine. It is a system that is alert and learns from its surroundings and experience. Such learning includes recognizing situations from past familiarities, solving complex issues, understanding and communicating and also creating own perspectives.⁴

Breaking down the term 'Artificial Intelligence', where artificial means something that is not available naturally or from nature. On the other hand, the term intelligence is the exact opposite, it is available and acquired naturally. It is the ability to obtain knowledge and skills applying them to the same or similar situations. Intelligence is and includes reasoning, insight, mental capacity, understanding, comprehension, acumen and perception. The current age that we live in has changed the common understanding that the power to think and inculcate intelligence is an attribute of a man. Today, machines are able to think and learn, owing to the age of artificial intelligence.

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1. Research Scholar, Christ University, Bangalore
 2. Professor, Christ University, Bangalore
 3. Siau, K. and Wang, W., 2020. Artificial intelligence (AI) ethics: ethics of AI and ethical AI. *Journal of Database Management (JDM)*, 31(2), pp.74-87.
 4. Kurian, N., Cherian, J.M., Sudharson, N.A., Varghese, K.G. and Wadhwa, S., 2023. AI is now everywhere. *British Dental Journal*, 234(2), pp.72-72.

AI is a field of computing where machines are programmed to perform tasks efficiently without the need of being specifically instructed.⁵ Such tasks are those tasks that are commonly undertaken and fulfilled by human beings. At the core of its functioning, AI includes neural network, natural language processing and computer vision, which have positively and effectively established its presence in mimicking human actions and responses.

Neural Network: Neural Network is an integral part of machine learning. It is regarded to be the brain or rather the clever quotient of the algorithm. The reason behind the term ‘neural’ comes from biological meaning of the term. A neuron is a cell in the brain that takes a signal and processes it to be converted into an action or reaction.⁶ Mimicking the working of a neuron in the brain, signals are processed entirely from the nerve, where information is passed along the fiber called the axon.⁷ This is triggered by an impulse only understood by the neuron if it sees or understands a certain kind of input. In terms of AI, the input here is information and the environment is the situation it tends to analyse and respond to. Such neurons are many in number in a machine and continuously analysis until the output can be given.⁸

Natural Language Processing: Natural Language Processing (NLP) is the ability of computers to process the language that is spoken and communicated to and by human beings.⁹ NLP has its own language called as ‘linguistics’. Such computational linguistics gives the computer the ability to understand words, their implications and even various accents.¹⁰ NLP has enabled computer systems to even understand the context of what is being said as many words may mean different things.¹¹

Computer Vision: Image Classification is what the computer system perceives from its surroundings. It includes detection of a person or a person/object from another picture. Trigger points or signals from every person, object or picture are what allow the computer to identify

5. Collins, C., Dennehy, D., Conboy, K. and Mikalef, P., 2021. Artificial intelligence in information systems research: A systematic literature review and research agenda. *International Journal of Information Management*, 60, p.102383.
6. Nwadiugwu, M.C., 2020. Neural networks, artificial intelligence and the computational brain
7. *Ibid.*
8. Fish, K.E., Barnes, J.H. and AikenAssistant, M.W., 1995. Artificial neural networks: a new methodology for industrial market segmentation. *Industrial Marketing Management*, 24(5), pp.431-438.
9. Nadkarni, P.M., Ohno-Machado, L. and Chapman, W.W., 2011. Natural language processing: an introduction. *Journal of the American Medical Informatics Association*, 18(5), pp.544-551.
10. Panesar, K., 2020. Natural Language Processing In Artificial Intelligence: A Functional Linguistic Perspective. *The Age of Artificial Intelligence: An Exploration*, p.211.
11. *Ibid.*

and differentiate one image from another.¹² A good example of computer vision or image classification can be the Pinterest application where images are streamlined on the basis of similarity and the option chosen by the user.

ARTIFICIAL INTELLIGENCE: INSEPARABLE PART OF DAILY LIFE

Society undermines their reliance on AI. Some feel that this concept has not yet touched their lives, whilst the other affirms that they do not depend on the same. However, AI has crept into our lives unknowingly and without alert. Face Recognition is the most basic example of AI. A phone that unlocks through the face pattern of its user is available on every smart phone. The phone is able to recognize the facial features due to computer vision to scan the face and the same is understood by the phone by machine learning to recheck if this is actually the face of the authentic user.¹³

Self-driving cars are those with autonomous drivers. Such cars enable a person to be transported from one place to another than do not require any human assistance. These cars use sensors to collect information of its surrounding to ensure safety. Sensors include cameras, radar, LiDAR and GPS. The cameras can see and hear, the LiDAR provides high resolution 3D view of how far objects are and the GPS helps to understand the location of the car. Such cars are able to process the information, analyse it and react spontaneously.¹⁴ AI helps processing such complex information and in making good judgment calls. The computer works parallel on understanding what different sensors are trying to convey and how they fit together. Such self-driving cars send information to alike cars so that they can learn from each other.¹⁵

Social media feed on platforms like Facebook or Instagram are filled with alerts, advertisements, videos and pictures that are as per the taste of the user. This is strategically done depending on the past searches or history of the user on that device. Social media companies utilize this information to reach to their customers and showcase to them what they want to see to satisfy economic goals.¹⁶ Email communication has progressively become a popular

12. Li, X. and Shi, Y., 2018, August. Computer vision imaging based on artificial intelligence. In 2018 International Conference on Virtual Reality and Intelligent Systems (ICVRIS) (pp. 22-25). IEEE.
13. Beham, M.P. and Roomi, S.M.M., 2013. A review of face recognition methods. *International Journal of Pattern Recognition and Artificial Intelligence*, 27(04), p.1356005.
14. Karnati, A. and Mehta, D., 2022. Artificial Intelligence in Self Driving Cars: Applications, Implications and Challenges. *Ushus Journal of Business Management*, 21(4).
15. Biggi, G. and Stilgoe, J., 2021. Artificial intelligence in self-driving cars research and innovation: A scientometric and bibliometric analysis. *SSRN* 3829897.
16. Bechmann, A. and Bowker, G.C., 2019. Unsupervised by any other name: Hidden layers of knowledge production in artificial intelligence on social media. *Big Data & Society*, 6(1)

means of business, educational and organizational communication. One has noticed that when writing an email, there are prompts to finish a sentence or spell checks. This is mobilized by AI enabled software and tools that use Natural Language Processing to help write better and well-constructed sentences.¹⁷

Google search is a common example of AI. Every search result is customized to the user's taste, preference and desires. All this is known by tracking, understanding and analyzing every click and website of the user. This information helps in understanding the likes and dislikes of the user and duly portraying themes that they would want to see, thereby profiling them.¹⁸ Google maps monitor live traffic conditions and compare them to previous directions and routes taken. This AI-enabled tool displays routes to the user communicating chances of weather changes after checking forecasts.¹⁹ Such assistance helps the user reach destinations fully aware of what is to come.

DEFINING DATA

AI tools and systems have positively affected our lives with ease, convenience and personalization, from indicating to a user what route they must follow to avoid traffic filled streets or even recommending a next movie one should watch to even driving a car. AI systems rely on statistical models that allow them to automatically identify and analyse patterns in data and then make proper predictions and suggestions.²⁰

Data is the foundation of AI, without which it would fail. AI requires a large amount of data to function because analyses made with small amounts of data will not be able to serve the purpose of customization and personalization. Therefore, data taken from the users is sometimes express, and number of times without user's knowledge and intention of sharing data.

Data are facts and statistics collected together for further reference and analysis.²¹ It includes quantities, characters or even symbols which a computer persons operations upon.²² Data can

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17. Dredze, M., Wallach, H.M., Puller, D., Brooks, T., Carroll, J., Magarick, J., Blitzer, J. and Pereira, F., 2008, July. Intelligent Email: Aiding Users with AI. In AAAI (pp. 1524-1527).
 18. Omar, M., Mehmood, A., Choi, G.S. and Park, H.W., 2017. Global mapping of artificial intelligence in Google and Google Scholar. *Scientometrics*, 113, pp.1269-1305.
 19. Mehta, H., Kanani, P. and Lande, P., 2019. Google maps. *International Journal of Computer Applications*, 178(8), pp.41-46.
 20. Sarker, I.H., 2022. Ai-based modeling: Techniques, applications and research issues towards automation, intelligent and smart systems. *SN Computer Science*, 3(2), p.158.
 21. Sapsford, R. and Jupp, V. eds., 1996. *Data collection and analysis*. Sage.
 22. Gallagher, M., 2009. Data collection and analysis. *Researching with children and young people: Research design, methods and analysis*, pp.65-127.

be words, measurements and also observations. Such data can be stored internally or can be transferred in the form of electric signals.²³

Data is personal. It is something about a person that is initially unknown and should be further shared with the consent of the user. Prima facie, data can be a piece of information that may not make sense in isolation. However, when grouped together, analysed and viewed in a structured format, such data can bring forward many interpretations.²⁴

The Indian Information Technology Act, 2000, defines data to include a representation of any sort of information, knowledge, facts and concepts that are either undergoing preparation or prepared in a formalized manner. Such data is being prepared with the mere intention of being processed by a computer network or system.²⁵

Data in its general form is a valuable right of an individual because of the amount of information it can carry when analysed. However, in order to seek customization and personalization, AI tends to use and harp upon personal and sensitive data which can be highly dangerous if abused by such systems and put to unregulated use.

Personal data is a subset of the concept of data. Personal data has been defined by the General Data Protection Regulation to include any data which relates to an identified or identifiable natural person.²⁶ Within personal data lies a special category of data called 'sensitive data'. A comprehensive list of those data that fall under sensitive personal data includes passwords, financial information including credit or debit card information, fingerprints, DNA, voice patterns, any physical, psychological or mental health conditions can be quantified as the same.²⁷

DATA PRIVACY: A RECOGNIZED RIGHT

Data has an established prominence in today's world because of the extent of information it can give about an individual, a group of individuals or an institution and also because on the monetary value the analysis of data can bring. Jurisdictions worldwide have understood this importance and have made legislative actions to protect this right of data within the framework of privacy.

23. Richmond, B., 2006. Introduction to Data Analysis Handbook. *Academy for Educational Development*.

24. Mikalef, P., Boura, M., Lekakos, G. and Krogstie, J., 2019. Big data analytics and firm performance: Findings from a mixed-method approach. *Journal of Business Research*, 98, pp.261-276.

25. Sec. 2, Information Technology Act, 2000

26. Art. 4(1), General Data Protection Regulation, 2018

27. Rule 3, The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011

The right to data as a privacy right is recognized as a human right by the Universal Declaration of Human Rights, 1948 (UDHR). As per the milestone document on human rights, no person can be subject to unlawful and unreasonable interference in relation to his privacy, including his home, family, honour, reputation and also correspondence.²⁸ The UDHR is a principal document in recognizing human rights of person world over. Such document has engulfed the concept of correspondence within the fold of privacy, extending rights of protection over what is said, spoken, written and communicated to other persons.²⁹

Though the Declaration came to be before automatic of computer systems were present, the Declaration still stands strong despite technological advances and evolutions. The Declaration emphasis that there cannot be any arbitrary intrusion over one's right to privacy which includes that of their interactions through word of mouth, computer systems and software enabled by AI.³⁰

The UDHR and other international conventions and instruments like the International Convention on Civil and Political Rights (ICCPR) and International Convention Economic and Social Rights (ICESR) underline the right of privacy to be intrinsic to human beings and though abstract in nature must be assured and protected by law, society and policies depending on the situations.³¹ It is an identifiable right that must be considered, acknowledged and recognized by all civil nations.

European Union

The General Data Protection Regulation, 2018 is a cornerstone legislative action to protect data privacy in the history the European Union. It encapsulates the various modes with which data privacy is interconnected to the digital world. The GDPR came into force to highlight the importance of data collection, dissemination and also the public expectation, legal and political issues of privacy.³² It identifies that data has value and must be protected by law. The GDPR is focused on protecting consumers as well as businesses from data thefts and alike unfortunate

28. Art. 12, Universal Declaration of Human Rights, 1948

29. Rengel, A., 2014. Privacy as an international human right and the right to obscurity in cyberspace. *Groningen Journal of International Law*, 2(2).

30. Woods, L., 2019. Digital privacy and Article 12 of the universal declaration of human rights. *The Political Quarterly*, 90(3), pp.422-429.

31. Rengel, A., 2014. Privacy as an international human right and the right to obscurity in cyberspace. *Groningen Journal of International Law*, 2(2).

32. Daigle, B. and Khan, M., 2020. The EU general data protection regulation: an analysis of enforcement trends by eu data protection authorities. *J. Int'l Com. & Econ.*, p.1.

situations. Penalties in the GDPR are high and stringent to avoid disobedience to the rules engulfed in it.³³

The GDPR has been widely acclaimed for the pillars it has been founded on:

1. Control- where data owners/subjects have ultimate and absolute control over their data on a digital space
2. Consent- data owners/subjects expressly consent to willingness of data being used for a certain purpose and in a specific way. This consent can be revoked at any time that the data owners wish to.
3. Simplicity- the Regulation ensure clear visibility, understanding and control over data that is processed, ensuring a uniform approach in securing data
4. Protect rights of data subjects
5. Enabling movement of personal data within the European Union and beyond
6. Addressing processing of personal data- how processing is conducted with respect to the expected outcome
7. Accountability – data controllers and processors are bound by law to be transparent and accountable for their actions in dealing with data in any stage of its processing or transferring

The GDPR has created various agencies and job positions within establishments to ensure compliance to the Regulation. Data Controllers are those who have control of the data of data subjects. Apart from ensuring compliance, it informs data subjects of how their data is being used, implementing technical measures and further enters into written agreements with data processors to enforce liability in case of any data misuse.³⁴ Likewise, Data Processors are vested with the duty of analyzing, storing and processing data. Such also includes recording process operations, implementing security measures and also inform of any data breach.³⁵ A Data Protection Officer (DPO) is appointed to oversee such compliance and has the ability to report any sort of misfeasance.³⁶

33. Vicentijevic, K., 2022. GDPR and Challenges of Personal Data Protection. *The European Journal of Applied Economics*, 19(1).

34. Art. 28, General Data Protection Regulation, 2018

35. Art. 24, General Data Protection Regulation, 2018

36. Art. 37, General Data Protection Regulation, 2018

The GDPR has also recognized rights and duties for joint and third part controllers. The former are controllers who jointly determine how, why and to what extent the data must be processed.³⁷ Each controller is responsible for compliance and joined with clear-cut objectives and roles. Third parties are those who share personal data through express agreement and are also vested with providing maximum security prerequisites, vendor risk assessments, self-certifications and independent audits.³⁸

United States of America

The Federal Trade Commission (FTC), established in 1914, is a law enforcement agency which creates policy initiatives and consumer and business education to protect consumers' personal information.³⁹ The FTC is empowered to protect consumers by enforcing any action concerning unfair or deceptive practices thereby jeopardizing privacy and data protection policies.

Law clearly highlights those data that is freely accessible by U.S citizens. The Freedom of Information Act, 1966 (FOIA) is a federal law that gives right to access federal records to persons who can lawfully do so. This right to access is recognised and enforceable by law. However, such right does not extend and apply to records held by Congress, the courts, or by state or local government agencies⁴⁰. Each state has its own public access laws that should be consulted for access to state and local records.

Fair Information Principles were articulated to protect information privacy. They are standards and guidelines for federal computer systems.⁴¹ These principles are dependent on the facts and circumstances of the firm- notice, appropriate use, individual choice, access and correction, security, minimisation, mitigation, downstream assurance, breach notification. These principles are woven into the privacy laws across the federal and state legislations.⁴²

Health Insurance Portability and Accountability (HIPAA) (1996) is the best known component with respect to data sharing initiatives. It is drafted to ensure insurance portability and

37. Art. 26, General Data Protection Regulation, 2018

38. Van Alsenoy, B., 2016. Liability under EU data protection law: from Directive 95/46 to the General Data Protection Regulation. *J. Intell. Prop. Info. Tech. & Elec. Com. L.*, 7, p.271.

39. Federal Trade Commission. 2021. *Protecting Consumer Privacy and Security*. [online] Available at: <https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy-security> (Accessed 09.08.2023)

40. 5 U.S.C. §551(1)(A), The Freedom of Information Act, 1966

41. Landau, S., 2015. Control use of data to protect privacy. *Science*, 347(6221), pp.504-506.

42. Gellman, R., 2017. Fair information practices: A basic history. *SSRN*, 2415020.

facilitate electronic communication in standard formats. There is an increase in communications of health sharing and hence such regulation is helpful.⁴³

The Gramm-Leach Bliley Act (1999) requires financial institutions and companies that offer consumers financial products or services like loans, financial or investment advice, or insurance to explain their information-sharing practices to their customers and to safeguard sensitive data. This legislation paved the way for commercial banks, investment banks and insurance companies to share information about their customers that previously did not exist.⁴⁴

The Children's Online Privacy Protection Act, 1998 (COPPA) gives parents control over what information websites can collect from their kids. It is a US federal law designed to limit the collection and use of personal information about children by the operators of Internet services and Web sites. The Genetic Identification Non-discrimination Act, 2008 prohibits discrimination on the basis of genetic information with respect to health insurance and employment. California Consumer Protection Act, 2018 (CCPA) has three basic rights- know what information of theirs is possessed by the company, right to delete, right to tell companies not to sell their information.

India

India is known to be a developing country but has contributed in large ways to the world's economy as well as the data pool. Across all strata of society and age groups, consumers of the digital age are a large magnitude of the country's population. However, it was in the year 2000, that the Information Technology Act came into force covering key issues of data protection, albeit not every matter.

The Information Technology (Amendment) Act, 2008 was the first legislative action of the Parliament that contained provisions on data protection. Data is understood to be information (factual or numerical), knowledge of concepts or instructions that have the ability to be prepared in an organised and structured manner and can be processed and saved by a computer system.⁴⁵ Likewise, the amendment added the sense of privacy with regard to sensitive personal information which is held by private intermediaries. It seeks to provide privacy by avoiding or negating any unauthorised disclosure of "sensitive personal data or information".⁴⁶

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43. Motti, V.G., Berkovsky, S. (2022). Healthcare Privacy. In: Knijnenburg, B.P., Page, X., Wisniewski, P., Lipford, H.R., Proferes, N., Romano, J. (eds) *Modern Socio-Technical Perspectives on Privacy*. Springer, Cham
 44. Murphy, M., 2013, *Privacy Protection for Customer Financial Information*, Congressional Research Service, Members and Committees of Congress
 45. Sec. 2(1)(o), The Information Technology (Amendment) Act, 2008
 46. Sec. 43A, The Information Technology (Amendment) Act, 2008

There are certain deficiencies that exist in the Information Technology Act, 2000 when dealing with artificially enabled machines. Section 43 specifically applies to body corporates. They are defined in the same section as an association of persons such as a company, firm or even a sole proprietorship when they are processing, dealing or handing any personal data or information. If such a body corporate is negligent in implementing and maintaining reasonable security practices and procedures thereby causing wrongful loss or wrongful gain of such sensitive personal data then they will be liable to pay damages in the form of compensation to the person who is the victim of it or is affected. The section only looks into sensitive personal data or information. That means it is not under the umbrella of data protection and privacy legislation.

The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 defines sensitive and personal data or Information as such personal information as may be prescribed by the Central Government in consultation with other bodies.⁴⁷ It is imperative for users to know the purpose and objective of collection of data⁴⁸ and the reasonable security measures taken to ensure compliance⁴⁹. The Telecom Regulatory Authority of India in 2020 addressed that the existing framework for protection of the personal information/ data of telecom consumers is not sufficient. To protect telecom consumers against the misuse of their personal data by the broad range of data controllers and processors in the digital ecosystem, all entities in the digital ecosystem, which control or process their personal data should be brought under a data protection framework.

INSTANCES OF DATA PRIVACY BREACH

Despite there being a number of data protection legislations, there have been a significant number of data leaks and breaches in 2023. This breach has affected a large number of people throughout the world.

ChatGPT Data Breach (2023)

OpenAI, the owner of the fast growing and popular ChatGPT, have accepted to a data breach that took place in the former part of 2023. The said breach happened because of a bug in the open-source code where the said bug created confusion in the system. The result of this confusion was that the application would deliver information to the next user who had a similar

47. Rule 3, The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011

48. Rule 6, The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011

49. Rule 8, The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011

request.⁵⁰ At this time, an estimated number of 1.2 million users of ChatGPT Plus had their first name, last name, email address, payment details including credit card type, expiration date and number were exposed.⁵¹

ChatGPT Data Breach (2023)

A report released by Group-IB, a Singapore-based cyber security firm alleged that over 101,134 accounts on ChatGPT have been compromised by selling credentials of account holders.⁵² The Federal Trade Commission (FTC) has opened strong and determined investigation to understanding the fault of ChatGPT in putting data of users at risk.⁵³

Deepfake Fraud (2023)

AI has been instrumental in online frauds and scams. Recently an elderly man from Kerala lost Rs. 40,000 to a AI-based Deepfake Whatsapp fraud where the victim had a video call with a person who impersonated to be his former colleague. The latter requested for money to meet a medical emergency.⁵⁴ AI is blended in this case of fraud because the caller used Deepfake technology, where the caller has digitally altered his facial or bodily features in order to appear as someone else. In this case, not only has there been monetary loss for the victim but there has also been a theft of identification features (personal data) of the former colleague.

Alexa Data Privacy Violation (2023)

The policy of Alexa was that parents were hindered from deleting their ward's voice and geolocation data from the server. This data was collected by the voice assistance owned by Amazon called Alexa. The reason such hindrances were present was because AI would be used

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50. Kurmanath, K. (2023) 'ChatGPT, Private Data of Premium Users Exposed' The Hindu Business Line, 25th March, <https://www.thehindubusinessline.com/info-tech/openai-admits-data-breach-at-chatgpt-private-data-of-premium-users-exposed/article66659944.ece> (Accessed on 09.08.2023)
 51. Poremba, S.(2023) 'ChatGPT Confirms Data Breach, Raising Security Concerns', Security Intelligence, 2nd May, <https://securityintelligence.com/articles/chatgpt-confirms-data-breach/> (Accessed on 09.08.2023)
 52. Dutta, A. (2023) 'Over 100000 ChatGPT Accounts Hacked! India is the worst-affected country', Hindustan Times Tech, 23rd June, <https://tech.hindustantimes.com/tech/news/over-100000-chatgpt-accounts-hacked-india-is-the-worst-affected-country-71687518415403.html> (Accessed on 09.08.2023)
 53. Zakrzewski, C. (2023), 'FTC investigates OpenAI over data leak and ChatGPT's inaccuracy'. Washington Post, 13th July, <https://www.washingtonpost.com/technology/2023/07/13/ftc-openai-chatgpt-sam-altman-lina-khan/> (Accessed on 09.08.2023)
 54. Bhati, D. (2023) Kerala man loses Rs 40,000 to AI-based Deepfake WhatsApp fraud, all about the new scam, India Today, 17th July, <https://www.indiatoday.in/technology/news/story/kerala-man-loses-rs-40000-in-ai-based-deepfake-whatsapp-fraud-all-about-the-new-scam-2407555-2023-07-17> (Accessed on 09.08.2023)

to understand the child's speech patterns and accents to generate more compatible algorithms.⁵⁵ The legislation, Children's Online Privacy Protection Act, precludes companies from saving data of children for perpetuity and for any purpose including that of training algorithms.⁵⁶

Samsung Data Leak (2023)

Samsung employees have been barred from using AI tools like ChatGPT, Microsoft Bing as there was a data leak of a source code fed by an engineer of the company on ChatGPT.⁵⁷ It is alleged that such AI generative tools tend to save data and chat history can neither be retrieved or deleted. This concern has pushed Samsung to take such a strong stand against such tools of development.

CONCLUSION

AI has inadvertently touched every aspect of human life. Its presence is now inseparable because of the value it brings in the form of ease, customization and personalization. However, through such attractive features of AI, one cannot deny its effect and impact on one's right to privacy.

By virtue of using such applications, data is being compromised, misused and abused, sometimes without the knowledge of the user. Data carries value and is an asset of every individual whether they are in the know of it or now.

There exist a large number of legislations worldwide to protect data and uphold the sanctity of privacy. However, their existence and impact is insufficient considering the number and rate at which data breaches are taking place. Considering data significantly highlighted to be valuable and intrinsic to dignified human existence, the right afforded to it still falls short of adequate protection.

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55. Reichert, C. (2023) Amazon to Pay \$30M for Ring and Alexa Privacy Violations: Tips for Protecting Your Smart Home Data, CNET, 1st June, <https://www.cnet.com/tech/services-and-software/amazon-to-pay-30-m-for-ring-and-alexa-privacy-violations-tips-for-protecting-your-smart-home-data/> (Accessed on 09.08.2023)
56. Singh, K. (2023) US says Amazon agrees to penalty for Alexa's alleged violations of children's privacy law, Reuters, 20th July, [https://www.reuters.com/sustainability/boards-policy-regulation/us-says-amazon-agrees-penalty-alexa-alleged-violations-childrens-privacy-law-2023-07-19/#:~:text=WASHINGTON%2C%20July%2019%20\(Reuters\),to%20its%20Alexa%20voice%20assistant.](https://www.reuters.com/sustainability/boards-policy-regulation/us-says-amazon-agrees-penalty-alexa-alleged-violations-childrens-privacy-law-2023-07-19/#:~:text=WASHINGTON%2C%20July%2019%20(Reuters),to%20its%20Alexa%20voice%20assistant.) (Accessed on 09.08.2023)
57. Ray, S. (2023) Samsung Bans ChatGPT Among Employees After Sensitive Code Leak, Forbes, 2nd May, <https://www.forbes.com/sites/siladityaray/2023/05/02/samsung-bans-chatgpt-and-other-chatbots-for-employees-after-sensitive-code-leak/?sh=11da7c906078> (Accessed on 09.08.2023)

Suggestions

1. Data privacy as a human right must envelop laws that are uniform world over keeping in mind the global economy we live in. Such laws must be in the form of Directives that also allows domestic jurisdictions to address the same keeping in mind their situation
2. Consent to take data must be express and authenticated. Implied consent has lost its value being hidden in terms and conditions of online agreements
3. Awareness to be spread about the value of data and how it is being misused by market players for their own benefit.

CHAPTER - 4
CRIMINAL JUSTICE AND HUMAN RIGHTS;
CHANGING DYNAMICS OF
INTERNATIONAL LEGAL ORDER

INCHOATE CRIMES IN THE CONTEXT OF PRINCIPLE OF HARM

Ugne Urbsyte¹

INTRODUCTION

As the globalization processes intensify and international law takes an increasingly important role in national criminal justice systems, more and more scientists are examining the influence of international law on the national criminal law systems². One of the outstanding topics is the increasing number of inchoate offences, which are understood as “distinct crimes” that ancillaries another criminal acts, which are their object or target³. More specifically, in order to complement with the requirements of international law, states in their criminal codes criminalized such actions as, *inter alia*, promising or offering to give and accept a bribe, luring a minor, traveling to a country for terrorist purposes. This reflects the paradigm of the “culture of control” that began to form in the 1990s, when a lot of attention is paid to the criminalization of preparatory actions⁴ and undoubtedly shows that criminal instruments are being used not only in order to respond to harm caused, but also to reduce the possibility of harm itself⁵.

The problem of this research become apparent when looking into a raft of questions and discussions that Inchoate offences raise. While some scientists are of the opinion that these crimes should not be treated as insignificant in any way compared to completed crimes⁶, others asks how can the existence of such crimes be justified in the context of human rights and how far expansion of criminal liability can go without individual’s rights being unlawful violated⁷,

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1. Legal officer, PhD student of Vytautas Magnus University.
 2. VALSAMIS MITSILEGAS, *EU CRIMINAL LAW AFTER LISBON: RIGHTS, TRUST AND THE TRANSFORMATION OF JUSTICE IN EUROPE* (Bloomsbury Publishing, 2016).
 3. Ian D. Leader-Elliott, *Framing preparatory inchoate offences in the Criminal Code: The identity crime debacle*, CRILJ 35, 80-81 (2011).
 4. Edita Gruodytė, and Ugnė Urbšytė, *Criminalization of the Promise and Offer to Give or Accept a Bribe as a Completed Criminal Offense: Compliance with the Principle of Ultima ratio*, BJLP 14.2, 125 (2121).
 5. Douglas Husak, *Inchoate Crimes and Criminal Responsibility under International Law*, J. INT’L L. & POL’Y 5, 7 (2006).
 6. MIKE MOLAN, DUNCAN BLOY, AND DENIS LANSER, *MODERN CRIMINAL LAW* 131 (Routledge-Cavendish 2003).
 7. Kimberly Kessler Ferzan, *Inchoate crimes at the prevention/punishment divide*, 48 SAN DIEGO L. REV., 1273 (2011).; JOHANES KEILER, *ACTUS REUS AND PARTICIPATION IN EUROPEAN*

even more important, “how should they be punished in comparison to the complete offence”⁸? This highlights the need to examine inchoate offences in the context of principle of harm, *ratio essendi* for the criminal offence⁹, which together with other criminal law principles “helps to frame the criminalisation process into a frame that is more appropriate in a modern liberal society”¹⁰.

This article focuses on aims to examine acts (such as promise and offer to give or accept a bribe, possession of equipment adapted to counterfeit money etc.) that essentially are only preparation or attempt to commit an offence, criminalization as completed criminal offences in the context of principle of harm. In order to achieve the set goal, the following chapters mainly use legal acts and scientific literature analysis, linguistic and systematic methods.

DEFINITION AND LEGAL REGULATION OF INCHOATE CRIMES

The Cambridge dictionary defines concept “inchoate” as “recently/partly formed” or “not completely developed or clear”¹¹, while in the context of criminal law, the inchoate offences are understood as “A step toward the commission of another crime, the step in itself being serious enough to merit punishment”¹², essentially incomplete criminal acts¹³. Such an interpretation might correspond to the preparation to commit a criminal act, which is criminalized in general part of the criminal codes of some states as, *inter alia*, obtaining and adopting resources, instrumentalities¹⁴ or “other intentional creation of the conditions facilitating the commission of the crime”¹⁵, also as an attempt to commit a criminal offence, defined as actions towards the realisation of the crime, as it is obvious that in the matter of preparation or attempt criminal act is not completely developed. However, that concept would not be entirely correct, since

CRIMINAL LAW 321 (Intercentia, 2013); Alberto Alonso Rimo, *Is Prevention Better than Cure?: The Ever-Increasing Criminalisation of Acts Preparatory to an Offence in Spain*, INT. J. CRIME JUSTICE SOC. DEMOCR.. 10.1, 8 (2021).

8. Keiler, *supra* note 6;.
9. Albin Eser, 4 *Principle of Harm in the Concept of Crime: A Comparative Analysis of the Criminally Protected Legal Interests*, Duq. UL Rev., 346 (1965).
10. NINA PERSAK, CRIMINALISING HARMFUL CONDUCT: THE HARM PRINCIPLE, ITS LIMITS AND CONTINENTAL COUNTERPARTS 71-72 (Springer Science & Business Media, 2007).
11. CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org> (last visited Jul. 7, 2023).
12. BRYAN A. GARNER (ED.), BLACK’S LAW DICTIONARY 1108, (West Group, St. Paul, Minn., 1999).
13. CHARLES P. NEMETH, CRIMINAL LAW: HISTORICAL, ETHICAL, AND MORAL FOUNDATIONS, (Routledge, 2022).
14. Criminal Code of Poland, §16, 17, Acts of Parliament, 1997 (Poland); Criminal Code of Latvia, §15, Acts of Parliament, 1998 (Latvia).
15. Criminal Code of Republic of Lithuania, Official Gazette (2000, no. 89-2741), art. 21.

inchoate offences, although considered as incomplete crimes, they are also “deemed to have been committed despite the fact that the substantive offence, that is, the offence whose commission they were aiming at, is not completed”¹⁶. In other words, inchoate crimes are criminalized in special parts of states criminal codes as independent criminal acts, although it is essentially a preparation or attempt to commit another crime, when the intended damage is not fully realized.

The development of inchoate offenses goes back to the Roman criminal law where such actions as incitation of adultery or conspiracy to blackmail adulterers were criminalized in Digests of Justinian¹⁷. After the fall of the Roman Empire, inchoate offenses did not cease to exist, and in the “dark ages” the temptation to leave one’s master was punished¹⁸. This evidences that the potential danger of essentially incomplete criminal acts was recognised for couple thousand years. Punishment not only for completed criminal offences where the resulting damage can be accurately measured has deep historical roots, although, of course, the inchoate crimes at the beginning were different from the current ones.

The criminalization of such offences, which we have in modern society, began to accelerate in 1990, when the “culture of control” started to dominate in international documents¹⁹. Among other activities, such actions as offering or promising to give or accept a bribe was defined as bribery in the Organisation for Economic Co-operation and Development Convention²⁰ and later on the same wording was established in the European Union legislation aimed at fighting corruption²¹. It is still not completely clear whether such actions can be punished as preparation or attempt to commit a criminal act, as the GRECO²² evaluation reports are ambiguous, meaning that in some reports such a regulation is considered to be in line with international legislation (for

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16. Wibke Kristin Timmermann, *Incitement in international criminal law*, INT’L REV. RED CROSS 88.864, 825 (2006).
 17. Tom Stenson, *Inchoate Crimes and Criminal Responsibility under International Law*, J. INT’L L. & POL’Y 5, 6 (2006).
 18. Stenson, *supra* note 17, at 7.
 19. JOHANNES KEILER & DAVID ROEF, *COMPARATIVE CONCEPTS OF CRIMINAL LAW* 205, (Intersentia 2016).
 20. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Organisation for Economic Co-operation and Development, Dec. 1997.
 21. Convention on fighting corruption involving officials of the EU or officials of Member States, 1997, OJ C195; Council framework decision 2003/568/JHA on combating corruption in the private sector, 2003, OJL 192/54.
 22. I. e. Group of States Against Corruption.

example, in Poland refused offer is understood as an attempt²³, while in others it is criticized²⁴. however, it is noticeable that the countries themselves often choose to criminalize new criminal acts by automatically transferring the texts of international legal acts and not looking for the most optimal ways to ensure their implementation²⁵.

Attention to preparatory actions was also drawn in legal acts against counterfeiting currency where the scope of actions that should be punished as counterfeiting was precisely defined, including the preparation and attempt to commit criminal offences, related to money laundering²⁶. In the directive for the protection of the euro and other currencies against counterfeiting by means of criminal law it was noted, among other things, that “important preparatory work to those offences, for example, the production of counterfeiting instruments and components, should be punished independently”.²⁷ Meanwhile, the report on the application of Directive 2014/62/EU revealed that states are required to criminalize the preparatory actions specified in the directive as an independent criminal act in order for the directive to be considered properly implemented and punishment for such an actions as for attempt or preparation contradicts EU law²⁸.

Without mentioned legal acts, inchoate offenses are also entrenched in directive on combating the sexual abuse and sexual exploitation of children and child pornography (criminalizing the luring a person under the age of 16²⁹, which could be considered as an attempt or preparation to commit another criminal act³⁰), in directive on attacks against information systems, where the

23. Greco Third Evaluation Round Evaluation Report on Poland on Incriminations (ETS 173 and 191, GPC2).
24. Greco Evaluation Report on Armenia on Incriminations (ETS 173 and 191, GPC 2).
25. Gintaras Švedas, *Europos Sąjungos teisės įtaka Lietuvos baudžiamajai teisei*, TEISĖ 74, 14 (2010).
26. Council framework decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro, Official Journal of the European Communities, L 140/1 of 14th of June 2000.
27. Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014, on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA.
28. Report from the Commission to the European Parliament and the Council, Application of Directive 2014/62/EU of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by means of criminal law, which replaces Council Framework Decision 2000/383/JHA (May 15, 2014).
29. Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011, on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.
30. Oleg Fedosiuk, *The Artificial Criminalization as Pathology of Legal Practice*, L. REV. 14, 32 (2016).

acquisition or possession of devices or software for criminal purposes is named as a criminal act³¹, directive on combating terrorism, encouraging criminalization of, *inter alia*, traveling, recruitment, providing and receiving training for terrorist purposes³². Criminalization of the latter's actions was justified in the practice of European Union Court of Justice while stating that in order to counter the phenomenon of terrorist entities movement between countries the prevention of the perpetration, planning or preparation of terrorist acts must be ensured.³³

In scientific doctrine, it is observed that such regulation seeks to promote the intervention of criminal law as early as possible to prevent harm before its materialization, justifying it by the presumed risk and, thus, possibly showing that security is prioritized over justice.³⁴ Such an approach is also symbolically revealed in many EU legal acts, when the term "security" is presented before the term "justice"³⁵, which presumably ranks these values in order of priority given by the EU. It can be seen that in international legislation that encourages the criminalization of inchoate crimes attention is drawn to serious moral and political problems recognizing the preventive role of governments³⁶.

Considering the above it becomes apparent that the criminalization of inchoate offences is based on the prevention of harm by intervening at early stages of criminal acts. The results of this chapter also reveal that possibly too little attention is paid to the search for optimal legal regulation that properly balances the interests of society and the perpetrator when actions, which should essentially be considered only as a preparation or attempt to commit a criminal act, are equated with a completed crime, even though the intended damage did not occur. This raises the need to analyse inchoate offenses in the context of the harm principle.

31. Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013, on attacks against information systems and replacing Council Framework Decision 2005/222/JHA.

32. Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017, on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

33. European Union Court of Justice, case no. C-573/14.

34. CHARIS PAPACHARALAMBOUS, *THE AIMS OF PUNISHMENT: THEORETICAL, INTERNATIONAL AND LAW COMPARATIVE APPROACHES* 134 (Sakkoulas publications, 2020).

35. *Ibid.*

36. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Organisation for Economic Co-operation and Development, Dec. 1997.

INCHOATE OFFENCES COMPLIANCE WITH THE PRINCIPLE OF HARM

While criminal law principles in general are understood as legal standard and guidance for proper legislation³⁷, basic criteria for criminal acts analysis³⁸, harm principle itself is called “first criminalisation filter”³⁹ and, according to Anglo-American criminal law theory, allows to justify the legality of criminalization⁴⁰. Although this chapter will be limited to the analysis of inchoate crimes compliance to principle of harm, it is important to underline that only one principle is not enough for justification of specific conduct criminalization, as other principles, for example, principle of legality or *ultima ratio*, can show that there are less instructive alternatives available⁴¹. Correspondingly, the principle of harm should be understood as one of the main justifications for state intervention in the context of criminalisation⁴² rather than the only justification. In order to be able to assess whether the action analysed in the previous chapter complies with the principle of harm, in this chapter the essential criteria of the principle of harm will be distinguished and inchoate offences will be analysed in the context of each of them.

The first criteria that should be discussed in the context of the principle of harm is an intent to cause harm. Intention or *mens rea* refers to knowledge of wrongdoing and will to accept the possibility of a certain outcome occurring.⁴³ It is noted in the scientific doctrine that intention (and that how strongly it is firmed) draws the line between unfinished and completed crime⁴⁴. While examining inchoate crimes legislation it can be seen that it tried to ensure that criminal liability for actions that are essentially only preparation or attempt to commit criminal offences arises only in the presence of intent. For example, in directive on protection of euro and other currencies against counterfeiting by criminal law intention is required element for

37. JEREMY HORDER, *ASHWORTH’S PRINCIPLES OF CRIMINAL LAW* 65 (Oxford University Press, 2016).

38. JEROME HALL, *GENERAL PRINCIPLES OF CRIMINAL LAW* 171 (The Lawbook Exchange, Ltd., 2010).

39. Nina Peršak & Jože Štrus, *Rule of Law in the EU: Justice and Criminal Law Dimensions*, ZBORNIK ZNANSTVENIH RAZPRAV SPECIAL ISSUE 79, 160 (2019).

40. ANDREW P. SIMESTER & ANDREAS VON HIRSCH, *CRIMES, HARMS, AND WRONGS: ON THE PRINCIPLES OF CRIMINALISATION* 108 (Bloomsbury Publishing, 2011).

41. Persalk, *supra* note 9, at 22.

42. Persalk, *supra* note 9, at 13.

43. Caroline M. Pelsler, *Preparations to commit a crime: The Dutch approach to inchoate offences*, UTRECHT L. REV. 4, 60 (2008).

44. O. V. Us, *Qualification of unfinished crime*, UDC 343.21, 168 (2018).

all specified offences⁴⁵. However, the problem with the perpetrator's intention in the event of inchoate crimes is that his or her intention is assessed right after the intended criminal act has started or even only preparation for it has started and potentially it may still be changed. He or she is still able to voluntarily refuse further criminal actions revealing that the intentions were not fully formed and irrevocable⁴⁶. In this context, it is important to note that scientific doctrine emphasizes the importance of voluntary refusal to commit a criminal act as a condition for avoiding criminal liability⁴⁷ and in many countries such possibility is provided when the criminal act is not considered completed⁴⁸. Case-law examples reveal that in cases, when the criminal act is stopped at the stage of preparation or attempt by the offender voluntarily stopping it, he may be released from criminal liability⁴⁹, which could be an argument that in the early stages of crime perpetrator's intention is not fully formed. On the one hand, while considering the element of intent it is important that perpetrator may change his change before completion of target offence⁵⁰, on the other hand, dealing with the subject of inchoate offences the accused is being punished only for actions he already did and already had a formed intention to do so. However, in the context of inchoate offences, when only perpetrators actions leading up to intended offence are considered as completed crime there is no room left for a change of will of the accused. For example, in case where a public officer, who had promised to accept a bribe, but later renounced his actions, began to avoid persons who offered the bribe and did not accept it, was still found guilty as court ruled that the criminal act was completed when person made a promise, and it didn't matter that later he voluntarily refused to continue this criminal act⁵¹. This means that in view of inchoate offenses, perpetrator's intention is in significant debate as it can only be assumed that the person's intention would not change and continue to be formed in the future leaving the doubt that perhaps the person would decide to no longer seek the desired harm.

45. Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014, on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA.

46. Pelsier, *supra* note 43, at 61.

47. Anzhelika Irekovna Alimova., *Distinguishing between views and roles of political and legal doctrines for developing the legal structure of stages in the commission of a crime*, LAPLAGE EM REVISTA, 218-236 (2021).

48. For example, in Germany, Spain, Lithuania, Latvia, Poland, Moldova, etc.

49. *State v. Ž. S.*, 1A-62-518/2015.

50. Margo Kaplan, *Sex Offenses and the Problem of Prevention*, THE PALGRAVE HANDBOOK OF APPLIED ETHICS AND THE CRIMINAL LAW, 712 (2019).

51. *State v. G. D.*, 2K-54/2010.

The second element is offender's actions, that led to the damage. The harm should first of all arise from harmful behaviour.⁵² The question is whether in the case of inchoate offences perpetrator's actions can be considered sufficiently intense and sufficiently close to the intended harm so that it may be evaluated in a more serious way than only as an attempt or preparation to commit a criminal act⁵³. As discussed previously, it is debatable in scientific doctrine whether, for example, actions such as promising to pay a bribe, when the person later changes his mind and refuses to do so, is an act so dangerous that it should be treated as a completed crime, leaving no possibility for the person to avoid criminal liability by voluntarily refusing to complete the crime⁵⁴ and in the context of democratic human rights, it is considered that actions such as going to the island for terrorist purposes, training terrorists or luring a child are sufficient to be considered as a completed criminal act⁵⁵. Although it is obvious that at the moment of performing the aforementioned actions, the will of the person to commit a criminal act exists, the question remains whether such actions should be considered sufficient to punish them as a completed criminal act.

The other important element is actual harm caused or the level of risk of harm. In respect to inchoate offences, the damage has usually not yet occurred and thus, criminal liability in this place performs a preventive function in order to reduce the possibility of damage⁵⁶. Although one would argue that principle of harm means that legal responsibility should incur only when the harm was actually occurred and no consideration should be given to what harm was intended or what harm might have occurred⁵⁷, other supports inchoate offences with the condition that

52. Persalk, *supra* note 9, at 48.

53. G.R. SULLIVAN & IAN DENNIS, *SEEKING SECURITY* 69 (Hart Publishing Ltd., 2012).

54. Armanas Abramavičius, et al., *Europos Sąjungos teisės įtaka Lietuvos teisinei sistemai: mokslinių straipsnių, skirtų Europos Sąjungos teisės įtakai Lietuvos konstitucinei, administracinei, aplinkos apsaugos, baudžiamajai, civilinei ir civilinio proceso, darbo ir socialinės apsaugos bei finansų teisei, rinkinys* (Vilnius: Vilniaus universiteto leidykla, 2014).

55. Caroline M. Pelser & Ezekiel Rediker, *The Incitement of Terrorism on the Internet: Legal Standards, Enforcement, and the Role of the European Union*, MICH. J. INT'L L., 123 (2014); TOM CHEN, LEE JARVIS, STUART MACDONALD *CYBERTERRORISM* 155-171 (Heidelberg, 2014); Nikola Paunović, *New EU Criminal Law Approach to Terrorist Offences*, ECLIC 2, 530-552 (2018); Cian C. Murphy, *EU Counter-terrorism Law: What Kind of Exemplar of Transnational Law*, THE CAMBRIDGE YEARBOOK OF EUROPEAN LEGAL STUDIES 21, 217-242 (2019); Margo Kaplan, *Sex Offenses and the Problem of Prevention*, THE PALGRAVE HANDBOOK OF APPLIED ETHICS AND THE CRIMINAL LAW, 709-727 (2019).

56. DOUGLAS HUSAK, *OVERCRIMINALIZATION: THE LIMITS OF THE CRIMINAL LAW* 62 (Oxford University Press, 2008).

57. Hall, *supra* note 37, at 295.

the actions taken are closely related to the risk of harm⁵⁸. It is evident that inchoate offenses are intended to prevent significant harm as, for example, huge financial damage and damage for public trust⁵⁹, physical and psichical damage for minors ⁶⁰ and etc. Furthermore, looking from the other point of view there might even be situations when inchoate offence itself causes certain level of damage. A survey conducted in 2005 revealed that 28 percent of minors, experienced solicitation perceived very or extremely upset while 20 percent felt either very or extremely afraid⁶¹, showing that luring itself may cause damage to the victims. A theoretic example illustrating the same point might be situation when public officer made a promise to receive a bribe and this situation was escalated in public. Although the bribe was not accepted yet, it would definitely damage public trust in the public institution. To conclude, when assessing the element of damage, it should not be limited to the damage that has occurred, but also to the potential for damage to occur. Although it cannot be unambiguously stated that this criterion will be violated in all cases of inchoate crimes, in each case it is necessary to assess whether the potential harm is not too far removed from the accused's action.

Lastly, while examining inchoate offences in the context of principle of harm proportionality of punishment should be also considered, as mentioned principle requires that the sanctions be proportionate to the damage caused or intended⁶². In other words, the level of harm which was inflicted to others should be returned on the offender (*lex talionis*)⁶³. Although the importance of proportional criminal sanctions is emphasized both in international legal acts⁶⁴ and in court practice⁶⁵, it can be assumed that in the case of inchoate offenses the perpetrator does not receive a proportionate punishment. Considering all of the mentioned elements, it can be seen that in the case of inchoate offences the will of the perpetrator is not as firmly formed as in the case of completed crime nor his actions are so intense. Furthermore, although there are some cases when inchoate offence may cause the damage, usually potential damage will be relatively

58. Kaplan, *supra* note 50, at 712.

59. Ciro Grandi, *The Protection of the Euro against Counterfeiting*, EUROPEAN JOURNAL OF CRIME, CRIMINAL LAW AND CRIMINAL JUSTICE, 211-251 (2013); Ferenc Sántha, *Protection of Currency by the European and Domestic Criminal Law*, EUROPEAN INTEGRATION STUDIES 14.1, 18 (2018).

60. Lauren Menzie and Taryn Hepburn, *Harm in the digital age: Critiquing the construction of victims, harm, and evidence in proactive child luring investigations*, MANITOBA LAW JOURNAL, 391-420 (2020).

61. Margo, *supra* note 50, at 714.

62. Dennis J. Baker, *Constitutionalizing the harm principle*, CRIMINAL JUSTICE ETHICS, 3-28 (2008).

63. Göran Duus-Otterström, *Do Offenders Deserve Proportionate Punishments*, CRIMINAL LAW AND PHILOSOPHY, 463-480 (2021).

64. For example, in EU Charter of Fundamental Rights, various EU directives.

65. Cases No. C-107/23, C-168/21, Court of Justice of European Union.

remote. Given into account the fact that we are talking about essentially unfinished criminal acts, it is agreeable to the opinion that criminal code should provide for specific maximums not only between different categories of crimes, but also between unfinished and completed crimes⁶⁶. Therefore, it can be assumed that prescribing the same punishment for inchoate offences as for completed offence contradicts the element of proportional punishment.

In light of the above, it can be stated that inchoate offenses do not meet the criteria of the principle of harm, and although in some cases it could be argued that the actions criminalized by inchoate offenses are dangerous enough in themselves and cause a real risk of harm, still in this case the person's intention is not fully formed, and the punishment for such actions as a completed criminal act do not meet the criterion of proportional punishment.

CONCLUSIONS AND RECOMENDATIONS

This study revealed that current international law prioritizes security and prevention over the proper balance of human rights when it aims to intervene at early stages of criminal acts, while recognizing actions that are essentially an unfinished criminal act as an independent offence. The question whether inchoate offences can be qualified as preparation or attempt to commit a criminal offence instead of punishing it as completed crime in order to complement with international regulation remains ambiguous and requires further guidelines in international level. As there are various interpretations and different approaches to criminalize preparation, attempt to commit a crime and inchoate offences across different jurisdictions, further harmonization between international and national law as well is required.

The present findings also confirmed that inchoate offences have some certain contradictions with the principle of harm. Although it can be concluded that in the context of the principle of harm, not only the resulting harm must be assessed, but also the potential harm, in case of inchoate crimes the offence is derived from preliminary steps which are often too far removed from the intended harm and the intention itself is not fully formed, as it when the criminal acts are essentially completed. Since in the case of inchoate offenses, compared to an essentially completed criminal act, both the intention and the intensity of the actions and the damage are different, the imposition of the same punishment as for a completed criminal act does not meet the criterion of proportional punishment.

Considering the above, it is further recommended that in order to complement with the principle of harm, as well as maintaining the right balance between security and justice, possibilities of punishing inchoate offences as an unfinished criminal act should be considered.

66. Ghareh Baghi, Venus, and T. R. Maruthi, *The Principle of Proportionality in International Criminal law*, ACTA U. DANUBIUS JUR, 6 (2011).

In other words, both international organizations and states implementing their requirements should look for more appropriate ways to punish essentially unfinished criminal acts as preparation or attempt to commit a criminal act, thus leaving room for the potential criminal to change his will and setting punishments proportionate to the possible harm.

A RESEARCH ON MISLEADING ADVERTISEMENTS AND CONSUMER PROTECTION ACT, 2019

Mohani Chaurasia¹

INTRODUCTION

Advertising plays a major role in our daily lives. It mostly determines our image and way of life, and it influences our thinking as well as our attitude toward ourselves. Advertising presents premade behaviors in a certain environment. It determines what is good and evil. We take as faith what others say or imply. Advertisement influences every consumer², even if they are unaware of it. We are now enslaved by scientific and technological progress, which advertising brilliantly takes advantage of. Advertisement is being famous day by day. A considerable amount of money is spent on advertising campaigns, resulting in multi-billion-dollar profits for the firms. Furthermore, it is a “first requirement product” for any firm seeking economic success, and it is growing increasingly expensive. The most ubiquitous part of integrated marketing communication is advertising, a paid type of non-personal communication. Organizations rely heavily on advertising to raise product awareness, provide information about new products, or make adjustments. However, the most significant advances in the worldwide advertising industry occurred in the twentieth century. It is not an exaggeration to state that the twentieth century was the “century of advertising”—there were substantial advances and innovations in the fields of technology and advertising at the time. In today’s world individual choices depend on advertisements³ and they are influenced by advertisements. As is common today, nearly everything was promoted, including olive oil, oxen, horses, other livestock, tools, weapons, etc.

The success of an advertisement is also determined by how the target audience sees the advertisement. Businesses and advertising agencies recognize that perception is one factor that can have a significant impact on the outcome of an advertising campaign. Advertising firms are constantly working to guarantee that the target audience receives the commercial in the desired way, ensuring that the advertisement is successful and yields the expected results. Working on client perception has thus become a difficult task for advertising companies.

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1. B.A. LL.B. (H), student. Alliance University
 2. Consumer Protection Act 2019, § 2(7)
 3. Consumer Protection Act 2019, § 2(1)

Because advertising is primarily intended to promote a product or service, there is some exaggeration in how they praise the virtues of the product. However, when it goes beyond that and purposefully tells a lie or attempts to falsify facts in order to mislead the consumer, it becomes offensive.

When an advertisement becomes misleading to the consumer

- When an individual company or product like a refrigerator claim that the refrigerator is the best in the market and makes vegetables and fruits fresh for 30 days if it fails to do so then it can be misleading to consumer throw advertisement.
- When a detergent advertisement claims that it can remove any kind of filth like oil, Greece, etc. in only one wash, it should be able to do so, and the producer should be able to prove it. Otherwise, it is a deceptive advertisement or an erroneous statement.
- If a “face cream advertisement⁴” claims that our cream helps to remove dark spots and also helps to improve skin color and fails to do so, then it is a misleading advertisement⁵.
- To understand, how consumer protection law helps consumers from such kinds of advertisements that curtail consumer rights throw their strategy of advertising.

CONSUMER PROTECTION ACT, 2019

The Consumer Affairs, Food, and Public Distribution Minister, Ram Vilas Paswan, introduced the Consumer Protection Act, 2019 to replace Copra 1986 on July 8, 2019, in the Lok Sabha.⁶ It was approved by the Lok Sabha on July 30, 2019, and the Rajya Sabha approved it on August 6, 2019. On August 9, President Ram Nath Kovind gave his approval to the law, which was then published in The Gazette of India⁷. The Act was enacted on July 20, 2020, however, some of its sections, such as the one creating the Central Consumer Protection Authority, started taking effect on July 24, 2020. The Act’s elements emphasize giving customers greater power by increasing openness. The government released a new draught of the “advertising code” in September 2020, which protects consumers from misleading commercials. Only the Consumer Protection Act gives customers the ability to take legal action against unethical and deceptive marketing and receive compensation for any damage or harm these advertisements may have caused.

4. 2020 Fair & Lovely case.

5. Consumer Protection Act 2019, § 2(28)

6. “Chapter At A Glance”. PRS India. Retrieved 14 August 2019.

7. “Gazette of India” (PDF). egazette.nic.in. Retrieved 17 June 2020.

CONSUMER RIGHTS UNDER CONSUMER PROTECTION ACT, 2019

The following consumer rights are mainly defined under the 2019 consumer protection bill.

- Be protected from the promotion of products and services that pose a risk to property or human life.
- Be knowledgeable about the standard, price, quantity, potency, purity, and quality of products and services.
- Count on having easy access to a range of products and services at affordable rates.
- Get redress for unfair and limiting business practices.

Main features of the Consumer Protection Act 2019

Although keeping some of the previous laws, the New Act has some new ones that tighten them up to further protect consumer rights and establish comprehensive consumer protection law.

- The term “customer” has been expanded under the new Act to comprise offline and online transactions made using electronic tools, teleshopping, direct selling, or multi-level marketing.
- District Commission is the new term for the district forum
- District Commissions⁸’ initial financial jurisdiction cannot exceed Rs. 1 crore, State Commissions⁹ can range from Rs. 1 crore to Rs. 10 crores, and National Commissions¹⁰ can exceed Rs. 10 crores.
- In addition to the preceding restrictions, the complainant may now file the complaint within the commission’s territorial jurisdiction where they personally work for gain or where they reside. While the State Commission still has the authority to excuse a delay, the appeal deadline has been extended from 30 days to 45 days from the date of the order.
- The State Commission must have a minimum of four members and one president.
- The opposing party must deposit 50% of the amount determined by the District Commission before bringing an appeal before the State Commission. Before, the highest limit was Rs. 25,000, but that limit has been eliminated by the new Act.

8. Consumer Protection Act 2019, § 34

9. Consumer Protection Act 2019, § 47

10. Consumer Protection Act 2019, § 58

- The primary draw of the new Legislation is complaint filing electronically. The complainant can submit his complaint online and use video conferencing to attend hearings and/or question witnesses.
- The new Legislation introduces a brand-new idea called “Product Liability.”¹¹

Guidelines are given by the central consumer protection authority on the misleading advertisement

To stop misleading advertisements and safeguard consumers who may be exploited or harmed by them, the Department of Consumer Affairs’ Central Consumer Protection Authority (CCPA) has released “Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022.”. The recommendations aim to protect customers from being deceived by unfounded claims, inflated promises, disinformation, and fraudulent claims. Such commercials infringe on a variety of consumer rights, including the right to be informed, the freedom to choose, and the right to be protected from potentially dangerous products and services.

Under Section 10 of the Consumer Protection Act of 2019, the CCPA was established to regulate issues relating to consumer rights violations, unfair trade practices, and false or misleading advertisements that are harmful to the interests of the public and consumers, as well as to promote, protect, and enforce consumer rights as a group.

Advertising that is misleading is already defined under Section 2(28) of the Consumer Protection Act of 2019. The definitions of “bait advertisement,” “surrogate advertisement¹²,” and “free claim advertisement” are provided in the current rules.

Disclaimers in advertisements are important from a customer standpoint since they limit the company’s liability. Guidelines state as a result that a disclaimer shall not seek to obscure any material information with regard to any claim made in such advertisement, the omission or absence of which is likely to mislead or obscure the advertisement’s commercial intent and shall not seek to correct a misleading claim made in an advertisement. Additionally, it specifies that the typeface used in the disclaimer and the claim’s font must match in order for it to be legally binding. A disclaimer must also be written in the same language as the advertisement’s claim.

Similarly, to this, specific guidelines are outlined for what manufacturers, service providers, advertisers, advertising agencies, and others are required to do. Guidelines aim to safeguard customers’ interests and empower them to make educated decisions based on facts rather than

11. Chapter VI of the consumer protection act, 2019.

12. It mainly works in the tobacco and liquor industry. The definition is given by Merriam Webster.

exaggeration and misleading narratives by enhancing transparency and clarity in the way advertising is released.

There are also very specific guidelines regarding penalties for breaking them. For any false advertising, the CCPA has the power to fine producers, advertisers, and endorsers up to 10 lakh rupees. The CCPA has the authority to levy fines of up to 50 lakh rupees for successive violations. For a period of up to one year, and for consecutive violations, for a period of up to three years, the Authority may forbid the endorser of false advertising from making any endorsement prohibited for a period of up to one year, with future violations subject to a three-year ban.

Cases related to misleading advertisement

Havells India Ltd. Vs Amritanshu Khaitan¹³

The distinction between comparable advertising, defamatory advertising, and misleading advertising was made clear by the Delhi High Court. Comparative advertising is beneficial and promoted in the spirit of competition, but disparaging advertising is not, and a cause of action must exist in cases of deceptive advertising, it was noted.

Nestle India Ltd. v. Union of India and Another¹⁴

The contentious and arrogant 2015 Maggi noodles case is a classic illustration of deceptive advertising, false labelling, and unfair trade practices. The Consumer Affairs Ministry complained in 2015 to the NCDRC (National Consumer Disputes Redressal Commission) over Nestle India's deceptive marketing of Maggi noodles as "healthy." After the Food Safety and Standards Authority of India (FSSAI) discovered an excessive amount of lead and the presence of MSG (monosodium glutamate) in the samples, deeming it "unsafe and harmful," the instant noodles brand Maggi was prohibited from selling the product.

Also, nestle was accused of breaking rules governing the labeling of the flavor enhancer MSG, and for the first time, an action under section 12(1)(d) of the Consumer Protection Act was taken through which both the Centre and States have powers to file complaints. Damages of Rs 640 crores were imposed.

How to file a complaint against misleading advertisement

A consumer can file a complaint on the portal designed for this purpose by the Union Ministry of Consumer Affairs or with the local regulators in your area. The portal's name is

13. Havells India Ltd. Vs Amritanshu Khaitan, 2015 (62) PTC 64 [Del]

14. Nestle India Ltd v Union of India & Anr, Civil Appeal No 14539 of 2015

Grievances Against Misleading Ads (GAMA), and its website is gama.gov.in.¹⁵ You can also complain to the Central Consumer Protection Authority by calling the national consumer helpline at consumerhelpline.gov.in (CCPA). The CCPA has the authority to take action against such advertising in accordance with the Consumer Protection Act of 2019. False and deceptive advertising is punishable by up to two years in prison and a fine of Rs. 10 lakhs. Subsequent offenses may result in harsher punishments.

Additionally, you can contact the (Advertisement Standards Council of India) ASCI¹⁶ via WhatsApp at 91-7710012345. Their Consumer Complaints Cell will investigate the veracity of the claims made and, if found to be false or deceptive, will request that the advertiser retract or change the advertisement or, if necessary, submit the matter to the regulator or the government for further action.

Through the consumer courts established by the Consumer Protection Act, you can seek compensation (from the manufacturer) if you experience any loss or injury as a direct result of such marketing. The consumer court has further authority over the manufacturer's withdrawal of such advertisements and the publication of corrective advertisements in addition to imposing compensation, punitive damages, and court costs.

- Advertisement companies made a different kinds of ads during covid-19 and they claim that if you will use our products, you will be safe from covid. If it fails to do so then what step one can take to stop such advertisements?

It is regrettable that some dishonest producers are using consumers' fear about Covid-19 to support a variety of unfounded claims. In order to persuade people to purchase a product over the previous two years, it appears that the typical trend in advertising is to somehow connect the product to some benefit vis-à-vis Covid. The ASCI, a self-regulatory organization, reviewed such Covid-related claims of a wide range of products during the fiscal year 2020–21, including clothing, paint, air conditioners, fans, laminates, plywood, and floor cleaners. The fact that only 12 of the claims made in the 332 advertising that were examined for deception could be supported by the manufacturer shows the prevalence of deception.

An expert is required to critically evaluate the claim in order to confirm its veracity. The best course of action is for you to alert the ASCI and law enforcement organizations to all of those dubious statements.

15. Department of Consumer Affairs: Grievances Against Misleading Advertisements (GAMA)

16. ASCI also has a tie up with Broadcast Audience Research Council (BARC) through which ASCI monitors nationally (National Advertising Monitoring Service – NAMS)

According to a 2022 report, over 6,000 complaints about deceptive advertisements have been filed with the Grievance Against Misleading Advertisements (GAMA), an online portal established by the Department of Consumer Affairs, in the last three years.

Anurag Thakur, the Union Minister of Information and Broadcasting, responded to a question in the Lok Sabha by stating that the web portal had received 6,154 complaints against deceptive advertising between 2019 and 2021.

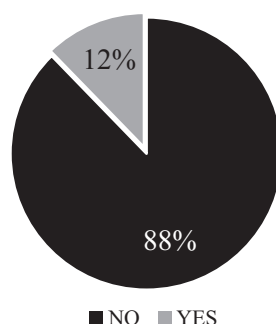
948 complaints were registered in 2021, 1790 were registered in 2020 and the highest 3416 were registered in 2019.

The Union Minister responded in writing, stating that all commercials broadcast on private satellite TV channels must adhere to the Advertising Code established under the Cable Television Networks Rules of 1994. For the purpose of ensuring that the Advertising Code is followed, the information and broadcasting ministry periodically sends warnings to broadcasters.

With effect from July 24, 2020, the Consumer Protection Act, 2019 established the CCPA (Central Consumer Protection Authority), which among other things investigates false advertising either on its own initiative or in response to complaints and/or requests from the central government.

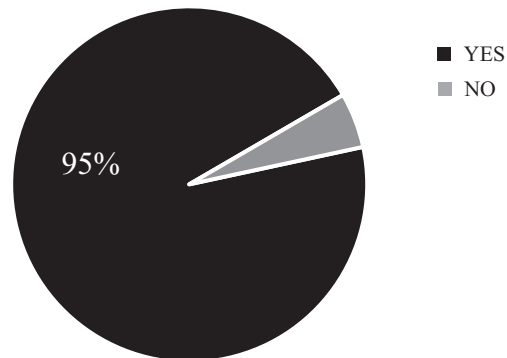
CONSUMER AWARENESS

Have you ever complained
any false advertisement?



This pie chart represents that most respondents disagree that they have ever complained about misleading advertisements, with an 88% response. 12% of respondents claim to have complained about these when faced.

Are you aware about the fact that false advertisement
is an unfair trade practice?
100 responses



This pie chart shows that 95% of the participants are aware of the fact that misleading advertisements fall under the category of unfair trade practices¹⁷. 5% of participants show unawareness.

CONCLUSION

The network with the most audience and greatest impact on the recipients is currently the media. Many incorrect and misleading commercials have affected customer behavior. They have come across numerous exaggerated or deceptive promises regarding advertised goods and services. If consumers learn that companies are lying or deceiving them in their advertising, they are likely to stop supporting the brands to which they have become devoted. As a result, our research contends that deceptive and untrue advertising alters consumers' behavior by making them distrust all forms of advertising. Consumers must go through a protracted consumer purchasing procedure in which they must confirm information before choosing whether to purchase a service or a good. This study makes the case for the significance of consumer caution while making purchases of goods and services. Injunctive relief, amending advertisements, and pursuing damages are some further remedies that a customer may be made aware of in addition to February 3, 2020. A draught of the Medicines and Magic Remedies (Objectionable Advertisements) (Amendment) Bill, 2020, was published by the ministry of health in response to complaints about deceptive advertising and the requirement that the legislation keeps up with technological advancements. Sadly, the application of these provisions to stop deceptive advertising is ineffective. As a result, in order to prevent being misled, a consumer should be fully informed about the product or service in question. They shouldn't let any information that has been presented fool them. Also, one thing that came to my attention during the entire text is that consumers' behavior and attitudes towards products are frequently the cause of misleading.

17. Consumer Protection Act 2019, § 2(47)

Currently, everyone wants to appear ideal and searches for the quickest way out. Very few individuals, however, put their attention on loving and accepting themselves. So, one should become conscious of their feelings and learn to embrace oneself if one wants to prevent being misled.

SUGGESTIONS

- Consumers should be given quick options, such as online complaint submission.
- Cost-effective and easily accessible online complaint tools are required.
- To promote fewer unfair business practices, consumers must report any wrongdoing.
- Children must be made aware of any clear health claims made for a specific category of goods.
- Regardless of the authenticity depicted in the product's commercial, it is the consumer's responsibility to review the nutritional label before making a purchase.

ADDRESSING LEGAL AND ETHICAL DILEMMAS: AI'S INTERSECTION WITH INTERNATIONAL HUMANITARIAN LAW

Hiza Nezin¹

INTRODUCTION

Artificial intelligence (AI) has surfaced as a transformative technology changing how we live and work. Its eventuality for advancing mortal weal is vast, but so are its pitfalls. AI has the implicit to revise warfare, and it's pivotal to examine the legal and ethical counteraccusations of its use in fortified conflict. International humanitarian law (IHL) is a set of rules that regulates the conduct of fortified conflict and seeks to cover civilians and combatants who aren't laboriously sharing in conflict. The development of AI has presented new challenges to IHL, which was developed before the arrival of similar technology. As AI systems come decreasingly sophisticated and integrated into munitions systems, it's essential to assess their impact on IHL.

In its attempt to attune minimizing dispensable mercenary detriment and enable necessary state action, IHL explicitly permits numerous acts that foster incidental detriment. For illustration, while designedly targeting civilians is interdicted, an attack that apropos results in mercenary detriment is indeed foreseeable, and expansive mercenary detriment may be lawful. However mercenary injury, and destruction of mercenary objects, If the commander authorizes an attack nicely determined the "collateral damage" (the anticipated mercenary deaths. The operation remains "commensurable" for legal purposes anyhow of how numerous or how poorly civilians are injured when it's carried out.

New munitions technologies complicate this pressure. First, new technologies have narrowed the list of defended mercenary objects. Not only has technology eased the shift to civic battlespaces, but the impulses to network and link service systems have also redounded in mercenary objects similar as electrical grids, telecommunications systems, and internet services decreasingly getting binary-use and therefore conceivably targetable structure. Second, this legal structure incentivizes the development and use of munitions that exploit the slate zones of permitted incidental detriment. For illustration, one of the most effective insofar as there are no given violations of transnational munitions regulations of all time is the prohibition on spotlights designed too permanently eyeless. The apparent success of this convention has led some to argue that it's a useful precedent for regulating other technologies, like independent armament systems. This convention has been "successful," still because it defines the regulated

1. BBA LL.B. Student, Alliance School of Law, Alliance University.

technology so hardly. Although the convention forbids the use of “ray munitions specifically designed, as their sole combat function or as one of their combat functions, to beget endless blindness to unenhanced vision,” it does not apply to the use of spotlights that temporarily render a person eyeless (like the splendour US forces used in Iraq, which is suspected of having dazed US service members) or those that unintentionally result in endless blindness (like other ray munitions).

Third, while decreasingly precise munitions are celebrated for contemporaneously minimizing pitfalls to colours and civilians, they also produce a perfection incongruity, given that “the capability to engage in more precise strikes may mean that a service can lawfully engage in further strikes overall, as an operation that might have formerly risked too important mercenary detriment and therefore failed the proportionality demand may be rendered recently legal”. The further attacks there are, the further mercenary detriment is permitted either as anticipated collateral damage or unlooked-for accidental detriment.

AI USED IN ARMED CONFLICTS

AI, as the technology that allows certain tasks to be performed as a substitute for human labour, can be characterized as an object to which this obligation applies, as well as the means to facilitate compliance with applicable rules of IHL. Any new technology of warfare must be used and must be capable of being used, in compliance with existing rules of IHL. This is a minimum requirement.

AI is being used in armed conflicts in various ways, including:

- **Autonomous Weapons:** Autonomous weapons or “killer robots” are being developed that can operate without human intervention. These weapons can select, and attack targets based on pre-programmed algorithms, without any human control or oversight².
- **Surveillance and Intelligence gathering:** AI is being used to collect and analyze vast amounts of data to identify potential threats, track troop movements, and detect hidden targets.
- **Cyber Warfare:** AI is used to conduct cyber-attacks and to defend against them. AI algorithms can identify and respond to potential cyber-attacks more quickly and effectively than humans.
- **Decision Support Systems:** AI algorithms are being used to support military decision-making, including target selection, battlefield analysis, and risk assessment.

2. Stuart Russell, “The Long-Term Future of AI and Law,” 114 Mich. L. Rev. 8 (2015).

- The use of AI in armed conflicts raises ethical and legal concerns. Some of the ethical concerns include:
- Human control: The use of autonomous weapons raises questions about who is responsible for their actions and how they can be held accountable for any harm they cause³.
- Human dignity: The use of AI in armed conflicts can have a dehumanizing effect on the enemy, leading to a lack of empathy and an increased likelihood of human rights abuses.
- Unintended consequences: AI algorithms can make mistakes or act in ways that were not intended by their creators, leading to unintended harm.
- Discrimination: AI algorithms can perpetuate biases and discrimination against certain groups, leading to unfair targeting or harm.

Indeed, though the primary IHL instruments were drafted before the development of AI, the compass of the IHL operation is designed to regulate all military conditioning, including new munitions, during fortified conflicts. Although IHL rules apply to AWS technologies, it isn't without challenges. Regarding LAWS and IHL regulation, the UN Group of Governmental Experts (GGE) has verified that "transnational philanthropic law continues to apply completely to all munitions systems, including the implicit development and use of murderous independent munitions systems." IHL legal concepts do provide restrictions that help shape the development of nations, but they still need to be reviewed to understand how their regulations fit together as technology develops.

Easily, technological advances and challenges ply pressure on legal morals of warfare giving rise to enterprises that new law is demanded, or other programs should be taken. The most practical challenge is that independent technologies haven't yet been banned. This is why a complete ban is likely neither possible nor can be widely accepted. therefore, some strategies for regulating AWS in the environment of fortified conflicts should be developed. On top of that, there should be clear delineations to completely understand these kinds of technologies and their specific aspects to regulate them snappily.

There are 32 nations at war now [Figure 1], and the conflicts themselves are rather diverse. Although the intensity and length of these battles vary, they all have a substantial influence

3. Kenneth Anderson & Matthew Waxman, "Law and the Long War: The Future of Justice in the Age of Terror" (2018).

on the communities they affect, can cause many deaths, and can even lead to humanitarian disasters.

COUNTRY	CONFLICT TYPE
Afghanistan	Civil War
Algeria	Terrorist Insurgency
Benin	Terrorist Insurgency
Burkina Faso	Terrorist Insurgency
Cameroon	Terrorist Insurgency
Central African Republic	Civil War
Chad	Terrorist Insurgency
Colombia	Drug War
Democratic Republic of the Congo	Terrorist Insurgency
Ethiopia	Civil War
Ghana	Terrorist Insurgency
Iraq	Terrorist Insurgency
Ivory Coast	Terrorist Insurgency
Libya	Civil war
Mali	Civil War
Mauritania	Terrorist Insurgency
Mexico	Drug War
Mozambique	Terrorist Insurgency
Myanmar	Civil War
Niger	Terrorist Insurgency
Nigeria	Terrorist Insurgency
Russia	War
Somalia	Civil War
South Sudan	Ethnic Violence
Sudan	Terrorist Insurgency
Tanzania	Terrorist Insurgency
Togo	Terrorist Insurgency
Tunisia	Terrorist Insurgency
Uganda	Terrorist Insurgency
Ukraine	War

Figure 1

OPPORTUNITIES AND CHALLENGES

Opportunities

- Early warning systems: AI can be used to develop early warning systems that can detect and predict potential armed conflicts, helping to prevent civilian casualties before they occur.
- Improved targeting: AI can help to improve the accuracy of targeting in military operations, reducing the risk of civilian casualties.
- Humanitarian assistance: AI can be used to identify areas of need and improve the delivery of humanitarian aid to civilians in conflict zones.
- Data analysis: AI can be used to analyze large amounts of data from conflict zones, providing insights into the impact of armed conflicts on civilians and helping to inform humanitarian responses.

Challenges

- Lack of data: AI models require large amounts of data to be trained effectively, and the lack of reliable and accurate data on armed conflicts can limit the development and effectiveness of AI systems⁴.
- Bias: AI systems can inherit and even amplify human biases and prejudices, leading to discrimination against certain groups of civilians.
- Ethical concerns: The use of AI in armed conflicts raises ethical concerns about accountability, transparency, and the use of lethal force.
- Technical limitations: AI systems are not yet advanced enough to fully understand complex social and cultural factors that influence armed conflicts and their impact on civilians.

Overall, the use of AI in the protection of civilians in armed conflicts presents both challenges and opportunities. It is important to approach the development and deployment of AI systems with caution and care, taking into consideration ethical concerns and the potential impact on civilians.

AI AND IHL PRINCIPLES

The obligation to admire and ensure respect for transnational philanthropic law in all circumstances is primarily deduced from Common Composition 1 of the 1949 Geneva

4. Elizabeth Quintana, "Artificial Intelligence and the Law of Armed Conflict," 163 RUSI Journal, 5, 20-26 (2018)

Conventions and fresh Protocol I but is also extensively considered as reflective of customary transnational law deduced from ‘the general principles of philanthropic law to which the Conventions simply give specific expression’. It’s also extensively accepted that this obligation encompasses both a negative duty of States to refrain from violating transnational philanthropic law, including the obligation not to encourage, aid, or help the commission of the violation, and a positive duty to take overall measures necessary to misbehave with their scores under applicable rules of transnational philanthropic law in reconciliation or in situations of fortified conflict. It’s an obligation of conduct to be exercised with due industriousness to help and suppress breaches of transnational philanthropic law, with the choice of means dependent upon the attendant circumstances. There’s no disagreement on the internal compliance aspect of this obligation indeed with the preface of new technologies, like AI.

The principles of IHL aren’t fixed in any one definitive list and so they must be linked. In nuclear munitions, the International Court of Justice (ICJ) enumerated its four ‘cardinal principles’ of IHL as distinction, military necessity, the prohibition of gratuitous suffering, and proportionality.

Humanity and military necessity

Humanity is perhaps best encapsulated in Additional Protocol I to the Geneva Conventions which provides that, always, ‘civilians and combatants remain under the protection and authority of the ... principles of humanity’⁵. Military necessity is captured in the Hague Regulations 1907 which provide that it is forbidden ‘to destroy or seize the enemy’s property unless such destruction or seizure be imperatively demanded by the necessities of war’⁶. When it comes to autonomous weapons, the practical significance of this finding is that States need not allow for the notions of humanity or military necessity as separate, free-standing, considerations from the rest of IHL. Instead, provided they observe the true principles and rules of IHL, these considerations will be accounted for automatically. While AI can be used to help achieve military objectives, it is important that these objectives remain legitimate under IHL. The use of AI should not be used to justify actions that would otherwise be illegal under IHL.

Distinction

This principle is captured in the Additional Protocol I rule that one must ‘distinguish between the civilian population and combatants and accordingly direct operations only against military objectives. However, the use of AI in targeting systems can raise questions about whether these systems can adequately distinguish between combatants and non-combatants. To adapt this

5. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 08 June 1977, entered into force 07 December 1978) 1125 UNTS 3, art 1(2)

6. *Id* at 4.

principle to the use of AI, it may be necessary to develop more sophisticated and accurate targeting systems that can make such distinctions⁷.

Proportionality

In addition to being able to distinguish a civilian from a combatant, an autonomous weapon would need to be able to comply with the principle of proportionality in IHL. This manifests in the Additional Protocol I rule that prohibits attacks that would cause collateral damage ‘excessive in relation to the concrete and direct military advantage anticipated’. With AI, it is possible that more accurate predictions of the outcomes of attacks can be made, which could help ensure that proportionality is adhered to. However, there is also a risk that the use of AI could lead to an over-reliance on technology and an underestimation of the human impact of military action⁸.

Precaution

Finally, autonomous weapons must be able to comply with the principle of precaution in attack in IHL, which comprises an amalgam of verification, proportionality, mitigation of means and methods, and the duty to provide warnings⁹. In terms of mitigation of means, these are any weapons, and they range from canisters of incapacitating gases to nuclear bombs. The precautionary obligation here is to make a ‘choice of means ... with a view to avoiding, and in any event to minimizing, incidental loss of civilian life’¹⁰. Autonomous weapons have the potential to discharge means-based precautions better than human combatants for two key reasons. Firstly, unlike human soldiers, autonomous weapons could be equipped with a wide range of different means of warfare due to their effectively unlimited physical strength. Secondly, the specifications of modern weapons are often highly complex¹¹. They cover matters such as penetrative proficiency, blast radii, duration of effect, and surface impact modelling.

To adapt these principles to the use of AI, it may be necessary to develop new guidelines and regulations that specifically address the use of AI in warfare. This could include the development

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7. Michael N. Schmitt, “Artificial Intelligence and International Humanitarian Law,” 24 *Journal of Conflict and Security Law*, 2, 173 (2019).
 8. Christof Heyns and Danielle Haas, “The Impact of Artificial Intelligence on International Humanitarian Law,” 100 *International Review of the Red Cross*, 909, 53-70 (2018).
 9. Robert Sparrow, “Killer Robots and the Concept of Responsibility,” 29 *Ethics and International Affairs*, 2 145-162 (2015).
 10. Jane Smith, “Autonomous Weapon Systems and International Humanitarian Law: A Critical Analysis,” 29 *European Journal of International Law*, 3, 875-897 (2018).
 11. Nathalie Weizmann, “Robotic Weapons and the Duty to Take Precautions in Attack,” 96 *International Review of the Red Cross*, 893, 131-146 (2014).

of ethical frameworks for the use of AI in military operations and the establishment of oversight mechanisms to ensure that these frameworks are being followed¹².

Overall, it is important that the use of AI in warfare does not undermine the principles of distinction, proportionality, and military necessity that are essential to IHL. Adapting these principles to the use of AI will require careful consideration and ongoing dialogue between stakeholders in the international community.

CONCLUSIONS AND RECOMMENDATIONS

AI and machine literacy systems could have profound counteraccusations for the part of humans in fortified conflict, especially in relation to adding autonomy of armament systems and other unmanned systems; new forms of cyber and information warfare; and, more astronomically, the nature of decision-making. According to the ICRC, when using AI and machine literacy systems, governments, races, and other relevant actors in fortified conflict must adopt a truly human-centered strategy based on legal standing and moral obligations. The use of AI in armament systems must be approached with great caution. As a general principle, it's essential to save mortal control and judgment in operations of AI and machine literacy for tasks and opinions that may have serious consequences for people's lives, especially where these tasks and opinions pose pitfalls to life, and where they're governed by specific rules of transnational philanthropic law. AI and machine literacy systems remain tools that must be used to serve mortal actors, and compound mortal decision-makers, not replace them. Keeping mortal control and judgment in AI-enabled physical and digital systems that present similar pitfalls will be demanded for compliance with transnational philanthropic law and, from an ethical perspective, to save a measure of humanity in fortified conflict. For humans to meaningfully play their part, these systems may need to be designed and used to inform decision-making at mortal speed, rather than accelerating opinions to machine speed and beyond mortal intervention. These considerations may eventually lead to constraints in the design and use of AI and machine literacy systems to allow for meaningful and effective mortal control and judgment, grounded on legal scores and ethical liabilities. An overall principle of mortal control and judgment is an essential element, but it isn't sufficient to guard against the implicit pitfalls of AI and machine literacy in fortified conflict. Other affiliated aspects to consider will be keeping pungency and trust ability or safety in the operation of the system and the consequences that affect; translucency or explaining capability in how the system functions and why it reaches a particular affair; and lack of bias or fairness in the design and use of the system. Although IHL legal principles do set limitations that aid in the growth of nations, they nevertheless need to be examined to comprehend how their rules interact with one another as technology advances. The nature of

12. Raja Chatila, "The Ethics of Autonomous Systems," 62 Communications of the ACM, 3, 54-59 (2019).

the mortal – AI commerce needed will probably depend on ethical considerations and the rules of transnational philanthropic law and other applicable laws that apply in the circumstances. Therefore, unique principles, guidelines, or regulations about the usage of AI and machine literacy for certain processes and under specific conditions may need to be added to generic concepts. In the ICRC's view, one of the most burning enterprises is the relationship between humans and machines in opinions to kill, injure, damage, or destroy, and the critical significance of icing mortal control over armament systems and the use of force in the fortified conflict. With decreasingly independent armament systems, whether AI- enabled or not, there's a threat of effectively leaving these opinions to detectors and algorithms, a prospect that raises legal and ethical enterprises which must be addressed with some urgency. The ICRC has proposed crucial rudiments of mortal control necessary to misbehave with transnational philanthropic law and satisfy ethical enterprises as a base for internationally agreed limits on autonomy in armament systems, including controls on armament parameters, controls on the terrain, and controls through mortal-machine commerce. It's clear to the ICRC that limits are demanded on the types of independent munitions used and the situations in which they're used. This mortal control-grounded approach to independent armament systems would also be material to broader operations of AI and machine literacy in decision-making in fortified conflict, where there are significant pitfalls for mortal life and specific rules of transnational philanthropic law that apply, like the use of decision support systems for targeting and detention. The IHL frame doesn't have enough laws to regulate the ongoing and forthcoming advancement of AI. Serious attention should be brought to this concern else; humanity will be forced to pay a huge price in the future. Hence the hypothesis is proved affirmative.

PUNISHMENT AS A DETERRENT TO CRIME

Sahana Arya¹

INTRODUCTION

A punishment not awarded appropriately can undermine the respect of law. Therefore, the court is obligated to impose appropriate punishment to deter other potential criminals and to meet the social necessity. We can mark that in the chapters of history that if punishments were not imposed, it would be impossible to tame the barbaric and bring about a proper social conduct. We humans always require something to fear for the correction of our thought or action. One such thing is the fear of punishment. Even in the religious texts we can witness the mention of punishment to bring about fear in the minds of people so they do not go on the wrong path. Similar format is applied by the court. With stating that every action has an equal reaction, the courts abstains individuals from committing an offence. Crimes are different, criminals committing the crime are different and the court sentencing is different. At times while adjudicating the matter the court feels that the offender who violated the law has a scope to reorient his mind, and gives him an opportunity. But there are times when the court is aware the offender will fail to revamp his thoughts. It is to be understood that the objective of the courts is to see that a crime does not go unpunished and the society is satisfied with the justice that has been served to them and not be skeptical about the judiciary.

CRIME

It is difficult to acknowledge a definition without knowing something about the subject. People often misinterpret crime to be a sin, a moral wrong or even sometimes religious, but the best way to word out crime is in legal terms as to distinguish it from sin, religious and moral wrong. Paul W. Tappan, a lawyer-sociologist defines crime as “an intentional act or omission in violation of criminal law, committed without defense or justification, and sanctioned by the laws as felony or misdemeanour”. A crime is not an act committed against an individual, it is considered as an act committed against an entire society. When a person commits a crime, he not just makes the victim feel unsafe but makes the entire society feel iffy about their safety. A similar statement was made by Justice Dalveer Bhandari in the case of *Mohd. Shahbuddin vs. State of Bihar*² in the year 2010 where he to quote stated that, “Every criminal act is an offence against the society. The crime is a wrong done more to the society than to an individual.

1. Advocate, Bangalore State Bar Council.

2. *Mohd. Shahbuddin v. State of Bihar*, 4 SCC 653

It involves a serious invasion of rights and liberties of some other person or persons". The hard truth appears to be that the judiciary has not yet been able to achieve a satisfactory definition and that it is indeed impossible to discover a legal definition of crime which can value the Indian Law. Even in the Indian Penal Code, crime is defined as an act committed by an individual which is forbidden by the State. There has been no precise definition attached to the subject.

WHAT LEADS AN INDIVIDUAL TO COMMIT CRIME

The Indian Judiciary fails to define what does a crime mean but successfully interprets what constitutes a crime. Therefore before we talk about why does an individual commit crime, it is important to understand the basic essentials required to commit one. The first element is an obvious yet was a debatable topic back then, that the act requires to be committed by a human being. Though Section 11 of IPC³ mentions a person may be a corporation, the view prevailed that a corporation does not entail any criminal liability as:

- It has no physical body of its own and can not be imprisoned thereof.
- It does not have a mind of its own and it operates through an agent and there exists no principle of Vicarious Liability under Criminal law therefore can not be held liable in capacity of a master.
- Lastly, the doctrine of ultra vires confines corporate activities and it can only be held liable for activities authorised by it.

In the case of *State of Maharashtra vs. Syndicate Transport Co. (P) Ltd.*⁴ it was held that a corporation can be held criminally liable under sections 420, 403 and 406 of IPC as it has been stated as a person under Section 11 of IPC.

The second element that is required for the commission of a crime is *mens rea* which means a guilty mind or an evil intent. There can be no crime until an unless there exists a will to do commit one. Saying so, the doctrine is embodied in the latin maxim *actus non facit reum, nisi mens sit rea* which is known to be an essential for holding a person to be penally liable. The maxim means that an act alone does not amount to guilt it must be accompanied by a guilty mind for it the act to be considered as an offence.

In *R. vs. Prince*⁵, Henry Prince was tried for having unlawfully taken an unmarried girl, who was below the age of 16 years out of the lawful possession and against the will of her

3. Person—The word “person” includes any Company or Association or body of persons, whether incorporated or not.

4. *State of Maharashtra vs. Syndicate Transport Co. (P) Ltd.*, AIR 1964 Bom 195

5. *R. v. Prince*, AIR (1875) LR 2 CCR 154

father, under the belief of her being 18 years old. The jury upon the presentation of the evidence were made aware that before the defendant took the girl away, she had told him that she was 18 years old. It was held that the prisoner's belief of the age factor of the girl was no defence. It was further argued that the statute did not accent on the factor that the knowledge of the accused about her age is necessary for conviction. Sixteen judges tried the case, where all but one unanimously held the accused guilty. Justice Bramwell said that "offences which are *malum pro habitum* it is the duty of the prosecution to establish the existence of *mens rea* but in offences which are *malum in se*⁶, *mens rea* is presumed". The real ground for conviction was that, the accused had committed an offence which was forbidden by the statute and was both, legal and morally wrong.

The third essential element of crime is *actus reus* the word *actus* means a 'deed' which is the physical result of human conduct. When criminal policy regards such a deed to be sufficiently harmful to the society, it prohibits and precludes by imposing penalty for its commission. Thus *actus reus* may be defined as 'such result of human conduct as the law seeks to prevent'⁷. The *actus reus* may be constituted by the happening of an event and may be not by the causation of the event. A deed may consist of harm and destruction of property and even of life, but it is not a crime unless the circumstances are such that it is legally prohibited.⁸

The last essential required to commit a crime is injury. The injury should be caused as defined in Section 44 of IPC⁹. When we talk about injury, there are specifically three Sections of the Indian Penal Code that deal with threats of injury- Section 189¹⁰, Section 190¹¹ and Section 385¹².

6. Moral and Legal wrongs

7. Kenny's Outline of Criminal Law (18th Edn.)

8. O.P. Srivastava's Principles of Criminal Law

9. Injury—The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

10. Threat of injury to public servant.—Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

11. Threat of injury to induce person to refrain from applying for protection to public servant.—Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

12. Putting person in fear of injury in order to commit extortion.—Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall

Now that we have stated the basic essentials required for commission of a crime, there are many reasons for an individual to commit a crime. According to the University of Glasgow, after conducting several studies have drawn the conclusion that there are two reasons why an individual commits a crime. One is the biological theories which states that some individuals are 'born criminals'. The most famous proponent of this approach is Cesare Lombroso. The second factor is the sociological theories, which suggests that crime is shaped by the external factors of the individual such as the neighborhood, peer group and the experiences.

Presently, there has been an increase in the crime rate and so has there also been an increase on the reasons for an individual to not abide by the law. Some of the reasons due to which an individual commits a crime is listed below:

1. Poverty

Poverty is considered one of the main reasons for crime. It has been noted that countries with high economic deprivation have high crime rates. Since they are unable to earn through right ways and have plenty of time, they tend to invest their time in criminal activities as it is the easiest way to earn money. According to the National crime records bureau, theft is one of the common crimes in India.

2. Peer Pressure

Peer pressure compels the teenagers to join the bandwagon. Individuals in their youth subconsciously get drawn to vices such as alcohol, drugs, smoking etc. individuals going through this age feel what they and their friends believe is right. As a result, they get involved in criminal activities.

3. Politics

The relation between politics and crime is often overlooked. This is the most important issue currently as some individuals who are involved in politics are also engaged with criminal activities. It is a known fact that many politicians have many crime records. Many youth members of political parties are given weapons to handle matters violently. Not just them, but also college students who are youth representatives are instructed too to handle political matters violently.

4. Religion

Many are deprived of practicing their own religion which further creates resentment in the minds of the believers. Even individuals belonging to the same religion quarrel over petty

be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

issues as they come from different school of thoughts. Most of the times the criminal activities committed by the religious people are the result of the instigation caused by our great leaders.

5. Background

Many a times the background of the criminal can be a factor for the commission of a crime. If an individual is surrounded around people who commit unlawful activities, it slowly grows on them too. If an individual has the responsibility to provide for the family and is expected to over do, sometimes the individual may involve themselves in criminal activities which maybe more dangerous than just theft.

6. Unemployment

With the introduction of Artificial Intelligence, the spread of COVID 19 virus, many individuals have lost their jobs. This leaves the youth frustrated and makes them resent the system that despite spending money and time on their education, they are unemployed, this makes them want to rebel and resort to crimes early in their lives.

7. Unfair Justice system

The flawed judiciary is another major reason for individuals to commit crime these days. When they think they have not received their due and have unfairly been treated by the system itself, they start to harbour negative feelings and rebel against it. People try to get justice on their own when they know the State may fail to do so. By doing so, they take the law in their own hands and in their journey to get what they deserve and believe, commit more crimes.

THEORIES OF PUNISHMENT

Every individual is different and with the society evolving so is the commission of crime. Therefore there should be different theories of punishment with the evolution of the commission of crime and criminals. There are six theories of punishment mentioned under the Indian Law.

1. Retributive theory

The concept of this theory, is based on the latin maxim *lex taloinis* which means the law of retaliation. The simplest way to interpret the theory is that it is based off the principle of ‘an eye for an eye and tooth for a tooth’. It is difficult to mark when this theory was used as a philosophy of justice. But it seems to appear alongside restorative principles in law codes such as the Code of Ur-Nammu (250 BCE), laws of Enshunna (2000 BCE) and even the Babylonian code of Hammurabi (1750 BCE). The concept in the present day can also be seen in many religious texts such as in the Bible, in the chapter of Adam and Eve and in Quran where Allah is addressed as the lord of retribution and also in the Hindu texts as Karma.

The Supreme Court has recently laid down that “the principle of an eye for an eye or better known as the retribution theory is neither proper nor desirable. Mandate of Section 354(3) CrPC¹³ does not approve of it¹⁴.”

2. Deterrence theory

From the deterrence theories drawn by various research philosophers such as Thomas Hobbes, Cesare Beccaria and Jeremy Bentham, there are three major components comprising of this theory;

- **Severity:** it means the degree of the punishment. It is a known fact that too severe a punishment is unjust, but if it is not severe, it would not deter the offender from committing a crime.
- **Certainty:** simply means, making sure that the offender is punished when ever there is a commission of a crime. According to Beccaria, a classical theorist, individuals if aware their undesirable acts will be punished, will refrain from committing them in the future.
- **Celerity:** the punishment for any crime must be swift in order to have more effect to deter crime.

In short, the deterrent theorists believed that ‘if the punishment is severe, certain and swift, a rationale person will measure his loss and gains before engaging himself in a criminal activity and will be deterred from violating the law, if the losses weigh high than the gains.’

3. Preventive theory

Preventive theory is also called as the “theory of disablement” as it prevents the crime by disabling the criminal. An offender here is disabled either with the sentence of death, imprisonment for life or transportation of life so as to prevent the repetition of the crime. It was quoted in the case of *Mohd. Giasuddin vs. State of A.P* that the infliction of harsh punishment is a relic of past and regressive time.¹⁵

In the case of *Dr. Jacob George vs. State of Kerala*, the Supreme Court held that “a punishment should be deterrent, retributive, preventive reformatory and compensatory. The application of one theory over the other is not the sound way of adjudicating a matter. Each

13. When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

14. *Sk. Ishaque v. State of Bihar*, AIR (1995) 3 SCC 392: 1995 SCC (Sri) 534

15. *Mohd. Giasuddin vs. State of A.P.*, AIR (1977) 3 SCC 287: 1977 SCC (Cri) 496

theory of punishment should either be used individually or should be incorporated on the merit of the case. It also went on to say that “every saint has a past and every sinner has a fortune”. Even a offender is a part of the society and reforming the offender and correcting them to help them re-establish themselves in the society too should be the responsibility of the law, as prevention of crime is the ultimate goal of the society and law”.

Another landmark case to underline this theory is the case of *Surjit Singh vs. State of Punjab* where one of the accused policemen, entered the house of the deceased with an intention to commit rape but failed to do so as one of the sons of the deceased shouted for help. Another accused suggested the policeman to kill the deceased. The accused therefore was held liable under Section 450 of the IPC. On the contrary, the death penalty or capital punishment is more of a temporary form of disablement.

4. Incapacitation

The term simply means, punishment given to an offender for a criminal act with an intent to refrain it from occurring again in the future by building fear in the minds of the future generations. Incapacitation happens by removing the offender from the society temporarily or permanently or by any other means which will restrict him due to physical inability. One of the most common ways to practice incapacitation, is incarceration, sometimes death penalty may be applied too.

5. Reformatory theory

Reformatory theory of punishment, as the name suggests, speaks for itself, it is based off the principle- “Hate the sin, not the Sinner”. It strongly believes that there is a possibility for an offender to reform himself. It believes that crime is a psychological disease which is caused due to various anti-social activities. State has to rehabilitate rather than to avenge, and focus of interest should be individual and goal should be to salvage him for society¹⁶. In modern times, much emphasis has been laid upon reformation and rehabilitation of an offender, specially in the case of juvenile. Some delinquent and criminals fail to appreciate and respond to it whereas the other half, educate and train themselves to re-establish themselves in the society. Nineteen accused were charged for Section 325/149 IPC and sentenced till the rising of court awarded by High Court, was held to be inadequate. However, keeping in view the present theory of penology which talks about the reformation of the accused, the court considered it improper to enhance the sentence and send all persons to jail. However they were asked to pay a sum of Rupees 2000 to the complainant party.¹⁷

16. *Maru Ram vs. Union of India*, AIR (1981) I SCC 107: 1981 SCC (Cri) 68

17. *Gulab Singh vs. Yuvraj Singh*, AIR (1995) Supp (4) SCC 623: 1996 SCC (Cri) 68

6. Expiatory theory

Expiation means, the act of expiating, reparation, amends and compensation. According to this theory, the wrongdoer is asked to compensate the victim as a form of punishment. This form of punishment was prevalent more during the ancient criminal law.

PUNISHMENT UNDER IPC

Sections 53 to 75 of the Penal code talk about punishments, where five sections (Section 56, 58, 59, 61 and 62) have respectively been repealed. In the above sections, different types of punishments, rules for their assessment and enhancement in a subsequent offence have been mentioned. The different kinds of punishments have been laid down in Section 53 of the code.

1. Capital punishment (death sentence)

Capital punishment has always been the concern of humans and is quite a debatable subject. Many states are trying to tackle the question of abolition or retention in their respective jurisdictions. There are presently many States that have imposed a temporary prohibition in imposing the capital punishments. Whereas States like India apparently still award and execute death penalty. The Stockholm Declaration of 1977 favoured its abolition. In 1998 capital punishment was abolished for all offences in England, who would award it for crimes such as Treason.

When we talk about death penalty, the most common section under IPC used to award it is Section 302¹⁸. The constitutionality came up again in the case of *Bachchan Singh vs. State of Punjab*¹⁹ where it held that “it is not violative of Article 21 of the constitution. Two questions are to be considered by the court while awarding death penalty, firstly, something uncommon about the crime that life imprisonment does not suffice and secondly, whether there is no choice but to award death penalty even after noting the mitigating factor in favour of the offender²⁰.” It was quite evident that the court was trying to articulate a doctrine of ‘cry for justice’.

2. Life imprisonment

Life imprisonment is considered as an alternate to death penalty in accordance to the code. Imprisonment for life for purpose of calculating of fraction, which is mentioned under

18. Punishment for murder.—Whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine.

19. *Bachchan Singh vs. State of Punjab*, AIR 1980 (2) 684

20. *Machhi Singh and others vs. State of Punjab*, AIR (1983) 957

Section 57 of IPC²¹ is applicable only in cases where there is a need to calculate the fraction. Imprisonment for life is considered to be termed as imprisonment till the remaining periods of the convict natural life. Whereas according to the Indian law, after the term of 14 years, a person can be released on accordance of good behavior. In *Union of India vs. Sriharan*²², the court dealt with two major issues, firstly, whether there can be two appropriate governments in a given case under Section 432 (7) of the CrPC and secondly, whether Union or State has primacy for the exercise of the power of commutation?

Imprisonment is further bifurcated- simple imprisonment and rigorous imprisonment. Simple imprisonment is imposed to small offences which do not require manual labor. Whereas on the other hand, rigorous imprisonment requires hard manual labor and is granted for severe offences. The court may also grant partly simple and partly rigorous.

3. Solitary confinement

This kind of imprisonment can only be awarded to persons punished with rigorous imprisonment with a condition that the whole period of solitary confinement should not be exceeding 3 months. Rules to be followed while awarding solitary confinement is prescribed under Section 73²³ and Section 74²⁴ of the Penal Code. It was challenged²⁵ for being violative of Article 14, 19 and 21 of the Constitution where it was stated by the Supreme Court that, ‘the liberty to move, mix mingle talk, share company with co-prisoners if substantially curtailed would be violative of Article 21 unless curtailment has the backing of law.’

4. Forfeiture of property

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21. Fractions of terms of punishment—In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.
 22. *Union of India vs. Sriharan*, AIR (2016) 7 SCC I: (2016) 2 SCC (Cri) 695
 23. Solitary confinement.—Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say— a time not exceeding one month if the term of imprisonment shall not exceed six months; a time not exceeding two months if the term of imprisonment shall exceed six months and 1[shall not exceed one] year; a time not exceeding three months if the term of imprisonment shall exceed one year.
 24. Limit of solitary confinement.—In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.
 25. *Sunil Batra vs. Delhi Admn.*, AIR (1978) 4 SCC 494: 1979 SCC (Cri) 155

The forfeiture of property is usually awarded under the civil law, but at times it is the courts discretion if they would want to award this form of punishment. It simply means taking the property of the accused. This form of punishment can be ordered under Section 126²⁶, 127²⁷ and Section 169²⁸ of the IPC.

5. Fine

Section 510 of IPC²⁹ provides lowest fine upto rupees 10 but with a condition of imprisonment for a time period of 24 hours. When there is mention of no specific amount that is to be imposed, it is at the discretion of the court keeping in mind that it should be reasonable and not excessive. Under the penal Code, Section 65 to 70 deal with the rule of imprisonment that is required to be followed in default of fine. The imprisonment awarded by court for the default is not a substitute for fine, but is awarded as a punishment for the default.

DETERRENCE

The term deterrence means to abstain from doing a wrongful act. Deterrence is usually considered as a preventive effect for the potential offenders. People often fear to commit an offence because they are aware about the repercussions they may have to face. The fear of punishment not just ensures that a person does not commit an offence again but also keeps a check on all other persons having malafide intentions. Even after it having many weaknesses and being highly criticised, it has not been removed from the policy of modern punishments.

26. Committing depredation on territories of Power at peace with the Government of India.—Whoever commits depredation, or makes preparation to commit depredation, on the territories of any Power in alliance or at peace with the 1[Government of India], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.
27. Receiving property taken by war on depredation mentioned in sections 125 and 126.—Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.
28. Public servant unlawfully buying or bidding for property.—Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.
29. Misconduct in public by a drunken person.—Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

Deterrence theory goes way back to the Romans and the Colonial America. The deterrent principle has been prominent throughout history in the systems of punishment³⁰. It was for this reason that crucifixion was employed as a means of execution by the Romans.

In a case of rape of girl aged around 13 years by her own father, the Supreme Court confirmed the conviction and adjudicated the matter with life imprisonment, which was imposed by the trial court and confirmed by the High Court. It is a fact known since memoir that a crime is not just committed against an individual but is committed against the society. Therefore it is the responsibility of the State to ensure the societies comfort. The Supreme Court further held that no sympathy or leniency is to be showed as it is an unpardonable act. It was, to quote stated that if the protector becomes the violator, the offence assumes a greater degree of vulnerability³¹.

Deterrent theory is related to the sociological school of jurisprudence as this School of thought creates a relationship between the society and law. It is utilitarian in nature, which means that a man if commits an offence is not just being punished for the wrongful act committed by him, but also being punished to make sure that this sets an example to those who want to commit an offence and make aware of the repercussions. Various studies conducted by Thomas Hobbes (1588-1678), Cesare Beccaria (1738-1794) and Jeremy Bentham (1748-1832), created the foundation of the modern deterrence in criminology.

In a case the judge quoted that “The legislature several times have amended the Indian Penal Code and the Evidence Act and made the penal laws more rigid for dealing with and punishing offences committed against women. Assuming, they would have a deterrent effect. Such stringent laws would have a deterrent effect on the offenders only if they were stringently implemented by the law courts to achieve the legislative intent³²”.

CONCLUSION

The policy which the court apparently is presumed to practice is that a punishment that is to be awarded must be appropriate and proportional to the gravity of the crime committed. What would be the adequate punishment in a given case has to be decided by the court on the bases of the facts and circumstances involved in the particular case. Where minimum and maximum sentence are prescribed, both are imposable depending on the facts of the cases. It is for the court, after recording conviction, to impose appropriate sentence.³³

30. THE DETERRENCE CONCEPT IN CRIMINOLOGY and LAW JOHN C. BALL (Vol 46| issue 3)

31. *Siriya vs. State of M.P.*, AIR (2008) 8 SCC 72: (2008) 3 SCC (Cri) 422

32. *K. Prema S. Rao vs. Yadla Srinivasa Rao*, AIR (2003) 1 SCC 217: 2003 SCC (Cri) 271

33. *Bhupinder Singh vs. Jarnail Singh*, AIR (2006) 6 SCC 277: (2006) 3 SCC (Cri) 101

In my opinion, deterrent form of punishment should be practiced more as it is important to build fear in the minds of the public so as to the commission of the crime does not occur. Until the criminal minds are not aware that their actions are going to be punished, they will not reform them. Every criminal is different so is the crime, but the common factor among all is them being confident of the fact that the court will show leniency. Therefore, it is important to curb this thought by making aware of the repercussions that are to be faced on the commission of a crime. This not just creates fear among criminal minds but also assures the society that they do not have to be dubious about the judiciary and its sentencing policy. Overseas, states have adopted the principle of the 'three strike law', whereas though we have the principle of the rarest of rare doctrine, the court at most instances refuses to put it into action. Sometimes the court feels that some cases are not rare and commonly occur and do not require the implementation of this principle. One such instance is the Nirbhaya case, where the court felt that such cases and circumstances are common, and the doctrine need not be applied. The court could have applied the doctrine irrespective of the fact that the offender was a juvenile. I reckon that this was not just unjust on the family of the victim, but it also failed to deter criminal minds wanting to commit a similar offence. The court, while imposing the sentence without considering the effect it may have on the social order in many cases is in reality a futile exercise. Justice, according to me when delayed, not just amounts to denying the victim justice, but also fails to deter the future offenders of law. Punishment should be a check to crime and minds of the criminal and not a way to be excused or be pardoned.

CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022 – IS IT FIT ENOUGH TO SERVE THE PURPOSE OR MERELY A PIECE OF LEGISLATION

Ashish Pathak¹

Gauri Kaushik²

“The natural liberty of a man is to be free from any superior power on earth, and not to be under the will or any legislative authority of a man, but only to have the law of nature for his rule”.

-Samuel Adams

INTRODUCTION

The framers of the Indian Constitution were aware of the fact that the people of India had suffered a lot due to the British rule over a long period of time. They knew that it is high time when Indian people should be given the recognition and establish their own identity in front of the world. Their attempt to include the provisions related to fundamental rights in the Indian Constitution³ is a reflection of the fact that they wanted to bring out the Indians from the chains of slavery, agony and poverty. Their zeal to incorporate these provisions was necessary to help the Indian citizens approach the judiciary if their basic rights were violated. Basic rights, here, include Fundamental Rights like Equality, Freedom, etc. For e.g. incorporation of Article 21 in the Indian Constitution gives the right to life and personal liberty to every person⁴. It means that the State⁵ cannot make any law which is in violation of the Right to life or personal liberty of any person in India and if it wants to do so, it should have a procedure for doing so which must be established by law. The court in *Maneka Gandhi vs Union of India*⁶ said that the procedure must be just, fair and reasonable. Meaning thereby, the State cannot arbitrarily use its powers to make laws that are in violation of Article 21 of the Indian Constitution, specifically talking about Rights related to Life and Personal Liberty and if it decides to do so, the law so made will

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1. Assistant Professor, Alliance University, Bengaluru
 2. BA.LLB (Hons), 4th Year student, Alliance School of Law, Bengaluru
 3. INDIA CONST., art. 12-35, 1950
 4. INDIA CONST., art. 21, 1950
 5. INDIA CONST., art. 12, 1950
 6. *Maneka Gandhi v. UOI* (1978) AIR 597, 1978 SCR (2) 621

be declared to be null and void by the judiciary as per Article 13(2) of the Indian Constitution.⁷ Knowing the importance of the chapter of Fundamental Rights in Indian Constitution, the Parliament of India as well as the State Legislatures has been reluctant in making laws that violate or abridge the Fundamental Rights of the people. However, there have been some instances where the Parliament over exercised its powers and went on to make laws that are in violation of the Indian Constitution. In that case, the Supreme Court was left with no option but to declare the law as unenforceable. For ex. National Judicial Appointments Commission was constituted in 2015 but the Supreme Court struck down the law citing it to be in violation of Article 14 of the Indian Constitution which talks about Right to Equality.⁸

However, in 2022, the Parliament of India came up with a new law on the Identification of accused persons and made it necessary for the accused as well as convicted persons to give measurements for identification and investigation in criminal matters. This Act has been named as *Criminal Procedure (Identification) Act, 2022*. It has replaced the previous law named “*Identification of Prisoners Act of 1920*”. It came into force on August 4, 2022. Over a period of time, it was felt that the outdated law framed back in 1920 should be repealed and a new law citing various ‘dynamic’ provisions meeting the current needs of the society, be introduced. The 87th Report of the Law Commission of India⁹ in 1980 had recommended certain changes to be made in the Identification of Prisoners Act, 1920.

THE LAW: AN ANALYSIS

An interpretation of the Act gives us an idea that the drafters have tried to tilt the balance in favour of the investigating authorities. The provisions have been added with a view to give the police authorities and prison officers a chance to collect relevant information of an individual who is accused of committing a crime or has been convicted by a court.

Section 3 - The framers of the new law have included provisions related to ‘taking of measurement’ of certain class of persons under Section 3 of the Act¹⁰. It says that any person who has been convicted of an offence punishable under any Indian law, or ordered to give security for his good behavior or maintaining peace under Section 117 of the Code of Criminal Procedure, 1973, or is arrested under any Indian law including preventive detention, will have

7. INDIA CONST., art. 13(2), 1950

8. INDIA CONST., art. 14, 1950

9. 87th Report of Law Commission of India <https://www.latestlaws.com/library/law-commission-of-india-reports/law-commission-report-no-87-identification-prisoners-act1920> (last visited Aug. 6, 2023)

10. Criminal Procedure (Identification) Act, 2022, § 3, Acts of Parliament, 2022 (India)

to give his measurement to the prescribed authorities in the Act¹¹. However, any person who has not committed any crime against a woman or a child and has been arrested under any law which is enforceable in India cannot be compelled to give his biological samples under this Section. So, this Section is focusing upon “measurements” more than anything else. “Measurements” includes ‘finger impressions, palm- print impressions, foot-print impressions, photographs, iris and retina scan, physical and biological samples along with their analysis, behavioral attributes including signatures, handwriting or any other examination referred to in Section 53 or Section 53 A of the Code of Criminal Procedure, 1973’.

The question that arises here is what is the use of getting identification details in a criminal trial? The answer is twofold: Firstly to establish the identity of a person who has committed the crime against the person who is being arrested and secondly to establish a previous conviction of a person by identifying suspected repetition of similar offences by a person.¹²

Section 4 – It has given the power to the National Crime Records Bureau for collecting, storing and preserving measurements of individuals. For investigating, prosecuting, detecting and preventing any offence, the NCRB has been given the powers under this Section to not only preserve and protect the measurements but also share relevant criminal records with law enforcement agencies. The record so maintained can be retained in electronic form for a period of seventy-five years from the date of collection of such measurement.¹³ However, the measurements of a person who has been acquitted or discharged without trial and not been punished previously for any crime under the law of the land shall be destroyed from the records unless the magistrate, in writing, directs otherwise.

Sections 5 and 6 - Section 5 of the Act empower a Magistrate to order a person for giving his measurements to the police or prison authorities. Section 6 says that if a person who has been asked by the Magistrate to give his measurements hesitates or willfully resists in giving his measurements shall be held liable for committing an offence under Section 186 of the Indian Penal Code¹⁴. The Section also allows the authorities to collect measurements in a way that is mentioned by the statutory law, if the concerned person is unwilling to give the same. Ultimately, this provision leaves no option for the accused or the convict but to give his ‘measurements’ to the concerned authorities for the purposes of ‘investigation’ and ‘identification’. This may look

11. *Ibid.*

12. Trishee Goyal, *What is the Criminal Procedure (Identification) Act, 2022?*, THE HINDU.COM, (August 2, 2023, 12:19 PM), <https://www.thehindu.com/news/national/explained-what-is-the-criminal-procedure-identification-act-2022/article65757554.ece>

13. Criminal Procedure (Identification) Act, 2022, § 4, Acts of Parliament, 2022 (India)

14. The Indian Penal Code, 1860, § 186.

‘impressive’ for the purposes of collecting information and coming on to a conclusion, but can be challenged in the Courts being in violation of certain legal principles.

Section 7 – This provision of the Act bars the institution of any suit or proceeding against any person who has performed his duties with a *bonafide* intention¹⁵.

Sections 8 and 9–Section 8 has given the powers of making rules to the Central as well as the State Government for carrying out the purposes of the Act and this may include the *modus operandi* adopted under Sections 3 and 6, as well.¹⁶

Section 9 has given the power of removing difficulties only to the Central Government and not the State Government. It says that the government has the powers to bring certain rules/provisions to remove the difficulties that have arisen in giving effect to the provisions of this Act, but they should not be inconsistent with the current provisions of the Act.

PRESENT LEGISLATION: ISSUES

Right to Privacy

Part III of the Indian Constitution talks about Fundamental Rights that are very much essential for an individual to sustain. There are many rights that are fundamental in nature like Equality, Freedom, Freedom of Religion, against exploitation, etc. More importantly, these rights are considered as basic rights because they are directly linked with the upliftment and survival of a person. For e.g. Article 21 of the Indian Constitution prohibits the State from making any law which may abridge *Right to Life or Personal Liberty* of an individual. It can be done only when the law so made is as per the procedure which is established by law. This procedure must be just, fair and reasonable. However, if we go through the provisions of the Criminal Procedure (Identification) Act of 2022, we will see that the Act somewhere violates the Right to Privacy of an individual which has been declared to a part of Fundamental Right under Article 21 of the Indian Constitution by the Supreme Court of India¹⁷. However, the Supreme Court of India didn’t make it an absolute right and declared certain restrictions on it, but its scope and the applicability was extended to give certain ‘freedom’ to the people. The Court went on to say that for privacy intrusive measure to be constitutional, the tests of ‘necessity and proportionality’ must be respected. In simple words, the State while compromising with the implied Fundamental Right of privacy, must show that the measures or the steps that are being taken by it are necessary in present circumstances and proportionate with the purpose or the aim that is proposed to be achieved by it. The inclusion of certain new things like

15. Criminal Procedure (Identification) Act, 2022, § 7, Acts of Parliament, 2022 (India)

16. Criminal Procedure (Identification) Act, 2022, § 8, Acts of Parliament, 2022 (India)

17. K.S. Puttaswamy and Others vs. Union of India, AIR 2017 SC 4161

‘behavioral attributes’ and ‘analysis’ has raised the risk of going beyond simply recording of ‘core’ measurements. The legislature has failed to determine and define transparently the purposes for which the ‘measurements’ can be processed as it has only talked about recording core measurements without having any need of their forensic examination. This will limit the scope of their use by the authorities.¹⁸

Different Offences

Secondly, the Act talks about taking measurements of those persons also who have been convicted or arrested for less than one year by any court. It is difficult to understand the ‘intent’ of the legislature while including this provision in the law as it fails to establish the difference between ‘minor; and ‘major’ offences. More importantly, it will be burden on the judiciary to tackle with the results of the ‘measurements’ of those persons who have been arrested or convicted for an offence, the punishment of which is less than one year. It will also be problematic for the authorities and their system to maintain records in such large numbers. The procedural criminal laws of India have differentiated between petty and major offences and therefore this provision of bringing two different kinds of offences on the same platform doesn’t appear to be fit or satisfactory in the current law.

Self-Incrimination

Thirdly, Article 20(3) of the Constitution talks about the doctrine of self – incrimination.¹⁹ This doctrine prohibits the courts and well as the police officials or any other authority, to compel a person from giving any testimony or evidence against himself or saying anything which may go against him. In the landmark case of *Nandini Satapathy vs. PL Dani*,²⁰ the Supreme Court went on to define and interpret the right to remain silent. The Court said that no person can be asked to answer questions that are self-incriminating. However, the apex court in the case of *State of Bombay vs. Kathi Kalu Oghad*²¹ held that non-communicative evidence has got no connection with the doctrine of self-incrimination. The doctrine of self-incrimination is in conflict with Section 6 of the Act as it makes a person liable under Section 186 of the Indian Penal Code if he is unwilling to give his measurements to the authorities empowered under the Act. On one hand, the Constitution doesn’t allow anyone to give any kind of statement unwillingly that may go against him, and on the other hand, we have a provision in the current law which ‘empowers’ the police officials and the prison authorities to take measurements even without the consent of the accused or the convicted person.

18. *Supra Note 10*

19. INDIA CONST., art. 20(3), 1950

20. *Nandini Satapathy v. PL Dani* 1978 AIR 1025, 1978 SCR (3) 608

21. *State of Bombay v. Kathi Kalu Oghad* 1961 AIR 1808, 1962 SCR (3) 10

Accused (arrested) and the Convict- Same platform

Fourthly, the Act fails to differentiate between an ‘accused’ and a ‘convicted’ person. The new law has placed both of them on the same platform, as a person accused of committing an offence as well as a person who has been convicted by the Court will have to give their ‘measurements’. Indian laws have been relying on the principle that ‘everyone is innocent until proven guilty’, so taking of measurements of an individual only on the basis of accusations which may turn out to be false later, infringes his right to life and personal liberty under Article 21 of the Indian Constitution, which is a Fundamental Right available not only to the citizens of India but also foreigners as well. There can be a counter argument on this that the collection of ‘measurements’ will somewhere, help in coming on to a definite conclusion, but it is to be understood that the probability is not cent percent. A person who has been declared to be a culprit by a court should be always kept separate from the person who has not been declared so.

Lack of safety

The Act fails to provide any safeguard regarding the misuse of sensitive information of persons to any third party. In absence of any structured Data Protection laws, it is very difficult for a party to avoid misuse of his personal information. Information that is going to be stored for seventy-five years can be transferred to any third party making it problematic for the person who has given his information. The Act should have included provisions making it compulsory for NCRB and other authorities to take adequate steps for ensuring the safety of the information so collected from the persons. Liability of the authorities should have been ensured if they fail to take proper care in this respect.

CONCLUSION AND SUGGESTIONS

The parliament came up with this law to effectuate the investigation and identification process and lay down certain rules and regulation for the authorities who have been given the task of collecting the measurements and samples. However, the legislators missed certain important points that could have been inserted in the Act for making it a ‘balanced’ law. In my opinion, the Parliament could have included the following provisions in the Act:

1) It was necessary for the legislators to come up with a defined, structured and transparent procedure for accused and convicted persons separately. They could have mentioned that the accused persons can be asked to give their ‘measurements’ only when they have been found guilty in the preliminary inquiry conducted by the magistrate. The ‘vast’ powers given to the police and prison authorities have left the scope for them to misuse their powers, more often than not. Taking measurements of a person only on the basis of accusations cannot be justified as it leads to unnecessary interference in his private life.

2) The Act could have defined the ‘need’ for collecting the ‘measurements’ of persons in a comprehensive and satisfactory manner. It has simply mentioned the words ‘investigation’ and ‘identification’ without explaining the conditions and circumstances in which these terms can be interpreted. By doing so, the legislators have failed to put a ‘check’ on the working of the police and prison authorities. These two words can be interpreted by the authorities as per their convenience while taking the measurements, which may create problems for the person giving the ‘measurement’.

3) The categorization of offences under Section 3 of the Act for giving biological samples and compelling only those persons who have committed an offence against a woman or a child or are accused of committing an offence, the punishment of which is above seven years cannot be said to be ‘reasonable classification’. By categorizing a crime on gender basis, the legislators have failed to establish the problems faced by male victims. For e.g. if a person is accused of causing hurt to a male aged 25 years, he cannot be compelled to give his biological sample because the offence has been committed against a male and not a female or a child and the punishment is also below seven years in the Indian Penal Code²². There was no need to categorize the offences on the basis of either gender, tender age or even the time limit of punishment.

4) Section 7 of the Act gives immunity from any kind of suit or other proceeding against any person who has *bonafidely* performed his duties under the Act. It means that if the prison officer or the police officer is successful in proving the fact that he has taken action against any person while taking his ‘measurements’ and it was done with a *bonafide* intention, irrespective of the fact that he has transgressed his limits or the ‘undefined’ powers related to investigation and identification given to him, no one can file a suit against him for getting compensation. More importantly, the Act has not defined the term ‘other proceeding’ anywhere making it difficult for the victim (who is an arrested or a convicted person in this case) to get justice against a prison or a police officer who has ‘over exercised’ his limits.

5) Last but not the least, making a person liable under Section 186 of the Indian Penal Code if he refuses to give his measurements is a flawed concept. There was no need to include this provision in the Act because it is totally against the Constitutional principles. Section 6(2) of the Act gives the message which appears to be ‘compelling’ in nature for the person who has to give his measurements. Instead of including this Section, the legislators could have advocated for having a panel of psychologists or teachers who could have explained the importance of the procedure to the accused or convicted persons. Even, if they were not willing to give their measurements, the approach should have been based on tactics that are justified, humane and

22. The Indian Penal Code, 1860, § 323.

intra vires the provisions of the Constitution. Detaining them for three months only because of the fact that they are unwilling to give their measurements is also against the judgment of the Supreme Court given in the case of *Selvi vs. State of Karnataka*²³ in which the Supreme Court had said that neuroscientific investigative techniques adopted by the investigating authorities without the consent of the accused/convict violate Articles 20(3) and 21 of the Indian Constitution. It is also against the principle of just, fairness and reasonableness as propounded by the Supreme Court of India in *Maneka Gandhi's* case way back in 1978.

23. *Selvi v. State of Karnataka*, AIR 2010 SC 1974

GUARDING PRIVACY AND RIGHTS: EXAMINING THE ROLE OF TECHNOLOGY IN CRIMINAL JUSTICE

Hariharaprasadh K.R.¹

Ajay Bharathi²

INTRODUCTION

The rapid growth of technology³ has had a serious impact on society, including the judiciary body. As technology is on growth, it has become both a boon and a bane for society. Technological advancement offers exciting potential for crime detection, prevention, and justice administration, they also pose serious concerns about privacy and individual rights.

Throughout this paper, we will look at the way technology is utilised in criminal justice, including its impact on crime detection, surveillance⁴, and evidence gathering. Furthermore, we will investigate the privacy concerns that have arisen in the digital era, including potential invasions of personal privacy, potential implications for constitutional rights, and the existing legal and regulatory frameworks in place to address these concerns.

ETYMOLOGY

Technology in Criminal Justice Overview

Technology⁵ is now a crucial driving element in influencing India's criminal justice setting. The incorporation of technology techniques has given law enforcement and judicial systems a new dimension. Technology's influence may be seen across the criminal justice system, from sophisticated surveillance systems that monitor public locations to AI-powered 'technologies

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1. Student (BBA.LLB, 2019-2024), Alliance University, Bangalore, India
 2. Student (BBA.LLB, 2019-2024), Alliance University, Bangalore, India
 3. Adam, Defining "Technology", Technology Liberation Front (Apr. 29, 2014), <https://techliberation.com/2014/04/29/defining-technology/#:~:text=Technology%20may%20be%20defined%20as,3> (last visited Aug. 6, 2023).
 4. Thomas Norman, Integrated Security Systems Design (Second Edition) (Science Direct 2d ed. 2014).
 5. Adam, *Defining "Technology"*, TECHNOLOGY LIBERATION FRONT (Apr. 29, 2014), <https://techliberation.com/2014/04/29/defining-technology/#:~:text=Technology%20may%20be%20defined%20as,3>.
 6. John R. Allen, *How artificial intelligence is transforming the world*, BROOKINGS (Aug. 10, 2023), <https://www.brookings.edu/articles/how-artificial-intelligence-is-transforming-the-world/>.

that aid in predictive policing. Furthermore, technological improvements have simplified case administration, allowing for more effective communication and information exchange between law enforcement agencies and courts. While these advancements have the potential to increase the efficiency and accuracy of investigation⁷s and judicial procedures, they also pose difficult problems regarding privacy, data security⁸, and the possibility of bias in algorithmic decision-making.

Technological Advancement in Criminal Justice

Technological innovations have completely changed the Indian criminal justice system, ushering in a new era of efficiency and capability. One major accomplishment is the widespread use of biometric identification, such as fingerprints and facial recognition, for reliable suspect identification and criminal record management. Furthermore, through integrated databases and online file systems, digitalization has altered case management, speeding up administrative processes and eliminating paperwork. Predictive analytics and data mining aid law enforcement in identifying crime patterns and enabling preventative responses. CCTV cameras and position tracking, for example, aid in monitoring public locations and improving situational awareness. Furthermore, e-Courts programmes have digitalized judicial proceedings, allowing for distant hearings and the filing of electronic evidence.

Surveillance Technology and Their Implications

Surveillance technologies⁹ have advanced drastically, reshaping the landscape of law enforcement and public security in India. The extensive use of surveillance techniques such as Closed-Circuit Television (CCTV) cameras, facial recognition systems, and biometric databases¹⁰ has considerably improved law enforcement agencies' ability to monitor and respond to criminal activity. These technologies provide advantages such as crime prevention, faster suspect identification, and better situational awareness. However, the fast expansion of monitoring technologies presents complex issues that are profoundly felt in the Indian setting.

One of the most serious consequences of modern technology concerns individual privacy rights. The massive network of surveillance cameras that blanket public spaces, as well as the possible use of facial recognition systems, call into question the fundamental constitutional

7. Code Crim. Proc., 1973, § 2

8. Thorin Klosowski, *How to Protect Your Digital Privacy*, *The New York Times - Breaking News, US News, World News and Videos*, THE NEW YORK TIMES (Aug. 1, 2023), <https://www.ny-times.com/guides/privacy-project/how-to-protect-your-digital-privacy>.

9. THOMAS NORMAN, *INTEGRATED SECURITY SYSTEMS DESIGN*, (Science Direct 2014).

10. Jason, Biometric, *Biometrics: definition, use cases, latest news*, THALES GROUP (Aug. 2, 2023), <https://www.thalesgroup.com/en/markets/digital-identity-and-security/government/inspired/biometrics>.

guarantee of privacy. The threat of permanent surveillance invading persons' private life has spurred concerns about the necessity for protections to prevent unjustified intrusions while maintaining law and order. The massive amount of data acquired by surveillance technologies poses serious data security concerns. It is critical to protect this data from breaches, leaks, or unauthorised access in order to prevent misuse and potential violations of citizens' rights. Personal information in the wrong hands could lead to identity theft or other forms of abuse, emphasising the importance of rigorous data protection procedures.

Furthermore, there is also concern about potential biases embedded in surveillance technologies, particularly facial recognition systems. These technologies, if not carefully monitored and calibrated, can exhibit biases that disproportionately affect marginalised people. Biased monitoring in a varied society like India, where social and economic inequities abound, could prolong, and worsen these imbalances, weakening trust in law enforcement.

Biometrics and Identification System

Biometrics and identity systems have experienced major changes in India, where they play a critical role in influencing numerous parts of the criminal justice scene. The use of biometric technologies such as fingerprint scanning, iris scanning, and facial recognition has transformed identification and record-keeping operations. These technologies allow law enforcement agencies to accurately establish and verify persons' identities, resulting in more efficient criminal investigations and increased security measures. Biometric identification techniques, in particular, have transformed criminal record governance. Law enforcement authorities can quickly match fingerprints or other unique identifiers to criminal records by developing extensive databases of biometric data, assisting in the speedy identification of suspects and the linkage of persons to previous criminal activity. This breakthrough speeds up investigations, minimises the possibility of wrong arrests, and improves overall accuracy in identifying people in the criminal justice system.

However, the incorporation of biometric technologies in India creates significant difficulties. While these systems provide unmatched accuracy, they also raise ethical and legal concerns about privacy and data security¹¹. The enormous gathering and storage of biometric data necessitates severe safeguards to prevent unauthorised access, breaches, and potential exploitation of sensitive personal data. Furthermore, to ensure that biometric data is only utilised for legitimate law enforcement objectives and not for unauthorised monitoring, clear legislative frameworks and thorough oversight are required.

11. Thorin Klosowski, *How to Protect Your Digital Privacy*, *The New York Times - Breaking News, US News, World News and Videos*, THE NEW YORK TIMES (Aug. 1, 2023), <https://www.nytimes.com/guides/privacy-project/how-to-protect-your-digital-privacy>.

PRIVACY RIGHTS AND CONCERNS

Privacy and rights are fundamental pillars of any democratic society, and they are especially important in the criminal justice system. In the context of criminal justice, privacy refers to a person's right to govern and preserve their personal information, as well as their right to be free from undue intrusion into their private matters. Rights, on the other hand, are the legal safeguards and entitlements afforded to individuals in order to ensure fair treatment, due process, and justice within the system. As technology becomes more integrated into criminal justice practises, striking a balance between effective law enforcement and respecting citizens' privacy becomes increasingly important. Surveillance technologies¹², data mining¹³, and biometric identification systems have the potential to violate individuals' private rights by constantly monitoring and collecting data.

Right to Privacy in India

In India, the right to privacy has evolved to play an important role within the framework of individual liberties and constitutional protections. The right to privacy is not expressly stated in the Indian Constitution; nonetheless, it is anchored in a broader understanding of fundamental rights, like Article 21, which ensures the right to life and personal liberty. Indian courts have recognised the right to privacy as an intrinsic feature of the right to life and personal liberty over time, widening its scope to include many aspects of an individual's private sphere.

In 2017, the landmark case of Justice K.S. Puttaswamy (Retd.) v. Union of India¹⁴ represented a turning point in the acknowledgement of the right to privacy as a basic right. In a unanimous ruling, the Supreme Court of India stated that the right to privacy is inextricably linked to the right to life and personal liberty established in Article 21¹⁵. The court emphasised the importance of privacy in ensuring personal liberty, dignity, and individuality.

The recognition of the right to privacy has profound effects in a variety of fields, including the criminal justice system. It restricts government entities, including law enforcement, from collecting, retaining, and using personal information. Surveillance technology, data-gathering procedures, and information-sharing mechanisms are scrutinised to ensure that individual's privacy rights are not jeopardised. This is especially important in criminal investigations¹⁶ when the balance between effective law enforcement and respecting individuals' privacy is important.

12. THOMAS NORMAN, INTEGRATED SECURITY SYSTEMS (Science Direct 2014).

13. Günther Schuh, 81 *Data Mining Definitions and Applications for the Management of Production Complexity*, PROCEDIA CIRP 874, (2019).

14. Puttaswamy and Anr v. Union of India, (2017) 10 SCC 1.

15. INDIA CONST., art. 21.

16. Code Crim. Proc., 1973, § 2,

Constitutional Rights

Individual freedom, dignity, and independence are guaranteed by constitutional rights to privacy and human rights, which are pillars of a democratic society. The right to privacy is fundamental to human rights, preventing individuals from unjustified intrusion into their personal life, protecting personal data, and preserving their capacity to make intimate decisions without excessive interference. This right is articulated as an essential component of the broader spectrum of human rights in various international human rights instruments, such as Article 12 of the Universal Declaration of Human Rights and Article 17¹⁷ of the International Covenant on Civil and Political Rights. Individuals should be protected from state and non-state entities who seek to limit personal liberties, according to constitutional rights for privacy and human rights. Many democratic nations' constitutional frameworks enshrine these rights to safeguard citizens from arbitrary state actions and to uphold their fundamental worth. For example, the United States Constitution's Fourth Amendment protects against unreasonable searches and seizures, emphasising the significance of privacy even in the context of police enforcement. Similarly, the European Convention on Human Rights enshrines the right to respect for private and family life, giving individuals a legal basis to fight any violation of their privacy.

The right to privacy is linked to a broader range of civil, political, economic, social, and cultural rights. Personal autonomy is connected with the opportunity to freely express oneself, participate in public life, access education and healthcare, and pursue economic possibilities, according to this synergy. Human rights discourse has evolved to confront the difficulties of the digital age, including topics such as surveillance, data protection, and the ramifications of new technology.

Potential Threats to Privacy in Technology Adoption

Technology's rapid growth¹⁸ in multiple areas of modern life has given unprecedented convenience and efficiency, but it has also generated an abundance of potential risks to human privacy. Personal data collecting and exploitation is one of the most serious concerns. Individuals accidentally give up substantial amounts of personal information when they use digital platforms, social media, and online services, which can then be harvested, analysed, and utilised for targeted advertising, profiling, and even manipulation. As individuals' online behaviours and preferences are methodically documented and commodified, this data-driven surveillance economy has the potential to erode personal privacy.

17. INDIA CONST., art. 21.

18. Adam, *Defining "Technology"*, TECHNOLOGY LIBERATION FRONT (Apr. 29, 2014), <https://tech-liberation.com/2014/04/29/defining-technology/#:~:text=Technology%20may%20be%20defined%20as,3>).

Furthermore, the rapid growth of surveillance technologies poses a serious danger to privacy. CCTV cameras, facial recognition ¹⁹technology, and geolocation tracking have all become commonplace techniques used by both governments and private companies. While these technologies are useful for public safety and crime prevention, they also allow for constant monitoring of individuals' movements and activities, potentially creating an Authoritarian surveillance state in which citizens' every move is scrutinised.

Another severe concern is the increasing frequency of data leaks and cyberattacks. Personal data is vulnerable to hacking and unauthorised access as it is stored in digital repositories, potentially leading to identity theft, financial fraud, and privacy violations. Organisational mishandling of sensitive information can have serious effects, harming not just an individual's privacy but also their financial security and personal reputation.

Furthermore, algorithmic bias and discrimination are major ethical concerns in technology adoption. Algorithms, particularly those utilised in decision-making processes, might unintentionally perpetuate biases in the data on which they are trained. This can lead to discriminatory effects, disproportionately affecting marginalised communities and infringing on their legal rights to fair treatment and equal protection.

The interconnection of smart devices and the Internet of Things (IoT) might expose individuals to unlawful surveillance. Data collected from smart gadgets such as smart home assistants, wearable technologies, and connected vehicles can develop detailed profiles of people's everyday activities, raising concerns about the possible exploitation of this information.

CHALLENGES AND CRITICISM

The incorporation of technology in the field of criminal justice has generated an abundance of new issues and concerns that must be carefully considered. One of the most significant challenges is the possibility of bias and discrimination embedded inside technical systems. Algorithms employed for predictive policing, risk assessment, and sentencing recommendations might perpetuate historical biases, resulting in disproportionate targeting and unequal treatment of marginalised communities. This raises worries about the continuation of structural disparities and the degradation of the legal premise of equal protection.

Furthermore, reliance on technology may result in the dehumanisation of justice. Automated decision-making procedures may diminish the value of human judgement and empathy, potentially compromising the delicate considerations required in judicial proceedings. Critics

19. John R. Allen, *How artificial intelligence is transforming the world*, BROOKINGS (Aug.10, 2023), <https://www.brookings.edu/articles/how-artificial-intelligence-is-transforming-the-world/>.

contend that removing human judgement might lead to rigid, one-size-fits-all solutions that fail to take into consideration the intricacies of particular instances.

Data security ²⁰and privacy breaches are a major problem, as the growth of digital platforms and networked systems exposes sensitive information to greater risk. Personal data mismanagement can result in identity theft, unauthorised monitoring, and unauthorised access to confidential case facts, jeopardising both the privacy of those affected and the integrity of current investigations.

likewise, the rapid speed of technological advancement may outpace the existing legal and regulatory frameworks. As a result, emergent technologies may not be fully addressed in existing regulations, resulting in gaps in accountability and supervision. The potential for technology to outstrip the ability for legal and ethical reflection highlights the importance of taking early steps to promote responsible and transparent technology adoption.

Critics also say that a legal professional's over-reliance on technology could hamper the development of critical thinking and problem-solving skills. Overreliance on algorithms and automated systems may limit the ability of lawyers, judges, and law enforcement agents to engage extensively with case specifics, potentially affecting the quality of legal analysis and decision-making.

Data Security and Breaches

In today's increasingly digitised world, data security and the threat of breaches have become critical considerations. The repercussions of data security are especially deep in the field of criminal justice, where sensitive information is at the centre of investigations²¹, trials, and legal proceedings. Data breaches pose a substantial risk, possibly exposing secret case details and personal information of individuals involved, as well as jeopardising existing investigations. Because of the incorporation of technology in criminal justice, from digital case management systems to biometric databases, an infinite number of sensitive data is stored electronically, making it vulnerable to cyberattacks, hacking, and unauthorised access.

The impacts of data breaches in the criminal justice sphere go far beyond privacy violations. They have the potential to damage public trust in the justice system, undermine law enforcement agencies' legitimacy, and even jeopardise the rights of individuals involved in cases. Personal information such as criminal records, witness testimony, and evidence can be misused or distorted, potentially leading to miscarriages of justice or false accusations.

20. Thorin Klosowski, *How to Protect Your Digital Privacy*, THE NEW YORK TIMES (Aug. 1, 2023), <https://www.nytimes.com/guides/privacy-project/how-to-protect-your-digital-privacy>.

21. Code Crim. Proc., 1973, § 2,

Bias and Discrimination

Bias and prejudice in the use of technology have arisen as major ethical concerns in a variety of fields, including the criminal justice system. While technology promises objectivity and impartiality, it can inadvertently reinforce and even intensify societal biases. Algorithmic bias in technologies such as predictive policing, risk assessment tools, and facial recognition systems can lead to disproportionate targeting and unfair treatment of marginalised communities in the context of criminal justice.

These technologies' algorithms frequently rely on past data, which can reflect existing biases in law enforcement practises and society standards. When biased data is used to train algorithms, the algorithms learn and replicate the biases, resulting in discriminating results. Predictive police algorithms, for example, may disproportionately target neighbourhoods with a history of higher crime rates, perpetuating over policing and contributing to cycles of monitoring and enforcement against already marginalised people.

Facial recognition systems²²' accuracy rates have shown racial and gender biases, resulting in misidentifications that disproportionately affect persons of colour and women. Such mistakes might lead to innocent people being wrongly accused of criminal activity or being subjected to unnecessary police attention. This poses serious ethical and human rights concerns, as the potential repercussions of algorithmic prejudice are far-reaching and can lead to systemic unfairness and uneven treatment in the eyes of the law.

Misuse of Technology

The potential for technology to be abused for surveillance and control is a worrying aspect of its integration into several aspects of modern life, particularly criminal justice and governance. While technology has many advantages, its use in monitoring and control mechanisms raises concerns about the erosion of privacy, civil liberties, and human rights. Misuse of surveillance technologies²³ in the criminal justice world can result in unrestrained government power, restricting individual liberties, and undermining due process.

To monitor citizens' activities, governments and authorities have increasingly relied on sophisticated surveillance methods such as facial recognition systems, GPS monitoring, and data analysis algorithms. Originally intended for crime prevention and public safety, these technologies can be exploited to target political dissidents, social activists, and marginalised communities, crushing dissent and prolonging authoritarian authority. The possibility of mass

22. John R. Allen, *How artificial intelligence is transforming the world*, BROOKINGS (Aug.10, 2023), <https://www.brookings.edu/articles/how-artificial-intelligence-is-transforming-the-world/>.

23. THOMAS NORMAN, INTEGRATED SECURITY SYSTEMS DESIGN, (Science Direct 2014).

surveillance and indiscriminate data collecting ²⁴can chill free expression by discouraging individuals from openly participating in public discourse for fear of punishment.

Furthermore, monitoring technologies have the potential to increase socioeconomic disparities and discrimination. Over policing in specific neighbourhoods, fuelled by biased data and algorithms, can disproportionately affect marginalised communities, resulting in unlawful arrests, racial profiling, and erroneous convictions. This perpetuates inequalities and weakens trust in law enforcement.

To address the misuse of technology for surveillance and control, a multifaceted approach is required. Strong legislative frameworks that balance security concerns with individual rights are essential, as are independent accountability procedures. Public knowledge, lobbying, and participation are required to hold authorities accountable for the responsible and ethical use of surveillance technologies. Furthermore, collaboration among technology developers, civic society, and governments is required to create safeguards that prevent technology from being misused while keeping its potential for beneficial influence.

PROTECTION OF PRIVACY RIGHTS

Protection and privacy rights ²⁵are fundamental values in modern communities, defending individuals' freedom, dignity, and personal liberties. These rights are established in different international human rights documents and constitutional frameworks, confirming each person's fundamental worth and the right to control over their personal information and private places. Individuals' right to privacy protects them against unjustified interference into their personal lives, encouraging the opportunity to make intimate decisions without undue interference. It includes both informational privacy, which ensures the security of personal data, and geographical privacy, which protects against invasive surveillance. These rights are especially important in the digital age, when technology-driven data collection ²⁶and surveillance has become ubiquitous.

Policy Recommendation

Policy recommendations emerge as a critical requirement in the field of technology's incorporation into criminal justice systems to ensure that developments are used responsibly

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24. Wen-Tao Wu et al., *Data mining in clinical big data: the frequently used databases, steps, and methodological models*, 8 MILITARY MED. RES., 4 (2021).
 25. Thorin Klosowski, *How to Protect Your Digital Privacy*, THE NEW YORK TIMES (Aug. 1, 2023), <https://www.nytimes.com/guides/privacy-project/how-to-protect-your-digital-privacy>.
 26. Günther Schuh, 81 *Data Mining Definitions and Applications for the Management of Production Complexity*, PROCEDIA CIRP 874, (2019).

and ethically. To begin, strong data protection regulations must be enacted, setting specific guidelines for the collecting, storage, and sharing of personal information. These rules should prioritise permission, openness, and the right to be forgotten, giving people control over their data. Furthermore, thorough policies addressing algorithmic transparency and accountability are required to reduce biases and discrimination inherent in automated decision-making processes. Ensuring that criminal justice algorithms are auditable, explainable, and routinely evaluated can help to foster trust and sustain fairness. Policies must also establish strict supervision systems to avoid the exploitation of surveillance technologies. Independent bodies should be given the authority to oversee the implementation of such technologies, ensuring that they adhere to constitutional norms and human rights standards. Investing in technical literacy and training for legal professionals and law enforcement employees is also critical in equipping them with the skills needed to manage the intricacies of technology while respecting justice values. Finally, establishing collaborations among technology developers, legal experts, civil society organisations, and marginalised populations can result in the co-creation of laws that are inclusive, rights-respecting, and responsive to societal demands.

Legal Structure

Improving the legal structure in light of the impact of technology on criminal justice is a critical factor for upholding the ideals of justice, fairness, and accountability. Legal frameworks should be adaptable and flexible, capable of quickly adopting technology advances and tackling fresh difficulties. This includes regular revisions to existing laws as well as the development of new legislation that expressly addresses issues such as data privacy²⁷, admissibility of digital evidence, and algorithmic transparency. Furthermore, legislative institutions should prioritise the preservation of individual rights and privacy, ensuring that technological deployment does not violate fundamental liberties. This can be accomplished by clearly defining approved technology²⁸ use cases and establishing tight criteria for data handling, retention, and sharing. Improving the legal structure also entails encouraging international collaboration to handle transnational issues. Cybercrime and data breaches frequently cross national boundaries, necessitating harmonised regulatory frameworks and international cooperation. Mutual legal assistance treaties, information-sharing agreements, and cross-border cooperation procedures are required to tackle cyber threats effectively while maintaining jurisdictional sovereignty. Collaboration among legal professionals, technologists, legislators, and civil society is critical

27. Thorin Klosowski, *How to Protect Your Digital Privacy*, THE NEW YORK TIMES (Aug. 1, 2023), <https://www.nytimes.com/guides/privacy-project/how-to-protect-your-digital-privacy>.

28. Adam, *Defining "Technology"*, TECHNOLOGY LIBERATION FRONT (Apr. 29, 2014), <https://tech-liberation.com/2014/04/29/defining-technology/#:~:text=Technology%20may%20be%20defined%20as,3>).

for improving the legal structure. This multidisciplinary approach has the potential to result in informed legislation that considers both the potential benefits and risks of technology. Finally, an improved legal structure can strike a balance between exploiting technology's promise and defending fundamental rights, encouraging a modern, just, and responsive criminal justice system to the complex issues of the digital era.

Public Education and Awareness

Promoting public education and awareness is an important tactic in the context of the integration of technology into criminal justice systems. Educating the public on the implications, benefits, and risks of technology aids in the development of an informed citizenry capable of actively engaging with and shaping the trajectory of technological advancements. Public awareness campaigns can highlight the importance of technology in criminal justice, emphasising how it can speed up processes, increase transparency, and even improve access to justice. These initiatives can also offer insight on potential hazards such as privacy violations, prejudices, and data security ²⁹challenges. Individuals are empowered to make educated decisions about their digital interactions, understand their digital rights, and advocate for ethical technological practises as knowledge grows. This information spreads beyond individuals to community groups, civil society organisations, and local institutions, developing a shared understanding of the complexities surrounding technology's involvement in the criminal justice system.

In addition, public education campaigns can establish a culture of transparency and accountability in technology deployment. Citizens who are well-informed about the use of surveillance technology³⁰, data management practices³¹, and automated decision-making processes are more inclined to demand strict monitoring and safeguards against abuse. As a result, law enforcement agencies and legislators are encouraged to create and implement responsible practices, ensuring that technological integration adheres to ethical and legal requirements.

Considering the incorporation of technology into criminal justice is fundamentally linked to the public interest, public education and awareness are critical components in ensuring that these innovations are used to benefit society as a whole. Individual empowerment, the ability to critically engage with the implications of technology, and the promotion of a culture of informed consent all contribute to the development of a technologically literate and engaged

29. Thorin Klosowski, *How to Protect Your Digital Privacy*, THE NEW YORK TIMES (Aug. 1, 2023), <https://www.nytimes.com/guides/privacy-project/how-to-protect-your-digital-privacy>.

30. THOMAS NORMAN, INTEGRATED SECURITY SYSTEMS DESIGN (Science Direct 2014).

31. Wen-Tao Wu et al., *Data mining in clinical big data: the frequently used databases, steps, and methodological models*, 8 MILITARY MED. RES., 4 (2021).

citizenry capable of navigating the complexities of the digital age while advocating for the preservation of fundamental rights and ethical considerations.

CONCLUSION

In India, the dynamic interplay between technology and criminal justice highlights a complicated and developing terrain. Technology integration has the potential to revolutionise the efficiency, transparency, and accessibility of the criminal justice system by providing breakthroughs in surveillance, identification, case management, and court proceedings. This transition, however, is not without problems and ethical implications.

Throughout the course of this study, the underlying subject of privacy and rights emerges as a critical concern. As technology becomes more intertwined with law enforcement and legal proceedings, protecting individuals' privacy and respecting their fundamental rights becomes increasingly important. Striking a balance between public safety and individual liberty is a sensitive endeavour, especially in the face of potential bias, discrimination, and the misuse of technology for surveillance and control. Policy recommendations that are based on solid legal frameworks, openness, and accountability serve as suggestions for responsible technology integration. To limit risks and promote justice principles, effective data protection legislation, policies addressing algorithmic transparency, and independent supervision mechanisms are required. Similarly, public education and awareness emerge as powerful tools for empowering individuals, establishing an informed engagement culture, and demanding responsible technological practices.

The future of technology in Indian criminal justice holds enormous promise, given that it is governed by the principles of fairness, equity, and human rights. Striving for an inclusive, transparent, and technologically advanced criminal justice system is critical not only for maintaining justice values but also for developing public trust in a nation navigating the uncharted waters of the digital age. By capitalising on technology's potential while minimising its hazards, India's criminal justice system may design a future in which justice is not only delivered effectively but also represents the ideals of equality, privacy, and due process for all.

NAVIGATING THE COMPLEXITY OF MENTAL HEALTH AND WELLBEING

Sahiba Verma¹

INTRODUCTION

Mental health encompasses an individual's cognitive, behavioral, and emotional well-being, influencing their thoughts, feelings, and actions. It involves the ability to think, learn, understand emotions, and empathies with others. It goes beyond the absence of mental illness. Having good mental health is essential for being healthy and functional. It depends on being in a balanced state both inside of oneself and with one's environment, which is influenced by a variety of interrelated elements including physical, psychological, social, cultural, and spiritual aspects. With over 100 million individuals alone suffering from mental health illnesses, such as depressive disorders, which considerably increase the global burden of disease, there is a strong link between mental and physical health. Daily living, relationships, and physical well-being are all affected by mental health.

Anxiety and depressive disorders were the most prevalent mental disorders, affecting 1 in 8 persons, or 970 million people worldwide in 2019. Due to the COVID-19 pandemic, the number of people who suffer from anxiety and depressive illnesses greatly increased in 2020. Initial estimates indicate a 26% and 28% increase in anxiety and major depressive disorders, respectively, in just one year. Although there are effective methods for both prevention and therapy, the majority of those who suffer from mental illnesses do not have access to them.

Stigma, prejudice, and human rights violations are also commonplace as happened in one of the leading cases.²

Peer support programmers (PSSs) have been effective in closing the communication gap between people with mental illnesses and medical professionals in recent years. Peer support is the assistance and encouragement given to one another by those who have had experience with mental illness. Despite having a long history, PSSs have only just begun to be acknowledged and integrated into the healthcare system. The usefulness of integrating peer support into healthcare is debated in the literature; some authors stress its advantages in fostering hope,

1. B.A. LL.B (Hons.), 3rd Year Student, Alliance School of Law, Bengaluru

2. *Mukul Dalai v. Union of India*, AIR (1988) 3 SCC 144

enhancing quality of life, and lightening the load on the healthcare system, while others raise the possibility of resource waste and neutral consequences.

A person's ideas, feelings, behaviour, and general well-being can all be impacted by a variety of illnesses known as mental health issues.

MENTAL HEALTH CONDITIONS

Depression: Depression is characterized by a loss of interest or enjoyment in activities as well as persistent emotions of grief and hopelessness. Two common types include major depressive disorder and chronic depression.³

Anxiety Disorder: Generalized anxiety disorder, panic disorder, social anxiety disorder, and specific phobias are a few examples of anxiety disorders. Excessive worry, fear, or anxiousness, which can disrupt normal life, are symptoms of anxiety disorders.

Bipolar Disorder: Extreme mood swings between episodes of despair and episodes of mania or a euphoric mood are symptoms of bipolar disorder. Energy levels, judgement, and behaviour can all be affected by bipolar disorder.

Schizophrenia: A severe mental illness known as schizophrenia causes disturbances in thinking, perception, emotions, and behaviour. Hallucinations, delusions, and difficulties separating reality from fiction are all symptoms of schizophrenia.

Obsessive-Compulsive Disorder (OCD): Consists of intrusive thoughts (obsessions) and repetitive actions (compulsions) carried out to calm anxiety. These customs have a big impact on daily living.

Post-Traumatic Stress Disorder (PTSD): PTSD is a condition that appears after going through or seeing a distressing event. Flashbacks, nightmares, excruciating anxiety, and avoiding reminders of the trauma are just a few symptoms that may appear.⁴

Eating Disorders: Disordered attitudes towards food, body image, and weight are involved in conditions including Anorexia Nervosa, Bulimia Nervosa, and Binge Eating Disorder, which result in unhealthy eating habits.

Attention-Deficit/Hyperactivity Disorder (ADHD): ADHD is a condition that is frequently identified in children and is characterized by problems with concentration, impulsivity, and hyperactivity that can have an impact on relationships, employment, and academic performance.⁵

3. *Mental Disorders*, WORLD HEALTH ORGANISATION (June 8, 2022).

4. *Ibid.*

5. *Ibid.*

Borderline Personality Disorder (BPD): BPD: A personality disorder marked by erratic emotions, relationships, and self-perception. People with BPD may act impulsively and suffer with a severe fear of abandonment.

Substance Use Disorders: Drug or alcohol abuse that has a negative impact on relationships, daily functioning, and physical and mental health are referred to as substance use disorders.

Dissociative disorders: These include illnesses like dissociative amnesia and dissociative identity disorder, which was once known as multiple personality disorder and causes disturbances in perception, identity, and memory.

Personality disorders: Personality disorders are long-lasting patterns of behaviour, thought, and functioning that depart from cultural standards and make social and interpersonal interactions challenging.⁶

IMPORTANCE OF PROMOTING MENTAL HEALTH

Mental illness stigma includes unfavorable attitudes, prejudice, and discrimination against those who are dealing with mental health issues. Feelings of shame, loneliness, and reluctance to seek treatment can result from this societal stigma. It maintains myths and obstacles that prevent people with mental health disorders from receiving the right information and support. People are frequently deterred by stigma from getting treatment for their mental health issues. People may hide their problems out of fear of criticism or other unfavorable consequences, which might delay or prevent them from receiving the right care. This may make mental health problems worse and make rehabilitation more difficult.

Promoting mental health is not only important for each individual but is also necessary for society as a whole. The extensive effects of disregarding mental health, such as decreased productivity, higher healthcare expenses, and societal inequality, are highlighted in this section. It emphasizes the value of preventative measures, early intervention, and de-stigmatization campaigns.⁷

AVAILABILITY OF MENTAL HEALTH RESOURCES IN DIFFERENT SETTINGS (URBAN, RURAL)

Urban and rural areas have very different levels of mental health resource availability, which creates barriers to and inequities in the availability of care.

6. *Ibid.*

7. *Supra* Note 3.

Urban settings: Due to larger population densities, better infrastructure, and closer proximity to healthcare facilities, resources for mental health are frequently more plentiful and easily available in urban regions. In general, those who live in urban areas have easier access to a wider range of mental health experts, such as therapists, psychologists, counsellors, and support groups. Hospitals, specialized treatment facilities, and clinics for mental health are typically more numerous. A greater variety of therapeutic methods, including art therapy, yoga, and mindfulness workshops, may also be available in urban settings. Nevertheless, despite the services that are available, living in an urban environment can also present its share of difficulties, such as higher stress levels, fast-paced lives, and a possibility for anonymity that may discourage some people from seeking assistance.

Rural settings: In contrast, there is frequently a severe lack of mental health resources in rural communities. Access to mental health services may be hampered by geographical distances, constrained transportation alternatives, and an absence of healthcare facilities. There could be a lack of mental health specialists, which would result in longer wait times for consultations and perhaps less specialized care. Although telehealth programs and online materials might help close some gaps, access in remote areas can still be hampered by problems with internet connectivity and technological knowledge. Furthermore, in some rural communities, there may be a higher prevalence of cultural stigma and a lack of knowledge about mental health, which discourages people from getting help.

IMPACT OF MENTAL STRESS ON THE LEGAL SYSTEM

- a. **Reduced Access to Justice:** Overworked legal professionals would find it difficult to provide the best solutions, which would prevent clients from getting the justice they deserve.⁸
- b. **Increased Error Risk:** Stress-related cognitive impairments can cause mistakes in legal procedures, which can compromise the fairness of the judicial system.
- c. **Inefficiencies in Legal Proceedings:** Legal practitioners' ability to collaborate and communicate may be hampered by stress, which can make the legal procedures less effective.⁹

8. *Mental Health and Legal Profession*, 89 Fordham Law Rev. 2415-25 (2021).

9. *Ibid.*

EFFECT ON MENTAL HEALTH DURING COVID

1. Loss of money, loneliness, dread, and bereavement have caused or made mental health disorders worse. Anxiety, insomnia, and substance abuse are all on the rise among them.¹⁰
2. By itself, COVID-19 can cause neurological and mental side effects such psychosis, agitation, and stroke. People who already have mental, neurological, or substance use disorders are more likely to suffer serious consequences from the infection, including death.¹¹
3. People have suffered worry, anxiety, dread, grief, and loneliness as a result of the pandemic. Anxiety and depression-related mental health conditions have gotten worse.
4. The epidemic has had a substantial impact on children and adolescents, who have suffered serious problems, mental stress, and anxiety and panic attacks. Younger children may display oppositional behaviour, shorter attention spans, and developmental regression due to their poor comprehension and coping mechanisms.
5. Due to prolonged exposure to the virus, a lack of personal protective equipment, social stigma, and poor communication, healthcare personnel have experienced substantial psychological suffering. Healthcare professionals frequently experience traumatic distress, sadness, anxiety, and insomnia.
6. The novel and serious threat posed by the epidemic has also caused tension, anxiety, and despair among the general population. Mental health issues have also been exacerbated by social isolation, financial stress, and company upheavals.
7. Reducing media exposure, spending more time with youngsters, and promoting video conversations with family members are ways to lessen the negative effects on mental health. Children who are in quarantine should communicate with their parents and mental health experts frequently.
8. Legal professionals may get more stressed out since their clients are dealing with pandemic-related legal challenges, like contract conflicts, employment issues, and health-related issues. In a distant setting, managing client expectations and offering strong representation can be difficult.

10. Trauma- and stressor-related disorders. In: Diagnostic and statistical manual of mental disorders. 5th ed. Arlington, VA: American Psychiatric Association, 2013:265-90.

11. *Ibid.*

9. Due to technical difficulties and adjusting to new procedures, the transition to remote work and virtual court sessions may result in increased stress. The legal sector's economic uncertainty and worries about job security can raise stress levels generally.¹²

GLOBAL PERSPECTIVES ON MENTAL HEALTH

Global perspectives on mental health include a variety of cultural, social, and structural approaches to comprehending and resolving global mental health issues. These viewpoints demonstrate the many ways that mental health is seen, treated, and supported throughout various societies. The following are some significant elements from global viewpoints on mental health:

Cultural Diversity: Different cultures have different attitudes and perspectives of mental health. The definition of “normal” and “abnormal” behaviour varies greatly depending on the community. How mental health concerns are identified, addressed, and treated is influenced by cultural norms, beliefs, and practises.

Collaboration and cross-cultural research: Cross-cultural study identifies worldwide similarities and contrasts in experiences with mental health. Collaboration between academics, professionals, and decision-makers from many fields can result in more potent approaches to promote mental health.

Conflict and Trauma: Both conflict and traumatic events have a significant negative influence on mental health. Due to the severe psychological effects of these occurrences, populations in areas affected by conflict, displacement, and humanitarian disasters frequently confront heightened mental health difficulties.

Personal Resilience and Strength: People all throughout the world exhibit incredible resilience and strength in the face of mental health difficulties, despite cultural differences. Recognising and appreciating these advantages can guide the development of more effective and culturally appropriate methods of mental health care.

Discrimination and Stigma: The stigma attached to mental diseases is a worldwide problem. It can be particularly noticeable in nations where social norms or traditional beliefs stigmatise mental health issues as a sign of fragility or personal failure. Stigma can prevent people from getting treatment and make them feel alone.

12. *Ibid.*

WAY TO OVERCOME MENTAL HEALTH ILLNESS

1. **Self-Care:** Adopt self-care practises that enhance your physical, emotional, and mental health as a top priority. This might involve obtaining regular exercise, eating a healthy diet, getting enough sleep, learning relaxing methods, and doing things you like.¹³
2. **Workload Management:** Reducing stress and avoiding burnout can be accomplished by putting into practise efficient workload management techniques.
3. **Training in Stress Management:** Providing techniques for mental health and stress management training can help legal professionals develop coping mechanisms.
4. **Social Support:** Keep in touch with your loved ones, friends, and support networks. Talking about your thoughts and feelings with sympathetic listeners may be a great emotional help.
5. **Peer Support Programs:** Among the legal community, support groups and mentorship programmes can be established to promote understanding and togetherness.
6. **Set Realistic Goals:** Breakdown more ambitious objectives into manageable, smaller steps. Getting these modest tasks done might improve your sense of control and self-worth.
7. **Therapy:** Numerous forms of treatment, including cognitive-behavioral therapy (CBT), dialectical behaviour therapy (DBT), mindfulness-based therapy, and others, can assist you in acquiring coping mechanisms, overcoming unhealthy thought patterns, and forming wholesome habits.¹⁴
8. **Medication:** In some situations, a psychiatrist may recommend medication to assist control symptoms.
9. To choose the best drug and dose for your requirements, it's critical to work closely with a medical specialist.
10. **Quiet your mind:** Meditation and mindfulness exercises can help people feel less stressed, more focused, and more aware of themselves. Utilising mindfulness practises can also help you control powerful emotions. To get connected, see spiritual resources on Personal Well-being for legal professionals and anyone who is facing this.
11. **Avoid Substance Abuse:** Abuse of drugs or alcohol may make mental health issues worse. It's essential to get assistance if you're battling with substance usage.

13. Kessler RC, Amminger GP, Aguilar-Gaxiola S, Alonso J, Lee S, Ustun TB. *Age of onset of mental disorders: a review of recent literature* (2007) 359–64.

14. *Ibid.*

COMMUNITY-BASED MENTAL HEALTH PROGRAMS AND INITIATIVES IN INDIA

The MINDS Foundation¹⁵

Founded in 2010, The MINDS Foundation is headquartered in Nizamabad, and has locations in Mumbai, Vadodara and Bhavnagar. The charity has been working relentlessly to improve access to healthcare and raise awareness of mental illness since its founding. It has a three-phase strategy in its mission to eradicate the stigma associated with mental illness in India.

Anjali Mental Health Rights Organisation

The Anjali Mental Health Rights Organisation, based in Kolkata, collaborates with municipal, state, and federal governments to humanise mental health and raise awareness of mental disability at the grassroots level. The nonprofit, which Ratnaboli Ray founded, aims to raise awareness of the rights of persons with psycho-social disabilities and to obtain significant policy changes in the nation that place mental health as a top priority for development.¹⁶

Manas Foundation

Three psychologists came together to form Manas in 2000 with the goal of improving access to care for people with mental disabilities in India.

The Live Laugh Love Foundation

According to Deepika Padukone, founder of The Live Laugh Love Foundation and a mental health survivor, 90% of depressed people in India don't seek treatment. The Bollywood actor made the decision to create this group to combat the stigma associated with mental illness after accepting her personal battle. The organisation seeks to remove obstacles to obtaining assistance and direct individuals in 14 states throughout the nation to the best therapeutic facilities.

Aasra

The mission of the Mumbai-based charity Aasra is "helping people in despair," and it runs a 24-hour helpline for people who are depressed emotionally and considering suicide.

CASES

1. Shikha Pandey, a young attorney in the Disputes and Regulatory practise, killed herself on July 17, 2020. She was a talented lawyer who began her career in Mr. Jayant Bhushan's chambers as a senior advocate and then worked for HSA.

15. Devika Manghnani, 8 organisations that are working towards de-stigmatising mental illness in India, WORLD HEALTH ORGANISATION (Oct. 7, 2019), 8 organisations that are working towards de-stigmatising mental illness in India.

16. *Ibid.*

2. A few days ago, on July 15, 2020, Chandrashekhar Takalkar, a lawyer from Pune, committed himself by plunging into a river. He served as the past president of the Khed Bar Association and was a renowned attorney in Rajgurunagar's District Court.
3. Civil judge aspirant dies by suicide in Misrod flat¹⁷

A 29-year-old woman, who was preparing for judicial services competitive exam, allegedly died by hanging herself in her rented home in Misrod.

Initial police investigations revealed that she had cleared preliminary and main written exams of Civil Judge entrance but failed in the interview. It was suspected that she was upset over it and took the extreme step in depression. She left a suicide note pasted on the wall apologising to her parents. She also requested police "not to investigate her death or bother her family".

Investigation officer ASI RS Yadav said that the deceased Neelam Thakur, 29, hailed from Ganj Basoda and presently resided on rental near Krishna Enclave in Misrod. Neelam was a law graduate and preparing for judicial services. ASI Yadav added that Neelam's elder sister fell ill on spotting her body hanging.¹⁸

CONCLUSION

The aims of this study were to identify and evaluate the types of mental health self-care and disability support used by, and available to the people who are suffering from the it and to establish how such support interfaces with statutory and non-statutory service provision. It is crucial that both legal institutions and individual practitioners pay attention to the effects of stress on legal professionals. The legal profession can create a more supportive and healthier atmosphere that is good to both legal practitioners and the entire legal system by recognising the causes and effects of stress and putting in place the necessary preventive methods. It important to understand that placing a priority on mental health and wellbeing is not only a moral obligation but also necessary for the long-term viability of the legal profession. Moreover, in doing so, we have developed a model of self-care support that can help policymakers and practitioners make decisions about the organization and delivery of mental health self-care and disability support for those people and their families, and help researchers identify gaps in the knowledge base that might be resolved with future research in this area.

17. TNN / Jul 29, 2023 *Suicide: Civil judge aspirant dies by suicide in Misrod Flat: Bhopal News - Times of India*, The Times of India.

18. *Ibid.*

UNMASKING THE CRUELTY: AN ANALYSIS OF CONVERSION THERAPY ON HOMOSEXUALS AND IT'S HUMAN RIGHTS IMPLICATIONS

Veenashri Jayprakash Kilnakar¹

Prof. (Dr.) Atul More²

INTRODUCTION

Going against nature has led to disaster. The conversion or reparative therapy is one of best the examples of same. These are derived practices by humans to hide, play-away and discriminate an individual to participate voluntarily or forcibly (mostly by immediate family and friends) to alter their sexual orientation or sexual identity which of-course is a natural instinct of the same person. These non-science-based methods involve heavy use of non-conventional drugs, physical and mental abuse using isolations or full expulsion therapy and emotional torcher method of forceful marriages. The primary motivations of the anti-LGBTQIA+ who advocates such measures show their inclination to convert a homosexual into heterosexual (a straight) person but in a way these efforts are there to hide the fact for their fake honor in the society.

People from LGBTQIA+ community often face highest form of human rights violation because people fail to accept them as a normal human being. A smaller number of people knows that there's a basic difference between sexual identity and sexual orientation. There are two types of sexual identities, firstly the one given my doctors at the time of the birth which is used for berth certification and second one is an identification which a person wishes to honor him/herself at their own will for example male, female, transgender or any other identification categorize therewith. Whereas sexual orientation is based on feelings of a person to date/ share/ stay/ lovemaking with another person, which doesn't follow any constraints of gender of the people involved, it shall rather be accepted as broader concept which also have various motives of sexual or physical attraction along with emotional and romantic encounters involving heart and soul³. There is a strong belief that having different sexual identity or sexual orientation rather than being heterosexual is an illness, or it's a curse. A person with different sexual identity or sexual orientation (LGBTQIA+) becomes odd one out in the family, society and in any social

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1. Research Scholar, University of Pune, India
 2. Professor, University of Pune, India
 3. *Mallory, Christy Brown, Taylor N.T., [Conversion Therapy and LGBT youth- Update] [Page No.2] [2019]*

platform. Most of the time such a person is forced by the family, friends and relatives to change their sexual orientations by various means this is where conversion therapy plays an important role of human trial or experiments that leads to sad reality and traumatic situation for person belonging to LGBTQIA+ community.

Discrimination continues with LGBTQIA+ community during the course of their employment, bullying in schools, colleges, public places not just that amongst their own family which severely triggers their social wellbeing and personal development. They are strictly instructed to maintain high confidentiality regarding the truth, they are not supposed to expose about themselves. Discrimination doesn't stop their it intervenes in their succession and adoption rights. People being disguise and biased with LGBTQIA+ community reject obstruct them to progress in their career they as a result they are left with no option but to indulge in sex work. Most of the time family abandon their kids at a very tender age where they need support, love, and care. They are being physically and mentally abused in prisons and hospitals as well. There is no social security for them such condition makes their life miserable.

In the landmark judgement of *Navtej Singh Johar. V. Union of India*, on 6th September 2018, Supreme Court termed "sexual orientation" as a natural phenomenon and the person having different sexual orientation is a natural behavior and it not a crime until and unless it is consented between adult persons, Homosexuality under section 377 Of IPC was decriminalized partially it was also stated that , this section was violative of Article 14, 15, 19 (1) (a) and 21 of the Indian Constitution ⁴ .Conversion therapy is largely practiced in India illegally by medical and non-medical practitioners, with the intention to fool people and earn profits. Conversion therapies aim at the sexual re-orientation of LGBTQIA+ community people which do not work any kind of reformation or changes rather amounting to harmful and unethical/illegal practices. It is very difficult to track down the heinous activity, because it is being carried out secretly, especially minors are highly vulnerable to get in such trap⁵.

HISTORICAL BACKGROUND

In India, temples are the source of belief, faith and ideologies. A lot of temples are also the showcase of what has been the history in the various parts of India; sometimes they also form the basis for general culture around the timelines. Hence, we can also state that, in India, homosexuality is not a new concept, and the proof for this can very well be found on number of famous ancient monuments and temples in the forms of stone carvings of homosexuality on

4. *Navtej Singh Johar.V. Union of India*, AIR 2018 SC 4321.

5. Academike Article on Legal Issues, <https://www.lawctopus.com/academike/conversion-therapy-india/> (last visited Aug. 1, 2023).

it e.g., Khajuraho temple⁶ and as per the archeological survey of India it belongs to 950 – 1050 AD⁷, such are also an evidence of presence of non-heterosexual tendencies during older times in India. For anti- LGBTQIA+, these could also be fantasies of multiple artists during those times but then it at least proves such intents were part of Indian people and culture.

Major era of ancient India did follow Spirituality, which had very limited basis of discrimination based on sexuality and orientation. The vision of oneness was always taught to relate all creation being part of God⁸, thereby accepting everything as part of one and not a spiritual odd creation. Though, practices performed were discreet in society, but they were not treated as criminals. In fact, the idea of oneness was profoundly used to provide secular environment for such individuals (e.g., devoting life to God) which in colonized India later got more exploited in the form of standard practice of Conversion Therapy and along with mental tortures and physical abuse.

British rule did gift Indian, section 377⁹ of Indian penal code, as per which homosexuality was treated as a crime since 1861, which was later partially legalized in India in the year of 2018¹⁰. But during these 150 plus years, Indians have developed pseudo dogma for the individuals from LGBTQIA+ community and non-pragmatic propaganda, social stigma and preferences developed mindset of rejection and prejudice. At the same time, some non-social opportunist entities also developed enough social surroundings to claim homosexuality as abuse, un-natural or even by terming it as mental illness.

Medical Science could only prove such tendencies being natural and not a mental illness¹¹ by mid 1990s which formed basis for various nations to accept LGBTQIA+ community legally. But in India, though its own medicinal science Ayurveda considers homosexual behaviors as natural and has termed it as “Tritiya Prakriti”, even in Vedas there is mention of rejection of

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6. Priya Srivastava, Discovering the reality of ‘sensuous’ side of these Indian temples, TimesTravel (last visited, Aug. 3, 2023)
 7. Khajurahoonline.in, <https://www.khajurahoonline.in/city-guide/museums-in-khajuraho> (last visited, Aug. 3, 2023)
 8. Nivedita R. Bhide, On the Mission of Human Evolution Indian Culture Challenges and Potentialities 41, (Vivekanand Kendra Prakashan 2022)
 9. Tess Wong, 377: The British colonial law that left an anti-LGBTQ legacy in Asia, <https://www.bbc.com/news/world-asia-57606847>, BBC News (last visited Aug. 10, 2023)
 10. *Navtej Singh Johar. v. Union of India*, AIR 2018 SC 4321.
 11. Robert L Kinney, Homosexuality and Scientific evidence: On suspect anecdotes, antiquated data, and broad generalizations, National Library of Medicine (Nov. 1, 2015), <https://pubmed.ncbi.nlm.nih.gov/26997677/>.

heteronormativity¹². Still historically and even now individuals from LGBTQIA+ community are imparted with various medicinal and non-medicinal techniques in the belief that they can be converted into Heterosexuals. Such clinical trial involves methods are certainly the human experiments to test the scientific cures for homosexuality, and it was reported in the Indian Journal of Psychiatry¹³. Apart from above documented activities, there are other religious based ways to deny the sexuality or sexual orientation of a person were practiced largely in rural and urban parts of India., viz. Devadasi Pratha or Renouncing submission to God or Ashrams (Seva).

FACT OF FLUID SEXUALITY

Most of the time people develop the misconception about sexuality orientation that as it is fluid in nature, the conversion therapy might change a homosexual into a heterosexual. Social status and general stigma in Indian society advocates monogamy which is mostly practiced by individuals after marriages. Currently, per law a marriage is sanctioned between opposite genders and hence it's a trivial mindset of society which gives green signal for conjugal practice between two individuals. Hence "being heterosexual" is a most popularly practices notion for Sexual Fluidity of a person. But on the contrary the fundamental definition of sexual fluidity mentions that it may change overtime in the lifetime of the person, which means a person who considers him/herself being heterosexual can experience a natural attraction for same sex individual. In other words, you may identify as straight but develop an attraction to someone who is genderqueer¹⁴.

Homosexuality in-spite being fluid it cannot be changed or altered by any kind of human experiment that is the fact¹⁵.

Some uncommon example/situations of Sexual fluidity

- **Changes in attractions:** Someone may be attracted to one gender at one time point and attracted to a different gender or more than one gender at another time point.

12. Anuradha Gupta, Ayurveda is Inclusive: Creating Safe Healthcare Spaces for the LGBTQ+ Community, The Art of Living Retreat Center (last visited, Aug 5, 2023), <https://artoflivingretreatcenter.org/blog/ayurveda-is-inclusive/>

13. T.S. Sathyanarayana Rao & K.S. Jacobs, Homosexuality and India, Indian Journal of Psychiatry 54(1) 1-3 (2012), https://journals.lww.com/indianjpsychiatry/Fulltext/2012/54010/Homosexuality_and_India.1.aspx

14. WEBMD, <https://www.webmd.com/sex-relationships/what-does-sexually-fluid-mean/> (Last Visited, Aug. 1, 2023).

15. Harvard Health Publishing, <https://www.health.harvard.edu/blog/sexual-fluidity-and-the-diversity-of-sexual-orientation> (last visited Aug. 5, 2023).

- **Changes in identity labels:** Someone may identify as lesbian at one time point and as bisexual at another time point.
- **Changes in sexual behavior:** Someone may have a sexual partner at one time point who is a cisgender woman and then have another sexual partner at a different time point who is nonbinary.

COMMON TYPES OF CONVERSION THERAPIES

- Aversion therapy and behaviorism
- Brain Surgery
- Castration and transplantation
- Sessions with Psychologist to alter emotional motives.
- Medicinal methods to repair sexual orientations.
- Heterosexual Marriage
- Religious and spiritual advisor's (baba, zad phoonk surrendered to baba's seva (ashrama)
- Home remedies using naturopathy, listening to community healers those who claim to be God's messenger for general public commonly known as "pravachans".
- Abandoning the person born with different sexual orientation believing that such a person is shraapit /cursed.

RULING FOR SAFEGUARDING LGBTQIA+

a. Naz Foundation v. Govt. of NCT of Delhi (2009)

Delhi high court struck off partially, section 377 of Indian Penal Code legalizing consensual homosexual activities between adults ¹⁶.

b. Suresh Kumar Koushal Case (2013)

Supreme Court of India overturned the previous judgement by Delhi high court (2009) arguing that "plight of sexual minorities" could not be used as an argument for deciding constitutionality of law¹⁷.

16. Naz Foundation v. Govt. of NCT of Delhi, 160 Delhi Law Times 277.

17. Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors., Civil Appeal No. 10972 of 2013.

c. Justice K.S. Puttuswamy V.S Union of India (2017)

Supreme Court of India ruled that fundamental right to privacy is intrinsic to life and liberty and thus, comes under Article 21 of the Indian constitution. It held that “sexual orientations an essential attribute of privacy”¹⁸.

d. Navtej Singh Johar V.S. Union of India (2018)

Dismissed the position taken by Supreme Court of India in in Suresh Kumar Koushal Case 2013 and decriminalized homosexuality. This judgement also discourages “conversion therapy”¹⁹.

e. Shafin Jahan V.S. Ashokan K.M. and Others (2018)

Supreme Court of India observed that choice of the partner is a person’s fundamental right, and it can be a same -sex partner²⁰.

f. National legal services authority V.S. Union of India

Judges declared that nobody could be forced to undergo any form of medical or psychological treatment based on sexual orientation and gender identity²¹.

g. S. Sushma V.S. Commissioner of police

Justice. N Anand Venkatesh on 7th June 2021 took a positive step in this direction by prohibiting conversion therapy²².

h. Supreme Court in Laxman Balkrishna Joshi’s Case

The Indian psychiatry association stated that being LGBTQIA+ can’t be defined as mental condition and hence doesn’t attract any kind of medical attention for managing life of such individuals. Therefore, doctors engaging in any of such practice to perform medical treatment as taking up such cases and assessing treatment and cure would attract legal liability due to medical negligence²³.

Indian Regulatory and Policy For LGBTQIA+ Community in Regards of Conversion Therapy:

The apex regulatory body (National Medical Commission) for medical professionals in India has clearly given a verdict to abate all the practices related to Conversion Therapy. They

18. *C. Justice K.S. Puttuswamy v. Union of India*, AIR 2017 SC 4161.

19. *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.

20. *Shafin Jahan v. Ashokan K.M. & Ors.*, (2018) Criminal appeal No. 366.

21. *National Legal Services Authority v. Union of India*, (2013) Writ Petition (Civil) No. 604.

22. *S.Sushma v. Commissioner of Police*, (2021) Writ Petition No.(7284).

23. *Laxman Balkrishna Joshi v. Trimbak Babu Godbole and Anr.*, 1969 AIR 128, 1969 SCR (1) 266.

have also clearly given official orders to take disciplinary actions on medical professionals if they are found in such misconducts.

“Conversion therapy also known as Reparative Therapy”, are non-conventional and non-scientific techniques which are predominantly used to alter person’s sexual behavior which is not accepted by society; it’s and exploitation act performed by relatives and friends to hide individuals’ sexual orientation or gender identity. This has only acted primarily to discriminate and create societal bias against LGBTQIA+ people. Individuals who are before their teenage are highly vulnerable due to their dependency on their parents for living. Such efforts by parents and friends only lead to depression, anxiety, drug use, homelessness, and suicide in their later life as they understand the true nature of their underlined sexual identity and orientation²⁴.

The Madras High Court has directed the National Medical Commission to issue necessary official notification by enlisting – Conversion Therapy as a professional misconduct. “In compliance of order July 8, 2022, Ethics and Medical Registration Board, National Medical Commission has decided that conversion therapy will constitute a professional misconduct under the Indian Medical Council (Professional Conduct Etiquettes and Ethics) Regulations, 2002²⁵”.

This rule was passed on till now until Supreme Court of India decriminalized section 377 of IPC and stated that sexual orientation is natural and is not a person’s fault and made sexual relationship between same gender legal on September 6th 2018. This section used to violate article 14, 15, 19 (1) (a) and 21 of the Indian Constitution as article 15 prohibits discrimination against a person on any basis.

Mental health care act 2017 refrains any kind of discrimination with to patient on basis of sexual orientation or any other reasons.

The Indian Association of Clinical Psychologists (IACP) called Conversion Therapy a dangerously harmful, discredited, and painful and traumatizing unprofessional practice. In an official statement on 21st May.

Many other countries now also considered conversion therapy as inhuman and unethical act towards a person. For example, Germany has declared punishment of 1 year imprisonment or

24. Bindu Perappadan, Conversion Therapy is Misconduct, Declares National Medical Commission, The Hindu e- Paper (Sep. 02, 2022, 10:15 PM), <https://www.thehindu.com/news/national/nmc-declares-conversion-therapy-to-be-professional-misconduct/article65842557.ece>.

25. Sudipta Datta, Explained, The ban on conversion therapy for the LGBTQIA+ Community, The Hindu (Sep.06, 2022, 10:30 AM.), <https://www.thehindu.com/news/national/explained-the-ban-on-conversion-therapy-for-the-lgbtqia-community/article65853083.ece>.

\$30,000 on those who would practice this therapy. United States of America have banned this inhuman therapy in various states and other states are in motion to follow the others.

According to the American Academy of Child and Adolescent Psychiatry (AACAP), conversion therapy fails to find any evidence to support its premise for describing a specific sexual orientation, gender identity, and/or gender expression as pathological. Furthermore, as per their scientific study, the AACAP asserts that such conversion therapies lack scientific credibility. Alongside, experience-based evidence suggests that such interventions are very harmful to imparted individuals and can further harm their lives and induced lifestyles. As a result, conversion therapies can't be a behavioral health treatment of children and adolescents. But in India there are famous personality, an International Yoga Guru (name not disclosed) claims that homosexuality can be cured by regular Yoga and Meditation, but the reality is such illogical approach only take person involved in mental issues like self-doubt, stress and can ruins a life²⁶. Also, it must be appreciated that we shouldn't even term this as illness; so, the word of "being treated and cured from" should be removed from social mindset.

GLOBAL SCENARIO ON CONVERSION THERAPY

Brazil: Brazil was the first country to ban conversion therapy in 1999. It introduced a ban on conversion therapy which were mainly related to practices performed for altering sexual orientation of an individual.

Ecuador & Malta: Ecuador and Malta started criminal ban on conversion therapy in 2014 and 2016, respectively.

Germany: In 2020, Germany put a verdict for ban on conversion therapy done on minors. This also was to protect adults who were forced to undergo such acts.

USA: Starting from 2013, USA has banned various forms of conversion therapy and have implemented them in 22 states so far.

China & Commonwealth Countries: In China, various law has found conversion therapy to be unlawful. There have been slow reforms taking place in Commonwealth countries and multiple cases are under discussion with Judiciary bodies.

Across the world, many countries already have bans on conversion therapy²⁷.

26. Bhavya Pandey, Criminalization of conversion therapy in India, Legal Services India E-Journal (Jul. 29, 2023, 10:11 PM), <https://www.legalserviceindia.com/legal/article-7419-criminalisation-of-conversion-therapy-in-india.html>.

27. Sudipta Datta, *supra* note 24.

DATA ANALYSIS OF THE SURVEY CONDUCTED

A sample set of 15 individuals who voluntarily contributed to this study by providing the details of their personal chronicles about their lives. In following section, the identity of the personal has not been disclosed for the purpose of safety; in few, their nicknames have been used with permission.

Before Teenage	During Teenage	After Teenage
6.6 %	73.4 %	20 %

Table 1: Age at which the sample set, Understood their Identity as part of LBGTQAI+

In general experiences, during a lifetime of a person the understanding of sexual behavior or orientation comes predominantly during teenage due to development of sexual attentions. But the behavior or personal choice of dressing or lifestyle does come out around the age of 8-10. During this phase social attention or family interactions with LBGTQIA+ plays major role in leading their identity and choices in later life.

T & I	LGBQA
66 %	34 %

T: Transgenders, I: Intersex

Amongst LBGTQIA+ community, Transgender person means a person's biological gender does not match with gender which he/she thinks or feels for themselves and, an intersex person is born with mixed sexual organ²⁸. Due to this un-conventional physical behavior or condition they are very prone to get identified in their early age/life and are highly vulnerable for getting indulged into Conversion Therapy.

"I am born as a biological male but during early schooling time, I started liking to dress up like girls. I pierced my ears at very early age and used to wear rings on my ears, also I wore my mother's saris and makeup multiple times. All this somehow attracted a lot of attention in my schools and I had to experience discrimination and teasing/bullying with names like "Meetha, Candy, Tai, Bayala etc.". During these times, I only received due support from a friend during my college times. I could only reveal my sexual choices to my parents during my teenage but didn't receive any support from them on the other hand I could get it from local Queer group", expressed one of the transgenders (aka. Mohini).

Before Teenage	During Teenage	After Teenage
-	93.4 %	6.6 %

28. DR G.B. Reddy & Baglekar Akash Kumar, Transgenders and The Law a Commentary, Page No. 27, Eastern Book Company, First Edition 2022.

Table 2: Age at which the sample set, declared their Identity @Home only.

Before Teenage	During Teenage	After Teenage
-	100 %	-

Table 3: Age at which the sample set, declared their Identity socially

“As my parents got to know about myself, I was asked not to show myself as “me” at family gatherings”, said Mohini. She was forced to look like as boy with decent hairstyle to look like proper male and attire during such encounters.

“When I wore dresses like a girl, I was punished with physical abuse by my parents (using sticks and belts)”, “I was also sexually abused by a neighbor and beaten by him”; narrated an anonymous Transgender.

“When I revealed about my sexual orientation with my parents hoping that they would understand, my father told me that you have been staying with girls for a long time and you haven’t encountered a male in your life, so you don’t know how does the touch or sensation of a male feels like. And it is important for you to know that first, that would help you to change your sexual orientation and my mindset. So, he made my own brother and cousins to rape me”, narrated by Lesbian. They used this brutal way to convert the sexual orientation just to maintain their social status in the society.

Medical conversion for suppression of sexual orientation	Non-Medical conversion Behavior/Psychological Counselling, Religious, Marriage Methods
40 %	60%

Table 4: Engagement into Conversion Therapy on Sample Set

“My family members wanted me to get married at the age of 26 after I started working , initially I denied, but after a year they become very firm and started forcing me to get married, then I lost my patience and told them about myself that I am a gay and I do not have interest in the girls, so my family told me that it’s a mental disorder; so, let us get checked from the neurologist, which I denied. All other relatives made fun of me and my parents started feeling embarrassed about my truth. So, for them I visited few doctors, one of them suggested counselling sessions, but to be honest it didn’t work”, this is the real-life events narrated by a gay.

“When my family members came to know about my affair with my girlfriend, my parents took decision to get me married as soon as possible, I requested them that I won’t be able to survive with a male for rest of my life as my sexual orientation is for a same sex. They beat me, saying that this is the only way to treat people with mental disorder. And they forcefully got me married. Since then, till now I have been raped n number of times by my husband. I still didn’t change my thinking what I feel it didn’t help me change my sexual orientation at all.

Narrated by a lesbian. This ritual is very common in India for girls, no one really cares about the emotional quotient in front of social status.

CONCLUSIONS AND SUGGESTIONS

One must ask a question as why people are homophobic or why there is an unrest about LGBTQIA+ community? Are they not humans? Can't there be a social space for them? Or we will keep on using inhumane ways to suppress them or eradicate them?

History has proven that so many talented people, who finally gave up to the agony by society; the main ask here is, should they be allowed to live their lives; what change they would have brought to humanity?

"Conversion therapy", is itself a definition doesn't justify the hypocritical social drama which has been in practice by different races, religions and nations; rather it must be termed as "Conversion Abuse". A therapy is a means by which a mentally or emotionally ill person is treated to resolve the underlining issues. But "acceptance of LGBTQIA+" by society is rather an issue of the society and society must receive various forms of counseling to accentuate natural absorption of everyone from LGBTQIA+ community.

Qualitative analysis of the empirical data shows that psychotherapeutic and religious conversion therapies is having zero effective in changing the sexual orientation of any person instead just creating havoc and, in many cases, leads to abatement to suicide. In above collected data, it is clear that these inhumane and barbaric treatment is done against a person's will. Conversion Therapy is not a new concept in today's world rather it is in practice from a long time, we are in a welfare era where things are changing with the time but when it comes to the sociological acceptance of LGBTQIA+ community the stigma remains the same. Most of them are teenagers, this is the age where person is struggling with his/her own feelings, they encounter hatred and victimization by their own love ones. Many people run away from their parental home, fight their difficulties by their own ways. Most of the time they have no choice but to indulge in crime or illegal activities. Legal system is helping in breaking the bias but yet it is long way to go. There have been many cases which are precedents for the other. As legalizing of same sex marriage is a national issue as people opposed it, even Central Government is negating over the legalization by saying it's not Indian Culture. The above narrated real-life incidences are the outcome of the stigma attached to the homosexuality, where most of the family member are homophobic. There are lot of motions which are working on creating legal framework to provide safety and dignified life to LGBTQIA+ community. But it is also true that the proceedings followed in various ways of Conversion Therapy and the cruelty drawn can't be Indian tradition or Culture; it is time to reflect ourselves and re-evaluate, how can we imagine

to reduce the stigma attached to LGBTQIA+ community. because there is no legality to the homosexual relationship.

In this darkness there is a ray of light for LGBTQIA+ community as multiple national NOG's who support, educate, motivate them to lead their life with dignity. Visit to Sarathi trust Nagpur, an organization who is working and fighting for the rights of LGBTQIA+ community also running HIV AIDS awareness campaign, has enlightened many lives by motivating the community people to complete their education and enhance their life skills. Their work is highly appreciated. We need many organizations and volunteers to support and understand the LGBTQIA+ community. After all they are also human beings, and it is our moral duty to treat a human as a human.

Constitution of India do not discriminate anyone, and its objective are to secure justice, liberty, equality to all citizens and promote fraternity to maintain unity and integrity of the nation. It is the human rights document, and we are all bound to respect and follow it²⁹. Chief Justice of India Hon'ble Dr Justice Dhananjaya Y. Chandrachud in his address speech said that *"that is why the constitution matters, because it works even for those who don't believe in it"*³⁰. Let us stop this human rights violation and if we find any such heinous offence happening around us, we shall report it directly to High Court u/A226(1)³¹ and to Supreme Court u/A32³². Currently several recommendations have been made by National Human Rights Commission to ban "Conversion Therapy", throughout the country but still no actions have been taken yet, legislature has to take consolidate actions for a complete this ban. "Conversion therapy" is not a therapy it is a crime, so, let us collective raise our voice for the "Voiceless".

29. P. M. Bakshi, The Constitution of India 1 (LexisNexis 2022).

30. FACEBOOK, <https://www.facebook.com/reel/1481305742626631>. Last Visited 5 August 2023 7:50 PM

31. P. M. Bakshi, *supra* note 28, at 239.

32. P. M. Bakshi, *supra* note 28, at 109.

CHAPTER - 5
GENDER JUSTICE

A STUDY INTO THE SOCIO-LEGAL POSITION OF SAME-SEX MARRIAGE WITH SPECIAL REFERENCE TO INDIA- AN ASIAN PERSPECTIVE

Pranathi Nandula¹

Varshini Janardhana²

INTRODUCTION

Gender and Sex are distinct concepts often used interchangeably. They refer to different aspects of human identity and biology. Sex refers to the biological attributes that typically distinguish males from females. Gender refers to the roles, behaviours, activities, expectations, and societal norms that cultures consider appropriate for men, women, and people of other gender identities³. This distinguishing is vital, as gender is not solely based on biological factors but is largely a social and cultural construct. As societies continue to evolve, our understanding about sex and gender become increasingly important for promoting inclusivity, cognizance, and respect for all individuals. The countries being analysed below will look at the responses of various countries to the problems posed by the muddled lines of Gender Neutrality and Gender Fluidity into their legal systems.

Taiwan was the first nation in Asia to legalise same-sex unions in May 2019. A same-sex marriage law was finally passed by Taiwan's parliament after much discussion and controversy in Taiwanese politics and society⁴. The law gave effect to a judgement by Taiwan's Constitutional Court that in May 2017 mandated that Taiwan's government amend the civil code to permit same-sex marriages within two years⁵. To understand this stark development in Taiwanese

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1. B.A. LL.B, BMS College of Law, Bengaluru.
 2. B.A. LL.B, BMS College of Law, Bengaluru.
 3. Government of Canada, C.I. of H.R. (2023) *What is gender? What is sex?*, CIHR. Available at: <https://cihr-irsc.gc.ca/e/48642.html> (last visited 03 August 2023, 06:30 pm).
 4. *Taiwan: Same-sex marriage law enters into effect* (no date) *The Library of Congress*. Available at: <https://www.loc.gov/item/global-legal-monitor/2019-06-18/taiwan-same-sex-marriage-law-enters-into-effect/> (last visited 01 August 2023, 09:00 pm).
 5. *Taiwan: Constitutional Court rules same-sex marriage prohibition unconstitutional* (no date) *The Library of Congress*. Available at: <https://www.loc.gov/item/global-legal-monitor/2017-06-05/taiwan-constitutional-court-rules-same-sex-marriage-prohibition-unconstitutional/> (last visited 01 August 2023, 09:30 pm).

society, keeping in mind the historical and cultural ties it shares with China, we have looked into the Historical Background of the country, and analysed its legal provisions as below.

The relationship between China and Taiwan is stressed. Both countries function independently, claiming to be the true representatives of China and Chinese cultures. Taiwan quickly industrialised in the 1950s before slowly transitioning to the services sector in the 1970s. This economic restructuring had loosened the inceptive hold of family on people, especially young persons who migrated from rural areas to search for new opportunities in cities, as well as other fundamental social as well as cultural changes like the availability of universal education and the emergence of popular culture. Since then, romantic love and marriage has begun to be viewed as two sides of the same coin. This section of the community is inclined towards accepting nonconforming romantic connections, irrespective of whether they are heterosexual or homosexual⁶.

Culturally, Taiwan is perceived as a community majorly consisting of Buddhist and Taoist beliefs, among Catholicism, Christianity, Islam and Hinduism being minorities.⁷ Buddhism views marriage as an inferior act compared to celibacy, in the absence of which, is more leaning towards procreational relationships over same-sex unions.⁸ The latter is not explicitly proscribed, and is “sometimes seen as the result of a past life’s gender asserting itself in the present.” The LGBTQ+ community presently finds sanctuary in Tu’er Shen, a Taoist ‘rabbit god’ - a deity largely associated with the Chinese Zodiac. Though the term was firstly used to ascertain a derogatory slang term with regard to the homosexual community, it has now become a notable symbol of the group⁹.

CURRENT LEGAL PROVISIONS

The Taiwanese Constitution provides for numerous rights in Article 22 which explicitly states that “All other freedoms and rights of the people that are not detrimental to social order

6. TIMOTHY HILDEBRANDT, *Same-sex marriage in China? The strategic promulgation of a progressive policy and its impact on LGBT activism*. 37 *Review of International Studies*, 1313-1333, (2011) doi:10.1017/S026021051000080X.
7. ABOUT TAIWAN: RELIGION, <https://eng.taiwan.net.tw/m1.aspx?sNo=0029044> (last visited 01 August, 2023, 09: 45pm).
8. Keown, Damien, ‘Sexuality and gender’, *Buddhist Ethics: A Very Short Introduction*, 2nd ed. Very Short Introductions (Oxford, 2020; online edn, Oxford Academic, 25 June 2020), <https://doi.org/10.1093/actrade/9780198850052.003.0004>, (last visited 01 August 2023, 08:00 pm)
9. Helen Davidson, Chi Hui Lin, *How a rabbit god became an icon for Taiwan’s gay community*, THE GUARDIAN, (Mar. 07, 2023, 2023, 02:57 AM GMT), <https://www.theguardian.com/world/2023/mar/07/how-a-rabbit-god-became-an-icon-for-taiwans-gay-community>.

or public welfare shall be guaranteed under the Constitution.¹⁰” This implies that the rights of the Taiwanese are quite flexible and stay in trend with the development of societies, i.e. it does not limit the ambit of new rights being created as society goes through changes. Therefore, the Right to Marriage is an implied right within this Article. Further, Article 7 of the Taiwanese Constitution guarantees the Right to Equality to all its citizens¹¹. Based on these two fundamental rights, two petitions filed by Chia-Wei Chi (Huei-Tai-12674) and the Taipei City Government (Huei-Tai-12771) regarding the unconstitutionality of certain articles of Chapters 2 and 3 of the Taiwan Civil Code were discussed¹².

The judicial proceedings that followed made the country the very first to recognise and legalise same-sex unions as marriage. The J.Y. Interpretation No. 748 delved into the fundamental question whether the people of Taiwan possessed a right, complying to Articles 7 and 21 guaranteed by the Constitution of Taiwan regarding marriage between two persons of the same sex, even if the marriage was institutionalised in a different form. The Judgement proclaimed the Legislature as the better creator of laws to protect the rights of the people, however, it also recognised that Family as a social institution existed long before the commencement of the Code, and given the rights as established in the Constitution, the following was observed:

“Such decisional autonomy is vital to the sound development of personality and safeguarding of human dignity and therefore is a fundamental right to be protected by Article 22 of the Constitution...Furthermore, the freedom of marriage for two persons of the same sex, once legally recognized, will constitute the bedrock of a stable society, together with opposite-sex marriage. The need, capability, willingness, and longing, in both physical and psychological senses, for creating such permanent unions of intimate and exclusive nature are equally essential to homosexuals and heterosexuals, given the importance of the freedom of marriage to the sound development of personality and safeguarding of human dignity.”¹³

Following the historic judgement, the Act for Implementation of J.Y. Interpretation No. 748 was approved in the Legislative Yuan. Article 2 of the Act provides that “two people of the same sex may, to manage a life together, conclude a permanent union that is intimate and

10. TAIWAN CONST. art. 22.

11. TAIWAN CONST. art. 7.

12. *Press release on the same-sex marriage case - constitutional court R.O.C. (Taiwan)*. Available at: <https://cons.judicial.gov.tw/en/docdata.aspx?fid=2175&id=339895> (last visited 01 August 2023, 08:45 pm).

13. *J.Y. Interpretation no. 748 (May 24, 2017)* same-sex marriage case*. Available at: <https://cons.judicial.gov.tw/uploads/docAtt/2b32e55e-e973-4537-a62c-c5f3517cdf6e.pdf> (last visited 01 August 2023, 7.30 pm).

exclusive.”¹⁴ In May 2023, same-sex couples were given full adoption rights to children, which were previously granted only to a single guardian.¹⁵

Societal Inclusivity:

Regardless the fact that Taiwan is considered to be the most neoteric state in Asia in relation to same-sex laws¹⁶, the journey to inclusivity was not one without protests. Largely originating from Catholic and Christian groups, large-scale protests in 2016 were initiated against the recognition and legalisation of gay marriage¹⁷.

However, after a year of the legalisation of same-sex marriage in 2020, a poll conducted by the Taipei Times helps us infer that a provision by the law, regarding same-sex unions is likely to not influence the daily lives of the majoritarian heterosexual couples. However, the same poll concluded mixed opinions on the effects of same-sex unions in relation to adoption and its types, showing the same hesitancy as most countries¹⁸. A brief summary of the poll can be constituted as follows:

Criteria	Population in Favour (in%)	Population in Opposition (in %)
Effect of Legalisation	No Effect - 92.8 Positive Effect - 1.8	Negative Effect - 3.78
Effect of Policy	No Effect - 50.1 Positive Effect - 11.9	Negative Effect - 28.4
Adoption of Children	56.8	38.4
Adoption of Children through Artificial Reproductive Technologies	42.1	50.1

14. *Taiwan: Same-sex marriage law enters into effect. The Library of Congress.* Available at: <https://www.loc.gov/item/global-legal-monitor/2019-06-18/taiwan-same-sex-marriage-law-enters-into-effect/> (last visited 01 August 2023, 7.45pm).
15. Emily Feng, *Same-sex couples will now have full adoption rights in Taiwan*, NPR, (last visited 01 August 2023, 8.30 pm) <https://www.npr.org/2023/05/16/1176433353/taiwan-same-sex-adoption-rights>.
16. LGBT Rights in Taiwan, <https://www.equaldex.com/region/taiwan> (last visited 01 August 2023, 8.15 pm).
17. Abraham Gerber, *Thousands protest gay marriage in Taipei*, TAIPEI TIMES, (last visited 01 August 2023, 8.45 pm) <https://www.taipeitimes.com/News/front/archives/2016/12/04/2003660533>. <http://www.dailymail.co.uk/wires/ap/article-3944818/Taiwanese-protest-against-sex-marriage-bill.html>.
18. *Most Taiwanese unaffected by same-sex marriage: poll*, TAIPEI TIMES, (last visited 01 August 2023, 10.00 pm) <https://www.taipeitimes.com/News/taiwan/archives/2020/05/16/2003736508>.

Social Acceptance	65	-
Public Affection	48.2	51.8
Adoption of Children through Artificial Reproductive Technologies	42.1	50.1
Social Acceptance	65	-
Public Affection	48.2	51.8
LGBTQ+ Awareness in Educational Institutions	53	47

SOUTH-EAST ASIA

Thailand

Thailand, officially known as the Kingdom of Thailand, is a country located in Southeast Asia. The capital of Thailand is Bangkok, which is also the largest city in the country. Bangkok is a bustling metropolis known for its vibrant street life, ornate temples, and modern skyscrapers. Thailand has a constitutional monarchy, and the King is highly respected and revered by the Thai people, King Maha Vajiralongkorn is the current monarch. Thai culture is deeply influenced by Buddhism and has a strong emphasis on respect, family values, and traditional customs. Thailand is one of Asia's most visible LGBTQ communities.¹⁹

Historical Background

Historically, Thailand has had a more tolerant attitude towards gender and sexuality compared to many other countries in the region. Traditional Thai culture did not stigmatise same-sex relationships as severely as some other societies. In pre-modern times, same-sex relationships were not uncommon, and some historical texts and literature depict same-sex love. In the early 20th century, Thailand's legal system underwent significant reforms under King Rama V, but same-sex marriage was not addressed in these reforms. After World War II, when several countries began decriminalising homosexuality, there was no specific legal recognition of same-sex relationships in Thailand. In the late 20th century, the LGBTQ+ rights movement started gaining momentum globally, and Thailand saw the emergence of LGBTQ+ rights activism. LGBTQ+ individuals and advocacy groups began advocating for greater recognition, protection, and acceptance of their rights in Thai society.

19. Kuhakan, J. (2023) *Thai PM frontrunner attends Pride parade, promising same-sex marriage, Gender Identity Rights, Reuters*. Available at: <https://www.reuters.com/world/asia-pacific/thai-pm-frontrunner-attends-pride-parade-promising-same-sex-marriage-gender-2023-06-04/> (last visited 02 August 2023, 10.00 pm)

Current Legal Provisions

Initially, Thai law prohibits same-sex couples from getting married or registering for civil partnerships; only a man and a woman may be lawfully wed. Even if the number of same-sex marriages in cultural or religious ceremonies has increased recently, Thai law prohibits them from being each other's legal heirs. Only those with a legal marital status are permitted to be regarded as the spouse's legal heirs, according to Section 5 of Thailand's Civil Code²⁰. Same-sex partners in the country are denied a number of legal conjugal rights and services, including the ability to co-direct "marital assets, tax advantages, alimony, social security benefits for spouses provided by the employer and the government, and life insurance benefits"²¹.

Section 30 of the Constitution of Thailand guarantees equality for all persons under Thai law and prohibits bigotry on the grounds of sex. However, it does not particularly include "sexual orientation" and "gender identity" among the dozen prohibited grounds. Instead, protection against inequity on the grounds of "sexual identity," "gender," and "sexual diversity," is explicated as inclusive in the grounds of "sex" in the accompanying 'Intentions of the Constitution' which provides guidelines for application²².

Currently, The House of Representatives has put together a parliamentary sub-committee to scrutinise two bills, i.e. Marriage Equality Bill and The Civil Partnership Bill²³. In July 2022, both the bills were separately checked and sent to the parliament for voting. The Marriage Equality Bill, projects to alter Section 1448 of Thailand's Civil and Commercial Code, commonly known as the "marriage law", to change the words "husband" and "wife" to "spouse", and the words "man" and "woman" to "person". This will allow the two individuals to lawfully marry, irrespective of their sexual and gender identity and also provide the rights similar to the heterosexual couples.

Contrarily, the Civil Partnership Bill grants same-sex spouses to register as "civil partners", which give them a more constrained range of rights and privileges with regard to matters

20. R. Kobsirikarn: The work of the National Human Rights Commission of Thailand on human rights in relation to sexual orientation and gender identity, Thailand country paper, for the APF-Komnas HAM Workshop on the Role of NHRIs in the Promotion and Implementation of the Yogyakarta Principles, 5-7 May 2009, Yogyakarta, Indonesia, p. 4.
21. S. Preechasilapakul, [Persons of diverse sexualities in [Thai] legal system], op. cit. (last visited 03 August 2023, 5.30 pm).
22. Busakorn Suriyasarn, *Gender Identity and Sexual Orientation in Thailand*, (International Labour Organisation, 2014) https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_356950.pdf
23. Busakorn Suriyasarn, *PRIDE at Work: A study on discrimination at work on the basis of sexual orientation and gender identity in Thailand*, (International Labour Organisation, 2015) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_368644.pdf

including child adoption, healthcare consent, property management, and inheritance²⁴. The Civil Partnership Bill does not grant LGBTQIA+ couples the same entitlements as heterosexual couples, including the access to connubial benefits such as tax deductions and government pensions, unlike the Marriage Equality Bill.²⁵

According to the country's Constitution, the bills must be passed by the House of Representatives in their second or third readings before the Senate takes them up for further consideration.

Societal Inclusivity

Thailand is considered one of the more progressive countries in Asia regarding social inclusivity for same-sex couples, although there is still work to be done to achieve full equality and acceptance. It has a rich tradition of gender diversity, and LGBTQ+ individuals are often visible and accepted to some extent. The country hosts vibrant LGBTQ+ events and festivals, and there are LGBTQ+ friendly establishments in cities like Bangkok. There are also various organisations and activists campaigning for equal rights for same sex couples.

While there is acceptance and progress, challenges remain. LGBTQ+ individuals can still face discrimination, stigma, and challenges in various aspects of society. Legal recognition of same-sex relationships would provide important legal and societal protections²⁶

Indonesia

The Indonesian society is dictated by a sense of 'morality' that is often linked to religious practices and laws. The country provides its citizens the Right to Religion as a fundamental human right under Article 28I, though the country also claims to be monotheistic in nature as enshrined in Article 29 in Part IX of the Indonesian Constitution²⁷. Islam, being the major religion in the country, is said to heavily influence the country's policies, much like the Hindu counterpart in India - which includes the concept of religious, social and constitutional 'morality' of same-sex marriage that this paper sets forth to recognise.

24. *International Labour Organization*. Available at: https://www.ilo.org/public/libdoc/ilo/2015/115B09_56_engl.pdf (last visited 03 August 2023, 6.15 pm)

25. Fortify Rights (2022) *Thailand: Prioritize the marriage equality bill in the New Legislative session, Fortify Rights*. Available at: <https://www.fortifyrights.org/tha-inv-2022-11-01/> (last visited 30 July 2023, 2.00 pm)

26. Lefevre, A.S. (2013) *Thailand, conservative but tolerant, may legalise gay marriage, Reuters*. Available at: <https://www.reuters.com/article/uk-thailand-gay-marriage-idUKBRE97K04X20130821> (last visited 03 August 2023, 10.45 pm)

27. *Undang-Undang Dasar Republik Indonesia 1945 - MKRI*. Available at: <https://www.mkri.id/public/content/infoumum/regulation/pdf/UUD45%20ASLI.pdf> (last visited 02 August 2023, 9.45 pm).

The LGBTQ+ community in Indonesia is on similar footing as India, forming a small portion of the country's population. However, Indonesia does not allow for interfaith marriages, and largely depends on a single Indonesian Law No. 1 of 1974 concerning marriage where couples can only get married if they belong to the same faith²⁸. The absence of Personal Laws in relation to marriage and correlated mechanisms puts the country on a separate footing compared to India.

Historical Background

Viewing Indonesia through a historical lens shows how the country's relationship with Indian culture dates back millenia. It is said to have relations with the Pallava, Chola and the Pandya Dynasties in Southern India. The use of Sanskrit and Pali, therefore, was institutionalised in the island of Sumatra²⁹. As time progressed, Indonesia is also said to have had relations with Buddhist Influences from India, with the Kalinga and Sriwijaya Empires. Close connections with India continued, with Islam emerging from the country around the 11th Century, though strong evidence for the same is only found from the 13th Century³⁰. Commercial ties with, once again, the Indians are said to have brought the "heterodox mystic sects of Sufism" into the country³¹.

The current legal system in Indonesia is a product of the Dutch Colonial Laws present in the country, a Roman-Dutch Model of which is greatly evident in the country's civil law even today³². After its independence in 1945, the country developed its Constitution based on the existing Dutch legal provisions in the country, and by incorporating the customary (adat) law that predates the country's colonisation^[33]. A single province in the country, Aceh, also implements the Sharia Law^[34].

28. *Refugee Review Tribunal australia RRT research response - refworld*. Available at: <https://www.refworld.org/pdfid/4b6fe1fe25.pdf> (last visited 02 August 2023, 10.00 pm).
29. *Sumatra's Indian connect. Jakarta Globe*. Available at: <https://jakartaglobe.id/opinion/sumatras-indian-connect> (last visited 02 August 2023, 10.15 pm).
30. *Islamic Influence in Indonesia*, BRITANNICA, <https://www.britannica.com/place/Indonesia/Islamic-influence-in-Indonesia> (last visited 02 August 2023, 11.00 pm).
31. *Muslims in Java*, BRITANNICA, <https://www.britannica.com/place/Indonesia/Muslims-in-Java> (last visited 02 August 2023, 10.15 pm).
32. *Southeast Asian Region Countries Law: Indonesia*, THE UNIVERSITY OF MELBOURNE, <https://unimelb.libguides.com/c.php?g=930183&p=6721974> (last visited 02 August 2023, 10.30 pm).
33. *Ibid*.
34. *Q&A: What you need to know about sharia in Aceh*, THE JAKARTA POST, (Mar. 04, 2018), <https://www.thejakartapost.com/news/2018/03/04/qa-what-you-need-to-know-about-acehs-sharia-law.html> (last visited 02 August 2023, 10.00 pm).

Sociologically, marriage is still bound by the practices as found in religious customs, practices or scriptures, if any. The institution of marriage in a legal sense, is not specifically addressed to every religion. Rather, the country defines the acceptable form of marriage, whose conditions, when met, are bound to be registered under the State according to the Law No. 01 of 1974 concerning Marriage.

Current Legal Provision

The politics surrounding same-sex marriage are rigid and unwelcoming to the recognition and legalisation of same-sex marriage. Currently, homosexual activity in the country is legal in all provinces of the State except the Aceh province³⁵, though the activity is still socially stigmatised. Further, the State continues to impose censorship regarding the spread of homosexual content³⁶.

With relation to the social institution of marriage and its legal sanctification, the Law No. 01 of 1974 concerning Marriage states that marriage is legal if the registration and procession follows and is sanctified by their respective religious institution³⁷. Further, the same provision also states that “marriage can exist only between a man and a woman”. This definition of marriage as provided by the law is not inclusive of any further provisions and is therefore considered to be an exclusive bond between a man and a woman only. In this sense, the law remains to be binary in nature.

Recently, the Indonesian Parliament unanimously passed a bill which is to replace the old dutch criminal code in place previously, with a need to make the law more “relevant as compared to the Dutch Law...”³⁸. The ratification of this bill into the law of the country could be potentially disastrous for the LGBTQ+ community, along with other minorities in the country.

35. *Indonesia summons Britain's envoy after furore over rainbow flag*, REUTERS, (May 23, 2022, 1:26 PM IST), <https://www.reuters.com/world/indonesia-summons-britains-envoy-after-furore-over-rainbow-flag-2022-05-23/> (last visited 02 August 2023, 10.45 pm).

36. Hugo Greenhalgh, *Banned and Blocked: LGBTQ+ Websites censored from Russia to Indonesia*, (Sept. 01, 2021), <https://www.thejakartapost.com/news/2021/09/01/banned-and-blocked-lgbt-websites-censored-from-russia-to-indonesia.html> (last visited 02 August 2023, 10.50 pm).

37. *Law no. 1 of 1974 Marriage Law. Legal Information Institute*. Available at: https://www.law.cornell.edu/women-and-justice/resource/law_no._1_of_1974_marriage_law (last visited 02, August 2023, 08.00 pm).

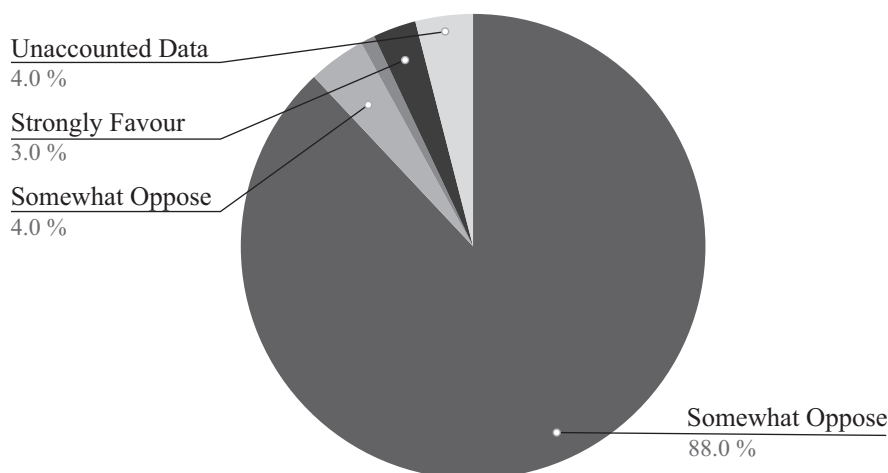
38. Jamaluddin, M., Chen, H. and Watson, A. (2022) *Indonesia bans sex outside marriage as Parliament passes sweeping New Criminal Code*, CNN. Available at: <https://edition.cnn.com/2022/12/05/asia/indonesia-new-code-passed-sex-cohabitation-intl-hnk/index.html> (last visited 02 August 2023, 08.15 pm).

Societal Inclusivity

Indonesia, as a society, can be said to be leaning towards rigidity as compared to flexibility with regard to laws relating to the LGBTQ+ community. Two sects of Islam exist in the country - Muhammadiyah and Nahdlatul Ulama - with the latter, a more tolerant and inclusive school of thought, being the steering force of the present government. With regard to Christianity, certain archdioceses in the provinces of the country make it the mission of the Religious institution to embrace minorities from the LGBTQ+ community as well as the specially-abled community. However, all these provisions point towards a society that is yet to develop and normalise homosexuality. Nonetheless, the homosexuality acceptance rate in Indonesia has risen from a meagre 3% in 2013 to 9% in 2020³⁹.

Further, a study conducted by the Pew Research Centre on the views persons share toward same-sex marriage in Indonesia showed the following results⁴⁰.

Views on Same Sex marriage in Indonesia



The results from the pie-chart elaborate on the inherent differences in opinion on the recognition of same-sex unions in Indonesia, and the conservatism that exists in the society.

39. The Jakarta Post (no date) *Survey on acceptance in Indonesia gives hope to LGBT community*, *The Jakarta Post*. Available at: <https://www.thejakartapost.com/news/2020/06/28/survey-on-acceptance-in-indonesia-gives-hopes-to-lgbt-community.html> (last visited 02 August 2023, 08.25 pm).

40. Poushter, J. (2023) *How people in 24 countries view same-sex marriage*, *Pew Research Center*. Available at: <https://www.pewresearch.org/short-reads/2023/06/13/how-people-in-24-countries-view-same-sex-marriage/> (last visited 02 August 2023, 08.45 pm).

THE INDIAN PERSPECTIVE

The beginnings of the legal recognition of the LGBTQ+ rights can be traced to the early 2000s. The Delhi High Court initially heard a case filed by Naz Foundation back in 2009⁴¹, delivering a historic judgement, where Section 377 was ruled to be unconstitutional to the extent that it “criminalized consensual sexual acts between adults in private”. The judgment effectively decriminalized homosexual acts among consenting adults. The Delhi High Court’s decision was widely celebrated by LGBTQ+ activists and supporters as a crucial step toward recognising LGBTQIA+ rights in India.

However in December 2013, the Supreme Court of India reversed the Delhi High Court’s judgement in the *Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors.*⁴² case. The Supreme Court reinstated the validity of Section 377, effectively criminalising consensual homosexual acts between adults. The Supreme Court’s decision was met with disappointment and outrage from LGBTQ+ activists and human rights advocates⁴³.

Following the decision of the Supreme Court of India in *Suresh Kumar Koushal & Anr. v. NAZ Foundation & Ors* - where the organisation stood its ground that Section 377 of the Indian Penal Code violated fundamental rights, including the right to equality, privacy, and non discrimination, as enshrined in the Indian Constitution - the clockwork for the inclusivity of homosexual couples started coming into place.

Many argued that the ruling was a setback for human rights and equality in India. In *Navtej Singh Johar & Ors. v. Union of India*, the court struck down the discriminatory aspects of Section 377, effectively decriminalising homosexuality in India.

Current Legal Provisions

There have been several legal petitions and cases related to the recognition of same-sex marriage and LGBTQ+ rights in India. In *Navtej Singh Johar v. Union of India*⁴⁴, a group of petitioners, including dancer and LGBTQ+ activist Navtej Singh Johar, challenged the validity of Section 377 of the Indian Penal Code. The case was primarily focused on the decriminalisation of consensual same-sex relationships between adults. On September 6, 2018, the Supreme Court declared that consensual homosexual acts between adults were no longer criminal offenses

41. Naz Foundation v. Government of NCT of Delhi & Ors., 160 Delhi Law Times 277

42. Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors., (2014) 1 SCC 1

43. Monalisa (2013) *Supreme Court upholds Section 377 criminalizing homosexual sex*, mint. Available at: <https://www.livemint.com/Politics/FHDQ9yB2jRJMsoINCQrkgL/Supreme-Court-to-rule-on-legality-of-gay-sex-today.html> (last visited 03 August 2023, 11.30 pm).

44. Navtej Singh Johar and Others v Union of India through Secretary Ministry of Law and Justice Writ Petition No 76 of 2016. The representative petitioners were a dancer (Navtej Singh Johar), a journalist (his partner), a chef, a hotelier and a businesswoman.

under Section 377. This judgement effectively decriminalised homosexuality in India and recognized the rights of LGBTQ+ individuals to engage in consensual relationships without fear of legal repercussions. While the Navtej Singh Johar case did not specifically address the issue of legalizing same-sex marriage, it was a significant step forward for LGBTQ+ rights in India by striking down a law that had been used to discriminate against and marginalize LGBTQ+ individuals.

Currently, *Supriyo @ Supriya Chakraborty & Anr. v. Union of India*⁴⁵ is an ongoing case in the Supreme Court, filed by 52 petitioners. The petitioners, consisting of queer couples and individuals, seek for the recognition of marriage between two persons irrespective of the gender or sexual orientation, by enforcing the fundamental rights guaranteed by the Constitution of India under the Articles 14, 15, 19, 21 and 25. In the matter at hand, the petitioners have sought for recognition of same-sex marriages under several acts - namely, the Special Marriage Act, 1954 ('SMA 1954'), the Foreign Marriage Act, 1969 ('FMA 1969') and the Hindu Marriage Act, 1955 ('HMA 1955') - and the same be made gender neutral⁴⁶

Section 4(a) of the Special Marriage Act, when read along with Sec. 4(c) gives rise to an opportunity to interpret the statutory provisions in a gender neutral manner.

“4. Conditions relating to solemnization of special marriages.— Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnised under this Act, if at the time of the marriage the following conditions are fulfilled, namely:—

(a) neither party has a spouse living;...

...(c) the male has completed the age of twenty-one years and the female the age of eighteen years;”

Clause (a) using terminology like ‘spouse’, rather than ‘husband’ or ‘wife’ - when read along with clause (c) of the same section, allows room for the Court to review the grammatical meaning of the sentence. However, this provision would still require the replacement of important parts of other Acts relating to Maintenance, Adoption, Inheritance and so on. This substantial replacement, therefore, is the risk that the Court and Government are hesitating to take, given the overburdening of the organs.

45. Supriya Chakraborty & Anr. v. Union of India W.P.(C) No. 1011/2022; Diary No. 36593/2022

46. Editor *et al.* (2023) *Supreme Court commences hearing on same-sex marriage*, SCC Blog. Available at: <https://www.scconline.com/blog/post/2023/04/18/same-sex-marriage-the-petitioner-refers-to-navtej-singh-johar-matter-and-challenged-the-constitutional-validity-of-provision-of-special-marriage-act-foreign-marriage-act-and-hindu-marriage-act-supreme/> (last visited 03 August 2023, 11.00 pm).

Under Articles 19 and 21 of the Indian Constitution, all citizens have the right to choose a spouse. This is because, at the core of personal liberty, we have the freedom to choose who we are, to love whom we choose, and to live a life that is true to our most authentic selves, not only without fear of retribution but also in unbridled joy and as equal citizens of this nation. The liberty safeguarded by Article 21 of the Constitution in regards to marriage and family life is this freedom of personal choice. The Hon'ble Supreme Court acknowledges these assertions and adds that Articles 19 and 21 of the Constitution designate the expression of choice as a Fundamental Right⁴⁷.

Excluding same-sex marriage from the SMA violates Article 14 and 15 of the Constitution as a certain section of the public is disproportionately debarred from availing the benefits of the masses. Here, the law must remain cognizant of the fact that changes in society have ushered in significant changes in family structures. Familial relationships must be protected by law; this certainly includes queer relationships. The argument that the decriminalisation of Sec. 377 has put the LGBTQ+ community on an equal pedestal is an incomplete argument if all spheres of life are not made equitable as well. There is a need to legalise and regulate their rights in subjects relating to Marriage, Family, Workplaces, Educational Institutions and other social institutions. Therefore, unconventional families which include same-sex couples, must be able to enjoy all legal and societal benefits that their traditional heterosexual counterparts do. The Petitioners, and thereby the community, seek that the Special Marriage Act ought to apply to “a marriage between any two persons”, regardless of their gender identity and sexual orientation, or in the alternative. This case is still on-going in the Supreme Court of India.

THE FUNDAMENTAL ISSUE: DIVERSITY VS. TRADITIONAL VALUE SYSTEMS

Sociologically, India's interpretation of marriage strictly restricts itself to the 'acceptable' form of marriage as opposed to the legal understanding of marriage. In other words, it can be argued to some extent that marriage as a social institution predates marriage as a legal requirement. Therefore, large degrees of opposition are met in a society where traditional values tend to have a greater persuasive value as compared to legal sanctity. However, it still cannot be claimed that the presence of legal provisions or recognition has not aided Indian society in developing an inclusive mindset about marriage between persons of the same sex. Marriage in India is an institution of great value to the very social structure of Indian Society. In the same manner, marriage in India is of great legal value to an individual. There is a need to find a consensus between the legal definition of marriage and the sociological definition of marriage.

47. *Supreme Court observer*. Available at: <https://www.scobserver.in/wp-content/uploads/2023/01/Supriyo-@-Supriya-Chakraborty-redacted.pdf> (last visited 03 August 2023, 11.45 pm)

Though India has said to be tolerant of homosexual relations in its ancient past, be it with Bruhannala from the Mahabharata⁴⁸, the story of Bhagiratha⁴⁹, and the town of Khajuraho in Madhya Pradesh⁵⁰, the country's frequent tussle due to foreign invasions, the burning of Nalanda, and the centuries of colonisation brought about elements of denouncement with regard to the treatment of the LGBTQ+ Community in India, the most influential being Section 377 of the IPC, which is primarily a colonial law.

However, through the end of all these instances, India is still left with a significant deal of culture, to the point where Islamic and Christian practices and customs have incorporated a Hindu outlook; all religions have been influenced to form the Indian identity. Nevertheless, this identity continues to be born from a colonial mindset, which enables one to contextualise the reasons as to why this society seems to be more 'conservative' in nature in the eyes of the West.

Analysing the grounds of the Petitioners from *Supriyo @ Supryia Chakraborty & Anr. v. Union of India* reveals another perspective. Their argument is based on the assumption of the concepts of gender fluidity. Gender fluidity refers to a gender identity that is not fixed to a single, static gender. Individuals who identify as gender fluid may feel that their gender identity changes or shifts over time, and they may not exclusively identify as strictly male or female. Instead, their sense of gender may be more flexible and fluid, encompassing a range of gender expressions and identities.

The concept of Gender Fluidity is difficult for a society like India to grasp, as the country has largely functioned on the Gender Roles in place for over a millenia. Another flaw in the system is the fact that the Petitioners and the Community perceive Gender beyond its binary nature; the limit to the number of genders one can identify does not exist.

Accordingly, the difficulties in bringing about the legalisation of same-sex marriage in Indian Society have to do with the confinement of society's intellectual capacity to the gender roles already present in society. These 'preset' roles perform a substantial function in today's social order, and the unacceptance of the same by the pro-LGBTQ+ proves to put them at a

48. Hariprasad, *Mahabharata: Arjuna as Bruhannala*, (Feb. 17, 2011), <https://anandatirtha.wordpress.com/2011/02/17/mahabharata-arjuna-as-bruhannala/> (last visited 04 August 2023, 5.30 pm).

49. Prabhash K. Dutta, *Homosexuality in ancient India: 10 instances*, India Today, (Jul. 10, 2018, 18:40 IST) <https://www.indiatoday.in/india/story/10-instances-of-homosexuality-among-lgbts-in-ancient-india-1281446-2018-07-10>. (last visited 04 August 2023, 06.15 pm).

50. Vikas Pandey, *Why legalising gay sex in India is not a Western idea*, BBC News, (Dec. 31, 2018), <https://www.bbc.com/news/world-asia-india-46620242> (last visited 04 August 2023, 06.30 pm).

disadvantage. This severe abstraction of the concept of Gender and Sex proves to be the most elementary issue that the Indian majority is vexed for.

The Government of India, on the other hand, has once referred to the recognition of same-sex marriage as an “urban elitist view”, and has actively advocated to not recognise the community as it would require the replacement of an entire “branch of law” before the Supreme Court⁵¹. Further, it has also argued that the Court must not try to create a “new social institution”, as it was the duty of the Parliament, and thereby the people of India who are entitled to do so^[52].

Nevertheless, dismissing the concern at hand by viewing it as a ‘Western’ concept is not viable either. India’s queer population was estimated to be around 2.5 million people in 2012⁵³ - a number that has been heavily debated upon currently⁵⁴.

FINDINGS

- The conception of homosexuality is still a major unlearning/relearning process in the Asian atmosphere.
- Homosexuality and the theories associated with it cannot be concluded to have arisen from the West.
- In relation to India, there is a difficulty in finding a nexus between Constitutional Morality as opposed to Societal Morality.
- The Constitution of India guarantees all citizens, which includes queer individuals, the Right to Equality and the Right to Life - a right which, in relation to the issue at hand, is being violated.
- Special Marriage Act, 1954 is a suitable platform for amendment to incorporate same-sex couples in the ambit of marriage.

51. Krishnadas Rajagopal, *Same-Sex Marriage is a ‘mere urban elitist view’: Government to SC*, (Apr. 17, 2023, 09:45 AM IST), <https://www.thehindu.com/news/national/same-sex-marriage-is-a-mere-urban-elitist-view-government-to-sc/article66746390.ece> (last visited 04 August 2023, 07.00 pm).

52. *Ibid.*

53. Banerji, A. (2019) *One year after landmark ruling for LGBT+ rights in India, challenges persist*, *Reuters*. Available at: <https://www.reuters.com/article/us-india-lgbt-idUSKCN1VR256> (last visited 04 August 2023, 07.15 pm).

54. Yang, T. (2021) *India ‘comes out,’ scrapping law criminalizing homosexuality*, *The Asia Foundation*. Available at: <https://asiafoundation.org/2018/09/26/india-comes-out-scrapping-law-criminalizing-homosexuality/> (last visited 04 August 2023, 07.45 pm).

- The absence of clear definitions of ‘Marriage’, ‘Man’, ‘Woman’, ‘Husband’ and ‘Wife’ prove to be problematic.
- Integrating same-sex marriage laws in the existing body of laws in the country is a herculean task as it requires the amendment of adoption, inheritance, maintenance and other substantial branches of law.

CONCLUSION

Promoting same-sex marriages in India requires a multi-pronged approach that involves legal advocacy, public education, and cultural change. However, it is concluded that the legalisation and regulation of same-sex marriage, no matter how difficult a task, is a worthwhile risk to take in order to integrate the community in accordance with the Constitution. Keeping the effects of allowing such marriages, and the greyness of law following such a decision, it is also recommended that the Legislative, Executive and Judicial systems take great care in deliberating on such issues. Though the Special Marriage Act is capable of being interpreted to permit same-sex marriage, such a decision cannot be made in haste. Inclusivity of a marginalised community, without practical and careful contemplation, cannot be set forth. Filling the lacuna of the law is the society’s highest duty; leaving it unpatched can be disastrous.

SUGGESTIONS

While significant progress has been made, there are still changes needed in the socio-legal aspects:

- A wider interpretation of the Special Marriage Act, to accommodate queer couples.
- Creation of cognizance on same-sex marriage and homosexuals and utilising the advantages of Education effectively.
- Conduction of public awareness campaigns to educate society about LGBTQ+ issues, dispel myths, and reduce stigma and discrimination.
- Fostering conversations within religious and cultural communities to promote inclusivity and acceptance.
- Highlighting progressive interpretation of religious texts that emphasise love and compassion.
- Promoting the need for regulation of same-sex marriages to the Parliament and the Government.
- Representation of individuals in the LGBTQ+ community in the legislative, executive and judicial arena.

DISCRIMINATION AGAINST THE LGBTQ+ COMMUNITY IN INDIA POST DECRIMINALIZATION OF SEC. 377

Nupur Adawadkar¹

Divya Panickar²

“To deny people their Human Rights is to challenge their very Humanity”.

-Nelson Mandela

INTRODUCTION

Historically, homosexuality has been subject to legal condemnation, with its practise being deemed a punishable offence under Sec. 377 of the Indian Penal Code, 1860 (IPC). This section of the code pertains to ‘Unnatural Offences’ which reads as follows: *“Unnatural offences. — Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*³ In the year 2018, a joint petition was filed before the Hon’ble Supreme Court (SC) of India by Navtej Singh Johar and four others, seeking the decriminalisation of consensual adult same-sex relationships within the purview of Section 377 which criminalized “unnatural offenses” thereby effectively criminalizing homosexuality in India. The petition sought to safeguard the rights and dignity of the LGBTQ+ community, whilst simultaneously contesting the discriminatory provisions of the legislation that transgressed the fundamental rights enshrined within the Indian Constitution. A distinguished five-judge bench of the SC comprising of Chief Justice Dipak Misra, Justice Rohinton F. Nariman, Justice A. M. Khanwilkar, Justice D. Y. Chandrachud, and Justice Indu Malhotra, unanimously decriminalized consensual adult same-sex relationships by striking down Sec. 377 of IPC whilst recognizing the inherent infringement of the Fundamental Rights of an individual as enshrined within the constitutional framework of India namely, Articles 14 (right to equality), 15 (prohibition of discrimination), 19 (right to freedom of speech and expression), and 21 (right to life and personal liberty).⁴ The court unequivocally affirmed that

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1. Ph.D Research Scholar (Full-time), Alliance School of Law, Alliance University, Bengaluru.
 2. Ph.D Research Scholar, Alliance School of Law, Alliance University, Bengaluru.
 3. Indian Penal Code, 1860, § 377, No.45, Acts of Parliament, 1860 (India).
 4. Supreme Court Observer, <https://www.scobserver.in/cases/navtej-singh-johar-v-union-of-india-constitutionality-of-section-377-ipc-background/>, (Last visited 7th August, 2023).

the constitutional safeguards pertaining to equality and non-discrimination are universally applicable to all individuals, irrespective of their sexual orientation. This landmark judgement, widely hailed as a momentous triumph for the LGBTQ+ rights in India, thereby signifying a progressive step towards fostering a more inclusive and accepting society. Despite the significant strides made by the law in promoting inclusivity for the LGBTQ+ community, the attainment of social inclusion and acceptance remains an elusive aspiration. There are notable instances of blatant violation of their rights thereby highlighting the necessity of persistent efforts aimed at mitigating the multifaceted challenges encountered by them.

Following the decriminalisation of Section 377, a significant challenge confronted the LGBTQ+ community, namely the pursuit of legal recognition pertaining to marriage, adoption, and surrogacy rights for same-sex couples. The dispute of marriage rights, adoption rights, and access to surrogacy for members of the LGBTQ+ community is a subject of significant debate. In the Indian legal framework, it is noteworthy to acknowledge that same-sex marriages remain devoid of legal recognition, thereby precluding LGBTQ+ couples from enjoying the fundamental right to engage in matrimonial unions. The absence of legal recognition extends to the realm of adoption, thereby depriving LGBTQ+ couples of the right to adopt children within the prevailing legal framework. Furthermore, the availability of surrogacy for LGBTQ+ couples is constrained, and there exist regulatory limitations that pose challenges in their pursuit of parenthood via this avenue. These limitations foster a state of inequality, thereby averting the LGBTQ+ community and couples from enjoying the same rights and opportunities that are readily accessible to heterosexual partners. The impact of this phenomenon extends beyond the realm of an individual's personal life, encompassing broader implications pertaining to various socio-legal domains, including inheritance rights, property rights, and the provision of healthcare and social benefits to familial units.

The historical trajectory of LGBTQ+ rights in India exhibits a multifaceted and ever-changing narrative, marked by a confluence of progressive developments, regressive segments, and an unwavering endeavour for equality. The genesis of this trajectory can be traced back to the traditional perspectives on sexuality and gender prevalent in India, wherein historical literature and artistic representations portrayed a remarkable fluidity in sexual expression and identities. However, this atmosphere of openness in Indian society was swiftly eclipsed by the establishment of the British colonial rule, wherein Victorian values were imposed which exerted a profound influence in the name of civilization. Consequently, this cultural shift materialised in 1861, when the British colonial administration introduced Section 377 of IPC.⁵ This regressive and unjust legislation, characterised by its draconian nature, designated any

5. Poonam Kakoti Borah, *Engaging with the Law: Decriminalisation of Homosexuality and the Johar Judgement*, 2018, 6(3), Space and Culture, India, 5-22, 11, 2018.

manifestation of “unnatural offences” as criminal and unlawful, encompassing acts of same-sex sexual conduct. The persistence of Section 377, even after attainment of Independence in 1947, perpetuated discrimination and persecution against the members of the LGBTQ+ community overshadowing their lives.

The emergence of LGBTQ+ activism and advocacy groups in India during the late 20th century marked a significant turning point in the country’s sociopolitical landscape. The AIDS epidemic that transpired in the 1980s served as a catalyst for the LGBTQ+ community, instigating the establishment of various organisations with the objective of providing support and fostering awareness regarding the challenges encountered by LGBTQ+ individuals. These organisations served as an amplifier for the marginalised voices and instigated the nascent embers of transformative progress. The endeavour to combat the antiquated legislation in question transcended the mere advocacy for the rights of individuals identifying as homosexuals, but rather encompassed a broader spectrum of individuals who did not identify with conventional paradigms of sexuality and gender. The arduous struggle of the LGBTQ community for basic human rights paid off in 2018, when the Supreme Court through its landmark judgment in the case of *Navtej Singh Johar vs. The UOI* reversed its previous judgement as rendered in 2013, in the case of *Naz Foundation vs. NCT of Delhi*, thereby effectuating the decriminalisation of consensual same-sex relationships. This notable judgement not only serves as a testament to the acknowledgment of the fundamental rights and inherent worth of individuals within the LGBTQ+ community, but also signifies a significant step towards the eradication of the deeply entrenched and oppressive remnants of Section 377.

Naz Foundation Govt. v. NCT of Delhi

In the year 2009, the High Court of Delhi, in the landmark case of *Naz Foundation Govt. v. NCT of Delhi*, rendered a significant judgement wherein it concluded that Section 377 of the IPC imposed an unjustifiable limitation on the act of consensual intercourse between adults conducted in private settings. The court rendered a verdict wherein it was determined that Sec. 377 of IPC contravened the fundamental rights safeguarded by Articles 14, 15, 19, and 21 of the Indian Constitution.⁶

Suresh Kumar Koushal v. Naz Foundation

The issue of the constitutional legitimacy of Section 377 has reemerged due to the opposition of certain individuals and faith-based organisations, who argue against its decriminalisation on the grounds of upholding India’s traditional values. The Supreme Court received a petition from individuals who challenged the *Naz Foundation* judgement of the Delhi High Court, with the aim of initiating a reassessment of the legal standing of Section 377. In 2013, the Supreme

6. *Naz Foundation v. Government of NCT of Delhi and Others*, WP(C) No.7455/2001

Court rendered a decision to resume the criminalization of homosexuality after a prolonged legal battle lasting eight years. The Court's rationale for this ruling was based on the assertion that the LGBTQ+ population, being a minority group, did not possess constitutional protection. The court held that the constitutionality of Section 377 was not infringed upon.⁷

National Legal Services Authority v. Union of India

The case of National Legal Services Authority v. Union of India constituted a significant milestone in the acknowledgment and safeguarding of transgender rights. The Supreme Court has recognised transgender individuals as a distinct gender category, commonly referred to as the "third gender," in order to address the issues of discrimination and marginalisation they face. The case prompted the government to confront the economic and social obstacles encountered by individuals identifying as transgender. This led to the implementation of policy modifications and the enactment of the Transgender Persons (Protection of Rights) Act, 2019.⁸

K.S. Puttaswamy v. Union of India

The case of K.S. Puttaswamy v. Union of India (2017) is significant in India's legal realm, particularly in the domain of individual rights and privacy. It stems from the landmark judgement of Suresh Kumar Koushal v. Naz Foundation, which examined the infringement of the right to privacy under Section 377 of the Indian Penal Code. Justice Chandrachud's analysis of the Koushal case highlights the importance of recognizing the scope of sexual orientation within the fundamental right to privacy. This recognition has challenged the argument that only a limited number of individuals are subject to prosecution under Section 377. The Puttaswamy case established a significant precedent by acknowledging the fundamental nature of the right to privacy and the societal implications of legislation for historically marginalized groups.⁹

Navtej Singh Johar v. Union of India

In the case of Navtej Singh Johar v. Union of India, the honourable Supreme Court of India was confronted with the constitutional validity of Section 377 of the Indian Penal Code, which criminalised consensual same-sex sexual activities. The petitioners, representing the LGBTQ+ community, challenged the provision on the grounds that it violated their fundamental rights. Contextualising the matter at hand, subsequent to the reversal of the Delhi High Court's ruling in 2013, individuals identifying as homosexuals were once again subjected to legal classification as offenders. These individuals tenaciously filed a petition before the highest judicial authority in the nation, the Supreme Court, contesting the constitutionality of Section 377 of the Indian Penal Code. Various contentions were posited with respect to the purported contravention of the

7. Suresh Kumar Kaushal v. Naz Foundation, Civil Appeal No. 10972 of 2013

8. National Legal Service Authority v. Union of India & Others, AIR 2014 SC 1863.

9. K.S. Puttaswamy v. Union of India, WRIT PETITION (CIVIL) NO 494 OF 2012

constitutional right to privacy, freedom of expression, equality, human dignity, and protection from discrimination by section 377. The Court rendered its final judgement on the 6th day of September in the year 2018, wherein it pronounced its decision, which can be succinctly encapsulated as follows: The unanimous decision rendered by the court unequivocally declares Section 377 to be in contravention of the constitutional framework, as it encroaches upon the fundamental rights pertaining to intimacy, autonomy, and identity.¹⁰

EXISTING LEGAL SCENARIO

One of the primary objectives pursued by the Supreme Court in its endeavour to decriminalise Section 377 was the protection and preservation of the fundamental rights of individuals who identify with the LGBTQ+ community through the case of Navtej Singh Johar vs. Union of India. It is evident that Section 377 of IPC, in its unambiguous form, flagrantly infringes upon the rights that are enshrined in Articles 14, 15, 19, and 21 of the Constitution. Nevertheless, this verdict proved insufficient in extending the matrimonial rights and privileges of LGBTQ+ members. The legal landscape surrounding family rights pertaining to same-sex couples is characterised by a lack of clarity and certainty. Moreover, it is evident that same-sex couples are subject to the deprivation of numerous family rights. Primarily, the institution of marriage in India does not currently extend its recognition to same-sex couples. While the statutory provisions in Indian legislation do not explicitly delineate the prohibition of marriage for same-sex couples, it is imperative to acknowledge that both the judiciary and the legislature have effectively conveyed the unequivocal stance that the institution of same-sex marriage is proscribed within the confines of Indian legal framework.

In the recent years, three petitions have been submitted before the Delhi High Court, seeking the honourable court's intervention to grant legal recognition and validation to marriages between individuals of the same sex.¹¹ The centre vehemently contested these pleas on the basis of the prevailing legal framework in India, which mandates that marital recognition is contingent upon the union being solemnised exclusively between individuals who conform to the biological categorizations of male and female, thereby possessing the inherent capacity to procreate.

In the landmark case of “Shakti Vahini v. Union of India” (2018)¹², the Honorable Supreme Court of India rendered a significant pronouncement, affirming that each and every individual, upon reaching the prescribed age, possesses the fundamental right to enter into matrimonial

10. Navtej Singh Johar v Union of India, AIR 2018 SC 4321.

11. Bevan Avil Pinto, *Family Rights for Same-Sex Couples in India: A Critical Analysis*, Vol.4, IJLR, 2022.

12. Shakti Vahini v. Union of India, Writ Petition (Civil) no. 231 of 2010

union with a person of their choice. Numerous activists harbour the belief that a comprehensive examination of this case, in conjunction with the Navtej Johar case, may potentially engender the possibility of according recognition to matrimonial unions between individuals of the same sex within the framework of the Special Marriage Act of 1954. However, on April 14th, 2022, the Allahabad High Court, rendered a verdict whereby it declined the plea put forth by two women seeking the recognition of their matrimonial union, claiming that the Hindu Marriage Act does not expressly forbid the solemnization of such a union. In response the lawyer of the Uttar Pradesh government, it was contended that the solemnization of same-sex marriage contravenes the established cultural and religious norms prevalent in India, thereby rendering it impermissible under the existing legal framework of the nation. The state government duly acknowledged that the Indian society operates in accordance with the tenets of Indian culture, religious beliefs, and the legal framework established by Indian jurisprudence. In the Indian context, it is widely acknowledged that marriage holds a significant religious and cultural value, being regarded as a sacred ‘sanskar’. However, from a legal standpoint, marriage is also recognised as a contractual arrangement. The state administration posited that, in accordance with the prevailing Indian family ethos, the recognition of a marriage in India necessitates the presence of both a male and a female party. Hence, the court, deemed it appropriate to deny the women’s request.¹³

Thus, it becomes evident that the legal framework in India unequivocally prohibits same-sex marriages. Consequently, the solemnization of such unions is rendered impermissible under the prevailing legal regime.

However, in the case of “Madhu Bala v. the State of Uttarakhand”,¹⁴ the court rendered a decision affirming the permissibility of cohabitation between two consenting adults of the same sex, even in the absence of a marital union. This ruling was grounded in the recognition that such individuals possess a fundamental right, as enshrined in Article 21 of the Constitution, to exercise their right to life and personal liberty. Hence, notwithstanding the absence of legal provisions for matrimony in India, it is noteworthy that cohabitation arrangements are safeguarded by the legal framework, thereby signifying parity in entitlements between same-sex and opposite-sex couples engaged in a cohabitation union. In another case of “S. Khushboo v. Kanniammal”¹⁵, the honourable Supreme Court of India rendered a landmark judgement, wherein it unequivocally affirmed that a live-in relationship, in all its manifestations, is an inherent facet of the valued right to life and liberty enshrined in Indian Constitution. The court, in its judicial pronouncement, expounded upon the legality of cohabitation arrangements,

13. *Id.*

14. Madhu Bala v. State of Uttarakhand, 2020 SCCOnLine Utt 276.

15. S. Khushboo v. Kanniammal, 2010 5 SCC 600

affirming that such unions are not prohibited or deemed illegal. Further in the matter of “Paramjit Kaur and others v. State of Punjab and others”, the Punjab and Haryana High Court rendered a judgement in July of the year 2020, wherein it was determined that individuals of the same sex are indeed permitted to engage in cohabitation arrangements and safeguard their fundamental rights to life and personal liberty as enshrined within the sacred Indian Constitution.¹⁶

Therefore, it is evident beyond doubt that the legal framework in India does not recognise marriage rights for individuals of the same sex, while concurrently allowing for the establishment of cohabitation arrangements.

Supriyo a.k.a Supriya Chakraborty & Abhay Dang v. Union of India thr. Its Secretary, Ministry of Law and Justice & other connected cases (2023)

This is a collection of ongoing cases before the Honourable Supreme Court of India pertaining to the potential expansion of the right to marry and have a family for individuals identifying as a member of the LGBTQ+ community in India. A panel of five judges forming a Constitution Bench presided over a series of twenty interrelated cases presented by a total of fifty-two petitioners. These petitioners seek the recognition of their right to marry and have a family, rooted in the guarantees against discrimination, equality, dignity, personal liberty, privacy, personal autonomy, and freedom of conscience and speech. Upon acceptance of the plea by the Supreme Court, the Central Government, represented by the Solicitor General Tushar Mehta, raised objections regarding the admissibility of the petitions, as well as the judiciary’s authority to bestow legal validation upon the ‘socio-legal institution’ of matrimony. The Chief Justice of India (CJI) expounded upon the limited purview of the hearing, which shall be confined to the elucidation and formulation of a conceptual framework pertaining to a “civil union” that may be accorded legal validation within the ambit of the Special Marriage Act of 1954.¹⁷

In the Indian jurisdiction, the solemnization and registration of matrimonial unions are regulated by various legislations, namely the Hindu Marriage Act of 1955, the Muslim Marriage Act of 1954, and the Special Marriage Act of 1954. These statutes pertain to distinct personal laws and govern the legal aspects of marriages within their respective religious communities. Likewise, the Special Marriage Act of 1954 assumes jurisdiction over civil marriages involving individuals of Indian origin, regardless of their religious or faith-based affiliations, both within the territorial boundaries of India and beyond its borders. Pursuant to the provisions of the aforementioned legislation, it can be discerned that the state, in its capacity as a governing entity, has chosen to bestow official recognition and approval upon the institution of marriage, thereby conferring legal validity and significance upon such unions, while concurrently exercising

16. Paramjit Kaur and others v. State of Punjab and others, 1996 SCC 7

17. Supriyo @ Supriya Chakraborty & Anr. v. Union of India, W.P. (C) 1011/2022

its authority to regulate and administer said unions in a manner that supersedes any religious considerations or affiliations.

In the context of the Indian legal framework, matters pertaining to marriage, divorce, and adoption are encompassed within the purview of personal laws, which are primarily regulated by religious laws which necessitate the conversion of one spouse to the religion of the other prior to the solemnization of marriage. Nonetheless, the Special Marriage Act, 1954, herein referred to as “the Act,” provides a legal framework that enables matrimonial unions between individuals belonging to divergent faiths and castes, without necessitating any form of religious or caste conversion. The present case before the Supreme Court pertains to the examination of whether the Act in question the capacity has to bestow the right to same-sex marriage.

A ‘civil union’ denotes the legally recognised status that affords same-sex couples with particular rights and obligations typically bestowed upon heterosexual married couples. While it is true that a civil union bears certain similarities to a marriage, encompassing aspects such as employment benefits, inheritance rights, property rights, and parental rights, it is imperative to acknowledge that there exist discernible distinctions between these two legal constructs. In the year 2015, the Supreme Court of the United States, through its seminal decision in the case of “*Obergefell v. Hodges*,” rendered a verdict that effectively legalised marriages between individuals of the same sex throughout the entire nation. Preceding this judgement, a significant proportion of the United States jurisdictions had enacted legislation pertaining to civil unions, which granted the capacity for matrimony to couples of the same gender, albeit without conferring upon them the full extent of legal recognition commensurate with opposite-sex unions. The institution of civil unions would entail the provision of certain entitlements, including but not limited to the right of succession, employment advantages extended to married individuals, shared parental responsibilities or co-ownership rights, and the prerogative to refrain from providing testimony against one’s significant other, akin to the legal protection afforded by the spousal privilege as stipulated in Section 122 of the Indian Evidence Act.

Within this particular corpus of legal cases, the primary purview of the Supreme Court of India is directed towards the comprehensive examination and analysis of the Special Marriage Act. There exists speculation within legal discourse regarding the potential for the Supreme Court to eliminate the gender binary paradigm within the purview of this act, thereby extending its applicability to encompass same-sex couples. The Supreme Court expeditiously curtailed the government’s “value judgement” pertaining to the proposition that an individual’s gender identity is solely determined by their genitalia. The Court astutely observed that the notion of a definitive and absolute conception of masculinity or femininity is lacking, and that gender encompasses a multifaceted and intricate construct that extends beyond the confines of one’s anatomical features.

The Supreme Court has reserved its judgment on the matter.

VIABILITY OF INCORPORATING SAME-SEX MARRIAGE WITHIN THE SCOPE OF PERSONAL LAWS

In the Indian jurisdiction, the institution of marriage is subject to the regulatory framework of personal laws, which are intricately intertwined with religious doctrines and principles. The Hindu community is subject to the regulatory provisions outlined in the Hindu Marriage Act of 1955. Similarly, the Christian community adheres to the Indian Christian Marriage Act of 1872, while the Parsi community abides by the Parsi Marriage and Divorce Act of 1936. Conversely, the Muslim community is governed by uncodified personal laws specific to their religious affiliation. Marriage, as delineated within the ambit of various personal laws, finds its foundational origins deeply entrenched in religious doctrines, thereby constituting an inseparable and indispensable facet of the broader religious fabric.

Upon conducting a meticulous examination of the Hindu Marriage Act, 1955 hereinafter referred to as HMA, 1955, it becomes evident that no explicit stipulation exists mandating the solemnization of marriage exclusively between individuals of opposite genders. Notwithstanding, the conjugal rights emanating from the institution of marriage are exclusively applicable to the designations of “husband” or “wife” for instance, Sections 9 and 13 of HMA, 1955.¹⁸ Consequently, even in the hypothetical scenario wherein same-sex marriages were deemed permissible under the HMA, 1955, no statutory provisions exist to regulate same-sex couples subsequent to their nuptials. This includes matters pertaining to the restoration of conjugal rights, dissolution of the marital bond, provision of financial support and sustenance, legal guardianship, and the realisation of the rights of the child (if one of the spouses has undertaken single parenthood through adoption). In the matter of “Arunkumar and Sreeja vs Inspector General of Registration and Ors”¹⁹, the Madras High Court was confronted with the issue of whether a transwoman possesses the legal status of a woman and can consequently be recognised as a <bride> within the purview of Section 5 of the HMA, 1955. After careful deliberation, the court unequivocally affirmed the proposition and conclusively determined that any individual, irrespective of their transgender or intersex identity, who self-identifies as a woman, shall be deemed eligible to assume the role of a bride. Consequently, it can be argued that the legal definition of marriage continues to uphold the traditional understanding that a marital union is exclusively between an individual identified as male and another individual

18. Nivedita Barail, *The Need for Legalising Same-Sex Marriage In India: A Future Possibility or a Possible Apprehension?*, Vol.4, IJLR, 2022.

19. Arunkumar & Other Vs. The Inspector General of Registration & Others, W.P. (MD) NO. 4125 OF 2019 AND W.M.P. (MD) NO. 3220 OF 2019.

identified as female. In another case of *Abhijit Iyer v. Union of India and others*²⁰, the petitioner, Mr. Abhijit Iyer, submitted a plea for the registration of a same-sex marriage under the HMA, 1955. The petitioner argued that the language of this legislation is devoid of any gender-specific references, thereby implying the absence of an explicit prohibition on same-sex marriages. The non-recognition of the prerogative to enter into matrimonial union with an individual of one's choice constitutes an explicit infringement of the fundamental rights enshrined within Articles 14 and 19 of the Constitution of India. The differentiation established between individuals identifying as homosexuals and those identifying as heterosexuals with respect to their entitlement to marital rights has resulted in the marginalisation and exclusion of homosexual unions within society. Despite the decriminalisation of homosexuality, the Central Government posited and provided counsel to the Delhi High Court that in the Indian context, matrimonial unions are exclusively sanctioned solely between individuals of the male and female biological composition, namely heterosexuals.

The provisions pertaining to conjugal rights as stipulated in the Indian Christian Act of 1872 are congruent to those enshrined in the HMA 1955. This legislation is of historical origin, originating from the British era, and it is evident that the intention behind it is to restrict marriage exclusively to individuals of opposite biological sexes, namely a husband (male) and a wife (female).

Within the Islamic context, it is widely acknowledged that the institution of marriage holds significant importance and is regarded as a contractual arrangement, commonly referred to as “*Mithaqun Ghalithun*”. This term, denoting a robust and binding agreement, underscores the solemnity and legal nature attributed to the marital union in Islamic jurisprudence. The underlying objective of matrimony is to actualize the procreative function inherent in the union of a male and a female, while simultaneously satisfying the innate yearning of both genders for companionship. Given that marriage is a legally binding agreement entered into by a male and a female, the underlying consideration for this arrangement is the financial responsibility undertaken by the male party in exchange for exclusive sexual privileges, specifically pertaining to vaginal intercourse, granted to the female party.²¹ According to legal analysis, it is contended that the inability of individuals identifying as homosexuals to fulfil the inherent obligations associated with the institution of marriage serves as a substantial impediment to the legalisation and validation of their matrimonial union. The Quran, in its essence, does not prescribe the penalty of death for homosexual acts. Furthermore, Prophet Muhammad did not explicitly

20. *Abhijit Iyer v. Union of India and others*, W.P.(C) 6371/2020

21. Dr Ibrahim B. Syed, “Same-Sex Marriage and Marriage in Islam”, Islamic Research Foundation International, Inc, November 2019, https://www.researchgate.net/publication/337307555_SAME_SEX_MARRIAGE_AND_MARRIAGE_IN_ISLAM.

prohibit homosexual relations, although he did express disdain towards such practises. However, it is observed in the field of Islamic jurisprudence, specifically “Fiqh”, the act of engaging in “liwat” is regarded as an offence that is subject to legal consequences.²²

RIGHTS PERTAINING TO PARENTHOOD FOR SAME-SEX COUPLES

The procedure of adoption is regulated by legal statutes such as the Hindu Adoption and Maintenance Act of 1956, the Juvenile Justice (Care and Protection of Children) Act of 2015, and the Adoption Regulations of 2017 in India.

The Hindu Adoption and Maintenance Act, 1956 (HAMA Act) permits married couples to engage in adoption proceedings. Additionally, the act extends similar permission to unmarried males and unmarried females. Furthermore, it is worth noting that the terms “spouse” and “wife” are specifically used in Sections 7 and 8 of the Hindu Adoption and Maintenance Act, thereby implying that individuals in same-sex relationships are not considered eligible for adoption under this legislation.²³ Therefore, as per the provisions of the Hindu Adoption and Maintenance Act, the adoption of children by same-sex couples is prohibited due to the need that the couple must be legally married. However, it has been previously mentioned that same-sex marriages are prohibited. Furthermore, in accordance with this legislation, an unmarried individual of any gender may adopt but same-sex couples are not permitted to adopt jointly.

In accordance with the Adoption Regulations of 2017, it is permissible for unmarried individuals of both genders to engage in adoption. However, unmarried males are prohibited from adopting female children, which distinguishes this regulation from the Hindu Adoption and Maintenance Act (HAMA). According to the Adoption Regulations of 2017 as well, same-sex couples are prohibited from engaging in joint adoption. Furthermore, as stipulated in section 57 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), it is explicitly stated that the process of adoption is contingent upon the pair having established a durable marital partnership for a minimum duration of two years.²⁴ Given that same-sex weddings are not legally recognised in India, it follows that the adoption of the Juvenile Justice (JJ) Act is not a viable option for couples of the same sex.²⁵ In accordance with the adoption legislation of India, it is not permissible for same-sex couples to engage in joint adoption of children.

22. Jonathan AC Brown, Muslim Scholar on How Islam Really Views Homosexuality, VARIETY (Last visited 10, August 2023). <https://variety.com/2015/voices/opinion/islam-gay-marriage-beliefs-muslim-religion-1201531047/>

23. Hindu Adoption and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956 (India).

24. Juvenile Justice (Care and Protection of Children) Act, 2015, No.02, Acts of Parliament, 2015 (India).

25. *Id.*

The court in the case of *Laxmi Kant Pandey v. Union of India* determined that the right to a family is inherent to every kid. Moreover, as per Article 39(f) of the Indian Constitution ensures that children are provided with opportunities and resources to foster their growth in a manner that is conducive to their well-being, inclusivity, and dignity.²⁶ Therefore, the aforementioned adoption laws are in opposition to the decriminalisation of section 377 and are in violation of Articles 14, 15, and 21 of the Constitution.

The guidelines set forth by the Ministry of Women and Child Development in relation to adoption, as outlined in the Juvenile Justice Regulation, specifically indicate that the marital status of individuals is not a determining factor in the adoption process. Consequently, these standards enable single parents to pursue adoption. However, the laws in question have faced criticism for their requirement that only married couples can adopt together, and for mandating the approval of both spouses. The adoption laws exhibit discriminatory tendencies against same-sex couples due to their restriction of adoption eligibility to only married couples or single parents, thereby undermining the intended purpose of the legislation. Despite the decriminalisation of homosexuality, the existing policy continues to exhibit discriminatory tendencies towards same-sex couples. These regulations delineate the eligibility criteria for child adoption, stipulating that individuals who are unmarried and single, as well as married couples, are permitted to adopt children. However, unmarried couples and same-sex couples are not granted the opportunity to adopt children.

One other familial right that is withheld from couples of the same sex pertains to the rights associated with surrogacy. The Surrogacy (Regulation) Act of 2021 has been implemented to establish regulations for the surrogacy sector in India.²⁷ Primarily, the legislation renders commercial surrogacy unlawful and prohibits the practise of commercial surrogacies. The language used in the legislation explicitly states that only Indian married couples, Indian origin married couples, and Indian single women who are widowed or divorced are eligible to engage in the surrogacy procedure. The legislation of India does not grant surrogacy rights to same-sex couples. Likewise, it has been observed that the Assisted Reproductive Technology (Regulation) Act, 2021 exhibits discriminatory practises towards same-sex couples, since it exclusively permits access to ART treatments solely for heterosexual couples and single women.²⁸ Therefore, it is evident that homosexual couples in India are not afforded the same privileges as their heterosexual counterparts. In the context of adoption, it is important to

26. *Laxmi Kant Pandey v. Union of India*, (1987) 1 SCC 66.

27. The Surrogacy (Regulation) Act, 2021, No. 47, Acts of Parliament, 2021 (India)

28. The Assisted Reproductive Technology (Regulation) Act, 2021, No. 42, Acts of Parliament, 2021 (India).

recognise that same-sex couples are currently prohibited from engaging in joint adoption due to the absence of legal recognition for same-sex marriage. Consequently, these couples are only able to pursue adoption as individual single parents. Furthermore, in India, same-sex couples are explicitly prohibited from accessing surrogacy treatments and ART services. This restriction effectively denies same-sex couples the opportunity to establish a family.

CONCLUSION AND SUGGESTIONS

The Navtej Singh Judgement in India has had a profound impact on the lives of same-sex couples and the LGBTQ+ community. Despite the express prohibition of same-sex marriage by the law and legislation, the opportunity to enter such unions remains unattainable for same-sex couples in India. Cohabital arrangements have historically allowed for the acceptance of live-in partnerships, yet same-sex couples have been denied the opportunity to engage in joint adoption of children. The decriminalisation has led to an uncertain and unclear legal status regarding family rights for same-sex couples. The recognition of same-sex marriage may not be readily accepted within individual legal frameworks, necessitating the development of new legislation to effectively address this urgent issue. Couples of the same sex can access and utilise the recently implemented legislation. The examination and revaluation of the foundational principles of marriage are crucial, given that women inherently have the right to exercise agency over their reproductive autonomy. This empowers them to make educated choices regarding their mother status. Forced pregnancy has been acknowledged by the international legal community as a serious transgression that constitutes a crime against humanity.

The potential benefits of legalising same-sex marriage are twofold. The lack of legal acknowledgment would hinder the fundamental rights protected by the Constitution, encompassing but not restricted to the right to life, the right to equality, the right to freedom of speech and expression, the right to live with dignity, the right to choose a life partner, and the right to privacy. In accordance with the provisions outlined in Article 15 of the Constitution of India, the State is obligated to abstain from participating in any discriminatory actions purely based on factors such as religion, race, caste, sex, place of birth, or any combination thereof. The comprehensive inclusion of all the rights and privileges associated with legalising same-sex marriage poses significant challenges within the framework of personal laws. Hence, it is crucial to establish new law that comprehensively elucidates the urgency inherent in the suggested legal enactment and the necessary competence of the parties involved. The provisions concerning the termination of marriage, financial assistance to a former spouse, the legal procedures for obtaining parental rights, the distribution of assets after death, and the transfer of property entitlements are the key elements necessary for the fulfilment of marital rights and privileges. It is crucial to clearly define the principal individuals who will be considered the proper recipients of financial support or granted the primary legal responsibility for adopted

children. Furthermore, it is the responsibility of the Parliament to clarify the process by which the allocation of inheritance and succession will be carried out for couples who share the same gender orientation.

GENDER EQUALITY: A SPECIAL FOCUS ON WOMEN WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

Hameeda Begum Safavi¹

INTRODUCTION

In many Indian families, the birth of a boy is usually celebrated; however, when a girl is born, no such celebrations are held; additionally, if the girl child is born with any disability, it is considered a curse. The situation for a woman with disabilities is much worse; these women are looked down upon and considered useless, and treated as mere objects. Women with disabilities are not only perceived as a burden, denied decision-making authority, and frequently abused and tortured but also regarded as inferior human beings. In every sector, they are facing many inequalities with disability and gender discrimination.

Women with disabilities are a severe problem that appears to be growing. “When women move forward, the family moves forward, and where the family moves, the village moves,” Nehru said once. However, women with disabilities, specifically IDD disability, face three forms of discrimination such as gender, disability, and poverty. In sociological research, masculinity encompasses both men and women and transgender persons. So both genders must have equal access to the same rights, comforts, possibilities and dignity. Women are critical in fostering gender security while being underutilized. Women encounter higher levels of bias due to variables such as impairments and membership in racial or ethnic minorities. A female with an intellectual disability is always discriminated against by society and her family. Those who advocate for gender equality, disability rights, and women’s empowerment may overlook and exclude women with disabilities from the community.

In this article, the author explores how discrimination against women with intellectual impairments occurs in many professions and what extra rights these women need.

VARIOUS BARRIERS FACED BY IDD DISABLED WOMEN

- Family Barriers
- Social Barriers
- Educational Barriers

1. PhD Scholar, Galgotias University

- Employment Barriers

Family Barriers

Every family acts as the bulwark of the community and the child's guardian in the face of hardship. However, parents of children with developmental and intellectual disabilities, especially girls, feel burdened and guilty. Researcher Kriti Sharma with Human Rights Watch claims that because the government "fails to provide appropriate support and services, women with disabilities are dumped in institutions by their family members or the police." Additionally, they frequently endure cruelty, loneliness, and misery in institutions similar to prison with little chance of escape."²

As a result of the stigma connected to disabilities, families face hurdles, obstacles and their human rights get violated. Children with special needs are confined at home and are denied the basic fundamental needs like Freedom of exploration, schooling, and play areas and they are considered as dependents. Most family members are hesitant to recognize and identify the mental or intellectual disability as a condition that can be treated as an illness. People tend to keep their family members' infirmities hidden due to the perceived shame linked to such impairments, eventually leading to social isolation and restricted environment.³

UNICEF supports the rights of children with disabilities and has emphasized that these barriers must be removed to remain with their families, get a quality education, and engage in community life.⁴

Moreover, parents do not want to send their girl child who is IDD to schools and rehabilitation centers because they give priority to society, but not about the future of girl children, moreover they do not want to invest money on them. These disabled girl children get bullied in every area, even in times of crisis; they give first preference to a male child. These situations are worse in rural areas.

Women with IDD face greater obstacles and are socially isolated; they also experience more abuse and ongoing humiliation. There is no social interaction involved moreover they

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2. India: Women With Disabilities Locked Away and Abused, Human Rights Watch, December 3, 2014, 12:45 AM EST, available at <https://www.hrw.org/news/2014/12/03/india-women-disabilities-locked-away-and-abused>.
 3. N. Janardhana et. al, "Discrimination against Differently Abled Children Among Rural Communities in India: Need for Action," *Journal of Biology and Medicine*, 6(1), Jan-Jun 2015, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4367071/>.
 4. UNICEF Fact Sheet: Children with Disabilities, UNICEF, August 2022, <https://www.unicef.org/media/128976/file/UNICEF%20Fact%20Sheet%20-%20Children%20with%20Disabilities.pdf>.

experience sexual and physical assault. Women with IDD who are living in mental hospitals or other institutions for a long time are sexually harassed, and they are unable to stop it since they don't comprehend what is happening, making it impossible for them to raise their voice and making it impossible for anyone to intervene.⁵

The institutionalization of women with mental or intellectual disorders is authorized without the approval of their families or legal guardians. Police may arrest them and get facility admittance by court orders; they frequently go for decades without family support. None of the women questioned by Human Rights Watch consented to be institutionalized, and none were abused in the facility. Most folks have no notion of how to obtain compensation.⁶

Social Barriers

According to Wagner, almost 37.5 per cent of the global population has been suffering from various disabilities, and more than 2.6 per cent represent individuals with a intellectual disability.⁷ Despite these sheer numbers, individuals suffering from intellectual disabilities must endure various issues and discrimination. Societies often neglect or stigmatize these individuals, forcing them to live across deplorable conditions without meeting their fundamental human rights. Across low-income nations, most women with intellectual disabilities are exposed to poverty, with no or limited access to healthcare facilities and rehabilitation services, because of their disability and more vulnerability towards abuse, exploitation, and marginalization. Moreover, with little understanding, they face many barriers, such as discrimination, ferocity, poverty, displacement and other forms of social denial.

Women who have IDD struggle with a range of social issues. Their parents do not go with them to social events, weddings, or religious sites because of concern for society. Because of limitations and bullying mental health care became more challenging. Their lack of resources, such as money, work, housing, land, healthcare, and education, may restrict their involvement to prevent these clashes. To overcome these obstacles, anti-stigma campaigns and informational campaigns regarding the treatments and resources accessible to the public are

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5. Katie Nguyen, "Disabled women in India 'locked up, abused'," *LiveMint*, December 3, 2014, available at <https://www.livemint.com/Politics/xL2c0oMu1PH7ZUQVeH8OyM/Disabled-women-in-India-locked-up-abused.html>.
 6. Narayan Choudhary Laxmi & Shikha Deep, "Indian legal system and mental health: The human rights of women with intellectual disability," *Indian J. Psychiatry*, January 2013, https://journals.lww.com/indianjpsychiatry/Fulltext/2013/55002/Indian_legal_system_and_mental_health.10.aspx.
 7. Mary Wagner & Others, "What Happens Next? Trends in Postschool Outcomes of Youth with Disabilities: The Second Comprehensive Report from the National Longitudinal Transition Study of Special Education Students," available at <https://files.eric.ed.gov/fulltext/ED356603.pdf>.

required. Furthermore, these programs must encourage holistic well-being and more hospitable perspectives towards women with mental IDD.

Educational Barriers

Women with IDD disabilities are currently among society's most socially ignored population. Education is an essential and ubiquitous requirement, yet it is unavailable to this peer group. These youngsters require special schools with the same quality and facilities as other children to study. However, there are various difficulties and challenges to success, including education in India. Many issues, such as a lack of well-educated instructors, curriculum, resources, adequate infrastructure, awareness, a positive attitude, strategies, and regulations, impede the expansion of inclusive education in India.

Girls with impairments do not attend school at all. According to UNESCO, 75% of children with disabilities in India do not attend school. Girls with impairments in schools were "fewer" than boys.⁸

According to World Bank research, many children with disabilities, particularly females, do not have access to special education owing to poverty. They require additional protection and assistance from the Government and society.⁹

Employment Barriers

Women with IDD are more susceptible, lack knowledge, and face several hazards. They are also biased in many aspects of life, including law, politics, and employment. Women's empowerment has long been a significant topic of concern in India. Women's status in the country has developed from ancient to current times. Even though they have the aptitude and expertise for specific jobs, they are not prioritized. It is for non-disabled women; what about intellectually or developmentally disabled women? According to their IQ level, they should be able to get jobs like data entry, but the Government ignores this peer group. They accomplished a wide range of activities. Male members are given first attention here as well.

VARIOUS RIGHTS FOR THE PROTECTION OF INTELLECTUALLY AND DEVELOPMENTALLY DISABLED WOMEN

1. The Human Rights (The UNCPRD)
2. The RPWD Act, 2016

8. UNESCO, N for Nose: State of the Education Report for India 2019; Children with Disabilities, available at <https://unesdoc.unesco.org/ark:/48223/pf0000368780>.

9. World Health Organization & World Bank Group, World Report on Disability (2011), <https://www.right-to-education.org/resource/world-report-disability>.

3. The Constitution of India

Human Rights (The UNCPRD): The United Convention on the Rights of Disability¹⁰

Article 6 – Women with disabilities

State Parties acknowledge the discrimination faced by women with disabilities and must ensure equal enjoyment of human rights and fundamental freedoms. They must also promote women's development, advancement, and empowerment, ensuring their full exercise of these rights.

Article 16: Ensuring Freedom from exploitation, violence, and abuse:

State Parties must implement legislative, administrative, social, and educational measures to protect persons with disabilities from exploitation, violence, and abuse, including gender-based aspects. They must also implement effective policies, including women and child-focused legislation, to identify, investigate, and prosecute instances of abuse.

Article 24 – Education:

States Parties acknowledge the right of persons with disabilities to education and ensure an inclusive system at all levels. This includes lifelong learning to develop human potential, dignity, self-worth, and respect for human rights, fundamental freedoms, and diversity, enhance personality, talents, creativity, and mental and physical abilities, and enable effective participation in a free society.

Article 25: The UNCRPD does not include a separate section on reproductive rights, although it does address it in terms of health and family respect. Article 25 requires states to offer free or low-cost healthcare to people with disabilities, as well as sexual and reproductive health services and population-based public health programs.

The RPWD ACT, 2016: Rights of Persons with Disability Act, 2016

Section 4: The government and local authorities must ensure equal rights for women and children with disabilities, allowing them to freely express opinions and receive appropriate support based on age and disability.¹¹

Section 31: Free education for children with benchmark disabilities.

10. Convention on the Rights of Persons with Disabilities, United Nations, available at <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>.

11. THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016, available at https://www.indiacode.nic.in/bitstream/123456789/15939/1/the_rights_of_persons_with_disabilities_act%2C_2016.pdf.

The Education Act 2009 grants free education to children with benchmark disabilities aged six to 18 years in a neighborhood or particular school. Government and local authorities must ensure access until the age of 18.

The Constitution of India

Article-41 of the Constitution of India, which forms part of the Directive Principles of State Policy, explicitly mentions “disablement” as a condition for which the State strives to assist in some issues, including education, work, etc.¹²

The Indian Penal Code, 1860 (‘IPC’) and the POCSO Act, 2012

- According to Section 376(2)(l) of the Indian Penal Code (IPC), aggravated rape of a woman who has a physical or mental impairment is illegal. Following Section 376-A of the Indian Penal Code, the lady must serve at least 20 years in a harsh jail. This clause was included in the Criminal Law (Amendment) Act of 2013. Under Section 5(k) and Section 9(k) of the POCSO Act, respectively, penetration sexual assault and sexual assault committed by taking advantage of a child’s physical or mental handicap are considered aggravated sexual assault. It would be aggravated penetrative sexual assault under Section 5(j)(i) and aggravated sexual assault under Section 9(j)(i) of the POCSO Act if the assault causes physical incapacitation, mental sickness, or disability.¹³
- Penal provisions in the RPD Act. Section 92 criminalizes assault, sexual exploitation, and medical procedures involving a woman or child with a disability without consent. Termination of pregnancy is prohibited without express consent, except in cases of severe disability and with the permission of the guardian. The penalty can extend to 5 years. Termination based on a registered medical practitioner’s opinion and guardian’s consent is exempt.
- The MH Act does not address the vulnerability of women with mental illness to violence. However, Section 20(2)(k) ensures protection from physical, verbal, emotional, and sexual abuse in mental health establishments.
- The Criminal Law (Amendment) Act 2013 introduced procedural changes for sexual offences. Police should record information against a woman with a mental or physical disability at her residence or a convenient location. An interpreter or special educator

12. Article 41 Right to work, to education and to public assistance in certain cases – Constitution Of India, <https://indianconstitution.guru/constitution-of-india/part-4/article-41/>.

13. Swagata Raha & Shampa Sengupta, “Rights of Women with Disabilities, under Indian Legislations,” available at <http://docs.manupatra.in/newsline/articles/Upload/7102F404-0902-4EEC-BA55-F8EFC25DA6D4.pdf>.

should be present, and the recording should be videographed. The POCSO Act, 2012 allows the police, Magistrate, and Special Court to use a special educator or expert to record a child's statement or evidence. This provision is considered a statement instead of the examination-in-chief, allowing the woman or girl with a disability to cross-examine on its basis. However, implementation has been delayed due to courts lacking audio-visual facilities or equipment.

It is an attempt to fulfill the present need and to provide some valuable contributions to develop the technology and rehabilitation services based on the practical legal system to benefit women in society and attain the global perspectives of legal developments. But the Government has failed to deal with these neglected sections of society. The welfare measures and schemes are not sufficient and far from reaching them. The lukewarm response of implementation machinery, which is very formal, leads to step-motherly treatment towards these sections of society.

CONCLUSION

Women with IDD are constantly discriminated against in all areas where they need protection legally, politically, and socially. The Government has taken more responsibility for dealing with these neglected sections of society. The welfare measures and schemes are insufficient and far from reaching this peer group, so provide more welfare measures to protect them and make strict laws.

The Supreme Court of India has ruled that individuals with mental retardation and multiple disabilities can be good parents. The RPD Act and Mental Retardation and Disability Act have enriched the legislative narrative of equality and non-discrimination, recognizing the impact of disability on women. These legislations can transform the realities of women with disabilities and mental illness. However, effective implementation can lead to structural changes and socio-economic empowerment. Monitoring systems and a complaints mechanism are necessary for women to exercise their legal capacity and seek remedies for rights violations. The Indian judiciary should adopt a positive interpretation of sexual and reproductive rights and the Code of Criminal Procedure, 1973, for dealing with women with disabilities, including sexual violence.

GENDER JUSTICE A FOUNDATION FOR WOMEN EMPOWERMENT: A RUNWAY FOR GENDER JUSTICE

Dr. Sharmila Ghuge¹

“Empowering women is a prerequisite for creating a good nation, when women are empowered, society with stability is assured. Empowerment of women is essential as their value system leads to the development of a good family, society and ultimately a good nation.”

-Dr. A.P.J. Abdul Kalam

INTRODUCTION

The World Economic Forum’s Global Gender Gap Report 2022 ranks India as the 135th nation out of 146 countries². It is indeed a differing situation to witness the glorified progress of India on one hand and the gender inequality on the other hand. The word ‘Gender’ arouses penetrating reaction in India. And this is due to the unchanging existence of gender discrimination in our country. Despite the remarkable strides achieved at global level, India as a nation still hosts the evil of gender inequality which poses a serious challenge to its developing character as the largest democracy in the world. Regardless of the plethora of highly equipped legal provisions, inequality prevails in India as the harsh reality. Gender discrimination rhizomes from the roots of patriarchal society yielding the bitter fruit of injustice to the women. Thus, it is inevitable to break the cobwebs of this patriarchal mind set with the involvement of legal intervention and social transformation by providing accessibility to women to empower them in all walks of life.

The term gender principally signifies the economic, social, and cultural attributes and opportunities associated with being male or female³. Biologically there is a natural difference between male and female in sexuality by birth. This difference arises from sex as male and female. However, the word gender differs from sex as it refers to cultural and social attributes rather than biological existence. It is this social and cultural phenomenon which specifies the difference in clothing, behavior, work, etc., for male and female. Consequently, these man made differences trigger prejudice encouraging discrimination. The root cause of lack of women in

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1. Associate. Professor, Jitendra Chauhan College of Law, Ville Parle (W), Mumbai.
 2. Global Gender Gap Report p. 28 https://www3.weforum.org/docs/WEF_GGGR_2022.pdf (Last Accessed on July 9 2023 2:30 PM)
 3. WORLD HEALTH ORGANIZATION https://www.who.int/health-topics/gender#tab=tab_1 (Last Accessed on July 14 2023 2:00 PM)

the mainstream is the lack of gender justice in India. Gender justice refers to harmonizing social, political, and economic rights of women into the mainstream society. Gender justice necessitates culmination of the inequalities between women and men. It can be averred that India is yet to substantiate the desired goal of gender justice in its spirit and not merely in letters. Nonetheless, certain significant steps have been taken in furtherance of securing gender justice. Ideally, gender should be perceived has the preferred state of equivalent comfort to access all opportunities and get equal participation in decision-making. Unless women are accepted equal to men, the goal of gender justice will be an illusion which stems up from the quintessence of patriarchy.

As per UNICEF, gender equality means that “women and men, girls and boys, should enjoy the same rights and liberties, resources, opportunities, and protections. It is, however, not important that girls and boys, or women and men, be the same, or that they be treated exactly alike.”⁴ Thus, securing gender equality is a step towards achieving gender justice. And achieving gender justice is the foundation for creating a runway for women empowerment in India. It is pertinent to mention that for empowering women, education plays a central role and for channelizing the educated female population, it is inevitable to weave the fabric of society with the golden thread of gender justice. The objectives of the research are to explore the role of gender justice in securing women empowerment, identify the causes of gender justice, explore the link between gender justice and women empowerment, identify the obstacles for securing women empowerment in India, access factors that are influencing empowerment of women and to provide suggestions for progress in women empowerment.

GENDER JUSTICE – THE JOURNEY FROM PRE TO POST INDEPENDENCE IN INDIA

At the global stage, the struggle of deracinating gender discrimination and demanding equal rights for women has a long history.⁵ Eminent champions of feminist awakening from the west, such as, Hobbes, Locke, Jeremy Bentham and John Stuart Mill, propounded the emancipation of women for achieving equality. Later, Mary Wolstone Craft through her prominent work in 1792 emphasized the importance of women’s rights within the context of essential human rights.⁶ Likewise, in India the ideology of liberalism and right to equality for women was accentuated by Raja Ram Mohan Roy, Ranade, Savitribai Phule, Mahatma Gandhi, Annie Besant, *etc.* It is a great incongruity that the struggle for women’s right which commenced centuries ago has

4. UNICEF, <https://www.unicef.org/gender-equality> (Last accessed on July 16, 2023 7:00 PM)

5. Sujata Manohar, “Human Rights Agenda: A Perspective for Development” *Journal of Indian Law Institute*, vol. 45, no. 2, April-June 2003, p. 165.

6. Mary Wolstonecraft, “Vindication of Rights” Helen Tierney, *Women’s Studies Encyclopaedia*, Westport: Greenwood Press, 1999, p. 1456-1458.

not yet successfully concluded. Not only in India but worldwide, all history attests that man has subjugated woman and used her according to his requirement and even as instrument for his comfort.⁷ This unequal status of women is provocative to human dignity and hence has consequentially transpired as a fundamental catastrophe in human development worldwide. India is not an exception to this situation. Rather, India has an acrimonious past of suppression of women. During the pre-independence period India was passing through phases of invasions by aliens and at the same time there was prevalence of extreme male dominance in the society. Due to the external aggressions, the position of women was enfeebled and powerless. Women were considered worth only for doing the household chores and were prohibited from pursuing education, being employed or even being a part of decision making. Additionally, the pre independent phase was overwhelmed with discriminatory practices, such as, child marriage,⁸ sati,⁹ polygamy,¹⁰ female foeticide.¹¹ Though in the contemporary period the situation of women in the society has improved as compared to the pre-independent days.

Post- independence, the situation has been improving slowly and steadily in India. The worth of women as an important human resource was recognised by the Constitution of India which has not only accorded equality to women but has also empowered the State to adopt measures of positive discrimination in their favour. A number of Articles of the Constitution of India¹² specially reiterated the commitment of the Constitution towards the socio economic development of women and upholding their political right and participation in decision making. Drawing the strength from the Constitutional commitments, the Government of India has been engaged in the continuous endeavour of concretely translating all the rights, commitments and safe guards incorporated in the Indian Constitution for women from de jure to de facto status. Apart from the Constitution, there are several laws enacted from time to time for protecting

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7. Sarah M. Grimke, *Letter on the Equality of Sexes and the Condition of Women*, Boston: Issac Kanapp, 1838, p. 10
 8. UNICEF, <https://www.unicef.org/protection/child-marriage#:~:text=Child%20marriage%20refers%20to%20any,in%20childhood%20across%20the%20globe> (Last accessed on June 20, 2023 4:00 PM)
 9. Mohammed Shamsuddin, *et.al.*, 'A BRIEF HISTORICAL BACKGROUND OF SATI TRADITION IN INDIA' *DİN & FELSEFE ARAŞTIRMALARI* Vol.3, No. 5, June 2020.
 10. Shaiful Bahari, I., Norhayati, M.N., Nik Hazlina, N.H. *et al.* Psychological impact of polygamous marriage on women and children: a systematic review and meta-analysis. *BMC Pregnancy Childbirth* 21, 823 (2021).
 11. Sneha Lata Tandon and Renu Sharma, *Female Foeticide and Infanticide in India: An Analysis of Crimes against Girl Children*, International Journal of Criminal Justice Science, Vol: 1, Iss.1, Jan 2006.
 12. India Const. art. 14, 15, 39, 42 and 51.

women's rights.¹³ Similarly, the Hon'ble Apex Court of India has strived hard to uphold the rights guaranteed under the Indian Constitution to every woman through its gamut of judgments.¹⁴

The law and the courts in the country have withstood strongly to endorse the essence of the rights guaranteed to women, nonetheless, the society is still dawdling at snail pace to practice gender justice. Moreover, the social norm is an imperative factor which is not only the radicle cause but is an underpinning basis which increases the gap of gender inequality in India. One of the abominable paradigm existing as multilayered impediment establishing gender discrimination is the thought process about a girl's entire life- to study till 12th grade or graduation, grow up, get married, look after family and children, that's it! The mindset of common man is that daughters are a responsibility till they get married and parent's duty is to simply take care of their elementary education, save money for wedding, find a groom and get her married. On the other hand, the concern towards a son is that, he should study well, he should work well and he should earn well. This social attitude reflects in the highest levels of sex discrimination at birth. According to the 2017 analysis of demographic data, India shall continue to have the worst sex ratio in South Asia, even in 2050.¹⁵ The heart wrenching 918 girls for 1,000 boys ratio as per 2011 had urged the Indian government to take action in the movement of the 'Beti Bachao, Beti Padhao' program to ensure survival, safety, & education to the girl child.¹⁶ The Beti Bachao program fights bias and offers benefits to fight female foeticide.¹⁷ However, as a ray of hope, in 2021 the census reflects a significant growth in the

13. Dowry Prohibition Act, 1961 (28 of 1961) Child Marriage Restraint (Amendment) Act, 1979, Protection of Women from Domestic Violence Act 2005, Commission of Sati Prevention Act 1987 (3 of 1988), Indecent Representation of Women (Prohibition) Act, 1986, Immoral Traffic (Prevention) Act, Pre-conception and Pre-natal Diagnostic Technique Act, 1994, Medical Termination of Pregnancies Act (1971), Protection of Women From Sexual Harassment Act, 2013, Maternity Benefit Act (1961), National Commission for Women's Act (1990), Labour statutes such as- Equal Remuneration Act, 1976, Contract Labour (Regulation and Abolition) Act 1970, Minimum Wages Act 1948, Factories Act 1948, Workmen's Compensation Act, 1923, Criminal and civil procedural laws- such as Code of Criminal Procedure (1973), Code of Civil Procedure (1908), Indian Evidence Act (1872), Legal Services Authorities Act, 1987, Personal laws on marriage, property rights, guardianship and custody rights, maintenance, Supreme Court guidelines on the compulsory registration of marriages.
14. *Vishaka v. State of Rajasthan* (1997) 6 SCC 241, AIR 1997 SC. 3011, *C.B. Muthumma v. Union of India* 1979 AIR 1868 1980 SCR (1) 668 1979 SCC (4) 260, *Air India v. Nargesh Meerza* (1981) 4 SCC 335, *Revathi v. Union of India* 1988 AIR 835 1988 SCR (3) 73, *Gita Hariharan v. Reserve Bank of India* AIR 1999, 2. SCC 228, *Chairman, Railway Board, Calcutta v. Chandrima Das* (2000) 2 SCC 465.
15. MINISTRY OF WOMEN & CHILD DEVELOPMENT, <https://wcd.nic.in/womendevlopment/national-policy-women-empowerment> (Last accessed on June 23, 2023 5:00 PM)
16. MINISTRY OF WOMEN & CHILD DEVELOPMENT https://wcd.nic.in/sites/default/files/Guideline_6.pdf (Last accessed on June 23, 2023 5:15 PM)
17. *Ibid.*

number of females. The fifth National Family and Health Survey (NFHS) carried out by the government between 2019 and 2021 reveals that India now has 1,020 women for every 1,000 men.¹⁸ It is indeed heartening to see the upsurge in the number of females which is hopefully a sign of decline of gender inequality. Thus the dream of empowering women at large in India can be fulfilled by securing gender justice. And this accomplishment is possible only by acceptance and actions coupled with positive change in the mindset of people to that effect. It is needless to say that gender discrimination is seen as an extreme ailment which reflects as a social stigma¹⁹ and this congruence of inequality mutilates the lives of women ruthlessly that can massively impoverish women.²⁰ Therefore, it is necessitous to firstly secure gender justice, lay a strong foundation of equality and then expect women to become empowered.

Gender justice, is a constituent of development as well as an instrument of development. No country can be deemed developed if half its population is severely disadvantaged in terms of basic needs, livelihood options, access to knowledge, and political voice. It is channel of development because without gender justice other goals of development will also be difficult to achieve, namely the goals of poverty alleviation, economic growth, environmental sustainability, and women empowerment etc. A natural corollary of ensuring gender justice is the elimination of gender discrimination and thereby concreting women empowerment.

RELATION OF WOMEN EMPOWERMENT AND GENDER JUSTICE

The extent of empowerment of women in the national hierarchy is determined largely by the three factors – her economic, social and political identity and their weightage.²¹ These factors are interleaved and entwined intensely to the effect that if a woman is economically progressed, she evolves socially and politically. Similarly, if a woman is socially advanced, she exhibits her economic and political growth. It is these three factors which should be attuned and harmonious for women to be genuinely empowered. Therefore, to achieve comprehensive empowerment of the women it is unavoidable to have congruous impact of social, economic and political aspects on a woman's life. Women empowerment means uplifting women to be economically self-sufficient, independent, and having positive regard to empower them to confront any

18. MINISTRY OF HEALTH AND FAMILY WELFARE https://main.mohfw.gov.in/sites/default/files/NFHS-5_Phase-II_0.pdf (Last accessed on July 17, 2023 3:00 PM)

19. Lynn Walter, (ed.), *The Greenwood Encyclopedia of Women's Issues*, Westport: Greenwood Press, 2003, p. 155.

20. *Amartya Sen, The Argumentative India*, London: Allen Lane, 2005, p. 207.

21. Tauffiqu Ahamad, *et.al.*, "An Attempt to Women Empowerment through Government Policies and Programmes - An Indian Perspective," *Journal of Emerging Technologies and Innovative Research*, Nov 2014 (Volume 1 Issue 6) p. 578 <https://www.jetir.org/> accessed on 29.06.2023

troublesome circumstance.²² There ought to be a preference and choice to women to make their decisions. Women empowerment also refers to fortifying the spiritual, the political, social, educational, and economic strength of women.²³

The relation of women empowerment and gender justice is evident from the fact that the rural societies have very less percentage of women empowerment in terms of decision making, social involvement, etc., as compared to the urban women. On the other hand, the rural women show a higher percent of economic empowerment, whereas the urban sector shows a lower percent of empowered women.²⁴ In urban society the women have better decision making power which empowers them in the social sphere but in the rural sector, women lack the decision making power. Though there are several policies crafted by the government for women empowerment from grass root level yet there is vast disparity in the society. And the disparity is crucial when compared with men. The employment to population percentage in India according to the World Bank data is 72.2 percent for males and 25 percent for females.²⁵

Therefore, for realistic empowerment it is pertinent to use the internationally approved principles to formulate effective remedies for eliminating gender discrimination which would lead to substantial justice in the society.²⁶ Additionally, the only panacea to liberate women from injustice of violations of their human rights is by empowering them.²⁷ The gap which exists between the ideal and the reality of the society free from unjustified differences or discrimination on grounds of gender²⁸ should be bridged up to secure women empowerment. And such a change can be brought about by complete transformation in the society by considering that the

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22. UN WOMEN <https://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures> (Last accessed on June 24, 2023 6:00 PM)
 23. E- KRISHI SHIKSHA, <http://ecoursesonline.iasri.res.in/mod/page/view.php?id=33946> (Last accessed on June 23, 2023 6:20 PM)
 24. Biswas, B., Banu, N. Economic empowerment of rural and urban women in India: A comparative analysis. *Spat. Inf. Res.* 31, 73–89 (2023)
 25. Tirtha Samant “Women: Education, employment, empowerment” January 2023, <https://www.orfonline.org/expert-speak/women-education-employment-empowerment/> (Last accessed on June 23, 2023 6:20 PM)
 26. Wigneswaran, C.V., Protection of Women’s Right 144 Soli, J. Sorabjee, (ed.), Law and Justice, (New Delhi: Universal Law Publishing Co. Pvt.. Ltd, 2003)
 27. Lakshmanan, A. R., Voice of Justice 134 (New Delhi: Universal Law Publishing Co. Pvt. Ltd, 2006)
 28. Bryan, Horrigan, Adventures in Law & Justice 153 (New Delhi: Universal Law Pub. Co. Pvt., Ltd, 2005)

categorical imperatives sanctioned by the founding fathers are not self-acting and can acquire socio-legal momentum only by effective State action and social transformation.²⁹

Gender justice does not indicate that men and women should be the same which is biologically impossible as nature has created men and women different in terms of their sexuality. However, gender justice implies equal access to opportunities. If women have the identical gateway to prospects women empowerment will be the direct outcome. Thus, it can be averred that, the relation of gender justice is directly proportional for achieving the goal of women empowerment.

POSITIVE EVIDENCE

India has ratified various international conventions and human rights instruments committing to secure equal rights for women.³⁰ One of the most significant convention among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.³¹ The Conventions include promoting gender equality and empowerment of women and improving maternal health. It is observed that over the years, constant efforts have been made at national and international forums to eradicate gender discrimination and to protect women's rights so as assure women empowerment. And it is affirmed that with the concerted efforts there has been substantial progress though it as a sluggish progress. India has taken required steps in the direction of securing women empowerment; however, these steps need a better momentum to augment the realization of higher percentage of women being empowered. At present, women workers account for about 1/3 of all workers.³² There are over 397 million workers in India, out of which 123 million are women workers.³³ Only a small proportion, 18

29. Justice Krishna Iyer, *Crimes against Women- A Saga of Victimology and Penology* 42 (Ashish Publishing House, New Delhi, 1993).

30. The Mexico Plan of Action (1975), the Nairobi Forward Looking Strategies (1985), the Beijing Declaration as well as the Platform for Action (1995) and the Outcome Document adopted by the UNGA Session on Gender Equality and Development & Peace for the 21st century, titled "Further actions and initiatives to implement the Beijing Declaration and the Platform for Action" have been unreservedly endorsed by India for appropriate follow up. The Beijing Platform for Action lays down critical areas of concern for the women, which are listed in the box. The commitments made in the international conventions are as far as possible reflected in the Plan documents and the National Policy for the Empowerment of Women. Eight Millennium Eight Millennium Development Goals (MDGs) have been established in the Millennium Declaration at the General Assembly of the United Nations in the year 2000.

31. United Nations General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women* New York, 18 December 1979

32. Sher Verick, "Women's Labour force participation in India: Why is it so low?" <https://www.ilo.org/wcmsp5/groups/.pdf> (Last accessed on June 24, 2023 3:20 PM)

33. MINISTRY OF SKILL DEVELOPMENT AND ENTREPRENEURSHIP, National Skill Training Institute (w), Noida <https://nstiwnoida.dgt.gov.in/about-us> (Last accessed on July 23, 2023 7:20 PM)

million, are in the urban areas while 106 million are in rural areas.³⁴ In terms of the informal sector, the women hold a higher percentage than men as compared to the formal sector.³⁵ It is imperative to mention that immediately post-independence, the Government of India, with its Five year plan programme (1951-56) was committed to look into the welfare of women. Taking a look at the growth and systematization plan for women empowerment it is noticed that the whole process has advanced slowly and steadily from welfare for women to empowerment.

Upon reflection it is perceived that women in India were positioned at forte with liberty, care and concern after the Sixth Five year Plan in 1980-85³⁶. Nonetheless, an exemplar change was witnessed with the advent of the Eighth Plan (1990-95), which laid emphasis on empowerment of women and featured it at the core of the development plan.³⁷ Likewise, a sea change was brought in by the Ninth Plan(1997-2002), which not only aimed but also directed women empowerment to be the central focus. Additionally, it accentuated the need to raise funds and develop schemes by the Ministry to that effect.³⁸ Conversely, the Ninth Plan desisted from making promises or assurances with respect to any particular goals. In 2002-2007, the Tenth Plan added targets setting up human development as the crucial focus with emphasis on lessening the gender gaps in education and economical gains. The Tenth Plan declared the three-pronged strategy of social empowerment, economic empowerment and providing gender justice to create an enabling environment of positive economic and social policies for women and eliminating all forms of discrimination against them and thus advance gender equality goals.³⁹

The standing of gender equality over the years has been improving, especially, when one ponders at the literacy percentage in India, there is significant progress. In the contemporary times, more number of girls are attending schools and further are also attending junior colleges

34. *Ibid.*

35. MINISTRY OF WOMEN AND CHILD DEVELOPMENT <https://wcd.nic.in/sites/default/files/National%20Policy%20for%20Empowerment%20of%20Women%202001.pdf> (Last accessed on July 24, 2023 3:40 PM)

36. Dr. Shivaputra B. Gaganamali A STUDY OF WOMEN EMPOWERMENT THROUGH FIVE YEAR PLANS IN INDIA International Journal of Creative Research Thoughts (IJCRT Volume 8, Issue 3 March 2020,)

37. Mitra, S. (2019). Planning and Budgeting for Women's Empowerment in India: A Historical Process. *ANTYAJAA: Indian Journal of Women and Social Change*, 4(1), 51–69.

38. Dr. Ujjal Kumar De , Critical Study Of Five-Year Plans And Women Empowerment, Ilkogretim Online - Elementary Education Online, 2021; Vol 20 (Issue 6): pp. 3302-3306

39. *Ibid.*

and degrees courses.⁴⁰ Additionally, the percentage of girls getting married below the age of 18 has also reduced as compared to the past decades.⁴¹ As a result of better female literacy and enhanced gender justice, women are now working as teachers, advocates, drivers, pilots, nurses, doctors, mechanics, engineers, entrepreneur, politicians, scientists, astronauts, judges, police officers, bureaucrats, etc., and many more.⁴² However, India has recently been ranked 112th among 153 countries in the annual Global Gender Gap Index for 2020,⁴³ as per the publications of the World Economic Forum (WEF). India has slipped to the 112th spot from its 108th position in the previous times; India was ranked relatively higher at 98th place in the 2006 Report.⁴⁴ India has been rated below countries like China (106th), Sri Lanka (102nd), Nepal (101st), Brazil (92nd), Indonesia (85th), and Bangladesh (50th).⁴⁵ Hence, it is inevitable to eliminate gender inequality to have holistic empowerment of women in India.

In order to support and create an underpinning, the State enacted several women-specific and women-related legislations to protect women against social discrimination, violence and atrocities and also to prevent.⁴⁶ Similarly, various policies and schemes have been introduced from time to time by the Government to secure women empowerment in India.⁴⁷ Thus, it is distinctly apparent that there is strengthening and formation of relevant institutional mechanisms and implementation of international obligations/ commitments and co-operation at the international, regional and sub-regional level in furtherance of securing gender justice as a corollary to accomplish women empowerment. Indian women who comprise of the nation, have indeed made strides by leaps and bounds towards achieving women empowerment, however, as rightly opined by Lord, Denning, “[t]hus far has the law developed up to date. Now there

40. ‘More women are pursuing higher education now than ever before’ <https://www.indiatoday.in/education-today/featurephilia/story/more-women-are-pursuing-higher-education-now-than-ever-before-1921750-2022-03-07> (Last accessed on June 23, 2023 6:20 PM)

41. “The prevalence of girls getting married before age 18 has declined from 47 per cent to 27 per cent between 2005-2006 and 2015-2016.” UNICEF, Ending Child Marriage and Adolescent Empowerment

42. PIB, <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1908062> (Last accessed on June 23, 2023 6:20 PM)

43. World Economic Forum. https://www3.weforum.org/docs/WEF_GGGR_2022.pdf (Last accessed on June 23, 2023 8:40 PM)

44. HINDRISE <https://hindrise.org/resources/gender-equality-in-india-empowering-women-empowering-india/> (Last accessed on June 23, 2023 7:00 PM)

45. GK TODAY <https://www.gktoday.in/world-economic-forum-report-india-slips-to-rank-112-in-gender-gap/> (Last accessed on June 23, 2023 5:00 PM)

46. *Supra note 12*

47. Beti Bachao Beti Padhao Scheme, One-Stop Centre Scheme, SWADHAR Greh, Support to Training and Employment Programme for Women (STEP), Mahila Shakti Kendras (MSK), NIRBHAYA Mahila Police Volunteers, etc.

are further developments looming ahead.”⁴⁸ In a similar go, there are numerous developments looming ahead to conquer gender justice in totality in India. Therefore, the upcoming segment puts forth a few recommendations to assist in moving towards the aspired goal.

CONCLUSION

Denial of empowerment to women is violative of their fundamental rights and human rights, especially right to a dignified life. It can be averred that though the Indian Government has displayed immense political will in enacting required legislations for protecting women's rights, there is a need to administer effective execution of the legislations coupled with an inclusive approach of society at large. For empowering women, securing gender justice is the most effective tool which provides equality in opportunities. Apart from other professional jobs even small scale industries which provide financial aid to women should be made available in urban as well as rural areas. Providing employment opportunities will strengthen women to fight their battle against unequal opportunities. Women should be given more opportunities in the governance of the State. Moreover, awakening of collective consciousness by changing the attitude and mentality towards women in the society is a persuasive requirement. It is pertinent to exterminate the prejudices which transmit discrimination. There should be extensive awareness campaigns launched at regular intervals to educate people at large about women's right to gender justice. Over the centuries of human civilization women are deprived of their deserving right to empowerment which epitomizes the darker side of the spirit of development.

In order to uphold the democratic principles and rule of law in the society, it is indispensable to conquer gender inequality which will pave way for women empowerment in India. Accomplishing women empowerment is not a women's trepidation but the responsibility of the society at large.

Empowerment of women will have affirmative effects on the social, economic and political aspects of the nation. Unless there is transformation in our perceptions and manner of behaviour, women empowerment cannot be achieved. Invigorating women from this discrimination will create a congenial atmosphere to further develop and progress Indian society. Hence, complete and equal participation of women in political, civil, economic, social, and cultural life at regional, national and international levels will certainly result in achieving gender justice in India endowing a solution to empower women.

48. Lord Denning, *The Due Process of Law* 246, London: Butterworth, 1980.

RECOMMENDATIONS

In order to boost the aim of gender justice and women empowerment, it is not a single feature which may prove charismatic, but it requires a multidimensional approach from the society as a whole.

1. The dominance of Patriarchal society- Change Required

First and foremost, Indians at large still believe that ‘man’ is the leader of the family, he is the bread winner, he is the decision maker, and he is the only person who should head the family. This approach and attitude needs to be exterminated from the roots of thought process.

2. Role of Women in society- Change Required

Despite the marvelous progress in diverse sectors, depressingly, the Indian mindset has a fixed image of a woman with a pre-defined role attributed to her even before her existence in the world. Generally, people feel a woman is supposed to take care of the house, raise children, cook for the family members, etc. Thus, the stereotypical thought put obligation on women to act within a limited sphere of life. Not only this, but due to such hackneyed and formulaic thoughts women are brain washed to perform these roles in her life and not to think beyond the conventional pattern of life. Needless to say this image of a woman which is brainwashed should be replaced with absolute equal role and responsibilities as the men hold.

3. “No need to work as husband is earning”- Change Required

The very thought of working and earning money being symbolized as a man’s prerogative, strikes at the cord of gender equality. Not only in rural sectors but also in the urban sector the thought process is that a woman does not need to earn money despite that the fact that she is educated and is capable of earning, working is prohibited. And this thought is totally premised on the clinched believe that a ‘woman does not need to work as her husband’s earning is enough’. This thought, this believe, this contemplation is the major reason why women despite being capable of working as restricted from doing so.

4. Workplace security concern- Change Required

Once a woman starts working her workplace security is an issue for the family members. Due to such fear and apprehension about the security of women, they are discouraged to work. AT the same time, a working women are prone to face issues, such as, sexual harassment, unprofessional comments, etc.

5. Media- Change Required

The role of the Media in portraying women and the female gender as a whole can do wonders but ironically the covering of a few incidents by the media leaves imprints adversely on minds at times. The print media in case of rape cases, etc., sensationalizes the traumatic events which invades the privacy of the victim and further portrays the female as vulnerable. Needless to say, an enormous change is required in the reporting by media- from negative to positive reporting.

6. Entertainment Industry- Change Required

It is said that the cinema, motion pictures these days more often preferred as web series are a mirror of the society. The electronic media and films portray women in a highly derogatory manner, glorifying subservience of the woman before her husband/ in laws, making out eve teasing, sexual harassment as 'fun' items etc. As a result the general populace are fed on a regular diet of stories/ news that are highly gender abusive, thus reinforcing traditional views that the women are an inferior race and can be freely exploited. Each web series, includes unrequired sexual intimate scenes arousing vulgarity and portraying women as a medium of physical pleasure. Women should not be portrayed as an object of entertainment, weak, submissive, etc. Women should be projected as valuable resources equal to men and not simply to add glamour and spice by portraying women in indecent clothes and inferior to men.

Overall a mammoth change is required in the thought process of each individual to bring about the expected women empowerment in India. It is suggested that women should be included in mainstream financial services, implanting the legal framework which aims to eliminate the gender biases, provide assistance to women for structuring economic groups, developing and providing policy and schemes from microfinance to mainstream economic policy, there is need to increase women's assets and ownership, ensure and achieve hundred percent literacy of females in India, encourage more women in higher education and employment, need to publicize good practices to counter gender stereotyping and negative portrayals of women in all forms of media and communications. Largely, if we as a society change our approach towards the way we think about a woman, a lot can be achieved by simply thinking that "SHE is equal to HIM".

GENDER JUSTICE: PROMOTING GLOBAL EQUALITY

Dr. Kiran Dennis Gardner¹

Aldrina Rimpa Gomes²

“Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance.”³

INTRODUCTION

Gender is a sociocultural concept that refers to the traditional roles and expected behaviours of men and women in any particular community. Gender is a social, historical, and cultural construction in which males are seen as superior to women and vice versa. Thus, the idea of gender may be seen as an artificial construct, whereas the term “sex” refers to the physiological phenomena that distinguishes men and women. Therefore, discrimination against women because of their sex may be seen as an example of gender inequality, whereas gender justice is the absence of such inequality.

Contemporary discourses pertaining to gender justice encompass a myriad of diverse origins, including philosophical deliberations on human agency, autonomy, rights, and capabilities; political deliberations encompassing democratization and citizenship; as well as discussions within the legal domain concerning judicial reform and practical considerations regarding access to justice.⁴

Gender justice, a principle of utmost significance, resides deep within the core of societal transformation, as it endeavours to establish a realm of fairness and inclusivity. The noble endeavour of gender equality encompasses the relentless pursuit of justice and parity for all individuals, transcending the boundaries of gender. Its overarching goal is to eradicate the deeply ingrained roots of discrimination, bias, and disparities that have long plagued women, girls, and those who identify with marginalised gender identities.

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1. Dean and (Prof) Alliance School of Law, Alliance University, Bangalore, Karnataka.
 2. Ph.D. Research Scholar, Alliance School of Law, Alliance University, Bangalore, Karnataka.
 3. Kofi Annan, Former Secretary-General of the United Nations. https://www.brainyquote.com/quotes/kofi_annan_401690. (Last visited July. 20, 2023).
 4. MAHANIRBAN CALCUTTA RESEACRCH GROUP <http://www.mcrg.ac.in/spheres/maria.pdf>. (Last visited July. 20, 2023).

The pursuit at hand is inextricably linked to the noble cause of Sustainable Development Goal 5 (SDG 5). This global commitment serves as a guiding principle leading us towards the attainment of gender equality and the empowerment of women and girls. It compels us to confront the deep-rooted systemic issues that perpetuate the disparities based on gender. With an acute awareness of the pressing nature of this issue, SDG 5 presents an all-encompassing structure of objectives and metrics, serving as a compass to steer endeavours towards the dismantling of gender-based prejudice. It strives to secure equal educational opportunities, foster the active involvement of women in the decision-making process, and eliminate detrimental customs that perpetuate inequality.⁵

In instances where legal or judicial frameworks fail to consider gendered economic, structural, and cultural barriers, the integrity of access to justice becomes compromised. This phenomenon can be further exacerbated when the justice system lacks adequate representation of the populace it serves. In instances where the rule of law has been compromised due to conflict, the accessibility to justice becomes significantly more arduous for individuals who are subjected to gender-based discrimination. The perpetration of violence, harm, and discrimination exacerbates and is reciprocally exacerbated by gender inequality, thereby compromising the potential for security, development, and peace within communities and the wider society.⁶

Gender inequality is a pervasive issue that continues to persist in various domains, including numerical representation. The disparity between genders in terms of numerical representation is a pressing concern that warrants attention and intervention. Females constitutes a proportion of less than 24% of the global parliamentarians and a mere 5% of its executive positions. On average, women experience a 24% disparity in compensation compared to their male counterparts for equivalent work, spanning various geographical regions and industries. Approximately 64% of the global population of illiterate adults, which amounts to 781 million individuals, consists of women. This proportion has exhibited a consistent lack of change over a span of twenty years. A total of 153 nations have implemented legislation that exhibits economic discrimination against women, encompassing 18 countries where husbands possess the legal authority to impede their wives' engagement in gainful employment. Globally, it is estimated that approximately one-third of women and girls encounters instances of violence or abuse throughout their lifespan. A significant proportion of lesbian individuals, approximately 44%, and bisexual women, approximately 61%, encounter instances of rape, physical violence, or stalking perpetrated by an intimate partner. In comparison, the corresponding figure for

5. Sustainable Development Goals (SDG 5) | United Nations Western Europe. (n.d.). United Nations Western Europe. <https://unric.org/en/sdg-5/>. (Last visited July. 22, 2023).

6. Justice and Gender Eleanor Gordon - Tool 4 - OSCE. (n.d.). Justice and Gender Eleanor Gordon - Tool 4 - OSCE. <https://www.readkong.com/page/justice-and-gender-8963972>. (Last visited July. 22, 2023).

heterosexual women stands at 35%.⁷ The doctrinal research serves as the primary approach used in this research article. The methodology encompasses of primary and secondary sources, such as judicial decisions, scholarly publications, academic journals, articles, online resources, and other documents pertaining to the subject of gender justice.

SIGNIFICANCE OF GENDER JUSTICE IN PROMOTING GLOBAL EQUALITY

The imperative significance of gender justice in any given societal context cannot be overstated. The central focus of this discourse pertains to the imperative of upholding principles of equity, parity, and deference towards all genders, while concurrently engaging in the deconstruction of deeply entrenched gender-centric biases and preconceptions that have endured across the period of time. The attainment of gender justice is not solely a question of safeguarding fundamental human rights, but rather a pivotal undertaking in cultivating a forward-thinking and all-encompassing societal framework. When the primacy of gender justice is accorded due emphasis, it engenders a propitious trajectory towards the empowerment of women, thereby dismantling the impediments that impede their comprehensive engagement across all domains of human existence. Moreover, it confers advantages upon males by engaging in a process that confronts detrimental preconceived notions and societal pressures that impose constraints upon their ability to convey emotions and realise their full capabilities.

Gender justice is a fundamental tenet that espouses the creation of a societal framework wherein individuals are able to exist without the encumbrance of violence, harassment, and systemic prejudices, irrespective of their gender identity. The pursuit of equitable treatment and equal opportunities for all individuals, regardless of gender, is not merely a mere objective, but rather a moral obligation. It is essential to recognise that the advancement and development of any society is contingent upon the establishment of such principles.

Theories of Gender Justice

Feminist theory encompasses a broad range of perspectives and continues to develop, engaging in critical analysis of the societal, political, economic, and cultural frameworks that sustain and propagate disparities and prejudices based on gender. The objective of this theory is to comprehensively examine and question the historical and current societal norms that have systematically subjected women to a marginalized position. and other gendered persons to inferior or marginalized positions relative to males.⁸

7. Gender justice and women's rights | Oxfam International. (2022, November 21). Oxfam International. <https://www.oxfam.org/en/what-we-do/issues/gender-justice-and-womens-rights>. (Last visited July. 22, 2023).

8. Budig, Michelle & Jones, Katherine. (2008). Feminist Theory.https://www.researchgate.net/publication/259694665_Feminist_Theory. (Last visited July. 29, 2023).

The concept of intersectionality, was first formulated by Kimberlé Crenshaw during the latter part of the 1980s, draws attention to the interrelatedness of several social categories, including but not limited to gender, race, class, sexuality, and disability. Crenshaw provided the following definition of intersectionality: “Intersectionality is a metaphor for understanding the ways that multiple forms of inequality or disadvantage sometimes compound themselves and create obstacles that often are not understood among conventional ways of thinking.”⁹

Social constructionism is a theoretical framework that places significant emphasis on the influence of social and cultural elements in forming our perceptions and interpretations of the world, including many aspects such as the idea of gender. Social constructionism posits that gender is not an innate or biologically predetermined attribute, but rather an outcome of social interactions, linguistic practices, and cultural conventions.¹⁰

The Capability Approach, developed by economists Amartya Sen and Martha Nussbaum, is a theoretical framework that centres on the evaluation of human well-being and freedom by considering the range of skills people possess to lead lives of value. Instead of focusing exclusively on money or resources, the Capability Approach places emphasis on the significance of individuals’ talents and their flexibility to pursue worthwhile functioning. This method has special significance within the realm of gender justice, since it offers a complete framework for comprehending and advancing gender equality and empowerment.¹¹

Should gender justice focus solely on promoting women’s rights, or should it encompass the rights and challenges faced by all genders to achieve true equality?

Within our societal framework, an underlying bias manifests itself, subtly but significantly, wherein certain roles are implicitly associated with either gender. This bias, operating at a subconscious level, inadvertently promotes the notion that men and women possess inherent aptitudes that render them more proficient in fulfilling their respective duties. It is contended that the conventional ideologies and societal conventions, which serve as the fundamental pillars of any cultured community, have not been instituted solely for the purpose of upholding

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9. Using intersectionality to understand structural inequality in Scotland: evidence synthesis. (2022, March 9). 3. What Is Meant by the Concept of “intersectionality”? - Using Intersectionality to Understand Structural Inequality in Scotland: Evidence Synthesis - gov. scot. <http://www.gov.scot/publications/using-intersectionality-understand-structural-inequality-scotland-evidence-synthesis/pages/3/>. (Last visited July. 25, 2023).
 10. <https://utkaluniversity.ac.in/wp-content/uploads/2022/02/social-construction-of-gender.pdf>. (Last visited July. 25, 2023).
 11. Abadeer, A.S.Z. The Capability Approach and Gender Discrimination. In: Norms and Gender Discrimination in the Arab World. Palgrave Macmillan, New York. (2015). https://doi.org/10.1057/9781137395283_4. (Last visited July. 30, 2023).

social harmony, but rather to exert undue influence and impose burdensome expectations upon the various genders.

The enduring presence of gender-based inequality in our society has resulted in pervasive injustice among people. The eradication of bias and injustice is a complex endeavour that cannot be accomplished swiftly with mere discussions or research studies. Nonetheless, engaging in these activities might serve as a first step towards mitigating biases and fostering a transformative movement. Gender, in its essence, can be comprehended as the intricate interplay between sociological sex, which pertains to the categorization of individuals based on their biological attributes, and behaviour, which encompasses the multifaceted range of actions and expressions exhibited by individuals within a given social context.

In addition to the binary genders of male and female, it is important to acknowledge the existence of a third gender, commonly referred to as transgender. By incorporating transgender individuals into the discourse surrounding gender, it becomes evident that the construct of gender is not solely contingent upon biological sex, but rather influenced by societal norms and expectations pertaining to various tasks, functions, and roles within both private and public domains.

Gender Bias and Violence Against Women: Challenging Societal Norms in Indian Culture

Worldwide, there is a generalised belief that women are less valuable than men, which leads us to develop as adults and believe that violence against women based on their gender is a normal act that should not be responded to because doing so would cause women to be excluded from society norms and culture. The status of women in Indian society is a subject of profound apprehension, given the presence of numerous cultural customs that pretend as religious and matrimonial affluence. However, an argument that arises within the cogitative faculties of individuals is the manner in which the establishment of societal norms and customs has exclusively pertained to the female gender while neglecting the inclusion of the other gender.

Redefining Gender Justice: Addressing the Multifaceted Impact on Men and Masculinity

The examination of gender justice and its orientation yields distinct outcomes when scrutinizing the position of males. The exclusionary nature of the observed practices effectively confers upon men the privilege of preferential treatment. This article argues that the notion of gender justice is multifaceted and extends beyond the mere pursuit of equality for women. It contends that in order to foster a society devoid of gender bias, it is imperative to elevate men's comprehension and perceptions to an equivalent level. The contemporary societal framework has imposed distinct sets of obligations upon individuals of varying gender identities. There

exist a multitude of pertinent concerns that warrant attention, as they exert a deleterious influence upon the disposition and self-assurance of the male gender. In contemporary society, it is customary for men to undergo rigorous training and adhere to societal expectations in order to cultivate and uphold their masculinity. This process is undertaken with the aim of attaining a distinguished persona, often at the expense of acknowledging their inherent vulnerabilities. Consequently, men frequently find themselves compelled to suppress their emotions, thereby conforming to the societal construct of the strong gender role. The discourse surrounding domestic violence has historically centred on the perpetration of violence against women by their intimate partners. However, it is important to acknowledge that in contemporary times, the occurrence of such violence is not confined to any specific gender, but rather encompasses individuals of all genders.

Advancing Human Rights and Social Justice: Fostering Gender Equality for Transgender Individuals

The imperative of fostering gender equality for transgender individuals constitutes a fundamental facet in the advancement of human rights and the pursuit of social justice. Transgender individuals, by definition, exhibit a gender identity that deviates from the sex assigned to them at the time of their birth. The attainment of gender parity for transgender individuals necessitates the meticulous guarantee of commensurate entitlements, prospects, and safeguards as those enjoyed by (non-transgender) individuals. Transgender communities, commonly referred to as ‘Hijras’, are characterized by their deviation from societal norms in terms of their behavioural and lifestyle choices, specifically pertaining to their self-identified gender identities as either male or female. Regrettably, these individuals encounter significant resistance from society due to the deeply ingrained stereotypes that impede the acceptance of their authentic selves. The marginalization of this particular community from the realms of politics, society, culture, and decision-making renders them increasingly vulnerable to the damaging effects of gender-based discrimination.

Multifaceted Approaches to Promote Gender Justice: Addressing Gender-Biased Practices

Female genital mutilation includes non-medical genital alteration or injury. Female genital mutilation, a human rights violation, affects 200 million girls and women worldwide. The majority of nations where female genital mutilation is practised are also growing rapidly, so if the practise continues at present levels, the number of girls who undergo it will expand.¹²

12. Female genital mutilation. (n.d.). United Nations Population Fund. <https://www.unfpa.org/female-genital-mutilation>. (Last visited July. 27, 2023).

India is home to around 33% of the global population of child brides. Child brides include females below the age of 18 who have entered into matrimony, as well as females of varying ages who entered into their first marriage during their youth. A significant proportion of females in India who entered into marriage during their childhood are concentrated in five states, namely Uttar Pradesh, Bihar, West Bengal, Maharashtra, and Madhya Pradesh. Uttar Pradesh is recognised as the region with the highest population count. The incidence of child marriage exhibits variation across different states and union territories within India. In West Bengal, Bihar, and Tripura, a minimum of 40 percent of young women were found to be married before reaching the age of 18, in contrast to a mere 1 percent in Lakshadweep.¹³

Dimensions in promoting gender justice

Women-led firms account for around 20.37 percent of the MSME sector in India, and they employ approximately 23.3 percent of the labour force. Women own between 13.5 and 15.7 million enterprises and employ between 22 and 27 million people. They are regarded as India's economic backbone. Women's job choices may be broadened, and the pressure of working two shifts per week for women can be reduced. The 3Rs strategy, which comprises Recognising, Reducing, and Redistributing unpaid care labour performed by women, must be applied to all areas of law.¹⁴

The social dimension of gender justice pertains to the intricate interplay between gender norms, roles, and expectations, and their profound influence on the lived realities, prospects, and consequences encountered by individuals. In contemporary societies, it is a common practise to ascribe distinct societal roles and normative expectations to individuals, predicated upon their gender. This prevailing phenomenon serves to reinforce and perpetuate deeply ingrained stereotypes, thereby imposing constraints on the range of opportunities available to individuals. Gender justice endeavours to interrogate and deconstruct these constrictive societal constructs and stereotypes with the ultimate objective of engendering a more egalitarian and all-encompassing social order.

The political aspect of gender justice pertains to the convergence of politics and the endeavour to achieve parity and impartiality across all genders. Gender-responsive governance refers to the comprehensive framework of policies, legislation, and measures used by governmental bodies

13. H. Ending Child Marriage: A profile of progress in India - UNICEF DATA. UNICEF DATA. <https://data.unicef.org/resources/ending-child-marriage-a-profile-of-progress-in-india-2023/>. (Last visited July. 27, 2023).

14. Bureau, A. N., & A. Contribution of Women Entrepreneurs Towards Economic Growth. How They Are Shaping the Future. Contribution of Women Entrepreneurs Towards India's Economic Growth. How They Are Shaping the Future (2023). <https://news.abplive.com/business/international-womens-day-contribution-of-women-entrepreneurs-towards-india-s-economic-growth-how-they-are-shaping-the-future-1586785>. (Last visited July. 28, 2023).

and political establishments in order to effectively combat and redress instances of gender-based discrimination, inequality, and violence. In order to rectify systematic gender prejudices and advance gender justice, it is imperative to undertake a comprehensive transformation of political institutions. This may include the implementation of gender-sensitive budgeting practises, the cultivation of a gender-inclusive organisational culture, and the provision of training and awareness programmes aimed at enhancing gender awareness among politicians and public workers.

PROMOTING GLOBAL EQUALITY THROUGH GENDER JUSTICE

Females, both women and girls, embody an equitable proportion of the global populace, thereby encapsulating an equivalent fraction of its inherent capacity. Gender equality, in addition to its inherent status as an inalienable human entitlement, is an indispensable prerequisite for the attainment of harmonious societies, wherein the entirety of human capabilities can be fully realised and sustainable progress can be effectively pursued. Furthermore, extensive research has demonstrated that the act of empowering women exhibits a profound impact on the enhancement of productivity levels and the stimulation of economic growth.

The esteemed United Nations Secretary-General, Mr. António Guterres, has eloquently posited that the realisation of gender equality and the empowerment of women and girls represents a formidable task that remains unresolved, constituting the paramount human rights quandary of our contemporary global milieu.¹⁵

Gender equality, an intrinsic facet of social justice, is unequivocally regarded as a fundamental human right. Article 1 of the Universal Declaration of Human Rights, which was duly ratified by the esteemed United Nations General Assembly on the auspicious date of 10 December 1948, unequivocally proclaims the inherent freedom and equality in dignity and entitlement to rights of every individual upon birth. Furthermore, the subsequent article, namely Article 2, firmly establishes the entitlement of all individuals to the comprehensive array of rights and freedoms enshrined within this momentous Declaration, without any form of differentiation or discrimination on the basis of race, colour, sex, language, religion, birth, or any other distinguishing characteristic or status.¹⁶

The International Labour Organisation (ILO) a specialised organisation of the United Nations that addresses labour-related matters, including the advancement of social justice and the

15. <https://www.un.org/en/global-issues/gender-equality>. (Last visited July. 29, 2023).

16. Gender Equality, <https://www.un.org/en/global-issues/gender-equality#:~:text=Women's%20rights%20as%20a%20human,Assembly%20on%2010%20December%201948> United Nations. (Last visited July. 28, 2023).

promotion of gender equality within the global workforce.¹⁷ Gender justice, as understood within the framework of the International Labour Organisation (ILO), encompasses the fundamental tenets of impartiality, parity, and the absence of prejudice in relation to the opportunities and treatment afforded to individuals of different genders within the realm of employment.

Some key aspects of ILO's work on promoting gender justice:

1. The ILO advocates gender-neutral hiring, promotion, and compensation policies.
2. To eliminate gender-based wage discrepancies, the ILO promotes equal compensation for men and women who do the same or equivalent job.
3. The ILO promotes paid parental leave, flexible work arrangements, and inexpensive, high-quality care.
4. The ILO addresses workplace sexual harassment, assault, and abuse.
5. The ILO promotes women's employment, skills training, entrepreneurship, and leadership.

The four primary gender equality Conventions established by the International Labour Organisation (ILO) include the Equal Remuneration Convention (No. 100), Discrimination (Employment and Occupation) Convention (No. 111), Workers with Family Responsibilities Convention (No. 156), and Maternity Protection Convention (No. 183). Conventions 100 and 111 are two of the eight basic Conventions that include concepts and rights outlined in the ILO Declaration on basic concepts and Rights at Work.¹⁸

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) came into effect in 1981 and is regarded as one of the most comprehensive international accords on women's rights and gender justice and is called as bill of rights for women. CEDAW aims to promote gender equality and abolish discrimination against women in all sectors of life, including political, economic, social, cultural, and civic. The convention defines gender discrimination and requires member governments to eliminate it.¹⁹

CEDAW and gender justice include:

17. <https://www.un.org/youthenvoy/2013/08/ilo-international-labour-organization/>. (Last visited July. 29, 2023).

18. ILO and gender equality (GEDI). (n.d.). ILO And Gender Equality (GEDI). [https://www.ilo.org/gender/Aboutus/ILOandGenderEquality/lang--en/index.htm#:~:text=ILO%20mandate%20on%20gender%20equality&text=The%20four%20key%20ILO%20gender,and%20Maternity%20Protection%20Convention%20\(No.](https://www.ilo.org/gender/Aboutus/ILOandGenderEquality/lang--en/index.htm#:~:text=ILO%20mandate%20on%20gender%20equality&text=The%20four%20key%20ILO%20gender,and%20Maternity%20Protection%20Convention%20(No.) (Last visited July. 28, 2023).

19. <https://www.un.org/womenwatch/daw/cedaw/> (Last visited July. 29, 2023).

1. CEDAW defines discrimination against women as any differentiation, exclusion, or limitation based on sex that degrades or nullifies human rights and fundamental freedoms in political, economic, social, cultural, or any other sector.
2. CEDAW mandates member states to eradicate gender discrimination and mainstream gender equality into all policies, programs, and activities.
3. CEDAW emphasises women's involvement in all decision-making processes, including political and public life.
4. CEDAW promotes women's economic empowerment and equitable employment and entrepreneurial possibilities.
5. CEDAW emphasises equitable education and healthcare for women and girls.

Notwithstanding the presence of international instruments and agreements designed to advance gender equality and justice, the persistence of gender injustice remains a pervasive global phenomenon. Despite notable advancements in the realm of gender disparities, it is imperative to acknowledge that a multitude of interrelated social, cultural, economic, and political determinants persistently contribute to the perpetuation of inequity and bias.

NATIONAL APPROACH IN PROMOTING GENDER JUSTICE IN INDIA

The Indian Constitution has bestowed upon the Indian society novel dimensions. The constitutional document in question does not make explicit reference to the concept of gender. In lieu of the term 'Gender', the term 'Sex' was employed. Within the legal framework delineated by Articles 15 (1), 16 (2), and 325, which explicitly prohibits any form of discrimination predicated upon the grounds of sex, it is noteworthy to observe that the term "sex" is employed. While it is acknowledged that the term 'sex' possesses a more restricted semantic scope in comparison to the term 'gender', it is important to recognise this distinction. The prohibition of discrimination on the basis of sex, colour, creed, caste, race, religion, and other pertinent factors has been enshrined within the constitutional framework, as such discriminatory practises are deemed to be in contravention of the sacrosanct Fundamental Rights.

Article 14 of the Constitution ensures parity in the face of legal proceedings, whereas Articles 15 and 16 abrogate restrictions or differentiations based on religious affiliation, racial background, social caste, gender, and requires the state with directives to institute measures for the welfare of women and children. It is intriguing to note that our constitution confers upon the

state the prerogative to enact specific measures aimed at safeguarding and fostering the well-being of women and children.²⁰

Throughout its history, India has consistently exhibited a societal consciousness regarding gender-related matters, thereby engendering a sense of apprehension. The extant sociocultural framework in India posits that women continue to be relegated to a subordinate position vis-à-vis men. Furthermore, it is noteworthy to mention that India's position in the esteemed World Economic Forum's Global Gender Gap Index 2020 stands at a rather modest 112th, out of a comprehensive coverage of 153 nations. As per the aforementioned report, it is evident that India has experienced a decline of 3% in its ability to provide equitable opportunities to individuals of both genders. Iceland emerged as the foremost nation in the present ranking index, exhibiting a commendable closure of 88% in the gender gap. In stark contrast, India, positioned at a modest 112th, managed to narrow the gender gap by a relatively modest 66%. The primary domains that substantiate the gender gap index encompass education, health, economy, labour force participation, and politics. The relatively inferior ranking of India in this context serves as a testament to the persisting gender disparities, wherein societal norms continue to favour the advancement and empowerment of men over women.²¹

Judicial framework on Gender Justice

In the case, *Vishaka v. State of Rajasthan*,²² Bhanwari Devi, a woman who was subjected to gang rape by five men as a retaliatory act for her involvement in an infant marriage annulment and her efforts to challenge male dominance in Rajasthan, which was within the scope of her professional responsibilities. The Apex Court held that sexual harassment constituted a blatant infringement of the rights enshrined in Articles 14, 15, 19, and 21 of the Indian Constitution. The court established 'The Vishaka Guidelines', which afterwards underwent conversion into the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

In the case, *Air India v. Nargesh Meerza*²³, the Supreme Court made a comprehensive interpretation of Article 14 in this case, and it was held concluding that the denial of employment based on an individual's sex is impermissible. Air India, an airline corporation, had implemented a policy mandating the retirement of female flight attendants upon reaching the age of 35,

20. Gender Justice And Its Various Forms Under Indian Constitution. (n.d.). Gender Justice and Its Various Forms Under Indian Constitution. <https://legalserviceindia.com/legal/article-7669-gender-justice-and-its-various-forms-under-indian-constitution.html>. (Last visited Aug. 5, 2023).

21. Sehgal, D. R. Legal provisions on gender equality: an analysis. iPleaders. [https://blog.ipleaders.in/legal-provisions-gender-equality-analysis/\(2021\)](https://blog.ipleaders.in/legal-provisions-gender-equality-analysis/(2021)). (Last visited July. 30, 2023).

22. *Vishaka v. State of Rajasthan*, AIR (1997) SC 3011.

23. *Air India v. Nargesh Meerza*, AIR (1981) SC 1829.

becoming pregnant, or getting married, whichever event comes first. The aforementioned requirements were held to be arbitrary and discriminatory.

In the case, *Laxmi v. Union of India*,²⁴ in response to the increasing incidence of acid attacks, the Supreme Court issued directions to both levels of government to implement nationwide prohibitions on the unlawful selling of acids. This ruling facilitated the implementation of more stringent penalties for those implicated in similar offences.

In the case, *Lillu Alias Rajesh and another v State of Haryana*,²⁵ the Supreme Court held that the use of the two-finger test infringes upon the private rights of those who have experienced sexual assault. Furthermore, it has a profound impact on the psychological well-being and personal sense of worth of the one who has experienced it. The court further directed that the government provide an improved forensic methodology to substantiate the victim's allegations of sexual assault.

Challenges in achieving Gender Justice

The imperative to scrutinise and rectify the social, cultural, and institutional factors that sustain the persistent inequities rooted in gender is paramount in the pursuit of justice for all genders. Gender stereotypes have long been recognised as a formidable force that imposes limitations on individuals, dictating their roles and shaping their expectations. These societal constructs, deeply ingrained within our collective consciousness, have the power to confine individuals within rigid boundaries, stifling their potential and hindering their personal growth. The perpetuation of gender inequality is fortified by a confluence of educational and economic obstacles. In the realm of labour, a disconcerting disparity persists: women, despite engaging in identical tasks, find themselves earning a lesser remuneration than their male counterparts. This inequity, an unfortunate reality, which casts a shadow over the principles of fairness and equality that society purports to uphold

CONCLUSION AND SUGGESTIONS

The pursuit of gender justice necessitates a community duty rather than an individual endeavour, requiring a steadfast dedication from all those involved. The aforementioned concept envisions a societal framework whereby every person, irrespective of their gender identification, is afforded equitable rights, opportunities, and liberties. The attainment of gender justice necessitates the deconstruction of repressive systems, the interrogation of detrimental preconceptions, and the cultivation of inclusive settings. This endeavour includes the empowerment of women and gender minorities, the promotion of allyship, and the adoption

24. *Laxmi v. Union of India*, AIR (2014) SCC 427.

25. *Lillu Alias Rajesh and another v State of Haryana*, AIR (2013) 914 SCC 643.

of intersectional perspectives. By adhering to the tenets of impartiality, parity, and regard, we have the capacity to construct a global environment in which gender parity thrives, enabling all people to prosper and make meaningful contributions towards the establishment of a more peaceful and equitable society. Achieving gender justice is a collective responsibility that requires concerted efforts from individuals, communities, governments, and institutions.

To attain a more equitable society, we must implement the following recommendations:

Promote Gender-Inclusive Education: Educational institutions should include gender-inclusive curriculum that challenges stereotypes and celebrates varied gender identities throughout history. This will promote early gender equality, empathy, and respect.

Employ, healthcare, and legal policies should be gender-neutral. Fair hiring, equal compensation for equal effort, and gender-neutral reproductive healthcare are examples.

Address Gender-Based Violence: Develop comprehensive gender-based violence prevention, support, and accountability programmes. Law enforcement, healthcare professionals, and community organisations must collaborate.

Empower Women and Gender Minorities: Empowerment should encompass economic possibilities, leadership responsibilities, and decision-making roles. Mentorship and training may boost their career and personal growth.

Inclusivity and Allyship: All genders must actively support an inclusive society. Open talks, safe places, and awareness efforts to combat gender prejudices and foster understanding.

Advocate for Legislative Changes: Civil society organisations and activists should support gender equality legislation. This encompasses anti-discrimination, harassment, and political and public life equality legislation.

Promote Intersectionality: Gender justice connects with racism, classism, and ableism. Address the particular issues of people with various marginalised identities via intersectional policies and activities.

PATH TO INCLUSIVITY- PROMOTING GENDER JUSTICE IN INDIAN SOCIETY

Soumili Chandra¹

Vaishnavi Suresh²

INTRODUCTION

Gender inequity has endured for centuries, and its origins often reach into the very essence of society, impacting various aspects of human existence. From religious convictions to physical appearance and occupation, the factors that shape the selection of partners have far reaching effects on the marginalized communities within our societies. In the context of ongoing gender disparities and discrimination faced by women and the LGBTQIA+ community, it is essential to examine the consequences of assortative mating on societal norms and political rights.

Furthermore, we analyze the potential impact of the Uniform Civil Code (UCC) in India as a mechanism to advance transgender rights and dismantle discriminatory practices. As we reassess the historical backdrop of gender representation and rights, we aim to comprehend the interplay of culture, politics, and economics that continue to influence assortative mating decisions.

Through this exploration, we aspire to initiate dialogue and encourage proactive measures to establish a society where gender equality is not merely an abstract idea but a lived reality. By addressing the fundamental causes of gender injustice and promoting inclusivity within partner selection, we can pave the way towards a fairer and more empowered future for all individuals, regardless of their gender identity.

The research is conducted based on a combination of descriptive and survey methodology to provide clarity with each topic mentioned and discussed with. This study is based on a doctrinal research with the support of secondary sources, assortative mating and reasoning. Collection of data has been done through published articles, journals, case laws and surveys.

Data were through Google document which were circulated among several communities. Approximately the survey reached 500 people. Although the response recorded electronically is

1. B.com LLB (Hons.), Presidency University, Bengaluru

2. B.com LLB (Hons.), Presidency University, Bengaluru

less than 15, but 50 of them conveyed their response through telecommunication. Considering all the views, opinions and responses, the results have been recorded in the paper.

Results³

The percentage distribution in Chart 1 reveals that 38% strongly supports and 31% strongly contradict the proposition.

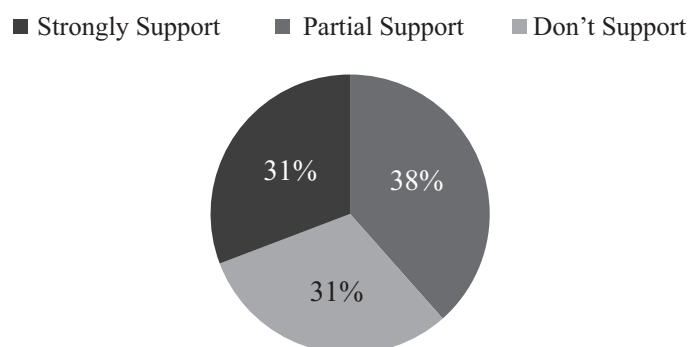


Chart 1: Approval for religion based marriage

The survey finds that religion has been given profound importance inspite of India being a secular country. Most interestingly as per the survey, 50% of the ratio of the unmarried men strongly believes on the notion that marriage should be based on religion whereas unmarried women have a partial opinion with regards to this.

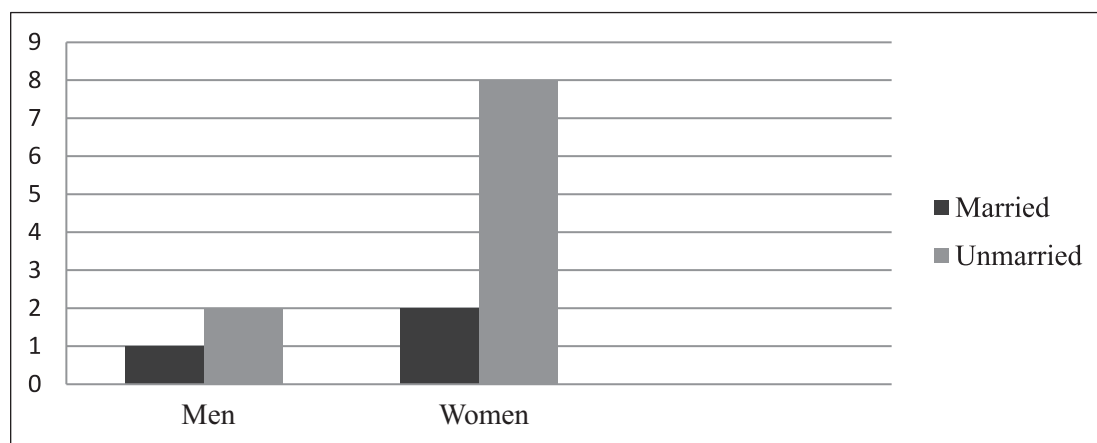


Chart 2: Ratio of votes by married and unmarried men and women

Chart 2 highlights the response of unmarried women than any other category.

3. <https://docs.google.com/spreadsheets/d/15X4eO71ED969Hcz0xz3bMFfh1tvITlwVEc57mXm-ga38/edit?usp=sharing>

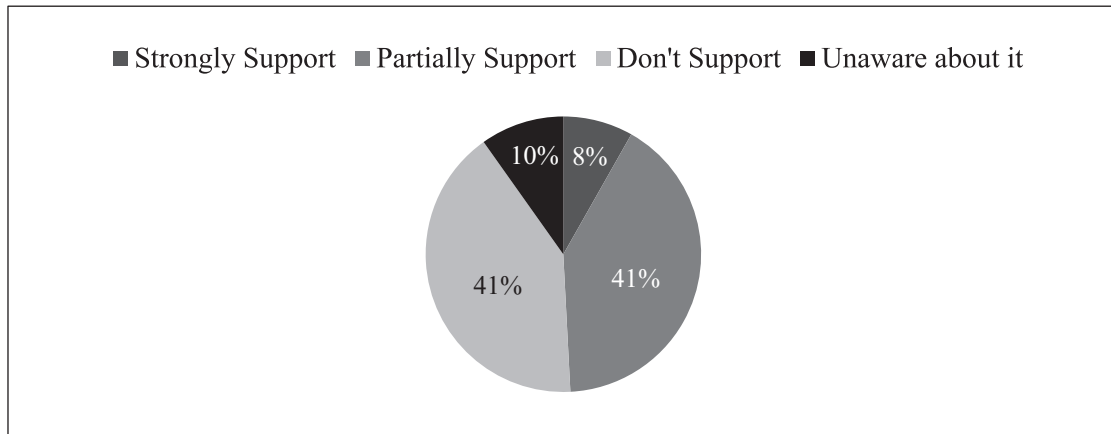


Chart 3: Votes on appearance based marriage

According to the survey, appearance isn't the criteria for many especially for the age group of 18 to 30. But a few partially believes in the ideology of appearance based marriage.

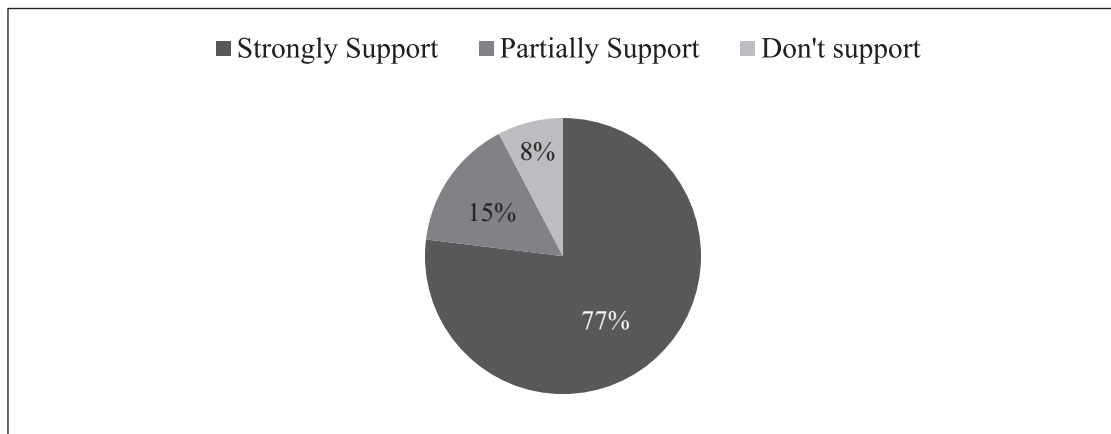


Chart 4: Vote on marriage based on behavioral, psychological and other factors

Chart 4 clearly identifies this as the most popular choice among the respondents and thereby, the population has a positive perspective for live-in relationships as we see in the pie chart 5.

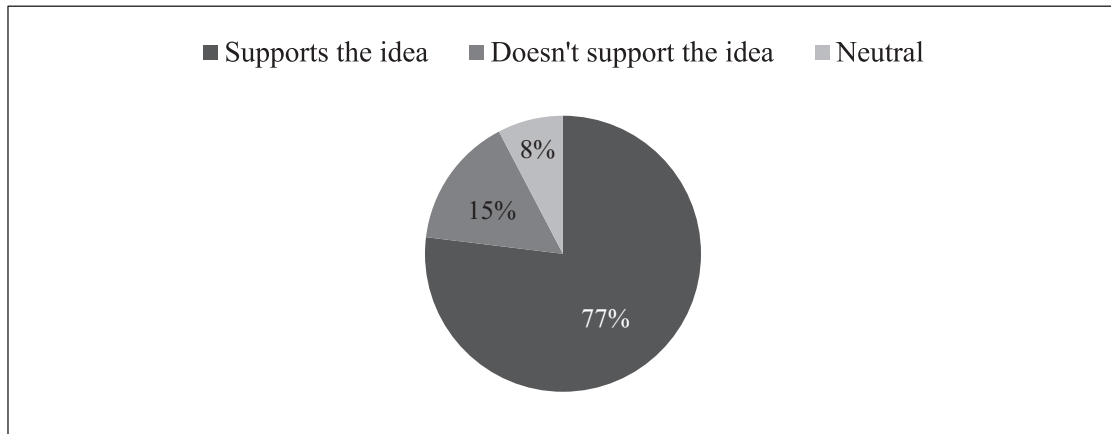


Chart 5: Approval on live-in relationship

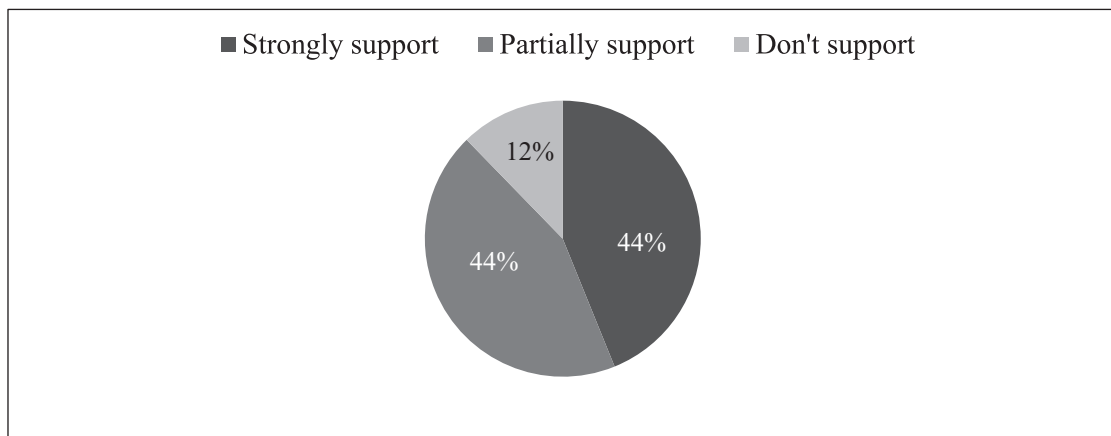


Chart 6: Vote on profession based marriage

Chart 6 represents a balanced response because it is a controversial and partially acknowledged basis of marriage.

Living in the 21st Century, inspite of having several laws, the statistics (Chart 7) of discrimination faced shouldn't have crossed 50%. But sadly, the real scenario is different and the law makers need to rethink the way of implementation.

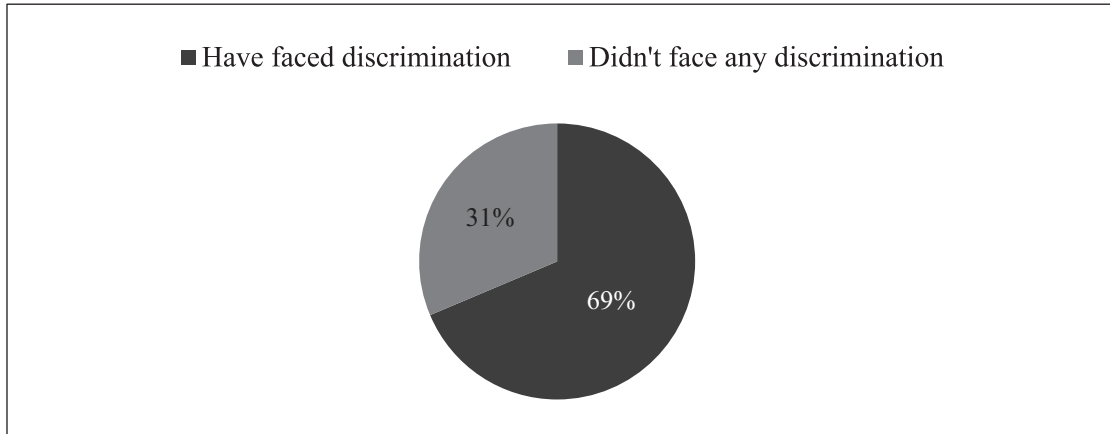


Chart 7: Consensus on discrimination faced by women and third gender

When discussed about discrimination, the third gender can't be chunked out from the purview. They can be placed at the top list in the grounds of denial of justice. The survey called in for an inquiry with aspects related to health. In chart 8 we find that 46% feels that the rainbow community is denied health service and their right to life as per Article 21 is infringed.

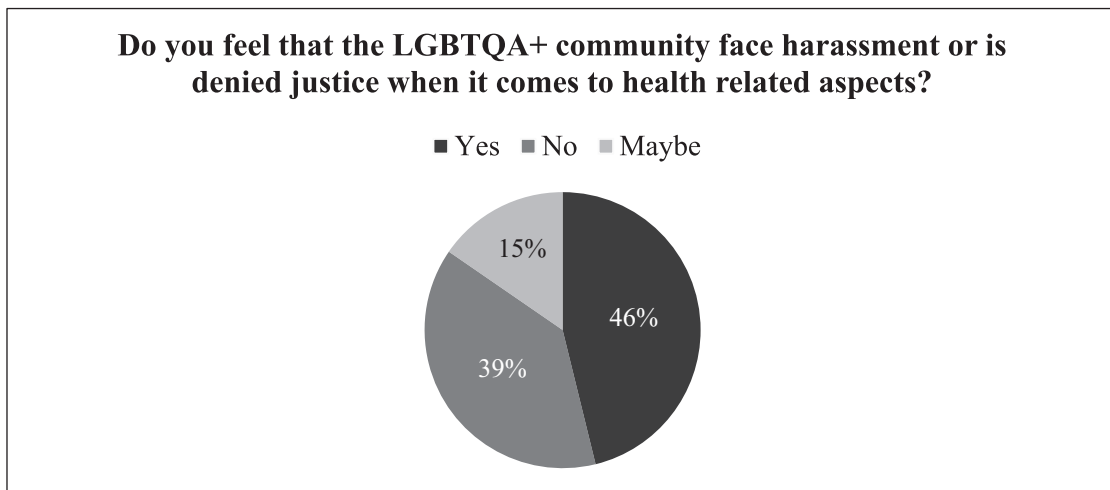


Chart 8: Vote of approval on growing denial of justice to rainbow community

Chart 9 explains the adverse situation where 46% of the respondents discern the society as the barrier for earning the living of LGBTQIA+ community.

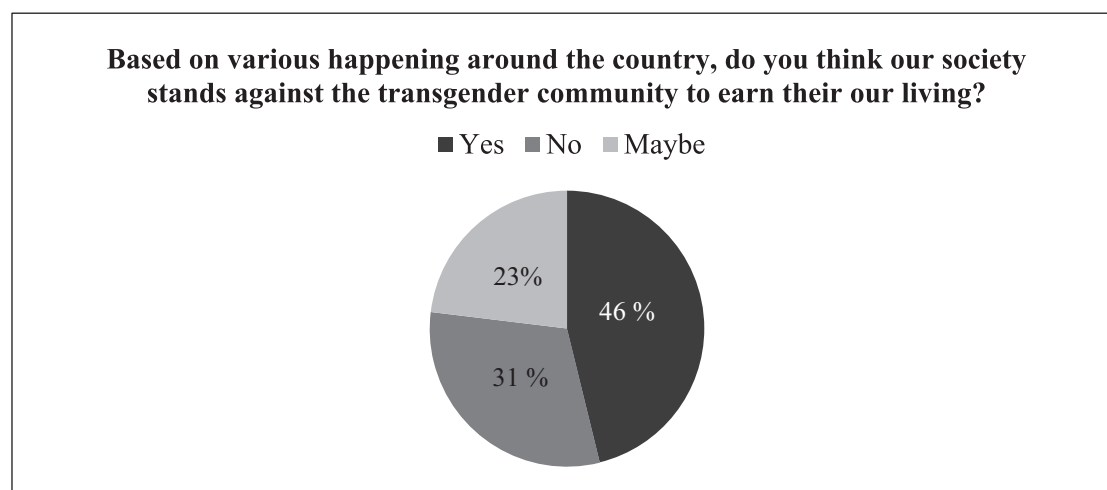


Chart 9: Maximum vote in favour of wage earners

As per chart 10, 69% of the population feels that the rainbow community needs acceptance within the society and 23% partially agree to this point. The prejudices against them should be reduced in order to get the acceptance.

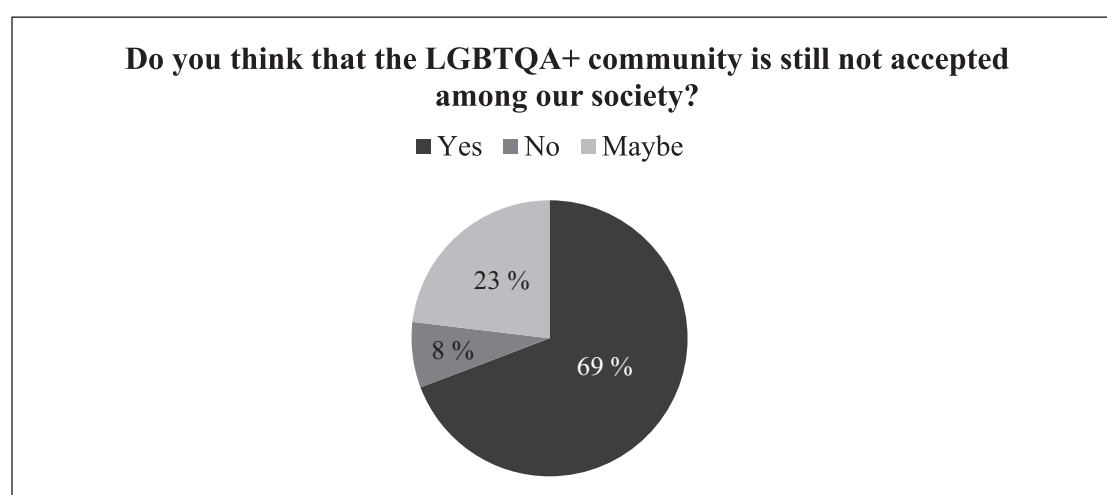


Chart 10: Graph of acceptance by the society.

In the survey conducted, 46% of individuals have witnessed harassments against third gender and 39% of individuals are of the opinion otherwise.

Elimination of women in various field have been an age old practice. They have been disregarded in several grounds, one of them being ethnic conflicts. The recent incident showcases the necessity of gender equality. But what concerns the most is whether the law makers address the interests of the affected group and prioritize it adequately? Various empirical researches have been made to address the inequality in political ground with the help of the legal instrument which is internationally responsible to promote rights of a girl and a woman. CEDAW is an

international bill which prescribes the rights of a woman and 186 countries explicitly ratified the bill. Yet there are several instances around the world which limelight the open humiliation of the “female race”. If we look back and see through the eyes of politics, it would be evident that even if women were interested to participate in political movement yet as per the doctrine of coverture⁴, the husbands subsumed the interests of their wives. In recent years the doctrine has subsided and women have been found participating in political field. India has a substantial history in terms of political activism of women. There is no scope of denial that the Indian Constitution plays an immense role in escalating the women’s participation through reservation of seats. Yet, due to the patriarchal set up, there is a huge set back in the female participation which discourages them to advocate in policy making. The early nineteenth century is marked as a remarkable year because of the national women suffrage movement but there were several prejudices. It allowed categorical representation of men and women who owned property which eliminated a wide population. Later, Article 326⁵ granted voting rights to all women in 1950. The general challenges faced by a woman in the due process of participation are inadequate education, violence and discrimination. The biggest loophole of violence is marital rape which remains unpunished by law and affects the mental health of women which diminishes their urge to participate in any political affair. Discrimination and illiteracy go hand in hand and people with proper education are given more priority compared to people who have less education.

The research discusses upon the wage variance, contrasting with previous findings that lack of education, occupational segregation and work proficiency. Through several newspaper articles and online sources it has been gathered that India has been ranked the lowest in terms of labour force participation rate⁶. It focuses on proving that this phenomenon is the result of wide gender injustice among common civilians. Assortative mating can be commonly described as preference based marriage among Homo sapiens. This arrangement necessarily means that mates with comparable features are chosen for the arrangement called “marriage”. The comparable features can be religion, hobbies, personal traits, mere distinctive attributes, psychological pairing, culture, common profession or profession of interest, racial preference and many more.

4. Stretton, Tim and Krista J. Kesselring, *Married Women and the Law: Coverture in England and the Common Law World*, McGill-Queen’s University Press, 2013, JSTOR.

5. INDIA CONST., Art. 326

6. Mayurakshi Dutta, *Discrimination Continues to be the main factor for India Women Earning less, Getting Fewer Jobs*, The Times of India (Mar 25, 2023, 15:48 IST), <https://www.indiatimes.com/explainers/news/discrimination-main-factor-for-india-women-earning-less-getting-fewer-jobs-597016.html> .

BALANCED DUALISM

The arrangement is operative through the contrary forces which essentially mean that assortative mating has a broad horizon and it includes positive as well as negative principles. But sorting between them is a herculean task because it differs from case to case basis. We shall present the study with the help of a set of circumstances. A survey has been conducted and opinion shall be elaborated on the basis of the same.

1. Monogamy on the basis of religion

Let's assume the harmonious relationship of a man and a woman. Whether or not they have the phenotypic dimensions⁷ fulfilled is not a cause of concern. But one of the comparable feature that has been established is both of them have similar religion i.e. Hinduism. But if this feature is all that is needed to live a blissful marital life is still a debatable concern. Religion can't be the basis to measure the compatibility of both the gender. There is a blend of positivity as well as negativity in this conjugal life. Positivity includes bridging of gender injustice and negativity in this circumstance can be the domination of male in terms of religion. There can be a verbalized limit set upon the opposite gender which shall restrain the female partner from associating with people of other religion.

2. Monogamy on the basis of appearance

There is an insignificant difference between likings and loving yet this turns out to be a major reason for falling out of love in a matrimonial alliance. Admiring a person for their specific appearance can result in the diminished longevity of the relationship. Later if the person loses such appearance; it might result in disapprovals in relationship. This has been seen mostly among men disapproving the relation due to fading of appearances. This leads to discrimination on the basis of appearance which further leads to aggravated form of domestic as well as sexual violence of women by their partners.

3. Monogamy on the basis of behavioral, psychological and other factors

Blend of all factors will not be chaotic but instead it would rather promote gender equality within the family which would extend to the society as a whole and will make it a societal norm. When a person is judged on the basis of behavior, he/she is judged inside out and then measured whether the person is compatible for the other person. This avoids the whole lot of complexity that a woman might face in the near future because the partners can understand each other's mentality.

7. McClintock CH, Lau E, Miller L. Phenotypic Dimensions of Spirituality: Implications for Mental Health in China, India, and the United States. *Front Psychol.* 2016;7:1600. (2016).

The concept of live in relationship⁸ shall also include within the horizon of monogamy. Although the concept has a broad dimension yet the journal shall focus mainly on the benefits and some legal implications. The facet of sacrament is yet unclear but got a legal premise through the famous judgement⁹ and perceived that such relationship isn't a heinous offence. Although such relationships have a tremendous social set back and considered a taboo to stay together before the marriage yet if seen from the practical outlook of life, we can observe that the success rate is more than failure rate as per research¹⁰. It is deduced in the journal that 60% of the live in couples are seen to further their relationship and the rest split up. If the positivity is judged then before the legal union, the couples can experiment the adaptability with each other in the long run. Even the relationship status remains unchanged due to professional or financial grounds. Divorced women often face several discriminations in society. In spite of no wrongs committed, their reputation is impugned. Since, an individual is a part of society and can't avoid the community absolutely the divorcee woman is victimized by the discriminatory barriers of the people surrounding her. The character of the divorcee woman is put to question. Even though most of the people of society are unaware of the fact for their unsuccessful marriage yet they make assumption on the mere title "divorced". The implications also incriminate the heirs of the partners who tied the matrimonial alliance and later got their separation certified. The child is discriminated in several things and this also affects the mental health due to such set back from society. Thus, young couple with far sightedness often opts for the concept where they can prioritize careers over after-marriage responsibilities and less commitment factors. Indian society which covers the senior population has different opinion on the topic and often focus more on the negative aspects of the concept not because of the culture but because they consider the security of the girl in such alliance. It cannot be said that the rationale behind the concept is wrong and security of a person shouldn't be prioritized but if analytically investigated then we see that nobody can give a guarantee to a person's life and turmoil can exist but this can't be a reason to stop oneself from taking a step forward in life. Infact, section 16¹¹ of the Hindu Marriage Act recognizes the children born out of such relationship although recognized as illegitimate yet they are capable of acquiring rights that a legitimate child of his parents shall possess. When judged from the International perspective, the major power nation has given a global recognition to the concept and acknowledges the relationship with an agreement which explicitly provides all the clauses which is equivalent to that of a marriage. It also grants alimony

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8. Narayan CL, Narayan M, Deepanshu M., Live-In Relationships in India—Legal and Psychological Implications, 3(1) Journal of Psychosexual Health 18-23 (2021) .
 9. Indra Sarma v V.K.V. Sarma, (2013) 15 SCC 755 (India)
 10. Larry Bumpass & Hsien-Hen Lu, Trends in cohabitation and implications for children's family context in the United States, 54 Population Studies 29, 29-41 (2010).
 11. Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

after the woman cohabits with her partner for a considerable amount of time. Therefore, live in relationship can turn out to be beneficial for a couple if decided after a detailed communication.

4. Monogamy on the basis of profession

This choice is obtained by many individual because there are chances of love affairs when people share the same space all together. People tend to get to know each other in a better way and work together simultaneously. The recent statistics portrayed that on an average, 35% to 40% of employees are reported to have affairs with their co-employees and among them almost 20% of the affairs are successful and ends up to marriage. Therefore, in recent decades, this choice has gained quite popularity. But on the other hand, there are several drawbacks of such marriage. Partners with same profession are likely to have disputes with regards to their work and this can affect their personal relationship as well.

Now when we segregate from case to case basis we can find that the first case (chart 1), although was prevalent in primitive India and marriage was arranged on the basis of religion, it resulted in several marital disputes. The women were assumed to be meant for discharging only domestic work whereas men are meant for doing office or any other outside work. If a woman desired to work outside and also had required qualifications for the same, still she was disallowed. If women declined to agree such consent, they were subject to mental as well as physical maltreatment. But this assumption doesn't necessarily mean that 100% cases portrayed such torment but majority of male in early Indian society denied too much of access to their women or family consisting of women.

The second case (chart 3) is the matrimonial tie up on the basis of appearance, which indeed has been accepted as the basic requirement especially from the bridegroom's family but beauty tend to fade with age. Does that essentially mean that a marriage shall come to an end because of this immaterial rationale? Women are molested for their outward appearance. Rural areas are yet to adapt the modern mind set to curtail such importance based on features.

The third case (chart 4) is the situation that has been accepted by the contemporary society. The modern scenario that has been put up where a woman is selected on the basis of behavioral, psychological and other factors should be the real basis of selection which shall reduce the inequality and discrimination.

The fourth case (chart 6) is yet a controversial and partially acknowledged basis of marriage because selection on the basis of profession might sound fascinating but there can be several conflicts that can give rise to intolerance between each other but it may not be the situation in every case and it differs based on the nature of the partner. But this basis can't be completely segregated in the negative side because when a couple selects on this, the partners generally

have a lot of things to discuss which also leads to a healthy and matured relationship devoid of any complications.

Thereby, from all the above cases, we deduced that marriage is a factor which affects the gender equality and if moderated properly, it can deduce gender biasness. The first two cases can be segregated under the negative principles, third case is definitely positive principle and fourth case has a dual tendency of the principle.

RETHINKING THE RIGHTS OF AN INDIVIDUAL IN THE PATH OF ESTABLISHED LAW

If flipped through the pages of history, the initiation of the feminism¹² was when women gradually realized the importance of education and this evoked their consciousness of speaking in favour of each other to establish their existence in political, economic, social and legal field. Careers which were hallmarked to be men's were also triumphed over by women and the worst thing that happened was inspite of achieving it with the same caliber, they weren't bestowed with equal dignity. When the concept of culture is talked upon, the autocratic society denied access to inherited property prior to the amendment. Although differentiating pre-colonial India and modern India would be effortless because the feminists are undoubtedly successful in changing the perspective of every individual and inculcating the sense of gender justice within them yet we see incidents which yet again reminds the necessity of basic education within the "so called cultured people".

The Manipur and the wrestling federation incident have shaken the entire country and made the feminists rethink of the prospect in which oppression could be curbed. The initiation of Manipur violence¹³ occurred in the beginning of May 2023. This commenced due to the tension between the two ethnic groups Meitei and Kuki-Zomi. It was also a religious conflict where several methods were tried such as killing, mass rape, arson, vandalism, riot, mutilation. But the major cause of agitation among the people were due to the law makers who passed an order on whims without further analyzing the consequences of passing the act. The Manipur High court was condemned by the Apex Court for demoting the status of Meitei community to scheduled tribes. This incident caused a wide protest among the civilians which gradually turned into a monstrous form of dissent where Kuki women were paraded naked and the incident was videographed by localites. The incident appeared like a sore thumb making it the worst humanitarian crisis of the 21st century in our country. It particularly bought shame to our country and terrified the entire female community for the way they were disrespected.

12. Rosalind Delmar, *Theorizing Feminism*, 8-29 (Routledge 2d ed. 2001).

13. Jilangamba, Yengkhom, "Sharmila and the Forgotten Genealogy of Violence in Manipur" 51 *Economic and Political Weekly* 36, 15-19 (2016).

If compared with the Manipur tragedy, the incident of wrestling federation¹⁴ might look trifling but holds great significance in the lights of woman dignity. It was in the midst of January, the ructions within the wrestling federation induced a huge turmoil. The president Brij Bhushan S. Singh was alleged to have committed sexual assault and also demanded “sexual favours” in return of professional accommodation. Although the accusations were denied by the president yet if this is assumed to be a true story then it could be said that women are yet not safe in the patriarchal society.

This also attracts our attention to a significant aspect that despite the existence of various regulations in our country, there is a significant increase in the prejudices faced by women. If we attempt to examine, it's not solely women and children who are regarded as part of the disadvantaged group. The LGBTQ+ community also falls within that scope. Presently, we witness numerous legislations and campaigns emerging to uplift or better the circumstances of the LGBTQ+ community in our nation and dismantle the obstacles constructed against them.

“We have to be visible. We should not be ashamed of who we are”.

This was the primary ideology of the creators of the Indian constitution while composing the Constitution of India. Section III of the constitution includes the basic rights to be enjoyed by the citizens of the country regardless of their age, gender, sex, caste, creed, and other societal factors. When we talk about the issue of gender and sex, it is in this context that most citizens face discrimination.

In India, despite scientific, technological, and economic advancements, the transgender community is still regarded as a marginalized and underprivileged community in all aspects of society. Commonly known as Hijra or Kinnar in Indian society, the gender inequality among them has been a contentious topic over the years.

India enforced the UCC, which seeks to establish a uniform set of laws governing personal matters such as marriage, divorce, inheritance, and adoption, applicable to all citizens irrespective of their religious affiliation. Enforcing the UCC has the potential to enhance transgender rights in several ways. The implementation of a UCC holds significant potential for advancing transgender rights and fostering inclusivity in society. Through uniformity in laws, the UCC can eliminate discriminatory provisions in personal laws based on religious traditions, ensuring equal rights for transgender individuals across various spheres. It can provide legal acknowledgement of gender identity and the right to self-identify, removing barriers that currently impede transgender people. Additionally, the UCC can safeguard

14. Wrestling for justice: On the protest by the wrestlers, The Hindu (June 02, 2023, 12:20 AM), <https://www.thehindu.com/opinion/editorial/wrestling-for-justice-the-hindu-editorial-on-the-protest-by-the-wrestlers/article66920308.ece>.

transgender marriages and inheritance rights, prevent bias in different aspects of life, address medical concerns, and establish an inclusive framework for adoption and guardianship. By promoting awareness and acceptance, a uniform code sends a powerful message of valuing and safeguarding the rights and dignity of all citizens, regardless of their gender identity.

A WAY TO PROGRESS ALONG WITH CHALLENGES

Even though UCC implementation can bring in such advancements throughout the country, the disparity never ends. The recent news about the prince Manvendra Singh Gohil draws us to such a conclusion. India's first openly homosexual Prince Gohil, disclosed that his parents attempted to subject him to a procedure to alter his sexual orientation.¹⁵ He felt deeply ashamed by their actions as they sought medical assistance to "convert" him after he came out as gay. Despite the fact that gay conversion therapy has been discredited as "*medical malpractice*" in India, it is still offered by certain doctors. Prince Gohil is currently engaged in a legal battle at the Indian Supreme Court to outlaw conversion therapy and legalize same-sex marriage in the nation. He stressed that no individual should have to endure such mistreatment and anguish on account of their sexual orientation, and he aspires for a more open-minded judiciary.

In this context, a survey was carried out to examine the healthcare privileges accessible to the LGBTQIA+ community. According to the conducted survey, 46% of people still hold the belief that the LGBTQIA+ community continues to endure harassment in relation to their health conditions. There exist various medical alternatives for altering one's gender identity through the process of transitioning. These options include hormone therapy, Gender Affirmative Therapy, and Corrective surgery/ intersex surgery. 39% of the respondents answered negatively to the survey question so base on the accessibility of these medical choices. The undeniable truth underlying these diverse perspectives leads to a single conclusion. Regardless of the existence of numerous laws, regulations, proposed bills, or medical advancements, complete freedom and equal rights to utilize them are still not accessible. The LGBTQIA+ community still encounters significant criticism when attempting to select their gender or rectify their gender.

Nevertheless, it is crucial to recognize that the influence of the UCC on promoting transgender rights depends on the specific provisions and implementation of the law. A carefully crafted and comprehensive UCC that takes into account the unique challenges faced by the transgender community has the possibility to be a significant step towards achieving equality and social justice. The rights of transgender people in India are slowly being acknowledged and dealt with. Nonetheless, it is worth mentioning that circumstances may have changed since

15. Daniel Binns, India's first openly gay prince says parents wanted him to have 'conversion brain surgery', SKY NEWS (July 28, 2023 21:07 UK), <https://news.sky.com/story/indias-first-openly-gay-prince-says-parents-wanted-him-to-have-conversion-brain-surgery-12929584>.

then, and specific legislations and policies might have been introduced or modified to enhance the protection of transgender rights.

Kerala is at the forefront of gender-inclusive measures, prioritizing the well-being of the queer community.¹⁶ The Minister of Health, Veena George, unveiled a healthcare system that provides treatments and services without any discrimination based on gender identity. Thiruvananthapuram, Ernakulum, Thrissur, and Kozhikode will spearhead this endeavor, aided by proficient personnel. In these districts, Transgender Community Link Workers will facilitate healthcare access, showcasing the government's dedication to empowering the transgender community. This initiative advocates for healthcare, entitlements, and welfare, solidifying Kerala's status as an all-encompassing state.

Being a Social Voice

The progression of voting and representational rights from exclusive male suffrage to the inclusion of women and eventually extending to all citizens, including transgender individuals, was a lengthy process. Constitutional provisions, such as Article 14¹⁷ ensuring equality under the law, Article 15¹⁸ prohibiting discrimination, and Article 326¹⁹ granting the right to vote, emphasize the commitment to equal voting rights. The significant 2014 Supreme Court ruling in the case of *National Legal Services Authority vs Union of India & Ors*²⁰ acknowledged transgender individuals as the 'third gender,' affirming their self-identified gender rights and directing measures for their social and educational advancement. This legal recognition is accompanied by efforts to streamline official documentation, healthcare accessibility, and public facilities. Comparisons with global counterparts reveal that many countries are still working towards implementing comprehensive LGBTQ+ rights. India's 2019 Transgender Persons (Protection of Rights) Act further strengthens these rights, including the ability to participate in elections and vote, in accordance with the Representation of the People Act, 1951.

A lack of education among transgender people is a major obstacle to understand political rights. Kerala's high literacy rate is not reflected in transgender education. According to the transgender survey of the Social Justice Department, 59% of transgender students drop out before

16. The Hindu Bureau, In a first, Kerala to roll out queer-friendly hospital initiative, *THE HINDU* (July 31, 2023, 08:55 pm)

17. INDIA CONST. Art. 14

18. INDIA CONST. Art. 15:

19. INDIA CONST. Art.326

20. *National Legal Services Authority vs Union of India & Ors*, Writ Petition (civil) No. 604 of 2013.

completing the 10th standard, and 72% by the time of the 12th standard due to discrimination²¹. Transgender individuals in the field of education frequently encounter marginalization. The belief that casting a vote and engaging in electoral affairs will not significantly impact their lives also contributes to the hesitancy of transgender individuals to engage in politics.

Perceptions and Exploitation

Transgender individuals in the field of education frequently encounter marginalization. The belief that casting a vote and engaging in electoral affairs will not significantly impact their lives also contributes to the hesitancy of transgender individuals to engage in politics. Addressing employment access inequality is relevant to the HIV response. In 2021 HIV prevalence among transgender people in India was 3.8%, almost 20 times the national average. A study commissioned by India's National Human Rights Commission found that in 2017 just six percent of transgender people were formally employed in either the private or non-governmental organization (NGO) sector. About 5% engaged in sex work and domestic labour respectively. Thirteen percent sold food and other items while 11% reported begging.²²

The survey answers to question about the reason for which the community begs around for money. The majority of individuals hold the belief that transgender individuals are compelled to resort to begging as a result of the challenges they face in being accepted by society. They face difficulties in finding employment and accessing education. Some people also argue that they coerce us into giving them money. Certain religious faiths maintain that Hijra or Kinnar possess supernatural abilities and their blessings can bring us prosperity. In the Sundar Kaand of the Ramayana, a significant narrative emerged that bestowed the Hijra community in India with their unique identity. As Ram embarked on his 14-year exile, individuals from his kingdom bid him farewell, yet he requested all, except the Hijras (transgender), to return home. These Hijras, not being nar (male) or nari (female), stayed devotedly in the forest for the entire exile. Touched by their unwavering faith upon his return, Ram blessed them with the ability to bestow good fortune and cast curses. To this day, Hijras are invited to significant life events, symbolizing their role in bringing luck.

The findings from our survey indicate that 31% of the individuals are of the opinion that such individuals exploit or attempt to manipulate this belief, pressuring others to give them money under the threat of a curse that could bring misfortune upon themselves and their families. The primary justifications for such convictions are linked to the behavioral aspects of

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21. P. K., Vinshy, The Political Participation of Transgender Community in Kerala: Rights, Accessibility, and Activism, *Bulletin of Applied Transgender Studies* 2 (1-2): 95-106.
 22. Beyond transgender visibility: India works toward employment equity, UNAIDS (March 31st 2023), https://www.unaids.org/en/resources/presscentre/featurestories/2023/march/20230331_beyond-transgender-visibility-india.

the transgender population. Persuasive donations from individuals, tormenting them, attempting to give priority to their community, and various other unfavorable attitudes from others are some of the reasons why employment opportunities elude them. Individuals have expressed that certain modifications in their mindset and conduct can foster a favorable transformation in society's perception of them.

Out of the responses received from the survey, 46% of the individuals believe that the society stands against the transgender community to earn their living. The main reason as per the opinions quoted are "These people are both physically and mentally way stronger than we are. We as humans are unwilling to accept that people can be superior to us and can't accept changes around us. The day we start accepting things is the day when there will be no discrimination and nothing as LGBTQIA+ and all. Everyone will be called 'one' and that is human being where everyone has the same social, economic, educational, and career statuses. No one will be treated indifferently and no one will have the thought of superiority or inferiority".

Recognition, Realities and Equality

In India, transgender individuals face significant barriers in asserting their gender identity and choosing their own partners. Despite the decriminalization of homosexual intercourse in 2018, same-sex unions remain unrecognized. Manoj, a 22-year-old transgender man, experienced severe violence and forced marriage after expressing his gender identity and love for a woman. He, along with his girlfriend Rashmi, has filed a petition with the Supreme Court to seek the legal right to marry.²³ The petition argues that legal recognition of their relationship is crucial to avoid the brutal violence inflicted by their families. India has an estimated half-a-million transgender individuals, and family violence continues to be a complex issue. Advocates argue that the right to marry is essential for establishing new families and redefining relationships without violence. However, support systems to help transgender individuals escape abusive families and build new lives are scarce. Many transgender people also struggle to find stable employment, due to low literacy rates and limited job opportunities. Sappho for Equality, an organization that supports LGBTQ+ rights in eastern India, has provided shelter and assistance to eloping couples seeking safety and a fresh start. The Supreme Court's upcoming decision on the legalization of same-sex marriage will determine the future of transgender individuals like Manoj and Rashmi, who hope that legal recognition will protect them from violence and secure their right to be together.

The general consensus among individuals is determined by their viewpoints, inclinations, and beliefs. According to the aforementioned investigation with regards to marriage among LGBTQIA+, we also reached the determination that transgender individuals are still not

23. Divya Arya, India LGBT couples: 'My parents were ready to kill me for their honor', BBC NEWS (July 27), <https://www.bbc.com/news/world-asia-india-66245194>.

embraced in our community due to insufficient knowledge among the populace, an inability to acknowledge realities beyond established societal standards, and a traditional mindset.

Reduced focus on the transgender community could exacerbate unequal political representation, prejudice in all areas of life, and the disinterest of transgender individuals in participating in the decision-making process. Addressing this issue should be regarded as the foremost challenge in achieving equal power distribution and taking essential measures to eradicate marginalization and discrimination, as outlined in the recent transgender Act of India. However, there are obstacles such as degradation, marginalization, exclusion from demographic data, and limited access to education, and fewer employment opportunities, imbalanced gender representation based on population, uneven resource allocation, and gender prejudice, particularly within the democratic system. And that must be the cause for our survey results, where 69% of individuals have indicated that they still perceive the LGBTQIA+ community as not yet being embraced in our society.

In spite of these progressions, obstacles endure, and there is still a great deal of effort required to guarantee the complete and equitable entitlements of transgender individuals in every facet of existence. Activists and groups dedicated to transgender rights persist in promoting for more extensive legal safeguards, societal approval, and policy revisions to establish a society that is welcoming and fair to all gender identities.

CONCLUSION

Survey methodology and qualitative analysis has culminated on the theory of assortative mating to determine the discrimination faced mainly by the two groups; women and rainbow community. The paper establishes a link between woman disparity and assortative mating and consequently estimates the loopholes of such variance in monogamy. Although live-in relationships are unsupported by elderly people yet it was found to be the most convenient way of reducing gender imbalance. Further the paper also brings on the denial of basic right to the third gender. The denial of marriage and health facilities in the Indian society between the marginalized and underprivileged group has always been a matter in question. The journal theoretically discusses and examines the applicability of UCC and its effectiveness. Although there is no platform of denial with regards to the positive aspects but with further research it strips off the shades within the effectiveness. Therefore, it has been proved time and again through our work that scrutiny is the need of the hour to control such inadequacy.

PERCEPTIONS OF THE GLASS CEILING EFFECT AMONG WOMEN IT EMPLOYEES

Prof. Mihir Dash¹

Arpana M.²

INTRODUCTION

In an increasingly competitive IT sector, women not only have to deal with work-life balance, social pressures, and biased attitudes, they also have to deal with the “glass ceiling,” i.e. the invisible, intangible, covert, and unspoken barriers that impede women’s career advancement and prevent them from coming up the organisational hierarchy.

Gender-based barriers exist in the IT sector. The boardrooms of the IT sectors are male-dominated, leading to a male hegemony on the organisational culture. The “glass ceiling” effect is perceived from the mid-level management onwards. It becomes more and more apparent as employees move towards senior management. Women have to work much harder than men to prove themselves worthy of climbing up the ladder. Men move into managerial roles faster. The career trajectories of techies lean towards men reaching the upper management at a much faster pace than women.

This, combined with the male perception that women cannot take bold and harsh decisions, make it very difficult for women to overcome this invisible barrier. Women are perceived to be emotional, and most men do not like to take directions/instructions from women. Women’s calibre and talent are undermined by men. They are often excluded from informal discussions and conversations where men share their views, ideas, strategies, decisions, and so on, which are very important information-sharing channels. However, women are slowly breaking this mould and making inroads towards the top management and company boardrooms.

Hymowitz and Schellhardt (1986) suggested that women were denied access to the top management because of prejudice and corporate culture, leading to the “glass ceiling.”³ Simon (1995) argued that there are multiple layers of “glass ceiling” for women, and this is felt at all

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1. Interim Associate Dean - Alliance School of Applied Mathematics Alliance School of Applied Mathematics
 2. Alliance University, Bangalore
 3. Hymowitz, C. and Schellhardt, T.D. (1986) “The glass ceiling: Why women can’t seem to break the invisible barrier that block them from the top jobs,” *The Wall Street Journal* 57, D1, D4-D5.

stages of their career⁴. Koshal et al. (1998) suggested that more than 40% of people perceive that the “glass ceiling” exists - that organisations discourage women to attain leadership positions, and that women need to work more than men to prove themselves at work. Further, the major factors that influence a woman’s career prospects are institutional discrimination, excluding women from informal networks, lower business expertise, and not sticking along consistently at work acted as barriers to their progress⁵. Helm et al. (2006) suggested that the “glass ceiling” is real, and that the culture of the organisation, work policies, and women’s personal inadequacies are the major factors that prevent women from career advancement⁶. Lyness and Heilman (2006) suggested that women were less likely to get promoted than men, and those women who did get promoted had higher performance ratings than men who got promoted⁷. Moore et al. (2008) focused on two types of gender gaps affecting the representation of women in the managerial and leadership positions in organisations: those arising from “traditionally masculine organisational norms and policies,” and those resulting from lower participation rates of women in higher education and in organisations⁸. Appelbaum et al. (2011) suggested that the “glass ceiling” mainly affected senior women professionals. They also found that married women who tried to maintain their work-life balance were under greater stress and conflict than those who did not, and that, among women professionals, promotional aspirations were generally lost after a ten-year cut-off period⁹. De Jonge (2014) found that women’s presence on firm boards is higher in financial services firms and in larger firms¹⁰. Amudha et al. (2016) suggested that the major obstacles to women’s career progression are the workplace culture and their capacity building nature¹¹. Aziz and Priyadarshini (2018) identified several sets of factors affecting career

4. Simon, J (1996) “The double-glazed glass ceiling,” in *Australian Libraries, Librarian Career Development* 4(4), pp. 4-14.
5. Koshal, M., Gupta, A. K. and Koshal, R. (1998) “Women in Management: a Malaysian perspective,” *Women in Management Review* 13(1), pp. 11-18.
6. Helm, B.M. (2006), “Women and the glass ceiling in South African banks: an illusion or reality?” *Women in Management Review* 21(4), pp. 311-326.
7. Lyness, K. S. and Heilman, M. E. (2006) “When fit is fundamental: Performance evaluations and promotions of upper-level female and male managers,” *Journal of Applied Psychology* 91(4), pp. 777-785.
8. Moore, L.L., Blake-Beard, S., and Gupta, V. (2008) “Women in Management in India: Status, Issues and Solutions,” *NHRD Network Journal* 2(2), pp. 157-166.
9. Appelbaum, S.H., Asham, N., and Argheyd, K. (2011), “Is the glass ceiling cracked in information technology? A qualitative analysis: part I” *Industrial and Commercial Training* 43(6), pp. 354-361.
10. De Jonge, A. (2014), “The glass ceiling that refuses to break: Women directors on the boards of listed firms in China and India,” *Women’s Studies International Forum* 47(PB), pp. 326-338.
11. Amudha, R., Motha, C.S.L., Selvabaskar, S., Alamelu, R., and Surulivel, S. (2016), “Glass ceiling and glass escalator - an ultimate gender divide in urban vicinity,” *Indian Journal of Science*

advancement opportunity for women, including personal factors, organisational factors and societal factors¹². Begum and Brindha (2019) suggested several possible reasons for the “glass ceiling” effect: lack of confidence to apply for senior positions, lack of adequate education/training, and systemic gender biases that exist in some organisations¹³. Babic and Hansez (2021) analysed the role of situational and interpersonal issues and organisational gender culture on the “glass ceiling” effect via the perception of differential treatment¹⁴.

With much greater women participation in labour in recent years, there is still concern of the relatively lower presence of women in higher managerial positions, i.e. the “glass ceiling.” More women now hold managerial jobs, but typically at lower levels and in less vital areas, and their access to top managerial jobs remains severely restricted. For example, men IT employees tend to transition to managerial roles after six years of experience on average, whereas women IT employees tend to transition to managerial roles only after eight years of experience on average. In fact, 45% of women IT employees quit technology roles after eight years of experience and move into marketing, product management, and consulting; if 29% women start working in a given year, after twelve years only 7% remain in tech. The biggest drop-off is in the first five years, due to starting a family, moving, and so on¹⁵. Further, while there is a significant difference in salaries of men and women IT employees, particularly after the age of 40 years, to the tune of 15%. Thus, there arises a need to analyse this issue in order to identify the factors acting as the barrier to the advancement of women.

This study was conducted to understand the perception of women IT employees towards the “glass ceiling” effect in the Indian IT industry and its determinants. This in turn would help in formulating better strategies for combating the “glass ceiling” effect and facilitating the career progression of talented women to higher positions in IT companies.

The objective of the study was to understand the perception of women employees towards the “glass ceiling” effect in the IT sector. The study was conducted with a sample of hundred

and Technology 9(27) [Open Access]

12. Aziz, N.P.V. and Priyadarshini, R.G. (2018), “Glass ceiling factors affecting women career advancement in IT industry in India,” *IOP Conference Series: Materials Science and Engineering* 390(130) [Open Access], Article no. 012021.
13. Begum, A.N. and Brindha, G. (2019), “Forcing gender issues and challenges affecting women employees to continue their career in IT industry,” *Indian Journal of Public Health Research and Development* 10(12), pp. 288-290.
14. Babic, A. and Hansez, I. (2021), “The Glass Ceiling for Women Managers: Antecedents and Consequences for Work-Family Interface and Well-Being at Work,” *Frontiers in Psychology* 129 [Open Access], Article no. 618250.
15. <http://blog.belong.co/gender-diversity-indian-tech-companies>

women IT employees, selected by convenient sampling. 49% of the respondents were single and 51% were married; of the married respondents, 70.6% had children, while 29.4% did not.

The data was collected from the respondents using a self-administered structured questionnaire. The variables considered included the perception of the “glass ceiling” effect in the respondents’ organisation and the possible factors contributing to the “glass ceiling” effect in the IT sector.

The perception of the “glass ceiling” effect was quantified by the following set of items:

- Women are under-represented in management.
- Women who are turned down for managerial positions are equally or more educated than the men that are currently holding those positions.
- The percentage of women in middle management is lower than the percentage of men in middle management.
- Women are not offered opportunities to assume higher responsibility or risky jobs.
- Women are generally hired for entry level clerical positions.
- Women usually reach supervisor positions but rarely go beyond.
- Women are discriminated against in promotion opportunities.
- Women receive lower salaries than men for the same jobs/roles.

All the items were measured using a simple binary scale (disagree/no = 0, agree/yes = 1). The perception of the “glass ceiling” effect was constructed using exploratory factor analysis.

On the other hand, the possible factors contributing to the “glass ceiling” effect in the IT sector included the following:

- Women have to balance work with family responsibilities.
- Women are less flexible than men when it comes to work hours as they need to attend to responsibilities at home.
- Women often have personal inhibitions.
- Women are subjected to different standards of performance evaluation than men.
- Women are excluded from informal networks.
- Women are perceived as less mobile.
- Women do not seek and attain high profile projects.
- Women lack self-confidence and timidity.

- Difference in leadership style (men – direct, women – interpersonal).
- Women lack management training and mentoring.
- Women do not tend to push beyond their comfort zone.
- Women have limited access to information and communication networks.

Again, all the items were measured using a simple binary scale (disagree/no = 0, agree/yes = 1).

The differences in perceptions between single, married employees without children, and married employees with children were tested using chi-squared analysis. The impact of the factors on the perception of the “glass ceiling” effect was tested using fixed-effects panel regression analysis.

ANALYSIS & FINDINGS

The perception towards the “glass ceiling” effect in their organisations was analysed as follows.

	single	married, with no children	married, with children	overall	chi- square	p- value
Women are under-represented in management.	61.2%	100.0%	100.0%	81.0%	24.414	0.000
Women who are turned down for managerial positions are equally or more educated than the men that are currently holding those positions.	67.3%	100.0%	72.2%	74.0%	6.457	0.040
The percentage of women in middle management is lower than the percentage of men in middle management.	44.9%	100.0%	100.0%	72.0%	35.046	0.000
Women are not offered opportunities to assume higher responsibility or risky jobs.	51.0%	60.0%	100.0%	70.0%	24.548	0.000
Women are generally hired for entry level clerical positions.	30.6%	100.0%	100.0%	65.0%	49.976	0.000
Women usually reach supervisor positions but rarely go beyond.	42.9%	26.7%	100.0%	61.0%	37.229	0.000

Women are discriminated against in promotion opportunities.	36.7%	60.0%	75.0%	54.0%	12.489	0.002
Women receive lower salaries than men for the same jobs/roles.	30.6%	100.0%	100.0%	50.0%	54.478	0.000

Source: primary data analysis

The highest perception was that women were under-represented in management (81%); followed by women who are turned down for managerial positions are equally or more educated than the men who are currently holding these positions (74%); the percentage of women promoted to middle management is lower than the percentage of men (72%); women were not offered opportunities to assume higher responsibility or risky jobs (70%); women were generally hired for entry level clerical positions rather than technical positions (65%); women usually reach supervisor positions and were usually unable to progress further (61%); women are discriminated against in promotion opportunities (54%); and women did not receive the same salary as men who perform the same job (50%). Further, there was significant difference between single women, married women not with children, and married women with children with respect to all these perceptions, being highest among married women with children, followed by married women with no children, and by single women.

The results of exploratory factor analysis formulated the construct of perception of the glass ceiling effect as presented in the following table.

	coefficients	factor loadings	communalities
Women are under-represented in management.	0.1539	0.7839	0.6145
Women who are turned down for managerial positions are equally or more educated than the men that are currently holding those positions.	0.1048	0.5337	0.2848
The percentage of women in middle management is lower than the percentage of men in middle management.	0.1358	0.6917	0.4784
Women are not offered opportunities to assume higher responsibility or risky jobs.	0.1699	0.8654	0.7490
Women are generally hired for entry level clerical positions.	0.1435	0.7312	0.5347
	coefficients	factor loadings	communalities
Women are under-represented in management.	0.1539	0.7839	0.6145

Women who are turned down for managerial positions are equally or more educated than the men that are currently holding those positions.	0.1048	0.5337	0.2848
The percentage of women in middle management is lower than the percentage of men in middle management.	0.1358	0.6917	0.4784
Women are not offered opportunities to assume higher responsibility or risky jobs.	0.1699	0.8654	0.7490
Women are generally hired for entry level clerical positions.	0.1435	0.7312	0.5347
Women usually reach supervisor positions but rarely go beyond.	0.1572	0.8011	0.6418
Women are discriminated against in promotion opportunities.	0.1446	0.7368	0.5429
Women receive lower salaries than men for the same jobs/roles.	0.1383	0.7046	0.4964

Source: primary data analysis

The KMO measure was found to be 0.647, indicating fair sampling adequacy, and Bartlett's test was significant (chi-square = 632.604, $p = 0.0000$). Overall, the construct extracted 56.61% of the total variance of the items. The factor loadings were quite high, apart from that of the second item ("Women who are turned down for managerial positions are equally or more educated than the men that are currently holding those positions."), for which the communality was also quite low. The overall Cronbach alpha for the scale was 0.9000, indicating high reliability.

The factors affecting the perception of the "glass ceiling" effect in their organisations was analysed as follows.

	single	married, with no children	married, with children	over- all	chi-square	p-value
Women have to balance work with family responsibilities.	91.8%	100.0%	100.0%	95.0%	2.196	0.334
Women are less flexible than men when it comes to work hours as they need to attend to responsibilities at home.	77.6%	100.0%	75.0%	80.0%	4.486	0.106
Women often have personal inhibitions.	81.6%	66.7%	83.3%	80.0%	1.998	0.368

Women are subjected to different standards of performance evaluation than men.	81.6%	80.0%	77.8%	80.0%	0.193	0.908
Women are excluded from informal networks.	69.4%	93.3%	66.7%	72.0%	4.060	0.131
Women are perceived as less mobile.	71.4%	73.3%	63.9%	69.0%	0.706	0.702
Women do not seek and attain high profile projects.	67.3%	40.0%	69.4%	64.0%	4.451	0.108
Women lack self-confidence and are perceived as timid.	67.3%	53.3%	63.9%	64.0%	0.979	0.613
Difference in leadership style (men – direct, women – interpersonal).	61.2%	66.7%	61.1%	62.0%	0.163	0.922
Women lack management training and mentoring.	55.1%	66.7%	66.7%	61.0%	1.045	0.495
Women do not tend to push beyond their comfort zone.	51.0%	46.7%	69.4%	57.0%	3.643	0.162
Women have limited access to information and communication networks.	53.1%	53.3%	52.8%	53.0%	0.001	0.999

Source: primary data analysis

The most factor contributing to the “glass ceiling” effect in IT organisations (95%) was found to be balancing work with family responsibilities; followed by women were less flexible than men when it comes to work hours as they need to attend to responsibilities at home (80%); women often have personal inhibitions (80%); women are subjected to different standards of performance evaluation than men (80%); women are excluded from informal networks (72%); women are perceived as less mobile (69%); women do not seek and attain high profile projects (64%); women lack of self-confidence and are perceived as timid (64%); difference in leadership style, viz. men as perceived to be direct, while women as perceived to be interpersonal (62%); women lack management training and mentoring (61%); women do not tend to push beyond their comfort zone (57%); and women have limited access to information and communication networks (53%). There was no significant difference between single women, married women with no children, and married women with children with respect to any of the factors.

The results of the fixed-effects panel regression analysis are presented in the following table:

	coefficient	std error	t Stat	p-value
[Intercept]	0.922	0.309	2.987	0.004
[group = single]	-0.665	0.079	-8.441	0.000
[group = married, with no children]	-0.545	0.113	-4.833	0.000
[group = married, with children]	-	-	-	-
Women have to balance work with family responsibilities.	-0.254	0.208	-1.219	0.226
Women are less flexible than men when it comes to work hours as they need to attend to responsibilities at home.	0.221	0.095	2.331	0.022
Women often have personal inhibitions.	0.307	0.205	1.499	0.138
Women are subjected to different standards of performance evaluation than men.	0.069	0.138	0.503	0.617
Women are excluded from informal networks.	0.340	0.134	2.550	0.013
Women are perceived as less mobile.	0.026	0.102	0.256	0.798
Women do not seek and attain high profile projects.	-0.252	0.152	-1.658	0.101
Women lack self-confidence and are perceived as timid.	-0.082	0.122	-0.671	0.504
Difference in leadership style (men – direct, women – interpersonal).	0.159	0.115	1.383	0.170
Women lack management training and mentoring.	0.063	0.130	0.487	0.628
Women do not tend to push beyond their comfort zone.	0.055	0.137	0.402	0.689
Women have limited access to information and communication networks.	-0.084	0.110	-0.764	0.447

Dependent variable: perception of the “glass ceiling” effect

Source: primary data analysis

There was found to be significantly higher perception of the “glass ceiling” effect among married women with children as compared to single women and married women with no children. Further, the only significant factors affecting the perception of the “glass ceiling” effect were that women are excluded from informal networks and that women are less flexible than men when it comes to work hours as they need to attend to responsibilities at home, both having a significant positive impact on the perception of the glass ceiling effect.

CONCLUSION

There has been much greater women participation in labour in recent years, and more women have reached the lower and middle managerial levels, but there is still concern of the relatively lower presence of women in higher managerial positions, i.e. the “glass ceiling.”

The perception of the “glass ceiling” effect in the IT sector was found to be strongest among married women employees with children. They unanimously perceived lower representation of women at the top levels of management; lower percentage of women in middle management than men; women were generally hired for entry level clerical positions than for technical positions; women reach supervisory positions but progress no further; women were not offered opportunities to assume high responsibility or risky jobs; and received lower salary than men who perform the same jobs.

The married women employees who did not have children also had a strong perception of the “glass ceiling” effect. They unanimously perceived lower representation of women at the top levels of management; lower percentage of women in middle management than men; women were generally hired for entry level clerical positions than for technical positions; women turned down for managerial positions were equally or more educated than the men currently holding the positions; and women received lower salary than men who perform the same jobs.

Thus, according to married women IT employees, the glass ceiling effect is primarily the result of bias in the system. This may reflect an implicit assumption among the management in IT companies that women are capable of doing only clerical or mid-level jobs, and they are not capable to take on the responsibilities and risks for higher level positions.

The married women employees also had a strong perception of factors affecting the “glass ceiling” effect in IT organisations. They had strong perception of the barriers to women’s career growth in IT organisations, including family responsibilities, personal inhibitions, less flexibility than men when it comes to work hours, and exclusion from informal networks. They had moderate perception of being perceived as less mobile, not seeking and attaining high profile projects, timidity/lack of confidence, leadership style, lack of management training and mentoring, and not pushing beyond their comfort zone.

Thus, along with the bias in the system, individual and social factors play an important role in the glass ceiling effect. Among the individual factors are personal inhibitions, timidity/lack of confidence, and not pushing beyond their comfort zone; whereby they lose the opportunity to grow in their organisation.

A major barrier to women’s career growth is their family responsibilities. Given the socio-cultural context of women’s role, they often have to take a break from their professional life

because of family responsibilities such as looking after children, taking care of elders, etc. This explains why women are less flexible than men when it comes to work hours, because they need to attend to responsibilities on the home front, often single-handily. This also explains why women are perceived as less mobile than men.

The importance of leadership style as a barrier is an interesting finding. There has been an implicit link in the management literature between leadership and masculinity. Men are described as taking charge, while women are described as taking care. Men's leadership style is more direct, while women's is more interpersonal. Thus, men are more preferred to be at the head of the business than women. Women are sensitive, and so their sensitivity to people issues gives them an edge in fields such as human resources.

Organisations have fundamentally misunderstood how to manage and motivate the women workforce. This is reflected by the strong perception of the women employees of discriminatory treatment, different standards of performance evaluation, gender-bias in promotion opportunities, lower salary than men who perform the same jobs, and that women who are turned down for managerial positions, are equally or more educated than the men who are currently holding those positions.

Organisations should develop proactive human resource policies to bring in gender diversity and equity, facilitating women to optimise the work-family balance, for example by providing flexible work arrangements and sabbaticals up to five years (possibly in two intervals). Women empowerment strategies can help in addressing gender discrimination and create a more nurturing work environment for women. The emphasis should be on designing policies that address the need for varying work-life balance over the careers of the employees, women as well as men, and managers as well as non-managers.

Organisations should also provide extensive operational/line experience, greater breadth/variety of work experiences to the women employees as this is essential to get to the top jobs. They should also provide women with management training. They should also develop effective mentoring programs. Women employees should have influential mentors who will help to maximise their potentials and mitigate the impact of being excluded from informal network of communication.

However, the real challenge is to **break down the structural, organisational, and cultural barriers** to women's career growth. This will require a complete organisational culture change. Some progress has been made in the right direction, but there is a very long way to go...

There are some limitations inherent in the study. The sample size for the study was relatively small, so that the results of the study may not be generalisable. Also, there is a possibility of biases in the responses, as they relate to quite sensitive issues. These biases may be minimised by taking indirect measurements, rather than direct questioning of the respondents.

TRANSGENDER RIGHTS IN SPOTLIGHT: UNVEILING LEGAL PROGRESS AND SOCIETAL SHIFTS

Sharika Rai¹

Dr. Santhosh Prabhu²

INTRODUCTION

The global landscape has seen a tremendous transformation in the discourse around gender identity and transgender rights. The demand for recognition and equality of the marginalized communities has turned the focus towards the often neglected struggles and triumphs of Transgender individuals. This article explores into the legal developments and societal shifts that have been instrumental in shaping the rights and visibility of Transgender People around the world.

From time immemorial the Transgender Community has been subjected to discrimination, stigmatization, and systemic challenges that have denied them the access to fundamental rights and opportunities in India. Ironically the Transgender Persons enjoyed a better status in the ancient Hindu period and even during the Islamic period. References to Transgender Persons and their role can be found in the ancient Hindu texts and scriptures. For example, most pre historical myths relate the descent of the *hijras* from the deity of Shiva, who was also called *Ardhanariswar*, meaning half man and half woman. For many *hijras* the quality of being half man and half woman is a source of infinite strength that endows on them the divine power to give a curse, just like Shiva cursed the earth.

In the famous mythology Mahabharatha, during the war of Kurukshetra, Arjuna dressed as a woman called *Brihannale* and participated in the wedding ceremony of his son *Abhimanyu* with the princess *Uttara*. It is to be noted that Arjuna's cross-dressing is an instance of voluntary emasculation.³ In Ramayana there is an instance that when Lord Rama was exiled for 14 years to the forest blessed all his followers, men and women to do their duties. Many of his subjects followed him to the forest. Lord Rama asked the men and women to return home. When he

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1. Research Scholar, Karnataka State Law University, Hubballi
 2. Assistant Professor, SDM Law College, Center for PG Studies and Research in Law, Mangalore, D.K.
 3. SANDEEP BAKSHI, *A Comparative Analysis of Hijras and Drag Queens: The Subversive Possibilities And Limits Of Parading Effeminacy And Negotiating Masculinity*, First Edi. 2010, Routledge, p.13.

came back from exile he saw the Transgender Persons who did not belong to the male or female gender, waiting for his order. Moved by their action Rama blessed them. In another instance Lord Krishna took women avatar as 'Mohini' to destroy the demon. In Tamil Nadu lot of people worship in number of places, Lord Shiva as '*Arthananareeshwarar*'. In this form Lord Shiva and Parvathi resides in a single body which serves as a powerful god for blessings and devotion. Further, another myth in Hinduism is that of Lord Ayyappa who was born to Shiva and Vishnu. These are some references in the Hindu mythologies which witnesses the extension of respect to transgender community.⁴

In the Islamic era the Transgender People were given high ranking and considered to be loyal and confidante of the Muslim rulers. They were also given the responsibility of guarding the *zenanas*.

However, the tyranny against the Transgender Community can be traced back to the British period which witnessed the passing of the Criminal Tribes Act, 1871. The Act branded the Transgender community as criminal and shunned them from the mainstream society. In the Criminal Tribes Act of 1871, the *hijras* were classified as a criminal tribe, inherently immoral and corrupt. The British colonial administration vehemently sought to criminalize the *hijra* community and to deny them the civil rights. The Act included all *hijras* dressed like women dancing in public places as suspects to be involved in kidnapping and castrating children. The punishment for such activities was up to two years imprisonment and a fine or both. This reflects the prejudice of the colonial administrators and policy makers to reject third gender persons as something biologically unnatural. Such a denial reflects British cultural perceptions on the third gender as something non-existent.⁵

Gender identity plays a pivotal role in accessing rights to live a dignified life guaranteed by the fundamental law of the state. To gain access to the welfare measures, policies, and gain protection under the statutes the gender identity becomes very crucial. Even after attaining independence there has not been much progress in the status of Transgender Persons in India. The Transgender Persons had been non-citizens until recently. Since their gender was lacking in legal and gender recognition, they were inhabitants of a zone where official identification is absent. They cannot participate in any political or socio-economic process which requires an officially endorsed identity. The government's response to the community's needs have been indifferent. The breakthrough in the struggle of the Transgender Community came from the land

4. Subramania, *Transgender as Disabled in the Modern Society*, International Journal of Management and Social Sciences, Annamalai University, February 2018, pp.10-15

5. Banshikha Ghosh, *A Diachronic Perspective of Hijra Identity in India*, Sociology of Motherhood and Beyond, University of Zurich, Levant Books, 2018, pp.107-119

mark judgement in *National Legal Services Authority of India v. Union of India*⁶, which paved a path for the recognition and empowerment of the Transgender community. Since then an increasing advocacy, awareness and activism on these issues have led to significant headways in the battle for transgender rights in India.

The article explores key legal developments and transformative social attitudes, showcases the progression and setbacks experienced by transgender communities on their path of empowerment. Despite the obstacles, there have been efforts on the part of various countries to protect the rights of Transgender Persons by way of policies and measures to overcome the prejudice. This article will throw light on the transformation of societal perceptions and attitudes towards gender diversity population. As conversations surrounding gender identity continue to expand and evolve, so does the understanding and acceptance of transgender experiences.

INTERNATIONAL PERSPECTIVES

International conventions and agreements have tremendously contributed towards promoting and protecting the rights of the Transgender Persons around the world. These conventions have been effective in bringing around a change in lives of Transgender community. The Universal Declaration of Human Rights (UDHR) lays the foundation for international human rights and therefore strives to recognise the inherent dignity and equal rights of all individuals regardless of their gender identity. The benefits of principles of non- discrimination, equality before law and right to life, liberty and security are extended to the Transgender Persons. The Provisions of the International Covenant on Civil and Political Rights (ICCPR) adopted in 1966 can be invoked to protect the Transgender Persons from violence and discrimination based on gender identity. The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), though not explicitly focused on Transgender rights can however be interpreted to include gender identity as part of its nondiscriminatory provisions, especially to challenge the discrimination and violence against Transgender women and matters of education, employment and health.

The Yogyakarta Principles, 2016⁷ containing a set of principles drafted by a group of human rights experts, outlines the application of international human rights law to issues of sexual orientation and gender identity. They provide a comprehensive international legal framework for the protection of Transgender Persons' rights ranging from protection against discrimination, violence, freedom of expression, equal access to healthcare, education employment and all concerned areas to live a life of dignity. The Yogyakarta Principles Plus Ten, 2017 further bridges the gap and extends protection based on the recent developments.

6. National Legal Services Authority of India v. Union of India (2014) SCC 438

7. YOGYAKARTHA ,<http://yogyakarthaprinciples.org>.(Last visited on August 5,2023 13.00)

The Convention on the Rights of Persons with Disabilities (CRPD) primarily focused on disability rights can be interpreted to be extended to intersect disability and gender identity. The benefits of the Convention can be availed by the disabled Transgender Persons. The Regional agreements such as the European Convention on Human Rights and the Inter American Convention on Human Rights which reinforce the principles of non-discrimination, privacy, and equality, have largely addressed various human rights issues within their respective regions. The International Human Rights Bodies like the United Nations Human Rights Council and various Treaty Bodies continuously monitor and periodically examine issues relating to violations of the rights of Transgender Persons. They also make recommendations to member states for protection of rights effectively.⁸

These conventions and agreements along with the collective efforts of the activists, organisations have raised humongous awareness about the rights of Transgender Persons and prompted the governments of member states to take steps for the overall protection of transgender rights. However, the journey is half way and there still lie huge challenges and disparities to be tackled in different parts of the world given the beliefs, culture and traditions of various nations. There is a need for proper implementation of these policies to overcome the hurdles and bring about a comprehensive change in the attitude and acceptance of Transgender Persons globally.⁹

LEGAL MILESTONES

In India, the path breaking judgment in *NALSA case*¹⁰ set a new milestone in the journey of the Transgender Person's battle for recognition and equality. The Court in its judgment for the first time recognized the Transgender community as Third Gender. It acknowledged the deprivation of the rights of the transgender Community. The court declared the rights of self-identification to the Transgender Persons. It recognised and guaranteed all the rights of the citizens of India to be extended to the Transgender Persons. It directed the government to make legislations and policies on par with the Yogyakarta Principles¹¹ to ensure a life of dignity equal to all citizens. It directed the state to take measure to ensure recognition, and protection to Transgender Persons. Accordingly, the Transgender Persons (Protection of Rights) Bill was introduced in the year 2016 which was the watershed version of the *NALSA Judgment*¹². The

8. *Born Free and Equal- Sexual Orientation and Gender Identity in International Human Rights*, United Nations' Human Rights office of High Commission, New York, Geneva, 2012, pp.39-44

9. *Ibid.*

10. *NALSA V Union of India*, (2014) SCC 438

11. *YOGYAKARTHA*, <http://yogyakarthaprinciples.org>. (Last visited on August 5,2023 13.00)

12. *NALSA V Union of India* (2014) SCC 438

Act was a total disappointment to the Transgender Community who came together to protest and reject the Bill. This prompted the Government to reconsider the Bill and finally the legislature passed the Transgender Persons (Protection of Rights) Act, 2019. The Act attempted to provide an inclusive definition of Transgender Person. The Act defines a Transgender Person as someone whose gender does not match the gender assigned at birth. It includes trans-men and trans-women, persons with intersex variations, gender-queers, and those who identify as a part of the transgender community. This definition marks the beneficiaries of the legislation.¹³

The Act for the first time allowed the right of self-identification as to gender for the Transgender Persons and prohibited discrimination of all forms based on gender identity. Now they have a right to identify themselves as man, woman, or transgender in accordance with their self-perceived identity. The District Administration was assigned with the task of issuing certificate of identity to Transgender Persons, based on the gender identified by them. The Act guaranteed the right of residence to the Transgender Persons with their family or in a rehabilitation center as per their choice and extends protection against their eviction based on gender identity.

Discrimination against Transgender Persons is prohibited in all specters under the provisions of the Act, such as education, employment, healthcare, access to public places and public services. The Act ensures the right of employment of Transgender Persons while promoting self-employment and ensuring that they are not discriminated in recruitment process.

The Act urges the government to take measures to provide easy access to healthcare services inclusive of sex re-assignment surgery and hormone therapy. Act directs the government to facilitate easy access to the various welfare schemes and programs. Accordingly, many State Governments like Tamil Nadu, Karnataka, Kerala, and Maharashtra have initiated to set up Transgender Welfare Boards to extend the welfare benefits to the Transgender Persons. The National Council of Transgender Persons is established under the Act to delve into the grievances of the Transgender Persons. The Act also criminalizes and penalizes provisions for acts of violence and discrimination against Transgender Persons.

LEGAL SCENARIO

However, the Transgender Persons (Protection of Rights) Act, 2019 received a mixed reaction from the stake holders. Concerns were voiced against certain provisions of the Act regarding intervention of the District Administration as certifying authorities resulting in dilution of the rights of self-identification of Transgender Persons. It is even debated that the Act is deliberately silent on many core issues touching upon the right to marry, adoption,

13. PRSIndia, <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2016>, (Last visited on August 2,2023 14.35)

and inheritance, hence failed to comprehensively cover and protect the rights of Transgender Persons in India.

The Transgender Persons (Protection of Rights) Act, 2019 was enacted in India with the intention of providing legal recognition and protection for Transgender Persons. Although the Act was brought in to force to effectively address the key issues of the Transgender Community, it has been subject to severe criticism by the stake holders for its serious shortcomings.¹⁴

The Definition of Transgender is not just narrow but also vague and gives rise to confusion. According to the Act ‘Transgender Person’ means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner, hijra, aravani and jogta*.¹⁵ The definition includes the term gender queer which is abstract and creates confusion as to the inclusive beneficiaries under the Act.

The Act guarantees the right of self-determination to the Transgender Persons; however the right comes with the rider where the Transgender Person has to obtain a certificate of identity from the District Magistrate, based on the recommendation of the screening committee. This procedure clearly intervenes and restricts the right of self-identification of the Transgender Persons, as the determination of identity rests in the hands of the government authorities.

The requirement of surgery and proof of surgery or medical treatment for purpose of gender recognition is invasive and violative of right to privacy. The criminalization of begging rather than regulating it, results in deprivation of survival means to many Transgender Persons whose primary source of income is begging. The Act fails to effectively address health care needs of the Transgender Persons including gender affirmation treatments and surgeries. There are no provisions to educate the Transgender Persons in making right choices about gender affirmation methods, the outcome, the damage, and other ill effects.

The Act directs the Government to provide vocational training and facilitate employment opportunities, the Act does not elaborate on the measures to be taken to eradicate practices of discrimination in areas of employment and education. The penalties stipulated by the Act for the violence and discrimination against Transgender Persons lacks teeth to deter heinous crimes like sexual assaults and other crimes actuated by hate. The penal provisions relating to sexual assault is also discriminatory when compared to Sec. 376 and other provisions of IPC

14. PRSIndia, <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2019>, last visited on 31.08.2023, 16.20

15. The Transgender Persons (Protection of Rights) Act, 2019, Sec. 2 (k) (India).

which provides for more punishment for sexual assault against women. The social security, housing and other essential welfare needs of the Transgender Persons are also not adequately addressed by the Act.¹⁶ The unique challenges faced by the Transgender Persons belonging to marginalized communities like indigenous background and lower castes makes the situation more complex requiring the government to put in a lot of thought in the provisions of the Act to address these issues. The Act is criticized by the activists and the transgender community for lack of consultation, and not being included in formulation of the Act, resulting in complete failure in understanding their needs and concerns, thereby causing great disappointment to the stakeholders.

GOVERNMENTAL INITIATIVES

Some states have been dynamic in promoting the Transgender welfare. Ray of hope can be seen where some states like Tamil Nadu constituted the Transgender Welfare Board. The Welfare Board has extended an assortment of social security benefits for the Transgender People, for example, work grants, training grants, free medical coverage, and grants for building houses. In 2015, Kerala also has taken some noteworthy steps to have a progressive and protective approach towards Transgender Persons by curbing acts of discrimination of Transgender People through the Kerala Social Justice Department 2015. The strategy likewise prescribes the setting up of a Transgender Justice Board with state Minister for Social Justice as its director. Kerala additionally made accessible free sex reassignment medical procedures for Transgender People in government clinics in 2016.¹⁷ Even states like Karnataka made provision for 1% reservation in Public Employment for Transgender Persons. These can be seen as slow but steady steps towards a progressive society.¹⁸

The Transgender Community awaited the legislation with great expectations; the Act intended to bring about a paradigm shift in the society towards recognizing, protecting and reshaping the lives of the Transgender Persons in India. However, there are loud cries of displeasure heard from various quarters about the lacunae's in the Act, which is a cause of concern and requires serious reconsideration. Many of the provisions of the Act are challenged

16. Riyaa Singh, Analysis of Transgender Persons (Protection of Rights) Bill, 2019, <https://www.legalserviceindia.com/legal/article-3199-analysis-of-transgender-persons-protection-of-rights-bill-2019.html>. last visited on 21.07.2023 at 12.00

17. *Ibid.*

18. Riyaa Singh, Analysis of Transgender Persons (Protection of Rights) Bill, 2019, <https://www.legalserviceindia.com/legal/article-3199-analysis-of-transgender-persons-protection-of-rights-bill-2019.html>. (Last visited on July 21, 2023 12.00)

as unconstitutional in *Swati Bidhan Baruah v Union of India*¹⁹ and the matter is pending before the Supreme Court. The Act is said to have deviated from the NALSA judgment, thus the Petitioners seek for the Court to strike down Sections 4, 5, 6, 7, 12(3), 18(a) and 18(d) of the Act as unconstitutional. In addition, they filed a Writ of Mandamus that directs Centre and State Governments to provide reservations for Transgender Persons in public employment and education, as directed by the Court in NALSA. They further contended that sec 18(d) sets maximum penalty for sexual assault and abuse of Transgender Person at a very lighter degree than that which is set under section 376 and related provisions of the IPC relating to sexual assault against women. It is further contended that section 12 of the Act restricts the decisional authority of an adult Transgender Persons and even threatens the alternative family structure of the Transgender Community. Sec. 7 which provides for the right of self-identity of Transgender Persons, is violative of article, 19 (1) and 21 of the Indian Constitution as it makes it contingent on medical surgery.²⁰

NAVIGATING REAL LIFE CHALLENGES

Our society has always been reluctant to acknowledge the trauma of the Transgender Community. There is unwillingness in the society to accept different gender identities and expression, which needs to be changed and law alone, cannot be a tool for such change. There are some practical difficulties in the literal implementation of the directions given by the court in the *NALSA judgment*²¹ which cannot be overlooked taking into account the unique traditions and culture of India. The right to marry, adoption, inheritance etc. are the major areas that are necessary for the complete citizenship to be enjoyed by the Transgender Persons but are conspicuously left out by the Act. It seems, like the government had a calculated mission in not incorporating these provisions in the Act, with the apprehension that, doing so will disturb the societal balance. The government believes that the conception of marriage is common to all domestic laws and instruments of laws relating to marriage, including the Special Marriage Act, which has enacted a special scheme of provisions based on the same concepts. The opposition on part of the government are based on the ground that the societal concept of marriage is inherently interconnected to religious and cultural norms and are within domain of personal laws that require a to be debated on a social and a national level. The view of the government is that the question of updating a law will arise when it fails to realise its purpose and not to accommodate an alien purpose forced into the scope of law. It is an impractical task according to the government as over 160 provisions across various legislations would have to be changed to

19. Supreme Court Observer, <https://www.scobserver.in/cases/swati-bidhan-baruah-union-of-india-challenges-to-transgender-persons-act-case-background/> (Last visited on July 21,2023 12.00)

20. *Ibid.*

21. *NALSA V Union of Indiat* (2014) SCC 438

accommodate the recognition of same-sex marriages. The time is now ripe to acknowledge the existence and reality of diverse gender identities in the society and we cannot live in perpetual denial. However, it is to be noted that the right to marry does not include the right to compel the State to create a new definition of marriage. Only the Parliament is competent to do this and, therefore, the court has also opined that this is a matter best left for the Parliament to decide.²² Nevertheless, there is a need to find a middle path to protect and extend all rights to the Transgender community yet maintain a balance that would not be turbulent to the societal norms at large.

As regards the right to adoption, The NCPCR and other organizations have opposed allowing adoption by same-sex couples, on grounds of “mental and emotional development of the child. They opine that there may be emotional difficulties for a child, due to not being exposed to a “normal” heterosexual marriage. Regarding the laws related to succession and inheritance it is to be noted that succession and inheritance are governed under personal laws, which poses a practical difficulty to extend to Transgender Persons²³

CONCLUSION

There is a pressing need to bring about a dynamic change in the sexual orientation network of India. There is a need to establish a strong support system to ensure that the Transgender Persons can live their lives freely with all dignity. Some of the suggestions for the betterment would be, to effectively implement the provisions of the Act. Stringent action against the people for abandoning children for biological distinction would deter and bring down the case of homelessness among the Transgender Persons. Easy credit offices and extension of financial aid must be guaranteed to fuel entrepreneurship in the community with adequate vocational training. Awareness programs and publicity at a large scale of projects and welfare measures must be composed to reach out to the Transgender Community. Strategies and policies for compulsory literacy program to Transgender Community must be undertaken in the grass root level. Establishment of helpline for profession planning and direction, vocation openings and online placement framework must be engaged. Helplines for psychological help and counseling must be extended.²⁴ The school curriculum must include content creating awareness of Transgender People, their problems and rights to sensitize the children who will grow up to

22. Aneesha Mathur, New Delhi, UPDATED: ISTSame-sex marriage case in Supreme Court - Issues and debates, 2023 <https://www.indiatoday.in/law/story/same-sex-marriage-case-supreme-court-issues-and-debates-2378525>, (Last visited on July 21,2023 12.00)

23. *Ibid.*

24. Riyaa Singh, Analysis of Transgender Persons (Protection of Rights) Bill, 2019, <https://www.legalserviceindia.com/legal/article-3199-analysis-of-transgender-persons-protection-of-rights-bill-2019.html>(Last visited on July 21,2023 12.00)

a generation of acceptance. However law alone cannot be a tool of social change, it can just be an instrument to usher the society to act in a particular manner. But the real transformation would happen when members of the society need to change the mindset of inclusiveness and acceptance. When the society accepts the Transgender Persons wholly, empathizing with them and realise that these gender diverse persons need to enjoy their rights to the same effect; there can be real societal shift towards a progressive society.

CHAPTER - 6
CHILDREN AND LAW; CHALLENGES
IN LEGAL EDUCATION

BEST INTEREST THEORY IN LIGHT OF JUVENILE JUSTICE ACT, 2015

Harpreet Kaur ¹

INTRODUCTION

There is disagreement over what the child's best interests are, despite the fact that it is evident that they must be upheld. In terms of how and by whom these interests should be determined or who should be held accountable for their ultimate decision, international standards themselves do not establish any criteria at all. As a result, the definition of "best interest" has changed over time and continues to do so.²

The Committee on the Rights of the Child did not make an attempt to fill this gap until the Convention on the Rights of the Child (CRC) entered into force in 1990. General Comment No. 14 was published in 2013³ and outlined how the best interests of the child should be taken into account when the CRC is being put into practice.

The idea of best interests existed before concepts of human rights that are universally recognised. However, when decisions based on the child's best interests are mostly based on contemporary thinking among decision-makers, the outcomes depend on many other factors, such as religion and location. This is unacceptable for any child, but especially for those who might be adopted into a different nation⁴; young children who are already at risk shouldn't be involved in an experiment that will affect their future.

Article 21 of the CRC specifies in clause b that inter-country adoption must only be used in particular specific situations. The adoption agencies in the individual Convention-party nations must be aware of whether the same is done or not.⁵

Invoking "best interests" in relation to adults has become somewhat taboo since the creation of human rights treaties. It has been argued that the existence of human rights disproves the

1. B.B.A. LL. B (Hons.), Alliance School Law, Alliance University, Bengaluru.

2. Paul E. Hopkins, Evaluative Mediation Upholding the Child's Best Interests, 20 CONCIL. Cts. REV. 63 (1982).

3. (last visited Jul. 24, 2023).

4. Susan J. Grossman, A Child of a Different Color: Race As a Factor in Adoption and Custody Proceedings, 17 BUFF. L. REV. 303 (1968).

5. *Supra* note 2.

necessity and legitimacy of using ‘best interests’ as a guideline for decision-making. Arguments based on the idea are even thought to pose a threat to the advancement and defence of human rights.⁶

As a result, the concept of best interests has only been recognised in regard to children within the context of international human rights law. The CRC and other broad instruments that deal with children’s difficulties both contain the premise. This carries on the tradition of the benevolent response to children’s concerns that predominated in the 19th and 20th centuries. The conundrum that children’s capacity to assert rights on their own behalf depends on that capacity evolving, however, complicates this legacy.⁷

Thus, the question arises: to what extent and under what circumstances must those decisions rely on the best interests approach as opposed to simply being “rightly based”? The CRC establishes limitations on the kind of actions that may be considered in the name of “best interests.” Now that taking them into consideration is a fully developed right within the CRC, its implementation is entirely interdependent with all other CRC rights.

Through specific procedural criteria laid out in the 1993 Hague Convention, these protections have been strengthened in connection to inter-country adoption. However, the risks of the paternalistic and overly straightforward approach that gave rise to the concept of “best interest” continue to be a factor in attempted and real violations of children’s rights. Because the term “best interest” has been purposefully and logically left open-ended to allow for a wide range of personal circumstances and sociocultural perspectives, it has become a breeding ground for misinterpretation and exploitation.

The “best interest” principle should be applied and thought of today in a way that fundamentally ensures the best protection of rights, as opposed to its original purpose, which was to supplement or make up for the lack of rights.⁸

ADOPTION LAWS IN INDIA

The adoption laws in India vary depending on the community’s religion. There are occasionally differences even within the same faith. Hereunder, it will all be discussed.

6. Chris Turnbull, Rosa: Reasonable Practicability and Child’s Best Interests, 10 Queensland U. TECH. L. & Just. J. 147 (2010).

7. Kathryn L. Alkire, “Providing for Cooperation between Private Adoption Entities and the Department of Children and Families?” When Legislative Intent Falls Short, 52 Stetson L. REV. 731 (2023).

8. *Supra* note 1.

Adoption under Hindu law

The *litera legis* of ancient Hindu law, which identified 12 different types of sons, 5 of which fell under the category of “adopted sons,” contains some particularly interesting chapters on marriage and son-ship. The *aurasa*, or legitimate son, born to the man by his legally wed wife was recognised by modern Hindu law. Only two types of adopted sons were recognised: the *dattaka* and *kritrima*.⁹ The earlier form predominated over all of India, whereas the latter form predominated in Mithila and the nearby areas. A daughter could also be adopted in the past, most likely during the pre-Vedic period.

The prerequisites for a valid adoption under the law in effect prior to the commencement of the Hindu Adoption and Maintenance Act (hereinafter the Act of 1956 or the 1956 Act) with regard to the capacity of the parties to the adoption process were that both the person giving and taking the adoption must have the legal capacity and right to do so, and the person being adopted must be permitted by law to be taken in adoption. Only a male Hindu had the legal authority to adopt a son as long as he did not already have a surviving son, grandson, or great-grandson, whether biological or adopted.¹⁰

A wife could give her husband a son in adoption, but she cannot do it without his express permission. In some regions of the nation, she could only legally adopt a son after his passing if he had given her specific permission. She may adopt without such power in the rest of India. However, a wife or widow is never permitted to adopt a son for herself; in the former instance, the adoption must be made to her husband. Unmarried or married, a woman could not legally adopt her own son, and the child thus adopted had no legal rights. Hindus were not allowed to adopt a daughter as a man or a female.¹¹

Hindu adoption law was entirely altered by the Act of 1956. A list of rules relating to a male Hindu and a female Hindu’s ability and right to adopt a son or daughter who must be a “Hindu,” an expression to be understood in the wide comprehensive meaning given to it in the Act, can be found in Chapter II of the 1956 Act, which codifies the law of adoption. Additionally, it addresses the issue of potential adoptive parents and adoptive parents-to-be. The formal and ceremonial requirements of the act of adoption are one of the chapter’s main provisions.

It is made very clear that the rules and regulations outlined in this chapter must apply to all adoptions made after the Act took effect, and that any subsequent adoptions made in violation

9. International Journal of Advanced Research- The perspective of Dattaka(adoption) in Hinduism-An Overview, (Last visited Jul. 24, 2023).

10. Vikranta Pradeep Barsay-Adoption under Hindu Adoption and Maintenance Act 1956 (Last visited Jul. 24, 2023).

11. *Id*

of any of those rules would be void. A null adoption has no bearing on the standing or rights of any of the parties. It does not grant the adoptee any rights within the adopted family.

The adoptee retains all of his or her rights to the biological family. The regulations relating to the validity and effect of adoptions contained in this Act do not apply to adoptions made before the 1956 Act entered into force, or on December 21, 1956.¹²

The law in place at the time they were valid and had an impact must be used to evaluate their legality and impact. Rules regarding adoption among Hindus are outlined in Sections 5 to 17, along with provisions relating to what constitutes a legitimate adoption, who is eligible to be adopted, who can give in adoption, and who can take in adoption. Regarding adoptions completed before the 1956, Act went into effect, Section 30 of the statute is crystal clear.

The section clearly states that nothing in the Act shall be deemed to modify the validity or impact of such adoption, which shall be determined in accordance with the legislation in effect immediately prior to the effective date of the Act. Evident unfairness would result from a rule that was the opposite. A void adoption that occurred before 1956 cannot be made lawful by this Act.¹³

The Act's Section 6 outlines the conditions for a valid adoption, including (1) The person or party taking in adoption must be legally able to do so and have the right to do so; (2) The person giving the child in adoption must be legally able to do so (Section 9); (3) The person adopted must be legally able to be taken in adoption (Section 10); and (4) The conditions related to adoption must be satisfied, including the actual giving and taking of the child with the intention of adoption.¹⁴

Any or all of the aforementioned requirements must be met in order for the adoption to be valid. Once an adoption has occurred, it is impossible to escape its legal ramifications, and the reason for the adoption is irrelevant.¹⁵ The adoption must be deemed genuine once all of the evidentiary and ceremonial requirements have been met and the conditions for adoption outlined in Chapter II of the Act have been met.

However, the adoption would not be valid if the other requirements listed below are not met.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

With effect from the adoption date, Section 12 of the 1956 Act grants the adoptive child the same rights and privileges in the adopter's family as the genuine natural-born child for all purposes. A legitimate adoption under the law cannot be revoked by the adoptive parent or any other party, according to Section 15 of the 1956 Act. Additionally, an adopted child cannot reject their adoption and go back to their biological family.¹⁶

Nothing prevents an adopted person from giving up their inheritance rights in the adoptive family; in that case, the inheritance would pass to the next heir.

Adoption under Muslim law

Parentage is defined as "the relationship of parents to their children" by Mulla. The legal relationship between a parent and a child is known as paternity.

Regardless of the legality of her relationship with the begetter, a woman's maternity is established when she gives birth to a child. Only via the union of the child's parents can the paternity of the child be proven. The marriage shall not be void (batil), whether it is legitimate (sahih) or irregular (fasid). In the absence of direct evidence, marriage may be established by presumption based on particular factors (circumstantial evidence), such as extended cohabitation in conjunction with other circumstances, or by an admission of legitimacy in favour of a child.

When a child's legitimacy is proven, its paternity is likewise confirmed. Marriage serves as the primary fulcrum in questions of legitimacy and paternity. It applies in the event of an acknowledgement as well. This is evident from the following passage from the Privy Council's ruling in *Habibur Rahman v. Altaf Ali*¹⁷.

According to Mohammedan law, a son must be the child of a man and his wife or a man and his slave in order to be considered legitimate; any other offspring is the product of Zina, which is an unlawful relationship and cannot be considered so. The term "wife" inevitably implies marriage, but as a marriage can be formed without any formalities, its existence in any given situation may be in doubt. In the absence of direct evidence, indirect evidence may be sufficient. Now, a son's legitimacy is acknowledged as one of the indirect proof methods.

A mere assumption is raised by acknowledging long-term cohabitation as husband and wife. Since there was no marriage at the time the children were born, the issue cannot potentially be justified by acknowledgement in that case. Blood tests cannot prove conclusively that any man is the father, according to the Supreme Court of India's ruling, but they can demonstrate

16. Vaibhvee Jangid, Loopholes in Various Family Laws and the Need for Their Rectification, 2 Jus Corpus L.J. 251 (2022).

17. *Habibur Rahman v. Altaf Ali* (1921) 23 BOMLR 636.

conclusively whether or not a certain man is or is not the father. Obviously, the latter feature is more useful in establishing paternity. The judge also noted:

1. That courts in India cannot routinely order blood tests;
2. That requests for such tests made to establish roving injury cannot be entertained; and
3. That there must be a strong *prima facie* case to overcome the presumption arising under Section 112 of the Evidence Act, which requires the husband to prove non-access.
4. The court must carefully consider what would happen if the blood test was ordered, including whether it would brand the mother and the child as unchaste women and label the child as a bastard.

No one may be forced to provide a blood sample for testing. When a marriage between a child's parents is considered to have occurred, it is also possible to assume that the child is legitimate. Either direct evidence or indirect evidence—i.e., a presumption derived from a variety of factors—can be used to establish a marriage. It may be inferred from a long-term relationship mixed with additional conditions, from the recognition of legitimacy in favour of a child, or from the man's "acknowledgement" of the woman as his wife.¹⁸

For instance, it was determined in *D. Velusamy v. D. Patchaiammal*¹⁹ that a "relationship in the nature of marriage" is comparable to common law marriage, which calls for the following conditions despite not being legally wed:

5. The couple must present themselves to others as being similar to spouses;
6. They must be of legal marriageable age;
7. They must meet all other requirements to enter a legal marriage;
8. They must have voluntarily cohabitated.

It is true that if the behaviour of the parties is at odds with the marriage between the spouses, the presumption would not apply. However, if there is no obstacle to a legal marriage, the aforementioned factors will raise this presumption. A child born out of wedlock cannot be altered unless there is clear evidence of a lack of access.²⁰

"Where a marriage between a child's parents at the time of the child's conception or birth cannot establish a child's paternity, that is, his legitimate descent from his father, the

18. Liaquat Ali Siddiqui, *The Legal Status of a Child under Muslim Law*, 5 DHAKA UNIV. Stud. PART F 87 (1994)

19. *D. Velusamy v. D. Patchaiammal* (2010)10 SCC 469.

20. Shahbaz Ahmad Cheema, *Rights of the Child in Islam: Theory, Mechanisms, Practices and Convention on the Rights of the Child - A Book Review*, 9 LUMS L.J. 108 (2022).

Mohammedan law recognises acknowledgement as a method by which such marriage and legitimate descent can be established as a matter of substantive law for purposes of inheritance.”

Only if the reality of marriage or the precise moment of the wedding could not be proven could the Mohammedan law of recognition of paternity be used. The doctrine of acknowledgement is founded on the presumption that a legal union between the child’s parents is not feasible, as would be the case in cases of incestuous relations or adulterous relationships.

When the marriage required to make a child legitimate is proven to be false, the doctrine is likewise not relevant. Muslim law accepts “acknowledgement” as a way to establish a parent-child marriage and lawful descent as a matter of substantive law for the purpose of inheritance among Muslims in cases where the paternity of the child cannot be established through such marriage.

The doctrine, however, does not apply in situations where the child’s illegitimacy is recognised and proven, either because the parents’ legal union cannot be established or because the marriage has been proven to be invalid. The theory will only be applicable in situations where the marriage’s reality has not been established rather than been refuted. It, therefore, applies to ambiguous scenarios. This acknowledgement could be explicit or inferred.

The assumption can be made based on the fact that the individual frequently and outwardly treated another as his legal child. A person must acknowledge another in such a way that the acknowledger intended to accept the other as both his child and his legal child. The age gap between the two must be large enough to indicate that the acknowledger is the father of the recognised child.

Such a child or person must not be the product of Zina, which includes adultery, incest, or fornication. Additionally, it must not be known that the acknowledged person is the father of another man’s child. The individual acknowledged must not have denied making the acknowledgement. The acknowledgement also generates a presumption of marriage if these requirements are met. In other words, the legitimacy of the marriage would need to be proven. Where it is established that the child was born before marriage, the rule is deemed to be irrelevant. Either a son or a female may be the acknowledged child. The notion of acknowledgement is a part of the substantive law of inheritance and is not just a rule of evidence.

Therefore, the circumstances under which it will apply must be decided in light of Muslim jurisprudence. *Mohammed Allahabad v. Mohammed Ismail*²¹, which has been followed by Indian courts, is the key case on the topic. In *Sadik Hussain v. Hashim Ali*²², the Privy Council reaffirmed the law.

21. *Mohammed Allahabad v. Mohammed Ismail* (1886) ILR 8 All 234.

22. *Sadik Hussain v. Hashim Ali* (1916) ILR 38 All 627.

“No declaration by one man that another (proven to be illegitimate) is his son can make the other legitimate, but where no such declaration or acknowledgement has been made, such a declaration or acknowledgement is substantive evidence that the person so acknowledged is the legitimate son of the person who makes the declaration, provided his legitimacy is possible.”

An acknowledgement does not have to be spoken. The assumption can be made based on the fact that one person has openly and frequently regarded another as his legal child. “It has been decided in several cases that there need not be proof of an express acknowledgement, but that an acknowledgement of children by a Mohammedan as his sons may be inferred from his having treated them as such in an open manner,” the Privy Council stated in *Muhammad Azmat v. Lalli Begum*.²³

An acknowledgement must meet the following requirements in order to be valid:

1. The acknowledgement must be written in a way that the acknowledger intends to accept as a legitimate son;
2. The age gap between the parties must be equal to the appearance that the acknowledger is the father of the person acknowledged. The acknowledger must embrace the other not simply as his son, but as his genuine son;
3. The child must not be the product of Zina, which includes adultery, fornication, or incest, as he would be if his mother could not have been the acknowledger’s legal wife at any time when he could have been conceived, as in cases where she was at the time the wife of another man, had been divorced by the acknowledger and the legal bar to remarriage had not been lifted, or was in an improper degree of relationship with him. If the marriage is found to be invalid, immorality would be brought up as a concern.
4. It cannot be known that the individual being acknowledged is a man’s child.
5. The person acknowledged must not have denied the acknowledgement. Whether the adopted child is a boy or a girl, the aforementioned requirements would still hold true. Direct evidence of marriage need not necessarily be present, though, as Muslim marriages can be formed without any formalities. In this situation, indirect proof may be sufficient. One such method is to acknowledge a son’s validity, which must go beyond simple son-ship to include legitimate son-ship. The acknowledgement will have more than just evidentiary value if the requirements outlined in this section are met.²⁴

23. *Muhammad Azmat v. Lalli Begum* 35 Ind Cas 718 a.

24. *Supra* note 20.

The burden of establishing a marriage is with the claimant until he establishes his acknowledgement. The burden of proof shifts to those who deny a marriage once he establishes an acknowledgement.

Except if the contrary shows or is established, acknowledgement would be sufficient to create a legal marriage. This comes with the caveat that there shouldn't be any other barriers to the claim, such as the fact that the lady is someone else's wife. Before a child's paternity may be recognised, the validity of the marriage must first be proven. There could not possibly be any acknowledgement if marriage was not even possible.

ADOPTION UNDER JUVENILE JUSTICE ACT, 2015

The Juvenile Justice (Care and Protection of Children) Act of 2015's adoption provisions

Adoption is included in Chapter VII of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hence referred to as "the JJ Act, 2015"). Adoption is covered under Section 56. The JJ Act, 2015—not the personal laws of the adopter or the adoptee—shall regulate international adoptions, according to clause 4, which is a noteworthy clause. Religion won't thus be a factor in international adoptions.²⁵

Lesbian, gay, and bisexual couples are having families and raising children in record numbers as a result of donor insemination becoming more widely available and advancements made in the fight against anti-gay prejudice in both private and public adoption agencies. Census data shows that at least 220,000 children are being raised in same-sex partnered households, and research suggests that up to six million children and adults have a lesbian, homosexual, bisexual, or transgender parent.²⁶

Anti-gay prejudice among adoption agencies and judges has significantly decreased as a result of the growing need for adoptive homes and the increased exposure of LGBT parent families. Despite this development, substantial barriers to fair treatment still exist. Individuals or couples from the LGBT community can adopt in several states.²⁷

Additionally, whether a person or couple can adopt in a specific state depends on the county they reside in. A legal process known as "second parent adoption" or "co-parent adoption" enables a same-sex partner to adopt their partner's biological or adopted child without terminating the rights of the original legal parents. Joint adoption is a legal process in which

25. Maria Grahn-Farley, A Child Perspective on the Juvenile Justice System, 6 J. GENDER RACE & Just. 297 (2002).

26. Shubham Mohapatra, A. P., Juvenile Just-Cis: The Issue of Rehabilitation of Transgender Minors under the Juvenile Justice Act, 16 NUALS L.J. 108 (2022).

27. *Id.*

both partners of a partnership adopt a child at the same time who is not related to either spouse biologically or previously.²⁸

Children in same-sex parent families are protected by second-parent and joint adoptions because they give the child the security of having two legal parents and give them access to important financial benefits like the right to inherit, wrongful death and other damages under tort law, social security benefits, and child support. Second-parent adoptions are crucial in many circumstances to ensure that the child has access to health insurance and to give both parents the power to make health-related decisions for the child.²⁹

Furthermore, by recognising the children's true relationships to both people in such households, second-parent and joint adoptions promote children's emotional and developmental health. By guaranteeing that the same-sex second parent will continue to have a legally recognised parental tie to the child in the event of the two of them separating, as well as in the event that the biological parent passes away, is imprisoned, or becomes incapable, second-parent adoptions also protect the rights of the second parent.³⁰

CRITICISM OF THE JUVENILE JUSTICE ACT, 2015

The repercussions of adoption are outlined in Section 63 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereafter "the JJ Act, 2015"). Although this section states that the adopted child's relationship with their biological parents is severed, Section 60, which deals with the international adoption of a child whose relative lives in India, states that the adoptive parents must make sure to facilitate occasional contact between the adopted child and their siblings and biological parents.

However, it does not declare that Hindus are prohibited from adopting children under the 2015 Act's provisions. Instead, Section 56 states that nothing in the 2015 Act would apply to the adoption of children under the 1956 Hindu Adoption and Maintenance Act terms. It implies that Hindus have a choice between adopting a child under the JJ Act of 2015 or the Hindu Adoption and Maintenance Act of 1956. The validity of an adoption by a Hindu under the JJ Act, 2015, however, may be contested due to the two legislation's insurmountable discrepancies.

For instance, the JJ Act of 2015 allows for the adoption of children younger than 18, although the Hindu Adoption and Maintenance Act of 1956 only allows for the adoption of children younger than 15. The various statutes do not provide a justification for this age distinction.

28. *Id.*

29. Annriya Liz Siji, Adoption Rights and the LGBTQ Community: Analyzing the Need to Give Adoption Rights to the LGBTQ Community, 5 INT'L J.L. MGMT. & HUMAN. 1965 (2022).

30. *Id.*

The JJ Act, 2015 has made no distinction between parents who abandon their child and act utterly irresponsibly, as opposed to parents who leave their child in the care of a daycare facility. No criminal action may be brought under the Indian Penal Code, 1860 (hereafter, “the IPC”) against any biological parent, regardless of whether they have abandoned or relinquished their child, in accordance with Section 38’s second proviso.

This strategy does not appear to align with a child’s constitutional right to “know and be cared for by his or her parents.” This clause appears to imply that parents of all abandoned children will be located and given advice on how to take care of their children by releasing the biological parent from any duty. Additionally, all of these parents will be required to sign the surrender deed at the end of the two-month period if they opt to surrender the child due to circumstances that are outside of their control on a physical, mental, or social level, according to the definition of “surrendered child.”

The adoption procedure is started once the Child Welfare Committee has determined a child to be eligible for adoption. The phrase “adoption shall be resorted to for ensuring the right to family for the orphan, abandoned and surrendered children” is definitely repeated in Section 56. It further states that the adoption of family members’ children, regardless of their faith, is also permitted under this rule.

Under the 2015 Act, religion is also not a barrier to adoption. Additionally, the rule applies to all children and is not just for those who need care and protection, giving it a wider range of applications. Therefore, in implementing the new law for juveniles, it is important to ensure that all children have access to protection and other facilities for rehabilitation and reintegration into society.

Legal protection for LGBTIQ

In *Navtej Singh Johar v. Union of India*³¹, the Honourable Supreme Court of India recently decriminalised homosexuality by ruling that the prohibition under Section 377 of the IPC was unconstitutional. As a result of this ruling, LGBT relationships are now considered equal to other marital relationships in the nation. As a result, these LGBT couples also acquire other rights such as adoption, guardianship, etc. However, India lacks an express law in that area, so the Indian government needs to quickly pass the necessary legislation.

A uniform law

“The state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India,” states Article 44 of the Indian Constitution. In order to rule everyone, regardless of religion, caste, or tribe, a consistent set of secular civil laws is administered (hence

31. AIR 2018 SC 4321.

referred to as “the UCC”). Various personal laws are superseded by such a clause. According to Article 25 of the Indian Constitution, the fundamental right to practise the religion of one’s choosing is not an unqualified one.³² The welfare of the child is the only consideration in adoption. Every personal legislation has some flaw, either in theory or in practice, as was previously mentioned. A unified adoption law is now necessary in India as a result.

CONCLUSION

Adoption is a lifelong choice, and the child is the one who is most impacted. Therefore, while placing a child for adoption, the welfare of the child must be the only consideration.

In order to establish a unified legislation free from any flaws, the conflicting sections in the Juvenile Justice Act, 2015 regarding adoption and their impact on the Hindu law of adoption must be rectified. The prohibition of bringing a criminal case against a parent who deserts an adopted child absolves them of any responsibility, which is against the fundamental principles of adoption law. According to Section 56, adoption must be used as a last alternative to guarantee an orphan, abandoned, or relinquished child’s right to a family. It also states that this rule allows for the adoption of relatives’ children, regardless of their religion. The 2015 Act does not prohibit adoption on the basis of religion.

Additionally, the rule applies to all children and is not just for those who need care and protection, giving it a wider range of applications. Therefore, in implementing the new law for juveniles, it is important to ensure that all children have access to protection and other facilities for rehabilitation and reintegration into society.

Denying LGBT people the ability to adopt a child is unfair and unlawful given that their relationships are currently entirely valid and legal. An immediate statute to that effect must be brought. In a secular nation like India, where the law is based only on the welfare of the child, there is a need to establish a consistent adoption law that is unaffected by religious restrictions.

Every legislation has a purpose and is designed to make life easier for people. People’s fundamental rights are violated by unreasonable legal limits, which is not what is expected of a democratic nation. For India’s adoption law to be more conclusive and effective, significant revisions and enactments are required.

32. Chanda Kushwaha, *Uniform Civil Code: An Emerging Law from the Existing Law Trends on Adoption, Custody and Guardianship*, 5 INT’L J.L. MGMT. & HUMAN. 362 (2022).

SDG3: RIGHT TO GOOD HEALTH AND WELL-BEING OF WOMEN AND CHILDREN IN COVID-19

Dr. Adinarayana J.¹

Athira R Nair²

INTRODUCTION

The declaration of World Health Organization (WHO) of 1948 defines health as a fundamental human right: a state of total bodily, cultural, and psychological well-being rather than merely the lack of illness or disability. Health is an asset for human beings to lead a productive life independently, publicly, and economical³. In the year 2009, health was explained by a fresh aspect – the ability of the body to adapt to new threats and infirmities⁴. This addition was defined by two major points: the health of humankind is inseparable from environmental health and secondly, the daily contact with the non-living world. Health of human beings is distinguished into two aspects: (a) the bodily well-being – to pursue a fit lifestyle and lower the probabilities of getting an ailment; and (b) the well-being of the mind to enhance the social and emotional strengths and lower the probabilities of mental collapse⁵. The point at which all countries across the globe are trying to improve public health hints towards sustainable progress. The prevalence of low-quality health systems among citizens causes major hindrances in their participation in economic events and learning programs. Such hindrances lead to a poverty surge in the country, irrespective of gender⁶.

Women Health

A woman's health is considered as the health of the population, and it is different from that of a man's health in various aspects. Several chronic illnesses, such as cancer, cardiovascular diseases, and diabetes, are highly responsible for the death of several women across the globe, leading to the loss of individuals in the society⁷. Women across the world are also exposed to

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1. Associate Professor, School of Law, Christ University, Bengaluru
 2. BBA. LL.B., School of Law, Christ University, Bengaluru
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illnesses, such as HIV/AIDS and malaria, due to certain sex-inclusive events, such as work routines, intercourse, and rape⁸. Death related to cervical cancer is primarily caused by the human papilloma virus (HPV) to which women fall prey in the modern world⁹. A woman's exposure to ill health is related to the lack of communication infrastructure and hygiene facilities in underdeveloped organizations¹⁰. Illnesses, such as diarrhea, dysentery, hepatitis, and typhoid, arise from the environment and cause deaths in women living in developing nations¹¹. Moreover, women face maternal death during pregnancy and childbirth every year, despite the probability of preventing such occurrences¹². Such hardships and difficulties influence children's well-being, studies, nutritional requirements, and financial status, and require several years to be overcome¹³. Women across the globe face mental health issues, such as depression, anxiety disorders, post-partum depression, body-image, menopause, eating disorders, and psychological distress, more commonly than men due to several physical and mental harassments prevalent in their houses or in the society¹⁴. In order to improvise the bodily health of women, major concerns, such as nutritional deficiency, health issues related to reproduction, maternal deaths, and non-communicable diseases, should be addressed through the application of cost-effective and quality healthcare facilities supported by global health coverage¹⁵. Educating women across nations is an important element to be considered as learning results in a woman's strength,

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mental well-being, physical well-being, financial well-being, healthy nutrition, and reproductive control¹⁶.

Child and adolescent health

Juvenility and youth are two significant phases in the lifespan with respect to well-being. Assessment of the population's health is substantially influenced by children's and youth's wellbeing¹⁷. Children's health develops over a lifetime and it is affected by the environment in which they are growing that includes the child, family background, and societal factors. Any interference on a child's health is related to the aforementioned factors. Some of the health issues that affect a child are infectious diseases, obesity, anxiety, premature birth, and low weight during delivery¹⁸. Similarly, home atmosphere affects the development of brain during the early stages of childhood. Social disadvantage, a part of societal factors, deals with defects caused during the pregnancy that lead to high birthrelated risks, such as coronary heart disease and diabetes mellitus¹⁹. Neonatal deaths or death of babies below the age of five years primarily occur due to sepsis, pneumonia, tetanus, diarrhea, and asphyxia²⁰. Some of the other causes of child death comprise nutritional deficiency, unhygienic drinking water, lower grades of sanitation, and reduced breastfeeding. A child's adequate mental health is equally necessary and it signifies the successful gains of milestones and healthy functioning in the house, school, and society. Common mental issues encountered in childhood or adolescence are anxiety, behavioral disorders, depression, and lack of attentiveness²¹. Thus, a family acts as a social environment with respect to the healthy physical and mental growth of a child. Further studies in public health should (a) confirm the characteristics of every family with respect to a child's

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illhealth in the early lifespan (e.g., overweight), and (b) study the effect of house surroundings on the health of newborns and infants²².

The effect of COVID-19 on women health

A humanitarian crisis threatened the overall health, security, and welfare of all communities across the globe during 2019-2022²³. The pandemic of COVID-19 revealed the worldwide spreading of a super contagious illness from person to person. The crisis caused by COVID-19 emphasized the connection between the changes in environment and the rise of contagious diseases, with persistent policies being required for sustainability and betterment of health, which might be partially met through the usage of stopgap policies²⁴. Presently, the health conditions across the globe are alarming, as a majority of the women population is lacking access to health benefits related to overall well-being and reproductive health²⁵. On a general basis, women's susceptibility to COVID-19 is complicated and multidimensional²⁶. Two of the most vulnerable women populations who were affected by the COVID-19 crisis were frontline healthcare workers and elder residents of nursing homes and hospitals²⁷. The frontline healthcare workers faced an extensive amount of healthrelated physical and psychological difficulties during the pandemic. The healthcare workers had to work in exceptionally challenging situations, and they had inadequate access to personal protective equipment (PPE)²⁸. Elder women residents of nursing homes frequently faced deteriorating health issues, such as cancer, Rheumatoid arthritis, dementia, etc., which made them vulnerable to COVID-19 contagion and demise²⁹. Women experienced physical ailments and contracted diseases, such as asthma, diabetes, and

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23. Parija SC, Bobhate PS. Addressing Public Health Challenges during Humanitarian Crisis. *SBV Journal of Basic, Clinical and Applied Health Science*. 2022;5(1):1-2.
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myocardial infarctions, during the pandemic³⁰. During the COVID19 crisis, governments across the world implemented lockdowns, wherein provision of reproductive healthcare facilities was suspended indefinitely, resulting in inaccessibility to emergency services and several deaths resulting from complex births and forced abortions³¹.

The pandemic resulted in a loss of income for several mothers, who required their jobs more than childless women and men. On the other hand, mothers without children probably suffered from food insecurity. Such social and economic concerns caused by the pandemic were found to be uniform for women across several nations³². The pandemic also affected the mental health of expecting women, who demonstrated symptoms of depression and anxiety related to the spreading of infection and affecting fetus health³³. In addition, women faced mental health issues due to their exposure to those who experienced postpartum, miscarriage, and domestic violence³⁴. The effect of COVID-19 on women was not only related to diseases but also to an increase in domestic violence, which led to increased physical and mental trauma³⁵. It is important to nurture economic growth and enable women to overcome healthcare barriers, sustain in risky situations, and resist gender-based violence³⁶ economic, and health effects of COVID-19. However, most existing studies have focused on its direct impact on health. Here, we aimed to explore the indirect effects of COVID-19 on gender disparities globally.

Methods

We reviewed publicly available datasets with information on indicators related to vaccine hesitancy and uptake, health care services, economic and work-related concerns, education, and safety at home and in the community. We used mixed effects regression, Gaussian process regression, and bootstrapping to synthesise all data sources. We accounted for uncertainty in the underlying data and modelling process. We then used mixed effects logistic regression to

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explore gender gaps globally and by region. Findings Between March, 2020, and September, 2021, women were more likely to report employment loss (26·0% [95% uncertainty interval 23·8–28·8, by September, 2021.

Pandemic's effect on children's and adolescents' health

COVID-19 has remarkably hampered humanity devastating individuals, kids, and youths of all ages. The influence of the pandemic might not be entirely revealed in terms of morbidity and mortality; but it can have an intense effect on children's well-being and it can have severe consequences on their survival³⁷. The pandemic's effects on children can be classified as: (a) reduced access to important healthcare amenities, such as newborn babies' attention and vaccination, (b) deficiency in nutritional requirements, (c) poverty, orphans, and strays, and (d) mental injury and compromised learning³⁸. Menstruation materials were scarce during the pandemic, which led young girls to adopt unhygienic methods, resulting in reproductive tract infections (RTI), toxic shock syndrome, and vaginal illnesses³⁹. Children and adolescents became more susceptible to health problems across the globe. Psychological issues, such as anxiety, depression, disturbance in sleep, and appetite loss, inadequate or lack of schooling, socializing, and physical exercises were encountered during the pandemic and the children were unable to explain the situation to their parents⁴⁰. In addition, a number of children are globally suffering from nutritional deficiency and problems related clean and safe drinking water⁴¹. The indirect consequences of the pandemic in developing nations showed that a rise in food wastage and underweight are instrumental in the additional monthly deaths of children (18-23%)⁴². Thus, even though the pandemic might have not directly affected children and adolescents in terms of illness and death, it has affected them indirectly. Adequate healthcare facilities and coordinated working of parents, psychiatrists, and pediatricians will help in overcoming the postpandemic difficulties in children and adolescents during any healthrelated emergency⁴³.

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SUSTAINABLE DEVELOPMENT GOALS AND SDG 3 GOALS

In the year 2015, the United Nations (UN) initiated the Sustainable Development Goals (SDGs) after the sanctioning by 194 member states. SDGs were meant to establish the Millennium Development Goals (MDGs) and bring all nations together to reduce poverty, attain optimal health, gain fortune, and spread peace until 2030⁴⁴. A global transformation has been brought about by SDGs to nurture progress and boost sustainability. SDGs aim to discard conventional strategies and emphasize on expected targets with a bigger theme, facilitation for workers, and crucial attention to finance for attaining developmental goals⁴⁵. SDG 1 to SDG 3 comprises 17 goals and 169 targets. Sound health and well-being of individuals belonging to all age groups is ensured by SDG 3 as a part of its 26 indicators and 13 targets⁴⁶. In accordance with SDG 3, good health and well-being is essential among people of all age groups for sustainable development, and this target could be achieved through rigorous and continuous observation of healthcare⁴⁷. SDG 3 requires all nations to conduct extensive studies and inventions, reduce healthcare expenses, and handle healthrelated risks effectively⁴⁸.

The main aim of SDG 3 is the prevention of early deaths (40% of total number of deaths) in every country. In other words, death rates of people aged below 70 years in 2010 would be observed for the population of 2030. SDG 3 aims to improvise healthcare facilities for different age groups. Another aim of SDG 3 is to combat diseases arising from antimicrobial resistance. Four subpoints based on the main aim of SDG 3, such as prevention of two-thirds of mother and child death; prevention of two-thirds of deaths caused due to HIV, tuberculosis, and malaria; exclusion of one-third of deaths caused due to non-contagious illness; and prevention of one-third of deaths caused due to other infections, injury, and nutritional deficiency, have been framed⁴⁹. SDG 3 aims at the prevention and cure of drugs and substance abuse, it funds research related to the production and access to reasonable therapeutics and vaccines, provides

elling study. *The Lancet Global Health*. 2020;8(7):e901-e908.

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accessibility to planning of parenthood, education, and reproduction and sexual care, lowers the risk of diseases and mortality arising from pollution and harmful compounds, reduces deaths from road accidents, and provides funds to achieve optimal health across the globe⁵⁰.

The following goals of SDG 3 are specifically directed towards women and children⁵¹:

1. **SDG 3.1-** SDG 3.1 intends to reduce the maternal mortality ratio (MMR) to less than 70 per one lakh live births on a global scale, because of pregnancy complications and death of fetus within forty-two days of conceiving.
2. **SDG 3.2-** By the year 2030, SDG 3.2 aims to prevent and terminate demises of newly born babies and kids aged below five years through proper neonatal, intra-partum, and prenatal care in all nations. It targets neonatal mortality rate (NMR) to be less than 12 per 1000 live births and it targets mortality of kids aged below five years to be less than 25 per 1000 live births.
3. **SDG 3.3-** By the year 2030, SDG 3.3 aims to terminate several contagious diseases, such as AIDS, tuberculosis, malaria, and other tropical ailments. It intends to fight diseases arising from unsafe and unhealthy water, hepatitis, polio, and other contagious ailments, irrespective of gender.
4. **SDG 3.4-** By the year 2030, SDG 3.4 aims to globally terminate early deaths occurring from noncommunicable diseases (NCDs), such as heart diseases, cancer, diabetes, and chronic respiratory ailments, irrespective of gender. The Non-Communicable Disease Alliance (NCDA) was established in the year 2009 and it transforms people's lifestyles through reduction of tobacco usage, regular exercises, restriction of alcohol consumption, and avoidance of unhealthy foods to prevent the occurrence of NCDs.
5. **SDG 3.5-** By the year 2030, SDG 3.5 aims to terminate substance abuse, drug abuse, and alcohol abuse that cause psychological disorders and negatively affect health, economy, working capacity, and social characteristics.
6. **SDG 3.6-** By the year 2030, SDG 3.6 aims to reduce the number of injuries, disabilities, and demises caused by traffic conditions and road accidents. Parents should ensure that their children are not subjected to such tragic incidents.

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7. **SDG 3.7-** By the year 2030, SDG 3.7 aims to provide global access to amenities related to reproduction and sexual healthcare to women. It aims to facilitate women to plan their parenthood and be aware of reproductive, contraceptive, and sexual education programs.
8. **SDG 3.8-** By the year 2030, SDG 3.8 aims to provide global access to healthcare amenities and provide cost-effective, safe, and quality therapeutics to the population.
9. **SDG 3.9-** By the year 2030, SDG 3.9 aims to reduce demises caused by harmful toxins and chemicals present in the atmosphere, water, and soil. Women living in poor environments face gradual death through inhalation of smoke and air circulating in the atmosphere and through unsafe water consumption. SDG 3.9 aims to safeguard women working in factories from hazardous and toxic chemicals and protect them from pollutants present in the atmosphere.
10. **SDG 3.A-** By the year 2030, SDG 3.A aims reduce deaths arising from smoking and inhalation of tobacco products across the globe. Women are subjected to the risks of oral and lung cancers caused by primary and secondary tobacco usage, gradually resulting in death.

Succeeding the MDGs, SDGs (especially SDG 3) are found to be efficient because a major improvement is witnessed in global health, i.e., the overall death rate of mothers, children, and kids aged less than five years is reducing and longevity is found to be extending in 202 nations. In addition, provision of clean drinking water and sanitary facilities is increasing⁵².

The impact of COVID-19 on SDG 3

The attainment of SDG 3 targets has become less important in the fight against the pandemic. The pandemic has greatly affected all SDGs. The healthrelated SDG 3 is connected with the rest of SDGs and it is greatly affected. SDG 3 is entwined and complimentary with SDG 1 (Poverty), SDG 2 (Zero Hunger), SDG 4 (Quality Education), SDG 5 (Gender Equality), SDG 6 (Clean Water and Sanitation), SDG 13 (Climate Action), SDG 14 (Life under Water), SDG 15 (Life on Land), and SDG 17 (Partnerships for Goals)⁵³. The pandemic caused huge barriers in the accomplishment of major global targets with SDGs. Due to the constant increase in the pandemic's load, a breakdown was witnessed in the healthcare systems of most of the

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53. Howden-Chapman P, Siri J, Chisholm E, Chapman R, Doll CNH, Capon A. SDG 3: Ensure healthy lives and promote wellbeing for all at all ages. A guide to SDG interactions: from science to implementation Paris, France: International Council for Science. 2017.

countries. This was especially true in countries where the capital for healthcare facilities was inadequate⁵⁴. The supply of goods, materials, and equipment, such as PPE kits and active pharmaceutical ingredients (APIs) was severely affected⁵⁵. Provision of necessary healthcare, diagnosis of cancer and cardiovascular disorders, family planning, and prenatal care were severely disturbed. In addition, management of contagious illnesses (in addition to COVID-19) and prevention and cure of non-communicable diseases (NCDs) was disturbed⁵⁶prosperity, and sustainable development. As a result of the global focus on SDGs, in particular SDG 3—ensuring a healthy life and promoting well-being for all—and its 13 targets, significant progress has been made in global health. The Global Action Plan for the Prevention and Control of Noncommunicable Diseases (NCDs. Domestic violence surged against women and children⁶¹. This led to unintended pregnancies and unsafe abortions due to lack of family planning facilities and safe deliveries⁵⁷. Limited accessibility to healthcare services, food, and nutrients due to the pandemic caused a surge in the death rate of mothers, children aged less than five years, and neonatal babies⁵⁸. AIDS/HIV patients faced a severe crisis in getting access to screening tests and appointments⁵⁹. Similar consequences including delay in treatment and check-up time were experienced by tuberculosis patients⁶⁰.

Several undesired outcomes, such as anxiety, posttraumatic stress, irritability, mood swings, stress, depression, and emotional distress, were caused by the fear of the pandemic and by the restrictions imposed during the lockdowns, resulting in the deterioration of mental health⁶¹. Although the pandemic's effect on children is lesser than on adults and specifically elders, their

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 61. Taub A. A new COVID-19 crisis: Domestic abuse rises worldwide. The New York Times. 2020;6.

overall development and safety against contagious illnesses have been highly affected⁶². During the pandemic, several kids across India suffered from nutritional deficiencies because they did not have access to mid-day meals during the lockdowns. Children did not receive vaccination related to polio and other avoidable diseases, such as measles⁶³. Despite the aspiring attitude and global promise to accomplish targets of all SDGs (specifically SDG 3), the improvement is unsatisfactory and substandard. The pandemic stalled the progress of SDGs. All nations to collaborate and invest substantially to redesign the healthcare system and use the pandemic as a step to increase accessibility and quality, safeguard the healthcare system, and promote a healthy way of living⁶⁴.

SDG 3 goals for the health and well-being of women and children during COVID-19

The pandemic has directly affected and strained the healthcare system and it has caused hindrances to SDG 3⁶⁵. As per the recent estimations, child mortality was highly affected by the secondary effects of the pandemic. Several factors, namely, prenatal care, care during child delivery, post-delivery care, vaccination, and prevention of juvenile illnesses, and curing services, were severely disturbed⁶⁶. It is expected that more than half million children aged below five years would possibly die because of the pandemic over a period of six months in thirty two Asia Pacific nations. The number of demises is expected to double in twelve months to more than 1 million⁶⁷. SDG 3.1 aims at reducing the maternal mortality ratio (MMR) to less than 70 per 10,000 new childbirths⁶⁸. A study was conducted across fourteen nations in the AsiaPacific region, wherein it was predicted that the MMR might increase in fourteen nations in the year 2020, attaining 214 per 100,000 or 263 per 100,000 and the prediction was related

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to a probable reference point of 184 per 100,000⁶⁹. The overall disturbance in the availability of necessary sexual and reproductive health amenities would probably lead to an increase of needs (from 18% to 26%) that are not met for planning parenthood⁷⁰. During the pandemic, several women were not able to plan their parenthood and could not avail reproductive healthcare services, resulting in illegal abortions estimated at 2.7 million⁷¹. Even during the rapid increase in infections and unforeseen situations caused by the pandemic, healthcare divisions across the world have attempted to provide healthcare amenities in various capacities.

Moreover, industries and administrative bodies coordinated and supported universal healthcare (UHC) throughout the pandemic and continue to act further⁷² to attain the goals of SDG 3. Provision of adequate healthcare facilities and handling the pandemic situation were the major tasks associated with SDG 3 and Covid19. Economy could be improved and attainment of SDG goals could be resumed after the pandemic is under control. Few of the areas where SDG 3 showed progress during the pandemic in relation to women and child population were a decrease in the maternal mortality ratio (MMR), a decrease in the death rate of children aged below five years and newly born babies, and an increase in accessibility of healthcare services including costeffective and safe therapeutics and vaccines⁷⁰. As on 1st September 2021, 5.44 billion doses of Covid19 vaccine were administered. Further, 3.15 billion people were vaccinated with the first dose in 63.5% of the developed nations and 1.8% of the developing and poor nations. On the other hand, 2.15 billion people were completely vaccinated in 53.5% of the developed nations and 0.6% of the developing nations⁷³.

The Covid-19 vaccine is not just to safeguard the health of children, parents, women, caregivers, and adolescents, but also to recover from financial losses caused by the pandemic. The requirements for lockdown were lowered and education centers, healthcare centers, markets, and other centers assisted the development of kids⁷⁴. Regardless of the devastations caused

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 73. Elavarasan RM, Pugazhendhi R. Restructured society and environment: A review on potential technological strategies to control the COVID-19 pandemic. *Science of the Total Environment*. 2020
 74. Elavarasan RM, Pugazhendhi R, Shafiullah GM, et al. Impacts of COVID-19 on Sustainable Development Goals and effective approaches to maneuver them in the post-pandemic environ-

by Covid-19, SDG 3 is important for the health of human beings on a global scale. SDG 3 facilitates a sturdy healthcare system, facilitates readiness for any emergency, and emphasizes on universal healthcare (UHC)⁷⁵. SDG 3 facilitated the attainment of women's and children's better health through adequate investments in healthcare, which protected the human population during the pandemic⁷⁷. Universal healthcare (UHC) is vital for attaining the targets of SDG 3 and for fighting against any pandemic in the future.

CONCLUSION

Health is an important fundamental right that acts as a pillar of an economically sustainable society. Even though Covid-19 imposed a huge risk to good health and well-being, it provided an opportunity to achieve sustainable and progressive development in healthcare, especially for women and children. The pandemic emphasized on the functions of UHC and evidenced it as a significant factor to attain sustainable health development (SHD). In order to achieve sustainable development, healthcare requirements must be prioritized in every agenda across the globe. In anticipation of any future pandemic, adequate financing in the healthcare sector will lead to the development of a sustainable society and protection of human population. Viable funding through SDGs would enable health agencies to surpass the progress made before the pandemic. For instance, a SDG drive for gaining optimal health, well-being, and education, along with governmental funding, social safeguarding, and digital modernization could result in higher secondary education of more than 25 million kids annually by the year 2030. If developing nations invest 0.07% of their gross domestic product (GDP), it will enable 613 million eligible women to work with stability and be independent financially. Therefore, thorough assistance across all SDGs combined with global coverage of healthcare is crucial for the protection of women and children, both economically and health wise.

ment. *Environmental Science and Pollution Research*. 2022;29(23):33957-33987.

75. Dhaliwal M, Small R, Webb D, et al. Covid-19 as a long multiwave event: implications for responses to safeguard younger generations. *BMJ*. 2022;

TEACHING PROFESSIONAL ETHICS THROUGH INTEGRAL EDUCATION – A STEP TOWARDS SOCIAL TRANSFORMATION

Dr. Vrushti Patel¹

INTRODUCTION

An integral approach to education includes looking at the education from physical, vital, mental and spiritual dimensions. It does not just focus upon acquisition and transmission of knowledge and skills but it focuses on self-development of an individual- discovering oneself and integrating oneself with the society, community and humanity at large.² Hence, the focus of integral education is upon an overall development of an individual during his whole life span. Sri Aurobindo introduced the concept of integral education. According to him, the integral knowledge is something that is already there in the integral reality.³ The integral education is thus the knowledge of fundamental truth of all things of existence that explain reality.⁴ The guiding principles of this education philosophy is the awakening of an individual as a spiritual being. It aims at self-discovery, self-realization, self-fulfillment and self-perfection.⁵

The announcement of National Education Policy 2020 (NEP-2020) with an aim to bring an educational reform through holistic development of a learner is an indication that incorporating integral values in the young minds in the need of an hour. Educational systems in the nation should be developed where the teaching learning process is not confined to mere acquisition of knowledge but liberation and realization of oneself. Hence, the idea is to scrap out the rote learning methodological by shifting the focus to experiential learning. This integral approach in education or the holistic approach to education is not something novel but a thought propounded by Sri Aurobindo decades back, which aims at building character and enabling the learners to be ethical, rational, compassionate and caring and at the same time prepared for a gainful and fulfilling employment.

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1. Assistant Professor, School of Law, AURO University, Surat.
 2. Compiled from the Writings of Sri Aurobindo and the Mother. *Sri Aurobindo and the Mother on Education*, sixth Edition, Sri Aurobindo Ashram Publication Department, Pondicherry, (2016).
 3. Parmeswarana K., *The integral Dimension of Law*, LexisNexis, P. 1., (2015).
 4. Sri Aurobindo, *The Life Divine Book Two*, Part II, Volume 22, The Sri Aurobindo Publication Department, Page 659, (2005).
 5. *Ibid.*

The author attempts to integrate the relationship between integral education and the ethical principles of legal education to find its practicality in making responsible lawyers. It also explores the inter-relationship between the principles of true teachings, four soul powers, core-values (as propounded by Sri Aurobindo and the Divine Mother in their teachings on Integral Education) and the Seven Lamps of Advocacy. In addition, how these principles of integral education can support in the making of better social engineers.

The researcher has adopted Doctrinal and Exploratory method of data collection, as these two methods can complement each other in providing a comprehensive analysis of the interrelationship between integral education and legal education. The doctrinal research has provided a theoretical framework for understanding the concepts and principles involved, while the exploratory research has provided an insight into how these concepts and principles can be integrated into legal education in practice. The research hypothesizes as teaching Integral Education in Law Schools can help in making a better social engineers.

INTEGRAL EDUCATION AND ITS PRINCIPLES

The integral approach to education emphasis on the over-all development of an individual in all the spheres of one's life, from the cradle to Kosmos. According to Sri Aurobindo, there are three basic principles of true teaching- ***"Nothing can be taught"***⁶: the role of a teacher is to facilitate the learning process. The task of the teacher is to aid the student acquire knowledge through self-exploration. Different from the present day education system where the principle emphasis is on suggestion rather on imposition,⁷ ***"The Mind has to be consulted in its own growth. The idea of hammering the child into the shape designed by the parent or the teacher is a barbarous and ignorant superstition"***⁸: Every human being is conferred with something divine and unique, something that is his own which separates him from others. The task is to find it, nurture it, develop it and use it. This principle outcastes the present day education norm that focuses on hammering and molding the student according to the shape desired by the parent or teacher.⁹ The student should be free to explore rather than just rote learning and ***"To work from near to the far, from that which is to that which shall be"***¹⁰: This principle focuses upon learning through establishing a context, which is familiar, relevant, relatable and non-threatening. This ensures less resistance and more motivation amongst the students where

6. Sri Aurobindo: *Principles of true teaching* (no date), Aarohi Life Education. Available at: <https://www.aarohilife.org/home/sri-aurobindo-principles-true-teaching> (Accessed: 25 July 2023).

7. *Ibid.*

8. *Ibid.*

9. *Ibid.*

10. *Ibid.*

their mind is enthused to take the journey of self-exploration.¹¹ In other words, it focuses upon converging from short-term goals to long-term goals, achieving small milestones to reach at the destination.

Integral education helps the students to integrate with their true self, their surroundings, their community, their society and with humanity. This integral approach to education includes approaches to education from different aspects - physical, vital, mental and spiritual and inculcating the core-values in one's being. It helps in becoming a complete being. It can be stated that the student who is exposed to integral education is more receptive and more integrated to self and others.

THE CORE OF INTEGRAL EDUCATION

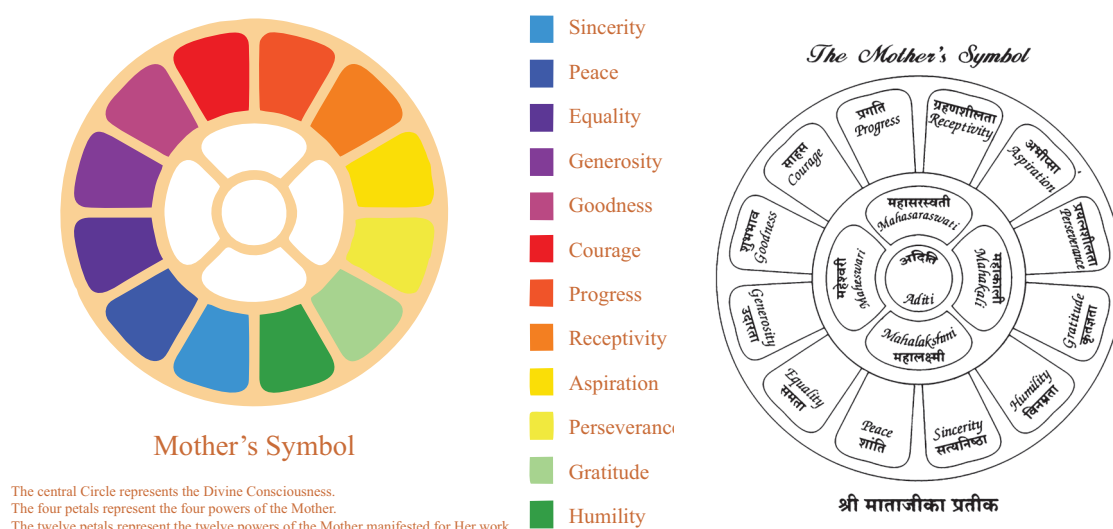


Image Source¹²

Image Source¹³

The above-mentioned Divine Mother's Symbol depicts the central idea of Integral Education. The inner most circle describes the Divine Shakti/ Divine Consciousness which is the source of the powers and creation. The outer petals of the innermost circle includes the four soul forces/ power of the mother - **Mahalaxmi** (depicts the power of *Harmony, Love and Delight*), **Mahakal** (Depicts the power of *Strength and Effective force*), **Mahasaraswati** (depicts the power of *Beauty, Perfection in work*) and **Maheshwari** (depicts the power of *wisdom and compassion*). The outer-most circle depicts the 12 core principles that forms a base for Integral Education.

11. *Ibid.*

12. The Mother, *The Mothers Symbol*, The Mother's symbol - meaning, significance (motherandsri-aurobindo.in) (Accessed: 14 August 2023).

13. The Mother, *The Mothers Symbol*, The Mother's symbol - meaning, significance (motherandsri-aurobindo.in) (Accessed: 14 August 2023).

These principles include sincerity, humility, perseverance, aspiration, receptivity, progress, courage, faith, gratitude, generosity, equanimity, and peace. According to the teachings of the Divine Mother these qualities are the most essential part of one's development and inculcating these values will help a person live a full and a well-rounded life. Moreover, soul forces can also be associated with the four aspects of being. The **mental aspect**- *focuses upon development of the idea, power of creativity and imagination*; **vital aspect**- *focuses upon refinement of aesthetic sense, refinement of emotions & thoughts, find values and worth in learning*; **spiritual aspect**- *focuses upon establishing original idea, expansion, intuition* and **physical aspect** - *focuses upon endurance, control and discipline, correction of deformities and developing a healthy and enriching lifestyle*. Overall, the Divine Mother's Symbol represents the core principles and values of Integral Education, which emphasizes on developing concentration, self-disciple, knowing oneself and choosing one's own destiny, leading a life ruled by enlighten reason, helping every child realize his full potential and the integration of different aspects of life, above all crate an empathic and responsible human beings. This symbol provides a framework for holistic education that can prepare students for life and help them realize their full potential as human beings, which is also emphasized in the National Education Policy, 2020.

NECESSITY OF TEACHING INTEGRAL EDUCATION IN LAW SCHOOLS

Integral education and legal education though two distinct areas of education, are related in some ways. Integral education is a holistic approach to education that focuses on developing the whole person, including their physical, emotional, intellectual, and spiritual aspects. It emphasizes the integration of different disciplines is to provide students with a comprehensive education that prepares them for life. Integral education aims to help students become well-rounded individuals with a sense of purpose, compassion, and creativity. Legal education, on the other hand, is a specialized field that focuses on the study of law and legal systems. It aims to provide students with a deep understanding of the law, legal principles, and legal practice. While integral education and legal education may seem different, they share some common goals and principles.

For instance-

- i. Both integral education and legal education emphasize the importance of critical thinking, analytical skills, and problem solving. Integral education encourages students to think across disciplines and to consider different perspectives, while legal education trains students to analyze legal texts, cases, and arguments.
- ii. Both integral education and legal education emphasize the importance of ethics and social responsibility. Integral education emphasizes the development of values,

character, and social awareness, while legal education emphasizes the ethical standards and responsibilities of legal professionals.

- iii. Both integral education and legal education aims to prepare students for lifelong learning and professional development. Integral education emphasizes the importance of continuous learning and personal growth, while legal education prepares students for a career in law and provides them with the skills and knowledge to succeed in the legal profession.

Overall, integral education and legal education share some common goals and principles, even though they are distinct fields with different areas of focus. While integral education aims to provide a comprehensive education that prepares students for life, legal education focuses on the study of law and legal systems, which affects life and the society. However, Legal Education though is considered as a mechanical profession, it has always put emphasis on human-values. The purpose of legal education has always been service to the society and community. A lawyer is always expected to have a social vision that helps in the development of the society and its people.¹⁴ He should be the one who not only preserves the interest of the client but also the one who balances the competing interests in the society and with those intentions ethical norms for practice are set. Hence, legal education evidently emphasized on the holistic development of the individual, society, community and the country. Late Prof. NR Madhava Menon, widely known as ‘*the father of modern legal education in India*’, too emphasized on socially relevant legal education through clinical legal education.¹⁵ He emphasized that each law school should take up the task to create a legally aware society and socially aware lawyers. According to him, legal education is not only about knowledge of rules of law but also the social and ethical responsibilities of a lawyer to the society.¹⁶

These legal ethics are governed and rooted in the principle of the ‘*Seven lamps of Advocacy*’¹⁷ Book authored by Justice Abbott Parry which is considered the foundation of ethical principles. The Author finds close association between the principles of Integral education and legal education and has tried to explain it in the following table:

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14. William P. Quigley, *Letter to a Law Student Interested in Social Justice*, 1 DePaul J. for Soc. Just. 7 (2007).
 15. Bloch, F.S, NR Madhava Menon: *The Guiding Light for Global Clinical Legal Education* - Jindal Global Law Review, SpringerLink. (2021). Available at: <https://link.springer.com/article/10.1007/s41020-020-00123-4> (Accessed: 25 July 2023).
 16. *Ibid.*
 17. *The Seven Lamps of Advocacy* (Classic Reprint). Forgotten Books (2018).

Interrelationship between Soul Forces, Core values and Seven Lamps of Advocacy

Soul Forces	Characteristic of the forces	Lamps of Advocacy / qualities expected in an Advocate/ Lawyer¹⁸	Core values of Integral education
Maheshwari	i. i. As power of self-knowledge and world-knowledge ii. ii. Knowledge, awareness, intelligence	• Honesty - The most important quality that an advocate must possess. An Advocate is expected to reflect this quality in his thoughts, words and deeds. • Eloquence - Expressiveness is the most essential skill required in the profession. A lawyer should be clear and engaging in his expression and should be aware about the latest developments in the field of law. • Judgment - The quality of foresightedness, anticipating the outcome and preparing it further.	• Aspiration, <i>Abhipsa</i> is the ability to reach out for the highest and deepest one can possess and realized. It is the primary quality helps one succeed in their doings. • Progress, <i>Pragati</i> is the attitude of continuous growth in life and consciousness.
Mahakali	i. Courage, Strength ii. Power to execute knowledge	• Courage - The lawyer is expected to be bold and fearless in his actions and arguments.	• Courage, <i>Viryam</i> is not absence of fear; it is the capability to overcome fears gracefully. It is the ability to give up the known in order to achieve unknown.

18. *IBId.*

Mahal- akshmi	i. Balance and harmony of body and Soul ii. State of Equanimity	• Fellowship - The quality of unity, brotherhood and having harmonious relations with the fellow lawyers. • Wit - The capacity to think consciously and clearly.	• Humility, <i>Namas</i> means humility before divine that means a precise, exact, living sense that one is nothing, one can do nothing, understand nothing without divine. • Goodness, <i>Svasti</i> is doing well without any expectation in return. • Gratitude, <i>Kritagyata</i> means being thankful to divine for the life that one has. • Peace, <i>Shanti</i> is an active state of being where one can no longer be disturbed by life's changing situations and is living always in harmony. • Equanimity, <i>Samata</i> means to be indifferent to the situation and outer world. The very first necessity for perfection and a life of excellence is perfect equality. Equality means to be able to regard and accept all people and events without preference or bias, to be able to see things from a higher perspective and to remain in inner equilibrium no matter what happens.

Ma- hasaras- wati	i. Power that labors ii. Perfection iii. Faultless elaboration of details	• Industry – It is the most basic and crucial quality that an advocate must possess. He should have mastery in the subject and be updated with all the recent legal trends. He is expected to do continuous hard work to develop and nurture the skill set.	• Perseverance, Dhriti states that in order to have transformation patience and perseverance are essential. • Generosity, Audarya - it is to give without expectation or bargaining. It is an opportunity that life gives for the liberation from ego and self-indulgence, an opportunity to participate in greater joys of life. • Receptivity, Samnana - To develop the capacity to receive from the above and within. This means to receive the higher, the divine force and allow it to work. Openness to accept and work on whatever needs to be done. • Sincerity, Satyam - Being true to oneself, authentic and transparent; not allowing any pretense, falsehood or contradiction in oneself is the essence of sincerity.

On having a close look of these principles with the seven lamps of advocacy, one can find the interrelationship between Soul Forces, Core Values, and Seven Lamps of Advocacy. The **Maheshwari** force is related to knowledge, awareness, and intelligence and these characteristics are related to the qualities of honesty, eloquence, and judgment in an Advocate/Lawyer. The Core Values related to **Maheshwari** force are aspiration and progress. The **Mahakali** force is related to courage, strength, and the power to execute knowledge, and these characteristics are related to the quality of courage in an Advocate/Lawyer. The Core Value related to Mahakali force is also courage. The **Mahalakshmi** force is related to balance and harmony of body and soul, as well as a state of equanimity. These characteristics are related to the qualities of fellowship, wit, humility, goodness, gratitude, peace, and equanimity in an Advocate/Lawyer. The Core Values related to Mahalakshmi force are humility, goodness, and gratitude. The **Mahasaraswati** force is related to the power that labors, perfection, and faultless elaboration of details, and these characteristics are related to the qualities of industry, generosity, receptivity, and sincerity in an Advocate/Lawyer. The Core Values related to Mahasaraswati force are perseverance,

generosity, receptivity, and sincerity. Hence, if legal education is taught through the lens of integral education. It will significantly affect the quality of Social Engineers/Lawyers in the Society. Application of Integral principles in the activities of experiential learning, community engagement and services through student's legal aid clinic will help the students to innate the Core values in themselves by naturally following the ethical principles of Advocacy.

For instance,

At AURO University, Integral education is taught through three courses, Science of Living 1, 2, and Foundations of India Culture. Every student indifferent to the program of his or her specialization has to study these subjects and has to apply the principles while studying their core specialization through the lens of Integral Education. The Students from school of law have taken up many community projects, where they have integrated the principles of Law and integral education; this has worked as a foundation of their involvement at the AURO Legal Aid and Community Development Center.

CONCLUSION AND SUGGESTIONS

In the recent past, most of the streams of education worked in isolation, imparting knowledge and skills confined to the professional domain, which resulted in an increasing gap between the individual and the society. However, with the announcement of the National Education Policy 2020 (NEP-2020) integration of different streams for a holistic development of students is the primary goal of the education system. The aim is to bring an educational reform through holistic development of a learner, where the teaching learning process is not confined to acquisition of knowledge but liberation and realization of oneself and in such scenarios including integral ways of education while teaching legal education will surely help in producing socially aware lawyers and legally aware society. Integral Education as propounded by Sri Aurobindo and the Divine mother facilitates the process of value-based education, the education that focuses on Social reforms and aims at building social lawyers. Integration of Integral Education with the Indian Legal Education may have the following effects:

1. It will help in promoting a more comprehensive understanding of law and justice whereby, Indian legal education can benefit from embracing ideas from Indian philosophy, such as Vedanta, Yoga, or Ayurveda. Students may gain a better understanding of how ethical and social considerations interact with legal ideas as a result.
2. The emphasis on ethical and value-based learning in Indian legal education could be increased. Future legal professionals can develop a sense of societal responsibility

and integrity by incorporating ideas from Indian ethical traditions like dharma (duty/righteousness) and ahimsa (non-violence).

3. India contains a wide range of indigenous legal systems, including customary laws and community-based dispute resolution procedures. Students can gain a deeper grasp of India's legal system and develop cultural sensitivity by integrating the study of these systems with traditional legal education.
4. Holistic teaching techniques that support students' complete development are encouraged by integral education. To close the gap between theory and practice in legal education, this may entail integrating experiential learning, multidisciplinary approaches, and practical training.
5. Integral legal education can help students develop a sense of social justice and community involvement. Students can better grasp the applications of the law and be equipped to strive for a more just and equitable society by being encouraged to take part in legal aid clinics, pro bono work, and social justice activities.

From the AURO Law School experience, the author can state that there is a significant impact of integral education on legal education and the students who are exposed to the principles of integral education are better social engineers. When taught the principles of Legal Ethics along with the principles of Integral Education, they develop keen interest in the community projects. When students take up the community projects from very beginning of their law course and being exposed to the principles of Integral Education helps them being more involved in the Legal Aid activities which would further nurture their role as a the Social Engineers.

TRANSFORMING LEGAL EDUCATION IN INDIA: IMPLICATIONS OF NEP 2020

L. Ashish Kumar¹

INTRODUCTION

Education is not synonymous with just attaining some information or qualifying a degree. The driving force behind a pupil's disposition, attitude and personality shapes the individual into a decent person. Education rescues one from blindness of society, superstitions, narrow mindedness, and liberates the person from unruly behaviour and nurturing a proper conscience. Attaining knowledge in any stream may be optional but having basic sense of knowledge in law is mandatory for every person. As the famous legal maxim '*ignorantia juris non excusat*' contemplates that ignorance of law is no excuse, it becomes necessary for common man to a crowned man to have best regard and respect towards law. A specialised method of studying law is quite different from having a basic knowledge. It requires years of industry experience and dedication. This evolution in the method of studying law has been gradual process over the ages.

Legal Education is to be considered sacrosanct as it paves way for the torchbearers who evolve to become the fate deciders of many in the form of advocates, judges, legal professionals in various sectors. Ascribing such a pivotal role requires a dedicated and contemporaneous legal education system which trains the budding legal professionals equipping them with necessary legal skills to handle various kind of legal disputes. The advancement of top-quality legal education is a precondition for the development of top-quality legal professionals. The law is the protector that upholds justice, equality and liberty. The primary goal of legal education is to produce advocates with social perspective. Modern legal education is considered as tool for societal transformation. Justice Dada Dharmadhikari rightly compares the legal education with doctors, priests and economists². Legal education transforms a person as a professional legal expert who advocates for all just like how a doctor performs his duty of prescribing medicines to the patients.³ It transforms a person as a professional legal expert just as a priest who preaches the devotees and economists who plans the finances of everyone.

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1. Assistant Professor, Vignan Institute of Law, Vignan's University, Guntur.
 2. SUSHANT DAHIYA, LEGAL EDUCATION AND RESEARCH METHODOLOGY, 9, 114-125 (2018).
 3. SUSHMA GUPTA, HISTORY OF LEGAL EDUCATION, 18, Deep & Deep Publications, (2006).

A brief history of legal education needs to be explicated to understand the essence of legal education in India.

LEGAL EDUCATION IN ANCIENT-VEDIC PERIOD

According to legal historians “a person well-versed in Dharma Shastra and legal procedure could be appointed as the representative”.⁴ ‘Niyogis’ were the indigenous term for legal practitioners who represented parties in litigation as early as the time of Manu Smriti. In ancient India, law was considered a subset of Dharma. The Vedas had been the primary foundations of law, and the Smritikars, Nibhandakarus were eminent jurists who communicated the wisdom of the Vedas by interpreting them. Gautama, Harita, Bondhayana etc, were truly esteemed and revered for their Dharmasutras. Despite there is no indication of official legal training, the sovereign was expected to administer justice based on self-taught knowledge. The king also dispensed justice through his administrators, who were known for their honesty and reputation for being equitable and unbiased. The preservation of Dharma was the king’s or his administrator’s driving principle. The fundamental purpose of education in ancient India was to provide proper guidance in all aspects of life. As Dharma is the central concept in Ancient India, separate training comparable to current legal education was deemed unimportant. In ancient times, legal disputes were resolved through negotiation, mediation, and various forms of arbitration. Thus, what we consider to be contemporary Alternative dispute resolutions(ADR) were also the prevalent means of conflict resolution in ancient India.⁵

LEGAL EDUCATION IN MUGHAL ERA

The year 1525 marked the beginning of the Mughal era in India, which lasted until the rise of British rule. During this era, the emperor presided over the judicial branch. Due to the fact that Islamic jurisprudence is derived from the Quran, it is considered indestructible by any individual’s autonomy. In addition, the Sunna, which assisted to comprehend the Quran, evolved into a significant source. Complex procedural and evidentiary rules were adopted for justice administration which necessitated the employment of vakils. Vakils were the legal experts in different domains. Fatwa-e-Alamgiri and Figh-e-Firoz Shahai were adopted to deal with responsibilities of vakils. Thus, legal experts assumed a crucial responsibility in ensuring the smooth functioning of justice. Despite the fact that the Mughal system of law⁶ was primarily

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4. Ludo Rocher, “Lawyers” in *Classical Hindu Law*, 3 LAW & SOCIETY REVIEW, 383–402 (1968).
 5. *Brief History of Legal Education in India*, UNIVERSAL INSTITUTIONS (July. 26, 2023), <https://universalinstitutions.com/brief-history-of-legal-education-in-india/>.
 6. M. L. Roy Choudhury, M. L. Roy Chowdhury, *Principles of Law in the Mughal Empire*, 10 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS, 367-370 (1947).

applied in urban areas, those in disputes were permitted to resolve religious disputes according to their religious customs. Moreover, at village scale, Panchayats carried on to resolve the majority of conflicts, with the exception of those concerning severe crimes. Yet, a dissatisfied litigant could choose to appeal the Panchayat's judgement to the court of appeal established under Mughal system. Despite the fact that the practise of third-party delegation was established during the time of the Mughal Empire, there was no indication of an official judicial system of instruction and no evidence of the specifically designed legal education was needed to operate as such advocates in present times.

LEGAL EDUCATION IN BRITISH ERA

Though there are many Charters from 1600 which encompassed references to legal profession, only few important Charters will be analysed hereinafter.

The Legal Practitioners Act, 1846⁷ enacted on 7th January, 1846 dealt with the appointment procedure and remuneration related aspects of pleaders in the courts of East Indian Company. Clause IV enabled the persons irrespective of nation or religion, to be admitted as pleader. Such person to become a pleader needs to have certain qualifications. He shall obtain a qualification certificate as per the directions of Sudder Courts. Having a good character as per the Court is quintessential. In addition to these, the person shall not be disqualified by any law or regulation to the contrary. Clause V enabled the Barristers of Her Majesty's Court of Justice in India to have power to practice in Sudder Courts subject to the condition that rules applicable to general pleaders are equally applicable to Barristers. Clause VII emphasised about the remunerative aspects and signing of vakalatnama. Clause VIII was a restrictive clause as to remuneration agreement between the pleaders and parties except in regular suits. The act of Legal Practitioners also mentioned about certain fines on pleaders in various instances.

Establishment of High Courts under Indian High Courts Act, 1862⁸ carved a new path for legal profession. Formation of 1883 Law Commissions made the legal profession a distinct one. Letters Patent of 1865⁹ laid down the procedure of enrolment of advocates at High Court of Judicature at Bombay.¹⁰

Subsequently after few years, Indian Bar Committee was constituted in 1923 which was led by Sir Chamier. There were wide deliberations towards establishment of Bar Committees

7. The Legal Practitioners Act, 1846, No. 1, Council of India, 1846 (British India).

8. Act No. XX of 1862, , Passed by Governor-General of India in Council.

9. Act No. XXIII of 1866, Passed by Governor-General of India in Council.

10. Sumeet malik, *VD KULSHETRA'S LANDMARKS IN INDIAN LEGAL & CONSTITUTIONAL HISTORY*, 12, Eastern Book Company, Pg. 353 (2022).

at various High Courts and establishment of National Level Bar Council. In 1926, by passing of Bar Council Act, various Bar Councils were to be constituted under High Courts. But they assumed only advisory role as regulation was controlled by High Courts.¹¹

The Post-independence era in 1953, SR Das headed the All-India Bar Committee through its report¹² suggested the formation of All-India Bar Council for regulating the legal profession as well as standards of legal education. This was taken by the Law Commission of India and after due deliberations, Advocates Act, 1961¹³ was enacted which established Bar Council of India.¹⁴

Ago 100-150 years, it is interesting to note that seeds for modern legal education were sown in 1855, when English replaced Persian language as official court language in 1826. Till then Persian language was mandatory for anyone to become a vakil or pleader. In 1857, three prestigious universities were established in Bombay, Calcutta and Madras that started formal legal education of 2-years study in Law. Early reforms were suggested in 1885 for an institutional set up for studying law and in 1902, the First Indian University Commission suggested that a base arts or sciences degree is mandatory for studying law. Here it can be understood that studying law is not equivalent as studying any other degree. The person who needs to study law should be comparatively matured enough to understand the intricacies of legal concepts. The year 1910 saw a huge moment when Chagla Committee¹⁵ suggested that law should be studied at least for 6 years to become eligible for practicing as a lawyer. It also suggested for an entrance level examination for studying law. Till independence there were any such committees which suggested for reforms in legal education which led to formation of Radha Krishna Commission in 1949.¹⁶ This commission suggested many changes recognising that the current educational institutions require skilled professionals, jurists, professors and the involvement of legal professionals to take note of social changes and thereby transform legal education.

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11. Suraj Narain Prasad Sinha, *History Bar Council Of India*, BAR COUNCIL OF INDIA (July. 28, 2023), <http://103.25.172.19/bar-council/history.php>.
 12. Justice SR Das, *Report of the All-India Bar Committee*, 1953 <https://indianculture.gov.in/reports-proceedings/report-all-india-bar-committee>.
 13. The Advocates Act, 1961, No. 25, Acts of Parliament, 1961 (India).
 14. *Supra Note 11*.
 15. *Supra note 3 at 70*.
 16. *The Report of the University Education Commission*, 1, (1948 – 1949). <https://www.education-forallinindia.com/1949%20Report%20of%20the%20University%20Education%20Commission.pdf> (July. 29, 2023).

Though during the British period there were snail pace activities regarding formal legal education, but it should be accorded that from ancient period to British period, legal education went through various stages of development.

LEGAL EDUCATION IN POST-INDEPENDENT INDIA

Hailing back to Advocates Act, 1961¹⁷, it is the most significant legislation which stands tall till date in India regarding legal profession and legal education. Ranging over 60 provisions, 7 Chapters, 1 Schedule it covers establishment of Bar Council of India as well as State Bar Councils. In addition to it, it lays down provisions for admission and enrolment of advocates and provides for rights to practice. The whipping power of the Act is chapter related to conduct of advocates. It provides for punishments and disciplinary proceedings for professional misconduct by advocates.

Section 7(h) of Advocates Act, 1961, specifically lays down the education function of Bar Council of India. It specifies that Bar Council shall promote legal education in India. It lays certain minimum standards for legal education through its rules. Section 7(i) provides for recognition of universities degrees obtained by the candidates who may become advocates through enrolment. There is a specific inspection manual for the legal institutions for standards compliance.

Section 10(2)(b) specifies for constitution of a legal education committee consisting of 10 members where 5 are elected among the Bar Council and 5 are Co-opted by the Bar Council.

Section 49(1)(d) empowers Bar Council to make rules in respect of standards of legal education and inspection. As per this power two important Rules of Legal Education were promulgated in 2008 and 2019. Most of the Centres of Legal Education on the current date have transformed the course structure and allied matters as per Rules of Legal Education, 2019.

As a part of uniform qualification for graduated law students, All India Bar Examination is conducted. Those who qualify that exam after enrolling as Advocates can practice in India. It was started in the year 2012.

India is a cradle of jurists like Prof. Upendra Baxi, MP Singh, Nani Palkhivala, NR Madhava Menon, etc. It is needless to mention that Prof. N.R. Madhava Menon has been instrumental in revolutionizing legal education for establishment of National Law Universities. He is considered as the father of modern legal education in India. He was the founding director of National Law School of India University, Bengaluru. He also has the credit of being the founding Vice-Chancellor of West Bengal National University of Juridical Sciences. NLSIU was considered to

17. *Supra Note 13*

be the first Indian University to adopt the Harvard Law School's case study-based methodology which is till date considered as the best method to study law.¹⁸

The establishment of National Law Universities made way for special recognition to legal education. Often legal education was considered as part-time. Evening colleges were later banned by Bar Council of India. The prime reasons for banning the evening law programmes were the non-conformity of minimum standards laid down by Bar Council of India like the lecture hours, timings of the colleges. It is also important to note that at the present status of legal profession, having a dedicated period of study and specific orientation is required to the new generation of lawyers. 5 Year Integrated Courses like BA.LLB(Hons.), BBA.LLB(Hons.), etc gained prominence due to National Law Universities. In India, we have 23 National Law Universities. Admission into National Law Universities is based on Common Law Admission Test (CLAT) for Under-graduate and Post-graduate levels. Earlier CLAT was conducted by independent NLUs on rotation basis but from 2019, Consortium of NLUs¹⁹, also known as CLAT Consortium is conducting the entrance examinations except National Law University, Delhi which conducts its own exam known as AILET.²⁰

In addition to National Law Universities, Central and State Universities and their affiliated institutions, Private Universities have also found space and carved a niche for themselves. There are many Private and Deemed Universities offering law programmes both 3-year, 5-year integrated programmes as well as LL.M and Ph.D programmes. They operate either on sui-generis model or adopt National Law Universities model of providing legal curriculum by following minimum standards of legal education as laid down by Bar Council of India.

Past few decades have observed development of various new fields like climate change, Artificial Intelligence, energy laws, animal laws, etc. For example, the convergence of climate change and law has various facets like human right issues, climate displacement, technology transfer issues in green technologies. Similarly, the regulation of Artificial intelligence in the domain of Intellectual Property Rights, Artificial Intelligence and ethical issues etc have posed contentious issues to the legal industry and academia. The changing dimensions in gender related jurisprudence has opened avenues for researchers, students, academicians and especially the advocates and judges to contemplate on recognition of gender related issues like women protection, rights to LGBTQ community, etc. These legal trends are kept alive by the legal

18. NEW VISION FOR LEGAL EDUCATION IN THE EMERGING GLOBAL SCENARIO EBC INDIA, <https://www.ebc-india.com/lawcoll/bangalore/vision.htm> (last visited Aug. 02, 2023).

19. CONSORTIUM OF NATIONAL LAW UNIVERSITIES, <https://consortiumofnlus.ac.in/> (last visited Aug. 02, 2023).

20. NATIONAL LAW UNIVERSITY, Delhi, <https://nationallawuniversitydelhi.in/> (last visited Aug. 03, 2023).

educational institutions by offering various specialised courses, establishing dedicated Centres, organizing seminars and conferences at national and international level.

Throughout the years, all legal institutions are trying to adopt to the changing needs of the society accommodating emerging legal trends. National Education Policy-2020 is one such policy which advocated for herculean changes in the current education system. It has brief references to legal education also in addition to technical education.

NATIONAL EDUCATION POLICY (NEP) 2020

The NEP 2020²¹ is a momentous initiative by the Government of India to transform the educational system. This policy intends to transform the learning environment, encourage critical thinking, and equip students for the exigencies of the twenty-first century. There exists a need to investigate the impact of the NEP 2020 on legal studies in India by examining the NEP's main provisions and reforms and the resulting implications for the legal academic sector.

The NEP 2020 postulates an all-encompassing and comprehensive approach to education which is essential. It emphasizes technology integration, critical thinking, and improvement of skills. In accordance with the policy, it is vital to recognize legal education as an integral part of the overall education system, with the objective of producing efficient and ethico-legal professionals. The NEP 2020 could be utilized to implement several significant legal education reforms in India. It envisions the establishment of universities and colleges that integrate law with disciplines such as social sciences, humanities, and technology. This multidisciplinary approach is anticipated to improve students' comprehension of legal issues in a broader social context.

In addition, the NEP prioritizes the growth of practical learning and clinical legal education programmes. It encourages law institutions to offer internships, moot court competitions, and legal aid clinics as practical training opportunities. This transition from a theoretical to a practical orientation will allow law students to acquire practical skills and insight into the legal profession.

Additionally, the policy emphasizes the significance of research and innovation in legal education. It encourages law schools to advance legal research, collaborating with other educational institutions, and research paper publication. These initiatives seek to improve the quality of legal education and advance the legal profession.

In addition, The NEP 2020 can be utilized to acknowledge the importance of professional ethics in the legal profession. To ensure ethical legal practice, it emphasizes the inculcation of

21. NATIONAL EDUCATION POLICY, 2020. https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf (last visited Aug. 06, 2023).

ethical values and principles in law students. The policy promotes the incorporation of ethics courses into the legal curriculum, emphasizing the significance of professional responsibility, integrity, and accountability.

In addition, the NEP should be modified to advocate for a robust disciplinary mechanism to address ethical violations in the legal profession. This mechanism would promote ethical conduct among legal practitioners by ensuring transparency and accountability.

In addition, the NEP 2020 highlights the significance of inclusivity and social justice in legal education. It requires the establishment of special provisions to guarantee access and representation for marginalized communities. The policy encourages universities and law schools to employ affirmative action policies, scholarships, and reservation quotas in order to advance diversity and equal opportunity in legal education. In addition, the NEP emphasizes the importance of promoting legal literacy among all segments of society. It encourages law schools to engage in outreach initiatives that provide legal assistance and promote awareness programmes that equip individuals with knowledge of the law.

India's legal education enters a new era as a result of the National Educational Policy 2020. The policy aims to produce skilled and socially relevant legal professionals by emphasizing inter-disciplinary education, clinical training, research, ethics, diversity, and social justice. The NEP 2020 seeks to fill the gap between academia and the legal profession by integrating legal education alongside the dynamic needs of society, thereby nurturing a substantially more efficient and equitable judicial system in India.

CONCLUSION AND SUGGESTIONS

Legal education is a pivotal pursuit aspired to reach the zenith of the legal profession. It needs to be socially relevant and legally conscious. The vision of Indian legal institutions should be to provide contemporary lawyers having respect towards the aspirations of legal historians. Legal education in India has passed various stages of transformation from the ancient Vedic period, Mughal era and subsequently British period. Post independent India has seen massive changes in legal education and legal profession by passing of the Advocates Act, 1961. Bar Council of India (BCI) was also set up as a regulatory body that provided various legal education rules by prescribing minimum standards. Legal Institutions across India like the traditional colleges, Central and State Universities, National Law Universities, Private and Deemed Universities have upgraded from the minimum standards prescribed by BCI. They are providing many law programmes in addition to conventional 3-year and 5-year law programmes. As society is dynamic so is law so should be legal educational institutions providing quality legal education. At the national level, to revamp the current educational system, National Education Policy, 2020 was adopted. This policy envisions new education reforms as to be globally competitive. Though

there is a minor reference towards reforms in legal education in NEP-2020, it is significant with a lot of scope in future. It provides for adopting an education system which encompasses best practices and technological interference. Constitutional values-based education is to have its best regard to socio-politico-economic justice. NEP-2020 also emphasizes legal principles, jurisprudential expositions, and evidence-based analysis. One major suggestion by NEP-2020 for legal education is aspiring for a bilingual education which is a major challenge. To achieve these aspirations, the legal educational institutions require proper infrastructure, quality legal academicians, and technical expertise. As it can be seen the data privacy, artificial intelligence, etc, any such new emerging areas are already being developed and merged into legal spheres. The legal institutions should equip themselves with all these necessary prerequisites while marching forward. Any education stream, more significantly legal education is living stream like a living constitution dependent on the societal dynamics, it will always be transforming and NEP-2020 is another stepping stone towards formalising such legal education. Though there are many minute developments that transformed legal education throughout the years, only few instances have been reported in this paper which are considered significant by the author.



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