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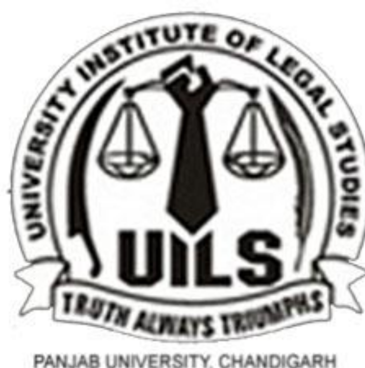

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Women as Stakeholders in Foreign Trade: A Note with Special Reference to Foreign Trade Policy 2023

Bommuluri Bhavana Rao [*]

Abstract

Statistics show a discrepancy, with fewer women than men engaging in starting new businesses. This paper delves into the role of women as stakeholders in foreign trade, with a focus on the Foreign Trade Policy of 2023. It emphasizes the significance of women's participation in international trade and the need for tailored policies that support their engagement. The Foreign Trade Policy (FTP) 2023 provides a strategic backdrop for this discussion. It aims to enhance the country's trade environment, and this paper underscores the importance of assessing its effectiveness concerning women's participation in foreign trade. Historically, women have faced distinct challenges in the realm of international trade. These include limited access to financial resources, socio-cultural barriers, inadequate legal support, and restricted networking opportunities. These challenges have hindered their active involvement in trade-related activities. The paper also highlights the critical aspect of financial inclusion for women in foreign trade. Financial literacy and access to financial products are essential for enabling women entrepreneurs to fully engage in economic activities. In the context of the FTP 2023, there is a need see if this policy is able to address these challenges and promote gender-responsive policies. This could involve understanding if this policy is creating specialized mechanisms for addressing women's concerns in foreign trade, ensuring equitable access to trade benefits, and providing necessary training and support. By recognizing women as key stakeholders in foreign trade and implementing policies that empower and include them, nations can unlock the potential for economic growth and prosperity while advancing gender equality.

Keywords*: Women's Entrepreneurship, International Trade Policies, Financial Inclusion, Gender Equality, CEDAW, World Trade Organization, Indian Foreign Trade Policy, Economic Empowerment, Gender Impact Assessment, Intellectual Property Rights, Women's Rights***.**

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1. Introduction

In layman's terms, trade refers to the exchange of goods and services between individuals, companies, or countries. It is an essential component of economic growth and development, as it allows countries to specialize in producing goods and services, they are most efficient in and trade them with others in exchange for goods and services they need but are not efficient in producing. Under international trade law regime, trade is defined as the exchange of goods and services between countries. The World Trade Organization (WTO) is the primary international organization that oversees and regulates international trade. The WTO provides a framework for negotiating and implementing trade agreements, resolving disputes, and ensuring the smooth functioning of the global trading system. Women are half of the population and trade effects, as well as is effected positively through women entrepreneurs. It has also been researched the governmental data may not be segregated gender wise.[1]

As per latest data available through government sources, from July 1, 2020, to March 12, 2023, India had a total of 14,750,018 MSMEs, with 2,775,390 being women-owned. In the fiscal year 2022-23, 340,013 women-owned enterprises received credit guarantees worth ₹14,247.24 crore under the Credit Guarantee Scheme. 26,241 women-owned enterprises benefited from the margin money subsidy under the Prime Minister's Employment Generation Programme.[2] The Procurement and Marketing Support (PMS) scheme provides 100% financial assistance for stall rent to women-owned MSMEs in trade fairs and offers various market enhancement opportunities. The International Cooperation Scheme supports MSMEs, including 57 women entrepreneurs in 2022-23, in participating in international trade events and accessing market intelligence and reimbursement for export costs.[3] Table 1 as under speaks of this But in terms of international trade, beyond this data, three variables, in addition to the conventional demand and supply, have over time influenced the course of international trade and long-distance business. Technology, politics, and the (then-dominant)[4] economic philosophy fall under this category.[5] Some people believe that we may be on the verge of a time when significant changes are

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1 Bhavana Rao, "Data On Indian Women Entrepreneurs: An Analysis Of Information Sought Through Rti" 25 (3) Stochastic Modelling and Applications 1722 July-December, 2021.

2 Press Report, PIB *availabl*e at Press Information Bureau (pib.gov.in) last visited on May 26, 2024.

3 *Ibid*.

4 Dominant economic philosophy of the time of evaluating the trade regime prevalent..

5 Ajitava Raychauduri et al, *World Trade and India: Multilateralism, Progress and Policy Response* (Sage Publications Pvt. Ltd., New Delhi, 2021).

occurring in each of these three areas. Politics is confronting the ostensibly inevitable march of globalization, and there appears to be a widening gap between the prevailing economic theory and policies. New technology is ready to transform how production and commerce are organized in the next years. The World Trade Organization (WTO) has remained fairly unchanged in this quickly changing global system.[6]

Table 1: Support and Statistics of Women owned MSME

Head	**Details**
Total MSMEs in India (01.07.2020 to 12.03.2023)	14,750,018
Total Women-Owned MSMEs (01.07.2020 to 12.03.2023)	2,775,390
Women-Owned Enterprises - Credit Guarantees (2022-23)	340,013
Amount of Credit Guarantees	₹14,247.24 crore
Women-Owned Enterprises - Margin Money Subsidy (2022-23)	26,241
PMS Scheme Support	100% financial assistance/subsidy for stall rent charges for women-owned MSMEs
PMS Scheme Opportunities	Participation in National/International Trade Fairs/Exhibitions Awareness on packaging, import-export policy, GeM portal, MSME Conclave, market access developments
International Cooperation Scheme (2022-23)	57 women entrepreneurs assisted in international exhibitions/trade fairs held abroad

Source:https://pib.gov.in/PressReleasePage.aspx?PRID=1907502#:~:text=Ministry%20of%20MSME%20implements%20International,providing%20them%20with%20actionable%20market%2D (last visited on May 30, 2024).

The General Agreement on Tariffs and Trade (GATT) regulations, which were occasionally drafted during the early Bretton-Woods era and the late 1980s,

6 *Ibid*.

remain at the core of the WTO. Many of these guidelines are now outdated and ineffective in the current situation. After 18 years, the Doha Development Round is still in discussion.[7] It was started in 2001 to solve various issues with the outdated GATT/WTO system and to create a new set of rules for the multilateral trade system. The political landscape of the world has dramatically shifted since the WTO was established. At the time, the major supporter of free trade was the United States, and China wasn't even a WTO member. The world was witnessing a phase of accelerated trade liberalization.[8]

When disputes arise in international trade, they can be settled with binding rulings under international trade or investment agreements. For World Trade Organization (WTO) agreements, members can launch such disputes through the two-step WTO dispute settlement mechanism. The European Union (EU) also includes similar dispute settlement provisions in its trade agreements.[9] However, there is another dimension to this. US grievances are linked to the broader question of the need to reform the WTO. Commentators have implied that the USA is using the Appellate Body crisis as leverage to effect other changes to the WTO, which largely stem from the paralysis in the negotiating function and other disruptive issues, such as the perceived incompatibility of Western and Chinese forms of capitalism.[10] Can this not add as a deterrent to the already existing lack of clarity on dispute settlement and finally effecting the women entrepreneurs.

The WTO's dispute resolution mechanism was invoked to address trade barriers related to automobile imports for example in between countries like Japan and USA. For reference, in the 1970s, trade disputes between Japan and the United States were mostly related to the surging exports of Japanese products (e.g., steel, color televisions, and automobiles) to the United States.

In the 1980s however, the two countries began to have more disputes over the alleged difficulties foreign producers face when trying to enter Japanese markets. Many of those disputes were based on U.S. allegations about closed distribution systems and other collusive or restrictive market practices/structures in Japan.

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7 *Ibid*.

8 *Ibid*.

9 Briefing Report, *International trade dispute settlement - WTO Appellate Body crisis and the multiparty interim appeal arrangement,* April 2021 European Parliament, 1. *available* at https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690521/EPRS_BRI(2021)690521_EN.pdf (last visited on September 10, 2023).

10 *Ibid*.

As in 2022, the US Japan International Trade Agreement tariff commitments cover about 5% of bilateral trade. The United States agreed to reduce or eliminate 241 tariffs on mostly industrial goods, including machine tools, fasteners, steam turbines, bicycles and parts, and musical instruments, and certain niche agricultural products, such as green tea. The United States also expanded its global tariff rate quota for beef imports. Japan agreed to reduce or eliminate tariffs on about 600 agricultural tariff lines (e.g., beef, pork, and cheese), and expand preferential tariff-rate quotas for a limited number of U.S. products (e.g., wheat).

Foreign trade policy is a set of guidelines and regulations established by a government to govern the trade of goods and services between its own country and other countries. It aims to promote exports, create jobs, increase foreign exchange earnings, and promote economic growth. At the International Level, this is taken care of by the international trading system which comprises of many thousands of unilateral, bilateral, regional, and multilateral rules and agreements among more than two hundred nations.[11]

Managing successfully this complex and rapidly evolving mass of political and economic arrangements implies understanding the changes occurring globally, the impact of trade in national development interests and priorities and fostering consensus on addressing trade barriers and commitment to more open and fairer international trade.[12]

Typically, a foreign trade policy includes measures to promote exports, such as export incentives, export promotion councils, and export finance. It also includes measures to regulate imports, such as tariff and non-tariff barriers, safeguard measures, and anti-dumping duties.

Foreign trade policy also covers trade negotiations and agreements with other countries, including preferential trade agreements, free trade agreements, and bilateral and multilateral trade negotiations.

2. Why are Foreign Trade Policies needed?

Foreign trade policies are an essential part of a country’s economic growth and development. Foreign trade is critical to an economy’s growth and development in terms of increased output, employment, and income, as well as the influx of

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[11] The International Trading System and Trade Negotiations, *available* at: https://unctad.org s/topic/trade-agreements/the-international-trading-system (Last visited on September 10, 2023)

[12] *Ibid*.

foreign exchange at the domestic level and the strengthening of bilateral and multilateral economic links at the global level.[13] The Indian government has implemented several foreign trade policies to promote exports and attract foreign investment.

3. Aim of FTP 2023

The Indian Foreign Trade Policy 2023 aims to enhance the country's exports, promote domestic manufacturing, and provide a conducive environment for foreign investment. This paper aims to investigate the effectiveness of the Indian Foreign Trade Policy 2023 with special reference to the World Trade Organization (WTO) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Overall, the FTP 2023 is a dynamic policy document that aims to boost India's exports and promote its growth manifold in the coming years.[14] With its emphasis on ease of doing business, technology interface, and collaboration, the policy is expected to facilitate the growth of the export industry, while also creating a favorable environment for MSMEs and other businesses to access export benefits. The FTP 2023 is a roadmap for India's exports to reach new heights and emerge as a global leader in the export industry.

For one to understand the new policy we must delve into a few questions like, to what extent will the Indian Foreign Trade Policy 2023 be effective in enhancing exports of women entrepreneurs? How will the Indian Foreign Trade Policy 2023 promote domestic manufacturing and more specifically women owned manufacturing units? What will be the impact of the Indian Foreign Trade Policy 2023 on foreign investment in Indian Companies run by Women? How will the Indian Foreign Trade Policy 2023 address gender issues in foreign trade, with a specific reference to the CEDAW? What are the challenges and opportunities for the Indian government to make the Foreign Trade Policy 2023 effective? These are largely the research questions to delve into.

4. The Foreign Trade Policy 2023

The previous foreign trade policy of India was released in 2015 and was valid until March 2020, but it was extended until September 2021 due to the COVID-

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[13] Inclusive India-The Foreign Trade Policy 2023, *available* at Inclusive India: The Foreign Trade Policy 2023 | ORF (orfonline.org) (last visited on 09/09/2023)

[14] Report, Invest India, "India's Foreign Trade Policy 2023-A Roadmap to Boost Exports", *available* at https://www.investindia.gov.in/team-india-blogs/indias-foreign-trade-policy-2023-roadmap-boost-exports (last visited on September 9, 2023).

19 pandemic. The government of India has in 2023, announced the new foreign trade policy. Before delving into the current trade policies, we will delve into the previous trade policies which Indian Government implemented and were in force. The Foreign Trade Policy from 2015-20 contributed significantly to the growth of India's export sector, which went from $435 billion in the FY16 to $676 billion in the FY22.[15]

The new policy has focus on promoting exports, enhancing trade infrastructure, increasing competitiveness, and reducing trade barriers. It is also likely to address issues such as e-commerce, services trade, and the promotion of micro, small and medium-sized enterprises (MSMEs).

In general, it can be said that there are four pillars of Indian Foreign Trade Policy 2023 and one of which is incentive to remission. The previous policy focused on incentives to the local manufacturer. For example, presently according to some reports, solar capacity addition in India majorly depends upon imported solar PV cells and modules.[16] The domestic manufacturing industry has limited operational annual capacities of around 2.5 GW for solar PV cells and 9-10 GW for solar PV modules.

The Production Linked Incentive Scheme (PLI) for high-efficiency solar PV modules aims to provide impetus to the domestic industry to scale up manufacturing in the coming years so that majority of this demand can be met domestically itself and India does not have to depend on imports to fulfill its demands.

The dictionary meaning of remission is "the cancellation of a debt, charge, or penalty". In terms of trade, particularly in International Trade, it is a support extended to the exporter of commodities by waiving away certain older loans, charges or duties so that the exporter can restart or re-engage in the business.

More importantly, there is hand holding at the stage of imports of raw materials at the stage of production. Certain duties are waived off when the importer is importing raw material for the purpose of producing for exports. The objective of these schemes is to enable duty-free import of inputs for export production, including replenishment of inputs or duty remission.

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[15] Foreign Trade Policy 2023: A Step forward towards ease of doing business in India | The Financial Express

[16] Research Report of Invest India titled "Inside India's Production Linked Incentive Schemes: Solar PV Modules" *available* at Inside India's Production Linked Incentive Schemes: Solar PV Modules (investindia.gov.in)

So, the first pillar of the FTP 2023, is “Incentive to Remission”, which aims to provide exporters with a level playing field. The policy also intends to stimulate exports and provide assistance to exporters in terms of lowering manufacturing costs, such as logistics, raw materials, and other inputs.

For women owned enterprises, the thrust of the policy should take care of the local women entrepreneurs. Remission should work not only for exporters at large but there should be conscious hand holding of the women entrepreneurs. If the support is extended to the exporter of commodities from business owners who are women by waiving certain older loans or duties, the objective of this incentive to remission will be taken care of at the gender level.

Any policy therefore should aim at giving clearances to women entrepreneurs by incorporating certain provisions under the foreign trade act and provisions of legislations related to investments. The Legislative changes will be studied in the forthcoming portions.

The other important areas which the policy focuses on are Export promotion through collaboration - Exporters, States, Districts, Indian Missions, Ease of doing business, reduction in transaction cost and e-initiatives and Emerging Areas - E-Commerce Developing Districts as Export Hubs and streamlining SCOMET policy.

Legislations facilitating balance in International Trade should be the focus of the policy. Since the stakeholders of trade are a many, there is a need to visit Constitutional principles which include Fundamental Rights and Directive Principles like Art 39. The constitution of India casts a duty upon the State of India to have policies which ensure adequate means of living, ensure that the ownership and control of resources of the community are distributed to subserve the common good,[17] Avoiding concentration of wealth and means of production to the common detriment. It also calls for bought the state up to ensure equal pay for equal work for both men and women, and to ensure that citizens are not forced to enter vocations unsuited to their age or strength.[18]

Article 39 of Indian Constitution says The State shall, in particular, direct its policy towards securing. (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; that there is equal pay for equal work for both men and women;

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[17] The Constitution of India, art. 39.

[18] *Ibid*.

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

5. Women Entrepreneurs and FTP 2023

Statistical reports regarding women's entrepreneurial activity are combined with recommendations for municipal or intergovernmental policy interventions[19]. For instance, the formation of extensive angel networks specifically devoted to funding female-owned businesses is one way that members of the European Union (EU) may work together to develop policies and initiatives that better encourage women's entrepreneurial engagement.[20]According to the OECD survey, women are less likely than males to be involved in founding new enterprises, and this disparity is greater in EU nations than in OECD nations. 2.9 percent of women and 5.3 percent of males in the EU between 2014 and 2018, as opposed to 5.3 percent of women and 7.9 percent of men.[21]

Position of Women under FTP

The Indian Foreign Trade Policy 2023 aims to improve the country's trade environment. While there is a need to investigate the effectiveness of the Indian Foreign Trade Policy 2023 post some time lapse, there is also a need to accommodate changes which should run in parallel and complement the policy. The context here is, the researcher in a previous study had pointed to the requirement of reading the World Trade Organization (WTO) through the lens of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

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[19] "The missing entrepreneurs" (OECD/The European Commission, Citation2019) Organization for Economic Co-operation and Development mentioned in Joyce A. Strawser, Diana M. Hechavarría et al, "Gender and entrepreneurship: Research frameworks, barriers and opportunities for women entrepreneurship worldwide", 1-15, Journal of Small Business Management, 59:sup1, , DOI: 10.1080/00472778.2021.1965615 2021 available at https://www.tandfonline.com/doi/full/10.1080/00472778.2021.1965615 (last visited on November 1, 2023).

[20] Joyce A. Strawser, Diana M. Hechavarría et al, "Gender and entrepreneurship: Research frameworks, barriers and opportunities for women entrepreneurship worldwide", 1-15, Journal of Small Business Management, 59:sup1, , DOI: 10.1080/00472778.2021.1965615 2021 *available* at https://www.tandfonline.com/doi/full/10.1080/00472778.2021.1965615 (Last visited on November 1, 2023).

[21] *Ibid*. Abstract available at https://www.tandfonline.com/doi/full/10.1080/004727 78.2021.1965615 Also refer to the full paper.

WTO Rules

It was a given at some point in recent history that the WTO rules have not been able to read the rights of women entrepreneurs from the developing and least developed countries. This, not just because of the rules lacking teeth, but also since there has been lack of political will in reading provisions which facilitate trade windows for women. It has however been acknowledged in the new policy that trade windows must become simpler. Now, there is a need therefore, to look beyond facilitation of trade and dive into the judicial requirements of women entrepreneurs.

Special Courts for Women

This requires delving into the requirement of special courts for women entrepreneurs not just for domestic cases, but also to work as a means to become the first point of contact for international commercial and trade related disputes. There is also a need to train these women the basic rules and jurisprudence of dispute settlement in international trade, investment and intellectual property. It is to be seen of the policy caters to this aspect of gender jurisprudence.

Under Chapter 8 of the FTP , Quality Complaints and Trade Disputes are covered. Action against erring exporters/importers can be taken under the Foreign Trade (Development and Regulation) Act, 1992, as amended and under Foreign Trade (Regulation) Rules, 1993, as amended. However there is no special mechanism for women exporters having some complaint.

Financial Inclusion of Women

The ability to engage in the financial system through financial inclusion enables underbanked and unbanked people to obtain financial services that foster economic growth and give people power. The Reserve Bank of India (RBI) defines financial inclusion as the process of ensuring that vulnerable groups, such as weaker sections and low income groups, have access to the necessary financial products and services they need from mainstream institutional players at an affordable price in a fair and transparent manner.

Financial exclusion is a challenge for both developed and developing countries. Even ‘well-developed’[22] financial systems haven’t been able to attain universal financial inclusion in many countries. This is the position in general. Women fare even worse. Unless there is financial literacy and inclusion of

women an entrepreneur, one cannot fathom including this group as controllers of finance and revenue generating businesses.

There is no particular section or chapter in FTA which deals with this aspect of women entrepreneurship. However, even prior to the unveiling of the policy there were certain loan schemes for small entrepreneurs including women.

Indian Exports related to SMES and position of women entrepreneurs with other countries before 1992

India's GDP increased at a 3.5% yearly rate before to 1991. Exports contributed no more than 4.5 percent to this. Trade liberalization policies implemented after 1991 increased the GDP growth rate (to >6%), with exports making up greater than 11% of the GDP. As a result, growth in the Indian economy was significantly fueled by international trade.

This export-led GDP growth is attributable to the free-trade policies, increase in public spending, favorable taxation policies, expansion of private investments, and banking sector reforms that stimulated FDI influx. India's export sector contributed 31.5% of the country's GDP in 2018–19, but that figure dropped to 27.8% in 2019–20.

Before 1991, the position of women entrepreneurs varied significantly across different countries and regions. However, in many parts of the world, women faced numerous challenges and barriers to becoming successful entrepreneurs. Here are some key aspects of the position of women entrepreneurs before 1991:

Limited Access to Capital

Women had limited access to financial resources and faced difficulties in securing loans or investments for starting or expanding their businesses. Banks and financial institutions were often reluctant to provide loans to women entrepreneurs, considering them as higher risk borrowers.

Socio-cultural Norms and Gender Bias

Traditional gender roles and societal expectations often discouraged women from pursuing entrepreneurial endeavors. Prevailing socio-cultural norms expected women to focus on domestic responsibilities and family duties rather than taking up business ventures. Gender bias was prevalent, leading to discrimination and unequal treatment in various aspects, including business opportunities, education, and access to networks.

Lack of Legal Support and Protection

Legal frameworks and policies related to entrepreneurship often did not adequately address the specific needs and challenges faced by women. This lack of support and protection further hindered women entrepreneurs in terms of property rights, inheritance laws, contract enforcement, and legal remedies for discrimination.

Limited Networking and Mentorship Opportunities

Women entrepreneurs had limited access to business networks, mentorship programs, and professional development opportunities. Existing networks and business associations were often male-dominated, making it difficult for women to establish connections, find mentors, or access crucial information and resources.

Educational and Skill Gaps

Women faced disparities in education and skills development, which affected their entrepreneurial prospects. Limited access to quality education and training opportunities, especially in business and technical fields, created barriers for women in acquiring the necessary knowledge and skills for entrepreneurship.

Lack of Role Models

The scarcity of visible and successful women entrepreneurs acted as a deterrent for aspiring women entrepreneurs. The absence of role models made it harder for women to envision themselves as entrepreneurs and limited their belief in their ability to succeed in business ventures.

Limited Market Opportunities

Certain industries and sectors were considered less accessible to women entrepreneurs, primarily due to gender biases and prevailing stereotypes. This restricted the range of opportunities available to women, further impacting their entrepreneurial prospects.

It is important to note that the position of women entrepreneurs varied across countries and regions, with some places being more progressive and supportive than others. However, in general, women faced significant challenges and systemic barriers that limited their participation and success in entrepreneurship before 1991.

Trade Policies after 1992 and Women Entrepreneurs

Since several nations, especially India, undertook economic reforms and liberalisation policies in 1991, it is sometimes regarded as a key year. These measures seek to boost entrepreneurship, welcome foreign investment, and open up the economy. Here are some basic elements of trade policy after 1992 and their effects on women entrepreneurs, while specific trade policies can differ across nations:

Market Access and Globalization

Post-1992 trade policy intended to liberalize economies and advance international commerce. This improved market accessibility and provided female company owners with chances to grow their enterprises outside of the home. Women-owned businesses were able to join global markets more easily as a result of lowered trade barriers and the elimination of protectionist policies.

6. Laws

Several legislations and international agreements have been put in place to support international trade and empower women in business. Here are some notable examples:

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Adopted by the United Nations General Assembly in 1979, CEDAW is an international treaty that promotes gender equality and women's empowerment. It calls for the elimination of discrimination against women in all areas of life, including economic and social spheres. CEDAW recognizes the importance of women's participation in international trade and highlights the need for policies that promote their equal opportunities and benefits.

World Trade Organization (WTO) Agreements

The WTO has several agreements that promote international trade and provide a framework for fair and transparent trade practices. These agreements, including the General Agreement on Tariffs and Trade (GATT) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), aim to create a level playing field for businesses. While not specifically focused on women, these agreements contribute to an enabling environment for women entrepreneurs by reducing trade barriers and ensuring non-discriminatory treatment.

Gender-Sensitive Trade Agreements

Some trade agreements and regional economic integration initiatives include provisions that address gender considerations. For example, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) includes a chapter on small and medium-sized enterprises (SMEs) that recognizes the importance of promoting women's entrepreneurship and supporting women-led businesses.

National Legislation on Gender Equality

Many countries have enacted legislation to promote gender equality and protect women's rights in the context of international trade. These laws address issues such as equal pay, anti-discrimination measures, maternity leave, access to finance, and business opportunities. They aim to create a supportive legal framework that enables women entrepreneurs to participate and succeed in international trade.

Women's Entrepreneurship Development Programs:

Governments often establish specific programs and initiatives to support women entrepreneurs in international trade. These programs may provide financial assistance, training and capacity-building, mentoring, networking opportunities, and access to markets. They are designed to address the unique challenges faced by women in international trade and enhance their competitiveness and participation.

7. Gender Impact Assessments

Some countries and international organizations have started conducting gender impact assessments of trade policies and agreements. These assessments analyze the potential effects of trade measures on women's economic empowerment and identify strategies to maximize positive impacts while minimizing negative consequences. Gender impact assessments help policymakers understand the specific needs and challenges faced by women in international trade and develop targeted interventions accordingly.

It is worth noting that while these legislations and initiatives are steps in the right direction, there is still progress to be made in ensuring gender equality and women's empowerment in international trade. Ongoing efforts are necessary to strengthen and implement these measures effectively and address the remaining barriers that women entrepreneurs face in accessing and benefiting from international trade opportunities.

8. Women's Intellectual Property Rights Issues in Foreign Trade

Women's intellectual property rights (IPR) issues in foreign trade have been a subject of concern and have garnered attention in recent years. Some key aspects related to women's IPR issues in foreign trade are:

Access to Intellectual Property Protection

Women entrepreneurs often face challenges in accessing and protecting their intellectual property (IP) rights in foreign markets. This includes obtaining patents, trademarks, copyrights, and other forms of IP protection. Limited knowledge, financial resources, and legal support may hinder women's ability to navigate complex IP systems and secure their creations and innovations.

Gender Bias and Stereotypes

Gender bias and stereotypes can influence the perception and valuation of women's intellectual creations and innovations. Discriminatory attitudes may lead to underestimating the value of women's work or ideas, making it more difficult for women to assert and protect their IP rights. This bias can also affect licensing agreements, collaborations, and negotiations in foreign trade.

Lack of Representation

Women are underrepresented in the field of intellectual property, including IP offices, legal practitioners, and expert bodies. This lack of representation can result in inadequate consideration of women's specific needs and perspectives in IP-related policies, laws, and practices. It may also limit the availability of gender-responsive support and services to protect women's IP rights in foreign trade.

Traditional Knowledge and Cultural Expressions

Women often possess unique knowledge and expertise related to traditional practices, cultural expressions, and indigenous innovations. However, their contributions to traditional knowledge and cultural heritage may be undervalued or exploited without adequate protection and recognition. Ensuring the protection and equitable benefit sharing of women's traditional knowledge and cultural expressions in foreign trade is crucial.

Counterfeiting and Piracy

Counterfeit and pirated goods pose significant challenges in foreign trade, affecting various industries and intellectual property rights holders. Women entrepreneurs, particularly those in industries such as fashion, design, and

cosmetics, may encounter infringements of their IP rights through the production and sale of counterfeit products. The economic impact, reputation damage, and enforcement issues associated with counterfeiting and piracy disproportionately affect women-led businesses.

Technology Transfer and Licensing

Access to technology transfer and licensing opportunities in foreign trade can be crucial for women entrepreneurs. However, they may face barriers in accessing technology, know-how, and licensing agreements, which can limit their ability to innovate, compete, and expand in international markets. Promoting equitable and fair technology transfer and licensing practices is essential to support women's participation in foreign trade.

Capacity-Building and Awareness

Enhancing women entrepreneurs' knowledge and capacity in understanding and protecting their intellectual property is vital. Access to training, workshops, mentorship programs, and awareness campaigns can empower women to navigate the complexities of IP systems, assert their rights, and effectively manage IP-related challenges in foreign trade.

Efforts are underway at both national and international levels to address women's IPR issues in foreign trade. These include promoting gender-responsive IP policies, providing support services, strengthening legal frameworks, and enhancing capacity-building programs. It is crucial to create an enabling environment that recognizes and protects women's intellectual creations, fosters innovation, and ensures equitable opportunities for women entrepreneurs in foreign trade.

Financial Inclusion of Women

The ability to engage in the financial system through financial inclusion enables underbanked and unbanked people to obtain financial services that foster economic growth and give people power. The Reserve Bank of India (RBI) defines financial inclusion as the process of ensuring that vulnerable groups, such as weaker sections and low income groups, have access to the necessary financial products and services they need from mainstream institutional players at an affordable price in a fair and transparent manner.

Financial exclusion is a challenge for both developed and developing countries. Even 'well-developed' financial systems haven't been able to attain universal financial inclusion in many countries.

9. Analysis and Conclusion

The Indian Foreign Trade Policy 2023 aims to enhance India's exports, promote domestic manufacturing, and create a conducive environment for foreign investment. It focuses on various aspects such as export promotion, trade infrastructure, reducing trade barriers, and addressing emerging areas like e-commerce and services trade. The policy also emphasizes the importance of collaboration and ease of doing business, aiming to support the growth of the export industry and provide favorable conditions for Micro, Small, and Medium Enterprises (MSMEs).

Regarding women entrepreneurs, the policy should strive to ensure their inclusion and empowerment in the trade sector. The effectiveness of the Indian Foreign Trade Policy 2023 in enhancing exports for women entrepreneurs needs to be examined, along with its promotion of domestic manufacturing, particularly for women-owned manufacturing units. The policy should also address gender issues in foreign trade, aligning with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Moreover, it is essential to consider the challenges and opportunities faced by the Indian government in implementing an effective Foreign Trade Policy 2023.

To support women entrepreneurs, the policy could include provisions that extend incentives, remission, and hand-holding measures specifically tailored to their needs. Additionally, establishing special courts for women entrepreneurs to address international commercial and trade-related disputes, along with providing training in dispute settlement and financial literacy, could further enhance their participation in the trade sector.

Financial inclusion of women entrepreneurs is crucial, and the policy should ensure their access to financial services and products through mainstream institutional players. By incorporating provisions that align with constitutional principles, such as ensuring equal pay for equal work and avoiding concentration of wealth and means of production to the common detriment, the policy can promote a more balanced and inclusive international trade environment.

Overall, the Indian Foreign Trade Policy 2023 sets a dynamic roadmap for enhancing exports and promoting India's growth in the global export industry. However, it is essential to closely monitor its implementation and make necessary adjustments to ensure the active participation and empowerment of women entrepreneurs, as well as address gender-related challenges in foreign trade. By effectively supporting women entrepreneurs and fostering an inclusive trade environment, India can strive towards becoming a global leader in the export industry while advancing its economic development goals.

10. Suggestions for making the Indian Foreign Trade Policy 2023 effective

(i)Tailored Incentives for Women Entrepreneurs: The policy should facilitate specific incentives and schemes designed to support women entrepreneurs, such as access to finance, training programs, and market linkages.

(ii) Specialized Dispute Resolution Mechanisms: Establishing special courts or tribunals to address international commercial and trade-related disputes involving women entrepreneurs can enhance their confidence in engaging in global trade.

(iii) Financial Inclusion Initiatives: Ensuring that women have access to financial services and products through mainstream institutions can help overcome barriers to their participation in the trade sector. The need to have collaterals in loans should be reduced.

(iv) Capacity Building and Training: Providing training in dispute settlement, financial literacy, and other relevant areas can enhance the skills and knowledge of women entrepreneurs, enabling them to compete effectively in international markets.

(v) International Law: The policy should align with international standards and conventions, such as CEDAW, to ensure that gender issues are addressed comprehensively in foreign trade. For this tools like some indicators similar to the rule of law indicators can be used. Regular monitoring and evaluation of the policy's impact on women entrepreneurs are essential to identify gaps and make necessary adjustments to enhance its effectiveness to stay in tune with legal norms at the international level.

(vi) Stakeholder Engagement: Engaging with women entrepreneurs, MSMEs, and other stakeholders through consultations and feedback mechanisms can help ensure that their needs and concerns are adequately addressed in the policy. A record of this could be kept at district, state and zonal levels.

Indian Foreign Trade Policy 2023 can create a more inclusive and supportive environment for women entrepreneurs, ultimately contributing to India's economic growth and global competitiveness in the export industry.

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Politics of Sex: Examining the Nexus between State Power and Gender Neutrality

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Abstract

Any modern state must have power. To keep order, protect citizens from external threats and internal threats and to provide essential services and public goods, government needs both force and access to wealth. But any government that has these resources can also use them in less salutary ways. They can be used to suppress dissent and maintain ruler's personal powers. Unfortunately, these concerns are far from idle. State should not favour any particular conception of good but should remain neutral towards all such conceptions. The State must be independent of any particular conception of good life, or what gives value to life. Community is simply an arena in which individuals each pursue their own self chosen conceptions of the good life and political institutions exist to provide the degree of order which makes self-determined activity possible. Although it is the task of the government to promote law- abidingness, it is no part of the legitimate function of government to inculcate any one moral outlook. This research paper critically examines the dynamic relationship between State Laws and Gender Neutrality in the context of India through a comprehensive analysis of both progressive and conservative legislations. The research also underscores the presence of conservative laws, illuminating the ongoing struggle to uproot deeply entrenched gender biases. It provides a comprehensive understanding of how state policies can either challenge or perpetuate traditional gender roles and how these laws interact with the broader discourse of human rights. The State need to re-address current legal jurisprudence on laws to establish rights for all irrespective of gender. The research employs doctrinal research methodology. Both primary and secondary sources have been used.

Keywords: *Conservative Legislations, Gender Roles, Human Rights, Progressive Legislations, State policies.*

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1. Introduction

All Human Rights for All.[1]

The intersection of politics, gender and sexuality within the context of India forms a complex tapestry that reflects the intricate interplay between societal norms, state policies, and individual identities. The "Politics of Sex and the Nexus between State and Gender in India" delves into a dynamic landscape where the state's influence over gender roles, sexuality and empowerment intersects with cultural values and historical legacies.[2]

India as a nation marked by its diversity in culture, religion and language, has undergone significant transformations in its approach to gender neutrality and sexual rights. The introduction of this study navigates through the historical evolution of gender dynamics in the country, tracing the pre-independence era's traditional gender roles to the post-independence advancements in women's political participation and legal rights.

The Constitution of India, 1950 (hereinafter referred as the Constitution) enshrines principles of equality and non-discrimination, providing a framework for addressing gender disparities. However, the practical implementation of these principles has faced challenges, as societal norms and patriarchal structures persist. Therefore, there is need to critically analyze the various facets of the "Politics of Sex," including women's political representation, reproductive rights, gender-based violence, and the influence of media on gender norms.[3]

The aim behind examining the nexus between state policies and gender dynamics is to shed light on the achievements and shortcomings of efforts towards gender neutrality in India. A comprehensive exploration of historical, legal, cultural and societal dimensions will contribute to a nuanced understanding of how the state's involvement shapes the intricate web of gender politics and sexuality in the Indian context.[4]

The State power and gender neutrality in India is a complex and multifaceted issue. There are a number of legislations that govern the relationship between sex

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1 Vienna World Conference on Human Rights (1993).

2 Understanding Gender and Law, *available at*: https://onlinecourses.swayam2.ac.in/nou23_ge26/preview (last visited on August 22, 2023).

3 Progress towards Gender Equality Under Threat, *available at*: https://press.un.org/en/2020/ga12275.doc.htm (last visited on August 22, 2023).

4 Re-balancing the scales: gender equality in cultural life, *available at*: https://www.unesco.org/en/articles/tracker-ndeg18-cutting-edge-re-balancing-scales-gender-equality-cultural- life (last visited on August 24, 2023).

and gender in India, but these laws are often contradictory and ineffective. There are also a number of case laws that have interpreted these laws, but these interpretations have also been inconsistent.[5]

One of the most important laws governing the relationship between sex and gender in India is the Indian Penal Code, 1860 (hereinafter referred to as the IPC). The IPC contains a number of provisions that criminalize sexual violence, including rape, sexual assault and stalking. The IPC, sections 375 to 376A, deal with rape and other forms of sexual assault.[6] However, the IPC has also been criticized for being outdated and for not adequately protectingwomen from sexual violence.

Another important law is the Protection of Women from Domestic Violence Act, 2005(hereinafter referred as PWDVA). The PWDVA was enacted in 2005 to provide protection to women from domestic violence. The PWDVA defines domestic violence broadly to include physical, sexual, emotional and economic abuse. The PWDVA also provides for a number of remedies for victims of domestic violence, including restraining orders, compensation and counseling.[7] The PWDVA, sections 3 to 12, deal with the definition of domestic violence, the remedies available to victims of domestic violence and the enforcement of the Act.[8] However, the PWDVA has also been criticized for being ineffective. A study by the National Commission for Women found that only 1% of cases filed under the PWDVA resulted in convictions.

Further, The Dowry Prohibition Act, 1961, Sections 3 to 6, which deal with the definition of dowry, the punishment for demanding or giving dowry and the protection of victims of dowry harassment.[9] The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, (hereinafter referred POSH) sections 2 to 7, which deal with the definition of sexual

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[5] Gender inequalities in the workplace: the effects of organizational structures, processes, practices, and decision makers' sexism", *available at*: https://www.frontiersin.org/articles/10.3389/fpsyg.2015.01400/full (last visited on August 24, 2023).

[6] Sexual Offences, *available at*: https://www.writinglaw.com/sexual-offences-375-377-ipc/ (last visited on August 27, 2023).

[7] Brief about Protection of Women from Domestic Violence Act, 2005, *available at*: https://legalvidhiya.com/a- brief-about-protection-of-women-from-domestic-violence-act-2005/ (Last visited on August 24, 2023).

[8] A brief about Protection of Women from Domestic Violence Act 2005, available at: https://legalvidhiya.com/a-brief-about-protection-of-women-from-domestic-violence-act-2005/ (last visited on August 27, 2023).

[9] What are the Laws Prohibiting Dowry in India, *available at*: https://blog.ipleaders.in/laws-prohibiting- dowry-India/ (Last visited on August 27, 2023).

harassment, the punishment for sexual harassment andthe protection of victims of sexual harassment.[10]

The politics of sex and the nexus between state and gender in India is a complex and challenging issue. There are a number of legislations that govern this relationship, but these laws are often contradictory and ineffective. There are also a number of case laws that have interpreted these laws but these interpretations have also been inconsistent. It is important to continue to work to reform these laws and to ensure that they are effectively implemented in order to protect the rights of women and girls in India.

In Vishaka v. State of Rajasthan,[11] the Supreme Court of India laid down guidelines forthe prevention of sexual harassment at the workplace. The Supreme Court under Mukesh and another v. NCT of Delhi and Others,[12] infamous as Nirbhaya case, awarded the death penalty to the four men convicted of the gang rape and murder of a young woman in Delhi. In Navtej Singh Johar v. Union of India,[13] the Supreme Court decriminalized consensual same-sex relations by striking down Section 377 of the Indian Penal Code. The court held that sexual orientation is an inherent aspect of an individual's identity and emphasized the importance of accepting and respecting diverse sexual orientations. In the Indian Young Lawyers Association v. State of Kerala,[14] the Supreme Court overturned the longstanding ban on the entry of women of menstruating age. The court held that biological or physiological attributes should not be used as a basis for discrimination and that all individuals, irrespective of their gender, should have equal access to places of worship. This judgment emphasized the principle of gender neutrality by challenging discriminatory practices based on biological characteristics.

These are just a few of the laws and acts that govern the politics of sex and the nexus between state and gender in India. The issue is complex and challenging but it is important to continue to work to reform these laws and to ensure that they are effectively implemented in order to protect the rights of women and girls in India.

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[10] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, *available at*: https://www.indiacode.nic.in/handle/123456789/2104?sam_handle=12345 6789/1362 (last visited on August 27, 2023).

[11] AIR 1997 SC 3011.

[12] (2017) 6 SCC 1.

[13] AIR 2018 SC 4321.

[14] (2019) 11 SCC 1.

2.Development of Human Rights: Global Scenario

Although the term "human rights" is relatively new, the concept behind it is as old as human civilization itself. Human rights are deeply ingrained in the historical background.

Human rights are thus seen here as the result of a cumulative historical process that takes on a life of its own, sui generis, beyond the speeches and writings of progressive thinkers, beyond the documents and main events that compose a particular epoch. The British jurist, Tony Honore in his book credits the ancient Roman jurist Ulpian for formulating for the first time the essential tenets of what is currently known as human rights law:

"Three principles- freedom, equality, and dignity- lie at the root of the contemporary civil rights movement.The trend towards enacting charters of rights is no more than an attempt to cast in one concrete form what these principles required in modern society."[15]

Gradually, human rights received a universal recognition through international instruments and Constitutions of various countries.[16] It is possible to cite ancient roots for the principles of human rights. Chronologically, the first legal system that left clear records was established in the Middle East by the King Hammurabi around 1800 BCE. These are also knownas Babylon laws. Visions of Hammurabi's Code illustrate clearly why virtually any effort at formal law also produced some formal notion of protective rules but also why this initial approach differs from human rights principles as currently understood. The Code offered a variety of protections against violence mainly by stipulating comparable injury to any perpetrator on the principle, literally, of an eye for an eye.[17]

The Magna Carta, the first Charter of liberties, was granted by the King John of Englandto the barons and free men in 1215 A.D. The Magna Carta was to protect the individuals and the King was made to declare that the subjects have certain rights, which could not be violatedby the King, in whom all powers were legally vested. The expression "without due process of law" had its roots in the expression "pet legem terrae" (law of the land) used in Magna Carta.[18]

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[15] Tony Honore, *Ulpian: Pioneer of Human Rights* (Oxford University Press, Oxford, 2nd Edn., 2002).

[16] Justice VR Krishna Iyer, *Human Rights and Inhuman Wrongs* (B.R. Publishing Corporation, New Delhi, 1990).

[17] Peter N. Stearns, *Human Rights in World History* (Routledge, Oxfordshire, 2012).

[18] *Ibid.*

The aftermath of World War II marked a pivotal moment in the history of human rights.The atrocities committed during the war prompted the international community to recognize the urgent need for a universal commitment to prevent such horrors in the future. The adoption of the Universal Declaration of Human Rights (hereinafter referred to as the UDHR) by the United Nations General Assembly (hereinafter referred to as the UNGA) in 1948 laid the foundation for modern human rights principles. The UDHR enshrined fundamental rights suchas the right to life,[19] liberty and security of person;[20] freedom from torture and slavery[21] and the right to education[22] and work,[23] among others. This landmark document was a culmination of the collective understanding that human rights are universal and inalienable, applying to all individuals regardless of their nationality, gender or background.

Subsequent legal instruments have expanded and specialized these principles to address specific human rights concerns. The International Covenant on Civil and Political Rights (hereinafter referred to as the ICCPR) and the International Covenant on Economic, Social, andCultural Rights (hereinafter referred to as the ICESCR). Both these legal instruments were adopted in 1966 which delineated the dual nature of human rights—civil and political as well as economic, social and cultural. The ICCPR, Articles 1 to 27 of the covenant, which guaranteea wide range of civil and political rights, including the Right to Life, the Right to Liberty and Security of person, the Right to Freedom of Expression and the Right to a Fair Trial and the International Covenant on Economic, Social, and Cultural Rights (hereinafter referred to as theICESCR), Articles 1 to 15, which guarantee a wide range of economic, social and cultural rights, including the Right to Work, the Right to Education and the Right to Health care.[24] Thesecovenants transformed the UDHR's aspirational principles into legally binding obligations for states parties, recognizing that both civil and socio-economic rights are interconnected and essential for human well-being.

The 1970s witnessed the rise of indigenous rights awareness, which later on lead to the adoption of the International Labor Organization (hereinafter referred to as the ILO) Convention No. 169 in 1989 and the UN Declaration on the Rights

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19 Universal Declaration of Human Right, 1948, art. 3.

20 *Id.*, art.22.

21 *Id.*, art.4.

22 *Id.*, art.26(1).

23 *Id.*, art.23(1).

24 International Covenant on Economic, Social and Cultural Rights, *available at*: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and- cultural-rights (last visited on August 27, 2023).

of Indigenous Peoples in the year 2007. These instruments recognized the unique vulnerabilities and distinct cultural identities of indigenous communities, emphasizing the need for their protection, participation and self-determination.[25]

The end of the Cold War era saw a renewed focus on democratization and the rule of law, with an emphasis on civil and political rights. The significance of these rights was underscored by the Vienna Declaration and Programme of Action in 1993, which affirmed the interdependence and indivisibility of all human rights. The Declaration emphasized that democracy, development and human rights were mutually reinforcing which laid the groundwork for a holistic understanding of human rights that extends beyond legal norms to encompass social, political and economic dimensions.[26]

The 21st century has brought forth a growing recognition of the universality of human rights, transcending cultural relativism and ensuring that human rights are not subordinated to cultural or political considerations. The expansion of technology and communication has facilitated the emergence of a global human rights discourse empowering individuals to advocate for their rights across borders. The establishment of the International Criminal Court (hereinafter referred to as the ICC) in 2002 marked a significant step towards accountability for egregious human rights violations reinforcing the principle that perpetrators of internationalcrimes should not enjoy impunity.

However, the implementation of human rights remains uneven and the principles enshrined in international instruments often face resistance from states that prioritize their sovereignty over their human rights obligations. Moreover, emerging issues such as climate change, digital rights and artificial intelligence present complex challenges that require innovative approaches within the human rights framework.

In addition to the treaties, there are also a number of important case laws that have helped to shape the development of human rights. One of the most famous cases is Brown v. Board of Education of Topeka,[27] in which the US Supreme Court ruled that segregation in public schools was unconstitutional. This case helped to pave the way for the civil rights movement in the United States of

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[25] International Labour Organization Convention 169, *available at*: https://indigenous foundations.arts.ubc.ca/ilo_convention_169/ (Last visited on August 27, 2023).

[26] Vienna Declaration and Programme of Action, *available at*: https://www.ohchr.org /en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action (Last visited on August 27, 2023).

[27] 347 U.S. 483.

America and it is considered to be a landmark victory for human rights.[28]

Another important case is Marbury v. Madison,[29] in which the US Supreme Court established the principle of judicial review. This principle grants the courts the power to strikedown the laws which they find to be unconstitutional. Judicial review has been used to protecta wide range of human rights, including the right to free speech and the right to a fair trial.

The development of human rights is a continuous process. There are still many challenges to be overcome, but the progress that has been made so far is significant. The UDHR and other human rights treaties have helped to raise awareness of human rights issues and they have provided a framework for protecting these rights. Precedents has also played an importantrole in interpreting and applying human rights law.

The global scenario for the development of human rights is positive overall. There is a growing consensus on the importance of human rights and there is increasing pressure on governments to uphold these rights. However, there are still many challenges to be overcome, such as poverty, inequality and discrimination. It is important to continue to work to promote and protect human rights for all people.

3. Development of Human Rights: Indian Scenario

In India, the people believed that the philosophy behind the original concept of human rights was considered to be as an accepted principle of Indian culture from time immemorial. The references occur as early as in the Rigveda to the three civil liberties of Tana (body), Skridhi(dwelling house) and Jibasi (life). Long before the English philosopher Hobbes, the Indian epicMahabharata describe the civil liberty of the individual in a political state. Ancient Indian society was a highly structured and well-organized affair with the fundamental rights and duties not only of individuals but also of classes, communities and castes clearly laid down. The concept of dharma was precisely that of rule of law- the supreme law, which govern the sovereign and subjects alike and covered the basic principles involved in the theory of rights, duties and freedoms. Long before the 2nd century B.C., we find mention of the law of nature, which even King had to obey on pain of the deposition. Also, King was required to take a pledge never to be arbitrary

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[28] *History - Brown* v. *Board of Education Re-enactment*, *available at*: https://www.us courts.gov/educational- resources/educational-activities/history-brown-v-board-education-re-enactment (Last visited on August 27, 2023).

[29] 5 U.S. 137 (1803).

and always to act according to "whatever law there is and whatever is dictated by ethics and not opposed to politics." Kautilya, the author of the celebrated political treatise Arthashastra, not only affirmed and elaborated the civil and legal rights first formulatedby Manu but also added a number of economic rights.[30]

The evolution of human rights in India has been shaped by a complex interplay of historical, cultural and legal factors. The country's journey towards ensuring and promoting human rights has been marked by significant developments, both in terms of legal frameworksand societal attitudes.

India's struggle for independence from colonial rule played a pivotal role in shaping its human rights trajectory. The demand for freedom was intrinsically linked to the notions of justice, equality and dignity. The Indian National Congress through its various movements andleaders, emphasized the importance of individual rights and civil liberties. This struggle culminated in the adoption of the Constitution which enshrined a comprehensive framework of fundamental rights and liberties for all citizens.

The Constitution lays the foundation for the protection and promotion of human rights in the country. Part III of the Constitution of India guarantees fundamental rights, including the right to equality, freedom of speech and expression, right to life and personal liberty and protection against discrimination.

One of the earliest instances of India's commitment to human rights is the enactment ofthe Protection of Civil Rights Act, 1955 which aimed to eliminate caste-based discrimination and untouchability. Additionally, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 provides safeguards against violence and discrimination faced by marginalized communities.[31]

Gender equality and women's rights have also been focal points of human rights development in India. The Dowry Prohibition Act, 1961, aimed to address the practice of dowry, while subsequent amendments strengthened its provisions. The Commission of Sati (Prevention) Act, 1987, aimed to curb the practice of widow immolation and acknowledged theinherent right to life and dignity.

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[30] A.S. Altekar, *State and Government in Ancient India* (Motilal Banarsidass Publishing House, New Delhi, 1st edn., 1984).

[31] Centrally Sponsored Scheme for implementation of the protection of Civil Rights Act, 1955 and Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, *available at*: https://socialjustice.gov.in/schemes/39 (Last visited on August 27, 2023).

The 1970s saw the declaration of the national emergency, during which civil liberties were curtailed. However, this period also led to judicial pronouncements that reaffirmed the supremacy of fundamental rights. The case of Maneka Gandhi v. Union of India[32] marked a turning point, establishing that the right to life and personal liberty could not be restricted arbitrarily.

In the realm of labor rights, India has enacted legislation to safeguard workers' rights and ensure fair working conditions. The Bonded Labour System (Abolition) Act, 1976 aimed to eradicate bonded labor, recognizing the right to work with dignity. The POSH Act, 2013 addressed gender-based discrimination in the workplace.[33]

India's legal framework has also incorporated international human rights principles. The country is a signatory to various international treaties and conventions, including the ICCPR and ICESCR. These international commitments have influenced domestic legal interpretationsand developments.[34]

Despite legal safeguards, India continues to grapple with issues such as gender-based violence, discrimination against marginalized communities, and challenges to freedom of expression. Implementation gaps and a slow judicial process have sometimes hindered the effective realization of human rights.

India's journey in developing human rights is marked by a rich history of struggle, legal advancements and societal changes. The Constitution serves as a bedrock for protecting individual rights, while subsequent legislations have aimed to address various forms of discrimination and inequality. The challenges faced by India underscore the ongoing need for education, awareness, advocacy and a commitment to upholding human dignity and rights for all citizens.

4. The Constitution of India and Human Rights

'WE, THE PEOPLE OF INDIA' in the Preamble means ultimate sovereignty of the people of India. Thus, the Preamble concisely sets out quintessence of human rights which represents the aspiration of the people, who have established the Constitution. The Preamble tothe Constitution of India is of extreme importance and it should be read and interpreted in the light of the grand and noble expressed

32 AIR 1978 SC 597.
33 An Overview on Bonded Labour In India And Laws Related to It, *available at*: https://www.legalserviceindia.com/legal/article-5938-an-overview-on-bonded-labour-in-india-and- law- related-to-it.html (Last visited on August 27, 2023).
34 International Human Rights Law, *available at*: https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law (last visited on August 27, 2023).

in the preamble.

The resonance between the Constitution and the UDHR is profound. The UDHR served as a global manifesto for the protection of human rights in the aftermath of World War II. As India emerged from colonial rule and sought to establish itself as a sovereign nation, the framers of the Constitution were influenced by the concept of human rights and guaranteed most of the human rights contained in the UDHR.

While civil and political rights have been incorporated in Part III of the Constitution i.e., Fundamental Rights as economic, social and cultural rights have been incorporated in Part IV of the Constitution i.e., The Directive Principles of State Policy (hereinafter referred to as the DPSPs). The inclusion of important provisions of the UDHR in the Constitution has given them supremacy over all other statutory provisions. Part III of the Constitution often referred to as the "Constitution's Magna Carta," encapsulates a comprehensive set of fundamental rights that mirror which expand upon the provisions of the UDHR. These rights are not merely aspirational rather they are judicially enforceable, allowing individuals to approach courts when their rights are violated. the Constitution recognizes the Right to Equality,[35] Right to Freedom of Speech and Expression,[36]Right to Life and Personal Liberty[37] and Protection against Discrimination among others.[38]

The Constitution further acknowledges the significance of cultural and educational rights,[39] and the rights of religious and linguistic minorities.[40] Additionally, the right to constitutional remedies empowers citizens to directly petition the Supreme Court[41] and High Court[42] to protect their fundamental rights.[43] These provisions collectively underscore the Constitution's dedication to safeguarding the diversity of India's population and ensuring that their rights are preserved.

Part IV of the Constitution contains the DPSPs, a set of guidelines that outline the moral and ethical compass of governance. While these principles are not

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35 The Constitution of India, art. 14.
36 *Id.*, art. 19.
37 *Id.*, art. 21.
38 *Id.*, art. 15.
39 The Constitution of India, art. 29, 30.
40 *Id.*, art. 25 to 30.
41 *Id.*, art. 32.
42 *Id.*, art. 226.
43 *Id.*, art. 32.

enforceable by courts in the same manner as fundamental rights, they hold immense importance in shaping policy decisions. The DPSPs serve as a roadmap for creating an equitable society, emphasizing social and economic justice, workers' rights, environmental protection and the enhancement of the standard of living for all citizens.

The synergy between the DPSPs and human rights principles is evident. Article 39 of the Constitution highlights the state's responsibility to secure adequate means of livelihood and equal pay for equal work, reflecting a commitment to economic justice reminiscent of human rights ideals. Similarly, Article 42 emphasizes ensuring just and humane conditions of work and maternity relief, encapsulating the human rights principle of dignity in the workplace.[44]

The harmonization of fundamental rights and the DPSPs is a testament to the holistic vision of the Constitution. While fundamental rights grant immediate protections to individuals against state action, the DPSPs envision a larger socio-economic framework that addresses systemic inequalities. This intricate interplay underscores the Constitution's aspiration to create an inclusive society where the dignity and rights of all citizens are upheld, irrespective of socio- economic disparities.

Despite the robust framework provided by the Constitution, challenges still persist. The implementation of these rights and principles faces obstacles such as social prejudices, inadequate awareness, and bureaucratic inefficiencies. Moreover, tensions between fundamental rights and the wider public interest, as highlighted by debates around the right to privacy and security, necessitate delicate legal balancing.

The alignment of the Constitution with the principles of the UDHR, its comprehensive guarantee of the fundamental rights and its visionary DPSPs collectively embody India's commitment to human rights. This legal and philosophical framework reflects the nation's evolving journey toward achieving social justice, equality, and individual dignity. The Constitution serves as a dynamic living document that continually guides India's path towards realizing the lofty ideals set forth by the UDHR within the unique context of its history and society.

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[44] Asish Kumar and Prashant Kumar Mohanty, *Human Rights in India* 57 (Sarup & Sons, New Delhi, 2007).

5. The Role of State: In Addressing and Readdressing Gender Roles

The role of the state in addressing and redressing gender roles is a critical dimension inpromoting gender neutrality and dismantling traditional stereotypes. Across the globe, states play a multifaceted role in shaping societal norms, implementing policies, and fostering awareness to challenge and transform traditional gender roles. This exploration delves into the various aspects of the state's involvement in reshaping gender roles, encompassing legal frameworks, policy initiatives, cultural interventions, and challenges faced.[45]

States wield significant influence through the enactment of laws that challenge discriminatory gender norms and practices. In India, the legal framework is geared towards promoting gender neutrality and redressing historical imbalances. The Constitution guarantees fundamental rights that prohibit discrimination based on sex[46] and ensure equality before the law.[47] Legislation like the Protection of Children from Sexual Offences Act, 2012 and the Protection of Women from Domestic Violence Act, 2005 directly address harmful practices of violence, signaling the state's intent to change entrenched gender roles.[48]

States often employ affirmative action measures to challenge traditional gender roles and enhance the participation of marginalized genders in decision-making processes. India's reservation of seats for women in local self-government (Panchayati Raj institutions) has led to increased political participation, challenging historical male dominance in politics. The Constitution 73rd and 74th Amendment Act, 1992 mandated that one-third of seats be reserved for women in local bodies.[49]

Education is a pivotal tool for reshaping gender roles by challenging stereotypes and fostering critical thinking. States undertake educational initiatives that promote gender- sensitive curricula and aim to debunk traditional notions of

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[45] Jeppe Hedegaard, "The crucial role of media in achieving gender equality", *available at*: https://www.mediasupport.org/the-crucial-role-of-media-in-achieving-gender-equality/ (last visited on August 27, 2023).

[46] The Constitution of India, art. 15.

[47] *Id.*, art. 14.

[48] Important Constitutional and Legal Provisions for Women in India, *available at*: https://www.legalserviceindia.com/helpline/woman_rights.htm (Last visited on August 27, 2023).

[49] National Policy for the Empowerment of Women, *available at*: https://wcd.nic.in /womendevelopment/national-policy-women-empowerment (last visited on August 27, 2023).

femininity and masculinity. The Beti Bachao, Beti Padhao (Save the Girl Child, Educate the Girl Child) campaign in India exemplifies a state-driven effort to challenge gender-based discrimination and promote girls' education.

The state's role in redressing gender roles extends to economic empowerment. Labor laws and policies addressing gender pay gaps, maternity benefits and workplace harassment aim to dismantle discriminatory practices. The Maternity Benefit (Amendment) Act, 2017 in India extends maternity leave and mandates crèche facilities, signaling a commitment to supportworking mothers.[50]

Despite significant progress, implementation gaps, cultural resistance and patriarchal attitudes hinder the effective redressal of gender roles. Traditional norms often intersect with other forms of discrimination, exacerbating vulnerabilities for marginalized groups. Deep- seated gender biases may lead to reluctance in accepting changes to traditional gender roles, necessitating continuous awareness campaigns and policy interventions.

States play a role in shaping cultural narratives that challenge traditional gender roles. Cultural initiatives, public campaigns and media regulations can challenge gender stereotypes and celebrate diverse gender identities. India's 'Gender Champions' program and campaigns like 'Men for Women's Rights' engage male influencers in questioning and deconstructing regressive gender norms.[51]

The state's role in challenging and redressing gender roles is pivotal in fostering a moreequitable society. Through legal frameworks, affirmative action, education, economic empowerment and cultural interventions, the state can challenge the status quo and dismantle entrenched gender stereotypes. However, addressing deeply ingrained norms requires sustainedefforts as challenges persist in implementation and cultural shifts. The state's commitment to reshaping gender roles underscores the transformative potential of policy interventions and collective societal action in advancing gender neutrality.

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[50] Advancing Gender Equality in The Workplace: Strengthening Women's Rights Through Labour Law, *available at*: https://www.legalserviceindia.com/legal/article-12125-advancing-gender-equality-in-the- workplace-strengthening-women-s-rights-through-labour-law.html (last visited on August 27, 2023).

[51] Transforming mentalities: Gender Equality and Masculinities in India, *available at*: https://unesdoc.unesco.org/ark:/48223/pf0000377859.locale=en (last visited on August 27, 2023).

6. Conclusion

The intricate interplay between state policies, legislation and societal norms significantly shapes the nexus between gender roles and human rights in India. The journey toward gender neutrality is marked by a complex tapestry of progressive and conservative elements within the legal framework and broader social consciousness.

The role of the State in protecting or oppressing gender roles is evident through its legislations, policies and societal norms. The state is involve creating a legal, social and culturalenvironment where individuals of all gender identities are recognized, protected and provided with equal opportunities and rights. This involves legislative action, education and public policy initiatives that challenge traditional gender norms and promote inclusivity and equality.While the state can play a crucial role in advancing gender equality and protecting individuals from gender-based discrimination and violence, it can also reinforce patriarchal norms and perpetuate gender role oppression. The state's actions, including the implementation of laws and policies, can either promote or hinder progress towards gender equality. States are responsible for enacting and enforcing laws that protect individuals from discrimination basedon gender entity or expression. This includes anti-discrimination laws, hate crime laws and legal recognition of non-binary and transgender individuals. The State also plays a role in ensuring equal access to legal rights such as marriage, adoption and health care, regardless of gender identity. The role of State in promoting gender neutrality is multifaceted and critical in advancing gender equality and social justice. Government play a pivotal role in shaping policies, legislation and initiatives that can have a significant impact on the recognition and protection of gender-neutral rights.

Progressive legislations like the POSH Act, the Transgender Persons (Protection of Rights) Act, 2019 and the Protection of Children from Sexual Offences Act, 2012 showcase India's commitment to challenging traditional gender norms and promoting inclusivity. These laws aim to create safer environments, protect marginalized communities and challenge deeply ingrained prejudices. Moreover, they reflect a concerted effort to align the legal landscape with evolving global human rights standards, fostering an environment where individual rights and dignity are upheld regardless of gender.

However, conservative legislations such as the historical criminalization of same-sex relations and the lack of comprehensive recognition for male victims of domestic abuse and rape highlight the ongoing struggle to break free from deeply rooted gender biases. These laws underscore the necessity of constant re-

evaluation and reform to align the legal system with contemporary human rights principles and societal realities.

The journey toward gender neutrality extends beyond legislation. Cultural shifts, education and raising awareness are essential components in challenging traditional gender roles. The state's role is not limited to enacting laws but also encompasses fostering a conducive environment where societal perceptions evolve. As India grapples with these complex dynamics, it must continue to engage in introspection, advocacy, and policy reforms to ensurethat human rights are realized in all their diversity. Governments can promote gender neutral education by developing and implementing curriculum that challenge gender stereotypes and include diverse gender perspectives. They can also support awareness campaigns that combat discrimination, promote inclusivity and raise public consciousness about gender issues. State should ensure that health care services are inclusive and accessible to individuals of all gender identities. This includes providing gender affirming health care for transgender individuals and supporting research and awareness around the specific healthcare needs of different gender identities. Governments can enact and enforce labour laws that promote gender equality in theworkplace. This may involve measures to close the gender pay gap, prevent workplace harassment and discrimination and support parental leave policies that are gender neutral. States should also prohibit discrimination based on gender identity or expression housing and public accommodations. This ensures that individuals can assess housing, restrooms and other public facilities that align with the gender identity. Further, collecting and analysing gender inclusive data is important for understanding the needs and experiences of diverse gender identities. TheState can fund and support research that focuses on gender issues and ensure gender-neutralityin laws.

In the pursuit of gender neutrality, collaboration between civil society, government institutions and international frameworks remains paramount. While progress has been made, much work remains to create a society that transcends gender-based discrimination, embraces diversity and ensures equal opportunities for all. As India navigates this path, the commitment to human rights and the continuous evolution of its legal and social frameworks stand as beacons of hope, fostering a future where gender roles are no longer barriers to individual empowerment and dignity.

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Resolving Disputes Through Arbitration in India: Issues & Challenges in International Commercial Arbitration

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Abstract

Arbitration, as a form of Alternative Dispute Resolution (ADR), has witnessed a surge in popularity within India in recent years, particularly as trade barriers have been removed and the country's commerce has opened up. International Commercial Arbitration, in particular, has gained significant importance. In comparison to traditional litigation, arbitration is widely regarded as the preferred method for resolving disputes due to its numerous advantages and benefits for the parties involved. While there are certain drawbacks, the accessibility of arbitration and its ability to deliver timely justice are contributing to its growing appeal in the foreseeable future.

In the realm of the financial industry, arbitration has become notably widespread. The establishment of guidelines and standards has been instrumental in promoting the use of arbitration within this sector. This study delves into the landscape of international commercial arbitration in India and modestly attempts to identify the challenges faced by the parties involved.

Keywords: *Arbitration, Financial Sector, Arbitration Guidelines, Commercial Arbitration, India*

1. Introduction

Arbitration has surfaced relatively recently as a valuable method aimed at rectifying the deficiencies within conventional judicial processes. Particularly within the realm of corporate arbitration, it harnesses a range of distinctive legal mechanisms to construct a robust alternative to the local court system. One of its hallmark features is the establishment of a Balanced Dispute Resolution Forum, which serves as a neutral ground for resolving conflicts. Moreover, the selection of arbitrators with relevant business acumen imparts specialized judgment that often outshines the broader jurisdiction of traditional courts.

The necessity for arbitration in India became strikingly evident following the economic reforms of 1991. These reforms ushered in increased foreign

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investments and expanded global commercial interactions. With the surge in business connections, the likelihood of disagreements and disputes naturally escalated. Consequently, Indian courts were saddled with an overwhelming backlog of pending cases, rendering litigation an impractical option for foreign investors. The dilatory and congested judicial system necessitated the establishment of an Alternative Dispute Resolution (ADR) mechanism that could offer speed, cost-effectiveness, and independence from conventional litigation.

In response to this demand, the Indian government enacted the Arbitration and Conciliation Act, 1996. This act replaced archaic legislation, including The Arbitration Act, 1940, and The Foreign Awards Act, 1961. The primary goal of this legislation was to streamline the arbitration process, rendering it more rapid and efficient while minimizing court intervention. Drawing inspiration from the UNCITRAL Model Law on International Commercial Arbitration, the Act provided a comprehensive legal framework for arbitration proceedings in India.

However, despite its intentions to promote arbitration as a cost-effective and expeditious means of resolving business disputes, the process has not been entirely devoid of judicial interference. Unnecessary court involvement has resulted in delays and added complexities, inadvertently making arbitration slower and more cumbersome than originally envisaged. This runs contrary to the intended non-litigious nature of arbitration, as the Indian arbitration system grapples with issues of delayed justice and mounting caseloads similar to traditional litigation. Another critical concern revolves around the enforcement of arbitral decisions, where the flexible concept of "public policy" is susceptible to varying interpretations by different courts. This ambiguity concerning public policy must be delicately balanced against the principles of limited judicial involvement and court oversight in arbitration.

Regrettably, the misinterpretation of the legislation by Indian courts has given rise to prolonged outcomes, establishing a discouraging pattern that may dissuade parties from exploring alternative conflict resolution methods. Furthermore, while arbitration is often viewed as cost-efficient when compared to litigation, it has been shown to incur significant expenses of its own, potentially nullifying its advantages in this regard.

These limitations within the arbitration process could have adverse repercussions on international trade and commercial arbitration. As more businesses establish themselves in India and engage in cross-border transactions, the effectiveness of the dispute resolution mechanism will significantly influence the country's economic landscape.

Consequently, while arbitration has indeed emerged as a promising alternative to traditional litigation in India, there remain considerable challenges and areas in need of improvement to fully realize its potential as a cost-effective, efficient, and preferred method for resolving business disputes[1].

2. Importance of Domestic ADR in India

2.1 Primary forms of Domestic ADR

Alternative Dispute Resolution (ADR) encompasses a diverse array of conflict resolution methods, including arbitration, conciliation, negotiation, mediation, and Lok Adalats, which have proven effective in many countries. In India, as in numerous other nations, the conventional judicial processes have grappled with mounting case backlogs, emphasizing the necessity of embracing ADR techniques as efficient and pragmatic alternatives. Notably, the Malimath Committee recommended that courts consider mandating the utilization of arbitration, conciliation, negotiation, Lok Adalats, and mediation to address the burgeoning caseload.

Arbitration, a prominent ADR method, serves as a preferred choice for dispute resolution. In arbitration, two or more disputing parties entrust their case to an impartial arbitrator or a panel of arbitrators selected through established procedures. These arbitrators undertake the task of evaluating the facts and evidence presented and subsequently issue a legally binding judgment that obliges both parties to adhere to the decision. Notably, arbitral awards typically offer limited options for review and appeal, thereby providing a conclusive and definitive resolution to the dispute.

Conciliation stands as another widely employed ADR approach. It involves the appointment of a conciliator who engages individually with each party to facilitate communication and explore potential solutions for settling their differences. The conciliation process is notably adaptable, allowing the involved parties to determine aspects such as the timing, framework, and substance of the proceedings. This flexibility renders conciliation suitable for resolving a diverse range of conflicts, including labor disputes, service matters, tax disputes, excise matters, business disputes, financial disputes, familial conflicts, real estate disputes, and bankruptcy matters.[2]

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1 Saville Lord. (2016). Some reflections on the making of international arbitration agreements for the resolution of commercial disputes (Part III: International Arbitration Agreements: Issues and Perspectives), 6.

2 Emilia Onyema, International Commercial Arbitration and the Arbitrator's Contract (Routledge Research in International Commercial Law, 1st edn.,2010)

Lok Adalats, a significant component of ADR in India, provide a platform for the peaceful resolution of disputes without resorting to formal litigation. Besides arbitration and conciliation, Lok Adalats may also employ mediation, negotiation, and judicial resolution techniques. Unlike arbitration, negotiation, and mediation, the outcomes of these Lok Adalat processes are not legally binding. Both parties maintain influence over the process and its eventual outcome. Mediation, for instance, involves the assistance of a neutral third party in facilitating amicable discussions between the disputing parties.

The strength of these ADR systems lies in their procedural adaptability and impartiality. Lok Adalats, in particular, are specifically designed for the peaceful resolution of pre-litigation issues. These are often conducted by NALSA (National Legal Services Authority) and other legal assistance organizations, with their statutory recognition established under the Legal Services Authority Act of 1987. Decisions reached in Lok Adalats are regarded as civil court judgments, and they carry binding force on all parties involved, with no recourse for appeal in regular courts[3].

Indian law also accommodates the resolution of commercial matters through international commercial arbitration. This mechanism is designed to settle business disputes between Indian and foreign companies in accordance with relevant Indian arbitration laws. Arbitration proceedings may be conducted under the rules of an arbitration organization or under court supervision, as stipulated in Clause 11 of the 1996 Arbitration Act. Parties voluntarily agree to submit their dispute to one or more arbitrators, who then issue a binding decision on the matter. This approach ensures a timely and accurate resolution of commercial disputes outside the confines of the traditional tribunal system.[4]

In sum, India has embraced a diverse range of ADR methods to provide efficient, cost-effective, and flexible alternatives to the congested traditional court system. These ADR mechanisms offer parties the opportunity to resolve their disputes with varying degrees of formality and legal enforceability, contributing to a more accessible and expedient justice system[5].

2.2 Governing Legislation

The regulation of domestic and international commercial arbitration in India falls under the purview of the 1996 Arbitration and Conciliation Act, which also

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3 Beata Gessel-Kalinowska vel Kalisz, Arbitration E-Review No. (Graphic Design & Prepress, 3-4edn., (18-19)/2014)

4 *Ibid*

5 Rohit Bafna & Rhea Srivastava, Alternative Dispute Resolution in India: Issues & Challenges in International Commercial Arbitration, SSRN Electronic Journal (2012).

governs the enforcement of international award decisions. This act serves as the cornerstone of India's arbitration landscape and plays a pivotal role in facilitating the resolution of disputes within the country. Let's delve into the nuances of this regulatory framework and explore the distinctions between domestic and international arbitration within the Indian context.

a) The 1996 Arbitration and Conciliation Act: A Comprehensive Framework

The 1996 Arbitration and Conciliation Act is a comprehensive legal framework that governs the conduct of both domestic and international commercial arbitration in India. It also addresses the recognition and enforcement of foreign arbitral awards, making it a vital instrument for facilitating cross-border trade and dispute resolution.

Part I vs. Part II: Regulatory Distinctions

The Act is divided into two distinct parts, each with its specific focus:

Part I: This section of the Act applies to all arbitrations held within India, regardless of whether the parties involved are local or foreign. It sets out the foundational principles and procedures for arbitration proceedings conducted within the Indian territory.

Part II**:** Part II is entirely dedicated to the enforcement of foreign arbitral awards. It provides the legal framework for recognizing and enforcing awards rendered in international arbitrations, enhancing India's reputation as a pro-arbitration jurisdiction.[6]

b) Distinguishing Domestic from International Arbitration

In the realm of international commercial arbitration, a clear definition is provided. It is characterized as arbitration in which at least one of the parties appears to be:

- A national or customary citizen of a country other than India.
- A corporation fully integrated in a country other than India.
- An institution or association of such an individual for whom the decision for "central management and control" to operate in a country other than India is made.

However, it's important to note that the Indian Supreme Court, in the case of TDM Infrastructure Pvt. Ltd. v. UE Development Pvt. Ltd.[7], ruled that if both

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6 *Ibid*

7 (2008) 14 SCC 271.

parties maintain their Indian registrations despite the management and control being located outside India, the arbitration would be categorized as "domestic" rather than "international."

Key Distinctions Between Domestic and International Arbitration:

(i) Appointment of Arbitral Panel: In domestic arbitration, if the parties' intended method for appointing an arbitral panel fails, nominations are made by the High Court. In contrast, for foreign arbitration, the Supreme Court of India takes charge of the appointment process.

(ii) Controlling Laws: International arbitration allows the arbitral tribunal to decide disputes based on the laws chosen by the parties as applicable to the content of the case. In the absence of such a choice, the tribunal must apply the laws and norms that the court is likely to apply. In domestic arbitration (arbitration between Indian parties), the panels must adhere to the Indian fundamental law in effect at the time of arbitration.

(iii) Grounds for Annulment: A significant difference arises from the 2015 amendment to the Act, which introduced a new basis for annulling domestic arbitration decisions based on "patent illegality." This ground is not available when it comes to foreign arbitral awards.

(iv) Time Limitations: Section 29A of the Act sets time limits for issuing judgments in domestic arbitration. However, these time limitations do not apply to the execution of international arbitral decisions, allowing for greater flexibility in the resolution process[8].

2.3 National Courts' Perspectives on the Enforcement of Arbitration Agreements

Part 8 of the Act provides that a judicial authority may confirm the arbitration procedure prior to taking action on a matter covered by an arbitration agreement – with one exception: the party referencing the court proceedings must do so no later than his opening statement on the substance of the issue. On the other side, arbitration proceedings may commence and continue, and an award may be rendered.[9]

The Indian Supreme Court said in Rashtriya Ispat Nigam Ltd v. Verma Transport Co.[10] Where the Sections' criteria are fulfilled, the judicial authority

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8 Anil Chawla Law Associates LLP, Guide for Arbitration Clause in International Agreements in India (2nd edn., June 2021).

9 *Ibid*

10 (2006) 7 SCC 275.

may be "statutorily forced" to refer the matter to arbitration. The fifth section supplements this by declaring, in a non-obstante manner, that no judicial authority may interfere in Act-regulated matters unless explicitly authorized. This position is reinforced by a 2015 Act amendment that struck down many precedent-setting Section 8 judgments. Currently, this section has a non-obstante provision that compels the court to refer the arbitration proceedings to arbitration unless the court finds that there was no apparent arbitration agreement. By contrast, Section 8 applies only to arbitrations with a seat in India. Overseas arbitration agreements have been regulated by Section 45 of the Act, which is somewhat distinct in wording. When a judicial body acquires jurisdiction over a matter including an arbitration clause, it is obligated to refer the parties to arbitration-"unless this finds that perhaps the declared accord is null and void, rendered inoperable, or incapable of being carried out." The latter part is based on Model Law Article 8. As a consequence, India has restricted its judicial participation in international arbitrations to the extent permitted under the Model Law.

At the very same time, the question about what to do in situations in which the court concludes that perhaps the arbitral agreement is null as well as invalid, rendered inoperable, or unable to be executed remains. Section 50 of the Act allows for an appeal of such a judgment. As a result, a decision based solely on a prima facie case would indeed be insufficient. One of the courts acknowledged this, stating that even if the court reached prima facie finding that perhaps the agreement was useless and invalid, it would have to proceed with a full trial and issue a definitive decision. As a result, in such a case, an international arbitration might come to a halt awaiting the ultimate judgment of an Indian court. Nevertheless, Section 45 procedures would have had no major effect on the advancement of an international arbitration. Chloro Controls India Private. Ltd. v. Severn Trent Water Purification Inc.[11] is a landmark case. In this case, the tribunal was presented with a scenario in which partners had signed into various relevant agreements - several with distinct companies within their group. The agreements included a variety of dispute settlement provisions, often including International Chamber of Commerce (“ICC”) adjudication in London, others with no arbitral award, and one with an American Arbitration Association (“AAA”) arbitral clause having Pennsylvania (USA) as one of its jurisdictions. The Supreme Court issued a significant pro-arbitration ruling, saying that perhaps the legislative purpose is in favor of arbitration and also that the Act "must be interpreted broadly to accomplish that goal." The Court ruled stated non-signatory entities may be submitted to arbitration if the agreements were within

[11] (2013) 1 SCC 641

the same group of businesses as well as the parties clearly intended to compel non-signatories too. It ruled stated non-signatories should only be subjected to arbitration in extraordinary circumstances. It would be evaluated based on the non-direct signatory's relationship to the signatories, the issue matter's similarity, and whether numerous agreements constituted a composites transaction or otherwise. The problem should've been sufficiently complicated that carrying out the "mother agreement" would have been impossible even without help, implementation, and execution of supplemental or auxiliary agreements. Chloro Controls were referenced in Ameet Lalchand Shah v. Rishabh Enterprises[12] and Cheran Properties v. Kasturi and Sons [13]

The Supreme Court ruled in PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion Pvt[14]. Ltd. because Indian parties may choose an international seat and can nevertheless seek equitable remedy from an Indian court.

The Act does not require that the parties have a contractual relationship. As a consequence, tort (contract) disputes may also be arbitrated. “Generally, and historically, all issues involving rights in personam are considered arbitrable, while all disputes involving rights in rem must be handled by courts and public tribunals.” SBI Home Finance Ltd. v. Booz Allen & Hamilton Inc.[15] non-arbitrable matters include those involving a criminal offense, marital difficulties, child custody, guardianship, bankruptcy, business closure, or testamentary procedures. In a recent decision, Shri Vimal Kishor Shah & Ors v. Mr. Jayesh Dinesh Shah & Ors[16], the Supreme Court established a new category of non-arbitrable problems, such as those arising from trust deeds under the Trust Act, 1882. This is really an implied exclusion in view of the Trust Act's provisions for a complete framework for dispute settlement, which includes recourse to civilian courts.

If significant fraud is alleged and the dispute is determined to be arbitrable N. Radhakrishnan v. Maestro Engineers[17] the courts refuse to refer the dispute to arbitration under Article 8 of the Act. Alongside World Sport Group (Mauritius) Co ltd v MSM Satellite (Singapore) Pte. Ltd., which was proclaimed on 24 January, 2014, the Supreme Court diverged from N. Radhakrishnan as well as managed to retain that, with in case of international arbitrations (as defined by

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[12] (2018) 15 SCC 678
[13] (2018) 16 SCC 413.
[14] (2021) SCC 226
[15] Civil Appeal No. 5440 of 2002
[16] (2016) SCC 3889
[17] (2010) 1 SCC 72

Section 45 of an Act), the Court may indeed decline to make references to a conflict governed by the arbitral award only if it tends to arise.

Switzerland Timing Ltd v. Organising Committee, Commonwealth Games 2010, Delhi[18] established that N. Radhakrishnan was only per incuriam and that serious fraud allegations are still subject to appeal in arbitration proceedings. However, the argument persists. In Ayyasamy v. A. Paramasivan and Others[19]. the Indian Supreme Court explained why Swiss Timing wouldn't even have invalidated N. Radhakrishnan. Additionally, because it was decided to hold that a straightforward allegation of scam cannot be used to nullify an arbitral award, there may be instances where this criminal act has been formed or the issue becomes so complicated which only a civil court can render a decision based on the assessment of the abundant proof required. Therefore, the decision resets the clock, at least in domestic-seated arbitrations, which allows for a civil action to be brought and pursued, circumventing the arbitration clause.

The Supreme Court held in Himangni Enterprises v. Kamaljeet Singh Ahluwalia[20] that said rental problems (in the context of eviction of a tenant) are not arbitrable. Nonetheless, in a subsequent case, Vidya Drolia v. Durga Trading Company,[21] the Supreme Court determined that Himangi Enterprises overestimates the law by impacting leases that lack legal protection, and remanded the issue to a larger bench for consideration. The Indian Supreme court clarified the criteria for determining arbitrability of disputes in a landmark judgment on 14 Dec 2020, and ruled all tenant disputes under Transfer of Property Act, 1882 were appealable.

The Emaar MGF Land Limited v. Aftab Singh[22] The Supreme Court decided that actions under the Consumer Protection Act constitute unique remedial procedures which are not prohibited by an arbitration clause. The disgruntled customer, on the other hand, has the option of opting for adjudication if he so desires.

High court decisions on arbitrability are pending clearance by the Supreme Court, including one from the Bombay High Court, which said that although copyright problems are appealable, shareholder "oppression and mismanagement" allegations are not. The Delhi High Court actually took a liberal

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[18] (2014) 6 SCC 677

[19] (2016) 10 SCC 386

[20] (2017) 10 SCC 706

[21] Civil Appeal No(s).2402/2019

[22] Civil Appeal No.(s). 23512-23513 of 2017

approach, finding that debt relief petitions may be brought to arbitration even if a panel specifically constituted to handle such matters exists.

Every arbitral tribunal has the authority to determine its very own competence. This is provided for in Article 16 of the concerned Act, which corresponds to Article 16 of the Model Law. Furthermore, a party may raise the question of jurisdiction before the courts by filing a petition under Article 10 (2) (a) justification of the arbitral tribunal's refusal of jurisdiction. However, if the tribunal determines this has authority, it may only be contested after the award is issued.

The subjective test for a tribunal's judgment on its own jurisdiction has yet to be established by the Indian judiciary. The probability would be that a claim to competence would be unhindered by otherwise specific grounds in Section 34, as long as it is not a veiled claim on merits.

Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc[23], a landmark Supreme Court decision, lays out the circumstances under which the arbitration court would have jurisdiction regarding non-signatories to the arbitral award. Reckitt Benckiser (India) Pvt. Ltd. v. Reynders Label Printing India Pvt. Ltd[24] as well as the Delhi High Court in Magic Eye Developers Pvt. Ltd. v. Green Edge Infra Pvt. Ltd. & Ors[25], both supported the Chloro Controls idea.

Clause 8 of the Act (as amended) provides that anybody who asserts a claim "through or under" the parties to an arbitral award have the power to seek the termination of court hearings commenced in judgement as well as the reference of the matter to arbitration.

Indian courts have regarded the aggregation of arbitrations favorably. Along with P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Investments (P) Ltd[26]., The Indian Supreme Court observed, hereby, that "if A had a claim against B and C, and if A had an arbitration agreement with B and a separate arbitration agreement with C, there is no reason why A should not arbitrate with B." The 1963 Limitation Act applies equally to arbitration proceedings as it does to court hearings (Section 43 of the Act). Arbitration proceedings are deemed to have started (unless such parties agree otherwise) on the same day the respondent receives a petition requesting that the dispute be referred to arbitration in a certain manner. The Limitation Act in 1963 provided that the party seeking arbitration

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[23] (2013) 1 SCC 641
[24] (2019) 7 SCC 62
[25] (2012) SCC 1866
[26] (2012) SCC 594

had three years from the commencement of the arbitral procedure to obtain the formation of an arbitration panel. The courts see the time restriction as an integral part of the legal system.

Formerly, the Companies Act included the criteria for corporate liquidation. India's Ministry of Legal system published the Insolvency Code, 2016 in May 2016. The Code's purpose is to unify the laws regulating insolvency and insolvency for companies, limited companies, partnerships, individuals, and other organizations. The Code established the Insolvency and Bankruptcy Board ("Board").

When the creditors/company starts the insolvency procedure, the Code imposes a moratorium on any new or existing actions.

Just after a bankruptcy decision is made or a preliminary liquidation or maybe an authorized liquidator has already been appointed, no lawsuit or other civil proceedings may be initiated or prosecuted by or against the main debtor.

Nonetheless, later Supreme Court as well as Delhi High Court decisions have cast some doubt on the prohibition of some legal activities even during the moratorium period under the Code.

The Supreme Court ruled in Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt. Ltd.[27] because no arbitral proceeding may well be initiated after the moratorium time prescribed in the Code starts. Despite, in Power Grid Corporation of India Ltd. v. Jyoti Structures[28], the High Court has held that perhaps the Code might very well simply prohibit the commencement of debt collection proceedings against such a corporate debtor, and that other deliberations supporting or enhancing the corporate debtor's economic condition may be initiated.

In arbitration proceedings, local parties might apply solely Indian law to a substance of the dispute. In certain other situations, either party may explicitly select a jurisdiction or the applicable law may be inferred from the agreement's terms and conditions. This was the law that was most directly connected to the agreement. Aspects such as the parties' nationality, the place of the agreement's execution, the site of the contract's entry, and the place of making business, among others, may be utilized to ascertain the parties' intent.

Generally, the arbitration treaty's applicable law is identical to the applicable law of contracts. Where there is no express preference for the legislation

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27 Civil Appeal No. 16929 of 2017

28 IA No.15241/2017

governing the contract in its entirety or for the arbitral award in its entirety, a presumption may very well emerge that perhaps the laws of the country wherein the arbitration has indeed been agreed to be held are the primary issue raised by the arbitration clause; however, this is a widely held presumption. (NTPC v. Singer Co[29].)

3. International Commercial Arbitration (ICA) in Indian Law

In the realm of Indian law, International Commercial Arbitration (ICA) pertains to legal and economic interactions where one of the parties involved is a foreign entity, national citizen, foreign corporation, business, institution, or a group of individuals with evident foreign central management. Under Indian law, arbitration involving a foreign party with its seat in India falls under the category of ICA within Part I of the Act.

(i) Applicability of UNCITRAL Model Law and Rules

International arbitration in India is primarily governed by the UNCITRAL Model Law and the 1976 UNCITRAL Rules. However, there are certain exceptions designed to limit judicial intervention. For instance, Section 8 of the Act differs from the Model Law in that it precludes a court from examining an argument if an arbitration requirement is deemed "void and invalid, rendered inoperable, or incapable of being executed."

(ii) Distinct Provisions in Indian Law

Section 16, which corresponds to Model Law Article 16, also exhibits some variations. Unlike the Model Law, Indian law does not permit challenges through an intermediate court if the court determines it has jurisdiction. An appeal is allowed only after the final judgment in such cases. It's important to note that international arbitrations conducted in India are subject to the same regulations as domestic proceedings.

(iii) Initiation of International Commercial Arbitration

The commencement of international commercial arbitration in India typically starts with a notice of arbitration. This notice is submitted by one party to the other, indicating their desire to resolve the dispute through arbitration. Section 8 of the Arbitration and Conciliation Act (the Act) outlines the process, requiring a party to submit the arbitration agreement along with its first statement. The judicial body must accept the application when made on the mentioned date. Additionally, both Section 9 of the Act, which empowers the court to grant

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[29] (1992) 3 SCC 551

interim relief, and Section 17, which empowers the arbitral tribunal to do the same, provide a means for parties to seek relief while awaiting a final decision. These provisions offer assurance to parties seeking relief during the arbitration process.[30]

4. International Arbitration Legislation

The UNICITRAL Proposed Legislation, initially introduced in 1985 and later revised in 2006, serves as a model legislative framework that comprehensively addresses various aspects of international arbitration. This model legislation has garnered adoption by more than 60 countries worldwide. It plays a pivotal role in ensuring the legality and enforceability of arbitration agreements, primarily by establishing guidelines for qualified arbitrators (Article 16) and safeguarding full judicial immunity (Articles 7-9).

One of its key features is its emphasis on party autonomy, granting parties the liberty to make critical choices in the arbitration process. This includes the freedom to select the arbitration venue (Article 1(2), 20), appoint arbitrators (Article 10-15), and determine the interim measures to be employed (Article 10-15). Moreover, the model lays out a straightforward arbitration procedure (Articles 18–26) that encompasses the collection of evidence in accordance with the relevant substantive law (Article 27), all leading towards the issuance of a final arbitral decision (Art 29–33).

Of notable significance is the model's provision for the recognition and enforcement of foreign arbitral awards, with specific attention to criteria that might lead to non-recognition (Art 35–36). This comprehensive framework ensures that international arbitration operates within a well-defined legal structure, fostering confidence in the resolution of cross-border disputes.

5. Challenges against the growth of International Arbitration in India.

(i) Judicial Intervention: One of most significant obstacles impeding the development of arbitrations is judicial involvement in arbitration tribunal. The Courts have indeed been given a restricted scope for involvement underneath the Arbitration and Conciliation Act, although they still allow for massive litigation. Despite legal provisions limiting court intervention, Indian courts have at times interfered in arbitration matters, issuing stay orders and making decisions that should be within the tribunal's jurisdiction. This often results in prolonged arbitration proceedings and uncertainty.

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[30] Rahul Dev, International Commercial Arbitration in India (Mar. 26, 2020) *available* at https://patentbusinesslawyer.com/international-commercial-arbitration-in-india/ (last visited on August 22, 2023).

(ii) Slow interim protection: The parties may approach the Court under Sections 17 and for interim protection to be granted, however the scope of the interim protection in international agreement itself is also limited and may only be awarded in certain cases. Parties may require interim protection orders to preserve assets or prevent irreparable harm during arbitration. However, obtaining such relief can be slow and cumbersome, impacting the effectiveness of arbitration as a dispute resolution mechanism.

(iii) Delay in Arbitrator Appointments: If neither party proposes their allocated arbitrator inside 30 days of filing their request, or if the two assigned arbitrators decline to suggest the third Presiding Arbitrator, the parties may file a Petition for Arbitrator Appointment. However, in the case of international arbitration, it takes longer time than expected. In cases where parties fail to nominate their arbitrators within the stipulated time, the process of appointing arbitrators becomes protracted. This can lead to further delays in initiating arbitration proceedings.

(iv) Rash Procedure to Challenge Awards: The Arbitration and Conciliation Act provides for the challenge of an Arbitral Award on certain reasons. Aside from that, it also allows for the enforcement and implementation of judgments, which only serves to extend the time span of arbitration. Regardless of the fact that perhaps the objective of this act is to reduce the need for judicial intervention, frequent intervention and contradictory judgments have been a source of frustration for so many parties, resulting in a number of choices by parties not to conduct their arbitrations in India. The Courts have consistently recognized the concept of none of Courts, with the Supreme Court sometimes vacating a stay granted by a High Court on the grounds that the party seeking to invoke arbitration over certain shares would've been able to gain control of a telecommunications company, which is opposite to the system of Indian Law. The Supreme Court, from the other hand, decided that it was a significance appeal and also that the case should be resolved before the Arbitral Tribunal solely, and that the Jury will not be the appropriate place to do so. As a consequence, the High Court's injunction was lifted, and the parties immediately ordered to arbitrate, with the Supreme Court going so far as to bar the Respondents from submitting any further applications that may interfere with the arbitration process. Foreign attorneys' scope of practice is being limited. The Top Court established in the case of Bar Council of India v. A.K. Balaji [31]on the problem of international lawyers and legal firms entering and practicing in India, as well as the formation of initiatives such as the Mumbai Centre for International Arbitration as well as the introduction of the NDIAC Bill, that this is essential to

[31] Civil Appeal Nos.7875-7879 of 2015

keep in perspective as well as evaluate the likeliness of India's success as the "successor."

Despite ruling in favor of the “fly-in, fly-out” concept, the Supreme Court added the condition that the visit has to be “casual” and not amount to “practice,” and the decision would be made on a specific instance basis. The Court also decided that foreign attorneys did not have a “absolute right” to undertake international commercial arbitration procedures. This decision significantly narrowed the scope of International Commercial Arbitration, particularly for companies seeking to invest in India but hampered by court challenges such as this one. The provision allowing challenges to arbitral awards provides opportunities for parties to dispute awards on various grounds, even if their intention is to prolong the process. Frequent challenges and contradictory court decisions contribute to arbitration delays.

(v) Restrictions on Foreign Lawyers: Another issue with foreign attorneys is that, owing to a statutory contradiction, the Eighth Schedule may be construed to imply that a foreign lawyer may not serve as an arbitrator in India. All of these discrepancies must be resolved as soon as possible by the government or the courts if India is now to be designated as a Global Arbitration Hub. While the "fly-in, fly-out" concept was recognized by Indian courts, there are still uncertainties and limitations regarding the practice of foreign lawyers in India. This hampers the ability to access international legal expertise in arbitration cases.

(vi) Reduced Flexibility Due to Amendments: While many view the establishment of the Arbitration Council of India as a positive development, it has also sparked concerns. These concerns arise from the fact that the council, composed of numerous members, is either affiliated with the Central Government or appointed by it. As a result, the government wields significant influence over the council, potentially compromising the independence of arbitrators.

Another issue with the 2019 Amendment Act pertains to confidentiality. While the Act emphasizes the importance of maintaining confidentiality, it lacks essential provisions outlining exceptions to this requirement. These exceptions could be crucial in situations where the involvement of a third-party expert or other circumstances necessitates disclosure. Without such provisions, unintentional breaches of confidentiality might be exploited as a delaying tactic by either party.

Lastly, the Amendment Act suffers from inconsistencies in the statute, particularly concerning the Eighth Schedule. This ambiguity could be interpreted as a prohibition on foreign lawyers practicing as arbitrators in India. Such an

interpretation could undermine India's aspiration to become a prominent Global Arbitration Hub, hindering its progress in this regard.

The 2019 amendments aimed to enhance arbitration procedures but have raised concerns regarding the role and independence of arbitrators. The establishment of the Arbitration Council of India and other changes could impact the autonomy of arbitration proceedings.

Addressing these challenges is crucial to promote India as a favorable destination for international arbitration. Implementing reforms, clarifying rules, and ensuring the timely resolution of disputes will contribute to the growth of international arbitration in India.

6. Conclusion

In summary, the Indian Arbitration Act currently affords a substantial degree of Sovereign Immunity. This is evident from Article I of the Act, which stipulates that parties can mutually choose the rules and laws governing their dispute. In cases where parties fail to specify these details, the arbitral tribunal is granted the authority to make such determinations. Notably, this empowers parties not only to select the arbitration venue but also to designate the chair of the arbitration, effectively determining the legal framework for their disagreement. This represents a departure from litigation, where court jurisdiction is clearly defined by statutory laws.

Furthermore, the Act permits parties to handpick their arbitral tribunal, which must consist of an odd number of members, granting them control over the individuals responsible for adjudicating their dispute. Additionally, parties enjoy the freedom to shape the procedure and manner in which the arbitration proceedings unfold.

From the author's perspective, the current framework of the Indian Arbitration Scheme offers a significant level of party autonomy. Parties can determine the arbitration venue, the governing law, the arbitrators—who essentially serve as the judges of the dispute—and the

This level of autonomy is a departure from traditional litigation, where the rules and jurisdiction of the courts are strictly defined by statutory laws. Arbitration, under the Indian Arbitration Act, empowers parties to tailor the procedure and conduct of the arbitration to best suit their needs and preferences.

In the author's perspective, the existing Indian Arbitration Scheme strikes a balance between flexibility and structure. It provides parties with the essential tools to customize their arbitration experience while maintaining the necessary

legal framework for fair and efficient dispute resolution. Any attempt to further modify these procedures should be undertaken with caution, as it may risk undermining the very autonomy and flexibility that make arbitration an attractive choice for resolving disputes in India.

The resolution of disputes through international commercial arbitration in India holds immense potential for attracting foreign investment, decongesting the judicial system, and enhancing India's reputation as a business-friendly destination. However, several issues and challenges need to be addressed to realize this potential fully.

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Nuclear Energy: Ecological Justice Through its Peaceful Use- A Study of International and National Legal Framework

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Abstract

Today in this world of economic development, the global energy demands have been increasing each day significantly due to industrial development. As consequence there is an increase in global greenhouse gases and carbon emission, polluting the environment. Therefore, a clean and sustainable energy source is vital for the mankind to meet the global energy requirements. In the wake of this concern, Nuclear energy being the low carbon power generation method of producing electricity has formed the backbone of clean, sustainable and zero carbon emission energy source for a clean future. By delivering the most sustainable energy transitions, Nuclear energy has contributed towards mitigating the greatest challenge faced by the mankind i.e. climate change. Yet the three major nuclear power plants accidents in different parts of the world—at Three Mile Island in the United States in 1979; at Chernobyl, in 1986, in Soviet Union; and at Fukushima, Japan in 2011, shook the world resulting in debates on the threats of nuclear energy and thereby posing a quandary as to who would be legally responsible for third-party consequences. There are some other limitations and challenges which nuclear energy has including the safety principle, radiation exposure, radioactive waste, off-site effects of nuclear accidents etc. In recent years Nuclear Terrorism is a term which has become very popular. The present paper will explore the merits of nuclear energy, the legal regime for nuclear accidents liability and also its challenges and threats.

Keywords: *Sustainable, Nuclear Energy, Nuclear Terrorism, Radiation*

1. Introduction

The protection of the environment is now humanity's top concern in the world of developed economies. A large portion of the ecosystem is exposed to greenhouse gases and carbon emissions, which is hereby causing environmental degradation every day. The energy sector, which is principally responsible for emissions of gases and carbon produced via the burning of fossil fuels, such as coal, natural gas, and oil. Recent patterns demonstrate that our use of fossil fuels, primarily

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coal and natural gas, accounts for about 60% of our electricity.[1]The second-largest contributor to greenhouse gas emissions in the United States in 2020 was the electrical sector representing 25% of the total in the United States.[2] Environmental degradation is not caused by economic growth but rather by a lack of effective policies to minimize emissions of greenhouse gases. Therefore, in light of the current state of the environment, it is crucial to protect it and to implement technologies that not only lower carbon emissions but also provide a sustainable source of energy. Nuclear energy has emerged as the leading option on this issue due to its clean, emission-free energy source and seemingly endless supply of energy. The most sustainable energy source available today, it is essential for achieving sustainable development goals.

Over the past century, India's consumption of energy has grown exponentially. In other words, electrification is a side-effect of modernization, which has fundamentally altered how people live their lives, from the usage of the most cutting-edge kitchen and home appliances to electrically powered cars. In addition to industry, manufacturing, and the service sector, where it is employed in cutting-edge dental drills, X-ray equipment, and ultrasound machines, electricity has emerged as a major source of energy in many other spheres of life. As a result, it is anticipated that global demand for power would increase.

Industrialization and urbanization are intrinsically linked to the energy sector because they utilize the most provided energy than any other industry, accounting for around 54% of the world's total delivered energy consumption.[3]The world's energy needs will significantly increase; they are predicted to increase by more than half by 2040 as a result of population expansion, urbanization, industrialization, and other factors.[4] The global electricity demand for electric vehicles is expected to surge five to eleven times from 2019 levels by 2030, according to the International Energy Agency. Electric vehicles have to be as carbon-free as possible if we're going to benefit the environment from them. The burning of fossil fuels is a major factor in the production of energy. Coal

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1 U.S Energy Information Administration, Independent Statistics and Analysis, "What is U.S. electricity generation by energy source?", *available at* https://www.eia.gov/tools/faqs/faq.php?id=427&t=3 (last visited on July 8, 2023)

2 United States Environmental Protection Agency, "Inventory of U.S. Greenhouse Gas Emissions and Sinks", (1920-2022)

3 U.S. Energy Information Administration, International Energy Outlook 2016, "Industrial Sector Energy Consumption". (2016)

4 World Nuclear Association, World Energy Needs and Nuclear Power, *available at* https://world-nuclear.org/information-library/current-and-future-generation/world-energy-needs-and-nuclear-power.aspx (last visited on Nov 20, 2023)

continued to be the primary fuel for power generation in 2019, accounting for 37 percent of worldwide electricity production, or 10% of all other renewable energy sources.[5]

The foremost concern here is that since the generation of energy is heavily dependent on the combustion of coal and other fossil fuels, it has become a major contributor to global warming as the demand for energy rises daily. Fossil fuels and industry accounted for 89 percent of the world's CO2 emissions in 2018[6]. Thus, the atmosphere's overall concentration of greenhouse gases has increased, which is what is causing the climate to shift. Coal accounts for 56% of all energy use in India. This coal is mostly used to make power. Currently, coal is used to generate 76% of India's electricity[7]. Since nature has a right to be clean and sustainable, it has become imperative to adopt such a renewable source of energy that is clean, sustainable, and low carbon emission. In this situation, there is a constant increase in greenhouse gas emissions along with an increase in energy demand across the countries. One such energy source that has emerged as a leading contender to meet the demands of a zero carbon emission, clean, and sustainable energy source as well as to be a measure to address the environmental concerns is nuclear energy. Nuclear energy generates more electricity than any other type of energy on the planet without producing any carbon emissions.

Today with 440 power reactors producing 10% of the world's electricity, nuclear power has been essential in achieving environmental sustainability.[8] The second-largest source of low-carbon energy in the world is nuclear power (28 percent of the total in 2019)[9]. Nuclear energy is consistent with the notion of being the clean, dependable, and sustainable provisions of Sustainable Development Scenario, according to the OECD International Energy Agency's World Energy Outlook 2021[10]. By using nuclear power to generate electricity and reduce carbon emissions, it has been possible to balance rising human activity with environmental problems like climate change and global warming. Through its sustainable development strategy of minimizing environmental concerns, nuclear energy generated 10.5 percent of the world's electricity in 2018.[11]

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5 International Energy Agency, World Energy Balances: Overview, Paris , (2021)

6 Client Earth Communications "Fossil fuels and climate change: the facts", *available at* https://www.clientearth.org/(last visited on December 8, 2023)

7 Indian Energy Dashboards Electricity Generation, NITI Aayog, available at https://iced.niti.gov.in/, (last visited on December 20, 2023)

8 World Nuclear Power Association, Nuclear Power in the World Today, *available at* https://world-nuclear.org. (last visited on January 20, 2024)

9 *Supra* note 5 at 3.

10 *Supra* note 2 at 2.

11 International Energy Agency, "Nuclear Power in a Clean Energy System", (May, 2019).

Therefore in order to reduce greenhouse gas emissions in the power industry, nuclear energy is crucial.

Despite the closure of all but two reactors in Japan following the Fukushima Daiichi accident, nuclear energy remains the largest source of low-carbon electricity in OECD (Organization for Economic Co-operation and Development) countries, accounting for 18.9% of total electricity production in 2012 (NEA, 2013).When the whole uranium lifecycle (from mining through generation to disposal) is taken into account, greenhouse gas emissions per kilowatt-hour. The lifecycle emissions of nuclear energy are 5.5 g CO2 eq./kWh on a global average whereas those of hydropower, solar, and wind energy are substantially higher and have more negative environmental effects.[12] Nuclear energy is ecologically sound. No harmful gases are released in the environment by it, yet there have been several risks or limitations associated with the use of nuclear energy for instance the radiation exposure by the nuclear power plants accidents and the liability for compensating the victims. The law as to the use of nuclear energy is therefore a significant here for its fair and peaceful use. Nuclear law includes the compilation of international treaties, conventions, principles, and agreements, the national or domestic laws and set of laws relating to the growth of the civil uses of nuclear energy.

2. Nuclear Damage and Liability : International Legal Framework

The three major nuclear power plant disasters—at Three Mile Island in the United States in 1979, Chernobyl in the Soviet Union in 1986, and Fukushima in Japan in 2011—shook the world and sparked discussions about the dangers of nuclear energy to the people and the environment. With these three major nuclear accidents that resulted in nuclear damage and loss of life and property were witnessed by the entire world, it has become essential to not only define nuclear damage but also to determine who is responsible for the loss that resulted from these accidents in order to provide justice to the individuals. Loss of life, property, income, economy, environment, and personal harm are all included in the definition of nuclear damage, as well as the costs associated with restoring the environment and any further preventive measures taken to lessen these losses. Serious nuclear accidents can result in a variety of and potentially wide-ranging effects on both people and property. The idea that common tort law procedures, while acceptable for conventional hazards, could impede rather than aid victims of nuclear damage in securing proper compensation quickly led to the formation

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[12] United Nations Economic Commission For Europe, Carbon Neutrality in the UNECE Region: Integrated Life-cycle Assessment of Electricity Sources, ECE Mar 2022/58, UNECE (Mar, 2022)

of nuclear liability regimes. According to the general rules of tort law, the victim must identify the person who caused the accident. This means that the victim must demonstrate which of the numerous parties who might have been involved in a nuclear accident, such as the operator, supplier, designer, is legally responsible for compensating the victim. To assure the availability of adequate compensation against damage to people and property caused by any nuclear accident, a specific legislative structure for nuclear liability was required.

The liability which arises from any nuclear power plants accidents was the civil liability. A requirement of a civil law to make restitution due to an unjustified harm to another's person or property is known as civil liability[13]. A person who intentionally or negligently violates another person's life, body, health, freedom, property, or other right must make up for any harm that results. This is how the idea is also expressed[14]. The Paris Convention on Third Party Liability in the Field of Nuclear Energy, 1960, was adopted with this specific objective. The operator of a nuclear installation is responsible for any personal or property loss resulting from a nuclear incident that occurred at a nuclear installation or as a result of a nuclear substance flowing out of such installation. This Convention is applicable to nuclear incidents that have caused damage within the territory of the Contracting Party where the nuclear installation of the responsible operator is situated. Only the operator of the nuclear site is entitled to compensation under this Convention, but if local or national legislation so provides, the right may also exist against an insurance or financial guarantor providing the security. According to this Convention, the overall compensation that must be paid in relation to a nuclear damage cannot be more than the amount specified in Article 7.

Another Convention which deals with Civil Liability for nuclear damage is Vienna Convention on Civil Liability for Nuclear Damage, 1963. The major goal of this agreement was to establish the most fundamental guidelines that could help give individuals financial protection against harm that might be caused by peaceful nuclear energy applications. According to this Convention, the owner or operator of the nuclear installation is responsible if it can be demonstrated that the "nuclear damage" was caused by a nuclear incident[15] that either occurred in the nuclear installation that he owns or controls, or as a result of the use of nuclear material that originated from or was brought into the nuclear installation.

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13 Civil Liability Definition, Legal Information Institute, Cornell Law School, *available at* http://www.duhaime.org/LegalDictionary/C/Civil Liability.aspx (last visited on April 20, 2024)

14 The German Civil Code, 1900, 823(BGB), s 823.

15 Vienna Convention on Civil Liability for Nuclear Damage, 1963, art. 2(1)

By virtue of this agreement, the operator has an absolute liability[16] for any nuclear harm. However, if the operator can show that the damage was the consequence of either his intentional act or omission or that the person who suffered the damage acted with gross carelessness, the operator may also be completely or partially released from obligation by the appropriate court[17].The amount permitted to be set by the installation state as operator's liability for nuclear damage shall not be less than US $5 million for a single nuclear incident[18]

Thus, the Paris Convention and the Vienna Convention were the compensation-related documents in existence prior to the Chernobyl nuclear tragedy. According to the research, these Conventions only applied to the State parties, and victims of nuclear accidents would receive compensation based on the location of the disaster. Damages sustained on the territory of a State Party to one of these Conventions were not covered by any of these Conventions. However, the tragic event at Chernobyl made the States and the international community question whether the current liability and compensation system was actually able to protect the victims' rights, particularly for the losses and damages experienced by the people of one country as a result of a nuclear accident occurring in a neighboring country that was capable of affecting the life, property, and environment of the affected country. As mentioned below, this led to the approval of the Joint Protocol of 1988. In order to avoid any problems that might arise from the concurrent application of these Conventions, this Protocol was thus agreed upon. The Paris Convention and the Vienna Convention's ability to be jointly enforced is determined by the Joint Protocol, 1988. It makes it clear that, in the same way that they apply between parties to the Vienna Convention and vice versa[19], the provisions of the Vienna Convention[20] shall be made applicable to those State Parties that are Contracting Parties to both this Protocol and the Paris Convention,

The contracting parties desired to create a uniform national rule on liability because they understood the significance of the provisions on compensation in case of nuclear damage under the Vienna Convention, the Paris Convention, and under domestic laws. The goal of the law was to increase and raise the value of compensation in order to broaden regional and international collaboration for the

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16 Id., art. 4(1)

17 Id., art. 4(2)

18 Id., art. 4(6)

19 Joint Protocol Relating to the application of the Vienna Convention and the Paris Convention, 1988, art. IV(2)

20 Id., art. IV(1)

improvement of nuclear safety. Thus, based on the ideals of global solidarity and cooperation, the Convention on Supplementary Compensation for Nuclear Damage (hereinafter referred to as the CSC) was adopted . The primary goal of this Convention was to strengthen the nation's existing compensation system. This Convention is applicable when nuclear installations within the boundaries of a Contracting Party are used for peaceful purposes and cause nuclear harm. When considering the long-lasting effects of the nuclear incident, the Vienna Convention's initial compensation amount was quickly realized to be extremely meager; therefore, the Convention on Supplementary Compensation was adopted to increase the compensation amount to 150 million SDRs along with the costs and interests paid in addition to the amount of compensation.[21]

Since nuclear reactors aboard ships were operating concurrently, another thorough document was required to address the issue of the operators of nuclear ships' liability in relation to other factors. Therefore the convention if a nuclear fuel, radioactive product, or radioactive waste produced in a nuclear ship flying the flag of a Contracting State causes nuclear harm, this Convention applies.

Additionally the 1975 Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Materials, which is based on the operator's strict liability principle, is another convention that deals with liability in cases of maritime carriage. The liability for such radioactive damage is put upon the operator of a nuclear installation under the rules of the Paris Convention, the Vienna Convention, or an equally favorable national law, in which case this Convention releases the individual from culpability for the nuclear incident in question.

3. Nuclear Damage and Liability : National Legal Framework

After the nuclear disaster in Fukushima, everyone had serious concerns about the security of the nuclear power plants in India. There were concerns about what the Indian government could do to ensure the safety of the populace if the same thing occurred. In India, there are six nuclear power stations, and twenty nuclear reactors were erected in them. It has not experience a nuclear catastrophe, but there are nuclear accidents. There have been several incidents, but they are rarely widely publicized because of only financial damage, and not human loss, results from them. In addition to financial losses, several incidents also resulted in greater environmental costs. A severe accident at the Tarapur Atomic Plant in 1974 that killed two engineers instantly and caused the chief engineer to suffer to death for three years was mentioned in the National Workshop on Siting and

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[21] Convention on Supplementary Compensation for Nuclear Damage, 2015, art. 3(7)

Safety of Nuclear Power Plants.[22] Then, in 1979, a significant radioactive water leak exposed 300 workers to radiation at levels that were substantially higher than allowed—1 millirem per hour per person. With such accidents taking place it became necessary to have a national legislation on nuclear accidents liability. The Atomic Energy Act of 1962 created a domestic framework within which the Indian nuclear sector has grown. The aforementioned Act makes no mention of nuclear liability or compensation for nuclear damage resulting from a nuclear accident or event, and no other law addresses the issue either. Therefore, it was deemed important to pass legislation that would cover nuclear liability that could follow from a nuclear accident or incident, as well as provide for financial compensation for people who sustain radioactive damage as a result of a nuclear occurrence. In response, the Indian Parliament received the Civil Liability for Nuclear Damage Bill. The 2005 Indo-US Civilian Nuclear Agreement led to the 2010 Civil Liability for Nuclear Damage Act. The Government of India or its undertaking businesses are held liable under a no-fault liability system that has been established for civil liability for nuclear damage in India and to compensate the victims of a nuclear industrial accident as soon as possible. The Act's and its Rules' specific provisions have proven to be very contentious. India joined the International Convention on Nuclear Civil Liability Arena after this Act was accepted. The Act is by far the most comprehensive piece of legislation, and it includes provisions for compensation to victims of nuclear disasters, among other things. The Act's core principle is the doctrine of strict liability. Taking into account previous cases of man-made disasters, such as the Bhopal gas tragedy, the legislature decided that strict liability would be better for the Act's core objective of allowing victims to get compensation.

The primary goals of the Civil Liability for Nuclear Damage Act, 2010 (henceforth abbreviated as CLND) were to establish civil liability in the event of "nuclear damage[23] and to provide urgent financial assistance to the victims of such an occurrence. The no-fault responsibility concept serves as the foundation

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[22] Teresa Tharakan,"Nucleus of disaster", *Down to Earth*, September 15, 1995 *available at* https://www.downtoearth.org.in/coverage/nucleus-of-disaster-28659, (last visited on April 20, 2024)

[23] Civil Liability for Nuclear Damage Act, 2010, s. 2(g), Nuclear Damage means–

I. loss of life or personal injury (including immediate and long term health impact) to a person;
   or
II. loss of, or damage to, property, caused by or arising out of a nuclear incident, and includes each of the following to the extent notified by the Central Government;
III. any economic loss, arising from the loss or damage referred to in sub-clauses (i) or (ii) and not included in the claims made under those sub-clauses, if incurred by a person entitled to claim such loss or damage.

for determining the compensation. Any radioactive damage resulting from or involving a nuclear installation will be the responsibility of the operator of the nuclear installation[24]. In addition, if multiple operators are responsible for nuclear damage, their responsibility will be joint and several to the extent that each operator's portion of the harm cannot be divided.[25] Under the Act, the operator[26] of a nuclear installation is responsible for any nuclear damage resulting from a nuclear incident when the incident occurs[27]:

i. within the nuclear installation;

ii. due to the involvement of nuclear material[28] that emerged or originated in the concerned nuclear installation, provided that the incident happened prior to
 a) another operator assuming responsibility for the liability for a nuclear incident that occurred due to the involvement of such nuclear material;
 b) the material's charge being taken over by another individual; or
 c) the charge of the nuclear material has been assumed by an individual who holds the necessary authorization to operate the 'nuclear reactor'[29]

iii. because of the nuclear material that was sent to the concerned nuclear installation and the incident transpired after—
 a) the operator of another nuclear installation transferred the liability of the nuclear incident to such operator;
 b) the operator assumed the charge of the concerned nuclear material;
 c) the material has been charged by the operator from the operator of a nuclear reactor fitted with a means of transportation for use as a power source;

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24 Civil Liability for Nuclear Damage Act, 2010, s. 4(1)

25 Id., s. 4(2)

26 Civil Liability for Nuclear Damage Act, 2010, s. 2(m), operator means , in relation to a nuclear installation, means the Central Government or any authority or corporation established by it or a Government company who has been granted a licence pursuant to the Atomic Energy Act, 1962 (33 of 1962) for the operation of that installation.

27 Civil Liability for Nuclear Damage Act, 2010, s. 4(1)

28 Civil Liability for Nuclear Damage Act, 2010, s. 2(k), nuclear material means and includes–
(i) nuclear fuel (other than natural uranium or depleted uranium) capable of producing energy by a self-sustaining chain process of nuclear fission outside a nuclear reactor, either by itself or incombination with some other material.

29 Civil Liability for Nuclear Damage Act, 2010, s. 2(1), nuclear reactor means any structure containing nuclear fuel in such an arrangement that a self-sustaining chain process of nuclear fission can occur therein without an additional source of neutrons.

d) the material has been loaded onto a means of transportation for transportation from a foreign state.

The Act's Limitations of Liability are covered in Section 6. The contentious part of the Act is sub-section (1), which says that the maximum financial liability for any nuclear accident is 300 million Special Drawing Rights (SDR) in rupees, or a greater sum that the Central Government may set by notice. This amount does not include any interest or proceeding expenses, albeit it is subject to periodic evaluations by the Central Government. The clause states that further action may be taken by the Central Government. [30]It is crucial to remember that in cases where a nuclear accident happens as a result of any kind of short-term material storage during transportation within an installation, the presumed operator of the material would be held accountable. In a similar vein, the consignor of the nuclear material will be assumed to be the operator in the event that such an incident occurs during transportation. However, in the event of a nuclear mishap brought on by a serious natural disaster, a civil war, an armed conflict, an insurrection, hostility, or terrorism, the operator will not be held liable for any radioactive harm.

Therefore a careful analysis of the all the international and national legal instruments for the civil liability in nuclear power accidents and compensation to the victims, makes us realize that the entire legal fraternity has worked hard to bring a comprehensive law dealing with nuclear disasters and for making the operator of the nuclear installation either strictly or absolutely liable for payment of compensation to the victims of nuclear accidents. Thus making it clear that for nuclear energy to flourish in energy sector it is indispensable to work upon its catastrophic risk of nuclear power plants accidents and also for the safe use of nuclear materials to avoid nuclear terrorism, a term which is now gathering our attention.

4. Nuclear Terrorism and its Prevention

Although terrorism did not start on September 11, 2001, the world did change as a result of that tragic day. The attacks on the United States, which resulted in the deaths of about three thousand unarmed civilians, demonstrated to us how terrorism had become into a worldwide phenomenon that was capable of wreaking havoc and wreaking havoc anywhere. Because of the scale of the attacks, nobody could continue to watch from the sidelines. The impact of terrorism was felt everywhere, therefore the conflict had gone worldwide.

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[30] Civil Liability for Nuclear Damage Act, 2010, s. 6(1)

Terrorism is a growing worry for global civilization, yet nuclear terrorism has received less attention than other forms of terrorism thus far.

The nuclear calamity that Hiroshima and Nagasaki faced during the Second World War was the most catastrophic and likely the first one to be publicly publicized. The sad outcome of dropping two atomic bombs is still distressing people today, as children are still being born with genital abnormalities. In terms of terrorist attacks, it is important to keep in mind that thousands of tonnes of radioactive waste from the nuclear industry go around the globe via roads, railroads, canals, etc., regardless of the possibility that a nuclear station would be directly targeted. Along with the concern of potential radioactive contamination, this global movement also raises the prospect of terrorist theft. Additionally, the States lack the necessary resources in terms of infrastructure and employees that are qualified to handle such catastrophes. A terrorist attack on such a train or truck could put thousands or lakhs of innocent people's lives in danger. Political and military scholars have long recognized the threats that the spread of nuclear weapons among the world's states poses to worldwide security. Terrorist attacks' effects on global security have also been looked at. Recent research, however, has concentrated on the connection between these two distinct dangers to global security—terrorist acquisition and potential use of nuclear explosive devices, radiological weapons, or attacks on various nuclear plants and infrastructure. The unauthorized or attempted use of nuclear explosive devices, nuclear materials, and attacks or attempted attacks on nuclear facilities and installations are all examples of nuclear terrorism. A person, a group of people, a company, or a country could all fall prey to nuclear terrorism. However, the government of the country whose territory nuclear terrorist acts are perpetrated will bear the bulk of the responsibility for responding to such attacks. The use of nuclear explosive devices, radiological weapons, attacks on nuclear facilities housing nuclear weapons, peaceful nuclear explosive devices, nuclear fuel cycle processes and materials, or nuclear weapons fabrication processes and materials are four distinct types of nuclear terrorist acts that can be taken into account. Overt threats to use nuclear explosive devices or radiological weapons or overt threats to attack a nuclear facility are also included.

As time went on, all the nations came to understand that each nation had the right to create, use, and benefit from nuclear energy for peaceful purposes. At the same time, serious nuclear terrorist incidents posed a threat to world peace and security. Such attacks were not adequately addressed by the current international legislation. This inspired the development and adoption of various practical and successful measures by the international community for the prevention of such crimes as well as the identification, arrest, and punishment of those responsible.

With a significant gain in comprehension of the issues to be solved, nuclear terrorism can be understood in terms of conventional arms control. The goal of creating countermeasures to nuclear terrorism is to lessen the likelihood of conflict and, in the event that it does break out, to lessen its repercussions. We can see that the international community has worked hard to strengthen the laws related to the promotion of only safe uses of nuclear material by prohibiting its use for manufacturing lethal nuclear weapons by framing laws like the Nuclear Non-Proliferation Treaty, 1968 (hereinafter referred as NPT), and the Treaty Banning Nuclear Weapons Tests In The Atmosphere, In Outer Space And Under Water, 1963 Or The Partial Test Ban Treaty, 1963 (hereinafter referred to as the PTBT), etc. By carefully analyzing all the legally binding primary international instruments that constitute the International legal framework for nuclear safety and security that to nuclear material should be used for peaceful purposes only. For this the Convention On The Physical Protection Of Nuclear Material, 1980 (hereinafter referred to as CPPNM) was adopted. It specifies mechanisms for the avoidance, discovery, and retribution of transnational offences involving nuclear material. Additionally, it was recognized that appropriate and efficient methods must be implemented to guarantee the avoidance, identification, and punishment of crimes involving nuclear material. Additionally, it was recognized that this required international cooperation for effective physical protection of nuclear material utilized for military objectives, secure transfer and storage of nuclear material, and physical protection of nuclear material in general.

The States Parties entered into the NPT taking into account the possible destruction that would result from a nuclear war. The proliferation of nuclear weapons in its opinion, would significantly increase the risk of a nuclear war, thus it was focused on doing everything in its power to prevent the hazards of such a war and to protect people's security. By allowing the use of nuclear energy for peaceful purposes, this treaty aimed to adhere to the standards established by the International Atomic Energy Agency (hereinafter referred to as the IAEA). This document was an attempt to revive the resolve espoused in the 1963 Treaty[31]. The Preamble to this Treaty strives to achieve the permanent cessation of all nuclear weapons test explosions and to continue talks to achieve this.

On July 16, 1945, a nuclear weapon test was conducted in New Mexico, USA In 1954, India made what was perhaps the first proposal for a treaty prohibiting nuclear weapon tests. As a result, the PTBT, also known as the Limited Test Ban Treaty, was the first Treaty of its kind to forbid nuclear tests. The PTBT instructs the parties to forbid, prevent, and refrain from carrying out any type of nuclear

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[31] NPT, 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (April, 2015)

weapon tests or nuclear explosions whether in the atmosphere, in outer space, under water, or in any other environmental conditions in an effort to prevent the formation of radioactive debris outside the territory of the State conducting nuclear explosions. Additionally, parties to this Convention are required to abstain from conducting, encouraging, or taking part in any nuclear weapon testing or explosions.[32]

The CTBT as the name suggests is a treaty banning all nuclear explosions, either for military or civilian purposes. As soon as this pact enters into force, it will forbid the State Parties from conducting any nuclear explosions, including nuclear weapon test explosions. Furthermore, it obligates the states Parties to take all necessary precautions to forbid and prevent the occurrence of any such nuclear explosion at any location that is within their territorial jurisdiction. Each State Party further agrees to refrain from encouraging or taking part in any explosions, particularly those involving nuclear weapons, and from making any additional advancement to the current NWs. This, in essence, is an international prohibition against nuclear explosion.

5. Conclusion

Despite the fact that nuclear energy has emerged as the most dependable and sustainable source of energy, the catastrophic risks associated with its use must be reduced in order to meet the growing demand for electricity. We can see that the international community has worked hard to strengthen the laws related to the nuclear safety, security, waste management, and for compensation in case of a nuclear incident. They have been vigilant towards promotion of only safe use of nuclear materials. Through the creation of rules like the NPT, PTBT, and others, it has been sufficiently watchful in promoting the use of nuclear material solely for safe purposes. Additionally, the international framework produced agreements like the Paris Convention, Vienna Convention, and CSC on Civil Nuclear Liability in Case of Nuclear Accident, which are essential in assisting the contracting parties in drafting domestic compensation laws. Both directly and indirectly, the CPNNM and the Convention on the Suppression of Acts of Nuclear Terrorism contribute to halting the spread of terrorism based on the exploitation of nuclear material. The state governments have attempted to write down their pertinent national laws on the uses of nuclear energy in such a way that there is generally total consistency between the national and international

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[32] Treaty Banning Nuclear Tests in the Atmosphere, in Outer Space and Under Water (Partial Test Ban Treaty) available at http://www.nti.org/. (last visited on April 20, 2024)

legal frameworks by taking these international instruments into consideration. For environmental justice to be achieved with the use of nuclear energy, at the same time it is also essential to minimize its risks and limitations. In addition to these variables, the extremely low estimated probability of a major reactor accident and the dearth of known serious reactor mishaps make it difficult to forecast the environmental effects of a possible disaster. How can the nuclear sector maintain its commercial viability while simultaneously making a significant contribution to the financial damages resulting from a nuclear accident? The development of international liability norms must be taken into account when pondering potential solutions to this conundrum. By building on the current platforms offered by the international agreements, especially the CSC, improvements in this area should be pursued rather than dismissing these concepts as unrealistic or unfeasible. The creation of a much more robust fund, which could offer significant compensation in the event of a nuclear accident, would come from a combined operator- and state-driven approach as well as contributions from the supplier community, as opposed to a solely operator-driven approach, as was the case with Price Anderson or the CSC. A comprehensive risk pooling programme should be incorporated at the international and national regimes wherein state shall contribute to the funds in nuclear accident and the nuclear supplier's community shall reimburse in the supplementary fund in accordance with a predetermined formula. A comprehensive reexamination of the worldwide and regional frameworks for nuclear liability legislation is necessary to close the gap between the actual losses resulting from a nuclear disaster and the responsibility limits stipulated by various legal instruments. It is worthwhile to take into consideration a model that entails the establishment and management of a fund to which states and the nuclear sector, including the supplier community, would both contribute. This would expand the available finances and establish a significant compensation system. In order to create suitable safeguards for the protection of people and their environment, additional efforts should be made at this stage of nuclear power development to comprehensive programmes that reduce the risk of nuclear accidents.

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Issues of Custody and Guardianship in Matrimonial Disputes

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Abstract

Legal guidelines for guardianship and child custody are intertwined. Custody, contrasted with, which more precisely refers to the minor's regular care and supervision by their parents. The rights and responsibilities of an adult with regard to a minor's person and property are collectively known as guardianship. In India, neither secular law nor religious law defines the term "custody". If a marriage ends in divorce, the children of the union are the ones who would suffer the most. The wellbeing of the child is given priority over all other considerations by Indian law when determining who should have custody of a minor kid, while still respecting the parents' entitlement to primary custody. In family law, the word "child custody" refers to the legal guardianship of a child under the age of majority. The custody of the child is frequently a problem that the court must decide to settle during a divorce. A notion known as "guardianship" was developed in response to the inherent inability of infants, people with impaired mental capacity, and occasionally other categories of people, to take care of business alone. A guardian is a person who is legally appointed to protect the person or property of the ward. When someone is designated as a guardian, it is typically because the ward is too young, incapacitated, or disabled to look out for their own interests. The majority of nations and jurisdictions have laws that declare that a minor child's parents are that child's legal guardians and they have the authority to name a replacement guardian in the case of their decease.

Keywords: *Minor, Guardian, Matrimonial, Marriage, Dissolution, Custody.*

1. Introduction: Matrimonial Disputes in India

The institution of marriage is revered. It is the basis for a strong family and a civilized society. It grants the parties and their children prestige and security. Every time two people get married, they bring their own unique goals into the union. Some of these objectives have to do with the upbringing they went through, previous relationships, etc. Over the course of a marriage, these

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objectives are always shifting. Conflicts occurs and such arguments lead to envious behaviour, conflict and distrust if they can't get along.

Matrimonial disagreements, which can devastate a person's life and take a long time to restore, are caused by unmet needs and desires. Having a divorce as a result of a marital conflict has a significant influence on the lives of those involved. Conflicts in marriages are unavoidable. They are not just a difference of opinion; rather, they represent a string of blunders that have seriously harmed the marriage. Nevertheless, giving in isn't always the smart move. Only when spouses demonstrate a willingness to compromise and partake in each other's interests and goals can their marriage flourish.

2. Stages of Marital Discord

Ignorance**:** Couples who are still learning how to resolve disagreements peacefully sometimes want to avoid it altogether. They avoid discussing the topic and always look for ways to avoid it. After a long period of this pattern's persistence, opinion begins to shift in favour of the next phase.

An articulation of demands: After a large amount of time, couples suddenly start demanding that their needs be met after realizing that this attitude has led to their pain. Kids begin expressing their ideas and opinions whenever they get the chance. Unfortunately, this stage also fails and leads to more conflict between the husband and wife.

Compromising and Negotiating**:** The demands and limitations of marriage, such as time management issues, hectic schedules, stress from parenting obligations, financial difficulties, etc., require the couple to negotiate and compromise. As a result, they start to doubt their compatibility as well.

Resignation: It is normal to feel fatigued from these never-ending fights and pessimistic about finding a solution. At this point, many married people believe they have no choice but to seek marital counselling or, in extreme cases, legal representation.[1]

3. Causes of Marital Conflicts

Almost anything can cause a marital argument. Partners lament the roots of conflict that range from physical and verbal abuse to individual traits and actions.

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1 Joseph Nevadomsky,"*Marital Discord and Dissolution among the Hindu East Indians in Rural Trinidad*". https://www.jstor.org/stable/40460795 (last visited on 3rd June, 2024)

Other causes of conflict include drug or alcohol abuse, adulterous sex, problematic drinking, and marital discontent. Among the most common causes of divorce in India are:

Infidelity: Around one out of every five divorces involve infidelity. A partner is not in a steady relationship and the marriage is in trouble when there is another man or woman in their lives.

Family Violence: Domestic violence refers to a habit of physically and/or emotionally abusive behaviour toward another family member. Couples within the family experience unwelcome strain as a result.

Control: Marriage issues are not gender-specific when it comes to excessive Control and the desire to "have things done your way." It has the potential to ruin a marriage.

Finances: Conflicts will inevitably emerge between spouses who have different spending and saving tendencies. Conflict between different financial beliefs and techniques might exist in a marriage.

Lack of Commitment: Men may struggle to show their spouse and marriage a genuine sense of commitment. Each person will have a different set of causes for this insufficiency. Such a mindset invariably weakens the marriage bond and may lead to marital discord.

Inability to Communicate: In today's hectic social and professional environment, spouses seldom ever have enough time to speak to one another. Individuals frequently neglect to maintain track of their marital affairs, and disenchantment slowly seeps into their union. Such emotional and psychological pessimism frequently leads men to file for divorce.[2]

4. Effects on Children

Divorce disrupts the entire lives of two spouses, and is made substantially more difficult if the couple has children. Also, when parents are fighting bitterly in court, the interests of the kids are frequently disregarded. In addition to having a large negative impact on each individual in a pair, unhealthy relationships and marriages also significantly affect the offspring of the couple. Children who are exposed to such conflict between their parents throughout their development do

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[2] Frank D. Fincham, "Marital Conflict: Correlates, Structure, and Context", *available at https://www.psychologicalscience.org/journals/cd/12_1/Fincham.cfm*

not get desensitized to it, as is often believed, but rather become more sensitive to it. This implies that in these kids, even the smallest indication of animosity or violence causes a rapid rise in cortisol levels and heart stress.

Also, parents might recognize indications in kids who experience chronic stress, such as persistent, unresolved marital strife.

4.1 Child Custody: Children were treated as the father's property under ancient Roman law, and he had the only authority to sell them or force them to work as slaves. Mothers had no right to their children even if the father was dead. The law began to shift away from a gendered approach to custody in the early 20th century. concluding that mothers were better equipped to raise children. Although it also considered the more pragmatic factor of the father's frequent departure as he worked to support the family, this was founded in part on a Freudian theory on baby attachment and relationships. Fathers started claiming their parental rights in the 1960s, and courts started deciding custody disputes based on “the child's best interest. “Custody refers to the legal right of one parent to exercise control over a child's upbringing, care, and decision-making. When it comes to a child's living situation, medical treatment, schooling, and spiritual development, the choices should always rest with the child's biological parents. When a dispute arises over the care and custody of a child, the law and the court will get involved. Explore this concept further with the help of the following definition of child custody:[3] In ABC v. S, the Supreme Court ruled. In a ruling on gender equality, the State (NCT of Delhi) mandated that even an unmarried mother shall be acknowledged as the child's legal guardian without being required to reveal the identity of the child's biological father.[4]

5. Kinds of Child Custody Arrangement in India

In *Gaytri Bajaj v Jiten Bhalla*[5],According to a Supreme Court decision, “the welfare of the child is the final consideration in determining the issue of custody of a minor child, not the greater rights of the parents.” In most cases, a court in India will award one of the three following forms of custody:

Physical Custody: A parent who is awarded physical custody of their kid will have primary residential responsibility for the child and will be entitled to visiting

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3 “Child Custody - Definition, Examples, Processes – Legal” , *available at* legaldictionary.net › *child-custody*

4 Sonali Abhang, “Guardianship and Custody Laws in India- Suggested Reforms from Global Angle”, 20 Journal of Humanities and Social Science 39(2015)

5 AIR 2013 SC (Civil) 77

rights with the other parent. An ideal custody arrangement would allow the kid to flourish in a stable, enriching setting while also preventing him or her from growing up without the affection of one parent.

Joint Custody: Although Indian courts often presume this to be the case, having joint custody of a child does not mean that both parents are compelled to live together for the child's welfare. If both parents have legal custody of a kid, then they will take turns caring for the child. The youngster might spend time with each parent once a day, once a week, or once a month. A kid benefits from this arrangement since both parents may maintain an interest in and focus on their upbringing.

Legal Custody: Having a child in your legal custody is not the same as having physical custody of that child. When a parent has legal custody of their kid, they have the authority to make decisions on the child's behalf about his or her education, medical care, and other matters. If the divorce is very contentious and the parents can't come to an agreement over custody, the court may grant sole legal custody to one parent.

6. Who Can Claim Custody of a Child?

Mothers or fathers may file for custody of their children in court. If for whatever reason, such as the application of other laws or the parent's death, neither parent can be traced, the child's maternal or paternal grandparents or another family may seek for custody out of compassion. The court will often designate the third party as the minor's legal guardian. *In Bimla and others v. Anita*[6] ,the court declared, "Mother is the best person to raise up her minor son and to effectively look out for his interests and in fact, the welfare of the child lies with his or her mother."

The court ruled in *Ruchi Majoo v. Sanjeev Majoo*[7]that an interim custody agreement in favour of one parent "shall not shield the minor from parental contact or the influence of the other parent," as stated in [AIR 2011 SC 1952].

7. Legislations Governing Child Custody Under Different Laws in India:

Though India is nominally a secular nation, its residents follow many different religions. Consequently, the religious community's own rules on child custody will determine the procedure by which a parent seeks custody of their child.

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6 2015(3) RCR (Civil) 153 (SC).

7 AIR 2011 SC 1952.

7.1 Custody Under Hindu Law

Article 26 of the Hindu Marriage Act of 1955

The custody of a kid is acknowledged only if both parents are Hindu and participate in the child's upbringing, care, and education. The court must determine whether to issue the pending decree within 60 days of the notification date and may make decisions, judgments, modifications, etc. regarding child support at any time in accordance with this legislation.

Hindu Minority and Guardianship Act 1956

Under the abovementioned statute, only a child's biological parents may file for custody of a minor Hindu kid. According to the Supreme Court's ruling in *Gaurav Nagpal v. Sumedha Nagpal*[8] stated that" "In any process under the said Act, the Court may from time to time make such interim orders as it may judge reasonable and proper with respect to custody, support, and education of minor children, consistent with their wishes, whenever possible." When it comes to the custody of a young kid, the law is clear. When determining who should have custody of a minor, the "wellbeing of the kid" should take precedence over the parents' legal parental rights.

7.2 Custody Under Muslim Law

As long as she hasn't been found guilty of any wrongdoing, only the mother has the right to ask for custody of her kids under Islamic law, known as the Right of Hizanat. In accordance with Islamic law, a child's mother retains custody of him or her until the kid reaches the age of puberty or majority for girls, or seven for boys. Because the father is thought of as the child's natural protector, custody of the child remains with him until the boy becomes seven and the girl achieves the age of majority or puberty.

7.3 Custody Under Christian Law

In matters of child custody, Christians are bound by the provisions of Section 41 of the Divorce Act of 1869. In addition to this regulation, the custody of a child after a judgment of separation is determined under Sections 42 and 43 of the same statute. The kid is entrusted to a caretaker who has shown to be more capable of meeting the child's needs. If the court rules that neither parent can

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[8] 2009 1 SCC 42 (SC)

provide the kid with a safe and nurturing home setting, the claim will be thrown out.

7.4 Custody Under Parsi Law

The Guardians and Wards Act of 1890 governs matters of child custody in Parsi law. The child's safety is its first priority, and it will stop at nothing to prove it.

If the mother's financial situation is worse than the father's yet the father has remarried and has children, who will get custody of the child? Because she makes less money than the father, the mother of a youngster cannot be disqualified from being the guardian. Given that the father would be at work all day and the legal premise that a stepmother has a primary duty of love to her own children, the mother would be the preferable guardian for the minor child's welfare in this case. The father is responsible for providing for the child's needs.

7.5 Relocation to Abroad with Child

Although the Indian legal system does not have a formal procedure for relocation, the same legal rules that govern disputes over child custody would also apply to relocation problems. As previously stated, Indian Law places a high priority on the wellbeing of children as held in the judgement of *Abhijit Kundu v. Ratan Kundu & Associates*[9]

The Supreme Court has always held that a child's best interests must come first. When reaching a judgment, the court must consider the child's wishes, and if the child is of sufficient age to make a well-informed decision, that want must be given weight. The custody of the kid must be decided on the primary criteria of the minor's welfare, it was said in the *Chandrakala Menon v. Vipin Menon case*[10].

8. General Principles Followed in Case of Child Custody

"The Central Government, State Governments, the Board, and other agencies should, in accordance with Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015), as applicable, shall be guided by the following fundamental principles when implementing the provisions of Juvenile Justice Act, 2015, namely:

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[9] (2008) 9 SCC 413

[10] 1993(1) CRIMES556(SC)

i. Principle of Presumption of Innocence

Any minor under the age of 18 should be presumed innocent of any malicious or criminal intent." This idea presumes that any illegal act committed by a minor or a minor was not done intentionally or maliciously. This regulation shall run concurrently with the proceedings and continue through the aftercare program. It only asserts that until shown otherwise, the presumption should be that the actor had no ill will against the victim, whether acting alone, under the influence of adults, or in the company of peers. That is to say, the presumption of innocence ought to be given to everything that fits this description.

ii. Principle of Dignity and Worth

All people must be treated equally and with respect for their rights. This concept requires the JJ Act's participating agencies to treat children with dignity and respect, and to refrain from labelling, stigmatizing, or discriminating against them. "Additionally, it requires that from the time of the child's initial detention until the end of the aftercare, the authorities respect the child's personal identity and other relevant matters."

iii. Principle of Participation

In accordance with their age and developmental stage, Children have the right to be included in, and their input valued in, all decisions and discussions that pertain to them. Developing age-appropriate channels of communication, encouraging active participation in life choices, and offering locations for discussion and debate are all necessary to protect a child's right to be heard.

iv. Principle of best interest

The greatest benefit of the child and their future development must always come first in all choices regarding the child. Children differ from adults in that they have different emotional and intellectual needs, as well as different physical and psychological maturation. The basis for children's diminished culpability in legal conflicts lies in these variances. Due to these and other characteristics, children must be treated differently, necessitating the establishment of a distinct juvenile justice system. For example, when dealing with child offenders, restorative justice and rehabilitation aims must take precedence over traditional criminal justice goals like repression and punishment in order to safeguard the child's best interests.

v. The Family Obligation Principle

A youngster is first exposed to feelings like love and security in a family. Children are best cared for, nurtured, and protected by their biological families or, if necessary, by adoptive or foster families. A child's social and cultural norms are mostly instilled within the context of the family. The family is still vital as a part of and building block for all societies and communities, despite the fact that many family activities, such as education, health care, and entertainment, have been taken up by other social groups.

vi. Safety Principle

While in the care and protection system and beyond, the child must be protected from all forms of damage, abuse, and exploitation. abuse, neglect, etc. Furthermore, it forbids the state from enforcing restrictions in the name of a child's protection.

vii. Principle of Non-Stigmatizing Semantics

Avoid using accusatory language while communicating with children. Examples of banned words in dealing with juvenile offenders include the ones listed below. The words "inmate," "delinquent," "neglected," "custody," "indictment," "warrant," "summons," "trial," "conviction," "charge sheet and "conviction" are all included.

viii. Principle of Non-Waiver of Rights

The request of the child, the child's agent, the Board, or the Committee for a concession of a basic right does not constitute a surrender of that right.

ix. Principle of Equality and Non-Discrimination

No child shall be subjected to discrimination on the basis of gender, race, national or ethnic origin, disability, health, status, employment, activity, or behaviour that is illegal or contrary to the conduct of the child's parents or guardians, or the child's civil or political status. All children, according to this theory, should be provided with equal opportunities and care.

x. Principle of Right to Privacy and Confidentiality

"Every minor has the right to privacy, including the right to be hidden from prying eyes, throughout the whole judicial process." No publication, magazine,

newssheet, audiovisual medium, or other form of communication regarding any inquiry, investigation, or judicial procedure shall disclose the name, address, school, or any other information that could identify a child in trouble with the law, a child in need of care and protection, or a child who is a victim or witness of a crime.

xi. Principle of Institutionalization as a measure of Last Resort

Depriving a child of their freedom has a severe impact on their healthy development and seriously hinders their ability to reintegrate into society. Deprivation of liberty, such as arrest, detention, and jail, should only be used as a last option and for the shortest time possible in order to fully respect and preserve the child's right to development. A child should only be institutionalized as a last option after a thorough inquiry has been conducted. Institutionalization and detention in the juvenile justice system should be used primarily to ensure the offender stops engaging in criminal behaviour as soon as possible.

xii. Principle of Repatriation and Restoration

Each child in the juvenile justice system has the right to be restored to the same social, economic, and cultural standing he had before to coming within the purview of this Act, if at all feasible unless doing so would not be in his best interests. This principle ought to be read in conjunction with the one about family duty.

xiii. Principle of Fresh Start

Every child has the potential to change for the better and must be given a second chance—a right to a fresh start"—while offenders must be held accountable for their actions. The idea of a fresh start denotes a new chapter in a child's life who is in legal trouble. Unless under exceptional circumstances, all prior records of any kid involved in the juvenile justice system should be destroyed.

xiv. Principles of Natural Justice

"The right to a fair hearing, rules against bias, and the option for appeal are all important procedural elements that all persons and organizations acting in a judicial capacity under this Act" must uphold.[11]

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[11] "Living conditions in institutions for children in conflict with law - A manual by Ministry of Women and Child Development",*available at* https://vikaspedia.in/education/child-

9. Welfare of Children

The wellbeing of the child remains the primary issue, regardless of the statutory position or law. The children are not only their parents' toys, as the Supreme Court noted in Jacob v. Jacob[12] *"In today's evolving social climate, parental absolute control over their children's futures and daily lives has given way to the concern of their welfare as people. The only way to gauge a child's welfare is through their level of financial or physical comfort. Welfare must be understood in its broadest sense. Along with bodily wellbeing, consideration must be given to moral and religious welfare."*

The welfare concept must be followed when a child or any other person who needs help taking care of himself or their property is placed under guardianship, according to Section 13 of the Hindu Minority and Guardianship Act, 1956. The law stipulates that any guardian who is chosen, whether by the parents, their will, or the law, must be chosen after considering whether or not the choice is made for the welfare and best interests of the kid and would not hurt the child.

The meaning of Section 13 of the Hindu Minorities and Guardianship Act,1956 has evolved throughout the years. The dynamics around this idea of the "Welfare Principle" have been outlined in many ways in the recent decisions mentioned above, and it is crucial to follow these rulings to safeguard the child's best interests, which is the core of this legislation.

What are the factors that are to be taken into account?

1. The child's wishes, if they can be made when the child is old enough to do so.
2. The child's age is an important consideration when deciding whether to grant someone guardianship. A mother is typically chosen as the guardian if the child is extremely young.
3. The child's gender must be taken into consideration while choosing a guardian. It is vital for the guardian to live with a female when the child is a girl.
4. When appointing a guardian, religious and cultural considerations must be made. A person of the same religion is typically assigned guardianship of a child so that the child develops his or her own religious convictions.

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rights/living-conditions-in-institutions-for-children-in-conflict-with-law/copy_of_general-principles-of-care-and-protection-of-children (last visited on 2 June 2024)

12 (1973) 1 SCC 840],

5. No one is appointed as a guardian if they have ever been the subject of civil or criminal proceedings that would have resulted in a court order prohibiting them from caring for others.
6. The family's financial situation of the person requesting guardianship. A guy who can support his family, including his child, is typically preferred by the court.

10. Guardianship

A notion or relationship known as "guardianship" was developed in response to the inherent inability of infants, people with impaired mental capacity, and occasionally other categories of people to handle their own affairs.[13]A person who is appointed as a guardian has the responsibility and legal authority to look after another person's physical or financial needs, including those of a child, disabled person, elderly person, etc.[14] Ward is a term used to describe anybody who is someone else's responsibility.

10.1 Who Are Guardians and What Are His Rights?

A guardian is a person who has significant influence over the lives of the kids. He/she assumes all of the responsibilities, rights, and authority that come with raising that child. A guardian may be appointed by the court or be defined as natural, by relationship or by other criteria. A guardian's rights include the following:

1. Protective custody,
2. Parental autonomy in religious upbringing,
3. Inalienable right to an education,
4. Possession of the Legally Protected
5. Legal protection against excessive punishment,
6. Advocate for the child's behalf in court,
7. Recoup your legal fees from the minor's assets,
8. To recoup costs associated with the minor's basic needs, file a lawsuit once he becomes.
9. If it's in the child's best interest, the dispute should be sent to arbitration.

The Guardian and Wards Act governs the processes of appointing a guardian, providing for their care and custody, and handling their property. "The Hindu

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[13] R. Chakraborty, *Law Relating to Guardians and Wards* 5 (Orient Publishing Co., Allahabad 2007)

[14] The Guardians and Wards Act, 1890, sec 4 (2)

Minority and Guardianship Act details the duties of natural guardians, such as handling the minor's finances. Islam's guardianship law is precedent-driven."

10.2 Guardianship Under Hindu Law"

Concerning guardianship law, the Dharmasastras make no mention of it. The courts developed guardianship law throughout the British era. It has been determined that the father is the children's natural guardian, and that the mother will take over that role after he passes away. No one else is permitted to serve as the children's natural guardian. Hindu law likewise adopted the concept of testamentary guardians: "It was acknowledged that the State, acting in its capacity as parens patrie, held the highest guardianship over young children, which was exercised by the courts.[15] Hindu law regarding guardianship of minors was established and updated in 1956 with the passing of the Hindu Minority and Guardianship Act. This may be discussed under the following headings: Person (i), property (ii), de facto guardians (iii), and affinity (iv) guardianship of children.

Hindu law regarding guardianship of minor children was updated, legislated, and defined with the passing of the Hindu Minority and Guardianship Act in 1956. According to Section 4(b) of the Act, everyone under the age of eighteen is deemed a minor." He is viewed as a person who requires protection since he is flawed physically and cognitively and is immature.

Sections 6 to 9 discuss the idea of the numerous guardian kinds recognized by Hindu law, as well as the guardian's obligations and privileges, in addition to his obligations and constraints.

10.3 Removal of A Guardian

According to Section 13 of the Hindu Minority and Guardianship Act, 1956, the court has the authority to discharge any guardian:

If any of the following three conditions are met:

1. He ceases to be a Hindu;
2. He has become a hermit or an ascetic; and
3. His interests are at odds with those of the minor, the court may order his removal.

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[15] *Available at* ttp://www.crisp-india.org/laws/67-guardianship-under-hindu-muslim-christian-and-parsilaws.html (last visited on, April 2023)

While making such decisions, the minor's wellbeing comes first.

10.4 Guardian Under Muslim Law

"Islamic guardianship and custody law is based on a few ahadis and a few chapters from the Koran. The Koran, the De facto, and other sources of Muslim law have clear provisions for guardianship of a minor's property, but guardianship of the minor's person is only assumed."

Despite the lack of codification in Muslim law, there are principles for every area of life, including guardianship. These include natural guardians, testamentary guardians, and court-appointed guardians. It also includes the very important and precisely defined in Muslim law concepts of custody (including de facto custody and guardianship).[16]

10.5 Guardian Under Christian Law

The Guardianship and Wards Act of 1890 governs Christian law because it has any special laws of its own. Sections 19 to 29 and other sections cover the title, responsibilities, powers, and constraints of the guardian.

"According to Section 17 of the aforementioned Act, the court must take the circumstances into account while appointing a guardian. When appointing or declaring a guardian of a child, the Court shall follow the requirements of this section, taking into account what seems to be for the minor's welfare under the legislation to which the minor is subject."

The Court will consider the minor's age, gender, and religion, the prospective guardian's capacity and proximity of kin to the minor, the desires of the dead parent (if any), and the proposed guardian's present and past ties with the minor or his property.

If the kid is old enough to have an understandable choice, the Court may give weight to that desire. If certain criteria are satisfied, the Court will not appoint guardians according to Section 19.

S.24. Responsibilities of the Person's Guardian. -A guardian of the person is responsible for the ward's care and must consider his sustenance, health, and

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[16] Ayan Roy, "A Study of Guardianship of Person and Property Under Muslim Law", *available* athttps://papers.ssrn.com/sol3/papers.cfm?abstract_id=162159 (last visited on June 2, 2024)

education, as well as any other requirements imposed by the law to which the ward is subject.

S.25. The guardian has legal responsibility for the ward:

(1) If a ward runs away or is taken from the care of a guardian, the court may issue a restitution order and the guardian can be detained and given custody of the ward to carry out the restitution order.

(2) The Court has the same power to make an arrest that a Magistrate of the first class has under Section 100 of the Code of Criminal Procedure, 1882."

(3) A guardianship does not automatically end if a ward lives with someone against the wishes of his guardian who is not also his guardian.

The court determined in learned case of *Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka*[17] that the legal rules governing a minor's custody are well established. It is a well-known fact that ev ery issue involving a minor must be seen only through the lens of the minor's welfare and best interests. When hearing a matter involving a juvenile, the court has a special responsibility to look out for the child's best interests and protect his or her rights. When making a custody determination, the Court's only concern should be the child's best interests.[18]

10.6 Guardian Under Parsi Law

There is no general rule governing guardianship under Parsi law, but it is still permissible under a Hindu statute and by custom for select statistically insignificant categories of people, for whom they must apply in accordance with the Guardians and Wards act of 1890. Since there are no adoption laws in the Muslim, Parsi, or Christian faiths, when a juvenile child in foster care turns 18, he is free to end all of his relationships, and the legislation that applies to the guardian is from another country. When a minor in foster care reaches adulthood, he is free to cut all ties. Additionally, such a child is not legally entitled to an inheritance. Under the aforementioned Act[19], Adoption of Indian children by foreigners requires a court filing. If the court grants permission for the child to be

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17 1982 AIR 1276

18 *Available at* http://en.wikipedia.org/wiki/Christian_Law_of_Guardianship_in_India (last visited on April 2023)

19 *Available at* http://www.legalserviceindia.com/helpline/helpline_HOME.htm (last visited on April 2023)

transported abroad, the adoption will take place in accordance with the foreign legislation or the law applicable to the guardian.

11. Conclusion

One of the most crucial tools for empowering children is legislation. It displays the state's dedication to advancing a perfect and progressive set of values. Some significant changes in child rights law, policy, and practice have occurred in recent years. “The adoption of the United Nations Convention on the Rights of the Child in 1989 marked a significant turning” point in the global debate over children's rights, with a rights-based approach increasingly gaining traction. The courts have taken nongovernmental organizations' actions and tactics into account when advising on policy. In the event of a custody dispute, the court will look to the personal law of the parents at issue to decide who will have physical custody of the kid. However, the best interests of the child will always take precedence over the parents' wishes. Marriage and divorce, as well as inheritance and guardianship, are within the purview of several personal law systems. Similar to other areas of family law, guardianship of a minor child is not standardized. The father of a minor Hindu boy and the father of a minor Hindu girl are the children's first legal guardians. The mother is the natural choice as a guardian second only to the father. The Supreme Court has recently held that a juvenile Hindu's biological parents are both legally responsible for their upbringing. The mother need not take precedence over the father as the child's natural guardian. The majority of the cases that have been discussed in this article show an inclination towards the welfare of the minor as provided under Section 13 of the Hindu Minority and Guardianship Act, 1956. In Muslim law, the father is given priority. Also, the distinction between legal custody and guardianship is made clear. Sunnis believe that a father is the best choice for guardianship, which in most cases means property guardianship and, in his absence, an executor. When a father dies without appointing an executor, the responsibility of guardianship falls on the paternal grandpa. While he is still alive, both institutions agree that only the father may act as guardian. After the father's death, the woman still isn't given legal custody of the kid. A guardian may be appointed by the court, named in a will, or be the child's natural parent. When considering guardianship, it's important to look at the minor's person and his property separately. Usually, you can't entrust one to another individual. However, personal law cannot be ignored entirely when deciding on a custody arrangement for a kid since it is crucial to the child's well-being. Neither Christian nor Parsi personal law addresses issues of guardianship or minors. The father is automatically considered to be the legal guardian and financial manager of his children. The father dies, and the mother is assumed to take on the role of guardian. A testamentary guardian must be

appointed for minor children in Christian and Parsi households under Section 60 of the Indian Succession Act 1925. If a kid cannot get welfare without custody being granted, then all other personal law practices and norms are secondary. Ultimately, the court will determine who will have custody of the child, although parents and children will be given precedence and welfare of child will be thought.

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Child Sexual Abuse: POCSO Act and Delivery of Justice in India

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Abstract

Children are the nation's most valuable asset.[1] Childhood is thought to be the period of innocence, freedom, joy, and play. Children from the majority of the country's population and they represent the future of nation and on the same, It is an undisputed fact that like many other social issues child sexual abuse in India is increasing at the alarming rate. Child sexual abuse has been acknowledged as a global problem. At ground reality it becomes difficult to manage the same. Child Sexual abuse is secret wrongdoing, but the biggest irony is that if the child wants to tell anyone about it, he is silenced for life. Children are frequently frightened to tell anybody regarding the wrongdoing. Many instances of misuse are not reported by the victim. This article seeks to analyses the issue of sexual offences against children. This article is broadly divided into various parts. In the introduction part the brief discussion about this issue is done and this part is followed by the legal history regarding this. In the next part an attempt is made to explain some major causes of theses sexual offences and their adverse effects on the children. In the subsequent parts a detailed analysis of the legal framework regarding this issue. In the next part a brief discussion on the evolutionary step of judiciary in the implementation of this POCSO Act, 2012 through the various judicial pronouncements is done. In the end the concluding observation is there along with certain suggestive measures for the protection of children from the sexual offences.

Keywords: *Children, Sexual Offences, POCSO, Incest, Sexual Exploitation, Sexual Assault, COVID-19, Legislation*

1. Introduction

"If we are to teach real peace in this world, and if we are to carry on a real war against war, we shall have to begin with the children."

Mahatma Gandhi[2]

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1 *Sheela Barse and Another v. Union of India*, AIR 1986 SC.

2 https://www.brainyquote.com/quotes/mahatma_gandhi_125825 (last visited on December 6, 2022).

The child of today is a responsible subject of a nation's tomorrow. Sexual offences against children is an epidemic, one that happens everywhere and is increasing profusely with each passing day, without any barriers of race, caste, sex, nationality, language or religion.[3] Sexual abuse of the children is not a new phenomenon but it is prevailing all around the world since the time immemorial. Every day a large number of children are sexually abused within the sphere of their own family. But it is not always in the news. The reason behind this is the fear as well as the impact of the incidence on the child's mind which restraint the child to tell about the incidence. Offensive and brutal behavior toward children is increasing day by day. Children Sexual offences are the violation of a child's fundamental human rights. It has some harsh physical and psychological results that affect the health, and overall personality of a child.[4] There is undoubtedly at least one case of child sexual abuse in our community, whether it is recognized or not, and it causes behavioral, cognitive, emotional, and developmental problems. The forms of child sexual abuse range from sexual assault to voyeurism, pornography and several other forms.[5] In general, it is believed that sexual assault poses the greatest threat to societal norms and behavior since it tends to instill dread in all women about the dominance of men in society who want to control them.[6]

In India, the term 'Child' has been defined by various legislation as a term representing a relationship, a term indicating capacity, and a term denoting special protection.[7] The term "Child" comes from the Latin "infants" which mean 'the one who does not speak'. As per the Roman, the term "Child" means the stage from birth, till the age of 7 years.[8] These alternate requirements are based on quite different conceptions of the child. The age of a child is the only element that defines who is considered a child.[9] A child is defined under the United

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3 Surbhi Garg, "The protection of children from sexual offences: A critical analysis", 4 *JLSR 10* (2018), *available at:* https://thelawbrigade.com/wp-content/uploads/2019/05/Surbhi-Garg.pdf. (last visited on July 6, 2023).

4 Dr. Meeta Malhotra ET. AL., "Child sexual abuse and personality development", 1 *IJMDRR,* 41-46, (2016), *available at:*http://www.ijmdrr.com/admin/downloads/3103201610.pdf. (last visited on July 16, 2023).

5 *Supra* Note 3.

6 Dr. Prakash P Behere ET. AL., "Sexual abuse in women and Anti Rape bill: Lesson to learn from success and failure", 1 *The Health Agenda*, 27-30, (2013), *available at:* http://cites eerx.ist.psu.edu/viewdoc/download?doi=10.1.1.708.3253&rep=rep1&type=pdf. (last visited on August 5, 2023).

7 Dr. Asha Bajpai, "The Legislative and Institutional Framework for Projection of Children in India", 5 *UNICEF,* 1-12 (2010), *available at:* http://www.ihdindia.org/pdf/IHD-UNI CEF-WP-5-asha_bajpai.pdf. (last visited on January 6, 2023).

8 https://www.humanium.org/en/child-rights/ (last visited on December 8, 2022).

9 *Supra* Note 7.

Nations Convention on the Rights of the Child, as someone who is under the age of eighteen years. This comprises early childhood, middle childhood, and puberty.[10] The term "child" is defined as someone under the age of eighteen years in section 2(d) of the Protection of Children from Sexual Offenses Act, 2012.[11]

In India, child sexual abuse is a severe and pervasive problem, with the number of reported cases increasing significantly during the past few years.[12] In general language, a crime is to be stated as an unlawful act punishable by the state or other authority.[13] Any intentional harm or mistreatment to a child under 18 years old is considered child abuse. According to the World Health Organization definition, Child Sexual abuse means It includes a child who is unable to give consent, under compulsion, fear or any other circumstances, not prepared physically, mentally or emotionally for sexual activities, any illegal activity, other activity which not relates with the moral values of the society, child trafficking, child prostitution, child pornography, and many other similar acts, which are done against the will of the child in it.[14]

The child sexual abuse includes contacts, interaction between children or any other person, who is older, person in trust, more knowledgeable child, and adult. An adult can be a parent, neighbor, employee, sibling, friends, peer group, stranger, and guardian. In child sexual abuse child is used as a preferred object that satisfied their sexual need. There is number of cases in our country in which the persons were found committing rape upon innocent children.[15]

2. Legal Framework

It demonstrates that in the context of India, the problem of sex trafficking and child sexual abuse is both widespread and dangerous. In most of the cases children who are victim of sexual abuse are generally known to the offenders. In India, the term "child sexual abuse" has not been used defined in any legislation. According to history, "Child Sexual Abuse" has been a hidden issue in the Indian

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10 The Convention on the Rights of Child, 1989, art.1.

11 The Protection of children from Sexual Offences Act, 2012, (Act 32 of 2012).

12 A. J. Lurigio et. al., "Child Sexual Abuse: Its Causes, Consequences, and Implications for Probation Practice", 59 *Federal Probation,* 69-76, (1995), *available at:* https://www.ojp.gov/ncjrs/virtual-library/abstracts/child-sexual-abuse-its-causes-consequences-and-implications. (last visited on January 17, 2023).

13 Crime, Oxford English Dictionary, Oxford University Press (2nd ed. 2009).

14 World Health Organization, "Report of the consultation on child abuse prevention", 29-31 *IRIS*, (1999), *available at:*https://scholar.google.com/scholar_ lookup?title=Report+of+the+consultation+on+child+abuse+prevention+(WHO/HSC/PVI/99.1)&publication_year=1999. (last visited on March 3, 2023).

15 *Kakoo v. State of Himachal Pradesh,* AIR 1976 SC 1991.

context, and it has rarely been brought to the attention of the general public, society, or the legal system. Before the POCSO was passed, there were no additional laws specifically protecting minors from sexual offenses, rape was the only crime, and child sexual abuse was not considered a crime.[16] In India following legislations are there against the child sexual abuse:

- The Constitution of India
- The Indian Penal Code, 1860
- The Protection of Children Sexual Offences Act, 2012.

The constitution of India is regarded as the cornerstone of the legal system and also known as the law of the land. Certain articles empower children and women to take a stand against societal injustice. The Constitution provides a safeguard and prevents abuse of the legal system, as well as strengthening society by enacting various laws to protect and shelter children. Some are mention below: [17]

- Article 14 guarantees that in Indian Territory, the right to equity before the law and equal protection under the law.
- Article 15(3) states that the state has the authority to enact laws that make special provisions for women and children.
- Article 21 guarantees the right to life, which must be free and dignified in accordance with the laws.
- Article 21 A The state is required to provide free elementary education to children under the age of six.
- Article 23 prohibits the trafficking of human or forced labour.
- Article 24 makes it illegal to employ children under the age of fourteen in hazardous occupations.
- Article 39(e) and (f) state that the worker's health, as well as the health of his or her children, men and women, and the right to a healthy life and livelihood, as well as dignity and protection from exploitation, must be guaranteed.
- Article 45 guarantees and protects all children's early childhood care and education until they reach the age of six.[18]

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16 *Available at* https://www.legitquest.com/legal-guide/pocso-act (last visited on December 12, 2022).

17 M.P. Jain, *Indian Constitutional Law* 1217 (Wadhwa and Company Nagpur, New Delhi 2015).

18 Dr. J.N. Pandey, *The Constitutional Law of India,* 194-202 (Central Law agency Allahbad 2012).

After the Nirbhaya rape case of Delhi in 2012, to make more strict laws regarding this sexual offences certain amendments are made through The Criminal Law (Amendment) Act, 2013 that make changes in the Indian Penal Code 1860, the Criminal Procedure Code 1973, the Indian Evidence Act, 1972, and The Protection of Children Sexual Offences Act, 2012. However, POCSO, an incredible statute at the time, recognized all potential forms of sexual crimes against minors as offenses that were subject to legal punishment. After this another amendment is done in, The Criminal Law (Amendment) Act 2018 a few provision were added as to related with the degree of punishment fluctuate with the range of age that is victim is of below 12 than the punishment is of death penalty in such case, also with the amendment in the Indian Penal Code 1860, the Criminal Procedure Code 1973, the Indian Evidence Act, 1972, and the Protection of Children Sexual Offences Act, 2012. All of this is a blessing, but there are still some unanswered questions. In recent years, the central government has taken commendable steps with the help of the Ministry of Women and Child Development which has been immensely indulged in breaking the chain of the conspiracy of silence and have begun to create better political and popular momentum in that direction.[19] These initiatives have resulted in the first-ever statute titled Protection of Children from Sexual Offenses (POCSO) 2012, as the Ministry of Women and Child Development recommended it as per the constitutional provision in this regard.

2.1 The Protection of Children from Sexual Offences Act, 2012

The Protection of Children from Sexual Offenses Act of 2012 (POCSO) come into effect on November 14, 2012, in response to an increase in child sexual abuse. Article 15(3) of the Indian Constitution empowers the state to make specific arrangements for children, and this act complies with that provision.[20] In the field of child protection from the sexual offences, this is landmark legislation.[21] POCSO is gender neutral, which means that regardless of the child's gender, it will handle crimes of this nature committed against children. For the first time, a special law addressing sexual offences against children has been passed. This law was enacted to counter crimes involving children, such as sexual assault, harassment, and pornography. Because it comprised forty six sections

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19 Savita Bhatnagar, "Child sexual abuse and the law in India: a Commentary", 4 *LEIJL*, 14 (2020), *available at:* http://legalexpress.co.in/downloads/child-sexual-abuse-and-law-in-india-prof.-.savita-bhatnagar1.pdf. (last visited on December 12, 2022).

20 The Constitution of India, art. 15(3) reads as: Nothing in this article shall prevent the State from making any special provision for women and children.

21 "Protection of Children from sexual offences Act, 2012", National Commission for protection of child rights, (NCPCR), (New Delhi, 2017).

and nine chapters that enlarged the possibility of reporting of cases of sexual offences against children that were previously not included in the Indian Penal Code, the act brought a great relief to parents.[22] So, the act was created to increase the legal protections for children against sexual abuse and exploitation.[23] It is essentially a comprehensive Act enacted to protect children's interests by including child-friendly processes for inquiry or investigation and fast trial processes through Special Courts designated for trial of offences as per the provisions, while keeping the child's best interests at the forefront of the judicial process at all stages.[24] Allowing a person who is a family member, a guardian, a friend, or a relative to the victim in whom he has faith in his or her ability to be present in the courtroom, ensuring that the child does not have to face the accused during evidence collecting and cross examination are all covered and providing frequent breaks for the child during the trial. Hearings can also be held in private at the Special Court's discretion, which means that no one other than those interested in the case is allowed to attend and the children have some trust in the presence of their parents or another adult.[25] The Act applies to all children under the age of eighteen.[26] It distinguishes between penetrative assault, non-penetrative assault, sexual harassment, and pornography, among other sorts of sexual abuse. In some cases, such as when the child who is the victim of sexual abuse is mentally ill or when the sexual abuse is perpetrated by someone in some authority or holding a position of trust with victim, the POCSO Act classifies sexual assault as 'aggravated'. People who engage in child trafficking for sexual purposes are also subject to the provisions of the POCSO Act.[27] This Act also imposes harsh punishments for similar offences, which are graded according to the seriousness of the crime. The punishments range from such offences, which from simple to rigorous imprisonment for varying periods of time.[28]

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[22] *Supra* Note 16.

[23] Gargi Whorra ET. AL., "Pedophillia and Child Sexual Abuse-A Socio Legal Perspective", 2 *The Christ University Law Journal* 10 (2013).

[24] The Protection of children from Sexual Offences Act, 2012 (Act 32 of 2012).

[25] The Protection of children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 37 reads as: 'Trials to be conducted in camera: The Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence:
Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of section 284 of the Code of Criminal Procedure, 1973 (Act 2 of 1974).'

[26] The Protection of children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 2(7.

[27] *Supra* Note 16.

[28] The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 28 reads: '28. Designation of Special Courts.—(1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by

It is also agreed upon that the intention to commit an offense, even in the event that the attempt is not successful for any reason, should be punished. As a result, attempting to commit an offence under the Act now carries a penalty of up to half the penalty for the actual offence.[29] Aiding and abetting the commission of a crime carries the same penalty as the commission of the crime itself.[30] In circumstances of penetrative sexual assault, aggravated penetrative sexual assault, simple sexual assault, and aggravated sexual assault, the burden of proof is passed to the accused. The provision was designed with children's greater sensitivity and innocence in mind. Simultaneously, a penalty has been imposed for making a fake complaint or supplying false information with malicious intent in order to prevent exploitation of the law.[31] Furthermore, the media has also been forbidden without the Special Court's permission, from disclosing the child's identify. Punishment is also prescribed for violations of this provision.[32] The Central and State Governments are required by this Act to create public knowledge to the general public, children, and their parents and guardians about the Act's provisions by media such as television, radio, and print media at regular intervals.[33] For monitoring or oversee the Act's real implementation two designated authorities have been appointed named as The National Commission

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notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act: Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006)or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section. (2) While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in sub-section (1)], with which the accused may, under the Code of Criminal Procedure,1973 (2 of 1974) be charged at the same trial. (3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000 (21 of 2000)shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online.'

29 The Protection of children from Sexual Offences Act, 2012 (Act 32 of 2012), s 18.

30 The Protection of children from Sexual Offences Act, 2012 (Act 32 of 2012), ss. 16, 17.

31 The Protection of children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 22.

32 The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 33 (7) reads- '33 (7) - The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial: Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child. Explanation.—For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.'

33 The Protection of children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 43.

for the Protection of Child Rights (NCPCR) and the State Commissions for the Protection of Child Rights (SCPCRs).[34]

Unfortunately, even after the enactment of this act, the sexual crimes against the children are still raising. As the NCRB data released in September 2020 stated that 47,221 cases of Prevention of Child from Sexual Offences (POCSO) Act were reported in 28 states and eight union territories across the country and on the other hand there are many cases which are still unreported due to many reasons. According to a report by National Crime Records Bureau (NCRB), more than 99 per cent of crimes reported under the Protection of Children from Sexual Offences (POCSO) Act in year 2020 were against girls.[35] In 94.6 per cent of cases of child sexual abuse, the perpetrators were known to child victims in one way or the other; in 53.7 per cent of cases they were close family members or relatives or friends.[36]

2.2 Sexual offences Against Children vis-à-vis COVID-19:

Malnutrition, poverty, violence, and mental health issues have all been exacerbated by the COVID-19 pandemic. COVID-19's socio-economic effects are likely to push many vulnerable families over the corner, given the country's high poverty levels. Longer periods of lockdown have increased the vulnerability of those already at risk to sexual crimes against children, with many trapped with their abusers and unable to seek help or services. Due to the disruption of children's routines and other economic and stress factors for families, mental health and violent discipline are becoming concerns. Families will likely resort to negative coping mechanisms as a result of extreme economic distress, leading to an increase in child labor, trafficking, and being pushed onto the streets or railway stations. By all these situations the offenders get more opportunity to commit sexual offences against children.[37]

Therefore, although this legislation is good step toward reducing child sexual abuse, but certain flaws in the law undermine its purpose and must be addressed in order for the law to be effective in its true sense. Upon a preliminary reading the POCSO Act appears to be a piece of legislation aimed at preventing sexual

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[34] Geetika Mantri , "What is the POCSO Act and how is it used: A guide", *The News Minute,* Dec. 12, 2022. *available at:* https://www.thenewsminute.com/article/what-pocso-act-and-how-it-used-guide-143310 (last visited on December 20, 2022).

[35] https://www.shethepeople.tv/news/ncrb-report-sexual-crimes-against-girl-child/ (last visited on January 12, 2023).

[36] https://vikaspedia.in/social-welfare/women-and-child-development/child-development-1/viol ence -against-children-in-india (last visited on January 15, 2023).

[37] *Supra* Note 36.

offences against children. There are, nevertheless, certain conceptual issues with it. Sexual behaviour between two adolescents or where an adolescent and an adult is involved that is voluntary with an age difference of less than three years is not recognised by the law as a noncriminal act. Marriage between people under the age of 18, which is illegal under the Protection of Children from Sexual Offenses Act of 2012, is legal under personal laws. As a result, sexual intercourse between such married individuals is a crime under the POCSO but legal under personal law. Persons under the age of 18 are not permitted to give consent under the Act. This means that if a seventeen-year-old boy or girl has a sexual partner, who is nineteen years old, may be detained under the provisions of the POCSO Act. When two minors engage in any kind of sexual activity, the Act is silent on the subject. Another issue that victims face is proving the child's age. Because the POCSO Act is silent as to which documents should be taken into account when the question regarding the victim's age is in issue. The POCSO Act should include a clear statement on which papers should be used when proving a child's age and if the ossification test cannot provide an exact judgment, if the youngster should be given the benefit of the doubt. Under the relevant provisions of the POCSO Act, only a male can be prosecuted with the offences since the accused pronoun is ‘he’. Despite the fact that, unlike rape, the victims of the POCSO Act can be any child of any gender, the accused can only be a man, and females are once again protected against unknown perpetrators. It is untrue to claim that females do not subject children to forcible sexual assault. The medical examination of a female child or teenage victim must be undertaken by a female doctor, according to Section 27(2) of the POCSO, although Section 166A of the IPC mandates any government medical officer on duty is required to examine the rape victim without exception regardless of the official’s gender.[38]

2.3 Recent Judicial Pronouncement under POCSO:

Jagar Singh v. State of H.P,[39] in this instance, the accused sexually molested a girl who is under the age of 18 years by touching her private parts. The accused has filed a petition under Section 438 of the Criminal procedure code, 1973 for anticipatory bail in a case where he is charged under Section 354(A) of the IPC and Section 8 of the POCSO Act 2012. As per the High Court, there is a presumption of culpable mental state under Section 30 of the Protection of Children from Sexual Offences Act 2012, and the onus is on the accused to prove that he did not have such a mental state. According to Section 42A of the

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[38] Mayank Tiwari, “Critical Analysis of POCSO, Act 2012”, *JURIST-Student Commentary,* 1-5 (2020), *available at:* https://www.jurist.org/commentary/2020/05/mayank-tiwari-posco-act/ (last visited on March 12, 2023).

[39] (2015) (2) RCR 320.

Protection of Children from Sexual Offenses Act 2012, the provisions of the POCSO Act have precedence over other laws to the extent of inconsistency. According to Section 7 of the Protection of Children from Sexual Offences Act 2012 in order to make a case against the accused, sexual intent to touch the child's nude vagina, penis, anus, or breast is necessary under Section 7 of the Protection of Children from Sexual Offences Act 2012. Sections 7 and 8 of the Protection of Children from Sexual Offenses Act 2012 have been carefully examined by the court. The court believes that there is no reference in Section 7 of the POCSO Act to sexual intent with regard to the child's naked vagina, penis, anus, or breast. The court believes that even light touches to a minor child's vagina, penis, anus, or breast Sections 7 and 8 of the Protection of Children from Sexual Offenses Act 2012 are triggered if the underage child is dressed. The word naked is missing from Section 7 of the Protection of Children from Sexual Offenses Act 2012, and it is widely established legislation that the Protection of Children from Sexual Offenses Act 2012 is a separate Act adopted for the safeguarding of minor children, and it is quite well established law that When two interpretations are permissible, the court as the guardian of minors should adopt the interpretation that is more favourable to minors in the interests of justice. The applicant's release on anticipatory bail is not in the best interests of justice, according to the court. As a result, the applicant's anticipatory bail application is denied.

Satish v. State of Maharashtra,[40] this is an appeal against the judgment and order dated 05.02.2020 in Special Child Protection passed by the Extra Joint Additional Sessions Judge, Nagpur. By this order the appellant is convicted under Sections 354, 363, and 342 of the Indian Penal Code, as well as Section 8 of the Protection of Children from Sexual Offenses Act, 2012. In this case the complainant, who is the mother of victim, registered the FIR against the accused. The complainant mentioned that on 14.12.2016 about 11.30 AM, her daughter went to bring guava. As she did not come back for a long time, she started searching for her. Her neighbor told her that the appellant, who was staying in the vicinity of their house, took her daughter to his house and showed her the house of the appellant. Then the complainant went there calling 'Laxmi Laxmi'. She saw the appellant coming down from the first floor. She asked the appellant about the whereabouts of her daughter. He denied the presence of the prosecutrix in his house. The complainant searched for her daughter on the ground floor and then she went up to first floor. The room was bolted from outside. She opened it and found her daughter. Her daughter was crying. She took out her daughter from that room and her daughter narrated the incident that on the pretext of giving guava to

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40 Criminal Appeal No. 161 of 2020.

her, the appellant brought her to his house and pressed her breast and when he tried to remove her knicker, she shouted. Thereafter he went out, after bolting the room from outside. Immediately, the complainant along with her daughter proceeded for Police Station and lodged report. The question for consideration of this court is, whether pressing of breasts and try to remove salwar would be considered 'sexual assault' under Section 7 of the POCSO Act, and punished under Section 8. The Hon'ble court held that the prosecution does not claim that the appellant took off her top and pressed her breast. As a result, there is no direct physical contact, such as skin to skin contact with sexual purpose that does not involve penetration. The appellant was acquitted under Section 8 of the POCSO Act by the court and convicted of a minor offence under Section 354 of the Indian Penal Code, 1860.

The above-mentioned recent verdicts under the Protection of Children from Sexual Offenses (POCSO) Act, 2012 acquitting accused persons have sparked debate in the country. Because the Hon'ble court hold the opinion given the severity of the punishment for the offence (under POCSO act), this Court believes that more exacting proof and significant charges are required. Because there was no clear description of whether the top was removed or if he placed his hand inside and touched her breast, the act of pressing the breast of the 12 year old child is not considered as sexual abuse. For a woman, pressing her breasts might be a criminal offence to outrage her modesty.

Then in case of Attorney General for India v. Satish and another,[41] The Supreme Court sets aside Bombay High Court's above mentioned ruling that mere touching or pressing of a clothed body of a child did not amount to sexual assault and there must be 'skin to skin contact' for sexual assault. The Bench said the most important ingredient in Section 7 was the sexual intent of the offender and not skin-to-skin contact. Justice Trivedi, speaking for the Bench, said when legislature had clarified its intent, the court should not introduce ambiguity. The supreme court after hearing the criminal appeal preferred by Attorney General for India, National Commission for Women and the State of Maharashtra against judgment acquitting the accused for the offence under section 8 of the POCSO act and convicting him under Section 342 and section 354 of IPC, The Supreme Court has ruled that touching a sexual portion of the body, or any other conduct involving physical contact, is illegal, if done with the "sexual intent" would considered as an act of "sexual assault" within the meaning of Section 7 of POCSO act. The Hon'ble Supreme court has clarified that the "sexual intent" not the "skin to skin contact" with the child, is the most key factor

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[41] Criminal Appeal No. 1410 of 2021.

in determining whether or not a child has been sexually assaulted under Section 7 of the POCSO Act. So, The Hon'ble Supreme court, while setting aside the High Court decision, confirmed the guilt of the offender in the case and sentenced him to three years of rigorous imprisonment subject to the period he has already undergone.

3. Conclusion and Suggestions

Children make up an overwhelming forty one percent of India's population. As a result, the rising rate of child sexual violence, abuse, and exploitation raises many concerns. Child sexual abuse is an alarming reality that is increasingly being reported in India and around the world. Sexual abuse of children is a particularly heinous crime. The Prevention of Children from Sexual Offenses Act (POCSO), 2012 of the Government of India defines child sexual abuse, lays out physician obligations, and provides management standards and legal procedures. To prevent child sexual abuse, parents, school teachers, and the general public must transcend conventional adversarial attitudes of silence and shame and implement proper educational initiatives. The scale of child sexual abuse is staggering, even with such thorough child sexual abuse statutes and the practice is widespread throughout the world and can be found in any society. Furthermore, in the vast majority of cases, the perpetrators are known to the victim, causing the victim to be hesitant to seek redress from authorities. During the COVID-19 pandemic, incidents of child sexual abuse have increased exponentially, with new and insidious forms of cybercrime. Furthermore, in our country, the public's understanding of the POCSO Act is grossly weak. It includes a detailed analysis of Indian criminal law, judicial rulings, and legislation from other countries; it is possible to conclude that the current law is insufficient in many ways. Even the justice system paying an important role in curbing the sexual crimes against children but unfortunately on the other hand the guidelines which are issued by the Hon'ble court that the police, doctors, and courts do not adhere to these guidelines, greatly hindering justice for the child victim. No doubt this present act provides a child friendly procedure for the investigation and trial but there is a dire need to increase human resources in the police force for effective policing and investigation. Reforms such as the separation of investigation and law and order functions, public awareness of the Police Complaints Authority (PCA) and its ability to make decisions on cases involving police atrocities, the implementation and monitoring of special laws such as POCSO, and the use of a multi-stakeholder approach to raise awareness and sensitise people about sexual abuse of children, among others, can help to improve safety and security.

Some reforms can be suggested like:

- The police must guarantee that the FIR is registered as soon as possible.
- Doctors need to be sensitized while conducting the medical examination of the child on how to deal with the child and converse with the victim about the difficulties he or she is facing.
- The police must be familiar with the most effective ways for gathering forensic evidence. Because forensic samples acquired by the police are frequently tainted as a result of incorrect storage.
- Making all forms of child pornography and voyeurism punishable.
- There is a need for medical professionals, teachers, advocates, and law enforcement authorities to be trained, and the Act must include provisions for this.
- Special approach for the medical examination is required when evaluating victims of child sexual abuse. As a result, mental health specialists must be involved in the victim's follow-up care in the event that psychiatric illnesses develop, by offering individual counselling, family therapy, and rehabilitation.
- Child abuse is a social evil that exists in every class of society, every state, city, and religion, and awareness is one of the most potent weapons against it.
- The POCSO will require a substantial revamp of the criminal justice system to be fully implemented. To create a child-friendly Special Court, dedicated finances are needed.

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Trading Lives: Unravelling the Phenomenon of Organ Trafficking in India

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Abstract

The problem of organ trade started growing roots as soon as India got introduced with the life saving medical procedure of organ transplantation. The black market of organs soon realised the shortage of organs available for transplantation so they started trafficking humans for organ removal and further started with the sole trafficking of organs. The laws have been lacking the required executive force and have always remained a step behind the organ traffickers. The medical practitioners have been major participants and the organ tourism and organ swapping have made the organ trafficking stronger and its regulation more difficult. In India, we have the Transplantation of Human Organs and Tissues Act, 1994 which has provision regarding trafficking of organs as well as Section-370 of the Indian Penal Code, 1860 which though deals with the human trafficking but nowhere mentions of the Organ Trafficking neither expands the purposes for which the human trafficking is being undertaken. In all, the shortcomings arise due to improper distinctions between organ trafficking and trafficking of humans for organ removal. The provisions lack the biting force. When one amendment is made in the right direction, another loophole arises for which the domestic laws need to be in conformity with the international laws. Through this paper, the author has strived to highlight the major reasons giving rise to the menace of organ trafficking in India with special reference to the half capable laws which fail to deliver the very aim of their enactment by dwelling into the loopholes these laws have.

Keywords: *Human Trafficking, Organ Transplantation, Organ Trade, Organ Trafficking, Organ Tourism, Organ Swapping, The Transplantation of Human Organs and Tissues Act,1994.*

1. Introduction

From times immemorial, the human species has always strived to add more years to their life span. The humans have even tried to attain immortality, for the love for being alive has superseded everything else. For this very purpose, the medical sciences have been ever evolving to make one's life less painful and longer. One such advancement is the organ transplantation and the processes associated with

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it. Organ transplantation refers to that process in which an organ from one's body is obtained and transplanted, or planted into someone else's body to keep the latter's cycle of life going.[1] The organs which are generally transplanted consists of heart, kidney, lungs among others in the ever-expanding list. It does not take much expertise to understand and even the statistics have proven time and again that there is a huge shortage of organs required for transplantation[2]. Though the shortage has spanned worldwide but most of the countries have made the commercialisation of organs illegal except a few, like Iran. [3] The commercialisation or commercial trade of organ refers to the practice of buying or obtaining organs in exchange of financial considerations of various sorts. Apart from this, there are various other considerations which are often confusing being uncertain such as the definition of death, the concept of consent, the payments involved, the legal procedures and documentations involved. Other issues like organ tourism and socio-economic factors also crop up at various levels. But the major problem requiring careful perusal, arising out of these issues and considerations and the shortage of organs is organ trafficking. [4] Unsurprisingly, India has long been the hot centre for these red markets of organs, owing to its vast population, massive poverty, widespread corruption, infectious bureaucracy, immeasurable wealth discrepancies and a long relationship with the western countries who have befriended and found routes to India for things like dug up skeletons and even human hair.[5]

The issue of organ trafficking has been recognised worldwide but the efforts have not been at par with the consequences of this illegal practice. The provisions are enacted, but soon after the loop holes are found by the miscreants involved in this illegal trade.[6] Organ trafficking is not merely related to the obtaining or buying of organs by unfair means, but it violates the fundamental and human rights including the right to life, liberty, security and protection from cruel, inhumane behaviours. There have been a number of rules set by the international

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1 Scott Carney, *The Red Market: On the Trail of the World's Organ Brokers, Bone Thieves, Blood Farmers and Child Traffickers* 69-70 (William Morrow, An Imprint of Harper Publishers, 2011).

2 *Available at*: http://en.wikipedia.org/wiki/Organ_transplantation (Visited on May 05, 2023).

3 Experts Warn Against Organ Trade, *available at*: http://news.bbc.co.uk/2/hi/health/6240307.stm (last visited on May 05, 2023).

4 Organ Trafficking and Transplantation Pose New Challenges, *available at*: http://www.who.int/bulletin/volumes/82/9/ feature0904/en/ (last visited on May 05, 2023).

5 *Available at*: http://boingboing.net/2011/05/31/the-red-market-book.html (Visited on May 06, 2023).

6 Sheri R.Glaser, "Formula to Stop the Illegal Organ Trade: Presumed Consent Laws and Mandatory Reporting Requirements for Doctors Transplant Proceedings" 7 *Human Rights Brief* 45-67 (2013).

community through various enactments, conventions and meetings. To begin with a few, in the year 1991, the World Health Organisation framed the Guiding Principles on Human Organ Transplantation, the 1997 Convention on Human Rights and Biomedicine of the Council of Europe and its Optional Protocol Concerning Transplantation of Organs and Tissues of Human Origin of year 2002.Also from the year 1985 onwards, the World Medical Authority denounced the commercial use of organs. Further it is worthy of being mentioned here about the Columbia University which established the Bellagio Task Force for the purpose of drafting a document regarding the use of organs for transplants[7]. Moreover, the United Nations framed a Protocol to Prevent, Suppress and Punish Trafficking in Persons, which also talks about the organ removal and its sale as an end purpose of trafficking.[8] Apart from the international instruments, many nations have formulated and adopted different legislations on the domestic front to fight with this menace of organ trafficking, but those have always had less teeth and improper implementation due to the underlying reasons such as the corruption and widespread criminal networks. If we take into consideration our own country's the Transplantation of Human Organs and Tissues Act, 1994, it has not been able to put a leash on the organ trade and trafficking even after passage of 3 decades since its adoption. Although the Act prohibits the sale of all human organs and prohibits the transplants involving organs being donated by persons other than close(near) relatives, but there is a vacuum vide which the hospital authroisation committees have been vested with power to go for the transplants if the donor is "emotionally close" to the recipient, thus providing for enough room for the illegal donors to barge in, as the term above has not been extensively and specifically defined.

2. Factors fuelling Organ Trafficking in India

The trafficking in human beings is an age old crime, wherein the trafficked humans were subsequently sold off in markets, used for prostitution among other things. Later on, with the advent and spread of organ transplantation, the trafficked humans were now also being used for organ harvesting, illegal organ removal and other activities. This particular aspect came to be known as Trafficking of Human Beings for the Purpose of Organ Removal (*hereinafter* referred to as the THBOR). Without any second thought, one knows the major reason underlying this issue is the wide gap in the demand and supply of organs

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7 The Bellagio Task Force Report on Transplantation, "Bodily Integrity, and the International Traffic in Organs" (Jan. 01,1997) *available at*: https://www.icrc.org/en/doc/resources /documents/article/other/57jnyk.htm (last visited on May 07, 2023).

8 *Available at*: https://www.wcl.american.edu/hrbrief/12/2glaser.pdf (last visited on May 07, 2023).

to be transplanted or to put in simple terms, 'organ shortage'. Apart from this, global asymmetries, criminological perspectives, local causes, religious causes are some of the other prevalent causes, a few of which are being discussed herein below:-

2.1 Organ Scarcity

When the world was still celebrating the development of medical process of organ transplantation considering its life saving abilities, the criminal organisations saw a big opportunity to benefit from this. While the world kept its eyes shut in the euphoria, the criminals were a step ahead and already started the activities involving organ trafficking because they understood the simple theory of demand and supply of organs. It was not uncertain that the shortage of organs was on the cards considering the number of patients in requirement of organs capable of being transplanted. As the medical process spread further, so did the organ trafficking. It would not be moral to say this, but the two went ahead hand in hand. The patients suffering from end stage organ failure were so desperate that they could not wait longer to get their organ as they wanted to live longer, so they had to turn to these so called "organ brokers" or traffickers and started buying their organs off the international illegal organ markets. The organ brokers knew they were sitting on a goldmine benefitting from the organ shortage prevalent all around. [9] The people here in India, are not motivated to donate their organs, owing to the various societal, religious, cultural as well as family restrictions, which are infact the limiting factor of their thoughts and nothing else. But what remains prevalent is that these same people when coming from financially weak strata, are ready to sell their organs, whereby creating the shortage which is not so wide in the first place.

3. Global Asymmetries

Once we have understood in brief how the problem of organ shortage leads to the organ trafficking and trafficking of persons for organ removal, it becomes more crucial to understand the other reasons and asymmetries which are common worldwide. The two major heads about to be discussed are the cultural analytical and criminological.

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[9] A. Bagheri, "Asia in the spotlight of the International Organ Trade: Time to Take Action" 2 *Asian Journal of World Trade Organisation & International Health Law and Policy,* 11-23 (2007).

3.1 Cultural Analytical Perspectives-

In the words of anthropologist Nancy Scheper-Huges, "the flow of organs follows the modern routes of capital". The above statement is short but explains the whole structure of the global powers which allow the first world companies to capitalize on third world natural assets and cheap labour also facilitate the trade in human organs. The bodies of the vulnerable and poor people are treated as commodities capable of being circulated on international markets.[10] But when we dive further into organ trafficking and the reasons behind it, the market trends are not the only forces behind it if not paired with the commercialisation of body parts and the powers of contemporary biomedicine. [11] The contemporary biomedicine is seen objectifying and fragmenting the precious human bodies when the diagnostics are run, the treatments are done and the diseases are cured. In the argument of Sharp and Lock and Nguyen, the organ transplantation is not separate from the working of biomedicine as it fragments the human body into a number of replaceable organs based on their function. [12] The role of immunosuppressive drugs such as cyclosporine has been instrumental in organ transplantation as it allows the organs to be suited to the donor's body and has allowed for the organs to be used on a global level and has even made the organ exchange global. Anthropologist Cohen states that the organs of the poor become 'bioavailable' when the market forces pair with objectifying and healing powers of the biomedicine.[13] These forces combined allow for the organs from the poor of the south-eastern parts of the world to reach the rich from the northern and western parts of the world.

3.2 Criminological Perspectives

The concept of globalization is explained as the processes through which sovereign national states are criss-crossed and undermined by transnational actors with varying prospects of power, orientation, identities and networks, in the words of Beck and Camiller. [14] This concept has helped establish many enterprises on a global level, both for the legal and illegal activities. As per the common economical concept, the prices are dependent on the supply and demand

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[10] Nancy Scheper Hughes, "The Global Traffic in Human Organs" 41(2) *Current Anthropology* 191-224(2000).

[11] C. Kierans, "Anthropology: Organ Transplantation and the Immune System: Resituating Commodity and Gift Exchange" 73(10) *Soc Sci Med.*1469-76 (2011).

[12] M.Lock and V. K.Nguyen, *An Anthropology of Biomedicine* (Wiley Blackwell, 2nd ed., 2011).

[13] L. Cohen, "Where It Hurts: Indian Material for An Ethics of Organ Transplantation" 38(3) *Zygon: Journal of Science and Religion* 663-88 (2003).

[14] U. Beck and P. Camiller, *What is Globalization?* (Polity Press Cambridge,7th edn.,2000).

of an entity, which has made the states more dependent than ever on each other to meet their economic goals. Undoubtedly, the new capitalist economy has grown but there has been no instance of formation of a mediating entity having the regulatory functions. The idea of power of a competition-driven market model or neoliberal paradigm has been dominant over other factors.[15] Passas has given out the definition of criminogenic asymmetries as structural disjunctions, mismatches and inequalities in the spheres of politics, culture, economy and the law. When the global market expands, it does not happen solely based on the legal markets' expansion but also the illegal ones. In fact, the illegal markets have expanded at a much more rapidly. The global asymmetries as discussed above strengthen the demand for illegal goods and services, then they are responsible for motivating the crucial respective actors to participate in illegal businesses and lastly, they also make efforts to decrease the ability of the authorities responsible for checking these illegal activities.[16]

Next, we move on to the concept or the term 'black market' of organs. For that we first need to understand that a black market refers to an economy hidden from the naked eye, exists parallel to the legitimate market and is involved in providing legal and illegal goods and services. Moreover, these black markets offer the persons involved to run their businesses with more profit, without any regulations and without any taxations. The same is done through money laundering and similar methods.[17] In context of organ trade in black markets, one needs to understand better that the black markets are not only related to the illegal goods and services but these also come into play when there is a shortage of the legal goods which cannot be obtained in enough numbers through legal players of the market. Taylor points out that if we want to reduce the black marketing of kidneys, we should be more concerned about the requisite legislations but not their continued prohibition.[18] If some goods or services are even outlawed, the illegal players would emerge to create black markets for the same to meet the remaining demand and that too at a higher rate.[19] Apart from increasing the prices uncontrollably, providing illegal income, the black market forces the actual crime to expand to newer places, evade from the initial place which results into

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15 P. Farmer, *Pathologies of Power: Health, Human Rights and the New War on the Poor: With a New Preface by the Author* (University of California Press, 2005).

16 N. Passas, "Cross-Border Crime and the Interface Between Legal and Illegal Actors: Upper World and Underworld in Cross-Border Crime" 16(1) *Security Journal* 11-41(2002).

17 G.Bruinsma and W. Bernasco, "Criminal Groups and Transnational Illegal Markets" 41(1) *Crime, Law and Social Change* 79-94(2004).

18 J.S. Taylor, "Black Markets, Transplant Kidneys and Interpersonal Coercion" 32(12) *Journal of Medical Ethics* 698-701(2006).

19 L.Paoli, "The Paradoxes of Organized Crime" 37(1) *Crime, Law and Social Change* 51-97(2002).

increased rates of crimes and victimization.[20] The black markets would be in no position to thrive if the legal entities do not support these.

3.3 Domestic Causes

If we want to properly dwell into the causes leading to the trafficking of human organs for transplantation, we cannot limit our study to the international instruments alone. The roots of the evil lie in the small domestic spheres of the society and creep up deep enough to make a globally expanded tree. There are a number of reasons for the same, one being the vulnerability of the poor. It has not been hidden from anyone that India has a high number of poor people who are not able to make their ends meet even for the basic necessities of life and when they get to know of a way out to make some quick money, they opt into the organ donation in return of money, thinking very little of the other consequences including the medical complications. These trades have become quite prevalent and a common scene in many places and are commonly referred to as "kidney-villes", "villages of half men", "kidney towns or no kidney islets". [21] Another reason can be the lacuna in the existing laws and the inability or the intentional inaction of the regulating authorities. A good law cannot do anything if the regulating authorities are corrupt and intentionally let the wrong doers evade. Even when the laws are not adequately formulated, like for countries which are deeply affected by these activities, need much stronger laws. Pakistan, Philippines and Israel are such examples which have come up with the laws at a much belated stage when the organ trafficking is already at its peak.

4. Transplant Activities under the Threat of Curtained Organ Trafficking

The Transplantation of Human Organs and Tissues Act, 1994 is the regulating statute for organ transplantation activities in India. The Act along with the rules made there under give out the provisions for these all. With its amendment of the year 2011, the permissions were granted for organ swapping, which, if explored, lets us understand the related threat of organ trafficking and organ sale. Two other concepts which have been legalized by the umbrella of section-9(3) are live donation by nonrelatives and the transplant tourism. The words legalizing the same are "by reason of affection or attachment towards the recipient or for any special reasons".

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[20] F. Ambagtsheer and W.A.Weimar, "Criminological Perspective: Why Prohibition of Organ Trade is not Effective and How the Declaration of Istanbul Can Move Forward" 12(3)*Am J Transplant* 571-5(2012).

[21] Y. Shimazono, "The State of the International Organ Trade: A provisional Picture Based on Integration of Available Information" 85(12) *Bull WHO* 955-62(2007).

4.1 Organ Swapping

A Swap transplant is a ray of hope for those who are not having matching donors in their families. It gives the freedom to all the patients an exchange of organs between two families, who cannot take the organ to their own family member because of non-matching blood group. This is also called as Pool transplant or Paired exchange.[22] Legally, this option is very helpful during the shortfall of organs that enhances the number of organ transplant. The technique is one of its own kind which is called Swap Transplant Program. It comes into view to accomplish the vision of sharing the organ of two people who are unknown to each other but their blood groups are same.

Suppose there are two donor/recipient pairs, Donor and Recipient 1 and Donor and Recipient 2:

- Donor 1 would give an organ to Recipient
- Donor 2 would then give an organ to Recipient 1

This organ paired donation transplant enables two incompatible recipients to receive healthy, more compatible organs. All medically eligible donor/recipient pairs may participate in the paired organ exchange program. All the four persons would be in the same operating room and the surgeries would be performed simultaneously. Organs would be removed from the two donors and immediately transplanted into the unrelated donors. The simultaneous surgeries are important to prevent possible problems, both legal or otherwise.

4.2 Live Organ Donation by Non-Relatives

In the beginning, as one thinks more sensible, the organ was obtained from someone who was already brain dead or even whose heart had stopped beating but the organs were retrieved in time to be able to be transplanted into the recipient's body. But with the advent of time, specially owing to the reason that there were not enough cadaveric organ donations, and the irregularities in the definitions of death, the concept of consent among other reasons meant the organs were never enough to be transplanted.[23] As per the provisions of the Act[24], for a person to give the organ to another, the living donors have to be related to

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[22] Lainie Friedman Ross, T. David et. al., "Ethics of a Paired-Kidney-Exchange Program" 336 *NEJM* 1732-55 (1997).

[23] P.A. Singer, M. Siegler, et. al., "Ethics of Liver Transplantation with Living Donors" 321(9) *N Engl J Med* 620-622 (1989).

[24] The Transplantation of Human Organs and Tissues Act, 1994.

the patient getting the organ, but the special committees at the level of state can authorize the donations otherwise. The person who is alive and willing to donate his organ, shall be of an adult of sound mind and with the knowledge of what he is about to do and then too there needs to be am expressly written consent. It is the duty of the medical professionals involved in the transplantation procedure to make aware the recipient as well as the donor of the potential risks during and after the procedure. Understandably, with the growing awareness about the organ trafficking, the commercial dealing came to be banned worldwide.[25] In the United States, the organ donation is permissible from all persons, even the anonymous donations are permitted. The regulations there have come so far as to dwell upon the legality of organ donation by children. On the other hand, the countries like India require a particular relationship between the two individuals involved in the organ transplantation. However, the point of concurrence among all is the prohibition of financial consideration for the organ donation, in order to prevent organ trading. Another common point is the concept of free consent, which is otherwise also deemed to be an ethical requisite for different medical procedures, as the procedures as complex as transplantation, requires the doctor to hurt one person for the benefit of the other.[26] The section-9(1)[27] of the Transplantation of Human Organs and Tissues Act, 1994 restricts the living donation of an organ from an unrelated donor. The list of near relatives, though requires to be longer, is given under section-2(i)[28] of the Act. Further, the section-9(3)[29] specifies where the organ donor is not a near relative, then in such case, for proving the love and affection and that the donation is without financial consideration, the approval has to be sought from the Authorisation Committee. The provision regarding Authorisation Committee is necessary and needs to be implemented strictly, in a number of instances, to carry out organ trading and illegal organ donations, the donors who do not even know the recipient, suddenly get a spark of attachment

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25 C. Jacobs, E. Johnson, "Kidney Transplants from Living Donors: How Donation Affects Family Dynamics". 5(5) *Adv Ren Replace Ther* 89-97(1998), *available at*: https://pubmed.ncbi.nlm.nih.gov/9554542/(last visited on May 14, 2023).

26 The Nuremberg Code or Declaration of Helsinki of the World Medical Association.

27 Save as otherwise provided in sub-section (3), no human organ and tissue or both removed from the body of a donor before his death shall be transplanted into a recipient unless the donor is a near relative of the recipient. only near relatives can donate their organs before death and who will be counted as near relative.

28 Section 2(i)- "near relative" means spouse, son, daughter, father, mother, brother or sister.

29 Transplantation of Human Organs and Tissues Act, 1994, sec. 9(3) ;"If any donor authorizes the removal of any of his human organs and tissues or both before his death under subsection (1) of section 3 for transplantation into the body of such recipient, not being a near relative, as is specified by the donor by reason of affection or attachment towards the recipient or for any other special reasons, such human organ and tissue or both shall not be removed and transplanted without the prior approval of the Authorisation Committee."

and affection in them to donate the organ, obviously owing to the financial benefits by human organ traffickers.

4.3 Transplant Tourism

The governments of countries may choose to trade their advanced health services in order to boost their national health objective, under the General Agreement of Trade in Services (GATS). Even some countries use the services of health service experts of their country for their economic development. The United Network for Organ Sharing (UNOS), recently defined transplant tourism as 'the purchase of a transplant organ abroad that includes access to an organ while bypassing laws, rules, or processes of any or all countries involved'.[30] This has become a necessary evil for the people residing in those countries where these advancements have not reached yet or are more costly or are hit by the more stringent provisions and long procedures. It is pertinent to mention here that not all medical tourism cases are of organ trafficking only. Sometimes there are genuine cases of dying patients in need for organ transplants who for some reason are unable to get it done in their own country. Moreover, in organ sharing programs which are official and based on reciprocated organ sharing program, it is not considered transplant tourism.[31] A recent example can be given of a hospital in Chennai, where a heart transplant surgery was performed of a 18 month old child from Bulgaria. The child from Bulgaria was suffering from terminal heart failure and experienced 2 heart attacks, one during her flight and one at the hospital where the surgery was performed.[32] While for this family, this would always be like a miraculous gift from the doctors, but in these instances, the people of our own country who are waiting for organs to be transplanted are kept in abeyance and some ultimately die waiting.

5. Legislative Measures to Fight Human Organ Trafficking

As we have already discussed earlier, the crime of organ trafficking and organ trade followed the expansion of organ transplantation closely, India is considered one of the biggest markets for such trades. Even some places have become popular for the sole reason of the residents willing to sell their kidneys at a small

[30] UNOS Board on Transplant Tourism. (June 26, 2007), *available at:* http://www.unos.org/news/newsDetail.asp? (last visited on May 12, 2023).

[31] *Available at*: http://www.cofs.org/COFS-Publications/Budiani_and_Delmonico-AJT_April_2008.pdf, (last visited on May 12, 2023).

[32] Pramod Madhav, "Heart Transplant Gives Bulgarian Baby Girl New Lease of Life in Chennai", *available at*: https://www.indiatoday.in/india/story/heart-transplant-gives-bulgarian-baby-girl-new-lease-of-life-in-chennai-2425041-2023-08-22 (last visited on May 13, 2023).

price. There are two different things which both are a form of organ trafficking. First is the trafficking of persons for the purpose of organ removal and the other is trafficking of organs alone. The human organs trafficking is criminally being dealt with by the Transplantation of Human Organs and Tissues Act, 1994 and the other is criminalized under section-370 of the Indian Penal Code, 1860.

5.1 Failure of the Transplantation of Human Organs Act, 1994

Though the Act was enacted for the sole purpose of regulating the organ transplantations so that there can be a check on the illegal transplants leading to serious issues like organ trafficking and organ trade. But the organ scams being reported time and again show the failure of the Act to do achieve the very goal it was enacted for. The kidney scams were being reported continuously in the year 2002, 2003 and 2004. Though various amendments to the Act and the rules have been proposed and executed but the implementation of the provisions has been poor though the Act is now better. These scams being uncovered possess a greater threat to the people who are willing to donate the organs freely as it makes them think of the financial considerations and even drives some people to part with their organs to earn some quick buck. The emphasis should be on spreading awareness about the organ donation but what is in the news more are the organ scams and transplant scams, which puts the whole concept in jeopardy.

5.2 Section 370 of Indian Penal Code, 1860

Apart from the Transplantation of Human Organs and Tissues Act, 1994, the limited crime of human trafficking has been dealt with in section 370 of the Indian Penal Code, 1860 as it does not mention about the trafficking in persons for the purpose of organ removal.[33] The much talked about and credible Justice Verma Committee Report[34] made certain recommendations regarding the various

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[33] Sec.370 IPC: Trafficking of persons- Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

1. using threats, or
2. using force, or any other form of coercion, or
3. by abduction, or
4. by practising fraud, or deception, or
5. by abuse of power, or
6. by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

[34] Justice Verma Committee Report Summary, *available at*: https://prsindia.org/policy/report-summaries/justice-verma-committee-reportsummary#:~:text=It%20recommended%20that%20the%20provisions,employment%20 of%20a%20trafficked%20person (last visited on June 10, 2023).

issues like rape, sexual harassment, trafficking, child sexual abuse, medical examination of victims, police, electoral and educational reforms and provided with some comprehensive solutions. Therefore, the various debates, demands of the common man and the executive will, led to the passing of the Criminal Law (Amendment) Act, 2013.[35] The shortcoming comes in the form of unclear distinction or of an absent criteria to distinguish between the trafficking of persons for other purposes and trafficking of persons for the organ removal. To be precise, the provision we are looking for can come into play when we are certain that a particular person is being trafficked for his organ removal, and that seems a distant certainty. While the section tells about how the person can be trafficked but does not mention anything about the purpose of such trafficking which is necessary to give the provision more teeth. We need to look into the act that is recruitment, transport, transfer, harbouring, receipt and the purpose of trafficking along with the way of trafficking being done.

6. Conclusion

To sum up the whole discussion, the problem of organ trafficking and the trafficking of humans for organ removal is as old as the very procedure of organ transplantation. While the different laws required long time to come at par with the illegal aspects, the crime of organ trafficking flourished in those times of vacuum. Even when the provisions were being made internationally, there was no implementation or cooperation among the countries as many took many additional years to come up with their domestic regulations. The regulations and laws at the international level need to be in line with the ones at domestic level if this menace of organ trafficking is to be tackled by the countries at their own level as well as internationally. This needs to be done before it gets out of hand and becomes totally uncontrollable. As we have already discussed the shortcomings of the Transplantation of the Human Organs and Tissues Act, 1994, there is a strong necessity to strengthen the provisions as well as the implementation of the Act while making the punishments stricter and reporting easier under the Act. The crime of organ trafficking has become international but the domestic laws need to be strengthened as these crimes begin from the very vulnerable sections of the society.

To sum up this research paper, the author would like to bring awareness about the most prominent steps that may be taken in order to curb the instances of organ trafficking in the country. First and foremost, would be educating the citizens by making sure that even the lowest of the lowest strata of the society are made aware of the concept of the organ donation and more importantly the punitive

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[35] Act 13 of 2013.

action for indulging into illegal activities like organ trading. Another measure the importance of which cannot be undermined is the promotion of transparency in the organ donation programmes and the procedures of organ transplantation so much so that whenever a person is hit by a doubt, he can himself get rid of it by using the information and the statistics relating to these procedures.

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Privacy in the Age of Artificial Intelligence: An Indian Perspective

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Abstract

As Artificial Intelligence (AI) proliferates across diverse domains, its impact on fundamental human rights, particularly the right to privacy, has become a subject of critical concern. The paper undertakes a thorough exploration of the intricate relationship between AI technologies and the right to privacy, offering a comprehensive analysis of their interplay and implications.

This paper delves into the multifaceted ways in which AI applications intersect with privacy rights. It dissects the mechanisms through which AI-driven data collection, analysis, and decision-making reshape the boundaries of personal privacy, often blurring the lines between convenience and surveillance. The study also delves into the ethical dimensions surrounding AI adoption, revealing the inherent tensions between technological advancement, societal benefits, and individual freedoms. It underscores the necessity of establishing robust legal and regulatory frameworks that balance the potential of AI-driven innovations with the imperative to uphold privacy as a fundamental right. By presenting a nuanced exploration of the evolving dynamics, challenges, and opportunities arising from AI's influence on privacy, this paper aims to equip policymakers, legal practitioners, and technology stakeholders with insights crucial for shaping a future in which AI and privacy coexist harmoniously. It is only through an in-depth examination that we can navigate the complex terrain of AI's influence on the right to privacy, fostering a society that harnesses the power of technology while safeguarding individual autonomy.

Keywords*: Privacy, Artificial Intelligence, Ethical and Legal Implications*

1. Introduction

Artificial Intelligence (AI) has become an increasingly important part of modern society, with its impact felt across a wide range of industries, from healthcare to finance, and transportation to entertainment. India, with its growing economy and technological advancements, is no exception. The use of AI has the potential to

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significantly transform and improve various sectors in India, and is therefore an area of great interest for businesses, policymakers, and the public alike.[1]

As AI technologies continue to advance, so do concerns regarding their legal and ethical implications. There are several potential concerns surrounding AI, including issues related to privacy, data protection, employment, and bias. Given the potential for AI to significantly impact society, it is important for governments to develop a regulatory framework that promotes innovation while ensuring that these concerns are adequately addressed.

In India, the legal and regulatory framework for AI is still in its nascent stages. While there are some laws and guidelines that touch upon aspects of AI, there is currently no comprehensive framework that specifically regulates the development and deployment of AI technologies. However, there are several initiatives and efforts underway to address this gap and develop a more robust regulatory framework for AI in India.[2]

This paper provides an overview of the current state of AI regulation in India, as well as the legal and ethical implications of AI in the Indian context. It also examines the emerging trends in AI regulation, and the key players and regulatory bodies responsible for developing and enforcing AI regulations in India.

The goal of this study is to provide a comprehensive overview of the current state of AI regulation in India, and to identify key areas for future development and improvement. Ultimately, a robust and effective regulatory framework for AI in India will be crucial in ensuring that the benefits of this technology are maximized while minimizing its potential negative impacts.

1.1 Definition of Artificial Intelligence

Artificial Intelligence (AI) can be defined as the development of computer systems that can perform tasks that typically require human intelligence, such as learning, reasoning, perception, and problem-solving. AI is often implemented

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1 Editorial, "How Artificial Intelligence is Changing Your Life Unknowingly" *Economic Times*, March 15, 2023 *available at:* https://economictimes.indiatimes.com/news/how-to/how-artificial-intelligence-is-changing-your-life-unknowingly/articleshow/98455922.cms (last visited on June 22, 2023).

2 Yashi, "Artificial Intelligence and Laws In India" *available at:* https://legalserviceindia.com/legal/article-8171-artificial-intelligence-and-laws-in-india.html (last visited on June 22, 2023).

using machine learning algorithms, which allow computers to learn and improve their performance over time without being explicitly programmed.

In India, there is no specific law or act that defines AI. However, there are several laws and regulations that touch upon aspects of AI. For instance, the Information Technology (IT) Act, 2000, which is the primary law governing the use of digital technology in India, defines "computer" as *"any electronic, magnetic, or optical device that can perform logical, arithmetic, or memory functions, and therefore encompasses computers that utilize AI technologies."*[3]

Additionally, the Personal Data Protection Bill, 2019, which is currently under consideration by the Indian Parliament, sets out guidelines for the collection, processing, and storage of personal data, which is often used to train AI systems. The bill also requires companies to obtain explicit consent from individuals before collecting their personal data and imposes penalties for violations of data protection standards.

2. AI Regulation Debate

A straightforward set of regulatory policies will soon be required, according to the majority of AI experts and policymakers; as computing power continues to rise, new startups in AI and data science appear on a near-daily basis, and the amount of data that businesses collect on individuals increases exponentially.[4]

Many national governments have already established artificial intelligence laws and regulations about how data should and shouldn't be used and gathered, albeit they are occasionally ambiguous. When discussing AI regulation and how it should be implemented, governments frequently collaborate with significant corporations.

The way AI should be explicable is also governed by some legal regulations. Many machine learning and deep learning algorithms now operate in a black box or have their inner workings classified as proprietary technology and kept private. As a result, organizations risk missing a biased output if they don't completely comprehend how a deep learning model decides.

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[3] Prateek Singh, "Cyber Law in India: IT Act 2000" *available at:* https://www.legalserviceindia.com/legal/article-836-cyber-law-in-india-it-act-2000.html. (last visited on June 22, 2023).

[4] Lee Raine, Janna Anderson *et. al*, "Worries about Developments in AI" *available at:* https://www.pewresearch.org/internet/2021/06/16/1-worries-about-developments-in-ai/. (last visited on June 22, 2023).

The way AI should be explicable is also governed by some legal regulations. Many machine learning and deep learning algorithms now operate in a black box or have their inner workings classified as proprietary technology and kept private. As a result, organizations risk missing a biased output if they don't completely comprehend how a deep learning model decides.

Artificial Intelligence (AI) has become an important topic of discussion among legal scholars, policymakers, and industry experts around the world. As AI technology evolves rapidly, there is a growing debate on whether and how it should be regulated to ensure its safe and ethical use.

On one hand, some argue that regulating AI would impede innovation and hinder its growth. Others believe that a lack of regulation would lead to potential dangers and risks associated with AI's unregulated use. Therefore, the AI regulation debate is complex and nuanced, with varying perspectives and opinions.

In India, the debate around AI regulation has gained momentum in recent years. While India is home to many AI startups and companies, there is still no clear regulatory framework governing the development and use of AI technology in the country. This has led to concerns about the potential risks and ethical implications of unregulated AI use.

Those who advocate for AI regulation in India argue that there is a need to ensure accountability and transparency in the development and deployment of AI technology. They also emphasize the importance of protecting individuals' rights and privacy as AI systems collect and process personal data.

Furthermore, some proponents of AI regulation point to the potential social and economic implications of unregulated AI use. For instance, unregulated AI could lead to job losses, exacerbate income inequality, and contribute to social unrest.

On the other hand, opponents of AI regulation argue that the technology is still in its nascent stages, and any attempts to regulate it would be premature. They also point out that overregulation could stifle innovation and slow down AI's growth and development.

In India, the debate on AI regulation has been further complicated by the lack of clarity around which government agency should take the lead in regulating AI. Currently, multiple government agencies, including the Ministry of Electronics and Information Technology (MeitY), the Ministry of Commerce and Industry,

and the Ministry of Science and Technology, are involved in AI-related initiatives and policymaking.

Moreover, there is also a lack of consensus among policymakers and experts on what the scope of AI regulation should be. Some argue that regulation should be limited to high-risk AI systems, such as those used in the healthcare and finance industries, while others believe that all AI systems should be subject to regulation.

In terms of existing laws and regulations, India's Information Technology Act of 2000 and the Personal Data Protection Bill of 2019 (PDPB) have provisions that could apply to AI technology. The PDPB, in particular, seeks to regulate the collection, processing, and storage of personal data by entities in India, including those using AI.

However, experts argue that these laws are insufficient to address the potential risks and ethical implications of AI technology fully. Therefore, there is a need for comprehensive AI-specific regulations to ensure its safe and ethical use.

3. Artificial Intelligence Laws and Regulations in India

India does not have a dedicated law or regulation on artificial intelligence (AI) yet. However, there are several laws and regulations in India that have relevance to AI. Some of the major laws and regulations that apply to AI in India are:

3.1 The Information Technology (IT) Act, 2000: The IT Act is the primary law that regulates electronic transactions and e-commerce in India. The IT Act provides for the regulation of digital signatures, security of electronic transactions, and protection of personal data. Section 43A[5] of the IT Act provides

[5] Section 43A, The Information Technology Act, 2000,
Compensation for failure to protect data. -Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation to the person so affected.
Explanation. -For the purposes of this section,-
(i) "body corporate" means any company and includes a firm, sole proprietorship or other association of individuals engaged in commercial or professional activities;
(ii) "reasonable security practices and procedures" means security practices and procedures designed to protect such information from unauthorised access, damage, use, modification,

for compensation in case of failure to protect personal data, which may be applicable to AI systems that handle personal data. Section 66 of the IT Act provides for punishment for hacking, which may be applicable to attacks on AI systems. In addition, the Act prescribes penalties for various cybercrimes such as unauthorized access, damage to computer systems, hacking, and spreading of computer viruses.

The IT Act, 2000 was amended in 2008 to address issues related to data protection and privacy. The amendment introduced provisions on the protection of sensitive personal data, punishment for identity theft, and the requirement of obtaining consent before collecting and processing personal data.

However, the IT Act does not specifically address the legal issues related to Artificial Intelligence (AI) and its applications. This is a significant gap in the Indian legal framework as AI is rapidly evolving and is being deployed in various sectors such as healthcare, finance, and transportation.

To address this gap, the Indian government has initiated efforts to develop a legal framework for AI. The NITI Aayog, a policy think-tank, has released a discussion paper on "National Strategy for Artificial Intelligence" in 2018, which provides a roadmap for the development of AI in India. The paper recommends the development of a legal and regulatory framework for AI to address issues related to accountability, transparency, and data protection.[6]

3.2 The Consumer Protection Act, 2019: The Consumer Protection Act, 2019, provides for the protection of consumer rights in India. The Act provides for compensation in case of defects in products or services. AI systems that are used in consumer products or services may be subject to the provisions of this Act.[7]

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disclosure or impairment, as may be specified in an agreement between the parties or as may be specified in any law for the time being in force and in the absence of such agreement or any law, such reasonable security practices and procedures, as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit;

(iii) "sensitive personal data or information" means such personal information as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit.

6 Keerti Pradhan, Preethi John, *et.al* "Use of Artificial Intelligence in Healthcare Delivery in India" 5 *Journal of Hospital Management and Health Policy* (2021), *available at:* https://doi.org/10.21037/jhmhp-20-126. (last visited on May 3, 2023).

7 Surabhi Khattar, Ashutosh Singh *et. al* "Product Liability under the Consumer Protection Act, 2019: An Overview" *available at:* https://corporate.cyrilamarchandblogs .com/2022/01/

The Consumer Protection Act, 2019 is an important law in India that aims to protect the rights and interests of consumers. The Act came into effect on July 20, 2020, and replaced the earlier Consumer Protection Act, 1986. The new Act includes provisions related to consumer protection in the digital age, including the use of artificial intelligence.

3.3 The Personal Data Protection Bill, 2019: The Personal Data Protection Bill, 2019, is currently under consideration by the Indian parliament. The bill provides for the protection of personal data and privacy of individuals. The bill proposes to establish a Data Protection Authority to regulate the processing of personal data. AI systems that handle personal data may be subject to the provisions of this bill once it becomes law. The Personal Data Protection Bill, 2019 is a proposed law aimed at regulating the processing of personal data of individuals in India. The bill seeks to create a comprehensive framework for the protection of personal data and defines principles for processing of personal data. The bill is expected to have a significant impact on the development and deployment of AI systems in India as AI relies heavily on the use of personal data.

Overall, the Personal Data Protection Bill, 2019 is an important legislation aimed at protecting the privacy and personal data of individuals in India. The bill is expected to play a crucial role in regulating the development and deployment of AI systems in India and ensuring that such systems are transparent, accountable and fair. However, the bill is still in the draft stage and it remains to be seen how it will be implemented and enforced in practice.[8]

3.4 The National Policy on Electronics, 2019: The National Policy on Electronics, 2019, aims to promote the development of the electronics industry in India. The policy recognizes the importance of AI and proposes to develop a roadmap for the development of AI in India. The National Policy on Electronics (NPE) was introduced in 2019 to promote the electronics sector in India, including the development and deployment of artificial intelligence (AI)

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product-liability-under-the-consumer-protection-act-2019-an-overview/ (last visited on May 3, 2023).

8 Editorial, "Centre Withdraws Personal Data Protection Bill, 2019: Will Present New Legislation, Says IT Minister" *The Times of India,* August 3, 2022, *available at:* https://timesofindia.indiatimes.com/india/centre-withdraws-personal-data-protection-bill/articleshow/93323625.cms. (last visited on May 3, 2023).

technologies. The policy aims to make India a global hub for electronics system design and manufacturing (ESDM) and generate employment opportunities.[9]

3.5 The National Artificial Intelligence Strategy, 2020: The National Artificial Intelligence Strategy, 2020, was released by the Ministry of Electronics and Information Technology in India. The strategy aims to promote the development of AI in India and identifies several areas, including agriculture, healthcare, and education, where AI can be used. The National Artificial Intelligence (AI) Strategy, 2020, is the most recent and comprehensive policy initiative taken by the Indian government to develop and promote the AI sector in the country.[10] The strategy aims to make India a global hub for AI innovation, research, and development and ensure that the technology is used for the benefit of society and the economy. The strategy outlines various policy measures, including capacity building, research and development, ethical and regulatory frameworks, and international collaboration, to achieve its objectives.

3.6 The National e-Governance Plan: The National e-Governance Plan was launched in 2006 to promote the use of information technology in governance. The plan includes several initiatives that use AI and machine learning, such as the use of chatbots in government services. The National e-Governance Plan (NeGP) was launched by the Indian government in 2006 to ensure the effective delivery of government services to citizens through the use of Information and Communication Technology (ICT). The plan aimed to bring about a transformational change in governance through the integration of ICT, with a focus on citizen-centricity, service orientation, efficiency, and transparency. The NEGP is a comprehensive program that consists of several initiatives and projects that aim to provide electronic access to government services to citizens.

India is emerging as a major player in the field of artificial intelligence. The Indian government has recognized the potential of AI to drive economic growth and social development, and has taken steps to promote its development and use. However, the rapid growth of AI presents challenges for regulators and policymakers. There is a need for a comprehensive legal and regulatory framework to govern the use of AI in India, and for skilled professionals to develop and implement this framework. The future of AI law in India will depend

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9 Tojo Jose, "What Is National Policy on Electronics (NPE) 2019? – Indian Economy" *Indian Economy*, February 21, 2019, *available at:* https://www.indianeconomy.net/splclassroom/national-policy-electronics-npe-2019/ (last visited on May 3, 2023).

10 "National Strategy for Artificial Intelligence" *available at:* https://indiaai.gov.in/research-reports/national-strategy-for-artificial-intelligence (last visited on May 3, 2023).

on the ability of regulators and policymakers to address these challenges effectively.[11]

4. Challenges and Opportunities In Regulating Artificial Intelligence In India

The use of Artificial Intelligence (AI) in India has been growing rapidly in recent years, and it has been transforming various industries, such as healthcare, finance, and education. While AI has the potential to bring about significant benefits, it also poses significant challenges. The regulation of AI is an area that has been receiving increasing attention in India, as policymakers seek to balance the benefits of AI with its potential risks.[12]

One of the main challenges in regulating AI in India is the lack of a comprehensive legal framework. While some laws and regulations cover certain aspects of AI, such as data protection, there is no specific legislation that addresses the broader implications of AI. This can make it difficult for regulators to ensure that AI systems are developed and deployed in a responsible and ethical manner.

Another challenge is the lack of expertise among policymakers and regulators. AI is a complex and rapidly evolving field, and it can be challenging for those without a technical background to understand its nuances. This can make it difficult for policymakers to develop effective regulations that address the unique challenges posed by AI.

There are also concerns about the potential impact of AI on jobs and the economy. While AI has the potential to create new jobs and drive economic growth, there are also concerns that it could lead to job displacement and exacerbate existing inequalities. Policymakers will need to consider how best to mitigate these risks while also promoting the benefits of AI.[13]

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[11] Sunil Kumar Srivastava, "Artificial Intelligence: Way Forward for India." 15 *Journal of Information Systems and Technology Management* 29 (2018).

[12] El Bachir Boukherouaa, Ghiath Shabsigh *et al.* "Powering the Digital Economy: Opportunities and Risks of Artificial Intelligence in Finance" *available at:* https://doi.org/10.5089/9781589063952.087.A001 (last visited on May 5, 2023).

[13] Cristian Alonso, Siddharth Kothari, *et. al.* "How Artificial Intelligence Could Widen the Gap Between Rich and Poor Nations" *available at:* https://www.imf.org/en/Blogs/Articles/2020/12/02/blog-how-artificial-intelligence-could-widen-the-gap-between-rich-and-poor-nations (last visited on May 5, 2023).

Despite these challenges, there are also significant opportunities for regulating AI in India. For example, India has a large and growing technology sector, and there is a significant opportunity for India to become a leader in the development and deployment of AI. India also has a large pool of talented software developers and data scientists, which could be leveraged to drive innovation in AI.

Another opportunity is the potential for AI to drive improvements in governance and public services. The Indian government has been investing heavily in digital infrastructure, and there is significant potential for AI to be used to improve the delivery of public services such as healthcare and education.

5. Ethical and Legal Implications of Artificial Intelligence In India

Artificial intelligence (AI) has the potential to revolutionize various industries and improve our daily lives. However, it also raises various ethical and legal concerns, particularly in terms of data privacy, bias, accountability, and transparency. In India, these concerns are amplified by the lack of comprehensive regulations and guidelines specifically tailored for AI.

One of the primary ethical concerns related to AI in India is the potential for bias and discrimination. AI algorithms are only as objective as the data they are trained on, and if this data reflects societal biases or systemic discrimination, then the algorithms will reproduce and perpetuate these biases. For instance, an AI algorithm used for hiring that is trained on historical data that reflects gender bias could result in the perpetuation of gender-based discrimination. This could lead to legal challenges under anti-discrimination laws such as the Constitution of India and the Equal Remuneration Act, 1976.[14]

Another ethical concern is the potential for AI to infringe on privacy rights. As AI systems gather and process vast amounts of personal data, there is a risk of this data being misused or hacked.[15] This could lead to violations of fundamental rights such as the right to privacy, which is enshrined in the Constitution of India

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[14] Jake Silberg and James Manyika, "Tackling bias in artificial intelligence (and in humans)" *available at:* https://www.mckinsey.com/featured-insights/artificial-intelligence/tackling-bias-in-artificial-intelligence-and-in-humans (last visited on May 5, 2023).

[15] Mark van Rijmenam, "Privacy in the Age of AI: Risks, Challenges and Solutions." *available at:* https://www.thedigitalspeaker.com/privacy-age-ai-risks-challenges-solutions/ (last visited on May 5, 2023).

and has been interpreted by the Supreme Court in the landmark case of Justice *K.S. Puttaswamy (Retd.)* v. *Union of India*[16].

Additionally, AI can raise accountability and transparency issues. Since AI systems are often opaque and difficult to interpret, it can be challenging to identify who is responsible for any harm caused by AI. This could lead to challenges in establishing liability under Indian laws, including the Indian Contract Act, 1872, the Indian Penal Code, 1860, and the Consumer Protection Act, 2019.

To address these ethical concerns and ensure the responsible development and use of AI, India has initiated various legal and policy measures. For instance, the Personal Data Protection Bill, 2019 is currently under consideration by the Indian Parliament. The bill aims to regulate the collection, storage, and processing of personal data by both private and public entities and to protect the privacy of individuals. If passed, the bill will impose strict obligations on entities collecting personal data and provide individuals with various rights to control and access their data.

Additionally, the National Artificial Intelligence Strategy, 2020 sets out a roadmap for the development of AI in India, with a focus on innovation, inclusive growth, and ethical development. The strategy emphasizes the importance of building public trust in AI and fostering collaboration between various stakeholders to ensure responsible development and deployment of AI.

Despite these initiatives, there is a need for further legal and policy measures to address the ethical and legal implications of AI in India. The lack of clear and comprehensive regulations tailored for AI creates uncertainty and challenges for entities developing and using AI systems. To ensure that the potential benefits of AI are realized while minimizing its risks, it is crucial for India to establish a coherent and robust legal and policy framework for AI. This framework should address issues such as bias and discrimination, privacy, accountability, and transparency, and should involve various stakeholders, including industry, government, civil society, and academia.[17]

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[16] AIR 2017 SC 4161

[17] Nithesh Naik, B. M. Zeeshan Hameed *et. al* "Legal and Ethical Consideration in Artificial Intelligence in Healthcare: Who Takes Responsibility?" *available at:* https://doi.org/10.3389/fsurg.2022.862322 (last visited on May 5, 2023).

6. Data Protection Issues Related to Artificial Intelligence in India

Data protection is a critical issue in the use of AI, as AI requires access to large amounts of data to function effectively. The following are the data protection issues related to AI:

Privacy: AI involves the processing of personal data, and the use of AI raises concerns related to privacy. The Personal Data Protection Bill, 2019, which is currently under consideration by the Indian Parliament, proposes stringent rules on the processing of personal data by AI systems. The Bill requires the consent of the data subject for the processing of personal data by AI systems and mandates that AI systems should be transparent in their functioning. Privacy is a fundamental right that is protected under Indian law. The Indian Constitution does not explicitly mention the right to privacy, but the Supreme Court has interpreted it to be part of the right to life and personal liberty under Article 21.[18] In addition, the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 under the Information Technology Act, 2000 (IT Act) also provides for the protection of personal information.

The right to privacy has been recognized and developed through a number of landmark cases. In *Kharak Singh* v. *State of U.P*,[19] the Supreme Court held that privacy is a part of the right to life and personal liberty. In *R. Rajagopal* v. *State of Tamil Nadu*,[20] the Supreme Court held that the right to privacy also includes the right to be left alone, and that it is not absolute and can be restricted for public interest. In *People's Union for Civil Liberties* v. *Union of India,*[21] the Supreme Court held that privacy also includes the right to confidentiality of personal information.

The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 under the IT Act provides for the protection of personal information of individuals. These rules require everybody corporate that collects, receives, possesses, stores, deals with or handles sensitive personal data or information to provide a privacy policy that discloses the purpose of collection, usage, storage, and disclosure of such

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[18] Article 21, Constitution of India provides, Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.

[19] (1964) 1 SCR 332

[20] (1994) 6 SCC 632

[21] (1997) 1 SCC 301

information. The rules also provide for penalties in case of any failure or violation[22].

In addition, the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 provides for the protection of privacy of Aadhaar holders. The Act prohibits the disclosure of identity information and biometric information of individuals except for the purposes specified under the Act. The Act also provides for penalties for any violation.

The Personal Data Protection Bill, 2019 (PDP Bill) is a proposed legislation that seeks to provide for the protection of personal data of individuals. The PDP Bill establishes a data protection authority, which is responsible for the enforcement of the provisions of the Bill. It also provides for the appointment of a data protection officer by every data fiduciary (i.e., any person who determines the purpose and means of processing of personal data). The Bill also provides for the rights of data principals (i.e., individuals whose personal data is being processed), such as the right to access and correct their personal data, the right to data portability, and the right to be forgotten.

Bias: AI systems can be biased towards certain groups or individuals, and this can result in discrimination. The Personal Data Protection Bill, 2019, proposes measures to prevent bias in AI systems. The Bill requires AI systems to be audited for bias, and if any bias is found, corrective measures should be taken. Artificial Intelligence (AI) algorithms are designed to learn from data sets and improve their accuracy over time. However, if the data sets are biased, the AI algorithms will learn and reproduce that bias, leading to discriminatory outcomes. This has become a significant concern with the increasing use of AI systems in various fields, including employment, finance, healthcare, and criminal justice.

Bias in AI systems can occur in various ways, such as bias in data collection, bias in algorithm design, and bias in decision-making. For instance, if a data set used to train an AI system is not representative of the population, the resulting algorithm may not accurately reflect the reality of the entire population. Similarly, if an algorithm is designed with inherent biases, it may produce discriminatory outcomes. Additionally, if the decisions made by AI systems are not transparent and explainable, it becomes challenging to identify and correct any biases.

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[22] Vinod Joseph and Protiti Basu, "A Review Of The Information Technology Rules, 2011" *available at:* https://www.mondaq.com/india/privacy-protection/904916/a-review-of-the-information-technology-rules-2011- (last visited on May 5, 2023).

To address the issue of bias in AI, several countries have started implementing laws and regulations. In the European Union, the General Data Protection Regulation (GDPR) provides a legal framework for protecting the privacy rights of individuals and preventing bias in algorithmic decision-making. The GDPR requires that AI systems must be transparent and explainable, and individuals have the right to object to decisions made by AI systems.

In the United States, there is no comprehensive federal law that regulates AI systems. However, several states have enacted laws that address bias in AI systems. For example, the California Consumer Privacy Act (CCPA) requires businesses to disclose the categories of personal information collected about consumers and whether that information is shared with third parties. Additionally, the law requires businesses to provide consumers with the right to opt-out of the sale of their personal information.[23]

Similarly, the New York City Automated Decision Systems (ADS) law requires that city agencies disclose information about the automated decision-making systems they use and establish procedures for individuals to challenge automated decisions. The law also requires that agencies conduct algorithmic impact assessments to identify and mitigate the risks of bias in their automated decision-making systems.

7. Future of Artificial Intelligence Law in India

The future of artificial intelligence law in India is likely to be shaped by various factors, including technological advancements, legal developments, and policy initiatives. As AI continues to transform various sectors of the economy and society, it is becoming increasingly important to address the legal and regulatory challenges that arise from its use. This section explores some of the key issues and trends that are likely to shape the future of AI law in India.

One of the most significant trends is the increasing focus on data protection and privacy. With the Personal Data Protection Bill, 2019 currently under consideration by the Indian Parliament, there is likely to be a greater emphasis on protecting the privacy rights of individuals in the context of AI. The bill seeks to regulate the processing of personal data by companies and government agencies and establish a data protection authority to oversee compliance with the law. As

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[23] H Mark Lyon, Cassandra L Gaedt-Sheckter, *et. al.* "United States: Artificial Intelligence" *available at:* https://www.lexology.com/library/detail.aspx?g=d5d76e54-1c3a-48a1-bce0-346ddb1bd3a9 (last visited on May 5, 2023).

AI systems rely heavily on data, these developments are likely to have a significant impact on the use of AI in India.

Another key trend is the development of ethical guidelines for AI. In 2020, the Ministry of Electronics and Information Technology (MeitY) released the Ethics of Artificial Intelligence document, which outlines principles for the responsible use of AI in India. These guidelines emphasize the need for transparency, accountability, and human oversight in the development and deployment of AI systems. As AI continues to advance, it is likely that ethical considerations will play an increasingly important role in regulating its use.

There is also a growing interest in developing industry-specific regulations for AI. For example, the Reserve Bank of India (RBI) has set up a working group to study the use of AI in the financial sector and make recommendations for regulating its use. Similarly, the Ministry of Civil Aviation has issued guidelines for the use of drones, which incorporate AI technologies. As AI continues to be integrated into various industries, it is likely that more sector-specific regulations will be developed.

The development of AI in India is also likely to be influenced by global developments. As AI becomes increasingly important for economic competitiveness and national security, countries around the world are investing heavily in research and development. India is no exception, with the government announcing plans to establish a National AI Portal to promote collaboration and innovation in the field. As AI technologies continue to evolve, it is likely that international cooperation and coordination will become increasingly important in regulating their use.[24]

Despite these developments, there are also significant challenges that need to be addressed in regulating AI in India. One of the biggest challenges is the lack of skilled professionals and resources in the field of AI law and regulation. With AI being a relatively new and rapidly evolving technology, there is a shortage of experts with the necessary technical and legal expertise to effectively regulate its use. This has led to a reliance on international standards and guidelines, which may not be suitable for the Indian context.

Another challenge is the need to balance innovation and regulation. While it is important to regulate the use of AI to protect the rights of individuals and prevent harm, overly burdensome regulations can stifle innovation and hinder the

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[24] *Supra* note 11.

development of the industry. This requires a delicate balance between protecting public interests and fostering innovation.

In conclusion, the future of AI law in India is likely to be shaped by a range of factors, including technological advancements, legal developments, and policy initiatives. While there are significant challenges that need to be addressed, there are also opportunities for India to take a leading role in the development and regulation of AI. By striking a balance between protecting public interests and fostering innovation, India can ensure that AI is used in a responsible and ethical manner that benefits society as a whole. The future of artificial intelligence law in India is expected to be dynamic and responsive to technological advancements. As AI applications become more prevalent, there will be a growing need for laws and regulations that address their ethical and legal implications. The Indian government has already taken steps towards establishing a regulatory framework that can effectively govern AI technology, with the National Artificial Intelligence Strategy and the Personal Data Protection Bill being some of the key initiatives in this regard.

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Understanding the Tussle between Sedition and Free Speech

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Abstract

The study primarily analyzes the idea of sedition laws and its applicability in the present Indian legal environment. In order to prevent the misuse of the right to free expression, the legislation against sedition was enacted in India. With the passage of time, there has been a pervasive misuse of this specific provision, and it is currently being used as a harassment weapon to restrict free speech. The Sedition laws, which are viewed as outdated legislation created to safeguard colonial interests, have thus been the subject of numerous petitions for their removal. In a recent writ case, the Supreme Court argued that the sedition act dates back to the colonial era and questioned whether it was still necessary after 75 years of independence. The Act has been misused, according to the court, to the point where it is "like giving a carpenter a saw to cut a piece of wood and he uses it to cut the entire forest." Since the legislation against sedition in India has been used as a threatening tactic to restrict free speech, As a result, there are now several calls for the repeal of the sedition-related measures, which are viewed as outdated laws designed to advance colonial interests. The analysis of the sedition law in our nation is the main emphasis of the paper, which also aims to determine whether or not the existing laws should be updated.

Keywords: *Free Speech, Colonial, Writ, Restrictions*

1. Introduction

> *"Sedition is being used as a sort of iron hand to curb free speech, which I think is an overreaction to the expression of opinion (or an) expression of views by people."*
>
> \- Justice Madan Lokur

As a cornerstone of a free society, freedom of speech and expression is regarded as the mother of all liberties. Almost every country in the world has given this freedom precedence. The objective of this freedom is intended to allow an individual to achieve self-fulfillment, aid in the discovery of truth, increase a person's decision-making skills, and facilitate a balance between stability and

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change. In the Preamble and Article 19[1] of the Universal Declaration of Human Rights, 1948, freedom of speech was designated a fundamental right. The Indian Constitution's framers foresaw a society in which everyone has the freedom to express themselves in a fearless and tolerant environment. Years of being exposed to the British government's arbitrary limits on expression and speech made it all the more important to establish a safeguard to ensure free expression of ideas and opinions. The Indian Constitution's introduction of Article 19(1) (a)[2] was considered as a realisation of this desire and promise. The right to free speech frequently raises serious concerns, such as the extent to which the government can restrict individual behaviour. As individual autonomy is the bedrock of fundamental freedom, any restriction on it should be scrutinized closely. However, appropriate limitations can always be placed on this right in order to guarantee that it is exercised responsibly and that it is available to all people equally. This freedom may be restricted, according to Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR), if the restrictions are prescribed by law and are necessary for "respecting the rights or reputation of others" or for the protection of national security, public order, public health, or morals. Similarly in the Indian Constitution, freedom of speech and expression is not absolute; it can be curtailed in the procedure established by law such as in the interests of India's sovereignty and integrity, the state's security, cordial relations with foreign states, public order, decency or morality, or in cases of contempt of court, defamation, or incitement to an offence. Moreover, Sedition laws are also one of the many restrictions that can be used to limit free expression in the name of public safety or order. The rapid rise in the frequency of sedition prosecutions has raised questions about the law's validity as a justification for restricting the important right to freedom of speech and expression. In the recent statement Sh. Amit Shah said that the sedition has been turned into a treason and under these laws, criticising government or government functionaries is fully permissible.[3]

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1 Universal Declaration of Human Rights Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

2 According to Article 19(1)(a) of Indian Constitution: All citizens shall have the right to freedom of speech and expression.

3 "Sedition to be treason': Amit Shah explains proposed changes to criminal laws" available at https://www.google.com/amp/s/www.hindustantimes.com/india-news/sedition-to-be-treason-amit-shah-explains-proposed-changes-to-criminal-laws-101703096211979-amp.html(last visited on February 21,2024)

2. Sedition: A Conundrum

"*Section 124A under which I am happily charged is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence"* - Mahatma Gandhi, March, 1922

The words above, as correctly stated by Mahatma Gandhi during his illustrious trial in 1922 in British India, succinctly explain what sedition actually means**.** The word "Sedition" is derived from the Latin word "Seditio," which means "sed" (apart) and "itio" (going), denoting something that is "going away from." The Oxford Dictionary describes it as behavior or language that incites opposition to a state's or a monarch's rule. In the legal sense, sedition, as defined by the black law dictionary, it is an insurrectionary movement tending towards treason, but wanting an overt act; attempts made by meetings or speeches, or by publications, to disturb the tranquillity of the state.[4] In other words, Sedition refers to any act intended to incite hatred, contempt, or disaffection towards the government's sovereign, such as inspiring dissatisfaction, stirring up opposition, inciting insurrection, causing public commotion, fostering disloyalty, or causing public unrest. Section 124A of the Indian Penal Code, 1860, defines sedition as a crime. The relevance of this part in an independent and democratic country is a hotly debated topic. Opponents consider this rule as a vestige of colonial past, making it unfit for a democracy. There is concern that the administration may try to use this clause to repress dissent. Time and again it has been suggested that even without section 124A IPC, there are sufficient constitutional and statutory safeguards which can restrict this freedom as per law.[5]

3. Political Origin

Politics has always played a role in the development of laws that repress opposition. The crime of sedition dates back to the Statute of Westminster of 1275, when the King was regarded as the possessor of Divine power. It came into being as a direct result of a "rebellion of the barons"[6] against the monarch who "was considered the holder of the Divine Right," was the earliest recorded instance of such a declaration. This was done to protect the ruling class—

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[4] Black Law Dictionary, 1067 (2nded, 1910)

[5] K.D. Gaur, *Criminal law- Cases and Material 270* (LexisNexis Publications,8th edition. 2015)

6 The Origins of the Doctrine of Sedition *available at:* www.jstor.org/stable/4048812 (last visited on August 30,2023)

including the nobility—from populist upheavals that threatened the status quo. This rule, which put restrictions on scandalizing or criticizing monarchs, judges, or peers, was based on the notion of Scandalum Magnatum, or "scandal of the magnates," in Latin. Seditious speech was initially penalised under the 1534 Treason Act. Not only was the veracity of the utterance taken into account while proving the act of sedition, but also the intention of the speaker. It was created to suppress speeches that were "inimical to a necessary respect for government." During the English Reformation, between 1530 and 1550, there were riots and rebellions. As a result, there was a need to prosecute seditious statements and make provisions for heavier punishments in order to quell any challenge to the government's power. It is necessary to examine a few historical occurrences in order to see how the meaning of sedition has developed.

The offence of sedition was further developed by the new government of William III and Mary after the dissolution of Star Chamber by Long Parliament in 1641. It was a criminal under the new rule to criticise the government or anyone linked with it. In R v. Tutchin[7], Lord Justice Holt wrote:

"If men should not be called to account for possessing the people with an ill opinion of the government, no government can subsist; for it is very necessary for every government that the people should have a good opinion of it. And nothing can be worse to endeavor to procure animosities as to the management of it. This has always been looked upon as a crime, and no government can be safe unless it can be punished."

Later on the Libel Act of 1792 gave juries the power to assess not only if seditious libel was published, but also whether the accused was guilty. A shift in the definition of sedition has also occurred. Previously, it was used to keep the King's peace, but after the 1792 Libel Act, it was used whenever there was a risk of causing a public commotion. As a result, sedition came to be defined as any activity, written or spoken, that would disrupt public order, promote insurrection against the government, or bring contempt for the sovereign.[8]

4. History of Sedition Law in India

The 1830s saw the beginning of the codification of Indian laws, which is where the sedition law in its current form has its roots. Prior to being codified, Indian law was "a complex array of Parliamentary Charters and Act, Indian Legislation

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7 (1704) 91 Eng. Rep 1224.

8 RK Mishra, "Freedom of Speech and Expression in India, *JILI* 120 (1966)

(after 1833), East India Company Regulations, English common law, Hindu law, Muslim law, and many bodies of customary law."

The history and interpretation of the law of sedition in India is examined from two perspectives, one judicial and the other political. The Charter Act of 1833 established a legislative council to oversee the East India Company's civil, defence, and commercial interests. Lord Thomas Bakington Macaulay and other members of the Law Commission were tasked with drafting the Indian Criminal Penal Code in order to create a consistent system of justice that would apply throughout the Indian British Empire. The Legislation Commission tasked with establishing a penal code questioned the Indian Legislature's ability to enact a broad law of sedition. As a result, the Law Commission recommended that the Imperial Legislature create such legislation, which would be applicable throughout the Empire.

The Law Commission suggested section 113, which would make it illegal to incite dissension against the administration constituted by law in the East India Company's possessions. The provision of sedition was included in Lord Macaulay's draught penal code in 1837 as one of the clauses in section 113, but it was not included in the final code, which was passed in 1860. 107 Section 113 of the Draft Penal Code criminalised "attempts to incite feelings of discontent with the administration."

Mr. James Stephen then set out to correct this oversight. As a result of special Act XVII of 1870, sedition was included to the IPC as an offence under section 124A. This clause followed the 1848 Treason Felony Act, which made seditious utterances illegal. Mr. Stephen described one of the reasons for adding this section as the fact that without it, this offence would be punished under England's more harsh common law. As a result, the adoption of this clause was portrayed as a clear choice for safeguarding freedom of expression against the harsher common law. The adopted provision was "far more compacted, much more plainly worded, and liberated from a considerable deal of confusion and vagueness with which the law of England was encumbered," according to Mr. Stephen. The section's objective was to punish an act that incited sentiments of dissatisfaction with the government, but this dissatisfaction was to be separated from disapproval. As a result, citizens were free to express their opposition to the government as long as they demonstrated a willingness to follow its legitimate authority.

5. The Indian Scenario

The provision in IPC 1860 includes any words verbal written or any signs etc within ambit of sedition which extend to disaffection to the State under Section 124A[9]. It further includes offences under the much-abused sedition law, as it exists now attract imprisonment for life or up to three years' jail term, to which a fine could be added and new law coming in force on 1 July 2024, the offences shall be punished with imprisonment for life or with a prison term that may extend to seven years and can include a fine. The new law will be known as "deshdroh" (treason) and not "rajdroh", which referred to the British crown.

6. Judicial Response

The use of the law to silence voices of dissent, protest, or criticism of the government has persisted since its inception. The existence of sedition laws in India is still up for question in the twenty-first century in view of the expanding human rights concerns. The legal definition of sedition in India has been under scrutiny recently due to its erroneous use as a harassment tactic by the prosecuting authorities as well as the fact that it has been pronounced outmoded and so eliminated in several nations, including the UK.

6.1 Colonial Era: Narrow View

In 1897, three trials under Section 124A of the Indian Penal Code were held, with Bal Gangadhar Tilak's trial being the most well-known. Bal Gangadhar Tilak and Keshav Mahadev Bal were accused of sedition and charged under Section 124A of the Indian Penal Code in Queen Empress v. Bal Gangadhar Tilak and Keshav

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[9] The Indian Penal Code 1860: Section 124A[9], includes detailed provisions for sedition law. It says: "Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added or with fine. Explanation 1 - The expression "disaffection" includes disloyalty and all feelings of enmity. Explanation 2 - Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Explanation 3 - Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting Sedition is a crime India, as it is stated above, only punishes those who, through their actions, seek to incite scorn, hatred, or hostility toward the government. Acts of opposition to the conduct of the government are not considered part of the violation, according to Explanation 3 for the provision to excite hatred, contempt or disaffection, do not constitute an offence under this section."

Mahadev Bal1,[10] known as the First Tilak Trial. In this instance, Justice Strachey presented the jury with essential evidence for understanding disaffection by interpreting: Only acts that suggested revolt or forced resistance to the government should be attributed to this section, according to Justice Strachey, who presented pertinent material to the jury for interpreting disaffection in this instance. This decision impacted the 1989 revision to section 124A of the Indian Penal Code, which expanded the definition of disaffection to encompass disloyalty and other forms of malice, hostile sentiments. Tilak was convicted and was sentenced to 18 months' imprisonment and the other accused was acquitted. His appeal to the High Court for grant of leave to appeal to Privy Council was refused. Later, he presented a special leave petition before the Privy Council which was also refused.

A conflict arose when the Federal Court of India, the highest judicial body of the country till the establishment of the Supreme Court, in the case of Niharendu Dutt Majumdar v. King Emperor[11], the Federal Court of India, the country's highest court prior to the founding of the Supreme Court, concluded that the mere use of harsh language did not qualify as seditious speech or publishing. The behaviors or statements that are being criticized must either cause disorder or be such that reasonable folks can infer their goal or tendency.[12]

The Privy Council[13] later disregarded the Federal Court's ruling. When the speaker urged the audience to resolve not to live under Englishmen and claimed that the Government wanted to ruin those who were attempting to lead them in the right direction, that Englishmen had come to India to make the people addicted to alcohol, opium, and bhang, and that the executive and judiciary have a preference for white men, it was determined that the speech was intended to incite disaffection against the Government and to foster hatred and contempt.

6.2 Post Constitutional Scenario

The statute of sedition was challenged several times after the Constitution was adopted, claiming to be a fundamental right to freedom of speech under Article 19 (1) (a) of the Constitution.

The first time the law of sedition was applied after independence was in a case involving a forfeiture of security order issued under the Press (Emergency Powers) Act of 1931.

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10 ILR (1898) 22 Bom 112

11 Niharendu Dutt Majumdar v. King Emperor, AIR 1942 FC 22

12 *Ibid.*

13 *King Emperor* v. *Sadashiv Narayan Bhalerao*, (1947) 49 Bom LR 526

The first time the law of sedition was applied after independence was in a case involving a forfeiture of security order issued under the Press (Emergency Powers) Act of 1931.[14] Regrettably, the court found that this external norm cannot be read into section 124A of the IPC, and that no other exceptions can be made except for the two explanations.

In Tara Singh v. The State of Punjab[15], section 124-A of the IPC was declared invalid for violating the freedom of speech and expression guaranteed by Article 19(1)(a). The first amendment to the Constitution, which added the additional grounds of "public order" and "relations with friendly states" to the list of permissible restrictions on the freedom of speech and expression under Article 19 (2), prevented the negative consequences of the aforementioned case.[16] Furthermore, to prevent government exploitation, the term "reasonable" was added before "restrictions."[17] As a result, it brought section 124-A of the IPC into compliance with Art. 19 (1) (a), which was preserved by the phrase "in the interest of public order" in Art. 19(2). It has been claimed that the phrase "in the interest of public order" has a broader meaning and encompasses more than just behaviors that could disrupt the peace. This interpretation holds that Section 124-A of the IPC is unconstitutional.

6.3 The Precedent

The Supreme Court addressed the constitutional validity of section 124A of the IPC in Kedar Nath Singh v. State of Bihar.[18] The Constitution Bench, which included Justice BR Sinha, CJ, Justice AK Sarkar, Justice SK Das, Justice J.R. Madholkar, and Justice N. Rajagopala Ayyangar, heard this case along with others involving the same subject. Kedar Nath, who was sentenced to one year in prison after being convicted under Section 124A of the IPC and Section 505 (1) (b) of the IPC 264, filed the appeal. He being a member of the Forward Communist Party of Bihar, was sentenced under Section 124A of the Indian Penal Code for making disparaging words about the Congress. He referred to Congress members as goondas and accused them of corruption and black marketing. He declared that the Forward Communist Party would reveal Congress leaders' wrongdoings and urged the people to depose Congress like the

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14 *Urdu Daily Newspaper Pratap, New Delhi* v. *Crown*, AIR 1949 East Punj 305.

15 AIR 1950 SC 124

16 Siddharth Narrain, Disaffection and the Law: The Chilling effect of Sedition Laws in India, *XLVI* (8) EPW34 (2011)

17 *Id.*

18 AIR 1962 SC 955.

British did. Kedar Nath's conviction was upheld by a single judge of the Patna High Court.[19]

The appeal was filed with the Supreme Court's Division Bench, but it was heard by the Constitution Bench since it raised a legal challenge concerning the constitutional validity of section 124A of the IPC. The Supreme Court considered the history of sedition law as well as the various High Courts' and Privy Council's interpretations of the clause. The court found that any act that has the potential to overthrow the government's power, bring the government into hatred or contempt, or incite disaffection against the government would be covered by section 124A of the IPC. The court upheld the Federal Court's judgment to read 'tendency to violence or public disorder' into section 124A of the IPC in order to pass the constitutional validity test and align it with English sedition law. The court further mentioned that:

"Government established by law' is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence, the continued existence of the Government established by law is an essential condition of the stability of the State. That is why 'sedition', as the offence in Section 124-A has been characterized, comes, under Chapter VI relating to offences against the State. Hence any acts within the meaning of Section 124-A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence."

Moreover at the same time struck a balance between sedition law and freedom of speech and expression.

The court reaffirmed this principle in Nazir Khan & Ors. v. State of Delhi[20], saying:

"Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder."

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[19] RK Mishra, "Freedom of Speech and Expression in India, *JILI* 120 (1966)

[20] AIR 2003 SC 4427.

In Common Cause & Anr. v. UOI[21], a request was made to grant instructions for reconsideration of pending sedition charges in various courts, where a superior police official could certify that the "seditious act" either incited violence or had the potential or intention to cause public disorder. The court allowed the petition and instructed the authorities to follow the standards set forth in Kedar Nath[22] Singh when dealing with section 124A of the IPC.

In Kanhaiya Kumar v. State (NCT of Delhi)[23],74 the petitioner, who was prosecuted under section 124A of the Indian Penal Code, applied to the Delhi High Court for bail. In reaching a decision on the matter, the Court noted that while exercising the freedom to Article 19(1)(a) of the Constitution guarantees freedom of speech and expression. Every citizen must keep in mind its fundamental duties enshrined under Article 51A of Part IV of the Constitution.

The preceding legal decisions were considered in order to determine what constitutes seditious acts. In light of this, it might be claimed that the act would not fall within the ambit of section 124-A of the IPC unless the words or actions in issue do not endanger the state's or the people's security; or cause any type of serious public disorder.[24]

6.4 Current Scenario

According to the data from the National Crime Records Bureau (NCRB), 356 cases of sedition under Section 124A of the IPC were registered and 548 people were arrested between 2015 and 2020. A total of 356 cases of sedition have been registered between 2015 and 2020. During this six-year period, however, only 12 people arrested in seven sedition cases were convicted.25

The cases under the charges of sedition across the country were 73 in 2020; 93 in 2019; 70 in 2018; 51 in 2017; 35 in 2016 and 30 in 2015. The conviction rate of sedition cases was 33.3% in 2020; 3.3% in 2019; 15.4% in 2018; 16.7% in 2017 and 33.3% in 2016. A total of 44 persons were arrested under the sedition law in 2020, as compared to 99 in 2019; 56 in 2018; 228 in 2017; 48 in 2016; and 73 in 2015.[26]

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21 (2016) 15 SCC 269

22 *Supra* Note 20 at 10.

23 (2016) 227 DLT 612.

24 *Supra* Note 20 at 10.

25 *Available at* https://www.siasat.com/548-sedition-related-arrests-since-last-six-years-ncrb-data-2324262/ (Last visited, May 11,2022)

26 *Ibid.*

Out of 548 persons, 290 belonged to the 18-30 year age group between 2015 and 2020 while the remaining is in the 30-35 age brackets.

Assam had the most arrests for sedition over the last three years for which the NCRB has published crime statistics (2018-2020), with 23 in 2018 and 2019, and 10 in 2020. Andhra Pradesh (15), Madhya Pradesh (4), and Chhattisgarh (3) had the most arrests under Section 124A of the IPC in 2018; Karnataka (18), Nagaland (11) and Uttar Pradesh (9) had the most in 2019; and Uttar Pradesh (8), Nagaland (7), and Karnataka (6) had the most in 2020. Manipur had the most sedition cases (15) in 2020, followed by Assam (12), Karnataka (8), and Uttar Pradesh (1).[27]

On 15th July 2021 the Supreme Court requested the administration to reconsider the scope of the sedition statute for the third time in a little over a month. CJI of India Sh. N V Ramana, hearing a petition challenging Section 124A of the IPC, a colonial-era legacy that punishes "sedition" with a maximum sentence of life in prison and allows police to arrest without a warrant, questioned the need for "a law that was used by the British to silence Mahatma Gandhi and Tilak." At the very least, his remark that "everyone is a little afraid when this clause is applied" should drive courts to challenge law enforcement agencies more when they utilize 124A.[28]

The Supreme Court maintained the constitutional legitimacy of the sedition statute in the Kedar Nath decision[29] in 1962, but also declared that citizens have the right to criticise the government as long as they do not promote violence. Since then, a developing body of case law has defined 124A's boundaries. Governments, on the other hand, have continued to use the bogey of sedition to silence dissenting voices, whether they are activists like Binayak Sen, writers like Arundhati Roy, protestors against nuclear power plants, opponents of the CAA or farm laws, Disha Ravi and other students arrested for merely shouting slogans, or journalists questioning government policies. In most cases, lower courts have failed to investigate arrest warrants using the Kedar Nath criteria. This is one of the reasons, according to CJI Ramana, "the conviction rate in such cases is relatively low." According to 2019 National Crime Records Bureau reports, only 3% of such instances result in convictions.

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27 *Supra* Note 26 at 11.

28 *Available at* https://www.siasat.com/548-sedition-related-arrests-since-last-six-years-ncrb-data-2324262/ Last visited, May 11,2022

29 *Supra* Note 16 at 9.

The court also gave the government notice of a writ case filed jointly by the Editors Guild of India and cartoonist Aseem Trivedi. The Supreme Court is currently hearing two further petitions brought by Kishore Chandra Wangkemcha and M/s Aamoda Broadcasting Company Private Limited,[30] the latter of which is against the Andhra Pradesh government. Both cases involve charges of sedition.

In the Vombatkere case[31], a bench led by Justice U.U. Lalit had issued notice. A bench led by Justice D.Y. Chandrachud is hearing the Aamoda petition. On Thursday, the CJI Bench stated that all of the petitions raised "similar legal issues." The Court directed that the matters be scheduled for hearing before an appropriate court.

The Supreme Court ruled on Wednesday that the 152-year-old sedition statute under Section 124A of the Indian Penal Code should be repealed. The Court issued an interim injunction urging the Centre and State governments to desist from filing any FIRs under the clause while it was under review. All ongoing trials, appeals, and proceedings were ordered to be dismissed by a bench consisting of Chief Justice of India NV Ramana, Justice Surya Kant, and Justice Hima Kohli. It was decided that adjudication of other parts might proceed without prejudice to the accused.

The Supreme Court also held that anyone who have been arrested under Section 124A of the Indian Penal Code and are now detained can seek bail from the proper tribunals. If a new case is brought, it has also been ruled that appropriate parties are free to approach courts for appropriate remedies, with courts being requested to consider the remedy sought in light of the court's ruling. Until further notice, these guidelines are in effect.[32]

Over a year after the Supreme Court ordered a stay on the use of the sedition statute, the 22nd statute Commission of India recently unveiled its final report, "Usage of the Law of Sedition," This research, which meticulously examines the validity of Section 124A of the Indian Penal Code, is of utmost importance in the fields of law and politics. The 279th report from the Law Commission, titled "Usage of the Law of Sedition," provides a thorough analysis of the development and use of Section 124A, which deals with the crime of sedition, across time. The report examines the continuing applicability of this legal provision, critically

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30 Writ Petition (Criminal) No. 106/2021

31 S.G. Vombatkere vs. UOI Writ Petition(C) No.682 Of 2021 decided on 11.05.2022.

32 *Ibid.*

examines examples of its alleged abuse, and offers suggestions for required modifications. Its extensive scope includes a variety of facets, such as historical study, contemporary significance, and a comparative examination of sedition laws.

The Commission has made three significant recommendations. The first is Section 124A of the Indian Penal Code, which contains the law of Sedition, be amended to incorporate the meaning of Sedition which was laid down by the Supreme Court in Kedar Nath Singh v. State of Bihar.[33] The Second is that minimum sentence should be increased from three to seven years. The third is that First Information Report in sedition case should be registered only after a police officer, holding the rank of an Inspector or higher, makes a "preliminary inquiry."

7. Conclusion

Sedition is considered as a constitutional issue rather than a criminal law issue because of its oppressive effect on a constitutional protection of freedom of speech and expression. Sedition laws have always been existed in history and in present times deemed incompatible with freedom of speech and expression. "It was obvious that the practical enforcement of this doctrine was wholly inconsistent with any serious discussion of political affairs, and so long as it was recognised as the law of the land, all such discussion existed only on sufferance," wrote Sir James Stephen, the draftsman of the framework of sedition laws in colonies.[34] Sedition laws are now justified on the basis of narrow grounds meant to undermine the system of democracy. In general, freedom of speech can be restricted if it "produces extra-legal change that undermines the process of rational deliberation that is an a priori value of a democratic system" or "produces extra-legal change that erodes the process of rational deliberation that is an a priori value of a democratic system."[35]

The objective behind the study on this topic is the rampant abuse of law of sedition in the recent times in the country and the world. Freedom of Speech and Expression has been given a supreme place as it is regarded as first and foremost right in the process of individual's self-development. It is like an asset in perpetuity that no one actually wants to part with. The tussle between the law of sedition and freedom of speech and expression is ever growing to the extent that

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33 *Supra* note 16 at 9

34 *Available at* https://www.siasat.com/548-sedition-related-arrests-since-last-six-years-ncrb-data-2324262/(Last visited, May 11,2022)

it has pressurized our governments to review the law of sedition in the twenty first century. As Supreme Court recently put the law in abeyance and hopes that the legislator revisits the controversial legislation. If we talk about recent events sedition has been used as a sword rather than shield. The inherent dispute between the two i.e. freedom of speech and expression and sedition cannot be solved while serving the underlying interests of the government. No doubt free speech is one of the essential to healthy democracy. From the time immemorial we have seen that the law of sedition has been used as a tool of oppression which in turn restricts the fundamental right of free speech. As with freedom comes great responsibility that means no freedom is absolute and reasonable restrictions should be imposed in the interest of nation as a whole. Therefore, while revisiting this law government should strike a balance to maintain public order, sovereignty and integrity of India.

Moreover, there has been a new tendency of charging anyone who speaks badly of the country with sedition. However, any act, speech, or writing that is not in the national interest is not considered sedition, according to the argument. The section's explanation only adds to the consternation. The explanation simply states that criticising government policies in order to change them through peaceful ways is not considered sedition. However, drawing a boundary between criticism of the government and criticism of the government's measures is difficult, and even if one is drawn, it will be shaky. In India, the law of sedition has been abused due to differing interpretations. The terms democracy and freedom of speech and expression have become interchangeable in recent years. As a result, the law of sedition must be incorporated and its scope determined appropriately. In a modern political, social, and democratic environment, it is necessary to modify the statute of sedition. The possibility of removing the sedition legislation has major repercussions, given the country's insurgency and separatist movements. There is currently no self-contained and comprehensive legislation in place to address such a threat. In these circumstances, repealing the sedition statute does not appear to be a wise decision. The retention of archaic colonial phraseology in the statute of sedition has led to its abuse to the point that it has been used to violate the fundamental right to freedom of speech and expression. As a result, modernizing the statute of sedition is strongly urged.

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Food Security with Special Reference to Covid 19: A Human Right

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Abstract

An enhancement in number of countries on globe cause lack of balance on food security, development also not able to secure food, or we can say food security is not achieved yet. Hunger is the big problem before the society even during modern era, where we have so many tools to produce, and food security is much broader term then hunger. Food Security, includes food, grain, nutrition and healthy growth. During COVID-19 there was less production, more wastage of resources. But before COVID-19 also food security was a problem, we can get an idea from "Sustainable Development Goals" also include ZERO HUNGER. But COVID-19 makes it more difficult task to achieve, it is affecting yearly since 2019. Let's discuss the effect of COVID-19 upon Food Security. Researchers aims to look into the matter with international perspective and rising food insecurity during the COVID-19 pandemic. Researcher thrust to know is to know the primary risks to food security. Researchers believe that each country has different risk level. Researcher found that the higher retail prices and reduced incomes during covid 19 is one of the major reasons for low rate of food availability. The objective of this paper is to study international policies and conventions on Food Security. An Empirical and fundamental study on right to food as a human right. To understand the concept of Food Security and origin of this concept. The progress of different countries toward zero hunger. Role of zero hunger in sustainable development. A Comparative study of policies adopted by different nations for achievement of Food Security in their national prospective especially during covid 19 period. Researchers have also objective to maintain the relation between Right to food as human right. It will be check by the researcher on the touchstone of fundamental rights and Indian constitution preamble.

Keywords: *Food Security, Right, Fundamental, Comparative, Human Rights.*

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1. Introduction

Hunger is on the rise again globally and under nutrition continues to affect millions of children, Migrant Labors and their families. The World Food Summit 1996 defined Food Security as existing "when everyone has access to enough healthy food at all times to lead active lives that are both healthy and safe." Food security means availability, accessibility, affordability of Food, physical as well as economic to meet the need of every one. Right to Food is a human right article 11 of international convention Economic, Social, and Cultural Rights to an adequate food. Food Security also a Directive Principle of State Policy which has its origin in article 39(a) and 47.

For eradiation of Hunger and Malnutrition the First World Food Conference, "Universal Declaration on the Eradiation of Hunger and Malnutrition" was adopted on 16 Nov 1974. A multilateral food aid programme was established with the support of UN General Assembly in 1961, named as World Food Programme. A new global declaration to reduce extreme hunger, came to known as the Millennium Development Goals, it includes a commitment till 2015 to achieve the goals[1].

The Agenda for Sustainable Development, adopted by all United Nation member states in 2015, provides a shared blueprint for peace and prosperity for people and the planet, now and into the future. UN decided 17 goals which are an urgent for action by all the countries-developed and developing- in a global partnership. No Poverty, Zero Hunger, Good Health and Well- Being are three goals which are related to Food security. UK Government to achieve the Zero Hunger Goal, to develop agricultural Policy that delivers an Environmental Land Management system based on Public money for public goods. A number of schemes are implemented in India. More than 800 people are covered under Food Grains at affordable prices through Public Distribution System. The Mid –Day-Meal Programme is also providing nutritious meals to 100 million children in primary schools[2].

2. Objective of Research Paper

The objective of this paper is to study international policies and conventions on Food Security. To understand the concept of Food Security and origin of this concept. The progress of different countries toward zero hunger. A Comparative

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1 Food Security: Concepts and measurements, Available at, http://www.fao.org/3/y4671e/y4671e06.htm (last visited on June 12 2020)

2 *Supra* note 1 at 2

study of policies adopted by different nations for achievement of Food Security in their national prospective.

3. Concept of Food Security

Food Security was originated in 1970. At that time the food crisis was a global problem. Price stability, food supply, availability of foodstuff were major issues at that time as well as production of food. The concept of globalization was not in trend and supply of food varieties. As well as import tax and export tax were huddle in the way of food supply. During that era, A Conference named as World Food Conference held in 1974, and changes the institutional arrangement, global food economy.

Before the modern concept there was also food security in ancient time period but uses in different sense. Collecting food for difficult time by every person for himself and his family was food security. Depositing some percentage of crop as a tax in King's Palace was rule and during the epidemic time King would distribute the food among public. This system was also considered as food security. Let's discuss the modern concept of Food security with the help of modern definition.

Food security was defined in the 1974 World Food Summit as to offset the fluctuations in prices and stable production, as well as availability of basic food, to sustain the food consumption, adequate food supply through whole world, zero hunger level in the world is fulfilling the concept of food security.

Food Security is different from secure food, food secured from all harms is secured food, but here food security term interprets widely, we can understand the term in easy way as follows.

Acc. to us, Food security means food shall be available to every person, any time he wishes to eat, but not only one or single but there shall be availability of varieties and nutrition, at lower prices or we can say at sustainable price that, buyer can purchase it and farmer can sell it without loss. That is the real meaning of food security.

The interpretation of Food Security term was also given wider scope by FAQ, in 1983, to include the security of demand and supply shall be balanced, and also secure the access physically as well as economically for all. Sustainable availability between price and supply.

There are four parameters to check the food security. These are as follows: -

Availability of Food: Food production shall be touched or above the line of hunger or demand. There shall be no lack in production of food, it shall fulfil the commercial and domestic purpose both.

Sustainability of Supply and Price: Food shall be accessible for all irrespective of income and status. Income shall not be huddle in the way of accessibility of food. The barter system shall also prevail in sale of food. Supply of food shall be balanced also for the sustainability in food security.

Utilization: Wastage of food especially in commercial production as well as distribution is a major hurdle in food security. Wastage of food among storage is also big issue. Food shall be utilized through proper channel, and storage practice shall improve.

Stability: There shall be stability of food. Food shall be available from crisis or seasonal shortage. The production of food shall be increased.

4. International Framework on Food Security

We all know that International Law is the outcome of mutual treaties, customs and some general civil rules which are adopted universally. So, before discussion on the International Framework on Food Security, we will classify International Framework in to two categories: -

1) Those are enforced at International Level
2) Those are enforced at domestic level.

In the 1st category countries pass resolution as well as set an agency or organization which will act as a supervisor and in second category the rules are framed to set a universal standard which are followed by every member state in their domestic laws. So, let's start with the first category.

4.1 Organizations for Food Security at International Level

These organizations work as an enforcing agency or we can say performed administrative work. One of them we are discuss in our paper.

FAO (Food and Agriculture Organization) 1945

FAO was established by UN in 1945 as a specialized agency. As we know UNO was established for maintaining peace and security in the world. Before Half of

the century world faced two world war, whole world was under drastic change, many colonies were becoming Independent Countries, hierarchical kingdoms were changing into democracy, Industrial Revolution, Climate change, hunger, poverty and many other problems. UN played a very important role during that time period even till the date plays a very important role.

FAO was established with objective of attaining food security, health of people, good quality of food. These objectives are interlinked with each other, food security related to good quality of food and quality of food related to healthy life.

- To achieve zero hunger, food security and come up with malnutrition.
- To reduce the poverty and enhance rural life.
- To make efficient agricultural system fit for production as well as sustainable.
- To make forestry and fisheries more efficient and productive.
- To make agriculture, forestry and fisheries more productive and sustainable

4.2 Treaties for Framing Rules on Food Security

UN Conference on Food and Agriculture 1943**:** A conference was held in Virgina, with the participation of 44 Nations. A decision was The FAO was created as a result of this conference. Franklin D. Roosevelt, the president of the United States, proposed holding the United Nations Conference on Food and Agriculture at the Homestead Hotel in Hot Springs, Virginia, from 18 May to 3 June 1943. The Final Act was signed by participants from 44 countries. In order to create "a specific plan for a permanent organisation in the field of food and agriculture," an interim commission was established."[3]

First World Food Conference 1974**:** It was held in Rome on 5-16 Nov 1974, where governments examined the global problem of food production and consumption. The Universal Declaration on the Eradication of Hunger and Malnutrition was adopted on 16 Nov 1974 by World Food Conference. The Conference Proclaims[4]:

Every Human being has a nontransferable right to food and free from hunger as well as malnutrition. Every human being has a right to developed fully

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[3] the founding of FAO, *available at,* http://www.fao.org/3/p4228e/p4228e04.htm (last visited on June 12, 2020)

[4] United Nations, *available at*, https://daccess-ods.un.org/access.nsf/Get?OpenAgent &DS=E/CONF.65/20&LangE (last visited on Aug 5, 2021).

physically as well as mentally. Eradication of Hunger is main object of all the countries in this world. No country till the date achieves the goal of zero hunger in their country. World already so much enriched with the technologies and resources to achieve the goal. Society, these days already possesses sufficient resources.

World Declaration and Plan of Action for Nutrition 1992

It was the First International Conference on the Nutrition. The World Declaration on Nutrition declare:

The object of this declaration is to achieve zero hunger and free from malnutrition. It recognizes that the main problem in the world is not less production of food but it is unequal distribution of food, inequality among accessible methods. The reasons behind the poverty in uneducated and unskilled people. Declaration objects upon sustainable development in the world. It ensures better nutrition and health for present and future generations. It will implement at national as well as international level, improve food, nutrition, education. The programs shall be extended to every sphere as well as in such a aspect that reduce the unequal distribution of food, and make available for every.

World Food Summit 1996

This Summit took place from 13 to 17 Nov in 1996. As we know All the Summits and conferences, as well as declarations are having object to eliminate the hunger and malnutrition, to achieve the zero hunger, food security and sustainable availability of food. The difference which makes it different from others is that it raised awareness among the decision makers. It has a blueprint related to efforts which are implement in eradication of hunger among all countries. It targets to reduce up to half of the numbers of undernourished people by 2015.

4.3 Food Assistance Convention 2012

Food Assistant Convention was adopted on 25 April, and it aims at nutrional need of population. Its object is to encourage the governments of countries which are having more insecurity in their country to owned such strategies that address causes of food insecurity via long term measures. It ensures linkage between relief and recovery, to check whether policies are implemented properly or not. Countries have their own policies which helps in overcome the situation which eliminate hunger from the countries. It aims at saving lives, improve food security, and improve nutrition and reduce hunger.

5. Right to Food as a Human Right

If we consider the universal document for human right that is *Universal Declaration of Human Rights*, which is considered as Magna Carta or as *Grundnorm* in Human Right's Documents. Article 25 (1) of the Universal Declaration of Human Right declares that:

Human being has a right to live with dignity, adequate standard of living and will-being of himself including food, cloth, services and the right to security in the sickness, old age, disability and others where livelihood is in circumstances beyond the control of human being[5].

Food security is not one day project for any nation. Development of every nation may vary the ratio of settlement of food security. There is a thin line difference between Right to food as a Legal right or Human Right or constitutional right.

Human Rights are the universal rights and universally applicable irrespective of their caste, color, gender, sex, nationality. Universal Framework in the form of many treaties like, UDHR, ICCPR, ICSER protect the right of human being specially right to food, nutrition and global justice. Making the government responsible for the population providing security of food. During the COVID-19 every govt plays an important role in food security. Human Rights makes a harmony between the government and citizen related to obligation and right[6].

The evolution of codified Human Right era started with the UDHR 1948, after the World War II. Codified Human Rights includes the food security, health and other standards related to life with dignity. This declaration was a result or output of World War II, in which atom attack at Hirosma and Nagasaki were shameful for human being and destroyer to humanity. UN was also result of it. After this the era of codification of Human Rights and treaties with the advanced Human Rights were become trending. A new level was set up for human rights, like right to live with dignity includes right to privacy, chose partner and others. Right to food include right to nutrition, food security, availability of food at sustainable prices, accessibility of food, as well as availability of varieties.

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[5] Universal Declaration of Human Right, Available at,https://www.un.org/en/universal-declaration-human-rights/#:~:text=(1)%20Everyone%20has%20the%20right%20to%20a%20standard%20of%20living,age%20or%20other%20lack%20(last visited on June 12 2020) .

[6] food and nutrition insecurity, available at,https://publichealthreviews.Biomed central.com/articles/10.1186/s40985-017-0056-5 (last visited on June 5, 2021)

Universal Declaration of Human Right was the first stone in the building of Human Right Charter.

UDHR raise the standard of living, adequate for health and wellbeing. Food cloth, house and medical care

It was specifically stated in the UDHR that everyone has the right to “a standard of living adequate for the health and well-being," which includes "food, clothing, housing, medical care, and necessary social services, as well as the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.”[7]

Despite the political constraints of the Cold War, states sought to formalize these rights in the 1966 ICESCR, providing under the following[8]:

Article 11: "The right of everyone to a standard of living adequate for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions," with states recognizing the fundamental right of everyone to be free from hunger" and including specific obligations "to ensure an equitable distribution of world food supplies in relation to need."

Article 12: The obligation for states to take all actions "necessary for the improvement of all aspects of environmental and industrial hygiene" and for "the prevention, treatment, and control of epidemic, endemic, occupational, and other diseases," as well as "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

6. International Convention on Economic, Social and Cultural Rights

Article 11 of the International Convention on Economic Social and Cultural Rights declares that,

The States Parties to the present Covenant acknowledge that everyone has a constitutional right to an adequate standard of living for himself and his family, including enough housing, food, and clothing, as well as a right to ongoing

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7 *Supra* note 6.

8 *Supra* note 6 at 9

improvements in living conditions. The States Parties will take the necessary actions to ensure the realization of this right, understanding the critical importance of free consent-based international cooperation in doing so."[9].

This research shows that right to food is a human right and it is protected everywhere in the documents relating to the Human Rights as we know the human rights are basic need of every human being. Food is very necessary for the living person so right to food is basic human right and every document protects as well as and ensure the duty of nation toward food security.

7. Indian Constitution and Right to Food

Under this subheading, we will discuss that whether "Right to Food" is a constitutional right or fundamental right? Up to what extend the State has liability to provide food to its citizens. Is the concept of Food Security is mentioned in Directive Principles of State Policy or not?

7.1 Right to Food as a Fundamental Right

In PUCL v. Union of India[10], the Supreme Court has held that:

People who are starving because of their inability to purchase foods grains have right to get food under Art 21 and therefore they ought to be provided the same free of cost by the states out of surplus stock lying with the states particularly when it is unused and rotting. The court held that under such a situation food grain be provided to all those who are aged, infirm, disabled, destitute women, destitute men, pregnant and lactating food grains lying in godown available to all those women and destitute children. Accordingly, the court directed the states to make surplus food grains lying in godowns available to all of them immediately through PDS shops to avoid starvation and mal-nourishment[11].

In Patel Dharmesh Bhai Naren Bhai v Dharmendra Bhai Pravin Bhai Fufani[12] The Gujarat High Court noted that the right to free trade in food goods like meat, or any such food, has to be subservient to the public health and food safety needs, holding that the right to safe food is a Fundamental Right under Article 21 of the Indian Constitution.

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9 https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx (last visited on June 12, 2020)

10 J.N Pandey, "*The Constitutional law of India*", , p. at 283, Central Law Agency, Allahabad, 49th edition, 2018.

11 S*upra* note 10.

12 2023 (Gujrat High Court) 70

7.2 Directive Principle of State Policy and Right to Food

Article 47 of Indian Constitution imposes a duty upon the state to raise the level of nutrition and standard of living of its people and improvement of public health. This research paper states that government should raise the level of nutrition. If we interpret widely the concept of Food Security then the lack of nutrition will also mislead food security concept. For raising the standard of living first essential is to improve the health of citizens.

8. Comparative Study of Food Security Policies

Under this subhead we will discuss the policies adopted by USA,UK And India. Firstly we will discuss policies and progress of USA.

Policies by USA Government to Achieve Food Security

To combat severe food insecurity, the Office of Global Food Security and the United States Agency for International Development (USAID) are working to advance Feed the Future (FTF), the U.S. government's global hunger and food security initiative, as well as the G-7 New Alliance for Food Security and Nutrition, a collaboration between the governments of the G-7 and African nations, as well as the private sector.[13].

U.S. Government Global Food Security Strategy 2017-2021

The U.S. Government, in partnership with other governments, civil society, multilateral development institutions, research institutions, universities, and the private sector, will build on experience to date to address these challenges, take advantage of opportunities, and advance food security and improved nutrition by focusing efforts around three interrelated and interdependent objectives[14]:

- Agricultural improvement and sustainable economic growth help in some sectors to overcome from poverty and hunger. It also increases the productivity of food and distribution of food generate income as well as create employment. Opportunities are created via distribution, transportation, availability all of these are generating income which also helps in reduction of hunger from the country.

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[13] Food Security, *available at*, https://www.state.gov/agricultural-policy/food-security/(last (visited on June 12 2020)

[14] U.S. Government Global Food Security Strategy 2022-2026, *available at*,https://www.usaid.gov/what-we-do/agriculture-and-food-security/us-government-global-food-security-strategy (last visited on June 12 2023)

- Emerge from poverty by strengthened resilience among people. It effects the ability of Human being, also grow up the sustainability among the system to overcome from poverty as well as hunger.
- Population especially women and children as undernutrition, especially during pregnancy and till child third birth year, leads to lower economic and physically growth. The main growth of a country and target for zero hunger achieved if during this time proper nutrition provided[15].

Policies by UK Government to Achieve Food Security

On 26 June 2019, the UK Government published its report on the implementation of the SDGs so far. The UK's report – the Voluntary National Review (VNR) – will be presented at the High-Level Political Forum on Sustainable Development scheduled for 16-18 July in New York[16].

In the VNR, the UK Government claimed these achievements:

- Free health service as well as high quality of service.
- Standard of education shall be raised.
- Employment shall be increased for women and person with disability;
- Environment and climate shall be improved;
- The standard of equality shall be raised via legislative measures.

Government acknowledged areas that need further work:

- Inequality leads to injustice.
- Increasing efforts toward climate and environmental issues.
- Housing Market for everyone;
- Need to care upon mental health; and
- Care and protection with support toward aged population.

Policies by Indian Government to Achieve Food Security

In 2016, With the Green Revolution in India, India become grain exporter, as well as moved away from food dependency. In 2014-15 grain production was 250 million tones. In 2016, governments started program to double the income of farmer till 2022. Rastriya Krishi Vikas Yojna, an integrated schemes on oil seeds, palm oil, pluses. Pardhan Mantri Fasal Bima Yojna for the protection of farmer

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15 *Supra* note 13

16 Sustainable Development Goals, available at,https://commonslibrary.parliament.uk/social-policy/health/sustainable-development-goals-how-is-the-uk-performing/(last visited on May 10, 2023)

from economic loss as well as to increase. Organic food is also having its origin in India[17].

Food program for the children, and pregnant ladies are also launched by the government,

The government has also taken significant steps to combat under- and malnutrition over the past two decades, such as through the introduction of mid-day meals at schools, anganwadi systems to provide rations to pregnant and lactating mothers, and subsidised grain for those living below the poverty line through a public distribution system. The National Food Security Act (NFSA), 2013, aims to ensure food and nutrition security for the most vulnerable through its associated schemes and programmes, making access to food a legal right[18].

9. COVID 19 and Changing Scenario for Food Security

As we know the Food Security is liability of government and right to food is a human right. In the paper we have learn that the meaning of Food Security had been changed from initial to 2015 sustainable development goals 2030. Initially only availability of eatable food was goal but with the changing society's need it will convert into nutrition food. But in this epidemic time the terms has been changed again and we are again 50 years back. Migrants and laboring class faces lots of problem relating to food. Although, Government distributes food through public distribution system but not available for all because all the states have their own ration card and a proper channel follows by distributer. It is not fault of government but due to circumstances government has failed to provide food for everyone. During this time the responsibility of Food Security has been widely interpreted by the world and people at individual level, community level, state level tries to help migrants. This is the changing scenario of food security during COVID 19, the scope of definition of Food Security has been narrowed again and liability level has been wider.

Zero Hunger and COVID 19

Zero Hunger was the 2nd goal among 17 goals of Sustainable Development Goals 2030 set in 2015 by UN. All the member countries adopted policies to achieve these goals. But COVID 19 arrives as a disaster in the World and all the policies are failed. Here we are sharing some data.

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17 United Nation India, *available at*, https://in.one.un.org/un-priority-areas-in-india/nutrition-and-food-security/(last visited on June 12, 2021)

18 *Supra* note 16 at15

According to the World Food Programme's Global Report on Food Crisis, 821 million people worldwide suffer from chronic hunger and must eat before bed each night. Additionally, 135 million people worldwide are in danger of starvation. By the end of this year, 265 million people worldwide would be going without food.[19].

The Right to Food in the United States and the COVID-19 Pandemic is the situation where people in the U.S. should ask to have their human right to food fully realized. While the U.S. has taken some steps to demonstrate its commitment to economic, social, and cultural rights, the right to food remains one of the most violated human rights in the country. The U.S. played a significant role in the elaboration and adoption of the Universal Declaration of Human Rights in 1948, which consists of 30 articles affirming the full range of individuals' human rights. Furthermore, the U.S. ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)[20]

The COVID-19 crisis has brought to light the stark inequities that leave tens of millions in persistent hunger and poverty in the U.S. and almost a billion worldwide. More than 30 million people across the nation applied for unemployment benefits in the few weeks alone, and millions more will likely lose their jobs. What will follow is an equally staggering rise in food insecurity. COVID-19 is pushing the emergency feeding system to its limits, exposing the true extent of the hunger problem in the United States at its roots[21]. Researchers believe that this situation raised at U.S is causing their violation of Human rights. People at U.S are asking to provide basic food security through financial aid in form of unemployment benefits to them. This can be one solution to avoid the violation of human rights by providing food.

10. Suggestions to Achieve Food Security

(i) Right to Food is a Human Right but make food available is only Government's Liability, why?

(ii) There should be more awareness for this issue.

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[19] Coronavirus Outbreak: World Food Programme Chief Warns Of 'Hunger Pandemic' As COVID-19 Spreads, *available at,* https://swachhindia.ndtv.com/coronavirus-outbreak-world-food-programme-chief-warns-of-hunger-pandemic-as-covid-19-hunger-pandemic-as-covid-19-spreads-45223/ (last visited on June 13, 2022)

[20] " Violations of the Human Right to Food During COVID-19 in the United States", *available at* https://www.ohchr.org/Documents/HRBodies/SP/COVID/Academics/Uiniversityof MiamiSchoolofLawHumanRightsClinic.pdf ,(last visited on June 2, 2021).

[21] *Supra* note 19 at 17

(iii) NGO's can raise their voice for the food security as a uniform issue for all.
(iv) There should be a strong legislation for the food security i.e., MANREGA.
(v) Transparency and accountability of the administration should fix for the implementation of policies.
(vi) The benefits of policies should be ensured by the government at regular basis.
(vii) Government shall not make policies to distribute food but creates more job and earning opportunity which will increase the buying capacity of people.
(viii) Right to Food should be direct part of Fundamental Right under the Indian Constitution.

11. Conclusion

Researchers found that ensuring adequate working conditions, minimum living wages, and gender and racial equity are few of Secure and protect people of color and Indigenous communities by providing basic unemployment benefits. Secondly, Promote Food security should be Environmentally Sustainable for a green earth. Infact Support, subsidize and incentivize independent and small-scale food producers should be promoted in such way that Incentivize food producers that implement sustainable practices and hold agricultural companies liable for their impacts on the environment, which taint water and food supplies are few essentials that should be completed in view of the common situation of all nations irrespective of their development and underdevelopment[22]

[22] *Supra* note 19 at17.

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A Primary Study on the Child Care Challenges of Women Police Personnel in Punjab

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Abstract

Nature has bestowed women with its best gift of motherhood which is the biggest contribution of women to mankind or society. A woman's identity and life trajectory are said to be irrevocably altered by becoming a mother. Women continuously juggled with the ability to combine a career with the added responsibility of raising a child specifically women in police with hectic and unscheduled work responsibilities. The journey of police mothers is not easy. Untimely phone calls for duties, no fix time of work and outstation duties puts an extra burden on women police officers. Leaving her child in someone else's care is difficult–both emotionally and logistically. This puts a stress on women police officers minds and a sense of guilt occurs among them as they are not with their child when they need them most. The purpose of this paper to examines the impact of the profession of women police personnel on their children and the challenges that they had faced in upbringing of their children. Although handful studies were conducted on the challenges of working mothers and its impact on their child; but this is unique due to the nature of police profession that works on the notion of 'Always on Duty'. The study provided an understanding to personal and organisational challenges faced by mothers working in police profession. This study was the first of its kind, and it provided in-depth experiences and views of working mothers in police profession.

Keywords: *Police Profession, Mothers, Child Care, Stress and Guilt*

I. Introduction

The origin of the Indian idea of appropriate female behaviour can be traced to the rules laid down by Manu in 200 B.C. "In childhood a girl must be subject to her father, in youth to her husband, when her lord is dead to her sons; a woman must never be independent". But increasing participation rates of women at higher levels of education and exposure to mass media of communication have broadened their vision, increased awareness and opened new horizons for their

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empowerment and growth. In current scenario, women are fully utilizing their education and potential to further empower themselves and their families by actively participating in the nation work force. Women participation in the workforce has increased and this has been accompanied by more significant challenges they face in balancing and managing their role between work and family responsibilities (Marcinkus and Hamilton, 2006). Survey results by Talent Corp (2013) also stated that women are predominantly marginalised due to the belief of prioritizing family over their work. Becoming a mother is a crucial stage in each woman’s life. Childcare has turned out to be the most difficult component for working women. According to the Bureau of Labor Statistics (2002), mothers of small children make up about two-thirds of the workforce and nearly three-quarters of them put in more than 30 hours each week. When women desire to combine employment and motherhood without any institutional assistance; however marriage and childbearing force them to make compromises. The motherhood dilemma is the reflection of a societal norm in which woman must sacrifice career progression and earnings for raising a child. The fact that women face repercussions due to this set of minds in the course of their careers is nothing but an extension of the narrative that men are primarily responsible for the financial well-being of the family while women are seen as secondary income earners. There are no easy and efficient ways of modifying these social norms and attitudes. In fact, bringing about a change in the society may take years altogether and may not be the only challenge faced by working mothers. Our research is an attempt to gain a holistic understanding of the real challenges that mothers working in police profession have faced in upbringing of their children that different from the mothers related to other professions due to the nature of work.

The occupation of policing has unique organizational and operational contexts that shape officers’ worldviews and practices, both at work and at home. Police organizations are paramilitary in structure, “with rigid rules and a hierarchy governing operations,” and they are often inflexible with respect to shift schedules, training and court requirements (Manning, 1978). Furthermore, very little research exists on policewomen who are also mothers (police mothers) and studies that had been done suggested that these women experienced additional challenges because of social expectations that inevitably come into play once their “mother” identity is known. This article focuses on how these organizational and operational contexts intersect to impact police mothers’ day-to-day lives and mothering practices in the domestic realm when they are not formally on duty.

Mothers in police exhibit a high level of determination to establish their competence both within their child-care and professional endeavors, often resulting in the inadvertent neglect of their child development. According to the study conducted by Poduval and Poduval (2009) found that Individuals frequently found themselves managing the dual responsibilities of motherhood and employment, leading to heightened levels of anxiety and stress. Certain female professionals encounter the challenge of psychological disorders and depression. An essential element of the pressure experienced by working mothers pertains to their experience of maternal guilt resulting from their perceived failure to fulfill their maternal responsibilities. Women frequently face criticism for not dedicating sufficient time to childcare, whereas men receive commendation even for a limited amount of time spent with their children. This disparity in societal expectations contributes to a heightened sense of guilt among women (Cuddy, 2013). Maternal responsibility and maternal guilt are two interconnected aspects that are inherently linked. According to Evans (2018), the responsibility for a child's improper behavior is often attributed solely to the mother. Working mothers frequently face discrimination in the workplace. The workplace, especially at lower job levels, is influenced by perceptions and social theories that suggest working mothers are less effective and more inclined to leave their jobs to prioritize child-rearing (Cuddy, 2013). As a result of the simultaneous responsibilities held by working mothers, they encounter a higher degree of stress and are susceptible to disturbances in their sleep patterns. Nevertheless, several studies have demonstrated a favorable impact of paid employment on mothers who are actively engaged in the workforce.

The interconnected factors of organizational and operational aspects of policing contribute to the heightened emotional labor experienced by women in this profession. The nature of their work is characterized by high levels of demand and strict adherence to established procedures. Additionally, as women fulfilling the role of mothers, they experience marginalization within the organizational context. In their professional endeavors, individuals in this field frequently encounter circumstances that entail peril or the potential for peril. The convergence of these factors plays a distinctive role in influencing the perspectives and approaches of mothers who are police officers in safeguarding their children from potential harm. Through the process of exposing and delving deeper into the various intensities and intricacies of the lives of these women, as well as analyzing the effects on their role as mothers, our research has the potential to make a valuable contribution to efforts focused on altering institutional policies, transforming police culture, and addressing stress-related challenges faced by police mothers. Furthermore, the insights gained from our

study may also have implications for mothers in other emergency response professions.

II. Literature Review

While the existing corpus of research on police mothers is extremely limited, it does offer a crucial contextual framework for comprehending the organizational challenges faced by policewomen. A significant proportion of research pertaining to female police officers has been conducted in the United States or the United Kingdom, where policing procedures, work environment accommodations and parental leave differ from those in Canada. The limited amount of research available on female police officers has predominantly employed quantitative approaches, examining statistically significant differences between males and females while considering "gender" as a variable. The limited numbers of qualitative research studies that have been conducted on policewomen indicate that female officers face distinct professional obstacles when compared to their male counterparts. These obstacles are directly related to the way in which their gender identity "fits" into the cultural and organizational contexts of policing (Rabe-Hemp, 2011). Finally, there is a scarcity of research that has specifically examined the unique experiences of female police officers as mothers (Cowan and Bochantin, 2009).

A limited number of studies have examined the relationship between policing and parenting. These studies have underscored the significance of maintaining a clear distinction between work and personal life within the police force. One participant even claimed that their colleagues would perceive their inability to work overtime or on specific shifts due to child care obligations as grounds for dismissal from the police force (Holdaway and Parker 1998). The prevalence of these beliefs in policing has been substantiated by a survey of 4,500 Canadian police officers conducted by Duxbury and Higgins in 2012. Additionally, this situation has been associated with elevated levels of stress (Kurtz 2012), role conflict, and the paradox of the ideal mother and worker for female police officers (Cowan and Bochantin, 2009).

According to Rabe-Hemp (2008), empirical studies have demonstrated that the culture within police organizations perceives motherhood and policing as incompatible roles. The limited body of research examining the intersection of policing and parenting has underscored the significance of maintaining a clear demarcation between personal and professional spheres within the police culture. It has been observed that certain individuals within this context hold the belief that disclosing child care responsibilities as a hindrance to working overtime or

specific shifts may be perceived by their colleagues as an indication of unsuitability for a career in law enforcement.

Burnal (2008) noticed that all day working moms of teenagers had lower levels of chipping in at school, knew less guardians of their kids' companions, had less TV limitations and checked schoolwork less as often as possible than low maintenance working moms or moms not in the workforce.

III. Objectives of the Study-

The specific objectives of the study are following

- To understand the personal and organisational challenges faced by women in playing the dual role as mother and police personnel.
- To identify the positive and negative effect of police profession on development of their children.

IV. Research Methodology

Research Design - The researcher has adopted Descriptive and exploratory research design for the present study. Hence this study tries to describe the challenges of child care faced by the police mother in general, and career cum family in particular. Suggestions were also given to maintain good Work Life Balance and Good Child rearing practices. The measures to overcome the problems were also recommended. In this study, the researcher follows the non-probability sampling method to choose the sample of study. Two districts of Punjab (Bathinda and Mansa) are chosen conveniently under Convenience Sampling method.

Sample Size - The universe of the study is married women with children in police profession in Punjab. Two districts of Punjab which include Bathinda and Mansa were taken as the samples purposively for this study and adopted a sample size of 150 married women with children in different police stations. Hence, non - probability purposive sampling procedure was adopted for the study. For the present study the married women with children working as non – executives such as the Head Constables, Grade I and Grade II Constables are included for the study.

Source of Data - This research is based on the primary data collected from women police personnel in Punjab.

Tools Used for Data Collection - The research was based on the structured survey through a interview schedule with married women in police profession. Data were subjected to descriptive statistics.

V. Mother-Child Relationship: A Need of Hour

The increasing tendency of women towards employment has influenced the relationship between them and their children, which also brought a significant increase in difficulties in sentimental aspects of relationship with children (Lee, 2003). Generally women are employed in police department where they have to work for longer duration and are paid a little for this, which leads to a stressful impact on their mind and body; specifically on the development of their children. Ultimately, they are not able to perform the role of a mother in a better way. This results in clashes of ideas and disturbed harmony of the family. Most of the time mothers forget the basic needs of their children because of their professional burden. Children feel lonely and lose their confidence when their mother goes out to earn. This makes the children to feel more insecure and they develop a feeling of mistrust for their mothers (Hallinan, 1979). According to a study, if a woman stays busy in her work or job for longer duration in a day and interact lesser with her child, then this hinder the holistic growth of the child because a child has the strongest connection with her mother but if the mother is not giving time to her child then there are chances that the child may indulge in bad habits or join bad company which would ultimately affect its personality. Moreover the child may start arguing with the family members on nominal things and turn rebellious and rude in nature (Almani et al., 2012).

VI. Police Mothers: Child Care and Personal Challenges

The mother and child share a unique and profound connection that is established from the early stages of childbirth or even prior to that. During the early phases, women engage in the practice of breastfeeding their newborns and maintaining physical proximity, so establishing the initial contact between the mother and the child (Morrisey, 2018). Past studies have also stated that working mothers' problems are finding appropriate child-care for their children while they work (Moilanen et al., 2016). The rising prevalence of working mothers has led to a heightened emphasis on the issue of child care within many families. Consequently, the challenge of locating dependable, high-quality and cost-effective child care has emerged as a prominent concern. The issue of stress related to the search for child care or daily living arrangements, commonly referred to as child care stress, is particularly worrisome for families when one or both parents engage in shift work, hold multiple jobs, or rotate shifts, as is often

the case in the field of police (Verhoef et al., 2016). Similarly, the influence of work-related factors experienced by officers, such as administrative or professional pressure, physical or psychological threats, lack of support, and shift work, on this association remains largely unexplored.

Furthermore, it is crucial to establish a contingency plan for child care in order to efficiently address circumstances where the primary caregiver is unable to complete their duties as a result of unforeseen circumstances. Moreover, the rearing of children and many important household tasks were affected due to their absence from the households which was another dilemma they were facing. Padma & Sudhir Reddy (2013) found that support from family members play a significant role in balancing personal and professional lives. They also found that women police who have adult children can easily balance than women with younger age kids. Through all this instances, it is evident that a policewoman faced dilemma between what she can do as a Policewomen and what the community has expectation from her as a female. The inability to perform expected gender role leads to her in a situation of role conflict. In such a situation, they have to face a dilemma between 'expected role' and 'performing role' (Oddey, 2016).

Table No. 1.1: Distribution of Respondents according to the Person who Provide Child Care

Person who Child Care	Total	
	Frequency	Percentage
Parents-in-laws	129	86.0
Husband	04	2.7
Maid	10	6.7
Parents	07	4.6
Total	150	100.0

Based on the data provided in above table, it is apparent that women police personnels received assistance from members of their extended family in tending to their newborns while they were away from home owing to work-related obligations. The findings of the survey indicated that a significant proportion of the participants, specifically 86% reported that their child is cared by their mother-in-law while they are not present. This arrangement was perceived by the respondents as a source of comfort and assurance. The parents did not express significant concern regarding the well-being of their child, as they relied on the assistance provided by their extended family. In the present-day culture, the predominance of nuclear families requires women to modify their work schedules

in order to fit their familial obligations. As a result, a small proportion of respondents, namely 6.7% of the total, reported relying on the assistance of maids for the care of their children. A total of 4.6% of the participants indicated that their parents assumed responsibility for childcare, as a result of residing separately from their in-laws owing to various circumstances. According to the findings of the present study, there is evidence of a notable inclination among males to actively engage and take on the responsibilities linked to child-caring, as shown by a rate of 2.7%. One respondent shared that- *'Even my mother-in-law cares my child in my absence. When I came back from my work, she immediately takes child to me. It is expected from me to do both household work and care of child. One day my mother-in-law told me – Asi ta avde jawak paal lye avde time ch, hun naal tuhade v palne peinde ne. Sanu ta do –do vari bachhe sambane pe gye ne. Our family expected a perfect daughter-in-law with work that also becomes a good mother. Both are not possible for a woman who is working and also a mother.'* Another respondent mentioned - *"I do not have anyone at home to depend on for help. It would be convenient to bring my children with me in my work place in case of any emergencies in the morning. There is no policies and support for child-care or other personal matters affecting employees".* One respondent expressing her views regarding pervasiveness of role conflict in police service said - *'Being unmarried, I did not face something like this. I feel those who are married, and especially those with young children face the possibility of role conflict more than those who are unmarried.'* One of the respondents narrated that -*'My husband is working in health department and they have two children. My in-laws stay in the village. She informed that for the care of children, a full time domestic help has been employed. Helper escorts them to school as both of them (she and her husband) stay away from the home. She further stated that her children always complained against her maid as she scolds them for minor faults. Her children often complain that they were not happy because of the unnecessary interference of maid during the absence of their mother. She informed that when she is on duty her mind wanders. She stated that it is not possible to find another care taker for her children as they are very difficult to find these days. As a result of this she often feels very sorry for depriving her children of mother's love and care. This adds to the experience of facing role conflict in their daily lives being in police.'*

VII. Involvement in Children Academic Activities

The current trend of more mothers entering the workforce has resulted in significant shifts in child-rearing practices, which has sparked a discussion on the positive and bad effects that may be expected from the continuation of this trend. This is due to the fact that working women have a limited amount of time

available to spend with their children and other members of their household. On contrary, the amount of money that mothers make contributes to their degree of self-confidence and helps them actualize their potential. In a similar vein, Sapungan and Sapungan (2014) discovered that the participation of parents, particularly women, in the process of their children's education can increase the academic performance of the children, meaning that the children are better able to complete their lessons and assignments at school. Working women have less time to spend with their children, as confirmed by Samman et al. (2016). It has an effect on the life patterns of the children when they become adults in areas such as education and employment.

Table No. 1.2: Distribution of Respondents according to their Involvement in Children Academic Activities

Involvement in Children Academic Activities	**Total**	
	Frequency	**Percentage**
Yes	45	30.0
No	34	22.7
Rarely	71	47.3
Total	150	100.0

According to above mentioned data, the vast majority of respondents 47.3% said that they perform random spot checks on their children's schoolwork. As a result of the demands of their jobs, they were unable to devote enough time to assisting them with their schoolwork. They glanced over the child's homework notebook to get a general idea of their child's academic standing. One of the respondents said, *'I only check the notebooks of my child to find out that he had done his homework of that day and his marks in the test. He does not receive any assistance from me with his schoolwork because even I do not have the time to assist him.'* 30% of those polled admitted that they provided academic assistance to their children. They provided them with the appropriate academic assistance they needed to do their assignments and get ready for their exams. Despite this, every one of the respondents admitted that they had private tutors for their child education. In spite of this, they each devoted time to the education of their children. The proportion of the whole sample that consisted of respondents who had not devoted enough time to their children's academic pursuits was 22.7%. A respondent from District Bathinda expressed her views as: *I can't spend enough time with my family. I feel as if Police Service has become primary rendering my family a secondary status. I don't have enough time to provide assistance to my child in his career.*

VIII. Impact on Children Development

Mothers' employment reduce the quality of mother-child interactions by disrupting the formation of crucial mother-child attachments – as hours spent in other forms of child care increase, or by causing maternal stress (Fitzpatrick, 2008). Sultana and Noor (2012) attempted to examine mothers' perception on the impact of their children academic, intellectual and cognitive development. The results show that although there are negative impacts of mothers' employment on children, working mothers are able to contribute to children development compare to non-working mothers. It is also found that mothers' intellectual and economic resources contribute to children academic and cognitive development. Furthermore, there is also positive impact of mother's employment on children especially for economic reason. The access of mothers to income-generating opportunities impacts positively on the well-being of children (Haddad & Haddinot, 1995).

Table No. 1.3: Distribution of the Respondents according to the Impact of Profession on Children Development

Impact on Profession Children Development	Total	
	Frequency	Percentage
Positively	21	14.0
Negatively	107	71.3
Can't Say	22	14.7
Total	150	100.0

Most of the respondents accepted that their profession affected their child negatively with 71.3% of responses. Women police personnels mentioned that they could perceive their work as a source of distress for their family. Mothers, in spite of having their kid's best interests at heart, might fail to provide their children a safe emotional outlet. They might not be enthusiastic to hear their children' issues after a hectic day at work. Mothers in police mostly bring their frustration home; children could develop a negative attitude. Such parental conflicts adversely affect children. It damages their self-esteem and makes them insecure. Many a times their children feel unattended because as working women they are not able to give proper attention to them. The respondents stated that their children feel neglected as a result of which many of them become delinquent. Many of the respondents who lived in government quarters, expressed that often it has been observed that where both husband and wife are working in police department their children become delinquent especially boys

who have been found drinking alcohol, smoking and even some time they were involved in thefts as well. Due to their job children feel and become careless as a result of which many of them get involved in bad activities. Even that 14% of the respondents said that their profession had positive effect of their children. Some police constables said that working women with some sense of accomplishment and satisfaction serve as a good role model for her children. Children get inspired to pursue their dreams and ambition. They could especially help their daughters break stereotypes and work for whatever they wish to accomplish in life. They further stated that they encourage their children to take responsibility and children learn skills that they would not learn otherwise. Raising independent children prepares them for the real world and inculcates in them sense of responsibility. They tried hard to spend quality time with their children to compensate for the amount of time they do not spend together. The financial benefits that come with having both working parent, such as going to good schools and pursuing extra-curricular interests can inculcate a sense of security in children.14.7% of the respondents stated that they can't say anything about it because their children were too young to have such circumstances. The following comments are indicative of the view and expressed by the participants - *'My role as a mother and a Police Officer is very challenging because I have to take care of my children and fulfil my work-related responsibilities that are unscheduled. I have a 5-year-old child, and I need to help with her studies and homework. I have a baby too, and I am still breastfeeding him. I also need to do many household chores.'*

IX. The Organizational Demands of Policing

In conjunction with the excessive time and effort dedicated to household duties, the organizational structures of law enforcement additionally hinder the manner and degree to which mothers in the force are able to dedicate time to their children. The inconsistent and frequently unpredictable nature of their shift work introduces uncertainty into the lives of their children. Participants feel fatigued, inadequate and guilty despite the predictability of their shift work schedule. They strive diligently with the limited time they have to "be there" for their children on a physical and emotional level, in accordance with widely held cultural ideologies regarding what constitutes a "good mother," according to the data. They exhibit a commitment to "intensive mothering" ideologies and practices in this manner. They consider themselves compelled to "sacrifice" their mothering responsibilities. One respondent stated- *'I could be a better mother if I am not a police officer. I too, experienced remorse for "not being present at home during dinner or when she awakens'.* The participants detailed extremely hectic daily itineraries. Most of them described their routine, which had been completed after

a day shift of ten hours, a commute home, and the retrieval of their child. They had to compound the situation, unpaid time away from work is occasionally jeopardized by training days, mandatory court appearances and unanticipated overtime caused by critical incidents. Unexpected occurrences of these demands cause significant distress for the individuals involved and on occasion, they are prevented from spending special moments with their children.

X. Suggestions

In this study, it was clear that flexible working hours could increase police mothers' intention to better child care responsibilities and their career advancement opportunities. Flexible working hours provide working mothers with the autonomy to control their work schedule. This can be of value for developing better work/family balance routines, which can lower the turnover rates of women in police organisations. Furthermore, since three out of six participants stated that organisations had established no current strategies to support working mothers, it would be ideal for police organisations, to consider looking into ways this strategy can be incorporated into working mothers' work schedules as this is a clear need which is currently not formally implemented. The research underscores the importance of workplace support and policies for police mothers. Adequate support, including flexible schedules, on-site childcare facilities, and family-friendly policies, can greatly alleviate the challenges they face. The study reveals that the high-stress nature of police work can have a significant impact on the mental health and well-being of police mothers. Coping mechanisms and mental health support are crucial for maintaining a healthy work-life balance. In conclusion, this study provides valuable insights into the lives of police mothers and the complex interplay between their roles as law enforcement officers and caregivers. The findings underscore the need for comprehensive support systems within law enforcement agencies, as well as the broader community, to help police mothers effectively balance their demanding careers with their responsibilities as parents. Addressing the challenges faced by police mothers is not only a matter of gender equality but also a critical factor in maintaining the mental health and well-being of those who serve and protect our communities.

XI. Conclusions

Although extensive research has been conducted on the effects of organizational structures, occupational culture, and operational aspects of policing, relatively little is known about how these elements interact to influence the experiences of mother policewomen. By conducting a critical analysis of the gendered aspects of

their work and home lives, expanding the theoretical framework surrounding extensive and intensive mothering practices, contributing to the body of knowledge on policing, and enhancing the literature on women in nontraditional and unconventional professions, our research aims to fill this void in the academic literature. The experiences of our participants are significantly influenced by both the gendered aspects of law enforcement and family life. As previously mentioned, despite an increase in the number of women serving in law enforcement, our research demonstrates that a hyper masculine culture continues to exist within the profession. As a consequence, officers are often required to prioritize their careers above their families. Officer women are especially burdened with this circumstance due to the gendered division of domestic labor, which places the majority of the planning, execution, and/or supervision of housework and child care on police mothers. Due to the demands of policing organizational structures, such as shift work and unanticipated overtime, police mothers are compelled to spend time away from their children. In order to optimize this time, they prioritize its quality over quantity. Despite this, the quality of their leisure time is compromised as they remain electronically connected to work despite being "off duty" due to the absorbing nature of their occupation. Furthermore, our research contributes to the existing body of literature on motherhood by revealing the ambivalence that police mothers experience regarding the influence of their profession on their parenting methods. They express concern regarding the manner in which their profession disrupts opportunities to spend quality time with their children and contributes to heightened vigilance that may have adverse emotional effects on the children. The Maternity Benefit Amendment Bill 2016 stipulates a 6 months benefit with the option of flexible working. Nevertheless, there is a considerable gap in the legal, effective coverage of maternity benefits that can be availed by women in employment (ILO, 2017).

XII. Limitations of The Research

This quantitative study collected information relating to working mothers' experiences in the police profession in Punjab including only non-gazetted officers. It should be expanded to other gazetted ranks because their work life challenges and experiences will be different from non-gazetted officers. The diversity or differences due to age, position in the organisation, social status and family size were not included in this study. For instance, studies involving single mothers may provide a different viewpoint. Therefore, future studies should consider the demographics to get a greater diversity of voice about challenges encountered and the perceived solutions to retain Police Mothers. Research conducted in a specific region, such as Punjab, may not be easily generalizable to

other regions or countries. The unique cultural, social and economic factors of the region can limit the applicability of findings beyond that specific context. The duration of the research limit the depth of understanding. Complex issues like child care challenges may require long-term observations to fully comprehend and short-term studies may not capture the evolving nature of the problem.

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Studying the Applicability of Select Sustainable Development Goals (SDGs) in Manipur Amidst Dystopia of Intra-State Conflict

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Abstract

The Sustainable Development Goals (SDGs) are an international agreement to tackle complex problems and create a more sustainable and equitable world by 2030. This research article offers a succinct overview of the significance of the SDGs with a focus on SDG 1 (No Poverty), SDG 4 (Quality Education), SDG 5 (Gender Equality), and SDG 8 (Decent Work and Economic Growth), analyzing their applicability in the context of the conflict-ridden region of Manipur. The inconsistency of implementation of SDGs in this situational context becomes apparent in this study of the violently divided region of Manipur. Due to the immediate and pressing nature of conflict-related challenges, the relevance of the SDGs becomes frequently redundant in such contexts, and development takes the backseat and civilians suffer. Conflicts undermine the social fabric, governance institutions, and infrastructure, making it difficult to prioritize long-term sustainable development objectives. While the SDGs offer a solid framework for addressing global concerns, this study tries to highlight that implementing them in conflict-ridden areas might present substantial challenges. Understanding this contradiction is crucial for formulating public policy plans that meet both short-term humanitarian needs and long-term development goals, ultimately promoting stability, peace, and sustainable development in conflict-affected areas.

Keywords: *Conflict-Ridden Regions, Applicability, Sustainable Development Goals.*

I. Introduction

The United Nations, in 2015, laid-down a list of 17 goals for all member nations as yardsticks to achieve in the direction of domestic development, while making no compromise on the standard of living for the future generations. According to the official website of the United Nations Development Program (UNDP),

> *"The Sustainable Development Goals (SDGs), also known as the Global Goals, were adopted by the United Nations in 2015 as a universal call to*

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action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity. The 17 SDGs are integrated—they recognize that action in one area will affect outcomes in others, and that development must balance social, economic and environmental sustainability. Countries have committed to prioritize progress for those who're furthest behind. The SDGs are designed to end poverty, hunger, AIDS, and discrimination against women and girls. The creativity, knowhow, technology and financial resources from all of society is necessary to achieve the SDGs in every context."

17 sustainable goals are:

1. No poverty
2. Zero hunger
3. Good health and well-being
4. Quality Education
5. Gender equality
6. Clean water and sanitation
7. Affordable and clean energy
8. Decent work and economic growth
9. Industry, innovation and infrastructure
10. Reduced inequalities
11. Sustainable cities and economies
12. Responsible consumption and production
13. Climate action
14. Life below water
15. Life on land
16. Peace, justice and strong institutions
17. Partnership for the goals

II. Select Sustainable Development Goals- why have these particular goals been selected?

The four goals, namely SDG 1 (No Poverty), SDG 4 (Quality Education), SDG 5 (Gender Equality), and SDG 8 (Decent Work and Economic Growth) have been chosen for the purpose of this paper to be applied in Manipur for the reason that development is most objectively viewed on some basic parameters. These parameters include minimal poverty and basic standard of living for all, accessibility of education to foster human resources, parity of males and females, consistent growth in the state's economy.

Since these parameters are the most fundamental and pivotal set of SDGs that constitute the determination of development of a state on the very basic level with universal applicability, they have been chosen for the purpose of this paper.

III. Applicability in Manipur- what is the relevance of these goals' implementation in the state?

Sustainable Development Goals have been laid down as blueprints for the nations, and the states within, to encourage development of today while making no compromise in the development of tomorrow. In the case of Manipur, the applicability of these select SDGs have been particularly studied to determine whether there is sufficient development in the state in accordance with these SDGs, in the backdrop of intra-state conflict, which has been explained in detail further in this research article.

This article, more particularly, aims to substantiate that if a region experiences conflict of any kind, it is impossible for it to achieve development in any sphere in accordance with the UN laid goals, through a specific illustration of the state of Manipur, and a solid mechanism is required to be put into place by the state to simultaneously balance development with conflict.

IV. The Manipur Conflict: An Overview

The Manipur conflict refers to the protracted and intricate battle of numerous ethnic groups in the northeastern Indian state of Manipur for political sovereignty, autonomy, and identity. This conflict has caused continual tensions, bloodshed, and instability in the area and is defined by a wide range of historical, social, and political elements. The Meiteis, Nagas, Kukis, and other ethnic communities reside in Manipur. Each group has a unique historical, cultural, and linguistic identity. The dynamics of the conflict have been significantly shaped by ethnic variety.

Following India's independence in 1947, the area has a history of princely states and political fusions with India. Some ethnic communities have long harbored resentment over the way these mergers came about. The conflict has been driven by territorial claims and conflicts over land and resources between various ethnic groups. These disagreements frequently center on demands for independent nations or autonomous territories.

Due to this, numerous insurgent groups have been operating in Manipur, each with a different set of objectives that range from independence to autonomy. These organizations have frequently engaged in armed conflict with the Indian government and one another, which has resulted in a cycle of violence. As a result, both insurgent groups and law enforcement agencies have allegedly engaged in extrajudicial executions, forced disappearances, and torture during the conflict.

Manipur is strategically placed in Northeast India and shares borders with Myanmar. The proximity to international frontiers and other geopolitical variables have made the conflict more complex. The Indian government and several insurgency factions have made several attempts to start peace talks and negotiations over the years. Although some agreements and cease-fires have resulted from these attempts, a long-lasting solution is still elusive.

Manipur's socioeconomic development has been hampered by the conflict. Projects involving building infrastructure, education, and healthcare have suffered.

V. Review of Literature

The following section provides a dive into some of the existing literature that tackles the Manipur issue in the economic context and on subjects that fall within the ambit of the selected SDGs.

(i) "The Multi-Faceted Economic Ramifications of Manipur's Ethnic Conflict" by Deepanshu Mohan and Amisha Singh and Shalaka Adhikari and Samragnee Chakraborty and Aditi Desai.

The article provides an insightful overview of the ongoing ethnic conflict in Manipur. It highlights the historical context, key actors, and the complex interplay of ethnic and political factors contributing to the conflict.

The central focus of the article is the economic ramifications of the conflict. The authors discuss how the conflict has adversely affected various sectors such as agriculture, tourism, and infrastructure development. A critical evaluation of the evidence presented in the article, including statistics and case studies, is necessary to gauge the credibility of the economic arguments put forth.

This piece of literature becomes relevant to the present research article as it addresses two focal points of concern of this very article, i.e., economic ramifications and consequential policy formulation and regulation.

(ii) "Economic Implications of Intra-State Conflict: Evidence from Manipur State of India" by Rahman, J., & Sheereen, Z.

The analysis of the economic effects of intra-state conflicts in Manipur, India, is the main goal of the study. Secondary level data were gathered for this study from various sources. The essay is broken up into five sections: a brief introduction to Manipur and the research methodology; a description of the state's economic situation; a description of the major intrastate conflicts; a discussion of

how these conflicts have affected Manipur's economy; and a summary and concluding remarks.

Overall, the literature review highlights the economic implications of intra-state conflicts in Manipur, emphasizing the impact on the economy, industries, and the development of the state. The study provides valuable insights into the challenges faced by Manipur and the need for conflict resolution to promote economic growth and stability.

(iii) "Conflict and Education in Manipur: A Comparative Analysis" by Komol Singha

The literature review focuses on the relationship between conflict and education in Manipur. It examines the impact of insurgency-related conflicts on the state's educational development and explores whether education can play a role in conflict prevention and peace-building. The function of education in resolving disputes is a hotly contested topic in the academic community. The study evaluates the state of educational development in Manipur in the midst of conflict and violence and investigates whether conflict encourages or discourages educational development. Hence, this paper becomes relevant in context of our selected SDG 04, Quality Education.

The literature review provides insights into the relationship between conflict and education in Manipur. It highlights the lack of direct impact of insurgency-related conflicts on educational development and emphasizes the positive correlation between public expenditure on education, enrollment rate, and literacy rate. The review also acknowledges the ongoing debate on the role of education in conflict resolution and the need for further research in this area.

(iv) "Why Does Our Government Need a Graphic Depiction of Violence Against Women to Act?" by Mohan D.

The given document provides insights into various issues related to women's rights and violence against women in Manipur. It highlights the role of women in protests and movements, the patriarchal-patronizing position of Hindutva, the intersectionality of women's identities, and the failure of institutions to address violence against women. The document also emphasizes the need for accountability and action by the state machinery.

The document mentions historical instances where women in Manipur have been at the forefront of violence and protest, such as the 'Nupi Lan' movement against colonial rule and the naked protest against the rape and murder of a

woman. However, it also highlights how women's issues can be overshadowed by nationalist politics, undermining the resolution of conflicts and ethnic tensions.

Thus, this document becomes relevant in context with SDG 05, Gender Equality, that has been selected for the purpose of this research article to be studied in the context of Manipur.

In conclusion, the given document provides insights into the role of women in protests and movements, the patriarchal-patronizing position of religion, the intersectionality of women's identities, and the failure of institutions to address violence against women. It emphasizes the need for accountability, action, and a comprehensive understanding of the issues faced by women in Manipur.

VI. The Sustainable Development Goals: Relevance in Conflict

Now that the preliminary question posed in this section has been duly answered in the research paper referred in V.I section of the article, the following sub-sections provide a qualitative and quantitative analysis into each select SDG and its applicability in the state of Manipur.

(i) SDG 01- No Poverty

A revolutionary social welfare program, the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), was introduced by the Indian government in 2005. It is intended to combat rural poverty and unemployment by giving rural households guaranteed wage employment, with an emphasis on underserved and economically disadvantaged populations. In the paper, “Rural Poverty Alleviation Programmes: A Study Of MGNREGA in Manipur”, it was recorded that for the purpose of poverty alleviation, the government has introduced various schemes like Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), Swarnjayanti Gram Swarozgar Yojana (SGSY), Indira Awaas Yojana (IAY), and Pradhan Mantri Gram Sadak Yojana (PMGSY). In the year 2009-2010, a total of Rs. 44,904.97 lakhs was available as resource allocation for these schemes, out of which Rs. 43,570.30 lakhs were expanded. Therefore, 97.027% of the resources allocated for poverty alleviation schemes in Manipur for the fiscal year 2009-10 were spent. In the fiscal year 2020-21 to 2021-22, a clear fall in resource allocation for a necessary scheme like that of MGNREGA is evident. Coincidentally, this is also the time period of peak conflict and violence in the state, which substantiates the fact that resource allocation to poverty alleviation schemes falls drastically,

Table 1: Resource Allocation to MGNREGA in Manipur (in crores)

	2020-21	2021-22
Manipur	1306.74	563.11

Source- Government of India

As shown in table 2, opposed to states like Meghalaya, Mizoram, and Nagaland, whose resource allocation was either greater or slightly lower, Manipur has received the lowest resources in this sector.

Table 2: Resource Allocation to MGNREGA in other states of Seven Sisters (in crores)

	2020-21	2021-22
Meghalaya	1284.17	1121.66
Mizoram	590.45	548.92
Nagaland	483.82	569.46

Source- Government of India

It is, therefore, clear that the socio-political factors prevailing in Manipur have negatively affected resource allocation to poverty alleviation schemes, creating a vicious cycle of violence, poverty and lack of redressal.

(ii) SDG 04- Quality Education

According to the Brahm Model, institutional effort, educational attainment, and level of enlightenment are some examples of variables that affect the peak of conflict, also known as the stalemate, and how long it will endure. A peaceful world can be attained by educating children well, according to UNESCO and several academics. As a result, it is thought that as society develops and educates to a certain level, conflict and violence would decline.

The annual expenditure per student in Manipur in 2007–08 was Rs. 4372, which was greater than the national level expenditure of Rs. 3058, according to the statistics provided from the NSS 64th Round (July 2007–June 2008). While the cost of education per student in Manipur was significantly higher than the national average for other courses/levels of study, it was only marginally higher for technical education. This suggests that education is highly valued by Manipurean parents.

However, as seen in Table 3, displaying the Reasons for Studying Outside the State of Manipur, it is evident that despite the level of expenditure that families are willing to make for education for their children, a bad law and order condition

makes more than 50% students who leave their state for education to study elsewhere.

Table 3: Reasons for Studying Outside the State of Manipur

Main Reason	No. of Students	Percent
Law and Order Condition	30	57.7
Limited Educational Infrastructure	8	15.4
Status Sake	2	3.8
Low Quality of Education in Manipur	7	13.5
Others	5	9.6
Total	52	100

Source: Primary Field Survey of the referred study

The table shows the number of students who have not attended a school because of a number of reasons. The main reason is law and order conditions, with 30 students (57.7%).

This is a clear indicator that although no direct correlated studies to show the economic impact of war on education have been conducted, yet, the major reason for displacement of education is a poor state of law and order, which implies that the state needs to redirect and reallocate resources towards controlling and managing violence to ensure that a child's education does not suffer.

(iii) SDG 05- Gender Equality

Violence against women has occurred in Manipur on occasion, as evidenced by the "Nupi Lan" movement in 1939 and the demonstrations over the rape and death of Manorama Thangjam. Violence and protest have primarily been led by women. However, nationalist politics in Manipur frequently place a higher priority on resolving conflict and ethnic conflicts than women's issues. It is troubling that organizations like the National Commission for Women lack accountability and take action slowly. Although the Supreme Court has demanded urgent action, the legal system is also facing difficulties. The violence that is still occurring in Manipur and the inactivity of the police emphasize how urgent it is to take action. Additionally, efforts are being made in the humanitarian sector to promote peace-building activities and study the effects of the violence.

The horrifying video that went viral on social media is the most recent instance of assault against women in Manipur. Two Kuki women were seen in the video being paraded in Kangkopi, Manipur, naked. After nearly 80 days of complacent silence on the ethnic violence in the state and the North East, this tragedy caused indignation and forced state administrators, local politicians, and even Prime Minister Narendra Modi to speak out. The tragedy made it clear that the government and state machinery must act right away and be held accountable for stopping violence against women in Manipur.

The following table, table 4, published by the Manipur State Commission for Women, is one of many statistics published by the statutory body showcasing the rampant gender inequality that still exists in the state.

Table 4: Data on Women's Empowerment and Gender Based Violence in India

Particulars	Manipur	India
Currently married women who usually participate in household decisions (%)	96.2	84.0
Women who worked in the last 12 months who were paid in cash (%)	40.9	24.6
Women owning a house and/or land (alone or jointly with others) (%)	69.9	38.4
Women having a bank or savings account that they themselves use (%)	34.8	53.0
Women having a mobile phone that they themselves use (%)	63.1	45.9
Women age 15-24 years who use hygienic methods of protection during their menstrual period18 (%)	76.1	57.6
Ever-married women who have ever experienced spousal violence (%)	53.1	31.1

Source- Manipur State Commission for Women (NFHS-4 survey conducted in 2015-16)

Additionally, the following table, table 5, also shows the limited sectors in which there is a separate, dedicated component of women budgetary allocation in Manipur, which makes it clear that there needs to be more budget allocation specifically for women in the state.

In response to the video of violence against the two women, the government has responded by saying that three centrally sponsored schemes for women are being implemented in Manipur, and it was said that these three schemes are going to look into the nutritional requirements, safety, security, protection and welfare of women and children in the country.

Table 5: Women Specific Schemes/Budget Allocation under Different Departments (in Lakhs)

Department	Name of Schemes/Budget Allocation	Estimate 2017-18	Estimate 2018-19	Estimate 2019-20
Minority and OBC & SC	Chief Minister's Laiyeng Shen for Widows	0.00	20.00	0.00
	State share of CSS for Girls' Hostel	0.00	53.00	35.00
Planning	Construction of Women Market	3500.00	3500.00	0.00
	Girls Hostel under RMSA (Secondary Education)	90.00	90.00	90.00
Education	Promotion of Women Education (University & Higher Education)	10.00	10.00	20.00
Police	9th IRBn (Mahila IRBn)	2625.98	2886.27	3550.75
	Total	6225.98	6559.27	3695.75

Source- Manipur State Commission for Women

The three schemes are: **Saksham Anganwadi and Poshan 2.0** for improving nutrition indicators; **Mission Shakti** for safety, protection and empowerment of women; and **Mission Vatsalya** for protection and welfare of children.

As far as resource allocation goes, the Ministry of Women and Child Development said in its statement that the **Nirbhaya Fund** which has been described as:

> *"Under Nirbhaya Fund, a scheme of Ministry of Women & Child Development namely Scheme for critical care and support for accessing justice to rape gang rape survivors and minor girls who get pregnant was appraised at the total cost of Rs.74.10 cr. The scheme aims at providing shelter, food & daily needs, safe transportation for attending court hearings and legal aid to the minor girls who have been abandoned by the*

> *family due to forced pregnancy, either due to rape/ gang rape or due to any other reason, and have no other means to support themselves."*

Thus, there needs to be more thrust on allocating resources to women-centric schemes in a much wider scope, rather than just a few select ones.

(iv) SDG 08- Decent Work and Economic Growth

The Chief Minister of Manipur (in-charge of Finance), Mr N Biren Singh, presented the Budget for the state for the financial year 2023-24 on February 21, 2023. The GSDP of Manipur had only estimated to grow from the previous year by 1.7% as compared to the national average of 8.7%.

The reason behind this is lack of budget allocation to economic and sectoral growth amidst intra-state violence.

According to Manipur state government data, the only industry that has consistently grown during 2018–19 is the services sector. 2021–2022 had declines in manufacturing and agriculture of 1.5% and 10%, respectively. According to estimates, the economies of agriculture, manufacturing, and services will make up 27%, 7%, and 66% of the economy, respectively, in 2021–22 (at current prices).

This shows the overall negative growth of the economy in light of the instability of political, social, economic and enforcement institutions.

VII. Findings and Conclusions

In terms of economics, achieving peace, justice, and a solid institutional foundation is a multidimensional and complex process including a variety of methods, policies, and activities. In this direction, an interactive approach must be adopted that covers all sectors and dimensions. The way to do this is effective policy formulation, that targets all dimensions of growth, and promotes holistic development.

(i) In Relation to SDG 01- No Poverty

A comprehensive approach to poverty reduction and economic development involves a multifaceted strategy that addresses various aspects of society and the economy. First and foremost, it's crucial to implement policies and programs that ensure economic growth benefits all segments of society, particularly disadvantaged groups. This includes focused measures to combat poverty and support vulnerable populations through targeted interventions. Additionally,

creating job opportunities is fundamental to economic advancement. This can be achieved by improving infrastructure, fostering industrial expansion, and supporting small and medium-sized enterprises (SMEs). Labor market policies should prioritize decent work, equitable compensation, and job stability to ensure sustainable livelihoods. Further, financial inclusion is vital for economic participation. Ensuring access to banking and financial services, particularly in rural areas, promotes economic empowerment. Microfinance programs and support for small businesses can significantly enhance economic resilience and community development.

(ii) In Relation to SDG 04- Quality Education

Education plays a pivotal role in sustainable development. Investing in education is essential to raising standards and expanding access to educational opportunities, especially in remote and underprivileged areas. Additionally, developing career training programs enhances employability and skills development, particularly among youth, fostering economic empowerment and reducing unemployment.

(iii) In Relation to SDG 05- Gender Equality

Establishing strong institutions and ensuring access to justice are foundational for sustainable development. Strengthening legal and judicial systems, implementing anti-corruption measures, and enhancing transparency foster accountability and trust in governance. At the same time, boost towards female-centric schemes and stringency of implementation is crucial.

Social welfare programs and social safety nets are crucial for protecting vulnerable groups and improving overall well-being. Implementing social welfare programs and ensuring universal healthcare coverage promote equitable development and support inclusive growth.

(iv) In Relation to SDG 08- Decent Work and Economic Growth

Investing in infrastructure is essential for economic growth. Building and maintaining critical infrastructure such as roads, power, water supplies, and sewage systems not only stimulates economic activity but also creates employment opportunities. Promoting sustainable urbanization and smart cities can improve living conditions and attract investment.

Additionally, rural development initiatives are key to inclusive growth. Implementing agricultural reforms and rural employment programs can boost farmers' productivity and income, reducing rural-urban disparities.

Further, improving the investment environment is critical for economic expansion. Simplifying regulations, reducing bureaucratic hurdles, and promoting a favorable investment climate attract both domestic and foreign investment, driving economic growth.

Lastly, engaging in global collaboration through international commerce, diplomatic initiatives, and foreign aid programs can advance economic stability, solve specific economic challenges, and foster peace and development across borders. This comprehensive approach underscores the interconnectedness of various factors in driving poverty reduction and sustainable economic development.

A comprehensive and ongoing effort that includes not only government action but also the active engagement and collaboration of civil society, corporations, and foreign partners is necessary to achieve economic peace, justice, and strong institutions. It is a protracted process that calls for thorough planning, consistent execution, and flexibility in response to shifting conditions.

VIII. Way Forward

The implementation of Sustainable Development Goals (SDGs) in a war-torn area is a tremendous challenge, but success is possible with a coordinated effort and a deliberate strategy. A thorough plan for moving forward in such a situation is of utmost importance toward the achievement of SDGs.

Support must be extended towards the resurgence of neighborhood markets, small enterprises, and agricultural endeavours to aid in economic recovery. To create jobs, vocational training and means of support must be offered.

Further, re-establishment and broadening of educational systems to give children access to high-quality instruction is imperative. To improve skills and employability, adult education and vocational training programs must be put into place.

Furthermore, women's economic and social advancement must be actively encouraged because they frequently play a key role in post-conflict reconstruction. Encouragement of gender equality and dealing with violence against women is crucial.

In a war-torn area like Manipur, achieving the SDGs will require resiliency, cooperation, and a dedication to long-term peace. It is a difficult journey, but progress can be made and the lives of those impacted by conflict can be improved with perseverance and international help.

IX. Scope and Limitations

This paper is an attempt to scale-over the economic aspects of applicability of select SDGs in Manipur at a time when it is war-torn.

The data is from sources that encapsulate government records, on-field studies by researchers, news and press sources, and from first-hand records of the people of Manipur.

However, since the study focuses on a socio-political situation that is still very recent, minute in territoriality and contemporaneously war-torn, the specific data that would be exactly crucial to answer the research questions posed, quantifiably, may still be undiscovered. The facts and figures that are available can be used to extrapolate for the time being.

Thus, to continue with this research topic, questions, and problems, the future researchers could delve deeper into the quantifiable aspect of this data, once it is available as the present state of affairs make sourcing this data a limitation to this study.

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Total Factor Productivity Growth in India: An Analysis of High and Low-Technology Manufacturing Industries

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Abstract

Productivity growth holds a significant role in the sustainable economic growth and development of any country. It is an indispensable factor in the success of any economy as it is directly related with the economic welfare and competitiveness of the country. Given the significance of sustainable development, sustained rise in productivity growth of the Indian manufacturing sector is a very sensitive issue. This study is an attempt to measure total factor productivity growth and its components for both high and low-technology manufacturing industries in India. The study uses Sequential Malmquist productivity index to evaluate total factor productivity growth and its decomposition components. Further, an attempt is also made to investigate the factors influencing total factor productivity growth across high and low-technology manufacturing industries using panel data regression models. The research relies on secondary data collected from the Annual Survey of Industries from 2002-03 to 2018-19 covering three-digit manufacturing industries. Results show that high-technology industries have shown greater productivity growth as compared to low-technology industries, even though there are lesser number of industries in the high-technology manufacturing sector. Further, the results of decomposition analysis indicate that both high and low-technology manufacturing industries are driven mainly by technical change. Productivity growth in high technology manufacturing industries is also driven by firm size whereby wage rate and capital intensity tends to cause a decrease in productivity growth. In low technology manufacturing industries, productivity growth is positively affected by firm size, growth rate of output and wage rate. However, in these industries, an increase in capital intensity is linked to a decline in productivity growth.

Keywords*: Economic growth, Total factor productivity growth, Manufacturing sector, technical change, technical efficiency, India.*

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I. Introduction

During the late 1980s and 1990s, India implemented significant industrial policy reforms. Before these reforms, the Indian manufacturing sector experienced limited total factor productivity growth, which was primarily attributed to the absence of competitive forces stemming from policies such as import substitution and industrial licensing. The trajectory of growth in productivity of Indian manufacturing sector after economic reforms has shown mixed results. Some studies have indicated that total factor productivity has improved after 1991 (Deb & Ray, 2014b; Kumar, 2006; Pattnayak & Thangavelu, 2005). They have found that productivity growth has increased after economic reform as capital intensity has increased which has led to technological progress in the manufacturing sector and also due to an increase in scale efficiency. Some other researchers have shown the adverse effect of economic reform on the productivity of the manufacturing sector of India (Arora & Singh, 2008; Goldar, 2004; Goldar & Kumari, 2003; Parida & Pradhan, 2016; Trivedi, 2004). According to them, despite an increase in the availability of imported capital and intermediate goods, manufacturing industries have failed to efficiently utilize the resources leading to technical inefficiency after economic reforms and hence, a reduction in total factor productivity growth.

In 2011, National Manufacturing Policy was introduced with the objective of efficiently utilizing scarce resources and to turn the manufacturing sector into a catalyst for inclusive growth. The policy aspires to achieve a growth rate of 12-14 percent in the manufacturing sector and elevate its contribution to the gross domestic product to 25 percent (Rath, 2018). Productivity growth is also one of the targets of the sustainable development goal as promoting sustainable industrialisation and encouraging innovation is the ninth goal of the sustainable development framework. One of the targets of this goal is to adapt industries to make them more sustainable with increased resource-use efficiency and also argues that long-term solutions to economic challenges require innovation and technological progress.

Productivity is defined as the ratio of output to the input used. According to Griliches (1987), productivity is often understood as an indicator of the current technology being used in an industry. Jorgenson, in 2009, regards productivity growth as a pivotal gauge of innovation, encompassing the successful introduction of novel products, processes, organizational structures, systems, and business practices. Through such innovations, the output experiences more increase than the growth of the inputs used. Total factor productivity growth is a composite of changes in technical efficiency, technical progress and scale

efficiency. Technological progress represents a shift in the production frontier resulting from the adoption of improved technology and equipment. Technical efficiency, often known as the catching-up effect, is a measure of how far a firm has progressed towards the production frontier as a result of the efficient utilisation of technology and equipment, stemming from the attainment of knowledge through learning-by-doing, increased labour skills and improvement in managerial efficiency etc. Scale efficiency indicates that firm is operating at optimal scale of production and experiencing constant return to scale (Mahadevan, 2002).

Total factor productivity can be assessed using frontier and non-frontier approach (Mahadevan, 2003). The frontier approach considers the increase in total factor productivity resulting from technological progress and technical efficiency. Technological progress shows the advancement brought about by innovation and the diffusion of new technologies whereas technical efficiency evaluates how far a firm has progressed towards the production frontier. In contrast, the non-frontier approach considers technological progress to be the sole measure of total factor productivity growth. Thus, the frontier approach implies that technical efficiency is crucial to firm performance, whereas the non-frontier approach assumes that all firms are technically efficient. Parametric and nonparametric techniques can be used to analyse both frontier and non-frontier approaches.

To attain sustainable economic growth, a sustained increase in productivity of the Indian manufacturing sector is very important. Thus, it is necessary to discuss productivity growth in different industries at the disaggregate level and to know the reason of the increase or decrease in total factor productivity. This information could also be highly valuable for policymakers, as an increase or decrease in productivity growth resulting from heightened efficiency or inefficiency, along with advancements or deficiency in technological advancement, may lead to divergent approaches in policymaking. Hence, the present research endeavors to examine the trends and factors influencing total factor productivity growth in high and low-technology manufacturing sectors from 2002 to 2019. The present research is divided into five sections. The second section discusses the existing literature and the third section elucidates the methodology of the study. The fourth section presents the findings of the study and the last section explains the conclusion of the study.

II. Literature Review

A wide range of literature is available on total factor productivity which analysis the trends of total factor productivity and its various components. Various

researchers have also examined the factors influencing total factor productivity growth in Indian manufacturing sector. Madheswaran et al., (2007) have explored total factor productivity, technical efficiency and technical progress in Indian manufacturing sector using Stochastic frontier approach. The study covers the time period from 1980-81 to 1997-98. The study has concluded that initially, productivity grows at a slower rate and then rises sharply. Further, the technical efficiency growth rate shows a negative trend in all the two-digit manufacturing industries. Authors have decomposed total factor productivity growth into technical efficiency and technological progress and have revealed that technical progress is the primary contributor in the growth of productivity. Ghose and Chakraborty (2012) have investigated the factors influencing total factor productivity growth in the Indian pharmaceutical industry. The regression analysis has indicated that firm size and capital intensity are positively related with total factor productivity growth. Saravanakumar and Kim (2012) have examined the trends of total factor productivity growth, technical progress and technical efficiency in two-digit Indian manufacturing industries using Malmquist productivity index from 1980-81 to 2003-04. The analysis finds that total factor productivity growth and technical efficiency in aggregate manufacturing industries and in light industries have declined from the pre to post-reform era. Further, technical efficiency and total factor productivity growth in heavy industries show improvement during the post-reform period.

In 2014, Deb and Ray have conducted a study investigating the effects of economic reforms on total factor productivity growth in the manufacturing sector of India, both at the national level and the state level, spanning from 1979 to 1998. Authors have used Malmquist Productivity index to calculate the total factor productivity. All India-level analysis shows that the rate of growth of productivity has declined after reforms only in the case of cotton textiles and chemical and chemical products. The study has also concluded that technological progress is the primary driver of total factor productivity growth in all industries except textile products. Gambhir and Sharma (2015) have explored the growth of total factor productivity and its sources in textile industry and in small and large-scale firms using Malmquist productivity index. The study cover the time span from 2007-08 to 2012-13. The study reveals cyclical pattern in total factor productivity within the textile industry over the entire time period. Large-scale firm shows an enhancement in total factor productivity and small-scale firm depict a decrease in productivity growth. Further, decomposition analysis has revealed that the primary factors contributing to the change in total factor productivity are technical efficiency and scale efficiency.

Long-run relationship between total factor productivity growth and firm size is analysed by Satpathy and Mishra (2019) in 390 Indian manufacturing firms from 1997-98 to 2012-13. Authors have obtained a direct correlation between firm size and total factor productivity growth. Further, efficient and innovative firms show more firm-size induced productivity growth than inefficient and non-innovative firms. Rawat and Sharma (2021) have explored the growth in total factor productivity in Indian manufacturing industries from 1999 to 2018. The study has used the Stochastic frontier model to estimate the growth in total factor productivity. The results have revealed that productivity growth has declined after the financial crisis of 2008 due to technical regress, technical and scale inefficiency. Technological progress is considered as the primary factor contributing to the growth of total factor productivity during the entire time period.

Various other studies are available which have investigated total factor productivity in high and low-technology industries. Rijesh has examined the influence of the import of embodied and disembodied technology on the productivity of India's manufacturing sector from 1995-2010 in 2015. Author has used Levinsohn and Petrin method to evaluate total factor productivity in two-digit manufacturing industries. The study has discovered that the productivity of medium-high technology industries is positively and significantly influenced by the imported technology. Rijesh in 2016 has also estimated total factor productivity in the manufacturing sector of India using growth accounting approach from 1980 to 2007. The disaggregate analysis of four-digit manufacturing industries has shown that growth in productivity of medium-high technology and medium-low technology manufacturing industries has enhanced post-2000 and there is a structural shift from low technology to high technology industries. Author has also concluded that low-technology industries exhibit low productivity growth despite their major share in the total manufacturing sector.

Kaur and Mehta have examined output, employment and productivity performance of three-digit manufacturing industries classified according to technological intensity in 2019. The analysis is done for 16 years from 1999-2000 to 2015-16. The study finds that the contribution of high technology industries in total output rises while employment share shows no improvement. The contribution of medium-low technology industries falls both in total output and employment. Authors have used Levinson-Petrin method to measure total factor productivity and finds that productivity growth is highest in high technology industries followed by medium-low, low and medium-high technology industries. Aneja and Arjun (2021) have focused on estimating productivity growth and its decomposed component in four-digit high and medium-high technology

industries using Malmquist productivity index. The study spanned the period from 2008 to 2018. The findings underscore that change in technical efficiency emerge as the primary catalyst for total factor productivity growth in medium-high technology industries. The study also highlights that the advancement in technology is the predominant force behind productivity growth in high-technology industries.

Various international studies have examined the total factor productivity in manufacturing sector. Total factor productivity growth in the Malaysian manufacturing sector is examined by Yean in 1997 using Translog-Divisia Index approach from 1986 to 1991. The results show that the productivity growth of manufacturing sector is very low. Regression analysis unveils that the rate of change in output, the rate of change in exports, and direct foreign investment positively influence productivity growth. Conversely, the change in the capital-to-labor ratio has a negative impact on productivity growth. Sun and Kalirajan (2005) have explored total factor productivity growth of three-digit manufacturing industries in Korea from 1970 to 1997. The results have revealed that technological progress is a major driven force of productivity growth in the entire manufacturing sector. The findings indicate that there is not a substantial difference in productivity growth of high-technology and low-technology industries. Also, technical progress plays a more substantial role than technical efficiency in driving total factor productivity growth in low-technology industries. Oh et al., (2014) have estimated total factor productivity and factors affecting the productivity growth in 7462 manufacturing firms in Korea from 1987 to 2007. The findings indicate that larger firms and high-technology manufacturing industries show higher growth of productivity as compared to other industries. The results of the regression analysis demonstrate that firm age and patenting activities are positively associated with productivity growth and capital intensity is negatively related with total factor productivity.

Literature review has revealed that total factor productivity growth in the manufacturing sector can be estimated by various frontier and non-frontier approaches. Various studies like Madheswaran et al., (2007), Saravanakumar and Kim (2012), Deb and Ray (2014), Gambhir and Sharma (2015), Aneja and Arjun (2021) and Rawat and Sharma (2021) have used stochastic frontier approach and Malmquist productivity index to estimate total factor productivity growth. Some other researchers have used production function approach, growth accounting approach, etc (Kaur & Mehta, 2019; Rijesh, 2016; Satpathy & Mishra, 2019; Yean, 1997).

Thus from the review of literature we can conclude that various researchers like Rijesh (2016), Kaur and Mehta (2019) and Aneja and Arjun (2021) have examined the trends of total factor productivity growth in the high and low-technology manufacturing sector and have concluded that total factor productivity growth has increased more in high-technology manufacturing industries than low-technology manufacturing industries. The factors driving the growth of total factor productivity in the manufacturing sector is also discussed by Madheswaran (2007), Deb and Ray (2014), Saravanakumar and Kim (2012) and Rawat and Sharma (2021) and have concluded that technological progress is the primary contributor in the growth of total factor productivity.

Hence, the researchers have covered the various aspects of total factor productivity in the manufacturing sector but many gaps are yet to be filled. The majority of research has focused on trends and determinants of total factor productivity in total manufacturing sector and very few studies have estimated trends and determinants of total factor productivity in high and low-technology manufacturing industries. Also, the examination of total factor productivity in high and low technology manufacturing industries is not done at the three digit level. Since technological effort is a critical determinant of productivity growth and international competitiveness and is unevenly spread across the manufacturing sector. Therefore, analyses of total factor productivity growth in technology wise manufacturing industries is much needed in detail, that is, at three-digit level. This study is designed to examine the total factor productivity growth, its components and determinants in the high and low technology manufacturing industries at three-digit level.

III. Research Methodology

The key objectives of this study are

1. To examine the trend of total factor productivity growth in high and low-technology manufacturing industries at three-digit level in India.
2. To analyse the different components of total factor productivity growth.
3. To identify the determinants of total factor productivity growth in high and low-technology manufacturing industries at three-digit level.

The research relies on secondary data gathered from Annual Survey of Industries (ASI) conducted by the Central Statistical Office, Ministry of Statistics and Programme Implementation, Government of India and Economic and Political Weekly Research Foundation (EPWRF) database for 2002-03 to 2018-19 time period. For the present study, three-digit manufacturing industries are classified as high and low-technology manufacturing industries using the OECD

classification 2011 (ISIC rev3). The concordance exercise is undertaken to convert this classification to ISIC rev4 (NIC 2008). According to OECD Classification 2011 (ISIC rev 3), there are nine high-technology industries and twenty-three low-technology industries. After performing a concordance exercise, there are nine high-technology industries and thirty low-technology industries. The study covers all the low-technology industries and eight high-technology industries out of nine due to the unavailability of data*.

To evaluate total factor productivity change, Sequential Malmquist productivity index is used. The Sequential Malmquist productivity index can be measured with the non-parametric method of Data Envelopment Analysis. The main advantage of the Data Envelopment Analysis (DEA) is that it observes input-output data without specifying any functional form. A production frontier is empirically constructed using linear programming method from observed input-output data of sample firms. The efficiency of firms is then measured in terms of how far firms are from their frontier. DEA with sequential frontiers assumes that in each period all preceding technologies are feasible. The frontier in a certain time envelops all data points observed up to this time, which eliminates the possibility of registering any technological regress (Shestalova, 2003).

Output, capital, labour, material and energy are used as the measuring variables to determine total factor productivity change using STATA software. Value of gross output at constant prices which is deflated by using wholesale price index of manufactured products is used in the analysis. Fixed capital serves as a proxy for capital. Fixed capital at constant prices is calculated using the wholesale price index of manufactured products. Total number of persons engaged in an industry are taken as representative of labour. The value of materials consumed by an industry is deflated using the wholesale price index of manufactured products. The expenditure on fuel by an industry serves as a proxy for energy. The value of the fuel consumed is deflated using wholesale price index of fuel and power.

Percentage change in total factor productivity is calculated as

$$\text{Percentage change in total factor productivity} = (\text{total factor productivity change} - 1) \times 100$$

The first null and alternative hypotheses are:

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* The detailed names and codes of the industries are given in the Appendix B

H_{01}: There is no significant change in the total factor productivity across the high and low-technology manufacturing industries at three-digit level.

H_{A1}: There is a significant change in the total factor productivity across the high and low-technology manufacturing industries at three-digit level.

To decompose the various elements of total factor productivity change Färe, Grosskopf, Norris, and Zhang (1994) decomposition analysis has been used. Total factor productivity change can be decomposed into technological change (TC), technical efficiency change (TEC) and scale efficiency change (SEC).

$$TFPC = TC \times TEC \times SEC$$

The value more than one of technological change indicates technological progress and less than one indicates technological regress. The value more than one of change in technical efficiency indicates an enhancement in a firm's efficiency and less than one indicates deterioration in technical efficiency. The value more than one of change in scale efficiency shows that firms are becoming more efficient if they increase firm size (Rath, 2018).

The second hypothesis is:

H_{02}: There is no significant change in the source of the total factor productivity growth across the high and low-technology manufacturing industries at three-digit.

H_{A2}: There is a significant change in the source of the total factor productivity growth across the high and low-technology manufacturing industries at three-digit.

For estimating the determinants following hypothesis is constructed:

H_{03}: There is no significant relationship between total factor productivity growth and its determinants.

H_{A3}: There is a significant relationship between total factor productivity growth and its determinants.

For testing this hypothesis, the dependent variable is total factor productivity growth. The independent variables are firm size, capital intensity, wage rate, growth rate of output. Firm size can lead to an increase or decrease in total factor productivity. As the firm size increases, larger firms may have better access to good quality inputs at lower prices as compared to smaller firms. Firms with larger scales of operation may enjoy economies of scale and may experience

higher total factor productivity growth. Also, large firms can experience x-inefficiency, organizational and managerial complexities which may lead to lesser total factor productivity growth as compared to smaller firms. Thus, it is a crucial variable which may affect total factor productivity growth. Firm size is computed by dividing real gross output by the total number of factories (Ghose & Biswas, 2011). Real gross output is calculated by deflating the value of gross output by the wholesale price index of manufactured products.

$$\text{Firm size} = \frac{\text{real gross output}}{\text{total number of factories}}$$

Capital intensity is a technological parameter employed to indicate the level of mechanisation of the firm. Higher capital intensity shows more use of capital along with labour and a greater degree of mechanisation in the production process. Firms with higher capital intensity may utilize more technology-intensive techniques which may enhance their productivity growth (Yean, 1997). The capital intensity is calculated as the capital-labour ratio (Ghose & Biswas, 2011). Real fixed capital and total number of persons engaged are used as proxies for capital and labour respectively. Fixed capital is deflated using wholesale price index of manufactured products.

$$\text{Capital intensity} = \frac{\text{real fixed capital}}{\text{total number of persons engaged}}$$

Wage rate is also an important factor associated with total factor productivity. After economic reforms, workers encounter the demands of increased efficiency and the necessity to acquire additional skills (Saihjpal, 2016). An industry offering a high wage rate may attract more skilled labour and their involvement in the production may increase the total factor productivity. An increase in skilled labour may enhance the absorptive capacity, that is, firm's ability to learn and absorb knowledge and technologies generated elsewhere (Mason et al., 2020). An increase in the absorptive capacity of a firm would lead to technology transfer and hence, increases total factor productivity (Ngo et al., 2020). The wage rate is calculated as real emoluments divided by the total number of persons engaged (Rath, 2018). Total emoluments are deflated using consumer price index for industrial workers.

$$\text{Wage rate} = \frac{\text{real emoluments}}{\text{total number of persons engaged}}$$

Growth rate of output can also affect the productivity performance of an industry. Higher output growth may enable the firm to achieve a higher rate of technological progress and enjoy economies of scale and may experience an

increase in productivity. This may be due to the application of Verdoon's law which states a direct association between the growth rate of output and the growth rate of productivity (Yean, 1997). The growth rate of output is calculated as the rate of growth in the real gross output. The value of gross output is deflated using the wholesale price index of manufactured products.

$$\text{Growth rate of output} = \frac{\text{real gross output in period n} - \text{real gross output in period n}-1}{\text{real gross output in period n}-1} * 100$$

Firm size, capital intensity and wage rate are used in log form in the data set.

Table 1: Variables used to examine determinants of total factor productivity

Variable name	Definition
Dependent variable	
Total factor productivity	Calculation using Sequential Malmquist productivity index
Independent variables	
Firm size	Real gross output divided by total number of factories
Capital intensity	Real fixed capital divided by total number of persons engaged
Wage rate	Real emoluments divided by total number of persons engaged
Growth rate of output	Rate of growth of real gross output

The basic regression equation is:

TFPG = f (FS, WR, CI, GO)

Where, TFPG = total factor productivity, FS = firm size, WR = wage rate, CI = capital intensity GO = growth rate of output

Since, in the present research, the same industry is examined over a period of time, the datasets are consolidated as panel data. To explore the factors influencing total factor productivity growth in low-technology industries, the study first examines the cross-sectional dependence among residuals. Cross-sectional dependence is examined using three tests: the Breusch-Pagan LM test, the Pesaran scaled LM test, and the Pesaran CD test. Table 1A in the appendix A shows the result of the Cross-sectional dependence test of low-technology manufacturing industries. The results of Cross-sectional dependence test are significant at a one per cent level of significance, thus accepting the alternative hypothesis which states cross-sectional dependence exists among the residuals. In the presence of cross-sectional dependence, the standard fixed effects (FE) and random effects (RE) estimators are consistent but not efficient (Hoyos &

Sarafidis, 2006). However, one can use a feasible generalised least squares regression (FGLS) in the estimation to resolve this issue. After confirming cross-sectional dependence among the residuals, we have employed feasible generalised least squares regression (FGLS) to estimate the factors influencing total factor productivity in low-technology manufacturing industries. The results of the determinants are given in the next section.

To examine the determinants in high-technology industries we have tested cross-sectional dependence for high-technology industries. Table 2A in the appendix A shows the result of Cross-sectional dependence test. The test accepts the null hypothesis which states no cross-dependence dependence exists among residuals. As there is no cross-sectional dependence in high-technology industries we can check for stationarity. The study has adopted the first generation unit root test. The unit root test reveals that some variables are stationary at a level while some are stationary at the first difference, which is the basic prerequisite of the panel ARDL model.

In the next step, panel cointegration tests are done to check the presence of long-run relationships among the variables in the model. Table 3A in the appendix A illustrates the panel cointegration tests. The results of the Pedroni and Kao cointegration test accept the alternative hypothesis, which states long-run relationships exist among the variables. As the variables are stationary on a mixture of integrated of order zero and one and cointegration test shows a long-run relationship among the variables, therefore, Panel Auto Regressive Distributed Lag (ARDL) model is the most appropriate method to estimate determinants of total factor productivity in high-technology industries. Eviews 12 software is used in our study to conduct the analyses.

Results

Low-technology manufacturing industries

Table 2 presents the year-wise results of percentage change in total factor productivity growth and its sources in low-technology manufacturing industries from 2002 to 2019. It is discovered that total factor productivity growth amounts to 2.23 per cent over the entire time period in the low-technology manufacturing sector. The study exhibits year-to-year fluctuation in the total factor productivity growth. Total factor productivity growth demonstrates a declining trend during the entire time period, but indicates upswings in productivity in 2005-2006,2007-08, 2010-11, 2013-14, and 2017-19. Changes in the total factor productivity growth can be explained using its components, that is, technical change, scale efficiency and technical efficiency. The major increase in total factor productivity

growth in the years 2007-08, 2013-14 and 2018-19 is due to the positive impact of all three components. It implies improvement in technical efficiency, technological advancement and progress in scale efficiency has lead to an increase in productivity in these years. Low-technology manufacturing sector achieved the maximum total factor productivity growth of 13.74 per cent in the year 2010-11 because of more intensive increase in technical progress. This highest growth is because of the adoption of new and better technology as indicated by the positive value of technical change and also because of an increase in the efficiency of firms by efficiently utilizing the resources depicted by the positive change in technical efficiency. Over the study period, there has been a consistent positive trend in technical progress, reaching its peak in the year 2003-04. This indicates that low technology industries have embraced more advanced technologies during this period. However, from 2014-16, there was minimal technological advancement, and from 2016-2019, progress remained significantly low. Technical efficiency has shown mixed results throughout the study period and depicts maximum value in the year 2010-11. It implies low technology industries are most efficient in this year may be due to improvements in technology, increased labour skills and an increase in managerial efficiency which will also lead to the maximum total factor productivity growth in the same year. Scale efficiency displays diverse results over the study period, reaching its highest point in the year 2008-09. In most of the years, the changes in scale efficiency tend to be negative, indicate that industries may be operating below their optimal production scale. Notably, during 2017-19, scale efficiency shows positive values.

Table 2 shows that from 2002 to 2019 technical change was the major source of growth in total factor productivity in low-technology manufacturing industries as the productivity growth was driven 5.37 per cent by technical change but has slowed due to technical and scale inefficiency by 0.54 per cent and 2.45 per cent respectively. This implies that low-technology industries are facing scale inefficiencies as firms are not operating at the optimal scale of production and deterioration in technical efficiencies as firms have failed to realize the full potential of resources. Hence, the scale and technical inefficiency have affected the total efficiency of the firm.

The estimates of regression for low-technology industries are discussed in table 3. Over the entire period, the coefficient of the firm size is found to be positive and significant at one per cent level of significance. This reveals that in low-technology industries, an augmentation in firm size correlates with an upsurge in total factor productivity. This implies that as the large firms reap benefits from economies of scale, which means that as they produce more, their

average per unit cost decrease. This may increase their total factor productivity, as the firm becomes more efficient in its operations.

Table 2: Year-wise analysis of percentage change in total factor productivity and its different components in low and high-technology industries

Year	Low-technology industries				High-technology industries			
	Total factor productivity change	Technical change	Technical efficiency change	Scale efficiency change	Total factor productivity change	Technical change	Technical efficiency change	Scale efficiency change
2002-03	6.05	20.34	-4.29	-7.93	1.08	7.87	-4.93	-1.44
2003-04	5.34	51.92	-1.82	-29.37	0.32	0.99	-0.12	-0.54
2004-05	-3.91	4.18	-4.61	-3.30	6.45	5.45	0.63	0.31
2005-06	1.32	0.76	1.78	-1.20	5.88	3.22	3.95	-1.32
2006-07	0.16	0.45	0.20	-0.49	0.90	2.89	-4.42	2.60
2007-08	4.86	0.44	0.07	4.33	-3.36	1.85	-2.77	-2.41
2008-09	3.26	0.77	-4.24	7.01	8.12	7.69	2.60	-2.15
2009-10	2.26	3.46	1.06	-2.20	7.40	2.80	3.52	0.92
2010-11	13.74	14.08	4.91	-4.96	1.20	4.29	-5.29	2.46
2011-12	1.13	1.77	-5.00	4.60	-2.51	1.63	-3.33	-0.76
2012-13	-2.41	0.00	-2.13	-0.29	9.84	21.44	0.38	-9.89
2013-14	11.49	3.33	4.84	2.91	3.64	2.19	1.04	0.37
2014-15	-2.99	0.01	-0.71	-2.31	-1.63	1.68	-4.41	1.20
2015-16	-1.39	0.00	-0.75	-0.64	7.45	24.27	-1.66	-12.07
2016-17	-2.69	0.27	1.62	-4.50	5.69	12.66	0.28	-6.45
2017-18	0.49	0.11	-1.67	2.08	4.15	4.50	0.74	-1.06
2018-19	3.07	0.06	2.32	0.67	4.35	1.20	-3.67	7.04
Total	2.23	5.37	-0.54	-2.45	3.40	6.07	-1.07	-1.47

Source: Annual Survey of Industries (ASI) conducted by the Central Statistical Office, Ministry of Statistics and Programme Implementation, Government of India.

Further, firms could afford to invest in specialized technology, equipment, and skilled labour, which may boost the total factor productivity. Various studies like Dvoulety and Blazkova (2021), Ghose and Biswas (2011) and Satpathy and Mishra (2019) have also shown similar results.

Further, the coefficient of growth rate of output is positive and significant at one per cent level of significance. This implies that an increase in growth rate of output leads to rise in total factor productivity as endorsed by previous studies (Goldar, 1986; Ahluwalia, 1991). This suggests that a higher growth of output would enable the firms to attain a higher rate of technological progress and could take greater advantage of economies of scale which enhances the total factor productivity.

The impact of wage rate is found to be significant and positive on total factor productivity growth. Sometimes, a higher wage rate may induce the workers to acquire new skills and increase their work efficiency. Thus, with higher wages, the workers may contribute positively to the firms. Therefore, investment in workers also indirectly benefits the firms. Lastly, the result indicates that the coefficient of capital intensity is negative and significant at five per cent level of significance. This implies an escalation in capital intensity leads to a reduction in total factor productivity. Some studies like Oh, Heshmati and Loof (2014) and Yean (1997) have also shown the same results. This illustrates that low-technology industries are not able to benefit from rise in capital/labour ratio, which may be the result of misallocation and underutilization of capital. This could also be because of over-reliance on capital allocation and less on the efficient utilization of that capital input. Therefore, null hypothesis stating that there is no significant association between total factor productivity growth and its determinants is rejected and the alternative hypothesis is accepted.

High-technology manufacturing industries

The year-wise results of percentage change in total factor productivity growth and its decomposition components in high-technology manufacturing industries from 2002 to 2019 are presented in table 2. The total factor productivity growth rate in the high-technology manufacturing sector is found to be 3.4 per cent over the entire period. The study has identified fluctuations in year-to-year total factor productivity growth. While there is an overall declining trend in total factor productivity growth over the entire time period, notable increases in productivity can be observed in 2004-05, 2008-09, 2012-13, and 2015-16. These fluctuations in total factor productivity growth can be attributed to its constituent components, that is, technical change, technical efficiency, and scale efficiency. The substantial increases in total factor productivity growth in 2004-05, 2008-09, and 2012-13 are primarily driven by positive values in both technological change and technical efficiency. This suggests that advancements in technology, alongside improved technical efficiency through more effective resource utilization by firms, contributed to the productivity upsurge during these years. In contrast, the

increase in total factor productivity growth in 2015-16 can be solely attributed to technical progress, as the other two components, technical and scale efficiency, are observed to be declining. Over the course of the study period, there has been a sustained positive trajectory in technical progress, culminating in its peak in the year 2015-16. This suggests that industries with advanced technologies experienced increased adoption of even more sophisticated technologies during this period. However, post the 2015-16 period, there has been a decline in the trend of technical changes. Technical efficiency exhibits a mixed pattern over the study's duration, with its highest value in 2005-06. This suggests that high-technology industries were at their most efficient during that year, possibly due to technological advancements and increased labour skills. Scale efficiency exhibits varied outcomes across the study period, with predominantly negative values in most years and only marginal improvements in scale efficiency noted in the years 2004-05, 2006-07, 2009-11, and 2013-15. The sole year demonstrating a notably substantial increase in scale efficiency is 2018-19.

Table 3: Determinants of total factor productivity in high and low-technology manufacturing industries

	Low-technology industries		**High-technology industries**	
	Coefficient	**Standard Error**	**Coefficient**	**Standard Error**
Firm size	0.752593***	0.241812	1.797157***	0.598012
Capital intensity	-0.807421**	0.342123	-1.887882**	0.966513
Wage rate	2.179350***	0.642778	-6.552823**	2.478109
Growth rate of output	0.108627***	0.005989	-0.048409	0.031044
Constant	-28.48233***	5.437644	-	-

*,**,*** indicates coefficient significant at 10%, 5% and 1% levels, respectively

Source: Annual Survey of Industries (ASI) conducted by the Central Statistical Office, Ministry of Statistics and Programme Implementation, Government of India.

The decomposition analysis of total factor productivity growth over entire period in high-technology manufacturing industries reveals average improvement of 6.07 per cent in technical change. But is offset by a decrease in technical efficiency and scale efficiency by 1.07 per cent and 1.47 per cent, respectively. This implies that technical change played the most substantial role in driving total factor productivity growth in high-technology manufacturing industries. Further, the study has revealed that high-technology industries are also grappling with

scale inefficiencies, as firms may not be operating at their optimal size of production, alongside experiencing diminishing technical efficiencies.

Table 3 reveals the findings of the determinants of total factor productivity in high-technology manufacturing industries using panel ARDL regression analysis. The study indicates that the coefficient of firm size is positive and significant at one per cent level of significance. This implies that within high-technology industries, an increase in firm size is associated with an increase in total factor productivity. The expansion of firm size often brings about economies of scale and cost reduction, potentially leading to an enhancement in total factor productivity. Additionally, larger firms may possess greater resources for research and development, fostering innovation and technological progress, which can further contribute to the growth of total factor productivity.

Further, the coefficient of wage rate is negative and significant at five per cent level of significance. This implies that an increase in wage rate leads to a decline in total factor productivity. Higher wage rates increase labour costs for firms. This cost pressure may lead to firms cutting back on other investments, such as research and development, innovation, or the acquisition of new technology, which are critical for improving total factor productivity growth. The impact of capital intensity is found to be significant and negative on total factor productivity growth. This could occur when an increase in machinery and technology is not accompanied by a concurrent increase in skilled labour. In such instances, capital-intensive technologies may not be optimally utilized, thereby these may negatively impact total factor productivity growth. Therefore, industries may be unable to reap the full benefits arising from a rise in the capital-to-labour ratio. Lastly, the coefficient of the growth rate of output is found to be insignificant.

IV. Conclusion

The present paper has exposed that the high-technology industries have performed better in terms of total factor productivity growth than low-technology industries, even though there are only eight industries in the high-technology manufacturing sector and thirty industries in the low-technology manufacturing sector. This could be because of more use of new machinery and technology by high-technology industries than low-technology industries. Also, low-technology industries are unable to produce at optimal levels of production leading to more scale inefficiency than in high-technology industries. The decomposition analysis has revealed that both high and low-technology manufacturing industries are driven mainly by technical change. However, the intensity of technical change is higher in high-technology industries as compared to low-technology industries.

This implies that low-technology firms need to embrace more improved means of production and invest more in research and development to improve total factor productivity growth. Moreover, the declining trend in technical efficiency can be noticed in both high-technology and low-technology industries. This implies that firms are unable to efficiently utilize the resources. This could be possible due to a lack of skilled workers and limited knowledge about how to use new and advanced technology. This skill shortage could hinder the growth of total factor productivity for both high and low-technology industries. The regression findings for low-technology industries establish that firm size, wage rates, and output growth rate exhibit statistically significant and positive effects on total factor productivity growth within the low-technology manufacturing sector. Capital intensity is statistically significant but has a negative impact on total factor productivity. Thus, low-technology manufacturing industries should prioritize the adoption of capital inputs and cutting-edge technology while also enhancing the quality of the resources used to enhance their total factor productivity. On the other hand, the analysis of factors influencing total factor productivity growth in high-technology industries has shown that firm size exerts a statistically significant and positive influence. Capital intensity and wage rates are found to be statistically significant but have negative effects on total factor productivity growth within high-technology manufacturing industries. Thus, high-technology manufacturing industries should place a strong emphasis on optimizing the use of their resources to boost their overall total factor productivity growth and this can be possible by elevating the quality of essential inputs.

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Appendix A

Table 1A: Cross sectional dependence test for low-technology manufacturing industries.

Test	Statistic	p-value
Breusch-Pagan LM	706.1550	0.0000
Pesaran scaled LM	9.193015	0.0000
Pesaran CD	7.561663	0.0000

Table 2A: Cross sectional dependence test for high-technology manufacturing industries.

Test	Statistic	p-value
Breusch-Pagan LM	26.11606	0.5667
Pesaran scaled LM	-0.251752	0.8012
Pesaran CD	-0.995677	0.3194

Table 3A: Panel cointegration test for high-technology manufacturing industries

Pedroni residual test	Panel statistics			
	Statistic	p-value	Weighted Statistic	P-value
V statistic	-0.850963	0.8026	-1.160445	0.8771
Rho-statistic pp-statostic ADF-statistic	-0.406901 -7.495523 -5.968036	0.3420 0.0000 0.0000	-0.525992 -8.274575 -6.670396	0.2994 0.0000 0.0000
	Group statistic			
Rho-statistic	0.693880	0.7561		
pp-statistic	-12.65051	0.0000		
ADF-statistic	-8.236722	0.0000		
Kao residual test	T statistic	P-value		
ADF	-2.904838	0.0018		

Appendix B

High-technology manufacturing industries	
Sr. No. (Col 1)	Industry Names and Codes (Col 2)
1.	Manufacture of pharmaceuticals, medicinal chemical and botanical products (210)
2.	Manufacture of electronic components (261)
3.	Manufacture of communication equipment (263)
4.	Manufacture of consumer electronics (264)
5.	Manufacture of measuring, testing, navigating and control equipment; watches and clocks (265)
6.	Manufacture of irradiation, electromedical and electrotherapeutic equipment (266)
7.	Manufacture of optical instruments and equipment (267)
8.	Manufacture of air and spacecraft and related machinery (303)
Low-technology manufacturing industries	
1.	Processing and preserving of meat Group (101)
2.	Processing and preserving of fish, crustaceans and molluscs Group (102)
3.	Processing and preserving of fruit and vegetables (103)
4.	Manufacture of vegetable and animal oils and fats (104)
5.	Manufacture of dairy products (105)
6.	Manufacture of grain mill products, starches and starch products (106)
7.	Manufacture of other food products (107)
8.	Manufacture of prepared animal feeds (108)
9.	Manufacture of beverages (110)
10.	Manufacture of tobacco products (120)
11.	Spinning, weaving and finishing of textiles (131)
12.	Manufacture of other textiles (139)
13.	Manufacture of wearing apparel, except fur apparel (141)
14.	Manufacture of articles of fur (142)
15.	Manufacture of knitted and crocheted apparel (143)
16.	Tanning and dressing of leather; manufacture of luggage, handbags, saddlery and harness; dressing and dyeing of fur (151)
17.	Manufacture of footwear (152)
18.	Sawmilling and planing of wood Group (161)
19.	Manufacture of products of wood, cork, straw and plaiting materials (162)
20.	Manufacture of paper and paper products (170)
21.	Printing and service activities related to printing Group (181)
22.	Reproduction of recorded media (182)
23.	Manufacture of furniture (310)
24.	Manufacture of jewellery, bijouterie and related articles (321)
25.	Manufacture of musical instruments (322)
26.	Manufacture of sports goods (323)
27.	Manufacture of games and toys (324)
28.	Other manufacturing n.e.c.(329)
29.	Materials recovery (383)
30.	Publishing of books, periodicals and other publishing activities (581)

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Conceptual and Legal Framework for MSMEs in India: Problems and Prospects

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Abstract

The conceptual and legal aspects provide a framework for the functioning of MSMEs in India and help to ensure that they are able to operate in a fair and transparent manner. The understanding of these aspects is essential for MSMEs to navigate the regulatory environment, access support, and contribute effectively to India's economic growth. The present study examines to understand the conceptual and legal framework for MSMEs in India. An attempt has also been made to study the problems and prospects MSMEs. The study is descriptive in nature and based on secondary source of data. The Suitable data has been collected from the various of research journals, RBI issues, periodic reports from the Ministry of MSME, handbook of Indian economic statistics, and from various websites. The legal framework for MSMEs in India is constantly evolving. The government is constantly taking steps to improve the legal framework and make it more conducive to the growth of MSMEs. The Indian economy is expected to continue grow in the coming years, and the MSMEs will play a key role in this growth.

Keywords*: Economic Growth, Indian Economy, Legal Framework, MSMEs.*

I. Introduction

The MSMEs is a vibrant, attractive, and thriving sector of the Indian economy and the key driver of economic growth in India. It is the second largest in the world after China (Kajol et al., 2021). It shelters around 63.4 million enterprises, of which 43.7 million provide services like electricity, trade, and others, and 19.7 million are engaged in manufacturing various kinds of manual and technology-based products (Ministry of MSME, 2022). After the agricultural sector, the MSME sector provides the maximum employment options in terms of both self-employment and jobs (Kumar & Sardar, 2011).

The conceptual and legal framework for micro, small and medium enterprises (MSMEs) in India is defined in the Micro, Small and Medium Enterprises

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Development Act, 2006 (MSMED Act). This Act is a comprehensive piece of legislation that provides a strong foundation for the promotion and development of MSMEs in India. The Act helped to create a conducive environment for MSMEs to grow and thrive, and has contributed significantly to the economic development of the country. There are a number of different laws and regulations that apply to MSMEs. These laws and regulations are complex in nature and overlapping. This can make it difficult for MSMEs to understand and comply with the law. The cost of complying with the law can be high for MSMEs, especially for those, which are small and have limited resources. Many MSMEs are not aware of the laws and regulations that apply to them. This can lead to non-compliance with the law. The conceptual and legal framework for MSMEs in India is constantly changing. The government is constantly taking steps to improve the conceptual and legal framework and make it more conducive to the growth of MSMEs.

The MSMEs has a crucial part of countries' economic development. It plays a pivotal role in India's economy, contributing significantly to economic growth, employment generation, and industrial development (Bhuyan, 2016). The government is committed to promoting the growth of the MSMEs and has taken a number of measures to achieve this goal such as; (i) leading campaigns like Make in India, Digital India, Start-up India, etc.; (ii) ease of registration through the Udyam portal (iii) Government e-Marketplace, (iv) Pradhan Mantri Mudra Yojana, MSME Samadhaan (v) policies regarding the allocation of funds, extension of credit, availability of collateral-free loans, encouragement of foreign direct investments, ease of doing business, development of MSMEs; etc. Increased digitalization, high internet penetration, business-to-consumer players in the market, changing employment trends towards entrepreneurial activities instead of agriculture, etc., have also given rise to the MSME sector.

The legal framework can help MSMEs to access finance from banks and financial institutions. This is important, as MSMEs often face difficulty in accessing finance due to lack of collateral or high interest rates. The legal framework can help MSMEs to access training and development programs. This is important, as MSMEs often lack the skills and knowledge needed to succeed in the competitive marketplace.

The legal framework can help MSMEs to access infrastructure support, such as land, power, and water. This is important, as MSMEs often need access to these resources in order to operate their businesses. The legal framework protects the interests of MSMEs, as it provides for mechanisms for resolving disputes

between MSMEs and their customers, suppliers, and employees. This can help to reduce the risk of MSMEs being exploited.

II. Registration and Certification Process

The certification process for MSMEs in India varies depending on the specific certification that is being sought. There are a number of different certifications that MSMEs in India can obtain. These certifications can help MSMEs to improve their credibility and competitiveness in the marketplace. MSME registration provides several advantages, including access to credit at favorable terms, protection against delayed payments, and participation in government schemes and programs aimed at promoting MSME growth. Registering a Micro, Small, and Medium Enterprise (MSME) in India involves a straightforward process, and it has been made easier through online registration. First, one needs to determine whether business qualifies as an MSME based on the investment in plant and machinery (for manufacturing enterprises) or equipment (for service enterprises) and turnover. Refer to the criteria outlined in the Micro, Small, and Medium Enterprises Development (MSMED) Act, 2006.

Obtaining a certification can be a time-consuming and expensive process. However, the benefits of certification can outweigh the costs. Certified MSMEs are often more competitive in the marketplace and they may be able to access new markets and opportunities. The Udyog Aadhar registration is the primary method for MSME registration in India. It is a simplified online process that replaces the earlier SSI (Small Scale Industry) registration. One can visit the Udyog Aadhar Portal (*https://udyogaadhaar.gov.in/UA/UAM_Registration.aspx)* and fill out the online Udyog Aadhar registration form with details such as name of the business, address, Aadhar number of the owner/partner, the type of organization, and the industry are engaged in. After the providing information regarding the plant and machinery/equipment and turnover, it verifies the details using an OTP (One Time Password) sent to Aadhar-registered mobile number and after verified, applicant will receive an Udyog Aadhar Memorandum (UAM) with a unique Udyog Aadhar Number (UAN). This serves as MSME registration certificate. It's important to note that the MSME registration process in India is free of cost or involves minimal fees. Overall, registration and certification can be beneficial for MSMEs in India. By registering and obtaining certifications, MSMEs can improve their access to government schemes and benefits, improve their credibility and reputation in the marketplace, and become more competitive.

III. Conceptual and Legal Framework of MSMEs

The conceptual and legal framework for MSMEs is essential to support the growth and development of the MSME sector and to promote economic growth in India. It is governed primarily by the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006. The legal framework helps to ensure that MSMEs are treated fairly and equally under the law, as MSMEs often face discrimination from larger enterprises. It protect the interests of MSMEs from exploitation by unscrupulous traders and suppliers. It also provides for mechanisms for resolving disputes between MSMEs and their customers, suppliers, and employees. The legal framework can help to promote the growth of MSMEs by providing them with access to finance, training, and other support services. MSMEs play an important role in India's exports. The legal framework also helps to boost exports by providing MSMEs with access to international markets and by simplifying the export process.

The government of India changed the definition of MSMEs in May 2020. Earlier MSMEs were defined with the amount of investment. Now the turnover of the enterprise is also included in the definition. Earlier MSMEs were differentiated on the basis manufacturing units and service units. But now this has been removed and MSMEs can mainly be distinguished into three categories micro small and medium. Sajeevan G (2012) investigate the statistical database in Micro, Small, and Medium Enterprises and examined conceptual problems concerning the MSME sector as well as worldwide standard for defining MSMEs.

The definition of MSMEs is based on their investment in plant and machinery (for manufacturing enterprises) or equipment (for service enterprises) and turnover. In May 2020, the Indian government also revised the criteria for classification to promote ease of doing business. The entire MSME manufacturing sector had firms with investments up to Rs. 10 crores and the service sector up to Rs. 5 crores as shown in the following Table 1. The ministry waived the distinction between manufacturing and service activities and classified the enterprises based on their ‘investment limit’ and ‘annual turnover limit’. A ‘micro’ enterprise is where investment does not exceed one crore and turnover does not exceed five crore rupees. A ‘small’ enterprise is where investment does not exceed 10 crore and turnover does not exceed 50 crore rupees. A ‘medium’ enterprise is where investment does not exceed 50 crore and turnover does not exceed 250 crore rupees. This definition came into effect on July 01, 2020. The purpose was to increase the investment limit and benefits to the sector to help them flourish. Later in 2021, wholesalers, retailers, and urban

street vendors were included in the MSME sector to extend the benefits of priority sector lending to them (Ministry of MSME, 2022). Table 1 exhibits the threshold limits and classification criteria for MSMEs in India.

Table 1: Classification and Limits of MSMEs in India

Manufacturing / Service Sector	Investment in plant & machinery/equipment	Annual turnover
Micro Enterprises	Up to Rs. 1 Crore	Up to Rs. 5 Crore
Small Enterprises	Up to Rs. 10 Crore	Up to Rs. 50 Crore
Medium Enterprises	Up to Rs. 50 Crores	Up to Rs. 250 Crore

Source: *Compiled from MSME Annual Report 2021-22 (Ministry of MSME, 2022)*

MSMEs in India governed by the Micro, Small and Medium Enterprises Development Act of 2006. Before 2020, the sector distinguished manufacturing and service enterprises. The classification was based on the enterprise's investment in plant and machinery or equipment. The legal framework for micro, small and medium enterprises (MSMEs) in India comprises the various laws and regulations such as; first, MSMED Act, 2006 which provides for the promotion, development and regulation of MSMEs in the country. It defines MSMEs as enterprises with investment in plant and machinery not exceeding Rs.1 crore (micro enterprise), Rs 10 crore (small enterprise) and Rs 50 crore (medium enterprise). This Act also provides for a number of incentives and schemes for MSMEs, such as financial assistance, tax benefits, and infrastructure support.

Second, Factoring Regulation Act 2011 regulates the factoring business in India. Factoring is a financial service that allows businesses to sell their accounts receivable to a third party (factor) at a discount. This Act provides for the registration of factoring companies and sets out the terms and conditions of factoring transactions. Third, Micro Finance Institutions Act, 2006 regulates the microfinance industry in India. Microfinance institutions (MFIs) provide financial services to low-income borrowers, such as loans, savings accounts, and insurance. This Act provides for the registration of MFIs and sets out the terms and conditions of microfinance lending.

Fourth, Khadi and Village Industries Commission Act, 1956 provides for the promotion and development of khadi and village industries in India. Khadi is a

traditional hand-woven cloth, and village industries are small-scale industries that are located in rural areas (Rani and Bains, 2014) This Act establishes the Khadi and Village Industries Commission (KVIC), which is responsible for implementing the Act. Fifth, National Small Industries Corporation Act, 1955 provides for the establishment of the National Small Industries Corporation (NSIC). The NSIC is a government-owned corporation that provides financial and technical assistance to small-scale industries.

In addition to these laws and regulations, there are a number of other laws and regulations that may apply to MSMEs, such as the Companies Act, 2013, the Consumer Protection Act, 2019, and the Competition Act, 2002. The legal framework can provide MSMEs with incentives and schemes, such as tax breaks and subsidies. This can help MSMEs to reduce their costs and grow their businesses. The legal framework can help MSMEs to export their products and services. This is important, as MSMEs can tap into new markets and grow their businesses. The government should improve the enforcement of laws and regulations by increasing the number of inspectors and providing them with better training. The government should also make it easier for MSMEs to report non-compliance with the law. The government should increase awareness of the law among MSMEs. This could be done through education and training programs.

IV. Contribution of MSME's in Indian Economy

MSMEs are contributing significantly to GDP, exports, and employment. They are instrumental in inclusive growth, poverty reduction, and regional development. The government of India has recognized the importance of the MSME sector and has taken a number of measures to promote its growth. These measures include providing financial assistance, tax benefits, and infrastructure support. Micro, Small, and Medium Enterprises (MSMEs) have a significant impact on economic development in India. They play a vital role in various aspects of economic growth and social development.

According to the Ministry of MSMEs Annual Report 2021-22, about 63.05 million micro, 0.33 million small, and 5,000 medium enterprises are operating pan-India (Ministry of MSME, 2022). The sector is on a high rise. As of January 01, 2021, over 65 lakh MSMEs were registered with the ministry (Ministry of MSME, 2022). Several initiatives by the Indian government have contributed to the sector's growth and stability. In terms of economic development, the facts presented at the Indian MSME Growth Summit, New Delhi, on June 2022, revealed the sector contributes to nearly 30 percent of the Indian Gross Domestic

Product, of which around 6.1 percent is from the manufacturing activities and 24.6 percent is from the service activities (CII, 2022). It also accounts for 33 percent of the nation's industrial output and 45 percent of its exports. In terms of industrial development, MSMEs act as ancillary units for large-scale industries and provide them with the necessary raw materials, components, supplies, and backward linkage. They also give opportunities to budding entrepreneurs to innovate and build creative products, boost competition, and enhance business growth. In terms of social development, around 120 million people nationwide work in MSMEs, making the sector the second largest employment generator in India after agriculture (Jain, 2020). About 20 percent of MSMEs are in rural areas (CII, 2022), indicating that the sector promotes rural and weaker sections' development and inclusive growth. As such, MSMEs are significant to the nation's overall flourishment. India is expected to become a $5 trillion economy by 2025, and MSMEs are claimed to play a pivotal role in achieving this milestone (Tyagi, 2022).

Table-2: Estimated Number of MSMEs in India during 2020-21 (in lakhs)

Category	Rural	Urban	Total	% Share
Manufacturing	114.14	82.50	196.50	31
Trade	108.71	121.64	230.35	36
Electricity	0.03	0.01	0.03	0
Other Services	102.00	104.85	206.85	33
All	324.88	309.00	633.88	100

Sources: Government of India, Ministry of MSME, Annual Report, 2021

As per a report by IFEF here are approximately 6.3 crore MSMEs in India." According to CII states report micro, small and medium (MSMEs) contribute about 6.11 percent of the manufacturing GDP and 24.63 percent of the GDP from service activities and about 33.4 percent of the India's manufacturing production. This sector has been able to provide to about 120 million persons and contribute around 45 percent of the overall export from India. It has over all consistently maintained about10 percent growth rates. Table 2 shows category wise estimated number of MSMEs in India and their percentage share during 2020-21. It can be seen from the Table that trade contributed highest percentage share i.e. 36 percent

followed by other services 33 percent and manufacturing 31 percent. Total numbers of MSMEs were 633.88 lakhs in India out of those 309 lakhs in urban areas and 324.88 in rural areas during 2021.

MSMEs have played an important role in the development of Indian economy since 1951 from the beginning of the planned economy (Vashisht, Chaudhary & Priyanka, 2016). These are not only creating employment, but they also assist to the county's development. They also support to the large industries of the economy and contribute significantly to the development of this sector (Kumar, 2017).

V. The Impact of the COVID-19 Pandemic on MSMEs in India

The COVID-19 pandemic significantly impacted Micro, Small, and Medium Enterprises (MSMEs) in India, causing disruptions in supply chains, reduced consumer demand, and financial constraints. According to the Ministry of MSME, around 35 percent of MSMEs were severely affected by the pandemic, with many facing liquidity issues and operational difficulties. Nationwide lockdowns led to a steep decline in demand for goods and services. Many MSMEs had to lay off workers due to reduced demand and cash flow issues. The shift to online operations exposed the digital divide between large and small businesses. A significant number of MSMEs were forced to temporarily or permanently shut down due to the financial strain and collapse in demand. Many MSMEs lacked the infrastructure and skills to adapt to e-commerce and digital marketing. The closure of businesses, restrictions on movement, and reduced economic activity resulted in declining revenues and cash flow problems for MSMEs across various sectors. Despite these the COVID-19 period also spurred innovation and adaptation among MSMEs.

VI. Problems and Prospects of MSME’s

MSMEs often face competition from large enterprises. This is because large enterprises have access to economies of scale and can produce goods and services at a lower cost. They have faced employment-related problems, including skill gaps, inadequate access to finance, and technology limitations. They often face difficulty in accessing finance from banks and financial institutions. This is due to a number of factors, such as lack of collateral, high interest rates, and cumbersome documentation requirements. The MSMEs are facing a shortage of skilled manpower. This is due to the fact that there are not enough training and development programs available for MSMEs. MSMEs often face challenges in

complying with the various regulations that apply to them. This is due to the fact that the regulations are often complex and time-consuming to comply with.

The enforcement of laws and regulations are still ineffective in India. This can lead to MSMEs getting away with non-compliance. MSMEs often face challenges in accessing justice when they are wronged. This can be due to the cost of legal services, the complexity of the legal system, and the lack of awareness of their rights. The government is taking steps to address these obstacles, such as simplifying the regulatory framework, providing financial assistance to MSMEs to help them comply with the law, and improving the enforcement of laws and regulations. However, more needs to be done to create a more conducive environment for MSMEs to comply with the law.

Overall, India has a large and vibrant MSME sector. MSMEs account for a significant share of India's GDP and employment. But, according to Yadav & Tripathi (2018), they face several challenges, such as access to finance, market access, and technology. A conceptual and legal framework for MSMEs can help to address these challenges and support the growth and development of the MSME sector.

MSMEs have significant prospects in developing countries like India. They are a major source of employment and economic growth, and they play a vital role in poverty alleviation and inclusive development. A conducive business environment is imperative for them to innovate, survive and grow, and compete on a global platform (Pradhan, 2016). MSMEs in India have a range of prospects available to them across various sectors. These prospects are driven by factors such as government policies, market dynamics, technology trends, and changing consumer preferences. The Indian government has also launched several schemes and incentives to promote MSME growth. These include credit guarantee schemes, subsidies, and grants for technology adoption, export promotion schemes, and PMEGP, among others. The digitalization of business processes, including e-commerce, online marketing, and digital payment systems, presents significant opportunities for MSMEs to reach a broader customer base, improve efficiency, and reduce operational costs. The government is taking a number of steps to address these challenges, such as providing financial assistance, setting up training and development programs, and simplifying the regulatory framework.

VII. Recent Factory Regulations and MSMEs

Various commissions, institutions and organisations has been setup by the MSME Ministry to promote & develop the various industries at micro, small and medium levels. In India, recent factory regulations have increasingly focused on addressing the specific needs and challenges faced by Micro, Small, and Medium Enterprises (MSMEs) while ensuring compliance with safety, environmental, and labor standards. In this regard one significant development is the introduction of the Micro, Small, and Medium Enterprises Development (MSMED) Act, 2006, which defines MSMEs and lays down the framework for their promotion and growth. Under this act, MSMEs are eligible for various benefits and incentives, including priority lending, subsidies, and exemptions from certain regulatory requirements, thereby facilitating their compliance with factory regulations (MSME.gov.in). One another important development is the implementation of the Udyog Aadhaar registration process, which simplifies the registration procedure for MSMEs. This initiative enables MSMEs to obtain a unique identification number easily, facilitating their access to various government schemes, subsidies, and benefits. Overall, recent factory regulations in India have aimed to create a conducive regulatory environment that supports the growth and sustainability of MSMEs.

A new regulation mandates that large buyers clear payments to MSMEs for goods procured within 45 days of delivery. This aims to improve cash flow for MSMEs (MSME.gov.in, 2023). The MSME classification is now based on a combination of investment in plant and machinery and turnover. This revision increased the threshold for medium enterprises, potentially benefiting some businesses.

VIII. Role of Judiciary in MSMEs

The judiciary plays a vital role in safeguarding the interests of Micro, Small, and Medium Enterprises (MSMEs) in India. It adjudicates disputes related to contractual agreements, payment defaults, intellectual property rights, and regulatory compliance, ensuring fair resolution and protection of MSMEs' rights. Courts enforce contracts, uphold intellectual property rights, and interpret laws governing MSME operations, thereby providing legal remedies and clarity for MSMEs. Additionally, the judiciary addresses systemic issues affecting MSMEs through Public Interest Litigation (PIL), issuing directives to relevant authorities for policy improvements.

The judiciary interprets and clarifies ambiguities in regulations, ensuring fair implementation and protecting MSMEs from arbitrary actions by government authorities. It also ensures fair treatment of workers by enforcing labor laws. By ensuring the rule of law; the judiciary fosters a conducive business environment for MSMEs to thrive, promoting economic growth and entrepreneurship in India. A strong and independent judiciary fosters trust and predictability in the business environment, which is critical for the growth and development of MSMEs. Overall, the judiciary serves as a guardian of the rule of law and provides a legal framework that supports the growth, development, and protection of MSMEs in India. Its interventions ensure that MSMEs operate in a fair, transparent, and conducive business environment, contributing to economic prosperity and social well-being.

IX. Policy Implications and Suggestions

Various commissions, institutions and organisations has been setup by the MSME Ministry to promote & develop the various industries at micro, small and medium levels. These recent changes reflect ongoing efforts by the Government of India to strengthen the MSME sector, promote entrepreneurship, enhance competitiveness, and facilitate its integration into the global economy. The Government is committed to providing a favorable legal environment for MSMEs, and it is working on a number of new initiatives to further support the MSME sector. The government can more simplify the regulatory framework for MSMEs by consolidating the different laws and regulations that apply to them. This will make it easier for MSMEs to understand and comply with the law. There should be a provision of financial assistance to MSMEs to help them comply with the law. This could be done in the form of grants, loans, or tax breaks. The MSMEs try to upgrade themselves in line with technological advancements.

There is a necessity to improve the enforcement of laws and regulations by increasing the number of inspectors and providing them with better training. The government should increase awareness of the law among MSMEs. This could be done through education and training programs. The government should create a more supportive environment for MSMEs by providing them with access to finance, training, and other support services. This will help MSMEs to comply with the law and grow their businesses. The government should create a more supportive environment for MSMEs by providing them with access to finance, training, and other support services. This will help MSMEs to comply with the law and grow their businesses.

X. Conclusion

Overall, the legal framework for MSMEs in India is very helpful for the growth of the MSME sector. The government of India is committed to providing a favorable legal environment for MSMEs. Understanding the conceptual and legal issues surrounding MSMEs in India is essential for policymakers, entrepreneurs, and investors. Micro, Small, and Medium Enterprises Development Act, 2006 provides a legal framework for the promotion and development of MSMEs. The government is taking a number of steps to address the challenges, such as providing financial assistance, setting up training and development programs, and simplifying the regulatory framework. Initiatives like the Udyog Aadhar registration and the online Udyam Registration Portal have simplified the registration process for MSMEs, making it easier for them to avail benefits and subsidies. Promoting technology adoption and innovation through subsidies and capacity-building programs can enhance competitiveness. Facilitating market access, protecting intellectual property rights, and promoting sustainable practices can unlock new opportunities for MSMEs.

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