

ISSN: 2229-3906

**JOURNAL OF
UNIVERSITY INSTITUTE OF LEGAL STUDIES**



**Peer Reviewed and Refereed
Volume XVII, Issue I
(January-June, 2023)**



**UNIVERSITY INSTITUTE OF LEGAL STUDIES
PANJAB UNIVERSITY, CHANDIGARH**

Journal of University Institute of Legal Studies

(Peer Reviewed and Refereed)

Journal of University Institute of Legal Studies is a bi-annual peer reviewed and refereed interdisciplinary journal which bears an ISSN 2229-3906, and is being published in print version since 2007 by University Institute of Legal Studies, Panjab University, Chandigarh, India.

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Analysis of the Biological Diversity (Amendment) Act, 2023 - A Legislative Comment

Anju Choudhary*
Shilpa Garg**

Abstract

The Biological Diversity Act, 2002 is the first exclusive legislation dealing with biological diversity in India. It was by way of this legislation that the provisions of Convention on Biological Diversity were enforced in India. With passage of time, it was observed that though the Act of 2002 is a progressive law, it still needed to be amended not just to remove some weaknesses but also to give effect to the Nagoya Protocol. As a result, the Biological Diversity (Amendment) Bill was introduced in Lok Sabha on 16th December, 2021 that received presidential assent on 3rd August, 2023. This paper aims at critically analysing the changes brought about by this amendment.

Keywords: *Biodiversity Conservation, Biological Diversity (Amendment) Act, 2023, Biological Diversity, Environment.*

1. Introduction

Biological Diversity refers to the variety of life forms that exist on the face of Earth. It includes all the plants, animals and micro-organisms along with their genetic resources. Biodiversity can be defined as a study of genetic, species as well as ecosystem variations among life forms. Each and every living organism has its own relevance and importance on this planet, which makes its conservation and sustainable use all the more necessary. Conservation of environment and protection of flora and fauna is a subject that has never evaded our international fraternity. United Nations has time and again introduced different programs, conventions and treaties to ensure conservation of environment. These include the International Plant Protection Convention, 1951; the Stockholm Declaration, 1972; Convention on International trade in Endangered Species, 1975; Ramsar Convention on Wetlands, 1975; the World Conservation Strategy, 1980; the Bonn Convention on Migratory Species of Wild Animals, 1983; the World Charter for nature, 1983; Basel Convention, 1992; etc.

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India being a country of huge ethnic diversity, is known for its harmonious coexistence with nature. India with about 2.4% of the world's landmass, is home to 7-8% of the world's Biological Diversity. India has 4 biodiversity hotspots, i.e., the Himalayas, the Indo-Burma, the Sundaland and the Western Ghats. Lately a decline in the biodiversity population has been observed even in India. As a result various legislative as well as policy frameworks have been put into place to ensure protection and conservation of environment. These include the Indian Forest Act, 1927; Wildlife (Protection) Act, 1972; Forest (Conservation) Act, 1980; Environment (Protection) Act, 1986; National Forest Policy, 1988; etc.¹

The first international instrument that dealt exclusively with Biological Diversity was adopted by the United Nation at the Earth Summit, 1992 that was held at Rio De Janeiro. It was called the Convention on Biological Diversity (hereinafter referred to as CBD). It is a legally binding international treaty with the goal of encouraging conservation and sustainable use of biodiversity. The convention came into force in 1993 and India became a party to it in 1994. In order to give effect to CBD, Indian legislature drafted and enacted the Biological Diversity Act, 2002 (BDA). The Act seeks to ensure fair and equitable sharing of benefits and also establishes a three-tier system to ensure its proper implementation. These include the National Biodiversity Authority (NBA), the State Biodiversity Board (SBB) and the Biodiversity Management Committees (BMCs). The NBA, SBB and BMCs work together to ensure that all the provisions of the Biological Diversity Act are duly followed and implemented.

2. Problems with the Implementation of Biological Diversity Act, 2002

The fact that there have been issues in proper implementation of the Act of 2002 is visible through various statistics. As per the Act, around 2.75 lakh Biodiversity Management Committees are to be formed. But as of July 2016, only 9700 Biodiversity Management Committees had been constituted. Similarly, each Biodiversity Management Committee is required to prepare a Peoples Biodiversity Register (PBR) to keep a record of the local biodiversity and associated traditional knowledge and by July 2016 only 1.388 of such registers had been prepared. It was only after the intervention of the National Green Tribunal that the numbers improved. By July 2022, 2.76 Lakhs Biodiversity Management Committees have been constituted and a total of 2.67 lakh Peoples Biodiversity Registers have been prepared. Between 2006-07 and 2021-22, NBA has approved 2982 applications. Of these, 426 were for access to biological

¹ S. Kaur *et al.* (eds.), *Biodiversity in India: Status, Issues and Challenges* 571 (Springer, 2022).

resources for research or commercial purpose, and 2344 were for obtaining Intellectual Property Rights.²

And as far as the question of further developments after the enactment of the Biological Diversity Act, 2002 are concerned, the Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulation, 2014 have been notified in order to give effect to the provisions of the Nagoya Protocol that was adopted under CBD. Therefore, it would be fair to conclude that the Biological Diversity Act, 2002 and the 2014 Guidelines together fulfil India's obligations under CBD and the Nagoya Protocol.

3. Biological Diversity (Amendment) Bill, 2021

Apart from the above discussed implementation related lacunas, various other concerns were also raised by people from the medical, industry and research sectors advocating the need to simplify, streamline and reduce compliances in order to provide a favourable environment for cross-border collaborative research. Also, a demand was being raised to remove the red-tapism attached with patent application process. The Ministry of Environment, Forest, and Climate Change is the nodal authority that is responsible for the implementation of the Biological Diversity Law. Upon receiving suggestions relating to amendments in the said Act, the Ministry constituted numerous committees between 2017 and 2021, and also consulted different ministries and departments before preparing the draft Biological Diversity (Amendment) Bill. The Ministry of Agriculture and Farmers Welfare, Ministry of AYUSH, Ministry of Tribal Affairs, Ministry of Science & Technology (Department of Biotechnology), Ministry of Rural Development, Ministry of Panchayati Raj, etc were called upon to give their opinions and recommendations as to the current situation and the required changes. The details relating to the reports given by different committees that were constituted by the Ministry and the recommendations made by various ministries and departments were all thoroughly considered while drafting this Bill of 2021. With the view to deal with all these queries and give effect to the recommendations being made on the law relating to biological diversity the Biological Diversity (Amendment) Bill, 2021 was introduced in the Lok Sabha on 16th December 2021. Thereafter, it was referred to the Joint Parliamentary Committee on 20th December, 2021 to prepare a report after detailed examination to be submitted before the legislature. The Bill of 2021 sought to-

- (i) Promote cultivation of wild medicinal plants and uplift the Indian system of medicine;

² Lok Sabha Secretariat, "Report of the Joint Committee on the Biological Diversity (Amendment) Bill, 2021" (August, 2022).

- (ii) Facilitate fast-tracking of processes for research, patent application and transfer of research results;
- (iii) Decriminalise offences; and
- (iv) Encourage foreign investment in the sector.³

The most important changes that this Bill sought to bring about in the Biological Diversity Act, 2002 were-

- (i) The term Indian Companies should include companies registered in India and controlled by Indians, irrespective of any foreign shareholding;⁴
- (ii) The list of entities exempted from payment of access and benefit sharing should include Indians accessing raw materials derived from cultivated medicinal plants;
- (iii) Instead of asking for approvals from NBA, Indian entities should only have to register themselves;⁵
- (iv) Agricultural waste should be exempted from the application of the Act except in cases of patenting;⁶
- (v) Decriminalisation of violations under the Act and prescribing only fine as a way of punishment.⁷

4. Biological Diversity (Amendment) Act, 2023

The committee that was formed under the Chairmanship of Dr. Sanjay Jaiswal took the oral evidence of the representatives of different Ministries and held discussions with the representatives of state Biodiversity Boards from some states. Suggestions were also invited from various stakeholders. The committee submitted its report before the Parliament on 2nd August, 2022. Based upon the recommendations of the committee, the Lok Sabha passed the Biological Diversity (Amendment) Act on 25th July 2023. It was passed by Rajya Sabha on 1st August 2023. On 3rd August 2023 it was signed by the President and became an Act.⁸

4.1 Key features of the Amendment Act of 2023

³ The Biological Diversity (Amendment) Bill, 2021 Statement of objects and reasons.

⁴ The Biological Diversity (Amendment) Bill, 2021, s. 5.

⁵ *Id.*, s. 8.

⁶ *Id.*, s. 29.

⁷ *Id.*, s. 38.

⁸ The Biological Diversity (Amendment) Act, 2023 (No. 10 of 2023).

The Amendment Act of 2023 has made numerous minor and major changes in the Biological Diversity Act, 2002. Some of the most significant changes have been discussed below-

- (i) *Expanded access*: The definition of the term “access” has been modified to include a wider array of activities.
- (ii) *Benefit claimers*- The definition of benefit- claimers has been clarified.
- (iii) *Addition of ‘derivatives’*- The addition of the term ‘derivatives’ in the definition of ‘biological resources’ widens the scope of by-products derived from a biodiversity resource.
- (iv) *Codified Traditional Knowledge*- A new definition has been added by the 2023 amendment Act. It ensures the protection of established practices. It basically means that traditional knowledge and practices that have been recorded in the form of books have been acknowledged and protected.⁹
- (v) *Indian- Controlled company*- by way of an amendment to section 3(2)(c)(ii), a company incorporated in India and controlled by an Indian will be considered as a domestic entity irrespective of its foreign shareholding.¹⁰
- (vi) *A boost to the Indian Medicine System*: Section 7 of the Act of 2002 that deals with “Prior intimation to State Biodiversity Board for accessing biological resource for certain purposes” has been amended to include “registered AYUSH practitioners” in the list of people exempted from its application. Also, “cultivated medicinal plants” have also been exempted from the application of section 7. The idea is to empower the local communities to be able to utilize resources and to encourage farmers to increase cultivation of medicinal plants.¹¹
- (vii) *Approval for Intellectual Property Rights*: Section 6 has been amended to change the requirement of the approval of NBA from “before applying for IPR” to “before the grant of IPR”. And as far as an Indian individual or company is concerned, they only need to register themselves with NBA before the grant of an IPR. But will require an approval from the NBA at the time of commercialization. This will not only simplify the patenting procedure but also ensure a speedy grant of patent to domestic entities.¹²

⁹ *Id.*, s. 3.

¹⁰ *Id.*, s. 5.

¹¹ *Id.*, s. 9.

¹² *Id.*, s. 8.

- (viii) *Exemptions:* The exemption available to goods Normally Traded as Commodities under section 40, has been extended to Agricultural waste, cultivated medicinal plants and derivatives of goods Normally Traded as Commodities.¹³
- (ix) *Decriminalisation of certain offence:* New sections 55, 55 A and 55 B have been substituted for the old section 55 as a result of which the amount of penalty has been increased manifold, for the punishment of imprisonment has been done away with.¹⁴

The object behind this is

- a. The amount of penalty has to be huge enough in order to have a deterrent impact on foreign companies; and
- b. Though the local community has knowledge and expertise, still investment is required. Therefore, the legislature has removed the provisions relating to imprisonment.¹⁵

4.2 Effect of Amendment Act, 2023

The above amendments have not only made the patenting procedure simpler but also made the process of obtaining patents for Indians easier and speedier. The roles and responsibilities of NBA and SBBs have now been defined more clearly. The amendment under section 55 relating to decriminalization has been introduced due to the lack of awareness amongst the masses about the provisions of the Biological Diversity Act, 2002. Apart from these, the changes made in section 7 and 40 that have exempted the use of cultivated medicinal plants and their by-products, codified traditional knowledge and registered AYUSH practitioners and expansion of list of Normally Traded as Commodities will not only benefit the local people but also promote ease of business for domestic companies.¹⁶

4.3 Key Issues and Concerns with the Amendment Act

Though the legislature with the help of the Joint Parliamentary Committee and various Ministries and departments of the Indian Government tried its level best to come up with a comprehensive Amendment Act that will resolve all the

¹³ *Id.*, s. 29.

¹⁴ *Id.*, s. 38.

¹⁵ *Supra note 2* at 116.

¹⁶ Kapil Kumar and Dr. Deepa K. Tiku, "Decoding the Biological Diversity (Amendment) Act, 2023", *BioSpectrum*, Oct. 6, 2023.

concerns relating to the Act of 2002, still there are some areas that raise a concern. These include¹⁷-

(i) *Preference of business over conservation*

It is being argued that instead of keeping with the spirit of CBD and focusing on conservation of biodiversity, the amendments seem to be giving more importance to commercialisation and interest of the industry.

(ii) *Deterrence effect lost due to decriminalization*

As a result of the amendments made to section 55 that have removed imprisonment as a means of punishment the enforcement procedure may be weakened and affect the efforts to stop illegal practises.

(iii) *Exemption from benefit sharing*

The exemption given to AYUSH practitioners from the obligation of benefit sharing is contrary to the very fundamental of CBD. This is likely to promote domestic companies that will evade their responsibility to share the profits earned with local communities that hold the traditional knowledge.

(iv) *Disparity between domestic and foreign companies*

The changes made in the meaning of Indian companies, has raised concerns relating to exploitation of biodiversity by companies that though registered in India, but have foreign shareholding as they don't need to seek permissions anymore and can by-pass the approval process.

(v) *Ignorance of conservation related issues*

Another argument against this amendment Act of 2023 has been the fact that instead of focusing upon conservation related aspects of biodiversity law and addressing them, the Act focuses more on facilitating commercial interests by reducing regulations and giving exemptions.

4.4 Recommendations and Suggestions

(i) *Priority to conservation over commercialization*

The Biological Diversity Act, 2002 is known for laying down rules relating to access and benefit sharing. The main object of conservation of biodiversity is somehow lost. Even the amendment Act of 2023 has failed to address the issues

¹⁷ Editorial, "Biological Diversity Amendment Bill passed in Lok Sabha", *The Hindu*, July 25, 2023.

relating to protection of biological diversity and rather focuses on facilitating access to AYUSH practitioners by allowing numerous relaxations to them. There is a need to shift the focus back from commercialization to conservation.

(ii) More power to the Biodiversity Management Committees (BMCs)

The BMCs being the local authorities under the Act of 2002 can play a vital role in providing a platform to the local communities to voice their concerns and have them addressed. But the authority of the BMC is limited to maintaining records. The only important task assigned to the BMC is to maintain a register of the traditional knowledge and bio-resources within its jurisdiction, that too without any power to protect those records from theft or piracy. Delegating some decision-making powers to the BMCs can go a long way in the effect implementation of the provisions of the Biodiversity laws.

(iii) Need for uniformity in rules for all

Since its very enactment has shown leniency towards Indian citizens utilizing the country's biodiversity resources. And now, the 2023 amendment Act has broadened the scope of this relaxation by extending it to the AYUSH practitioners. Such discrimination based upon the citizenship of a person is not just violative of the Indian Constitution that guarantees certain fundamental rights to all irrespective of their citizenship but also creates a legal assumption that Indian Citizens are not a threat to our biodiversity. In this context it is pertinent to be borne in mind that when it comes to commercialization, even Indian citizens and corporations can be exploitative.

(iv) Contribution at individual level

In order to ensure conservation of biodiversity, along with effective laws, efforts need to be put in at individual level. Awareness and educational programs can be run at grassroot level as it is the citizens themselves who can come together to curb the threats and contribute towards conservation of biological diversity.

5. Conclusion

It would be fair to conclude based upon the above discussion that the enactment of the Biological Diversity (Amendment) Act, 2023 has come a long way in facilitating ease of research and business, especially for domestic entities. The special status given to the domestic companies and Indian AYUSH practitioners gives them an edge over foreign entities trying to access Indian biodiversity resources. Though a number of major changes have been brought about by this

amendment, still there are some areas that need to be worked upon and require the attention of the legislature. These include-

- (i) A need to maintain a balance between sustainable conservation of India's biodiversity resources and the promotion of economic development;
- (ii) A need to engage in transparent and inclusive consultations with various stakeholders, including the indigenous people, conservationists, local communities, scientists and industry representatives;
- (iii) A need to ensure that all perspectives are considered at the time of making of a decision and ensuring that a balance is maintained between the laws relating to biological diversity and the principle of conservation of biological diversity.

Apart from this, it is being hoped that the amendments are going to yield the desired results and resolve the queries that were being raised by various stakeholders time and again. But considering that it has just been a few months therefore, the benefits and aim of this Amendment shall only be brought to light against the backdrop of time.¹⁸

¹⁸ Note on Biological Diversity (Amendment) Act, 2023, available at: <https://ceerapub.nls.ac.in/note-on-biological-diversity-amendment-act-2023/> (last visited on Nov. 12, 2023).

Crypto Conundrums: Analysing the Issues of Cryptocurrency Space in India

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Abstract

The widespread adoption of technology in each phase of our daily lives has led to its gradual encroachment. The regulatory agencies in different countries have been forced to fight constantly to keep a healthy equilibrium between successful new ideas and conventional programmes. In order to easily implement the infrastructure needed to facilitate the new advancements, regulators must be diligent in their approach and understand the market dynamics. This is because the industry is currently in an ongoing phase of development and growth. In 2009, when few people were not actually concerned about it, the idea of crypto currency became known to the world. In subsequent years, everyone was talking about this concept and it was used frequently. The crypto business began attracting a lot of investors as well as traders from around the globe. It also drew interest from the Indian market, where dealers were eager to put money into cryptocurrencies. But for several drug traffickers and extortionists, cryptocurrencies like bitcoin, Ethereum, and most recently Monero have emerged as the preferred form of payment in order to carry out their criminal activities. Criminals have got more opportunities to conceal as the market for cryptocurrencies rises due to the presumption of anonymity and confidentiality. Because of the transactions having the cross-border characteristics, the use of evasion technology to conceal users' identities, and inconsistent regulations, it has been difficult for law enforcement to recognize these offences related to cryptocurrency. Legality of crypto currency should be studied in order to find out the details that constitute illegal offences in the cryptocurrency transactions, thus leading to crypto currency scams. Here, the study made use of an orderly content review of news stories, legal decisions, academic journals, online search results, and commentaries that were pertinent to rules and reforms. The results contribute to our understanding of the present state of virtual currencies, how they are used in committing frauds, and how difficult it is to regulate them.

Keywords: *Crypto Currency, Scams, Money Laundering, Market.*

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1. Introduction

The “The Digital Age” has altered traditional business and industry practices. The Internet has given rise to a variety of business practices as well as new sectors that didn’t exist a few years back. Skype, Dropbox, and Spotify are the result of recent technological advancements. The given benefit of technological advancement is that it develops new and efficient methods for both individuals and companies to interact. Nowadays, in a world that has become more integrated, innovations spread faster and through many channels.¹ Characterized by new technologies fusing the physical, digital and biological worlds, the Fourth Industrial Revolution will impact all disciplines, economies and industries - and it will do so at an unprecedented rate. World Economic Forum data predicts that by 2025 we will see: commercial use of nanomaterials 200 times stronger than steel and a million times thinner than human hair; the first transplant of a 3D-printed liver; 10% of all cars on US roads being driverless; and much more besides.²

An important technological advancement is blockchain. Blockchain is recognized as a technology that powers digital assets like Bitcoin, Litecoin, Ethereum, and others. Usage of decentralized system in order to facilitate peer-to-peer transfer of payments safeguarded by cryptography which is based on public keys, cryptocurrencies are considered similar to digital money. Bitcoin was first introduced in early 2009 by a programmer or collection of programmers(s) known by the name Satoshi Nakamoto.³ It is a “peer-to-peer electronic cash system,” according to Satoshi. There is an absence of a centralized governing body and no existence of any engagement of servers, therefore, it is totally decentralized. The idea is very similar to peer-to-peer systems that are used for the sharing of content.⁴

In India, the legal framework surrounding cryptocurrencies is still evolving, leading to several lacunae and uncertainties. One of the primary issues is the lack of clear regulations governing the use and trading of cryptocurrencies. The

¹ Aqib Aslam, Johannes Eugster, et al, Globalization Helps Spread Knowledge and Technology Across Borders, IMF Blog, *available at*: <https://www.imf.org/en/Blogs/Articles/2018/04/09/globalization-helps-spread-knowledge-and-technology-across-borders> (last visited on January 01, 2024).

² Klaus Schwab, *The Fourth Industrial Revolution* (Penguin Books Limited, Switzerland, 2017).

³ Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System*, *available at*: www.bitcoin.org (last visited on Apr 06, 2023).

⁴ Blockchain and Cryptocurrency: The Emerging Regulatory Framework - Lexology, *available at*: <https://www.lexology.com/library/detail.aspx?g=85676d29-5a50-4437-9405-2dd295a69dbd> (last visited on Apr 06, 2023).

Reserve Bank of India (RBI) had imposed a banking ban on crypto transactions in 2018, which was later overturned by the Supreme Court in 2020. Since then, there have been discussions about introducing a new regulatory framework, but concrete laws are yet to be established. This ambiguity creates challenges for businesses and investors in understanding the legal implications of dealing with cryptocurrencies.

Associated with this legal uncertainty are various risks for individuals and businesses involved in the crypto space in India. One significant risk is the potential for regulatory crackdowns or sudden changes in regulations, which can impact the value and legality of cryptocurrencies. Additionally, the lack of regulatory oversight makes it easier for fraudulent schemes and scams to proliferate, posing a risk to unsuspecting investors. Furthermore, the absence of consumer protection measures leaves investors vulnerable to theft, hacking, and other cybersecurity risks associated with crypto transactions. These risks highlight the pressing need for clear and comprehensive regulations to protect the interests of all stakeholders involved in the crypto ecosystem in India.

In a network that is decentralized, involves utilization of blockchain technology which means that a publicly accessible record which will track every single transaction that ever occurred within the system and is accessible by everyone. In a consequence of this, amount of each & every account is visible to every user over the internet. Each deal comprises a record that holds the sender's and recipient's keystrokes (wallet addresses) in addition to the number of coins exchanged. Additionally, personal password could be utilized by the senders so as to certify the exchange. This is all merely elementary encryption. Prior to anything is permitted to be disseminated in the online environment, it needs to be initially certified.⁵ Money in virtual form is suitable for a wide range of objectives, such as shopping, making investments, the mining sector, executing business operations, and so on.

Wide range of illegal activities took place because of the anonymity and decentralized character of cryptocurrencies. Authorities from every corner of the world are concerned regarding the cryptocurrency's usage as it is getting used for tax evasion, money laundering, and funding for terrorist activities. In controversial contexts, cryptocurrency is additionally utilized in digital black marketplaces like Silk Road. Certain governments possess explicitly outlawed virtual form of currencies or they're on brink of attempting to do so. Meanwhile,

⁵ Bitcoin Foundation Hires Firm to Lobby Congress on Cryptocurrencies, *available at*: <https://www.coindesk.com/markets/2014/07/09/bitcoin-foundation-hires-firm-to-lobby-congress-on-cryptocurrencies/> (last visited on Apr 06, 2023).

some countries have made initiatives towards regulating these kinds of currencies by deeming them as official currency. Because the United States possesses hundreds of ATMs for money that is digital plus greatest number of individuals who carries out trading in virtual currency worldwide, employing these currencies remains currently illegal; nevertheless, local and federal laws might vary significantly.⁶

1.1 Meaning of Crypto Currency

Any kind of money having the existence in virtual or electronic form and makes use of encryption in order to secure activities is commonly referred as cryptocurrency, or crypto. For monitoring events as well as generate fresh denominations, these forms of currencies adopt a decentralized structure as opposed to an organised entity.⁷

This is a platform for online payments which is independent of institutions for confirming operations. Peer-to-peer communication enables everyone, anytime to exchange funds. Cryptocurrency payments aren't available just genuine real currency which might be transferred or swapped; alternatively, it survives in electronic contributions towards an internet-based registry containing information about every operation. A centralised database records every exchange of money that is digital comprising funds being transferred. Cryptocurrencies are kept within electronic vaults.⁸

Because purchases are confirmed via encoding, bitcoin has gained moniker. Thus, currency archives, data transfer, plus publishing to open databases all require complicated coding. The purpose of encrypting is to provide safety and protection.⁹

It is possible to mine or generate cryptocurrencies, buy them on exchanges, or use them as payment for blockchain work. Not all online stores let customers use digital currencies to make transactions.¹⁰

2. History of Crypto Currency

⁶ Pedro Hernandez, Microsoft: Bitcoin, *available at*: <http://www.eweek.com/cloud/microsoft-bitcoin-accepted-here.html> (last visited on Apr 06, 2023).

⁷ What is cryptocurrency and how does it work?, *available at*: <https://www.kaspersky.com/resource-center/definitions/what-is-cryptocurrency> (last visited on Apr 07, 2023).

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Cryptocurrency Explained With Pros and Cons for Investment, *available at*: <https://www.investopedia.com/terms/c/cryptocurrency.asp> (last visited on Apr 07, 2023).

Despite numerous fluctuations in its growth, the acceptance of virtual currency i.e., crypto currency has steadily increased over the past ten years. Here, the evolution and history of crypto currency could be divided into two phases.

- i. The Era before Bitcoin
- ii. The Era after Bitcoin

2.1 The Era before Bitcoin

The history of cryptocurrencies predates the creation of bitcoin by up to three decades, to the early 1980s. In 1982, American computer scientist David Chaum described an innovative type of cryptography that permitted peer-to-peer transactions without the use of a third party in his paper titled “Blind signature for untraceable payments.” Early in the 1990s, David Chaum put a lot of efforts in his goal to make it a reality by developing a cryptocurrency called “Digicash.” With its headquarters in Amsterdam, Digicash had a structure resembling the one used by bitcoin. This initiative was thought to be the one that would alter the course of fiat currency. As they shared David’s philosophy, a variety of employees and venture money showed interest. David’s product never truly took off since digicash went bankrupt ten years after the invention. In 1997, Adam Back introduced the concept of “Hashcash,” a cryptocurrency which is comparable to bitcoin.¹¹

The world witnessed the rise of two cryptocurrency philosophies as the 20th century was going to end. First and foremost, Wei Dai had a very clear vision for “B money” in 1998, which gave rise to the blockchain technological platform that underpins bitcoin today. Cryptocurrency is created using the proof of work algorithm by resolving mathematical problems. Nick Szabo presented the second concept, which he called “Bitgold.” Nick proposed direct financial transfers between individuals without the use of a middleman. By resolving the evidence of work, a programmer can acquire bits. The final bit of the sequence is then joined and utilized to generate a fresh transaction. Despite having technology that was close to the nature of bitcoin today, neither of the proposals ever saw widespread adoption.¹²

2.2 The Era after Bitcoin

The financial crisis that the entire world was experiencing in 2008 led to the registration of the infrastructure-collapsing domain name bitcoin.org. Then, in the

¹¹ Bitcoin History: Timeline, Origins and Founder - TheStreet, *available at:* <https://www.thestreet.com/investing/bitcoin/bitcoin-history-14686578> (last visited on Apr 7, 2023).

¹² Kabilan P., “Bitcoin and Its Legality in India” 3(3) *International Journal of Law Management and Humanities* 1094 (2020).

exact same year, Satoshi Nakamoto, a mysterious individual or group of individuals, published a paper on white paper bitcoin in a mailing list for cryptography. The paper provided a thorough description of the operation of bitcoin (a cryptocurrency). It was a significant advancement after the predecessors' failure to produce a fully functional coin.¹³

Nakamoto mined the genesis block, the first bitcoin ever created, at the start of 2009. By January 9, the Bitcoin software was distributed on a website that was accessible to the general public. Hal Finney, a programmer and expert in cryptography, received 10 bitcoins from Nakamoto in the first ever bitcoin exchange. In October, New Liberty Standards issued a bitcoin exchange rate that put the value of 1 US dollar at 1,309.03 BTC. The current value of BTC is 88,420,100 US dollars. Nakamoto published the further refined edition before the year was out.¹⁴

3. Types of Crypto Currency

3.1 Bitcoin

Without a doubt, Bitcoin dominates the crypto market. It also serves as the original cryptocurrency. An individual (or maybe a group) using the alias Satoshi Nakamoto invented Bitcoin in 2009. As of June 2022, there were barely more than 19 million active Bitcoin tokens, compared to a maximum of 21 million.¹⁵ Neither the Indian government nor the banking system was having any intention to have any influence over bitcoin at all. It is instead built on the blockchain system, which is a decentralized open database that records every activity of Bitcoin digitally. Peer-to-peer (P2P) verification, the core mechanism of encryption and agreement that forms the basis of the majority of other cryptocurrencies, was pioneered by Bitcoin.

3.2 Ethereum (ETH)

In 2015, ETH was introduced. Ethereum constitutes as a distributed open-source blockchain that supports smart contracts. After Bitcoin, Ethereum is the second-largest cryptocurrency and enjoys an extremely powerful and supreme status at the marketplace. Ethereum runs on its own network and supports smart contracts, which are automatically carried out when certain

¹³ *Ibid.*

¹⁴ A Selection of Key Events in Bitcoin's History | by Cos | Coinmonks | Medium, *available at:* <https://medium.com/coinmonks/a-selection-of-key-events-in-bitcoins-history-65a982c76ebf> (last visited on Apr 07, 2023).

¹⁵ Thanapackiam, Nk. Chitra Nk, *et al.*, The Factors Affecting Implementing Crypto Currencies In India, *Journal of Positive School Psychology* (2022).

circumstances are satisfied. The coin that leverages the Ethereum blockchain is called ether.¹⁶

Ethereum transitioned from an evidence of work methodology to an evidence of stake technique in 2022, which is regarded as to be among the largest changes in the cryptocurrency market. It is notable since it represented a large decrease in the energy footprint. As of January, 2023, it is now fluctuating at values around \$1,500.¹⁷

3.3 Tether

It is among the earliest and most widely recognized stable coins. These are the type of cryptocurrencies which attempt to tether their price to a currency or another extrinsic point of reference in order to lessen volatility. The cost of Tether is directly correlated with the value of the US dollar. Instead of truly converting to fiat money, the system enables users to transfer funds more quickly and easily from different digital currencies back to dollars.¹⁸ This category of virtual currency, was debuted around 2014, qualifies as “a blockchain-enabled platform in order to facilitate the use of fiat currency digitally”.¹⁹

3.4 Cardona

Smart contracts are something which are supported by the blockchain platform Cardano. Cardano is distinguished by its focus on academic research, high throughput (TPS), and Ouroboros, which is efficient in terms of energy agreement process.²⁰ The Cardano blockchain’s native coin is called ADA. Cardano, branded a “third-generation” digital currency, divides the network’s blockchain into two levels to quicken up operations and introduces native tokens to give ADA holders a better experience.²¹

4. Journey of Crypto Currency Laws and Notifications so far in India

4.1 RBI Issues its First Circular on Crypto Currency (2013)

¹⁶ Popular Types Of Cryptocurrency & How Do They Work – Forbes Advisor India, *available at:* <https://www.forbes.com/advisor/in/investing/cryptocurrency/types-of-cryptocurrency/> (last visited on Apr 08, 2023).

¹⁷ *Ibid.*

¹⁸ 10 Important Cryptocurrencies Other Than Bitcoin, *available at:* <https://www.investopedia.com/tech/most-important-cryptocurrencies-other-than-bitcoin/> (last visited Apr 08, 2023).

¹⁹ *Ibid.*

²⁰ *Supra* note 15.

²¹ *Supra* note 18.

In 2013,²² the RBI issued a circular advising people not to utilize virtual currencies. The bank has cautioned owners and dealers of virtual currencies about the risks they are incurring in terms of money, operations, the law, client protection, and security. According to a statement from the Central Bank, it has been paying close attention to changes in the realm of virtual currencies like Bitcoin, Litecoin, and other Altcoins. However, the demonetization that took place of Rs. 500 & Rs. 1000, currency notes on November 8, 2016, and the government's attention to online payment options, are what really spurred bitcoin adoption and market growth. Due to this, the RBI was compelled to reiterate its concerns from the prior press release in a second press release, on February 1, 2017.²³

4.2 RBI Issues Second Circular on Crypto Currency (2017)

Arun Jaitley, who was the finance minister of the country at the time, announced on March 1, 2017,²⁴ the establishment of an interdisciplinary committee in order to investigate the legality of virtual currencies and stated that, Dinesh Sharma, Special Secretary of Department of Economic Affairs (DEA), will serve as the committee's head. Although it is thought that the group has filed its findings, the administration hasn't made its suggestions available to the public.

Two PILs were brought forth in the Supreme Court of India, one by Siddharth Dalmia, a law student at JGLS, and the other by Dwaipayyan Bhowmick, a Supreme Court advocate in months of October and November, 2017. The former PIL questioned the legality of Bitcoin and other cryptocurrencies, while the latter sought to establish a regulatory framework for them. Neither the Indian government nor the banking system was having any intention to have any influence over bitcoin at all. It is instead built on the blockchain system, which is a decentralized open database that records every activity of Bitcoin digitally. Peer-to-peer (P2P) verification, the core mechanism of encryption and agreement that forms the basis of the majority of other cryptocurrencies, was pioneered by Bitcoin.

4.3 RBI'S Banking on Crypto (2018)

²² Reserve Bank of India - Press Releases, *available at:* https://www.rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=30247 (last visited on Apr 09, 2023).

²³ Reserve Bank of India - Press Releases, *available at:* https://www.rbi.org.in/scripts/FS_PressRelease.aspx?prid=39435 (last visited on Apr 09, 2023).

²⁴ Press Information Bureau, *available at:* <https://pib.gov.in/PressReleasePage.aspx?PRID=1514568> (last visited on Apr 09, 2023).

The RBI published a circular on April 6th, 2018, titled “*Prohibition on Dealing with Virtual Currencies.*” The VC Circular limited the sale and purchase of virtual currency through authorized financial and transaction channels. Simply put, the circular forbade businesses under RBI regulation from transacting in virtual currencies;²⁵

“2. *In view of the associated risks, it has been decided that, with immediate effect, entities regulated by the Reserve Bank shall not deal in VCs or provide services for facilitating any person or entity in dealing with or settling VCs. Such services include maintaining accounts, registering, trading, settling, clearing, giving loans against virtual tokens, accepting them as collateral, opening accounts of exchanges dealing with them and transfer / receipt of money in accounts relating to purchase/ sale of VCs.*”²⁶

Regulated businesses offering services involving virtual currencies were allowed three months to terminate their contracts. The VC Circular forbids organizations from generating digital currencies in return for fiat money, but it does not bar them from doing so for other virtual currencies.²⁷ The circular effectively cut linkages between the Indian formal sector and the market for virtual currencies.²⁸ The Supreme Court of India only recently invalidated the VC circular. India’s absence of robust regulation on cryptocurrency transactions exposes investors to significant dangers. One initial digital currency trading app to be introduced in India, Pluto Exchange, was discovered to have scammed 43 investors out of more than \$2,72,000 in September 2020.²⁹

4.4 The Supreme Court Lifts the Bitcoin Banking Ban Restriction (2020)

The Indian Supreme Court ruled against the RBI’s mandate for cryptocurrencies in March 2020. Following this ruling, banks and other financial organisations were forbidden from giving anyone who transferred any cryptocurrency holdings access to banking services. Internet Mobile Association of India (IAMAI)³⁰

²⁵ Prarthna Nachappa, *Crypto-Regulation in India: Necessary Evil?*, 2(4) *LexForti Legal Journal* 115 (2021).

²⁶ Reserve Bank of India - Notifications, *available at*: <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11243&Mode=0> (last visited on Apr 09, 2023).

²⁷ Ian Cherise Abela Grech Gauci, *Virtual Currency Regulation Review*, *Law Review* 433 (2020).

²⁸ *Decoding The Supreme Court’s Cryptocurrency Judgment*, *available at*: <https://www.bqprime.com/opinion/decoding-the-supreme-courts-cryptocurrency-judgment> (last visited on Apr 09, 2023).

²⁹ *Supra* note 25.

³⁰ *Internet and Mobile Association of India v. Reserve Bank of India*, MANU/SC/0264/2020.

appealed the RBI's notification of the ban to the Indian Supreme Court. The petitioner argued that RBI lacked the authority to forbid the exchange of virtual currency and that the ban was placed on a faulty comprehension of the role of the central bank. The petitioner further argued that the ban contravenes article 19(1)(g) of Constitution,³¹ which guarantees the freedom to engage in any profession or occupation. Additionally, the notice did not serve to safeguard the well-being of the general public at large.

The reserve bank's ban was removed on March 4, 2020, by a three-judge panel made up of Justices Rohinton Nariman, Aniruddha Bose, and V. Ramasubramanian. The circular was being investigated by the apex court to see whether or not the Bill violated article 19 of the constitution of India. The court examined the various institutions' definitions of cryptocurrencies. Additionally, it examined virtual currency's four primary purposes: (a) mode of exchange; (b) unit of record; (c) store of value; and (d) norm for delayed payment. It was decided that digital currency cannot serve as a form of normal postponed payment, failing to fulfil all four requirements and excluding it from being regarded as legal tender.³² In addition, the court declared that the RBI has the authority to regulate cryptocurrencies as a form of digital payment. They did admit, however, that the circular issued by the RBI effectively eliminated the idea of virtual currency exchange for the nation's industrial sector, violating Constitution of India's article 19(1)(g). Later, the court looked into how virtual currency exchanges traded and operated. It requested the RBI to provide evidence of the actual injury incurred to date, but the RBI was unable to provide any evidence indicating any kind of harm, either direct or indirect, experienced by any institutions it regulates. As a result, it highlighted how crucial it is to identify the true loss sustained while emphatically stating that there was none.³³

The court further, contested that the RBI's decision to outlaw virtual money fell within the broad authority granted to it by the Payment and Settlement System Act of 2007 and the Bank Regulation Act of 1934. The judgement named, *State of Maharashtra v. Indian Hotel and Restaurant Association*,³⁴ was referred by the court in this instance of *Internet and Mobile Association of India v. Reserve Bank of India*³⁵. The tribunal in this instance believed that the petitioner must have suffered at least some harm before the judgement could be

³¹ Constitution of India, 1950.

³² Keshav Batheja & Param Goel, Cryptocurrency in India, 1 *Jus Corpus Law Journal* 98 (2021).

³³ *Ibid.*

³⁴ MANU/SC/0045/2019.

³⁵ *Supra* note 30.

rendered in their favour. The court ruled that despite the RBI's wide power and major contribution towards steady growth of the Indian economy, that remains reluctant to show any harm to the enterprises it oversees. Therefore, the country's apex bank's directives to banks not to conduct contact alongside or supply facilities to entities that promote the illicit use of digital currencies are illegitimate and illegal.³⁶

4.5 Amendment of Crypto Bill (2021)

Within the guidance of the secretary of economic affairs, a panel of ministers was established to examine the concerns surrounding virtual currencies and so as to propose concrete steps to be taken in the directions recommended in its report. However, all state-issued private cryptocurrencies will be illegal in India. The risks involved and the limitations of the regulations at the time made it difficult to solve the problems with cryptocurrencies. To address this, the administration intended to draught a bill.³⁷ The finance minister said, "We have to ensure that there is a door for every type of experiments which need to take place in the crypto world," on March, 5 during an interview with CNBC TV 18.

With the goal to examine the topic of digital assets, the parliamentary Standing Committee on Finance, which is presided over by BJP member Jayant Sinha, visited alongside representatives of exchanges for cryptocurrency, the distributed ledger system and digital asset council, as well as other parties. In their opinion, cryptocurrencies should be controlled rather than outlawed in 2022.³⁸

4.6 Budget 2022–2023, Tax on Cryptocurrencies (2022)

In India, significant changes have taken place this year. The Union Budget 2022–23, which was presented on February 1st, included provisions for Tax deducted at source (TDS) on digital assets or cryptocurrencies starting on July 1st, as well as cess and surcharges that are applied to such transactions in a similar way to how it applies to profits from betting on horses or other hypothetical transactions.³⁹

4.7 Central Government's Notification (2023)

According to the most recent decision made by the Indian government concerning digital assets, businesses dealing in cryptocurrencies or virtual assets

³⁶ Internet And Mobile Association of India v. Reserve Bank Of India, *available at*: <https://www.legalserviceindia.com/legal/article-3912-internet-and-mobile-association-of-india-v-reserve-bank-of-india.html> (last visited on Apr 10, 2023).

³⁷ Vrinda Dhoot, Cryptocurrency as a Revolution, 30 *Supremo Amicus* 531 (2022).

³⁸ *Ibid.*

³⁹ *Ibid.*

will now be covered by the PMLA.⁴⁰ According to the gazette notification published by the Union Finance Ministry, on March 7, virtual digital assets (VDAs) will now be regarded as “reporting entities” under the PMLA. Additionally, it is required of the exchange of crypto currency i.e., virtual or digital currency and facilitators that deal with VDAs to undertake KYC on their users and clients. Additionally, cryptocurrency exchanges are obligated to notify the Financial Intelligence Unit of India (FIU-IND) of any questionable transactions. According to the notification, the Act will also apply to the management or storage of VDAs along with the tools that provide control over VDAs.⁴¹

The aforementioned action, which was taken to crack down on the illegal use of digital assets, is an initial step in order to legalize this market. It should be emphasized that the Indian government is yet to have formalized laws and legislations affecting cryptocurrencies, despite the fact that the RBI thinks they are akin to Ponzi schemes.⁴² In reality, the government was in conversation with other G20 members about the need to develop a common operating procedure for regulating crypto assets, according to the country’s finance minister, Nirmala Sitharaman, during her speech.⁴³

5. Status of Crypto Currency in Other Countries

5.1 United States

While the United States is regarded as one of the world leaders in regulation of crypto, the federal character of the government leads to uneven legislation. Various states regulate the operation of cryptocurrencies with varied degrees of rigidity. Wyoming and Arizona have fairly advanced cryptocurrency laws, whereas Massachusetts does not, they have yet to be any law passed.⁴⁴ In 2015,

⁴⁰ Prevention of Money Laundering Act, 2002.

⁴¹ Crypto regulation in India: Govt. issues notice to add virtual assets under money laundering act - India Today, *available at*: <https://www.indiatoday.in/cryptocurrency/story/crypto-regulation-in-india-govt-issues-notice-to-add-virtual-assets-under-money-laundering-act-2344279-2023-03-09> (last visited on Apr 10, 2023).

⁴² Explainer: Why crypto has come under India’s anti-money laundering law - Times of India, *available at*: <https://timesofindia.indiatimes.com/business/cryptocurrency/bitcoin/explainer-why-crypto-has-come-under-indias-anti-money-laundering-law/articleshow/98515196.cms> (last visited on Apr 10, 2023).

⁴³ *Supra* note 41.

⁴⁴ More US States May Roll Out Cryptocurrency Regulations, <https://www.investopedia.com/news/majority-us-states-are-still-acknowledge-cryptocurrencies/> (last visited Apr 13, 2023).

the Commodities Future Trading Commission deemed Bitcoin to be a type of commodity.⁴⁵

The Treasury of Financial Crimes Enforcement Network (FINCEN) of the USA's Government's Department of the Treasury was responsible for developing Standards as well as suggestions for virtual currency. According to the Bank Secrecy Act, Cryptocurrencies and other digital currencies are not just paper money or legal cash, nonetheless Money Services Businesses (MSB). By this Act, it is required by the investors to retain track of documents, specifics, and folders of their firm. Bitcoin which is a type of a crypto currency is taxed as asset by the Internal Revenue Service of US.⁴⁶

5.2 China

China is well-known for housing many of the globe's greatest bitcoin mining. China prohibited trading of the of digital currencies i.e., crypto currency on Chinese exchanges thus rendered ICO financing unlawful in 2017, curtailing market demand and generating a significant general fall in cryptocurrency markets. Rather, numerous citizens of China led to international exchanges for carrying out transactions in cryptocurrencies.

The People's Bank of China (PBC) is now rumouring that China may prohibit entire utilization of both the domestic as well as international cryptocurrency trading platforms and ICO websites. It is unknown, the extent of impact additional Chinese cryptocurrency prohibitions would have, but they might potentially feed market gloom. The People's Republic of China considered as country with strictest cryptocurrency regulator among the big economies.⁴⁷ However, it has tightened down on mining operations and will legally outlaw the trading of crypto currency in the month of June 2021.⁴⁸

5.3 Japan

Japan's currency, Yen nowadays accounts for more than 36% of Bitcoin trade volume, more than currency of any other nations worldwide. USD comes in

⁴⁵ Is Bitcoin Legal in the USA? (2021 Update) - Decrypt, <https://decrypt.co/43756/is-bitcoin-legal-in-the-usa> (last visited Apr 13, 2023).

⁴⁶ IRS Provides Further Guidance on the Taxation of Virtual Currency - The TurboTax Blog, <https://blog.turbotax.intuit.com/tax-news/irs-provides-further-guidance-on-the-taxation-of-virtual-currency-45272/> (last visited Apr 13, 2023).

⁴⁷ Shailak Jani, *The Growth of Cryptocurrency in India: Its Challenges & Potential Impacts on Legislation Digital Fiat Currency: The integration of Distributed Ledger Technology (DLT) and Fiat Currencies View project* (2018), <https://www.researchgate.net/publication/324770908>.

⁴⁸ *Supra* note 37.

second with approximately 31%. The high demand for cryptocurrencies in Japan is backed by a tightly monitored legal structure that supports the business in a manner which increases confidence within traders and expertise in cryptocurrency trading as a security. The Payment Services Act of Japan established a preliminary national registration framework for exchanges that traded bitcoins. Hackers stole \$534 million in NEM from Coincheck, among Japan's 36 cryptocurrency exchanges, in January 2018. Coincheck was applying for a formal license from Japan's Financial Services Agency (FSA).⁴⁹ The organization will also consult with the legislature on cryptocurrency policy and legislation, as well as develop policies on illegal trading, promotion, and privacy. Representatives of regulating authority who fail to comply with its guidelines will face fines.⁵⁰

5.4 United Kingdom (U.K.)

Companies in the United Kingdom which indulge in or want to get indulged in operations associated with trade in digital currency need to be listed with the Financial Conduct Authority. Organizations additionally have to adhere to the country's anti-money laundering ("AML") and counter-terrorism financing ("CFT") regulations.⁵¹ In *AA v. Persons Unknown & Ors.*,⁵² *Re Bitcoin*, the English and Welsh High Court acknowledged crypto-assets such as Bitcoin as property.

5.5 Bangladesh

On December 24, 2017, the Banking Authority of Bangladesh issued a statement informing residents that digital currencies are banned in Bangladesh. The notice was issued due to believe that transacting in virtual currency could violate the legislative restrictions of the Money Laundering and Terrorism Act of Bangladesh.⁵³

Digital foreign exchange transactions aren't authorized or supervised by the central government or any crime prevention statutes, such as Bangladesh's Foreign Exchange Regulation Act of 1947, the Anti-Terrorism Act of 2009, or the Money Laundering Prevention Act of 2012. Furthermore, because they lack a regulated means of payment, any unidentified client or whoever refrains from disclosing his/her identify may breach the rules of the

⁴⁹ *Supra* note 49.

⁵⁰ *Id.*

⁵¹ *Supra* note 25.

⁵² [2019] EWHC 3556 (Comm).

⁵³ Sayanti Dey, *Legalization of Cryptocurrency*, 18 *Supremo Amicus* 825 (2020).

aforementioned Acts.⁵⁴ The Bangladesh Telecommunication Regulatory Commission has previously issued four directives prohibiting the use of digital currencies.⁵⁵

6. Forms/ Types of Crypto Currency Scams

6.1 Phishing Scams

Crypto phishing attacks frequently focus on details regarding digital currency wallets. Hackers attack private keys for crypto wallets, which are essential for obtaining funds from the account. Their operation is comparable to various other fraudulent activities. An email to entice readers to visit a specially designed website where they must submit private key information has been sent by them. After obtaining this information, the hackers take the cryptocurrency stored in those wallets.⁵⁶

6.2 Investment Scams

The ancient precept “if it seems too good to be true, it probably is” persists, and it is worth remembering for anyone considering investing in general. This is particularly true for cryptocurrency. There are numerous people who are looking for profit who gravitate to deceptive websites that provide so-called assured profits or other schemes that need traders to commit big amount of money in order to receive even more higher guaranteed profits.⁵⁷

6.3 Ponzi Schemes

The Ponzi scheme is considered as the venture that is deceitful strategy. It involves using contributions made by prospective buyers as leverage to pay back past donors. Scam operators frequently promise to execute deals employing the resources that they receive with the goal to generate tremendous earnings without minimal risk or risk not at all. However, the scammers do not intend to utilize the funds in the actual term. They are planning on paying off the first investors in order to make the scam appear credible. As a result, a Ponzi scheme demands an ongoing source of money in order to function. When the planners have no way to

⁵⁴ *Ibid.*

⁵⁵ Regulation of cryptocurrency around the world : Albania, Algeria, Angola, Anguilla, Antigua and Barbuda, Argentina, Australia, Azerbaijan, Bahamas, Bahrain, Bangladesh, Belarus, Belgium, LIBR. CONGR. WASHINGTON, D.C. 20540 USA, *available at*: <https://www.loc.gov/item/2021687419/> (last visited on Apr 13, 2023).

⁵⁶ How To Avoid Cryptocurrency Scams, *available at*: <https://www.kaspersky.com/resource-center/definitions/cryptocurrency-scams> (last visited on Apr 13, 2023).

⁵⁷ Cryptocurrency Scams: How to Spot Them, Report Them, and Avoid Them, *available at*: <https://www.investopedia.com/articles/forex/042315/beware-these-five-bitcoin-scams.asp> (last visited Apr 13, 2023).

attract fresh participants or whenever a significant portion of the current capitalists opt to pull their money, the scheme fails.⁵⁸

6.4 Red Pull Scams

Rug pull scams include investing fraudsters “pumping up” a fresh endeavour, nonfungible token (NFT), or coin in order to obtain money. The money gets whisked by scammers, who then vanish. Clients are left holding an arrangement that is worthless since the computer programmes that facilitates such transactions prevents them from moving cryptocurrency once they have purchased it.⁵⁹

There was a scam named as Squid coin scam, which was derived from the famous Netflix comedy Squid Game, can be considered as the popular variation of this type of scam. Participants need to engage in in order to acquire a digital currency: individuals would purchase coins for games they played and then exchange them for other digital currencies. The Squid token’s value increased from one cent to around \$90 per token.⁶⁰ Trading ultimately gets ceased, and the funds vanished. As users requested but unable to trade in the tokens they held, the token value fell to zero. These backers yield the scammers with about \$3 million. This kind of scandal is frequent with non-traditional assets (NFTs).⁶¹

6.5 Cloud Mining Scams

To assure for long-time earnings for a digital currency mining possibility, initial investment is necessary. Despite the fact that there are numerous reputable cloud mining options, prospective investors must undertake due research.⁶²

These scams are defined as firms who lease out mine equipment in return for a predetermined price and a percentage of the income that you allegedly generate. In concept, this allows users to mine remotely with no having to purchase costly mining equipment. Most cloud mining organizations, on the other hand, are frauds or, if successful, unproductive, resulting in you loosing funds or receiving less than what was promised.⁶³

⁵⁸ Ponzi Scheme - Overview, How It Works, How to Protect Yourself, *available at:* <https://corporatefinanceinstitute.com/resources/wealth-management/ponzi-scheme/> (last visited Apr 13, 2023).

⁵⁹ 9 common cryptocurrency scams in 2023, *available at:* <https://www.techtarget.com/whatis/feature/Common-cryptocurrency-scams> (last visited on Apr 13, 2023).

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Top Crypto Scams: How to Avoid Becoming a Victim - IDStrong, *available at:* <https://www.idstrong.com/sentinel/cryptomining-scams/> (last visited on Apr 13, 2023).

⁶³ *Supra* note 62.

7. Discussion

India has taken a proactive stance towards addressing this issue. India has recognized the potential risks associated with cryptocurrencies, particularly with regards to their use in illegal activities such as money laundering and financing of terrorism, and has taken measures to regulate and monitor the cryptocurrency market. India considers itself as an innovation hub for a digital asset ecosystem. It promotes FinTech startups and has established a conducive environment for digital adoption of financial services.⁶⁴ While the Government has been accommodative and welcoming to the application of blockchain and Distributed Ledger Technology (DLT) for governance, it has exercised caution towards virtual assets like cryptocurrencies.

In 2018, the Central Bank, the RBI prohibited its financial services regulated entities from facilitating sale and purchase of cryptocurrencies. This made crypto exchanges obsolete within India for Rupee based transactions. In 2020, the Supreme Court of India ruled that the prohibition was unconstitutional. The RBI has issued a circular in 2018, that prohibits banks from dealing with entities or individuals involved in cryptocurrency trading. In addition, the Indian government introduced a ban on cryptocurrency trading in 2019, which was later overturned by the Supreme Court in 2020. However, this ban was lifted with certain conditions, and the government has now proposed a regulatory framework for cryptocurrencies through the commencement of the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021. The proposed bill is expected to bring clarity and transparency to the cryptocurrency market and address the concerns of investors and regulators alike.

The country's Financial Intelligence Unit (FIU) has made it mandatory for cryptocurrency exchanges and traders to comply with anti-money laundering and know your customer regulations. This move comes after the government's decision to regulate cryptocurrencies & the introduction of the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021. The FIU has also made it mandatory for cryptocurrency exchanges and traders to report any suspicious transactions to the authorities. Failure to comply with these regulations can result in penalties, including imprisonment. The regulation of cryptocurrencies aims to address these concerns and create a secure and regulated cryptocurrency ecosystem in the country. These steps taken by the Indian government is basically to regulate cryptocurrencies and combat their use in illegal activities.

⁶⁴ PWC, "Where is crypto regulation heading?" 46 (2023); Available at: <https://www.pwc.com/gx/en/new-ventures/cryptocurrency-assets/pwc-global-crypto-regulation-report-2023.pdf> (last visited on January 01, 2024).

The government has also launched several campaigns to raise awareness about the potential risks associated with cryptocurrency trading. These awareness campaigns aim to educate people about the risks and consequences of investing in cryptocurrencies and encourage them to exercise caution when dealing with them.

8. Conclusion and Suggestions

India's approach to combating cryptocurrency fraud is multi-faceted and involves a combination of regulatory measures, public awareness campaigns, and the establishment of a legal framework. While there are still concerns about the use of cryptocurrencies in illegal activities, India's efforts to regulate and monitor the cryptocurrency market are commendable. With the instigation of the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021, followed by a recent notification in 2023, India has taken a significant footstep towards creating a secure and regulated cryptocurrency ecosystem in the country. However, the effect of this is still to be measured. Crypto currency frauds have become a serious concern in India. The RBI has already cautioned users against the risks of virtual currencies, and the government has also recently issued a notification according to which virtual digital assets businesses would be considered as the declaring groups under the "prevention of money laundering act, 2002". Prevention of these is possible if the following are executed.

Increasing Awareness: One of the main reasons for crypto currency frauds is the lack of awareness among users. The government and regulatory bodies should conduct awareness campaigns to educate users about the risks associated with virtual currencies and how to avoid them.

Regulating the Market: The government should regulate the crypto currency market and ensure that only genuine companies are allowed to operate in India. This can be done by requiring all crypto currency companies to be registered with regulatory bodies and comply with regulatory requirements. The notification by government which came in March, clearly represents the government's intention to regulate virtual currencies or crypto currency rather than to ban it which is considered as a welcoming step.

Implementing KYC and AML: The government should mandate Know Your Customer (KYC) and Anti-Money Laundering (AML) requirements for all crypto currency transactions. This would help prevent frauds not only today but would be an effective method in order prevent any such malpractices for a longer run. It would also help to ensure that only genuine transactions take place by the people who are dealing with various cryptocurrencies. The government must also implement certain guidelines which make sure that all relevant documents other than the KYC and AML which ensure safer transactions.

Strengthen Cybersecurity: The government should also invest in strengthening cybersecurity measures to prevent hacking and theft of crypto currencies. This can be done by setting up a dedicated cybersecurity task force to monitor and prevent cyber-attacks on crypto currency exchanges and users.

Stringent Domestic Laws: The government can also consider implementing strict Indian laws in order to regulate crypto currencies. For example, the Securities and Exchange Board of India (SEBI) can regulate Initial Coin Offerings (ICOs) under the existing Securities Contract Regulation Act (SCRA) to prevent frauds. By the growing economy and technology and the welcoming of cryptocurrencies in today's world, a special act which deals only with the mechanism of cryptocurrencies, including their operation, regulation and settling any such disputes must be incorporated as a part of the Indian legislation.

Providing a redressal mechanism: The government can create a redressal mechanism to help users who have fallen victim to crypto currency frauds. This can be done by setting up a dedicated helpline or a website where users can report frauds and seek help.

Collaborating with International Bodies: The government can also collaborate with international bodies like the Financial Action Task Force (FATF) to prevent cross-border crypto currency frauds.

Rights of Street Vendors: Constitutional and Legislative Contours

Deepak Thakur*

Abstract

Street trading is a very old vocation which has been accepted as a legitimate mode of earning livelihood throughout the world. It has been regarded as fundamental right under Articles 19(1)(g) and 21 of the Indian Constitution. However, this fundamental right has been subjected to reasonable restrictions with respect to social control. The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, has been enacted for the protection of the rights of street vendors and for regulating street vending activities. The challenges remain in the implementation of the Act in letter and spirit.

Keywords: *Street Vendors, Fundamental Rights, Reasonable Restrictions.*

1. Introduction

Since the beginning of modern political philosophy there have been consistent efforts to recognize and acknowledgement certain basic rights of human beings to be treated as fundamental and inalienable rights under any system of governance and obligation was laid upon the state to maintain and preserve such basic human rights.¹ The founding fathers of independent India acknowledged essential human rights and shaped them in the form of Fundamental Rights under Part III of the Constitution of India. This inclusion of human rights in the Constitution of India is in accordance with the modern democratic trend, to preserve such ideas and thoughts which are indispensable condition of a free society.² The fundamental rights guaranteed under the Constitution of India have been liberally construed by the High Courts and the Supreme Court keeping in view the practice of making the State accountable for the interests of citizens at the core.³ Thus, in *M. Nagraj v. Union of India*,⁴ the Supreme Court observed that citizens possess basic human rights in the form of fundamental rights and these rights are not gift from the State rather they are inherited by persons simply because they are the humans.

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¹ M.P. Jain, *Indian Constitutional Law* 897 (LexisNexis, Gurgaon, 6th edn., 2013).

² J.N. Pandey, *Constitutional Law of India* 53 (Central Law Agency, Allahabad, 52nd edn., 2015).

³ *Supra* note 1 at 902.

⁴ AIR 2007 SC 71.

The present research paper aims to highlight as to how the Courts in India have reconciled the conflict under Article 19(1)(g) with reasonable restrictions imposed in favour of street vendors with the aid of Article 21 of the Indian Constitution. Further, the research paper seeks to critically evaluate the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and the viability in the application of the Act evenly in all urban areas.

2. Street Vendors' Rights: Constitutional Perspective

In order to earn their living, human beings have adopted street trading which is a very old vocation. The venues for such street trading have remained largely the public streets. Over the period of time street trading has been accepted as a lawful mode of earning livelihood in almost all countries of the world.⁵ Street trading makes articles of ordinary-everyday use available at a comparatively lesser price. These articles can be picked up without any hassle by any person while going home from his/her office or place of work without going to a regular market.⁶ This right of street vendors to transact business, thus, has been long recognized. Street-trading though falls under Article 19(1)(g) of the Constitution of India as a fundamental right; it is also protected under Article 21 of the Constitution of India, as it includes all avenues and modes which a person can adopt to earn his living.

The scope of Article 21 of the Constitution of India has been extended by the Supreme Court and various High Courts through judicial pronouncements whereby widest possible interpretation has been given to it.⁷ If a right possesses characteristics of any fundamental right it may be regarded so even if it is not mentioned specifically in any of the Articles under Part III of the Constitution of India. In this way new rights get recognition with the changes in the political, social and economic structure of a country. Thus, in *Olga Tellis v. Bombay Municipal Corporation*,⁸ the right to livelihood was included under Article 21 of the Constitution of India being an important component of right to life wherein, the Supreme Court observed that the right to livelihood is an important aspect of right to life because a person cannot live without the means of livelihood.

The law permits a citizen to hawk on the street pavements by moving from one place to another without being stationary on any part of the pavement vested

⁵ *Sodan Singh v. New Delhi Municipality Committee*, AIR 1989 SC 1988.

⁶ *Ibid.*

⁷ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁸ AIR 1986 SC 180.

in the State. However, it has also been realized that in any modern State, freedoms cannot be guaranteed in absolute terms and cannot be uncontrolled; for an organized society is a pre-condition for civil liberties. Since fundamental rights are not mutually exclusive, the right to livelihood has to be regulated in cases of trade, occupation, business, etc., by taking recourse of ‘*reasonable restrictions*’ as envisaged in Article 19(6) of the Constitution of India. However, the phrase “reasonable restriction” connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public.⁹ Also, there is no abstract standard or general pattern of reasonableness that can be laid down as applicable to all cases,¹⁰ and in order to determine the reasonableness of the restriction regard must be had to the nature of the business and conditions prevailing in that trade as these factors differ from trade to trade and no hard and fast rules concerning all trades can be laid down.¹¹

In *Cooverjee v. Excise Commissioner*,¹² it was held that the fundamental right to carry on any trade, occupation or business under Article 19(1)(g) is subject to reasonable restrictions in the interests of general public which the governing authority of the country may deem essential to the safety, health, peace, order and morals of the community. The Court observed that in the absence of proper control mechanism, the right to trade of street vendors may likely lead to unhealthy competition and quarrel between the traders and travelling public which could result in chaos. Thus, in *Pyare Lal v. New Delhi Municipal Committee*,¹³ it was observed that a person cannot be heard to say that he has a fundamental right to carry on street trading, particularly when it is bound to create insanitary and unhygienic conditions in the neighborhood.

In *Gopal Basak v. State of West Bengal*,¹⁴ it was observed that hawkers have no fundamental right to carry on their trade on the public street and the government authorities must not let out or allow any person to occupy any portion of the footpath or the roads for the purpose of carrying on any trade or business. In the absence of any Statute for regulating street-trade, the Court further observed that it is the duty of the government authority to see that there is no obstruction on the roads and on the footpath. The Court, thus, held that even though hawkers have been granted by license by the Municipal authority still

⁹ *Chintamanrao v. State of Madhya Pradesh*, AIR 1951 SC 118.

¹⁰ *State of Madras v. V.G. Row*, AIR 1952 SC 196.

¹¹ *Cooverjee v. Excise Commissioner*, AIR 1954 SC 220.

¹² AIR 1954 SC 220.

¹³ AIR 1968 SC 133.

¹⁴ AIR 1986 Cal 183.

they do not have any permanent right to squat on the pavements and/or on streets. Although, in *Bombay Hawkers' Union v. Bombay Municipal Corporation*,¹⁵ the Supreme Court felt that the hawkers ought not to be completely deprived of their right to carry on trade and directed that there should be hawking zones in the city. Also, in *Sodan Singh v. New Delhi Municipality Committee*,¹⁶ the Supreme Court came to the conclusion that the right to carry on trade, occupation or business by way of street vending if properly regulated should not be denied, however, it should be properly regulated otherwise the very purpose of laying roads would be defeated. It was, thus, held that street vendors do have under Article 19(1)(g), the fundamental right to carry on a trade, occupation or business of their choice but, not to occupy any particular place on the pavement where they can squat and engage in street-trading business. However, the Court opined that Article 21 of the Constitution of India is not attracted in a case of trade or business – either big or small. The Court observed that the right to carry on any trade or business and the concept of life and personal liberty within Article 21 of the Constitution of India are too remote to be connected together.

The *Sodan Singh* ruling was reiterated by the Supreme Court in *Saudan Singh v. N.D.M.C.*¹⁷ wherein street trading was held to be a fundamental right under the Constitution of India *vide* Article 19(1)(g). The Court observed that it is settled law that every citizen has a right to the use of a public street vested in the State as a beneficiary but, this right is subject to such reasonable restrictions as the State may choose to impose. In *South Calcutta Hawkers Association v. Govt. of West Bengal*,¹⁸ the court observed that if properly regulated, the right to carry on trade or business on street pavements cannot be denied on the ground that the streets are made exclusively for passing and re-passing and for no other use. The court, however, cautioned that proper regulation is a necessary condition as otherwise the very object of laying out roads to facilitate traffic may be defeated. It was, thus, held that street trading cannot be denied if properly regulated.

Distinguishing the *Olga Tellis* case, the Supreme Court, in *Maharashtra Ekta Hawkers Union v. Municipal Corporation, Greater Mumbai*,¹⁹ held that there is no fundamental right under Article 21 the Constitution of India to carry on street trading; also, that street vendors do not have the right to trade or business at any particular place. Thus, hawking may not be permitted where for example due to narrowness of road free flow of traffic or movement of pedestrians is hindered or

¹⁵ AIR 1985 SC 1206.

¹⁶ AIR 1989 SC 1988.

¹⁷ AIR 1992 SC 1153.

¹⁸ AIR 1997 Cal. 234.

¹⁹ AIR 2004 SC 416.

where for security reasons an area is required to be kept free or near hospital, places of worship, etc. Contrarily, in *Mohd. Zahoor v. State of M.P.*,²⁰ the court observed that it is trite that right to trade cannot be said to be absolute to do at particular place, which is regulated by license.

The fundamental rights constitute checks on the government functionaries and it becomes the duty of the courts to interpret these rights in such a way so as to make proper harmony. This becomes a difficult task in a welfare state; however, the courts have favored individual rights in case of non-economic matters whereas, in case of economic matters, they have tilted in favor of social control.²¹ Thus, in *Govinda Ram v. Municipal Corporation of Delhi*,²² a Division Bench of the Apex Court issued directions for regulating hawkers' fundamental rights, subject to right of commuters to move freely on the roads without any impediments.

3. Street Vendors' Right: Legislative Perspective

The various judicial decisions reminded the government of its constitutional obligation in safeguarding the rights of the vast majority of India's population, who are still living below the poverty line, to earn their livelihood through street trading. The needful was done when the Parliament enacted the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. The aim for the Street Vendors Act, 2014 is protecting the rights of street vendors and regulating the street vending activities. The Street Vendors Act, 2014 provides for the survey to be conducted by the appropriate agency with respect to street vendors and for the protection of street vendors from eviction or removal. The Act also provides that street vendor should not be evicted or re-located till the completion of survey; and provides for issuance of vending certificate to all street vendors covered by such survey.²³

The Street Vendors Act, 2014 comprehensively defines the term 'street vendor'²⁴ as a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public, in a street, lane, sidewalk, footpath, pavement, public park or any other public place or private area, from a temporary built up structure or by moving from place to

²⁰ AIR 2010 (NOC) 241 (MP).

²¹ *Supra* note 1 at 902-03.

²² (2010) 10 SCC 715.

²³ The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (Act No. 7 of 2014), s 3(3).

²⁴ *Id.*, s. 2(1)(1).

place and includes hawker, peddler, squatter and all other synonymous terms which may be local or region specific; and lays down the following conditions for issuing of a certificate of vending by appropriate committee:²⁵

- (a) That the street vendor must have completed the age of fourteen years;
- (b) That the street vendor himself or his family member shall carry street vending business;
- (c) That the street vendor has no other means of livelihood;
- (d) That the street vendor shall not transfer vending certificate or the place specified therein to any other person;
- (e) That the street vendor shall pay vending fees as specified.

Section 7 of the Act, 2014 provides that in issuing vending certificate to any street vendor preference should be given to persons belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, or to women, persons with disabilities, minorities etc. The Act further provides that the right to carry on trade, occupation or business of street vending shall be according to the terms and conditions of vending certificate.²⁶ It also entitles a street vendor for carrying out his vending activities at a new place in case of his relocation.²⁷

The Street Vendors Act, 2014 imposes certain duties upon the street vendors, which are: restriction on carrying out vending activities in a non-vending zone;²⁸ maintenance of cleanliness and public hygiene in the vending zones and the surrounding areas;²⁹ maintenance of civic amenities and public property in the vending zone and not to damage or destroy the same;³⁰ payment of such periodic maintenance charges as may be determined by the local authority;³¹ and removal of goods and wares every day by those street vendors who have been allotted space on a time-sharing basis at the end of such time as allowed to them.³²

Section 18 of the Street Vendors Act, 2014 provides that on the recommendations of the Town Vending Committee, the local authority may, for public purpose, declare an area as non-vending zone, and relocate the street vendors. It further provides for the eviction of those street vendors who do not have vending certificate or whose certificate has been cancelled and vendors

²⁵ *Id*, ss. 4(1), 5(1).

²⁶ *Id*, s. 12(1).

²⁷ *Id*, s. 13.

²⁸ *Id*, s. 12(2).

²⁹ *Id*, s. 15.

³⁰ *Id*, s. 16.

³¹ *Id*, s. 17.

³² *Id*, s. 14.

without such certificate; however, in doing so the street vendor shall be given thirty days' notice for the same. Section 20 of the Act provides for the constitution of committees comprising of a Chairperson and two other members for the purpose of deciding the applications of grievance or dispute of street vendors. It further makes provision for appeal against the decision of such committee to the local authority by the aggrieved person. The Act provides for the issuance of vending certificate to street vendor who has been identified under the survey by the Town Vending Committee, also the interest of persons who were not included in the survey is protected and they will be deemed to be street vendors if they possess a valid vending certificate before the commencement of the Act.³³

The Street Vendors Act, 2014 also enlists persons from various fields to be nominated by the appropriate government as members of the Town Vending Committee which includes persons from various associations such as trade-association, market-association, street vendors association, resident welfare association, and also persons representing various offices of local authority, NGO etc.³⁴ Further, the Act provides that not less than forty per cent of the members of Town Vending Committee representing the street vendors shall be elected by the street vendors themselves only, and one-third of members shall be from amongst women street vendors. It also provides that persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, minorities and persons with disabilities should be given due representation in the Committee.³⁵

Section 24 of the Act provides that the Town Vending Committee may, for carrying out any of the purposes of the Act, take assistance or advice of any person as it may desire. Section 27 provides that once the street vendor has been allowed to carry out the vending activities in accordance with the terms and conditions of vending certificate, he shall not, thereafter, be prevented from exercising such rights by any person or police or any other authority. Section 28 provides penalty to the tune of rupees two thousand if any street vendor: does vending activities without obtaining vending certificate; violates the conditions of such certificate; or violates any other term regulating street vending. Section 31 provides that the appropriate government may undertake promotional measures and welfare schemes for the street vendors. Section 32 of the Act further provides for the organization of such programmes by the appropriate government through

³³ *Id.*, s. 4(1).

³⁴ *Id.*, s. 22(2)(b).

³⁵ *Id.*, s. 22(2)(d).

which the street vendors may enable themselves to exercise the rights provided by this Act.

4. Critical Analysis

It is interesting to note that the judicial pronouncements which necessitated the Parliament to enact the Street Vendors Act, 2014 were related to rights of street vendors in the metropolitan cities like Mumbai, Delhi and Kolkata wherein it is possible to have trade unions. But this cannot have any universal application since not all the urban areas can have street vendors union. The Act has overlooked this proposition and in cases of cities with no trade unions of street vendors, their representation in the Town Vending Committee will be jeopardized which may ultimately led to more discretionary and discriminating powers in the hands of administration. Further, conducting elections for members to represent trade unions may politicize the whole scenario and may defeat the legislative intent of enacting such public welfare law.

There is also unnecessary inclusion of different sections of society in the constitution of Town Vending Committee which will only create hurdles in the proper implementation of the Act. Moreover, after mentioning an elaborate list of members of Town Vending Committee under section 22, there would hardly be any need for the assistance or advice of any person as provided in section 24 which would otherwise be burdensome on the State exchequer. Besides for conducting survey, constitution of Dispute Redressal Forum and Town Vending Committee and for undertaking Promotional and Awareness measures the burden on State exchequer will be excruciating.

Preference for issuing certificate of vending under section 7 of the Act is unnecessary and improper as a poor is poor and it irrelevant to which caste, category, and gender he or she belongs. This will give discretion to the authority in issuing the certificates and biasness will be inescapable. It is also worth noticing that the whole scheme of the Act revolves around stationary vendors thereby overlooking the perspectives of mobile vendors whose activities cannot be equated with stationary vendors. Further, imposition of the provisions of the Act or rules made there under for vending zones are not possible in case of mobile vendors.

The administration at the time of survey has to take care of the fact that the vendors who are already operating in the urban area may invite their relatives or friends from their native places to put up temporary stalls and get themselves registered for valid licenses. This will add to the difficulties of the administration in handling the street vendors and managing their affairs in an organized manner.

In the absence of will and mechanism to check the mushrooming of street vendors, the civic body will be flooded with enormous pressure of issuing certificates.

The Street Vendors Act, 2014 requires a detailed survey to be undertaken by respective authorities in different States and U.T.s since its enactment and accordingly, the eligible street vendors should have been allotted the designated area and license for a particular type of activity. However, if any particular authority would start with survey while implementing the provisions of the Act, not only the existing vendors would expand their business and spread the wings on public land but also a host of new vends will spring up overnight to dot the city streets.

5. Conclusion

Limitations of modern era necessitated creative methods to do trade and business. The street traders' right to transact business while going from place to place has been recognized for a long period. However, this practice of street trading incredibly floods the streets with merchandise items which greatly affects the free movement of people and sometimes causes vehicular traffic. If street vendors be allowed their alleged right to trade or business, they could seize the society through their activities, thereby paralyzing busy thoroughfares and all civic life. They have made it impossible for the pedestrians to walk on footpaths or even on the streets properly so-called. With each passing day, the numbers of street vendors are increasing and the reason for this is unemployment among the youth who struggle to earn their bread. Most of the migrants who venture urban area in search of green pastures end up as street vendors. A cluster of ice-cream vendors at light-points and fruit stalls on the roadside becomes a traffic hazard with customers parking their vehicles on the road, disrupting normal traffic. The corridors in the market area are occupied by placing tables and chairs, leaving no space for the public to move. The street vendors should, therefore, be regulated keeping in view road safety and public conveniences. The government is required to give a serious thought for generating employment avenues.

To conclude, the street vendors have been doing their business in urban areas for the past many years, so the feasibility in implementation of the Act necessitates time period. However, since the street vendors are roaming all over the urban cities, regulation of street vendors through identification, rights and obligations, timing and working hours, award and punishments under the provisions of the Street Vendors Act, 2014 is a due necessity in modern times.

The Enforcement of International Law in the Indian Constitution

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Abstract

While India's legal system strikes a balance between the demands of international commitments and the principles of domestic sovereignty and autonomy, the application of international law in the Indian Constitution is a complicated and developing subject. The Indian Constitution acknowledges the significance of international law as a source of legal authority and the country's long history of interaction with it. This study explores the numerous ways that the Indian Constitution upholds international law and also outlines how Indian courts have attempted to resolve this disagreement.¹

Keywords: *Sovereignty, International Law, Constitution, Social Justice.*

1. Introduction

India is a nation that has a long legacy of participation in international law. India has shown a commitment to respecting international legal commitments and fostering international cooperation as a member of the United Nations and a signatory to various international treaties and agreements. Yet, enforcing international law within the Indian legal system can be difficult and complicated, especially when there is a contradiction between international and domestic law or when domestic institutions may be reluctant to uphold international legal responsibilities.

In addition to providing a framework for incorporating international legal duties into domestic law, the Indian Constitution acknowledges the significance of international law as a source of legal authority. Nonetheless, the intricate relationship between domestic and international legal systems, as well as the ways in which these systems interact and influence one another, must be carefully considered if international law is to be upheld in domestic courts. This paper will look at the different ways that the Indian Constitution upholds international law, including constitutional clauses, statute laws, and judicial rulings. It will look at how Indian courts apply international law as well as the difficulties and

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¹ Bimal N. Patel (ed.), Volume 2, *India and International Law* (Martinus Nijhoff 2008).

constraints that come up when trying to enforce obligations under international law. The essay will also look at current examples where there has been a clash between Indian law and international law, as well as how Indian courts have attempted to resolve this disagreement.

In common parlance, the application of international law under the Indian Constitution is a complicated and dynamic problem that necessitates close consideration of the judicial, political, and cultural elements that influence the interplay between domestic and international legal systems. This paper provides readers with a clearer understanding of how international law is influencing the growth of Indian law and society by examining the numerous obstacles to and potential for its enforcement in India.

2. Definitions

2.1 International Law

International law is a body of norms and guidelines that control how nations, organisations at the international level, and other international players interact with one another. It is a legal framework that functions on a global scale and was created to foster collaboration, settle conflicts, and uphold global peace and security.

A wide range of legal instruments are included in international law, including treaties, common law, general legal principles, and judicial rulings. The majority of international law comes from treaties, which can address a variety of issues like human rights, trade, investment, and environmental protection. Customary law is a body of unwritten laws and customs that have evolved over time and are often regarded as having legal force. International courts and tribunals apply general principles of law that are developed from national legal systems. Moreover, judicial rulings are a significant source of international law because they interpret and apply it to particular situations.

International organisations, diplomatic channels, international courts, and international tribunals are just a few of the tools used to uphold international law. State disputes are frequently settled through diplomatic channels, and international institutions like the United Nations are crucial for fostering collaboration and tackling global issues. The merging requirements and goals of the global community shape the dynamic and ever-evolving discipline of international law. It is crucial in supporting global concerns, including climate change and the spread of infectious diseases, safeguarding human rights, and promoting international peace and security. International law will continue to be

essential in determining how nations and other international entities behave as the world grows more interconnected.²

2.2 Domestic Law

Domestic law, usually referred to as national or municipal law, is the body of law that regulates how people, groups, and governments behave within a particular nation. It is the body of law that governs a particular territorial jurisdiction and is developed and upheld by the nation's domestic legal system.

Municipal law includes a broad range of legal disciplines, such as family law, contract law, property law, and tort law. Many sources, including constitutions, statutes, case law, and administrative regulations, are used to produce it. Statutes are laws passed by legislative bodies like parliaments or congresses, whereas constitutions lay forth the basic rules and framework of the legal system. Case law, usually referred to as common law, is a significant source of law in many nations. It describes the legal decisions made by judges in the course of settling disputes. Administrative regulations are guidelines and orders issued by government departments and agencies to carry out legislation and uphold the law.

Law enforcement agencies, courts, and other legal institutions are only a few of the ways that domestic law is upheld. The enforcement of both criminal and civil law is the responsibility of law enforcement organisations like the police and other specialised units. In understanding and applying the law, settling disputes, and defending the rule of law, courts are essential. Administrative agencies and tribunals, in addition to other legal institutions, are crucial in upholding the law and resolving legal issues in particular fields, including labour, immigration, and environmental law.

3. The Philosophy of the Constitution of India

The Indian Constitution is one of the world's most significant legal and political instruments. It is a living example of the principles of justice, liberty, and democracy that are ingrained in its worldview. A deeply significant document, the Indian Constitution reflects the aspirations of the Indian people for a just and equal society. Ancient traditions and contemporary democratic ideals are profoundly ingrained in the thought of the Indian Constitution. India is a sovereign, socialist, secular, democratic, and republican state, according to the Constitution's preamble. The Indian Constitution is based on these ideas as its guiding ideals.

² *Ibid.*

The foundation of the Indian Constitution is democracy. It acknowledges the significance of the rule of law and free and fair elections. It also acknowledges the significance of individual liberties and rights, such as the freedom of association, of speech, and of religion. These rights are necessary for a democratic society to function properly. Social justice is a foundational concept of the Indian Constitution as well. It acknowledges that prejudice and inequality pose significant barriers to the creation of a just society. The Constitution offers affirmative action and reservations in education and employment for historically underprivileged groups like Scheduled Castes, Scheduled Tribes, and Other Backward Classes in order to solve these challenges. Additionally, the Constitution acknowledges the significance of secularism in a multicultural community like India. It guarantees the separation of church and state and outlaws discrimination based on religion. The Constitution also defends the rights of linguistic and ethnic minorities and acknowledges the value of cultural variety.

The Indian Constitution is a dynamic, ever-evolving instrument. It has undergone numerous revisions to reflect how society's demands have changed. The democratic and constitutional culture of India has been greatly influenced by the Constitution. It has given India a foundation for the growth of contemporary, democratic, and secular society. In essence, the tenets of democracy, social justice, secularism, and cultural diversity form the foundation of the Indian Constitution. It is a booklet that captures the Indian people's hopes for a fair and just society. Everyone who upholds the principles of democracy and freedom should be inspired by the magnificent accomplishment that is the Indian Constitution.³

4. The Philosophy of International Law

International law is an ensemble of regulations and norms that direct interactions between governments and other international entities. Its foundation is based on the ideas of justice, fairness, and equality, and it aims to advance harmony, collaboration, and observance of human rights. A just and peaceful world is something that humanity strives for, and this is reflected in the philosophy of international law, which is based on the goals of the international community.

The idea that all states are equal and that their sovereignty must be maintained forms the basis of international law. International law acknowledges that nations have the freedom to self-govern and enact their own laws. This right, though, is not unrestricted and must be employed within the bounds of international law. International law binds nations and requires them to uphold their responsibilities. The idea of justice also serves as the foundation of

³ S. K. Verma, *International Law and the Indian Constitution* (Oxford University Press, 1996).

international law. International law aims to ensure that nations treat one another justly and fairly. It acknowledges that all states' interests must be balanced, and all people's rights must be upheld. In accordance with international law, states are obligated to defend people's rights, especially the rights to life, liberty, and personal security.

The peaceful resolution of conflicts is another tenet of international law. International law provides a framework for peacefully resolving problems between states and acknowledges that conflicts between states will inevitably arise. International law encourages states to engage in sincere negotiations and find solutions to their differences that are acceptable to both parties. It also allows for the resolution of conflicts through the employment of judicial and arbitral processes. The idea that international collaboration is crucial for accomplishing shared objectives forms the basis for the philosophy of international law. International law acknowledges that only through international cooperation can problems like terrorism, poverty, and climate change be solved. States have a responsibility to cooperate in order to advance the general welfare and safeguard the interests of all people.

5. The Relationship between International Law and the Indian Constitution

With its foundation in the values of democracy, social justice, secularism, and cultural diversity, the Indian Constitution is one of the most important legal and political texts in the entire world. The significance of international law in influencing the legal and political landscape of a nation is also acknowledged. In order to secure individual liberties and rights and advance world peace and cooperation, it is essential that the Indian Constitution and international law work in tandem.

The Indian Constitution makes frequent references to the significance of international law. First off, the Constitution's Preamble declares that India is a sovereign, socialist, secular, democratic, and republican state that is dedicated to upholding the ideals of international law and the United Nations Charter. The significance of international law in forming India's constitutional and legal systems is reflected in this declaration.

Similarly, the Indian Constitution acknowledges the value of international law in defending personal liberties and rights. The right to life, liberty, and equality before the law are among the fundamental rights that are protected by the Constitution. Moreover, the Universal Declaration of Human Rights and other international human rights treaties that India has ratified safeguard these rights.

The Indian Constitution also acknowledges the role that international law plays in advancing social justice. The Constitution guarantees historically oppressed groups like Scheduled Castes, Scheduled Tribes, and Other Backward Classes affirmative action and reservations in employment and education. The non-discrimination and equality norms of international law are upheld by these clauses. In summation, there is a symbiotic link between the Indian Constitution and international law. In order to defend individual rights and freedoms and to shape India's legal and political system, the Indian Constitution acknowledges the value of international law. In order to advance social justice and foster world peace and cooperation, India's adherence to international legal norms is crucial. Together, the Indian Constitution and international law must assure the defence of individual liberties and rights and advance the common good.⁴

6. Legal framework for International Law

The complex set of standards, regulations, and principles that underpin international law governs how nations and other international actors must conduct themselves. This body of law is composed of several sources of international law, including treaties, common law, general legal precepts, and judicial rulings. An outline of the international law system's legal foundation is important in trying to enforce it in the Indian constitution.

The main source of international law is treaties. An agreement between two or more governments that is subject to international law is referred to as a treaty. Many subjects, such as human rights, trade, investment, and environmental protection, may be covered by treaties. Governments may sign bilateral or multilateral treaties. After a treaty is signed, it becomes legally binding, and the parties are required to abide by its provisions.

Another significant source of international law is judicial rulings. The International Court of Justice and the International Criminal Court are two examples of international courts and tribunals that interpret and apply international law in their rulings. These rulings, which are binding on the case's parties, may establish new regulations or clarify those that already exist.

7. Indian Constitutional provisions for International Law

Several provisions in the Indian Constitution acknowledge and incorporate international law into domestic law. India's adherence to the fundamentals of international law and its desire to foster cooperation and peaceful relations

⁴ Balakrishnan Rajagopal, "International Law in Indian Courts: Law and Politics", *Yale Journal of International Law* (2005).

between nations are reflected in these sections. Some of the important clauses dealing with international law in the Indian Constitution are as follows:

Article 51: According to this article, the Indian state must uphold just and equitable relations with states as well as work to advance global peace and security. The state must also uphold its duties under international law and treaties.

Article 253: This provision gives the Indian Parliament the authority to enact legislation to carry out international treaties and conventions.

According to Article 13(3), any law that is in conflict with or derogates from the fundamental rights protected by the Constitution is invalid to the extent of the conflict or derogation.

Article 51A: This article outlines the fundamental responsibilities of Indian citizens, including the obligation to safeguard and defend India's sovereignty, unity, and integrity, as well as to foster harmony and a sense of common brotherhood among all Indians.

Article 372: This section outlines the continuation of pre-constitutional laws as well as how to modify existing laws to make them constitutionally compliant.

In general, the Indian Constitution offers a framework for the application of domestic law to international law. The articles of the Indian Constitution and the judiciary's jurisprudence demonstrate India's dedication to advancing world peace and security and preserving the fundamentals of international law.⁵

8. Enforcement of International Law in the Indian Constitution

The Indian Constitution acknowledges the significance of international law and the influence it has on the development of the nation's legal and political system. The Indian state's obligations under international law are acknowledged by the Constitution, which also provides for the adoption of international law into domestic law. Nonetheless, the application of international law under the Indian Constitution is still a difficult and complicated matter.

The two primary processes of direct and indirect incorporation are used to uphold international law in the Indian Constitution. Direct incorporation is the process through which international law is directly incorporated into domestic law by a specific legislative or executive action. On the other side, indirect incorporation describes how international law is applied and interpreted by the judiciary.

⁵ The Constitution of India (Universal Law Publishing, 3rd edn., 2022).

The notion known as "incorporation theory" is outlined in the Indian Constitution as a means of directly incorporating international law into local law. According to this argument, as soon as the Indian government ratifies international law, it becomes a component of the country's internal legal system. The Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, among others, have been incorporated into Indian domestic law using this idea.

Through judicial interpretation and application, international law is indirectly incorporated. International law has been cited in numerous rulings by the Indian judiciary, which has acknowledged its significance in forming its jurisprudence. For instance, in rulings on the right to life and the right to a fair trial, the Supreme Court of India cited the International Covenant on Civil and Political Rights.

Although international law is incorporated into the Indian Constitution, its enforcement is nevertheless difficult. The domestic legal system of India, a sovereign nation, is separate from international law. As a result, the ability of the Indian government and court to apply and execute international law in the Indian legal system rests on them.

Likewise, the Indian Constitution acknowledges the significance of international law in forming the nation's judicial and political system. Both direct and indirect incorporation are used to impose international law in the Indian Constitution. Nonetheless, it is still difficult to enforce international law in the Indian legal system, and whether it is successful depends on how willingly the Indian government and judiciary would do so.⁶

9. The Conflict between the Indian Constitution and International Law

It is a complex and divisive topic when the Indian Constitution conflicts with international law. Although the Indian Constitution recognises the significance of international law and calls for its inclusion in domestic law, there are several situations where international law provisions contradict with the Constitution.

The safeguarding of national sovereignty is one of the primary areas where the Indian Constitution and international law clash. India's territorial integrity and political independence are protected by the Indian Constitution, which acknowledges India as a sovereign state. The Indian government may, nevertheless, be required to cede its sovereignty to international institutions and organisations in accordance with specific elements of international law, particularly those pertaining to human rights and international criminal law. This

⁶ Arun K. Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Hart Publishing, 2017).

conflict is particularly clear when attempts are made to bring Indian people to justice for crimes committed on Indian soil by international institutions like the International Criminal Court.

The protection of rights to culture and religion is another area where the Indian Constitution and international law clash. Although the Indian Constitution protects the right to freedom of religion and offers protection for linguistic and cultural minorities, some aspects of international law may contradict with these rights. For instance, some international human rights accords might mandate that the Indian government support and defend particular cultural and religious traditions that conflict with the safeguards provided by the Constitution.

In the domains of commerce and investment, there can also be disputes between the Indian Constitution and international law. India has accepted a number of foreign investment treaties and is a member of the World Trade Organization (WTO). These treaties, however, can be in conflict with some clauses of the Indian Constitution, particularly those that deal with the rights of indigenous groups and environmental protection.

In assertion, it should be noted that the clash between the Indian Constitution and international law is a difficult and complicated problem. There may be circumstances where aspects of international law conflict with the Constitution, despite the fact that the Indian Constitution acknowledges the significance of international law and calls for its inclusion in domestic law. A careful balancing of national sovereignty, human rights, cultural and religious rights, and economic interests is necessary for the resolution of these issues.⁷

10. Recent Cases of the Conflict between the Indian Constitution and International Law

The clash between Indian law and international law has been the subject of several recent cases in India. Below are a few illustrations:

Union of India v. Navtej Singh Johar:⁸ The validity of Section 377 of the Indian Criminal Code, which made homosexual conduct illegal, was the subject of this important lawsuit. The Indian Supreme Court ruled that Section 377 was unconstitutional because it infringed on the constitutionally protected rights to equality, privacy, and freedom of expression. The court also stated that decriminalising homosexuality was supported by international law and jurisprudence.

⁷ N. C. Sehrawat, "Implementation of International Law in Indian Legal System", *Florida Journal of International Law* (July 2020).

⁸ AIR 2018 SC 4321.

*State of Haryana v. Jindal Stainless Ltd.*⁹ The Supreme Court of India considered whether the Haryana Value Added Tax Act, 2003's provision that taxed imported goods was in compliance with India's obligations under the General Agreement on Tariffs and Trade (GATT) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (GATT). The court determined that the clause was invalid because it violated India's commitments under the TRIPS and GATT agreements.

In *Vishaka & others v. State of Rajasthan*,¹⁰ the topic of sexual harassment of women at work was raised. The Indian Supreme Court ruled that sexual harassment of women breached their constitutionally protected rights to equality and to a dignified existence. The court added that the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) had been ratified by India and that Indian legislation should be updated to reflect its tenets.

These instances show that the contradiction between Indian law and international law is a complicated matter that calls for considerable thought and investigation. In settling these disputes and ensuring that India's legal framework complies with its international duties, the Indian judiciary has been crucial.

11. Ways of Resolving the Conflict between International Law and the Indian Constitution

A complex issue that might come up in relation to human rights, trade, and environmental law is the clash between the Indian Constitution and international law. The variables that define the interaction between local and international legal systems must be carefully considered in order to resolve these conflicts. Following are several strategies for addressing problems between international law and the Indian Constitution:

Constitutional Interpretation: In line with international legal requirements, Indian courts have a long history of interpreting the Constitution. In order to evaluate whether the Constitution permits or mandates adherence to international legal standards, this technique entails evaluating the Constitution's text, history, and purpose.

International Dispute Resolution: International dispute resolution systems, such as international courts and tribunals, can provide a means of addressing discrepancies between the Indian Constitution and international law where those problems cannot be handled through domestic legal procedures.

⁹ *Jindal Stainless Steel Ltd. & Anr v. State of Haryana & Ors.* CA No. 3453 (2002).

¹⁰ AIR 1997 SC 3011.

Negotiation and Diplomacy: Dialogue and negotiation can be used to resolve issues between the Indian Constitution and international law when they develop during international discussions or diplomatic efforts. In order to find solutions to problems between domestic and international legal requirements, this strategy entails engaging in constructive communication with other governments and international organisations.

In principle, addressing disagreements between the Indian Constitution and international law necessitates a multidimensional strategy that considers the social, political, and cultural context in which these disagreements occur. Conflicting legal duties can be resolved, and greater adherence to international legal norms and standards can be encouraged, by combining constitutional interpretation, harmonisation, domestic implementation, international dispute resolution, negotiation, and diplomacy.¹¹

12. Other ways of Enforcing International Law in the Indian Constitution

The Indian Constitution contains additional means of implementing international law in addition to the methods for resolving issues between it and international law. These are a few instances:

Integration into Domestic Law: Statutory laws, executive directives, and administrative rules can all be used to incorporate international law into domestic law. For instance, the executive branch of India's government can establish rules to enforce responsibilities under international treaties and agreements, and the Indian Parliament can introduce laws to do the same.

Human Rights Commission: To look into and redress human rights breaches, India established national human rights commissions, such as the National Human Rights Commission (NHRC) and the State Human Rights Commission (SHRC). These commissions may assist in upholding international human rights law and keeping an eye on adherence to such standards.

Civil Society Groups: Groups from civil society, such as non-governmental organisations (NGOs), can be crucial in promoting and upholding international law as it is reflected in the Indian Constitution. Research can be done by NGOs, who can also keep an eye on compliance and promote the application of international legal responsibilities.

International Cooperation: To encourage the application of international law in the Indian Constitution, India might participate in international cooperation and

¹¹ André Nollkaemper, August Reinisch, et al. (eds.), *International Law in Domestic Courts: A Casebook* (Oxford University Press, 2019).

dialogue. This may entail working with other nations and international organisations to create and execute global legal norms or participating in global legal systems like the International Criminal Court (ICC).

The Indian Constitution contains numerous methods for upholding international law in general. India can encourage better adherence to international legal norms and standards by incorporating international legal duties into domestic law, depending on judicial decisions, utilising human rights commissions and civil society organisations, and participating in international collaboration.¹²

13. Conclusion

Transnational law and state practice are both continually changing. The important-lauded principles and norms of transnational law are, in turn, negotiated by state practice according to supposed public interests. The intricate and nebulous link between transnational law and domestic law is demonstrated by Indian practice. India's approach to implementing international law varies depending on the situation; sometimes it is prepared. The abecedarian base for enforcing the domestic legal system's commitments under transnational covenants is handed down by the Indian Constitution. Likewise, only the Indian government has the authority to negotiate and carry out any transnational covenants or accords. The Prime Minister of India is given sole authority over the Indian government and has the authority to subscribe to and authorize transnational covenants. When there's a gap in the original law but no disagreement between them, Indian courts cite transnational law. More perpetration, nonetheless, is possible. This composition offered four recommendations for perfecting the way that domestic Indian law is applied internationally.

Conclusively, the Indian Constitution acknowledges the significance of international law in forming the nation's judicial and political system. Both direct and indirect incorporation are used to impose international law in the Indian Constitution. Nonetheless, it is still difficult to enforce international law in the Indian legal system, and whether it is successful depends on how willingly the Indian government and judiciary would do so.

¹² Dinah Shelton (ed.), *International Law and Domestic Legal Systems: Incorporation, Transformation, and Persuasion* (Oxford University Press, 2011).

International Perspectives on Conjugal Visitation Rights of Prisoners: Possibilities, Paradox and Paradigm

*Harmandeep Kaur**

Abstract

The prison administration at the international level is seen as deviant, where the prisoners are kept with the constraints and kept under a power over them. Different countries run their prison administration in their own way and grants basic human rights to their respective inmates but one point upon which every state has consented is that a crime is a social disorder. Thus, to rehabilitate the law breakers, other non-penal measures are adopted such as probation, parole etc. At the global level since it has been realised that there is need to endorse the human rights approach towards the prisoners, there has been pragmatic shift in regard the attitude to deal the prisoners and rehabilitative approaches have been propagated one of which is conjugal visitation rights. The objective of the present research paper is to analyse the conjugal visitation measures adopted by other countries and how a humanitarian approach has been promulgated in these countries to implement them. For this purpose both primary and secondary sources have been used by adopting doctrinal method of research. The conjugal rights of the prisoners have been widely advocated as the sexual orientation of a prisoner does not cease to exist upon imprisonment. If such right cannot be granted to the whole community of the prisoners, it must be granted to certain prisoners to whom it has been wrongfully denied due to their imprisonment and should be restored without any delay.

Keywords: *Conjugal rights, Conjugal visitations, International Perspective, Prisoners and Procreation.*

1. Introduction

No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.¹

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¹ Nelson Rolihlahla Mandela, he was anti-apartheid activist and a politician in South Africa, who served as First President of the country and also first black head of the fully democratically elected government in South Africa. He served 27 years in prison for the struggle of the global human rights, democracy and equality.

In a state which is administered by the rule of law, the criminal justice system protects human rights of its citizens and it is done by punishing the wrong doers. Punishment means distress which is inflicted to the individuals by confining them into the jails or protective homes after being found guilty by the court of law. Usually, human beings are more allured to take law in their hands and commit wrongs. A crime is usually committed when there is difference between the personality of an individual and the intention. The Reformatory Punishment Theory further states that a person indulges in crime when the temptation of motive is more stuck and as a result their character gets weakened.

Since the Second World War, the world has seen the changing degrees of the human rights; their importance has been acknowledged especially for the marginalised sections including prisoners by the United Nations at global level. The ideology behind punishment for the offences has been modified a lot by the development of the jurisprudence of human rights. The prisoners' human rights have been upheld and protected to avoid the possible abuse. In India also, significant steps have been taken for the reformation of the prisoners.

1.1 Perspective of the Conjugal Rights of Prisoners

A man being a social animal, always require a family to share his happiness and sorrows. He needs a company to co-exist in the society and company of the partner who would support him physically as well as mentally. For the existence of the human beings, some basic necessities are required like food, house, clothing etc. and along with them there is a biological need of sexual intimacy which is equally required to be fulfilled. This biological need certainly cannot be ignored. The sexual intimacy with a spouse or partner is not just a biological want but it is necessity to procreate children and start a family. The society validates only such a person who is having family.

A marriage is contract between a man and woman which would allow them to live as husband and wife. This bond of marriage requires a married couple to be present for each other emotionally and physically. The purpose of granting the conjugal rights to the prisoners is not to let anything block their family life. This is an accepted fact that having sexual intimacy would help them to feel normal, happy and affectionate and distressed under the harsh conditions of the prison.

The conjugal rights of an individual are primarily associated individual's marital rights. The person who is imprisoned has a right to meet his family and spouse which is generally known as the family union. The conjugal rights of prisoners highlight on the relationship arise out of marriage between the inmates with spouse.

1.2 The Reformatory Theory of Punishment

The Reformatory Theory of punishment is the most accepted one form of punishment in India. It is also believed that the conjugal rights can help the prisoners to rehabilitate and reform. It can be seen in the judicial rulings which have been passed by the High Courts and the Supreme Court (*hereinafter* referred to as the SC). The societal perspective has been somehow changed towards the prisoners and the prisoners are not considered as mere animals but are human beings who deserve basic amenities and have right to live with dignity.² The courts have from time to time emphasised on the point that a prisoner does not cease to be a human being thus, it is believed that conjugal visitation rights can be granted them.

2. Conjugal Rights of Prisoners: An Evolved Jurisprudence in India

In India, there is no law which supports the conjugal rights of the prisoners. In general, there is some leniency given to the prisoners during the span of their imprisonment, for instance, least solitary confinement, less hard jobs etc. however, it depends upon their good behaviour for a persistent time period. Also, the appropriate government has the power to remit or suspend the sentence of the prisoner.³ The Indian law provides for other kind of mercies like parole and furlough but it does nowhere provide for the conjugal rights of the prisoners.

The basic law of today related to the prison administration in India is the Prisons Act, 1894.⁴ According to Section 59(25) of the above-mentioned Act, the State has the power to frame and make the rules for the guidance of the visit of the prisoners. But there are no separate rules and laws framed exclusively for the conjugal visitation rights. However, at few instances, a break from the imprisonment is granted citing the conjugal rights as a reason but the conjugal visitation is neither a solid reason nor expressly mentioned in the state laws for granting the temporary release unlike other countries.

The rule of conjugal visitation in India is purely based on the important reasons like procreation of children only. When either spouse or both spouses are in jail and they want to procreate children, they usually demand the conjugal

² *D.K. Basu v. State of West Bengal*, (1997)1 SCC 416.

³ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 432.

⁴ In May, 2023 the Ministry of Home Affairs had announced that it has prepared and finalised the Model Prisoners Act, 2023 which will serve as a guiding light for the states while framing their own laws related to prison administration.

visitation rights. The existing *Mulaqat System* (Visitation System) in India, where the prisoners and their families meet for only twenty minutes, it is utterly difficult for them to establish any emotional connection. The concept of visitations only for the purpose conjugal right does not exist in India. Where in foreign countries these kinds of visitations are allowed, India also has started putting up the steps in this direction though a few people are favouring them.

In human beings, the desire of their sexual expression and sexual intimacy is very powerful and it even persists in the imprisonment. The imprisoned humans also maintain their humanity and individuality. The unlawful person *i.e.* the jail inmates should not be denied the rudiments of human consideration. In the case of *D. Bhuvan Mohan Patnaik v. State of Andhra Pradesh*,⁵ the SC emphasised that the prisoners should not be denied and blocked of their fundamental rights that they possess. Their incarceration should not impact their constitutional remedies even which are included under Article 21.

In famous case of *Sunil Batra v. Delhi Administration & Ors.*,⁶ also known as Sunil Batra-I, the SC held in the following words:

“The goal of imprisonment is not only punitive but restorative, to make an offender a non-offender. Rehabilitation is a prized purpose of prison 'hospitalization'. A criminal must be cured and cruelty is not curative even as poking a bleeding wound is not healing. Visit to prisoners by family and friends are solace in isolation and only a dehumanized system can derive vicarious delight in depriving prison inmates of this humane amenity. Subject, of course, to search and discipline and other security criteria, the right to society of fellow men, parents, and other members of family cannot be denied in the light of Article 19 of the Constitution of India and its sweep.”

The path breaking judgment for the conjugal rights of the prisoners was *Jasvir Singh v. State of Punjab*,⁷ where a couple was awarded the death sentence for the offence of the murder of a minor boy. The couple wanted to procreate their children and thus filed petition in the Punjab and Haryana High Court for the enforcement of their conjugal rights. The question in the case was whether the right to procreation for prisoners come under the ambit of the right to life under Article 21 of the Constitution of India. The High Court held that the prisoners have the right to conjugality under Article 21 subject to the restrictions.

⁵ 1974 AIR 2092.

⁶ (1978) 4 SCC 409.

⁷ 2015 Cri LJ 2282.

Further, in the case of *Meharaj v. State of Tamil Nadu and Ors.*,⁸ Madras High Court considered the question of whether prisoners' conjugal rights come under the ambit of the right to life and personal liberty guaranteed by Article 21. The three judges' bench observed that the law abiders and the law violators cannot have the same standard for the enforcement of the Article 21 of the Constitution. Thus, the conjugal visitation rights of the prisoners cannot be held as the fundamental right to life and liberty. The Madras High Court further observed that the even the conjugal rights could not be held as the fundamental right but the prisoners still have liberty to avail the leave for the conjugal visits in some extraordinary situations like infertility treatment etc.

Clearly, there is conflict between the judgments of the High Courts and in the absence of any legislation and set precedent along with the guidelines from the SC, the right to conjugal visit for the prisoners in India has become a debatable issue which need to be addressed.

3. International Conventions Granting Basic Rights to the Prisoners

Due to the world wars there was a widespread impact on the human rights and liberties of the individuals and people around the world. There has been violence on the basis of the religious and racial basis including genocide against individuals and also against the prisoners who have faced the slave labour, physical abuse and torture, murders of the prisoners, confiscation of the property, etc. During the preceding decades, the areas of the international law have changed a lot. This included the rights of prisoners at the global level; the basic civil rights and human rights of the prisoners have been widely recognised. The basic human rights of prisoners have been widely recognised through multiple instruments and treaties after the two world wars.

The first and foremost instrument regarding the protection of the human rights is the Universal Declaration of Human Rights⁹ (*hereinafter* referred to as the UDHR) which was endorsed by General Assembly. UDHR provides for the promotion and protection of the basic human rights. It does not directly talk about the conjugal rights of the prisoners but it set some essentials for the administration of justice, for instance, Article 1 of the UDHR states that no individual should be subjected to merciless, cruel or debasing treatment. Further the UDHR provides for the right to life and personal liberty and security of the

⁸ H.C.P. (MD) No.365 of 2018.

⁹ The Universal Declaration of Human Rights adopted by the United Nations General Assembly, is an international declaration that establishes all human beings' rights and freedoms. It was adopted by the General Assembly on December 10, 1948 at the *Palais de Chaillot* in Paris, France.

people.¹⁰ It also extends the protection to individuals against the arbitrary arrest and confinement¹¹ and along with that it provides for the presumption of innocence of the wrongdoer until he is proved guilty according to the procedure established by law.¹²

The International Covenant on Civil and Political Rights (*hereinafter* referred to as the ICCPR) is an instrument which further elaborates the civil and political rights/liberties given under the UDHR. The ICCPR was adopted by the General Assembly on December 16, 1966 and it was brought into force in 1976. It expressly talks about the rights and protection of the prisoners from the inhumane treatment. For instance, Article 7 states that no person including prisoners shall be subject to the cruel and inhumane treatment or punishment and also no one shall be subjected to the medical experimentation. Further, Article 9 provides for the protection of the prisoners from the arbitrary arrest and confinement. The ICCPR also provides that if the personal liberty of anyone is deprived, they should be treated with humanity and dignity.¹³ It focuses on the rehabilitation of the prisoners rather than the punishment. The ICCPR advocates the equal treatment to the prisoners and who have deprived of their personal liberty in context of humanity and dignity as it has been given to a free person.

The General Comment No. 22 on Article 12 of the International Covenant on Economic Social and Cultural Rights (*hereinafter* referred to as the ICESCR) provides that parties should ensure the equals right of reproduction since the right to health is the basic human right and good sexual and reproductive health is its facet.¹⁴ Here it is worth mentioning that the instruments and conventions which adopted for the rights of the prisoners do not specifically mention their conjugal rights rather different states have adopted them according to their current scenario and social structure. The United Nations Standard Minimum Rules for the Treatment of Prisoners was originally first adopted by the First United Nation Congress on the Prevention of Crime and the Treatment of Offenders in 1955. The Rules were revised in 2015 and were renamed as the Nelson Mandela Rules. Although they are non-binding in nature but still they have worldwide acceptance as the minimum standard for the treatment of the inmates. The Rules are the universal source of the national legislations and domestic law and considered as the guidance for the prison management and for the protection of the citizens held

¹⁰ Universal Declaration of Human Rights, 1948, art. 3.

¹¹ *Id.*, art. 9.

¹² *Id.*, art. 11.

¹³ International Covenant on Civil and Political Rights, 1966, art. 10.

¹⁴ Alemu Balcha Adugna, "Prisoners' Right to Conjugal Visits in Ethiopia: An Insight into Laws", 6 *Hawassa University Journal of Law* (July 2022).

in the prisons and other forms of custody. The Rules also provide for the prohibition of the discrimination on grounds of colour, sex, religion, linguistic background, political ideology, nationality, birth and other status. The Kampala Declaration on Prison Conditions in Africa which was adopted by African countries exclusively in 1996 states that the prisoners' rights should not be violated because of their imprisonment.

In Europe, the basic right to marriage and privacy is based on the European Convention on Human Rights (*hereinafter* referred to as the ECHR). Every man or woman of marriageable age has right to marry and to form a family depending on the governing laws of the respective nations.¹⁵ Further Article 8 of the ECHR states that the every individual has the right to respect towards his private and family life and no authority shall intervene in any private family life of any individual except in accordance with law or if necessary for the democracy for certain public morals like health and public safety.¹⁶ The parties who all are members to the ECHR are under the responsibility to make provisions in their respective states in consonance with the same.¹⁷

4. International Perspective Related to Conjugal Visitation Rights of the Prisoners

India is not the first country where the debate over the conjugal rights of the prisoners has been arose. Some states of the United States of America (*hereinafter* referred to as the USA), Canada, Spain, Mexico, etc. have already implemented the conjugal rights of prisoners while other countries are still in discussion of the implementation of the same. Here we have the brief analysis of the conjugal rights of the prisoners in different jurisdictions across the world.

4.1 United States of America

Till a considerate time in the USA, a person imprisoned was considered to be dead for law. There used to be unregulated conditions of the imprisonment which usually supervised by the prison administration. Initially, the American Courts were also hesitant to recognise the prisoners' rights as a result there was increase in the dehumanising conditions for the prisoners in the jails. But subsequently, by the intervention of judiciary provided a push to the prison reforms and the abuse of the power by the correctional authorities was restricted. The aim was to strengthen the bond of the society with the inmates and an effort was made to establish a place for prisoners in the community.

¹⁵ European Convention on Human Rights, 1950, art. 12.

¹⁶ Shruti Goyal, "Conjugal Rights of Prisoners", *Bharati Law Review* 70 (April-June, 2018).

¹⁷ *Ibid.*

There are number of judgments of the Supreme Court of the United States which clarified the position of prisoners' rights in the country. For instance, in the decision of Supreme Court of the United States in *Lanza v. New York*,¹⁸ unlike the outside world, the private property rights are not associated or granted to the inmates of the prison. Also, the right to privacy is apprehended in the jails and they cannot have the privacy which a normal individual has. It was also emphasised that their fundamental right of privacy should be intact as they are not zoo animals or clones in a circus that should be filmed or photographed.¹⁹ It was further held that although the prisoners are convicted for the crimes are deprived of their rights but surely, they retain the basic constitutional rights. Because they are confined in the prisons lawfully, they are not denied their fundamental civil rights.

To protect the other rights of the prisoners, Supreme Court of the United States has recognised the constitutional right to access the courts and legal assistance by the prisoners in landmark case of *Bell v. Wolfish*.²⁰ Further in the case of *Bounds v. Smith*²¹ it was established beyond reasonable doubt and was held that the inmates have right to access to the law libraries and can get assistance from the legally trained people.

The Constitution of the USA ensures that a citizen's rights are supreme and can only be taken away by the due process of law.²² The correctional philosophy which was adopted in the country was based on the ideology of treatment of the offender and public protection. In the early 1960s, the prisoners' rights movement started gaining momentum in the country. In present scenario, numerous rights of the prisoners have been recognised and in case violation of any of them, the prisoners can approach the judiciary. But the conjugal visitation right is not such right for which an inmate can approach to the court. The reason behind not making conjugal right at par with other basic rights is legitimate need of the penal administration and the idea that the prisoners should not enjoy the comfort of life like the non-prisoned.

In USA, the first state to implement the conjugal rights of prisoners was the Mississippi state. The Mississippi State Penitentiary also known as Parchman Farm was the first jail where the conjugal visits were allowed. Basically, this jail used to have most of the Black men as the inmates, who used to do the hard

¹⁸ 370 U.S. 139 (1962).

¹⁹ *Houchins v. K.Q.E.D. Inc.*, 438 U.S.I. (1978).

²⁰ 441 U.S. 520.

²¹ 430 U.S. 817 (1977).

²² Fifth and Fourteenth Amendment of the United States Constitution.

manual labour whole week. The prison authorities wanted to make the black prisoners more productive by granting them the reward in the form of the physical intimacy either with their spouses or some other women. It was considered as the motivation for them for doing the hard labour for whole week. It was kind of allurements which worked in favour of the prison authorities. Initially it was done unofficially but subsequently it became a ritual and being regularised. Afterwards in other states of the USA also, the conjugal visits were allowed and the family visits were normalised. Till 1995, seventeen states in the USA permitted the conjugal visits for the prisoners. While in current scenario, only four states allow these visits namely California, Connecticut, New York and Washington.²³

The reason of prohibiting the continuation of the conjugal rights was the public opinion. The opinion of the public is that the prisoners do not deserve anything, they should not access anything not even the health care and being provided with the conjugal visits is a huge matter.

The federal government in the USA has still not approved the concept of the conjugal rights of the prisoners in the federal prisons. There is no federal law related to this and only the states which implemented it. In the case of *Lyons v. Gilligan*,²⁴ District Court for the Northern District of Ohio denied the conjugal visitation rights for the prisoners with their spouses during the span of the sentence. Afterwards in the year 2008, the Department of Correction in various states of the USA have allowed the extended family visit programmes which includes whole family instead of the conjugal visits of the spouses. It is believed that holistic development of an incarcerated can only be done when there is strong family bond.²⁵

4.2 Canada

The conjugal visits to the federal inmates in the Canadian jails rather it allows the Private Family Visit which includes the spouses and common law partners. It was a pilot project of the country which was started in 1980. Under the Private Family Visits Program, other family members like children, parents, siblings, grandparents and any other person with who, in the opinion of the prison's head, the inmate have a good family bond. The duration is seventy-two hours once in

²³ Conjugal Visits: Rules and History; Available at: <https://web.archive.org/web/20160424091505/http://www.dopplr.com/social-atlas/> (last visited on August 10, 2023 at 10:25 pm).

²⁴ 382 F. Supp. 198.

²⁵ Department of Corrections, Washington State available at: <https://www.doc.wa.gov/corrections/incarceration/default.htm> (last visited on August 11, 2023 at 12:35 pm).

every two months. The inmates who have the disciplinary restrictions or there is history of family violence are not allowed to have the facility of the family visits. During the visits, the prison staffs keeps a close check on the inmates and visitors so that any kind of violence and mis-happening could be avoided.²⁶ The aim of the Private Family Visit System is to take one step ahead of the punishments and make sure that the inmates must realise that they have a family and bright future ahead when they will be out of the jail. The interesting case of the Lee Chapelle is worth mentioning here who was imprisoned for fifteen years in jail. Due to this Correctional System, he was able to marry and procreate children during the span of the imprisonment. Due to this system, he got a chance to live a happy life.

4.3 Mexico

The conjugal visit for the inmates in Mexico is very common. The marital status of the prisoners does not matter, thus the partners of the inmates were allowed to visit. Even the family unions are also permitted where the inmate used to live with the entire family within the limits of the prison. In July 2007, the administration in the Mexico City, the capital of the country, granted the conjugal visits for the gay prisoners from their partners. This was done on the basis of a law passed by the legislature to prohibit the discrimination on the basis of the sexual orientation.

4.4 Europe and other Commonwealth Countries

European countries are the most developed and are considered as the first world countries. Despite being first world countries, not all European countries allow the conjugal visits. Yet the countries which are positive viewpoint for the conjugal rights have liberal rules for the same. For instance, United Kingdom (UK) does not permit the conjugal visits but it permits the home visits with aim to build the links of the prisoner with the outside world, where he has to return one day. Also, these family visits are only allowed only for the prisoners who have less chance of being absconded or whose few weeks or months of imprisonment are left. Ireland also does not allow the conjugal visits. The famous anarchist couple Noel and Marie Murray, who were convicted for capital murder, fought a legal battle for ten years for their conjugal rights so that they can procreate a family within the jail. The Irish Supreme Court ruled that the Constitutional right to procreate children cease to exist when the couple is already imprisoned and that too in some heinous crime.

²⁶ Correctional Services of Canada available at: <https://web.archive.org/web/20081201003207/http://www.csc-scc.gc.ca/text/pblct/visit/index-eng.shtml>. (last visited on August 12, 2023 at 6:23 pm).

Among the Scandinavian countries, Sweden is the most open-minded country where spouses are allowed to visit the inmates on every Sunday that too without any supervision and can last up to nine hours. The country also allows the private home visits.²⁷ Denmark State Prison of East Jutland has the various facilities for the inmates like the private apartments for the couples where they can have the private time up to forty-seven hours per visit. On the similar lines, the prison system in France has also constructed the mini apartments and allows conjugal visits twice a week. The prison system in Spain allows the spouses to visit the prisoners anytime in a month, it allows the families and close friends to come and see the prisoners within the premises of the prison.²⁸

If we talk about the Australia, only two territories of Australia allow the conjugal visitation rights. They are Australian Capital Territory which includes the capital Canberra and another is Victoria. Other states including Queensland and New South Wales does not permit the conjugal visits.²⁹

5. Conclusion

*Whether a convict, under trial, does not cease to be a human being and, while lodged in jail, he enjoys all his fundamental rights guaranteed by the Constitution of India including the right to life guaranteed by the Constitution.*³⁰

With time, the evolved jurisprudence of prison administration has somehow achieved the humanitarian aspect. The jails are no more places where the inmates are left to be forgotten rather treated them as individuals having basic human rights including right to marriage and right to procreate the children. As the time has passed, there is more awakening regarding the prisoners' rights at the international level. As the world human rights movement started to take place after the Second World War, more recognition was granted to human rights of the prisoners. The evolved jurisprudence at global level regarding the prisoners' rights at the global level has given an impetus to the discussion on the same topic in India as there is no statutory law regarding the same. In India, this issue is still

²⁷ Dirk Van Zyl Smit, Frieder Dunker (eds.), *Imprisonment Today and Tomorrow: International Perspective on Prison Rights and Prison Conditions* 612 (Kluwer Law International, Hague, 2001).

²⁸ *Ibid.*

²⁹ ACT prisons allow Conjugal Visits available at: https://www.nzherald.co.nz/world/act-prisons-allow-conjugal-visits/GHZYHR7UDCVRY2MNOBKOCILXN4/?c_id=2&objected=10577199 (last visited on August 15, 2023 at 7:12 pm).

³⁰ The SC in the case of *State of Andhra Pradesh v. Challa Ramkrishna Reddy*, AIR 2000 SC 2083.

in its infancy; as a result the prisoners have to knock the door of the court under Article 21 of the Constitution of India.

Most of the democracies in the world including India, has adopted a penal system which is reformatory in nature and thus recognized the rights including decent lifestyle for its prisoners. It is well established fact that the contact with the family helps a man to live fulfilled and stress-free life. In each society, the institution of family is deeply rooted and cannot be separated from an individual. Thus, it has been widely accepted that bringing a prisoner close to his family would help him to reform and go back to the society and rehabilitate.

The courts have played a significant role in safeguarding the different rights of the prisoners. Even in other countries too, the courts never hesitated to uphold the basic human rights of the prisoners. This shows that the judiciary still holds a humanitarian approach towards the inmates but the formation of the law is not the duty of the judiciary. It is prerogative of the legislature and it should start to formulate an outline regarding this.

There is need to accept this fact that the imprisonment does not inhibit an individual's sexuality. Denying of the conjugal rights will be equivalent of subjecting the innocent family to a cruel punishment. On contrary to that, if the conjugal rights will be allowed, it will make the prisons more rehabilitative and less frustrating. Considering the current infrastructure and other facts, conjugal visitation no doubt should not be granted to each and every inmate but those who are denied this right because of imprisonment shall be granted the same and the right cannot be denied.

Role of United Nations High Commissioner for Refugees toward Refugee Protection

*Indu Bala**

Abstract

Refugees are forced or involuntary migrants driven out of their homeland due to human rights violations. They are entitled to the most basic human rights like life and liberty. The reasons for escape to freedom and safety can be many like oppression, threat to life or liberty, persecution, deprivation, acute poverty, war or civil strife, natural disasters, earthquake, drought, famine, flood etc. Legal efforts for refugee protection at international and regional level in the form of various instruments for refugee protection have also been elucidated such as Universal Declaration of Human Rights, 1948, Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949, the Convention Relating to the Status of Refugees, 1951 and its Protocol, 1967, the Convention Relating to the Status of Stateless Persons, 1954, the International Covenant on Civil and Political Rights, 1966, the African Convention on Refugee, 1969, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, the Cartagena Declaration on Refugees, 1984, the Convention on the Rights of the Child, 1989, the Bangkok Principles and Common European Asylum System etc. The United Nations High Commissioner for Refugees (UNHCR) has worked since 1981 for the protection of refugees and asylum-seekers in India. In support of the efforts by the Government of India, United Nations High Commissioner for Refugees (UNHCR) works with the Ministry of Home Affairs, Ministry of External Affairs, NITI Aayog, United Nations Country Team and its NGO partners based across 15 states of India.

Keywords: *Refugee Protection, Asylum seekers, Persecution, UNHCR.*

1. Introduction

Human rights violations are a major factor in causing the flight of refugees as well as an obstacle to their safe and voluntary return home. The impact of this problem is felt world-wide and its influence on international politics is increasingly becoming more pronounced. Coming to Indian scene, India is one of the few countries in the world which has experienced refugee situations on a gigantic scale during last century. It has

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given humanitarian assistance and protection to millions of refugees.¹ Refugee means one who, owing to religious persecution or political trouble seeks refuge in a foreign country.² A refugee is a person who has fled across the physical borders of his homeland to seek refuge in another place and who, upon granting refugee status, receives certain rights not available to other international migrants.³ According to United Nations Convention Relating to the Status of Refugees, 1951 the term refugee shall apply to “any persons who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”.⁴ As per UNHCR Report of January, 2023, total 49,059 refugees and asylum-seekers residing in India; out of which 92,072 are from Sri Lanka, 72,291 are Tibetans, 29,361 are from Myanmar, 15,053 from Afghanistan and 4,645 from other countries.⁵

The High Commissioner for Refugees is mandated by the United Nations to lead and coordinate international action for the worldwide protection of refugees and the resolution of refugee problems.⁶ When the United Nations replaced the League of Nations in 1945, it recognised from the outset that the task of caring for refugees was a matter of international concern and that in keeping with its Charter, the community of States should assume collective responsibility for those fleeing persecution. The task of caring for refugees indicates an international concern because of two basic reasons. First, there exists a clear humanitarian aspect of the matter duly recognised by the Charter of the United Nations which has distinct provisions for respect and protection of human rights. The second reason is the basic fact that it inevitably involves the interests of more than one State. Another reason was indeed fundamental based on sheer necessity arising out of the need for effective tackling of the problem of refugees. It could not be dealt with by mere negotiation or mediation or intervention or other methods known for resolution of international problems and disputes. The special aspects of the problem needed a proper organisation with regular manpower running it to create some impression towards resolving the grave problem

¹ Manik Chakraborty, *Human Rights and Refugees: Problems, Law and Practices* xi (Deep and Deep Publications Pvt. Ltd., New Delhi, 2001).

² Oxford English Dictionary 493, Second Edition, Volume-XIII, Clarendon Press, 1991.

³ A. Natrajan, *Human Rights in International Perspectives 2* (Aavishkar Publishers, Jaipur, 2006).

⁴ The United Nations Convention Relating to the Status of Refugees, 1951, art 1(A)(2).

⁵ UNHCR India Factsheet - January 2023, available at: file:///C:/Users/HP/Desktop /January %202023_ UNHCR%20India_Factsheet.pdf (Last visited on February 15, 2023).

⁶ Global Report, 2018 by UNHCR, “The UN Refugee Agency”, available at: <https://www.unhcr.org/enus/5e4ff98f7.pdf> (Last visited on April 25, 2022).

of multitude of human beings totally displaced and rendered helpless without a home and often without food and necessary means of living.⁷

The primary purpose of United Nations High Commissioner for Refugees is to safeguard the rights and well-being of refugees. In its efforts to achieve this objective, the Office strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State and to return home voluntarily. By assisting refugees to return to their own country or to settle permanently in another country, the United Nations High Commissioner for Refugees (UNHCR) also seeks lasting solutions to their plight. Persons of concern to United Nations High Commissioner for Refugees (UNHCR), are those whose protection and assistance needs are of interest to United Nations High Commissioner for Refugees (UNHCR). They include refugees, asylum-seekers, stateless people, some internally displaced people and returnees. The office carries out its work in collaboration with many partners including governments, regional organisations and international and non-governmental organisations. It is committed to the principle of participation, believing that refugees and others who benefit from the office's activities should be consulted over decisions which affect their lives.⁸

2. Historical Background of International Assistance for Refugees

In 1949, the United Nations decided to assume more responsibility for international action for protection of refugees. After the demise of the International Refugee Organisation (IRO) two possibilities worked out in the General Assembly, either to entrust this task to a department of the United Nations Secretariat or to establish an adhoc body which could act independently within the administrative and financial framework of the United Nations. The later formula was adopted. The General Assembly decided to keep this body outside of the political considerations. According to them, Secretary General, the High Commissioner for Refugee would enjoy a special status within the United Nations and would possess the degree of independence and the prestige which would seem to be required for the effective performance of his functions.⁹

However, after a long debate which continued for one year, the General Assembly decided on December 3, 1949 to establish the office of the United Nation High Commissioner for Refugees.¹⁰ As a result of the office of the United Nation High Commissioner for Refugees (UNHCR) was setup on January 1, 1951 for a period of

⁷ *Supra* note 1 at 61.

⁸ *Supra* note 1.

⁹ *Id.*, at 153.

¹⁰ Resolution No. 319 (iv) of December 3, 1949.

three years. It soon became imperative that the office could not be dispensed after three years and the General Assembly decided to prolong the mandate for a further period of five years and made it renewable beginning January 1, 1954. Thus, the tenure of the United Nations High Commissioner for Refugees (UNHCR) has been continuously renewed from time to time. The latest position is that the General Assembly during its session 49 decided to extend the period for another five years from January 1, 1994. The office was established as a subsidiary organ of the General Assembly under the Charter of the United Nations.¹¹ Dr. G.J. Van Heuven Goedhart of the Netherlands was elected by the General Assembly as the first High Commissioner for a period of three years.¹²

3. The United Nations High Commissioner for Refugees

3.1 Structure of the Office

The office of the United Nations High Commissioner for Refugees is a subsidiary organ of the General Assembly. It enjoys a special status within the United Nations with a high degree of independence and autonomy. The headquarters of the United Nations High Commissioner for Refugees (UNHCR) is in Geneva, Switzerland. In 1953, the office had 11 regional offices with 99 staff members. Whereas at present, the office had 11 regional offices maintained in 119 countries and around 5500 staff members. The staff are from over 100 different countries. Out of them, around 988 are working at the organisation's headquarters and remaining are in the regional offices. The office consists of a High Commissioner and an assistant High Commissioner. Apart from them, the office of the High Commissioner has been divided into 13 divisions/departments called bureaus. An advisory committee on refugees was established in 1951 to guide the High Commissioner in exercise of his functions. The committee consisted of 15 states. The advisory committee was reconstituted as an executive committee in 1955. The new committee was known as the United Nations Refugee Fund (UNREF) Executive Committee. The committee retained the advisory functions of its predecessor. The committee was also supposed to supervise the High Commissioner's material assistance programme and to determine an annual financial target. However, the United Nations Refugee Fund (UNREF) Executive Committee of the High Commissioner's Programme in January 1959. This committee, at present consists of 53 states. It looks after the United Nations High Commissioner for Refugees (UNHCR's) budgets and advises on refugee protection. It holds an annual session in Geneva in October every year to approve programmes for the next calendar year and to set the financial target needed to implement them. It can establish subsidiary bodies, as the need arises. For instance, it has set up a Standing Committee in 1950. The tasks of the United Nations High Commissioner for Refugees stated therein to

¹¹ Charter of the United Nations, art. 22.

¹² Secretary General Report, A/C.3/527-26, October, 1949.

provide international protection for refugees and to seek permanent solutions to their problems by assisting governments to facilitate their voluntary repatriation or their assimilation within new national communities.¹³

Although United Nations High Commissioner for Refugees (UNHCR)'s mandate is to protect and assist refugees, it has been called upon more and more to come to the aid of a wider range of people living in refugee-like situations.¹⁴ United Nations High Commissioner for Refugees (UNHCR) was awarded the Nobel Peace Prize in 1954 and 1981. Many celebrities are associated with the agency as United Nations High Commissioner for Refugees (UNHCR) Goodwill Ambassadors, currently including Angelina Jolie, Gugulethu Sophia Mbatha-Raw, Benjamin Edward Meara Stiller and others.¹⁵ Filippo Grandi is the 11th United Nations High Commissioner for Refugees elected by the United Nations General Assembly on January 1, 2016 for a five-year term. The General Assembly re-elected him to serve till June 30, 2023.¹⁶

3.2 Subjects of United Nations High Commissioner for Refugees (UNHCR): Jurisdiction and Persons of Concern

There are at least four types of persons that form the legitimate subjects of United Nations High Commissioner for Refugees (UNHCR). These are the so-called statutory, Convention, Protocol and mandate refugees. The first type, Statutory refugee is severely restricted by limitations of time and geography. The second type, Convention refugee as it appears in the Convention (and the statute) is also greatly restricted by qualifications of time and geography. But as these qualifications are removed by the Protocol, the potential membership of the class of the third type Protocol refugee is global and without limit as to time. The fourth type, Mandate refugee referring to the mandate of the High Commissioner is similarly broad. The competence of the High Commissioner extends in varying degrees to all four types of refugees. These are not mutual exclusive it is quite possible for an individual to be classified under more than one type. But, only the latter two types (Protocol and mandate) are relevant to the more recent refugee situations.¹⁷

However, it was General Assembly Resolution of November 20, 1959,¹⁸ which drew a clear distinction for the first time between refugees within the mandate and

¹³ *Supra* note 5 at 153.

¹⁴ V T Patil and P R Trivedi, *Refugees and Human Rights* 118 (Authors Press, Delhi, 1st edn., 2000).

¹⁵ Ramesh Thakur, *International Human Rights of Refugees* 10 (Cyber Tech Publications, New Delhi, 1st edn., 2013).

¹⁶ *Available at:* <https://www.unhcr.org/en-in/the-high-commissioner.html> (Last visited on May 20, 2023).

¹⁷ *Supra* note 2 at 63.

¹⁸ General Assembly Resolution No. 1388 (XIV) of November 20, 1959.

refugees who do not come within the competence of the United Nations, in respect of whom the High Commissioner was authorised to use his good offices in the transmission of contribution designed to assist them. So, until 1964 some refugees were described as benefitting from the High Commissioner's good offices and others as falling within his mandate. From 1966, however, the General Assembly ceased to make this distinction, requesting the High Commissioner to continue to provide international protection to refugees who are his concern, within the limits of his competence and to promote permanent solutions to their problems. Later, in December, 1972, to allow United Nations High Commissioner for Refugees (UNHCR) to assist in the repatriation of Sudanese refugees from neighbouring countries and also to resettle those who had been displaced within their own country, the Assembly referred at one and the same time to refugees and displaced persons as coming within the competence of the High Commissioner. On December 9, 1975, an important step was taken in a resolution and reaffirmed in its preamble that the essentially humanitarian character of the activities of the High Commissioner for the benefit of refugees and displaced persons.¹⁹

3.3 Function and Role of United Nations High Commissioner for Refugees (UNHCR)

The main function of the United Nations High Commissioner for Refugees is to provide international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and seeking permanent solutions for the problem of refugees by assisting government and subject to the approval of the governments concerned private organisations to facilitate the voluntary repatriation of such refugees or their assimilation within new national communities. The work of the High Commissioner is of an entirely non-political character. The High Commissioner follows policy directives given by General Assembly or the Economic and Social Council. The first chapter of the statute of United Nations High Commissioner for Refugees sets two main functions of the United Nations High Commissioner for Refugees. These are:

- i) Providing international protection to refugees,
- ii) Seeking permanent solutions for the problems of the refugees.

In performing the primary functions, the United Nations High Commissioner for Refugees seeks to provide an international substitute for diplomatic and consular protection of State. The purpose of international protection is to give refugees a recognised legal status and effective implementation of these legal status such as employment, education, residence, freedom of movement and safeguard against being

¹⁹ Resolution No. 3454 (XXX) of December 9, 1975.

returned to country where refugees may have reason to fear persecution. In performing the second function, the United Nations High Commissioner for Refugees (UNHCR) seeks to facilitate the voluntary repatriation of refugees and social and economic integration of refugees that have been offered asylum.²⁰ The United Nations High Commissioner for Refugees also perform the functions of promoting, organising and supervising international action on behalf of refugees protected by former international agencies. The High Commissioner shall provide for the protection of refugees falling under the competence of his office by—

- i) Promoting the conclusion and ratification of international Convention for the protection of refugees, supervising their application and proposing amendment.
- ii) Promoting through special agreement with host government steps aimed at improving the situation of refugees and reduction of the number requiring protection.
- iii) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities.
- iv) Promoting the admission of refugees.
- v) Obtaining from the government information concerning the number and condition of refugees in their territories and the laws and regulation concerning them.
- vi) Keeping in close touch with government and inter-governmental organisation concerning refugees.
- vii) Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement.
- viii) Establishing contact in such manners with private organisation dealing with refugees' questions.
- ix) Facilitating the co-ordination of the efforts of the private organisation concerned with the welfare of refugees.²¹

The United Nations High Commissioner for Refugees also plays a very vital role in coordinating aid to refugees. Except in special circumstances, material assistance activities are conducted through national or local authorities of the country concerned, other organisations of the United Nations system, non-governmental organisations or private technical agencies. Material assistance activities of the United Nations High Commissioner for Refugees include emergency through migration to other countries as well as counselling, education and legal assistance. Providing emergency assistance is a major aspect of the response to the United Nations High Commissioner for Refugees (UNHCR) to refugees. There has been frequent resort to the emergency

²⁰ *Supra* note 5 at 157.

²¹ *Id.*, at 158.

funds, which allows the High Commissioner to allocate upto \$10 million annually. Emergency relief is provided mainly in the form of care and maintenance of new refugees of displaced persons when a variety of basis essential such as food, shelter and medical aid are required on large scale at short notice.²²

The United Nations High Commissioner for Refugees is also developing several emergency systems in order to improve response to emergencies. These include roster of trained personnel to respond quickly to emergencies specially filled cargo plans and a project on early warning of refugees. The United Nations High Commissioner for Refugees also provides intermediate assistance in the form of care and maintenance. That may include the provision of food, shelter, water, health services, sanitation, clothing household utensil and basic education. Whenever feasible those programmes also include vocational training or small income generating activities that prepare refugees for a more productive life and promote a reasonable degree of self-reliance. The United Nations High Commissioner for Refugees has continued to pressure self-reliance as an integral part of its assistance activities and in particular provide refugees more economic opportunities, employment and self-employment. Thus, assistance toward self-sufficiency has become an important goal and more supports has gone to institution and into infrastructure in order to achieve a greater degree of sustainability.²³

As United Nations High Commissioner for Refugees (UNHCR) practice and General Assembly resolutions show, for United Nations High Commissioner for Refugees (UNHCR) it is the lack of effective protection, rather than persecution narrowly defined, that determines whether a person falls within the agency's competence. Thus, all those who flee across an international border because their own State could not or would not protect them against serious threats to their life, liberty and security, fall within United Nations High Commissioner for Refugees (UNHCR's) international protection mandate.²⁴

4. Refugee Protection in the Context of State Security and Sovereignty

The security of individuals is locked into an unbreakable paradox in which it is partly dependent on and partly threatened by the States. International protections for refugees have been repeatedly frustrated as States have expressed and increased reluctance to offer asylum. One of the main challenges for United Nations High Commissioner for Refugees lies in finding the proper balance between international responsibilities towards refugees and legitimate State interests. History has shown that

²² *Ibid.*

²³ *Id.*, at 159.

²⁴ Guy S. and Goodwin Gill, *The Refugee in International Law* 131 (Clarendon Press Oxford, 1983).

the two are not inherently incompatible and can co-exist: the refugee treaties themselves allow for this.²⁵

In planning its objectives for protection activities, United Nations High Commissioner for Refugees set itself four overarching tasks:

- Combating the deteriorating quality of asylum.
- Improving the efficacy of the international refugee protection system.
- Ensuring worldwide consistency in the application of protection standards to address the trend towards regionalisation of approaches to protection.
- Re-vitalising old and building new partnership for protection.

The primary objectives of activities of United Nations High Commissioner for Refugees are the achievement of durable solution through voluntary repatriation, legal integration in the country of first asylum or where these are not possible resettlement in another country.²⁶

The General Assembly's requests made it possible for United Nations High Commissioner for Refugees (UNHCR) to deal with other categories than Convention refugees in an increasingly automatic fashion, while at the same time States did not become obliged to provide these refugees of concern with the same protection standards to which Convention refugees were entitled.²⁷

The United Nations High Commissioner for Refugees has always continued to promote and support effort towards the voluntary repatriation of individual or groups of refugees. The protection element consists of ensuring that repatriation is voluntary and the assistance element consists of helping refugees. Whenever possible to overcome practical difficulties concerning their voluntary repatriation, it also allows United Nations High Commissioner for Refugees to ensure that the refugees are given basic help upon arrival in their homeland. Assistance to persons repatriated to their country of origin has frequently proved to be indispensable. The United Nations High Commissioner for Refugees (UNHCR) also provide educational facilities to refugees. Primary education is provided through educational assistance components included in multi sectorial projects. In service training literacy, adult education, skill and language training, together with cultural orientation constitute the main activities under informal education assistance project. The United Nations High Commissioner for Refugees has also promoted educational co-ordination between the Ministry of Education and the refugees in order to improve the quality of curriculum in refugee's

²⁵ *Supra* note 5 at 163.

²⁶ *Id.*, at 166.

²⁷ Anand Singh Shekhawat, *Rights of Refugee's and International Human Right* 168 (2019) (Unpublished Ph.D. Thesis, University of Rajasthan, Jaipur).

camps to develop a refugee teacher training scheme and to provide text book to refugee children.²⁸

5. Efforts During Novel Corona Virus (COVID-19) Pandemic

The Novel Corona Virus (COVID-19) pandemic has shown that we as one global community, can only be safe if everyone is included and protected. United Nations High Commissioner for Refugees (UNHCR) is providing a comprehensive protection and assistance response to people forced to flee who are disproportionately affected by the pandemic. United Nations High Commissioner for Refugees advocated for their inclusion in vaccination plans and work to address their growing needs in education, mental health and psychosocial support, child protection and prevention and response to sexual and gender-based violence.²⁹

The United Nations High Commissioner for Refugees continues to work with partners to ramp up cash assistance, reinforce shelters and provide core relief items in congested collective settings including urban contexts. This includes the use of digital and other innovative solutions. To reduce density in overcrowded living conditions, United Nations High Commissioner for Refugees (UNHCR) has worked to improve shelter and settlement conditions and provide improved health infrastructure in areas most at risk from a spread of Novel Corona Virus (COVID-19). The United Nations High Commissioner for Refugees has also coordinated interventions in camps and camp-like settings ensuring provision of services and assistance. Finally, United Nations High Commissioner for Refugees (UNHCR) is working to support education systems ensuring that schools remain open where health conditions permit, mitigating the risk of Novel Corona Virus (COVID-19) spreading through increased access to health services and information campaigns. It has also expanded investments in online and offline distance education or alternative solutions.

The United Nations Secretary-General launched the United Nations Comprehensive Response to Novel Corona Virus (COVID-19) to save lives, protect societies and recover better. In its contribution to the priorities of the global coordinated approach, United Nations High Commissioner for Refugees pledged the

²⁸ *Supra* note 5 at 167.

²⁹ Efforts during COVID-19 Pandemic, *available at*: <https://www.unhcr.org/coronavirus-covid-19.html#:~:text=The%20COVID%2D19%20pandemic%20has,disproportionately%20affected%20by%20the%20pandemic> (Lat visited on April 20, 2023).

following strategic approach to prepare and respond to the needs of people of concern to it, including:

- Strengthening critical protection, communication and assistance activities to reduce risks to refugees, asylum seekers, returnees, Stateless persons, internally displaced persons (IDPs) and surrounding host communities, including harmful coping strategies.
- Together with other United Nations (UN) agencies and the non-governmental organisations (NGO) community, ensure efforts to combat xenophobia, discrimination and stigmatisation of Stateless populations, refugees and others forcibly displaced.
- Undertaking measures that may support prevention of infection.
- Undertaking critical support interventions to ensure access to effective health care.
- Ensuring the basic needs of the most vulnerable are met to reduce the impact of shocks, including in lockdown situations.
- Actively participating in country and district level Novel Corona Virus (COVID-19) coordination structures to ensure refugees are included in country specific national operational plans with estimated resource requirements such as medicines or supplies.
- Advocate and support governments to include refugees and other forcibly displaced in their socio-economic recovery plans and in the United Nations' efforts to support these plans.³⁰

6. Post COVID-19 Response of UNHCR for Refugee Protection during Future Pandemics and Public Health Crisis

In preparation for future pandemics and public health crises, advocate and plan for the maintenance of essential in-person protection services to the fullest extent possible, including the provision of adequate human and financial resources. Proposed actions for international protection actors and governments:

- To ensure access by protection staff to all refugees and asylum seekers within and at the borders of countries during crises, in line with the underlying principles of the 1950 Statute and the 1951 Convention.
- Plan for the provision of adequate, safe quarantine facilities that respect the human rights of refugees and asylum seekers, placing the minimum additional financial burden on hosting states.³¹

³⁰ Report on UNHCR's response to COVID-19 by UNHCR: The UN Refugee Agency, *available at*: <https://reporting.unhcr.org/sites/default/files/COVID-19%20progress%20report%20-%2004.10.20%20-%20FINAL.pdf> (Last visited on March 20, 2023).

7. Role of United Nations High Commissioner for Refugees (UNHCR) in India

One of the thrust areas of United Nations High Commissioner for Refugees (UNHCR's) advocacy efforts in India has, therefore, been to highlight the absence and the need for laws to protect the rights of refugees. In this endeavour, United Nations High Commissioner for Refugees (UNHCR) has over the years built an institutional relationship with the judicial community in India. In collaboration with well-known lawyers, United Nations High Commissioner for Refugees (UNHCR) has held several seminars and workshops on refugee law and international law relating to refugees. One of the key partners in this effort has been South Asian Association for Regional Co-operation in Law (SAARC Law), together with whom United Nations High Commissioner for Refugees (UNHCR) held major seminar in 1997. United Nations High Commissioner for Refugees (UNHCR) has also sought the services of Public Interest Legal Support and Research Centre (PILSARC), an implementing partner, to provide legal assistance to refugees facing protection problems. The Indian Centre for Humanitarian Laws and Research (ICHLR), another implementing partner of the United Nations High Commissioner for Refugees (UNHCR) in India, has been conducting seminars, workshops and conferences on refugee issues throughout the country.³²

7.1 Fact Sheet of United Nations High Commissioner for Refugees (UNHCR) in India

The Government of India directly provides protection and assistance to 2,03,235 refugees from Sri Lanka and Tibet, and 40,859 refugees and asylum seekers of other nationalities are registered under United Nations High Commissioner for Refugees (UNHCR's) mandate till January 30, 2020. The United Nations High Commissioner for Refugees (UNHCR) India in partnership with academic institutions, supports research, teaching and information sharing on topics related to refugee protection geared towards implementation of the Global Compact on Refugees and the sustainable development goals (SDGs) Agenda 2030. Cumulatively, at the end of January 2020, 12,524 asylum seekers were registered with United Nations High Commissioner for Refugees (UNHCR), 16 refugees were submitted for resettlement,

³¹ UNHCR, "Joint Evaluation of the Protection of the Rights of Refugees During the COVID-19 Pandemic" (July, 2022), *available at*: <https://www.unhcr.org/sites/default/files/legacy-pdf/62c6ceca4.pdf> (Visited on February 02, 2023).

³² *Supra* note 13 at 115.

11 refugees departed for resettlement, 59 Sri Lankan refugees were assisted to voluntarily return to Sri Lanka.³³

7.2 Composition of UNHCR India

The United Nations High Commissioner for Refugees (UNHCR) is comprised of 29 national staff, 6 International staff, 31 affiliate workforce (30 national and 1 international) offices in India, 1 country office in New Delhi and 1 field office in Chennai.

7.3 Biometrics, Registration and Refugee Status Determination

- Biometric Identity Management System (BIMS), including the recording of iris scans and fingerprints, is an integral part of the registration, refugee status determination and refugee card renewal process for persons 5 years and above. So far, 31,194 persons are enrolled which is 78% of the active refugee and asylum-seeking population. In the month of January 2020, 483 (274 male and 209 female) individual refugees and asylum-seekers were enrolled.
- 634 individuals (359 males and 275 females) mainly from Afghanistan and Myanmar were newly registered in the month of January. In 2019, 6,817 asylum-seekers (3,878 male and 2,939 female) were newly registered (including new births), a slight decrease compared to 2018 when 7,229 asylum seekers were registered. Interpretation services were provided for interviews, protection outreach, and other sessions.³⁴

7.3.1 Protection

- 16 best interest assessment for unaccompanied or separated children were conducted.
- 15 new incidents of sexual and gender-based violence (SGBV), 8 in the country of origin and 7 in the country of asylum were reported and they included incidents of rape, domestic violence, sexual abuse, child sexual abuse, forced sodomy and emotional abuse. Appropriate multi-sectoral interventions were made for survivors opting for support, including fast-tracking for refugee status determination (RSD), psycho-social, medical, legal counselling and shelter home support. 41 survivors (old cases) were also assisted.

³³ UNHCR, “Fact Sheet by the UN Refugee Agency”, *available at*: <https://reporting.unhcr.org/sites/default/files/UNHCR%20India%20factsheet%20-%20January%202020.pdf> (Last visited on April 9, 2023).

³⁴ *Ibid.*

- Action Aid conducted a session with 22 Rohingya refugee men on the role of men in prevention and response to sexual and gender-based violence (SGBV) in Nuh.
- Non-governmental organisations (NGOs) provided legal aid and counselling to asylum seekers and refugees at risk of detention/in detention. As on January 31, 2020, a total of 259 asylum seekers and refugees are detained at prisons, detention centres, children's homes and shelter homes in 16 different states of India.
- As a part of United Nations High Commissioner for Refugees (UNHCR's) child protection framework, children's participation in decisions affecting them and their capacity to understand issues affecting them, are integral to their protection. In Delhi, BOSCO conducted interactive session with children (6-14 years) on prevention of abuse, vulnerabilities and their rights. In this session 331 children (138 boys and 193 girls) reached. In Nuh, Action Aid involved 28 children in a consultation on the children's programmes being implemented.
- In Hyderabad, 5 children engaged in child labour activities were rescued by the Labour Department, Government of Telangana. Save the Children supported in identifying these children and supported the department to organise the rescue operation.³⁵
- United Nations High Commissioner for Refugees (UNHCR) conducts regular dialogues and trainings with communities on Protection from Sexual Exploitation and Abuse (PSEA) as a part of its strategy. In Delhi, BOSCO conducted a Protection from Sexual Exploitation and Abuse (PSEA) training for 45 youth leaders to sensitise them on the prevention and response mechanisms and to work together to build a safe environment.
- The United Nations High Commissioner for Refugees (UNHCR) and partners remain committed to strengthen children and women protection systems and services and advocate for access of refugees and asylum seekers to services. Action Aid advocated with the State Commission for the Protection of Child Rights in Nuh for the effective inclusion of refugees in education; Save the Children advocated with relevant stakeholders on establishing multi-sectoral linkages for sexual and gender-based violence (SGBV) survivors in Jammu.³⁶

7.3.2 Education

- To support mainstreaming into the formal learning environment and to boost refugees' education, a total of 442 refugee students (208 boys and 234 girls) in Delhi are enrolled in distance learning education and are supported by

³⁵ *Ibid.*

³⁶ *Ibid.*

BOSCO through tuition classes. Action Aid runs four bridge learning centres in Nuh attended by 161 children.

- Action Aid organised a guidance and counselling session for 64 parents on school enrolment and retention and conducted visits to two schools to strengthen the inclusion of refugee children.
- In collaboration with partners, United Nations High Commissioner for Refugees (UNHCR) identifies local solutions to address gaps in respect of access to education and addresses the need for school supplies, uniforms, textbooks and other school materials. In Hyderabad, 310 school going children received school bags, water bottles and umbrellas, and 60 children (32 girls and 28 boys) from Child Friendly Learning Space (CFLS) received school uniforms.³⁷

7.3.3 Health and Sanitation

- United Nations High Commissioner for Refugees (UNHCR) and partners support government health departments to reach out to refugee and asylum seeker children for delivery of immunisation services. In Jammu, Save the Children supported the Directorate of Health Services to administer polio vaccinations to 595 children under the Government's Pulse Polio Immunisation Programme, and other routine immunisation was provided to 23 children (15 girls and 8 boys). In Hyderabad, over 700 refugee and asylum seeker children were immunised under Mission Indradhanush. Health sessions were conducted on the importance of immunisation including a polio vaccination camp which benefitted 216 children and five reproductive health sessions were conducted with Rohingya refugees at five sites including Faridabad which benefitted 302 refugees.³⁸
- United Nations High Commissioner for Refugees (UNHCR) and partners advocate for and facilitate access to quality health services for refugees. A total of 17 persons (12 in Jammu, 5 in Nuh) were supported to access health services. In Hyderabad, 33 expectant mothers were supported and linked to antenatal care.
- In Jammu, Save the Children supported the Urban Health Centre to organise a free health check-up camp benefitting 61 asylum seekers and refugees. Mission of the Government of India supported by Save the Children.³⁹

7.3.4 Durable Solutions

- United Nations High Commissioner for Refugees (UNHCR) facilitates voluntary repatriation of refugees to their countries of origin. In January,

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

United Nations High Commissioner for Refugees (UNHCR) supported a total of 59 Sri Lankan Refugees (28 camp-based refugees and 31 non-camp refugees) to voluntarily repatriate to Sri Lanka.

- The Director of Rehabilitation organised a coordination meeting on January 29, 2020 with non-governmental organisations (NGOs) working with Sri Lankan refugees. One of the important outcomes of the meeting was an agreement to conduct information dissemination sessions with non-camp refugees living in various districts of Tamil Nadu on the process to apply for a waiver for overstay penalties if refugees intend to return voluntarily to Sri Lanka.
- United Nations High Commissioner for Refugees (UNHCR) promotes resettlement as a protection tool for the most vulnerable individuals. A total of 16 refugees were submitted for resettlement by United Nations High Commissioner for Refugees (UNHCR) in January and 11 departed for resettlement in the same month. 12 refugees were able to benefit from different complementary pathways (family reunification, private sponsorship, special humanitarian visa) to different countries.
- No Afghan Hindu or Sikh refugees were naturalised in the month of January.⁴⁰

8. Recent Humanitarian Crisis in Afghanistan and Ukraine

The withdrawal of United States (U.S.) troops from Afghanistan has triggered a major humanitarian crisis in the country. The fall of the Afghan Government and the Taliban's return to power has resulted in many Afghans leaving the country in search of safety. Some countries have agreed to take in refugees from Afghanistan; India is one notable country that has agreed to provide safe shelter. India launched an electronic visa, the "e-Emergency X-Miscellaneous Visa," in August, 2021 for Afghan nationals who wish to come to India. Since the launch of the new visa, India has received close to 60,000 applications from Afghan nationals. The visas will be processed after a security clearance is completed and be valid for six months.⁴¹ The United Nations High Commissioner for Refugees (UNHCR) said it is in constant dialogue with the government on matters pertaining to Afghan nationals. A total of 736 Afghans were recorded for new registration from August 1 to September 11, 2021 the United Nations High Commissioner for Refugees informed in New Delhi, adding that it is scaling up its capacity to meet increasing requests for registration and assistance of Afghans in India. The United Nation refugee agency said it is in constant dialogue with the government on matters pertaining to Afghan nationals, including

⁴⁰ *Supra* note 33.

⁴¹ *Available at:* <https://www.justsecurity.org/78586/afghan-refugees-in-india-highlight-the-need-for-indian-domestic-refugee-law/> (Last visited on February 15, 2023).

issuance and extensions of visa, assistance and solutions. According to the data, the total number of persons of concern to United Nations High Commissioner for Refugees (UNHCR) in India stands at 43,157. Among them, 15,559 refugees and asylum seekers are from Afghanistan. From August 1 and until September 2021, 11,736 Afghans were recorded by United Nations High Commissioner for Refugees (UNHCR) for new registration, the United Nation body stated in a statement. The United Nations High Commissioner for Refugees (UNHCR) further informed that it is scaling up its capacity to meet the increasing requests for registration and assistance of Afghans in India. The United Nations High Commissioner for Refugees (UNHCR) is increasing its humanitarian response programme for vulnerable new arrivals from Afghanistan. Basic assistance such as food, cash-based assistance and core relief items are being provided to the most vulnerable new arrivals from Afghanistan and those already in India, also stated by the United Nation body.⁴²

Russia's invasion of Ukraine in late February, 2022 has already caused two million refugees to flee the country. The United Nations High Commissioner for Refugees predicts that another four million will be displaced if the conflict continues. Although all neighbouring European Union countries have pledged to accept refugees from Ukraine, as people flee across borders, a complicated story emerges of who are perceived and received as good, bad and ideal refugees in modern Europe.⁴³

9. Collaboration of UNHCR with Governments and Non-government Organizations (NGOs)

The United Nations High Commissioner for Refugees (UNHCR) coordinates protection and assistance for refugees and asylum seekers in collaboration with:

- Government of India: Ministry of Home Affairs, Ministry of External Affairs.
- United Nation: The United Nations High Commissioner for Refugees (UNHCR) was a member of the United Nations Country Team (UNCT) and contributes towards the Government of India-United Nations Sustainable Development Framework (UNSDF) for 2018-2022.
- Formal partnership agreements with eight national non-governmental organisations (NGOs): Social Legal Information Centre (SLIC), Bal Raksha Bharat (Save the Children), Fair Trade Forum India (FTF-I), Development and

⁴² Available at: <https://www.thehindu.com/news/national/a-total-of-736-afghans-recorded-for-new-registration-in-india-from-august-1-to-september-11-unhcr/article36468198.ece>. (Visited on February 19, 2023).

⁴³ Business Standard, "In Russia's invasion of Ukraine, here are the good, bad and ideal refugees", available at: https://www.business-standard.com/article/international/in-russia-s-invasion-of-ukraine-here-are-the-good-bad-and-ideal-refugees-122030900473_1.html (Visited on March 9, 2023).

Justice Initiative (DAJI), Gandhi National Memorial Society (GNMS), Action Aid and Commonwealth Human Rights Initiative (CHRI).

- Operational Partners: Tata Institute of Social Sciences (TISS) and Migration and Asylum Project (MAP).⁴⁴

Durable Solutions by UNHCR: Over the years, UNHCR has managed numerous voluntary repatriation programmes that have brought millions of displaced people home. UNHCR also assists with small-scale and individual repatriations, and monitors the reintegration of returnees to ensure that their repatriation was a sustainable solution. Some 251,000 refugees were able to return to their country of origin in 2020, either assisted by UNHCR or spontaneously. When voluntary repatriation is not feasible and refugees do not qualify for resettlement, a solution is for refugees to integrate in their country of asylum. UNHCR coordinates resettlement needs, develops resettlement criteria, and identifies refugees to be submitted for consideration for resettlement. UNHCR works with various partners to develop complementary pathways to third countries (e.g. visas, work permits, scholarships) that will meet the protection needs of refugees.⁴⁵

11. Indian Position of Refugee Protection in light of Citizen Amendment Act (CAA), 2019

In December 2019, the Indian government introduced the Citizenship (Amendment) Act, 2019, which sought to make “illegal migrants” from Afghanistan, Bangladesh and Pakistan who are Hindu, Sikh, Buddhist, Jain, Parsi or Christian eligible for citizenship. The purpose of the Citizenship (Amendment) Act (CAA)⁴⁶ is to give Indian citizenship to refugees of six communities (Hindus, Christians, Sikhs, Jains, Buddhists and Parsis), who have come from Pakistan, Bangladesh and Afghanistan. Subsequently, in May 2021, the Union Ministry of Home Affairs (MHA) began inviting applications for Indian citizenship from non-Muslims from Afghanistan, Bangladesh and Pakistan residing in 13 districts of Gujarat, Rajasthan, Chhattisgarh, Haryana and Punjab.⁴⁷

⁴⁴ *Supra* note 33.

⁴⁵ Report on “Finding Durable Solutions for Refugees” by UNHCR, *available at:* <https://www.unhcr.org/sites/default/files/legacy-pdf/61a0fe634.pdf> (Visited on February 3, 2023).

⁴⁶ *Available at:* https://indiancitizenshiponline.nic.in/Documents/UserGuide/E-gazette_2019_20122019.pdf (Visited on March 14, 2023).

⁴⁷ Refugee protection in India calls for the adoption of a specific law, *available at:* <https://www.livemint.com/opinion/online-views/refugee-protection-in-india-calls-for-the-adoption-of-a-specific-law-11635353951190.html> (Last visited on March 14, 2023).

The United Nations High Commissioner for Refugees expressed concern over the law, calling it a “breach of India’s international human rights obligations.”⁴⁸ The United Nations High Commissioner for Refugees moved to Supreme Court seeking to have a stay on the Citizenship Amendment Act (CAA), which she claimed lacked objectivity and rational and detracted from India’s international obligations not to discriminate between migrants on the basis of religion or render. However, Government of India reacted and said that the Act was an internal matter and concerned the sovereign right of Parliament to make laws. Further contended that “no foreign party has any locus standi on issues pertaining to India’s sovereignty.”⁴⁹

12. Conclusion

The provision of assistance to refugees is a humanitarian and non-political matter which should not be hindered by political considerations, despite the fact that refugee situations themselves are inherently political in character. However, of all United Nation agencies, the United Nations High Commissioner for Refugees is the most operational one. By encompassing the needs of greater numbers of people, the United Nations has developed the High Commissioner’s Office into a principal instrument of its humanitarian policies. It is indeed true that in its towering activity the United Nations High Commissioner for Refugees (UNHCR) has not trodden on any one toes to incur displeasure of a single soul or a single sovereign State. Whereas, it has stood on its legs constantly to serve teeming millions of humanity in dire distress. The United Nations has expressed its gratitude on numerous occasions and the community has recognised it by giving it the ‘Nobel Prize’ time and again. It functions not only with the community’s support but also with the deepest gratitude of the human race. The former President of International Court of Justice, Mr. Nagendra Singh rightly observed that in relation to the work it performs and the activities that it undertakes, the office of the High Commissioner is the central pivot promoting humanitarian cause par excellence. The office of the High Commissioner does not give out doles in charity but promotes human activity to keep human beings alive and self-reliant.⁵⁰ Protecting refugees is a shared responsibility. States have the primary duty, non-governmental organisations (NGOs), international organisations, agencies and the United Nations High Commissioner for Refugees (UNHCR) must work together if we want to be sure that this responsibility is met.

⁴⁸ Available at: <https://www.hrw.org/news/2024/03/15/india-activates-discriminatory-citizenship-law> (Last visited on March 2, 2023).

⁴⁹ Available at: <https://economictimes.indiatimes.com/news/politics-and-nation/unhcr-moves-sc-against-caa-india-rejects-intervention/articleshow/74468523.cms> (Last visited on March 9, 2023).

⁵⁰ Nagendra Singh, *The Role and Record of the UN High Commissioner for Refugees* 42 (Macmillan India Limited, Delhi, 1984).

Evolution of White-Collar Crimes in the 21st Century

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Abstract

A silent revolution however has taken place in the criminal law as well as the law enforcement theory dating back to the nineties. Ever since the onset of globalisation and liberalisation there has been a new branch of criminal jurisprudence of economic crimes which has surfaced that is not only national in character and scope but also transnational. Although non-violent in character these crimes can cause noticeable loss to the general public, any nation or the world as a whole. The advancement of scientific knowledge and technology has brought about complexities in daily life and has thereby resulted in a considerable rise in crime rate together with new crimes which were hitherto unknown altogether. Albeit the notion of white-collar crime did not become popular in our society until Sutherland invented it almost fifty years ago. From ancient times to the present white-collar crime has invariably continued to exist as a part of Indian society. As the state, society, and economy changed, so did its complexity and intensity. The concept of economic crimes on the other hand has come a long way since its conception, from being first introduced as "white collar crimes" a "phenomenon of law breaking by "respectable" persons in the upper reaches of society" coined by American Sociologist Edwin. H. Sutherland to acquiring several forms in the wake of globalisation and liberalisation. These crimes in the 21st century however, have cruised behind past the perimeter of business and trade thereby obsoleting the term "white collar crimes" which is deficient and unsuitable to detail all the forms of economic deviances found. The aim of this paper is to study thoroughly the nature of the criminals particularly with respect to economic crimes and whether the nature and character of such criminals has changed with the advancement of scientific knowledge and technology. The first part of the paper will focus on how does white collar crime vary from "traditional" crime, either in terms of the offense or the offender. The second part will focus on how different are white collar crimes from economic crimes and in turn their offenders and whether economic crime is an extended limb of white-collar crimes. The third part will elaborate on the transition of white-collar crimes to cyber economic crimes in the 21st century and then nature

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of the offenders. An attempt will be made to draw distinction between the offenders of the aforesaid crimes, followed by the analysis of the primary definition of white-collar crimes in respect to the offender. Lastly the paper will conclude with a few suggestions.

Keywords: *White collar crime, Criminology, Economic Crimes, Cyber Economic crimes.*

1. Introduction

The most noteworthy facet of criminology is its concern for crime and criminals. The study of criminals by and large is presupposed on a basic speculation that no one is born a criminal and any criminal can be rehabilitated if given sufficient treatment options. A silent revolution however has taken place in the criminal law as well as the law enforcement theory dating back to the nineties.¹ Ever since the onset of globalisation and liberalisation there has been a new branch of criminal jurisprudence of economic crimes which has surfaced that is not only national in character and scope but also transnational. Although non-violent in character these crimes can cause noticeable loss to the general public, any nation or the world as a whole. The advancement of scientific knowledge and technology has brought about complexities in daily life and has thereby resulted in a considerable rise in the crime rate, as well as the emergence of previously unknown crimes. As a result, criminal law administrators have developed new approaches and techniques to address these issues using a more scientific manner.

The history of human society predates the use of coercion as well as fraud to conduct crimes. Despite the fact that Sutherland's thesis of "white collar crime" was not widely applied in our own society until almost fifty years ago². From ancient times to the present white-collar crime has invariably continued to exist as a part of Indian society. As the state, society, and economy changed, so did its complexity and intensity. Conflict theory, and particularly a Neo-Marxist critique of it, focused increased emphasis in the social sciences on the crimes of the state, the crimes of the economic elites, and the disproportionate influence of the powerful and wealthy on the legislative branch. The concept of economic crimes on the other hand has come a long way since its conception, originally referred to as "white collar crimes," they were described as a "phenomenon of law breaking

¹ Guy Stessens, *Money Laundering: A New International Law Enforcement Model* 5 (Cambridge University Press, 1st edn., 2008).

² Stanton Wheeler, David Weisburd, *et.al.*, "White Collar Crimes and Criminals" 25 *American Criminal Law Review* 331 (1988).

by "respectable" persons in the upper reaches of society." by American Sociologist Edwin. H. Sutherland to acquiring several forms in the wake of globalisation and liberalisation.

The extent and scope of these crimes have changed dramatically due to the emergence of extremely sophisticated and improved modes of transportation, communication, and technology. Along with a growth in the number of crimes, the type of these crimes has also gotten more digital as a result of technological advancements and the increased usage and dependability of computers in various organizations and government facilities. This development has in turn given rise to a new concept of criminological approach known as Neo-criminology. There has been a transition of white-collar crimes to cyber economic crimes in this day and age, crimes which by its very nature or modus operandi are simple to commit yet difficult to detect and even more challenging to prove. Criminal in general and an economic crime criminal in particular is a product of capitalistic system.³

The aim of this paper is to review thoroughly the nature of the criminals particularly with respect to economic crimes and whether the nature and character of such criminals has changed with the headway of scientific learning and technology. The first part of the paper will focus on how white-collar crime vary from "traditional" crime, either in terms of the offense or the offender. The second part will focus on how different are white-collar crimes from economic crimes and in turn their offenders and whether economic crime is an extended limb of white-collar crimes. The third part will elaborate on the transition of white-collar crimes to cyber economic crimes in the 21st century and then nature of the offenders. An attempt will be made to draw distinction between the offenders of white-collar crime as well as cyber economic crime criminal their modus operandi etc. and lastly the paper will conclude with a few suggestions.

2. Historical Background

“White collar crime” which was first identified as a sociological notion, is now a recognized legal term⁴. Nonetheless, this phrase is given to Edwin H. Sutherland. However, several academics before him, including W. A. Bonger (1916), E. A. Ross (1907), Sinclair (1906), and Steffens (1903), brought attention to the

³ N.V. Paranjape, *Criminology & Penology (including Victimology)* 98 (Central Law Publication, 18th edn, 2019).

⁴ Ellen S. Podgor, “The Challenge of White Collar Sentencing” 97 *The Journal of Criminal Law and Criminology* 734 (2007).

unethical behavior of companies and elites.⁵ In his 1872 paper *Criminal Capitalists*, Edwin C. Hill emphasized the criminal behavior of US Congress leaders. Idea of White-collar Crime articulated by Sutherland however, is not all embracing as he confined the term to include those crimes committed by a person of respectability and high social status in the course of his occupation.

The identification of White-collar crime cannot be fully explained by associating white collar crime with the higher class because this type of crime is equally committed by members of the middle class and lower Further, Sutherland gave more emphasis to the criminal rather than the crime. Lastly, white collar crimes according to his definition were committed only by the professionals in the course of their occupation thereby excluding the non-professionals. But in the twenty-first century, these crimes have sped past the boundaries of commerce and industry, rendering the term “white collar crimes” obsolete and inadequate.⁶

Growing commercial ties between various stakeholders, including the insurance, banking, stock, and other industries, were brought about by liberalization, privatization, and globalization. This led to the emergence of a new mindset and neo-capitalist culture, which emphasized a voracious and instantaneous appetite for wealth accumulation. Additionally, it has radically and amorously changed a primarily traditional and hoarded society into a consumer nation.⁷ Globalization has brought forth a favourable environment for such crimes, not only by changing the nature of economy but also that such crimes as well. In a liberalised economy these crimes have cruised past the traditional borders and jurisdictions becoming more transnational and ambiguous which are hard to detect and even harder to convict thereby posing unique challenges to the criminal justice system. White collar criminals on the other hand have become more technologically sophisticated hiding behind the veil of anonymity.

The worldwide scope of white-collar crime poses obstacles concerning legal frameworks, international collaboration, and jurisdiction. Criminals frequently work across international borders, taking advantage of legal weaknesses and looking for refuge in countries with weak control.

⁵ Pushpinder Kaur, “White Collar Crimes in Globalised India: An Analytical Study”, *XX Law Journal Guru Nanak Dev University Amritsar* 103 (2012).

⁶ Herman Mannheim, *Criminal Justice and Social Reconstruction* 82 (Routledge 1958).

⁷ *Supra* note 5, p. 108.

3. White Collar Crime and Traditional Crime Offender

As per economic theory of crime the criminal is represented as a maximising agent, which analyses risk factors, reward and punishment when considering the economic and social environment fundamental to the commission of the crime⁸.

The table below illustrates the difference between the white-collar criminal and traditional crime criminal on the aforesaid variables:

Categories	White collar Crime Criminal	Traditional Crime Criminal
Age	Middle aged or older	Likely to be young
Class	Upper Class	Disproportionately lower class or poor
Gender	Males and females almost equally	Mostly Males
Employment	Employed as employment is virtually a precondition to committing white collar crime	Generally unemployed
Education	Better educated or exceptionally well educated	Mostly uneducated
Modus Operandi	Farud	Force
Tools used	Paper instruments, computers	Knives, Guns etc
Effect on society	Not threatened by it and has apathy towards the offenders	Fear of such crimes as well as criminals Outrage towards the perpetrators

⁸ G.S. Becker, "Crime and punishment: An economic approach" in *Essays in the Economics of Crime and Punishment*, UMI, (1974) I-54 (Published online 15 October 2015).

Before drawing any distinction between the white collar and traditional crime offender it is pertinent to acknowledge that both the key terms cover a broad range of offenses and offenders.⁹ However, some well-founded generalisations about differences are possible and useful to identify. While white collar offenses include various forms of corporate and occupational crime as well as frauds. Traditional crime includes murder, rape, robbery, burglary, aggravated assault, and auto theft etc. Beyond age, class, color, and gender, white collar crime offenders typically differ from traditional crime offenders in other ways as well.

The aforesaid table of classification is not exhaustive and there are many exceptions to such generalisations.

The white-collar transgressors vocational capacity is also the distinguishing attribute of the expression of white-collar crime.¹⁰ Inherently white-collar crime is intangible, sneaky and speedy in effect.¹¹ These crimes are more complicated and necessitate more groundwork and order. As a consequence, the violators are also unlike the traditional crime offenders. Unlike the white-collar crime traditional crime shouldn't necessarily be committed in connection to one's occupation. White-collar crime is an umbrella term and consists of profit-motivated, illegal activities conducted within or arising out of an economic activity that is in itself legal or purported to be so. Unlike the traditional crime, these crimes have no aggrieved party, who recognises and makes public the incident. The fact that white collar crime occurs in nominally authorized enterprises adds to the minimal danger of detection. The abusers are frequently individuals with substantial riches and eminent positions.¹² Further the traditional crime offenders are often viewed by the society with a bias. They are frequently referred to as habitual criminals since they commit several crimes on a regular basis over several years, sometimes even indefinitely. Conversely, as white-collar criminals are usually perceived as performing a single type of white-collar crime,

⁹ David O. Fredrichs; "Trusted Criminals White Collar Crime in Contemporary Society" 13 (Wadsworth Publishing Co. Inc. 4th edn., 2009).

¹⁰ Donald J. Newman, White-Collar Crime, 23 *Law and Contemporary Problems* 735-753 (Fall 1958).

¹¹ H. Edelhertz, "White-Collar and Professional Crime: The Challenge for the 1980s". 27(1) *American Behavioral Scientist* 109-128 (1983).

¹² Einar Dorum Per -Kristian Foss, The Norwegian Governments Action Plan for combating Economic Crime (2004-2007).

they commonly face public indifference. When someone is arrested, the crime is usually seen as a relatively isolated incident.¹³

Another important distinction between the two forms of crime is that white collar crime is less noticeable than traditional crime. Even if the majority of typical crimes don't actually happen on the streets or in other public areas, the police are usually alerted to them because victims, bystanders, and even officers themselves witness some of them. Conversely, white collar crime is considerably less noticeable because it occurs primarily in secret rather than on the streets, and the victims frequently aren't even aware that they have been the victim of a crime.¹⁴

The offender based conceptualisation of white collar crimes which consists of three elements i.e. respectability, high social status, and ultimately the power of white-collar offenders has resulted in the ignoring of elite forms of lawbreaking, owing to the fact that upper-class offenses were not recorded in official criminal records, which served as the primary source of data for criminologists.¹⁵

This distortion according to Sutherland was primarily because of the following facts: *First*, white collar criminals unlike the traditional crime offender have been tremendously successful in moving the burden for dealing with white-collar crimes away from the criminal justice system to specifically constituted regulatory agencies-which are more prone to bargain a cooperative settlement than to seek heavy criminal sanctions. *Secondly*, it is considered that individuals from higher socioeconomic classes possess stronger political and financial influence and are more adept at avoiding detection, arrest, and conviction than others who lack such power” i.e. a traditional crime criminal.¹⁶ *Third*, when apprehended white-collar delinquents are looked upon in a intrinsically disparate way by the justice system:

[T]hey are not detained by uniformed police officers, tried in criminal courts, or imprisoned; this illegal behavior is investigated by administrative commissions and courts with civil or equity jurisdiction. As a result, these legal transgressions are not included in criminal

¹³ *Supra* note 5 at 17.

¹⁴ *Supra* 5 at 20.

¹⁵ Arjan Reurink, “From Elite Lawbreaking to Financial Crime: The Evolution of the Concept of White-Collar Crime” Econstor (2016) available at: <https://www.econstor.eu/handle/10419/146416>.

¹⁶ *Id.* at 11.

*statistics, nor are individual cases brought to the attention of academics developing theories of criminal conduct.*¹⁷

Fourth, even when taken prisoner, privileged class transgressors repeatedly enjoy the reward of a decent appearance as well as the best legal representation which in case of traditional crime offender is not always possible for they lack the apathy of the general public. This also results from the fact that traditional crimes such as murder, rape, dacoity etc. are also viewed as moral wrongs.

4. White Collar and Economic Crime Criminal

While the term white collar crimes has been defined adequately by Sutherland there is till date no agreement on the different conducts that could be included under this expression “economic crimes”.¹⁸ Sutherland’s elucidation suggested that the respectability and high social status of the white collar criminal should be allowed at as the expounding attribute of white-collar crime.¹⁹ Sutherland’s research mostly concentrated on transgressions made by CEOs and senior staff members in support of their professional endeavours. Later however, it has been proved that white-collar crime is committed by all types of employees or individuals, not just those of respectable standing.²⁰ Economic crime is expounded as an unlawful act (or a constantly reforming chain of crimes) typically carried out by someone (or a group of people) who has notable professional or technical dexterity for the aspiration of personal or organisational financial gain or to gain (or attempt to gain) a partisan advantage over another individual or entity.²¹

The term “economic crimes” is a translation of the Anglo-Saxon term “economic crimes.” The first references to the expression economic crimes, or also the so-called “White-collar crimes”, can be found in the works of the sociologist Sutherland, who highlighted how “white collar” crimes were committed through dishonest practices - manipulation of accounts, bribes,

¹⁷ *Id.* at 3.

¹⁸ B. Zagaris, *International White-Collar Crime: Cases and Materials* (Cambridge University Press, 2010).

¹⁹ A. Reurink, “White-Collar Crime: The concept and its potential for the analysis of financial crime” 57(3) *European Journal of Sociology / Archives Européennes De Sociologie* 385-415 (2016).

²⁰ Balsing Rajput; Understanding Modus Operandi of The Cyber Economic Crime from People Process Technology Framework’s persp 5 *JETIR* 1090 (2018).

²¹ Gordon, Sarah, and Richard Ford, “On the Definition and Classification of Cybercrime”, 2 *Journal in Computer Virology* 13–20 (2006).

embezzlement, tax fraud or embezzlement, among many others in different professions. He also developed the “differential association theory” highlighting that white-collar criminals often have the cooperation of other actors and significant social or relational capital that serves as coverage.²² Although there is no universally accepted definition of economic crimes the term can be defined as follows, “Economic crimes are a manifestation of criminal acts done either solely or in an organized fashion, with or without allies or organizations, with the goal to amass wealth through dubious means and engage in unlawful activities that breach local laws and other regulatory statutory provisions controlling the government's economic operations and management”²³. It has frequently been propounded that in Sutherland's definition word like “persons of respectability and high social status” and crime committed in the course of an occupational limits some crimes committed in the economic world class and occupation are not only the key characteristics of the economic crime.²⁴

Economic crimes is an outcome of a novel form of society, a society earmarked by scientific and technological developments, a society inspired by values contradictory to the traditional values of morality. With the society growingly becoming a welfare state, there was a shift from the protection of the interest of the individual to that of the public at large i.e “collective interest”. The haul in the interest of the society gave rise to an increasing need to regulate these anti-social activities.²⁵ By defining white collar crimes strictly concerning occupational and professional activities of upper strata, Sutherland narrowed the concept of white collar crimes to the interest of Capitalistic society. This concept was deemed too limited for the Indian context by the Santhanam committee report, which concluded that “the fabric of Indian society, albeit capitalistic, has diverse strata with the apportioning of economy being inequitable. A “guilty individual” in such a society cannot be termed as a white collar criminal.²⁶ The law commission in its 29th report observed that the nature and scope of economic crimes is much extensive when juxtaposed to white collar crimes. These crimes have now cruised behind past the perimeter of business and trade thereby

²² J. W. Coleman, “Toward an Integrated Theory of White-Collar Crime,” 93 *American Journal of Sociology* 406-439 (1987).

²³ Crime in India 1996, Chapter 17, NCRB (M.H.A), Govt. of India.

²⁴ Croall, Hazel “Who Is the White Collar Criminal?” 29 *British Journal of Criminology* 157-74 (1989).

²⁵ Mahesh Chandra, “Socio-Economic Crimes” 32 *Tripathi* (1979).

²⁶ Santhanam Committee Report, on Prevention of Corruption (1962).

obsoleting the term “white collar crimes” which is deficient and unsuitable to detail all the forms of economic deviance found in India.²⁷

However, contradictory to Sutherland’s supposition, white-collar criminal today is status neutral and the term economic crime focuses on the essence, attributes, and technique of the offenses, in contrast to the offenders and their stature. Sutherland’s definition of a white-collar criminal was narrow in approach as opposed to economic crime criminal. Sutherland essentially incorporated the concept of respectability into his prefatory definition of white-collar crime owing to the fact that it expounded the very ability to carry out such crimes.²⁸ However, in modern culture, there are two major changes in the link between social rank and the capacity to conduct white-collar crimes, which makes it challenging to define white-collar crime in terms of respectability and high social status. First, by the end of the twentieth century, most advanced industrialized countries had abandoned the strong division between the managerial white-collar and blue-collar parts of the labor force that existed when Sutherland created the idea. White-collar jobs are no longer associated with high social standing, power, prestige, and respectability²⁹ Further, the “democratization” of white-collar jobs and the opportunities that come with it concludes that many of the atrocities that Sutherland was alluding to could now just as easily be perpetrated by middle-class people, thereby not fitting into the definition of “a person of high social status”.³⁰ Second, the emergence of the computer and contemporary administration has put agreements entailing sizeable quantity of money in the hands of people who never had means to such sums before thereby changing the nature and the characteristic of the criminal as conceptualised by Sutherland. In contemporary society, it is therefore “whimsical to discern similar behaviours, involving similar people with similar motives, calling one white-collar crime, and the other something else”.³¹ There has not only been an increase in such crimes but today each of such crime is more complex than the other making the detection and prevention of such crimes a difficult task for the criminal justice

²⁷ Law Commission of India, 47th Report on The Trial and Punishment of Social and Economic Offences (February 1972).

²⁸ David Weisburd and Elin Waring, *White-Collar Crime and Criminal Careers* (Cambridge University Press, New York, 2001).

²⁹ Leap Terry, *Dishonest Dollars: The Dynamics of White-Collar Crime* (Cornell University Press, 2007).

³⁰ *Supra* note 23.

³¹ Jay S. Albanese, “Offense-Based versus Offender-Based Definitions of White Collar Crime” in James Helmkamp, Richard Ball, *et al.*, (eds.), *Albanese Offense-Based versus Offender-Based Definitions of White Collar Crime*. (National White-Collar Crime Center, WV Morgantown, 1996).

system. The nature of these newer forms of crimes is such that it warrants unceasing legislative vigil.³²

The Indian criminal justice system is largely modelled on the British criminal justice system which is versed in the trial and punishment of the traditional crimes. Economic crime however, is constantly evolving with its nature and dimensions undergoing an astronomical change along with the revamping of the character of socio-economic context of property and development in the information and communication technology therefore presenting challenges to the criminal justice system.³³

Economic crimes have acquired new forms, character as well as dimensions becoming more and more complex and difficult to detect. On the other hand the pace of criminal law jurisprudence has been slow to match the considerable rise of such crimes thereby making it hard for the criminal justice system to bring order in the society. The legal regime for economic crimes has two basic roots. The first is the Indian Penal Code of 1860, and the second is a set of special legislation designed specifically to combat economic crimes. The Indian Penal Code, 1860, is the primary legislation dealing with serious economic crimes such as cheating, forgery, criminal breach of trust or fraud, and counterfeiting. On the other hand, there are various special laws, such as the Prevention of Corruption Act 1988, the Money Laundering Act 2002, and the Information Technology Act of 2000.

Besides the Indian Penal Code, there are large number of central laws currently in place to prevent and prosecute economic crimes, and they are executed by a variety of bodies, each with its own enforcement machinery, procedures, and consequences.

5. Cyber Economic Crime and Criminal

The meteoric augmentation of computerised ingress to information has shown beyond doubt to be a blessing to business, industry, and the general public. It has also proved to be a productive rink for the evolution of new forms of white-collar

³² Dag Lindström, *Historical perspectives: Swedish and international examples* 89 (2004); Hans Sjögren and Göran Skogh, *New Perspectives on Economic Crime* 8 (Edward Elgar Publishing 2004); Dharma Raj Bhusal, *Economic Crime: Law and Legal Practice in the context of Nepal* (University of Technology, Germany, 2009).

³³ Balsing Rajput, "Understanding Modus Operandi of The Cyber Economic Crime From People - Process-Technology Framework's Perspective" 5 *JETIR* (2018).

crime.³⁴ The study of white-collar crime along with its nature has expanded over the past eight decades. With the evolution of occupations in this day and age there has been a variation of white-collar crime. One modification in the vocational field that has perhaps affected white-collar crime presupposes technological changes.³⁵ A new reality has emerged for society, as economic crime and technology-warranted crime have become incomprehensible. Traditional vectors of economic crime have gone digital, enabling both old and new channels of financial crime, fraud, money laundering, and corruption. Sutherland did not discuss cybercrime since the technology revolution had not yet transpired, and the expression cybercrime had not so far been legally or socially expounded. The expression cyber-crime is used to express the availing of cyberspace to execute a crime, enclosing an extensive range of rogue and criminal behaviours that are made possible by computer technology. These oscillate between what might be summed up as: i. Crimes against the machine (hacking and cracking, paralysing computer networks; Denial of Service attacks; ii. Crimes using the machine (deception, fraud, theft, extortion, embezzlement), and; iii. Crimes in the machine/on-screen (grooming, obscenity, stalking, hate speech).³⁶

Cybercrime can simply be characterised as the use of the computer as tool, target or to facilitate to commit the crime. The technology with its vulnerabilities has greatly impacted the cyber and financial crimes. A crime committed using cyber technology but primarily for financial gains can be termed as cyber economic crime. Virtual financial crime, cyber economic crimes, online fraud, and online cheating are all forms of cyber economic crime. All of these crimes have the same basic mode of operation and motive: to obtain illegal financial gains.³⁷

The concepts white-collar crime and computer crime share one feature—an unfortunate degree of ambiguity.³⁸ Price Waterhouse Coopers, which conducts

³⁴ Raymond J. Michalowski, *White Collar Crime, Computers, and the Legal Construction of Property* 162.

³⁵ Brian K. Payne, “White-Collar Cybercrime: White-Collar Crime, Cybercrime, or Both?” 19 *CCJLS* (2018).

³⁶ Christopher Hamerton, “White-Collar Cybercrime: Evaluating the Redefinition of a Criminological Artifact” 8 *Journal of Law and Criminal Justice* (December 2020).

³⁷ Balsing Rajput, “Understanding Modus Operandi of The Cyber Economic Crime From People Process-Technology Framework’s Perspective” 1090 *Journal of Emerging Technologies and Innovative Research*.

³⁸ P. Grabosky and S. Walkley, “Computer Crime and White-Collar Crime” In: H. N. Pontell and G. Geis (eds.) *International Handbook of White-Collar and Corporate Crime* 358 (Springer, Boston, MA 2007).

economic crime surveys, defines cybercrime as “an economic crime committed using computers and the internet. It includes distributing viruses, illegally downloading files, phishing and pharming, and stealing personal information like bank account details. It’s only a cyber-crime if a computer, or computers, and the internet play a central role in the crime, and not an incidental one.”³⁹ Most computer-related crime are committed at the lower level unlike the white-collar crimes. Their mode of operation is simple to change data in the computer system, either while managing input documents or while sitting at an internet terminal.⁴⁰ Fewer computer-related crimes entail inside computer personnel, and even fewer involve external high-tech criminals. As far as the crimes perpetrated in the cyber space are concerned the role and the status of the person concerned is of very little significance. There is nothing inherently “Sutherlandian” about a cyber economic criminal. The key to white-collar crime was an opportunity. Nevertheless, with the sprawl of digital technology, computers have become accessible to both the public and the elites, generating adequate opportunity for anyone to commit a crime. Thus, digital technology has supplied ordinary workers and others with numerous illegal options. While both white collar and cyber economic crimes are types of crime, differences exist between the two and if we look from the criminal standpoint alone the cyber economic crime offenders tend to be younger and the education of the offenders of both these crimes may vary.⁴¹ One possible explanation for the abrupt increase in cyber economic crime is increased e-business volume, as well as increasing internet and e-commerce adoption. Economic crime does not discriminate, and with the widespread use of cyber technology, it has become truly global, leaving no business or organisation immune.⁴²

As far as the criminal of cyber economic crime is concerned it has much similarity to that of the white-collar criminals with a few exceptions. Unlike a white collar criminal cyber economic crime offender need not be a person of high social status or necessarily commit the crime in the course of his occupation. The degree of anonymity is far greater in the case of a cyber economic crime offender. More often than not a white collar criminal is a part of an organisation, company, industry etc with a certain defined jurisdiction limits as opposed to a cyber economic crime offender who can commit an offence with a click of a button without being present at any specific locale and hence the chances of

³⁹ As defined in the Global Economic Crime Survey 2011 by PwC in conjunction with our survey academic partner, Professor Peter Sommer.

⁴⁰ *Supra* note 29.

⁴¹ *Supra* note 38.

⁴² *Supra* note 26.

being captured are reduced. Because of the offender's distinct location and jurisdiction, law enforcement organisations find it difficult to prosecute him using typical investigation methods. The perpetrators can reemerge to the location of the crime with virtually little fear of detection, unlike a traditional crime offender.⁴³

This technology has played a pivotal role in the modus operandi of Cyber economic crime criminal.

When traditional crime and cyber-crime are juxtaposed, it is clear that in cybercrime, technology, as well as its fragility and prowess, has played a major role. Cyberspace is simply a tool for doing old crimes in a new way.

6. Conclusion & Suggestions

To conclude it can be said that the concept of white-collar crimes since its conception has come a long way in terms of its nature, character, reach as well as its effect. Liberalization and globalisation of the economy has opened wide avenues and provided ample opportunities both for the development as well as the crime. Further in today's digital age, the classic definition of white-collar crimes especially with respect to the offenders holds no ground as both the crime as well as the criminal have moved beyond the perimeters of role and status as elucidated by Sutherland. White collar crime has become transnational in character and its criminals are successful in evading the justice system given the secrecy in which such crimes are committed. The time has come to take a departure from the definition of white-collar crimes as elucidated by Sutherland so that the same can be elucidated in a status-neutral manner as well as in terms of modus operandi. In the age of the internet and its widespread availability, it is difficult to incorporate high social position and respectability into a description of white-collar crime. When compared to the white collar crimes as conceived by Sutherland economic crimes as well as cyber economic crimes are a new breed of the crime, which are now committed with the help new technology as compared to the traditional crimes. However, the current criminal justice system is founded on the conventional crime system and its style of operation. A flexible, specialised, and technologically competent criminal justice system is urgently required. It is critical that all police stations have sufficient advice and training in order to investigate, detect, and prevent such crimes.

⁴³ Vidya Rajarao, *Economic Crime in India: an ever increasing phenomenon*, *Global Economic Crime Survey* (Price Waterhouse Coopers, India, 2011); Available at: <https://www.pwc.in/assets/pdfs/publications-2011/economic-crime-survey-2011-india-report.pdf>.

Today with the all pervasive presence of technology economic crimes have become borderless thereby giving rise to the problem of jurisdiction. Interstate as well as national coordination for investigation and prevention of economic crime should be seamless and through online platform. The need of the hour is a multi-disciplinary, inter-state and transnational investigation with requisite evidentiary alterations to bring the guilty to book.

COVID-19: Aligning Tourism, Air Quality, Sustainability and Legalities in India

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Abstract

Due to the coronavirus pandemic, all major countries have recently experienced improved air quality and decreased gas emissions. The world has shifted from a war-time response to a building back better, and in no way, the situation can be termed positive for the environment. There is an amount of hope that the effect of Covid 19 has resulted in a greater level of environmental protections. Because of more consumers isolated at home, resulting into increase in the bulk of online marketing which has to some extent assisted in preventing negative impact on tourism and hospital industries. The prevention could in a large extent go successful because of the less usage of environmental resources, less consumption of fossil fuels and restrictions in the volume of vehicular traffic. This research paper delves into the multifaceted relationship between tourism, air quality, and sustainability in India during the challenging period of Covid-19 restrictions. It aims to uncover the ways in which the pandemic influenced travel patterns, affected air quality, and ignited conversations about the long-term sustainability of the tourism industry. Moreover, this study takes a distinctive legal perspective, examining the role of legal frameworks and policies in addressing these complex issues. This paper also aims to address the impacts of Covid 19 on tourism and environmental issues more particularly air pollution through analysis of various literatures available.

Keywords: Covid- 19, Tourism Industry, Environmental Resources, Natural Resources.

1. Introduction

As the old age goes, “In every shadow, there is light.” Indeed, positive and heart-warming things do come together even when the days seem to speak only of gloom and dread.¹ The Covid-19 pandemic, an unparalleled global crisis, halted the world's normalcy in early 2020, causing significant shifts in societies,

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¹ Nicolson, J. *The Great Silence: 1918-1920: Living in the Shadow of the Great War* (Hachette UK).

economies, and environments. While countries grappled with the immediate health threats posed by the virus, the pandemic also provided an opportunity for introspection on broader matters, including the intricate balancing act between economic development, environmental health, and public well-being. In the Indian context, where tourism plays a pivotal role in economic growth, the restrictions imposed due to the pandemic offered a unique perspective to examine the complex interactions among tourism, air quality, and sustainability.

India, known for its rich cultural heritage, diverse landscapes, and historical landmarks, has consistently attracted traveller's from around the globe. However, the surge in tourism has come at a price, often straining the delicate equilibrium between conserving the environment and advancing economically. Concerns about air pollution and sustainability have persistently loomed, and the Covid-19 pandemic unexpectedly disrupted the usual course of events, prompting a pause and demanding a re-evaluation of the existing norms.² Today, even as the world mourns more than 3 million infections and 200000 deaths from the coronavirus pandemic, it is important to also look at some positive side-effects that have resulted.³

From the environmental point of view, the shut-down of tourism industry caused by the COVID19 pandemic has definitely brought about a positive improvement in the environment.⁴ The skies are clear, the water bodies are clean and fresh, the rivers are flowing unpolluted, and Nature has never been happier. Noise pollution is also much less. Vehicles are few, and so the carbon footprint is less.⁵

2. Impact of Covid on Environment

In the short term, the total amount of energy consumed in this world has been reduced. This is true in nearly in all the corners of transportation and industrial manufacturing. With the lockdown in effect, everyone stayed home and didn't prefer to go for holiday visits which has impacted the tourism industry

² Berman, J. D, "Changes in US air pollution during the COVID-19 pandemic" *Science of the Total Environment* (2020).

³ Bruckner, P. "The Fanaticism of the Apocalypse: Save the Earth, Punish Human Beings" *John Wiley & Sons* (2013).

⁴ Chauhan, A. "COVID-19: Disaster or an Opportunity for Environmental Sustainability" *The Impact of the COVID-19 Pandemic on Green Societies* (2021).

⁵ Alagona, P. J. 2020. "Reflections: Environmental History in the Era of COVID-19" *Environmental History* 25, no. 4 595-686 (2020).

financially.⁶ The post-COVID environment has had diverse effects on the environment, some of which had an adverse impact on sustainability. First, the immediate effect was reduced movement and decreased industrial, vehicular, and airplane activities through lockdowns and travel bans, which reduced carbon emissions and pollutants into the atmosphere. During this period, most countries recorded improved air quality across cities and towns. However, there was an anticipated spike in environmental degradation when economies reopened up to handle the consumption “backlogs.” The waste sector was the most affected during this time since the increased consumption led to more medical waste, such as disposable masks and gloves. However, the COVID prompted most economies to consider possibilities for sustainable consumption. For example, many people worked from home for extended periods, reducing carbon footprints from daily commutes and practices related to work. Many governments also emphasized environmental concern in their recovery strategies. Finally, green recovery strategies like renewable energy, sustainable infrastructure, and conservation efforts gained more traction in the post-COVID period. It is vital that such a critical period for post-pandemic recovery entails environmental sustainability and builds resilience to future crises through conservation, emission reductions, and environmental stewardship.

The fact further lays down that people have learned in hard way to maintain good hygiene, eat healthy food, stay home. In a large scale the staying back at home has at a great extent affected the transport systems and forced to reduce the tourism operation which even also running at a slow speed in overcoming the losses sustained in the past one and half years.⁷ Many large factories completely associated with tourism and hospitality sector, which were contributing dangerously in carbon emission and gases harmful got a halt.

The lockdown certainly resulted in a notable improvement in air quality in many urban areas, as almost everyone stayed home. However, there is some unverified evidence that particulate matter in the air remained about the same levels as before the lockdown.⁸ However air pollution has surged because of the increase in the tourism industry before the covid Pandemic time. Given that nobody was walking through the woods or visiting parks during the lockdown, the animals have returned to them, possibly changing vegetation patterns as more

⁶ Bishoi, B. P. “A comparative study of air quality index based on factor analysis and US-EPA methods for an urban environment” *Aerosol Air Quality Research* (2009).

⁷ Sperling, K. A. “End-use energy savings and district heating expansion in a local renewable energy system—A short-term perspective” *Applied Energy*, 831-842 (2012).

⁸ Nishat, H. “Coronavirus Covid-19 World Disaster Impact of Covid-19 on Various Sectors of India” *Front Med (Lausanne)* (2020).

plants remain for them to feed on.⁹ It's also possible that streams are cleaner because less waste is being deposited in them. However, given that homeless populations tend to gather around urban creeks and other waterways, and they had no other place to "go home" to, waste may have continued to be deposited.

3. Tourism and Air Pollution

Unexpectedly, the Covid-19 epidemic resulted in a dramatic improvement in air quality across Indian cities. Numerous variables, such as a decline in vehicle emissions, a decrease in industrial activity, and constraints on human mobility, were cited as the causes of this improvement. The total number of tourists is rising along with their increased ability to travel by air, road, and rail. Due to this rise in air travel, tourism today makes up more than 60% of all air transport and therefore accounts for a large amount of air pollutant.¹⁰

Transportation and energy production uses are linked to discharges that contribute to acid rain, climate change, and photochemical pollution. Travellers traffic's impact on the environment is extensive, especially in terms of the carbon dioxide (CO₂) emissions that result from the use of transportation energy. Additionally, it has the capacity to produce substantial hazardous gases. Some of these effects are specific to the tourism industry.

Hotel industries are generating lesser or even have stopped discharging pollutants into watercourses and the earth layer as a result of reduced tourism activities, which are hazardous to human health. There has been a significant reduction in the limiting of dangerous chemicals, toxins, and pollutants from being released into the waterways, air, rivers, and sea as a result of the ongoing Covid 19 concerns. The environment has improved significantly considering the positive impacts of the lockdown and prevention in various industrial activities including the tourism. Reduced pollution of air and water is benefiting humans in health resulting in less suffering of respiratory valves, lungs, intestinal and kidney diseases.¹¹

4. Tourism vs. Air Quality

⁹ Soto, E. H.-S.-M.-F "How does the beach ecosystem change without tourists during COVID-19 lockdown?" *Biological Conservation* (2021).

¹⁰ Shah, M.I., Khan, Z., Moise, M.L., et al. "Tourism adaptability amid the climate change and air pollution in BRICS: a method of moments quantile regression approach." *Environmental Science and Pollution Research*, 29, 86744–86758. (2022).

¹¹ Kalita, S. A, *COVID-19 Pandemic: An Unprecedented Blessing for Nature* 349-370 (*The Impact of the COVID-19 Pandemic on Green Societies* 2021).

4.1 Tourism Industry

Before COVID-19, the tourism industry globally was witnessing significant growth, particularly in international travel to popular destinations, contributing substantially to the global GDP and employment figures. In India, legal frameworks were in place to support and facilitate tourism development, such as the Tourism Policy of 2015, aimed at encouraging sustainable tourism practices and attracting foreign investments.

During the COVID-19 pandemic, the tourism sector faced severe challenges due to travel restrictions, lockdowns, and safety concerns, resulting in a virtual halt in international travel and economic distress for many tourist destinations. To address these challenges, the Indian legal system adapted by implementing stringent health and safety regulations, issuing travel advisories, and providing financial assistance packages to support affected businesses.¹² For instance, the Ministry of Tourism introduced guidelines for hotels and restaurants to ensure compliance with COVID-19 protocols, including social distancing and sanitation measures. Additionally, relief packages and loan schemes were introduced to provide financial aid to those in the tourism industry impacted by the pandemic.

As the situation gradually improves post-COVID-19, the tourism industry is witnessing a slow recovery, with domestic tourism initially leading the way due to ongoing safety concerns and travel restrictions. However, as confidence grows and restrictions ease further, international travel is also beginning to resume. The legal framework remains instrumental in guiding this recovery phase, with a focus on ensuring health and safety standards, supporting sustainable tourism practices, and facilitating the resumption of international travel in accordance with global regulations. For example, initiatives like the "Safe Travel Score" aim to provide travellers with information about destinations' adherence to COVID-19 safety protocols. Moreover, there is an increasing emphasis on policies promoting eco-tourism and responsible travel to preserve natural habitats and cultural heritage sites.¹³

The impact of COVID-19 on tourism has been partially mitigated, especially concerning international travel restrictions. While there has been a significant increase in domestic flights, its impact on travel to poorer nations has been minimal. Older individuals are now more inclined to stay at home due to the high

¹² World Health Organization [WHO) "World Health Statistics 2018: monitoring Health for the SDG". Geneva: World Health Organization (2017).

¹³ Saura, J.R., Palos-Sanchez, P., & Martin, M.A.R. "Attitudes expressed in online comments about environmental factors in the tourism sector: an exploratory study" *International Journal of Environmental Research and Public Health* 15(3), p. 553. (2018)

costs associated with each trip. In contrast, younger traveller's, such as hikers, who seem more willing to travel during the pandemic, prefer to stay but spend less compared to older traveller's. Commercial cruise ships with extended periods of confinement are experiencing reduced popularity. Developing nations heavily dependent on cruise ship tourism may need to diversify their economies. Healthy environment is good for whole of the life chain on planet earth which include plants animals', birds and whole of marine life beside humans.¹⁴

4.2 Air Quality

Pre-COVID: In India, particularly in major cities like Delhi, Mumbai, and Kolkata, severe air quality issues have long been a concern due to pollution from vehicles, industries, construction, biomass burning, and other sources. For example, Delhi has consistently ranked among the most polluted cities globally, with PM2.5 levels often exceeding the World Health Organization's safe limits by multiple times. This pollution leads to high levels of harmful pollutants such as PM2.5, PM10, NO2, SO2, and O3, resulting in various health problems like respiratory diseases and premature deaths. Despite efforts like the National Clean Air Programme (NCAP), achieving and maintaining acceptable air quality levels remained a challenge.¹⁵

During COVID: The nationwide lockdown imposed in India to curb the spread of COVID-19 brought a significant reduction in economic activities, vehicular traffic, industrial operations, and construction, leading to noticeable improvements in air quality across the country. For instance, during the lockdown period, Delhi witnessed a remarkable reduction in PM2.5 levels, dropping to levels considered "good" by air quality standards. Satellite imagery and air quality data indicated marked decreases in pollutants like PM2.5, NO2, and SO2 in major urban areas during the lockdown period. This period provided valuable insights into potential strategies for pollution mitigation.

Post-COVID: Despite the gradual easing of lockdown restrictions and the resumption of economic activities, concerns have arisen regarding a potential resurgence in air pollution levels. With industries restarting, vehicular traffic increasing, and construction work resuming, there is a risk of air quality deteriorating once again. However, the pandemic has also spurred discussions on

¹⁴ Verma, A. A, "Impact of COVID-19 on environment and society". *Journal of Global Biosciences*, (2020).

¹⁵ C. Eusébio, Maria João Carneiro, Mara Madaleno, et al. "The impact of air quality on tourism: a systematic literature review." *Journal of Tourism Futures* (ahead-of-print), (2021).

sustainable development and environmental protection, emphasizing the need to integrate environmental considerations into post-pandemic recovery plans. The government has reaffirmed its commitment to implementing the NCAP and strengthening air quality monitoring and enforcement mechanisms. Furthermore, there is a renewed focus on promoting renewable energy, electric mobility, green infrastructure, and public transportation to reduce pollution emissions and combat climate change.

Legally, India's air quality management is governed by laws like the Air (Prevention and Control of Pollution) Act, 1981, and the Environment (Protection) Act, 1986, empowering regulatory bodies to monitor and enforce air quality standards. Additionally, the NCAP, launched in 2019, outlines specific targets and timelines for pollution reduction, supported by the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs). However, challenges persist in effectively implementing these regulations, addressing transboundary pollution, and ensuring public involvement in air quality management efforts. A case study highlighting the impact of COVID-19 on air quality in India can be seen in the city of Delhi. During the lockdown period, Delhi experienced a significant improvement in air quality, with the concentration of pollutants dropping to levels rarely seen in recent years. For example, the Air Quality Index (AQI) in Delhi plummeted to "good" or "satisfactory" levels, a stark contrast to the hazardous levels recorded in previous years. However, as restrictions eased and economic activities resumed, air pollution levels began to rise again, underscoring the need for sustained efforts to address the root causes of pollution and mitigate its impacts on public health and the environment. This case study highlights both the potential benefits of reducing human activities on air quality and the challenges of maintaining these improvements in the long term.

5. Post-COVID Policies: Government of India Implementation in Tourism, Air Quality and Sustainability

The Government of India (GOI) has implemented various measures post-COVID in tourism, air quality, and sustainability domains, supported by legal frameworks and specific instances of action.

5.1 Tourism

Legal Framework: The Ministry of Tourism has enacted guidelines and provided incentives to promote responsible tourism and ensure adherence to COVID-19 safety measures.¹⁶

Examples:

- The “Dekho Apna Desh” initiative, spearheaded by the Ministry of Tourism, encourages domestic tourism by showcasing India's rich cultural and natural heritage. This campaign aims to revitalize the tourism sector by promoting local travel destinations.¹⁷
- A “Tourism Aid Fund” was established by the government to extend financial support to tourism-related businesses affected by the pandemic. This fund assists establishments like hotels, tour operators, and guides in recovering from the economic impact of COVID-19.¹⁸

5.2 Air Quality

Legal Framework: The National Clean Air Programme (NCAP) provides a structured framework for addressing air quality issues and sets specific targets for pollution reduction across India.

Examples:

- Stricter emission norms for industries and vehicles have been enforced by the government to curb pollution levels. Implementation of Bharat Stage VI (BS-VI) emission standards for vehicles is one such measure aimed at significantly reducing vehicular emissions.¹⁹
- The “Green Good Deeds” campaign encourages citizens to adopt sustainable practices and contribute to improving air quality. This initiative promotes actions like tree plantation, waste reduction, and usage of eco-friendly transportation alternatives.²⁰

¹⁶ Mohd Sarwar Alam and Nigamananda Biswas, "Sustainable Tourism in India Post COVID-19." *Journal of the Asiatic Society of Mumbai*, ISSN: 0972-0766, Vol. XCIV, No.6, (2021).

¹⁷ Ministry of Tourism, Government of India, "Indian Tourism Statistics at a Glance 2019." *available at:* <https://tourism.gov.in/market-research-and-statistics> (last visited on march 24,2024).

¹⁸ Ibid

¹⁹ Ministry of Tourism, Government of India, "Indian Tourism Statistics at a Glance 2020." *available at:* <https://tourism.gov.in/market-research-and-statistics> (last visited on march 26,2024).

²⁰ *ibid.*

5.3 Sustainability

Legal Framework: The Environment (Protection) Act, 1986, empowers regulatory bodies to monitor and enforce environmental standards, thus supporting sustainability efforts across different sectors.

Examples:

- The GOI's Renewable Energy Policy endeavours to augment the share of renewable energy sources in India's energy mix. Initiatives like the Solar Energy Corporation of India (SECI) facilitate the deployment of solar power projects, aiding India's transition to sustainable energy.²¹
- The Swachh Bharat Mission is geared towards enhancing sanitation and waste management practices. This national campaign underscores cleanliness and hygiene, thereby mitigating environmental pollution and enhancing public health.

In summary, GOI's post-COVID endeavours in tourism, air quality, and sustainability are bolstered by legal frameworks and tangible actions. Continued collaboration between government entities, stakeholders, and citizens remains pivotal for achieving sustained progress in these domains.

6. Covid and Environment

No doubt, the lock-down days might have been one of the toughest times the human beings have witnessed in the past years, but in environmental perspective, then this is the period which has completely revived the natural resources which were long been ignored in the name of earning more GDPs by every nation. Many significant changes across the nation had taken place.

Here are some of the points that might consider worthy to relate:

Air Pollution: This is the very first thing requires special mention about the environmental changes that is witnessed in the recent. It is quite astonishing how the lethal air pollution in most of the highly polluted cities of India, that had diminished the life expectancy of so many people came to a downfall. While there were a few automobiles moving around the city in this lock-down, the nature got a way to thrive once again. Though this purified air that living beings are inhaling right now is going to be worsen up again gradually during the

²¹ *Ibid.*

increase in industrial activities after the removal of all restrictions, but at least for some time it is going to help the nature to stay in a stable position.²²

Water pollution: while there were no dumping of garbage and waste products, and plying of cargo ships in the rivers and seas for such a long time, it is fascinating to see the rivers and seas being cleared up.²³ People across the world have witnessed a huge change in the quality of water in the rivers and seas of various countries in the world,²⁴ And, in Indian perspective, then the purifying of water that took place by its own during this lock-down in the Ganga and Yamuna river are the best example of the reducing water pollution. The water of Ganga became fit for drinking in Haridwar.

Effect on wildlife: It feels exciting to see the animals living and roaming freely wherever they want, just like we humans do. At first the lock-down pretty much changed the whole scenario of the roads, streets and various public places in India. While there were few human beings roaming across the streets, the birds and animals got a chance to join.²⁵ There was an increase in the population of flamingos in Delhi and Mumbai, and news came that at some places in Delhi people also spotted tiger and leopard roaming on the streets. Few of the people have also experienced the most astonishing thing of seeing peacock in their localities.²⁶

However, it is unlikely how long this will last. Once the pandemic is over and a vaccine is developed, governments all around the world would seek to rebound and recover their economies from the recession.

Industry would be promoted and regulations would be relaxed, in order to foster high GDP growth rates.²⁷ While such a course of actions is expected and totally understandable. The environmental crisis is also a crisis that affects the

²² Verso, "There Is No Outside: Covid-19 Dispatches". *Verso Books* (2020).

²³ Arif, M. A, "Reduction in water pollution in Yamuna River due to lockdown under COVID-19 pandemic" *ChemRxiv. Preprint* (2020)

²⁴ Pearson, R. M, "COVID-19 recovery can benefit biodiversity" *Science* (2020).

²⁵ Shreedhar, G. A, "Linking human destruction of nature to COVID-19 increases support for wildlife conservation policies" *Environmental and Resource Economics* (2020).

²⁶ Bar, H, "COVID-19 lockdown: animal life, ecosystem and atmospheric environment" *Environment, Development and Sustainability* (2021).

²⁷ Hall, C, "Pandemics, transformations and tourism: be careful what you wish for" *Tourism Geographies* (2020).

lives of everyone, even if it may not be as rapid or as painfully obvious as the pandemic, this present generation is handling now.²⁸

7. Survival of Tourism Industry

In the short and medium term, adaptive policy suggestions to enable the tourism sector to survive with both the virus, certain conditions must be met. The present global recession offers an opportunity to rethink travel in the long run. Policymakers must assess the disaster' with its long-term significances, promoting the low-carbon transition, and inspiring operational reform in order to achieve a sustainable and robust tourism sector.²⁹ Unless continuing governmental backing and outstanding effort to absorb the shock to tourism, minimise loss of jobs, and create restoration in 2021 and beyond, the viability of enterprises all through the tourism sector is at stake. Something remains to be accomplished, and in a much more synchronized approach.

8. Government Policies and Legal Frameworks

The Covid-19 pandemic brought forth an unprecedented set of challenges for the tourism industry in India, prompting the central government to swiftly implement a series of vital measures and regulations. These encompassed travel advisories and guidelines to safeguard the health of travellers, phased reopening strategies under the 'Unlock' phases, and the formulation of meticulous Standard Operating Procedures (SOPs) to protect the security of visitors and industry personnel.³⁰ The suspension and gradual resumption of e-visas and domestic flights were pivotal in managing international and domestic travel. Additionally, the reopening of tourist destinations, supported by stringent health protocols, marked a pivotal step towards rejuvenating the sector.

Financial relief packages played a crucial role in mitigating the economic repercussions faced by the industry, offering support to hotels, tour operators, and other stakeholders grappling with the pandemic's ramifications.³¹ Concurrently, vaccination drives were encouraged to enhance safety standards within the tourism sector. Furthermore, the central government took steps to regulate online

²⁸ Song, L. A, "The COVID-19 pandemic and its impact on the global economy: What does it take to turn crisis into opportunity?" *China & World Economy* (2020).

²⁹ Kshitija Pandey, Kala Mahadevan, "Indian Tourism Industry and COVID-19: A Sustainable Recovery Framework in a Post-Pandemic Era" available at: <https://doi.org/10.1177/09722629211043298> (last visited on march 30,2024).

³⁰ Yi Guo, Jinbo Jiang, "A Sustainable Tourism Policy Research Review" *Sustainability* (2019).

³¹ Alexander Z Forkpa, Sangay Tenzin, "Strategy Development and Sustainability Of Tourism Industry In India." *IOSR Journal of Economics and Finance* (2023).

travel aggregators, ensuring consumer protection and safety standards were met. Interstate travel restrictions, with quarantine and testing protocols, were instituted in accordance with guidelines issued by state governments.

These comprehensive efforts underscore the government's commitment to revitalizing the tourism industry while prioritizing the health and safety of all stakeholders. As the pandemic's effects continue to evolve, a continued collaboration between the government, industry, and traveller's will be imperative in navigating the path toward a resilient and sustainable future for tourism in India.³²

In addition to the immediate measures and regulations enacted during the pandemic, it's essential to recognize the broader implications of these actions. The pandemic underscored the vital role of the government in crisis management and its ability to swiftly adapt to unforeseen challenges. It also highlighted the intricate relationship between public health, economic stability, and the tourism sector, prompting a re-evaluation of priorities.

Moreover, the pandemic-driven disruptions forced the tourism industry to adapt and innovate rapidly. The adoption of technology, contactless services, and enhanced hygiene protocols became the new norm. These changes are likely to have lasting effects on the way tourism operates, emphasizing the importance of flexibility and resilience in the face of adversity.

As we move forward, it is imperative to leverage the lessons learned during the pandemic to build a more sustainable and resilient tourism industry. This entails continued collaboration between the government, industry stakeholders, and the public to ensure that future tourism practices prioritize environmental sustainability, cultural preservation, and the well-being of all involved. While the Covid-19 pandemic brought about unprecedented challenges for India's tourism industry, it also served as a catalyst for adaptation and transformation.³³ The government's decisive actions, coupled with the industry's resilience, position India's tourism sector for a gradual but steady recovery while embracing the imperative of sustainability and safety in the post-pandemic world.

9. Case Studies

³² Qadar Bakhsh Baloch, Syed Naseeb Shah, "Impact of tourism development upon environmental sustainability: a suggested framework for sustainable ecotourism" *Sustainability* (2023).

³³ *ibid*

The case studies of specific regions or cities in India that experienced significant changes in tourism and air quality during the Covid-19 pandemic:

Case Study 1: Goa³⁴

Introduction: Situated on the southwestern coast of India, Goa is a renowned tourist hotspot famous for its beaches, lively nightlife, and vibrant cultural scene. It draws visitors from both within the country and from around the world year-round.

Impact on Tourism: During the Covid-19 pandemic, Goa's tourism industry was severely affected. Travel restrictions, lockdowns, and fear of the virus led to a sharp decline in tourist arrivals. Hotels, restaurants, and other businesses that depended on tourism revenue suffered significant losses. Many tourists cancelled their bookings, and new bookings were minimal.

Impact on Air Quality: The reduction in tourist activity and transportation during the lockdowns resulted in a noticeable improvement in air quality in Goa. The concentration of pollutants, such as PM2.5 and PM10, decreased significantly. With fewer vehicles on the road and industrial activities temporarily halted, the region experienced cleaner air.

Sustainability Challenges and Opportunities:

- The pandemic highlighted the region's heavy dependence on tourism, raising questions about the sustainability of the industry.
- There was an opportunity for Goa to re-evaluate its tourism model, promoting sustainable and responsible tourism practices.
- Initiatives to reduce waste and protect natural resources gained attention as part of future sustainability efforts.

Government Response and Recovery: Goa's government-initiated measures to support the tourism industry during the pandemic, including financial aid to businesses. However, there was also a push to diversify the local economy and reduce overreliance on tourism.

Case Study 2: Delhi³⁵

³⁴ Amit Ranjan, "Goa Tourism: Under the Shadow of COVID-19" *Indian Legal Institute* (2020)

³⁵ Abhijit Biswas, Anuradha Arthanari, "Post-Pandemic Recovery Measures to Ensure Socio-Economic Sustainability through FDI in Smart Tourism" *European Economic Letters* (2020)

Introduction: Delhi, the capital city of India, is a bustling metropolis known for its historical landmarks, cultural heritage, and economic activities. It is also notorious for its air pollution problems.

Impact on Tourism: Delhi's tourism sector was severely affected during the pandemic. International travel restrictions and health concerns led to a decline in both domestic and international tourist arrivals. Landmarks and tourist sites faced temporary closures, impacting businesses dependent on tourism.

Impact on Air Quality: One of the silver linings of the Covid-19 lockdowns in Delhi was a dramatic improvement in air quality. The reduction in vehicular emissions and industrial activities led to a significant drop in air pollution levels. For the first time in years, Delhiites experienced cleaner air with lower levels of PM2.5 and PM10.

Sustainability Challenges and Opportunities:

- Delhi's air pollution problem has long been a sustainability challenge, and the pandemic demonstrated that significant improvements were possible with reduced emissions.
- The city had an opportunity to rethink urban planning and transportation policies to maintain improved air quality in the long term.
- Promoting cleaner and more sustainable modes of transportation became a priority.

Government Response and Recovery: The Delhi government took various steps to maintain improved air quality, such as promoting electric vehicles and implementing stricter emission norms. Additionally, policies were put in place to encourage sustainable urban planning and reduce traffic congestion.

Case Study 3: Chandigarh³⁶

Impact on Tourism:

- **Sudden Decline in Tourist Arrivals:** With the onset of the pandemic and subsequent travel restrictions, Chandigarh witnessed a drastic decline in tourist arrivals, both domestic and international. Popular attractions such

³⁶ Suman Mor, Sahil Kumar, "Impact of COVID-19 lockdown on air quality in Chandigarh, India: Understanding the emission sources during controlled anthropogenic activities." *Chemosphere* (2021).

as the Rock Garden, Sukhna Lake, and Capitol Complex saw a sharp drop in visitors.

- **Economic Downturn:** The decline in tourism had severe economic repercussions on the city. Hotels, restaurants, and local businesses heavily reliant on tourism revenue faced financial challenges, leading to temporary closures and job losses.
- **Shift in Tourist Behaviour:** The pandemic reshaped tourist behavior. Travelers prioritized safety and sought less crowded destinations. Consequently, eco-tourism and outdoor activities gained popularity in nearby natural reserves like the Morni Hills and Shivalik ranges.

Air Quality Impact:

- **Improved Air Quality:** The pandemic-induced lockdowns and travel restrictions led to a noticeable improvement in air quality in Chandigarh. The reduction in vehicular emissions and industrial activities resulted in lower levels of air pollutants.
- **Reduction in PM Levels:** Chandigarh experienced a significant reduction in particulate matter (PM2.5 and PM10) levels during the lockdown period. Cleaner air was particularly beneficial for the city's residents, as it led to improved respiratory health.
- **Impact on Green Spaces:** The improved air quality encouraged residents to utilize the city's green spaces more actively. Parks and outdoor recreational areas became popular destinations for exercise and leisure.

Government Initiatives:

- **Tourism Promotion:** The local government focused on promoting domestic tourism by highlighting Chandigarh's less crowded, open spaces. Special packages and discounts were offered to attract visitors from neighbouring states.
- **Air Quality Monitoring:** The Chandigarh Pollution Control Committee intensified air quality monitoring during the pandemic. Real-time data was made available to the public, raising awareness about the benefits of reduced pollution.
- **Public Awareness:** Government initiatives aimed at raising public awareness about Covid-19 safety protocols and environmental conservation. Citizens were encouraged to follow guidelines for cleaner air and safer travel.

Challenges and Lessons:

- **Economic Resilience:** Chandigarh's heavy reliance on tourism income highlighted the need for diversified economic activities to withstand crises.
- **Sustainable Tourism:** The pandemic underscored the importance of sustainable tourism practices that prioritize health, safety, and environmental preservation.
- **Air Quality Management:** Chandigarh's experience emphasized the need for continued efforts to maintain improved air quality, including sustainable urban planning and reduced vehicular emissions.

States experiences during the Covid-19 pandemic serves as a case study of the interconnectedness of tourism and air quality. While the pandemic brought significant challenges to the tourism industry, it also offered an opportunity for reflection and adaptation. The city's response, including government initiatives and shifts in tourist behaviour, provides valuable insights for the post-pandemic recovery and long-term sustainability of tourism and air quality management in urban centers.

10. Learning from Covid-19: Essential Lessons for the Future of Tourism, Air Quality, and Sustainability

The Covid-19 pandemic has offered valuable lessons that can shape future planning and policies concerning tourism, air quality, and sustainability in India and beyond. Here are key lessons and their relevance to future planning:

10.1 Importance of Resilience and Diversification

Lesson: Heavy reliance on a single industry, such as tourism, can make a region vulnerable during crises.

Relevance: Future planning should emphasize economic diversification to reduce dependency on any one sector. Investments in diverse industries can help mitigate the impact of future disruptions.

10.2 Sustainable Tourism Practices

Lesson: The pandemic highlighted the significance of sustainable tourism practices that prioritize both environmental conservation and public health.

Relevance: Future tourism planning should incorporate sustainable practices, including reduced carbon emissions, protection of natural and cultural heritage,

and precautions to guarantee both the local population and tourists' health and safety.³⁷

10.3 Air Quality Management

Lesson: Reduced economic activity during lockdowns led to improved air quality. However, maintaining clean air requires long-term strategies.

Relevance: Future planning should include comprehensive air quality management measures, such as stricter emissions regulations, sustainable urban planning, and investments in clean energy sources.

10.4 Crisis Preparedness and Adaptability

Lesson: The pandemic demonstrated the need for crisis preparedness and the ability to adapt quickly to changing circumstances.

Relevance: Future planning should include contingency plans and adaptable strategies that can be implemented during emergencies, ensuring a more resilient response to unexpected events.

10.5 Technology Integration

Lesson: Technology played a crucial role in facilitating remote work, virtual tourism experiences, and air quality monitoring during the pandemic.

Relevance: Future planning should embrace technology integration, including digital solutions for tourism promotion, remote work, and environmental monitoring.

10.6 Public Awareness and Behaviour Change

Lesson: The pandemic prompted changes in behaviour, such as reduced travel and increased use of green spaces.

Relevance: Future planning should leverage public awareness and behavioural shifts to promote sustainable practices, including responsible tourism, reduced pollution, and conservation efforts.

³⁷ Sicard, P., De Marco, A., "Ozone pollution in cities during the COVID-19 lockdown" *Science of the Total Environment* (2020).

10.7 Collaboration and Data Sharing

Lesson: Collaborative efforts and data sharing were instrumental in managing the crisis.

Relevance: Future planning should prioritize collaboration among government agencies, industry stakeholders, and the public, along with transparent data sharing for effective crisis management.

10.8 Policy Flexibility

Lesson: The pandemic necessitated quick policy adjustments and flexibility to address evolving challenges.

Relevance: Future planning should incorporate policy flexibility, allowing for rapid responses to changing circumstances without compromising long-term sustainability goals.

10.9 Public Health and Environmental Linkages

Lesson: The pandemic highlighted the interconnectedness of public health and environmental health.

Relevance: Future planning should recognize and address these linkages, ensuring that policies and practices promote both public well-being and environmental sustainability.

The Covid-19 pandemic has underscored the need for comprehensive, adaptable, and sustainable planning in the domains of tourism, air quality, and sustainability. The lessons learned provide a foundation for more resilient and environmentally conscious approaches to these critical areas, ensuring a brighter and more sustainable future for India and the world.

11. Conclusion

The disaster presents a chance to re-examine how tourism can in a better way address to the present ongoing issues in running its operations, other economic activities, natural resources, and eco – systems. It is a high time to detect in a proper way and monitor the negative impacts; and even to guarantee that earnings are distributed fairly; and to expedite the transition to a carbon-neutral, adaptive tourism industry. The primary focal point of this study revolved around the pandemic's influence on tourism.

The abrupt decrease in the number of tourists arriving, alongside economic setbacks in the tourism sector, emphasized the susceptibility of regions highly dependent on tourism-generated income. Nonetheless, it also unveiled the ability of both the industry and tourists to adapt and persevere. Tourist preferences shifted towards destinations prioritizing safety and lower population density, thereby underscoring the significance of sustainable tourism practices that strike a harmonious balance between economic considerations and the imperatives of environmental preservation and public health.

It seems that planet earth may be just getting a chance to catch her breath. Global levels of air and water pollution are dramatically down since the travel restrictions started and people are actually starting to talk, perhaps care again, about environmental issues.³⁸

The future of the tourism industry is marked by significant uncertainty. The ongoing impact of the COVID-19 pandemic continues to disrupt the sector, with a projected 80% decline in international tourism by 2020. Additionally, many countries are actively developing strategies to create a more sustainable tourism sector in the post-COVID-19 era. These efforts involve implementing measures to support the industry's long-term recovery and transitioning towards a sustainable model of tourism.

In the recent past, foreign media has largely projected India in bad light. But now in this Covid times travellers are searching for adventure destinations and all of them now are deciding to visit countries like India which is full of natural beauties and architectures, because they are in first place and tops their bucket list.

If there is a silver lining to this horrific, global disaster, perhaps seeing the differences in our planet and bringing these thoughts back into the public discourse are it.³⁹ It is expected that Indian tourism will see tremendous boom as there will more foreign tourist will be coming to India from the year 2023 onwards on regular basis as they are slowly realising and experiencing real India.

³⁸ Ma, C. J, "Modern pandemics: Recession and recovery" *International Finance Discussion Paper SSRN*, 3565646 (2020).

³⁹ Paital, B, "Nurture to nature via COVID-19, a self-regenerating environmental strategy of environment in the global context" *Science of the Total Environment* 729 (2020).

**Use of Telemedicine and E-Consultation in the Post-Pandemic World:
Critical Analysis and Extent of Physician's Liability**

*Supreet Gill**

Abstract

Telemedicine and E- Consultation is being exceedingly used to provide basic as well as emergency health care to patients who do not have access to medical professionals or medical equipment owing to various reasons which could be social, economic or geographical in nature. It has been recently seen that the practice of telemedicine and e-consultation has been allowed to flourish unregulated in several parts of the country owing to lockdown and restriction of movement due to the spread of corona virus. There is no means of fixing liability of medical professionals in case they fail to abide by the professional standards or when they risk the life of a patient due to negligence. Also, as it is with every technology, the new means of telecommunication are not alien to drawbacks. One would agree with the author when they point out that our first reaction these days at the onset of any physical ailment is self-medication by 'googling' the problem. Additionally, we may end up either calling or sending a WhatsApp text to a friend who happens to be a doctor and seek prescription for medication for the impending ailment. When a child gets any skin rash, any worried mother would quickly take a picture of the same and waste no time in sending it to their pediatrician in order to seek advice on what ointment to apply. Hence, it is pertinent to point out here that any lack of legal regulation in the field will lead rampant misuse of the practice which will not only be inconvenient for the physicians but could also prove dangerous to patients in certain cases. Therefore, in order to assure protection to rights and liabilities of all parties involved in a tele-consult it is pertinent for the legislature to pass some sort of guidelines that set a legal benchmark for consultation through tele-medium.

Keywords: *Telemedicine, Legal Regulation, Tele-consult, Patient, Doctor, Liability.*

“Clearly consumers are not only becoming aware of telemedicine but starting to demand access to it. It is becoming a part of the standard of care that should be made available throughout the country.”¹

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1. Introduction

In 2017, the United Nations study conducted a worldwide census to evaluate the emergent trends in population growth across the globe.² The study estimates, population of India at almost 1.37 billion; which means that India is home to almost one fifth of the total population on the face of the earth³ despite the fact that it occupies only 2.4% of total inhabitable land.⁴ Furthermore, it has also been suggested by various studies that 75% of India's population lives in the villages. However, 75% of the total health care facilities are based in urban areas.⁵ Most of the advanced technology is first introduced in urban India which houses well equipped hospitals and medical personnel and the rural sector remains largely underserved. Hence there is a gaping disparity between healthcare facilities available for those living in *India* as compared to those living in *Bharat*, as it is metaphorically called. In order to bridge this divide it is pertinent that current revolution in means of telecommunication is availed to serve people who live in these indigent areas, as this is where healthcare industry needs to extent its outreach the most.

However, statistics paint a very grim picture of healthcare spending in India where it is both grossly inadequate and unaffordable by the rural population. Indian villages are still plagued by lack of the most basic of health care facilities and infrastructure like electricity, clean drinking water and proper sanitation. It is estimated that almost 60% to 80% of positions for medical professionals are

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- ¹ Andrea Smith, "2016 Tele-health Quote Roundup", *Chiron Health*, (Dec.17, 2016), available at: <https://chironhealth.com/blog/2016-telehealth-quote-roundup/> (Visited on June 23, 2023).
 - ² World Population Prospects: The 2017 Revision, United Nations, Department of Economic and Social Affairs. (Jun.12, 2017); available at: <https://www.un.org/development/desa/publications/world-population-prospects-the-2017-revision.html> (Visited on June 23, 2023).
 - ³ India Population 2020, World Population Review, (Live Updates), available at: <http://worldpopulationreview.com/countries/india-population/> (Visited on June 23, 2023).
 - ⁴ India v. China Geography, Index Mundi; available at: <https://www.indexmundi.com/factbook/compare/india.china/geography> (Visited on June 23, 2023); See also, Sanchita Sharma, "India's population grew twice as fast as China's: UN report" *Hindustan Times*, Apr.10, 2019; available at: <https://www.hindustantimes.com/india-news/india-s-population-grew-at-1-2-a-year-during-2010-19/story-kUriMWaVWH2tBkEzUaxWFJ.html> (Visited on June 23, 2023).
 - ⁵ Sanjit Bagchi, "Telemedicine in Rural India", 3(3) *PLoS Med* 82 (2006); available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1420376/#pmed-0030082-b1> (Visited on June 23, 2023).

vacant in rural areas⁶ and in a scenario like this, reformation of the healthcare sector seems an unnerving task.

However, with the advancement in information and communication technology in the last decade, there is some hope for people living in far flung areas to get access to a healthcare professional through 'telemedicine.'

2. Meaning and Scope

Telemedicine is the term used to describe "the use of communication networks to exchange medical information for providing healthcare services and medical education from one site to another."⁷ In simple words, telemedicine is providing medical healthcare to a patient (who lives in remote area) via means of telecommunication by a physician in a comparatively developed area. The World Health Organization (WHO) defines Telemedicine as,

*"The delivery of healthcare services, where distance is a critical factor, by all healthcare professionals using information and communication technologies, for the exchange of valid information for diagnosis, treatment and prevention of disease and injuries, research and evaluation, and for the continuing education of healthcare providers, all in the interests of advancing the health of individuals and their communities."*⁸

Telemedicine is being exceedingly used to provide basic as well as emergency health care to patients who do not have access to medical professionals or medical equipment owing to various reasons which could be social, economic or geographical in nature.

Be that as it may, it has been recently seen that the practice of telemedicine has been allowed to flourish unregulated in several parts of the country owing to lockdown and restriction of movement due to spread of corona virus. There is no

⁶ Ministry of Health and Family Welfare, available at: <http://mohfw.nic.in/WriteReadData/1892s/492794502RHS%202012.pdf> (Visited on Sep. 12, 2023).

⁷ S.P. Sood, S. Negash, et al., "Differences in public and private sector adoption of telemedicine: Indian case study for sectoral adoption", 130 *Stud Health Technol Inform* 257-268 (2007); available at: <https://www.ncbi.nlm.nih.gov/pubmed/17917199> (Visited on Sep. 12, 2023).

⁸ WHO Global Observatory for e-Health. (2010). Telemedicine: opportunities and developments in Member States: report on the second global survey on eHealth, World Health Organization, (2010), available at: <https://apps.who.int/iris/handle/10665/44497> (Visited on Sep. 12, 2023).

means of fixing liability of medical professionals in case they fail to abide by the professional standards or when they risk the life of a patient due to negligence. Also, as it is with every technology, the new means of telecommunication are not alien to drawbacks. One would agree with authors when they point out that our first reaction these days at the onset of any physical ailment is self-medication by ‘googling’ the problem. Additionally, we may end up either calling or sending a WhatsApp text to a friend who happens to be a doctor and seek prescription for medication to the impending ailment. When a child gets any skin rash, any worried mother would quickly take a picture of the same and waste no time in sending it to their pediatrician in order to seek advice on what ointment to apply.

We all use this technology to our benefit and are very happy with the doctors who are no less than modern day genies for having solved our problem at the click of a button. However, one never stops to wonder what would happen if the patient was taken ill due to a medicine prescribed over phone call or what if a child has a life threatening allergic reaction to the local steroid prescribed by the doctor over WhatsApp. In this unfortunate scenario, who is to bear the brunt of failing to comply with the actual protocol, the patient seeking advice through improper channel or the physician dispensing it through casual means like text messaging?

Hence, it is pertinent to point out here that any lack of legal regulation in the field will lead rampant misuse of the practice which will not only be inconvenient for the physicians but could also prove dangerous to patients in certain cases. Therefore, in order to assure protection to rights and liabilities of all parties involved in a tele-consult it is pertinent for the legislature to pass some sort of guidelines that set a legal benchmark for consultation through tele-medium.

3. Historical Perspective

3.1 International Perspective

The time when telemedicine was first used is difficult to pinpoint with complete precision. However, taking an educated guess one may be able to predict that the concept must have originated centuries ago when information about the epidemics were broadcasted across Europe through bonfires and use of heliograph. Telegraph was the mainstay of communication for medical services for most part of the 19th Century. In the early 1900’s it is said that means of communication (mainly radio) were first introduced in arena of health care during the world wars when the count of casualties and medical reinforcements requirements needed to be communicated. With the advent of telephone, disseminating information related to medicine and healthcare became visibly

easy, and remains to be the primary mode of communication till date. Owing to the territorial inaccessibility of remote areas of rural Australia, two-way radio waves were used to communicate medical information to the Royal Flying Doctor Service of Australia.⁹ The modern means of telemedicine originated in the 1960's when humans first endeavored to step into outer space where National Aeronautics and Space Administration (hereinafter NASA) was at the center-stage for providing medical assistant to astronauts in space.¹⁰ The decade of 1960's saw much development in the field of telemedicine wherein two experiments were leading the way in this modern technology. In 1964, first audio-visual link was set up between Nebraska Psychiatric Institute and Norfolk State Hospital which were situated more than hundred miles apart.¹¹ In the year 1967, first and one of its kind telemedicine network was set up collaborative efforts of Dr. Kenneth Bird and Dr. Jay Sander, who is popularly known as the Father of Telemedicine. Dr. Sanders and Dr. Bird were behind this novel telemedicine experiment which linked Massachusetts General Hospital to Boston's Logan Airport in order to provide remote diagnosis in case of emergencies owing to the high traffic zone between transit routes of both the places. In 1971, the National Library of Medicine's Lister Hill Center for Biomedical Communication chose 26 sites in Alaska to improve healthcare communication in far flung areas in wilderness.¹² NASA went one step ahead and launched Space Technology Applied to Rural Papago Advanced Health Care programme (hereinafter STARPAHC) dedicated to serving the Papago Indian Reservation in Arizona. STARPAHC was only one of the seven telemedicine research cum demonstration projects which were funded by government agencies.¹³ Since the 1980's NASA has conducted and implemented several other

⁹ Shubhangi M. Verulkar and Maruti Limkar, "Real Time Health Monitoring Using GPRS Technology" 3 *IJCSN Journal* 1 (2012); available at: <https://repository.arizona.edu/handle/10150/229011> (Visited on Sep. 12, 2023).

¹⁰ Rashid Bashshur, "Technology serves the people: The story of a cooperative telemedicine project by NASA, the Indian Health Service and the Papago people", Superintendent of Documents. Washington DC: US Government Printing Office; 1980; available at: <https://eric.ed.gov/?id=ED225794> (Visited on Sep. 12, 2023).

¹¹ Karen M. Zundel, "Telemedicine: history, applications, and impact on librarianship" 84(1) *Bull. Med Libr. Assoc* 72 (1996); available at: <https://pdfs.semanticscholar.org/330b/842db3ff57347c523544bf60bd263ecb344c.pdf> (Visited on Sep. 12, 2023).

¹² D. Foote, H. Hudson, *et al.*, "Telemedicine in Alaska: The ATS-6 satellite biomedical demonstration, National Technical Information Service (NTIS) Springfield" VA: *US Department of Commerce*; (1976).

¹³ Other Projects were:

- INTERACT, based at Dartmouth Medical School in Hanover, New Hampshire;
- Rural Health Associates in Farmington, Maine;
- Blue Hill Memorial Hospital in Blue Hill, Maine;

telemedicine programs which were designed to serve both remote areas on earth as well as astronauts in space.¹⁴ Telemedicine caught the eye of several private organisations and several companies since the 1990's have shown keen interest in developing it starting with the 1989 launch of telemedicine through standard telephone lines by MedPhone.¹⁵

3.2 Indian Perspective

With the advent of internet at the turn of the century, the field of telemedicine was revolutionised and with present means of telecommunication technology tele-consult is made possible with a simple click of a button. In India, the year 1999 marked the beginning of experiments in the field of Telemedicine when the Ministry of Communications and Information Technology took the novel step of introducing the innovative project titled, "Development of Telemedicine Technology". This project was introduced to uplift the dismal state of healthcare delivery system in the country. Under this project the Department of Information Technology (DIT), (a wing of the Ministry of Communications and Information Technology), along with Indian Space Research Organisation (ISRO), took upon itself to not only establish but also to standardize technology related to telemedicine, wherein more than seventy-five telemedicine nodal centers were established across the country. Furthermore, one of the first states to adopt the telemedicine model was the state of West Bengal wherein it started several projects in association with Webel Electronic Communication Systems Ltd (Webel ECS), a public entity under DIT and Indian Institute of Technology (IIT)- Kharagpur.¹⁶¹⁷ Also in the year 2000, Department of Space (DOS), ISRO and the North Eastern Council (NEC) cooperated to launch North Eastern Space Applications Centre (NESAC) to cater to north eastern states of India, wherein an ISRO-NEC telemedicine project¹⁸ was initiated in 2004 assisted by satellite communication through Very Small Aperture Terminal (VSAT). Another significant activity attempted by NESAC is the establishment of Village Resource Center (VRC) in far flung arear of northeast India. This is a milestone

-
- the Puerto Rico telemedicine program in Ponce, Puerto Rico;
 - Lakeview Clinic in Waconia, Minnesota;
 - Alaska Native Program in Alaska and Seattle, Washington.

¹⁴ Aparajita Dasgupta, "Soumya Deb, Telemedicine: A New Horizon in Public Health in India" 33(1) *Indian J Community Med.* 3-8 (2008).

¹⁵ Ajagana Geidam Matawalli, A. Ibrahim, *et al.*, "Health Care Using Telemedicine: A Case Study of Yobe State, Nigeria" 385 *IJCSN* (2014).

¹⁶ *Supra* note 14.

¹⁷ Pankaj Mathur, Shweta Srivastava, *et al.*, "Evolving Role of Telemedicine in Health Care Delivery in India" 7 *Prim Health Care* 1 (2017).

¹⁸ *Id.* at 6.

achievement which facilitates and avails cutting edge technology to places and population who have very limited or almost no access to medical facilities. In 2001, Kerala Oncology Network (Onconet - Kerala) telemedicine project was efficaciously accomplished by the Centre for Development of Advanced Computing and Regional Cancer Center in Trivandrum.¹⁹ The project was inclusive of a network empowered Hospital Information System 'TEJHAS' (Telemedicine Enabled Java based Hospital Automation System) - an automated archive of patient's therapeutic files, readily available to each medical facilities in the vicinity.²⁰ Once ONCONET was effectively launched in the state of Kerala, the Government of India's idea of establishing an pan India ONCONET gained more impetus wherein more than twenty five cancer treatment facilities across India were connected to more than hundred remote-site fringe hospitals and healthcare organisations.²¹ ISRO was instrumental in both establishment and effective functioning of telemedicine network in India for both public and private sector, wherein caters to sixty super specialty hospitals and referral centers, eighteen mobile telemedicine units and three hundred and six rural hospitals.²²

Additionally, the famous chain of hospitals, Apollo Hospitals Group has also taken several progressive steps to initiate the use of telemedicine under its Apollo Telemedicine Networking Foundation. Dr. Krishnan Ganapathy, who is famously known as the father of telemedicine in India is a prominent neurosurgeon who has worked tirelessly to popularise telemedicine in India during his work with Apollo Hospitals. Under his dynamic leadership, Apollo Hospitals successfully collaborated with ISRO in order to set up Rural Telemedicine Center at Aragonda, a small village in the State of Andhra Pradesh. Since the establishment of the Aragonda Apollo Telemedicine Center and Hospital in the year 2000 it has served as foundational case study model for the whole telemedicine healthcare infrastructure. In today's date Apollo Telemedicine Networking Foundation has gained the status of the biggest private healthcare contributor in the area of Telemedicine with over one hundred and twenty-five tangential hubs in India and ten abroad.²³ Another gem in the country is Narayan Hrudayalaya, a prominent healthcare establishment that has been operational in the area of tele-cardiology. It has the pride of being named among the top fifty groundbreaking

¹⁹ D.C. Sharma, "India takes to telemedicine for cancer treatment", 2 *The Lancet Oncology* 128 (2001).

²⁰ *Supra* note 17.

²¹ S. Sudhamony, K. Nandakumar, *et al.*, "Telemedicine and tele-health services for cancer-care delivery in India" 2 *IET Commun.* 231-236 (2008).

²² *Supra* note 17.

²³ K. Ganapathy and A. Ravindra, "Telemedicine in India: The Apollo Story" 15(6) *Telemed J E Health* 576-585 (2009).

establishments of the world by the prevalent online magazine Fast Company in the year 2012.²⁴ Since 2001-02, this undertaking has started another one hundred and thirty telemedicine centers all over India and treated over sixty-four thousand patients, including ten thousand patients in coronary care units with tele-consultations. Also, E-Sanjeevani-OPD is based on e-Sanjeevani - Government of India's flagship telemedicine technology developed by Centre for Development of Advanced Computing (Mohali).²⁵

4. Benefits and Drawbacks of Telemedicine and E-Consultation Technology: A Balance

Any new technology which is developed has both pros and cons, and same goes for telemedicine as well. The potential benefits and drawbacks of telemedicine shall be discussed in this section.

4.1 Benefits

1. Telemedicine has helped reach out to patients living in remote locations which do not have access to good medical care and personnel owing to their geographical impediments.²⁶
2. Telemedicine has bridged the divide between patients and physicians where they no longer have to travel to seek medical help.²⁷ They can seek a consultation through video conferencing.^{28,29}
3. Telemedicine has also been a boon for medical education and research where physicians across the world can share data and collaborate to fight a disease in their respective areas.³⁰ The dissemination of information has become a lot easier and free.

²⁴ Narayan Health, *available at*: <http://www.narayanahealth.org/telemedicine> (Visited on Sep. 12, 2023).

²⁵ E-sanjeevani, *available at*: <https://esanjeevaniopd.in/About> (Visited on Sep. 12, 2023).

²⁶ K. L. Rockwell and A. S. Gilroy, "Incorporating telemedicine as part of COVID-19 outbreak response systems" 26(4) *Am. J. Manag. Care* 147-148 (1 April 2020).

²⁷ R. Wootton, K. Bahaadinbeigy, *et al.*, Estimating travel reduction associated with the use of telemedicine by patients and healthcare professionals: proposal for quantitative synthesis in a systematic review 11(1) *BMC Health Serv. Res.* 1 (December 2011).

²⁸ K. F. Funderskov, Boe Danbjørg D., *et al.*, "Telemedicine in specialised palliative care: healthcare professionals and their perspectives on video consultations—a qualitative study" 28(21-22) *J. Clin. Nurs* 3966-3976 (November 2019).

²⁹ B.L. Charles, "Telemedicine can lower costs and improve access" 54(4) *Healthc. Financ. Manag.* 66 (01 April 2000).

³⁰ M. Kerleau and N. Pelletier-Fleury, "Restructuring of the healthcare system and the diffusion of telemedicine" 3(3) *Eur. J. Health Econ.* 207-214 (01 September 2002).

4. Remote patient monitoring has reduced the burden on hospitals serving largely populated areas where patient to physician ratio is very poor.³¹
5. Telemedicine has reduced the overall cost of health care by reducing the need for outpatient visits.³²
6. Telemedicine also reduces the risk which medical staff are exposed to otherwise when they are treating a patient suffering from a high-risk infection disease.³³

4.2 Drawbacks

1. Telemedicine has reduced the patient-physician personal interaction which is sometimes very necessary as the work of a physician in both physical treatment and psychological counselling. In telemedicine, the reassurance a patient might seek out of actually meeting a doctor face to face is greatly reduced.
2. There is also an added cost to the service provider who has to set up the telecommunication machinery and equipment at several sites. In some cases, the government may not be able to dispense such large amounts of funds for the same and private companies may not be willing to make the investment fearing that it may not give the desired returns.
3. Also, there is another factor of finding trained professional who are fully equipped to operate telecommunication equipment. Deploying these professionals at remote sites may also be a task as many people might not want to live in remote areas.
4. Additionally, there is high likelihood of storage and transmission of data related to patients which is open to data theft and violation of privacy issues.
5. Poor quality of images transmitted through tele media pose a potential risk to patients as it greatly increases the chances of misdiagnosis.
6. Most importantly, lack of legal clarity on rules relating to telemedicine pose the biggest risk in practice of telemedicine which may be responsible for violation of rights of several patients as well as physicians who earnestly perform their duties in good faith.

³¹ P.S. Whitten, F. S. Mair, *et al.*, "Systematic review of cost-effectiveness studies of telemedicine interventions" 324(7351) *BMJ*. 1434-1437 (15 June 2002).

³² S. K. Mishra, L. Kapoor, *et al.*, "Telemedicine in India: current scenario and the future" 15(6) *Telemedicine and e-Health* 568-575 (01 July 2009).

³³ R. V. Acharya and J. J. Rai, "Evaluation of patient and doctor perception toward the use of telemedicine in Apollo Tele Health Services India" 5(4) *J. Fam. Med. Prim. Care*. 798 (October 2016).

5. Telemedicine and E-Consultation in Times of Covid-19: Legal Problems

5.1 Status Prior to Telemedicine Guidelines of 2020

In the year 2020, mankind became witness to a situation so unprecedented and devastating that we were left dumbfounded and at complete loss of experience to give appropriate response to the deadly COVID-19 pandemic. The recent outbreak of the novel corona virus has brought the entire world to a standstill. People from all walks of life and profession were forced to give up their normal way of life and be trapped within the four walls of their homes to ensure safety of their own and their loved ones. However, there were select few who were not afforded the luxury of being within the warmth of their homes and those select few are fighting on behalf of rest of us. The tireless work of health care professionals involved in the fight against this pandemic is indeed commendable and they deserve the much-needed credit that was due to them. They are rightly being called “the real heroes”. However, not all medical health care providers are on duty, owing to the nature and area of their expertise. Some of them are fighting from behind the screens. With lockdown being imposed nationwide, access to health care facilities became increasingly difficult and also risky owing to the fear of spread of this deadly virus. The nation was put under lockdown, and so were people and places, however, accidental injuries, diseases and ailments of minor or less serious nature could hardly be expected to adhere to restrictions imposed on us humans. However, even minor ailments need treatment and became highly difficult and scary to visit a doctor in such times in the last few months. The only feasible alternative to physical examination by a doctor became e-consultation and use of telemedicine. Any patient suffering from a common ailment was quick to call or text their family physician expecting the doctor to deliver the highest professional standard of care. Patients did not pause to think even once that for a physician to form a correct diagnosis of any problem, it is of extreme importance that the patient be examined in person. So in event of unfortunate misdiagnosis over an e-consult when the patient themselves failed or protested to present themselves physical to the doctor, who is to be held liable? In order to gain better understanding on the subject we need to connect all the laws that some into play in a tele-consult or e-consult scenario.

In India, the Medical Council of India is responsible for governing and regulating a standard uniform qualification and eligibility criteria for obtaining professional degrees in the area of medicine, both from medical colleges situated within India and for those students who obtain their degrees in medicine from overseas. The Indian Medical Council Act, 1956, read with the Indian Medical Degree Act of 1916, lay down the guidelines for registration of healthcare professionals and rules and regulations governing their conduct while practicing

medicine. However, it is pertinent to note that there is no one benchmark standard which healthcare professionals need to follow or adhere to. Despite that, there are several legislations in India which, to some extent govern the conduct of healthcare providers, namely, Drugs and Cosmetics Act, 1940 which define negligence; criminal intent; sale, manufacture and distribution of drugs etc. In addition to this, after much debate and unnecessary excitement of the medical fraternity, it is now clear as water that healthcare providers do come under the scope of the new Consumer Protection Act, 2019.³⁴ The responsibility and degree of professional care become even more pronounced in the case of medical health care providers and doctors who choose telemedicine as a method of patient consultation, diagnosis, prescription of medication and treatment of the disease according to its prognosis. Artificial intelligence and pre-programmed softwares play a very big part in use of telemedicine in India. However, when any finger is raised in case of malpractice by a physician or discrepancy in service, it is never the AI or software that come in the line of fire, but almost always the physician. Therefore, in order to understand and use the methods of telemedicine safely both for the benefit of patients as well as doctors it is appropriate that light must be shed on some legal provisions in our system which come into play when a physician used means of technology and media in order to treat his patients.

As stated earlier, it the Medical Council of India which lays down rules and regulations with requisite qualifications for a person to practice medicine in India. The Drugs and Cosmetics Rules, 1945 in Section 2 (ee) lays down the definition of a “registered medical practitioner” as a person who possesses qualifications as specified under Section 3 of the Indian Medical Degree Act, 1916 or in the Schedules to the Indian Medical Council Act of 1956 or eligible for registration in the register of dentists for a State under the Dentists Act, 1948 (16 of 1948); or who is engaged in the practice of veterinary medicine and who possesses qualification approved by the State Government.³⁵ Therefore it is pertinent to note that for any medical practitioner to treat patients through telemedicine, he/she must first and foremost qualify as a medical practitioner under these rules. Furthermore, the same legislation sheds light on the definition of the term “drugs”³⁶, “prescribed”³⁷ and goes on to differentiate between “prescription only drugs”³⁸ and otherwise. It is to be noted here that the term

³⁴ M.Z.M. Nomani, Faizanur Rahman, *et al.*, “Consumer Protection Act, 2019 and its implications for the medical profession and health care services in India” 41(4) *J Indian Acad Forensic Med.* 282-285 (2019).

³⁵ The Drugs and Cosmetics Rules, 1945, s. 2(ee).

³⁶ The Drugs and Cosmetics Act, 1940, s. 3(b).

³⁷ *Id.*, s. 3(i)

³⁸ *Supra* note 35, s. 65(9).

OTC Drugs or Over the Counter Drugs at one time did not find any legal definition in India.³⁹ It is implied that all those drugs which do not find mention in the list of “prescription only drugs” under the Drugs and Cosmetics Act, 1940 may be understood to mean and be considered as non-prescription drugs (or OTC drugs). However, this has changed after the latest guidelines on telemedicine which has been discussed in detail in the section that follows.

In case of use of telemedicine and e-consultation technology, it becomes extremely important to shed light upon the legal definition of term “prescription” as laid down in the Drugs and Cosmetics Act. The term “prescription” is defined under Section 65(10) of the Drugs and Cosmetics Rules, 1945, which lays down certain conditions that a prescription must fulfil for it to be valid. The conditions are namely: -

- i. “be in writing,
- ii. be signed by the person giving it with his usual signature and be dated by him;
- iii. specify the name and address of the person for whose treatment it is given;
- iv. indicate the total amount of the medicine to be supplied and the dose to be taken.”⁴⁰

On indepth analysis of the definition of the above-mentioned term it is clear that for a prescription to be valid, it has to satisfy the above mentioned criteria. This becomes even more important in time of COVID-19 when doctors and physicians are already under stress due to long working hours, and patients are seeking e-consultation through social media platforms. Again, it is pertinent to mention here that there is no specific legal provision which lays down the manner in which a patient is to be treated, therefore in the event of case of medical negligence, a prescription becomes the single most important documentary evidence to prove misconduct or lack of professional care or misdiagnosis on part of the physician. Therefore, if any prescription is to be relied upon for proving misconduct, it must satisfy the legal criteria of being in writing and signed failing which it ceases to be a valid medical prescription. Furthermore, electronic documents⁴¹ are given due recognition and authentication⁴² under the Information

³⁹ P.A. Marathe, S.K. Kamat, *et al.*, “Over-the-counter medicines: Global perspective and Indian scenario 66 *J Postgrad Med* 28-34 (2020); Available at: <http://www.jpgmonline.com/text.asp?2020/66/1/28/274716> (Visited on Sep. 12, 2023).

⁴⁰ *Supra* note 35, s. 65(10).

⁴¹ The Information Technology Act, 2000, s. 4.

⁴² *Id.*, s. 3.

Technology Act, 2000 and a prescription in an electronic format will be validated as legal if it is affixed with a secure digital signature⁴³ as prescribed under the Act. Needless to say, all professional and ethical code of conduct also applies to physicians in event of tele-consult as well. Therefore, all physicians still have to adhere to restrictions placed on them by way of Section 6.1.1 of the Code of Ethics Regulations, 2002 which considers the act of soliciting patients directly or indirectly as unethical. However, there is no legal provision that prescribes or limits the method or means or manner of interaction between a medical practitioner and patient with respect to diagnosis and treatment. Hence there is nothing per se which limits or restrains doctors from consultation over voice calls or texts messages.

Nonetheless tele-consultation is not always the best option for both patient as well as the physician. A judgment delivered by the Hon'ble Bombay High Court in July 2018, caused both confusion and widespread panic among the medical fraternity and caused them to question the entire legality of tele-consultation and demand Medical Council of India to issue clear guidelines on legality of telemedicine.⁴⁴ The case which attracted a lot of attention was the rejection of anticipatory bail of two gynecologists in *Deepa Sanjeev Pawaskar and Anr. v. State of Maharashtra*,⁴⁵ where it was alleged that a patient in their care had died due to their negligence by way of absence from the clinic and giving instructions to their subordinates about the treatment of the patient over voice calls. The court in their wise opinion found the act of prescribing treatment without proper diagnosis and without personal examination amounting to criminal negligence. However, the couple was later granted bail on appeal by the Hon'ble Supreme Court Bench comprising of Justice Abhay Manohar Sapre and Justice Uday Umesh Lalit.⁴⁶

This incident sent shockwaves across the medical fraternity and some of them interpreted this case as labelling tele-consultation as illegal. Some of the state medical councils even warned the doctors registered with them to refrain from

⁴³ *Id.*, s. 5.

⁴⁴ P Suraksha, "Telemedicine has no legal backing, fraternity calls for regulation", *The New Indian Express* (Sep. 17, 2018, 7:18 AM); available at: <https://www.newindianexpress.com/cities/bengaluru/2018/sep/17/telemedicine-has-no-legal-backing-fraternity-calls-for-regulation-1872965.html> (Visited on Sep. 12, 2023).

⁴⁵ Criminal Anticipatory Bail Application No. 513 Of 2018.

⁴⁶ Dr. KK Aggarwal, "Hon'ble Supreme Court grants relief to doctor couple from arrest under section 304 as anticipated", (Jun.8, 2016); available at: <http://kkaggarwal.com/Editorial/honble-supreme-court-grants-relief-to-doctor-couple-from-arrest-under-section-304-as-anticipated/> (Visited on Sep. 12, 2023).

indulging in any kind of tele-consultation.⁴⁷ There was a growing demand from the Indian Medical Association to issues some clarification and provide regulation with respect to tele-consultation and the practice was already rampant.

5.2 Status after Telemedicine Practice Guidelines (“Telemedicine Guidelines”) dated March 25, 2020.

One may consider this a lucky coincidence for physicians that the impending guidelines which were long due were issued almost at the same time when our country was going to need it the most. It is indeed very surprising to note that the guidelines almost coincide with the nation-wide lockdown declared in the country owing to threat caused by the Covid-19 pandemic. The Telemedicine Guidelines are a welcome step for physicians and patients alike as they lay down in details all the activities that are permissible and the manner in which tele-consultation is to be conducted. The amendment made to was made to the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (“Code of Conduct”) gives statutory recognition and foundation for the practice of telemedicine in India. The Guidelines have several salient features; however, the most prominent ones have been highlighted as follows:

- i. Tele-consultation is now legal.
- ii. The term ‘Telemedicine’ has been expressly defined.⁴⁸
- iii. For the first time ever, Over the Counter or OTC medicines have been listed in List O⁴⁹ marking a clear distinction from List A, List B and Prohibited⁵⁰ medication.
- iv. First consultation need not be in person.⁵¹
- v. All doctors providing tele-consultation must display their registration number in all communications exchanged with the patient.⁵²
- vi. Prescribing medicines for chronic diseases should be avoided unless it is a refill for follow up in person previous prescription within six months.⁵³

⁴⁷ Yasmeen Afshan, “KMC warns doctors against online consultation”, *The Hindu* (May 14, 2019, 11:08 PM); *available at*: <https://www.thehindu.com/news/national/karnataka/kmc-warns-doctors-against-online-consultations/article27130640.ece> (Visited on Sep. 12, 2023).

⁴⁸ Telemedicine Practice Guidelines, Appendix 5 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics Regulation, 2002) at p. 5; *available at*: <https://www.mohfw.gov.in/pdf/Telemedicine.pdf> (Visited on Sep. 12, 2023).

⁴⁹ *Id.* at p. 45.

⁵⁰ Schedule X of Drug and Cosmetic Act and Rules or any Narcotic and Psychotropic substance listed in the Narcotic Drugs and Psychotropic Substances, Act, 1985.

⁵¹ Telemedicine Practice Guidelines, 2020, r. 3.6.

⁵² *Id.*, r. 3.2.5.

⁵³ *Id.*, r. 4.1.2.1.

- vii. Mode of issue of e-prescription has been laid down in details leaving no room for doubt or discrepancy.⁵⁴
- viii. Same professional and ethical norms and standards as applicable to traditional in-person care.⁵⁵
- ix. Responsibility on patient for giving accurate information to the RMP.⁵⁶
- x. Identification of RMP, patient as well as caregiver is necessary before the process of tele-consult is started.⁵⁷
- xi. Caregiver is deemed to be authorized on behalf of minor or incapacitated patients for the purpose of seeking medical advice over tele-consult.⁵⁸
- xii. Provisions for consent of the Patient in order to deliver appropriate treatment.⁵⁹
- xiii. Patient confidentiality and data privacy is given supreme importance.⁶⁰
- xiv. Documentation and Digital Records of Consultation have to be maintained by the RMP.⁶¹
- xv. Penalties in case of any breach of rules.⁶²

Therefore, it can be seen that the new guidelines of 2020 were the need of the hour and timing could not have been better. It clearly defines rights and duties of all the parties involved in a tele-consult and leaves very less room for any kind of misconduct, both on part of the patient as well as the physician.

6. Conclusion

Telemedicine as a means of healthcare delivery system has immense significance especially in times of a pandemic like Covid-19 wherein it can offer cost effective alternative to traditional in person consultation when risk of transmission of Covid-19 virus is at its peak. Nonetheless, a word of caution is required here as patient should be sensitized that tele-consultation can only be a supplement of traditional in person consultation and not its substitute. No matter how high the picture quality of your smartphone camera be, it can never replace the alert and caring eyes of a physician for whom attention to detail mostly holds the key in forming diagnosis to an ailment. We have become so comfortable in

⁵⁴ *Id.*, r. 3.6.4.2.

⁵⁵ *Id.*, r. 1.3.2.

⁵⁶ *Id.*, r. 4.1.1.2.

⁵⁷ *Id.*, r. 3.2.

⁵⁸ *Id.*, r. 4.2.2.

⁵⁹ *Id.*, r. 3.4.

⁶⁰ *Id.*, r. 3.7.

⁶¹ *Id.*, r. 3.7.2.

⁶² *Id.*, r. 3.7.1.5.

our own homes and so paranoid to visit a doctor's clinic that we are falling into the trap of believing that tele-consult is the only way of treating all our medical issues. The patients must understand that in person consultation should be the norm and tele-consult should be an exception.

The prescription for clonazepam that was issued to the deceased actor Sushant Singh Rajput was contested in court as an element of the recent high-profile case⁶³ involving his demise. This was attributable to the allegation that the medication had been acquired via teleconsultation. As a consequence of clonazepam's inclusion on the list of prohibited medications, the purported acquisition of the substance was deemed illegal, with reference to the Telemedicine Practice Guidelines. To sum up, the legislative framework pertaining to telemedicine in India is presently undergoing development. The most recent standards for the year 2020 fail to address certain concerns. These concerns pertain to the utilization of telemedicine for research purposes and remotely conducted invasive or surgical procedures. Furthermore, the applicability of this provision to consultations with RMPs or patients situated beyond the jurisdiction of India is not explicitly specified. The expansion of telemedicine utilization will necessitate the development and strengthening of regulatory frameworks to accommodate this emerging trend.

⁶³ *Priyanka Singh and Anr. v. State of Maharashtra and Ors*, Bombay High Court on 15 February, 2021.

Concept of Public Welfare State Enshrined in Directive Principles of State Policy: An Examination

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Abstract

The Directive Principles of State Policy (DPSP) embedded within the Indian Constitution serve as a foundational guidepost, steering the government's efforts towards achieving social, economic, and political justice. At the core of these principles lies a commitment to fostering a society where resources are distributed equitably, epitomizing the essence of social justice. Through a comprehensive examination, this paper elucidates how the DPSPs function as a blueprint for the establishment of a welfare state that caters to the needs of all citizens impartially. They not only outline the government's responsibilities but also serve as a constitutional tool for actualizing the ideals of a welfare state, shaping policies and actions to promote the well-being of the populace. By advocating for an economic order characterized by equitable wealth distribution and ensuring avenues for every individual to lead a dignified life, the DPSPs encapsulate the essence of a welfare state. Specific provisions, such as Article 39(e) and 39(f), safeguarding the rights of workers and children, along with Article 43, emphasizing a fair economic system and adequate wages, underscore the DPSPs' holistic approach towards social, economic, and political welfare.

This paper further explores the profound influence of the DPSPs on Indian legislation and judicial interpretation, illustrating their tangible impact on governance and societal development. Despite criticisms regarding their non-justiciability and challenges pertaining to financial feasibility, the DPSPs remain indispensable in India's journey towards building an inclusive and equitable welfare state.

Keywords: *Directive Principles of State Policy (DPSP), Social Justice, Economic Justice, Political Justice, Welfare State.*

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1. Introduction

The Directive Principles of State Policy (DPSP), integral to the Indian Constitution, were designed as a moral compass to guide the government in its quest to establish social, economic, and political justice within the country's landscape.¹ These principles are a quintessential manifestation of the concept of a welfare state and are intricately woven into the fabric of policy-making in India. They serve as the foundations upon which the government can build a socially equitable, economically fair, and politically inclusive society. This paper delves into a comprehensive exploration of how the concept of the public welfare state is embedded within the framework of the DPSP and extrapolates on the broader implications of these principles on the canvas of public policy.

The DPSPs in the Indian Constitution echo these sentiments and more. They provide the state with the necessary guidance to secure and protect a broad spectrum of rights and opportunities for its citizens, thereby enabling the state to serve as the custodian of public welfare. In doing so, they contribute towards bridging the chasm between the individual and the state, rendering the relationship more symbiotic and balanced. Furthermore, the DPSPs also direct the government towards creating policies that promote the welfare of marginalized and vulnerable sections of society. The principles uphold the ethos of social justice by advocating for the equal distribution of material resources and ensuring the well-being of all individuals, irrespective of their social or economic standing. The principles enshrined in DPSP are comprehensive and wide-ranging, spanning from the provision of adequate means of livelihood, equal pay for equal work, health, education, public assistance in cases of unemployment, old age, sickness and disablement, to the promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections.² Through these guidelines, the DPSPs establish the trajectory towards a welfare state where public welfare and social justice are not just abstract ideals but lived realities.

In essence, the Directive Principles of State Policy serve as the beacon that directs the government on its journey to establish a welfare state. The paper aims to decode the complex relationship between the DPSP and the concept of a public welfare state, while evaluating their impacts and implications on public policy within the Indian socio-political context.

¹ D. D. Basu, *Commentary on the Constitution of India* (1952).

² *The Constitution of India* (1950).

2. Historical background of the Directive Principles of State Policy

The concept of Directive Principles of State Policy (DPSP) originated from the Irish Constitution of 1937. The Irish Constitution's drafters were influenced by social teachings within the Catholic Church, particularly the papal encyclicals, which emphasized the responsibilities of the state towards its citizens. The DPSP were envisioned as a set of principles to guide the state in its policy-making, promoting social justice, economic welfare, and cultural development.

In India, the idea of DPSP was adopted from the Irish Constitution during the drafting of the Indian Constitution, which took place between 1946 and 1949. The Constituent Assembly of India, under the leadership of Dr. B.R. Ambedkar and other prominent leaders, recognized the importance of incorporating principles that would guide the state in ensuring social and economic justice for its citizens. The DPSP are enshrined in Part IV of the Indian Constitution, comprising Articles 36 to 51. These principles are not enforceable by courts but are intended to serve as guidelines for the government in formulating policies and laws. They cover a wide range of areas including social justice, economic welfare, international relations, environmental protection, and promotion of education and culture.

The historical background of DPSP in India reflects the commitment of the framers of the Constitution to build a just and equitable society, addressing the socio-economic inequalities inherited from colonial rule. While fundamental rights provide individuals with legal protections, DPSP aim to ensure that the state takes proactive measures to create conditions for the realization of these rights, thus fostering a welfare state.³ Over the years, DPSP have played a significant role in shaping India's socio-economic policies, providing a framework for development programs and initiatives aimed at uplifting marginalized sections of society. Despite their non-justiciable nature, DPSP have influenced judicial decisions and public discourse, serving as a yardstick against which the performance of governments is often evaluated in terms of their commitment to social justice and inclusive development.

3. DPSP and the Welfare State

The Directive Principles of State Policy (DPSP), as detailed in Part IV of the Indian Constitution, play a cardinal role in shaping the country's trajectory

³ Santanu Basu, *Coalition Politics and The Issues of Social Justice: A Study in the Context of Directive Principles of State Policy under the Constitution of India* (Diss. University of North Bengal, 2015).

towards becoming a welfare state that serves all its citizens equitably. They function as a roadmap, presenting the government with comprehensive, strategic directions for designing and implementing effective social and economic policies. The DPSPs, thus, hold a critical place in the governmental framework, serving as a compass in the journey of securing justice and welfare for all members of the society.

The concept of a welfare state is embedded in the fundamental promise of democratic governments to its citizens – a promise of equality, justice, and a decent standard of living. This promise necessitates the state's active role in providing a safety net for its citizens, offering them protection from the various socio-economic vulnerabilities they may face. It advocates for universal access to public services, equitable distribution of resources, and a steadfast commitment to uplifting the disadvantaged and marginalized sections of society.⁴

In the Indian context, the DPSPs resonate strongly with these ideas. They act as the constitutional instrument that operationalizes the concept of a welfare state. These principles inform and inspire the government's approach to social and economic policy-making, driving the state's actions to promote the welfare of its citizens. These principles, though non-justiciable, are fundamental to the governance of the country and crucial for realizing the social objectives laid down by the Constitution.⁵

The DPSPs cover a broad spectrum of socio-economic rights, explicitly advocating for an economic order where wealth is not concentrated in a few hands and is distributed equitably to prevent exploitation. They urge the state to strive for a decent standard of life for all workers, including a reasonable wage and proper working conditions (Constitution of India). In essence, these principles paint a picture of a society where social and economic barriers are minimized, and everyone has an opportunity to lead a fulfilling life.

Moreover, the DPSPs also outline the state's duty towards specific vulnerable groups, emphasizing social justice and inclusivity. They mandate the state to promote the educational and economic interests of weaker sections of society, such as the Scheduled Castes, Scheduled Tribes, and other backward classes, and protect them from social injustice and all forms of exploitation. By doing so, the DPSPs ensure that the pursuit of a welfare state is not a blanket

⁴ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50 (Oxford: Clarendon Press, 1966).

⁵ B Shiva Rao (ed.), *The Framing of India's Constitution: A Study* 319 (New Delhi: Indian Institute of Public Administration, 1968)

approach but a nuanced one, accounting for the various social inequalities ingrained in Indian society. However, the DPSPs not only focus on the present but also provide a vision for the future. They inspire the government to foster scientific temper, humanism, and the spirit of inquiry and reform (Constitution of India, 1950). This ensures that the conception of a welfare state is not stagnant but continuously evolves with the changing times and societal advancements.

To conclude, the DPSPs, nestled in the Indian Constitution, are the bridge that connects the government's actions and the realization of a welfare state. They guide the state's approach to social and economic policy, firmly rooting the government's actions in the principles of justice, equality, and welfare for all.

4. Key Elements of DPSP

The Directive Principles of State Policy (DPSP), an integral part of the Indian Constitution, embed the blueprint of a welfare state across three distinct, yet interrelated domains: social, economic, and political. Each domain encapsulates distinct principles, yet they collectively drive the state's pursuit of a welfare society. These elements ensure an integrated approach to policy-making, facilitating comprehensive societal progress.⁶

4.1 Social Welfare

At the forefront of the DPSPs lies the focus on social welfare. These principles, particularly as enshrined in Article 39(a), assert that the state should secure for its citizens adequate means of livelihood. This directive underpins the basic necessity for survival and dignity, implicitly endorsing the idea that no citizen should be deprived of their essential needs. It is an endorsement of the state's responsibility towards its people, ensuring that all citizens, irrespective of their socio-economic status, have access to the basic means for survival and leading a dignified life. Furthering this commitment to social welfare, Article 39(e) and Article 39(f) uphold the rights and safety of workers and children, respectively. These articles ensure that the health and strength of workers are not abused, and that children are given opportunities for healthy development, protecting them from harmful labor and other practices unsuited to their age. These principles reflect the Constitution's commitment to nurturing a society that is not only economically prosperous but also socially just and humane.

⁶ P.K. Tripathi, "Directive Principles of State Policy: The Lawyer's Approach to them Hitherto, Parochial Injurious and Unconstitutional" 17 *SCJ* 7 (1954).

4.2 Economic Welfare

The principles of economic welfare are central to the vision of the DPSPs. Articles 39(c) and 43 place emphasis on a fair economic order, advocating for the minimization of wealth concentration and assurance of a living wage for all workers (Constitution of India, 1950). This reflects the state's duty to create an environment where economic prosperity does not remain the privilege of a few but is a right accessible to all. It is a clarion call for economic democracy, which ensures that the wealth and resources of the country are distributed to serve the common good.

Article 43 further mandates the state to secure living wages, conditions of work ensuring a decent standard of life, and full enjoyment of leisure for all workers. It envisions an economy where work is not a means of mere survival but a source of livelihood that guarantees a decent and dignified life.

4.3 Political Welfare

Political welfare, as articulated in the DPSPs, serves as a foundational pillar for a democratic welfare state. Article 40 mandates the organization of village panchayats, thereby ensuring grassroots-level participation in political processes. It is a testament to the commitment to decentralize power and ensure that democracy is not merely a concept confined to the constitution but is practiced at the most basic unit of society. Article 45, on the other hand, mandates free and compulsory education for all children up to the age of fourteen. Recognizing education as a primary tool for political empowerment, this principle reinforces the role of the state in ensuring an informed and politically active citizenry.

In essence, the key elements of the DPSPs, encompassing social, economic, and political welfare, present a holistic approach to realizing a welfare state. They serve as guiding lights for the government, illuminating the path towards a society where justice, equality, and fraternity are not mere ideals but lived realities.

5. Implementation of DPSP

Although the Directive Principles of State Policy (DPSP) are non-justiciable, meaning they are not legally enforceable by the courts, their impact on Indian legislation and judicial interpretation has been profound (Austin, 1999). They serve as the underlying philosophy and inspiration behind several landmark legislations, policies, and judicial decisions, thereby creating a tangible impact on

society and governance.

An exemplary case in point is the Minimum Wages Act, 1948, which draws heavily from the ethos of the DPSP, particularly Article 43, which calls for securing a living wage for all workers (Minimum Wages Act, 1948). The legislation is a concrete manifestation of the constitutional directive, enabling the state to ensure a basic level of income for all workers, thereby fostering an environment of social justice and economic fairness.

In addition to legislative influence, the DPSPs have also served as a touchstone in judicial interpretation. The Supreme Court of India, in the landmark judgment of *Kesavananda Bharati v. State of Kerala*, recognized the DPSPs as fundamental in the governance of the country.⁷ This case underscored the DPSPs' significance, asserting their essentiality in achieving the Constitution's social objectives and shaping a welfare state.

6. Implementation of DPSPs

The implementation of Directive Principles of State Policy (DPSP) in India involves the government's commitment to utilizing these principles as guiding factors in policy-making and governance. While DPSP are not legally enforceable by courts, they are integral to the constitutional framework and serve as a moral and political obligation for the government to work towards fulfilling the socio-economic rights of citizens. Here are some ways in which DPSP are implemented:

6.1 Policy Formulation

The DPSP serve as guiding principles for the formulation of laws and policies by the government. Policies related to education, health, rural development, labor welfare, and social justice are often designed with reference to the principles outlined in Part IV of the Indian Constitution.

6.2 Legislative Measures

The Parliament and state legislatures enact laws that align with the objectives laid down in DPSP. For instance, laws promoting land reforms, protecting the interests of workers, ensuring access to education and healthcare, and promoting the welfare of women and children are all manifestations of DPSP in action.

⁷ AIR 1973 SC 1461

6.3 Government Programs and Schemes

Various government programs and schemes are launched to implement the principles enshrined in DPSP. These programs include poverty alleviation schemes, rural development initiatives, employment guarantee programs, and social security schemes targeting vulnerable sections of society.

6.4 Judicial Interpretation

While DPSP are not legally enforceable, the judiciary often considers them while interpreting laws and adjudicating cases. Courts may use DPSP as a moral and ethical compass to assess the constitutionality of laws and government actions, especially when they impact the fundamental rights of citizens. By way of article 21 various DPSPs has been implemented. While Article 21 primarily falls under the category of fundamental rights, it also serves as a conduit for the implementation of Directive Principles of State Policy (DPSP), particularly those related to social justice, welfare, and human dignity. Here's how Article 21 facilitates the implementation of DPSP:

Right to Livelihood: The Supreme Court of India has interpreted the right to life under Article 21 expansively to include the right to livelihood. This interpretation aligns with DPSP objectives such as promoting the economic well-being of citizens and ensuring equitable distribution of wealth and resources. Judicial pronouncements have emphasized the importance of protecting the economic interests of marginalized communities and ensuring their right to earn a livelihood.

Right to Health: The right to life under Article 21 encompasses the right to health and access to medical care. The government is obligated to take measures to protect and promote public health, which is in line with DPSP provisions calling for the improvement of public health and the provision of medical facilities for all citizens. Policies and programs related to healthcare, sanitation, and disease prevention contribute to the realization of this objective.

Environmental Protection: Environmental degradation poses a threat to the right to life and a healthy environment. Article 21 has been invoked in numerous cases related to environmental protection, asserting citizens' rights to a clean and pollution-free environment. DPSP provisions related to environmental conservation and sustainable development find expression through the interpretation of Article 21 in environmental jurisprudence.

Right to Housing: Adequate housing is essential for a dignified life. While not

explicitly mentioned in Article 21, the Supreme Court has recognized the right to shelter as an integral aspect of the right to life. DPSP principles advocating for the improvement of living standards and the provision of housing facilities for all citizens resonate with this interpretation. Government initiatives aimed at providing affordable housing to economically weaker sections contribute to the realization of this right.

Protection of Human Dignity: The right to life under Article 21 encompasses protection against arbitrary or inhuman treatment. This includes safeguards against torture, custodial violence, and degrading living conditions. DPSP principles emphasizing the dignity of the individual and the promotion of social justice find expression through judicial interventions aimed at preventing human rights violations and ensuring due process of law.

Constitutional Amendments: From time to time, amendments to the Constitution are made to introduce provisions that facilitate the implementation of DPSP. For example, the 73rd and 74th Constitutional Amendments introduced provisions for decentralization of power and local self-governance, in line with the principles of democratic decentralization outlined in DPSP. Right to education is now added in 21A of the constitution of India.⁸

Public Awareness and Participation: Civil society organizations, advocacy groups, and grassroots movements play a crucial role in advocating for the implementation of DPSP. They raise awareness about socio-economic issues, mobilize public opinion, and hold governments accountable for their actions in fulfilling the objectives of DPSP. Overall, the implementation of DPSP requires a comprehensive approach involving coordinated efforts by the legislature, executive, judiciary, civil society, and citizens to create an equitable and just society as envisioned by the framers of the Indian Constitution.

7. Criticisms and Challenges

Despite the laudable vision and purpose of the DPSPs, they have been subject to various criticisms and challenges. A key criticism is rooted in the non-justiciability of these principles. Critics argue that the non-enforceability of DPSPs in courts of law curtails their effectiveness and potentially dilutes their impact. This non-justiciability allows for the possibility of non-compliance without legal consequences, which could hamper the realization of the welfare

⁸ 86th Amendment to *the Constitution of India* 2002 and implemented in 2009

state ideal.⁹

Another substantial challenge is the implementation of DPSPs, which heavily depends on the financial capacity of the state. Many of the principles enshrined in the DPSPs, such as providing adequate means of livelihood for all, ensuring a living wage for all workers, and delivering free and compulsory education, require significant financial resources. If state resources are limited, the execution of these principles could be compromised, consequently affecting the realization of a welfare state.¹⁰

8. Conclusion

In conclusion, the Directive Principles of State Policy (DPSP) embedded within the Indian Constitution stand as a beacon of hope and guidance in the nation's pursuit of a public welfare state. Through their moral imperatives and guiding principles, the DPSPs underscore the government's duty to ensure social, economic, and political justice for all citizens. By advocating for equitable distribution of resources, protection of worker rights, and the provision of a fair economic order, these principles lay the groundwork for a society where every individual can thrive.

Despite criticisms and challenges, including non-justiciability and fiscal constraints, the DPSPs have left an indelible mark on Indian governance and societal development. Their influence on legislation and judicial interpretation underscores their significance in shaping policies and fostering a more inclusive society. As India navigates its path towards greater prosperity and equity, the DPSPs remain essential pillars, guiding the government's actions and policies towards the realization of a truly welfare-oriented state.

9. Suggestions

Strengthening Implementation Mechanisms: Efforts should be made to strengthen mechanisms for the effective implementation of DPSPs, including robust monitoring and evaluation frameworks to ensure adherence to these principles in policy formulation and implementation.

⁹ Suresh Mani Tripathi, *Fundamental Rights and Directive Principles in India* (Anchor Academic Publishing, 2016).

¹⁰ Conference Paper Proceeding of the Third International Conference of Appellate Judges, New Delhi, March 1984, Supreme Court of India, 210, Cf., Anand Kumar, "Purpose and Objectives of Directive Principles of State Policy: Its Relevance in 21st Century" 8 *MLJ* 20 (2012).

Enhancing Awareness and Education: There is a need to enhance awareness and understanding of DPSPs among the general populace, policymakers, and stakeholders through education and advocacy initiatives, emphasizing their importance in advancing the welfare of society as a whole.

Addressing Financial Constraints: While recognizing the fiscal challenges associated with fulfilling DPSPs, innovative approaches, such as exploring public-private partnerships and leveraging resources efficiently, should be explored to maximize the impact of welfare-oriented policies within existing budgetary constraints.

Strengthening Legal Framework: Efforts should be made to explore avenues for enhancing the justiciability of DPSPs, ensuring greater accountability and enforceability of these principles through legal reforms and constitutional amendments, where necessary.

Promoting Research and Dialogue: Continued research and dialogue on the relevance and efficacy of DPSPs in contemporary Indian society are essential to inform policy debates and decision-making processes, facilitating the ongoing evolution of the welfare state paradigm in India.

**Gender Diversity in the Boardroom: The Impact of Independent Directors
on Promoting Gender Equality in Indian Corporations**

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Mahipal Lather^{***}

Abstract

The role of independent directors in promoting gender diversity in the boardrooms of Indian corporations is examined in this researched article. As an outcome of its potential positive effects on organizational performance and societal progress, gender diversity on corporate boards has attracted considerable international attention. In despite this, many nations, including India, continue to strive to achieve gender parity in leadership roles. A review of the manners in which independent directors can promote gender equality and diversity in corporate governance frameworks is the focus of this article. This article assesses the efficacy of independent directors in promoting constructive transformations in Indian boardrooms by utilizing regulatory perspectives, empirical studies, and theoretical frameworks to offer insights into the present state of gender diversity in such environments. The primary objective of this study is to enlighten stakeholders, policymakers, and corporate executives regarding the criticality of advancing gender diversity in corporate governance. Also, it seeks to underscore the indispensable function that independent directors play in this pursuit.

Keywords: *Gender diversity, Independent Directors, Corporate governance, Gender equality, Indian corporations.*

1. Introduction

In recent discussions on corporate governance, the importance of gender diversity within leadership positions is a significant concern that is being recognized worldwide. Corporate boards play a crucial role in shaping strategic decisions, impacting organizational performance, and shaping stakeholder perceptions. However, even with the increasing acknowledgment of the importance of gender diversity, there is still a significant lack of women in boardrooms, especially in emerging economies such as India. Recent reports highlight the concerning lack

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of female representation in board seats within Indian corporations, emphasizing the ongoing gender disparity in corporate leadership roles (Credit Suisse, 2022).¹ This stark contrast not only highlights a lack of inclusivity but also represents a lost chance to utilize a range of perspectives and expertise to drive strategic decision-making.

Independent directors play a crucial role in promoting transparency, accountability, and ethical conduct within corporations. These individuals, who fulfill a role similar to that of an operations manager, are responsible for impartially overseeing operations and protecting the interests of shareholders. Within the realm of gender diversity, independent directors have a crucial role in promoting inclusive practices, questioning existing biases, and fostering a culture of diversity and equality within organizations. This paper aims to explore the complex dynamics of how independent directors impact gender diversity in Indian corporations. It will also critically assess the effectiveness of current regulatory frameworks and initiatives in addressing gender imbalances in boardroom representation.

Despite various efforts and policies, achieving gender equality in corporate boardrooms continues to be a significant challenge. There are still significant obstacles that hinder women from advancing into leadership positions, including cultural norms, biases, and systemic barriers. Tackling these complex challenges requires a comprehensive strategy that encompasses changes in regulations, organizational restructuring, and shifts in societal attitudes towards gender roles and diversity.

This research aims to explore the multifaceted manners in which independent directors can drive gender diversity and equality in Indian corporations, considering the various challenges involved. Through a thorough examination of existing literature, empirical evidence, and regulatory perspectives, this paper aims to provide valuable insights into the current state of gender diversity in Indian boardrooms. It also seeks to analyze the effectiveness of independent directors in bringing about positive change. In addition, this research aims to provide strong recommendations customized for policymakers, corporate leaders, and stakeholders, with the goal of strengthening gender diversity initiatives and promoting inclusive corporate governance practices in India.

In the subsequent parts, we will discuss the theoretical foundations of gender diversity in corporate governance, review empirical studies on the link between

¹ Valiante, Diego, "The Last Days of Credit Suisse: Banking Crisis Management under Siege", *Rivista delle Società* 68 (2023).

gender diversity and firm performance, analyze the important role of independent directors in promoting gender equality, and evaluate the regulatory frameworks and initiatives aimed at fostering gender diversity in Indian corporations. Through this extensive exploration, this research aims to enhance the current body of knowledge on gender diversity in corporate governance and provide practical insights for promoting gender equality in Indian boardrooms.

Gender diversity within corporate leadership, especially in boardrooms, has received considerable attention from scholars, practitioners, and policymakers globally. The literature review explores various theoretical perspectives, empirical evidence, and regulatory frameworks related to gender diversity in corporate governance, specifically in the Indian context. Through a thorough analysis of existing research, this review seeks to offer a comprehensive grasp of the factors that influence gender diversity in boardrooms and the ways in which it affects organizational outcomes.

2. Theoretical Perspectives on Gender Diversity and Corporate Governance

Scholars have explored various theoretical frameworks to understand the relationship between gender diversity and corporate governance dynamics. Among these, the agency theory and resource dependency theory provide valuable insights into how gender diversity influences board effectiveness and organizational outcomes.

The **Agency Theory**, as articulated by Jensen and Meckling,² posits that corporate boards, including independent directors, serve as monitors of managerial behavior to mitigate agency conflicts between shareholders and executives. According to this theoretical paradigm, the inclusion of gender diversity on boards is believed to improve the effectiveness of monitoring by incorporating a range of perspectives and experiences into the decision-making procedures. Research suggests that diverse boards are better equipped to scrutinize managerial actions, leading to improved accountability and risk management.³

The **Resource Dependency Theory**, developed by Pfeffer and Salancik,⁴ suggests that organizations depend on external resources to survive and thrive. The existence of diversity in the membership of a board can grant access to a

² Jensen, Michael C., and William H. Meckling, *Corporate governance* 77-132 (Gower, Farnham, 2019).

³ Carter, David A., *Financial Review* 33–53, (Wiley, New Jersey, 2003).

⁴ Pfeffer, Jeffrey, and Gerald Salancik, *Organizational behavior* 355-370 (Routledge, England UK, 2015).

broader range resources and networks, so augmenting the adaptability and performance of an organization. Gender-diverse boards are argued to have a wider array of connections and perspectives, enabling them to better navigate complex environments and capitalize on emerging opportunities.⁵

The **Social Identity Theory** suggests that individuals derive their self-concept from group memberships, and diversity within groups can lead to enhanced creativity and problem-solving.⁶ Gender-diverse boards are believed to exhibit greater cognitive diversity, fostering a climate of constructive dissent and innovative thinking.⁷ Furthermore, diverse boards are better equipped to anticipate and respond to emerging market trends and consumer preferences, leading to competitive advantages in the marketplace.⁸

However, it is important to acknowledge the potential limitations of gender diversity in corporate governance. The **Groupthink Theory**, suggests that cohesive groups may prioritize consensus over critical evaluation, leading to flawed decision-making outcomes.⁹ In some cases, gender-diverse boards may face challenges in reaching consensus, potentially impeding their effectiveness.¹⁰ Additionally, the **Tokenism Theory** posits that the presence of a minority group member, such as a lone female director, may lead to feelings of isolation and marginalization, limiting their influence and effectiveness within the boardroom.¹¹

Theoretical perspectives on gender diversity and corporate governance highlight the potential benefits of diverse boards in enhancing monitoring effectiveness, accessing resources, fostering innovation, and improving decision-making quality. However, these benefits must be weighed against potential

⁵ Samara, Ihssan, "Governance diversity: Its impact on strategic variation and results" 32 *Strategic Change* 29-42 (2023).

⁶ Turner, John C., and Katherine J. Reynolds, *Psychology Press* (Taylor & Francis, England, UK, 2010).

⁷ Tang, Shi, "Balancing the yin and yang: TMT gender diversity, psychological safety, and firm ambidextrous strategic orientation in Chinese high-tech SMEs" 64 *AMJ* 1578-1604 (2021).

⁸ Harjoto, Maretno, Indrarini Laksana, and Robert Lee, "Board diversity and corporate social responsibility" 132 *J. Bus. Ethics* 641-660 (2015).

⁹ Schafer, Mark, and Scott Crichlow, *Groupthink versus high-quality decision making in international relations* (Columbia University Press, New York, 2010).

¹⁰ Wu, Jie, "The performance impact of gender diversity in the top management team and board of directors: A multiteam systems approach" 61 *Human resource management* 157-180 (2022).

¹¹ Duyvejonck, Beth, "'One of the Guys': Women Leaders and Tokenism in Male-Dominated Environments" (2021).

challenges, including groupthink and tokenism, to effectively harness the advantages of gender diversity in corporate governance.

3. Empirical Evidence on Gender Diversity and Firm Performance

Empirical research examining the relationship between gender diversity in corporate boards and firm performance has yielded mixed findings, prompting extensive debate among scholars and practitioners. While some studies suggest a positive association between gender diversity and financial outcomes, others find no significant correlation, underscoring the complexity of the relationship and the need for nuanced analysis.

One line of research suggests that gender-diverse boards are associated with improved financial performance. For instance, a study by Carter et al. (2003)¹² found a positive correlation between the presence of women on corporate boards and firm profitability, as measured by return on equity and return on sales. Similarly, a meta-analysis conducted by Catalyst (2011)¹³ revealed that companies with a higher proportion of women on their boards tend to outperform their peers in terms of return on equity, return on sales, and return on invested capital. These findings suggest that gender diversity in boardrooms may contribute to enhanced financial performance by fostering a climate of innovation, risk management, and stakeholder engagement.

Conversely, other studies have failed to establish a significant relationship between gender diversity and firm performance. "While the correlation between female board representation and market performance is minimal, it is positive in nations where gender parity is higher and negative in countries where it is lower. This may be due to the fact that investors may perceive future earnings potential of companies with more female directors as being influenced by gender disparities in human capital within society."¹⁴ "Assigning one of four stereotypical or caricatured roles to female colleagues through "role encapsulation" (Kanter, 1977)¹⁵ inevitably restricts the influence and progression prospects of female directors. Hence, the lack of significance in the result does not necessarily

¹² Carter, D. A., Simkins, B. J., & Simpson, W. G., "Corporate governance, board diversity, and firm value" 38 *EFA* 33-53 (2003).

¹³ Hoobler, Jenny M., "The business case for women leaders: Meta-analysis, research critique, and path forward" 44 *J. Manag.* 2473-2499 (2018).

¹⁴ Post, Corinne, and Kris Byron, "Women on boards and firm financial performance: A meta-analysis" 58 *AMJ* 1546-1571 (2015).

¹⁵ Adikaram, Arosha S., and Kanchana Wijayawardena, "What happens to female employees in skewed it project teams in sri lanka? revisiting kanter" 2 *South Asian J. Hum. Resour. Manag* 37-57 (2015).

indicate that women make poor directors; instead, companies might be employing them as "window dressing".¹⁶ Additionally, the lack of distinction between male and female directors could account for the insignificance of the effect. Supporting evidence that women avoid competition in general (Niederle & Vesterlund, 2007)¹⁷ suggests that women in executive positions are an exception rather than the rule for women in general. Thus, since the preferences of female directors may be comparable to those of male directors, their influence on firm performance is improbable. Rose (2007)¹⁸ even hypothesizes that female directors might conceal characteristics that set them apart from male directors (the dominant group) in order to blend in with the majority and appear adequately qualified to be appointed as directors. As a result, the anticipated impacts of having female directors remain unrealized."¹⁹

However, it is essential to recognize that firm performance encompasses not only financial outcomes but also non-financial dimensions such as innovation, decision-making quality, and corporate social responsibility. Research suggests that gender diversity may have a more pronounced impact on non-financial performance measures. For example, Bear et al. (2010)²⁰ found that gender-diverse boards are associated with higher levels of innovation, as evidenced by the number of patents granted to companies with diverse boards. Similarly, a study by Catalyst (2007)²¹ revealed that companies with more women on their boards tend to exhibit stronger corporate governance practices and greater commitment to corporate social responsibility initiatives.

Moreover, the relationship between gender diversity and firm performance may be contingent on various contextual factors, including industry dynamics, organizational culture, and regulatory environment. For instance, a study by

¹⁶ *Supra* note 12.

¹⁷ Niederle, Muriel, and Lise Vesterlund. "Do women shy away from competition? Do men compete too much?" 122 *The quarterly journal of economics* 1067-1101 (2007).

¹⁸ Rose, Caspar, "Does female board representation influence firm performance? The Danish evidence" 15 *Corp. Gov.* 404-413 (2007).

¹⁹ Moss, Rebecca. Does the Gender Composition of a Board of Directors affect Firm Performance?. Diss. School of Economics L13500 Dissertation 2018 Does the Gender Composition of a Board of Directors affect Firm Performance? Rebecca Moss Supervisor: Maria Garcia Vega Word count: 7494 This Dissertation is presented in part fulfilment of the requirement for the completion of an undergraduate degree in the School of Economics, University of Nottingham, (2018).

²⁰ Jolchubekova, Jyldyz, and Jae-Jin KIM, "A comparative study between countries on gender diversity, openness and innovation" 10 *EAJBE* 123-136 (2022).

²¹ Cook, Alison, and Christy Glass, "Women on corporate boards: Do they advance corporate social responsibility?" *HR*. 897-924 (2018).

Adams and Ferreira (2009)²² found that the positive impact of gender diversity on firm performance is more pronounced in industries characterized by high levels of innovation and knowledge-intensive activities. The regulatory initiatives aimed at promoting gender diversity, such as quota requirements and disclosure mandates, may influence the relationship between board composition and performance outcomes.

Empirical evidence on the relationship between gender diversity and firm performance is mixed, with studies yielding contradictory findings. While some research suggests a positive association between gender diversity and financial outcomes, others find no significant correlation. However, gender diversity may have a more pronounced impact on non-financial performance measures, such as innovation and corporate social responsibility. Moreover, the relationship between gender diversity and firm performance may be contingent on contextual factors and regulatory interventions, highlighting the need for further research and nuanced analysis.

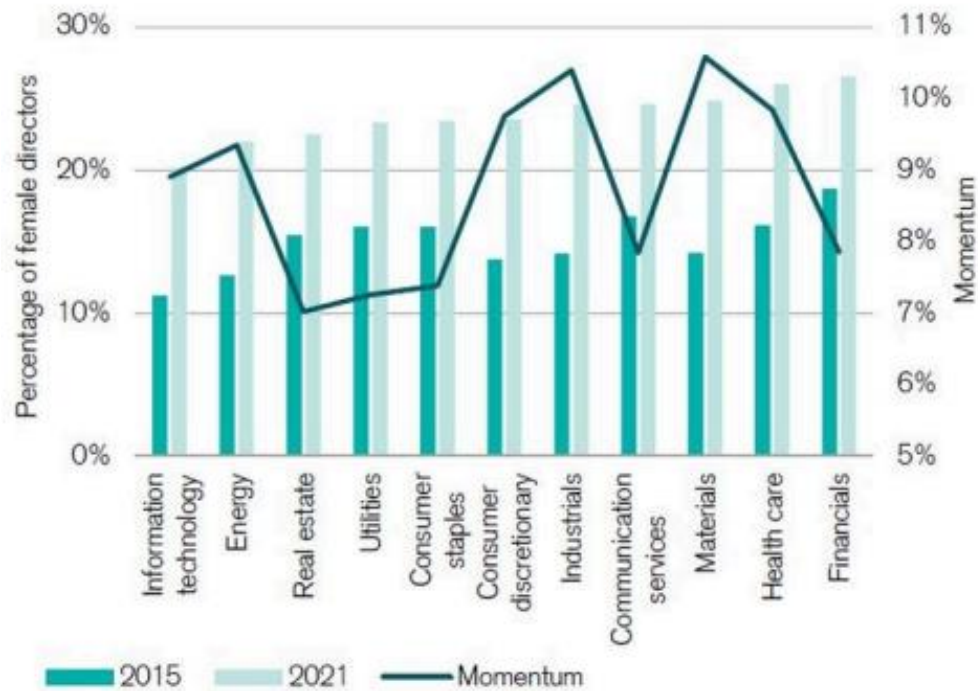
4. Gender diversity in Corporations: The Gender 3000 Report²³

The 2021 Gender 3000 report by Credit Suisse analyzes the progress made in enhancing gender diversity in companies, focusing on executive positions as an additional metric. The report analyzes the gender distribution of 33,000 senior executives from more than 3,000 companies in 46 countries. The proportion of women serving on corporate committees increased by 8.9% between 2015 and 2021, or more than double when compared to the beginning of the decade. Europe and North America exhibited the highest proportion of women on boards at 34.4% and 28.6%, respectively. Latin America accounted for 12.7%, while Asia-Pacific held 17.3%.

Figure 1: Percentage of Female Directors on the Board- Sectorwise (Comparison 2021 Vs 2015)

²² Kagzi, Muneza, and Mahua Guha, "Does board demographic diversity influence firm performance? Evidence from Indian-knowledge intensive firms" *25 BIJ* 1028-1058 (2018).

²³ Credit Suisse Gender 3000 report shows women hold almost a quarter of board room positions globally. (n.d.). Credit Suisse, *available at*: <https://www.credit-suisse.com/about-us-news/en/articles/media-releases/credit-suisse-gender-3000-report-shows-women-hold-almost-a-quart-202109.html> (Last Modified March 22, 2024)



Source: Credit Suisse Research, CS Gender 3000, Refinitiv The BLOOMBERG PROFESSIONAL™ service

Europe dominated the world in terms of the proportion of female board directors, with France leading with 45%. The United Kingdom achieved the 30% Club objective for the FTSE 100 and FTSE 350 by finishing tenth with 35 percent. Significant variations exist among the member states of APAC, where the percentage of women on corporate boards ranges from an extremely low 9% in South Korea to 34% in Australia/New Zealand, a region where disclosure requirements and an ESG focus may be more comparable to those in Europe and North America. Australia/New Zealand, Singapore, and Malaysia stand out for their especially substantial advancements. In contrast to the trajectory observed in Latin America, the main Asian economies (China, India, Japan, and Korea) have exhibited a more sluggish rate of progress.²⁴

The Credit Suisse Gender 3000 assesses the degree to which management teams reflect diversity. From 2019 to 2021, the average proportion of women in

²⁴ Jackson, Beau, Europe leads global average for female board representation, HR, available at: <https://www.hrmagazine.co.uk/content/news/europe-leads-global-average-for-female-board-representation/> (last visited on May 24, 2024).

senior management has increased from 17.6%. North America and Europe have the highest proportion of women in management positions, but the gap between these regions and the rest of the globe is considerably narrower than at the board level. Globally, the proportion of female CEOs has increased by 27%, but they remain in the minority at 5.5%. There has been a 17% increase in the representation of female CFOs, who now occupy 16% of all CFO positions worldwide.²⁵

The "diversity premium" of Gender 3000 remains true, with 200 basis points of alpha generated by companies with gender diversity above the average as opposed to those below. Additionally, ESG scores are preferable, and the most successful organizations have the most diverse boards and C-suites.²⁶

Regarding gender and diversity in general, this year's report analyzes businesses in terms of their more comprehensive diversity and inclusion policies pertaining to gender and sexual identities. This finding indicates that organizations that prioritize gender and diversity on a broader scale exhibit superior performance with regard to their environmental and governance policies.

5. Role of Independent Directors in Promoting Gender Diversity

Independent directors play a crucial role in advocating for and advancing gender diversity within corporate boardrooms. As stalwarts of governance, they are entrusted with overseeing management, safeguarding shareholder interests, and promoting the long-term sustainability of organizations. Within the context of gender diversity, independent directors wield significant influence in shaping boardroom dynamics, fostering an inclusive culture, and driving positive change.

One of the primary functions of independent directors is to advocate for gender diversity initiatives and challenge traditional norms within the boardroom. Research suggests that women directors who adopt paradoxical framing have the potential to facilitate boards in taking into account not just economic considerations, but also environmental and social aspects of sustainability when making decisions. Moreover, it should be acknowledged that the impact of gender diversity on the distribution of board attention towards corporate sustainability is dependent on contextual elements, such as board openness, as

²⁵ ETHRWorld, Women hold almost a quarter of board room positions globally: Credit Suisse Gend, <https://hr.economictimes.indiatimes.com/news/workplace-4-0/diversity-and-inclusion/women-hold-almost-a-quarter-of-board-room-positions-globally-credit-suisse-gender-3000-report/86636633> (last visited on May 24, 2024).

²⁶ <https://www.credit-suisse.com/about-us-news/en/articles/media-releases/credit-suisse-gender-3000-report-shows-women-hold-almost-a-quart-202109.html>

well as structural characteristics, such as chairperson leadership, which enable social interactions within boardrooms.²⁷ These directors bring diverse perspectives, expertise, and networks to board discussions, enabling them to advocate for the appointment of qualified female candidates and champion inclusive practices.

Moreover, independent directors serve as role models and advocates for women's representation within corporate leadership. By actively promoting gender diversity, they signal to management and stakeholders the importance of inclusive governance practices and the value of diverse perspectives in driving organizational success. Studies indicate that boards with visible commitment to gender diversity are more likely to attract and retain top female talent, thereby enhancing boardroom diversity over time.²⁸

Independent directors also play a pivotal role in evaluating board dynamics and addressing unconscious biases that may impede the advancement of women in leadership roles. By fostering an inclusive boardroom culture that encourages open dialogue and respects diverse viewpoints, they create an environment where all directors, regardless of gender, feel valued and empowered to contribute effectively. This can help mitigate the effects of groupthink and promote constructive dissent, leading to better decision-making outcomes.²⁹

Independent directors are instrumental in holding management accountable for advancing gender diversity goals and ensuring transparency in reporting on diversity metrics. Through active engagement with management, they can monitor progress on diversity initiatives, provide feedback on strategies, and advocate for necessary changes to promote gender equality. This oversight function is essential for driving meaningful change and embedding diversity considerations into the fabric of corporate governance.

In addition to their advocacy role, independent directors contribute to gender diversity efforts by participating in board nomination and recruitment processes.³⁰ By actively seeking out and considering diverse candidates for board

²⁷ Kanadlı, Sadi Boğaç, "Do independent boards pay attention to corporate sustainability? Gender diversity can make a difference" 22 *CORP GOV-INT J BUS S* 1390-1404 (2022).

²⁸ Terjesen, Siri, Ruth Sealy, and Val Singh, "Women directors on corporate boards: A review and research agenda" 17.3 *CGIR* 320-337 (2009).

²⁹ Pless, Nicola, and Thomas Maak, "Building an inclusive diversity culture: Principles, processes and practice" 54 *J. Bus. Ethics* 129-147 (2004).

³⁰ Doldor, Elena, "Gender diversity on boards: The appointment process and the role of executive search firms" 85 *Equality and human rights commission research report* 1-98 (2012).

positions, they help expand the talent pool and promote greater representation of women in corporate leadership. This proactive approach to board composition is essential for building diverse and inclusive boards that reflect the communities they serve.

Independent directors play a multifaceted role in promoting gender diversity within corporate boardrooms. From advocating for diversity initiatives to fostering inclusive boardroom cultures and actively participating in recruitment processes, they are instrumental in driving positive change. By leveraging their influence and expertise, independent directors can help build more diverse, equitable, and sustainable organizations that thrive in today's complex business environment.

6. Regulatory Frameworks and Gender Diversity Initiatives in India

In response to the persistent gender gap in corporate leadership, India has implemented regulatory frameworks and initiatives aimed at promoting gender diversity within corporate boardrooms. These measures seek to address structural barriers, enhance transparency, and foster a culture of inclusivity in corporate governance practices. This section examines key regulatory interventions and gender diversity initiatives in India, highlighting their impact and effectiveness in driving change.

6.1 Mandatory Appointment of Women Directors

The **Companies Act, 2013**, represents a landmark piece of legislation that mandates the appointment of at least one woman director on the board of listed companies and certain categories of public companies. This statutory requirement aims to increase women's representation in corporate leadership roles and provide them with opportunities to contribute to strategic decision-making. The inclusion of women directors on boards is viewed as a crucial step towards promoting gender diversity and improving board effectiveness. The 2013 Companies Act mandates that at least one female director be appointed by each public company or listed company with a paid-up share capital of 100 crore rupees or a revenue of 300 Crore rupees or more.³¹ The Securities and Exchange Board of India extended the deadline for companies to appoint a female director to their boards by six months up to April 2015.³² As of March 8, 2015, the proportion of

³¹ Section 149(1) of Companies Act of 2013.

³² Financial Express, Deadline near, India Inc scrambles to get women directors, Shruti Srivastava New Delhi March 31, 2015 08:34 IST <https://www.financialexpress.com/business/industry-deadline-near-india-inc-scrambles-to-get-women-directors-on-board-58880/> (last visited on May 24, 2024).

National Stock Exchange companies without a female director on their boards was approximately 180 out of 1456.³³ The representation of women on the boards of 200 BSE companies was a mere 9.5%. 278 out of the total number of companies that adhered to the regulation by scheduling appointments did so in March 2014, indicating that the sole purpose of these appointments was to demonstrate compliance, with no other considerations.³⁴ Approximately 612 of these women held non-independent directorships, with 82 directorship positions occupied by women who belonged to the promoter group, including family members. Organizations that neglected to appoint a single woman to their boards provided justifications by asserting they were unable to locate competent women possessing the necessary expertise. However, the procedural aspects of the appointment process for women directors are the true cause of their non-appointments. India was placed 119th out of 135 countries on the Global Gender Gap index in 2011, with a mere 29% of its population being female-occupied.³⁵

In addition to statutory mandates, regulatory bodies such as the Securities and Exchange Board of India (SEBI) have issued guidelines and recommendations to promote gender diversity and enhance board governance practices. SEBI's Listing Obligations and Disclosure Requirements (LODR) Regulations, introduced in 2015, require listed companies to disclose their diversity policy and report on the implementation of gender diversity initiatives. These regulations underscore the importance of gender diversity in boardrooms and encourage companies to adopt proactive measures to address gender imbalances.³⁶

Furthermore, SEBI has introduced amendments to the LODR Regulations to strengthen gender diversity norms and enhance disclosure requirements. In 2018, SEBI mandated that listed companies with a woman director on the board must constitute at least one-third of their board composition with independent directors.³⁷ This move is aimed at ensuring greater independence and diversity in boardrooms and promoting a balanced mix of skills, experience, and perspectives.

³³ Nili, Yaron, "Beyond the numbers: Substantive gender diversity in boardrooms" *Ind. LJ* 94 145 (2019).

³⁴ https://www.business-standard.com/article/companies/spot-womens-share-of-board-seats-in-india-only-9-5-per-cent-for-bse-200-companies-115011300590_1.html

³⁵ Balasubramanian, Gayathri. "Mandatory Appointment of Woman Director under Companies Act, 2013: A Feminist Critique."

³⁶ Chandratre, K. R., *SEBI Listing Obligations and Disclosure Requirements—A Handbook* (Bloomsbury Publishing, 2020).

³⁷ *Ibid.*

Apart from regulatory interventions, industry bodies, advocacy groups, and civil society organizations have launched various initiatives to promote gender diversity and empower women in corporate leadership. For example, the Confederation of Indian Industry (CII) launched the Indian Women Network (IWN) in 2013 to promote gender diversity and leadership development among women professionals. IWN provides networking opportunities, mentoring programs, and skill-building workshops to support women's career advancement and leadership aspirations.³⁸

Similarly, the National Stock Exchange (NSE) launched the NSE's Corporate Governance Scorecard in 2017 to assess listed companies' adherence to corporate governance principles, including gender diversity norms.³⁹ The scorecard evaluates companies based on parameters such as board composition, diversity policy, and disclosure practices, thereby incentivizing companies to enhance their governance standards and promote gender diversity.⁴⁰

Despite these regulatory frameworks and initiatives, achieving meaningful progress in gender diversity remains a challenge in India. The pace of change has been slow, and women continue to be underrepresented in corporate boardrooms. Structural barriers, cultural norms, and unconscious biases persist, hindering women's advancement into leadership roles. Moreover, compliance with regulatory requirements alone may not suffice to drive substantive change; companies need to adopt holistic approaches that prioritize gender diversity as a strategic imperative and embed inclusive practices into their organizational culture.

The regulatory frameworks and gender diversity initiatives in India represent important steps towards promoting gender equality in corporate governance. While statutory mandates and regulatory guidelines provide a foundation for change, concerted efforts from companies, regulators, and stakeholders are needed to overcome barriers and foster a culture of inclusivity and diversity in boardrooms. By leveraging regulatory frameworks, industry initiatives, and stakeholder collaboration, India can create more equitable and sustainable corporate governance structures that reflect the diversity of its workforce and society.

³⁸ Kaur, Harpreet, *Women and Entrepreneurship in India: Governance, Sustainability and Policy* (Routledge, England, UK, 2021).

³⁹ Kangea, Sammy Thuo. *Board Characteristics and Earnings Quality of Non-Financial Firms Listed at Nairobi Securities Exchange, Kenya*. Diss. JKUAT-COHRED, 2023.

⁴⁰ *Ibid.*

7. Challenges & Opportunities in Promoting Gender Diversity

The promotion of gender diversity within corporate governance faces a multitude of challenges, rooted in systemic barriers, cultural norms, and organizational dynamics. However, amidst these challenges lie significant opportunities for fostering a more inclusive and equitable corporate landscape. This section examines the key challenges and opportunities in promoting gender diversity, offering insights into the complexities of this endeavor and avenues for meaningful progress.

7.1 Challenges

Cultural Norms and Stereotypes: Deep-seated cultural norms and stereotypes continue to perpetuate gender biases and hinder women's advancement into leadership roles. Traditional notions of gender roles may limit women's opportunities for career progression and reinforce perceptions of male dominance in corporate settings.⁴¹

Structural Barriers: Structural barriers, such as limited access to networking opportunities, mentorship programs, and leadership development initiatives, pose significant obstacles to women's career advancement. The lack of a supportive ecosystem and inclusive organizational policies may impede women's ability to break through the proverbial glass ceiling.⁴²

Unconscious Bias: Unconscious biases, ingrained in organizational decision-making processes, can manifest in various forms, including hiring, promotion, and performance evaluation. These biases may result in the underrepresentation of women in leadership roles and perpetuate inequalities within corporate hierarchies.⁴³

Pipeline Issues: The pipeline of female talent in leadership positions remains limited, particularly in male-dominated industries and senior executive roles. Factors such as work-life balance, childcare responsibilities, and gender

⁴¹ Correll, Shelley J., "Constraints into preferences: Gender, status, and emerging career aspirations" 69 *Am Sociol Rev* 93-113 (2004).

⁴² Van Schalkwyk, Mrs S. "TRANSCENDING THE "CORPORATE GLASS CEILING": A LEADERSHIP FRAMEWORK FOR WOMEN" (2019).

⁴³ Schwanke, Dee-Ann, "Barriers for women to positions of power: How societal and corporate structures, perceptions of leadership and discrimination restrict women's advancement to authority" 3 *ECJ* (2013).

discrimination may contribute to women's attrition from the workforce and hinder their progression into leadership positions.⁴⁴

Resistance to Change: Resistance to change within organizational cultures and structures poses a significant challenge to efforts aimed at promoting gender diversity. The status quo, characterized by entrenched power dynamics and male-dominated leadership paradigms, may inhibit the adoption of inclusive practices and policies.⁴⁵

Lack of Accountability: Despite regulatory mandates and guidelines aimed at promoting gender diversity, many companies lack accountability mechanisms to ensure compliance and track progress. The absence of transparency and reporting requirements may enable companies to pay lip service to diversity initiatives without implementing meaningful changes. Moreover, the lack of consequences for non-compliance may diminish the effectiveness of regulatory interventions in promoting gender equality.⁴⁶

Intersectionality: Gender diversity initiatives often fail to account for the intersecting identities and experiences of women from diverse backgrounds. Women of color, LGBTQ+ women, women with disabilities, and other marginalized groups face unique challenges and barriers to advancement, which may not be adequately addressed by one-size-fits-all diversity programs. Failure to recognize and address intersectional issues may exacerbate disparities and perpetuate inequities within corporate governance.⁴⁷

7.2 Opportunities

Business Imperative: Gender diversity is increasingly recognized as a business imperative, linked to improved organizational performance, innovation, and stakeholder trust. Companies that embrace diversity and inclusion are better

⁴⁴ Siemiatycki, Matti, "The diversity gap in the public-private partnership industry: An examination of women and visible minorities in senior leadership positions" 90 *Ann. Public Cooperative Econ.* 393-414 (2019).

⁴⁵ Kanter, Rosabeth Moss, *Men and women of the corporation: New edition*, Basic books (2008).

⁴⁶ Jourova, Vera, "Gender balance on corporate boards: Europe is cracking the glass ceiling" *Brussels: European Commission* (2016).

⁴⁷ Hewlett, Sylvia Ann, Melinda Marshall, and Laura Sherbin, "How diversity can drive innovation" 91 *Harv. Bus. Rev.* 30-30 (2013).

positioned to attract top talent, enhance employee engagement, and gain a competitive edge in the marketplace.⁴⁸

Regulatory Mandates: Regulatory mandates and guidelines, such as gender quotas and disclosure requirements, provide a framework for promoting gender diversity and holding companies accountable for their diversity initiatives. By complying with regulatory norms, companies can signal their commitment to diversity and enhance their reputation as responsible corporate citizens.⁴⁹

Leadership Commitment: Leadership commitment is essential for driving meaningful change in promoting gender diversity. When senior executives champion diversity initiatives, allocate resources, and hold themselves accountable for progress, they set the tone for inclusive organizational cultures and foster an environment where all employees feel valued and empowered.⁵⁰

Employee Resource Groups: Employee resource groups (ERGs) and affinity networks provide a platform for women and other underrepresented groups to connect, collaborate, and advocate for diversity and inclusion within organizations. By fostering a sense of belonging and providing support networks, ERGs can help amplify diverse voices and drive organizational change.⁵¹

Data-Driven Approach: Adopting a data-driven approach to diversity management can help organizations identify gaps, track progress, and measure the impact of diversity initiatives. By collecting and analyzing diversity metrics, companies can identify areas for improvement, set targets, and evaluate the effectiveness of their diversity programs.⁵²

Supplier Diversity Programs: Supplier diversity programs present an opportunity for companies to extend their commitment to diversity beyond internal operations and into their supply chains. By partnering with diverse suppliers, including women-owned businesses, companies can drive economic empowerment, create opportunities for underrepresented entrepreneurs, and contribute to the

⁴⁸ Hunt, Vivian, Dennis Layton, and Sara Prince, *Diversity matters 15-29* (McKinsey & Company, New York City, 2015).

⁴⁹ *Supra* note 46.

⁵⁰ Smith, N., & Smith, V. L., "Women and leadership: A qualitative perspective" *Int. J. Manag.* 29 468-477 (2012).

⁵¹ Hewlett, S. A., "Marshall, M., & Sherbin, L., How diversity can drive innovation" 91 *Harv. Bus. Rev.* 30-31 (2013).

⁵² Sharma, Radha R., and Sonam Chawla, "Gender equality & gender equity: strategies for bridging the gender gap in the corporate world" *Exploring Gender at Work: Multiple Perspectives* 197-212 (2021).

development of diverse ecosystems. Supplier diversity initiatives help diversify supply chains, foster innovation, and generate positive social impact.⁵³

Public-Private Partnerships: Collaboration between governments, businesses, and civil society organizations can accelerate progress towards gender equality in corporate governance. Public-private partnerships leverage the expertise, resources, and networks of multiple stakeholders to implement holistic solutions, address systemic barriers, and scale impactful interventions. By aligning incentives, sharing best practices, and mobilizing collective action, public-private partnerships can drive transformative change and create inclusive ecosystems where all individuals have equal opportunities to succeed.⁵⁴

Promoting gender diversity within corporate governance presents both challenges and opportunities for organizations. While entrenched biases, structural barriers, and resistance to change pose significant obstacles, the business imperative, regulatory mandates, leadership commitment, and the emergence of employee resource groups offer avenues for progress. By addressing these challenges and capitalizing on opportunities, companies can build more inclusive and equitable workplaces that harness the full potential of diverse talent and drive sustainable growth. Overcoming these challenges requires concerted efforts from organizations, policymakers, and stakeholders to dismantle structural barriers, challenge cultural norms and biases, and foster inclusive workplaces where all individuals, regardless of gender, can thrive and contribute to organizational success.

8. Gender Diversity: Best Practices & Suggestions

Implementing best practices and adopting proactive measures are essential for promoting gender diversity within corporate governance. Drawing upon insights from research and industry experiences, the following recommendations offer a roadmap for organizations to foster inclusive cultures, advance women's representation in leadership roles, and drive meaningful change.

Commitment from Leadership: Senior leadership must demonstrate a firm commitment to gender diversity and inclusion by articulating a clear vision, setting measurable goals, and allocating resources to support diversity initiatives. Leaders should lead by example, championing diversity in their decision-making

⁵³ Dyer, Melissa Renee. Financial strategies for long-term success in women-owned small businesses. Diss. Walden University, 2019.

⁵⁴ Guterres, Antonio, "The sustainable development goals report 2020" *United Nations publication issued by the Department of Economic and Social Affairs* 1-64 (2020).

processes and holding themselves accountable for progress towards gender equality.

Diverse and Inclusive Recruitment Practices: Implementing diverse and inclusive recruitment practices is critical for building a pipeline of female talent and ensuring equitable access to leadership roles. Companies should adopt gender-neutral job descriptions, employ diverse interview panels, and proactively seek out qualified female candidates through targeted outreach and networking initiatives.

Leadership Development and Mentorship Programs: Investing in leadership development and mentorship programs is essential for nurturing the next generation of female leaders. Providing access to training opportunities, mentorship relationships, and sponsorship programs can help women develop the skills, confidence, and networks needed to advance into leadership roles and thrive in their careers.

Transparent Reporting and Accountability: Establishing transparent reporting mechanisms and accountability measures is essential for tracking progress and holding organizations accountable for their diversity initiatives. Companies should regularly report on diversity metrics, such as gender representation at different levels of the organization, and publicly disclose their diversity policies, goals, and action plans.

Promotion of Inclusive Leadership Behaviours: Promoting inclusive leadership behaviors is essential for creating a culture of belonging where all individuals feel valued, respected, and empowered to contribute their fullest potential. Leaders should actively solicit diverse perspectives, encourage open dialogue, and foster a climate of psychological safety where employees feel comfortable challenging the status quo and expressing dissenting opinions.

Work-Life Balance: The provision of flexibility and the promotion of work-life balance are essential factors in facilitating the career progression and retention of women. It is recommended that organizations adopt flexible work arrangements, including telecommuting, flexible scheduling, and childcare leave policies, in order to accommodate to the diverse requirements of their employees. Establishing a conducive work environment that prioritizes the well-being of employees and promotes a harmonious equilibrium between work and personal life is vital in order to effectively attract and retain highly skilled female women on board of directors of corporations.

Continuous Learning and Unconscious Bias Training: Providing ongoing education and training on unconscious bias, diversity, and inclusion is essential for raising awareness, challenging stereotypes, and promoting inclusive behaviors. Companies should offer regular training sessions, workshops, and educational resources to help employees recognize and mitigate biases in their decision-making processes and interactions with colleagues.

Establishment of Employee Resource Groups: Establishing employee resource groups (ERGs) and affinity networks provides a platform for women and other underrepresented groups to connect, share experiences, and advocate for diversity and inclusion within organizations. ERGs can play a crucial role in raising awareness, driving cultural change, and influencing organizational policies and practices to better support diverse talent.

Partnerships and Collaboration: Collaboration with external stakeholders, including government agencies, industry associations, and civil society organizations, can amplify the impact of diversity initiatives and drive systemic change. Companies should engage in partnerships and collaborative initiatives aimed at addressing systemic barriers, promoting gender equality, and advancing women's representation in leadership roles across industries and sectors.

Regular Evaluation and Adaptation: Regular evaluation and adaptation of diversity initiatives are essential for ensuring their effectiveness and relevance over time. Companies should regularly assess the impact of their diversity programs, solicit feedback from employees, and make adjustments as needed to address emerging challenges and capitalize on new opportunities. By adopting a continuous improvement mindset, organizations can build more inclusive cultures and drive sustainable progress towards gender diversity and equality in corporate governance.

Implementing these best practices and recommendations requires a holistic approach that integrates diversity and inclusion into all aspects of organizational strategy, culture, and operations. By fostering inclusive cultures, promoting equitable opportunities, and leveraging diverse perspectives, organizations can unlock the full potential of their workforce and drive sustainable growth and innovation in today's dynamic business landscape.

Gender diversity in corporate governance is a multifaceted issue with far-reaching implications for organizational performance, stakeholder trust, and societal progress. While significant strides have been made in recent years to promote gender diversity, there is still much work to be done to achieve meaningful and sustainable change. By leveraging theoretical insights, empirical

evidence, and regulatory frameworks, companies can develop holistic strategies to advance gender diversity in boardrooms and reap the benefits of a diverse and inclusive leadership team. Moreover, by fostering collaboration and engagement among stakeholders, including policymakers, corporate leaders, investors, and civil society organizations, we can collectively drive progress towards gender equality in corporate governance and beyond.

9. Findings and Discussion

9.1 Gender Diversity in Indian Corporate Boards

Despite regulatory interventions and growing awareness, gender diversity in Indian corporate boards remains limited. Recent data reveals that women hold approximately 17% of board seats in listed companies, indicating a slow pace of progress (Prime Database Group, 2022)⁵⁵. Furthermore, the representation of women in executive positions is even lower, highlighting persistent barriers to women's advancement in corporate leadership roles (Korn Ferry, 2021)⁵⁶. Cultural norms, social biases, and structural barriers contribute to the underrepresentation of women in boardrooms, necessitating targeted interventions to promote gender equality.

9.2 Role of Independent Directors in Driving Gender Diversity

Independent directors play a pivotal role in driving gender diversity within corporate boards through their advocacy for inclusive practices, challenge against existing norms, and cultivation of a culture of equality. Research suggests that boards with a higher proportion of independent directors are more inclined to prioritize diversity considerations and endorse initiatives aimed at enhancing boardroom diversity.⁵⁷ By leveraging their diverse perspectives, expertise, and networks, independent directors contribute to informed decision-making processes and mitigate the risks of groupthink.⁵⁸

⁵⁵ Goryunova, Elizabeth, and Susan R. Madsen. "The current status of women leaders worldwide." *Handbook of research on gender and leadership*. Edward Elgar Publishing, 2024. 2-22.

⁵⁶ Babafemi, Olufunmilayo Elizabeth. "Opportunities and Barriers to Leadership for Female Finance Leaders in The Uk." *European Journal of Human Resource Management Studies* 7.2 (2024).

⁵⁷ Boulouta, Ioanna, "Hidden connections: The link between board gender diversity and corporate social performance" 113 *J. Bus. Ethics* 185-197 (2013).

⁵⁸ Certo, S. Trevis, Catherine M. Daily, and Dan R. Dalton. "Signaling firm value through board structure: An investigation of initial public offerings" 26 *Entrepreneurship theory and practice* 33-50 (2001).

Furthermore, independent directors serve as influential role models and advocates for women's representation in corporate leadership. Their influence extends to board composition and recruitment practices, where they actively promote the inclusion of women candidates and foster a more diverse and inclusive boardroom environment.⁵⁹

In essence, independent directors act as catalysts for change, driving the agenda for gender diversity and inclusion within corporate governance structures. Their advocacy, expertise, and influence play a crucial role in shaping organizational culture and fostering environments where all individuals, regardless of gender, have equal opportunities to contribute and succeed.

9.3 Regulatory Frameworks and Gender Diversity Initiatives

India has achieved notable progress in the advancement of gender diversity by means of regulatory reforms and various initiatives. The Companies Act of 2013 and SEBI guidelines have served as catalysts for initiatives to promote the appointment of women directors and the disclosure of corporate boards' diversity policies. Nonetheless, mere adherence to regulatory obligations might not be adequate in attaining significant results regarding gender diversity. Organizations must embrace comprehensive strategies, which encompass diversity training, talent pipeline development, and leadership dedication, in order to confront fundamental obstacles and prejudices (KPMG, 2020). Furthermore, the involvement of stakeholders, including investors, advocacy groups, and members of civil society, is crucial in ensuring that businesses fulfill their diversity obligations and fostering a shift in societal values.

10. Gender Diversity: A way ahead

Despite progress, several challenges hinder the effective promotion of gender diversity in Indian corporations. Persistent gender stereotypes, lack of inclusive corporate cultures, and limited representation of women in leadership pipelines pose significant barriers to achieving gender equality. Addressing these challenges requires coordinated efforts from policymakers, corporate leaders, and other stakeholders to dismantle structural barriers, challenge cultural norms, and foster inclusive environments where all individuals have equal opportunities to succeed. Moreover, investing in leadership development, mentorship programs, and diversity training is essential for nurturing a diverse talent pipeline and cultivating inclusive leadership behaviours. By addressing these challenges and

⁵⁹ Hillman, Amy J., Albert A. Cannella Jr, and Ira C. Harris, "Women and racial minorities in the boardroom: How do directors differ?" 28 *J Manage* 747-763 (2002).

embracing diversity as a strategic imperative, Indian corporations can unlock the full potential of their workforce and drive sustainable growth and innovation in the 21st century.

11. Conclusion

Despite regulatory interventions and increased awareness, gender diversity in corporate boards remains a pressing issue, with women significantly underrepresented in leadership positions. Cultural norms, social biases, and structural barriers continue to hinder women's advancement, highlighting the need for targeted interventions and concerted efforts to drive meaningful change.

The findings underscore the critical role of independent directors in driving gender diversity initiatives within corporate boards. Independent directors bring diverse perspectives, expertise, and networks to board discussions, advocating for inclusive practices and challenging existing norms. Regulatory frameworks, such as the Companies Act, 2013, and SEBI guidelines, have provided a catalyst for promoting gender diversity, but compliance alone is insufficient to achieve meaningful outcomes. Companies must adopt holistic approaches, including leadership commitment, talent pipeline development, and diversity training, to address underlying barriers and biases.

Despite progress, several challenges persist, including persistent gender stereotypes, lack of inclusive corporate cultures, and limited representation of women in leadership pipelines. Overcoming these challenges requires coordinated efforts from policymakers, corporate leaders, and other stakeholders to dismantle structural barriers, challenge cultural norms, and foster inclusive environments where all individuals have equal opportunities to succeed.

It is imperative for Indian corporations to prioritize gender diversity as a strategic imperative, embracing inclusive practices that unlock the full potential of their workforce and drive sustainable growth and innovation. By investing in leadership development, mentorship programs, and diversity training, companies can nurture a diverse talent pipeline and cultivate inclusive leadership behaviours that foster a culture of equality and empowerment.

The promotion of gender diversity within the boardroom is not solely an issue of social justice, but also a strategic need for corporations aiming to prosper in the contemporary and competitive corporate environment. By leveraging the collective expertise, perspectives, and backgrounds of individuals, irrespective of their gender, firms may stimulate innovation, improve decision-making, and generate value for stakeholders, ultimately leading to a fairer and more prosperous society.

**Unravelling the Legal Complexities of Digital Estate Planning:
An Indian Perspective**

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Abstract

The paper titled "Unraveling the Legal Complexities of Digital Estate Planning: Indian Perspective" delves into the intricate web of legal complexities and challenges surrounding digital estate planning in the context of India. The significance of addressing the transfer and administration of digital assets after one's death has grown as our lives become more and more entwined with digital technologies. "Death is an inevitable fact for all of us in the natural world. In the modern digital world, parts of our life persist online even after we physically leave them and the data on various platforms like Twitter, Instagram, and Facebook still exists. The questions regarding access, management, privacy, and ownership of the deceased digital assets are still unanswered due to a lack of specific laws and regulations, the different policies of intermediaries, fiduciaries, industries, etc.

This research paper provides a comprehensive analysis of existing laws of the Indian legal system, policies of service providers, and legislative efforts aimed at defining and regulating digital estate planning. By examining various legal frameworks of India and the policies of technology companies and service providers. The article elucidates how digital assets' property rights are changing and the complexities that result from their virtual, intangible, and transnational nature. The author aims to comprehensively explore the challenges associated with digital estate planning, identify potential legal hurdles, and propose effective solutions to address them. Understanding and addressing these challenges are crucial for individuals, families, legal professionals, and technology companies to navigate this emerging area and secure the digital legacies of the deceased.

Keywords: *Digital Estate plan, Digital assets, Digital will, Social media account, Social media platform, Digital legacy, IT Act, Intermediaries.*

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1. Introduction

“Death is an inevitable fact for all of us in the natural world. In the modern digital world, parts of our life persist online even after we physically leave them. Recognising the importance of our digital identities as essential elements of our life is vital in today's environment. We may gather ideas, images, and memories on websites like Facebook, Twitter, and Instagram, which helps us stay in touch with our loved ones. Have you ever thought about what will happen to this digital character after we leave this earth, though? Many people have been thinking about this subject nowadays.”¹

The term “digital death” refers to the online presence of individuals after they pass away, including social media accounts, email accounts, cloud storage, bitcoins, and other digital assets. Whereas Digital estate planning involves preparing for the appropriate handling and distribution of these digital assets after a person's death. The way people connect and engage with one another has been significantly changed by technology. In India, the digital population is growing at a rapid speed and now it has become the world's second-largest internet market. The statistics are staggering: approximately 692 million Indians are active users of the internet; 467 million Indians are active social media users:² Over 1.2 billion people use mobile phones, while 600 million people use smartphones.³ As per the report of The UNCTAD (United Nations Conference on Trade and Development), 7.3% of India's population owns digital currency (7th highest globally).⁴ RBI has urged banks and financial institutions to “go paperless” to save the environment and to become more environment-friendly. In the 2023 fiscal year, there would be over 103 billion digital transactions worth over 166 trillion Indian rupees in India. In the country, the number of transactions is anticipated to increase to over 411 billion in the fiscal year 2027.⁵ The recent COVID-19 pandemic has forced many industries to become more digital friendly in their businesses. The rapid increase in smartphone access and increase in

¹ N. Patel, “Digital assets and succession planning: A comprehensive perspective” 15(1) *International Journal of Cyber Law and Ethics* 102-120 (2021).

² Statista. Digital population across India as of February 2023. Retrieved from <https://www.statista.com/statistics/309866/india-digital-population-by-type/>.

³ Livemint, “India has over 1.2 bn mobile phone users: I&B ministry” *Livemint*, August 16, 2022; Retrieved from <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=187655>.

⁴ United Nations Conference on Trade and Development (UNCTAD). (2022). Policy Brief No. 100. Retrieved from https://unctad.org/system/files/official-document/presspb2022d8_en.pdf.

⁵ Statista. (n.d.). Number of digital transactions across India in the financial year 2020 and 2023, with estimates until 2027. Retrieved from <https://www.statista.com/statistics/1247252/india-number-of-digital-transactions/>.

digital literacy make it convenient for parties to digitize their statements and payment processes.

This Research aims to shed light on the issues and challenges surrounding 'Digital Estate Planning'. The Researcher will strive to understand the key aspects influencing data protection, digital wills, the development of online assets, and their management after digital death. With practically everything moving online in recent years, the digital age has fundamentally changed how we communicate, store information, and go about our daily lives. But this transition to a digital society has also given rise to new difficulties and complications. One of these issues is "Digital Estate Planning", which raises the question of how to prepare for the appropriate handling and distribution of these digital assets after a person's death.

Technology has advanced quickly, but the legal and regulatory frameworks for dealing with digital assets after death have not kept pace. As a result, concerns about digital estate planning have drawn a lot of attention from academics, decision-makers, and regular people. Digital estate planning refers to making arrangements for digital assets so that they may be appropriately managed, accessed, transferred, or destroyed in accordance with the person's preferences or legal requirements after their dying or in case they become unable to control their online presence.

At the moment, there is no explicit law in India that governs digital assets once a person dies digitally. The recently enacted Digital Personal Data Protection Act, of 2022, does, however, include some rules pertaining to the administration of digital assets after death but those are very limited and are not sufficient to handle various challenges related to digital digital estate planning. Thus it has become almost necessary to come up with a solution to deal with the various issues related to digital death. In this paper, the author does an analysis of the laws of various jurisdictions with a special focus on India. Lastly, the author proposes a basic framework to deal with the challenges associated with digital estate planning in India.

Given the implications and challenges associated with digital estate planning, it is essential to carefully assess the issues, identify any ambiguities in the law, and propose alternative solutions. The objective of this Research is to study the intricacies, issues, and challenges associated with digital estate planning in order to give a comprehensive overview of the subject and to support the creation of laws, regulations, and other frameworks in this rapidly growing sector.

2. Beyond the Grave: Data, Digital Assets, Digital Society and Digital Death

2.1 Data Defined

Data can be generated through human interactions, automated processes, or the utilization of digital technologies.⁶ Data is any piece of information that can be stored, processed, or transmitted electronically or in any other format. It may include personal information, such as names, addresses, email addresses, phone numbers, health records, financial details and more. Data protection aims on securing this information and ensuring that it is handled securely and responsibly.⁷

2.2 Digital Assets Defined

Any type of information that is electronically saved and has value to its owner is considered a digital asset. This can apply to things like images, audio, video, papers, and other digital information. Online accounts, such as social media Id's, email addresses, E-banking credentials, and accounts for virtual currencies, can also be considered digital assets.⁸ Depending on the nature and setting of a digital asset, its value can change. Some digital assets, like a cryptocurrency wallet, might be valuable financially, whilst other digital assets, like family images, might be valuable emotionally.

Recognizing the significance of digital assets and taking precautions to secure them is crucial, both during one's lifetime and after they pass away. This may entail drafting a strategy for handling digital assets in the event of an individual's death or incapacity, as well as setting up proper security measures and backing up important digital files.⁹

2.3 Types of Digital Assets

The Digital assets can be of various types, some of the most common types include:

1. Digital media: This includes digital photos, videos, music, and other multimedia files.

⁶ Davenport, T. H., & Patil, D. J. "Data Scientist: The Sexiest Job of the 21st Century". *Harvard Business Review* (2012).

⁷ Mayer-Schönberger, V., & Cukier, K., "Big data: A revolution that will transform how we live, work, and think" *Houghton Mifflin Harcourt* (2013).

⁸ Lustig, N, "Digital estate planning: What are digital assets?" [Entrustet HIWI Blog] (2010, April 19).

⁹ Zucker, S., *Digital assets: Estate planning for online accounts becoming essential (Part II)*. (The Zucker Law Firm PLLC, 2016).

2. Online accounts: This includes social media profiles, email accounts, online banking, virtual currency accounts, and other online accounts.
3. Virtual currencies: A virtual currency where records are kept and transactions are validated by a decentralized system employing encryption as opposed to a central authority.
4. Intellectual property: Digital assets that have value based on their ownership, such as patents, trademarks, copyrights, and trade secrets.
5. Domain names: Your website's name is its domain name. The address at which Internet visitors can access your website is known as a domain name.
6. Software and applications: Digital assets that provide functionality or services, such as mobile apps, computer programs, and web-based applications.
7. Digital documents: This includes electronic versions of legal documents, contracts, and other important paperwork.
8. Data: Any type of digital data or information that is stored electronically, such as databases, spreadsheets, and other types of digital records.

These are just a few examples of the many types of digital assets that exist. The value of digital assets can vary widely depending on their type and context.

2.4 Digital Estate Planning

The term “Digital estate planning” refers to making arrangements for digital assets so that they may be appropriately managed, accessed, transferred, or destroyed in accordance with the person's preferences or legal requirements after their death or in case they become unable to control their online presence.” Its foundation is based on the traditional notion that people have the right to manage their property.¹⁰ In the modern digital world, it has become necessary to expand the definition of property to include “digital assets” in the definition of property.

In order to manage one's digital assets and online presence in advance of passing away, one must engage in digital estate planning. It takes into account things like locating and cataloging digital assets, laying down guidelines for their administration or destruction, and choosing digital trustees or executors.

3. Key Concepts to Understand Digital Estate Planning

Digital Death: In the digital age, where people produce and acquire enormous volumes of digital content over the course of their lives, the idea of "digital death" has become a significant problem. The term "digital death" describes the

¹⁰ Beyer, Gerry & Nipp, Kerri, “Estate Planning for Digital Assets” (2011).

state of a person's digital assets and online presence following their passing.¹¹ The concept of "digital death" has several facets, such as difficulties in locating and using digital assets, managing social media accounts, and protecting digital legacies.

Digital Will: A digital will refers to how your loved ones should manage your digital assets and presence following your passing. The usernames and passwords to your digital assets, as well as the person you designate to manage the account, can be included in digital wills.¹²

Post-Mortem Data Management: Post-mortem data management refers to the practices and processes involved in handling an individual's digital assets and accounts after their death. This includes accessing, transferring, or deleting digital assets according to the individual's wishes or legal requirements.¹³

3.1 Importance of Digital Estate Planning

Due to the quick digitization of many facets of life and the special difficulties presented by digital assets, digital estate planning is becoming more and more significant in the Indian legal setting. Planning for digital assets is important for following reasons:

1. Digital electronic records hold both sentimental and financial value, making it essential to have a plan for their management and distribution.
2. There is a dearth of specific legislation or case law that regulates the management, transfer, and inheritance of digital assets. Digital estate planning fills this gap by ensuring that assets are managed in line with a person's preferences or the law.
3. Online financial activities are increasing rapidly. Without careful planning, it might be difficult for heirs or executors to be able to use these accounts and the related funds.
4. Creative professionals, such as authors, artists, and content producers, frequently have digital intellectual property that needs to be considered in estate planning. It guarantees that their intended claimant-successor or other claimant-continues to profit from their creative work.
5. Social media profiles may have sentimental value and may need to be preserved or remembered when a person passes away. A digital estate

¹¹ Banta, N. M., "Inherit the cloud: The role of private contracts in distributing or deleting digital assets at death" 83(2) *Fordham Law Review* 799-854 (2014).

¹² Beyer, G., & Hargrove, C., "Digital wills: Has the time come for wills to join the digital revolution?" (2009).

¹³ Conner, J., "Digital life after death: The issue of planning for a person's digital assets after death" 3 *Estate Planning & Community Property Law Journal* 301 (2011).

plan's clear instructions prevent misunderstandings among family members and service providers.

6. Family disputes over how to handle digital assets may occur in the absence of a digital estate plan. The likelihood of disputes is reduced and the distribution of assets is guaranteed when there is a clear plan in place.¹⁴
7. Online debts, subscription services, and recurring payments are a few examples of digital liabilities that should be taken into account. These obligations cannot harm the estate or the loved ones if proper planning is done.
8. As the importance of awareness about digital assets grows, individuals are recognizing the need to address these assets in their estate plans to protect their interests and provide for their families.

4. In what manner do Technology Companies, Digital Service Providers, and Online Platforms deal with the Issue of Digital Estate Planning?

4.1 Digital Estate Planning and Social Media Platforms

Social media platforms have become a necessary element of modern life since they permit people to interact, communicate, and share their experiences. However, the question of what happens to a person's accounts on social media and online presence after their passing presents particular difficulties and raises crucial ethical, legal, and psychological issues. This section examines the evolving rules, practices, and solutions related to the complex interaction between social media platforms and digital estate planning.¹⁵

4.1.1 Policies and Practices of Social Media Platforms

Social media sites' regulations and procedures for dealing with accounts belonging to deceased users vary. While some platforms have created explicit standards and procedures for administering these accounts, others can lack them or offer few choices for account memorialization, deletion, or ownership transfer.¹⁶

To start the account management after death, social media networks typically demand a verification step, such as submitting a death certificate or other pertinent evidence. Platforms might have options for memorialization, in which

¹⁴ *Supra* note 11.

¹⁵ Carroll, B., & Landry, K., "Logging on and letting out: Using online social networks to grieve and to mourn" 30(5) *Bulletin of Science, Technology & Society* 341-349 (2010).

¹⁶ Fletcher, D., "What happens to your Facebook after you die?" *Time Magazine* (2010).

the account is kept as a memorial to the deceased, or for account termination on demand.¹⁷

4.2 Policies of Different Social Media Platforms after users Death

Tweeter: When a Twitter user passes away, twitter can work with the estate's representative or a confirmed member of the deceased person's immediate family to deactivate the account.¹⁸

Google: With the help of Inactive Account Manager of google, users can choose a Trusted Contact who will be granted access to their account after a predetermined amount of inactivity. The option to permanently remove information is also available to users. To identify when you were last active, Google looks at your most recent activity, your last sign-in, how you use Gmail on the web or in an app, and Android check-ins.¹⁹

Facebook: A user can choose a trusted individual to handle their account management after passing away using Facebook's Legacy Contact feature. While not granted full access, a Legacy Contact can edit a user's profile, including their cover photo and pinned posts. They can also ask for the account of a user to be deleted. Google didn't allow them to delete old posts or friends or see a user's private communications.²⁰

Instagram: Instagram's policies state that a deceased person's account may either be reported and memorialised, or a member of the immediate family may ask for the account to be deactivated. Instagram requires evidence of death in order to memorialise an account, "such as a link to an obituary or news article."²¹

Pinterest: If a family member requests it, the platform will deactivate the user's profile. However, the website makes it clear that if a user dies, it will not share any personal or login information.²²

¹⁷ Sehati, I. N., "Beyond the grave: fiduciary's access to decedent's digital assets" 43(2) *Cardozo Law Review* 745-782 (2021).

¹⁸ Tweeter account policy. (n.d.). Retrieved June 7, 2023, from <https://help.twitter.com/en/rules-and-policies/contact-twitter-about-a-deceased-family-members-account#:~:text=In%20the%20event%20of%20the,to%20have%20an%20account%20deactivated>.

¹⁹ Inactive Google policy. (n.d.). Retrieved June 4, 2023, from <https://support.google.com/accounts/answer/12418290?hl=en>.

²⁰ Facebook policy. (n.d.). Retrieved June 4, 2023, from <https://www.facebook.com/help/1568013990080948>.

²¹ Instagram account policy. (n.d.). Retrieved June 4, 2023, from <https://help.instagram.com/231764660354188>.

²² Pinterest account policy. (n.d.). Retrieved June 4, 2023, from <https://help.pinterest.com/en/article/deactivate-or-close-your-account>.

Email: When a member of the immediate family requests it, Gmail will also close a deceased person's email account. In exceptional cases, Gmail may also "allow to give content from a dead user's account."²³

In order to handle digital assets and preserve the digital legacy of the departed, individuals and their families must have a thorough understanding of the policies and practises of social media sites.

4.3 Problems in managing Social Media Accounts After Death

After death, managing social media accounts poses a number of challenges. The difficulty of gaining access to or retrieving the account credentials and related data is one of the major challenges. Inadequate preparation or access arrangements may make it impossible for family members or heirs to access the dead person's social media logs, which could make it difficult to manage or preserve the digital legacy.²⁴

Finding a balance between honouring the deceased's digital privacy and maintaining their memory is another challenge. Social media accounts frequently include private discussions, shared material, and personal information with varied privacy settings. It is important to give serious thought to how much access family members or other designated people should have while yet honoring the deceased's privacy wishes.

In addition, the vast amount of digital content uploaded on social networking sites raises questions about the long-term preservation and curation of this content. Solutions that address the preservation, organisation, and future-proofing of social media information are required to ensure that the digital legacy is accessible and meaningful over time.

4.4 Creating Memorials and Preserving Legacy

Social media platforms' memorialization features give users and their families the chance to build a permanent digital homage to the deceased. These features might include memorial profiles, where the account is disabled but can still be viewed by others, enabling friends and family to submit words, memories, or pictures as a tribute.²⁵ Additionally Beyond the built-in capabilities of social media platforms, emerging solutions and third-party businesses provide alternatives for

²³ Google account policy. (n.d.). Retrieved June 4, 2023, from <https://support.google.com/accounts/troubleshooter/6357590?hl=en>.

²⁴ *Supra* note 15.

²⁵ Shearer, K. M. (2018). Like, share, and remember: Facebook memorial Pages as social capital resources. *Journal of Computer-Mediated Communication*, 28(1), zmac021. <https://academic.oup.com/jcmc/article/28/1/zmac021/6808785>.

conserving and curating the digital heritage. These systems might make it possible to build online obituaries, digital memorials, or communities for sharing memories and tales. They present opportunities for particularly significant ways to maintain the deceased's digital presence and memory.²⁶

4.5 The Role of Legislation and User Education

Legislation has a significant impact on maintaining of social media profiles after death. In some places, specific legislation regulates a person's rights and obligations with regard to their digital assets and accounts after their death. These regulations seek to make account access, memorialization, and deletion clear, permissible, and governed by the law²⁷.

To increase public awareness of the effects of digital death on social media platforms, user education is equally crucial. People who are knowledgeable about their options, privacy settings, and planning considerations are better able to decide how to manage their digital assets and social media accounts when they pass away. User-friendly tools, instructions, and awareness-raising efforts can help people be more aware of their options and prepared.

Individuals, families, social media corporations, and legislators can collaborate to develop solutions that meet the challenges while honouring the privacy, rights, and memories of the deceased by negotiating the intricacies of social media platforms in the context of digital death.

5. Existing Legal Framework in India

India doesn't have specific laws explicitly titled "digital state planning." However, there are several laws and regulations related to digital governance, data protection, and information technology that collectively shape the digital landscape in India.

5.1 Information Technology Act, 2000 (IT Act)

The IT Act is a comprehensive piece of legislation that covers several facets of digital signatures, E-commerce, cybersecurity, and E-governance. While it doesn't explicitly mention "digital state planning," it provides the legal framework for digital transactions and electronic governance.

²⁶ Kaleem, J. (2012, December 07). Death on Facebook now common as 'Dead Profiles' create vast virtual cemetery. Huffington Post. https://www.huffpost.com/entry/death-facebook-dead-profiles_n_2245397.

²⁷ Rossetto, K., Lannutti, P., & Strauman, E., "Death on Facebook: Examining the roles of social media communication for the bereaved" 32(1) *Journal of Social and Personal Relationships* (2014) 10.1177/0265407514555272.

The term "Computer Resource" encompasses devices that store digital assets, and it can be relevant when determining what constitutes a digital asset.²⁸ Definition of "Electronic Record": Similar to the above, this definition is relevant when considering digital records and assets.²⁹ Further, the provisions of the IT Act validate electronic records and digital signatures, providing a basis for electronic governance.³⁰ It deals with the compensation to be paid by a company that fails to protect data and causes wrongful loss or gain.³¹ Additionally, it gives the government the authority, under some situations, to intercept, monitor, or decrypt any information generated, sent, received, or stored in any computer resource.³² The provision of IT Act deals with identity theft, which can be related to protecting a person's digital identity after their demise.³³ The unauthorized disclosure of personal information is a punishable act. It could apply to cases where someone's personal digital information is mishandled after their death.³⁴ Protection to intermediaries (online platforms) is also given in certain cases. It's important when considering how digital assets hosted on online platforms could be managed or transferred.³⁵

5.2 Digital Personal Data Protection Act, 2023

According to the act, "personal data" includes any information associated with a natural individual. This definition could include information from digital assets like emails, pictures, and online accounts.³⁶ The measure requires acquiring individuals' consent before handling their personal data. If the dead had provided previous consent, this might apply to the handling of digital assets after death.³⁷ The right to be forgotten enables people to ask data fiduciaries to delete their personal information. The administration of digital assets and accounts after death may be affected by this clause.³⁸ The Indian Data Protection Authority is in charge of regulating data security. It may have an indirect impact on rules governing how digital assets are handled and accessed after death.³⁹ The rights given to data principals, such as the right to access personal data and the right to

²⁸ The Information Technology Act, 2000 (Act 21 of 2000), s. 2(1)(w).

²⁹ The Information Technology Act, 2000 (Act 21 of 2000), s. 2(1)(t).

³⁰ The Information Technology Act, 2000 (Act 21 of 2000), s. 4.

³¹ The Information Technology Act, 2000 (Act 21 of 2000), s. 43A.

³² The Information Technology Act, 2000 (Act 21 of 2000), s. 69.

³³ The Information Technology Act, 2000 (Act 21 of 2000), s. 66C.

³⁴ The Information Technology Act, 2000 (Act 21 of 2000), s. 72.

³⁵ The Information Technology Act, 2000 (Act 21 of 2000), s. 79.

³⁶ The Digital Personal Data Protection Act, 2023 (Act 22 of 2023), s.2.

³⁷ The Digital Personal Data Protection Act, 2023 (Act 22 of 2023), ss. 5,6.

³⁸ The Digital Personal Data Protection Act, 2023 (Act 22 of 2023), s.12.

³⁹ The Digital Personal Data Protection Act, 2023 (Act 22 of 2023), ss. 18,21,24.

data portability, may have an impact on how digital assets are managed after a person's passing.⁴⁰

While the Personal Data Protection Act covers data protection, it's crucial to keep in mind that it might not fully handle the complex issues involved in digital estate planning. Choosing digital executors, logging into online accounts, and managing digital assets are just a few of the many facets of digital estate planning that go beyond data protection and involve other legal considerations.

5.3 Indian Succession Act, 1925

This Act deals with matters related to inheritance and succession. While not focused on digital assets, it can be relevant to certain aspects of digital estate planning:

Section 2(h): Will: This section defines what constitutes a will, which might include digital wills or instructions left behind by a deceased person.⁴¹

Section 57: Copy or Duplicate of Will or Codicil: This section deals with the production of copies of a will. It could be relevant to producing digital copies of a will if they exist.⁴²

5.4 Indian Contract Act, 1872 and Other Laws:

This act governs contracts and agreements. While not focused on digital assets, it can be relevant when considering the terms of service agreements and contracts related to digital platforms that hold assets or information⁴³.

The regulations governing banks and financial institutions might affect the handling of digital assets stored in online banking or digital wallet accounts after the owner's death. Laws related to intellectual property, such as copyrights, patents, and trademarks, could have relevance to certain types of digital assets, such as digital art or software. The ownership and transfer of such assets should be considered.

6. Required Legal Changes in Indian Laws

Laws that require to be amended to address the issues related with data protection and digital death are the following:

⁴⁰ The Digital Personal Data Protection Act, 2023 (Act 22 of 2023), s.2.

⁴¹ The Indian Succession Act, 1925 (Act 39 of 1925), s.2(h).

⁴² The Indian Succession Act, 1925 (Act 39 of 1925), s.57.

⁴³ The Indian Contract Act, 1872, (Act 9 of 1872).

Indian Succession Act of 1925 and Information Technology Act of 2000: The concerns related to digital death and digital assets are not specifically addressed under the Indian Succession Act of 1925⁴⁴ and IT Act of 2000⁴⁵. As a result, specific changes to the Indian Succession Act would be needed to address these problems. The following amendments should be made:

Definition of Digital Assets: An amendment to the Act may be necessary to incorporate a precise definition of digital assets that covers a variety of forms, including online accounts, digital currencies, digital files, social media accounts, and other digital properties.

Legal recognition of digital will: The legal requirements for creating, executing, and enforcing digital wills could be outlined in amendments that address the legal recognition and validity of digital wills.

Authority and Responsibilities of Digital Executors: The Act may need to define the powers and duties of the testator's chosen digital executors, addressing how they would administer and distribute digital assets in accordance with the digital will.

Authentication and Validity: Amendments may address the authenticity and legality of digital wills by establishing the legal force of electronic signatures or other accepted authentication techniques for transfers of digital properties.

Access to Digital Assets: The Act may need to address how legal heirs or beneficiaries can access and retrieve digital assets following a person's passing, including the steps to take in order to obtain the credentials or rights needed to access digital accounts and assets.

Data protection and privacy: Changes could be made to address the privacy and data protection issues related to digital assets and digital death, ensuring that the personal data contained in digital assets is handled and safeguarded in accordance with applicable laws, such as those outlined in the Digital Personal Data Protection Act, 2023.

Jurisdictional Considerations: To ensure the enforceability of transfers and conformity with Indian laws, amendments may be required to resolve jurisdictional difficulties when dealing with digital assets stored on international platforms or service providers based outside of India.

⁴⁴ The Indian Succession Act, 1925 (Act 39 of 1925).

⁴⁵ The Information Technology Act, 2000 (Act 21 of 2000), s. 43A.

Personal Data Protection Act, 2023: To address the specific issues of digital estate planning within the context of the Personal Data Protection Act, certain specific changes could be considered. The handling of personal data in the event of a digital death could be specified in this act's amendments, ensuring the security and privacy of the decedent's digital data. There should be clauses allowing people to expressly authorize their selected digital executor to access and handle their digital assets following their passing.⁴⁶ To do this, language that permits the processing of personal data for the sake of digital estate planning would need to be added. Introduce clauses that acknowledge the authorized parties' (digital executors') right to ask for control and access over the digital assets of the deceased. It might be possible to manage, transfer, or erase digital accounts and content. A new clause should be added that acknowledges the heirs' or authorized representatives' entitlement to receive digital property, such as accounts and content. In accordance with estate planning, this would guarantee the creation of a legal framework for the transfer of digital properties.

Indian Contract Act, 1872: The definition of the term "digital assets" can be introduced to include a range of intangible assets, including digital currency, online accounts, media, and other types of digital property⁴⁷. Accept the legality of contracts that specify the duties and rights of digital executors in relation to the management and distribution of deceased digital assets. Specify the conditions under which digital asset agreements, such as digital executor appointments, can be revoked or amended by the individual.

Indian Penal Code, 1860: Changes to the Indian Penal Code may be required to address issues with cybercrime associated to digital death, such as unauthorized access to digital assets, identity theft, or misuse of personal information after death.⁴⁸

Banking And Financial Laws: Modifications to banking and financial regulations may be required to allow for the transfer and management of digital assets after a person's passing, including cryptocurrencies, investment accounts, and digital wallets.

Intellectual Property Laws: Legislation governing intellectual property may need to be amended to solve problems with the ownership and transfer of digital assets that contain copyrights, trademarks, or other types of intellectual property.

⁴⁶ The Digital Personal Data Protection Act, 2023 (Act 22 of 2023).

⁴⁷ The Indian Contract Act, 1872, (Act 9 of 1872).

⁴⁸ The Indian Penal Code, 1860 (Act 45 of 1860).

7. A Proposed Basic Framework of Digital Estate Planning for Indian Jurisdiction

Digital Estate Planning: Your whole digital asset list, as well as instructions on how to access each account, will be included in the digital estate plan. It doesn't just mean your Gmail, Google, and social media profiles. While those may be the most visited, digital assets also include:

- Pictures, digital music, and files on your computer, owned by you
- Subscriptions, like Jio Cinema, Amazon Prime, Hot star, Netflix, Hulu, Jio Savaan and Spotify
- Website domains
- Blogs, Articles and all of their written content
- Tax and financial software
- Dogecoin, Bitcoin and other cryptocurrencies

Things that need to be done:

1. Custodians are the companies like Google and Facebook that create, hold, or provide digital assets. Before granting access to an account, custodians may apply for judicial orders. Additionally, they may limit access to information to that which is "reasonably necessary" for settling an Estate. Custodians are not permitted to grant access to shared accounts or erased assets.
2. After someone passes away or becomes incapacitated, there should be a basic framework for how the state, an executor, a fiduciary, or attorney should handle their digital possessions.
3. In order to manage or delete someone's online accounts, there should be a hierarchy of procedures that clearly spell out how to do so:

Online Tools: Users can choose what should happen to their account after death or extended periods of inactivity using online tools like Facebook's Legacy Contact and Google's Inactive Account Manager. When such tools are available, they must take precedence over any other instructions, such as the Terms of Service of a website.

Digital will: The legal documents should be consulted next if a Custodian does not provide an online service. This could be a trust, power of attorney, or digital will. One or more specific accounts may be made accessible to an Executor or Fiduciary by a person's digital estate plan. Access to an individual's online accounts might also be restricted by a digital estate plan.

Term of service: A Custodian's Terms of Service should govern a Fiduciary's access to a user's digital asset if there is no documentation regarding how to access an individual's online accounts, whether through an online tool or digital estate plan.

8. Conclusion

This study went into the complex world of digital estate planning, looking at service providers' policies and the laws of India as they relate to this developing field. The necessity to efficiently manage, transmit, and inherit digital assets after a person's dying has become more important as they increasingly dominate modern life. The study offered here highlights how crucial it is to close the gap between technical development, legal frameworks, and the preservation of people's digital legacies.

The analysis of service providers' policies revealed how they are adapting to accommodate digital estate planning. These service providers are starting to develop measures to ease transitions by acknowledging the difficulties people and their families have while managing digital assets, whether through account access, data management, or memorialization services. These policies are always changing, which highlights the developing understanding of the complex relationship between digital presence and real-world inheritance.

The study shed light on the difficulty of incorporating digital estate planning within current legal frameworks in the context of Indian legislation. There is still a need for particular legislation designed to address the complexities of managing digital assets after death, even while some laws, such as the Information Technology Act and the Personal Data Protection Act, have an indirect impact on digital estate planning. The absence of comprehensive legal standards emphasizes the urgent need for legislative changes that deal with concerns with digital asset transfer, management, and privacy.

To provide people the power to actively manage their digital assets and make sure they are transferred to chosen successors in a meaningful and secure way, rules, regulations, and technology innovation must come together in this digital age. In order to encourage an environment where individuals' legacies are seamlessly preserved in both the digital and physical realms, it is critical that legal and regulatory frameworks keep up with the rapid evolution of the field of digital estate planning. As the fusion of technology and law accelerates, the future of digital estate planning holds promise for a harmonious coexistence of the virtual and the tangible, ensuring a meaningful legacy for generations to come.

**Changing Role of Women: A Study of Churah Tehsil of Chamba
District, Himachal Pradesh**

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Abstract

Women are the epitome of strength, love, sacrifice and courage. Over the past century, the role of women in society has evolved significantly. Women have fought for and won the right to vote, access to education, and the opportunity to pursue careers outside the home. This shift in gender roles has empowered women and positively impacted society as a whole. Women are now self-sufficient, financially independent, and successful in every field. However, in India, women have historically suffered due to the patriarchal mindset, which has relegated them to the role of homemakers. As a result, they have had no identity of their own and have been discriminated against. Nevertheless, Indian women are now trying to empower themselves and establish their identity by stepping out of their homes and facing the world. While progress has been made, there are still ongoing challenges that women face in their quest for equal rights and opportunities. The present paper examines the changing roles i.e., socio-economic, health and political roles of women in the Churah Tehsil of Chamba District, Himachal Pradesh. The study is exploratory in nature and based on primary and secondary sources of data. Secondary sources of data collection include journals, articles, websites, etc. Methods of data collection such as personal interview, focused group discussion, comparative method etc. have been used. In the past, women faced challenging conditions, leading them to take on diverse roles. But now, in the contemporary world, the role of women is gradually changing. The study findings indicate a shift in the roles played by women. They are actively empowering themselves in various daily activities, contributing to an improvement in the overall conditions of women.

Keywords: *Women, Patriarchy, Change, Roles, Empowerment.*

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I. Introduction

The role of women varies across different cultures, societies, and historical periods. However, in general, women have played critical roles in various aspects of human life, including reproduction, caregiving, education, and socialization of children, and contributing to the economic development of communities and societies. In recent times, the role of women has expanded to include significant contributions in various professional fields, including business, politics, science, technology, arts, and sports. Women have also played a vital role in advocating for equal rights, gender equity, and social justice.

Women are the key to sustainable development and quality of life in the family. The varieties of roles the women assume in the family are those of wife, leader, administrator, manager of family income and last but not the least important the mother. In earlier times, women were exploited through every possible means by society. They suffered a lot of criticism, lacked freedom and stood nowhere next to men. They were even deprived of the basic birthrights of human beings. It took a lot of effort and courage for them to mark an impression of “*women power*” and make a significant place in society.

Women’s full and equal participation in all facets of society is a fundamental human right. Yet, around the world, from politics to entertainment to the workplace, women and girls are largely underrepresented. The visualizations below take a closer look at this gender-imbalanced picture over time, revealing just how slow progress is. Rooted in patriarchal norms and traditions, the consequences are far-reaching with detrimental, negative consequences on the personal, economic and future well-being of women and girls, their families and the community at large. From their presumed strictly household activities at the premises of civilization to being today able to figure among the most powerful and influential personalities on the planet, the status of women has greatly evolved through the ages. The world we are experiencing today is dramatically different from the world our parents experienced, let alone the world that our grandparents experienced.

In ancient times, the main social groups of early mankind and early civilizations used to favour a matriarchal setting of their society. This means that women were literally at the forefront; they were at the centre of society and made up a dominant role from different perspectives and points of view.

In the ancient world, women were politicians, spiritual and religious leaders, warriors, and respectable icons, symbols of fertility and prosperity. Somewhere

along the line, the female-dominated culture of early social groups switched from a matriarchal setting to a patriarchal setting, meaning that men “took the front-row seat” and became leaders and kings. For thousands of years, our society has been dominated by males; culturally and historically speaking. Most anthropologists hold that there are no known societies that are unambiguously matriarchal. It is a very well-known fact that women have not been placed on the same standing since then, never being on the same pedestal as a man throughout the centuries, but always covering “minor” roles characterized by submission. Many people can communicate easily, breaking through language and cultural barriers, like never before in history. The internet is opening more doors than any other means of communication before it; It is not only a way for people to communicate with each other, but also to spread ideas, to spread culture, discuss, and even to work and be entertained. This has opened up new doors, and windows through which more proactive social interaction can be stimulated and help in breaking the age-old social barriers not easily visible like the parda (veil) system, domestic violence etc. (Yadav et. al., 2021).

II. Role of Women: Global Perspective

Women are the primary caregivers of children and elders in every country of the world. International studies demonstrate that when the economy and political organization of a society change, women take the lead in helping the family adjust to new realities and challenges. They are likely to be the prime initiators of outside assistance and play an important role in facilitating (or hindering) changes in family life.

“Rural women play a key role in supporting their households and communities in achieving food and nutrition security, generating income, and improving rural livelihoods and overall well-being.”

UN Womenwatch Organization

In many ancient societies, women played important roles in their communities and were often respected for their contributions. For example, in ancient Egypt, women were able to own property and participate in trade, and some women even held positions of power as queens and pharaohs. Similarly, in ancient Greece, women played significant roles in religion and mythology, and some women were able to participate in public life as philosophers and poets.

However, with the rise of patriarchal societies, women's status began to decline in many parts of the world. In Europe during the Middle Ages, women were often seen as inferior to men and were expected to be subservient to their

husbands. Women were also excluded from education and the workforce, and their opportunities for personal and professional fulfilment were limited. The 19th and 20th centuries saw significant advancements in women's rights and gender equality. The suffrage movement, which began in the mid-19th century, led to women gaining the right to vote in many countries around the world. The feminist movement of the 1960s and 1970s brought attention to issues such as workplace discrimination and sexual harassment and helped to promote greater equality for women in many areas of life.

In recent years, women have made significant gains in education, the workforce, and politics. More women than ever are attending school, and women are increasingly breaking through the glass ceiling to reach leadership positions in various fields. Women are also playing crucial roles in tackling global issues such as climate change, poverty, and inequality.

Despite these advancements, however, women still face many challenges, including discrimination, gender-based violence, and unequal pay. Achieving gender equality requires continued efforts to address these challenges and ensure that women have equal access to education, economic opportunities, and political representation.

III. Role of Women: Indian Perspective

Women are a gift to society. During the ancient period of India, women played a significant role. The Rig Vedic Women in India, women had superior status and they got more liberty and equality. Their condition was good. The women were provided with an opportunity to attain high intellectual and spiritual standards. There were many women Rishis during this period. After observing Upanayana Samskar, girls were permitted to spend their life in Gurukul. The education of girls was considered an important qualification for marriage. Though monogamy was the most common, the richer section of society indulged in polygamy. There was no sati system or early marriage.

But from enjoying free and esteemed positions in the Rig-Vedic society, women started being discriminated against since the Later-Vedic period in education and other rights and facilities. Child marriage, widow burning, the purdah and polygamy further worsened the women's position. Religious ceremonies increasingly were conducted by the priests resulting in losing her pre-eminent position in the household.

The later years saw a decline in the role and status of women in public life. Early marriage started hindering education and women slowly started diminishing from political and educational spheres.

The epics and Puranas equated women with property. This was the period during which the importance of rituals increased and so did the importance of the Brahmins. The position of women was not as high as it was in the Rig Vedic period. Even Buddhism did little for women. Though the Maurya kings often employed female bodyguards, spies and '*Striadyakshamahamratras*', their status was still quite bad. Upper-caste women had to accept the purdah. During this period men were polygamous and widow burning was an accepted norm. Arthashastra imposed more stigmas on women as Kautilya dismissed women's liberation and they were not free even to go elsewhere without their husbands' permission. The Maurya and later, the Gupta period saw the practice of Sati increasing, and women's lives were dictated by the men in their life. The Smritishastras abused them; Manu dictated a woman would be dependent on her father in childhood, on her husband in youth and her son in old age. Apart from child marriage and sati, prostitution and the Devadasi system became widespread (Rout, 2016).

IV. Objective of the Paper

The present paper examines the changing roles i.e., socio-economic, health and political roles of women in the Churah Tehsil of Chamba District, Himachal Pradesh.

V. Research Methodology

The present study is exploratory in nature and based on primary and secondary sources of data. Secondary sources of data collection include journals, articles, websites etc. Methods of data collection such as personal interview, focused group discussion, comparative method etc. have been used.

Study Area

The proposed study has been conducted in Churah Tehsil of Chamba District in Himachal Pradesh with its administrative headquarter at Tissa which falls in the Churah legislative assembly constituency. Churah tehsil has 63 panchayats and 372 revenue villages, out of which the following villages have been selected for this research:

1. Thalli

2. Matiyond
3. Shiri
4. Shoul

There are 967 females for every thousand males in Churah tehsil. The demographic composition of the area includes; Hindus, Muslims, Gaddis and Gujjar Tribes, etc. Agriculture is the main occupation, though recently, some horticulture and cash crops have also been commercialised.



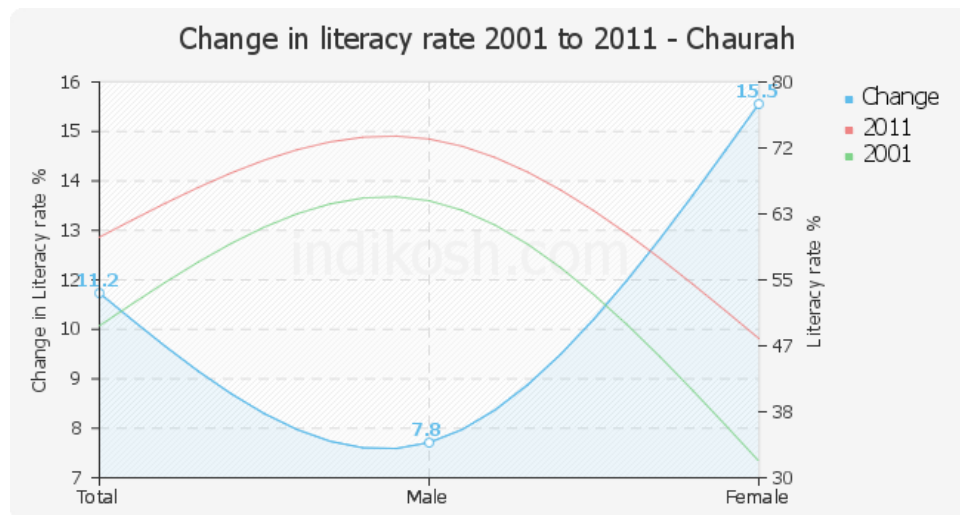
Figure 1.1: Showing Tehsil & Sub-tehsil Wise Map of Chamba District

Source: According to Census 2011, mapsofindia.com/maps/Himachal-pradesh/tehsil/chamba.htm

Demographics of Churah Tehsil

There are 275 villages in Churah Tehsil. The tehsil is entirely rural, encompassing all 78,988 residents. The gender distribution is nearly equal, with 50.83% males and 49.16% females. Caste diversity is notable, with 63% of the population belonging to the general caste, 29% to the scheduled caste, and 8% to

the scheduled tribe. The tehsil comprises around 14 thousand households, each hosting an average of six individuals. These demographic insights provide a foundational understanding of Churah Tehsil's socio-economic and cultural dynamics, essential for developing targeted strategies to meet the community's unique needs.



Source: According to Census 2011, <https://indikosh.com/files/census/14/c/h/a/w/r/a/h/8070/images/change-in-literacy-rate-2001-to-2011-chaurah>

Figure 1.2: Change in Literacy Rate 2001 to 2011

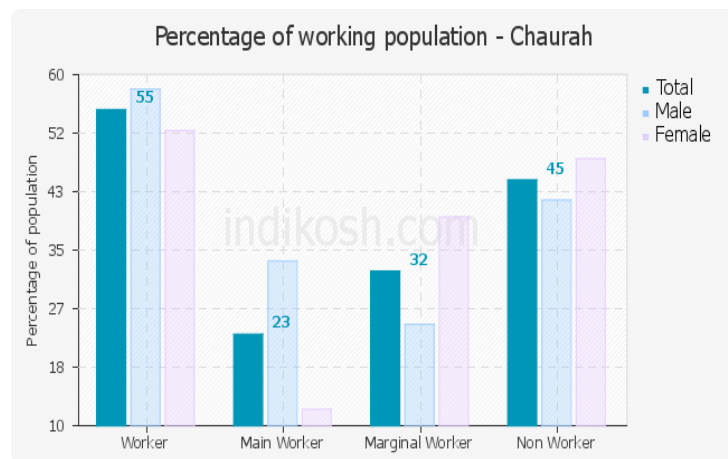
Literacy of Churah Tehsil

In Churah Tehsil, there has been notable progress in education, with a total of 40,431 individuals being educated. Among them, 24,856 are male, and 15,575 are female. The overall literacy rate, excluding those under the age of 6, stands at 60%. Breaking it down further, the literacy rate is 73% for males and 48% for females. Encouragingly, there has been an 11% increase in the universal literacy rate in the tehsil, reflecting positive advancements in educational achievements. Specifically, there is an 8% growth in male literacy and an impressive 16% increase in female literacy. These trends indicate a concerted effort to improve educational opportunities, although addressing the gender gap remains crucial for achieving more balanced literacy rates in Churah Tehsil.

Workers' Profile

In Churah Tehsil, a substantial portion of the population, comprising 55% or approximately 43 thousand individuals, is actively involved in both main and

marginal occupations. The working demographic is characterized by a gender distribution of 58% male and 52% female. Among male workers, 33% are dedicated to full-time main employment, while 24% are engaged in part-time marginal work. In the case of female workers, 12% are employed in main work, while a larger segment, constituting 40%, is involved in part-time, marginal employment. These figures underscore the diverse employment landscape within Churah Tehsil, signalling variations in gender participation and the nature of employment. Consequently, tailored economic policies are essential to cater to the distinct needs of the tehsil's multifaceted workforce.



Source: According to Census 2011, <https://indikosh.com/files/census/14/c/h/a/w/r/a/h/8070/images/percentage-of-working-population-chorah>

Figure 1.3: Percentage of the Working Population

VI. Results

Changing Role of Women in Churah Tehsil

The changing role of women in Churah Tehsil has been subject to analysis, revealing a gradual change across socioeconomic, health, and political spheres.

Socio-Economic Role

In the past, women played distinct roles within society, primarily centred around domestic and agricultural responsibilities. Their duties revolved around household chores and agricultural tasks, with a particular emphasis on tending to family, livestock, and farming. Women were restricted to activities confined within the household sphere, and the notion of women engaging in activities

beyond these realms was discouraged. There existed a stark gender disparity where women were expected to undertake more responsibilities than men, often working extensive hours in the absence of advanced tools and machinery in agriculture. Unfortunately, women had limited autonomy in decision-making processes concerning their households and children. The education of girl children was not prioritized; instead, they were compelled by their parents and grandparents to focus on domestic duties or accompany cattle to the fields. This historical perspective underscores the prevailing gender norms and restrictions that shaped the roles and opportunities available to women in earlier societies.

In recent times, women's roles have expanded, earning them more respect in both families and societies. This positive shift has contributed to a decrease in social issues like domestic violence, alcoholism, and harmful practices such as bride burning. Women are actively participating in addressing family and societal challenges, providing their valuable perspectives. The percentage of women involved in various forms of employment, including both main and marginal work, has increased in the study area. This not only benefits the women themselves but also contributes to the economic well-being of their families. The improved economic conditions have led to more opportunities for girls to enrol in schools and colleges, where they are excelling academically. Mothers, recognizing the importance of education, are actively involved in educating their children, aspiring to provide them with a life free from unnecessary struggles.

With the introduction of modern machines and advanced tools, women are excelling in agriculture. Now, they no longer need to spend 8 to 9 hours in the fields; instead, they can complete their agricultural tasks in 4-5 hours. The increased use of machines, including washing machines, hand-held tractors, and regular tractors, has significantly improved women's efficiency in their daily activities. Additionally, the development of roads and the availability of transportation have seen significant growth. This transportation boost enables the commercialization of agriculture, positively impacting people's social and economic well-being. The shift toward commercialized agriculture is playing a vital role in enhancing the overall quality of life for many individuals.

Role Related to Health

Earlier, women had restricted opportunities to engage in various activities, limiting their roles. In the study area, there was a specific role known as "*dai*," where a woman served as a '*vaid*' or '*nurse*'. The dai assisted in delivering babies either at home or alongside a doctor in the hospital. However, apart from this, women lacked awareness about caregiving or any health-related roles.

Knowledge about reproductive health was minimal, and people only visited hospitals during emergencies. The opportunities for women to participate in diverse activities and gain awareness about health-related roles were limited in those times.

At present, women are well-informed about their health and the well-being of their families. They take on the responsibility for the health of their families, caring for children, spouses, and elderly relatives. Women play a vital role in receiving healthcare, ensuring medical attention for themselves and their families, and advocating for health needs in their communities. With increased education, women actively promote healthy behaviours, manage chronic conditions, and ensure timely medical care for their loved ones. They now possess knowledge about reproductive health, including contraception, prenatal and maternity care. Women actively contribute to this sector by raising awareness about these issues. As *Asha workers*, women diligently fulfil their duties, such as providing nutritious meals and spreading awareness about vaccination, menstruation, diabetes, reproductive health, and other health-related matters.

Political Role

In the study area, there was a lack of awareness regarding politics and related issues. The perception was that political leaders were distant and not transparent, making it difficult for people to engage in political activities.

Nowadays, women actively participate in political endeavours, with a crucial role as voters. They are well-informed about the voting process and actively exercise their voting rights. Women contribute to decision-making in their households, villages, and panchayats. When issues arise in their communities, women play an active role by expressing their concerns. They have become integral parts of the political system. As *Asha workers*, women assist others by creating awareness about government schemes and policies and by conveying people's issues to political leaders. However, overcoming social and cultural barriers remains essential for further enhancing women's political participation in public life.

VII. Conclusion

While significant strides have been made in advancing women's rights globally, achieving true gender equality remains an ongoing challenge. In many parts of the world, women continue to encounter discrimination, violence, and social

barriers that impede their opportunities and potential. It is essential to persist in efforts aimed at creating a world where women can fully engage and contribute across all aspects of life, free from discrimination or gender bias.

In the study area, while women are actively engaged in fulfilling their various roles, there exists a noticeable gap in their overall progress. Although there is gradual improvement, financial challenges restrict women to their homes and limit their pursuit of higher education. Recognizing the importance of breaking down these barriers, it becomes crucial to provide women with enhanced opportunities to assume more substantial roles within both their families and the broader society.

By empowering women in these multifaceted roles, the benefits extend beyond individual women themselves. The ripple effect is felt within their families and the broader society, fostering positive change. Women empowered with education and opportunities are better equipped to contribute to economic growth, community well-being, and social progress. In essence, addressing the financial challenges that hinder women's progress is a pivotal step towards not only enhancing their personal lives but also creating a more empowered and inclusive society.

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Dimensions, Trends and Socio-Economic Determinants of Drug Abuse in Punjab: A Research Study

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Abstract

As per UNODC report, India has been gripped in the complex problem of illicit drug abuse and addiction since past few decades. World Drug Report 2023 shows that there are high prevalence rates of opioid addiction in India and marked India as Expanding market for Amphetamines-type Stimulants with notable prevalence rate. The scourge of drug abuse and addiction in the state of Punjab has acquired the size of an epidemic and has shaken the society, economy and political spheres to its core. The present study attempted to assess the pattern of drug abuse and its determinants among the male population of Punjab. Study attempted to understand the role of various social, demographic and economic backgrounds of the addicts and examined the type of drugs abused by different demographic section. Study further examined the prevalence of injecting drug usage in Punjab. A cross-sectional survey was conducted across 15 de-addiction and treatment centres in six districts of Punjab covering 409 male addicts. The data was analysed for descriptive statistics. Study found that an alarming rate of young population is using illicit drugs especially heroin and ATS type pharmaceutical drugs in Punjab. Majority of addicts belonged to Casual Labour class with almost no land followed by addicts from agriculture self-employed class. A high percentage was abusing heroin and almost one third was injecting drugs through dangerous usage of shared needles. Majority of addicts reported suffering from co-morbidities like hepatitis-C and other infections such as liver cirrhosis.

Keywords: *Drug Abuse and Addiction, Heroin, Punjab, Burden of Drug Abuse*

I. Introduction

The year 2023 marks the midpoint of global efforts towards achieving Sustainable Development Goals. However, the global drug trafficking, abuse and addiction phenomena are hindering SDG progress in many countries through disruptions such as peace, justice, health, human rights. As per the latest “World Drug report 2023” released by the UNODC, there are total 296 million people abusing illegal drugs worldwide, with an increase of 21% in last 10 years (UNODC, 2003). Out of it, around 60 million are hooked on highly addictive opioids (illegal drug heroin,

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synthetic opioids such as fentanyl, and pain relievers available legally by prescription) and 20 million on “ecstasy” drugs. More alarmingly, globally there are around 13.2 million Persons who inject Drugs (PWIDs). However, the problem of drug abuse and addiction differs from region to region as defined by various supply side and demand side factors (Sharma, 2017).

India too has been gripped in this issue of illicit drug abuse and addiction. As per same UNODC report, there are high prevalence rates of opioids in India and the Amphetamine type Stimulants (ATS) market is also expanding across the country with notable prevalence rate. Another nation-wide report on survey conducted for determining the prevalence of drug addiction in Punjab, titled “Magnitude of Substance Abuse in India”, released by Ministry of Social Justice & Empowerment, Government of India, after alcohol, cannabis and opioids are the most common substances used in India (Ambekar A, 2019). About 2.8% of population reported being current users of cannabis, and around 2.1% of population use opioids which include opium, heroin and pharmaceutical opioids. Moreover, a sizeable population use sedatives, inhalants and other amphetamine type stimulants and hallucinogens.

Table 1: Prevalence of Drug Abuse and Addiction in Punjab

Type of Drug	Current Use		Dependence		Quantum of Work	
	%	N	%	N	%	N
Cannabis	12.5	3742375	0.42	125743.8	2.26	676621
Opioids	9.69	2901089	1.28	383219.2	2.8	838292
Sedatives	4.25	1272408	0.42	125743.8	0.8	239512
Cocaine	0.66	197597	0.11	32932.9	0.2	59878
ATS	0.64	191610	0.06	17963.4	0.24	71853.6
Inhalants	1.01	302384	0.11	32932.9	0.31	92810.9
Total	28.75	8607463	2.4	718536	6.61	1978968

Source: Ministry of Social Justice & Empowerment, GoI

The scourge of drug abuse and addiction in Punjab has acquired the size of an epidemic and has shaken the society, economy and political spheres to its core. Although, the usage of opiates are rooted culturally in agriculture society of Punjab,

the problem of chemically treated opioids originated somewhat post 2001, after opium cultivation hike in golden crescent region of Asia i.e. region of Iran-Pakistan-Afghanistan. The problem of rising amphetamines and meta-morphine is however a new phenomenon, the origin of which lies in extorted pharmaceutical black market. According to the report of Ministry of Social Justice & Empowerment, there are total 19.79 lacs harmful and problematic illegal drug addicts in Punjab (Ambekar A et al., 2019). The data from report is presented in Table 1.

The present study attempted to assess the pattern of drug abuse and its determinants among the male population of Punjab. Study attempted to understand the role of various social, demographic and economic backgrounds of the addicts and examined the type of drugs abused by different demographic section.

II. Methodology

Study Area

The present study is conducted in 15 public de-addiction, treatment and rehabilitation centres across six districts of Punjab, two each from each geographical region of Majha, Malwa and Doaba., after due clearances from the Government of Punjab.

Table 2: Public De-addiction, Treatment and Rehabilitation Facilities where sample survey was conducted.

	Name of the public healthcare centre
1.	Opioid Outpatient Assisted Treatment Centre, Government Medical College, Amritsar.
2.	Swami Vivekanand Drug De-addiction and Treatment Centre,
3.	Government Medical College, Amritsar
4.	Public OST centre, Civil Hospital, Tarn Taran.
5.	Government Drug De-addiction centre, Civil Hospital, Tarn Taran.
6.	Opioid Outpatient Assisted Treatment Centre, Gharial, Tarn Taran.
7.	Model De-addiction Centre, Civil Hospital, Jalandhar
8.	OST Centre, CHC, Phillaur, Jalandhar.
9.	OOAT centre, CHC, Phillaur, Jalandhar
10.	OST centre, Civil Hospital, Hoshiarpur.
11.	OOAT centre, MohallafatehgarhHoshiarpur.
12.	De-addiction and Treatment centre, Civil Hospital, Hoshiarpur.
13.	Government Model De-addiction and Treatment Centre, Bathinda.
14.	OOAT centre, Mansa
15.	OSD centre, CH, Bathinda

Study design, Participants and Sampling

This is an exploratory cross-sectional study. The drug addicts seeking treatment, substitution, rehabilitation for de-addiction from different age groups were the main participants of this study. Purposive random sampling method was used to select the subjects for study, mainly because of complex nature of problem. The sample size of 384 using Krejcie and Morgan Table was decided and 409 addicts were interviewed during the survey. The details of study area are given in table 2.

Definitions

The term drug or substance for the purpose of this study means the consumption illegal/banned psychoactive substances such as cannabis, opium and opioids, cocaine, Amphetamine-type stimulants including sedatives, prescription abuse of sleeping pills, hallucinogens, inhalants and other illegal substances used for extra-medicinal purposes. In general terms, substance or drug abuse refers to misuse of a particular substance, psychoactive or pharmaceutical drug. Substance/drug abuse means psychological and physical addiction to a certain substance along with the medical complexities.

III. Statistical Analysis

IBM SPSS Statistics 29.0.1.0 and Microsoft Excel was used for analysis. The data collected was analysed using descriptive statistics. For diagrammatical presentation, data tabulation, bar diagrams and other charts have been used.

Results

Table 3, 4 and 5 presents details on the social-demographic, economic and epidemiological profile of addicts in Punjab. A total of 409 drug addicts were studied between the age group of 14 to 71 years, seeking treatment and intervention services in Public de-addiction centres of Punjab. It was noted that majority of addicts were from age-group of 15-45 years, depicting the “J” shape relationship between age and prevalence of drug abuse and addiction in Punjab. Majority of addicts (68%) were married, from majority religion of Punjab and from middle size households.

It was found that the majority of addicts seeking care at public de-addiction centres were from non-agriculture labour household types followed by agriculture self-employed class. The reason may be the unemployment levels of casual labour class, social and economic deprivation. It can also be observed from above tables that share of Agriculture labour is minimum. This is against the popular notion of cultural usage of drugs in agriculture labourers in Punjab.

Table 3: Social and Demographic Profile of Drug Users in Punjab

<i>Socio-Demographic Characteristics</i>			
		N	(%)
<i>Age Group</i>	0-15	2	.5
	15-29	177	43.3
	30-45	185	45.2
	45-59	35	8.6
	Over 60 years	10	2.4
<i>Marital status</i>	Married	277	67.7
	Unmarried	128	31.3
	Separated/divorced/widow	4	0.9
<i>Religious Group</i>	Sikh	291	71.1
	Hindu	114	27.9
	Christian	3	.7
	Muslim	1	.2
<i>Social Group</i>	Scheduled Castes	174	42.5
	General	199	48.7
	Other backward classes	36	8.8
<i>Area</i>	Urban	219	53.5
	Rural	190	46.5
<i>Household Size</i>	Up to 2 members	15	3.7
	2-4 members	120	29.3
	4-6 members	189	46.2
	6-10	72	17.6
	Over 10 members	13	3.2

Source: cross-sectional survey conducted in public de-addiction centres

One of the possible reasons of low coverage of agriculture labour could be treatment-seeking behaviour of this group; others could be types of drugs consumed by agriculture labourers that can be termed as not so dangerous drugs (named *doda* and *bhukhi*). Interestingly the “self-employed in agriculture” group is consuming the illicit drugs at alarming rates only behind the non-agriculture labourers. This shows the agriculture-oriented nature of prevalence drug abuse and addiction in Punjab. The results coincide with the national level report by Ministry of Social Justice and Empowerment, in which majority of addicts are also from non-skilled labour class. Majority of addicts reported that in past one year they were employed as “casual unskilled labour” or “casual workers” in farm and non-farm activities. The national level reports also point the same pattern of prevalence among the Casual workers (Ambekar A, 2019). Results also shows that salaried and self-employed were also found using drugs at alarming rates followed by unemployed people.

Table 4: Economic Profile of Drug Addicts in Punjab

	<i>Economic Determinants</i>	<i>N</i>	<i>(%)</i>
<i>Type of the Household</i>	Self-employed in non-agriculture occupation	51	12.5
	Agriculture labour	10	2.4
	Other labour	227	55.5
	Self-employed in agriculture	79	19.3
	Others/salaried class	42	10.3
<i>Usual activity status in past one year</i>	Self employed	54	13.2
	Employed	9	2.2
	Salary/waged	78	19.1
	Casual worker	214	52.3
	Unemployed	46	11.2
	Student	3	.7
	Pensioner	1	.2
	Disabled	-	-
	Others	4	1
	<i>Land owned by the household</i>	No land	278
Marginal		12	2.9
Small		34	8.3
Medium		44	10.8
Large		41	10.0
<i>Education levels</i>	Illiterate or below primary	54	13.2
	Up to primary level	29	7.1
	up to middle level	94	23.0
	Senior/matric	92	22.5
	Secondary	89	21.8
	Higher level	51	12.5

Source: cross-sectional survey conducted in public de-addiction centres

This shows that the relationship between unemployment, quality of employment and drug consumption needs to be further validated as against the common notion of “unemployment-related drug abuse”. Majority of drug abusers reportedly were landless, advocating the trend of “casual labour” more into drugs. But the extent of

small, medium and large farmers into drug abuse shows the depth of problem in farming community of Punjab.

Table 5: Epidemiological Profile of Drug addicts in Punjab

	Epidemiological Determinants	N	(%)
Types of drugs abused	Cannabis and marijuana	2	.5
	Amphetamine type stimulants or other synthetic/pharmaceuticals hallucinogens	27	6.6
	Other opioids excluding heroine	52	12.7
	Heroine	143	35.0
	Multiple Drugs including Heroine, other opioids and ATS type hallucinogens	185	45.2
Co-morbidity diagnosed	None	278	68.0
	Hep-C	87	21.3
	Others	43	10.5
	HIV	1	.2
Injecting drug users	Yes	135	33
	No	274	67
Severity of abuse	Mild	26	6.4
	Moderate	93	22.7
	Severe	290	70.9
Hospitalisation in past one year	Yes	81	19.8
	No	328	80.2

Source: cross-sectional survey conducted in public de-addiction centres

Who abuse what type of drug in Punjab?

There are some psychoactive substances such as cannabis, Opioid and alcohol whose consumption is a cultural aspect in many regions of India. However, the extent is not very well documented. According to a report by MoSJE, alcohol is most consumed licit substance in India followed by tobacco. However, the usage of illicit substance in India is also problematic as per the report. The most common substance abused are illegal cannabis (ganja and charas), Opioids (opium: poppy husk, doda, phukki, heroin) including pharmaceutical Opioids (Ambekar A, 2019). The abuse of pharmaceutical sedatives and inhalants are also rampant in India. There are other categories of illegal drugs including cocaine, Amphetamine Type Stimulants and Hallucinogens used in India in small quantity. Table 5 gave a summary on the extent of consumption of different type of illicit drugs in Punjab. It has been found that the real problem is opioid dependence as more than 90 per cent of surveyed addicts were directly or

indirectly dependent on opioids in Punjab. Table 2.6 and 2.7 presents the socio-demographic and economic determinants of drug addiction in Punjab. It has been derived from these tables that age group of 15-59 years are worst affected from opioid dependence, married people are more prone to opioid addiction or it proves the popular notion in Punjab of marrying drug addicts as an avoidance measure, depicting the deep-rooted social problem of Punjab.

Table 6: Socio-Demographic Determinants of Different Type of Drugs Abused in Punjab

		Percentage Abusers in each category				
		Cannabis & marijuana	ATS, pharmaceuticals and other synthetic drugs	Other opioids	Heroin	Heroin, ATS and other
Age group	0-15	-	-	-	0.70	0.54
	15-29	50	25.9	15.4	54.5	44.9
	30-45	50	63	40.4	42.7	45.9
	45-59	-	11.1	32.7	2.1	6.5
	Over 60 years	-	-	11.5	-	2.2
Marital status	Married	50	88.9	94.2	50	71.2
	Unmarried	50	11.1	5.8	47.9	28.3
	Separated/divorced/widow	-	-	-	2.1	0.5
Religious group	Sikh	100	77.8	82.7	70.6	67.0
	Hindu	-	22.2	17.3	28.7	31.4
	Christian	-	-	-	0.7	1.1
	Muslim	-	-	-	-	0.5
Social Group	Scheduled Castes	100	66.7	34.6	39.9	42.7
	General	-	33.3	53.8	54.5	45.4
	Other backward classes	-	-	11.5	5.6	11.9
Area	Urban	100	33.3	50.0	53.8	56.8
	Rural	-	66.7	50.0	46.2	43.2
Household Size	Up to 2 members	-	3.7	1.9	2.8	4.9
	2-4 members	50	18.5	26.9	29.4	31.4
	4-6 members	50	55.6	42.3	48.3	44.3
	6-10	-	22.2	26.9	14.7	16.8
	Over 10 members	-	-	1.9	4.9	2.7

Source: Primary Survey

Table 7 Economic Characteristics of Different Type of Drug Abusers in Punjab

		Percentage Abusers in each category of drugs				
		Cannabis & marijuana	ATS, pharmaceuticals and other synthetic drugs	Other opioids	Heroine	Heroine, ATS and other
Type of the Household	Self-employed in non-agriculture occupation	-	7.4	5.8	16.1	12.4
	Agriculture labour	-	3.7		2.8	2.7
	Other labour	50	59.3	57.7	52.4	56.8
Usual activity status	Self-employed in agriculture	-	22.2	28.8	18.2	17.3
	Others/salaried class	50	7.4	7.7	10.5	10.8
	Self employed	-	3.7	13.5	15.4	13.0
	Employer	-	3.7		3.5	1.1
	Salaries	-	18.5	9.6	20.3	21.1
	Casual worker	100.0	70.4	67.3	46.2	50.3
	Unemployed	-	3.7	7.7	12.6	12.4
	Student	-	-		1.1	0.5
	Pensioner	-	-	1.9	-	-
	Disabled	-	-	-	-	-
Land owned by the household	Others	-	-	-	0.7	1.6
	No land	100	69.0	60.0	70.3	67.0
	Marginal	-	3.4	5.5	5.1	0.5
	Small	--	13.8	9.1	7.2	8.0
	Medium	-	6.9	12.7	8.7	12.2
Education	Large	-	6.9	12.7	8.7	12.2
	Illiterate or below primary	-	29.6	26.9	6.3	12.4
	Up to primary level	-	0.0	15.4	4.9	7.6
	up to middle level	50	33.3	30.8	18.9	22.2
	Senior/matric	50	14.8	5.8	29.4	22.7
	Secondary	-	18.5	15.4	25.9	21.1
	Higher level	-	3.7	5.8	14.7	14.1

Source: Primary Survey

Discussions

Illegal drug abuse and addiction is one of the major problem faced by many countries across globe. The situation in India and in Punjab particularly is alarming. There are various popular media reports and other open information sources in addition to orderly efforts of governments and civil societies suggesting the high rate of drug addiction in the state. Rampant drug addiction leads to a disease prone society with huge impact on overall labour productivity of the economy. The impact of drug abuse is clearly realised in workplace, family system and the society. In addition to the huge social and economic loss, the problem gives rise to crime rates, gang wars, petty thefts and incarceration rates and huge burden on justice system.

Present study focussed on measuring the determinants of drug abuse in Punjab with special focus on opioid based drugs. The study found that most drug addicts in the most productive age group of 18-35 years, the loss in terms of productivity also termed as economic burden is very high in Punjab. The damage to the physical and mental health of drug addicts is also a serious concern. Other studies such as Ambekar (2019) and Sharma B et.al. (2017) have previously tried to measure the extend and dimensions of drug addiction in Punjab and similar trend was found too. While the study by Ministry of Social Justice and Empowerment basically touched the “prevalence” aspect of drug addiction in Punjab and the later study was limited to rural Jalandhar district of Punjab. Thus, present study has added value of measuring dimensions with a wider area and scope. Present study found that most of the addicts in Punjab are dependent on “multiple drugs including heroin”, which includes pharmaceutical supplement drugs for heroin, followed by dependence on “only heroin” and “other opioids”. Thus, present study highlights the “synthetic opioid crisis” of Punjab and alarms the rising trend of pharmaceutical based drug addiction. Various other studies such as Chavan et al. (2019) also showed similar opioid addiction trends in Punjab. Present study highlighted the economic factors driving the youth into drugs in Punjab. Study has found that agriculture labourer class is the most prone to drugs. Further studies to unearth the possible reasons of this drive may be conducted in future. Preliminary inspection during survey interviews suggested that the disguised unemployment and easy availability in rural areas may be a primary cause of this trend.

In the present study it has been found that around 33% of addicts use needles to inject drugs directly into blood, around 21% addicts are suffering from co-morbidity crisis of hepatitis-C and other 10% from other infectious diseases. This shows a dangerous health crisis and health burden on resources of Punjab. Surprisingly, most of the drug addicts are educated up to secondary levels (73%)., landless (68%) followed by medium and large landholders (23%), casual workers (52%) and

unemployed (11%) and belongs to Labour households. The need for educational and curriculum reforms are also need of the hour in Punjab.

The study could have under-reporting because of limitations to male addicts only and coverage of public de-addiction centres only. However, present study gives definitive impressions regarding pattern of drug abuse in Punjab. More studies with wider scope are required to compare data and to generalise for whole state.

IV. Conclusions and Suggestions

The menace of drug abuse and addiction among the productive aged youth in Punjab is matter of grave concern. The issue is even more serious as majority of them are abusing harmful opioids, mainly heroin. Striking observation of this study relates to rising usage of ATS type drugs along with heroin and rate of IDUs and the related co-morbidity among youth.

V. Recommendations

Government should implement the long term supply curb policies with strict enforcement laws, community participation for awareness of youngster with proper backend linkages; revamp treatment services for more coverage, quality and long term rehabilitation. Various non-government organizations and non-profit organizations can be involved to fasten civil society participation. Moreover, flow of information between health workers, policy makers, civil society and educational institutions for planning prevention and rehabilitation activities should be increased. A holistic approach starting from educational awareness, employment oriented policy decisions, modern rehabilitation facilities, reformed family and social structure along with highly efficient health care system is need of the hour in Punjab.

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**Trend of Trading: A History of Joint-Stock Companies in
Colonial Punjab C.E. 1866 - 1901 C.E.**

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Abstract

Today the era of technology has a profound impact on almost every aspect of our lives. The rapid rise of online trading has encouraged many people to begin investing in the stock markets. Technology has made it very easy to invest in the stock market. Due to this, the trend of investing in the stock market is also increasing among the Indians. However, the number of Indian people investing in stock marketing is very low compared to other Western countries. It is due to a lack of proper financial literacy, a conservative attitude, a preference towards physical assets and a lack of trust. It was in the nineteenth century that Indians started investing in joint-stock companies through the influence of European enterprises. However, our main object in this article is to know about the main joint-stock companies in colonial Punjab from 1866 to 1901, their main works and their paid-up capital.

Keywords: *Punjab, Capital, joint-stock, Company*

Introduction

There are records of joint-stock companies being formed in Europe as early as the thirteenth century. However, they appear to have multiplied at the beginning of the sixteenth century when adventurous investors began speculating on opportunities to be found in the New World which led entrepreneurs to devise a business plan. They would sell shares of their ventures to many investors to raise capital to invest in voyages to the New World. The potential for resources to be exploited and trade to be developed was attractive to many investors. Though it is not possible to discover the instances of the joint-stock companies in England before the middle of the sixteenth century at the same time it must be recognized that before that date there were tendencies that would make its ultimate establishment inevitable.¹ It is still the leading theory that the joint-stock principle originated in Italy. Professor Holdsworth may be considered as representative of this view as he said “There can be little doubt that the origin of

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¹ C. Walker, “The History of the Joint Stock Company”. *The Accounting Review*, 6 no. 2 (1931): 97–105.

the joint-stock principle, like the origin of so many other principles of our commercial law, must be sought in medieval Italy.”² There were two main lines of development which might result in the formation of joint-stock bodies. These were the medieval partnership and the growth of the idea of a corporation. The canonist theory on the use of capital discouraged loans while it encouraged the formation of a partnership.³

Muscovy Company, the first English joint-stock company, was formed in 1555 A.D. In this company, capital remained regularly in use instead of being repaid after every voyage. In Europe, the other famous companies that were formed at the beginning of the seventeenth century to trade in different continents were as United East India Company (VOC Dutch Company), Danish East India Company, English East India Company, Virginia Company and these were the all-joint stock companies of Europe.⁴ However, such a tendency to invest capital through market and partnership for starting a business was less common among Indians at that time. Indians did business only with their capital. The other fact is that the cost of capital in India was very high. Due to this major factor, there was no encouragement to establish such joint-stock bodies in India.⁵

Tirthankar Roy in his book *A Business History of India* throws light on the cost of capital in India. The emanation of large-scale transnational trading firms required raising big capital. Also, industrialisation needed even bigger amounts of capital that would stay locked up in machines for a long time and the same required managing technology. Even Large-scale production of goods and services is needed to manage a large and specialised workforce and reach out to unknown customers. Development in transportation systems spread trade geographically and made firms mobile and multi centred. Successful adaption to these challenges could build up the capacity of the firms to make investments, increase productivity offer high wages, and create jobs and in these ways lay the foundation for what Simon Kuznets called ‘modern’ economic growth.⁶ Some of these problems were particularly challenging in India: trade costs were high; the capital was costlier; there was no indigenous industry making machines; artisanal tools were simple in construction; artisanal skills were manual rather

² M. Schmitthoff, “The Origin of the Joint-Stock Company”. *The University of Toronto Law Journal*, 3 no. 1 (1939): 74-96.

³ C.Walker, *The History of the Joint Stock Company*, 97-105.

⁴ Britannica, The Editors of Encyclopaedia. "Muscovy Company". *Encyclopaedia Britannica*, 1 Aug. 2013, <https://www.britannica.com/topic/Muscovy-Company>. Accessed 26 February 2023.

⁵ T. Roy, *A Business History of India: Enterprise and the Emergence of Capitalism from 1700* (New Delhi: Cambridge University Press, 2018), 9-10.

⁶ Ibid.

than mechanical in character; and labour was tied to land. In the mid-1600s, 'good credit did not bring much over 6%' in England. Interest rates in contemporary India were double as in the major financial centres in Europe. There was no long-term tendency in interest rates between 1660 and 1760.⁷

Shireen Moosvi in her work, *'People, Taxation and Trade in Mughal India'*, mentions that the nominal interest rate dropped somewhat (from 18 to 24 percent modal rate to about 12 per cent) through the seventeenth century. But 12 percent for a trade loan was still high. Indian bankers charged 30-40 per cent on credit to their clients and European businesses also borrowed loans on 17 to 18 per cent interest from Indian bankers.⁸ It is due to such a high-interest rate that the cost of capital in India was very high. The introduction of the joint-stock company helped entrepreneurs to pool in public capital and limited liability limited the owners' risk. The principle of joint stock came into India through European enterprise but it was consolidated via state intervention.⁹

I

As a legal entity, the joint-stock company came to be recognised in India for the first time in 1850 when the country's earliest company act was passed.¹⁰ *The New Oriental Life Insurance Company* was the first company to be registered under the Indian Joint-Stock Companies Act 1850 on 16 June 1851 in Bengal. This act did not offer limited liability to its members and authorised any seven or more shareholders to register themselves as a company.¹¹ Registration as a company created the legal 'fiction' that the company had a separate existence apart from its shareholders. It also permitted the shareholders to transfer their shares to anyone without securing the approval of the rest of the shareholders. The company's form of organisation, however, did not get instant popularity, since the shareholder's liability remained unlimited until the limited liability principle was given recognition through another Joint-Stock Companies Act of 1857.¹² However, it was only from January 1859 that companies outside Bengal began getting registered. By December 1860 companies had been registered in

⁷ Ibid. 10.

⁸ S. Moosvi, (2018), 'The Indian Economic Experience 1600-1900: A Quantitative study' in *People, Taxation and Trade in Mughal India*, New Delhi: Oxford University Press, 30.

⁹ Roy, *A Business History of India*. 14.

¹⁰ D. Bhattacharyya, *A Concise History of Indian Economy: from the Mid-Eighteenth Century to the Present Day* (New Delhi: Prentice Hall Pvt. Ltd, 1989), 129.

¹¹ S. Jaganathan, *Corporate Disclosures: The origin of Financial and Business Reporting 1553-2007 A.D* (New York: Routledge, 2019), 29.

¹² Bhattacharyya, Op. cit.p. 130.

Bombay, North-West provinces and Madras.¹³ Up to 1860 sixty companies had registered themselves under the Companies Act.¹⁴

II

However, in Punjab, under the Joint-Stock Companies Act of 1850 and 1857, proof of registration of any joint-stock company in Punjab is not available. The trend of the formation of joint-stock companies in Punjab is found after the formation of the Indian Companies Act of 1866. In 1872 there were eleven companies in Punjab, registered under Act X. of 1866; of which three were banks, three were engaged in agricultural pursuits, three were clubs or hotels, one was a brewery and one was a slate company.¹⁵ After a decade in 1882, twenty companies survived in Punjab but seven companies had towound up their functions.¹⁶ Hence, it can be seen that during 1851-1882 joint-stock companies in Punjab were negligible as compared to other regions of India. In these sixteen years from 1866-1882, only twenty joint-stock companies were functioning in Punjab. Here we are given a table which shows the pattern of regional growth of companies between the years 1851-1882.

Table 1: Number of Companies Registered in Different Regions, 1851-1882

Regions	Number of Companies 1851-1882	Percentage of Total
1. Bombay	370	32.1
2. Bengal	380	33.1
3. Madras	215	18.7
4. Punjab	20	1.8
5. Others	164	14.3
	Total:1149	Total:100

Source: - Rungta, Radhey Shyam, *The Rise of Business Corporation in India 1851-1900*, Cambridge: Cambridge University Press, 1970, p.112, *Report on the Administration of the Punjab and its Dependencies for the Year 1881-82*, p.114.

¹³ R. S. Rungta, (1970). *The Rise of Business Corporation in India 1851-1900* (Cambridge: Cambridge University Press, 1970), 46.

¹⁴ Bhattacharyya, Op. cit.

¹⁵ *Report on the Administration of the Punjab and its Dependencies for the Year 1871-72*, Lahore: Government Civil Secretariat Press, 1872, 175.

¹⁶ *Report on the Administration of the Punjab and its Dependencies for the Year 1881-82*, Lahore: Government Civil Secretariat Press, 1882, 113-114.

It is clear from the data given in the above table that there were not many joint-stock companies in Punjab till 1882. Apart from these companies some companies also ended their ventures in Punjab. Even till 1900 in Punjab, the number of these joint-stock companies did not increase much. In 1900 at the end of the year, seventy-seven joint-stock companies were registered in Punjab out of which sixty-three companies were working and fourteen had wound up.¹⁷ After one year in March 1901, there was a huge decline in the number of these companies and this number was limited to fifty only. On the other side, the years between 1882 to 1901 were for the great development of corporate enterprise in India. But this development mainly concentrated in three provinces Bengal, Madras and Bombay.¹⁸ However, if we talk about Punjab, then from 1882 to 1901, the number of joint stock companies in Punjab also increased more than twofold.

III

Every year many companies gave up and end their functions. Now let us see what were the problems faced by the companies and what factors were responsible for winding up their functions. A good number of companies failed to efficiently conduct their business in accordance with the provisions of the act and frequent reminders were issued from the Registrar's office which sometimes were accompanied by threats of levy of a penalty. These omissions occurred principally owing to the want of cohesion in the companies and the neglect to draw up proper rules of business, also lack of proper legal advice and only some superficial knowledge of the provisions of the act made the situation worse. Some companies also wound up due to the orders of the court because they did not function according to the law. Sometimes, companies did not submit their return regularly to the Registrar's Office and ignored the numerous reminders given by the government. For instance, *The Commercial Bank of Upper India, Limited* was dissolved by the orders of the Government because it did not submit its returns to the office of the Registrar of joint-stock companies.¹⁹ Another company *The Northern India Trade Association* became defunct during 1888 by the gradual withdrawal of all its members. It was not formally dissolved, but with the sanction of the Government, was struck off from the register as non-existent.²⁰ In some cases, companies were wound up because their number of shareholders was

¹⁷ *Report on the Administration of the Punjab and its Dependencies for the Year 1899-1900*, Lahore: Punjab Government Press, 1901, 153.

¹⁸ R.S. Rungta, Op. cit. 148.

¹⁹ *Report on the Administration of the Punjab and its Dependencies for the Year 1887-1888*, Lahore: Punjab Government Press, 1889, 99.

²⁰ Ibid.

less than that required by the act. For example, *The Punjab Printing Company* was wound up in 1872 by court orders because their shareholders were less than that required by the Act.²¹ Sometimes the case of fraud was also alleged against the joint-stock companies.

IV

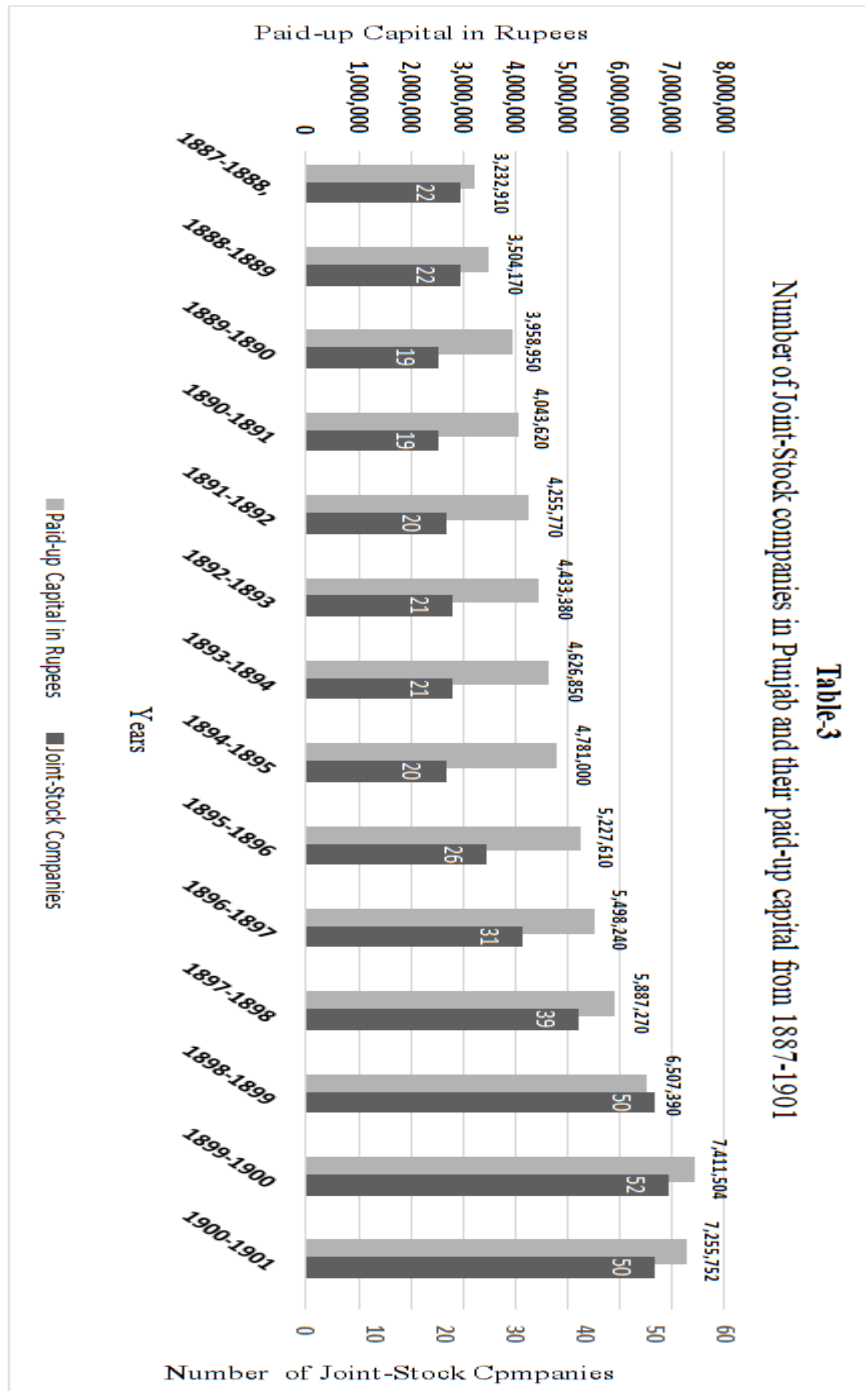
In the next table how much, paid-up capital was invested in the joint-stock companies of Punjab and other regions of India till March 1901 has been depicted.

Table 2: Regional Distribution of Companies, March 1901

Regions	Number of Companies	Paid-up Capital (Rs)
1. Bombay	342	15,60,33,551
2. Bengal	398	15,47,11,734
3. Madras	361	2,43,56,104
4. Mysore	88	28,25,249
5. Berar	3	1,45,000
6. C.P	12	30,59,058
7. Punjab	50	72,55,752
8. Ajmer- Merwar	9	9,98,275
9. N.W.P & Oudh	75	1,71,97,630
10. Assam	6	1,90,433
11. Burma	22	38,57,100
	Total: 1366	Total: 37,06,29,886

Source: - Rungta, Radhey Shyam, *The Rise of Business Corporation in India 1851-1900*, Cambridge: Cambridge University Press, 1970, p. 150

²¹ *Report on the Administration of the Punjab and its Dependencies for the Year 1871-1872*, Lahore: Government Civil Secretariat Press, 1872, 175.



Source: Financial and Commercial Statistics of British India for the Years 1899 and 1904.

Table - 4

Working and winding up joint-stock companies in Punjab in different years

Type of Companies	Working companies				Wind up companies			
	1887-88	1891-92	1895-96	1899-1900	1887-88	1891-92	1895-96	1899-1900
1. Banking, Loan, and Insurance companies	3	4	4	6	2	1	Not Available	2
2. Trading companies	12	5	6	15	0	2	-	7
3. Mills and Presses	2	6	10	26	1	0	-	3
4. Tea and other Planting companies	1	1	1	1	0	0	-	1
5. Mining and Quarrying companies	1	2	1	1	0	0	-	0
6. Ice Manufacturer	1	1	1	1	0	0	-	0
7. Breweries	1	1	1	1	0	0	-	0
8. Sugar manufacturer	0	0	0	1	1	0	-	0
9. Other Joint-stock companies including companies limited by guarantee	1	1	9	11	0	0	-	1
10. Associations other than joint-stock companies	3	4	-	0	0	1	-	0
	25	25	33	63	4	4		14

Source: - Report on the Administration of the Punjab and its Dependencies for the years 1887-1888, 1891-1892, 1895-1896, 1899-1900.

Most of the paid-up capital was invested in joint-stock companies of Punjab in the category of Mills and Presses. Under this category, the figure of paid-up capital often reached up to or approached the nominal capital. About thirty companies altogether were doing business under the head 'Mills and Presses' and the total number of companies doing all kinds of work was fifty at the end of the year 1901. Approximately 72.5 lakhs of paid-up capital were invested in all fifty joint-stock companies of Punjab and out of this thirty-eight-lakh paid-up capital was only invested in mills. Nevertheless, the joint-stock companies and their paid-up capital increased by more than two-fold from 1887-1901.

V

During the colonial period, all joint-stock companies in Punjab were categorised into different sections. Firstly, the section of Banking, Loan, and Insurance companies had six companies that worked in Punjab in 1899 and these were '*The Shimla Bank Corporation, Limited; The Alliance Bank of Shimla, Limited; The Native Commercial Bank, Limited; The Kayasth Mercantile and Banking Company, The Diamond Jubilee bank, Limited* etc. Some of the companies in this section used to lend money, buy and sell *hundis*, do all kinds of banking business, commission agencies, life and fire insurance and other allied businesses.²² *The Alliance Bank of Simla, Limited* commenced business at Shimla on 23rd March 1874 and soon became a prosperous institution. The bank was established to take the place of the United Bank of India, Limited, which had commenced business at Shimla and Ambala in 1866. The later bank never attained much success. In 1873 steps were taken to revive the fortunes of the United Bank of India by appointing a new Chairman. However, matters had gone too far for this object to be accomplished and the United Bank was placed in voluntary liquidation on 21st March, 1874. This liquidation led to the establishment of Alliance Bank of Shimla as it had bought the shares of the liquidated bank and hence it commenced its operation after two days i.e., 23rd March, 1874. The Alliance Bank started with a capital of Rs. 5,00,000 of which Rs. 2,50,000 was issued to commence with. One-half was taken up by the public and the other half was allotted to shareholders of the old United Bank of India. The Alliance Bank opened branches at Muree in 1877, at Lahore in 1878 and at Ambala in 1885. The Alliance Bank also liquidated the Himalayan Bank, Mussoorie and Lloyd's Bank, Darjeeling and opened branches at both places in 1891 and 1896, respectively.²³

²² *Report on the Administration of the Punjab and its Dependencies for the Year 1879-1880*, Lahore: Punjab Government Civil Secretariat Press, 1880, 107; *Report on the Administration of the Punjab and its Dependencies for the Year 1898-1899*, 160.

²³ S. Playne, (1917-1920). *The Bombay Presidency, The United Province, The Punjab Etc: Their History, People, Commerce and Natural Resources*, London: Foreign and Colonial Compiling and Publishing company, 564-566

The other section of joint-stock companies was ‘Mills and Presses’ and in this section various cotton and woollen mills, spinning and weaving, press and ginning, and flour mills worked in Punjab. *The National Silk and Woollen Mills, The Oriental Cotton and General Mills Company, The Hindu Cotton Press Company, The Diamond Jubilee Flour Mills Company, Limited; The Ganesh Flour Mills Company, The Delhi Cloth and General Mill Company, Limited; The Egerton Woollen Mills Company, The Bannu Sugar Manufacturing Company, Limited.* etc are examples of some important joint-stock mills and presses of Punjab during that time.²⁴ In India the words *Dhariwal* and *The New Egerton Woollen Mills Company Limited* were synonyms. Dhariwal is situated in Bari Doabin the Gurdaspur district of the Punjab. This company was started in 1889 when it took over the premises and goodwill, such as it was, of The Egerton Woollen Mills, in Liquidation. The principal output of this company comprises woollen and worsted yarn, woollen and worsted fabrics etc and the property of the company spread over 350 acres of land. The power necessary to drive the enormous plant of the mill was derived mainly from the Bari Doab Canal, which via the company’s own waterways constructed at a cost of Rs. 5,00,000 actuated a series of large and powerful water turbines. This company gave employment to more than 2500 Indian men, women and children and provided various facilities to them. The company opened a school for Dhariwal workers. The Dhariwal Co-operative Credit Society was another institution inaugurated by the company for the benefit of all classes of its workers.²⁵ On the other side, there were some hindrances faced by the wheat mills of Punjab and the rest of India. One of the main hurdles in the expansion of the wheat mills was the excessive freight charges imposed by the Railway companies. Indian Railway traffic managers granted distinctly preferential rates to the Indian Mill owners for the wheat that had to be exported as compared with the rates charged on wheat consumed in Indian mills which were not situated at ports of shipment for overseas.²⁶

In the section of Brewery, *The Murree Brewery Company* was the only company registered in this category from 1866 to 1901. This company was established in 1860 at *Ghora Gali*, near the resort town of *Murree*.²⁷ The Brewery was established by General Proby Thomas Cantley, Lieutenant Colonel

²⁴ *Report on the Administration of the Punjab and its Dependencies for the Year 1898-99*, p. 160; *Report on the Administration of the Punjab and its Dependencies for the Year 1891-1892*, 136; *Report on the Administration of the Punjab and its Dependencies for the Year 1880-1881*, p.166; *Report on the Administration of the Punjab and its Dependencies for the Year 1897-1898*, 181.

²⁵ S. Playne, *The Bombay Presidency, The United Province, The Punjab Etc: Their History, People, Commerce and Natural Resources*, 646-653.

²⁶ *Ibid*, 666.

²⁷ <http://murreebrewery.com/history/>

Oliphents, and several others, with Edward Dyer as the Manager (father of infamous General Reginald Dyer) and his family being much involved in its operation.²⁸ This company was started with a Rs. 2,00,000 subscribed capital and brewing was commenced in 1861, but very little progress was made until 1870, when the Government first granted a formal contract to the company for the supply of beer to the British troops cantoned in the vicinity. In 1889 the other plant of this company was established in Rawalpindi. The malt for Ghora Gali and Rawalpindi Breweries was made from Barley grown in Hazara and Rewari districts. Hops were imported from England, Bavaria, California, and France.²⁹ After the partition of India, this company remained the only legal brewery company of Pakistan for many years and presently this company is still existing and working.

Recently tea of KangraValley received GI (geographical indication) registration with the European Union, paving the way for its sale in European countries.³⁰ In the section of tea and plantation, there was only one company 'Kangra Valley Tea Company' and the tea of this company was very popular. In London, there was only one depot where the people could obtain the pure teas of the Kangra Valley. This tea was highly recommended and was guaranteed pure and unmixed. The Gold and Silver medals won by KangraTea in London and Amsterdam markets in the late nineteenth century (1886 to 1895) bear testimony to its quality at the international level.³¹ The credit for the introduction of tea in the KangraValley goes to Dr Jameson, the then superintendent of the Botanical Garden, North West Provinces, Saharanpur. In 1849, Dr Jameson conducted a feasibility survey of the valley and found it suitable for tea cultivation. In the same year, he brought Chinese tea plants from the nurseries at Almora and Dehradun. These were laid down in three government gardens one at Kangra itself and another two at Nagrota and Bhowarna.³² In the beginning, the plantation of tea was on government land but the successful launching of the tea plants in Kangra valley led to the introduction of private enterprise and capital investment. Many outsiders both native and Europeans, approached the government for

²⁸ N. Collett, (2005). *The Butcher of Amritsar: General Reginald Dyer*, London: Hambledon Continuum, 6.

²⁹ *Punjab District Gazetteers, Volume XXVIII A. Rawalpindi District, with Maps*, Lahore: Civil and Military Gazette Press, 1909, 171-72.

³⁰ <https://www.thehindu.com/news/national/other-states/himachal-pradeshs-unique-kangra-tea-registered-for-gi-tag-with-european-union/article66866009.ece>

³¹ S. Brajinder and Sood, R.K. 'History of Tea in India' *Science of Tea Technology*, edited by P.S. Ahuja, Arvind Gulati and others, Jodhpur: Scientific Publishers, 2013, 11.

³² *Gazetteer of the Kangra District, Vol-1 Kangra Proper 1883-1884*, Calcutta: Calcutta Central Press, 186-187.

procuring land for tea cultivation. The tea of Kangra Valley was also popular and was sold in Central Asian and local European or local native markets.³³ In 1872, The Kangra Valley Tea Company was the only company from the valley to be mentioned in the Calcutta share market list. It stood at a ten per cent premium on its paid-up shares with a last dividend being of seven per cent.³⁴ But, during the late nineteenth century, the Kangra tea industries faced many problems which were highlighted by the daily '*Englishman*' in its issue of April 7, 1898, as follows:

“The decline of Kangra tea begins due to high freight charges by Railways, tax imposition by Afghans, discrimination in the revenue charged on tea fields diversified from agriculture, lack of rail link, between Palampur and Pathankot, pending repair of Chakki and Matore bridges and absence of British Counsellor at Nasirbad (Seistan) and the Bir-j-ang for central Asia trade. Further, Russia has also become a major threat by its entry into the tea trade”³⁵

The imposition of heavy duty by Russia and the Amir of Kabul also affected the green tea trade in Central Asia. The retail trade of Kangra tea fell from 5,00,000 lbs to 2,50,000 lbs. On 4th April 1905, a devastating earthquake hit the Kangra Valley which rocked the entire Kangra valley. More than 20,000 people were killed and numerous houses were demolished. The majority of tea manufacturing units were razed to the ground. Some tea areas were destroyed and many were abandoned. As an outcome of this, the Europeans, who pioneered the production and manufacturing of the Kangra tea, sold their plantation at cheaper prices to the locals and left the valley.³⁶

In 1896, the other company name '*The Biscuit Manufactory and General Steam Bakery Company, Limited*' was registered. In this company biscuits, bread, cakes and other articles of confectionary that made by steam power.³⁷ The idea of the establishment of a biscuit factory in Delhi led '*The Delhi Biscuit Company Limited*' to form a biscuit company in the year 1898 under the name of '*The Hindu Biscuit Company Limited*' and only Brahmans and high-class Hindus were employed in this factory so that biscuits were touched by Hindus only. The company enjoyed the patronage of his excellency the Commander-in-Chief in India, the Government of India and of many rulers of native states. This company

³³ *Selection from the Records of the Government of Punjab and its Dependencies*, New series, No- V, Tea Cultivation in the Kangra District, Punjab Printing Company, 1869, 17.

³⁴ *Gazetteer of the Kangra District*, 1883-1884, 192.

³⁵ S. Brajinder and R. K. Sood, '*History of Tea in India*' *Science of Tea Technology*, 14.

³⁶ *Ibid*, 14-15.

³⁷ *Report on the Administration of the Punjab and its Dependencies for the Year 1895-1896*, Lahore: Punjab Government Press, 1897, 142.

also supplied thousands of biscuits during the Coronation Durbar of 1903 and 1911.³⁸ The other important joint-stock companies of colonial Punjab were *The Mackworth Tobacco and Cigarette Company, Limited*; *The Punjab Mutual Family Hindu Relief Fund*; *The Bari Dukan Limited*; *The Punjab Hosiery and General Manufacturing Company, Limited*; *The Punjab Publishing and Stationary Company, Limited*; *The Veda Udharik and General Publishing Company, Limited*.³⁹

Conclusion

In the second half of the nineteenth century, the number of joint-stock companies in Punjab did exist but the number was not too high due to certain reasons. Many joint-stock companies in India belonged to Europeans and these companies were mostly in Madras, Bengal and Bombay from where the companies could easily send their products to Europe by sea route. On the other hand, these centres were connected to the coastal areas by way of railway lines hence the freight charges were also cheap due to which these areas remained the centre of attraction for the capitalists from the business point of view. Whereas in Punjab situation was totally different. Firstly, Punjab became a part of the British empire in 1849 A.D. but the Europeans were already trading in Bombay, Madras and Bengal since the seventeenth century. Railways imposed high freight charges when companies sent products to non-coastal areas or internal markets of India. Such was the situation not only in Punjab but also in other non-coastal states of India where the number of joint-stock companies was less as compared to the coastal areas. The other reason was that the main markets of India for exporting goods were located in Bombay, Calcutta and Madras which were far away from Punjab due to which the freight charges of goods by railways and other means of transport were also very expensive. The British government imposed high taxes on the export of industrial products manufactured by companies owned by Indians whereas, on the other hand, the government gave tax benefits to the companies owned by the British. Apart, from this, the high cost of capital and financial illiteracy was some of the other reasons due to which there were not many joint-stock companies in Punjab during the second half of the nineteenth century.

³⁸ S. Playne, *The Bombay Presidency, The United Province, The Punjab Etc: Their History, People, Commerce and Natural Resources*, 589.

³⁹ *Report on the Administration of the Punjab and its Dependencies for the Year 1897-1898*, Lahore: Punjab Government press, 1899, 181-182.

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**Sedentarization of Gujjar-Bakarwals in Jammu Region:
A Case Study of Rajouri-Poonch**

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Abstract

The Gujjar-Bakarwals are the third largest ethnic group in Jammu and Kashmir. Their unique culture and ethnicity gives them a distinguished position in the society of Jammu and Kashmir. They are one of the laborious, hospitable, soft spoken and peace-loving communities inhabiting the region. Different aspects of their life have intrigued the researchers. Sedentarization is a new aspect which needs to be studied thoroughly. Modernization, social awakening and government's programmes have resulted in their socio-economic upliftment which in turn has resulted in the process of sedentarization. This is the culmination of a long process which took place over the years. Rajouri-Poonch area forms the focus of study as the highest population of Gujjar-Bakarwals reside in these two border districts. The present study aims to understand the factors which led to sedentarization of Gujjar-Bakarwals in Rajouri-Poonch area and examine its impact on the community. The study is based on historical method which relies on the primary and secondary sources. In addition, a field survey was conducted in randomly selected settlements of Gujjar-Bakarwals in Rajouri-Poonch with the help of a structured research questionnaire. The samples were taken from both rural as well as urban areas. The questionnaire is based on the aspects of their socio-economic conditions, reasons of sedentarization, impact of sedentarization and their relations with the non-tribals of the same locality.

Keywords: *Gujjar-Bakarwals, sedentarization, tribe, nomads, settlements, socio-economic, militancy, Jammu and Kashmir, forest, education.*

I

Gujjar and Bakarwals belong to the single monolithic group who share the same ethnicity, origin and historical background. They also share the same culture, language, religiosity, mode of life and racial identity. Gujjars mostly rear buffaloes and own some land where they keep themselves engaged in agricultural pursuits. The Bakarwals on the other hand rear sheep and goats and hardly

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possess any land for agriculture. Numerous scholars believe that Gujjars came from Georgia in Russia often known as Gurjistan¹. Gradually, they crossed Suleiman and reached upto Gujarat during fourth-fifth century A. D. Another group of scholars consider Gujjars as aboriginal inhabitants of the Indian sub-continent and descendants of the Kshatriya families.² From fifth to eleventh century, the Gujjars ruled over the different parts of North-Western region of India.³ The establishment of Delhi Sultanate led to the downfall of Gujjars in the early thirteenth century. Various campaigns were launched against them from thirteenth to sixteenth century and this period is termed as ‘Age of Resistance of Gujjars’. Thereafter, some Gujjars continued to live in different parts while some moved to other areas where they established their own principalities and came to be known as ‘*Bud Gujjars*’. They moved to different parts to reach Uttar Pradesh, Haryana, Punjab and Himachal Pradesh. They also migrated to Jammu and Kashmir after getting defeated in Gujrat during the conflict for power to the throne. Draughts and famines in Gujrat also accelerated their migration. The search for new meadows and pastures for their cattle resulted in their settling in hilly areas. Since a large number of them had converted to Islam, they preferred to settle in Muslim dominated region of Jammu and Kashmir which also provided habitat and fodder for their cattle. The Gujjar-Bakarwals therefore set up their settlements in Jammu and Kashmir along the Mughal road in Rajouri-Poonch area. They lived a life of ignorance and backwardness as a result of which they were given the status of Scheduled Tribe (ST) in 1991 by the Government of India.⁴

The available figures of population of Gujjar-Bakarwals are generally based on the Gojri speaking people. On the base of this fact, it is difficult to get the accurate figures of their population. This number varies from ten lakhs to fifteen lakhs. The Gujjar-Bakarwal comprise about 25% of the total population of the erstwhile state of Jammu and Kashmir.⁵ According to the census report of 1931 they were 4,02,728 in number while their population declined to 3,81,457 in the census of 1941. The reason behind this decrease has not been analyzed by the Government so far. The census reports of 1961 and 1971 do not give a

¹ Javaid Rahi, *The Gujjar Tribe of Jammu and Kashmir* (Srinagar: Gulshan Books, 2011), 14-15.

² Rana Ali Hassan Chauhan, “Gujjars: A historical Perspective,” in *Gujjars of Jammu and Kashmir*, eds. Khulbushan Warikoo and Sujit Som (New Delhi: Himalyan Research and Cultural Foundation, 2000), 13-14.

³ Rahi, *The Gujjar Tribe of Jammu and Kashmir*, 16 & 55.

⁴ Rana Ali Hassan Chauhan, *A Short History of The Gujjars* (Jammu: Gurjar Desh Charitable Trust, 2001), 204 & 222.

⁵ A. N. Bharadwaj and Avneet Kour, *Gujjars: History and Culture* (Jammu: Jay Kay Book House, 2023), 94-96.

satisfactory number of their population. The census report of 2001 enumerated officially the Scheduled Tribes residing in the state of Jammu and Kashmir and recorded a population of 11,05,979 of which the Gujjar-Bakarwals were 8,24,530 in number. They comprised around 10.90% of the total population. According to the census report of 2011, the total population of Gujjar-Bakarwals accounts to 10,93,852. Most of the Scheduled Tribes of Jammu and Kashmir belong to Gujjar-Bakarwals. Out of total 14.9 lakh Scheduled Tribes counted in Jammu and Kashmir in 2011, 9.8 lakh were Gujjars and 1.1 lakh were Bakarwals. It is pertinent to mention that the claim of Gujjar-Bakarwals activists is that the accurate figures of their population is yet to be ascertained. This should be done during winters as in summers, most of the Gujjar-Bakarwals migrate to upper reaches along with their cattle.

Gujjar-Bakarwals constitute the third largest ethnic group in Jammu and Kashmir and are found in almost every district of Jammu and Kashmir. Valleys of *Pir Panjal* and *Shivalik* hills are ecologically suitable for their nomadic pastoral life. In Kashmir region, they are concentrated in the valley of Larin Kangan of Ganderbal district, Uri, Handwara and Karnah in Baramulla district, Lolab Valley of Kupwara District, Pahalgam, Dakshum and Kokernag in Anantnag District, Sadau and Killer in Shopian District. In Jammu Region, they are found in Gharota, Jahri, Jandrah and Bathindi. A locality known as Gujjar Nagar in Jammu is named after them. In district Reasi they have their settlements at Gool, Gulabgarh, Poni and Mahore etc. In Doda district, they are found in Bhalessa and adjoining areas of Bhaderwah. In Kishtwar district, they are found in Dool, Paddar and Chatroo areas. They are also found in the upper hills of Kathua and Udhampur districts and adjoining areas of Samba district.

Rajouri and Poonch districts have the highest population of Gujjar-Bakarwals. In Rajouri they are concentrated in Peeri, Prori, Sokar, Kurhed, Panihad, Kakora, Tarkasi, Janglanoo, Liran, Kothra, Nadian, Badhanoo, Chowdhary Nar, Dhanour, Plangarh, Alal, Mangota, Panghai, Fatehpur, Dodassan Bala, Naka Panj Grian, Bagla, Sialsui, Dhalote and Tareru. In Poonch, they live in Mankote, Kalaban, Gursai, Chajla, Parat, Surhoti, Bandi Chechian, Changarh, Khanetar, Gonthal, Shindara, Hari, Marhote, Kalayi, Kallar Kattal and Lassana areas. The language, customs, dress, social organization and economic activities of Gujjar-Bakarwals are different from the other people residing in Jammu and Kashmir. They are known for their bravery, courage, laborious and hospitable attitude. They are God-fearing people who have affinity for their environment including their cattle, jungles, pastures, and tracks used during their seasonal migration. They are also superstitious.

Table 1: - Distribution of Scheduled Tribe Population in rural and urban (area under municipal corporation) in Rajouri.

Tehsil	Total Population	Scheduled Tribe (ST) Population	% of Scheduled Tribe (ST) Population
Rajouri (Rural)	161535	73921	45.76
Rajouri (Urban)	18742	1867	9.96
Darhal	38595	14179	36.37
Thanamandi (Rural)	65942	31436	47.67
Thanamandi (Urban)	4447	489	10.99
Kalakote	76043	34326	45.14
Budhal	125671	73340	58.35
Nowshera (Rural)	77294	15469	20.01
Nowshera (Urban)	4624	170	3.67
Sunderbani (Rural)	60163	5872	9.76
Sunderbani (Urban)	4256	0	0

Source: - Census of 2011 and Tribal Research Institute.

The basic unit of social structure among the Gujjar-Bakarwals comprises clan (*gotra*) and the lineage (*dada-potra*). The entire community of Gujjar-Bakarwals is divided into a number of clans which is based on the belief of common descent.⁶ Some of them use their gotra as suffix to their name e.g. Kassana, Lodhi, Gors. The house hold or family is called *Dera* which is the basic unit of this tribe. Usually *Dera* is established when a person sets up an independent household. In Gujjar-Bakarwals community, a son establishes his own *Dera* when he gets married. Early marriages are prevalent.

⁶ S.P. Vaid, *How Partition Rocked Jammu and Kashmir* (Jammu: Shyama Publications, 2019), 41-61.

Table 2: - Distribution of Scheduled Tribe Population in rural and urban (under municipal corporation) in Poonch.

Tehsil	Total Population	Scheduled Tribe (ST) Population	% of Scheduled Tribe (ST) Population
Haveli (Rural)	103246	53840	52.14
Haveli (Urban)	21576	2928	13.57
Mandi	75580	17469	23.11
Surankote (Rural)	112644	49725	44.14
Surankote (Urban)	5475	855	15.61
Mendhar	134225	52789	39.32

Source: - Census of 2011 and Tribal Research Institute.

The literacy rate is still very low which forms the main reason for their backwardness. In recent years, some members have started educating their children to live a settled life as other communities. However, majority of them still continue to lead a nomadic life moving seasonally along with their cattle.

In this community, education of girls is the most pressing problem. Extreme poverty, traditional and orthodox beliefs, illiteracy and lack of educational facilities are the primary factors due to which children are not sent to schools. Those who chose to educate their children prefer to send their boys to schools. The practice of early marriages of girls also prevent them from receiving education.⁷

Poverty, successive pregnancies and a large number of children and lack of nutritious food have a negative impact on women's health.⁸ Women believe in superstitions and lack of education results in their following myths. Menstruation

⁷ Kavita Suri & Permilla Raina, "A Study of Educational Status of Tribal Bakkarwal Children of Kalakote Block in Rajouri District of Jammu and Kashmir," *Asian Journal of Multidisciplinary Studies*, 4, no. 11 (2016): 72-81.

⁸ Intiyaz Hussain, "Gujjar Women's Identity in Trouble," in *The Gujjars: Book Series on History and Culture of Gujjar Tribe* (Vol. 1), eds. Javaid Rahi (Jammu: J&K Academy of Art, Culture and Languages, 2012), 67-71.

is regarded as a shameful and disrespectful subject among Gujjar-Bakarwal women, and sanitary pads are viewed as a social taboo.⁹ They generally use a piece of cloth as an absorbent material during periods, often without following necessary washing and drying procedures. They follow their beliefs and taboos surrounding menstruation like not handling cooking utensils, bathing, or looking in the mirror.¹⁰ The fear of suffering humiliation at the hands of elder women prevent the younger girls from bathing during their periods. As their mothers are uneducated, the girls lack basic knowledge about hygiene and sanitation which leads to larger incidence of diseases amongst them. Lack of basic health care facilities also cause problems for women. Pregnant women residing in the upper reaches of Jammu and Kashmir have to travel long distances to reach the hospitals. Some women give birth before reaching the hospitals while some die along the journey.

In addition to managing all household activities, women are responsible for livestock care, dairy product management, and poultry keeping. Their participation in decision-making is limited, with the male head of the family taking decisions about education, job, and marriages.¹¹ The patriarchal nature of the community limits women's independence, and they are unable to go out of the house or work in any place of their own choice. They are unaware of their rights and suffer from domestic abuse and violence. The existence of polygamy makes matters worse for women. They are unable to seek legal and social help due to lack of socio-legal organizations. Also, since divorce is considered as a stigma, women prefer to silently bear ill-treatment from their husbands.¹²

Militancy has far-reaching consequences for women in the community. They have experienced psychological trauma as well as problems like rape, displacement, loss of family members, and threats to their safety and well-being. Despite adversity, the Gujjar-Bakarwal women of Hill-Kaka and Marrah villages in Poonch district organized a women's wing of the Village Defence Committee

⁹ Shazia Chaudhary, "Lacking Awareness on Menstrual Hygiene," *Daily Excelsior*, January 30, 2022.

¹⁰ Saqib Mugloo and Shefali Rafiq, "Kashmir's tribal women suffer from very poor menstrual health," *Open Democracy*, May 28, 2022.

¹¹ Wasia Hamid, Tanveer Ahmad Khan & Mohd Saleem Jahangir, "Autonomy and Decision-Making Ability Among Gujjar Women of Kashmir: A Study of Khan Sahib Tehsil in District Budgam," *Indian Journal of Gender Studies*, 28 no. 1 (2021): 90-103.

¹² Anita Sharma, *The Bakarwals of Jammu and Kashmir: Navigating through Nomadism* (New Delhi: Niyogi Books, 2009), 48-49.

(VDC) in 2002 and have demonstrated great courage and perseverance in fighting and expelling the militancy from their respective villages.¹³

II

On the basis of their migration pattern and socio-economic conditions they are broadly classified as sedentarised group, semi-sedentarised group and nomadic group. Sedentarised group includes those who have almost given away the practice of seasonal migration and have settled in both urban as well as in rural areas. They have attained better economic status and depend on agriculture, trade and commerce. The semi-sedentarized group of Gujjar-Bakarwals consist of those families who have adopted an intermediate mode of life between sedentarized and Nomadic group. They are neither fully settled nor fully nomadic in nature. The field survey carried out reveals that majority of the Gujjar-Bakarwals population belongs to this group. They reside mostly in villages at the foot hills of mountains during the months of winters whereas during summers, they migrate to high altitudes in the pastures (*Dhoks*) along with their cattle. They do not move with their entire family. Some members of the family stay back at their homes (*Kacha* houses) in villages to look after the agricultural pursuits and the education of their children. The Nomadic group consists of those families who practice seasonal migration along with their entire family and cattle. They form the poorest section and face economic hardships. They do not have even *Kacha* houses and live in tents set up in pastures or along the river banks.

Rajouri and Poonch districts which have the highest population of Gujjar-Bakarwals are taken as the area to understand the process of sedentarization of the community. Sedentarization is a process of shifting one mode of production from primary to another. The process of sedentarization is a dynamic phenomenon over time and space which took place through the socio-economic activities based on the modifications in the traditional mode of production and life style.¹⁴

In Jammu and Kashmir, the process of sedentarization among the Gujjar-Bakarwals has resulted in their better socio-economic life. As per the survey majority of the community is semi-sedentary and practices seasonal migration along with the nomadic group. However, a considerable number of families have

¹³ Khush Dev Maini, *Poonch: The Battlefield of Kashmir* (Srinagar: Gulshan Books, 2012), 328-31.

¹⁴ Bashir Magray, "Tradition and Change: From Nomadism to Sedentarisation" in *The Gujjars: History and Culture of Gujjar Tribe (Vol. VI)*, ed. Javaid Rahi (Jammu: Jammu and Kashmir Academy of Arts, Culture and Languages, 2017), 511-530.

started leading a sedentary life in both rural and urban areas of Rajouri and Poonch.

Since fourteenth-fifteenth century, the Gujjars were nomadic in nature.¹⁵ They reared buffaloes and in winters they used to live in the areas of the land lords in the foothills of the *Pir-Panjal* region. The main profession included cattle rearing and supplying its produce to the other land lords and other people. In 1797, Ruh-Allah Sangu, believed to be the last king of the Gujjar community annexed the adjoining areas of Poonch under the patronization of Raja Khan Bahadur.¹⁶ Under him, Gujjars had a dignified position in the administration of Poonch Darbar. The Gujjars actively took part in the revolt of 1857 following which they were declared as criminal tribes by the British through Criminal Tribes Act 1871.¹⁷ Consequently, their entry into the government service was banned. This resulted in adversely affecting their social and economic position. They started living a pastoral life in the backward areas near the forests and along the foot hills of *Pir-Panjal*. A large number of them started working as labour with land lords and with the passage of time they became tillers of land lords. In 1931, Gujjar-Jat Conference tried to remove their backwardness and uplift them socially, politically and culturally.

In 1947, thousands of Gujjar-Bakarwals were massacred in Jammu region. Some went to Pakistan but the Gujjar-Bakarwals of Rajouri-Poonch and Kashmir did not shift and continued to stay back in India.¹⁸ However, their movement across the valley was restricted with the formation of actual line of control (ALC) due to the illegal occupation by Pakistan in the Pakistan occupied Kashmir (POK). Many families of Gujjar-Bakarwals got divided across the ALC. The disturbances in Jammu and Kashmir during 1965 and 1971 further divided their families. Due to the restrictions on their migration, the Gujjar-Bakarwals started looking towards agricultural pursuits. This paved way for their sedentarization. Sheikh Abdullah introduced land reforms in Jammu and Kashmir through the Land Reforms Act, 1976. This provided relief to the tillers and agriculturists. The tillers now became the owners of the land. In this way the Gujjar-Bakarwals, who were already working as laborers and tillers in the fields of the land lords became the owners of land. It increased their interest in agriculture following which they carried out their work with greater zeal and started settling down.

¹⁵ Bashir Magray, "J&K Gujjars: A Sedentarized Tribe," in *The Gujjar Tribe of Jammu and Kashmir*, ed. Javaid Rahi (Srinagar: Gulshan Books, 2011), 190-94.

¹⁶ Bharadwajand Kour, *Gujjars: History and Culture*, 93.

¹⁷ Rahi, *The Gujjar Tribe of Jammu and Kashmir*, 197-98.

¹⁸ *Ibid.*, 17.

Another reason for sedentarization of Gujjar-Bakarwals was Indra-Abdullah accord in 1975. According to this accord, special packages were allotted for the welfare of Gujjar-Bakarwals. In 1975, Gujjar and Bakarwal Welfare Board was constituted. A large number of Gujjar-Bakarwal hostels were established to provide better education to children. Apart from educational facilities, Gujjar-Bakarwals markets were also set up to improve their socio-economic condition. Gujjar Mandi in Rajouri is an example of such market which was established. The educated Gujjars took employment in the service sector while the exclusive markets provided them with opportunities to increase their trade and commerce. However, poverty of this marginalized community remained a major challenge.

III

It was not so easy for Gujjar-Bakarwals to compete with the other communities which had a higher literacy rate and a comparatively better socio-economic status. With the efforts of Mian Bashir Ahmed Larvi (R.A.), the Gujjar-Bakarwals of Jammu and Kashmir were granted the status of Scheduled Tribes (ST) in 1991 by the Central Government on the recommendation of state Government. This gave them reservation in education and in jobs. This acted as a bridge for providing equal educational and employment opportunities. As a result of this, the first generation of Gujjar-Bakarwals were able to become gazette officers. After receiving the status of Scheduled Tribes, the actual sedentarization of the community started. However, the benefits of this reservation have remained confined to a selected few. As per the survey, majority of the respondents agreed that the Scheduled Tribe status has failed to uplift the community economically. The limited infrastructure for education and employment act as barriers for improvement. Greater awareness regarding the benefits of reservation can help in improving the conditions of the community.

During the 1990's the militancy affected the peace of Jammu and Kashmir in general and Rajouri-Poonch in particular. Militants set up their hideouts in the *Pir-Panjol* mountains where they harassed Gujjar-Bakarwals. In order to avoid getting caught in cross firing between the armed forces and militants, most of the Gujjar-Bakarwals gave up the practice of seasonal migration. Consequently, they opted to settle in pastures.

The survey also reveals that closure of pastures also resulted in sedentarisation. The forest department restricted the entry of Gujjar-Bakarwals and closed the pastures. Due to the harassment at the hands of forest officials, many took up agriculture.¹⁹ The community which is called as 'king of jungles' by J.L. Nehru has been demanding for Forest Right Act which was enacted by

¹⁹ Vaid, *A Saga of Colourful Tribe: Gujjars and Bakarwals*, 71.

Indian Parliament in 2006.²⁰ This act however came into force in Jammu and Kashmir only after the abrogation of article 370. In spite of this, the Gujjar-Bakarwal tribal activists claim that its positive impact on the ground level is zero. In certain areas of Rajouri like Kalakote, Nowshera and Budhal, pastures have been closed and restrictions have been imposed on their seasonal migration.²¹

Climatic change has also affected seasonal movement of the community. Unseasonal snowfall disturbed their schedule of movement. Drying up of water resources and construction of roads led to the decline in quality of grasslands in the pastures. Consequently, their occupation based on livestock got affected by droughts, unseasonal snowfall and other climatic problems in the region.²²

Sedentarization among Gujjar-Bakarwals did not take place suddenly. It was a gradual process that took place through numerous reasons and government intervention. Sedentarization had its impact on the Gujjar-Bakarwals.

The socio-economic condition of sedentarized Gujjar-Bakarwals improved as compared to the rest of the members of the community. They took up various jobs, practiced agriculture and trade and commerce. A large number of them left their ancestral land and property and shifted to urban areas. Around 10 per cent of them have settled in the periphery of Rajouri town. Still, half of their family members manage the ancestral property and reside in the rural areas.

Those residing in urban areas have given up pastoral and agricultural activities. They want to provide better education to their children. Most of the educated respondents have given up their traditional occupation and are employed in different professions. They realized that education is the only source which can provide them employment and uplift their social condition. However, in rural areas, there is a mix of sedentary and semi-sedentary population who are still rooted to their land and cattle.

Sedentarization has also negatively impacted the community. In order to protect themselves from the social stigma attached with Gujjar-Bakarwals, a large number of them hide their identity. They mimic the lifestyle of other communities to the extent that the young children do not speak in their mother tongue Gojri. Also, a gap has been created between the settled members and nomadic members which can be seen in their appearance and dressing style.

²⁰ Rahi, *The Gujjar Tribe of Jammu and Kashmir*, 157.

²¹ *Ibid.*, 37.

²² Mohd Tufail, "Impact of Climate Change on Seasonal Movement of Gujjar and Bakarwals: Community Perceptions." *IOSR Journal of Environment, Science, Toxicology and Food Technology*, 8 no. 1 (2014): 41-46.

It is also seen that Gujjar-Bakarwals co-exist with the non-tribal population in both rural and urban areas. Non-existence of intermarriages among them remains a concern of social difference between the communities. The survey revealed that the Gujjar-Bakarwals earlier faced social harassment at the hands of non-tribals. Sedentarization reduced this social discrimination. The non tribals who earlier did not share a seat in public transport with any Gujjar-Bakarwal can be now seen sharing even food.

The Gujjar-Bakarwals have a unique identity and culture who live in isolation from the mainstream society since decades. In order to bring them in mainstream society, both State Government and Central Government have introduced different policies from time to time. These improved their socio-economic position as well as increased their political awareness which led to its sedentarization. However, their number is still low. There is a need to increase awareness about the benefits of reservation for Scheduled Tribes and importance of education and employment for the upliftment of the social condition of Gujjar-Bakarwal community.

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Workers Contractualisation in Textile Industries in India

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Abstract

Employment patterns globally are changing in manufacturing sector from the last few decades as there is an increased preference to hire temporary or contract workers in order to be cost efficient. The pattern of increased contractualisation is observed in both developed and developing countries. This paper explore the trends in growth, intensity and determinants of contractualisation of workers in organised textile industry from 1998 to 2018. The present research is based on data from Annual Survey of Industries, UN Comtrade database by World Bank and reports of Labour Bureau. For calculating determinants, time series econometric analysis is employed. Analysis reveals fluctuating trend in the employment of contract workers in textile manufacturing sector but an increase in the intensity of contract workers is observed which reflects the replacement of regular workers by contract workers. The analysis of the determinants exhibits that, the primary driving forces for the employment of contract workers in the industry are the export orientation, size of the plant and the bargaining power of the workers.

Keywords: *Contract workers, textile industry, manufacturing, export, bargaining power of permanent workers, India*

I. Introduction

According to the eighth goal of sustainable development (decent work and economic growth), providing productive employment, quality job, and social protection to workers to achieve sustained & inclusive growth is needed. In order to achieve this goal, extent of informal sector should be reduced in an economy and formalization of informal sector should be the policy target as the workers working in the informal sector are deprived of the benefits and security as is provided under the different laws. On the contrary, employment pattern globally has changed from the last few decades as there is an increased preference to hire temporary or contract workers even in the formal sector. Such a pattern is

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observed in both developed and developing countries (IMF, 2010). In India, informality in the formal manufacturing sector is increasing which is reflected from the rise in number of contract workers in formal manufacturing industries in India. As per the data collected from various reports of Annual Survey of Industries, the share of contract workers out of total workers in all manufacturing sector has increased from 16 percent to 32 percent from 1998-99 to 2008-09 and has further increased to 38 percent in 2018-19.

The system of contract labour is not a recent phenomenon; it has originated in the early industrialisation phase. Retrospective analysis of the prevalence of contract labour system has revealed two school of thoughts. First school of thought believes that contract labour system has emerged due to the labour scarcity. The reason of the scarcity was said to be the reluctance of labour to leave their homes and work in strange environments. Conditions of the factory were unsatisfactory and the workers in such factories did not enjoy a respectable social status. In order to speed up the pace of industrialization, the factory owners were left with no option than to depend on the intermediaries for the recruitment process. Employers engaged middlemen to recruit labour for the factories (Saxena, 1974). This is how the system of middlemen emerged in the industries. This thought has no empirical foundation but still is a widely circulated view.

On the contrary, Morris D. Morris (1965) has conducted a scientific study on Bombay Cotton Mills from 1854 to 1947 and made an attempt to investigate a more logical reason of the emergence of the system of contract labour. Morris has believed that there was acute shortage of skilled labour but labour was otherwise not scarce. Moreover, he disagreed with the first school and said that labour was immobile to some extent because of lack of transportation facilities and not because of social barriers. He opined that there was no difficulty in the availability of labour to the mills during industrial revolution phase despite increasing numbers of industries. He observed that the recruitment system of “jobbers” emerged because technicians at that time were Englishmen, who looked for assistance in hiring local workers. These middlemen were given the task to recruit the workers, provide training and overseeing their performance. Slowly, the jobbers substituted the supervisory and managerial roles in the factories. These people got paid by the employers. They enjoyed the power to provide employment and to terminate the employment at their will. This sometimes had negative consequences for the labour as these middlemen demanded fees (baksheesh) or bribe (dasturi) from the labour class. This system has uninterruptedly continued and is still prevailing in the society and considered as precursor of the system of contract labour.

After independence in India, Industrial Disputes Act, 1947 is the most important legislation concerning the welfare of workers. The Act governs the laws related to various conditions of hiring of workers, conditions of closure of an establishment and retrenchment of workers etc., to protect the interest of the workers. In 1976, an amendment in the Act was made that the firms employing 300 workers had to seek prior permission from the Government authority in order to lay off workers in the firms, closure of an establishment or retrenchment. This limit was reduced by an amendment to firms hiring 100 workers in 1982. This pro-worker amendment reduced the flexibility for large number of firms or employers in decision making regarding employment adjustment. Since, the contract or temporary workers are not considered as workmen and do not come under the purview of this Act, the rules are not applicable to this category of workers. Hence, due to this stringent amendment in IDA, firms preferred hiring contract workers over regular workers. The flexibility ensured by the changed pattern of employment, firms could now bypass few of the strict regulations of IDA, 1947 (Chaurey, 2015).

Since major labour laws do not regulate contract workers and their employment, Contract Labour (Regulation and Abolition) Act (hereafter, CLA) came into picture in 1970. This Act aims at both regulating and abolishing contract labour in order to protect the interest of contract workers. The Act lay rules regarding minimum wages, their health and safety conditions, timely payment of wages, etc., for the welfare of contract labour. Establishments employing more than 20 contract workers come under the purview of this Act. As per Section 7 of the Act, it is mandatory for the principal employer (owner or occupier of the factory) to disclose the actual number of contract workers, directly hired workers and the nature of work for which contract workers are to be hired. This declaration is a mandatory condition for obtaining certificate from the Government authority. As per its Section 12, it is mandatory for the contractor, who supplies contract labour to obtain license after the declaration of nature of work, duration of work, wage fixation, and maximum number of contract workers Das et al.(2015).

Section 8 of the Act relates to suspension of the license or certificate in case of any misinformation by principal employer or the contractor or violation of rules as per the Act. In general, contract worker's wages must be equal or higher than the minimum wage rate. Also, if both directly hired worker and contract workers are performing the same task, they both are to be paid equally. Examination of records and interaction with the contract workers is to be done by labour inspector, as per the provision of the Act. Section 10 of the Act gives the Government the authority to ban the employment of contract workers if the

workers are found performing the core or perennial nature job or the same job as the regular worker in same firm or other firm in same industry are performing. But there is no legislation or law covering contract workers who are working in firms where contract workers are banned. It is not mentioned in the Act whether such contract workers are to be absorbed in the permanent jobs or not. This is made clear with the judicial interpretation in *Air India Statutory Corporation v. United Labour Union*¹ (1997) case. It has stated that after the abolition as per the notice under Section 10, principal employer is required to absorb contract workers as permanent workers. After four years, in 2001, Supreme Court in *Steal Authority of India Limited versus National Union Water Front Workers*² case has made a pro-employer judgement which has stated that it is not compulsory for the employer to absorb the contract workers in regular jobs after the firm is being issued the abolition notice as per Section 10 of Contract Labour (Regulation and Abolition) Act, 1970. On one hand, this has increased the flexibility for employer in terms of both hiring and firing and on the other hand it has created hardships for the contract labour (Srivastava, 2001).

Another Supreme Court decision is said to be the cause of rising contractualisation. In the case of *International Airport Authority v. International Air Cargo Union of Waterfront Workers and Others*³ (2009), Supreme Court has stated that there is no responsibility of principal employer in the matter of contract workers and “ultimate supervision and control lies with a contractor”. This means that the salaries of contract workers are to be paid by the middlemen i.e. contractor, and not the principal employer. This has created the wage difference between the contract workers and the regular workers. Since principal employer is not responsible in the matter of wage difference, in order to reduce the total wage bill, they prefer to hire more contract workers and pay comparatively less to them.

Thus, the changes introduced after the amendments to IDA and the introduction of CLA along with these judicial interpretations have led to de facto changes in the labour market.

Contractualisation has further intensified after India adopted New Economic Policy in 1991. Liberalization, Privatization and Globalization has changed the business scenario in India. Due to the opening up of the economy, India has attracted foreign investments, the culture of setting of Multi-National

¹ *Air India Statutory Corporation v. United Labour Union* (1997) (9) SCC 377

² *Steal Authority of India Limited v. National Union Water Front Workers* AIR 2001 SC 3527.

³ *International Airport Authority of India v. International Air Cargo Workers' Union* (2009) 13 SCC 374.

Corporations has developed which has increased competition. In order to survive competition, firms have to be flexible to adjust the manpower as per the changing global requirements. The rigid labour laws provide very less room for flexibility in the adjustment of the labour. Hence, firms have resorted to an alternative strategy to achieve flexibility i.e. hiring of contract workers. This has helped the firms to be cost effective, optimize profits and to achieve economic efficiency at the cost of justice to the contract labour who face injustice in terms of lousy pay and lower worker loyalty.

Figure 1: Proportion of Contract Workers among Total Workers in Textiles Industry in India.



Source: Annual Survey of Industries (ASI), Labour Bureau, Ministry of Labour and Employment, Government of India, Shimla and Chandigarh (Various Years).

Manufacturing sector plays a very crucial role in the economy as it has a very significant contribution in nation's output, employment and exports. As per various reports of Annual Survey of Industries, total workers employed in organized manufacturing sector has increased by one hundred six percent from 1998-99 to 2018-19. According to the recent Annual Survey of India for the year 2020, the organised manufacturing sector has consistently witnessed a positive employment trend, with a gradual rise in employment per factory (Economic Survey, 2022-23). In terms of share of employment (total number of

workers), textile sector had a major share i.e. around eighteen percent in 1998 amongst all the manufacturing industries. This industry continues to have the highest share i.e. around twelve percent in 2018-19 in overall manufacturing sector.

Figure 1 indicates the proportion of contract workers among total workers in textile industry over the period of two decades. Figure reveals that percentage share of contract workers has followed a rising trend. In 1998-99, out of hundred workers in textile sector, nearly 10 were employed on contractual basis. This figure has increased to 16 workers in 2018. This indicates increasing preference of firms towards contract workers.

Table 1: Phase Wise Growth Rate of Total Workers and Contract Workers in Manufacturing Sector and in Textile Industry (2 digit)

Phases	CAGR of Total workers		CAGR of Contract workers	
	Manufacturing sector	Textile Industry	Manufacturing sector	Textile Industry
Phase 1 (1998-2001)	-1.00	-3.22887	7.47	-7.71
Phase 2 (2002-2007)	4.86	2.635579	10.30	7.50
Phase 3 (2008-2013)	2.85	1.007974	3.77	2.46
Phase 4 (2014-2018)	3.64	1.940892	5.11	3.23

Source: Annual Survey of Industries (ASI), Labour Bureau, Ministry of Labour and Employment, Government of India, Shimla and Chandigarh (Various Years).

The above table reflects that there is a negative growth rate of contract workers in phase one which reflects falling number of contract workers in textile industry. During this phase firms have preferred to hire less contract workers which could be due to pro-worker judgement in 1997. The judicial interpretation in *Air India Statutory Corporation v. United Labour Union* (1997) case has stated that after the abolition as per the notice under Section 10, principal employer is required to absorb contract workers as permanent workers. Hence, firms have been reluctant to hire contract workers. In phase two, the growth rate of contract worker has

substantially increased to 7.5 percent. This could be probably because of the reversed decision in judgement passed in the year 2001. Textile industries started to hire increasing number of contract workers as they were not required to be absorbed in permanent roles. Further, in phase three (2008-13) the growth rate of contract workers in textile industry slowed down to 2.46 percent. Although, year 2009 has seen another pro-employer judgement (*International Airport Authority v. International Air Cargo Union of Waterfront Workers and Others*⁴) yet the slowdown could be probably because of the global financial crisis in the year 2008 (Singh, 2020). Further, the growth rate in textile industry picked up to 3.23 percent during 2014 to 2018. This revival of growth reflects the normalization in the business environment after the slowdown. The table reveals that phase two is the golden phase for contractualisation with highest growth rates. Similar pattern of growth rate is reflected in the overall manufacturing sector. Hence, this paper seeks to analyze the dynamics behind the growth and intensity of employment of contract workers in textile industry and to explore the factors leading to increased preference to hire temporary workers in this industry. An attempt is also made to capture the effect of various judicial interpretations and global financial crisis of 2007-08 on the pattern of contractualisation in formal textile sector.

II. Literature Review

Increasing preference towards contract workers has attracted the attention of the researchers since long. As a result, researchers have discovered various dimensions of the phenomenon. Houseman (1997) explained the use of flexible staffing arrangements like contract workers, part time workers, and other temporary workers in all the sectors including agriculture, mining and construction, manufacturing, trade, service, and transport, utilities, communication in United States of America. Results also show that the flexible staffing arrangements have increased since 1990s. Results have revealed that around eighty percent firms prefer hiring flexible workers in order to save cost and to accommodate the fluctuations in the workload. Booth et al. (2002) in their research work have made an attempt to study extent of temporary work in European countries from 1985 to 1998. Cross country data reveals that proportion of temporary workers have increased during the period in all the countries except Greece and Denmark. Spain has the highest proportion of temporary workers of around thirty-three percent among total workers because of strict employment legislations. In Sweden, adverse macroeconomic shocks have increased the proportion of temporary jobs.

⁴*International Airport Authority of India v. International Air Cargo Workers' Union* (2009) 13 SCC 374

Another remarkable work is done by Polavieja (2006). Their study has covered fifteen advanced countries. The paper has indicated international differences in the share of temporary employment across countries and maximum proportion of contract worker is found to be in Spain. Employment protection legislations, high economic uncertainty and collective bargaining strategies are the main reasons of high incidence of temporary work in Spain. However, Fuller and Vosko (2008) have covered dynamics of temporary employment in Canada from 2002 to 2004. The results of the study have showed that in manufacturing sector, seventeen percent workers are permanent and remaining workers work on temporary basis which includes contract workers, part time workers and seasonal workers. Employees prefer to hire temporary workers to avoid paying statutory and social benefits, entitlements, as well as non-wage benefits. Around sixty percent of temporary workers in Canada are females. Education level of the temporary workers are low as compared to permanent workers. Temporary workers are exploited in terms of lower wages and do not get other benefits which they are entitled to.

In Indian context, many researchers like Deb Kusum et al. (2015), Sundar and Sapkal (2019) Goldar and Sadhukhan (2015) and Parwez and Meena (2021) have made a significant contribution in analyzing the trend of employment of contract workers using data from Annual Survey of Industries (ASI), Ministry of Statistics and Programme Implementation, Government of India. They have concluded that the absolute number of contract workers have increased in Indian manufacturing sector over time. Many researchers have made an attempt to analyse the growth rates of contract workers in different time periods in the manufacturing sector. Goldar and Sadhukhan (2015) have used Annual Survey of Industries, CSO and Employment and Unemployment Survey by National Sample Survey Office data and have shown that contractualisation has steadily increased in the first decade of twenty-first century. Compound annual growth rate of contract workers in aggregate manufacturing sector during 1989-2000 is found to be around five percent and around ten percent during 2000-2010. The authors have also mentioned that the quality of employment in organized manufacturing sector has deteriorated. Further, Srivastava (2016) has revealed that growth rate of contractualisation is ten percent during 1996-97 to 2011-12. Author has shown that between 2004-05 and 2011-12, compound annual growth rate of total workers is seven percent and growth rate of contract and regular workers is eleven and five percent respectively. According to the author, flexibility in manufacturing sector has increased over time as contractualisation has increased along with greater extent of outsourcing and subcontracting of work. Kukreja and Bathla (2018) have focused on textile and clothing industry in India from 2000-01 to 2013-14. In this industry, annual growth rate in the overall employment is

found to be around four percent whereas it is close to nine percent in case of contract workers. Sundar and Sapkal (2019) have observed that incidence of contract worker employment has increased significantly in the post liberalization period due to rigid labour regulations. Based on data from Annual survey of Industries the authors found that during post-reform period, compound annual growth rate of contract workers is greater than growth rate of regular workers.

Some researchers have pointed out the trends in intensity of contractualisation i.e. proportion of contract workers in total workers. Srivastava (2016) has covered formal manufacturing sector and has shown that the proportion of contract workers was negligible in early 1970s which has increased to twelve percent in mid 1980s and has further increased marginally to fourteen percent in 1991. In 2011-12, proportion of contract workers among total workers is found to be around thirty-five. Neethi (2008) has pointed out that out of hundred workers in 1995, fifteen workers were employed through contractors and this number increased to thirty-three in 2003, reflecting the displacement of directly hired workers. Share of contract worker among total workers is highly concentrated in industries. The highest share is found to be of tobacco products and around seventy percent of contract workers are found to be in six industries (tobacco products, food and beverages, chemical and chemical products, textiles, other non-metallic mineral products, and basic metals). Sofi and Sharma (2015) have focused 28 manufacturing industries at two digit level for the time period 1999 to 2007. Results have revealed that at an aggregate level, contract worker intensity has increased from twenty percent to thirty-five percent in this time period. The authors also show that average contract worker intensity is found to be the highest in beverages and production, procurement and preservation of meat, fish and fruits etc., and the least in publishing and spinning, weaving of textiles. Sapkal (2016) has shown similar results using data from Annual Survey of Industries, Labour Bureau reports and Economic survey. He has shown that proportion of contract workers in total workers has increased from ten percent to twenty-seven percent whereas the share of directly hired workers has decreased from sixty-eight percent in 1995 to fifty-four percent in 2010.

Many researchers have contributed significantly in the literature by analyzing the state-wise trends and determinants of contractualisation. Neethi (2008) has shown that top three states with maximum share of contract workers are Gujrat, Andhra Pradesh and Orissa from 1980-81 to 2002-03. Deb Kusum et al. (2015) have conducted exploratory analysis to study the implications of Contract Labour Act, 1970 on the employment in manufacturing sector in India. Analysis at state level has revealed that contract workers have increased in absolute numbers and relative to permanent workers in all the states taken under consideration

irrespective of the difference in legislative laws in states. Top five states, Maharashtra, Tamil Nadu, Gujrat, Andhra Pradesh and Uttar Pradesh, have contributed maximum to the rise in contract workers. Jacob (2016) using Annual Survey of Industries data has shown that contractualisation is rising in all 15 states including Andhra Pradesh, Assam, Bihar, Gujrat, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, and West Bengal. During 1998-2004, Bihar has shown maximum contractualisation and Kerala has shown least contractualisation and Andhra Pradesh has recorded the highest increase in contractual employment. Ganguly (2017) analysed inter-industry trend from the time period 2000-01 to 2015-16 using Annual Survey of Industries (ASI) and Labour Bureau of Ministry of India data. Variations in participation of contract workers in major States/UTs and Industries in India is observed. Tripura, Bihar, Meghalaya, Telangana and Odisha are found to be the top five states employing contract workers. Delhi, Kerala, Tamil Nadu, Chandigarh and Assam are the bottom five states with low proportions of contract workers. Tsivanidis et al. (2021) have made an attempt to study the trends, causes and effects of contractualisation due to Industrial Dispute Act, 1948. They have found that contractualisation has boomed since early 2000s after the Steel Authority of India Limited versus National Union Water Front Workers, 2001 judgement and the restriction on large firms have diminished thereafter. This increase is observed more in pro-worker states and in districts which are close to staffing industry. Ramaswamy (2013) has used unbalanced panel data from twenty-five states and five union territories for the analysis and has revealed that inflexible states have greater level of contractualisation. Sapkal (2016) has conducted the analysis in thirty-one states and sixty-four industries at three digit level from 2000 to 2007. Results have revealed that the growth of contract workers is higher in states with inflexibility in labour laws and comparatively lower in the states with flexible labour laws. Whereas, Goldar and Aggarwal (2019) have found that there is no significant impact of flexibility of labour laws in states on the employment status.

Researchers have also focused on factors responsible for increasing informalisation through contractualisation in organized manufacturing sector in India. There is an opinion that strict labour regulations has an impact on the usage of contract workers and permanent workers in the manufacturing sector of India. Chaurey (2015) shows that firms operating in pro-worker labour regime prefer hiring contract workers as compared to firms in pro-employer regime. Some more evidence that the use of contract workers has increased in states with stricter labor regulations has been provided by Sen et.al. (2010). Moreover, Sapkal (2016) has also discovered that contract worker employment rises with stricter employment protection laws and their enforcement. Various other

researchers have empirically suggested that several other factors like workers bargaining power, trade exposure, capital intensity, size of the firm, etc have a significant effect on contractualisation. Researchers like Kapoor & Krishnapriyan (2019) and Kumar & Singh (2018) have shown that firms prefer hiring contract workers in order to curb the bargaining power of regular worker who are part of the trade unions. In other words, worker bargaining power has a positive impact on the extent of contractualisation. Similar positive impact is proven by Sen et al. (2013). Singh et al. (2019), on the basis of a specially commissioned survey which is a part of World Bank funded Project on 500 firms from selected states and industries show that greater the labour bargaining power, the chances of a firm hiring in contract labour increases substantially. Literature has revealed mixed results with regard to the impact of capital intensity on the extent of contractualisation in manufacturing firms. Pradhan (2006) has highlighted the positive impact of capital intensity on contract worker employment. This research work is based on the Prowess Database (2002) of the Centre for Monitoring Indian Economy (CMIE) and various reports of the Labour Bureau, Government of India. Similar positive association is reflected in research work by Singh et al, (2017), Goldar and Aggarwal, (2019). However, contradictory results by Goldar, (2022) reflect that as capital intensity increases, contract worker employment reduces.

Additionally, there is mixed view on the impact of trade exposure of manufacturing sector and employment pattern. While Goldar (2010), shows negative impact of export intensity on contractualisation, Sapkal & Sundar (2017), Singh et al (2017), Singh et al. (2019) show that the association is positive. However, there are researchers like Pradhan (2006) and Sen et al. (2010) who have shown that impact of export orientation is insignificant on contractualisation. Goldar & Aggarwal (2019) and Sapkal & Sundar (2017) have observed negative impact of import competition on contractualisation. Researchers like Singh et al (2017), Tsivanidis et al. (2021) and Goldar (2022) have observed that greater the size of plant or firm, greater is the proportion of contract workers among the total workers. But Deb Kusum et al. (2015) have shown that at an all India level, increase in proportion of contract workers is observed in factories of all sizes. Kukreja and Bathla (2018) have also found an opposite result i.e. the proportion of contract workers is found to be greater in small size firms i.e. firms employing less than hundred workers. These firms do not fall under strict regulations of Industrial Dispute Act, 1947, so they have an incentive to stay beyond the threshold by hiring contract workers. Many studies have revealed that firms prefer hiring of contract workers in order to save cost and be cost effective. Using Annual Survey of Industries data, Kapoor & Krishnapriya, 2019 show that wages paid to contract workers is lower than

directly hired workers. Sen and Dasgupta (2009), Kannan (2007) and Goldar and Agarwal (2012) have found the wages of casual workers to be significantly lower than those of permanent workers. Goldar (2009) found that greater the gap in wages of directly hired and contract workers, greater is the extent of contractualisation. Various micro level studies like Patel (1986), Das et al., (1986) and Das and Pandey (2004) have highlighted that contract workers are discriminated in various ways like lower wages for same work, unpaid extra working hours, safety conditions, benefits other than wages etc.

It is revealed from the literature that comprehensive analysis of the extent and factors responsible for contractualisation in textile sector has remained outside the ambit of researchers. Keeping in mind the gaps and importance of the phenomenon of contractualisation, it is pertinent to conduct a detailed analysis in textile industry in India.

III. Objectives and Data Sources

The major objectives of the study are:

1. To study the growth of contractualisation in textile industries in India.
2. To study the intensity of contractualisation in textile industries in India.
3. To study the determinants of contractualisation in textile industries in India.

The data on number of contract workers at three digit level are available from 1998 to 2018. Therefore, the analysis of growth, intensity and the determinants is done for the period from 1998 to 2018. This paper is based on the secondary sources of data. The data on number of contract workers, total number of workers, labour cost on wages and salaries for contract workers and directly hired workers, man-days worked for contract workers and directly hired workers are extracted from Annual Survey of Industries (ASI), Labour Bureau, Ministry of Labour and Employment, Government of India, Shimla and Chandigarh. The data on gross value of output and fixed capital is taken from Annual Survey of Industries (ASI), Ministry of Statistics and Programme Implementation, Government of India. For gross import and gross export data, the major data source is UN Comtrade database by World Bank. Necessary conversions of gross imports and gross exports which are provided in US dollars to INR have been done by using exchange rate data provided by International Monetary Fund. The data on number of strikes, number of lockouts are taken from the report – Statistics on Industrial Disputes, Closures, Retrenchments and Lay-Offs in India issued by Annual Survey of Industries by Labour Bureau, Ministry of Labour and

Employment, Government of India, Shimla and Chandigarh. Fixed capital, gross output are deflated by Wholesale Price Indices.

For the current study, necessary concordance is done at National Industrial Classification (NIC), 2008. The study covers Spinning, weaving and finishing of textiles (NIC- 131) and Manufacturing of other textiles (NIC -139). Various ratios, percentages and compound annual growth rates are used to present a picture of contractualisation in textile industry in India. For the analysis of determinants, E-Views software is used.

IV. Hypotheses

On the basis of a detailed analysis of the existing research work & the gaps therein, following hypotheses are formulated and tested.

First null and alternative hypotheses are as follows:

H₀₁: There is no significant growth of employment of contract workers in textile industries.

H_{A1}: There is a significant growth of employment of contract workers in textile industries.

To analyse the growth of number of contract workers, the present study is divided in 4 phases i.e. 1998-2001, 2002-2007, 2008-2013 and 2014-2018. The division of the time period is done to capture the impact of important judicial interpretations in twenty-first century and global financial crisis. Compound annual growth rate (CAGR) i.e. annual growth rate that accounts for the compounding effect, providing a constant rate of return over a specified time period is calculated for number of contract workers in both Spinning, weaving and finishing of textiles (NIC- 131) and Manufacturing of other textiles (NIC - 139) for all the four phases.

Second null and alternative hypotheses are as follows:

H₀₂: There is no significant change in the intensity of contractualisation in textile industries.

H_{A2}: There is a significant change in the intensity of contractualisation in textile industries.

To analyse the intensity, total time period is divided in 4 phases i.e. 1998-2001, 2002-2007, 2008-2013 and 2014-2018. For intensity, percentage share of average number of contract workers is calculated among average number of total workers in all four phases in both Spinning, weaving and finishing of textiles (NIC- 131) and Manufacturing of other textiles (NIC -139).

Third null and alternative hypotheses are as follows:

H₀₃: There is no significant impact of workers' bargaining power, capital intensity, plant size, relative labour cost and export orientation on intensity of contractualisation in textile industries in India.

H_{A3}: There is a significant impact of workers' bargaining power, capital intensity, plant size, relative labour cost and export orientation on intensity of contractualisation in textile industries in India.

For the analysis of determinants, the dependent variable used is intensity of contractualisation (INT) i.e. ratio of number of contract workers to number of total workers in textile manufacturing sector.

First independent variable is workers bargaining power. Workers' bargaining power is the power of trade union to bargain for the demand of workers in a unit. Contract workers are usually not a part of such unions. If the bargaining power of workers' union which normally consists of regular workers is high, they are able to negotiate wages along with the working conditions in their favor. In such case, firms may want to hire more contract workers instead of regular workers. Employers may also want to hire more contract workers in order to curb or to make dent in the bargaining power of the regular workers (Kapoor & Krishnapriya, 2019). Workers' bargaining power would be measured as the ratio of number of strike to number of lockouts in a particular industry.

Another independent variable is capital intensity which is used as a proxy variable of progress in technology. Increased competition after the economic reforms in the early 1990s has increased the pressure on the domestic firms to enhance efficiency and minimize cost. Due to the opening up of the economy, firms are inclined towards capital intensive technology. According to Sen and Dasgupta (2006), capital intensive industries preferably recruit workers on contractual basis. This indicates positive relation between capital intensity and contractualisation. However, it is also believed that greater the capital intensity, lesser would be the extent of contractualisation as the firms would want to hire more skilled workers and on regular basis (Goldar, 2022). Labour required for

capital intensive industry is the skilled labour which is preferably hired on regular basis and not on contract basis, which may indicate a negative relationship. In this paper, capital intensity is calculated by the ratio of net fixed capital and total number of workers. This ratio is deflated by wholesale price index. Plant size also plays a role in contractualisation of workers. It is observed that as plant size increases, greater number of contract workers are hired (Goldar, 2022). It is measured by dividing gross value of output by total number of factories, deflated by wholesale price index.

Another important independent variable is relative labour cost. There are cost advantages to the firms hiring contract workers as there is significant difference in the compensations paid to the two categories of workers i.e. contract and directly hired workers. Former is paid lower compensation as compared to the latter. Relative labour cost is calculated as the ratio of labour cost per man days worked for contract workers and labour cost per man days worked for directly hired worker.

Another variable taken for the analysis is the export orientation. Due to Liberalization, Privatization and Globalization (LPG) reforms in India, the domestic industries faced competition from external world. Also, there are many uncertainties of demand at global level. Hence, firms choose to increase the share of contract workers amongst total workers. Firms hiring contract workers are at an advantageous position because when demand at global level is low, the contract workers can be removed. Export orientation is calculated by the ratio of gross exports by gross output. One limitation of this method of calculation of export orientation is that gross output data of the industry is taken from Annual Survey of Industries which includes formal or organized manufacturing sector whereas gross exports data taken from World Bank Trade Database includes both formal and informal manufacturing sector. This implies that the value of export orientation will be higher than would have been the case if we use gross exports of only formal sector. Due to unavailability of data on gross exports of formal manufacturing sector, we take the value of gross exports of both formal and informal sector. The aim here is to capture the impact of export orientation in an industry on employment pattern in formal manufacturing sector.

Data on gross exports is available in terms of US\$. To bring the parity in data, it is multiplied by annual average of exchange rate in each year.

V. Regression Model and Diagnostic Testing

Log transformation is taken for all the variables in order to normalize different scales of various variables. The basic regression equation is:

$$\ln INT_t = \alpha_1 \ln WBP_t + \alpha_2 \ln RLC_t + \alpha_3 \ln CI_t + \alpha_4 \ln EO_t + \alpha_5 \ln PS_t + u_t$$

Where, $\ln INT$ is the log of intensity of contractualisation, $\ln WBP$ is the log of worker's bargaining power, $\ln RLC$ is the log of relative labour cost, $\ln CI$ is the log of capital intensity, $\ln EO$ is the log of export orientation and $\ln PS$ is the log of plant size.

Time series analysis is conducted to explore the determinants of contractualisation. Before finalizing the appropriate model for the analysis, stationarity test is conducted for all the variables in order to avoid spurious results due to non-stationarity. Time series are said to be stationary when the statistical properties, such as mean and variance, are constant over time (Kočenda and Černý, 2015). Thus, we check for stationarity using graphical method, correlogram and Augmented Dicky-Fuller (ADF) test.

Since some variables are found to be stationary at level and some are found to be stationary at first difference in case of both the industries, therefore, autoregressive distributed lagged (ARDL) model is selected for further analysis which is proposed by Pesaran (1997) and Pesaran *et al.* (2001) to identify the existence of relationships between variables.

Annual data of spinning, weaving and finishing of textiles (NIC- 131) and manufacturing of other textiles (NIC -139) industry is used and the following ARDL model is employed:

$$\begin{aligned} \Delta \ln INT = & \beta_0 + \sum_{j=0}^{k1} \alpha_j \Delta \ln INT_{j-t} + \sum_{j=1}^{k2} \chi_j \Delta \ln WBP_{j-t} + \sum_{j=1}^{k3} \delta_j \Delta \ln RLC_{j-t} \\ & + \sum_{j=1}^{k4} \varepsilon_j \Delta \ln EO_{j-t} + \sum_{j=1}^{k5} \phi_j \Delta \ln CI_{j-t} + \sum_{j=1}^{k6} \lambda_j \Delta \ln PS_{j-t} + \mu_t \end{aligned}$$

Where dependent variable ($\ln INT_t$) is explained by regressors like $\ln WBP_t$, $\ln RLC_t$, $\ln CI_t$, $\ln PS_t$, and $\ln EO_t$. Where $\ln INT$ is the log of intensity of contractualisation, $\ln WBP$ is the log of worker's bargaining power, $\ln RLC$ is the

log of relative labour cost, $\ln CI$ is the log of capital intensity, $\ln EO$ is the log of export orientation and $\ln PS$ is the log of plant size.

VI. Results and discussion

Table 2 reveals that in spinning, weaving and finishing of textiles (NIC-131) industry, growth rate of contract workers in the first phase is (-) 8.85 percent which reflects a fall in number of contract workers. Probable reason of such preference of firms could be the pro worker judgement of 1997. The judicial interpretation in *Air India Statutory Corporation v. United Labour Union* (1997) case stated that after the abolition as per the notice under Section 10, principal employer is required to absorb contract workers as permanent workers. However, the decision of the absorption was reversed in the *Steel Authority of India Limited versus National Union Water Front Worker*, 2001 case and its impact could be seen in the CAGR of contract workers which has increased to 7.04 percent in phase two. In phase three, however, CAGR of contract workers has again slowed down to 3.53 percent which could be due to the global recession of 2008. Since Indian textile industry is a key player in global exports, the demand for exports experienced a decline due to worldwide economic downturn. The declining demand for exports might have resulted in firms downsizing their workforce. As contract workers do not enjoy the benefits of job security, they had to face job losses.

Table 2: Compound Annual Growth Rate of Contract Workers in Various Phases in Textile Manufacturing Industries at Three-Digit Level.

Industry Codes	Phase 1 (1998-2001)	Phase 2 (2002-2007)	Phase 3 (2008-2013)	Phase 4 (2014-2018)
131	-8.85	7.04	3.53	0.66
139	2.81	9.90	-0.66	8.52

Source: Annual Survey of Industries (ASI), Labour Bureau, Ministry of Labour and Employment, Government of India, Shimla and Chandigarh (Various Years).

The trend of decline in CAGR continued even in fourth phase as CAGR of contract workers declined to 0.66 percent. In manufacturing of other textiles (NIC-139) industry, similar spike in the growth rate of contract workers is observed from 2.81 percent in phase one to 9.90 percent in phase two. During phase three, there is a negative rate of growth of contract workers indicating removal of certain workers from their roles, which can be attributed to the repercussions of

the global financial crisis of 2008. Further in phase four, the growth rate further jumped to 8.52 percent. The economy at the global level started to revive after the economic downturn of 2008, therefore, demand for textiles exports may have increased. To meet the demand, units may have brought on board a substantial quantity of contract workers.

Table 3 shows that in spinning, weaving and finishing of textiles (NIC-131) industry, the intensity of contractualisation follows an increasing trend. The data reveals a rising trend in the proportion of contract workers among the total workers over the initial three phases, followed by only a slight decline in the fourth phase. This trend indicates a growing dependence of firms within the industry on contract labor. An elevated degree of contractualisation implies that textile firms are extensively leveraging contract workers, potentially to achieve objectives like cost reduction, enhancement of flexibility, and to curb the bargaining power of trade unions. In manufacturing of other textile industry (NIC 139), barring the third phase (2008 to 2013), an increasing trend in the intensity of contract workers is observed as is revealed by table 3. This trend highlights the preference of employers to augment the number of contract workers, as they can be easily adjusted or removed without incurring significant costs. Due to the vital role of textile industry in meeting global demand, firms in this sector aim to enhance their ability to adapt their workforce more flexibly.

Table 3: Percentage Share of Contract Workers among Total Workers in Various Phases in Textile Manufacturing Industries at Three-Digit Level.

	Phase 1 (1998-2001)	Phase 2 (2002-2007)	Phase 3 (2008-2013)	Phase 4 (2014-2018)
131	8.46	11.40	14.03	12.89
139	18.40	21.41	19.83	24.85

Source: Annual Survey of Industries (ASI), Labour Bureau, Ministry of Labour and Employment, Government of India, Shimla and Chandigarh (Various Years).

Next, we discuss the results pertaining to the determinants of contractualisation. Before the estimation of ARDL model, it is necessary to choose optimal lag length of all the variables to find cointegration relationship between dependent and the independent variables. The standard Akaike information criterion (AIC) is chosen and lag length is selected. For spinning, weaving and finishing of textiles industry (NIC 131), lag length is selected as (2,2,2,1,1,2) for (LINT, LWBP, LRLC, LCI, LEO, LPS) based on the criteria

graph as given in figure 1A (see Appendix). For manufacturing of other textiles (NIC 139), lag length is selected as (1,0,2,0,1,0) for (LINT , LWBP, LRLC, LCI, LEO, LPS) based on criteria graphs given in figure 2A (see Appendix). The present research work conducts Jarque Bera test for testing normality, Ramsey Test for model specification, Breusch-Pagan-Goldfrey test for heteroscedasticity, Breusch-Godfrey Serial Autocorrelation LM test for serial correlation, CUSUM and CUSUM square test for stability of the model in the case of both spinning, weaving and finishing of textiles industry and manufacturing of other textiles industry. Table 1A (see Appendix) confirms the presence of normality, no heteroscedasticity, no model specification error, no autocorrelation in case of both the industries. CUSUM and CUSUM of Squares tests are conducted for analyzing the stability of the regression coefficients in the long-run. Further, bounds test is conducted to investigate if long-run equilibrium relationship between dependent and independent variable exists. The results of bounds test are presented in table 2A (see Appendix). The value of F-statistic for the bounds test for industry 131 and 139 are 14.67364 and 9.561130. Both of which exceeds the 1 percent critical value (4.15) for the upper bound I(1). Hence, we conclude that there exists long run relationship between intensity of contractualisation and independent variables such as workers bargaining power, relative labour cost, capital intensity, export orientation, and plant size in both the textile industries. Due to the presence of long run co-integration, Auto Regressive Distributed Lagged – Vector Error Correction (ARDL-VECM) model is used for analyzing the factors affecting contractualisation in long run.

Based on the model specified above, the analysis of determinants is done which shows relationship of dependent variable with other explanatory variables. Results are presented in Tables 4 and 5. Each table reveals the coefficients, standard errors and the significance level of different independent variables. In case of Spinning, weaving and finishing of textiles industry (Table 4), it is observed that the coefficient of worker's bargaining power is positive and significant. This means that as workers bargaining power of directly hired workers increase, firms opt to hire more contract workers. This decision is a strategic measure to curb the growing bargaining power of permanent workers and to simultaneously attain flexibility. Permanent workers or directly hired workers, due to their direct reporting to the employer and their potential unionization, possess stronger bargaining power. The increased bargaining power can result in heightened requests for improved wages, enhanced working conditions, and enhanced benefits. As permanent workers can successfully negotiate, it places additional pressure on employers and reduce the flexibility of the employer to adapt quickly to changing circumstances. Contrarily, contract workers are not affiliated to the unions of permanent workers and employers

often perceive them as more flexible and easier to manage in terms of cost and can be hired and fired at will. Consequently, employers prefer to retain more contract workers so as to create a dent in the bargaining power of permanent workers and also to attain flexibility. Similar results are revealed by Sen et al., (2010), J. Singh et al. (2019) and Kapoor & Krishnapriya (2019) in the manufacturing industries. Further, the coefficient of relative labour cost is positive and significant at 1 percent level. This indicates that as the labour-cost on wages and salaries per man days worked for contract workers increases in relation to the labour cost on wages and salaries per man days worked for directly hired workers, firms still prefer hiring more contract workers. The probable reason for such preference is that these workers usually provide greater flexibility, enabling employers to readily adapt their workforce size and structure in response to shifts in demand conditions. Additionally, contract workers often do not receive the same benefits as permanent employees, which can contribute to cost savings for the employer. Moreover, contract workers are not typically part of the permanent workforce's union, hence, by employing contract workers, employers can reduce the collective bargaining power of the entire workforce. This lack of union affiliation enables employers to maintain more control over labor-related decisions and negotiations, even in the face of rising labor costs for wages and salaries for contract workers.

Also, the coefficient of plant size is positive and significant at 5 percent level. Sometimes, as the size of a plant increases, firms hire large number of contract workers as these workers offer a flexible solution, allowing employers to scale their workforce up or down based on fluctuating demand without the long-term commitments associated with permanent employment. This adaptability is particularly advantageous in industries where production volumes are subject to seasonal variations or unpredictable market conditions. Hence, large firms hire more contract workers in order to enjoy the benefits owing to the scale of operations. Also, mostly large sized firms are under the close and constant supervision of the government agencies and hence, they are expected to follow all rules and regulations pertaining to the permanent workers where any evasion or laxity is quickly highlighted. So, by employing contract workers, they get relaxation from this restriction. Recent study by Goldar, (2022) has shown similar results as the research shows that large-sized firm is likely to hire more contract workers than a small sized firm. Table 4 also reveals that capital intensity has no significant impact on the dependent variable in long run. This is probably because spinning, weaving and finishing of textiles industry is a labour intensive industry in which capital has a relatively less significant role in manufacturing process. Also, the variable export orientation has no significant impact on contractualisation in this industry.

Table 4: Long Run Coefficients with their Significance for Spinning, Weaving and Finishing of Textiles Industry (NIC 131) Dependent Variable: ln INT				
Long-Run Coefficients				
Variables	Coefficients	Std.error	t-statistics	Prob.
ln WBP	0.286319	0.087527	-3.271207	0.0467
ln RLC	5.117929	1.117373	4.580322	0.0195
ln CI	-1.112666	0.504840	-2.203997	0.1147
ln EO	0.422083	0.340507	1.239571	0.3033
ln PS	0.871651	0.192269	4.533486	0.0201
c	-1.226055	2.004084	-0.611778	0.5839

Source: Annual Survey of Industries (ASI), Labour Bureau, Ministry of Labour and Employment, Government of India, Shimla and Chandigarh (Various Years).

In case of manufacturing of other textiles industry (Table 5), it is observed that workers bargaining power has no significant relationship with intensity of contractualisation. Further, the coefficient of relative labour cost is negative and significant at 10 percent level indicating that as the ratio of labour cost on wages and salaries per man days worked for contract workers to that of directly hired workers increases, firms hire lesser proportion of contract workers among total workers. This suggests that firms in this industry are striving for cost-effectiveness by preferring the employment of contract workers, who are typically compensated at lower rates as compared to permanent workers and if the cost of hiring contract workers increases, then they prefer to go for permanent workers.

Employers may leverage this cost advantage to reduce overall labor expenses, especially in roles where specific skills are required. Also, plant size plays a positive and significant role in the decision regarding contractualisation in this industry as it is found significant. With the increase in size of a plant, firms may hire large number of contract workers in order to save cost and to enjoy the benefits owing to the scale of operations. Managing a large permanent workforce also involves additional administrative tasks. Contract workers, often employed

through contractors, can reduce the administrative burden associated with permanent employment, allowing employers to focus on core manufacturing operations. Also, large textile firms experience variations in demands due to factors such as seasonal changes, fluctuating market demand, or specific orders. Contract workers offer flexibility, allowing firms to quickly adjust their workforce up or down as per the requirement. Moreover, large sized firms can also evade monitoring of the government agencies, if they hire more contract workers.

Further, export orientation has a positive and significant effect on the intensity of contractualisation at 5 percent level. The coefficient is equal to 0.137 indicating 1 percent increase in export intensity, leads to 1.37 percent increase in contractualisation. This indicates that firms may want to deal effectively with the fluctuations in the global market. Export-oriented textile firms may experience seasonal peaks in production, such as increased demand for certain products during specific times of the year. Also, in case of uncertainty in the global market due to which textile firms receive less orders, firms want some flexibility in the labour adjustments. These adjustments are not possible in case of directly hired workers due to stringent labour laws, therefore, firms prefer to hire more contract workers. Contract workers enable manufacturing units to address these seasonal peaks without the challenges associated with maintaining a large permanent workforce year-round. It may be mentioned here that positive relationship between export orientation and contractualisation is also found by Sapkal and Sundar (2017) and J. Singh et al., (2019).

It is also observed that capital intensity has a negative and significant effect on the dependent variable at 10 percent level of significance. This means in manufacturing of other textile industry, as capital intensity increases, firms prefer to hire less number of contract workers and prefer to hire more permanent workers. Higher capital intensity often implies increased investment in research and development, automation and advanced technologies. As firms adopt more technology-driven processes, the need for contract workers, decreases. This could be because specific training programs are conducted to train workers to operate and maintain the updated and sophisticated technology. Firms are reluctant to train temporary workers as such training program involves additional cost. Employers find it valuable to train permanent workforce as their continuous presence allows for better utilization of their skills and knowledge over the long term. Hence, employers may prefer to retain permanent employees to maximize the return on these training investments, as contract workers, with their temporary nature, might not offer the same level of commitment or continuity.

Table 5: Long Run Coefficients with their Significance For Manufacturing of Other Textiles Industry (NIC 139) Dependent Variable: LINT

Long-Run Coefficients				
Variables	Coefficients	Std.error	t-statistics	Prob.
ln WBP	-3.87E-05	0.011322	-0.003414	0.9974
lnRLC	-0.601675	0.271111	-2.219301	0.0536
lnCI	-0.394326	0.198778	-1.983755	0.0786
lnEO	0.136824	0.049427	2.7682	0.0218
lnPS	1.055381	0.214068	4.930124	0.0008
C	-0.005792	0.601491	-0.009629	0.9925

Source: Annual Survey of Industries (ASI), Labour Bureau, Ministry of Labour and Employment, Government of India, Shimla and Chandigarh (Various Years).

VI. Conclusions

The paper sheds light on the growth, intensity, and factors influencing the use of contract labor in the textile industry over a two-decade period from 1998 to 2018. The analysis reveals that Indian textile manufacturing firms have increasingly opted for non-standard forms of labor, i.e. contract workers who are employed through intermediaries known as contractors. This increase in contractualisation is observed by the increase in absolute number of contract workers and contract workers amongst total workers. The most significant period of growth in contractual labor is identified as the "golden period," spanning from 2002 to 2007 within the textile manufacturing sector. Globalization, industrial relations between permanent workers and employers, scale of operation, cost efficient target and updated technology has contributed to rising demand of contract labour in textile industry in India. The growing prevalence of contract workers can also be attributed to different judicial interpretations in the twenty-first century that have been favorable to employers.

In spinning, weaving and finishing of textiles industry, strong bargaining power of permanent workers is an important factor responsible for increased number of contract workers. When permanent workers have considerable bargaining power, they may negotiate for higher wages, better working conditions, increased bonus, leaves, etc. When employers face challenges arising

from the demands of permanent workers, may opt for a more flexible approach by increasing the proportion of contract workers who have weaker bargaining power in their workforce. It is also indicated that in this industry, despite increasing cost of contract workers in relation to permanent workers, firms still hire more contract workers because they prefer flexibility in the unit. Insignificant relation between capital intensity and contractualisation reveals that firms may not be going for technical progress as with more investment in research and development, firms have to depend on permanent workers instead of training contract workers again and again. Hence, they recruit more contract workers. Also, large sized firms hire more contract workers. This indicates that as plant size increases, employer wants flexibility, allowing easy adjustment to fluctuating demand. Additionally, large firms, often closely monitored by government agencies, adhere strictly to regulations for permanent workers, making the hiring of contract workers a way to navigate such restrictions. Therefore, the shift towards hiring more contract workers can be interpreted as a strategic response by employers who, feeling constrained by the strong bargaining power of permanent workers, choose to diversify their workforce composition.

In manufacturing of other textile industry, plant size is found to be the significant factors affecting contractualisation. Large sized firms aim to save cost and leverage operational scale advantages. Handling an extensive permanent workforce requires added administrative responsibilities, while contract workers can alleviate this burden. Hence, they prefer hiring more contract workers. Also, export oriented textile firms hire more contract workers. Due to global market fluctuations, export-oriented textile firms may face seasonal production peaks or uncertain market conditions. To address these difficulties and ensure flexibility in labor adjustments, firms prefer hiring contract workers. Also, capital intensity is also revealed to be a significant variable which has a negative relationship with contractualisation. This signifies that as firms invest in technical progress, research and development, or buy new machineries they prefer hiring more permanent workers so as to cut expenditure on training temporary workers again and again. Lastly, it is revealed by the present study that in this industry, rise in labour cost of contract workers cause a decline in their demand. So, in this industry, firms desperately intend to cut their costs which is apparent as they may have market in foreign economies.

In order to reduce the extent of non-standard form of employment which lacks job security, policies need to be formulated to improve the industrial relations among the employers and the workforce. Flexibility in the stringent labour laws should be the policy target so that the extent of exploitation of

contract workers end. Textile industry has huge potential to capture large share in global market. Rigid labour laws have been the roadblock in the way of this industries. Hence, reforms in the labour laws should capture the attention of the policy makers. Rigidity in labour laws and unhealthy industrial relation between the stakeholders could be the reason of decline in share of exports because firms could not attain flexibility they desire. To position the textile industry as a leader, the government must enhance flexibility for employers, encouraging them to invest in research and development and subsequently reducing the reliance on contractual arrangements.

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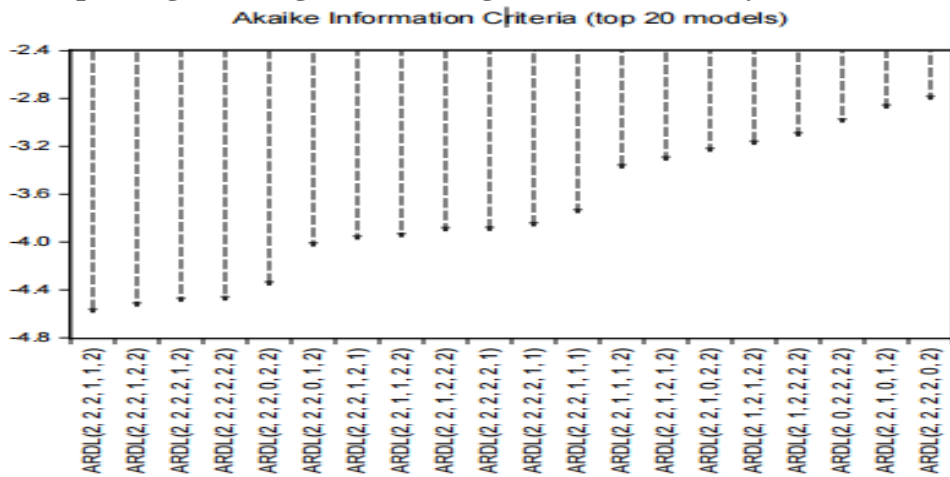
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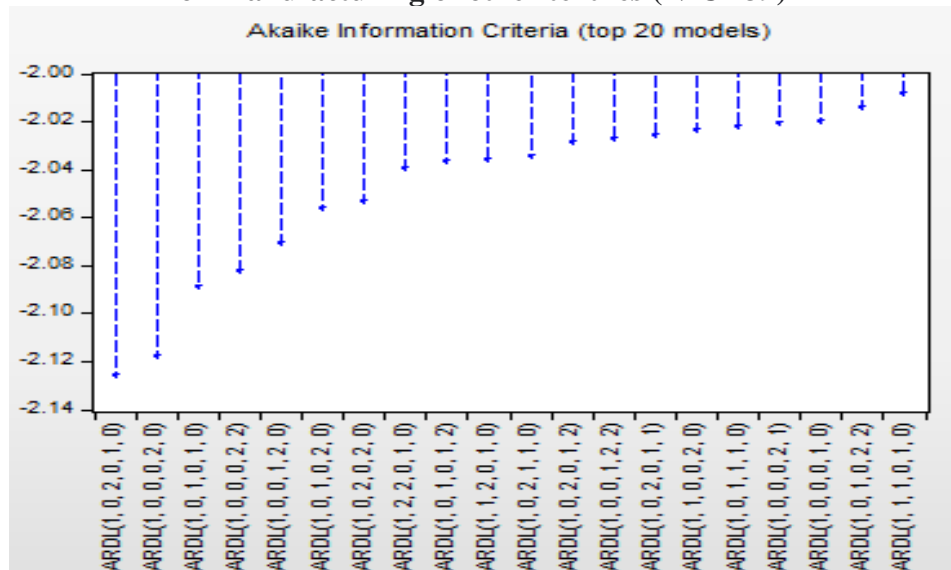
APPENDIX

Fig 1A. Akaike information criterion (top 20 models) for Spinning, weaving and finishing of textiles Industry (NIC 131)



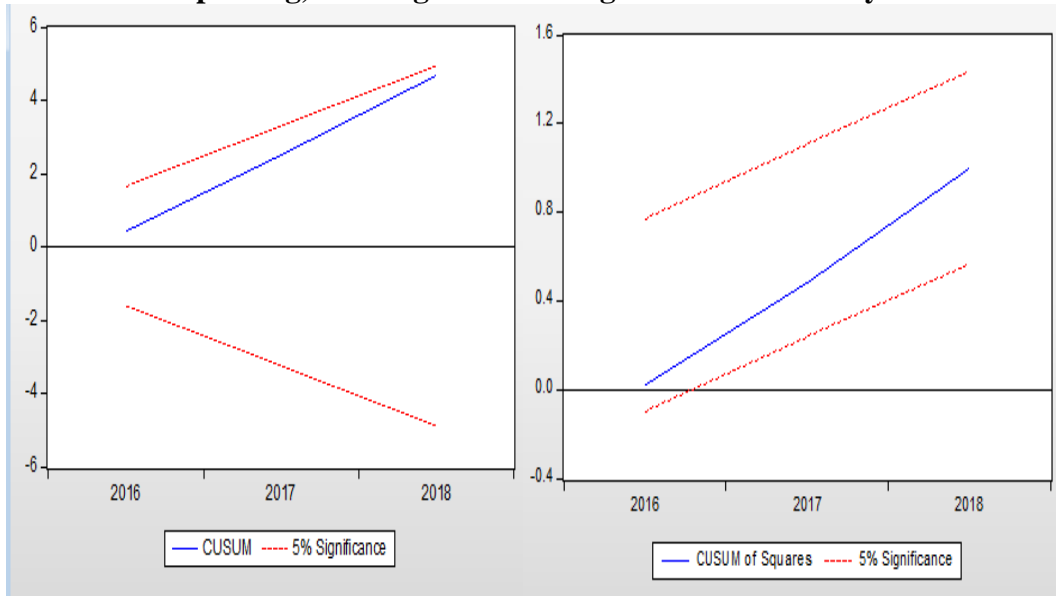
Source: Annual Survey of Industries (ASI), Labour Bureau, Ministry of Labour and Employment, Government of India, Shimla and Chandigarh (Various Years).

Fig 2A. Akaike information criterion (top 20 models) for Manufacturing of other textiles (NIC 139)

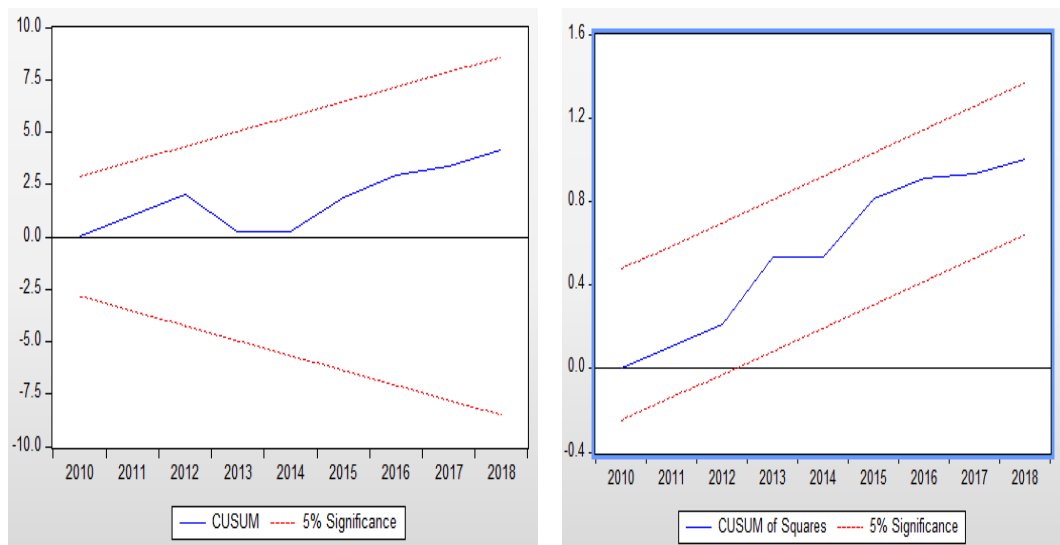


Source: Annual Survey of Industries (ASI), Labour Bureau, Ministry of Labour and Employment, Government of India, Shimla and Chandigarh (Various Years).

**Figure 3A: CUSUM & CUSUM of Squares 131:
Spinning, weaving and finishing of textiles Industry**



139: Manufacturing of other textiles Industry



Source: Annual Survey of Industries (ASI), Labour Bureau, Ministry of Labour and Employment, Government of India, Shimla and Chandigarh (Various Years).

Table 1A: Results of Various Diagnostic Tests

Test Series	Coefficients	Prob.	Coefficients	Prob.
	131: Spinning, weaving and finishing of textiles Industry		139: Manufacturing of other textiles Industry	
Normality test (Jarque Bera test)	0.863694	0.649309	0.479624	0.786776
Model Specification test (Ramsey Test)	1.172369	0.2606	1.346025	0.2152
Heteroscedasticity (Breusch-Pagan-Goldfrey)	14.16560	0.5130	9.964530	0.3534
Autocorrelation (Breusch-Godfrey Serial Autocorrelation LM test)	3.939457	0.3356	2.573373	0.1453

Source: Annual Survey of Industries (ASI), Labour Bureau, Ministry of Labour and Employment, Government of India, Shimla and Chandigarh (Various Years).

Table 2A: Bounds Test

F- bounds Test		Null Hypothesis : no level relationship			
Test statistics	Value		Significance	I(0)	I(1)
	131	139			
				Asymptotic: n=1000	
F- statistics	14.6736 4	9.56113 0	10%	2.08	3
k	5	5	5%	2.39	3.38
			2.5%	2.7	3.73
			1%	3.06	4.15
*p-value incompatible with t-bounds distribution					

Source: Annual Survey of Industries (ASI), Labour Bureau, Ministry of Labour and Employment, Government of India, Shimla and Chandigarh (Various Years).

Promoting Ethical Consumption for Sustainable Development: With Special Reference to Organic Products and Indian Regulatory Regime

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Abstract

Today, goods reflecting an underlying concern with safety, sustainability and other ethical issues are prevalent in the market, more than ever before. The environmental and social impact of consumption in the present diverse market is significant and thus demands greater attention. As a result, ethical and sustainable commodities have witnessed a major surge over the past decades. Ethical consumerism includes a wide range of practices, from investigating products and understanding labels, to supporting ethical brands and boycotting unethical ones. Ethical consumer behavior has largely influenced the way corporates do business hence the market for organic products is booming all across the world in a variety of sectors. Organic products employ processes and products that reduce or eliminate the use or generation of hazardous substances, hence aligning with ethical and sustainable consumption patterns. This paper highlights the philosophical approach that is useful in understanding and evaluating the ethical consumption of organic products. This paper aims to explore the vital role of ethical consumption in fostering sustainable development and reshaping consumption patterns towards a more responsible and harmonious relationship with our planet.

Keywords: *Ethical Consumption, Ethical Consumerism, Organic, Sustainable Development, Consumer Behaviour*

I. Introduction

The philosophy of ethics, or morality, investigates the theory of what acts are said to be right and what is wrong. Ethics, a sub-discipline of philosophy, constitutes studying human practices, customs, and conventions ((Düwell, Brauer, & Schönecker, 2002) in an academic setting. Consumerism is the belief that a person's happiness and well-being are the results of possessing or obtaining material goods. It indicates the direct relationship between an individual's consumption of

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goods and services and their level of happiness derived from the same. This link is based on the philosophy that the products and services we consume can significantly impact our well-being and satisfaction. It has often been synonymised with superfluous lifestyle, wasteful consumption, and overconsumption, ‘conspicuous consumption’ (Veblen, 1899). In terms of the economy, it stimulates production which is a major fuel to the development of economic growth. But lately, it has been widely criticised due to various economic, social, environmental, and psychological factors. Gradually social and environmental concerns and consumerism became increasingly interwoven and frequently converged on common issues (Aaker, 2017). This whole phenomenon has led to the birth of the philosophy of ‘ethical consumerism’.

‘Ethical consumerism’ involves the process of producing, exchanging, and consuming goods and services, with the purpose of promoting social values such as sustainability, social justice, corporate responsibility, workers’ rights, and environmentalism (Bennett, 2018). Ethical consumerism implies consumer activism by laying special emphasis on production and consumption based on social, environmental and ethical concerns. It has evolved as a practice of purchasing or avoiding purchasing products, leading to minimum social and/or environmental damage. Ethical consumption can be expressed as a deliberate attempt to select such goods and services, which are produced, procured, processed, delivered (and even disposed of) using ethical means and measures (Cooper-Martin and Holbrook, 1992). The primary objective is to reduce the impact and aftermath of consumerism, whether it be on individuals, animals, or the environment. The whole premise of ethical consumerism revolves around the idea that when consumers purchase goods or services, they are not just buying the product itself, but also supporting the process and practices that align with social values such as social justice, morality, responsibility, labour rights, and sustainability. It requires conscious decision-making on the part of the consumer, as well as a commitment by companies to align with these values. Due to the growing interest in ethical consumption, firms have become conscious of their ethical behaviour, its impact on consumers and brand reputation in the market. In present times, businesses are actively engaged in cultivating markets for ethical products as a strategic approach to changing their brand image, demonstrating a commitment towards ethical and sustainable practices. Increased understanding of environmental problems like global warming, pollution, etc., has led to behavioural change, perceived behavioural control and environmental sensitivity. As a result, consumers can often be seen practising recycling, promoting paper bags, discouraging single-use plastic (eg. straw), and preferring organic products, as ethical consumer behaviour. The philosophy of ethical consumerism centres around empowering consumers, to enable them to make rational and informed choices. This involves promoting

transparency and sustainability in the operations of companies that provide goods and services, thereby encouraging ethical purchasing decisions. Consumers who practice ethical consumption are often motivated by a desire to promote sustainability, fairness, good health and social justice through their purchasing decisions. Consumers in general quickly respond to the information published or even the rumours about corporations being involved in unethical practices like engaging in environmental pollution, child labour, human resource exploitation, animal cruelty etc. It can create a negative image of the company in the eyes of consumers, leading to a loss of customer loyalty, trust, company's reputation ultimately to a decline in sales. Further, consumers may choose to completely boycott or 'buycott' (Neilson, 2010) and shift their purchasing habits to more ethical and conscious brands. In order to avoid any negative impact, reputable and established brands usually address consumers' concerns and respond to their protests through public demonstrations or regulatory interventions. They not only function according to consumer preference, but also as per their product choice and consciousness. Exercising production practices and market functions in conformity with consumers' values helps to create brand value and incentives for producers. Ethical consumption as a philosophy involves making a purchase decision based on the positive principles and overall impact of a product in various dimensions, such as social, environmental and economic factors. From a philosophical perspective, the concept of ethical consumption aims to shed light on the implicit assumptions that underlie arguments about consumption and sustainability.

Sustainable consumption, alongside ethical consumption, is increasingly gaining prominence as a key driver of sustainable development. Sustainable Consumption and Production (SCP) is addressed under Goal 12 of the SDGs, which is "Responsible Consumption and Production". SCP is known to achieve economic growth, promote resource efficiency and encourage sustainable lifestyles (Le, 2023, Mishra, Singh, & Rana, 2022), without hampering environmental degradation (UNEP). Sustainable Consumption, as defined in the Oslo Symposium, 1994 meant the optimal use of products and services in a judicious manner to respond to basic needs and improve in quality of life without compromising the needs of future generations (Ofstad et al., 1994). It focuses on reducing resource use, minimizing waste, and promoting environmentally friendly practices throughout the entire lifecycle of a product. By integrating ethical considerations into consumption patterns, sustainable consumption aims to address social, economic, and environmental challenges, fostering a more sustainable and equitable future.

II. Background

In the bygone era, consumption has been solely a need-based approach, with purchases driven by necessity. Due to various factors, and limited resources, the consumer only sought to buy goods based on the requirement, and product attributes rather than personal satisfaction, at the same time ensuring maximum utility of every single penny spent. Since the demand was limited, the product availability was also limited. The supplier had ultimate control over the market, in terms of competition, product availability, inflating pricing etc. Fast forward to the last decade, people have become more educated and gradually aware and conscious. Due to advancements in technology and globalisation, product availability wasn't an issue anymore. Consumers now were more educated, hence more informed and interested in how the market functioned. They were conscious of the supply chain, market competition, and expected transparency and started making informed choices. As a result, companies and corporations started to cater to the needs, interests and expectations of consumers. They started to fulfil the expected attributes pertaining to wider product availability, irrespective of geographical barriers, origin, ingredients and label transparency, brand representation, pro-environmental approach etc. All these factors ultimately influenced the consumers, and led to incessant indulgence and consumption of goods, more than ever. This indulgence is now reckoned as 'consumerism', wherein, people as potential consumers are acquiring and accumulating material possessions and deriving. Consumers believe that such indulgence not only derives pleasure and happiness but also is a key indicator of personal success and satisfaction. This hyper-consumption regime has led to multi-dimensional problems that have intensified globally. In order to fulfil the increasing demand, the companies and corporations, producing goods were exploiting the workers in sweatshops, as child labour, and making them work under harsh conditions and tremendous pressure. Consumer choices have the capacity to extend beyond individual actions, to form political movements that may challenge political and economic powers (Klein, 2000). Consumer activism aims to ensure the protection of the interests and well-being of consumers as well as those of people involved in different aspects of the supply chains. Consumer activists work to hold businesses accountable for their actions and to promote ethical, sustainable, and socially responsible practices.

Ethical 'consumerism' or 'consumption' has emanated from the philosophy of political consumerism, (Barnett et al., 2005) which is based on the premise of the consumer taking action through active participation in the market. It has been defined and interpreted differently by different scholars and may include a wide range of attributes and different components. Sometimes the term 'ethical consumption', is replaced with widely acclaimed terms like 'consumer activism'

‘ethical purchase behaviour’, ‘pro-environmental consumption’ (Saari et al., 2021) and critical consumption’(Jacobsen & Dulrud, 2007). The term "ethical consumer", was popularised in the late '90s by the British magazine *Ethical Consumer* (Ethical Consumer, n.d.) which was first published in 1989. One of the first instances dates back to the 1700s when Americans protested against the Stamp Act refusing British Goods (Hussain, 2012).

Ethical Consumerism (Concise Encyclopedia, n.d.) is the philosophy, which tries to explain the rationality of how consumers can, and should act, before spending their money, so being driven by ethical values and principles they uphold. It implies that purchasing decisions made by consumers are sheer reflections of these values. Ethical consumption encompasses a wide range of practices, where consumers take into account effects on the social and natural environment (Ariztía et al., 2014). It involves conducting investigations, product differentiation, understanding labels, supporting ethical brands, adoption of clean technology, preference for cruelty-free products, and boycotting unethical brands, among other related actions. By engaging in these practices, consumers are in a position to make more informed choices about the products and the companies they support which can help to promote more sustainable and responsible consumption patterns. Moreover, purchasing decisions are a way of putting values (ethical) into action. Ethical consumption in the field of marketing refers to consumer behaviour influenced by ethical criteria (Crane, 2001). Ethical consumerism largely covers all periods of the life cycle of consumption, encompassing production, distribution, usage and disposal of a product (Gummerus, Liljander, & Sihlman, 2017), aligning with values and morals that prioritize the well-being of the environment (Shaw et al., 2005), people, and animals. Ethical consumption thus involves making choices that are respectful of these values and avoiding actions that would conflict with them. As a response, accountability shifts to the industry, to realign ethical actions along with enforcing fair (ethical) standards, thereby protecting the interest of labourers and society. Consumers are choosing products that they perceive to align with their values and disclose sufficient information. An organisation which functions as per consumers' expectations in terms of social and environmental practices, tends to attract and retain more customers than its counterparts, in present times. Information about the environmental and social policy of organisations has a significantly huge impact on the purchasing decisions of consumers. The bottom line idea behind ethical consumption is that product choice act as a means to exert pressure on producers, corporation and even authorities, with the object of promoting positive change in market practices.

III. Reality and Behavioural Gap

Ethical consumption can be said as a selection of goods and services based on the manner of production, procurement and delivery, with the aim of causing no harm to individuals, society, animals and the environment throughout the entire process. Despite the fact that production and consumption are principally responsible for environmental degradation, consumers are not described as being completely rational, selfish, or only concerned with individual preferences. Instead, a new theory of a socialized consumer suggests that consumers have the power to exercise autonomy, reflect on their choices, and engage with objects and symbols of consumer society, while still being susceptible to manipulation and having conditioned behaviour (Figuerola-García et al., 2018). This complex interplay of factors plays an essential role in the economic environment and influences strategies for promoting environmentally friendly consumer behaviour. By understanding the dynamics of ethical consumption and acknowledging the multidimensional motivations behind consumer choices, businesses and policymakers can develop more effective and targeted approaches to encourage sustainable practices among consumers.

Consumers involved in making ethical purchases are found to be concerned with the environment, society, animal welfare and health-related implications (Carrigan et al. 2004). It further includes considerations such as fair labour practices, sustainable sourcing, animal welfare, and sustainable production methods that are environmentally sound. In a study, it was found that 30% of consumers have the intention to buy ethical products, whereas only a small fraction of 3% actually purchase them (Cowe and Williams, 2000). As a result market share of green products remains confined to just 1-3% of the entire market (Bray, Johns, & Kilburn, 2011). This reality or discrepancy is known as the 'attitude-behaviour gap' (Chatzidakis, Kastanakis, & Stathopoulou, 2016) or 'purchasing inconsistency' (Sharma et al., 2023). It signifies that a consumer's positive attitude towards ethical products does not always translate into action. The most common finding about consumers engaging in ethical purchases is the lack of consistency between their attitudes, values, intentions, and their actual behaviour, often referred to as the 'attitude-behaviour' or 'intention-behaviour' gaps (Chatzidakis et al., 2016). This conceptualised phenomenon of the 'attitude-behaviour gap' (Park & Lin, 2020), implies consumers expressing sustainable attitudes but not displaying sustainable behaviours when it comes to making purchases.

Research on the ethical consumption 'attitude-behaviour' gap can be categorized broadly into two groups: firstly, psychological and attitudinal research (Shaw et al. 2015) that focuses on methodological and situational issues, and sec-

only interpretive and cross-disciplinary research that explores socio-cultural influences on ethical consumption (Caruana et al., 2016). Currently, there are various pieces of research, providing useful information about ethical consumers and the behavioural gap, but there is still room for new and interdisciplinary approaches that could lead to a different understanding of ethical consumption. Notably, many people in developing countries are still unfamiliar with the concept of ethical consumerism. It is crucial to remember that consumer behaviour is shaped by cognitive, emotional, and motivational factors (Sofi et al., 2020) and can be influenced by various circumstantial factors. It is also essential to acknowledge that adopting sustainable consumption patterns requires a shift in individual behaviour.

Ethical consumption campaigns and policies often rely on the assumption that people's behaviour is influenced by the outcomes or consequences of their actions, as well as by appeals to these outcomes ((Barnett, Cafaro, & Newholm, 2005). Although ethical consumption is a relatively modern movement, it has seemingly not yet garnered widespread popularity among the masses. Research has shown that only a small fraction of people in society give due consideration to its principles. However, in developed countries, it is increasingly becoming a social phenomenon, reflecting people's growing concerns about environmental, animal, and social issues. This view has two different dynamics, first societies where making ends meet seems a daily struggle, being ethical for sustenance could be a challenging task. Hence, many people don't pay heed to integrating the behavioural attribute of ethical consumption into their purchase habits. As a result, they have an indifferent approach towards the protection of the environment, sustainability and other people's health and safety. On the other hand, 'elite' and 'affluent' households (Thompson and Kumar, 2021) are eager to exploit their spending, promoting economic consumerism (Crocker, 2017) at its core. They make purchases based on their status and utilities that are solely self-motivated rather than altruistic (Boobalan et al. 2021), disregarding any potential consequences that their purchase entails. The reasons why people choose to prioritize ethical consumption or not are largely influenced by psychological factors (Krishnakumare, 2020). This philosophy of ethical consumption may be perceived as futile by some individuals, while others may prioritize it.

A growing body of literature has highlighted a phenomenon about consumers' knowledge and awareness of ethical concerns not always leading to a significant increase in the purchase of ethical products, attributing to the existence of an "attitude-behaviour gap" phenomenon (Wiederhold & Martinez, 2018). As per the *theory of planned behaviour* (Ajzen, 1991), a person's behaviour can be explained through her/his intention, attitude, social norms etc. There are two types

of consumers, the ones who tend to receive suggestions and advice from others and the ones who realize their shopping goals and invest efforts in gathering information to pursue utilitarian shopping value (Akram et al., 2023). Such information tends to reduce the risk involved in a purchase. There are various psychological and attitudinal factors (ElHaffar, Durif, & Dubé, 2020) that impede the ethical purchase behaviour of consumers, which shall be taken into account. Additionally, various other factors affecting purchase behaviour, vary between individual (emotions, behavioural control, habits, personal values, trust, and knowledge) and situational (price range, product choice, availability, reference group, product attributes and quality, brand image, and eco-labelling, among others) factors (Joshi, Rahman, & Kazmi, 2015). Habits and social structures shape people's lifestyles, which are expressed through social schemes. These underlying social structures flag the most basic differences in society, such as wealth and status, which often become the foundation for how practices are structured and perceived. However, for the common masses, a shift in values has been witnessed. Consumers often find themselves in a dilemma between their ethical ideals and their desire for social belongingness, self-esteem, and acceptance. As a result, they are exposed to multiple factors that ultimately contribute to their purchasing decisions (Lundblad & Davies, 2016).

In conclusion, the reality-behaviour gap remains a significant challenge for promoting environmentally friendly consumer behaviour. Despite positive attitudes towards green products, various psychological and attitudinal factors can impede actual ethical purchase behaviour. Bridging this gap requires a multifaceted approach that addresses both individual and contextual factors.

IV. Factors Influencing Ethical Consumption

Ethical consumption can be seen as a response to the negative impact of rapid economic growth on the environment and society, and it emphasizes the importance of supporting social and environmental values in the marketplace. Ethical consumerism is a philosophy that relates to market contexts and shopping practices, emphasizing the support of social and environmental values by producers and consumers. Ethical consumption is based on a thoughtful and conscious approach (Tomşa, Romoñi-Maniu, & Scridon, 2021), influenced by a variety of factors that go beyond consumer activism, including social, cultural, and economic factors. These factors shape consumers' perceptions, beliefs, values, and attitudes towards ethical consumption, as well as their behaviours and purchasing decisions. To understand consumer behaviour, the whole consumption cycle should be studied rather than just initial choices (Sheoran and Kumar, 2020).

There are various factors that influence ethical consumption behaviour, including but not limited to underlying Internal and External factors.

Internal Factors

The theory of planned behaviour has been confirmed to be a predictor of individual behaviour (Otika, Olise, & Uche, 2019). Consumers purchasing decisions are profoundly influenced by psychological, social, cultural, personal and economic factors in many complex ways. Internal factors that influence ethical consumption behaviour are related to an individual's personal characteristics, traits, beliefs, and attitudes. These factors are influenced by various social, cultural, and environmental factors, including upbringing, education, family values, peer groups, media, and personal experiences. Additionally, personality traits such as empathy, knowledge, altruism (Yadav, 2016), and self-efficacy can also play a significant role in shaping an individual's ethical decision-making. Literature on ethical consumption emphasises that egoistic values (self-interest) and altruistic values (concern for others) are key drivers in human decision-making regarding ethical behaviours.

External Factors

Individual ethical decision-making can be influenced by various external factors, which may vary based on economic, institutional, social, and cultural aspects. These factors encompass the following elements:

1. **Social and Cultural Influences:** Social and cultural factors such as family, friends, and peer groups can influence ethical consumption behaviours. Interpersonal influence is an important aspect of social and cultural impact on ethical consumption behaviour.
2. **Internet and Technology:** The convenience and accessibility of technology and the Internet have a significant impact on consumer purchasing behaviour (Akram et al. 2020). Due to the vast amount of information accessible on the internet, consumers are better informed than ever before.
3. **Media and Advertising:** The way products are advertised and marketed can influence consumer perceptions and attitudes towards ethical consumption. The media coverage of environmental and social issues has significantly increased sensitized consumer behaviour (Wiederhold & Martinez, 2018) over the past decade.
4. **Economic Factors:** The price, availability, and quality of ethical products can also play a significant role in influencing ethical consumption and purchasing decisions. Individuals often prioritize their own benefits and

opt for lower-priced products that fit within their budget, even if sometimes it means keeping aside their care for environmental protection or ethics.

5. **Environmental Factors:** There has been an irreversible shift in consumer preference toward environment-friendly consumption and behaviour (Akenji, 2014). Considering the significance of the environment for the survival of humanity, and the negative impact of economic growth on the environment, ethical consumerism has gained momentum (Dowd and Burke, 2013).
6. **Corporations and Business:** The way corporations and businesses produce and market their products can have an impact on ethical consumption behaviour. Companies that engage in unethical practices like exploiting workers or causing environmental damage may discourage the consumption of their products among consumers who prioritize ethical considerations. In contrast, businesses that value sustainability and ethical production may encourage ethical consumption among consumers who share those values. Firms worldwide have come to recognize that incorporating sustainability can lead to an expansion of their market share (Mani & Gunasekaran, 2018). As a result, a number of business organizations have emerged with the aim of producing items labelled as 'organic', 'green', 'vegan', 'ethically-sourced' or 'cruelty-free', with the intention of appealing to consumers who prioritize ethical considerations.
7. **Government Policies and Regulations:** Government policies and regulations that promote or mandate ethical and sustainable practices can influence consumer behaviour.
8. **Independent Agencies and NGOs:** Organisations like Ecocert, Fairtrade, Soil Association, NATRUE, and Rainforest Alliance World Fair Trade Organization, encourage ethical and promote sustainable practices in various industries, including agriculture, forestry, trade and manufacturing.

The interplay between these motives influences consumers' ethical decisions, making it essential for businesses and policymakers to understand and address both aspects to promote ethical consumer behaviour effectively.

V. Promoting Ethical Consumption through Organic Products

Consumption patterns have a significant impact on biodiversity and climate, with traditional methods often leading to environmental degradation and ecological imbalances. To address this issue, there is a growing recognition of the need for more sustainable and ethical consumption practices. Organic products have emerged as a viable solution to promote ethical consumption and reduce the neg-

ative environmental effects of conventional products. The increasing interest towards organic and ethical production and trade has been driven by both consumer demands and trade considerations (Browne et al. 2000). Organic food or other products for that matter strives for environmental benefit and animal-friendly techniques, making it a better choice for people, animals and the planet. By eliminating harmful synthetic chemicals, pesticides, and GMOs, organic production methods safeguard biodiversity and promote healthier ecosystems (Seufert and Ramankutty, 2017).

Ethical consumption refers to the deliberate choices made by consumers to purchase products and services that are ethically produced and aligned with values such as fair trade, organic, or environment-friendly products. It is a personal choice made by the consumer to support ethical practice, which further reinforces these principles and values by focusing on environmental protection and sustainable development. In its purest form, ethical consumption is about acquiring products and services that have been manufactured without causing much harm or exploitation of, humans, animals, or the environment. Sustainable consumption, in its broadest sense, aims at reducing absolute consumption levels (Voegt-Kleschin, Baatz, & Ott, 2015) coupled with complexities and nuances associated with responsible and conscious choices and plays a significant role in achieving sustainability goals. Despite a great deal of literature being available, owing to its complex and multifaceted nature, sustainable consumption has no single acknowledged definition (Arias, Vélez-Rolón, & Méndez-Pinzón, 2021). Organic agriculture often adheres to fair trade principles, ensuring that farmers receive fair compensation for their labour and communities benefit from improved economic opportunities. As observed, various principles of organic production closely correspond to ethical production and consumption methods, as a result, they overlap in various attributes. The adoption of organic farming methods has yielded additional benefits in terms of promoting ethical practices at various levels. Similarly, ethical consumers may prefer organic products as they often support local farmers, and fair trade practices and prioritize the ethical treatment of animals, ensuring they are raised in more humane conditions without the use of growth hormones or unnecessary antibiotics (IFOAM Organics Europe, n.d.). This rising interest towards organic production and consumption leads to positive ripple effects throughout supply chains, mitigating the negative consequences of traditional consumption patterns.

VI. The Role of Law in Enabling Ethical Consumption Choices in India

When it comes to sustainable and ethical consumption, a dynamic and robust legal framework is required to empower consumers by ensuring transparency, ac-

countability, and truthful representation from market players. The law plays a pivotal role in enabling consumers to make informed and ethical choices. Along with the regulatory framework, certificate standardisation, compliance and enforcement mechanism, assigning legal liability, consumer protection and protecting intellectual property are some of the legal interventions required in the evolving arena of sustainable and ethical consumption.

In India, The Consumer Protection Act, 2019, aims to protect consumer interests by prohibiting unfair trade practices and misleading advertisements, including instances of greenwashing. The Advertising Standards Council of India (ASCI) lays down the code of self-regulation for advertisement. It requires environmental claims to be specific, clear, and not misleading. The NPOP (National Program for Organic Production) and The Food Safety and Standards (Organic Foods) Regulations, 2017, particularly under Chapter 4 (Section 14-22) establish stringent criteria for organic certification, labelling, and monitoring, enabling consumers to identify authentic organic products. However, it is confined to organic food products and a lack of comprehensive standards for non-food organic products highlights the need for further legal reforms. Additionally, Environmental laws like the Environment Protection Act, 1986, and the Plastic Waste Management Rules, 2016, promote sustainable practices and production methods which align with sustainable development goals and eventually with environmental conservation. Complementing them, The BIS has developed a standard for eco-labelling of products and services called (IS/ISO 14024:1999), which sets out criteria for the companies and brands regarding the use of eco-labels and further provides guidelines for making environmental claims in their advertising.

Effective implementation and enforcement of these legal provisions, coupled with consumer awareness programs, can help foster a legal environment where ethical consumption choices are facilitated and promoted. At the same time developing an ecosystem of dynamic legal frameworks and strengthening the existing ones can help to address the needs of the evolving market and further encourage consumers to make such sustainable choices freely.

VII. Conclusion

The present industrial production and consumption involve a number of detrimental consequences to human health, the environment, and society at large. Adopting ethical consumption practices promotes a more sustainable and responsible approach to consumption, which shall benefit both society and the planet. It ensures coordination for environmental, social and ethical compliance throughout the supply chains by considering factors such as fair trade, environmental sus-

tainability, animal welfare, and labour rights. Thus, Ethical consumption can be defined as a holistic approach to consumption activities, including production, procurement, and disposal of products, guided by values and morals that prioritize the well-being of the environment, people, and animals. The need is to address multiple complexities and reflect the changes in policies, education, and industrial practices. In the pursuit of ethical consumption and sustainability, the focus should be on collaborating with communities, businesses, and policymakers to establish supportive environments that encourage sustainable practices and facilitate a shift towards more sustainable lifestyles. Simultaneously, enhancing legal frameworks, aligned with the idea of sustainability and consumer protection programs, can encourage and empower consumers to make ethical purchasing choices that ultimately contribute to sustainable development.

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