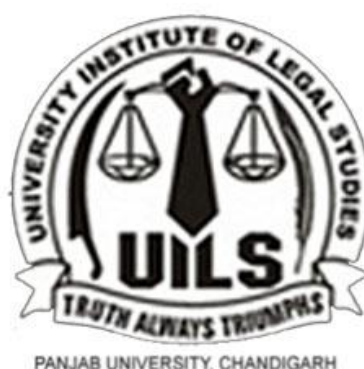


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## **Editor's Note**

The Journal of UILS is a refereed and peer-reviewed academic publication dedicated to fostering scholarly dialogue and disseminating research across a wide range of legal disciplines. Our journal serves as a platform for academics, practitioners, and students to contribute to the evolving landscape of legal scholarship that is multi-disciplinary in nature. As we present this latest issue of our multi-disciplinary journal, we are reminded of the ever-evolving landscape of law and its intersection with various fields, including technology, public policy, social justice, and environmental sustainability. Contemporary issues continue to challenge traditional legal paradigms, requiring innovative approaches and interdisciplinary collaboration.

In this issue, we explore a range of topics that reflect these pressing challenges. From the implications of artificial intelligence in legal practice to the intersection of public health law and individual rights, our contributors offer critical insights into how legal frameworks must adapt to address the complexities of modern society. The ongoing dialogues underscore the urgent need for a holistic understanding of these issues. We also acknowledge the vital role of social movements in shaping legal discourse. As activism increasingly influences legislative processes, we examine how grassroots efforts can inform legal reform and advance equity and justice in our communities.

In the issue Prof. Chanchal Narang and Medhavi explore issues pertaining to the efficacy of Twitter to teach prepositions at the undergraduate level; Dr. Gurpreet Kaur investigates the role of socio-cultural factors on the mental health of women; Dr. Jayanti Dutta reviews a book that is a memoir of barrister Roshan Lal Batta who was called to the Bar by the Hon'ble Society of the Inner Temple, London, and is an inspiring detail of his life and works. Dr. Kanwaljit studies the relationship between cancer and the rural population in Punjab; Dr. Reena and Dr. Ganagandeep attempt to understand the dynamics of women in sports and the relationship they share with their male counterparts; Dr. Manjit and Sahibpreet assess the criminal liability in AI-enabled autonomous vehicles; Dr. Sheetal Thakur unravels the source, subject matter, and scope of International Criminal

Law; and Harish Yadav conducts an exploration of the manner in which legal decisions shape the Indian economic landscape;

In the legal domain, the articles represent a variety of issues.; Swapanpreet Kaur critically examines the Juvenile Justice Act, 2015 and its existing gaps; Banveer Kaur delves into the constitutional jurisprudence on bribery vis-à-vis parliamentary privileges; and Gurleen Kaur scrutinizes the issues and challenges faced in conducting elections in India. Hannu Gandhi and Dr. Gaurav Gaur analyse the socio-economic factors impacting women engaged in Farmer Producer Organisation in Punjab; and Neha Setia details the significance of communication skills for engineering graduates in the Indian job market. Another piece by Kanchi Jain reconnoitres the life narratives of children whose childhood was impacted by the insurgency in Kashmir. Lastly, Agampreet Singh adopts a rights-based approach to analysing consumerism.

Time has highlighted disparities in access to justice, prompting a re-evaluation of existing legal structures. As we move forward, it is essential to consider how law can be a tool for resilience and recovery, addressing both immediate needs and long-term systemic inequities. We invite our readers to engage with the diverse perspectives presented in this issue, as we collectively navigate the complexities of contemporary legal challenges. Our commitment to fostering interdisciplinary dialogue remains steadfast, and we look forward to continuing this important conversation in the pages ahead. Thank you for your ongoing support and engagement with our journal.

***Acknowledgments:***

I express my sincere gratitude to our Chief Patron, Prof. Dr. Renu Vig, Vice Chancellor, Panjab University for her commitment and support to our journal. I am extremely grateful to the members of the Advisory Board – Justice A K Sikri, Former Judge, Supreme Court of India & International Judge, International Commercial Court; Prof. Dr. Balram K Gupta, Professor Emeritus & Former Director, National Judicial Academy, India; and Prof. Dr. Dilip Ukey, Vice Chancellor, Maharashtra National law University, Mumbai, for pledging their vital backing to this journal.

I express my earnest thanks to the Co-Editors, Prof. Gulshan Kumar, and Prof. Jai Mala for undertaking the detailed editorial work. I appreciate the efforts of Prof. Rattan Singh, Prof. Chanchal Narang, Prof. Ajay Ranga, and Prof. Meenu Kaushik as part of the Editorial Board. I offer my sincere thanks and appreciation to all the authors and reviewers that have entrusted the Journal of University Institute of Legal Studies (JUMLS) with their scholarship. Lastly, I would like to thank Dr. Sugandha Passi and Dr. Sital Sharma for the efficient execution of the process of bringing this journal to life; and to Dr. Abha Sethi, Kritika Sheoran, and Sharanjit Kaur for the assistance they have rendered.

***Prof. Dr. Shruti Bedi***  
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## Breaking Boundaries: Exploring the Efficacy of Social Media Platform ‘X’ to Teach Prepositions at the Undergraduate Level

Medhavi Sood\*

Prof (Dr.) Chanchal Narang\*\*

### Abstract

*Prepositions are often a challenging aspect of language learning due to their nuanced usage and context-dependent meanings. Many students struggle to grasp the correct application of prepositions, leading to frequent errors in writing and communication. Integrating social media platforms, such as “X”, into language instruction can offer a dynamic and interactive approach to mastering prepositions, leveraging the platform's concise and real-time nature to enhance engagement and practical usage. This study looks into how well undergraduate students might learn prepositions utilizing the social media platform "X". The researcher uses a mixed-methods approach, combining qualitative information from surveys and interviews with quantitative data from pre-tests and post-tests. With the mean posttest score of 85.6 (SD=10.2) being noticeably higher than the mean pretest score of 62.4 (SD=14.7),  $t(49) = 12.64$ ,  $p < 0.001$ , the quantitative results demonstrated a considerable increase. Positive student perceptions of the platform's features, including engagement, interaction, ease, and collaborative learning possibilities, were highlighted by qualitative data. However, difficulties including technological problems (18% of students reported them) and 25% of students' preference for in-person learning with teachers were also noted. The study adds to the expanding corpus of studies on using social media for language instruction and offers valuable insights for teachers who want to include these platforms in their classrooms.*

**Keywords:** Social Media, Language Education, Prepositions, ‘X’, Engagement

### 1. Introduction

Young students and people of all ages are navigating through an increasingly complex information and communication environment where there is more to hear, read and see than ever before (UNESCO, 2019). The last few years have witnessed tremendous growth in social networking services afforded by immense technological developments. These rapid changes to our communication and

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information landscapes have created the need for language teachers to renew their pedagogy in accordance with these digital competencies. Social networking services have become so deeply intertwined with human activity and are being disseminated so quickly that their influence and attraction in any form are unavoidable. Additionally, researchers believe that teaching language without some form of technology can create a very limited and artificial learning environment- if it were even possible at all (Chun et al., 2016). This suggests that we cannot learn a language in isolation from the technological advancements that now lie at the core of communication in society. As discussed earlier, one such advancement that requires grave attention is social networking. Researchers have now begun to evaluate the use of social networking sites in teaching language. One of the most popular social networking sites, 'X', formerly known as Twitter, has recently been gaining ground in language teaching despite its 280-character limit per post, making it an exciting avenue for research in English Language Teaching. This is a crucial feature as due to the character limit imposed on Twitter, posts on Twitter are exciting data to observe how meaning can be made in constrained environments (Zappavigna, 2012). Another important characteristic feature of platform 'X' is its emphasis on brevity. Brevity is an important component of language as has been highlighted by Shakespeare "Brevity is the soul of wit." This means that clever people can express intelligent things using very few words. These inherent advantages of 'X' can make it a suitable classroom tool. Hence, this study report uses 'X', a social media platform, to teach prepositions at the undergraduate level.

## **2. Problematizing Teaching of Prepositions**

Prepositions are often a challenging aspect of language learning due to their nuanced usage and context-dependent meanings. Many students struggle to grasp the correct application of prepositions, leading to frequent errors in writing and communication. Further, they are fundamental to English language learners, especially those without a native accent, who typically find them to be particularly difficult. The subtleties and correct application of prepositions are not necessarily easy for pupils to understand when taught via conventional techniques like textbooks and lectures. That is why it is so important to look into different ways of teaching these grammatical components so that students have a better experience overall.

To better understand how to teach prepositions to undergraduates, this study will look at platform X and its possible advantages and disadvantages. This work seeks to illuminate the efficacy of social media in language instruction by examining the features and functions of 'X' and undertaking a study with a group

of undergraduate students.

The following are the research questions that this article will attempt to answer:

1. How can platform 'X' enhances undergraduate students' understanding of prepositions?
2. When comparing platform 'X' to more conventional methods of teaching prepositions, what are the benefits and drawbacks of each?
3. How effective is platform 'X' for teaching prepositions to students?
4. Does using platform 'X' affect students' ability to learn and remember prepositions?

For the proposed study, the researcher used a mixed-methods strategy that incorporated both qualitative and quantitative data to address these issues. Participants in the study were undergraduates who took part in a platform X-based preposition learning program. They were tested both before and after the program to see how much they had learned about prepositions. To further collect data on how students perceived and reacted to platform 'X' as a learning tool, surveys and interviews were also carried out.

This research has the potential to make a significant contribution to language education by investigating new ways to use social media for teaching. If the results show that teaching prepositions on platform 'X' is effective, it could lead to new opportunities for language teachers to use social media in the classroom. Further research on the use of technology in education could be inspired by the insights acquired from this study, which could be extended to other elements of language acquisition.

### **3. Literature Review**

The onset of technology has put tremendous pressure on researchers and educators to incorporate it into their classroom instruction. Since social media's inception, many people have considered its language-learning potential. This research review will examine the use of social media in education, particularly in preposition instruction.

#### **3.1. Social Media Usage in Education**

With billions of users worldwide, social media platforms have become utterly ubiquitous in this era of digital technology. Social media sites like Facebook, Instagram, LinkedIn, Twitter, and others have proliferated, revolutionizing people's capacity to engage, share information, and communicate with one another.

The potential of social media as a teaching and learning tool has come to the attention of educators more and more in recent years.

The task of performing a comprehensive analysis of the body of research on the application of social media to higher education falls to Manca and Ranieri (2016). They found that social media platforms can support a range of educational activities, such as content creation, knowledge sharing, and collaborative learning. However, they also highlighted several challenges, such as worries about personal data and the need for instructors and pupils to be digitally literate.

The study conducted by Chugh and Ruhi (2018) examined the benefits and drawbacks of social media use in the educational setting. Among the several advantages they noted were a rise in student engagement, enhanced teacher-student connection, and the ability to develop a sense of community. However, they also identified potential issues, including the blending of personal and professional life, cyberbullying, and academic work diversions.

### **3.2. Teaching Prepositions**

Prepositions are an important part of the English language, but people who are learning the language on their own sometimes find them difficult to use. Prepositions are used to express relationships between words, such as those that are temporal, geographical, or logical. However, they can be hard to understand because of their idiomatic and context-dependent usage.

Traditional methods including drills, exercises, and explicit instruction are usually used to teach prepositions. A study by Lorincz and Gordon (2012) looked into the effectiveness of explicit instruction while teaching prepositions to English language learners. Their findings showed that getting specialized instruction greatly enhanced students' understanding of prepositions and their capacity to use them.

Conversely, other academics have argued in favor of a more contextualized and communicative approach to teaching prepositions. Lind Stromberg (2010) proposed the use of cognitive linguistic concepts to teach prepositions, emphasizing the metaphorical and geographical implications of prepositions. He said that if students first had a knowledge of the basic ideas and relationships that prepositions transmit, they would then develop a more intuitive understanding of how to use prepositions.

### **3.3. Teaching Prepositions Using Social Media**

Few studies have looked into the potential of social media platforms for language acquisition in general, despite the paucity of research specifically focusing on the use of these platforms to teach prepositions.

Kabilan, Ahmad, and Abidin (2010) conducted research on college students' use of Facebook as a medium for English language acquisition. They concluded that Facebook enhanced collaborative learning, increased motivation, and provided opportunities for the use of genuine language. But they also made the point that instructors needed to help and engage in thorough planning if they wanted to ensure excellent learning outcomes.

Alnujaidi's (2017) study looked into the opinions and experiences of English language learners who used Twitter to practice their language skills. The study's conclusions show that participants thought Twitter was a useful tool for honing their language skills, getting feedback, and interacting with native speakers. Nonetheless, certain challenges were identified, including the limited character count and the need for self-directed learning.

## **4. Gap in the Literature**

Even while previous research has looked into the use of social media in education and language learning, there is a lack of studies that particularly address the use of social media to teach prepositions to undergraduate students. This study article's goal is to determine whether using platform 'X' to teach prepositions to undergraduate students is an effective way to meet this demand.

This research seeks to add to the body of knowledge already available about the use of social media in language training. This will be achieved by examining the features and operations of Platform X and carrying out research with a cohort of undergraduate students. The results of this study may offer researchers and educators important new information if they are interested in using social media for instructional purposes.

## **5. Methodology**

An investigation of the effectiveness of using platform 'X' to teach prepositions at the undergraduate level was conducted using a mixed-methods approach. This section contains comprehensive details on the study design, participants, data-gathering methods, and data analysis processes.

### **5.1. Strategy for the Investigation**

A single group of participants' pre-and post-test results were compared as part of

the quasi-experimental methodology used for the study. The individuals took part in a prepositional learning program run on platform 'X'. The participants' prepositional knowledge and comprehension were assessed both before and after the training.

The goal of the qualitative information gathered through surveys and interviews was to obtain a better understanding of students' viewpoints and experiences with using platform 'X' to study prepositions. Along with the quantitative information gathered from the pretest and posttest exercises, this was also carried out.

## **5.2. Participants**

Fifty undergraduate students from Panjab University who were enrolled in an English language program participated in this study. Purposive sampling was used in the sample selection process to guarantee that each participant had the same degree of English proficiency and had not received any prior instruction on prepositions using Platform X.

The study participants' demographic characteristics are listed below for each individual:

- There were 22 men (44%) and 28 women (56%) in total.
- The age range was 18 to 24 years old.

## **6. Techniques for Gathering Data**

### **6.1. The Posttest and the Pretest**

Before the learning program started, a pretest was used to gauge the participants' understanding of and familiarity with prepositions. Fifty questions with multiple-choice responses covering a range of prepositional usage issues made up the preliminary exam. Participants were given a posttest at the end of the learning program, which was identical to the pretest in terms of both format and difficulty.

### **6.2. Surveys of opinions**

After the training session ended, participants were required to fill out an online survey. To gather data on the participants' opinions of using platform 'X' to learn prepositions, their level of involvement, and their assessments of the advantages and disadvantages of the program, the survey contained both open-ended and Likert-scale questions.

Ten individuals were selected at random and then questioned in a semi-structured manner to gain a deeper knowledge of the experiences and viewpoints



of the participants. The interviews were both audios recorded and transcribed to perform the analysis.

## 7. Analyzing the Information

The pre-and post-test results were compared using descriptive statistics like mean and standard deviation. The paired-sample t-test determined if pre-and post-test scores differed statistically. The investigation significance was set at 0.05.

The open-ended survey responses and the transcripts of the interviews were examined using theme analysis. The data were categorized and arranged into themes once recurring themes and patterns were found in them. Subsequently, the themes were analyzed and a conversation regarding their connection to the research subjects ensued.

## 8. Results

This section presents the results of the data analysis, addressing the research questions posed in the introduction. The findings are organized into three main subsections: (1) quantitative results from the pretest and posttest, (2) qualitative results from the surveys and interviews, and (3) a synthesis of the quantitative and qualitative findings.

### 8.1. Quantitative Results

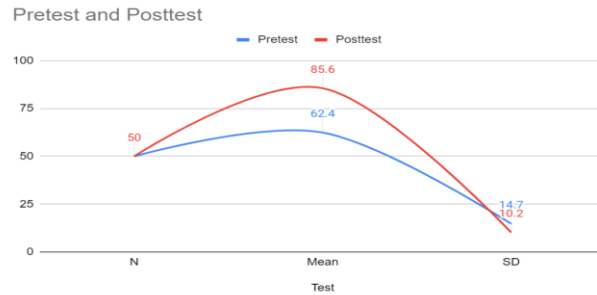
#### 8.1.1. Pretest and Posttest Scores

The pretest and posttest scores were analyzed to determine the effectiveness of using platform 'X' to teach prepositions to undergraduate students. Table 1 presents the descriptive statistics for the pretest and posttest scores.

**Table 1 presents the descriptive statistics for pretest and posttest scores.**

| Test     | N  | Mean | SD   |
|----------|----|------|------|
| Pretest  | 50 | 62.4 | 14.7 |
| Posttest | 50 | 85.6 | 10.2 |

The mean pretest score was 62.4 (SD = 14.7), while the mean posttest score was 85.6 (SD = 10.2). This suggests an improvement in participants' knowledge and understanding of prepositions after completing the learning program using Platform X.



### 8.1.2. Paired-Samples t-Test

To determine if the difference between the pre-test and post-test scores was statistically significant, a paired-sample t-test was conducted. The results are presented in Table 2.

**Table 2 presents the results of the paired-sample t-test comparing pre-test and post-test scores.**

| Pair             | Mean Difference | T     | df | p-value |
|------------------|-----------------|-------|----|---------|
| Posttest-Pretest | 23.2            | 12.64 | 49 | <0.001  |

The paired-sample t-test revealed a statistically significant difference between the pretest and post-test scores,  $t(49) = 12.64$ ,  $p < 0.001$ . This indicates that the improvement in participants' scores after the learning program was not due to chance.

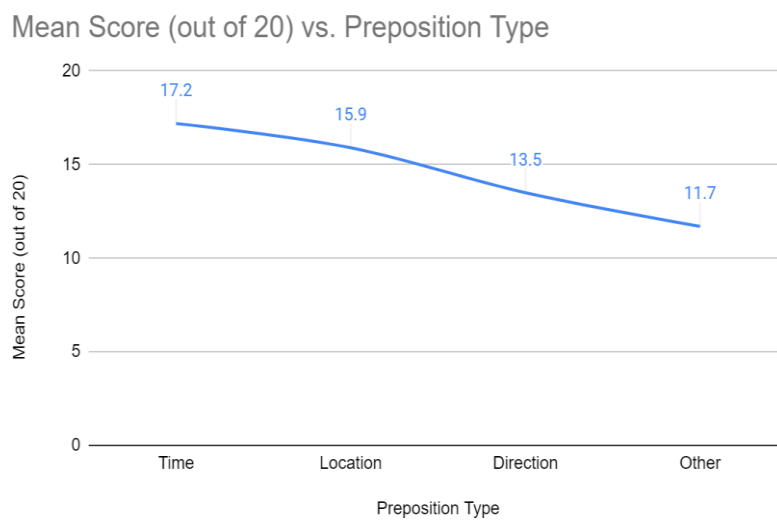
### 8.1.3. Performance by Preposition Type

To delve deeper into learning outcomes, post-test scores were analysed by preposition type:

**Table 3: Mean Post-Test Scores by Preposition Type**

| Preposition Type | Mean Score (out of 20) |
|------------------|------------------------|
| Time             | 17.2                   |
| Location         | 15.9                   |
| Direction        | 13.5                   |
| Other            | 11.7                   |

As depicted in Table 3, students exhibited higher proficiency in prepositions related to time and location on the post-test. However, they encountered challenges with prepositions denoting direction and other meanings. This suggests the necessity for additional instructional emphasis on certain preposition types when utilizing Platform X.



## 9. Qualitative Results

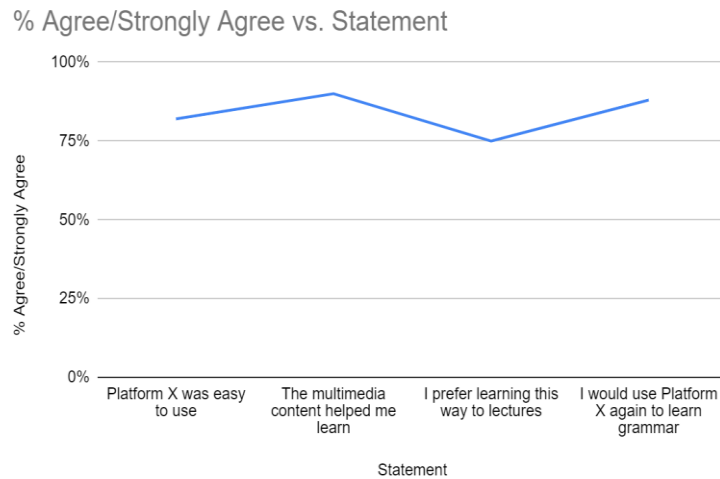
### 9.1. Survey Responses

Post-program survey responses, rated on a 5-point scale from "Strongly Disagree" to "Strongly Agree," are summarized in Table 4:

**Table 4: Percentage Agreeing with Post-Survey Statements**

| Statement                                     | % Agree/Strongly Agree |
|---|------------------------|
| Platform X was easy to use                    | 82%                    |
| The multimedia content helped me learn        | 90%                    |
| I prefer learning this way to lectures        | 75%                    |
| I would use Platform X again to learn grammar | 88%                    |

The survey data indicates an overall positive experience, with multimedia content particularly valued. Nonetheless, a minority still expressed a preference for lecture-based learning.



The key themes that emerged from the analysis of the open-ended survey questions are presented below.

### 9.1.1. Engagement and Interactivity

Many participants appreciated the interactive features of Platform X, such as quizzes, games, and multimedia content. They found the learning experience more engaging compared to traditional classroom instruction.

### 9.1.2. Convenience and Flexibility

Participants valued the ability to access the learning material anytime and anywhere through Platform X. They appreciated the flexibility to learn at their own pace and review the content as needed.

### 9.1.3. Collaborative Learning

Some participants highlighted the benefits of collaborative learning through the discussion forums and group activities on Platform X. They found it helpful to learn from their peers and share their understanding of prepositions.

### 9.1.4. Challenges and Limitations

A few participants mentioned technical issues, such as occasional platform glitches or slow loading times. Some participants expressed a preference for face-to-face interaction with instructors for clarification and feedback.

In summary, both quantitative and qualitative data support the effectiveness of Platform X in improving preposition comprehension among students, albeit with room for improvement. These findings offer valuable insights into leveraging social media for innovative language instruction.

## **9.2. Interview Findings**

The semi-structured interviews provided a deeper understanding of participants' experiences and opinions regarding the use of Platform X for learning prepositions. The main themes that emerged from the interview analysis are as follows:

### **9.2.1. Enhanced Understanding**

Most interviewees reported a better understanding of prepositions after completing the learning program on Platform X. They attributed this to the clear explanations, examples, and practice exercises provided on the platform.

### **9.2.2. Personalized Learning**

Several interviewees appreciated the personalized learning experience offered by Platform X. They liked the ability to focus on the prepositions they found challenging and receive targeted feedback.

### **9.2.3. Motivation and Confidence**

Many interviewees expressed increased motivation and confidence in using prepositions after the learning program. They felt more prepared to apply their knowledge in real-life communication situations.

### **9.2.4. Integration with Classroom Instruction**

Some interviewees suggested that Platform X could be used as a complementary tool alongside classroom instruction. They believed that a blended learning approach combining online and face-to-face instruction would be most effective.

## **10. Synthesis of Quantitative and Qualitative Findings**

The quantitative results demonstrated a significant improvement in participants' knowledge and understanding of prepositions after completing the learning program on Platform X. This finding was supported by the qualitative data, which revealed participants' positive perceptions and experiences of using the platform for learning prepositions.

The engagement, interactivity, convenience, and collaborative learning opportunities offered by Platform X were highlighted as key benefits by participants. These factors likely contributed to the observed improvement in their preposition skills.

However, the qualitative data also identified some challenges and limitations, such as technical issues and a preference for face-to-face interaction with instructors. These findings suggest that while Platform X can be an effective tool for teaching prepositions, it may be most beneficial when used in conjunction with traditional classroom instruction.

Overall, the results of this study provide evidence for the efficacy of using Platform X to teach prepositions at the undergraduate level. The combination of quantitative and qualitative findings offers a comprehensive understanding of the potential benefits and considerations for implementing social media platforms in language education.

## **11. Discussion**

The results of this study make significant additions to our knowledge of how well platform 'X' works as an undergraduate preposition teaching resource.

After the platform 'X' learning program was finished, the participants' understanding and knowledge of prepositions significantly improved, according to the quantitative results. The results of this investigation align with other studies (Kabilan et al., 2010; Alnujaidi, 2017) that have illustrated the potential for language acquisition offered by social media platforms.

The interactive elements, multimedia information, and practice exercises that Platform X offered are likely what contributed to the participants' enhanced prepositional skills. These elements align with the fundamentals of successful language learning, which emphasize the value of opportunities for practice, authentic materials, and active participation (Lorincz & Gordon, 2012; Lind Stromberg, 2010). These characteristics align with the ideas.

The qualitative study's conclusions demonstrated that there are several advantages to teaching prepositions on Platform X. These advantages include opportunities for group learning, ease of use, flexibility, and engagement. According to studies on social media use in education (Manca & Ranieri, 2016; Chugh & Ruhi, 2018), these benefits are in line with the findings.

However, the qualitative data also revealed certain shortcomings, including a predilection for in-person interactions with teachers and the existence of technical issues. These issues are a reflection of the worries expressed in previous studies regarding the possible drawbacks of online learning environments and the requirement for digital literacy skills (Manca & Ranieri, 2016).

The results of the interviews and the survey responses provided important new information on the attitudes and experiences of students using Platform X to study prepositions. Overall, the participants expressed positive feelings about the platform, listing the main benefits as enhanced confidence, personalized learning, higher motivation, and increased knowledge.

Prior studies have indicated that social media can facilitate self-directed learning, increase student engagement, and create a sense of community (Kabilan et al., 2010; Alnujaidi, 2017). These results are congruent with their results and

agree with them.

The post-test results show a considerable improvement in the participants' comprehension of prepositions, suggesting that the use of platform 'X' was useful. However, as was noted in the limitations section, an assessment of the long-term retention of the learned prepositions was not included in this study. Further research into the long-term effects of teaching prepositions and other language skills through social media platforms may be undertaken in the future.

The results of this study allow instructional designers and foreign language educators to make several inferences, some of which are as follows:

Prepositions and other grammatical principles can be taught more effectively in language classes by including social media sites like Platform X.

Educators should carefully choose social media platforms, looking for ones that offer opportunities for collaborative learning, interactive features, and multimedia content, to boost student engagement and learning results.

Teachers who use social media for language learning should provide feedback, help, and clear guidelines to their students. This will ensure that students can fully utilize the platforms and will help to minimize any possible problems.

## **12. Implications for Future Research and Their Significance**

This study lays the groundwork for future research on social media's application in prepositions and other language-learning studies. Future research could go in the following directions:

- Longitudinal studies aimed at examining how students' use of social media platforms affects their memory and application of prepositions learned during their schooling.
- Comparative research is being done to find out how effective different social media platforms or teaching approaches are for teaching prepositions.
- An examination of the use of social media platforms to impart grammar, vocabulary, writing, and other language abilities.
- A study of language instructors' opinions and experiences about their use of social media sites for instructional purposes.

## **13. Conclusion**

This study explored the efficacy of the social media platform "X" to teach prepositions at the undergraduate level. The results demonstrated a significant improvement in participants' knowledge and understanding of prepositions after completing the learning program on Platform X. The qualitative findings revealed

positive perceptions and experiences among students, highlighting the benefits of engagement, interactivity, convenience, and collaborative learning opportunities offered by the platform. However, the study also identified some limitations and challenges, such as technical issues and a preference for face-to-face interaction with instructors. These findings suggest that while Platform X can be an effective tool for teaching prepositions, it may be most beneficial when used in conjunction with traditional classroom instruction. As technology continues to advance and social media becomes increasingly prevalent, it is crucial to continue exploring innovative ways to enhance language learning experiences and outcomes.

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## Mental Health: Analysis through the Gender Lens

Dr. Gurpreet Kaur\*

### Abstract

*The daily newspapers carry news of female infanticide, rape of young female children, wives tortured for not bringing enough dowries, the abuse of women at home and at work, discrimination against women, denial of their basic rights. Apart from tainting Indian society, all of these carry immense implications for the mental health of women. Any kind of mental deterioration in mental health is equated with insanity in India and that's why it is associated with social stigma. People can talk about sex life, live in relationship, love life but talking about someone's mental sickness results in labeling and naming the patient. Even the family members of the patients start calling the patient 'Pagal', 'insane', 'unsafe for the kids', 'over sensitive'. There are so many factors which are responsible for the deteriorated mental condition of women like domestic violence, female illiteracy, gender inequality and gender violence, lack of awareness etc..<sup>1</sup> It is essential that mentally ill people must be provided a good quality mental health care and good living conditions at their homes as well as in the society. Any policy or mere discussion on women's health concern should involve her emotional and mental well-being along with her physical health at all stages of her life. The primary motive of the paper is to study the scenario of women's health in India. This research paper whilst trying to enquire into the status of women's health, particularly, tries to understand and highlight the role of the contextual socio-cultural factors and gender constructs that operate in society; in serving as determinants of women's mental health. Study is exclusively doctrinal and based on secondary sources.*

**Keywords-** *Mental health, women, depression, gender, inequality, law.*

### 1. Introduction

Among the strongest and most consistent patterns of mental health problems are the differences between men and women. The daily newspapers carry news of female infanticide, rape of young female children, wives tortured for not bringing enough dowries, the abuse of women at home and at work, discrimination against women, denial of their basic rights. They are all sordid tales of apathy, neglect and

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<sup>1</sup> Article 21, The Constitution of India

indifference to women's woes. Apart from tainting Indian society, all of these carry immense implications for the mental health of women.

The society in which we live is completely having a very poor attitude towards depression and anxiety. Majority of the people are in the denial mode and even the patients are not ready to accept depression or anxiety as an illness like fever, headache, and stomachache. These are the main reasons that the mental problems are always overlooked. Any kind of mental deterioration in mental health is equated with insanity in India and that's why it is associated with social stigma. People can talk about sex life, live in relationship, love life but talking about someone's mental sickness results in labeling and naming the patient. Even the family members of the patients start calling the patient 'Pagal', 'insane', 'unsafe for the kids', 'over sensitive'. Their skills are ignored and are treated as burden on the family and on the other side if you are able to conceal your emotions, you are considered mature enough. Every year more than 20000 people are suffering from mental illness which is on the higher side comparatively physical sickness. Mental health is impacted by the social settings, personality of the individuals as well as physical capacities.

The World Health Organization's Ottawa Charter for Health Promotion (1986) sees health as multidimensional and espouses a social model of health. It defines health as 'a positive concept emphasizing social and personal resources, as well as physical capacities.' In the social model of health, while human biology, physiology and health care are considered as important elements, besides these, it incorporates within its purview a variety of other variables and factors that have the potential to impact the health of an individual. These factors range from social and cultural attributes, political environment, economic and financial factors, psycho-social factors to various other inter-personal and environmental factors as well as their reciprocal communications that might lead to health or illness.<sup>2</sup>

It is in this context, mental health issues among women in general and Indian women in particular, as a subset of the larger corpus of health concerns needs to be inevitably understood and contextualized in the societal and cultural milieu within which women operate. One of such important societal constructs that seems to have a significant impact on mental and emotional health and experience of women is the construct of gender and its corollaries like gender roles, expectations, demeanor, stereotypes etc.

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<sup>2</sup> *The First International Conference on Health Promotion, Ottawa, 1986, available at: <http://www.int>teams>firstvisitedon> (Last visited 23<sup>rd</sup> March 2023).*

The inevitable foremost step towards sculpting a socially-rooted and contextualized model for improvement of women's mental health is figuring out a definition of mental health that can be usefully applied to women. The 1981 WHO report on the social dimensions of mental health, states that: *'Mental health is the capacity of the individual, the group and the environment to interact with one another in ways that promote subjective well-being, the optimal development and use of mental abilities (cognitive, affective and relational), the achievement of individual and collective goals consistent with justice and the attainment and preservation of conditions of fundamental equality.'*<sup>3</sup>

This definition is apt for a holistic understanding of mental health because it:

- Emphasizes the intricacies of mutuality and interrelations among a host of variables that determine mental health and that the determinants of health function at multiple stages.
- looks and reaches beyond the 'biological' and 'individual' concedes the significance of the society and the 'social'
- Acknowledges the primal importance of values and principles of justice and equality in configuring mental and emotional well-being.

The social construct of gender engineers a woman's position in the social hierarchy and also has a prominent bearing on her social and personal life experiences. Consequently, socio-cultural context and gender need to be understood as powerful decisive factors of one's mental and emotional make-up that colludes with other variables like age, family, educational attainment, occupational structure, income and social support etc.

There are psychological theories that present a gender sensitive viewpoint called as Alpha Bias, and there are others that are gender neutral representing Beta Bias.<sup>4</sup> Alpha bias proposes that men and women are different and opposite, and in beta bias differences between men and women are ignored. Alpha bias is seen in psychodynamic theories and therapies where according to Freudian viewpoint, male anatomy and masculinity is the most desired and cherished goal and female anatomy and femininity are seen as a deviation. In contrast, the cognitive theories, behavioral theories, and humanistic-existential theories have beta bias.<sup>5</sup>

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<sup>3</sup> The 1981 WHO Report

<sup>4</sup> Hare-Mustin RT, Marecek J., *The meaning of difference. Gender theory, postmodernism and psychology. Am Psychol.* 1988; 43:455–64.

<sup>5</sup> *Ibid*

## 2. Mental Health Issues

Mental health issues can be influenced by a variety of factors, including genetics, brain chemistry, trauma, and life experiences. Treatment often involves a combination of medication, therapy, lifestyle changes, and support from healthcare professionals and loved ones. Mental health issues encompass a wide range of conditions that affect mood, thinking, and behavior. Some common mental health disorders include:

- 2.1 Depression:** Persistent feelings of sadness, loss of interest, and a range of emotional and physical problems.
- 2.2 anxiety disorder:** Excessive fear, worry, or anxiety that interferes with daily activities includes generalized anxiety disorder, panic disorder, and social anxiety disorder.
- 2.3 bipolar disorder:** Characterized by extreme mood swings that includes emotional highs (mania or hypomania) and lows (depression).
- 2.4 Schizophrenia:** A severe mental disorder where people interpret reality abnormally, leading to hallucinations, delusions, and extremely disordered thinking.
- 2.5 obsessive-compulsive disorder (OCD):** Recurrent, unwanted thoughts (obsessions) and/or repetitive behaviors (compulsions).
- 2.6 Post-Traumatic Stress Disorder (PTSD):** A disorder that develops in some people who have experienced a shocking, scary, or dangerous event.
- 2.7 eating disorders:** Includes anorexia nervosa, bulimia nervosa, and binge-eating disorder, characterized by extreme emotions, attitudes, and behaviors surrounding weight and food.
- 2.8 Personality Disorders:** Patterns of behavior, thinking, and feeling that are significantly different from cultural expectations and cause distress or impairment.

## 3. International Perspective on Mental Health

Global mental health is an evolving field of research and practice that aims to alleviate mental suffering through the prevention, care and treatment of mental and substance use disorders, and to promote and sustain the mental health of individuals and communities around the world.<sup>6</sup> Globally, depression is nearly 50% more common in women than it is in men. In India and most South Asian countries, the patriarchal structure of society places women in an inferior position to men, affecting their access to social opportunity, self-expression, and mental well-being. From an adolescent age, mood and eating disorders and death

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<sup>6</sup> Patel V, Prince M. *JAMA* 2010 ; 303:1976-7.

by suicide, are more common in women than men; in the South Asian diasporas, cultural stereotypes mean that women's experiences are ignored in medical treatment – depression, for example, being 'cultural' rather than individual. Women, in rural and urban South Asia alike, seldom seek medical treatment. Later in life, too, pressures to do with 'staying in a marriage' prevent women from voicing their mental health concerns.<sup>7</sup>

The international perspective on mental health highlights significant variations in awareness, attitudes, and treatment of mental health issues across different cultures and countries. Here are some key points:

### **3.1 Awareness and Stigma**

**Western Countries:** Generally, there is greater awareness and acceptance of mental health issues, although stigma still exists. Campaigns and education programs have improved public understanding.

**Developing Countries:** Stigma remains high, and mental health issues are often misunderstood or ignored. Cultural beliefs and lack of awareness contribute to the reluctance to seek help.

### **3.2 Access to Care**

**High-Income Countries:** Better access to mental health services, including a range of therapeutic options and medications. However, there are still gaps in care due to shortages of mental health professionals and the high cost of services.

**Low- and Middle-Income Countries:** Limited access to mental health care. There is often a shortage of professionals, and mental health services are not prioritized in health budgets. Many rely on traditional healers or community support.

### **3.3 Policy and Legislation**

**Global Initiatives:** Organizations like the World Health Organization (WHO) and the United Nations advocate for global mental health policies and provide guidelines for member countries to improve mental health care.

**National Policies** Vary widely; some countries have comprehensive mental health policies and legislation, while others have minimal or outdated frameworks.

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<sup>7</sup> "Mental Health: A Gendered Lens" *available at:* <https://asiasociety.org/india/events/mental-health-gendered-lens-> (Last visited on July 14, 2024).

### **3.4 Cultural Attitudes**

**Cultural Differences:** Beliefs about mental health and illness vary. For example, in some cultures, mental health issues may be attributed to spiritual causes, while others may view them as a result of personal weakness.

**Integration of Traditional Practices:** In many regions, traditional and community-based practices are integrated with conventional mental health care.

### **3.5 Global Challenges**

**Refugee and Conflict Zones:** Mental health issues are prevalent among refugees and in conflict zones due to trauma and displacement. International agencies often step in to provide support.

**Pandemic Impact:** The COVID-19 pandemic has exacerbated mental health issues globally, highlighting the need for robust mental health systems and international cooperation.

### **3.6 Efforts and Innovations**

**Digital Health:** Telemedicine and digital health platforms are emerging as vital tools to bridge gaps in mental health care, especially in remote and underserved areas.

**Global Partnerships:** Collaborative efforts between governments, NGOs, and international organizations aim to improve mental health care access and reduce stigma worldwide.

## **4. Gender and Mental Health**

Gender is closely connected to sex, though there are different ideas about how. Sex is usually understood as relating to the biological and physiological body. Gender is often understood as the cultural interpretation of sexed bodies, embedded in the whole apparatus of a society's roles and norms. Thus, a sex/gender binary is set up parallel to that of nature/culture. Gender, as a relationship between sexes in societies, is usually seen as operating hierarchically-men being more powerful and dominant, while women are less powerful and weaker. These power relations produce stereotypes of masculinity and femininity-traits and behavior that are expected of men and women. Role expectations of women as the nurturer, men as

breadwinner and so on, define approved ways to perform gender.<sup>8</sup> The World Health Organization recognizes that the social construction of gender identity and unbalanced power relations between women and men affect the health seeking behavior and health outcomes of women and men in different ways. Women's mental health cannot be understood in isolation from the social conditions of our lives. These conditions are characterized by social inequities e.g., sexism, racism and ageism which influence the type of mental health problems women develop and impact on how those problems are understood and treated by health professionals and by society.<sup>9</sup> Analysis has been done on the basis of the following findings:

#### 4.1 The social reality and women's mental health

It has long been observed that the social environment plays a very important role to one's health. Plethora of studies dealing with women and mental health has demonstrated strong links between health status and socio-economic factors affecting women. On the one side less participation in social gatherings, limited decision-making powers, dependency on husband, financial violence, physical violence, sexual abuse, verbal abuse etc hamper the potential for mental wellbeing and on the other side, in certain cases the higher education qualifications of a woman, boldness, independency starts pinching to the family members. Families which later on become a huge group of people to form a society create such an environment in homes so that women can't move out to explore and learn about their rights. Social and economic stresses, coupled with the inequitable burdens imposed by gender role expectations, often have a negative impact on women's health, happiness and potential for personal fulfillment and achievement.<sup>10</sup> She plays multiple roles as care taker, cook, cleaner, working in the field but still she is ignored by the family she is not considered even a human being in the family.

#### 4.2 Gender and depression

Gender plays an important role when it comes to deciding women's mental health. Gender also determines one's ability and capacity to avail various resources and

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<sup>8</sup> Meekosha H. Encyclopaedia of Disability 2005 Sage, *available at*: <https://handicapcenter.com/wp-content/uploads/2014/05/Encyclopedia-of-Disability-SAGE-2006-vol-1.pdf> (Last visited on 20th October, 2023).

<sup>9</sup> Morrow M, Chappell M. *Hearing Women's Voices* Mental Healthcare for Women British Columbia Centre of Excellence for Women's Health: Vancouver, Canada; 1999 *available at*: [https://bccewh.bc.ca/wp-content/uploads/2012/05/1999\\_Hearing-Womens-Voices.pdf](https://bccewh.bc.ca/wp-content/uploads/2012/05/1999_Hearing-Womens-Voices.pdf) (Last visited on 20th October, 2023)

<sup>10</sup> "Mind, Body and society: Mental Health among Women" *available at*: <http://yourstory.com> (Last visited on 8/7/2023).

facilities. Self-evaluation, self-concept, self-image styles of interpersonal interactions, spirituality, mechanisms of violence, domestic violence, eve teasing, stalking, sexual harassment at work places, which is a common occurrence in India cumulate to act as catalysts for mental diseases.

When analyzing through doctrinal research, it is vital to keep in mind that there are significant gaps. Male-female differences in some mental health problems, such as depression and schizophrenia, are better understood than other scenarios. Adult men and women are better understood than adolescents and children, and the situation in industrialized countries is better understood than the situation in developing countries.<sup>11</sup> There is a gender divide in the usage of mental health services. Men consult mental health experts less frequently than women. When it comes to general care, gender inequalities are more obvious, but they fade when it comes to an expert or residential care. This disparity in mental health care utilization between men and women cannot be explained by a lack of need. Women have a significantly higher frequency of depression and anxiety in adulthood, while men have a larger prevalence of substance use disorders and antisocial behaviors. Women also have a higher prevalence of depression and anxiety disorders due to genetic and biological factors. Some studies have found that mood swings are linked to hormonal changes during the menstrual cycle. The interplay of psychosocial and hormonal factors resulted in an increased risk of prenatal and postnatal depression. Women may also face significant psychological anguish and disorders as a result of reproductive health issues. Infertility and hysterectomy have been linked to an increased risk of affective/neurotic disorders in women. According to a recent study from the United States, adults with bladder control issues, a disorder more common in older women than older males, showed more mental distress and signs of depression.<sup>12</sup>

#### 4.3 Gender Violence and Suicide Tendency

Suicide statistics reveal that women are roughly three times more likely to attempt suicide, though men are two to four times more likely to die by suicide.<sup>13</sup> Compared to men, women show higher rates of suicidal thinking, non-

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<sup>11</sup> *The Gender Gap in Mental Healths*, available at: [www.news-medical.net/healthvisted](http://www.news-medical.net/healthvisted) (Last visited at 20<sup>th</sup> October, 2023)

<sup>12</sup> *Ibid*

<sup>13</sup> Vijayakumar, L. (2015). Suicide in women. *Indian Journal of Psychiatry*, 57(Suppl 2), S233–S238. Available at: <https://doi.org/10.4103/0019-5545.161484> (Last visited 28th October, 2023)



fatal suicidal behavior, and suicide attempts.<sup>14</sup> It's important to note that among women, an attempted (but failed) suicide attempt is the greatest risk factor for suicide in the future, and all suicide attempts, whether in men or women, need to be taken very seriously. Women are twice as likely as men to carry a diagnosis of major depression, though, as noted, completed suicide occurs much more often in men than women. It's also known that women are more likely to seek treatment for depression than men. Depression disproportionately affects women. Women are more likely than men to experience physical and mental health problems in addition to depression. 70% of antidepressant prescriptions are given to women in the US. Major depression is a psychiatric disorder that includes several symptoms. The two main symptoms are:

- 1) Having a depressed mood, this includes feeling worthless, thinking about death
- 2) Being overwhelmed by sadness and losing interest in activities that you used to enjoy.<sup>15</sup>

The precipitants for suicide, according to Indian Government statistics, among women compared to men are as follows: Dowry disputes (2.9% versus 0.2%), love affairs 15.4% versus 10.9%, illegitimate pregnancies 10.35% versus 8.2%, and quarrels with spouse and in-laws 10.3% versus 8.2%. Common causes for suicide in India are disturbed interpersonal relationships followed by psychiatric disorders and physical illness.<sup>16</sup>

#### 4.4 Female Illiteracy and Mental Health

Alex Cohen in a recent publication has clearly described the association between female illiteracy and poor mental health.<sup>17</sup> Women belonging to a rural community in India had significantly more symptoms of somatic disorders and anxiety than men, and this was strongly associated with the lack of education, poverty and low

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<sup>14</sup> Crosby AE, Han B, Ortega LAG, Parks SE, Gfroerer J. Suicidal thoughts and behaviors among adults aged  $\geq 18$  years: United States, 2008-2009. *Morbidity and Mortality Weekly Report (MMWR)*. Centers for Disease Control and Prevention. 2011;60(SS13):1-22.

<sup>15</sup> Canadian Mental Health Association, available at: <http://www.cmha.bc.ca/documents/depressio-2/> (Last visited on 3<sup>rd</sup> December, 2023)

<sup>16</sup> Rao V. Suicidology: The Indian context. In: Agarwal SP, editor. *Mental Health: An Indian Perspective 1946;2003*. New Delhi: Directorate General Health Services /Ministry of Health and Family Welfare Nirman Bhawan ;2004, p.279-84

<sup>17</sup> Alex Cohen. Our lives were covered in darkness. In: Cohen A, Kleinman A, Saraceno B, eds. *The Work of the National Literacy Mission in Northern India, Chapter 5, World Mental Health Case Book*. New York: Kluwer Academic/Plenum Publishers, 2002.

caste.<sup>18</sup> A community psychiatric survey by Carstairs and Kapur determined that women had higher rates of psychiatric symptoms and that higher levels of education had a positive effect on the well-being of both genders.<sup>19</sup> While low levels of education did not seem to have a deleterious influence on the mental well-being of those in the age group of 15–20 years, lack of education did have a deleterious effect on the age group 21–40 years, a finding that led Carstairs and Kapur to speculate that low levels of education restricted life opportunities and, therefore, resulted in mental distress at that time of life when individuals were seeking to establish themselves in their worlds. These effects seemed to be particularly strong among women.

The ageing effect of this population will not change the profile of the impact of these disorders.<sup>20</sup> Women and Common Mental Disorders (CMD) Indian women suffer from CMD much more than men do. Both community-based studies and studies of treatment seekers indicate that women are, on average, two to three times, at greater risk to be affected by CMD.<sup>21</sup> There are a number of potential factors, which increase vulnerability of women to CMD. The reproductive roles of women, such as her expected role of bearing children, the consequences of infertility and the failure to produce a male child, have been linked to wife battering and female suicide.<sup>22</sup> The areas of intersection of reproductive and mental health are considerable in scope and include, for example, psychological issues related to childbirth, violence, rape, adverse maternal outcomes such as stillbirths and abortions, reproductive tract surgeries, sterilization, premarital pregnancies in adolescents, HIV/AIDS and the impact of caring, menopause and infertility.<sup>23</sup> Research in Asian countries has demonstrated a wide range of prevalence of Post Natal Depression (PND) from 3–36% of mothers after childbirth.<sup>13,14</sup> The majority of PNDs are self-limiting though, if untreated, this process of resolution may take up to 6–12 months. Furthermore, the negative effects of globalization and

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<sup>18</sup> Shirala KA, Kanwar S. *Mental illness and hill women: A demographic study*. Journal of Personality and Clinical Studies 1987;3(2):103–108.

<sup>19</sup> Carstairs GM, Kapur RL. *The Great Universe of Kota: Stress, Change and Mental Disorder in an Indian Village*. Berkeley: University of California Press, 1976.

<sup>20</sup> Murray JL, Lopez AD. *The Global Burden of Disease: A Comprehensive Assessment of Mortality and Disability from Diseases, Injuries and Risk Factors in 1990 and Projected to 2020*. Summary. Boston: Harvard School of Public Health, World Health Organisation, 1996.

<sup>21</sup> Patel V, Araya R, Lima MS, Ludermir A, Todd C. *Women, poverty and common mental disorders in four Restructuring Societies*. Social Science and Medicine 1999; 49:1461–1471.

<sup>22</sup> Davar B. *The Mental Health of Indian Women: A Feminist Agenda*. New Delhi: Sage, 1999. 10. Dennerstein L, Astbury J, Morse C. Psychosocial and Mental Health Aspects of Women's Health. WHO/FHE/MNH/93.1. Geneva: World Health Organisation, 1993

<sup>23</sup> Thara R, Patel V. *Women's Mental Health: A Public Health Concern*—Regional Health Forum. Geneva: World Health Organisation, 2001; 24–33.

economic reform on public health are likely to hit women harder than men; for example, since the economic reforms and subsequent crisis in Southeast Asia, there has been a rise in reported domestic violence, rape and alcohol abuse.<sup>24</sup>

## 5. Law and Mental Illness

International human rights instruments are important in the context of mental health because they are the only source of law that legitimizes international scrutiny of mental health policies and practices within a sovereign country and also because they provide fundamental protections that cannot be taken away by the ordinary political process. Mental health and human rights are inextricably linked. They are complementary approaches to the betterment of human beings. Some measure of mental health is indispensable for human rights because only those who possess some reasonable level of functioning can engage in political and social life. On the other hand, human rights are indispensable for mental health as they provide security from harm or restraint and the freedom to form and express beliefs that are essential to mental well-being.<sup>25</sup> Concurrently with the international human rights UN institutions, regional human rights systems provide additional opportunities for the protection and development of human rights, sharing many of the ideals and goals of the UN system. However, the regional nature of these systems has allowed for the implementation of novel approaches and institutions to protect and promote human rights in Europe<sup>26</sup>, the Americas and Africa. Considering that human rights treaties need States to establish mechanisms for the implementation of human rights so that these treaties can function,<sup>27</sup> these regional systems have created additional fora for the protection and promotion of human rights, often through more direct means. Courts and Commissions established at the regional level granted individuals the ability to redress human rights grievances that have not been appropriately dealt at the domestic level or to challenge domestic policies and practices that violate human rights norms.<sup>28</sup> The European and Inter-American

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<sup>24</sup> Subramaniam V. *The impact of globalisation on women's reproductive health and rights: A regional perspective. Development* 1999; 42:145–149.

<sup>25</sup> Gostin, Lawrence & Gable, Lance. *The Human Rights of Persons with Mental Disabilities: a global perspective on the application of human rights principles to Mental Health. Maryland Law Review*, 20- 121 (2004) [hereinafter Gostin & Lance, *The Human Rights of Persons with Mental Disabilities*].

<sup>26</sup> The European Convention for the Protection of Human Rights and fundamental Freedoms was drafted in 1950 by the Council of Europe and entered into force in September 3rd, 1953. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention and the earliest opportunity (CE, 1950).

<sup>27</sup> Beco, Gauthier. *Human Rights Indicators for Assessing State Compliance with International Human Rights. Nordic Journal of International Law* 77, 23-49 (2008).

<sup>28</sup> *Ibid.*

regional systems are particularly important because they have the most highly developed mechanisms for implementation

As per the Indian constitution article 21 Right to life includes right to health also.<sup>29</sup> It is essential that mentally ill people must be provided with good quality mental health care and good living conditions at their homes as well as in the society. In 1982 the Government of India launched a National Mental Health Program but it was never implemented by saying that it is going to be burden on the society and there are not enough infrastructures to deal with it.<sup>30</sup> Moving forward in 1987 The Mental Health Act was enacted but it did nothing except facing the criticism by majority intellect.

In 1996, the District Mental Health Program (DMHP) was added and re-strategized in 2003 to include two important schemes of Modernization of State Mental Hospitals and Up-gradation of Psychiatric Wings of Medical Colleges/General Hospitals. India signed and ratified the Convention on Rights of Persons with Disabilities and its Optional Protocol in 2007. In 2009, the Manpower Development Scheme (Scheme-A & B) was made part of the Program. A Mental Health Policy Group (MHPG) was appointed by the Ministry of Health and Family Welfare (MoHFW) in 2012 to prepare a draft of DMHP for Twelfth Five Year Plan (2012–2017).<sup>31</sup> The main objective was to reduce distress, disability, and premature mortality related to mental illness and to enhance recovery from mental illness by ensuring the availability of and accessibility to mental health care for all in the plan period, particularly the most vulnerable and underprivileged sections of the population.<sup>32</sup> Its other objectives were to reduce stigma, promote community participation, increase access to preventive services to at-risk population, ensure rights, broad-base mental health with other programs like rural and child health, motivate and empower workplace for staff, improve infrastructure for mental health service delivery, generate knowledge and evidence for service delivery, and establish governance, administrative, and accountability mechanisms.

A central mental health team has also been constituted to supervise and implement the program. A Mental Health Monitoring System (MHIS) is being developed. Standardized training was proposed with the help of training manual.

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<sup>29</sup> Article 21, The Constitution of India

<sup>30</sup> New Delhi: Ministry of Health and Family Welfare; 1982. Director General of Health Services. National Mental Health Programme for India.

<sup>31</sup> Twelfth Five Year Plan (2012–2017) Social Sectors, volume III, *available at*: <https://nhsrcindia.org/sites/default/files/2021> (Last visited on 14 August, 2023).

<sup>32</sup> *Ibid.*

After the National Mental Health Survey during 2014–2016, the Government of India started making efforts to improve the mental health services by formulating policies like the National Mental Health Policy (NMHP), 2014 and consequently, the Mental Healthcare Act, 2017 was enacted and notified on May 29, 2018. The new Act focused on the rights of a mentally ill person and repealed the Mental Health Act, 1987. Despite having many positive features, the Mental Health Act, 1987 has been the target of criticism since its introduction and was not effectively implemented due to the lack of resources.<sup>33</sup>

The objective 2017 act was of providing for mental health care and services for persons with mental illness, for protection, promoting and fulfilling the rights of the persons during delivery of mental health care and services.<sup>34</sup> This is the duty of the concerned government to fund the required treatment of the patients which includes mental health services of affordable cost, of good quality, available in sufficient quantity, accessible geographically without discrimination. Substantial steps to be undertaken by the government in terms of infrastructure etc., and for that funding is the primary need.

The practical hurdles in actually carrying out the benign objectives of the MHC Act, 2017, pose a huge challenge. The Act seeks a complete overhaul of the mental health-care system that would require infrastructural development by establishment of various new bodies such as Mental Health Review Commission and Central and State Mental Health Care Authorities. The Act also contemplates provision for various services such as halfway homes, shelter homes, and community-based shelters. This would entail a huge infrastructural, economic, and human resource burden on the respective Governments. Moreover, the adoption of “community integration approach” by the Act in dealing with the mentally ill, requires change of mind towards them at the very first place. The implementation of this ambitious legislation apprehends the following practical challenges:

First, the lack of funds for setting up the desired infrastructure within a limited span of time is a huge impediment in developing community-based facilities, services, and rehabilitation programs.

Second, the paucity of mental health professionals that stands at approximately 10,000 professionals of all categories for one billion population; limited mental health service infrastructure with about 30,000 psychiatric beds for over a billion

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<sup>33</sup> Urgent need for reforms in law and policy for Mental Health in India, *available at: <https://www.barandbench.com/columns/urgent-need-for-reforms-in-law-and-policy-for-mental-health-visited>* (Last visited on 2 February, 2024)

<sup>34</sup> Section 5, The Mental Health Care Act, 2017

population; limited investment in health by the Government (estimated public sector expenditure on health is only 17% of total health expenditure); and problems of poverty (about 30% of population live below poverty line) and low literacy with associated stigma and discrimination for persons with mental disorders.<sup>35</sup> These limitations make access to mental health services far from realistic, especially in the near future.

Finally, the likely response of newly introduced provisions of “nominated representative” and “advance directive,” the success of which remains controversial and lacks unanimity. In the Indian social context, these provisions might leave a bitter taste due to the family members being the primary caregivers. By keeping all this in view Budget 2023 is having special mention for mental health care services.<sup>36</sup>

As for as India is concerned, the numbers related to mental health issues among Indians, are no less alarming. As per India’s economic loss due to mental; health conditions in 2030 would amount to 1.03 trillion dollars i.e. around 83,8000 corer.<sup>37</sup> Significance of mental health has been highlighted recently by the Hon’ble CJI, Shri DY Chandrachud. A proportional increase in the chunk of the budget to be allocated towards dealing with the mental health problems, keeping in mind the rapid increase in number of cases of mental health disorders lately, is also required in order to make it possible to achieve the required affordability, accessibility and outreach of mental health treatment.<sup>38</sup>

## 6. Conclusion and Suggestions

Mental health is a prerequisite not only for a long life but also for a better quality of life. Mental disorders among women are on the rise. Also, women get less mental health care than men. A greater awareness of these facts is needed so corrective measures are taken. As for women, they must know that the brain is a body part though we know less about it. That mental health is not a destination but a process. That they must never give up. The high prevalence of psychosomatic disorder in females again points out the lack of avenues for open and healthy discussions. The fear of being ridiculed and being judged often compel women to live with tremendous

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<sup>35</sup> Trivedi JK Mental Health Act, Salient Features, Objectives, Critique and Future Directions. *available at:* <http://www.indianjpsychiatry.org/cpg/cpg2009/article7.pdf>. visited (Last visited on 30th January, 2024).

<sup>36</sup> The Mental Health Care Act. 2017

<sup>37</sup> Budget 2023: Mental Health Law and expected govt measures to counter India ongoing Mental Health Crisis”, Times of India, 20<sup>th</sup> January, 2023

<sup>38</sup> *Ibid*

stress leading to psychosomatic disorders.<sup>39</sup> If work places are not women friendly with protective mechanism like child care facilities, counseling services and harassment redressal committee in place then it end up being one more stressor for working women. The environment and culture at the work place is significant for working women's mental wellbeing. Flexibility, work from home and motherhood support will go long way in making our work places healthy and comfortable for women.<sup>40</sup>

That to have power over the disorder demands and that they go on strongly despite the fear, because it is during our darkest moments that we must focus to see the light.

Therefore, it has been made inarguably clear that women's mental health is not a lone impervious variable; it has to be considered in association with their socio-cultural context and gender roles. Any policy or mere discussion on women's health concern should involve her emotional and mental well-being along with her physical health at all stages of her life. It is a common occurrence were policies in India view women's health very narrowly in terms of reproductive and maternal health solely. Such a constricted policy worldview in India has greatly contributed towards reinforcing the idea that women only exist as mothers and procreators. Moreover, when an individual woman suffering from a certain mental health concern is focused in isolation as a singular independent biological entity divorcing her condition from her sociological realities, it runs a risk of placing the burden of reformation on the women alone. But as we would agree that change for women is well beyond their control and is possible only with a bigger positive social transformation. Given these realities, it becomes imperative to undertake stratagems and schemes that would target the social factors responsible for having a degrading impact on women's health. Such strategies may involve social policies to reduce gender gaps in all fields of social existence, enhance women's status in society by giving them their due or at least empower and educate them enough that they are able to voice out their demands and grasp their rights for themselves. Although a large portion of the responsibility of change lies on the policy makers but women in India too must speak up to bring about the change they want in their lives. There are ample instances where women have taken on a social-activist vesture to fight off their own devils, for instance, the anti-arrack movement in Andhra Pradesh where they fruitfully succeeded in fighting off liquor addiction in their husbands and wife battering. Movements on the same line for fighting evils of sexual abuse, rape etc can go a long way in remedying the unjust social circumstances under which women live in India. "In summary, concerted efforts at

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<sup>39</sup> Dr. Anupam Gadhkari, "*Time to change lens about Women and Mental Health*", published in Times of India on March 5, 2023

<sup>40</sup> *Ibid*

social, political, economic, and legal levels can bring change in the lives of Indian women and contribute to the improvement of the mental health of these women.”<sup>41</sup>

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<sup>41</sup> Malhotra S, Shah R. *Women and mental health in India: An overview*. Indian J Psychiatry. 2015Jul;57(Suppl2):S205-11. Doi: 10.4103/0019- 5545.161479. PMID: 26330636; PMCID: PMC4539863.



## Cancer Patients in Rural and Urban Areas of Punjab: A Comparative Study

Dr. Kanwaljit Kaur\*

### Abstract

*Good health and well-beings have always been agenda of national and international-policies because it contributes significantly to the human development and leading to human capital formation. Cancer poses the biggest threat to the society at the global level. Punjab State is experiencing a rising burden of cancers as one of the most significant diseases. The population of the state in the age group of 35-65 is the target of this disease. It is causing considerable loss in the productive years of the life of an individual. The objective of the paper is to check the nature and extent of cancer patients in Rural and Urban areas of Punjab. Primary data is collected from 500 patients of Cotton belt of Punjab. Chi square and Correlation tests are applied to check the relationship. The study found that district Mansa of Punjab carries highest cancer patients (78 %) for two consecutive years. In the year 2020 and 2021, Faridkot and Sangrur district documented majority of urban cancer patients 41 % and 46 % respectively. Majority of cancer patients (81.9%) belonged to rural area and 18 % lived in urban areas. p-value (0.012) <.05. Hypothesis is significant. There is strong relationship between cancer and rural population. Almost 46 percent of the respondents were illiterate. The study suggests that Government policies should focus more on rural area. Mansa district of Punjab need special attention.*

**Keywords:** Health, Cancer, Rural population, Urban population, Cotton belt of Punjab

### 1. Introduction

Clinics play an instrumental role in the life of individuals, and they are a crucial part of the healthcare system. Healthy homes and communities are widely acknowledged as foundation stones for the progress of any nation. They ensure its economic growth as well as internal stability. World Health Organization stressed that

*“Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity” (World Health Organization, 2020)*

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The efficient and responsive service delivery of a hospital is largely influenced by its infrastructure which certainly includes physical structures, advance equipment, technologies, supporting systems, and essential services (World Health Organization, 2020).

Goal 3 of Sustainable Development Goals, 2015 aims to “*increase life expectancy, reduce maternal and child mortality and fight against communicable diseases*”. In case of non-communicable disease, there are four major disease – cardiovascular, cancers, severe respiratory diseases and diabetes. In the year 2016, 18 per cent patients have probability of dying between the ages of 30-70 which are the productive years of the life of an individual (United Nations Organization, *n.d.*). Cancer has become the second most common disease as it is responsible for maximum deaths after cardiovascular disorders in the world. Cancer has caused approximately 23 per cent and seven per cent deaths in the U.S.A. and India respectively (National Cancer Control Programme, *n.d.*).

Punjab is experiencing a rising burden of cancers as one of the most significant diseases in the NCD category. Due to it, masses suffer from out-of-pocket expenditures for the treatment and, society suffers in the form of reduced production as well as low productivity. There are sufficient number of health care institutions in Punjab consisting of Allopathic, Ayurvedic and Homeopathic as is clear from Table no 1.1.

| Type of Institution                                 | Number |
|---|--------|
| Hospitals   | 71     |
| Community Health Centers                            | 150    |
| Dispensaries  | 3038   |
| Primary Healthcare Centers                          | 524    |
| Ayurvedic and Unani Institutions                    | 529    |
| Homeopathic Institutions                            | 111    |
| Medical Institutions                                | 18716  |
| <i>Source: Statistical Abstract of Punjab, 2021</i> |        |

In the context of cotton belt of Punjab State, there are primary and community health centers in selected villages of the district as shown in Table 1.2.

Although there is civil hospital in every district: a remarkable achievement, but

it is not sufficient to cater to the needs of patients. Mukatsar, Mansa, Barnala and Moga district of Punjab in the cotton belt does not have any specialized hospital for treatment. These are concentrated in Bathinda, Faridkot and Sangrur districts of Punjab.

## 2. Review of literature

**Dinshaw et al (2001)** highlighted that the cancer is very bad for the family as well as the patients. It largely impacts their routine functioning and economic situation. The economic burden includes income loss and also the medical expenses to treat cancer. The patients also suffer from depression and other physiological impacts.

**Ahsan et al (2004)** studied the treatment choices and economic impact of the cancer among the persons having comprehensive health insurance policies. Women with cancer suffered more and faced financial difficulties. The study evaluated the out-of-pocket expenses comprising direct medical, direct non-medical and indirect costs. It was found that financial impact is essentially high in persons though they have obtained comprehensive health insurance policies. It was suggested that cancer insurance policies should be designed as per the patient needs and requirements in order to reduce the financial burden of this disease.

**Sharma, Virk and Sharma (2011)** assessed the natural radio-activity present in our environment which is a major threat to human life in the region of Punjab. The health related menace is the consequence of exposure to the natural radio-activity. The study presented the findings of measurements of dissolved radon in drinking water in some areas of the State. The inhalation dose rate and radio-activity in soil and water samples has been found to be within permissible limits. The study concluded that the values of natural radio-activity measured in air, soil and water in various districts covered in the present survey was within the permissible limits prescribed by the regulatory bodies. It was suggested that as high incidences were reported in Bhatinda and adjoining areas, detailed and more extensive surveys need to be carried out and role of other toxic elements and pesticides need to be investigated.

**Zaidi, Ansari and Khan (2012)** examined the emotional burden of the deadly disease cancer and the perceptions of the cancer patients regarding financial cost of the ongoing cancer treatment at a private tertiary care hospital. It was mentioned that the emotional burden of cancer usually overshadowed by the financial burden sustained by the patient and his family. It was suggested that the patients should be supported by government or voluntary agencies financially in order to deal with out of the pocket expenses. The study of **Mallath et al (2014)** had found that cancer is

deeply associated with the major socio-economic inequalities in the country especially in case of accessing healthcare facilities.

If we don't address the socio-economic inequalities, chances of survival will reduce and costs to individual and society will increase. It was suggested that there is need to relook the role of individuals and groups at all levels i.e. political leaders, the medical profession, patient organizations and the public as a whole. The root of the solution is need for political commitment and action. We have to focus on affordability, equity and universal cancer care for the whole of population.

**Kaur and Kaur (2020b)** lamented that in the past few decades, Cancer has emerged as one of the major public health concerns of the general public and the state in particular. It is affecting the quality of life (QoL) of the individuals – professionally, physically, economically, socially as well as the life of his/her family. The research paper studied the cancer prevalence and cancer patients of Bathinda district based on various parameters, namely, gender, age, education, occupation and area. The results of the study revealed the high incidences of cancer in rural areas (87 per cent) than urban areas. Male patients (29) belonged to rural area whereas female patients (22) from urban area and their association was found at the significant level (.002). High incidences were found in homemakers (45 per cent) and agriculture owners (36 per cent). Chi-square test showed a significant level of association (.000) between gender and occupation. It was also found that there were social, economic and cultural implications of this disease and it affects the female patient's more than male patients. It was recommended that there is need to create health awareness, and organize health check- up camps for early detection and treatment of this disease in order to create healthy communities which significantly contribute towards the progress of a nation.

### **3. Objective of Paper**

To check the nature and extent of cancer patients in Rural and Urban areas of Punjab

### **4. Hypothesis**

**H<sub>0</sub>:** There is no significant relationship between the area of the cancer patients and their occupations.

### **5. Research Methodology**

The study was based on both primary and secondary data. Secondary data was collected from Statistical Abstract of Punjab and various internet sources. The

primary data was collected through interviews (sets of separate semi- structured questionnaires), Two semi-structured questionnaires for healthcare establishments and cancer patients and an interview schedule for NGOs was prepared to address the tangible and non-tangible aspects of the study. The study was undertaken as part of the ICSSR IMPRESS sponsored project.

### Sample Size

Table 1.3 depicts the selection criteria of ample size for our study. A total of ten Hospitals which are empaneled under Mukh Mantri Rahat Kosh Scheme were selected. The responses of 500 cancer patients were collected from eight districts- Barnala, Bathinda, Faridkot, Fazilika, Moga, Mansa, Muktsar and Sangrur from the Cotton belt of Punjab.

**Table 1.3 Distribution of Sample**

| Category                  | Sub-Category   | Sample Size | Sampling Technique   |
|---------------------------|--|-------------|--|
| Healthcare Establishments | Advance Cancer Research Institute, Bhatinda              | 1           | Respective Medical Superintendent of all hospitals after taking permission from Punjab Health Systems Corporation        |
|                           | Max hospital, Bhatinda                                   | 1           |  |
|                           | Guru Gobind Singh Medical College and Hospital, Faridkot | 1           |  |
|                           | Homi Bhaba Cancer Hospital, Sangrur                      | 1           |  |
|                           | Rajendra Hospital, Patiala                               | 1           |  |
|                           | Oswall, Ludhiana   | 1           |  |
|                           | DMC, Ludhiana  | 1           |  |
|                           | PGI, Chandigarh  | 1           |  |
|                           | Max Hospital, Mohali                                     | 1           |  |
|                           | Fortis Hospital, Mohali                                  | 1           |  |
| Cancer Patients           | Barnala  | 50          | Contacted directly at the respective hospitals and through ASHA workers using Snowball Sampling and Multi-stage Sampling |
|                           | Bathinda   | 75          |  |
|                           | Faridkot   | 75          |  |
|                           | Fazilika   | 50          |  |
|                           | Moga   | 50          |  |
|                           | Mansa  | 75          |  |
|                           | Muktsar  | 50          |  |
|                           | Sangrur  | 75          |  |
| NGOs                      | CankidsCan, BTI  | 1           | Snowball Sampling  |
|                           | Udham Emergency Group, Fazilika                          | 1           |  |
|                           | Sewa Dal, Sangrur  | 1           |  |

Respondents were chosen for each major type of cancer: urinary, bladder, lungs, kidney, breast and prostate representing male and female patients from the chosen districts. As many as 75 patients were taken from the large district (Sangrur Bathinda, Faridkot Mansa) and 50 each from small district (Barnala, Fazilika, Moga, Muktsar) from the cotton belt districts of Punjab.

### Statistical tests

Chi-square test: This test aims to investigate that to what extent an observed distribution is due to chance, popularly, it is also known as “goodness of fit”. This test determines “*how well the observed distribution of data fits with the distribution that is expected if the variables are independent*”.

**Correlation** is widely applied to test the direction and strength of the relationship between two or more variables. The data of cancer patients was co-related with age, gender, area, education, and occupation using chi-square test and co- relation tests whereas type of cancer and district wise was calculated using ANOVA test in order to see the trend among districts.

Chi-square tests was applied to study the association and co-relation among different variables of cancer patients in the chosen districts.

### Results and Discussion

#### Area-wise Distribution of the Cancer Patients

Table 1.4  
Area-wise Distribution of Cancer Patients

| Gender     | Quantity   | Rural | Urban | Total |
|------------|------------|-------|-------|-------|
| Female     | Number     | 1,006 | 203   | 1,209 |
|            | Percentage | 83.21 | 16.79 | 100   |
| Male       | Number     | 733   | 180   | 913   |
|            | Percentage | 80.28 | 19.72 | 100   |
| Total      |            | 1,739 | 383   | 2,122 |
| Percentage |            | 81.95 | 18.05 | 100   |

**H<sub>01</sub>:** No significant relationship is observed between the area of the cancer patients and their occupations.

Table 1.4 revealed that among the females, 83.21 per cent cancer patients belong to rural area. When male population is taken, our sample consist of 80.28 per cent cancer patients from rural area. Overall cancer patients in rural areas are very high

(81.95 %). Only 18.05 per cent cancer patients reside in urban area.

**Area-wise and Occupation-wise Distribution of Cancer Patients** The cancer patients who belonged to rural area were predominantly agriculture farmers; followed by laborers and other professions whereas majority of the female cancer patients were homemakers. It implies that agricultural farmers among male and female who were home maker are the worst victims of cancer. It is due to the excessive use of pesticides in the fields by the farmers. This is clear from Table 1.5. Chi- square test was applied to check the relationship between area and occupation.

**Table 1.5**  
**Area-wise and Occupation-wise Distribution of Cancer Patients**

| Occupation        | Sub-category | Area  |       | Total | Pearson $\chi^2$<br>(p-value) | Chi-square |
|-------------------|--------------|-------|-------|-------|-------------------------------|------------|
|                   |              | Rural | Urban |       |                               |            |
| Homemaker         | Number       | 171   | 87    | 258   | 10.9301<br>(0.012)            |            |
|                   | Percentage   | 66.28 | 33.72 | 100   |                               |            |
| Agriculture Owner | Number       | 90    | 27    | 117   |                               |            |
|                   | Percentage   | 76.92 | 23.08 | 100   |                               |            |
| Labour            | Number       | 36    | 15    | 51    |                               |            |
|                   | Percentage   | 70.59 | 29.41 | 100   |                               |            |
| Other Professions | Number       | 36    | 31    | 67    |                               |            |
|                   | Percentage   | 53.73 | 46.27 | 100   |                               |            |
| Total             |              | 333   | 160   | 493   |                               |            |
| Percentage        |              | 67.55 | 32.45 | 100   |                               |            |

*Source: Primary Data*

The chi-square test has provided strong evidence for significant relationship between area and occupation as p-value (0.012) <.05. Area and occupation do contribute significantly to the cancer.

**Table1.6**  
**Education-wise Distribution of Cancer Patients**

| Gender   |    | Illiterate | Upto 5 <sup>th</sup> | Middle | Matriculation | 10+2  | Total |
|----------|----|------------|----------------------|--------|---------------|-------|-------|
| Male     | No | 82         | 34                   | 33     | 26            | 23    | 198   |
|          | %  | 41.41      | 17.17                | 16.67  | 13.13         | 11.62 | 100   |
| Column % |    | 35.96      | 38.2                 | 38.82  | 56.52         | 52.27 | 40.24 |
| Female   | No | 146        | 55                   | 52     | 20            | 21    | 294   |
|          | %  | 49.66      | 18.71                | 17.69  | 6.8           | 7.14  | 100   |
| Column % |    | 64.04      | 61.8                 | 61.18  | 43.48         | 47.73 | 59.76 |
| Total    | No | 228        | 89                   | 85     | 46            | 44    | 492   |
|          | %  | 46.34      | 18.09                | 17.28  | 9.35          | 8.94  | 100   |
| Column % |    | 100        | 100                  | 100    | 100           | 100   | 100   |

### Education-wise Distribution of Cancer Patients

Table 1.6 reveals education profile of the surveyed respondents. A significant chunk (46 percent) of the respondents were illiterate, disturbing situation.

Other respondents (54 %) were equally distributed in different categories of middle class, matriculation and 10+2. The sample consists of 35.96 per cent of male illiterate and 49.66 per cent of female illiterate. Overall, 46.34 per cent of selected sample is illiterate. High percentage of illiterate were present in the sample. Illiteracy can be the cause of cancer also as they were not aware of the preventive methods. Spread of cancer is less among literate population. It implies that illiteracy is also one of the causes of cancer.

Table 1.7 listed the rural-urban classification and district wise of the cancer patients in the

year 2020 and 2021. In both years, the cases were high among rural areas than urban areas.

Among all the districts of cotton belt, district Mansa carries highest cancer patients (78 per cent) for two consecutive years.

**Table 1.7**  
**Rural-Urban Classification of Cancer Patients in year 2020 and 2021**

| Districts    | 2020        |       |             |      |             |      | 2021        |      |             |     |            |     |
|--------------|-------------|-------|-------------|------|-------------|------|-------------|------|-------------|-----|------------|-----|
|              | Total       |       | Rural       |      | Urban       |      | Total       |      | Rural       |     | Urban      |     |
|              | No          | %     | (No.)       | (%)  | (No.)       | (%)  | No          | %    | (No.)       | (%) | (No.)      | (%) |
| Barnala      | 238         | 7.14  | 160         | 67.2 | 78          | 32.8 | 196         | 7.36 | 122         | 62  | 74         | 38  |
| Bathinda     | 624         | 18.73 | 415         | 66.5 | 209         | 33.5 | 552         | 20.7 | 384         | 70  | 168        | 30  |
| Faridkot     | 278         | 8.34  | 164         | 59.0 | 114         | 41.0 | 252         | 9.46 | 157         | 62  | 95         | 38  |
| Fazilika     | 284         | 8.52  | 190         | 66.9 | 94          | 33.1 | 187         | 7.02 | 141         | 75  | 46         | 25  |
| Mansa        | 354         | 10.62 | 278         | 78.5 | 76          | 21.5 | 316         | 11.8 | 247         | 78  | 69         | 22  |
| Moga         | 399         | 11.97 | 292         | 73.2 | 107         | 26.8 | 246         | 9.23 | 185         | 75  | 61         | 25  |
| Muktsar      | 390         | 11.70 | 279         | 71.5 | 111         | 28.5 | 277         | 10.4 | 186         | 67  | 91         | 33  |
| Sangrur      | 764         | 22.93 | 516         | 67.5 | 248         | 32.5 | 637         |      | 342         | 54  | 295        | 46  |
| <b>Total</b> | <b>3331</b> |       | <b>2294</b> |      | <b>1037</b> |      | <b>2663</b> |      | <b>1764</b> |     | <b>899</b> |     |

*Source: Department of Health and Family Welfare, Government of Punjab (n.d.)*

In the year 2020 and 2021, Faridkot and Sangrur district documented majority of urban cancer patients 41 per cent and 46 per cent respectively. Similarly, majority



of cancer patients (81.9%) belonged to rural area and 18 per cent lived in urban areas.

### Conclusion

Our Hypothesis that there is relationship between cancer and rural population is significant. The study results revealed that there is strong relationship between cancer and rural population. The study also revealed education profile of the surveyed respondents. Almost 46 percent of the respondents were illiterate. Rest of the respondents was equally distributed in different categories of middle class, matriculation and 10+2. About 54 per cent of population were literate in the sample.

### Policy Implication

The study suggests that Government policies should focus more on rural area as the cases of cancer are more there. Moreover, percentage of population living in rural areas (62.52 %) is quite high as compared to urban areas (37.48%). Accordingly, more awareness programs, detection camps and rallies are required in the rural areas as the illiteracy rate is still higher. Treatment facilities of Cancer are much needed in rural areas. Mansa district of Punjab need special attention as the no. of patients are quite high. New cancer hospital should be opened in the area in near future for the convenience of public in the Mansa and adjoining areas.

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**A Journey of a Lifetime in Law**

***Prof (Dr.) Jayanti Dutta\****

***Book Review***

**Raising the Bar. Roshan Lal Batta, SLM Publishers, Patiala. 2024,  
p218, Rs. 495/-**

The book under review is the memoir of barrister Roshan Lal Batta who was called to the Bar by the Hon'ble Society of Inner Temple, London in the year 1964 and thereafter practiced in the Hon'ble Punjab and Haryana High Court, Chandigarh. Seekers of the knowledge of the law discipline, who are more inclined towards reading the technical concepts of legal literature would find the memoir both educative and entertaining. In twenty chapters, the author takes the reader on an exciting journey of his life from a small village in Punjab to the hallowed portals of London legal institutions and finally his illustrious career in law.

Leaving the country in the year 1958 to study Economics in London as per the wishes of his grandfather, Roshan Lal finally ended up studying Law due to certain influences. Though his education was not confined to the classrooms alone. Out of the seven years that he spent in London, Roshan Lal did not spend a single day in any wasteful pursuit. Rather he proactively sought novel experiences through teaching, travelling, attending seminars, discussing, and acquiring new skills. He even took lessons in dances. His experiences do underline the fact that exposure to a wide spectrum of diversity of culture, academics and politics surely help in sharpening the mental faculties. The aimless pursuit of random things that came across his path did lend the author the much-needed wide world view, maturity, insight and perspectives which are so indispensable for any practitioner of Laws.

The seven years that Batta spent in London were the most promising and enjoyable years of his life during which he mingled with great personalities of his era. He had the unique experience to witness the trial of the publisher of the book, 'Lady Chatterley's lover' written by D.H. Lawrence, which resulted in the jury declaring it 'Not Obscene'. He also had the opportunity to attend lecture sessions of the illustrious Rama Krishna Mission monk, Swami Ranganathananda, several British parliamentarians, University Professors and UNO statesmen. For some time, he taught in a school also and his experiences of pedagogy too are so

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enlightening that interesting takeaways can be drawn from all of them.

Back in India at a crucial juncture of history, the author does not shy away from nurturing his political consciousness which made him not only an informed citizen but also an active participant in the events happening in the nation. He also rubbed shoulders with the high and powerful personalities in India. He met and spent time with Jai Prakash Narayan, APJ Abdul Kalam, Krishan Kant etc., The writing is also a documentation of the journey of our country through different political movements, events and ideologies, the idea of socialism, the declaration of emergency, and emerging extremism. Batta faithfully chronicles his first-hand experiences with different dimensions of Indian polity and legal framework. His objectivity while writing about the events shine through his writings.

In the later period of his journey the author is invited to attend conferences and proceeding in different courts across the border and becomes, privy to the justice systems of Pakistan, Shanghai, Canada, and New Zealand. Wherever he goes he takes along his inquisitive mind, a pair of observant eyes, his sharp and his analytical intellect- all indispensable possessions of a law professional. By a curious coincidence, his granddaughter was also called to the bar, on the same date 24th November, exactly 58 years after his own calling by the Hon'ble society of inner Temple. The author sees it as the completion of the circle of his interesting and adventurous journey. More than thirty colored plates of significant events of Barrister Batta's life provide a vivid and personal glimpse into his life. Though one laments the lack of more information about his growing up years in the memoir.

Students and practitioners of law will find in this memoir documentation of an Indian life in Law, as well as the evolution of the profession of Law along with words of wisdom and inspiration from a senior colleague who has walked the path ahead of them.

## Women in Sports: Relationships with Male Counterparts

*Dr. Reena Chaudhary\**  
*Dr. Gagandeep Kaur\*\**

### Abstract

*The participation of women in sports has grown remarkably over the past decades, contributing significantly to the diversity and richness of the sports world. Historically marginalized, women athletes have made remarkable strides in diverse sports, from traditional arenas like track and field to more contemporary pursuits. Various factors influence women's choices of sports, including cultural norms, availability of resources, family and societal support etc. The relationship between sportswomen and their male counterparts also plays a crucial role in shaping the dynamics of the sports industry. Sportswomen had to deal with male counterparts; male coaches, co-sportsmen as well as support staff and experience different kinds of problems at workplace. The present paper explores the dynamics of women's involvement in sports, focusing on their choice of games and the relationship they share with their male counterparts.*

**KEYWORDS** - *Women in Sports, Relationships, Choice of Games, Male Counterparts*

### 1. Introduction

Female participation in sports has been an under researched area. Sex roles, stereotyping, male research bias and the reward structure of society all led to this neglect (Devi 2018). Women's sports are currently a fast evolving and increasing aspect of culture, and recent trends have sparked a need for information concerning female sports involvement. Women's participation in sports has slowly and gradually expanded and have started engaging actively in numerous sports (Crosset 1986). However, males have consistently dominated the world of sports, and men have consistently held the most important professions (Farrell 1985; White 1984). Existence of gender related assumptions in our society clearly state that males are supposed to be more active than girls and sporting or physical activities are more appropriate for males than females. Play styles, type of game and selection of play

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things are gender labeled in our society (Higginson 1985). Ross and Shinenw (2008) found that sports such as rugby, wrestling, hockey, basketball, soccer and bodybuilding were strongly associated with masculinity and were “weird” and “odd” for female participation. Females’ participation in sports is often thought to be less appreciated since athletics are primarily male dominated and characterized by masculine qualities, such as strength, aggression, and competition (Krane et al. 2004).

Women are holding prominent positions in sports in India, which serves as motivation for other women. Indian women started to take part in Helenski Olympics during 1952 and the prominent women were Mary D’Sousa (sprint) and Nilima Ghose (100mts hurdles) to participate in it. Mary Leela Rao was proud leader of the March-past at Melbourne (1956) Olympics games. Miss Meera Shaw (Badminton); Kamaljit Sandhu and Arata Saha participated in swimming in Olympic games during 1960; Stephy D’Sousa (Athletics) was awarded with Arjuna Award in 1963. Many more Indian women have made notable achievements in different sports like; P.T. Usha (Athletics); Bula Chaudhary, first woman to cross seven seas; Kunjurani Devi (Weightlifting), Diana Edulji (Cricket), Koneev Hampi (Chess), Sania Mirza (Tennis), Karnam Malleshwari (Weightlifting), Saina Nehwal (Badminton), and Boxer Mary Kom (Kaur, 2015).

While we applaud the achievements of Indian sportswomen, we often hear about horrific cases of exploitation, harassment, and violence against women in sports. Poor access to sports facilities, no equipment to play, having to travel more than 10km to reach the facility, safety concerns, lack of preferred female coaches, unsafe travelling to tournaments, lack of drinking water and toilets at coaching fields, no changing rooms, lack of sensitivity towards gender-based issues like privacy and discrimination in sport were the common concerns of sportswomen (Naik 2023).

Newton and Duda (1999), coaches often have a bad attitude towards female athletes. Athletes had experienced physical punishment due to poor performance and received negative feedback from their coaches due to poor performance. Fasting and Knorre (2005) investigated the interactions between coaches and female athletes and found that 11percent of athletes reported receiving a slap to the face, head, or ears from a teammate. 15 percent had observed unwanted physical contact between a female athlete and her coach. 74 percent knew about other female athletes who had sexual relationships with their coaches. Stirling (2009) described relational maltreatments and non-relational maltreatments. Relational maltreatments include neglect, physical, sexual and emotional abuse. Non-relational maltreatments include abuse or assault, child labour, institutional

maltreatment, corruption, bullying and harassment. Alexander et al. (2011) found that 75 percent athletes talked about emotional harm including humiliation, negative self-body image and self-harm. In this study, peers were the most common perpetrators.

Grokce and Celik (2016) described the bullying experiences of women basketball players. Women players had faced bullying during their tournaments by their coaches, teammates and directors of sports. Some of them had faced violent behavior and humiliation by their coaches in front of other players. Women experienced violence, humiliating words, unfairness and unnecessary restrictions and throwing of any sport equipment on players.

Fowlie et al. (2020) revealed that adolescent females would feel undervalued and that their achievements are not equal to the males within their sporting club if they are not having their achievements recognized. The adolescent females wanted their achievements to be valued the same as their male counterparts.

## **2. Objectives**

The present paper has the following objectives, viz

1. To know the level of participation of sports women in different games
2. To examine the kinds of relationships sports women share with their male counterparts

## **3. Methodology**

The study was conducted in the state of Punjab which is divided into three major regions i.e. Majha, Malwa and Doaba. It has 22 districts. Nearly 499 sportswomen were playing sports in different sports Academies of Punjab. Population of sportswomen was higher in three districts of Punjab i.e. Amritsar (Majha region), Jalandhar (Doaba region), and Ludhiana (Malwa region) than in other districts of Punjab, according to Punjab Directorate, Chandigarh (2015-16). These three districts also cover the three regions of Punjab. Amritsar district had 114 sportswomen, Jalandhar district had 108 sportswomen and Ludhiana district had 118 sportswomen in sports wings. In this study, 70 sportswomen were interviewed from each district i.e. Amritsar, Ludhiana and Jalandhar from different types of games. For the present study, a purposive sample of 210 sportswomen who were playing sports under professional training institutes and were pursuing games as their career at district, national and international level were taken. The research design for the study was partially exploratory and partially descriptive.

#### 4. Results

To achieve the objectives of the present paper, it is important to understand the demographic and socio-economic background of the respondents. Table 1 represents the background characteristics of the respondents.

**Table 1: Background Characteristics of the Respondents**

| Characteristics       | Frequency | Percentage |
|-----------------------|-----------|------------|
| <b>Age (in years)</b> |           |            |
| 15-20                 | 142       | 67.61      |
| 20-25                 | 67        | 31.91      |
| 25-30                 | 1         | 0.48       |
| <b>Level of game</b>  |           |            |
| State level           | 72        | 34.28      |
| National              | 131       | 62.38      |
| International level   | 7         | 3.34       |
| <b>Caste</b>          |           |            |
| General               | 130       | 62         |
| Other Backward Castes | 28        | 13         |
| Scheduled Castes      | 52        | 25         |
| <b>Education</b>      |           |            |
| B. A                  | 188       | 89.52      |
| M.A                   | 14        | 6.66       |
| Professional          | 8         | 3.82       |
| <b>Religion</b>       |           |            |
| Hinduism              | 94        | 44.77      |
| Sikhism               | 114       | 54.28      |
| Islam                 | 2         | 0.95       |
| <b>Family type</b>    |           |            |
| Nuclear               | 145       | 69.05      |
| Joint                 | 65        | 30.95      |

The above given table shows that majority of the sports women in the sample i.e. 67.61 percent were in the age group of 15-20 years and 62.38 percent were found to be national level/interuniversity level players. The educational background of the respondents indicates that 89.52 percent of the total respondents were pursuing graduation and 6.66 percent were pursuing post graduate degrees. There were only 3.82 percent of the total respondents who were pursuing professional degrees i.e. B.P.Ed, M.P.Ed, etc. 62 percent respondents belonged to the 'General' category comprising various sub-castes like the Khatri, Jat Sikh, Brahmins, Baniyas, Kshtriya etc. and majority of the respondents i.e. 54.28 percent were Sikhs as the study was conducted in the state of Punjab. Further, the



dominance of nuclear family system was found in the sample i.e. 69.05 percent. It is believed that respondents discuss their problems with family members to find out solutions and nuclear family perpetuates more open and healthy interaction between the family members.

#### 4.1 Forms of Games/Sports

To attain the first objective of the present paper, it is pertinent to know what type of games respondents joined in their sports career. In sports academies, indoor and outdoor games are played among sportspersons. In sports wings, women select their games as profession, according to their own interest, capabilities as well as according to the scope of a game. Ross and Shinenew (2008) stated that when women participate in athletic activities, they are given the opportunity to feel more powerful and in control over their lives, leading to a sense of self acceptance, pride, and appreciation for their athletic competence. The table given below presents the real picture of types of games preferred among sports women in sports academies.

**Table 2: Distribution of the Respondents According to the Forms of Games/Sports**

| Forms of games  | Frequency | Percent |
|-----------------|-----------|---------|
| Gymnasium games | 18        | 8.57    |
| Field games     | 180       | 85.71   |
| Aquatic games   | 2         | 0.95    |
| Court games     | 10        | 4.77    |
| Total           | 210       | 100     |

The above given table indicates that a majority of the respondents i.e. 85.71 percent were involved in field games. It included Archery, Athletics, Basketball, Cycling, Football, Handball, Hockey, Kabaddi, Kho-kho, Korfball, Netball, Softball, Taekwondo, Volleyball and Wushu. 8.57 percent of the respondents were engaged in gymnasium games. Gymnasium games included Gymnastics, Judo, Kick Boxing, Weightlifting and Wrestling. 4.77 percent respondents used to play court games that included table tennis and badminton. The percentage of respondents engaged in aquatic sports like swimming and wakeskating was minimum i.e. 0.95 percent. As a result, it was observed in the present study that majority of the respondents were involved in outdoor field games, which include a

number of games that are more career-oriented and were well-liked by sports women.

#### 4.2 Choice of Game

Choice to play a particular game is likely to affect the interest of a sports woman in sports domain. Interest in a particular game increases the performance of a player. Lack of interest lowers a player's performance and leads to conflicts between coach and sportsperson. An attempt has been made to determine how many female athletes participated in both team and individual sports.

**Table 3: Distribution of the Respondents According to the Choice of Games**

| Choice of game  | Frequency | Percent |
|-----------------|-----------|---------|
| Team game       | 171       | 81.42   |
| Individual game | 39        | 18.58   |
| Total           | 210       | 100     |

It was found that there were 30 games in all; of which 12 were team games and 18 were individual games. Individual sports included Athletics, Water Sports, Swimming, Kickboxing, Boxing, Judo, Archery, Javelin Throw, Wrestling, Weightlifting, Wushu, and so on. Team sports included Football, Volleyball, Kabaddi, Hockey, Handball, Badminton, Softball, Korfbal, Kho-kho, Taekwondo, Netball, Basketball, and so forth. Only 18.58 percent of the total respondents were keen to play solo games, whereas 81.42 percent of respondents preferred team games. Women who participated in individual games had the belief that they could show their full ability and succeed in tournaments by playing alone. While respondents who were engaged in team games believed that these activities are career-focused and also get more importance in Olympic Games.

#### 4.3 How Women Joined Sports?

Sports is an integral part of the culture of almost every nation in the world. However, sports are considered to promote gender equality and empower women who are often overlooked because sports are not universally perceived as a suitable or desirable pursuit for girls and women (Ahmed 2015). Existing social constructs of masculinity and femininity or socially accepted ways of expressing what it means to be a man or woman in a particular socio-cultural context plays a key role in determining access, levels of participation, and benefits from sports. Studies described that even if a girl plays, she faces hurdles regarding the opportunities of

continuing to play sports. After high school, physical activity decreases by almost 50 percent among females (Han et al. 2008). For the purpose of analysis, it is vital to know how women joined sports.

**Table 4: How Women Joined Sports?**

| How were sports joined?   | Frequency | Percent |
|---------------------------|-----------|---------|
| Family support            | 82        | 39.04   |
| Influence of peers        | 21        | 10      |
| Through school activities | 76        | 36.20   |
| All of the above          | 31        | 14.76   |
| Total                     | 210       | 100     |

The data highlights that majority of the respondents, i.e. 39.04 percent respondents joined sports because their family members wanted them to join. The family members of these respondents were well educated and at least one family member was from sports background (either as a player or as a D.P.E. teacher). Therefore, they wanted their child to be into sports. 36.20 percent respondents were involved in sports because they got exposure of playing different games in schools, which were already promoting sports in schools. Their school teachers found them to be physically fit and agile for sports and therefore motivated them to join sports. Only 10 percent respondents played sports because of their peer pressure and 14.76 percent respondents found all the above-mentioned factors to be responsible for joining sports. Findings show that majority of the respondents participated in games of their interest with the support of their family members and school authorities.

#### **4.4 By Whom Were the Respondents getting Training at the Academies?**

At the collegiate and professional levels, coaching has evolved over the last few decades into a more competitive, widely accepted, and long-term career. Men have dominated the world of sports since its inception. In Seoul for the 1988 Olympics, it was discovered that 92 percent of the coaches were men and only 8% were women (Singh 2005). In 1972, male coaches mentored 90 percent of the female teams (Welch and Sigelman 2007). Women made up only 42.9 percent of all collegiate coaches in 2012, a 47 percent decline over the previous 40 years (Pilon 2015). An International Olympic Committee directive requires 30 % female representation in governing bodies of sports, whereas, in India, 8 National Sports

Federations don't have female representation in their governing bodies (Naik 2023). Therefore, for the present research work, it is crucial to know who was instructing the players at the academies.

**Table 5: Distribution of the respondents according to by whom they were getting training at Academies**

| <b>Trainers of women players</b> | <b>Frequency</b> | <b>Percent</b> |
|----------------------------------|------------------|----------------|
| Male coaches                     | 204              | 97.14          |
| Female coaches                   | 6                | 2.86           |
| Total                            | 210              | 100            |

According to the above-mentioned table, 97.14 percent of the respondents received training from male trainers at their workplace. Only 2.86 percent of the respondents reported getting training from a female coach. It was determined that female coaches in the sports world did not have the same standing as male coaches, and that there was a common misconception that women could not competently train athletes. As a result, the current research demonstrates that male coaches predominate in sports academies.

#### **4.5 Number of Male Counterparts**

Before understanding the relationships of sportswomen with the males at workplace, it is important to know the number of male coaches, co- sportsperson and support staff. Table 6 presents the distribution of number of male coaches, co-sportsmen and support staff at work place. Fasting and Knorre (2005) described relationships between sportswomen and male coaches and observed unwanted physical contact between a female athlete and her coach and many sportswomen knew about female athletes who had sexual relationships with their male coaches.

The aforementioned information makes it evident that 63.72 percent of the respondents had 1-5 male coaches. All respondents had supporting staff ranging from 1 to 5, and 63.54 percent of respondents had more than 10 fellow athletes. It was also found that sportswomen were playing with co-sportsmen to improve their skills and to increase their endurance in games. Thus, it is evident from the data that female athletes had maximum number of co-sportsmen.

**Table 6: Distribution of the Respondents According to their Number of Male Counterparts**

| No. of males | Male coaches  | Co – sportsmen | Supporting staff |
|--------------|---------------|----------------|------------------|
| 1-5          | 130<br>63.72% | 32<br>16.67    | 210<br>100%      |
| 5-10         | 74<br>36.28%  | 38<br>19.79%   | --               |
| 10+          | --            | 122<br>63.54%  | --               |
| Total        | 204           | 192            | 210              |

*\*For male coaches' number is 204, 6 respondents did not have male coaches.*

*\* For co- sportsmen number is 192, 18 respondents did not have co – sportsmen.*

### **5. Treatment given by Male Counterparts at Workplace**

An attempt was made to explore the type of treatment sports women got at their workplace from their male counterparts. Respondents were given six statements to know about the kind of treatment they get at workplace. Male domination and women's subordination are common problems in patriarchal community. Another area in which women are at a disadvantage in the workplace is through discrimination and exploitation. Discrimination and exploitation affect women in unusual ways. Another problem that women face is when men express their hatred and try to advocate control, when they see women as dependants. Millett (1977) has defined the concept of patriarchy and analyzed that Patriarchal ideology exaggerates biological differences between men and women, making certain that men always have the dominant, or masculine roles and women always have the subordinate or feminine ones. This ideology is so powerful that "men are usually able to secure the apparent consent of the very women they oppress". They do this "through institutions such as the academy, the church, and the family, each of which justifies and reinforces women's subordination to men. Keeping this in mind, sports women's perception about the kind of treatment they got from their male counterparts has been evaluated.

Table 7 depicts that the majority of respondents i.e. 80.47 percent, were physically punished at work by male coaches and senior players. It was observed that they were penalised as a result of their subpar performance on the field, their tardiness, their failure to win competitions, etc. 64.29 percent of respondents said

that they were treated more like a woman than a player by their male counterparts, including coaches, teammates, and support staff.

**Table 7: Treatment given by male counterparts at workplace**

| <b>Treatment Given by Male Counterparts</b> | <b>Yes</b>    | <b>No</b>     | <b>Undecided</b> | <b>Total</b> |
|---|---------------|---------------|------------------|--------------|
| Treatment as equal to male sportspersons    | 65<br>30.95%  | 133<br>63.33% | 12<br>5.72%      | 210          |
| Treatment as a female rather than a player  | 135<br>64.29% | 59<br>28.09%  | 16<br>7.62%      | 210          |
| Exploitation                                | 109<br>51.90% | 71<br>33.80%  | 30<br>14.30%     | 210          |
| Discrimination                              | 120<br>57.15% | 80<br>38.09%  | 10(4.76%)        | 210          |
| Favoritism                                  | 114<br>54.30% | 90<br>42.85%  | 6<br>2.85%       | 210          |
| Physical Punishments                        | 169<br>80.47% | 32<br>15.25%  | 9<br>4.28%       | 210          |

Their fellow athletes believed that women weren't good athletes and couldn't ever match with males in sports. The respondents further mentioned that because they were female, their male counterparts repeatedly disrespected them and did not perceive them as players. Despite performing well, 63.3 percent of respondents believed they did not receive the same treatment as male peers. 51.90 percent of respondents said that they had been exploited at work by their teammates and other sportsmen, and 57.15 percent of respondents said that they had experienced discrimination. Gender stereotypes give us the cultural perception that women will eventually get married and become caregivers whereas sportsmen will continue to play sports or compete even after they get married. This is the root cause of discrimination and exploitation. 54.3 percent of respondents said they have observed favouritism and nepotism at work by the male coaches. Thus, it is clear that women were not being treated well by their male counterparts at their workplaces.

**Table 8: Distribution of Respondents According to Type of Punishments Faced by them**

| Type of Punishment        | Frequency | Percent |
|---------------------------|-----------|---------|
| Physical Punishments      | 169       | 80.47   |
| Psychological Punishments | 14        | 6.67    |
| Economic Punishments      | 27        | 12.86   |
| Total                     | 210       | 100     |

The aforementioned table makes it evident that the majority of respondents, or 80.47 percent, experienced physical punishment at work from male coaches and senior players. Various physical punishments, such as kicking, pushing, hitting, and slapping, were used. They were unable to compete effectively as a direct outcome of such physical punishments. Furthermore, the respondents usually had to undergo physical discomfort for a longer period of time. Their athletic career was dramatically affected. Psychological punishments were imposed on 6.67 percent of the respondents. Since they were harder to see, psychological penalties posed a greater risk. Rejecting respondents from matches, discouraging them during matches, and keeping them as substitutes in the matches were all examples of psychological punishments. Sportswomen experienced depression as a result of psychological punishments, as well as low self-esteem and a sense of inferiority. Economic punishments included not financing them, giving them subpar equipment, and serving them unhealthy food.

## 6. Conclusion and Suggestion

In conclusion, this research paper delved into the level of participation of sports women in different games, as well as how these sports women are treated by males at workplace. It was observed that maximum percentage of the respondents were playing field games as these games were more popular among sportswomen. Regarding the choice of games among sportswomen, team games were preferred over individual games as team games were considered to be career oriented and also get more importance in Olympic Games. It was also found that majority of the respondents participated in games with the support of their family members and school authorities.

Through a comprehensive sociological analysis, it became evident that athletes were first treated as women before being considered athletes. In administrative and supervisory capacities, men have traditionally held the directing power, whilst

sportswomen are much more likely to be found in dependent and subordinate positions. It was also discovered that fewer women were engaged as coaches. Due to the patriarchal structure of our society, men are inherently reluctant to give up this superior position of privilege. Women are socialized to be passive, submissive, and sexual gatekeepers, whereas men are socialized into positions of sexual assertion, leadership, and resilience.

To make both men and women gender sensitive and to challenge long-held patriarchal conventions, proper socialization of both sexes is crucial. In addition, women must develop their courage so that workplace issues are not disregarded, and we strive to find solutions rather than simply accepting the situation as it exists.

To foster a more inclusive sports environment, it is crucial to promote equal opportunities, and encourage collaboration between male and female athletes. Stakeholders must prioritize policies and initiatives that support gender equality, provide equal access to training facilities and adequate resources, ensure balanced media representation of male and female athletes, and create platforms for mutual growth and respect between sportswomen and their male counterparts. By addressing these areas, the sports community can cultivate an environment where both male and female athletes thrive, benefiting from mutual respect, support, and equal opportunities.

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## Criminal Liability in AI-Enabled Autonomous Vehicles: A Comparative Study

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### Abstract

*AI is revolutionizing transportation by making it more sustainable. This application in autonomous vehicles has its own set of complexities concerning liability in case of infractions. The methodology employed in this study involves a comparative legal analysis approach. This includes a comprehensive analysis of primary legal documents to understand the current legal landscape in the selected jurisdictions. Additionally, the study draws on a real-world comparative analysis and examines liability claims to gain practical insights into the legal complexities. Secondary sources include academic literature, industry reports and news articles. This paper examines various aspects of criminal responsibility of AI-based AVs, drawing comparisons among US, Germany, UK, China, and India. The rationale for comparing these countries lies in their diverse legal frameworks. These countries were chosen for their technological advancements and contrasting regulatory approaches to liability in AI-enabled autonomous vehicles. The goal is to compare how different countries have approached this problem by analysing their legal frameworks and responses to it. It explores various approaches for ascertaining human errors that result in crime, such as intervention or moral agency on the part of AI, and identification of the primary offenders in incidents involving AVs. However, it shows that every country has its own unique way within its respective jurisdiction. For instance, India and USA have a loose interweaving network of state laws, while UK made a pioneering piece of legislation in 2018 called the Automated and Electric Vehicles Act, 2018. Germany applies strict safety standards and distinguishes liability based on the operating mode of the vehicle. Contrarily, China also aims to establish a very strict liability regime for AVs. Lastly, as an outcome of this study, it was found that there is a pressing need for globally agreed upon legal standards to encourage technological advancements, ensuring there is innovation invoking minimum risk.*

**Keywords:** Artificial Intelligence, Accountability, Tort Law, Autonomous Vehicles, Criminal Liability

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## 1. Introduction

Self-driving cars are the kind of vehicles that employ artificial intelligence as well as other sensors to operate autonomously. This is done without human intervention or supervision. These vehicles can make transportation safer and more efficient by helping people get where they are going easier, in an environmentally sustainable manner.<sup>1</sup> Autonomous Vehicles<sup>2</sup> also have significant legal and ethical connotations, especially criminal liability, since they pose questions about who is at fault for their actions and outcomes. However, the shift from conventional vehicles to AVs is neither consistent nor continues in a straight line; rather, it progresses in degrees with different levels of automation, capabilities and applications. The Society of Automotive Engineers<sup>3</sup> has come up with six levels of automation for on-road vehicles.<sup>4</sup> They are as follows:

**Level 0: No Automation-** The human driver performs all driving tasks.

**Level 1: Driver Assistance-** It is specified that the vehicle system shall be able to provide assistance to the human operator with either steering or acceleration/deceleration. Nonetheless, it is clearly stated that these two cannot be offered simultaneously.

**Level 2: Partial Automation-** The automotive system assists the human driver in steering and acceleration/deceleration. However, the driver must always be ready to take control of the vehicle.

**Level 3: Conditional Automation-** The vehicle can drive by itself under some conditions. However, a human being must be ready to take over control at any moment, should there be a need for assistance from him/her or a fault happens in the system.

**Level 4: Elevated Degree of Automation-** These are systems that perform all driving tasks under specific conditions without requiring participation from humans or supervision by drivers, like in a traditional car.

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<sup>1</sup> Inclusion Cloud, "The Future of Autonomous Vehicles: Evolution, Benefits, and Challenges" *available at*: <https://inclusioncloud.com/insights/blog/future-autonomous-vehicles/> (Last visited on November 7, 2023).

<sup>2</sup> Hereinafter referred to as AVs.

<sup>3</sup> Hereinafter referred to as SAE.

<sup>4</sup> SAE International, "Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles J3016\_201806," 2023 *available at*: [https://www.sae.org/standards/content/j3016\\_201806/](https://www.sae.org/standards/content/j3016_201806/) (Last visited on November 7, 2023).

**Level 5: Complete Automation-** The system performs all driving tasks under all circumstances. In no way does it involve a person who is expected to participate in whatever form.

Indeed, the issue of criminal liability is a significant and contentious aspect within the legal framework for AVs or their Artificial Intelligence<sup>5</sup> systems. Criminal liability pertains to the legal obligation incurred for the commission of a crime, which could lead to sanctions. It includes fine, imprisonment or other penalties.<sup>6</sup> The primary elements consist of the two:

- i. Actus reus (the wrongful act) and
- ii. Mens rea (the guilty mind).<sup>7</sup>

However, the process of integrating these principles into the operations is neither direct nor unequivocal. The inherent complexities of these advanced technologies pose significant challenges to the unambiguous incorporation of existing legal elements. According to some scholars, there are three basic models to cope with this phenomenon within the current definitions of criminal law.<sup>8</sup> These models are:

- a. **The Perpetration-by-Another Liability Model:** In this model, a human being who uses, controls or directs the AI system that commits a crime will be held liable as the perpetrator, whereas the AI system is seen as an instrumental tool.
- b. **The Natural Probable Consequence Liability Model:** This model holds that if someone creates, programs or allows an autonomous AI system to commit a crime, then they are liable as an accessory since it was foreseeable that such criminal conduct would naturally flow from their acts or omissions.
- c. **The Direct Liability Model:** This model holds that where an AI system can be said to have had enough autonomy, intelligence and moral agency, it may also be considered criminally responsible as a separate legal person.

These models have different benefits and drawbacks and thus, they may be used differently depending on the degree of automation, capacity as well as purpose for which the AI system is put in place. Some legal systems could blend various

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<sup>5</sup> Hereinafter referred to as AI.

<sup>6</sup> Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law*, (Oxford University Press, Oxford, 7<sup>th</sup> edn., 2013).

<sup>7</sup> David Ormerod et al., *Smith and Hogan's Criminal Law* (Oxford University Press, 2015).

<sup>8</sup> Prof. Gabriel Hallevy, "The Basic Models of Criminal Liability of AI Systems and Outer Circles" *SSRN Electronic Journal* (2019).

models or even create others to respond specifically to challenges posed by AI systems.

## 2. Criminal Liability of SDVS

A primary obstacle in the regulation of these vehicles is the identification of the party to be held legally accountable upon any violation.<sup>9</sup> The question of who bears legal responsibility for acts done by AV remains unanswered. Liability could be attributed to either humans operating them, AI system running them, vehicle manufacturers, software developers making programs that make these cars function, service provider or a combination of these parties. This issue can be approached differently in different jurisdictions depending on their underlying principles, values and objectives. Various legal viewpoints on the criminal liability of autonomous vehicles within the jurisdiction of India and other nations are discussed hereunder.<sup>10</sup>

### 2.1 India

India is a common law jurisdiction following the principles of tort law. It includes the concept of negligence, strict liability and product liability as well. India currently lacks any specific legislation addressing autonomous vehicles. Motor Vehicles Act, 1988 is the main ruling that governs road transport & traffic in India. The MVA<sup>11</sup> defines a motor vehicle as: "*any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source*".<sup>12</sup>

The act mandates that every motor vehicle must be registered<sup>13</sup>, insured<sup>14</sup> and driven by an individual holding a valid driving licence.<sup>15</sup> MVA outlines various offences and penalties for contravention of its provisions or inflicting harm on others through the use of a motor vehicle.<sup>16</sup> It also provides for offences and penalties where these provisions are contravened or harm is caused to others using the motor vehicle. However, this has nothing to do with self-driving cars or their

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<sup>9</sup> Ziya Altunyaldiz, *Legal Aspects of "Autonomous" Vehicles*, 2020.

<sup>10</sup> Dhawal Srivastava, "Legal issues related to autonomous vehicles" available at: <https://blog.ipleaders.in/legal-issues-related-autonomous-vehicles/> (last visited on November 7, 2023).

<sup>11</sup> The Motor Vehicles Act, 1988 (Act No. 59 of 1988).

<sup>12</sup> The Motor Vehicles Act, 1988 (Act No. 59 of 1988), s. 2(28).

<sup>13</sup> The Motor Vehicles Act, 1988 (Act No. 59 of 1988), s. 39.

<sup>14</sup> The Motor Vehicles Act, 1988 (Act No. 59 of 1988), s. 146.

<sup>15</sup> The Motor Vehicles Act, 1988 (Act No. 59 of 1988), s. 3.

<sup>16</sup> The Motor Vehicles Act, 1988 (Act No. 59 of 1988), Chapter X and XI.

criminal liability as provided for under the MVA. In addition, it should be noted that the MVA assumes that there is always a human driver behind a wheel whose actions can be attributed to him; it does not consider possibilities such as transference of control or accountability to an artificial intelligence system or even another entity. Thus, if an accident occurs or a traffic law is broken by a self-driving car, under the MVA, the human driver is more likely to be assumed responsible unless they can prove otherwise.<sup>17</sup> This can lead to unfair and absurd circumstances for the human driver, especially when he did not know or participate in the failure or mistake of that self-driving car.<sup>18</sup>

Consider the case in which a self-driving car is given an erroneous software update<sup>19</sup> or it is hacked by a third party<sup>20</sup> and ends up harming others. In this case, the driver may face difficulty trying to prove his innocence or lack of fault.<sup>21</sup> Besides, this may also discourage adoption and innovation of autonomous vehicles in India, where potential users fear legal consequences and liabilities. Thus, it becomes imperative for India to formulate a specific regulatory framework to comprehensively address the complexities surrounding autonomous vehicles and their potential criminal liability. The following legislations could have potential connotations for Self-Driving Vehicles<sup>22</sup> as well:

- i. Consumer Protection Act is an enactment to advocate for the rights of consumers. This legislation ensures end user safety in relation to defective commodities. It is also applicable in cases involving unsatisfactory service and inequitable trade practices.<sup>23</sup> This act aims to protect consumers' interests by establishing authorities for quick administration and settlement

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<sup>17</sup> Essense Obhan and Shourya Paul, "Driving into the Future: Regulating Autonomous Vehicles" available at: <https://www.mondaq.com/india/patent/1239240/driving-into-the-future-regulating-autonomous-vehicles> (Last visited on November 7, 2023).

<sup>18</sup> Yineng Xiao and Zhao Liu, "Accident Liability Determination of Autonomous Driving Systems Based on Artificial Intelligence Technology and Its Impact on Public Mental Health," *Journal of Environmental and Public Health* e2671968 (2022).

<sup>19</sup> BBC News, "Tesla withdraws self-driving beta over software issues" available at: <https://www.bbc.com/news/technology-59037344> (last visited on November 7, 2023).

<sup>20</sup> Sascha Brodsky, "How Self Driving Cars Can Be Hacked" available at: <https://www.lifewire.com/how-self-driving-cars-can-be-hacked-5114337> (Last visited on November 7, 2023).

<sup>21</sup> Rohit Ray, "Liability For Self Driving Vehicles: Is There Anyone To Blame?" available at: <https://www.livelaw.in/lawschoolcolumn/liability-for-self-driving-vehicles-automated-cars-driverless-technology-212778> (Last visited on November 7, 2023).

<sup>22</sup> Hereinafter referred to as SDVs.

<sup>23</sup> BYJUS, "Consumer Protection Act, 2019 - A Brief Overview" available at: <https://byjus.com/free-ias-prep/consumer-protection-act-2019/> (last visited on November 7, 2023).

of consumers' grievances.<sup>24</sup> In addition, it includes certain provisions relating to product liability, misleading advertisements and e-business.<sup>25</sup> The manufacturers might have to be held responsible if these cars cause any harm due to any malfunction. The service providers might also be held responsible in one case or another.

- ii. IT Act, 2000<sup>26</sup> confers legal recognition to transactions carried out through electronic data interchange. It may involve other means of electronic communication as well.<sup>27</sup> This contains provisions relating to cybercrimes and their penalties, as well as rules for the use of digital signatures and electronic records. There is also the provision of setting up a Cyber Appellate Tribunal.<sup>28</sup> Similarly, in relation to autonomous cars, it can be said that this might cover software up-dates; digital transactions and privacy; and digital transaction issues related to self-driving vehicles. For instance, where an autonomic car receives a defective software up-date or is hacked by a third party, leading to injuries to others, then the situation may fall under the purview of this law.<sup>29</sup>

However, it is vital that we recognize that, though these Acts have some consumer protection measures as well as regulations on aspects of Information Technology<sup>30</sup>, but they don't specifically deal with the unique problems posed by self-driving cars. It is therefore necessary for India to come up with special legislation or regulations on self-driving cars' criminal liability. This would assist in diverging such matters like accountability during malfunctions or accidents and other things like data privacy and security, maintenance, together with software updates.

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<sup>24</sup> Ministry of Consumer Affairs, *FAQs on Consumer Protection Act, 2019*, 11 September 2023.

<sup>25</sup> Citizen Consumer and Civic Action Group, *Salient Features of the Consumer Protection Act, 2019*, October 2019.

<sup>26</sup> The Information Technology Act, 2000 (Act No. 21 of 2000).

<sup>27</sup> Dr. Harisingh Gour Vishwavidyalaya Sagar, "The Information Technology Act, 2000" available at: <https://dhsgsu.edu.in/images/Reading-Material/Law/UNIT-IV-Second.pdf> (last visited on November 7, 2023).

<sup>28</sup> Team ZCySec, "Key Provisions of the Information Technology (IT) Act, 2000" available at: <https://zcybersecurity.com/key-provisions-of-the-information-technology-it-act-2000/> (Last visited on November 7, 2023).

<sup>29</sup> Law Web, "Important provisions of Information Technology Act 2000" available at: <https://www.lawweb.in/2019/09/important-provisions-of-information.html> (last visited on November 7, 2023).

<sup>30</sup> Hereinafter referred to as IT.



## 2.2 United Kingdom

AEVA<sup>31</sup> has been passed by the UK. It defines an automated vehicle as a motor vehicle which is designed or adapted to be capable of safely driving itself without having to be monitored by an individual.<sup>32</sup> According to the AEVA, whenever an automated vehicle is operating on its own, the insurer of such a vehicle will have the responsibility of compensating for any injury caused to another person or property.<sup>33</sup> However, the insurer can disclaim or limit its liability provided that the accident was triggered by unauthorized modification of such a vehicle or where its software has not been updated when required.<sup>34</sup> The amount expended may be claimed from those responsible for making the alteration without authorization or failing to update it.<sup>35</sup> Additionally, AEVA enables the Secretary of State to make regulations for testing and certifying self-driving cars.<sup>36</sup>

## 2.3 Germany

The Road Traffic Act (StVG) of Germany has been changed to allow for the use of highly or fully automated driving functions. Such a system is described as one that can take over the driving task within a certain operational area, although the driver can switch off such systems at any time.<sup>37</sup> The StVG<sup>38</sup> still requires the driver to be responsible for any destruction caused by the vehicle if he is not guilty.<sup>39</sup> Nonetheless, where this damage arises out of defects in an automatic drive system, it becomes the responsibility of either the car or the system manufacturers limited to a maximum amount of 10 million Euros.<sup>40</sup> Also, in accordance with StVG requirements, the driver must remain alert, be ready to regain control of the vehicle at any given moment and adhere to all orders given by the automated driving function.<sup>41</sup> Additionally, StVG also asks that there should be a data logger that records when an automatic driving function is switched on or off and all other malfunctions and accidents happening in the vehicle as well.

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<sup>31</sup> Automated and Electric Vehicles Act, 2018.

<sup>32</sup> Automated and Electric Vehicles Act, 2018, s. 8(1)(a).

<sup>33</sup> Automated and Electric Vehicles Act, 2018, s. 2(1).

<sup>34</sup> Automated and Electric Vehicles Act, 2018, s. 2(3).

<sup>35</sup> Automated and Electric Vehicles Act, 2018, s. 2(4).

<sup>36</sup> Automated and Electric Vehicles Act, 2018, s. 9(1).

<sup>37</sup> Road Traffic Act (StVG), s. 1a(2).

<sup>38</sup> StVG refers to Straßenverkehrsgesetz.

<sup>39</sup> Road Traffic Act (StVG), s. 7(1).

<sup>40</sup> Road Traffic Act (StVG), s. 7(3).

<sup>41</sup> "Self-driving car liability," *Wikipedia*, 2023.

## 2.4 China

China has issued several guidelines for SDVs. These standards mainly include the Guidelines on Road Testing of Intelligent Connected Vehicles (Trial)<sup>42</sup> and the Safety Technical Requirements for Road Testing of Intelligent Connected Vehicles (Trial)<sup>43</sup>. They declare an intelligent connected automobile to be a motor vehicle that can replace partially or wholly human driving through advanced sensors, controllers and actuators as well as other devices and is capable of perceiving traffic environment information, planning driving routes and executing longitudinal and lateral control. Additionally, these documents establish that during road testing, the individual conducting the test is responsible for any damage caused by the vehicle unless it can be proven that such damage was due to force majeure or an intentional act by a third party.<sup>44</sup> The tester must also obtain a testing permit; ensure that there's a qualified safety driver present in the vehicle who can take over at any time; install data recorder and remote monitoring system in the vehicle; and report all accidents or failures to authorities according to these documents.<sup>45</sup>

These are examples of how different nations have dealt with the matter of self-driving cars and their criminal accountability. However, there are many loopholes in this area. These countries clearly lack a harmonized approach when it comes to regulations. For example, there is no clarity on what constitutes a SDV or its level of autonomy. There is no consistency in terms of criteria to be used by persons trying to establish responsibility in cases of accidents. Dispute resolution mechanism is non-existent, while at the same time, enforcing liability claims has become problematic. The cost of protecting data privacy and security appears inadequate. Equally, there are no incentives for promoting innovation and cooperation among stakeholders that would be effective in doing so. Therefore,

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<sup>42</sup> Shanghai Municipal People's Government, "Announcement of the Standing Committee of the 15th Shanghai Municipal People's Congress" *available at*: <https://www.shanghai.gov.cn/nw48050/20230317/49999fa1d26e49e3b887b5dbe0751490.html> (Last visited on November 7, 2023).

<sup>43</sup> Conventus Law, "China - National Administrative Rules of Road Testing of Self-driving Vehicles Promulgated." *available at*: <https://conventuslaw.com/report/china-national-administrative-rules-of-road/> (Last visited on November 7, 2023).

<sup>44</sup> China Daily, "Fresh guideline highlights autonomous vehicle tests" *available at*: [https://english.www.gov.cn/policies/policywatch/202211/03/content\\_WS6363176ec6d0a757729e23ac.html](https://english.www.gov.cn/policies/policywatch/202211/03/content_WS6363176ec6d0a757729e23ac.html) (Last visited on November 7, 2023).

<sup>45</sup> Iris Deng, "China steps up autonomous driving development with new guidelines on operating driverless vehicles for public transport" *available at*: <https://www.scmp.com/tech/policy/article/3188314/china-steps-autonomous-driving-development-new-guidelines-operating> (Last visited on November 7, 2023).

more research into this issue, as well as better coordination between countries, needs to be undertaken urgently. Likewise, increased public awareness and education about the subject must go hand-in-hand with greater participation and consultation by concerned groups within society. Lastly, a balanced approach that equally takes into account the other aspects of SDV other than the legality is necessary in order to address any problem encountered during their operation process.

### 3. Comparing Liability Claims in AVS

This part draws comparisons involving liability claims on SDVs from different countries. It contains the way different courts or authorities dealt with some cases as well as the legal arguments that were made by parties to those cases. Also, it has implications for what could happen in the future and how regulations may be developed for autonomous vehicles going forward.

#### 3.1 India

India is one of the high-growth opportunity market for automobiles globally.<sup>46</sup> Alarming, it's also amongst the countries with highest road accident death toll. As per Ministry of Road Transport and Highways<sup>47</sup>, there were a total of 4,49,002 accidents in 2019. These mishaps resulted in 1,51,113 deaths and 4,51,361 injuries (approx.).<sup>48</sup> Most of these were caused because of human error; primarily consequential of over speeding, drunk driving as well as breach of traffic rules, among others. Consequently, SDVs seem to have a possibility to decrease these collisions and boost highway safety in India.<sup>49</sup> However, at present, India does not have any specific legal framework or regulation that deals with autonomous vehicles explicitly.<sup>50</sup> This main law overseeing motorcars which, is Motor Vehicles Act, 1988 (MVA), neither recognizes nor defines what self-driving vehicles are. It does not provide their different levels of automation as well. The MVA also fails to discuss the matter about liability when it comes to SDVs. There is no provision

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<sup>46</sup> Invest India, "Invest in Indian Automobile Industry, Auto Sector Growth Trends" *available at*: <https://www.investindia.gov.in/sector/automobile> (Last visited on November 7, 2023).

<sup>47</sup> Hereinafter referred to as MoRTH. Ministry of Road Transport and Highways.

<sup>48</sup> Megha Sood, "India had most deaths in road accidents in 2019: Report" *Hindustan Times* (Mumbai, 25 October 2020).

<sup>49</sup> Team Ackodrive, "Causes of Road Accidents in India - Why Do Accidents Occur?" *available at*: <https://ackodrive.com/traffic-rules/causes-of-road-accidents/> (Last visited on November 7, 2023).

<sup>50</sup> Sharath Kumar Nair, "Self-driving cars to become a major challenge for legal systems" *available at*: <https://analyticsindiamag.com/self-driving-cars-to-become-a-major-challenge-for-legal-systems/> (Last visited on September 10, 2023).

relating to their manufacturers or developers too.<sup>51</sup> The only pertinent section in MVA is Section 146. This section makes third-party insurance obligatory. Nonetheless, this provision does not state how such liability will be determined in cases involving SDVs. The implication of this is that the policy must cover the vehicle for any liabilities that may arise from death or bodily injury to a person or damage to any property resulting from the use of it.<sup>52</sup>

As a result, there is a void in the Indian legislation concerning autonomous vehicles. Therefore, there will be no sufficient grounds to make an argument about liability claims of self-driving cars until proper laws are put in place. Consequently, any case that arises from such cases will need to consider the general principles of tort law or contract law applicable in India. For example, if this vehicle causes a road accident which leads to the death or injury of another person or damage to somebody else's property, the injured party may go ahead and file a lawsuit against the owner or even operator of such a motor vehicle on account of negligence and breach of duty by care.<sup>53</sup> The victim can also sue for product liability or defective design, for instance, the manufacturers or developers of this vehicle.<sup>54</sup> In respect to either eventuality, plaintiffs must establish a link between what was done by defendants and the pain caused as their burden within this context. Defendants can plead contributory negligence, assumption of risk and exculpatory excuses depending on the circumstances in order to avoid or mitigate liability for their actions. The defendant might also have other defences like *force majeure et alia* that he/she can employ so as not to be held accountable at all or lessen her/his guilt before court proceedings.<sup>55</sup>

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<sup>51</sup> Tejas Sateesha Hinder and Ritik Kumar Rath, "Self-Driving Cars and India: A Call for Inclusivity under the Indian Legal Position" *available at*: <https://lawreview.nmims.edu/self-driving-cars-and-india-a-call-for-inclusivity-under-the-indian-legal-position/> (Last visited on November 7, 2023).

<sup>52</sup> Essenese Obhan and Shourya Paul, "Driving into the Future: Regulating Autonomous Vehicles" *available at*: <https://www.mondaq.com/india/patent/1239240/driving-into-the-future-regulating-autonomous-vehicles> (Last visited on November 7, 2023).

<sup>53</sup> Om Shivam, "Analysis of laws regulating self-driving cars" *available at*: <https://blog.ipleaders.in/regulation-of-self-driving-cars/> (Last visited on November 7, 2023).

<sup>54</sup> "Self-driving car liability," *Wikipedia*, 2023.

<sup>55</sup> Patrick H. Reilly and Elsa M. Bullard, "5 Defenses for Autonomous Vehicles Litigation" *Faegre Drinker* 1–8 (2018).

### 3.2 USA

Among other countries, USA is at the forefront of designing and testing autonomous vehicles<sup>56</sup>, with several companies such as Tesla, Waymo, Uber, etc, operating or experimenting with them on public roads.<sup>57</sup> Nevertheless, there lacks a uniform federal legal framework or regulation for self-driving cars.<sup>58</sup> Instead, there is a wide variety of regulations & state laws that are not equal in scope and content.<sup>59</sup> According to National Conference of State Legislatures<sup>60</sup> data as of March 2020, 29 states and the District of Columbia have enacted legislation related to autonomous vehicles and executive orders have been issued in 11 states on the same. These statutes govern different aspects of autonomous vehicle technology, including definitions, testing, deployment, licensing, registration, insurance, liability, safety, data, etc.<sup>61</sup>

Nonetheless, these rules differ and cannot be comprehensive enough to cover all the problems associated with autonomous vehicles.<sup>62</sup> In addition, they can come into conflict with and be pre-empted by other federal statutes that are applicable to motor vehicles generally speaking.<sup>63</sup> NHTSA<sup>64</sup> is responsible for setting regulations concerning automotive safety standards across the country. It also ensures safety standards in cases of the equipment used.<sup>65</sup> NHTSA has issued some

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<sup>56</sup> Johannes Deichmann et al., *Autonomous Driving's Future: Convenient and Connected* 1–12 (McKinsey & Company, 7 November 2023).

<sup>57</sup> Sunny Betz, “28 Self-Driving Car Companies You Should Know” *available at*: <https://builtin.com/transportation-tech/self-driving-car-companies> (Last visited on November 7, 2023).

<sup>58</sup> Eric Stauffer and Brad Larson, “Which states allow self-driving cars? (2023)” *available at*: <https://www.autoinsurance.org/which-states-allow-automated-vehicles-to-drive-on-the-road/> (Last visited on November 7, 2023).

<sup>59</sup> “Regulation of Self-Driving Cars,” *Wikipedia*, 2023.

<sup>60</sup> Hereinafter referred to as NCSL.

<sup>61</sup> National Conference of State Legislatures, *Autonomous Vehicles | Self-Driving Vehicles Enacted Legislation*, 18 February 2020.

<sup>62</sup> Justin Banner, “Are Autonomous Self-Driving Vehicles Legal in My State?” *available at*: <https://www.motortrend.com/features/state-laws-autonomous-self-driving-driverless-cars-vehicles-legal/> (Last visited on November 7, 2023).

<sup>63</sup> Jones Day, “Autonomous Vehicles: Legal and Regulatory Developments in the United States” *Jones Day White Paper* (2021).

<sup>64</sup> National Highway Traffic Safety Administration.

<sup>65</sup> NHTSA, *Federal Automated Vehicles Policy* 1–116 (U.S. Department of Transportation, September 2016).

guidelines on SDVs, which include, Automated Driving Systems 2.0<sup>66</sup> & 3.0<sup>67</sup>. However, these documents have no force or effect; and they do not expressly address the liability issue surrounding autonomous driving in clear language.<sup>68</sup>

Hence, similar to India, a self-driving vehicle liability claim in the USA will be decided on an individual case basis through courtrooms using general principles of tort law or contract law.<sup>69</sup> In contrast to India, there have been several reported cases or incidents involving self-driving vehicles in the United States that have sparked off liability concerns.<sup>70</sup> A few such accounts are as follows:

### 3.2.1 Autopilot crashes

Tesla is a top manufacturer of Electric Vehicles<sup>71</sup> and SDVs globally.<sup>72</sup> Its Autopilot mode is an attribute for its cars to steer, accelerate and brake. It can also change lanes and park itself under certain circumstances.<sup>73</sup> But still, the company cautions its customers that Autopilot is not fully autonomous. The drivers must pay attention and be prepared to take control at any time.<sup>74</sup> But even with this warning, there have been several accidents involving Tesla cars operating in this very mode. Tesla has been charged with negligence or product liability on its drivers because of some crashes that took place. These mishaps result in fatal injuries to drivers or passengers or other road users.<sup>75</sup>

In 2016, after a fatal crash into a tractor-trailer, Joshua Brown got killed. His Tesla Model S was in auto-pilot mode. The incident took place in the month of

<sup>66</sup> NHTSA, *Automated Driving Systems 2.0: A Vision for Safety* 1–36 (U.S. Department of Transportation, September 2016).

<sup>67</sup> NHTSA, *Preparing for the Future of Transportation: Automated Vehicle 3.0* 1–80 (U.S. Department of Transportation, October 2018).

<sup>68</sup> Jon Eberst, “Self-Driving Cars and Liability” *available at*: <https://eberstlaw.com/2020/02/06/self-driving-cars-and-liability/> (Last visited on November 7, 2023).

<sup>69</sup> Steven D. Jansma, “Autonomous vehicles: The legal landscape in the US” *Norton Rose Fulbright* 1–26 (2016).

<sup>70</sup> Tom Krisher, “US report: Nearly 400 crashes of automated tech vehicles” *AP News*, 16 June 2022.

<sup>71</sup> Hereinafter referred to as EVs.

<sup>72</sup> Tesla, “Autopilot and Full Self-Driving Capability” *available at*: <https://www.tesla.com/support/autopilot> (Last visited on November 7, 2023).

<sup>73</sup> “Tesla Autopilot,” *Wikipedia*, 2023.

<sup>74</sup> Sky UK, “Tesla full self-driving software ‘may do the wrong thing at the worst time’ company warns” *Sky News*, 12 July 2021.

<sup>75</sup> “List of lawsuits involving Tesla, Inc.,” *Wikipedia*, 2023.

May on a highway in Florida.<sup>76</sup> The NHTSA probed the accident and found that Brown ignored seven visual warnings from the Autopilot system before colliding with it despite six voice warnings from the same system.<sup>77</sup> Another NHTSA's investigation also showed that the autopilot system could not detect the white tractor-trailer due to its light colour against a bright sky. The Autopilot system was not found to have any fault by NHTSA. Hence, no action against Tesla.<sup>78</sup> Nevertheless, Brown's family filed a lawsuit against Tesla in the year 2018. They claimed for the wrongful death and product liability. The suit claimed that the company was at fault for negligently selling the Autopilot system. They claimed this as it failed to warn Brown of its limitations. Additionally, the suit alleged that the company had misrepresented the Autopilot as reliable while it was actually dangerous.<sup>79</sup> Consequently, there was a confidential settlement of this matter in 2019.

In 2019, Walter Huang was involved in an unfortunate incident. The crash happened on Highway-101 in California. His Tesla Model X went off course, colliding with a concrete barrier, resulting in his demise. National Transportation Safety Board<sup>80</sup> conducted an investigation into the accident and concluded that before the collision occurred, there had been several warnings to Huang from the system to put his hands back on the steering wheel. In addition, NTSB also found out that Autopilot misread lane markers and directed his vehicle to hit a concrete divider. When considering road conditions under which Autopilot mode should be used as well as preventing driver distraction, NTSB lambasted Tesla for failing to do so.<sup>81</sup> His family has sued Tesla in court since they believed this system led to his death through negligence and faulty product liability. They claimed that this was due to negligent designing, testing, marketing and selling of the system. Furthermore, it was alleged that Tesla did not properly warn Huang about its

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<sup>76</sup> Danny Yadron and Dan Tynan, "Tesla driver dies in first fatal crash while using autopilot mode" *The Guardian*, 30 June 2016.

<sup>77</sup> David Shepardson, "Tesla driver in fatal 'Autopilot' crash got numerous warnings: U.S. government" *Reuters*, 19 June 2017.

<sup>78</sup> Jack Stewart, "After Investigating Tesla's Deadly Autopilot Crash, Feds Say Hooray for Self-Driving" *Wired*, 2023.

<sup>79</sup> Amy Martyn, "Lawsuit charges Tesla of misleading consumers about safety of its Autopilot feature" *Consumer Affairs*, 28 February 2018.

<sup>80</sup> Hereinafter referred to as NTSB.

<sup>81</sup> BBC News, "Tesla Autopilot crash driver 'was playing video game'" *BBC News*, 26 February 2020.

dangers. It represented the device falsely as safe, even though it was dangerous.<sup>82</sup> The case remains pending at court.<sup>83</sup>

Jeremy Banner's fatality happened in Florida in December 2019. The Tesla Model 3 was being driven by Jeremy Banner himself. It was in Autopilot mode when it collided with a tractor-trailer along Highway I-75 in Florida. In response to the accident, NTSB looked into the crash, establishing Banner had turned on the Autopilot system just seconds before running his vehicle into a semi-truck trailer and he never tried to avoid the accident.<sup>84</sup> The board also noted that the system could not detect the tractor-trailer because of its colour combined with the lighting conditions.<sup>85</sup> In the year 2020, an action for wrongful death and product liability was filed against Tesla by members of Jeremy Banner's family. The lawsuit claimed that Tesla failed in its duty of care while designing, testing, marketing and selling the Autopilot system; as well as failed to alert him about its limitations or dangers as they were known to him at the time or what could be reasonably understood based on his experience with other self-driving cars. The complaint further alleges that Tesla misrepresented that it was safe to operate the Autopilot so long as drivers maintained some degree of attention.<sup>86</sup> This case is still pending before court.<sup>87</sup>

### 3.2.2 Uber SDV Fatality case

Uber is another company that has been testing AVs on public roads in the USA. It's developed SDVs are fitted with detectors, video cameras, radar sensors, lidars as well as software to allow them manoeuvre through traffic. Nonetheless, actual

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<sup>82</sup> Richard Lawler, "Tesla sued over fatal 2018 Model X crash with Autopilot engaged" *available at*: <https://www.engadget.com/2019-05-01-tesla-autopilot-lawsuit-model-x.html> (Last visited on November 7, 2023).

<sup>83</sup> "List of lawsuits involving Tesla, Inc.," *Wikipedia*, 2023.

<sup>84</sup> Andrew J. Hawkins, "Tesla didn't fix an Autopilot problem for three years, and now another person is dead" *available at*: <https://www.theverge.com/2019/5/17/18629214/tesla-autopilot-crash-death-josh-brown-jeremy-banner> (Last visited on November 7, 2023).

<sup>85</sup> Timothy B. Lee, "'I was just shaking'—new documents reveal details of fatal Tesla crash" *available at*: <https://arstechnica.com/cars/2020/02/i-was-just-shaking-new-documents-reveal-details-of-fatal-tesla-crash/> (Last visited on November 7, 2023).

<sup>86</sup> Isobel Asher Hamilton, "'We cannot have technology and sales take over safety': Tesla is being sued again for a deadly Autopilot crash" *available at*: <https://www.businessinsider.in/we-cannot-have-technology-and-sales-take-over-safety-tesla-is-being-sued-again-for-a-deadly-autopilot-crash/articleshow/70499578.cms> (Last visited on November 7, 2023).

<sup>87</sup> HT Auto Desk, "Tesla CEO Elon Musk spared from testifying in Autopilot crash lawsuit" *Hindustan Times*, 18 March 2022.



human security drivers are still hired to remain behind the steering wheel, watching over the vehicle, ready to intervene if need be.<sup>88</sup>

Towards the end of March 2018, one of its AVs hit a pedestrian named Elaine Herzberg crossing a street at night in Tempe, Arizona. This was the first known death involving an autonomous vehicle in America, which led to public outrage. This sparked debate about the safety and regulation of self-driving cars. These are some findings by NTSB concerning:

- i. The AV was operated in auto mode but had a human driver for safety purposes when this occurred.<sup>89</sup>
- ii. The AV detected Herzberg 5.6 seconds before impact, but failed to accurately identify her or predict her path correctly.
- iii. It did not break or steer to avoid Herzberg because Uber had disabled its self-driving system's emergency braking feature so as to minimize potential clashes with human intervention.<sup>90</sup>
- iv. The person responsible for monitoring the vehicle was distracted by her own personal mobile phone and failed to keep track of either the road or the performance of the car until half a second before impact occurred.<sup>91</sup>
- v. The human safety driver could have avoided the crash if she had been attentive and reacted appropriately.<sup>92</sup>

Uber's insufficient safety culture was found by NTSB as most likely cause of the accident, which also led to its failure to address testing risks of autonomous vehicles on public roads. The NTSB also blamed the human safety driver for her inattention and failure to intervene, as well as Herzberg for crossing outside a crosswalk at night. In April 2018, Herzberg's family reached a confidential settlement with Uber for an undisclosed amount of money.<sup>93</sup> The crash also led to

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<sup>88</sup> Leif Johnson and Michelle Fitzsimmons, "Uber self-driving cars: everything you need to know" *available at*: <https://www.techradar.com/news/uber-self-driving-cars> (Last visited on November 7, 2023).

<sup>89</sup> Sam Levin and Julia Carrie Wong, "Self-driving Uber kills Arizona woman in first fatal crash involving pedestrian" *The Guardian*, 19 March 2018.

<sup>90</sup> Mark Harris, "NTSB Investigation into Deadly Uber Self-Driving Car Crash Reveals Lax Attitude Toward Safety" *available at*: <https://spectrum.ieee.org/ntsb-investigation-into-deadly-uber-selfdriving-car-crash-reveals-lax-attitude-toward-safety> (last visited on November 7, 2023).

<sup>91</sup> Matt McFarland, "Feds blame distracted test driver in Uber self-driving car death" *available at*: <https://edition.cnn.com/2019/11/19/tech/uber-crash-ntsb/index.html> (Last visited on November 7, 2023).

<sup>92</sup> Rory Cellan-Jones, "Uber's self-driving operator charged over fatal crash" *BBC News*, 16 September 2020.

<sup>93</sup> Reuters, "Uber settles with family of woman killed by self-driving car" *The Guardian*, 29 March 2018.

criminal and civil actions against Uber or its safety driver. The proceedings took place in the month of March of 2019. Yavapai County Attorney's Office announced no criminal charges for the crash. This was because of lack of evidence, necessary to prove criminal liability.<sup>94</sup>

In August 2019, Maricopa County Attorney's Office charged Rafaela Vasquez with negligent homicide leading to the death of Herzberg. She was the human safety driver. Vasquez denied the charges and is expecting a trial.<sup>95</sup> This case demonstrates how complex and uncertain it is to determine and allocate responsibility for autonomous vehicles, in particular with human components that can be distracted, intervened in or make mistakes. It also signifies the need for coherence clarity on standards and rules guiding the trial of self-driving vehicles on public roads.

### 3.3 UK

The United Kingdom is an actively involved country in developments towards testing of automated cars, including projects like UK Auto drive, Gateway, Venturer, among others.<sup>96</sup> Additionally, the British government has announced its backing for autonomous vehicles aiming at making UK as global leader in this field, hence, fostering safe environment and encouraging invention and usage of these machines.<sup>97</sup>

The UK government passed the Automated and Electric Vehicles Act (AEVA) in 2018, the first-ever legislation globally to focus on self-driving vehicle liability.<sup>98</sup> In order for a vehicle to be regarded as a self-driving one according to AEVA, there must be cases where it can drive safely with no human control or observation. Besides, AEVA also provides that there should be a list of vehicles which are self-driving as specified by the Secretary of State.

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<sup>94</sup> 12News, "Uber driver charged in self-driving crash that left woman dead in Tempe in 2018" *12News*, 15 September 2020.

<sup>95</sup> Corina Vanek, "Arizona driver in fatal autonomous Uber crash in 2018 pleads guilty, sentenced to probation" *The Arizona Republic*, 28 July 2023.

<sup>96</sup> Iain Forbes, *Connected and Autonomous Vehicles in the UK* 1–26 (Center of Connected & Autonomous Vehicles, July 2016).

<sup>97</sup> Rachel Maclean, "Government paves the way for self-driving vehicles on UK roads" *available at*: <https://www.gov.uk/government/news/government-paves-the-way-for-self-driving-vehicles-on-uk-roads> (last visited on November 7, 2023).

<sup>98</sup> Matthew Channon, "Automated and Electric Vehicles Act 2018: An Evaluation in light of Proactive Law and Regulatory Disconnect," 10 *European Journal of Law and Technology* 1–36 (2019).

As per AEVA:

1. Regardless of whether a vehicle is insured or uninsured; if it gets into an accident while driving itself, the blame will go to its owner or the insurance company.
2. If the cause of the incident is as follows, then such damage or injury may be compensated for by the insurer or owner of a SDV from the person responsible for the car:
  - i. The vehicle was made to move on its own in circumstances where it would have been inappropriate.
  - ii. The individual supervising the vehicle failing to take reasonable measures that could prevent an accident.
  - iii. The vehicles software or hardware was tampered with or otherwise altered in such a way that changed its operation.
3. An insurance company will not be held answerable for any wrongdoing caused by an autonomous automobile under their cover if:
  - i. Another person's actions that result in destruction and injury were intended.
  - ii. Terrorism and war are involved.
  - iii. An unavoidable occurrence due to natural causes.

AEVA provides that:

1. A driver of a self-driven car cannot be charged with any criminal offence arising from its act of driving itself except he or she disrupted its working order or commanded it to do so when it was unnecessary.
2. The maker or developer of a driverless vehicle cannot be sued for civil damages brought about by such cars unless they supplied defective goods, broke their promise or warranty agreement.

In the UK, AEVA is intended to make it easy for people to understand who is liable for an accident involving self-driving vehicles. Also, the legislation means that insurers and owners can have confidence in a system that provides adequate coverage.<sup>99</sup>

### 3.4 Germany

Several companies, including BMW, Mercedes-Benz, Volkswagen, etc. are heavily investing in this area, making Germany the centre of autonomous driving development and testing.<sup>100</sup> Germany is also known for its automotive industry

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<sup>99</sup> Automated and Electric Vehicles Act, 2018.

<sup>100</sup> Christy Gren, "Germany takes a pioneering role in self-driving cars development" *available at*: <https://www.industryleadersmagazine.com/germany-takes-a-pioneering-role-in-self-driving-cars-development/> (last visited on November 7, 2023).

proress and engineering knowledge base as well as the rigid safety measures plus regulations set by the country.<sup>101</sup> Based on this reference point, Germany was one of the first countries globally to legislate on autonomous cars when it amended its Road Traffic Act (Straßenverkehrsgesetz).<sup>102</sup> The amendment categorizes highly automated driving systems as those which can perform every task related to driving within certain parameters without needing a human being's input. Furthermore, according to the amendment, driver assistance systems are able to aid or support humans in some driving activities, but they need somebody else to watch out for them.<sup>103</sup>

The amendment provides that:

1. A driver of a highly automated driving system shall not be held responsible for any harm or damage caused by the system while it is within its stated use case, unless he or she inhibited its operation or made it operate other than its specific use case.
2. The driver of such a highly automated driving system will hold any damages inflicted by the system during operation outside of its specified use case; they can only be absolved from blame if they assumed control of the vehicle immediately or the accident was unavoidable.
3. When in operation, the person who operates should bear all blame for the system's defects resulting in injuries and damages, except where there was no negligence on his part or where an accident is not avoidable.
4. Unless he/she delivered a faulty product, breached a contract/warranty, supplied a defective product, neither civil liability will attach to the maker/developer of such a highly-automated vehicle nor to that of any driver-assistance-systems during operation.

The amendment also provides that:

1. The driver of a highly automated driving system must keep awake and be ready to take over the car if not ordered by the system otherwise.
2. A driver of a highly automated driving system has to follow the road rules applicable to humans unless otherwise instructed by the system.

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<sup>101</sup> BMDV, "Germany will be the world leader in autonomous driving" *available at*: <https://bmdv.bund.de/SharedDocs/EN/Articles/DG/act-on-autonomous-driving.html> (Last visited on November 7, 2023).

<sup>102</sup> Dr. Gerd Leutner and Dr. Martin Eichholz, "Autonomous vehicles law and regulation in Germany" *available at*: <https://cms.law/en/int/expert-guides/cms-expert-guide-to-autonomous-vehicles-avs/germany> (Last visited on November 7, 2023).

<sup>103</sup> Jenny Gesley, "Germany: Road Traffic Act Amendment Allows Driverless Vehicles on Public Roads" *available at*: <https://www.loc.gov/item/global-legal-monitor/2021-08-09/germany-road-traffic-act-amendment-allows-driverless-vehicles-on-public-roads/> (Last visited on November 7, 2023).

3. Furthermore, this new provision requires that a driver using a fully automated driving system must capture and store all data relating to its operation and make it accessible to authorities during investigations of accidents or other incidents.
4. Moreover, according to these new provisions, a manufacturer or developer of such an automated vehicle will have to ensure that it complies with technical and safety requirements prescribed by the Federal Motor Transport Authority (Kraftfahrt-Bundesamt) and obtain its consent before releasing it for use on public roads.

The amendment aims at clarifying liability issues in relation to AVs in Germany. Additionally, it seeks to give enough protection, both for drivers as well as manufacturers so that they can develop and adopt them.<sup>104</sup>

### 3.5 China

Several companies in China (including Baidu, Alibaba, Tencent, etc.) are racing to develop and test AVs<sup>105</sup>. Besides, the country has a huge market potential plus the demand for SDVs due to population growth, urbanization, traffic congestion, pollution, among others.<sup>106</sup>

Nonetheless, there is currently no dedicated legal framework or regulation for the operation of self-driving vehicles in China.<sup>107</sup> The existing laws affecting motor vehicles generally fall short of adequately addressing SDVs. For example, the Road Traffic Safety Law (2003) mandates that all motor vehicles should be driven by a person who has the requisite driving skills and knowledge.<sup>108</sup> Another, Tort Liability Law (2009) stipulates that the driver of a vehicle is liable for any injury or damage resulting from his/her fault or negligence.<sup>109</sup> These laws do not

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<sup>104</sup> Christian M. Theissen, “The new German bill on automated vehicles – and the resulting liability changes,” in M. Bargende, H.-C. Reuss, *et al.* (eds.), 18. *Internationales Stuttgarter Symposium* 1295–301 (Springer Fachmedien, Wiesbaden, 2018).

<sup>105</sup> Luca Pizzuto *et al.*, “The market for China autonomous vehicles” *available at*: <https://www.mckinsey.com/industries/automotive-and-assembly/our-insights/how-china-will-help-fuel-the-revolution-in-autonomous-vehicles> (Last visited on November 7, 2023).

<sup>106</sup> Eduardo Jaramillo, “Top 10 Chinese autonomous driving companies to watch” *available at*: <https://thechinaproject.com/2023/02/23/ten-chinese-autonomous-driving-companies-to-watch/> (Last visited on November 7, 2023).

<sup>107</sup> Mark Schaub and Atticus Zhao, “China’s Legislation on Autonomous Cars Rolls out” *available at*: <https://www.chinalawinsight.com/2021/04/articles/corporate-ma/chinas-legislation-on-autonomous-cars-rolls-out/> (Last visited on November 7, 2023).

<sup>108</sup> “Road Traffic Safety Law of the People’s Republic of China,” *Wikipedia*, 2023.

<sup>109</sup> Ministry of Commerce People’s Republic of China, “Tort Law of the People’s Republic of China” *available at*: <http://english.mofcom.gov.cn/article/policyrelease/Businessregulations/201312/20131200432451.shtml> (Last visited on November 7, 2023).

recognize or define SDVs or their levels of automation. They also do not address the issue of liability for self-driving cars or their manufacturers.<sup>110</sup> Therefore, similar to India<sup>111</sup> or USA<sup>112</sup>, any litigation concerning auto-robotics will have to be decided by Chinese courts on an individual basis under tort law principles or contracts law.<sup>113</sup> There have been no reported cases or incidents involving self-driving vehicles in China that have raised or triggered liability issues. Therefore, it is difficult to predict how courts will approach and resolve these issues.<sup>114</sup> But some scholars and experts suggested some ideas and recommendations on establishing a legal framework or regulation for self-driving vehicles in China:

This means the developers of autonomous vehicles should be held strictly liable whenever their products cause injuries or damages, whether they are at fault for these defects or not.<sup>115</sup> This kind of system would enable victims to obtain fair compensation while motivating manufacturers and developers to enhance safety and quality features of self-driving cars. The country's leaders must establish a mandatory insurance policy which accommodates for all mishaps caused by the manufacturers.<sup>116</sup> As concerns over the question of responsibility continue to generate discourse among Chinese academicians, some suggestions have been advanced on this matter. Nevertheless, those views cannot be regarded as official interpretations because they may not necessarily reflect what happens now or later with regards to pronouncements made by courts or other bodies within China.

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<sup>110</sup> "Civil and Commercial Laws," available at: [http://www.npc.gov.cn/zgrdw/englishnpc/Law/2011-02/16/content\\_1620761.htm](http://www.npc.gov.cn/zgrdw/englishnpc/Law/2011-02/16/content_1620761.htm) (last visited on November 7, 2023).

<sup>111</sup> Disha Patwa, "Autonomous vehicles: The question of liability" available at: <https://lawbeat.in/articles/autonomous-vehicles-question-liability> (Last visited on November 7, 2023).

<sup>112</sup> Steven D. Jansma, "Autonomous vehicles: The legal landscape in the US" *Norton Rose Fulbright* 1–26 (2016).

<sup>113</sup> Rita Liao, "Real driverless cars are now legal in Shenzhen, China's tech hub" available at: <https://techcrunch.com/2022/07/25/real-driverless-cars-legal-in-chinas-shenzhen/> (Last visited on November 7, 2023).

<sup>114</sup> Mark Schaub and Atticus Zhao, "China's Legislation on Autonomous Cars Rolls out" available at: <https://www.chinalawinsight.com/2021/04/articles/corporate-ma/chinas-legislation-on-autonomous-cars-rolls-out/> (Last visited on November 7, 2023).

<sup>115</sup> Jiixin Liu et al., "Road Traffic Law Adaptive Decision-making for Self-Driving Vehicles" 2022 *IEEE 25th International Conference on Intelligent Transportation Systems (ITSC)*, 2022.

<sup>116</sup> Yineng Xiao and Zhao Liu, "Accident Liability Determination of Autonomous Driving Systems Based on Artificial Intelligence Technology and Its Impact on Public Mental Health," 2022 *Journal of Environmental and Public Health* e2671968 (2022).

#### 4. Key findings from the Comparative Study

There are complex legal challenges in different areas of law that affect autonomous vehicles. Global legal framework for driverless cars is not uniform and this highlights the need to tackle issues of responsibility, safety as well as interaction between man and machine together. The comparisons drawn among India, the USA, UK, Germany and China shows there is an immediate need for an all-encompassing and adaptable legal regime that can embrace or deal with the complexities involved in this transformational technology. The rationale for comparing these countries lies in their diverse legal frameworks. These countries were chosen for their technological advancements and contrasting regulatory approaches to liability in AI-enabled autonomous vehicles. This paper has probed into the intricate legal landscape surrounding autonomous vehicles across various jurisdictions. Using existing laws, cases and regulatory trends as a source of data, this research highlights some key insights and recommendations.

The fact that there is no global uniform framework that governs the use of autonomous vehicles reveals how intricate it is to regulate this type of technology. Different countries have different legal, cultural and technological factors that they consider in forming their responses to AV liability. The analysis illustrates the urgency for comprehensive and adaptable legal systems that can tackle the complex issues arising from AV rollout. The examples demonstrate how complex it can be to attribute blame for an accident when both driver and car are involved in the decision-making process; for example, Tesla's Autopilot crashes in America or Uber's lethal car crash in Arizona demonstrate this. The UK has been proactive by enacting specific legislations for liability caused by AVs compared to India, which has not yet regulated on this matter. Inadequate frameworks create significant problems for various stakeholders, including manufacturers, insurers and consumers alike. It underlines the importance of worldwide harmonization of legal norms in order to boost innovation, ensure responsibility and reduce risks within increasingly automated transport systems. In the process of establishing international guidelines and standards for AVs, it is important that they be designed to prioritize safety, equity and adaptability for different legal systems and cultures. Thus, these findings result in various recommendations:

- i. The policy makers should focus on developing and implementing clear, flexible and technology-neutral regulatory frameworks that provide certainty and accountability to all stakeholders.
- ii. More sharing of knowledge and collaboration between countries' industry players as well as regulatory institutions are vital to harmonizing the AV rules globally.

- iii. Ongoing researches should be done together with dialogue aimed at addressing emerging legal challenges, especially those associated with AVs such as data privacy, cyber security, among others.

| Country | Legal Framework                           | Liability Model                | Relevant Provisions/Guidelines                               | Key Differences                   |
|---------|---|--------------------------------|--|-----------------------------------|
| India   | Motor Vehicles Act, 1988                  | Tort Law                       | Section 146 (Third-party insurance)                          | Lack of specific regulations      |
| USA     | State laws, NHTSA                         | Tort Law, Product Liability    | NHTSA guidelines, State legislation                          | Variation in state laws           |
| UK      | Automated and Electric Vehicles Act, 2018 | AEVA provisions                | Liability for self-driving incidents, Insurer responsibility | First legislation globally        |
| Germany | Road Traffic Act (StVG)                   | Direct Liability               | Liability for defects, Compliance with safety standards      | Clear regulations on AV operation |
| China   | Various guidelines                        | Suggestions for liability laws | General laws applicable, Proposed liability framework        | Lack of dedicated regulations     |

Table 1.1 Legal Models in Selected Countries for Autonomous Vehicles

Consequently, it is very necessary for legal frameworks to move with the pace of technological innovation in AVs so that safe autonomous vehicle deployment may transpire concurrently. By upholding safety fundamentals yet embracing innovation, policymakers can effectively utilize AV's transformative potential by creating a more efficient transportation system which is sustainable, fairer and equitable for future generations. As autonomous vehicles continue to advance, global harmonization of legal standards should be pursued so as to encourage creativity, ensure responsibility and reduce risks within an increasingly automated transport system. As an outcome of this comparative study, it is found that there is a pressing need for globally agreed upon legal standards to encourage further technological advancements.



## Unraveling the Nexus of International Criminal Law: Understanding Its Scope, Subject Matter, and Sources

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### Abstract

*Every Human society, if it is to live in security and freedom must be governed by a system of clear laws, courts with binding authority and effective enforcement of generally accepted norms. International criminal law is the body of law that prohibits certain categories of conduct deemed to be serious crimes, regulates procedures governing investigation, prosecution and punishment of those categories of conduct, and holds perpetrators individually accountable for their commission. The repression of serious violations of international humanitarian law is essential for ensuring respect for this branch of law, particularly in view of the gravity of certain violations, qualified as war crimes, which it is in the interest of the international community as a whole to punish. There are several basic principles upon which international criminal law is based. Yet international laws are often ambiguous or nonexistent, courts to settle international disputes have only limited authority and enforcement is almost completely lacking. The creation of permanent international criminal courts to punish perpetrators of the war, crimes against humanity is still in its formative stages with details being debated at United Nations. Small wonder that there are millions of people throughout the world to continue to live in constant fear and misery. Here we shall trace outlines of a century of slow evolutionary progress as hesitant nation reach out cautiously for a more civilized and humane planetary society. Seeing history in its proper perspective should encourage hope that, as we enter the next millennium the future will be brighter than the present.*

**Keywords:** *International Laws, International criminal law, International Disputes, Permanent International Criminal Courts, United Nations*

### 1. Introduction

International law governs the rights and responsibilities of states<sup>1</sup>. Criminal law on the other hand is paradigmatically concerned with prohibitions addressed to individual, violations of International criminal law which are subjected to penal

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<sup>1</sup> Robert Jennings & Arthur Watts(eds), *Oppenheim's International Law*, 5-7 (Longman, London, 9th edition 1994).

sanctions by state.<sup>2</sup> The meaning of phrase “International Criminal Law” depends on its use, but there is a plethora of definitions, not all of which are consistent.

In 1950 *George Schwarzenberger*<sup>3</sup> described six different meanings that have been attributed to that term, all of which related to international Law, criminal law and their interrelationship, but none of which referred to any existing body of international law which directly created criminal prohibitions addressed to individual.

According to *M. Cherif Bassiouni* in his book “Internal Criminal Law” International criminal law is, a hybrid between Internal law & Domestic Criminal Law, as being founded by the internalized elements of criminal Law & by the criminal elements of international law

*Antonio Cassese* defined the term as a branch of public international law because both areas of the law share same sources.

According to *Natalia M. Luterstein* explains international law in narrow sense. international criminal law is one of that entails a individual criminal responsibility for international crimes, essentially war crimes, crimes against humanity and genocide the so called *Jus Cogens* or core crimes.

The major part of this study is based on archival and published source material. This study is based on research articles related to international criminal law, international human rights, and guidelines of Geneva conventions, ICC statutes and Nuremberg Charter. Material is gathered by using the analytical and qualitative research methods. For the purpose of writing this research paper, comprehensive research is done to analyze the subject matter and scope of international criminal law.

International Criminal Law is concerned with the rules and principles applying to individuals. Specific crimes that attract individual responsibilities at international law include following things:

- Piracy
- Slavery
- Genocide
- Torture and cruel, inhuman or degrading punishment
- Aggression

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<sup>2</sup> Glaville Williams, “The definite of crime” 8 *Current Legal Problems* 107 (1995).

<sup>3</sup> George Schwarzenberger, “The problem of an International criminal law” 3 *Current Legal Problems* 263 (1950).

- Crimes against humanity
- War crimes etc.

International Criminal Law deals with the criminal responsibilities of individuals for international crimes. However, there is no generally accepted definition of international crimes. The international core crimes i.e. crimes over which international tribunals have been given jurisdiction under international law are genocide, war crimes, crimes against humanity and aggression. International criminal law finds its origin in both international law and criminal law and closely relates to of the areas of international law.

International law though not quite as comprehensively codified or as widely ratified by states as international human rights obligations, is relevant to that study and protection of international human rights because it, generally is aimed at punishing acts which affect fundamental human rights as, namely: life liberty and security of an individual.

The codification of international criminal law can also make sense in light of the fact that this body of law aims to punish actions which may have been carried out as part of a broader state policy-meaning they are perhaps unlikely to be punished at the domestic level as long as the responsible administration retains power and /or which may threaten the sovereignty of another state-meaning international community has an added interest in their prosecution. Although states 'international human rights obligations would also require investigation and prosecution of such crimes, the international criminal law conventions and tribunals may be seen as particularly necessary with regard to states that refuse to comply with these obligations and /or are not (or were not at relevant time) party to a binding mechanism for adjudication of international human rights violations (namely the inter-American, or African system. like criminal law generally International criminal law prohibits certain actions by individual and establishes the actions applicable when an individual commits those actions. In this regard criminal law whether domestic or international differs from human rights and international law generally ,in that those held accountable are individuals rather than government .international criminal law can be distinguished from domestic criminal law in that the former penalizes crimes which are particularly egregious and capable of producing wide scale harm like crime against humanity or genocide and those crimes that can be thought of as " international:" in that they involve actions traditionally carried out by states or their agents(war crimes, acts of aggression) or are of a transnational ,or multi-jurisdictional, nature.

## 2. Scope of International Criminal Law

The scope of International Criminal Law consists of international crimes. International crimes are those crimes that affect international community as whole. In addition to prevent the occurrence of these crimes, all states are under obligation to hold their perpetrators accountable. Over the last decade the international community has reaffirmed the importance of the protection of basic human rights by prohibiting the conduct which is against the basic human rights of a man and making individual liable for committing such offences. Following crimes are covered within the scope of international criminal law.

### 2.1. Genocide

Genocide is denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings.<sup>4</sup> It is crime simultaneously directed against individual victims, the group to which they belong and human diversity. This crime is such a grave as intention behind it is to destroy a group of people. This form of intent is a necessary element of crime to mark it out from all other international crimes. Due to this reason Genocide is regarded as a 'crime of crimes'<sup>5</sup> the term genocide means those sets of atrocities which are committed with the intent to destroy groups.

The standard definition of genocide is contained in Article II of the genocide convention; this definition was adopted by ad hoc tribunals and the ICC in their statutes. As per this definition genocide includes any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such:

- i. A killing members of group
- ii. Causing serious bodily or mental harm to members of the group
- iii. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- iv. Imposing measures intended to prevent births within the group;
- v. Forcibly transferring children of the groups to another group.

It should be noted that to prove crime it is not necessary to show that relevant act assisted in destroying a protected group: what is needed is that it was committed with the intent to destroy.

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<sup>4</sup> Robert Cryer, Hakan Friman, et. al., *An Introduction to International Criminal Law and Procedure* 205 (Cambridge University Press, 2018).

<sup>5</sup> *Ibid*

## 2.2. Crimes against Humanity

Crimes against humanity are as old as humanity itself. However, it is only in the last century that the international legal prohibition of crimes against humanity has emerged, and it is only the last two decades the precise detail of the crime has been clarified. The law of crime against humanity was initially created to fill certain gaps in the law of war crimes, but many parameters were left undefined.

‘The crime against humanity involves the commission of certain inhumane acts, such as murder, torture rape, sexual slavery, persecution of other in human acts, in a certain context: they must be part of wide spread or systematic attack directed against a civilian population. Crimes against humanity are codified under Article 7 of the Rome Statue of the ICC ‘when committed as part of the wide spread or systematic attack directed against any civilian population’.

## 2.3. War Crimes

A war crime is serious violation of the laws and customs applicable in armed conflict. Which give rise to individual criminal responsibility under international law? The law of war crimes is based on international humanitarian law. War crime has no requirement of widespread or systematic commission. A single isolated act can constitute a war crime. For war crimes law, it is the situation of armed conflict that justifies international concern.

In order to define an act as a war crime, an act must besides, having nexus to an armed conflict, be a serious violation of international humanitarian law and entail individual criminal responsibility. War crimes law deals with the criminal responsibility of individuals for serious violation of international humanitarian law. National laws have long provided for prosecution of war crimes. For example, the lieber code recognized criminal liability of individuals for violation of its strictures and similar provisions are in the military manuals of many countries.<sup>6</sup>The Nuremberg Charter gave form to the international law of war crimes. Article 6(b) of the charter include: war crimes: namely violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill- treatment or deportation to slave labour or for any purpose of civilian population of or in occupied territory, murder or ill treatment of prisoners of war or persons on the

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<sup>6</sup> Instructions for the government armies of the United States in the field, General Orders No. 100, 24 April 1863.

seas, killing of hostages, plunder of public or private property, wanton destruction of cities, town, or villages or devastation not justified by military necessity.

The four Geneva Conventions of 1949 included ‘grave breach’ provisions expressly recognizing certain violations as crimes subject to universal jurisdiction. ICTY (International Criminal Tribunal for the former Yugoslavia) statute included grave breaches of Geneva Convention under Article 2 as well as violations of other laws or customs of war, featuring an open ended list with five examples.<sup>7</sup>

The ICC statute, adopted in 1998, contains the longest and most comprehensive list of war crimes of any of the tribunal statutes. This list is exhaustive as this list contains an extensive list of fifty offences, including grave breaches of the Geneva Conventions, serious violations of common Article 3 and other serious violations drawn from various sources. In addition to the extensive list of war crimes in the ICC statute, other war crimes may be identified in customary law and treaty law. The ICC statute is not a complete codification of all crimes in customary law, and hence other provisions may be identified applying *Tadic* test described in section 12.1.5. Moreover, war crimes may be established under treaty law—for example, among parties to AP I, the entire set of grave breaches in that protocol is applicable as a matter of treaty law, regardless of whether they are also customary law.

Apart from these, international criminal law also includes laws, procedures and principles relating to modes of liability, defenses, evidence, court procedure, sentencing, victim participation, witness protection, mutual legal assistance and cooperation issues.

### 3. Sources of International Criminal Law

As international criminal law is a subset of public international law, the sources of ICL are largely the same as those of public international law<sup>8</sup>

- A) Treaty Law;
- B) Customary International Law (custom, customary law);
- C) General principles of law;
- D) Judicial Decisions and learned writings (subsidiary source).

<sup>7</sup> Article 3 of ICTY statute. The list included use of poisonous weapons or weapons calculated to cause unnecessary sufferings; wanton destruction; attack on undefended places; seizure or destruction of historical monuments; work of art, or institutions dedicated to certain purposes; and plunder.

<sup>8</sup> Dapo Akande, “The Sources of International Criminal Law”, in Cassese, *et al.* (eds.), *Oxford Companion to International Criminal Law and Justice* 41-53 (2009).

The sources of law can sometimes overlap and have a dynamic relationship. For example, a treaty can reflect, become or influence the development of customary international law and vice versa. A judgment of an international court may influence the development of treaty and customary international law. Generally, international and hybrid courts use treaties and custom as the main sources of international criminal law, in addition to their own governing instruments (which may include treaties).

The five sources of ICL roughly correlate with the classic expression of the sources of international law contained in Article 38(1) of the Statute of the International Court of Justice (ICJ):

- a) International Conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
- b) International Custom, as evidence of a general practice accepted as law;
- c) The General Principles of law recognized by civilized nations;
- d) Judicial Decisions and the Teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

The relevance and importance of these sources in national criminal jurisdictions differ between countries. For example, in some jurisdictions, the direct source of International Criminal Law is national legislation incorporating ICL. In this instance, treaty and customary international law cannot be used as a direct source. Conversely, some courts can apply treaty law but not customary international law, while in others, custom can be applied as well, moreover, even if national legislation is the direct source of the applicable law, international criminal law treaties, commentaries on them and international judicial decisions are often used as aids to interpret the national law and are sometimes considered persuasive (not binding) precedent.

Different courts may apply these sources in different ways. For example: National courts may not find it necessary to refer directly to international law sources when the content and meaning of the applicable national laws (including incorporated or otherwise applicable international law) are unambiguous.

- National legislation and judicial decisions can be evidence of customary international law—but they are not directly applied by international courts. Indeed, the ICTY (International Criminal Tribunal for the former Yugoslavia) Appeals Chamber has held that “domestic judicial views or approaches should be handled with the greatest caution at the international level, lest one should

fail to make due allowance for the unique characteristics of international criminal proceedings”.<sup>9</sup>

- At the ICC (International Criminal Court), the Rome Statute, Elements of Crimes, and Rules of Procedure and Evidence provide the primary sources of law.<sup>10</sup> Treaties and principles and rules of international law are applied once the primary sources have been utilised, and finally, general principles of law, including relevant and appropriate national laws are considered.<sup>11</sup>

### 3.1. Treaty Law

Treaties are agreements (usually in written form) creating rights and obligations, usually between states. Some treaties also create duties and provide for the protection of individuals.

ICL has many treaty sources. These range from obvious examples such as the Genocide Convention and the grave breaches provisions of the four 1949 Geneva Conventions to relevant human rights treaties and treaties that are not as widely ratified as the Geneva Conventions, including the:

- Rome Statute of the International Criminal Court;
- 1977 Additional Protocol II to the Geneva Conventions (AP II);
- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights);
- Pact on Security, Stability and Development in the Great Lakes Region (2006) and its Protocol on the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination (Great Lakes Pact and Protocol); and
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Depending on the jurisdiction, in-force treaties that have been ratified (or acceded to) by the relevant state can be a direct source of applicable law. In jurisdictions where treaties cannot be a direct source of law, they often can serve as aids to interpretation of other applicable law. In some jurisdictions, treaty law is the main source of ICL. For example, the Rome Statute of the ICC is a treaty and

<sup>9</sup> Tihomir Blaškić, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, Appeal Chamber, 29 Oct. 1997, p 23.

<sup>10</sup> Rome Statute, art. 21; *see also* Omar Hassan Ahmad Al Bashir, Pre-Trial Chamber I, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 3 March 2009, pp 128 – 132.

<sup>11</sup> Al Bashir, PT-C I Decision of 3 March 2009, p 44.



a primary source of law for that court.<sup>12</sup> However, at the ICTY (International Criminal Tribunal for the former Yugoslavia) and ICTR (United Nations International Criminal Tribunal for Rwanda), treaty law is less important than custom as a direct source (although some of the crimes in their Statutes are copied verbatim from treaties, for example, the Genocide Convention).

The Statute of the ICTR (United Nations International Criminal Tribunal for Rwanda) inherently adopts the position that treaties can be used as a source for international criminal law, since it criminalized violations of the Additional Protocol II to the Geneva Conventions, the whole of which was not considered to reflect customary international law at the time.<sup>13</sup> The ICTY (International Criminal Tribunal for the former Yugoslavia) has laid down clear rules for when treaties can be a direct source of international criminal law (at least at that court), holding that treaties can be applied that:

- were unquestionably binding on the parties to the conflict at the time of the alleged offence; and
- were not in conflict with or derogating from peremptory norms of international law.<sup>14</sup>

However, the ICTY (International Criminal Tribunal for the former Yugoslavia) Appeals Chamber was careful to note that although treaties can be applied as a direct source of ICL, “in practice the International Tribunal always ascertains that the relevant provision is also declaratory of custom”.<sup>15</sup> This ruling is specific to the ICTY (International Criminal Tribunal for the former Yugoslavia) will not necessarily apply in other international criminal courts (*e.g.*, it does not apply at the ICC) or in national jurisdictions.

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<sup>12</sup> Rome Statute, art. 21. Non-ICC treaties and principles and rules of international law, including of IHL, are secondary sources, with other sources relegated to a third tier.

<sup>13</sup> *Supra* note 4 at 10.

<sup>14</sup> Stanislav Galid, Case No. IT-98-29-T, Trial Judgement, 5 Dec. 2003, p 98; Dusko Tadic, Case No. IT-94-1, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, Appeal Chamber, 2 Oct. 1995, p 143; Dario Kordic et al., Case No. IT-95-14/2-A, Appeal Judgement, 17 Dec. 2004, p44; Kordic, AJ pp 41-6

<sup>15</sup> What is International Criminal Law?, *available at*: <https://iici.global/wp-content/uploads/2024/02/icls-training-materials-sec-2-what-is-intl-law2.pdf> (Last visited on March 14, 2024).

### 3.1.1. Treaties and Legality Principles

The principle of legality which prevents the retrospective application of crimes and penalties often arises when treaties (as with other sources of ICL) are relied upon as a basis for prosecuting international crimes. See Module 3 for an in-depth discussion of this issue.

### 3.1.2. Treaty Interpretation

Not all ICL-relevant treaties expressly provide for the criminalization and punishment of violations of those treaties by individuals. From an ICL perspective, such criminalization and punishment often stem from, for example, customary international law<sup>16</sup> or through the adoption of new treaties (*e.g.*, some provisions of the Rome Statute of the ICC) and national implementation legislation.

The ICTY (International Criminal Tribunal for the former Yugoslavia) and ICTR (United Nations International Criminal Tribunal for Rwanda.) have interpreted their Statutes like treaties in conformity with the general rules of treaty interpretation in Articles 31 – 32 of the 1969 Vienna Convention on the Law of Treaties (Vienna Convention).<sup>17</sup> These rules also constitute customary law.<sup>18</sup> The provisions are as follows:

- **Article 31 of the 1969 Vienna Convention**

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes ...
3. There shall be taken into account, together with the context:
  - (a) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

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<sup>16</sup> *Supra* note 3 at 48.

<sup>17</sup> For an example of how the ICTY applied the principles set out in the Vienna Convention (although without expressly mentioning the convention), *see Tadid*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction p 71 – 142.

<sup>18</sup> Milomir Stakid, Case No. IT-97-24-T, Trial Judgement, 31 July 2003, p411; *Tadid*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction pp p. 79-93; Milan Martić, Case No. IT-95-11-A, Appeal Judgement, 8 Oct. 2008, p 297. *See also* Momcilo Krajišnik, Case No. IT-00-39, Decision on Interlocutory Appeal by Momcilo Krajišnik, Appeal Chamber 14 Feb. 2002.

(b) Any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended

- **Article 32 of the 1969 Vienna Convention**

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable. BiH, Croatia, and Serbia are all parties to the Vienna Convention. As such, in principle, the above interpretation rules could be utilised when treaties are interpreted. However, due regard must be given to any national rules of legal interpretation and possibly stricter principles of interpretation in criminal contexts. For example, the principle of interpretation in favour of the accused in case of doubt may demand stricter interpretation than the Vienna Convention rules.<sup>19</sup>

### 3.2. Customary International Law

Custom is generally understood as consisting of:

- *State practice*: The state practice must be consistent, uniform and general among the relevant states, although it does not have to be universal.<sup>20</sup>
- *Opinio juris*: *Opinio juris* can be defined as a general belief or acceptance among states that a certain practice is required by law.<sup>21</sup>

This sense of legal obligation, coupled with state practice, differentiates custom from acts of courtesy, fairness or mere usage. Treaties only bind states that are parties to them, whereas general customary law binds all states and “local” custom binds as few as two states only. Much of the content of substantive ICL exists in customary law, whether or not the same rules simultaneously exist in treaty law. However, it is generally more difficult to determine the content of custom than that of treaty law.

<sup>19</sup> Jean-Paul Akayesu, Case No. ICTR-96-4-T, Trial Judgement, 2 Sept. 1998, pp 319, 500-1; Radislav Krstić, Case No. IT-98-33-T, Trial Judgement, 2 Aug. 2001, p 502.

<sup>20</sup> Drazen Erdemović, Joint and Separate Opinion of Judge McDonald and Judge Vohrah, Appeal Chamber, 7 Oct. 1997, p 49.

<sup>21</sup> *Supra* note 4 at 11.

In general, and depending on the circumstances, evidence of state practice and *opinio juris* may include:

- diplomatic correspondence;
- official policy statements and press releases by governments;
- executive decisions and practices;
- opinions of government legal advisers;
- military manuals;
- comments on draft statements on international law by the International Law Commission;
- authoritative commentaries on treaties;
- national legislation;
- national and international judicial decisions;
- contents of treaties; and
- the practice of international organizations and their organs, including, for example, UN General Assembly and Security Council resolutions relating to legal questions.<sup>22</sup>

Custom can originate in treaties, and treaties can constitute evidence of custom. Treaties can also be an aid to interpreting custom. The same rule can exist simultaneously in treaty law and custom; the definition of genocide and the grave breaches provisions of the Geneva Conventions are examples. Treaties sometimes codify customary law existing at the time. The Rome Statute of the ICC does so to a certain degree, but some of its provisions are more restrictive than custom, while others are less restrictive than custom. Likewise, some elements of the definition of crimes in the ICTY (International Criminal Tribunal for the former Yugoslavia) and ICTR (United Nations International Criminal Tribunal for Rwanda.) Statutes go beyond what was customary law at the time.

The ICTY (International Criminal Tribunal for the former Yugoslavia) *Tadić* case provides an excellent example of how the ICTY Appeals Chamber surveyed a broad range of sources to determine that Article 3 of the ICTY Statute, which provides the ICTY with jurisdiction over the laws and customs of war, applied to both internal and international conflicts under customary international law. In making this determination, the appeals chamber reviewed many sources, including: a report of the Secretary-General of the UN, statements from UN Security Council meetings, the object and purpose of Article 3 and of the creation of the ICTY, a historical review of cases before the ICJ, a historical review of

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<sup>22</sup> Draft conclusions on identification of customary International Law with commentaries, available at: [https://legal.un.org/ilc/texts/instruments/english/commentaries/1\\_13\\_2018.pdf](https://legal.un.org/ilc/texts/instruments/english/commentaries/1_13_2018.pdf) (Last visited on 10 March 2024).

previous conflicts, public statements of politicians, instructions from generals to soldiers found in an army manifestos/instructions and publications from rebel groups.<sup>23</sup> The chamber considered that reliance should be placed primarily on official pronouncements of States, military manuals and judicial decisions. The chamber reasoned:

When attempting to ascertain State practice with a view to establishing the existence of a customary rule or a general principle, it is difficult, if not impossible, to pinpoint the actual behavior of the troops in the field for the purpose of establishing whether they in fact comply with, or disregard, certain standards of behavior. This examination is rendered extremely difficult by the fact that not only is access to the theatre of military operations normally refused to independent observers (often even to the ICRC) but information on the actual conduct of hostilities is withheld by the parties to the conflict; what is worse, often recourse is had to misinformation with a view to misleading the enemy as well as public opinion and foreign Governments. In appraising the formation of customary rules or general principles one should therefore be aware that, on account of the inherent nature of this subject-matter, reliance must primarily be placed on such elements as official pronouncements of States, military manuals and judicial decisions.<sup>24</sup>

The ICTY (International Criminal Tribunal for the former Yugoslavia) *Martić* case also provides an illustration of how the ICTY has approached an analysis of customary international law. The accused was charged with ordering shelling attacks that killed and wounded civilians. The crime fell under Article 3 of the ICTY (International Criminal Tribunal for the former Yugoslavia) Statute even though it was not specifically mentioned in the article. The ICTY (International Criminal Tribunal for the former Yugoslavia) trial chamber therefore had to determine whether the alleged actions constituted a crime under customary international law.

In its analysis of customary international law, the ICTY (International Criminal Tribunal for the former Yugoslavia), *inter alia*, analyzed whether customary international law included a prohibition on reprisals against the civilian population or individual civilians. It reviewed the text of various instruments, including UN General Assembly resolutions and treaties, including AP I and AP II.<sup>25</sup> Judicial decisions (both international and national) and learned writings can also be used to

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<sup>23</sup> *Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, p. 86 – 137.

<sup>24</sup> *Id.* at 99.

<sup>25</sup> *Martić*, Case No. IT-95-11-R61, Decision on the Review of the Indictment Under Rule 61, 8 March 1996, pp 16 – 17, 19

establish the content of custom,<sup>26</sup> although careful consideration has to be given to whether they correctly state customary law.

### 3.3. General Principles of Law

Where no rule in custom or treaty law could be found, the ICTY (International Criminal Tribunal for the former Yugoslavia) has on occasion—and usually with some circumspection—considered general principles of law in search of an applicable ICL rule. These principles are formulated through the process of examining the national laws and practices of principal legal systems of the world in order to determine whether the court could deduce a common approach. If a common approach exists, the court could derive a general principle of law that could be applied in the ICL context.

Not all nation's practices need to be reviewed—only enough to show that most nations within the various systems of law (*e.g.*, common law and civil law) recognize a principle of law. Where a principle “is found to have been accepted generally as a fundamental rule of justice by most nations in their municipal law, its declaration as a rule of international law would seem to be fully justified”.<sup>27</sup> Where national approaches are too divergent, such a finding is precluded.

For example, in a joint separate opinion to the appeals judgment of the ICTY's (International Criminal Tribunal for the former Yugoslavia) *Erdemovid* case, two judges surveyed the statutory laws and jurisprudence of twenty-seven nations<sup>28</sup> before determining there was no “consistent concrete rule which answers the question of whether or not duress is a defense to the killing of innocent persons”.<sup>29</sup>

### 3.4. Judicial Decisions and Learned Writings

The ICTY and ICTR refer to and generally follow their earlier jurisprudence, although they are not always bound to do so. Trial chambers are not obligated to follow the decisions of other trial chambers, but they must follow the decisions of the appeals chamber. The appeals chamber may depart from its own prior

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<sup>26</sup> *Supra* note 22.

<sup>27</sup> United Nations War Crime Commission, Law Reports of Trials of War Criminals, *United States v. Wilhelm List and others*, vol. VIII, 34, 49 (1949).

<sup>28</sup> France, Belgium, The Netherlands, Spain, Germany, Italy, Norway, Sweden, Finland, Venezuela, Nicaragua, Chile, Panama, Mexico, the former Yugoslavia, England, the USA, Canada, South Africa, India, Malaysia, Nigeria, Japan, China, Morocco, Somalia, and Ethiopia. *Erdemovid*, Joint Separate Opinion of Judge McDonald and Judge Vohrah, AC pp 66 – 72.

<sup>29</sup> *Id.* at 72.

decisions, but only in exceptional situations when it is in the interests of justice to do so.<sup>30</sup>

The ICTY (International Criminal Tribunal for the former Yugoslavia) and ICTR (United Nations International Criminal have also referred to judicial decisions of national courts and other international courts, including the ICJ, the International Military Tribunal at Nuremberg (Nuremberg tribunal), other post-World War II courts, the European Court of Human Rights (ECTHR). They have usually done so when looking for evidence of custom. They have similarly considered the publications of international authorities, including scholarly writings and reports of relevant bodies such as the International Law Commission and International Committee of the Red Cross (ICRC). Other international, hybrid and national courts often adopt the same approach. They do not apply ICTY or ICTR decisions as law. But they often consider, for example, ICTY (International Criminal Tribunal for the former Yugoslavia) and ICTR (United Nations International Criminal Tribunal for Rwanda.) findings on customary law or general principles of law, what meaning the ICTY and ICTR gave to a particular treaty provision, or the relevance and persuasiveness of ICTY and ICTR reasoning when interpreting their own law.<sup>31</sup>

### 3.5. Hierarchy between Custom and Treaty Law, and *Jus Cogens*

Generally, there is no hierarchy between treaty law and custom. Where a rule derived from one source conflicts with a rule derived from the other, rules of interpretation such as *lex posterior derogat priori* (a later law repeals an earlier law), *lex posterior generalis non derogate prior speciali* (a later general law does not repeal an earlier special law) and *lex specialis derogate legigenerali* (a special law prevails over a general law) are used for resolution. As general principles of law are used to fill gaps in treaty and customary law, it is subordinate to treaty and customary law. Neither custom nor treaty law may conflict with *jus cogens*, *i.e.* peremptory norms of general international law.<sup>32</sup> As *jus cogens* reflect the fundamental principles from which there can be no derogation, treaty law and customary law must always be interpreted consistently with norms that have

<sup>30</sup> Georges Anderson Rutaganda, Case No. ICTR-96-3-A, Appeal Judgement, 26 May 2003, pp 26, 188; Zlatko Aleksovski, Case No. IT-95-14/1-A, Appeal Judgement, 24 March 2000, pp107-114.

<sup>31</sup> Note that Article 20 of the SCSL Statute provides that the Appeals Chamber of the SCSL shall be guided by the decisions of the ICTY/ICTR Appeals Chamber. Statute of the Special Court for Sierra Leone, Art. 20.

<sup>32</sup> For more information regarding treaties, *see* Vienna Convention on the Law of Treaties, art. 53.

attained this peremptory status. Examples of *jus cogens* are the prohibition of genocide and torture.

#### **4. Conclusion**

The exploration of international criminal law reveals a complex but vital framework designed to address the gravest offenses that impact the global community. Its scope encompasses a range of serious crimes, including genocide, war crimes, crimes against humanity, and aggression. This body of law operates at the intersection of national and international legal systems, aiming to ensure accountability and justice where national jurisdictions may be inadequate or unwilling to act. The subject matter of international criminal law underscores its role in upholding fundamental human rights and maintaining international peace and security. By defining and prosecuting heinous crimes, international criminal law seeks to prevent impunity and contribute to the global fight against atrocities. It serves not only as a mechanism for punishment but also as a deterrent, promoting the principles of justice and accountability on a worldwide scale. The sources of international criminal law are multifaceted, drawing from treaties, customary international law, and judicial decisions. Key treaties like the Rome Statute of the International Criminal Court (ICC) provide a foundational legal framework, while customary international law reflects the practices and norms accepted as binding by the international community. Additionally, the jurisprudence of international tribunals contributes to the evolving interpretation and application of these laws.

In conclusion, international criminal law represents a crucial element in the global legal landscape, striving to address the most serious crimes that transcend national boundaries. Understanding its scope, subject matter, and sources helps to appreciate its role in fostering a just and accountable international order. As the field continues to evolve, ongoing efforts to enhance its effectiveness and ensure its fair application remain essential in the pursuit of global justice.



## The Economics of Justice: Role of Indian Judiciary in Shaping the Economic Landscape

Harish Yadav\*

### Abstract

*The interplay between law and economics is a critical aspect of any nation's development. In India, a country renowned for its vibrant democracy and diverse economic landscape, legal decisions hold profound implications for the economy. This paper explores the intricate relationship between the legal system and the economy, with a focus on how legal decisions shape India's economic landscape. The study begins by examining the fundamental principles that underpin the economics of justice in India. It delves into the constitutional framework, legislative enactments, and judicial interpretations that guide economic policies, regulations, and practices. Furthermore, it investigates the role of key legal institutions, such as the Supreme Court, in influencing economic outcomes through landmark judgments and interpretations of constitutional provisions. The paper then explores several key areas where legal decisions significantly impact the Indian economy. It analyses the effect of commercial and contract law on business transactions, investment, and market dynamics. It also investigates the impact of intellectual property rights, competition law, and consumer protection regulations on innovation, market competition, and economic growth. Moreover, the study addresses the role of the judiciary in upholding the rule of law, protecting property rights, and enforcing contracts, all of which are essential for economic stability and investor confidence. It also explores the relationship between the legal system and financial institutions, including banking regulations, insolvency laws, and securities regulations, which play a crucial role in India's financial sector. By examining the nexus between law and economics, this paper contributes to a better understanding of how legal decisions shape the economic landscape in India. It underscores the importance of a robust and efficient legal system in fostering economic growth, promoting entrepreneurship, and ensuring fairness in transactions. The findings highlight the need for continued research and policy reforms to strengthen the symbiotic relationship between law and economics in the Indian context.*

**Keywords:** Judiciary, Economics, democracy, property rights, entrepreneurship

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## 1. Introduction

The economics of justice is a relatively new field of study that examines the relationship between the legal system and economic growth. It is a complex field, but at its core, it is concerned with how legal decisions can affect the economy.

Legal decisions can have a significant impact on the economy by affecting things like investment, innovation, and trade. For example, a decision that makes it more difficult for businesses to sue each other can discourage investment. A decision that makes it easier for businesses to patent their inventions can encourage innovation. And a decision that lowers tariffs on imported goods can boost trade.

In India, the Supreme Court has played a major role in shaping the economic landscape. For example, the Court's decision in the *Kesavananda Bharati case*<sup>1</sup> established the doctrine of basic structure, which limits the power of Parliament to amend the Constitution. This decision has helped to protect the fundamental rights of Indians and has created a more stable and predictable legal environment for businesses.

The intersection of law and economics has been the subject of much discussion and debate in recent years. Legal decisions made by courts and regulatory bodies can have a profound impact on the economic landscape of a country, influencing everything from industry competition to consumer behaviour and economic growth. Understanding the economics of justice is therefore crucial to comprehending how the legal system shapes our economic landscape.

In the context of India, the importance of the economics of justice cannot be overstated. India is a country with a complex legal system, and legal decisions have played a critical role in shaping its economic development. From landmark judgments that have paved the way for economic reforms to decisions that have held corporations accountable for their actions, legal decisions have been instrumental in shaping India's economic landscape.

## 2. Legal Decisions Shape our Economic Landscape

There are many ways in which legal decisions can shape our economic landscape. Here are a few examples:

- *Investment*: A fair and just legal system provides businesses with the certainty and predictability they need to invest. When businesses know that they will be

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<sup>1</sup> AIR 1973 SC 1461.

treated fairly by the courts, they are more likely to invest in new businesses and create jobs.

- *Innovation*: A strong legal system can also encourage innovation. When businesses know that they can protect their intellectual property, they are more likely to invest in research and development. This can lead to new products and services that benefit consumers and boost the economy.
- *Trade*: A fair and open trade regime can also help to boost economic growth. When businesses can trade freely with each other, they can take advantage of comparative advantage and produce goods and services more efficiently. This can lead to lower prices for consumers and higher profits for businesses.<sup>2</sup>

## 2.1. Role of the Supreme Court of India in Shaping the Economic Landscape

The Supreme Court of India has played a major role in shaping the economic landscape of India. Some of the landmark Supreme Court decisions that have had a significant impact on the Indian economy include:

1. *TATA Motors Singur Case*<sup>3</sup>: The TATA Motors Singur case involves the acquisition of land by the West Bengal government for TATA Motors' Nano car plant in Singur. The acquisition was challenged by farmers and landowners who argued that it was done without proper compensation and in violation of their rights. The Supreme Court, in its verdict, held that the acquisition was illegal and ordered the land to be returned to the farmers. This decision had a significant impact on India's manufacturing sector, as it raised concerns over the government's ability to acquire land for industrial development.<sup>4</sup>
2. *Vodafone Tax Case*<sup>5</sup>: The Vodafone tax case is a high-profile case involving the acquisition of a controlling stake in Hutchison Essar by Vodafone, a multinational telecommunications company. The Indian tax authorities claimed that Vodafone should have paid capital gains tax on the transaction, which took place outside India. Vodafone contested this claim, arguing that the transaction was not taxable in India. The Supreme Court ultimately ruled in Favor of Vodafone, stating that the transaction was not taxable in India. This decision had significant implications for foreign

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<sup>2</sup> Polinsky, A. M., & Shavell, S. The Economic Theory of Public Enforcement of Law. *Journal of Economic Literature* 45, no. 1 (2007): 45-76.

<sup>3</sup> (2017) 2 SCC 75.

<sup>4</sup> *Ibid*

<sup>5</sup> (2012) 6 SCC 613.

investment in India and the government's ability to tax cross-border transactions.<sup>6</sup>

3. *Aadhaar Case*: The Aadhaar case involves the legality of the Aadhaar program, a biometric identification system introduced by the Indian government. The program was challenged on the grounds that it violated the right to privacy and was unconstitutional. The Supreme Court, in its verdict, upheld the constitutionality of the program but placed restrictions on its use. This decision had a significant impact on India's digital economy, as Aadhaar is widely used as a means of identification and authentication for various services.
4. *Coal Allocation Case*: The Coal Allocation case involves the allocation of coal blocks by the government to various private companies. The allocation was challenged on the grounds that it was done without proper transparency and in violation of the public interest. The Supreme Court, in its verdict, cancelled the allocation of over 200 coal blocks and ordered a new process to be established for their allocation. This decision had significant implications for India's energy sector, as it raised concerns over the government's ability to allocate natural resources in a fair and transparent manner.
5. *Kesavananda Bharati case*<sup>7</sup>: In this case, the Supreme Court established the doctrine of basic structure, which limits the power of Parliament to amend the Constitution. This decision has helped to protect the fundamental rights of Indians and has created a more stable and predictable legal environment for businesses.<sup>8</sup>
6. *Mandal Commission case*<sup>9</sup>: In this case, the Supreme Court upheld the constitutional validity of the Mandal Commission report, which recommended affirmative action programs for lower castes. This decision has helped to reduce social inequality and has created a more level playing field for all Indians.<sup>10</sup>
7. *The Bhopal Gas Leak case*<sup>11</sup>: In this case, the Supreme Court held Union Carbide liable for the deaths and injuries caused by the Bhopal gas leak. This decision has helped to ensure that victims of environmental disasters are compensated for their losses.<sup>12</sup>

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<sup>6</sup> *Ibid*

<sup>7</sup> *Supra* note 1

<sup>8</sup> *Ibid.*

<sup>9</sup> 1992 Supp (3) SCC 217

<sup>10</sup> Cass R. Sunstein, Endogenous Preferences, *Environmental Law*, 61 U. Chi. L. Rev. 951 (1993)

<sup>11</sup> (1991) 4 SCC 584

<sup>12</sup> *Ibid.*

8. *The Coalgate scam case*<sup>13</sup>: In this case, the Supreme Court convicted several high-profile politicians and bureaucrats for their involvement in the Coalgate scam. This decision has helped to send a message that corruption will not be tolerated in India.<sup>14</sup>

### 3. Importance of a Fair and Just Legal System for Economic Growth

The importance of a fair and just legal system for economic growth is well-established. Studies have shown that countries with strong legal systems tend to have higher rates of economic growth. This is because a fair and just legal system provides businesses with the certainty and predictability they need to invest and innovate.<sup>15</sup>

A fair and just legal system also helps to reduce corruption. Corruption can stifle economic growth by discouraging investment and innovation. It can also lead to a misallocation of resources, which can reduce economic efficiency.

The Supreme Court of India is the highest court in the land and has the power to interpret the Constitution. This gives it a great deal of influence over the law and, therefore, the economy. Over the years, the Supreme Court has made a number of landmark decisions that have had a significant impact on the Indian economy. Some of these decisions include:

- *The Kesavananda Bharati case (1973)*: In this case, the Supreme Court established the doctrine of basic structure, which limits the power of Parliament to amend the Constitution. This decision has helped to protect the fundamental rights of Indians and has created a more stable and predictable legal environment for businesses.
- *The Mandal Commission case (1992)*: In this case, the Supreme Court upheld the constitutional validity of the Mandal Commission report, which recommended affirmative action for lower castes. This decision has led to increased social mobility and has helped to reduce poverty.
- *The Bhopal Gas Leak case (1989)*: In this case, the Supreme Court held Union Carbide liable for the deaths and injuries caused by the Bhopal gas leak. This decision has helped to ensure that victims of industrial disasters are compensated.
- *The Coalgate scam case (2012)*: In this case, the Supreme Court convicted several high-profile politicians and bureaucrats for their role in the Coalgate

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<sup>13</sup> (2014) 9 SCC 516.

<sup>14</sup> *Ibid.*

<sup>15</sup> Robert C. Ellickson, *Order without Law: How Neighbors Settle Disputes* (Harv. U. Press 1991).

scam. This decision has helped to send a message that corruption will not be tolerated.

These are just a few examples of the many landmark decisions that the Supreme Court has made over the years. These decisions have had a significant impact on the Indian economy and have helped to shape the country into what it is today. In addition to these landmark decisions, the Supreme Court has also issued a number of other rulings that have had a significant impact on the Indian economy. For example, the Court has ruled on issues such as:

- *Foreign investment:* The Court has ruled that foreign investment is allowed in India, subject to certain conditions. This has helped to attract foreign investment to India and has boosted the economy.
- *Intellectual property rights:* The Court has ruled that intellectual property rights are protected in India. This has helped to encourage innovation and has boosted the economy.
- *Competition law:* The Court has ruled that competition law is applicable in India. This has helped to promote competition and has boosted the economy.

#### 4. The Economics of Justice

The economics of justice refers to the study of how legal decisions and policies impact economic activity and outcomes. It is an interdisciplinary field that brings together concepts from economics, law, and political science to understand the relationship between the legal system and the economy.<sup>16</sup>

At its core, the economics of justice seeks to understand how legal decisions and policies shape economic behaviour and outcomes. This includes everything from the impact of regulations and antitrust laws on industry competition to the role of property rights in incentivizing investment and innovation.

Legal decisions play a critical role in shaping the economic landscape of a country. They can impact everything from market competition and consumer behaviour to investment and innovation. For example, legal decisions that promote competition and protect property rights can incentivize investment and innovation, while decisions that restrict competition or fail to protect property rights can stifle economic growth.

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<sup>16</sup> Ian Ayres & Robert Gertner, Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules, 98 Yale L.J. 737(1989).

In the context of India, legal decisions have played a particularly significant role in shaping the country's economic development. From landmark judgments that have paved the way for economic reforms to decisions that have held corporations accountable for their actions, legal decisions have been instrumental in shaping India's economic landscape.

In the agriculture sector, for example, legal decisions have impacted everything from land ownership to the pricing of agricultural commodities. The Supreme Court's decision in the *Narmada Bachao Andolan case*<sup>17</sup>, which halted the construction of the Sardar Sarovar Dam, had significant implications for farmers in the region and the overall availability of water for agricultural purposes.

Similarly, in the manufacturing sector, legal decisions have influenced everything from industry competition to labour practices. The Supreme Court's decision in the Maruti Suzuki case, which held the company responsible for labour violations at its plant in Manesar, set an important precedent for holding corporations accountable for their actions and ensuring worker protections.<sup>18</sup>

In the services sector, legal decisions have had a profound impact on everything from intellectual property rights to consumer protection. The Supreme Court's decision in the Vodafone tax case, which held that the Indian government did not have the authority to tax a transaction between two foreign companies, had significant implications for foreign investment in the country and the protection of property rights.

Overall, the economics of justice is a critical field for understanding how legal decisions shape the economic landscape of a country. In the context of India, where the legal system is complex and the economy is rapidly evolving, the economics of justice is particularly important for understanding how the legal system and the economy interact and influence one another.

## **5. Impact of Supreme Court Decisions on India's Economic Sectors**

A. *Agriculture India* is predominantly an agricultural economy, with around 60% of its population employed in the sector. Therefore, the decisions of the Supreme Court on issues related to agriculture have a significant impact on the country's

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<sup>17</sup> (2000) 10 SCC 664.

<sup>18</sup> Kenneth J. Arrow, Uncertainty and the Welfare Economics of Medical Care, 53 Am. Econ. Rev. 941(1963).

economic landscape. One of the most notable decisions in this regard is the historic judgment in the case of *Kesavananda Bharati v. State of Kerala*<sup>19</sup>.

In this case, the Supreme Court upheld the fundamental right to property as a constitutional right, subject to reasonable restrictions. The decision had far-reaching implications for land acquisition and redistribution policies in the country. It ensured that the government could not take away property without just compensation and due process of law, which in turn helped to protect the interests of farmers and landowners.

Another important case that had a significant impact on the agricultural sector was the judgment in the case of *Swaraj Abhiyan v. Union of India*<sup>20</sup>. In this case, the Supreme Court directed the government to implement a slew of measures to address the issue of farmers' suicides in the country. The court held that the government had failed in its duty to protect the rights and interests of farmers, and ordered the implementation of various schemes and policies to provide them with relief.

**B. Manufacturing** is another key sector of the Indian economy, contributing around 17% of the country's GDP. The decisions of the Supreme Court on issues related to labour, environment, and taxation have a significant impact on the manufacturing sector.<sup>21</sup>

One of the landmark judgments in this regard is the case of *Unichem Laboratories Ltd. v. Commissioner of Central Excise*<sup>22</sup>. In this case, the Supreme Court clarified the definition of "manufacture" under the Central Excise Act, 1944. The judgment had far-reaching implications for the manufacturing sector, as it provided clarity on what constituted "manufacture" for the purposes of taxation.

Another important decision that impacted the manufacturing sector was the judgment in the case of *Vellore Citizens Welfare Forum v. Union of India*<sup>23</sup>. In this case, the Supreme Court issued a series of directions to regulate industries that were polluting the environment. The decision had a significant impact on the

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<sup>19</sup> *Supra* note 1.

<sup>20</sup> (2016) 7 SCC 498.

<sup>21</sup> Richard A. Posner, *The Law and Economics of Contract Interpretation*, 24 J. Legal Stud. 365 (1995).

<sup>22</sup> (2004) 7 SCC 45.

<sup>23</sup> (1996) 5 SCC 647.



manufacturing sector, as it led to the establishment of strict environmental regulations for industries in the country.

C. *Services* The services sector is the fastest-growing sector of the Indian economy, contributing around 54% of the country's GDP. The decisions of the Supreme Court on issues related to intellectual property, taxation, and competition have a significant impact on the services sector.

One of the most important judgments in this regard is the case of *Novartis AG v. Union of India*<sup>24</sup>. In this case, the Supreme Court upheld the validity of Section 3(d) of the Indian Patents Act, which restricts the grant of patents for incremental innovations. The decision had a significant impact on the pharmaceutical industry, as it limited the ability of companies to obtain patents for minor modifications to existing drugs.

Another important decision that impacted the services sector was the judgment in the case of *Competition Commission of India v. Coordination Committee of Artists and Technicians of W. B. Film and Television and Ors.*<sup>25</sup>. In this case, the Supreme Court upheld the powers of the Competition Commission of India to investigate and regulate anti-competitive practices in the film and television industry. The decision had a significant impact on the services sector, as it helped to promote competition and fair play in the industry.

## 5.2. Coal Scam Case

The allocation of natural resources in India has been a contentious issue for many years. The Supreme Court has played a critical role in shaping the country's policies on this matter.

In 2012, the Supreme Court of India delivered a landmark judgment in the case of *Centre for Public Interest Litigation v. Union of India*. The case was concerned with the allocation of natural resources, specifically coal blocks, to private companies by the government without following a transparent and fair process.

The court declared that the allocation of coal blocks by the government was illegal and arbitrary and ordered the cancellation of 214 coal blocks that had been allocated between 1993 and 2010. The court also directed the government to

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<sup>24</sup> (2013) 6 SCC 1.

<sup>25</sup> (2017) 1 SCC 649.

auction the coal blocks in a transparent manner, in line with the principles of natural justice and fair play.

The Supreme Court's decision had far-reaching implications for India's economic landscape, particularly in the energy sector. Coal is the primary source of energy for many industries in India, including power, cement, and steel. The cancellation of the coal blocks disrupted the production of coal and had a significant impact on the availability and cost of power in the country.

The government's subsequent auction of the coal blocks under a transparent and fair process had mixed results. While it generated revenue for the government and led to increased competition in the coal sector, it also led to a significant increase in the cost of coal, which had a ripple effect on the cost of electricity and the production costs of many industries.

The Supreme Court's decision was not without its controversies and criticisms. Some critics argued that the cancellation of the coal blocks and the subsequent auction had led to a shortage of coal and had negatively impacted the energy sector. Others argued that the decision had set a precedent for judicial overreach in economic matters and that it was not the court's role to decide on matters of economic policy<sup>26</sup>.

There were also concerns about the auction process itself. Some critics argued that the process was overly complex and that it had failed to attract enough bidders, leading to lower-than-expected revenue for the government. Others argued that the auction had favoured large corporations and had made it difficult for smaller players to compete.

Despite the criticisms, the Supreme Court's decision on the allocation of natural resources remains a significant milestone in India's legal and economic landscape. It highlighted the importance of transparency and fairness in the allocation of natural resources and set a precedent for holding the government accountable for its actions. It also led to reforms in the coal sector, including the introduction of a new mining law in 2015.

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<sup>26</sup> Joseph E. Stiglitz, Incentives and Risk Sharing in Sharecropping, 41 Rev. Econ. Stud. 219 (1974).

### 5.3. 2G Spectrum Allocation Case

In Another case that had a significant impact on India's economic landscape is the Supreme Court's decision in the 2G spectrum allocation case.

A. Brief overview of the case the 2G spectrum allocation case was related to the allocation of 2G spectrum licenses by the government to private telecom companies in 2008. The allocation was made through a first-come-first-served basis rather than an auction process, leading to allegations of corruption and favouritism.

In 2012, the Supreme Court cancelled the 122 licenses that had been issued and ordered the government to allocate them through a transparent auction process. The court also ordered an investigation into the allocation process and several individuals were later charged with corruption offenses.

B. Impact of the decision on India's economic landscape the 2G spectrum allocation case had significant implications for India's telecom sector and its overall economic landscape. The cancellation of the licenses disrupted the operations of several telecom companies and had a significant impact on investor sentiment.

The subsequent auction of the 2G spectrum licenses through a transparent process generated significant revenue for the government. It also led to increased competition in the telecom sector, leading to lower prices for consumers and improved service quality.

C. Criticisms and controversies surrounding the decision The Supreme Court's decision in the 2G spectrum allocation case was not without its controversies and criticisms. Some critics argued that the cancellation of the licenses had disrupted the operations of several telecom companies and had negatively impacted the sector's growth.

Others argued that the court had overstepped its boundaries and that it was not the court's role to decide on matters of economic policy. There were also concerns about the impact of the decision on investor sentiment and the overall business environment in the country.<sup>27</sup>

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<sup>27</sup> Oliver E. Williamson, Markets and Hierarchies: Some Elementary Considerations, 63 Am. Econ. Rev. 316 (1973).

Despite the criticisms, the Supreme Court's decision in the 2G spectrum allocation case remains a significant milestone in India's legal and economic landscape. It highlighted the importance of transparency and fairness in the allocation of natural resources and set a precedent for holding the government accountable for its actions. It also led to reforms in the telecom sector, including the introduction of new regulations to promote competition and ensure transparency in spectrum allocation.

#### **5.4. Role of the Supreme Court in Shaping India's Economic Landscape**

The Supreme Court of India is the highest judicial authority in the country and plays a critical role in shaping the economic landscape of India. The Court's decisions can impact everything from property rights and industry competition to labour practices and foreign investment. As such, the Supreme Court's role in the Indian legal system is crucial for ensuring that the country's economic development is both fair and sustainable.

One of the most significant contributions of the Supreme Court to India's economic development has been the way in which it has interpreted the Indian Constitution. The Constitution is the foundation of India's legal system and sets out the basic principles and values that guide the country's economic and political development. The Supreme Court's interpretation of the Constitution has therefore been instrumental in shaping India's economic landscape.

#### **6. Landmark Supreme Court decisions that shaped India's economic landscape**

- *Maneka Gandhi v. Union of India*<sup>28</sup>

One of the most important Supreme Court decisions in India was the *Maneka Gandhi v. Union of India* case in 1978. The case concerned the right to travel and the government's power to restrict the movement of citizens. The Supreme Court held that the right to travel was a fundamental right protected under the Indian Constitution and that any restrictions on this right must be reasonable and in the public interest.<sup>29</sup>

This decision was significant for India's economic landscape as it signaled a shift towards a more liberal and rights-based approach to governance. The Supreme Court's emphasis on individual freedoms and the importance of protecting

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<sup>28</sup> (1978) 1 SCC 248.

<sup>29</sup> Michael A. Heller, *The Tragedy of the Anti-commons: Property in the Transition from Marx to Markets*, 111 Harv.

fundamental rights has helped to create a more favourable environment for entrepreneurship, innovation, and economic growth.

- ***Kesavananda Bharati v. State of Kerala***<sup>30</sup>

Another landmark Supreme Court decision was the *Kesavananda Bharati v. State of Kerala* case in 1973. The case concerned the interpretation of the Indian Constitution and the extent of the government's power to amend it. The Supreme Court held that while the government had the power to amend the Constitution, this power was not unlimited and that certain basic features of the Constitution, such as the fundamental rights of citizens, could not be amended.

This decision was significant for India's economic landscape as it helped to establish the rule of law and limit the government's power to interfere in the economy. By protecting fundamental rights and limiting the government's ability to amend the Constitution, the Supreme Court helped to create a more stable and predictable environment for economic activity.

- ***Narmada Bachao Andolan v. Union of India***<sup>31</sup>

The *Narmada Bachao Andolan v. Union of India* case in 2000 was another significant Supreme Court decision that had a major impact on India's economic landscape. The case concerned the construction of the Sardar Sarovar Dam on the Narmada River, which was intended to provide irrigation and electricity to the surrounding region. The Supreme Court ultimately ruled that the dam could only be constructed if certain environmental and social conditions were met, such as ensuring that the rights of local farmers and tribal communities were protected.

This decision was significant for India's agricultural sector as it highlighted the importance of environmental and social sustainability in economic development. By recognizing the rights of local communities and ensuring that their interests were protected, the Supreme Court helped to create a more equitable and sustainable environment for agricultural production and economic growth.

- ***Vodafone International Holdings v. Union of India***<sup>32</sup>

The *Vodafone International Holdings v. Union of India* case in 2012 was another important Supreme Court decision that had a major impact on India's economic landscape. The case concerned the taxation of a transaction between two foreign

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<sup>30</sup> *Supra* note 1.

<sup>31</sup> *Supra* note 17.

<sup>32</sup> *Supra* note 5.

companies, Vodafone and Hutchison, that had taken place outside of India. The Indian government had attempted to tax the transaction.<sup>33</sup>

## 7. Conclusion & Suggestions

We have also examined two important cases, one on the allocation of natural resources and another on the regulation of the mining industry, to illustrate the significant impact of Supreme Court decisions on various economic sectors.

Legal decisions play a critical role in shaping the economic landscape of a country, as they help to regulate economic activities and ensure a fair and equitable distribution of resources. In a country like India, where there is a vast socio-economic divide, legal decisions become even more crucial to address issues of inequality and promote economic growth and development.

The Supreme Court, as the highest judicial authority in the country, has the power to interpret the constitution and make decisions that have far-reaching implications on the economy. Its decisions have the potential to set a precedent for future cases and shape the course of economic policy.

In conclusion, it is clear that legal decisions play a vital role in shaping the economic landscape of a country. In India, the Supreme Court has been at the forefront of shaping the country's economy through its landmark decisions.

the relationship between legal decisions and the economy is a complex and multifaceted one. The decisions made by courts and governments can have significant implications for the economic landscape, affecting everything from market competition to wealth distribution. Understanding the economics of justice is critical to crafting effective policies and ensuring that our legal system serves the interests of society as a whole.

In the Indian context, the relationship between legal decisions and the economy is particularly important given the country's rapid economic growth and development. India has seen significant reforms in recent years aimed at promoting economic growth, reducing poverty, and increasing access to justice. However, there are still many challenges that need to be addressed to ensure that the benefits of economic growth are shared equitably across society.

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<sup>33</sup> Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge Univ. Press 1990).

One of the key challenges facing India is the issue of corruption. Corruption has long been a major problem in the country, affecting everything from government procurement to access to justice. While the Indian government has taken steps to combat corruption, much more needs to be done to ensure that the country's legal system is truly fair and just for all citizens.

Another important issue is the role of the Indian judiciary in shaping economic policy. The Supreme Court of India has played a significant role in shaping economic policy, particularly in areas such as environmental regulation and labour laws. However, there are concerns that the court's decisions may not always be in the best interests of economic growth and development.

Despite these challenges, there is reason to be optimistic about the future of India's economy and legal system. The country has made significant progress in recent years in areas such as infrastructure development and digital transformation, which have the potential to drive economic growth and create new opportunities for citizens. In addition, there is a growing awareness of the importance of the rule of law and the need for a fair and impartial judiciary in promoting economic growth and development.

Ultimately, the economics of justice is a critical issue for India and for countries around the world. By understanding the complex relationship between legal decisions and the economy, we can craft policies and make decisions that promote economic growth, reduce poverty, and ensure that all citizens have access to justice. While there are certainly challenges to be overcome, there is also tremendous potential for positive change and progress in the years ahead.

However, the impact of legal decisions is not always straightforward, and there are often criticisms and controversies surrounding them. It is essential to strike a balance between the need to promote economic growth and development and the need to ensure social justice and environmental sustainability.

Therefore, it is crucial that the Supreme Court, as well as other judicial bodies, continue to make decisions that are based on sound economic principles and take into account the broader socio-economic context. This will help to ensure that legal decisions promote a fair and equitable distribution of resources and contribute to the sustainable development of the country.<sup>34</sup>

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<sup>34</sup> James M. Buchanan & Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Univ. of Mich. Press 1962).

## A Critical Study of Juvenile Justice System in India

Swapanpreet Kaur\*

### Abstract

*The juvenile justice system has been embraced by people all over the world as the most dynamic and enlightening framework for children's holistic development. The defenseless children's needs and the reform of the corrupt should be the primary priorities. If possible, a kid should be returned to the family and given every opportunity to recover. The juvenile justice system in India was assessed using protected reasoning and international norms. John Locke distinguishes between the human identity and something that is initially "white paper, devoid of any characters and without any thought." This viewpoint holds that all "material of reason and learning" genuinely start at the beginning. When Locke prohibited the teaching of inherent principles, he clearly had Descartes and the Cartesians in mind. It also advises letting go of the Platonic idea that knowledge is merely the recollection of unquestionably known forms. Some contemporary specialists in the field of mental evolution discovered that Locke's massive impelling, or Plato's or Descartes' strong occupants, were perfectly pleasing. What we have called the "Aristotelian start" holds that youth is a fundamentally evolving state. This point of view holds that a child's evaluation needs not be extraordinary, but rather helpful in helping the youngster grow up to be a responsible adult. Some juvenile handicraft could be the remedy to this yearning. This article aims to examine the provisions of the Juvenile Justice Act of 2015 as well as the gaps that exist within the aforementioned legislation.*

**Keywords:** Juvenile, Fundamentally, Justice, Youngsters, child, legislation.

### 1. Introduction

The words of Nehru are accurate: "Children are recognized across the world as the highest assets of the state and must be nurtured and protected." India's Constitution has granted children many rights, including protection from various forms of exploitation and exploitation as a means to achieve its goal of creating a virtuous and healthy community, as well as rights to education, religious freedom, and intellectual and cultural advancement. India maintains a large population of street children due to factors like poverty, broken families, poor parenting, and a lack of

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parental supervision. Since children represent the nation's future, they require extra protection and care. If kids are prosecuted and punished like adults at a young age, there's a potential that they will grow up to be ardent criminals. They will probably join other offenders if they get the same punishment.

The number of adolescent offenders has significantly increased in recent years. Furthermore, it seems to have a noticeable rise in the quantity of crimes perpetrated by teenagers under the age of sixteen. The National Crime Records Bureau reports that in 2011, there were 23, 25,575 IPC violations that had an impact on minors. In 2015, it increased gradually to welfare of a country's youth is crucial to its development. Therefore, it is in the country's best interest to invest in the welfare and education of its children and make sure they have access to the care and opportunities they need to realise their own goals and also make a positive contribution to growth, both national and societal.<sup>1</sup> The fact of the matter is that a sizable portion of the child population does not receive the care they need, which exposes them to criminal activity and other socially undesirable actions that result in juvenile offences.

The Latin word "juvenis," which means young, is the source of the word "juvenile". Beijing Rules, Rule 2.2(a29, 49,400). The economy, the upbringing of children, a lack of education, and parental care and supervision could all be contributing factors to the rising crime rate. These are only a few of the fundamental causes of the growth in adolescent criminality. What's most depressing about it is that children nowadays, in particular People between the ages of five and seven are frequently used as props in criminal activities because of how easily controlled and underdeveloped their minds are at this age<sup>2</sup>.

Since children are a country's future, they should be given the best possible care, protection, education, and nurturing in a happy, healthy atmosphere to help them develop into responsible adults. Nonetheless, there are many instances of child exploitation worldwide, not just in India. In a civilised culture, children's welfare is of utmost importance because a child is not only the property of his or her parents but also of the nation and society. The) states that a juvenile is a kid or young person who, in accordance with the relevant legal systems may handle an offence differently from how they would an adult. According to the 1989 Convention on the Rights of the Child (CRC), "every human being below the age

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<sup>1</sup> The Merchant Shipping Act 1958 and The Apprentices Act 1961.

<sup>2</sup> Shreyansh Chouradia, "Child Labour: The Burning Predicament In The World, Legal Service of India", *available at*: <http://www.legalserviceindia.com/article/1216-Child-Labour.html> (Last visited on February 5, 2024).

of eighteen years, unless under the law applicable to the child, majority is attained earlier” is considered a “child” under Article – 1.

The idea of “doli incapax,” which refers to a person who is thought to be incapable of developing the intention to conduct a crime or tort, especially due to advanced age, has been included into the legal codes of most modern countries<sup>3</sup> youngster under the age of seven cannot be legally held responsible for advances, as per Section 82 of the Indian Penal Code, IPC, 1860. According to Section 83 of the Indian Penal Code, if a person is mentally incompetent or unable of understanding the consequences of their conduct, they become criminally liable at the age of twelve. In this case, a young woman cannot marry till she is fifteen; if not, she must be sixteen at the latest. The age at which a young, active female partner must grant consent for sexual engagement is sixteen; for a less active female partner, it is eighteen. It is important to keep in mind this final goal.

The Child Labor (Prohibition and Regulation) Act of 1986 states that a male is deemed a youngster if he is younger than 14 years old A person is deemed a “child” in accordance with section 2(12) of the Juvenile Justice (Care and Protection) Act of 2015, which establishes the age restriction at 18<sup>4</sup>. A distinction is made between “children in dispute with the law” and “children in need of care and protection” under the Juvenile Justice (Care and Protection) Act of 2015.

A person under the age of fifteen is called a kid, and a person who has turned fifteen but is not yet eighteen is called a juvenile, as per the Factories Act of 1948 and the Plantation Labor Act of 1951. According to the Factories Act, young persons who are declared therapeutically fit may work in handling factories, but their daily labor hours cannot exceed four and a half hours<sup>5</sup>.

Males under the ages of fifteen and fourteen are considered children under the Beedi and Cigar Workers (Conditions of Employment) Act of 1966 and the Motor Transport Workers Act of 1961, respectively. While juveniles under the age of fourteen are prohibited from working in appear-related activities under the Apprentices Act of 1961 and the Merchant Shipping Act of 1958, these laws do not define a juvenile.

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<sup>3</sup> S. K. Bhattacharya, *Juvenile Justice: An Indian Scenario*, (Regency Publications, New Delhi, 2002).

<sup>4</sup> R. Chowdhary, *Law relating to Juvenile Justice in India*, (Orient Publishing Company, Allahabad, 2005).

<sup>5</sup> A. Bajpai, *Child Rights in India*, (Oxford University Press, New Delhi, 3<sup>rd</sup> edn., 2017).

## 2. Historical background of Juvenile Justice System in India

A modern global trend that is seen in many wealthy countries, such as the United States and the United Kingdom, is treating young criminals differently. This trend got its origins in the 18th century. Previously, juvenile offenders received the same treatment as adult offenders. The UN General Assembly ratified the Convention on the Rights of the Child<sup>6</sup>. The purpose of this treaty is to safeguard the interests of juvenile offenders. According to the Convention, juveniles cannot be the subject of lawsuits or judicial cases in order to protect their ability to reintegrate into society. The Juvenile Justice Act of 1986 might be repealed as a result of this agreement, and a new law might be passed in its place<sup>7</sup>. The Juvenile Justice Act of 1986 might be repealed as a result of this agreement, and a new law might be passed in its place. According to the regulations, a male had to be 16 years old and a female had to be 18 years old. utilizing the 1986 Juvenile Justice Act<sup>8</sup>.

In a landmark ruling, the Hon. Supreme Court of India's Constitutional Bench addressed the issue of "reckoning date for the determination of the age of the juvenile is the date of the detailed discussion of this problem and held that commission of the offence" in *Partap Singh v. State of Jharkhand*, 2005(3) SCC 551. This was because there were the new Act was silent or unexpressive in a few unclear instances, chief among them being the determination of the age of a juvenile criminal. The law pertaining to this matter was therefore updated in light of the aforementioned ruling by the Hon'ble Apex Court<sup>9</sup>.

The principal goals of the Act are:

- To safeguard young people's rights and interests, the Act basically gave the juvenile justice system nationwide consistency within its operating framework.
- It covers the framework and mechanisms for the growth, defense, maintenance, and rehabilitation of young offenders.
- It lays out the fundamental principles for the impartial and proper administration of criminal justice in instances of horrific crimes committed by young offenders<sup>10</sup>.

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<sup>6</sup> M. Baligar and S. C.A., *Juvenile Delinquency in India*, (Prateeksha Publication, Jaipur, 2015).

<sup>7</sup> *Bijoy @ Guddu Das vs The State of West Bengal*, Calcutta High Court, CRAN 4926 of 2016., available at: <https://indiankanoon.org/doc/22883435/> (Last visited 15<sup>th</sup> Feb, 2024).

<sup>8</sup> "Convention on the Rights of the Child, 1989", available at: <https://www.ohchr.org> (last visited on February 24, 2024 (Last visited 15<sup>th</sup> Feb, 2024).

<sup>9</sup> M. P. Jain, *Indian constitutional law*, (LexisNexis, Haryana, India, 2016).

<sup>10</sup> V. Kumari, "The Juvenile Justice Act 2015 - Critical Understanding." 58 JILI, 83-103 (2016).

### 3. Debate on the Juvenile Justice Act of 2015

After the horrific and violent Delhi gang rape incident in December 2012, there have been multiple discussions over the sufficiency or deterrent of the Juvenile Justice Act of 2000. The involvement of juvenile offenders - who were just six months away from becoming adults - was the main problem with these. Since the Juvenile Justice (care and protection) Act of 2000 applied in this case, the offender's punishment was limited to three years in jail by the court. Many protests were conducted in response to the Apex Court's ruling, calling for changes to the Juvenile Justice Law<sup>11</sup>.

Since The New "Juvenile Justice (care and Protection of Children)" was passed into law in 2015, the juvenile code has undergone various significant modifications. The treatment of teenagers between the ages of sixteen and eighteen as adults is one of these major developments. In addition, individuals who turn 21 while incarcerated are detained for the entirety of their sentence. Nonetheless, these choices are made by the "Juvenile Justice Board."<sup>12</sup>

### 4. Lacunae in the Juvenile Justice Act, 2015

The JJ Bill, 2014, as it was introduced to the Lok Sabha, contained a clause that said that individuals who were apprehended after reaching 18 for crimes they committed before then would face adult trials. This clause was obviously unconstitutional. Fortunately, this clause was removed by the administration before to the Lok Sabha's approval<sup>13</sup>. Nevertheless, it still contains provisions that go against the constitutionally protected right to equality.

Article 15(3) of the Indian Constitution establishes special legislation for children, despite not defining a child. It stipulates that special considerations may be given to mothers and children. According to Article 24, minors under the age of 14 shouldn't work in mines, factories, or other hazardous jobs. They shouldn't work in any dangerous jobs of any type. Article 21 states that the only people who can obtain the fundamental right to a free and compulsory primary education are children between the ages of 6 and 14<sup>14</sup>. Articles 39(e) and (f) aim to protect young

<sup>11</sup> V. Kumari, *The Juvenile Justice (Care and Protection of Children) Act 2015 Critical Analyses*, (Lexis Nexis, Gurgaon, 1<sup>st</sup> edn., 2017).

<sup>12</sup> Munna & Others Vs Sate of U.P, AIR 1982 806.

<sup>13</sup> Crime in India 2016-SNAPSHOTS (States/UTs). NCRB, available at: <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/9%20%20Snapshots%20All%20India%202016.pdf> (Last visited on March 2, 2024).

<sup>14</sup> Protection of Children from Sexual Offences Act, 2012 (POCSO).

children from abuse and to provide them with the opportunity and means to grow up in a healthy manner, don't bring up any specific age range while maintaining your freedom and dignity. Article 45 mandates that children under the age of six get early childhood care. When India ratified the Convention on the Rights of the Child in December 1992, it pledged to align the definition of a child with the convention's provisions for all purposes<sup>15</sup>. According to Article 1 of the CRC, children are all natural persons under the age of 18, unless that country's majority age is achieved earlier.

Since boys' youth age was raised from 16 to 18 years old and girls' youth age was already safeguarded by the JJA, 1986 until the age of 18, the JJA, 2000 was especially adopted to fulfill India's vow. Even in the face of the CRC commitment, India unquestionably had the freedom to determine the age at which to identify a child<sup>16</sup>. If it had felt forced, it could have selected a minimum age of sixteen. However, the JJA of 2015 decided to keep the 18-year-old cutoff point for child classification while allowing the selective transfer of children who fall between the 16 and 18-year-old age range. These children were to be charged with serious crimes and handled as adults in the adult criminal court. General Comment 10 of the UN Committee on the Status of the Refugee Committee, which prohibits the trial of juveniles younger than 18 and urges countries that engage in this practice to remove such measures, is obviously broken by this clause<sup>17</sup>.

More than any other nation, India chose to amend its nonexistent initial exception fifteen years after ratifying article 1 of the CRC. It is indisputable that India, as a state party to the CRC, is not bound by the general remarks even though it is bound by its own Constitution. Despite the well-known fact that this clause forbids class legislation, the connection test allows equitable classification<sup>18</sup>. Any kind of classification is appropriate as long as it has some connection to the Act's objective. There must be a definite connection shown between the type of offense and the standard of treating children differently according to their age. In *Subramanian Swami v. Union of India*, the Supreme Court heard arguments that grouping all juveniles till the age of 18 was an overclassification and was forbidden by the Constitution, regardless of the type of crime they committed or their mental state. The Supreme Court rejected the argument of reading down the provision of the JJA, 2000, reiterating the well-established principle that: Classification or categorization need not be the result of mathematical or arithmetical precision in

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<sup>15</sup> Sampurna Behrua vs Union of India & Ors, (2018) 4 SCC 433.

<sup>16</sup> Sheela Barse & Ors Vs Union of India & Ors, JT 1986 136.

<sup>17</sup> D. Singh, "Restorative Justice" 05(5) *Ideal Journal of Legal Studies* 77-82 (2014).

<sup>18</sup> S. Singh, *Offences against Children and Juvenile Offence*, (Central Law Publications, Allahabad, 1<sup>st</sup> edn., 2017).

the similarities of the persons included in a class and there may be differences among the members included within a particular class<sup>19</sup>. Article 14 will not prohibit such a course of action, provided as the general characteristics of the category are recognizable, evident, and make sense in connection to the object objectives. The state has acknowledged that discernible and identifiable characteristics are typical of children up to the age of eighteen by defining “child” as an individual below that age. As previously mentioned, among other things, this classification serves to ensure their protection and care. As a result, every new sub-categorization must make sense in light of the original ideas. The JJA, 2015’s objectives have nothing to do with the subject matter of this sub-classification, so it does not meet the requirements of Article 14 of the Constitution regarding the reasonable classification of minors, 16 to 18 years old, suspected of heinous crimes. Since scientific methods cannot distinguish between a crime committed by an adult and a juvenile mind, arbitrary decisions resulting in actual cases of child transfer will continue to occur in the future<sup>20</sup>. Moreover, it is maintained that it is against article 15(3) to exclude those between the ages of 16 and 18 from adult trials. This is because special law can only be passed “for” children, not “against” them.

## **5. Adolescent Criminality and the Global Context**

When a child does an act that is illegal under the Juvenile Justice System or the country’s legal system, it is referred to as juvenile delinquency. Delinquency can stem from a number of factors, including dysfunctional families, psychological or physical abuse, unmonitored use, and the influence of violence on social media, neglect by parents, absence of siblings, alcoholism, drug addiction, unsuitable company, and poverty, among other issues. In order to address the need for developing an appropriate juvenile justice framework that would serve as a model for the nations to create and manage their juvenile justice systems to address juvenile delinquency and child protection, juvenile delinquency has drawn a lot of attention on a global scale<sup>21</sup>. A number of international instruments have been created to address issues pertaining to juveniles. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (also known as the Beijing Rules, 1985) were established by the General Assembly in a resolution in 1985. The Riyadh Guidelines, i.e., In 1990, the United Nations established guidelines for the prevention of juvenile delinquency, which included a list of preventive measures to be implemented as well as rules for protecting young

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<sup>19</sup> The Apprentices Act, 1850.

<sup>20</sup> The Children Act, 1960

<sup>21</sup> The Juvenile Justice (Care and Protection of Children) Act 2000.

offenders. Although many of the Beijing Rules' tenets have been included into the 1989 Convention on the Rights of the Child (CRC), an international convention that seeks to uphold children's human rights in order to safeguard their interests, the Beijing Rules are not legally obligatory on States in and of themselves. These guidelines' main goal is to help the youngster socialise and integrate by actively supporting the family and any groups they may be involved in. When the Havana Rules were implemented in 1990, they promoted the protection of minors who were being detained. United Nations Regulations for the Defence of Children Deprived of Their Freedom, 1990<sup>22</sup>. The Vienna Guidelines for Action on Children in the Criminal Justice System (1997), the Hague Convention on the Protection of Children and Cooperation in Respect of International Adoption (1993), and the European Convention on the Exercise of Children's Rights (1996) are just a few of the additional conventions pertaining to juvenile justice that have been passed over time.

## **6. Juvenile Justice System in India**

### **6.1 Rights under Constitution**

The rights and benefits of Indian citizens are outlined in the Constitution. It allows for a few adjustments to ensure the kids' well-being. It requires the state to defend and preserve everyone's fundamental human rights, particularly those of children. This instructs the State to uphold the best possible results for their growth and well-being in an open, safe environment. Articles 15(3), 21, 39, clauses (e), (f), 45, 47, and 51 all work together to guarantee children's welfare and develop their ability to turn their lives around.

### **6.2 Juveniles and their liability under criminal liability**

In the Indian context, the phrase "juvenile justice" refers to both the laws governing minors who commit crimes and their rehabilitation, setting it apart from the conventional criminal justice system, which is based on the ideas of repression and retaliation. Given that the majority of children who commit crimes having been exposed to socially and morally improper circumstances and as a result become victims of deviances, the law provides opportunities for corrective behaviour and rehabilitation. Section 82 of the Indian Penal Code, 1860, specifies the age at which a kid is deemed a juvenile and is released from the penalties associated with *doli incapax*.

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<sup>22</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015. (JJ Act).

A child's perceived responsibility is determined by their comprehension as long as they are between the ages of 7 and 12. According to criminal law, where there is a strong indication of guilt, it can be assumed that a person has committed a crime and can be treated as such. A person is capable of creating a mens rea, or mala fide intention, and using an actus rea, or overt act, to carry that intention out. It takes these two conditions to create a responsibility for any individual. This line of demarcation appears to be founded on the idea that minors should not be regarded like criminals since they lack the mental capacity to form intentions that could lead to subsequent crimes and their faculties are still developing<sup>23</sup>.

Since children cannot distinguish between good and wrong, India has adopted a particular juvenile justice system that places more emphasis on reformation and correction than on punishment. The kids below for this reason, individuals under the age of 18 shouldn't be dealt with by the adult criminal justice system; instead, they should get community service opportunities, appropriate guidance, and counselling.

### **6.3 Other Laws to deal with Offences against children**

Due to their vulnerability, immaturity, and fragile mental capacities, youngsters appear to require constant supervision and protection against all forms of abuse and disrespect. A suitable legal framework is necessary for children's development and success in any social welfare state. Several measures to address child abuse and penalise the offender are included in the Indian Penal Code, 1860. The legislation punishes a number of serious offences against minors, including rape, hurting others, acid attacks, slandering the modesty of any woman, sexual harassment, using force to undress a woman, voyeurism, stalking, buying and selling minors for prostitution, kidnapping, and the procurement and importation of girls. Children are the most frequently targeted demographic in human trafficking, which is a horrible criminal activity. The Immoral Traffic (Prevention) Act of 1956 contains laws aimed at safeguarding minors against child trafficking. The Young People Harmful Publications Act of 1956 prohibits some publications that could endanger children<sup>24</sup>. Foster Homes and Other Charitable Homes (Supervision and Control) Act, 1960, which deals with the supervision and management of orphanages, homes for abused women and children, and similar institutions, as well as problems connected thereto. The Apprentice Act of 1961, which was enacted to encourage skill and craftsmanship, establishes training

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<sup>23</sup> *The Secretary vs. Union of India*, W.P(C). No. 14858 of 2016, Kerala High Court.

<sup>24</sup> P. Tiwari, "An Overview of Juvenile Justice Act, 2015 with regard to Child in Conflict with Law", available at: [http://ujala.uk.gov.in/files/Article\\_5BOOK\\_UJALA.pdf](http://ujala.uk.gov.in/files/Article_5BOOK_UJALA.pdf). (Last visited on July 14, 2024).



requirements for those above the age of 14 in any relevant trade. The Medical Termination of Pregnancy Act of 1971 establishes guidelines for ending a pregnancy under a doctor's supervision.

The Child Labour (Prohibition and Regulation) Act of 1986 governs the working conditions of children employed and protects them from certain hazardous jobs. Children are protected from pledging labour under the Children (Pledging of Labour) Act of 1933. Because of female foeticide, the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 forbids prenatal sex determination.

A number of additional acts likewise control matters pertaining to children in one manner or another. The goal of the 2009 enactment of the Right of Children to Free and Compulsory Education Act was to give children access to free primary education. 1890's Guardian and Wards Act. The Hindu Minority and Guardianship Act, 1956 specifically addresses the appointment of guardians for Hindu minors, although it also addresses the removal and appointment of guardians. The 1956 Hindu Adoption and Maintenance Act addresses the adoption and upbringing of Hindu children.

The Prohibition of Child Marriage Act, 2006, declares child marriage illegal in India if a girl kid is younger than 18 and a boy child is younger than 21. In the lack of gender, the Protection of Children from Sexual Offences Act, 2012 (POCSO) was passed. Impartial legislation to address issues pertaining to child abuse, child pornography, trafficking, and sexual harassment and assault. The Information Technology Act of 2000 prohibits the publication or electronic transmission of any pornographic content that shows youngsters engaging in sexually explicit behaviour. (By Section 67).

For almost decades, governments have upheld a strong belief that by giving the juvenile criminal justice system a way to deal with crimes committed by minors, it could defend society at large adolescent who are maturing and entering adulthood<sup>25</sup>. States know that adolescent Compared to adult offenders, criminals frequently behave more impulsively and irrationally. States have developed a variety of youth-focused service delivery systems and adult-accessible juvenile justice systems in response to these disparities. Reports state that the economies of transitioning countries have witnessed a sharp rise in delinquency rates. When it

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<sup>25</sup> "International Instruments/ rules relating to juveniles", *available at:* <https://www.un.org> or <https://www.ohchr.org> (Last visited on July 20, 2024).

gets down to legal difficulties, most teenagers, young adults, and children have breached the law.

## **7. Conclusion and Suggestions**

The following suggestive measures should be adopted to give access to justice to the juveniles:

- The Board's personnel, including the Principal Magistrate, should have specialized training in child welfare and psychology. A particular training program should also be developed.
- The Board's inquiry location should have a kid-friendly atmosphere. Using elevated platforms and donning dark coats are not recommended. The juvenile should not be forced to stand in front of the board. It is important to put the child at ease and help them to overcome their fear of others. The Board may convene in the observation homes for meetings.
- Lists of professionals in the fields of psychology, counseling, clinical psychology, non-governmental organizations, panelists representing advocacy, fit institutions, fit individuals, observation homes, special homes, and nonprofits committed to child welfare should be sent to the Board. People like these may have their services used.
- The Board must make sure that the juvenile's right to privacy is upheld.
- When a juvenile is brought before a magistrate, the magistrate should not have the authority to exercise the board's powers under the Act. Instead, the magistrate should record their opinion about the juvenile and forward it to the Juvenile Board, which will conduct an investigation into the matter as though the juvenile had been brought before it in the first place.
- India has an adoption system that is based on religion. Adoption of minors or neglected or abandoned children must also be governed by a complete international adoption law, which should not be based on religious beliefs.
- JJ Board will inform pupils in all of the schools within its jurisdiction about crimes against children through a legal aid campaign.
- Juvenile houses should be built separately, and they shouldn't resemble prisons. The Board should be able to investigate and supervise children's homes more easily by having video links installed. This will allow them to monitor any actions that may be taken against the interests of the children.
- Education for youngsters living in households up until the age of 14 ought to be mandated. They ought to be provided with the best resources and possibilities available, just like any boarding school or hostel, with the added

requirement that residents of the homes take a course in civics and moral science.

- Games, sports, and other useful programs can be arranged in observation homes and other facilities for the betterment of juveniles. These programs should encourage juvenile participation in order to help them integrate into society.
- The police officer looking into the juvenile case needs to set a deadline for the investigation and turn in the report within sixty to ninety days after the complaint date.
- Every district should have a special juvenile police unit established by the State governments, with particular training and instruction provided in child welfare and child psychology. Sensitization and training with the juvenile police should be provided to the public prosecutors handling the cases.
- The State ought to launch trial programs experimenting with different approaches to dealing with children, and following a positive assessment, incorporate those approaches into binding legislation. Because there is no benefit to just renaming the current structures or JJA.
- Families, society, and the country as a whole share responsibility for children, and all three must work together to guarantee that children are given a supportive environment in which to develop and thrive, with a primary focus on preventive measures before turning to curative, rehabilitative, or re-instating measures.

## Offence of Bribery vis-à-vis Parliamentary Immunity

*Banveer Kaur Jhinger Toor\**

### Abstract

*The significance of prevention of bribery as an offence could be analyzed from the fact that there exists a “Corruption Perception Index” which rank all the countries across the world on the basis of level of corruption and bribery transactions. India’s rank in 2023 was 93 out of 180 countries. This rank indicates the level and magnitude of corruption in Indian subcontinent. There is no shadow of a doubt that bribery is an offence in Rem i.e., a crime against public. Another significant aspect which would be the prime consideration under this research paper is ‘Parliamentary Immunity.’ In simple terms it could be explained as a constitutional protection provided to the member of parliament and legislative houses against any court proceedings. However, there are various dimensions of this single concept, which the study would be dealing in great detail under this research paper.*

*The primary focus of this research article is to deal with the criminal aspect of bribery where giving someone bribe is considered to be an offence. The study has adopted the doctrinal method of research in which the aid of various printed and electronic resources shall be taken to discuss the issue. Though the topic of bribery and corruption is a very wide topic, the study would be restricting the discussion of this paper to understand the connections of the offence of bribery and parliamentary immunity as provided under the Indian Constitution. It is interesting to note that the constitutional jurisprudence on the aspect of offence of bribery vis-à-vis parliamentary privilege is very enriched due to several landmark judgments of the Supreme Court like PV Narasimha which the study would be discussing in this paper in great detail. Recently, an extra spark to this topic has been provided by the Supreme Court with one of its judgments. Thus, the study would be exploring the development of this topic within the legislative and judicial realms.*

**Keywords:** *Bribery, Parliamentary Privileges, Corruption, Indian Constitution.*

### 1. Introduction

*“Integrity, transparency and the fight against corruption have to be part of the culture. They have to be taught as fundamental values”*

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- *Angel Gurría, OECD Secretary General*

The Preamble of the Indian Constitution secures to all the Indian citizens, “Justice in form of Social, Economic and Political.” To put this in other words, it can be said that India is a welfare state where the primary purpose of the state is to ensure and provide equality, justice and social well-being of the citizens in every aspect. However, evils like bribery undermines the spirit of the constitution enshrined under the Preamble. The offence of bribery is not something new for this world but is considered to be an age-old practice

The offence of bribery is not only restricted to common people and administrative wing of the country but it has equally polluted the judicial as well as parliamentary wing as well. This study would try to focus only on the later aspect i.e., the offence of bribery in relation to Parliament in India.

### **1.1. Bribery as an offence under Indian Law**

Bribery is considered to be one of the serious white-collar crimes which directly affects the integrity and social values of any administration. However, before going into detailed discussion related to bribery as an offence under Indian Law, it is first important to understand how bribery is different from corruption. It can be said that “Corruption is dishonest or fraudulent conduct by those in power, typically involving bribery. Bribery is offering, giving or receiving anything of value with the intention of inducing a person to act or to reward a person for having acted.”<sup>1</sup> Thus, it is clear that there exists some difference between both the terms, however, for the purpose of instant discussion, the study would be using both the terms interchangeably.

According to the Transparency International, the position of India in the “Corruption Perception Index” has fallen from 85<sup>th</sup> position in 2022 to 93<sup>rd</sup> position in the year of 2023.<sup>2</sup> Thus, it can be said that the Government of India has to work a lot on the improving the status of India as a country on these indexes. It would not be wrong to say that offence of bribery or corruption clearly undermines the fabric of a country like India wherein the constitution guarantees justice and equality as some of the most important human rights. The importance of curbing

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<sup>1</sup> Anti-Bribery and Corruption, India, *available at*: <https://www.principal.com.my/en/bribery-and-corruption#:~:text=What%20is%20Bribery%20and%20Corruption,a%20person%20for%20having%20acted> (Last visited on April 4, 2024).

<sup>2</sup> Shivangini, Global Corruption Index: World's most and least corrupt countries ranked: Check India's position here, India, *available at*: <https://www.livemint.com/news/india/global-corruption-index-worlds-most-and-least-corrupt-countries-ranked-check-indias-position-here-11706691397277.html> (Last visited on April 4, 2024).

this evil could be understood from the fact that there exists a dedicated conventions of United Nations known as “United Nation Convention against Corruption (UNCAC)” for combating against this evil.<sup>3</sup>

Despite the current global ranking of India on the corruption index, it cannot be said that Indian law lacks enough safe guards for fighting against corruption because there are various laws in place in India which makes bribery and corruption as a serious offence in India like,

*“Indian Penal Code, 1860 or Bhartiya Nyaya Sanhita, 2023, The Benami Transactions (Prohibition) Act, 1988, Prevention of Money Laundering Act, 2002, and Prevention of Corruption Act, 1988.”<sup>4</sup>*

## 2. Research Methodology

The present research work being a descriptive and exploratory in nature seek to understand the relationship between offence of bribery and the receivers of parliamentary immunity under the Indian legal system. The study is conducted through a qualitative method and involves the analysis of secondary data which includes legal documents, case laws and scholarly writings. The following are the main goals of the study: To analyses bribery as an offence under the selected Indian legislation, including the “Indian Penal Code, 1860; Prevention of Corruption Act, 1988; The Benami Transactions (Prohibition) Act, 1988; and The Prevention of Money Laundering Act, 2002”. Also, the study undertakes a brief analysis of the meaning of Parliamentary Privileges by reference to the Indian Constitution as well as the issue from the international perspective. Due to this, the study considers legal perspectives through referential case laws, the most important being: “P V Narasimha Rao State (CBI/SPE), Sita Soren v. Union of India”. Last of all, the research discusses the significance of the topic in the current and future context, thereby, offering the complex view of the legal and constitutional issues under consideration.

## 3. Research Objectives

- To discuss 'bribery' as offence under Indian law, including provisions from the “Indian Penal Code, 1860, Prevention of Corruption Act, 1988, The

<sup>3</sup> United Nation Convention against Corruption (UNCAC), General Assembly resolution 58/4 of 31 October 2003.

<sup>4</sup> Corruption Laws in India, available at: [https://prsindia.org/files/parliament/discussion\\_papers/1302844978\\_PRS%20Note%20on%20corruption%20laws.pf](https://prsindia.org/files/parliament/discussion_papers/1302844978_PRS%20Note%20on%20corruption%20laws.pf) (Last visited on April 4, 2024)

Benami Transactions (Prohibition) Act, 1988, and The Prevention of Money Laundering Act, 2002”.

- To explore Parliamentary Privileges under the Indian Constitution, are these privileges working as a shield for the Parliamentarians to get bribe.
- To explore transnational perspectives on bribery and parliamentary privileges.
- To discuss judicial standpoints, focusing on landmark cases like “P V Narasimha Rao State (CBI/SPE) and Sita Soren v. Union of India”.
- To analyze the topic critically, exploring its contemporary relevance and future prospects.

#### 4. Analysis

##### 4.1 To discuss 'bribery' as an offence under Indian law, including provisions from the “Indian Penal Code, 1860, Prevention of Corruption Act, 1988, The Benami Transactions (Prohibition) Act, 1988, and The Prevention of Money Laundering Act, 2002”

###### a) Bharatiya Nyaya Sanhita, 2023 (BNS) and Indian Penal Code, 1860

Chapter IX of BNS primarily deals with “offences relating to elections” under which **Section 168 (1)** defines the term ‘Bribery’ as “*Whoever – gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, commits the offence of bribery*”<sup>5</sup>

Further, “**Section 171 of BNS**” provides punishment for the offence of Bribery as “imprisonment of either description for a term which may extend to **one year**, or with fine, or with both.”<sup>6</sup> Parallel provision defining and punishing bribery is provided under “**Section 171 B and 171 E of the Indian Penal Code, 1860**”.<sup>7</sup> It is important to note that in there was a separate chapter for the offence of corruption under the Code i.e., Chapter IX, however, the same has now been repealed through the enactment of “Prevention of Corruption Act, 1988.”

<sup>5</sup> Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023) s. 168.

<sup>6</sup> *Id.* S. 171.

<sup>7</sup> The Indian Penal Code, 1860 (Act 45 of 1860) s. 171 B and 171 E.

### **b) Prevention of Corruption Act, 1988**

This Act is one of the most important legislations in India for dealing with the offence of Bribery or Corruption. This Act primarily deals with the punishment and procedure for crime committed by the Public Servant. Chapter III of this Act deals with all forms of offences and punishment provided for the crime committed by Public Servant related to bribery or corruption.<sup>8</sup>

### **c) Prevention of Money Laundering Act, 2002**

Any offender falls within the purview of this Act when “he is detected as one of the parties to the proceeds of the crime and activities which are listed as offence under the Schedule of the Act.”<sup>9</sup> Punishment for the same is provided under Section 4 of this Act as “rigorous imprisonment for three to seven years and a fine of upto Rs 5 lakh.”<sup>10</sup>

When a Parliamentarian receives money for posing questions in the Parliament, this money is subsequently altered into white money. Hence, the offence of Money Laundering comes into the picture. The Enforcement Directorate initiates proceedings against the accused.

### **d) The Benami Transactions (Prohibition) Act, 1988**

When someone purchases a property in the name of a fictitious person in order to evade legal mandates, such offence falls within the purview of this Act.<sup>11</sup> It provides punishment for such offence of imprisonment which “may extend to 3 years as well as fine.”<sup>12</sup> The 2016 Amendment to the Act has made significant changes to this law. The Amendments became effective on November 1, 2016.

It has expanded the range and meaning of the Benami Transaction. According to “Section 1(9) of the 2016 Act”, the following transactions are required to be considered as Benami Transactions:

- When someone else holds or transfers property, yet the true owner's benefit, either now or in the future, is the one who paid for the item.
- When a transaction is carried out using a fake or fictitious name.

<sup>8</sup> The Prevention of Corruption Act, 1988 (Act 49 of 1988) ss. 7-16.

<sup>9</sup> The Prevention of Money Laundering Act, 2002 (Act 15 of 2003) s. 3.

<sup>10</sup> *Id.* s. 4.

<sup>11</sup> The Benami Transactions (Prohibition) Act, 1988 (Act 45 of 1988) s. 2(a).

<sup>12</sup> *Id.* s.3



- When the owner of the property is either unaware of or denies their ownership of the property.
- When the person who provided the payment for the property cannot be traced.<sup>13</sup>
- Benami Transaction Act, penalises all those transfers in which the ownership of the property is not clear. When any tainted proceeds come to any public servant in the form of transfer of the property, it can be said to be a Benami Transaction, wherein the beneficiary don't take the property in his name, rather an ostensible owner is produced and transfer is made in his name.

#### 4.2. Parliamentary Privileges under the Indian Constitution.

*“Some of the peculiar rights enjoyed by each House collectively as a constituent part of the Parliament and by the members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals.”<sup>14</sup>*

The definition of Parliamentary privilege provided by Sir T.F. May holds prime importance while discussing this concept. Parliament is one of the primary pillars of the Indian democracy which plays a role of law maker in India. It is for this reason it becomes very important that Parliament could act without any interference and perform its functions in the most effective manner and for the same the reason privileges and immunity is provided to the members of the parliament. It is interesting to note that the freedom and liberty provided to members of parliament is somewhat wider than what is provided to the citizens.<sup>15</sup>

It is important to emphasize that the Constitution does not differentiate when granting privileges and immunities to State Legislatures and members of Parliament. Article 105 of the Constitution pertains to the immunities of the Parliament, while Article 194 deals with the immunities of the State Legislature.<sup>16</sup> Primarily, two major privileges have been provided to the members i.e., “Freedom of Speech in the Parliament and Right of publication of its proceedings.” Apart

<sup>13</sup> Benami Transactions In India And Analysis Of The Provisions Relating To Attachment And Confiscation Of Property Under The Benami Transactions (Prohibition) Amendment Act, 2016, available at: <https://www.mondaq.com/india/white-collar-crime-anti-corruption--fraud/661234/benami-transactions-in-india-and-analysis-of-the-provisions-relating-to-attachment-and-confiscation-of-property-under-the-benami-transactions-prohibition-amendment-act-2016> (Last visited on 15th May 2024 at 5:40 pm)

<sup>14</sup> JN Pandey, *Constitutional Law of India* 625, (Central Law Agency, 58<sup>th</sup> edn., 2021).

<sup>15</sup> *P. Sudhir Kumar v. Speaker, AP Legislative Assembly*, (2003) 10 SCC 256.

<sup>16</sup> The Constitution of India, arts. 105 and 194.

from these there are various other privileges available to members of parliament and state legislature like “Freedom from arrest, right to exclude strangers from its proceedings and hold sessions in secret, right to prohibit to publication of its Report and Proceedings, Disciplinary powers over members, Power to punish for contempt, right to regulate Internal Proceedings and many others.”<sup>17</sup>

For the instant discussion the study would be focusing only upon the first major privilege provided to the members of legislatures i.e., “Freedom of Speech in the Parliament” which has been covered under “Articles 105 and 194 of the Constitution.” As both the provisions runs on the same line, the study would only be analysing Article 105(2) for the sake of brevity. It reads as:

*“(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.”*<sup>18</sup>

In simple words, it provides that the members of the parliament shall not be held liable with respect to “anything said or any vote given by them in the Parliament” before any court of law. Thus, it can be said that casting vote by the member of parliament is covered under the freedom of speech provided to the member. In the case of *Tej Kiran Jain v. N. Sanjeeva Reddy*<sup>19</sup> it was held that the protection provided under “Article 105 of the Constitution” is only available to the members for their actions in the parliament, thus, any speech given or vote casted have a nexus with the proceedings of the parliament then the same would be protected and the member would receive immunity.

The rationale behind the same was also discussed by the Supreme Court in the case of *Kalpana Mehta v. Union of India*<sup>20</sup> wherein it was held that providing protection to the members of parliament is essential as “it embodies the fundamental value that the free and fearless exposition of critique in Parliament is the essence of democracy.” Recently, the Supreme Court in the case of *State of Kerala v. K. Ajith*<sup>21</sup> also discussed the ambit of the privileges and immunities provided to the members of parliament and legislative assemblies. It was held that the primary purpose behind the recognition of privileges and immunities is to

<sup>17</sup> JN Pandey, *Constitutional Law of India* 627, (Central Law Agency, 58<sup>th</sup> edn., 2021).

<sup>18</sup> The Constitution of India, art. 105(2).

<sup>19</sup> (1970) 2 SCC 272.

<sup>20</sup> (2018) 7 SCC 1.

<sup>21</sup> (2021) 17 SCC 318.

provide a conducive environment to the members so that they can perform their functions in an efficient manner. “These privileges bear a functional relationship to the discharge of the functions of a legislator. They are not a mark of status which makes legislators stand on an unequal pedestal.”

### 4.3. Transnational perspectives on bribery and parliamentary privileges

The purpose of discussing transnational perspective is to understand how the Indian standpoint on offence of bribery vis-à-vis parliamentary immunity is different from the legal position in other countries like Australia, United States of America and United Kingdom.

#### a) Australia

Unlike the Indian Constitution, the Australian Constitution does not have any dedicated provisions related to parliamentary privilege. “Section 49 of the Australian Constitution” provides that “*The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament.*”<sup>22</sup> In the light of the same Parliamentary Privileges Act, 1987 was enacted by the Australian Parliament.

In the landmark case of *R v. Edward White*,<sup>23</sup> the Supreme Court observed that “A person sent into the Legislature by means of votes corruptly obtained may be an able and conscientious member; but a legislator who suffers his vote to be influenced by a bribe does that which is calculated to sap the utility of representative institutions at their foundation.”

#### b) United Kingdom

It is a well-known fact that the majority of laws in India are influenced by the laws of United Kingdom and same is the case with the aspect of parliamentary privileges under the Indian Constitution. Unlike India, there is no written constitution in the United Kingdom, thus the aspect of parliamentary privileges has been covered under the “Rules and Guides for conducting business in the Parliament”<sup>24</sup> For many

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<sup>22</sup> Chapter 2 Parliamentary privilege: immunities and powers of the Senate, Australia, available at: [https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/Odgers\\_Australian\\_Senate\\_Practice/Chapter\\_02](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_02) (Last visited on April 05, 2024).

<sup>23</sup> 13 SCR (NSW) 3332.

<sup>24</sup> Parliamentary Privilege and Related Matters, United Kingdom, available at: <https://www.parliament.uk/business/publications/house-of-lords-publications/rules-and->

years the commission of the offence of bribery by the members of parliament was an unattended question as the existing legislations only covered the public and private sector.

However, it was after the consideration of two major reports i.e., “The Royal Commission on Standards of Conduct in Public Life, 1976 and the Report of the Standing Committee on Standards in Public Life, 1994” a consolidated legislation known as “Bribery Act, 2010” was enacted.<sup>25</sup> In brief, the position in United Kingdom could be explained in a way that over a long period of time the courts of United Kingdom have moved from narrow view to a broader view regarding the parliamentary immunities provided to the members of parliament in relation to the offence of bribery committed by them.

### c) United States of America (USA)

In the USA, the aspect of Parliamentary privileges is covered under “Section 6 of Article 1 in the Constitution.” The members of Congress have always been subjected to the proceedings of criminal legislations in case any offence is committed by them.<sup>26</sup> In the case of *United States v. Thomas F. Johnson*<sup>27</sup> it was held that if the offence of bribery is committed by members of congress, then they could be prosecuted in the legal proceedings till the time they “do not rely on a speech or vote given by the legislator.”

Additionally, the case of *United States v. Brewster*<sup>28</sup> also holds importance for the instant discussion as this case was referred by the majority judgment in PV Narasimha Rao. In *Brewster*, the court was of the view that any nexus to the legislative functions would not by itself immune the members of congress under the “Speech and Debate Clause of the US Constitution.”

From the aforesaid discussion, it can be said that the transnational jurisdiction has been taken into consideration by the supreme court while interpreting the aspect of parliamentary immunity in the light of offence of bribery. Moreover, it is now the time to discuss the main topic of this research paper that is the transition of the Indian judiciary from PV Narasimha Rao to Sita Soren.

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guides-for-business/companion-to-the-standing-orders/companion-chapter-12/ (Last visited on April 05, 2024).

<sup>25</sup> Bribery Act, 2010, United Kingdom, available at: <https://www.legislation.gov.uk/ukpga/2010/23/contents> (Last visited on April 05, 2024).

<sup>26</sup> Privilege from Arrest, USA available at: [https://constitution.congress.gov/browse/essay/artI-S6-C1-2/ALDE\\_00013354/](https://constitution.congress.gov/browse/essay/artI-S6-C1-2/ALDE_00013354/) (Last visited on April 05, 2024).

<sup>27</sup> 383 US 169 (1966).

<sup>28</sup> 408 US 501 (1972).

#### **4.4. To discuss judicial standpoints, focusing on landmark cases like *P V Narasimha Rao v. State (CBI/SPE)* and *Sita Soren v. Union of India***

There is a plethora of judgments related to parliamentary privileges under the Indian Constitution, however, the study would be focusing upon only two judgments in this part of the research paper i.e., *P V Narasimha Rao v. State (CBI/SPE)*<sup>29</sup> and *Sita Soren v. Union of India*<sup>30</sup>. The reason behind the same is that for a long time the jurisprudence on the offence of bribery vis-à-vis parliamentary privileges was governed as per “P V Narasimha Rao”. However, the situation was recently changed in the case of Sita Soren. Thus, the study would explore the legal development in the light of the aforesaid cases.

##### **4.4.1 Understanding the dynamics of PV Narasimha**

To begin with, let us comprehend the verdict of PV Narasimha Rao. In a nutshell during the 1991 general election, the Congress party gained the most seats, resulting in the formation of a minority government with Mr. Narasimha Rao as Prime Minister of India. The opposition parties initiated a motion of no-confidence against his government. To counter the no-confidence motion, the ruling party resorted to bribery by offering incentives to the members of the "Jharkhand Mukti Morcha (JMM)". As a result, the motion was successfully rejected. Ajit Singh, a member of JMM, refrained from voting on the no-confidence motion.

Two major issues came before the Supreme Court for consideration:

- a) *Whether by virtue of Articles 105(1) and 105(2) of the Constitution, a Member of Parliament can claim immunity from prosecution on a charge of bribery in a criminal court in relation to the proceedings in Parliament?*
- b) *Whether a member of Parliament is a Public Servant under the Prevention of Corruption Act, 1988?*

The five-judge Bench of the Supreme Court comprising of Chief Justice SP Bharucha, Justice S Rajendra Babu and Justice GN Ray gave the majority judgment whereas Justice SC Agarwal, Justice AS Anand gave the minority judgment.

With regard to first issue, the majority while providing a broad interpretation to Article 105(2), was of the view that acceptance of bribery by a member of Parliament in relation to the proceedings in Parliament do not come under the

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<sup>29</sup> (1998) 4 SCC 626.

<sup>30</sup> 2024 INSC 161.

purview of any ordinary law penalising bribery. According to the majority view the bribe giver and bribe taker cannot be placed on the same pedestal as the former would not be entitled to receive any immunity under Article 105(2) but the same is not the case with the later. Taking this further, the majority was of the view that even the bribe taker could be further bifurcated into those who voted against the motion and those who abstained. It was determined that individuals who voted against the resolution were eligible for immunity according to Article 105(2). However, those who chose to abstain from voting, even after accepting a bribe, were not granted any form of protection.<sup>31</sup>

It was further observed by the majority view that the bribe takers received the amount “as a motive or reward” for voting against the no-confidence motion, thus, the court considered it as a nexus between the bribe taken and the no-confidence motion. According to them the members should be able to participate in the parliamentary proceedings without any fear of civil or criminal proceedings and hence, they should be provided with a wider immunity. It was held that “the reason for such a broad view is that otherwise a member who makes a speech or case a vote that is not to the liking of the powers that be may be troubled by a prosecution alleging that he has been paid a bribe for the purpose.”<sup>32</sup>

The minority view gave a narrow interpretation to Section 105(2) in a way that the criminal liability incurred by the member of parliament for accepting bribery for speaking or giving vote stands independent and cannot be considered to be “in respect of anything said or any vote given in Parliament.”<sup>33</sup>

#### **4.4.2 Sita Soren: Overruling PV Narasimha**

The brief facts of Sita Soren Judgment are that this dispute came before the Supreme Court through an Appeal from the judgment of High Court of Jharkhand dated February 17, 2014. In the High Court of Jharkhand, a disagreement emerged from an election conducted to select two representatives of the Rajya Sabha from the province of Jharkhand. The Appellant, a MLA of Jharkhand, was accused of accepting a bribe in exchange for voting in Favor of an independent candidate during the election.<sup>34</sup>

Subsequently, it was disclosed that instead of voting in support of the independent candidate, Sita voted in Favor of a candidate affiliated with her own

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<sup>31</sup> (1998) 4 SCC 626.

<sup>32</sup> *Ibid*

<sup>33</sup> *Ibid*

<sup>34</sup> *Sita Soren v. Union of India*, 2024 INSC 161, para 3.

political party. Nevertheless, the previous election was invalidated and a new election was conducted, in which she once again cast her ballot in support of the candidate from her own party. As a result, the appellant was charged with criminal proceedings due to her acts in the election.<sup>35</sup>

Feeling wronged by the circumstances, she went to the High Court to request protection under "Article 194(2) of the Constitution," drawing parallels between her case and the *P V Narasimha Rao v. State (CBI/SPE)* case. Nevertheless, the complainant's attempt to have the criminal proceedings dismissed by the High Court was unsuccessful. The Court declined to do so on the basis that she did not vote in Favor of the candidate from whom she was accused of accepting a bribe.<sup>36</sup>

The Primary issue for Supreme Court in the case was "*Would a legislator who receives a bribe to cast a vote in a certain direction or speak about certain issues be protected by parliamentary privilege?*"<sup>37</sup>

While dealing with submissions from both the sides, the court first observed that if this court would reconsider the correctness of PV Narasimha, it would not in any of the way violate the principle of *Stare Decisis*. Through this, the seven-judge bench of the Supreme Court was of the view that it does not agree with the majority judgment of the Supreme Court in PV Narasimha and consequently overrule the said judgment.<sup>38</sup>

The court held that any "State Legislature or M.P. (Member of Parliament)" accepting bribery for the purpose of parliamentary proceedings cannot come forward and claim immunity under "Articles 105 or 194 of the Constitution" as the case may be.<sup>39</sup> This conclusion was arrived by the court on the basis of the following two-fold test which enable any member to claim immunity under these provisions i.e.,

- "The claim is tethered to the collective functioning of the House; and
- It is necessary to the discharge of the essential duties of a legislator."<sup>40</sup>

The court safely concluded that immunity under "Articles 105 and 194 of the Constitution" cannot be provided to the members for committing the offence of Bribery as the same is not essential aspect for giving speech or casting vote in the house. The court further hold that the distinction made between member who casted the vote and member who abstained from the same is erroneous in the light

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<sup>35</sup> *Ibid*

<sup>36</sup> *Id.* para 4.

<sup>37</sup> *Id.* para 2.

<sup>38</sup> *Id.* para 23-45.

<sup>39</sup> *Sita Soren v. Union of India*, 2024 INSC 161, para 188.4.

<sup>40</sup> *Id.* para 5-7.

of the interpretation of “Articles 105 and 194 of the Constitution” and do not stand good in the present legal context. The offence of bribery is committed the moment a bribe is taken by the member irrespective of his voting action in the house.<sup>41</sup>

Analyzing both the judgments, it can be said that the Supreme Court has rightly overruled the mischief created by the PV Narasimha Rao. Now it would be interesting to see as to how Sita Soren would be applied and interpreted in the upcoming year in the Indian political scenario.

#### 4.4.3 Deprivileging the Bribery

It was a decision that has caused irritation and resentment for many years. The Supreme Court of India's decision over 25 years ago to differentiate between 'bribe-givers' and 'bribe-takers' in the well-known JMM bribery case shocked many. This ruling implied that individuals who paid large sums of money to Members of Parliament in exchange for voting in Favor of the P.V. Narasimha Rao government during a no-confidence motion could be charged with corruption, while those who accepted the money were exempt from prosecution.

The rationale behind this was that those who had cast their votes in exchange for money were granted the constitutional right to be exempt from any legal repercussions for "anything said or votes given in Parliament". There was just one person who did not fit the category of alleged bribe-takers: Ajit Singh. He was accused of accepting a bribe but could not be punished because he was not present during the voting. As a result, he did not receive the same protection as those who voted about the bribery deal. The Court has rectified this inconsistency in the legal framework concerning parliamentary privileges by ruling that no Member of Parliament (MP) or Member of the Legislative Assembly (MLA) can claim immunity from bribery accusations about a vote or speech made in the legislature. The seven-member Constitution Bench has overturned the majority verdict in the P.V. Narasimha Rao case, emphasizing probity as the primary feature of parliamentary functioning.

The Court has clarified that parliamentary privilege, as defined in Article 105 (for MPs) and Article 194 (for State legislators), is intended to safeguard the legislators' freedom of speech and independence in their work within the House. However, it does not cover bribery, as it is not necessary for the act of voting or determining how to vote. One important reason that influenced the Constitution Bench in 1998 was the recognition that parliamentary privilege is crucial for safeguarding members from being persecuted for their speech or votes in the

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<sup>41</sup> *Id.* para 188.11



House. Many people were concerned that imposing restrictions on this right could have significant repercussions. They believed that public outrage over certain Members of Parliament accepting bribes should not result in the court interpreting the Constitution so narrowly that it eliminates the guarantee for meaningful participation and discussion in Parliament. Nevertheless, the seven-person Bench has determined that the possibility of such abuse is not increased or decreased by acknowledging the court's authority to punish a member for bribery. The Supreme Court has also ruled that voting in the upper house election, which is a part of a legislator's duties, is safeguarded as a privilege under Article 194 of the Constitution. Ensuring the highest level of safeguarding is necessary to enable a member to exercise their voting rights without any apprehension of facing legal prosecution. Overall, the finding aligns with the public's expectation that elected officials do not engage in bribery or accept financial incentives.<sup>42</sup>

#### **4.4.4 Two-fold test**

The Supreme Court has established a two-part assessment to evaluate if a Member of Parliament can benefit from immunity for their statement or vote, as demonstrated in the case of Sita Soren.

The Court determined that the immunity shield might be invoked under two specific conditions. Firstly, if a legislator's acts were intended to improve the authority and dignity of the legislature and its members as a whole, and secondly, if such actions were within the legislator's rights of free expression, protest, & liberty from arrest, among other rights.

A claim for privilege would not be upheld if it did not pass this dual examination.

#### **4.5. To analyses the topic critically, exploring its contemporary relevance and future prospects.**

Imagine a situation that after the entire process of election, none of the parties secured absolute majority and an unstable coalition government is formed. Now if a no-confidence motion is passed against such a government and that government in order to protect its position approaches various members of parliament to cast their vote against the no-confidence in exchange of money. Now this entire incident of taking money appears to be prima facie illegal, however, it was not so

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<sup>42</sup> Deprivileging bribe: On overruling the majority verdict in P.V. Narasimha Rao vs State, *available at:* <https://www.thehindu.com/opinion/editorial/deprivileging-bribe-on-overruling-the-majority-verdict-in-pv-narasimha-rao-vs-state-cbispe-1998/article67917031.ece> (Last visited on 15<sup>th</sup> May 2024 at 6 pm)

for those who will vote after taking bribe in the light of *P V Narasimha*, however, as the legal situation now has been changed with *Sita Soren*, such illegal incidents would be considered as an offence.

On one hand India is trying to achieve the target of \$ 5 trillion economy while on the other hand India's position as a corrupt nation is getting stronger every year as it can see in the recent Global Corruption Report. Thus, some serious measures are required to curb the evil of bribery and corruption. Moreover, according to the study, the judgment of *Sita Soren* is one such contribution from the side of Judiciary of the country.

This judgment has overruled the controversial judgment of *P V Narasimha Rao* which in some sense was validating the offence of bribery in certain manner committed by member of legislature. From the day the judgment of *P V Narasimha* was passed, it came into controversy wherein majority of the constitutional scholars supported the minority view that judgment. Thus, it was always expected that one day this judgment would get overruled and the same happened through *Sita Soren*.

The study is of the view that nothing within the purview of corruption should be provided with any immunity under the provisions of the constitution. The offence of bribery is a crime of serious nature which directly affects the foundation of healthy democracy and when the same crime is committed by a member of legislatures then it could impact the whole country in an adverse manner. It would not be wrong to say that "the offence of bribery is agnostic to the performance of the agreed action and crystallizes on the exchange of illegal gratification." It is important to note that the members of legislatures represent the interest of general public in the houses and thus, must be judged on the higher standards as compared to the common public of the country.

Another angle through which it could be seen is that conducting an election for a country like India is a mammoth task. For instance, the upcoming elections of 2024 will be conducted in seven different phases wherein a total of around 96.8 crore people will cast their vote.<sup>43</sup> Therefore, the consideration of the issue in *Sita Soren* was important because the legal life of any government remains completely dependent on the support of majority in the house, thus if the offence of bribery is provided immunity, then it could be easily used as a tool to destabilize the

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<sup>43</sup> 2024 Lok Sabha Election: Interesting Facts and Figures by ECI ahead of Lok Sabha Election, India, available at: [https://www.jagranjosh.com/general-knowledge/interesting-facts-and-figures-about-2024-lok-sabha-election-1710593703-1#google\\_vignette](https://www.jagranjosh.com/general-knowledge/interesting-facts-and-figures-about-2024-lok-sabha-election-1710593703-1#google_vignette) (Last visited on April 7, 2024).

government. This would not only waste a lot of money but would also waste the precious time of the houses which otherwise could be used for passing various important legislation and taking important legislative decisions for the country.

Also, it would be interesting to see the judgment of the Supreme Court in the petition filed by Mahua Moitra case wherein she was expelled from the Lok Sabha on the basis of the report submitted by the Ethics committee for her involvement in the alleged “cash-for-query charges.”<sup>44</sup> The study is of the view that the Supreme Court will uphold the action of her expulsion from the Lok Sabha based on the precedent of Sita Soren.

## 5. Conclusion

The study focuses on the current laws that deal with bribery and parliamentary immunity. The method used in the analysis points to the relationship between the demand for accountability and openness and the immunity granted to the elected officials to protect the legislative processes’ autonomy in the country. Thus, the provided results point to the fact that while the granting of parliamentary immunity is necessary to protect the parliamentary work and democratic processes in general, it should not encourage scandals and cases of corruption. To this effect, the study recommended that there is need for enhancement of the legislation governing anti-bribery besides enhancement of mechanisms to tackle the issue even for those under parliamentary immunity. The implications for the future are that the society may be prepared to introduce the amendments to the legislation to fine tune the immunity and to avoid abuse of this status to strengthen the people’ confidence in the democracy. Enhancing the fight against corruption measures, within the parliamentary legislation can also encourage more responsible behavior among the members of the parliament, and thus enhance the ethical practices within the leadership.

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<sup>44</sup> Mahua Moitra Summoned by Probe Agency in Foreign Exchange Violation Case, India, available at: <https://www.ndtv.com/india-news/mahua-moitra-summoned-by-enforcement-directorate-on-monday-in-foreign-exchange-violation-case-5063495> (Last visited on April 7, 2024).

## Situational Analysis of the Women Engaged in the Farmer Producer Organizations in Punjab

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### Abstract

*Punjab has a critical role in securing national food security and self-sufficiency. But due to uneven dependence on paddy-wheat cycle and limited coverage of MSP the agriculture has become less remunerative and results in the migration of males of the family to meet the needs of the family. This rising problem leads to feminization of agriculture. The study tries to find out information about the various socio-economic factors in play due to feminization of agriculture by collecting data from women indulged in FPOs located in the state of Punjab. As per the data available NABARD promoted FPOs are present in 19 districts. Among 19 districts, 13 districts of Punjab were chosen randomly on the basis of different agro-climatic zones. The sample size of the study is 76. The women were chosen as per their availability. The study highlights the status of land ownership, health related issues, time management related issues, relationship between literacy rate and leadership roles, issue and dependence of women on male counterparts for money and poses as a constraint for uplift of socio-economic status of women indulge in agriculture.*

**Keywords:** *Paddy-Wheat, remunerative, feminization, FPOs*

### 1. Introduction

The state of Punjab is of utmost importance for ensuring national food security and self-sufficiency. The state is recognized as the breadbasket of India. Punjab has been a trailblazer in agricultural growth, as well as a pioneer of the nation's Green Revolution. Its agricultural GDP grew at 5.7% per annum during the period from 1971–72 to 1985–86, which was more than double the growth rate of 2.31% achieved at all-India level in the same period. But after 1985–86, the green revolution showed signs of waning and Punjab's agricultural growth slowed to 3% per annum over the period 1985–86 to 2004–05 (Gulati, 2021). Punjab covers 1.53% of the entire nation's land area, providing 29% of rice and 38% of wheat to the nation's core food grains in 2016-17 (Punjab at A Glance-Economic

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Indicators). As per Punjab Economic Survey 2021-22, though declined, Punjab, in 2021-22, had a share of rice and wheat at 24.56% and 30.50%, respectively towards national food security. Given a fall in agriculture's percentage of the State's total Gross State Value Added (GSVA) it still accounts for the vast majority of jobs. Agriculture remains the primary source of income for the inhabitants of the State. More than 50% of the rural population still relies on agriculture for a living and job. However, agricultural yields in the state have remained stagnant throughout the years, while cultivation costs have risen dramatically. Instead of crop diversification, the Wheat and Rice Cropping Pattern is spreading throughout the state, having a considerable impact on agricultural productivity. It has resulted in a lopsided cropping pattern in favor of these two commodities. Further, rise in fragmented land holding, huge gap between the returns and cost of production and cost of living, yield gap per kg and per hectare has come down drastically in Punjab and resulted in agriculture becoming less remunerative. In addition to this problem of debt is another major issue attached with agriculture in Punjab. As per Indian Council of Social Science Research (ICSSR) study (results published in India Today on 11<sup>th</sup> December, 2020), each agriculture household has an average debt per owned acre of Rs 1,16,801.97 and per operated acre of Rs 71,203.60.

Punjab's economy is mainly dependent on agriculture and its allied sector. As discussed above, agriculture has become less remunerative and young minds of Punjab seeking jobs abroad due to lack of government and private opportunities, a new issue is emerging in the state. This has resulted in the feminization of agriculture. Women play an important part in the growth of agriculture and related fields such as main crop cultivation, raising animals, horticulture, post-harvest activities etc. This reality has been taken for granted and long overlooked. As mentioned, agriculture becoming less remunerative and to meet the needs of family and support the families' male counterparts and their sons are migrating leading to rising this phenomenon of feminization of agriculture.

The term "feminization of agriculture" is used to describe female increased engagement and responsibility in agriculture. In India, women have traditionally played an important part in agriculture, both as cultivators or laborers. However, their efforts have frequently gone unappreciated and ignored, and they have encountered several impediments to equal involvement and decision-making in the field. Women have a crucial role in agricultural and rural economies across developing countries. Their duties differ by area and are rapidly evolving globally. Empowering women through employment reduces inequalities and improves their standing. It is only achievable if we, as a culture, provide opportunities for females to increase their prosperity and skills through literacy and work keeping in mind work life balance and health etc. It has previously been established through much

research that women's engagement significantly contributes to the family income, but the dual role they play as money generators and homemakers has certain negative consequences for the women.

Further, despite the potential increase in household income due to their contributions to farm work, women typically have limited or minimal authority in determining its allocation (Garikipati, 2006). In addition, women have to shoulder additional responsibilities and they often bear the primary burden of managing household affairs and attending to the needs of children and elderly family members (Subhanil, 2011). This entails not only overseeing daily household tasks but also providing emotional and physical care, reflecting the multifaceted roles that women play within the family structure. In addition, the representation of women in agriculture often entails their involvement in precarious and poorly compensated employment, which ultimately leads to disempowerment (Kelkar & Wang, 2007).

In a nutshell Punjab's agricultural sector faces a number of issues, including stagnant yields, increased cultivation costs, and mounting debt. These concerns are exacerbated by the feminization of agriculture, emphasizing the importance of gender-sensitive policies and programs to empower women while also addressing the fundamental problems in the agricultural industry.

### **1.1 Farmer Producer Organizations (FPOs) and Women**

FPO (Farmer Producer Organization) is basically an integration or group of producers. It allows farmers to increase production through efficient, cost-effective, and sustainable resource usage, quality inputs, contemporary technology, and increased bargaining power, resulting in higher returns for their output through collective action and beneficial teamwork. A Farmer Producer Organization is a legal entity founded by primary producers directly involved in agriculture and allied activities, such as agricultural production, dairy, fishing, animal husbandry, poultry, and bee-keeping. A FPO can obtain the legal status of a cooperative organization or business, which allows for the distribution of profits among its members. The fundamental aspect of FPO is that it may be constituted for either farm or non-farm activities.

Farmer Producer Organizations (FPOs) play an important role in empowering women in agricultural and rural areas. These smallholder farmer-led groups seek to improve their members' socioeconomic standing by collaborating on production, processing, marketing, and value-added operations. FPOs provide women farmers with collective bargaining power, access to markets. FPOs offer training and

capacity-building programs for enhancing their agricultural knowledge, technical skills, and business acumen. FPOs promote women's leadership and participation in decision-making processes, empowering them to take on leadership roles. By participating in FPO activities, women gain confidence, self-esteem, and a sense of empowerment, challenging traditional gender roles and norms in agriculture and society.

Farmer Producer Organizations (FPOs) play a transforming role in strengthening women in agriculture by providing them with economic opportunities, capacity-building assistance, access to resources, social capital, and a say in decision-making. Women farmers may overcome obstacles, reach their maximum potential, and make a difference to long-term rural development and food security by harnessing FPOs' collective strength.

## 2. OBJECTIVES

1. To study the role of women engaged with FPOs in agriculture and allied activities.
2. To determine the socio-economic status of these women.

## 3. METHODOLOGY

The present investigation took place in the state of Punjab. FPOs were selected on the basis of two basic Criteria which were as follows:

- (i) **Agro-climatic zone-** As per the data available FPOs are present in 19 districts of Punjab. Study has been conducted in 13 districts of Punjab which were in turn chosen randomly on the basis of different agro-climatic zones in such a way that from each zone at least two districts must be selected for the purpose of study. List of selected districts is as follows:
  - Zone 1-Pathankot, Rupnagar and Hoshiarpur
  - Zone 2-Fatehgarh sahib, Gurdaspur, Amritsar and Kapurthala
  - Zone3-Ludhiana, Sangrur, Patiala and Tarn Taran
  - Zone 4-Bhatinda and Shri Muktsar sahib



**Map:- Punjab Agro-climatic Zones (source: Krishi Vigyan Kendra, Faridkot)**

**(ii) Activities-** FPOs are indulged in various activities such as horticulture, dairy etc. In total there were 66 FPOs in 19 districts. From selected 13 districts, 22 FPOs i.e. one third were chosen which were working in different sectors, if available; otherwise FPO working in the same sector was taken in consideration for the purpose of study.

### 3.1 Selection of Respondents

In a total response of 76 respondents were noted down. The rationale for the number of respondents is the non-fixed number of women indulged in these FPOs. Further, on the day of field visit 76 women members associated with FPOs were present and data was collected from them. Furthermore, data collection was conducted with informed verbal consent from each participant. Prior to collecting any data, the researchers ensured that participants were fully informed about the purpose of the study,

### 3.2 Tools of enquiry and data collection

For the purpose of study, an interview schedule will be prepared. Data was collected on a pretested interview schedule which covered different aspects of the study.

### 4. Observations and Inferences

Women who are involved in agriculture and related activities i.e. women who are working for at least 7 or more hours daily or need-based generally manage complex



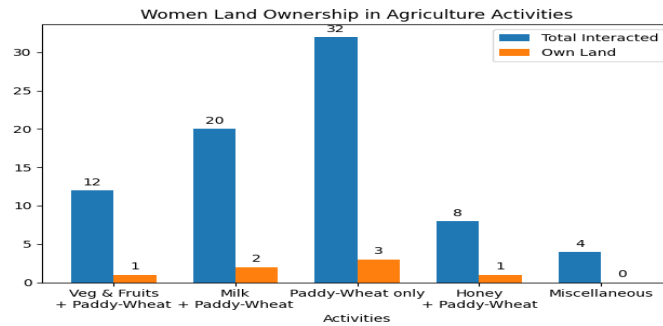
households and pursue several income sources. They typically engage in crop production, animal care, food processing and preparation, wage employment in rural enterprises, fuel and water collection, family care, and home maintenance. They rely heavily on occupations that are not considered "economically active employment" in national accounts. This research tried to find out the various factors associated with socio economic empowerment of women in agriculture.

#### 4.1 Land Ownership

| FPO Activity wise                  | Number of Women interviewed | Women own land in their name |
|------------------------------------|-----------------------------|------------------------------|
| Vegetable and Fruits + Paddy-Wheat | 12                          | 1                            |
| Milk+Paddy+Wheat                   | 20                          | 2                            |
| Paddy+Wheat only                   | 32                          | 3                            |
| Honey+Paddy+Wheat                  | 08                          | 1                            |
| Miscellaneous                      | 04                          | 0                            |
| <b>Total</b>                       | <b>76</b>                   | <b>7</b>                     |

**TABLE 1.0 - Women Owning Land**

Women throughout India are among the most economically and socially disadvantaged in the entire world. Existing data on women's land ownership in India is incomplete, but it paints a bleak picture: despite the fact that 85 percent of economically active women work in agriculture, just 13 percent own agricultural property. The case is also similar for the state of Punjab. Table 1.0 depicts that out of the 76 womens interacted only 11 womens have stated that they own any land on their name which is only 9.21%. It was observed that women were becoming more active in household decision-making, possessing and using bank accounts and mobile phones. However, there is still a significant disparity in terms of property ownership.



The statistical narrative unfurls a systemic conundrum where the prevalence of land ownership among women is not only disproportionately low in relation to their participation but also presents a numerical insignificance ( $\sigma^2_{land\_ownership} \ll \sigma^2_{participation}$ ), suggesting a tenuous grip on agrarian assets which are traditionally considered bastions of economic leverage. Hence, in the context of fostering equitable agricultural development, addressing the skew in land ownership is not merely a matter of economic rectitude but a sine qua non for the advancement of women within the agricultural paradigm. The theoretical ramifications of these findings suggest that interventions designed to ameliorate the constraints on women's land ownership could catalyze broader socio-economic dividends, paving the way for an augmented female presence in agricultural leadership and decision-making echelons.

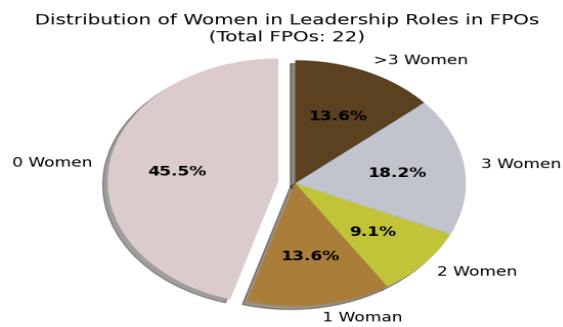
#### 4.2 Women as CEO/Member in the Board of FPO

| Female CEO/Members in Board   | Number of FPOs | Percentage |
|---|----------------|------------|
| 0   | 10             | 45.45      |
| 1   | 3              | 13.63      |
| 2   | 2              | 9.09       |
| 3   | 4              | 18.18      |
| More than 3   | 3              | 13.63      |
| <b>Total Number of FPOs having Women as CEO/member in the board</b> | 22             |            |

**TABLE 2.0 - Women as CEO/Member in the Board of FPO**

Women in India encounter numerous hurdles in the male-dominated field of agriculture, impeding their advancement and representation throughout the value

chain. From cultural and social contexts and restricted chances for leadership roles, the industry has long been programmed to anticipate that men possess absolute authority over decisions. Table 2.0 depicts the same. Table 2.0 depicts that out of 22 FPOs studied 10 FPOs don't have any female CEO/member in the board which is nearly half of the number of FPOs having any CEO/member in the board. Further, there were only three FPOs which were having exactly one female as CEO/member of the board. The number of FPOs which were having exactly two females as CEO/member of the board stood at two. The number of FPOs which were having exactly three and more than three females as CEO/member of the board stood at four and three respectively. The reason for this is lack of interest and interference from the side of male counterpart.

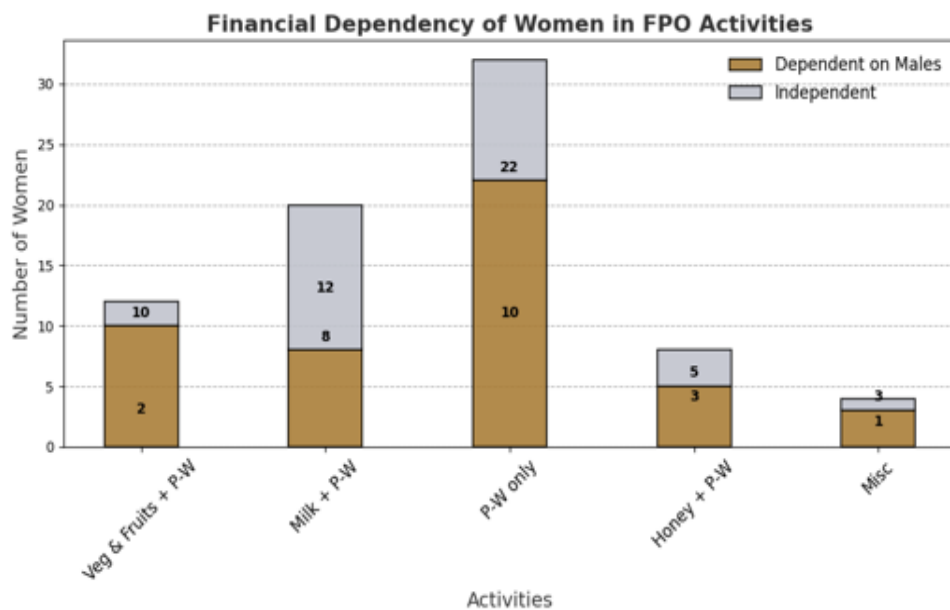


| FPO Activity wise                  | Number of Women interacted | Women dependent on male for money |
|------------------------------------|----------------------------|-----------------------------------|
| Vegetable and Fruits + Paddy-Wheat | 12                         | 10                                |
| Milk+Paddy+Wheat                   | 20                         | 08                                |
| Paddy-Wheat only                   | 32                         | 22                                |
| Honey+Paddy+Wheat                  | 08                         | 05                                |
| Miscellaneous                      | 04                         | 03                                |
| <b>Total</b>                       | <b>76</b>                  | <b>48</b>                         |

#### 4.3 Women Dependent on Males for Money

**TABLE 3.0 - Women Dependent on Men for Money**

The study shows that though women are spending on an average 10.40 hours (see table 4.0) daily on the farms along with managing the household chores etc but still dependent on the male counterparts for money. They were not getting a fixed amount, and it was variable as per the needs of women. It has been observed each and every time women have to ask for money despite doing rigorous labor in farms or allied activities. Table 3.0 shows that out of 76 women interacted 48 said that they were dependent on male counterparts for money. This finding underscores the prevalence of financial dependence among women engaged in agricultural activities, despite their substantial contributions to farm work and household responsibilities. Further, it was observed that women engaged in maintaining cattle and selling milk and ghee were less dependent on male counterparts for money. The issue faced by these women was only of lesser price for milk and ghee etc. This suggests that while engagement in certain income-generating activities may provide some degree of economic independence, women continue to encounter barriers such as unequal compensation and market challenges.



#### 4.4 Time Spent in Agricultural Activities

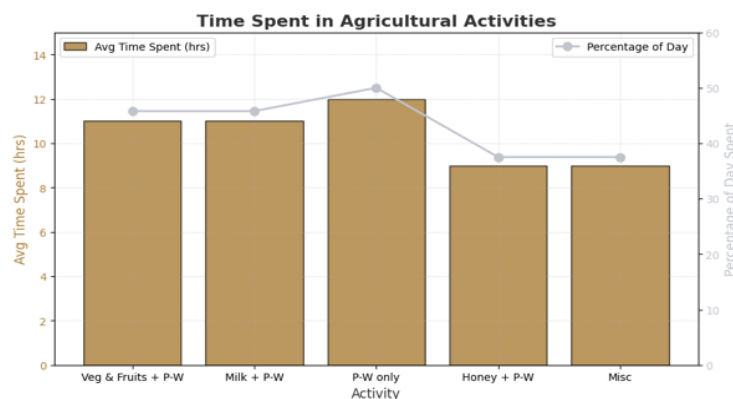
Table 4.0 depicts that woman engaged in activities related to vegetables and fruit in addition to paddy-wheat spent on average 11 hours i.e. 45.8% of time of day in agriculture activities. It has been observed that women shoulder the responsibilities of looking after the cattle e.g. feeding, milking, converting of milk for 'ghee' for

sale and home consumption.

| FPO Activity wise   | Number of Women interacted | Avg time spent on agriculture related activities (in hrs) | Percentage of time spent on agriculture related activities in a day of 24 hrs |
|---|----------------------------|---|---|
| Vegetable and Fruits + Paddy-Wheat  | 12                         | 11  | 45.8  |
| Milk+Paddy+Wheat  | 20                         | 11  | 45.8  |
| Paddy+Wheat only  | 32                         | 12  | 50.0  |
| Honey+Paddy+Wheat   | 08                         | 09  | 37.5  |
| Miscellaneous   | 04                         | 09  | 37.5  |
| Combined average time spent on agriculture related activities and household chores (in hrs) |                            | 10.40   |   |

**Table 4.0 - Time spent in agricultural activities**

The number of average times in hours spent by women engaged in a combination of FPOs engaged in milk and paddy-wheat stood at 11 hours i.e. 45.8%. In addition to this, women engaged in the activity only related to paddy-wheat spent an average 12 hours in the field helping the male counterparts. Further, women engaged in activities related to honey plus paddy-wheat and other activities spent nine hours respectively on these activities. It was depicted from data that on an average woman engaged in agriculture and allied sector spends more than 10 hours in these activities. Additionally, it was observed that women have to take care of her family, prepare food and do other work at home and end up finding no time for leisure and this also impacted the upbringing of the children and general maintenance of the family.

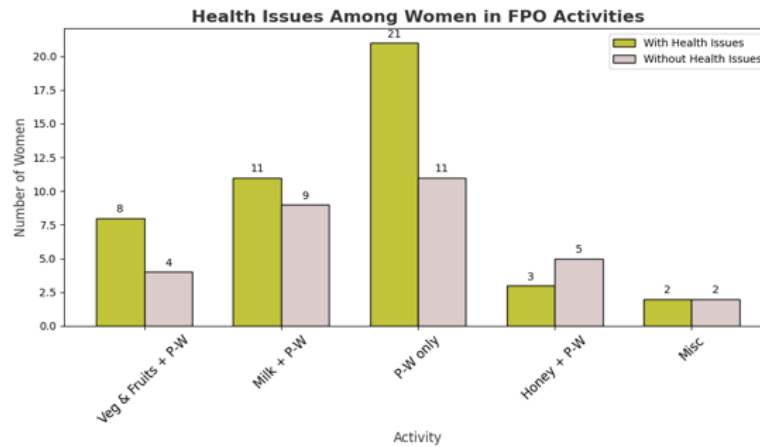


#### 4.5 Health Issues

| FPO Activity wise                  | Number of Women interacted | Having any health issues |
|------------------------------------|----------------------------|--------------------------|
| Vegetable and Fruits + Paddy-Wheat | 12                         | 08                       |
| Milk+Paddy+Wheat                   | 20                         | 11                       |
| Paddy-Wheat only                   | 32                         | 21                       |
| Honey+Paddy+Wheat                  | 08                         | 03                       |
| Miscellaneous                      | 04                         | 02                       |
| <b>Total</b>                       | <b>76</b>                  | <b>45</b>                |

**Table - 5.0 - Health Issues**

It has been observed that the double burden of long working hours in the farm or allied activities and responsibility to manage home resulted in deteriorating health of women. Table 5.0 presents empirical evidence to support this observation. A significant number of the 76 women included in the analysis, 45 women in total, are reported to be dealing with at least one health issue. This research emphasizes the significance of the rigorous workload and duties put on women in agricultural settings. Tackling the health difficulties encountered by women in agriculture necessitates comprehensive treatments that identify and address the underlying causes of their health problems. This could include efforts aimed at reducing workloads through mechanization or labor-saving technologies, enhancing access to healthcare services and resources, assisting with household duties and childcare, encouraging gender parity within families and adding awareness regarding the importance of taking care of oneself.

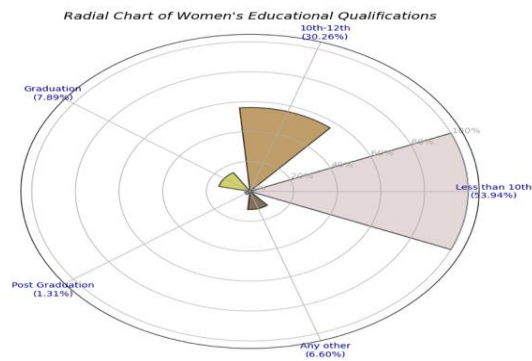


#### 4.6 Educational qualification

| Educational Qualification | Frequency | Percentage |
|---------------------------|-----------|------------|
| Less than 10th            | 41        | 53.94      |
| 10th-12th                 | 23        | 30.26      |
| Graduation                | 06        | 7.89       |
| Post Graduation           | 01        | 1.31       |
| Any other qualification   | 05        | 6.57       |

**Table - 6.0 - Educational Qualification**

Table 6.0 shows that out of 76 women 41 were qualified less than 10th standard. The number of women whose qualification lies between 10th and 12th was 23. The number of women whose qualification was graduation or post-graduation or above was six and one respectively. The women members with other qualifications like computer diploma were five. In general, Table 6.0 highlights the need of taking into account the educational qualifications of female FPO members. It emphasizes the wide range of educational achievement among members, from individuals with no formal schooling to those with advanced academic credentials or specialized training. However, it has been observed that education qualification and women being a Member/CEO are not directly related to FPOs growth. Though, recognizing educational qualification can help to inform focused capacity building programs customized to the individual requirements and skill capacities of women members, resulting in upliftment as members and CEOs in boards, their empowerment and the FPO's success as a whole.



#### 4.7 Received training

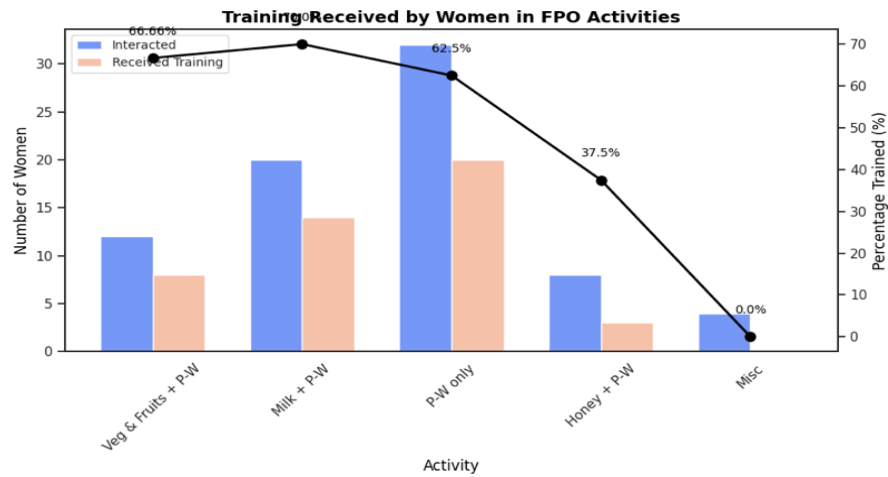
| FPO Activity wise                  | Number of Women interacted | Number of women received training | Percentage |
|------------------------------------|----------------------------|-----------------------------------|------------|
| Vegetable and Fruits + Paddy-Wheat | 12                         | 08                                | 66.66      |
| Milk+Paddy-Wheat                   | 20                         | 14                                | 70.00      |
| Paddy-Wheat only                   | 32                         | 20                                | 62.5       |
| Honey+Paddy-Wheat                  | 08                         | 03                                | 37.5       |
| Miscellaneous                      | 04                         | 00                                | 00.00      |

Table - 7.0 - Received Training

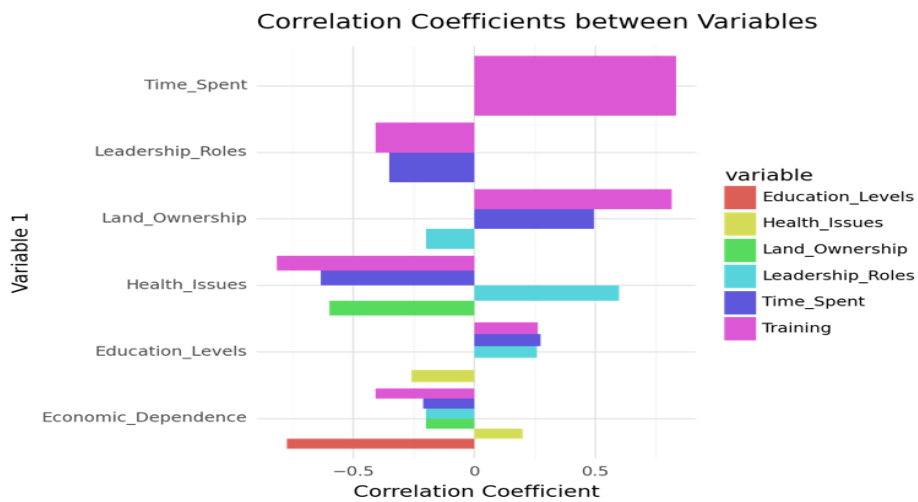
As the objective of FPO is to enhance the income of members hence capacity building is necessary. Under the guidelines capacity building is the key responsibility of the Producer Organization Promoting Institute (POPI). POPI has a very crucial role to play in the success of FPOs. They have played a critical role in mobilization of farmers for the formation of FPOs, ensuring market linkages to the produce of the FPOs etc. POPI also has the responsibility of providing handholding support to the FPO in running their enterprise. They have substantial expertise in collective action and community institutions. These figures represent the level of participation and training of women in various activities. It has been observed that out of 76 women's only 45 women have received training. In the "Milk+Paddy+Wheat" category, 70% of the women engaged received training, the greatest rate among the listed activities. In the "Miscellaneous" category, no women were trained. This demonstrates a gap in capacity building initiatives for women active in these unspecified activities, highlighting the requirement for specific measures to ensure that every participant has access to training



opportunities irrespective of the exact activity in which they are involved.



### 5. ANALYSIS OF VARIOUS VARIABLES



- The study reveals how closely related socioeconomic factors are by using mathematical calculations. It shows that if one factor improves, another related one also gets better, highlighting a cooperative connection that supports the roles of women in agriculture.
- On the other hand, when two factors are negatively related, it prompts us to examine deeper into the reasons behind these links, potentially uncovering unfair barriers. For example, if women's health problems and their dependence on others for money are negatively linked to their education or ownership of land, this points to deep-seated challenges that might need corrective policies.

- The collected data shows a complex interaction between different factors, reflecting the real-life experiences of women in Farmer Producer Organizations (FPOs) and the broader workings of the agricultural sector. Positive links suggest that improvements in areas like education could lead to better outcomes in many areas, including more leadership opportunities and less financial dependency.
- For instance, the analysis of study suggests that negatively correlated between owning land and depending on others financially indicates that giving women more property rights could also make them economically independent. This highlights the role of land ownership in empowering women socio-economically. Also, the link between women's health and other factors suggests that better health could lead to more economic productivity and less time lost to illness.
- The strong link between education levels and training underlines the need for educational programs that build skills and capabilities. Investing in women's education is crucial as it supports their effectiveness and leadership in FPOs. The results paint a picture where empowering women in one area can lead to widespread positive changes in various aspects of their work and personal lives.
- The data from the study adds to the academic discussion on gender and agricultural economics by mapping out the quantitative relationships defining women's roles in FPOs. It also motivates the creation of varied development programs addressing the issues found in the study. The insights from the analysis of data collected provide a basis for further research into why these relationships exist, guiding future efforts to improve women's lives in agriculture.

## Conclusion

The research done in the state of Punjab focuses on the varied problems that women confront in agriculture and related activities.

- The feminization of agriculture, a process caused by the migration of male family members to seek employment elsewhere, has increased the burden on women, who are increasingly becoming the center of agricultural households. Key findings show a significant disparity between genders in title to land, with only a tiny proportion of women holding property in their names.
- Furthermore, the absence of women in managerial roles within FPOs highlights broader social issues about gender equality and access to processes for making decisions. Notwithstanding their immense

contributions to agricultural work, women continue to rely heavily on males for financial support. This dependence, combined with the weight of family management and agricultural tasks, highlights the need for policies and programs that strengthen women both financially and socially. The paper also emphasizes the negative impact of extended working hours on women's health, underlining the critical need for measures to reduce workplace risks and offer adequate medical support to women in agriculture.

- Women in agriculture have varying levels of educational attainment, with a large proportion having inadequate formal schooling. However, there is an enormous interest in capacity-building activities, as indicated by the number of women trained through FPOs.
- Finally, tackling women's agricultural difficulties requires a multidimensional approach that includes accessibility of resources, training programs, and measures to combat ingrained gender stereotypes. Empowering women in agriculture is critical not only for their personal well-being, but also for the long-term viability and help them to earn livelihood at the same place of residence.

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## Indian Elections: Issues and Challenges

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### Abstract

*Election is an indispensable part of a democratic country. The conduct of fair election can be assured when the rights of the people involved in elections are granted and further exercised in the right spirit. The effective use of the rights of the voter and the candidate are of immense importance in ensuring fair elections. The researcher has applied doctrinal research methodology with analysis of the legislations concerning elections along with the secondary sources. The laws dealing with the rights of the electorate have been studied in light of the issues, which hinders the conduct of 'fair election'. The elections, the process and the rights in India are regulated by the Constitution, The Representation of People's Act, 1950, The Representation of People's Act, 1951, The Conduct of Election Rules, 1961, The Registration of Electors Rules, 1960 and The Bharatiya Nyaya Sanhita, 2023<sup>1</sup>. Each part of elections in India is well regulated and the rights of the people are protected. Where the legislature has not dealt with an aspect, the judiciary has played an active role to interpret and provide justice. However, the elections conducted till date have faced issues and challenges in some form or the other, which goes against the concept of credible elections. To name few issues, they range from uneducated electorate along with few uneducated candidates entering politics, mis-use of social media and misinformation, booth capturing which disrupts the fairness of polling, bribery done to induce the voters or the candidates, loosely regulated election funding including electoral bonds and campaigning which encourages inequality and corruption, the issue of simultaneous elections and unequal representation of gender in elections.*

**Key Words:** Elections, Rights, Voters, Candidates, Issues.

### 1. Introduction

Elections is a result of political and civil rights granted to the people. To be specific, it is the right to vote and right to contest elections that helps shape the election process. The conduct of free and fair elections is one of the basic features of the Constitution, however the right to vote and contest elections have been recognized as statutory rights, as per the Representation of People's Act, 1951. Even the

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<sup>1</sup> The Bharatiya Nyaya Sanhita, 2023 has replaced the Indian Penal Code, 1860.

judiciary in *N.P. Ponnuswami v Returning Officer*<sup>2</sup>, *Jamuna Prasad Mukhariya v Lachhi Ram*<sup>3</sup> and *Jyoti Basu v Debi Ghosal*<sup>4</sup> has interpreted the right to vote and contest election as statutory rights. Further, Article 326 of the Indian Constitution provides that a person who has attained the age of 18 years is entitled to vote. No person can be prohibited from voting on the grounds of religion, race, caste or sex. Further, the RPA, 1951 may disqualify a person on grounds of non-residence, unsoundness of mind, crime or corrupt practice. The right to vote comes from the statute but it has its basis in the Constitution.<sup>5</sup>

## 2. Issues and Challenges

A good electoral system can be ensured through a society that helps the government in proper implementation of the laws and adherence to them. The cooperation is required between the government and the people in order to achieve the benefits of democracy. The citizens are able to hold their governments accountable through elections, ensure policies are developed in interest of wider public and ensures deeper civic engagement.<sup>6</sup> The elections in India are characterized by huge scale of operations in terms of election process and the campaigns. The conduct and management of the elections which is regulated at every step can also faces certain issues and challenges. To name a few, the issues that have been identified include uneducated electorate, mis-use of social-media, booth capturing, lack of transparency in election funding, bribes that influence the society, issue of simultaneous elections and the unequal representation of gender in politics.<sup>7</sup>

### 2.1 Uneducated Electorate

Education is one of the most important aspects to ensure that the electorate understands their rights, the political system, the elections they are part of and where and how to vote. They should be able to participate in the election process in the right spirit.<sup>8</sup> Education in terms of elections can be voter education and civic education. An educated citizen is attentive, knowledgeable and participatory and

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<sup>2</sup> AIR 1952 SC 24 (21).

<sup>3</sup> 1954 2 SCC 306.

<sup>4</sup> AIR 1982 SC 983.

<sup>5</sup> M.P. Jain, *Indian Constitutional Law*, 826 (Lexis nexis, 7<sup>th</sup> ed. 2014).

<sup>6</sup> Prof George Mathew, "Leap of Faith: Journey of Indian Elections", Vol. II, No. 1, *A Web India Journal of Elections*, 211 (2022).

<sup>7</sup> Electoral Integrity Project, "Electoral Integrity Global 2019-2020" (May 2022).

<sup>8</sup> "Voter and Civic Education" available at: <https://www.un.org/womenwatch/osagi/wps/publication/Chapter5.htm> (Last visited on Mar 4, 2024)

the uneducated is not.<sup>9</sup> Education determines the political attitudes of the people the most when compared with other demographics like sex, age, residence, occupation, income and age. The person with no education or limited education acts differently in the political sphere than a person with higher levels of education.<sup>10</sup> Voter education is one of the components required for informed and ethical decision making of the voters through choice, awareness and access to relevant information. The ECI has been very active in educating the voter and spreading awareness about the benefits of voting through various initiatives like workshops, awareness programs and regulations contributing to disclosure of information regarding the rights of the voters and information about the candidates.<sup>11</sup>

One of the initiatives of the ECI which cover electoral education started in 2009 was the SVEEP Program<sup>12</sup>. The program has not been implemented across various States; however, it has not been able to achieve its prime objective of voter education in a uniform manner. The implementation of the SVEEP program is not uniform in all the States. While states like Kerala and Andhra Pradesh have emphasized on quality voting, other States are having a hard time to even formulate a policy on informed voting. The need is for SVEEP to have collaborative approach with other actors of the society for better results. It should engage media, organizations and other District/State level Election Officers for better reach in the States where the level of education and awareness is low.<sup>13</sup>

In addition to the voters, when it comes to the candidates, no educational qualification has been prescribed for elections to the House of People and State Legislative Assemblies. However, an attempt was made by the local governments of Haryana to include certain education criteria to contest elections in 2015. In the case of *Rajbala and Others v State of Haryana and Others*<sup>14</sup>, Section 175 of the Haryana Panchayat Raj Act disqualified people on the basis of five grounds. One

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<sup>9</sup> “What is the education’s impact on civic and social engagement”, available at: <https://www.oecd.org/education/innovation-education/37425694.pdf>. (Last visited on Mar. 6, 2024)

<sup>10</sup> *Ibid.*

<sup>11</sup> Archit Lohani and Priyal Pandey, “Towards informed discourse and voter education: A critique of E-Campaigns”, available at: <https://www.orfonline.org/research/towards-informed-discourse-and-voter-education-a-critique-of-e-campaigns>. (Last visited on Mar. 9, 2024)

<sup>12</sup> SVEEP is ‘Systematic Voters Education and Electoral Participation’, a flagship programme by ECI. It aims at promoting voter education, voter awareness and voter literacy in India. It uses various platforms of communication to achieve its goals like Print Media, Electronic Media, Social-Media and more, available at: <https://ecisveep.nic.in> (Last visited on Mar. 9, 2024)

<sup>13</sup> *Supra* note 11.

<sup>14</sup> 2016 2 SCC 445.

of the five grounds included disqualification of persons who did not possess certain specified educational qualifications. The petitioner challenged the law, as he was of the view that these provisions have led to disqualification of about 50% of the rural population who were otherwise eligible to contest elections.<sup>15</sup> The court held that it is not for the courts to declare legislation unconstitutional unless the legislation violates specific provisions of the Constitution.<sup>16</sup> The move was not appreciated by majority of people because it has led to mass disqualifications and a pre-filtered panel of candidates has been brought in the front, which implies that a citizen cannot judge the best candidate to represent their interests. It is to be noted here that the State did try have education as a qualification which was not appreciated by the people. This calls for educating the society about the benefits of having more educated legislators.

Majority of the politicians in India lack the educational qualifications. According to ADR Report<sup>17</sup>, 121 candidates in the recent 2024 Lok Sabha elections have declared themselves as illiterate, 359 have studied till 5<sup>th</sup> grade, 647 have studied till 8<sup>th</sup> grade, 1303 have 12<sup>th</sup> grade education, 1502 have graduation degrees and 198 with doctorate degrees.<sup>18</sup> Thus, there is lack of education among the voters and candidates. The other issues of elections i.e., money power, bribes, casteism, criminalization of politics and more can be reduced by educated voters through informed voting and by setting certain educational qualifications for the candidates.<sup>19</sup>

## 2.2. Misuse of Social-Media

In the digital age, social networks have great potentials for the political parties, the ECI and voter education as well. The ways in which we consume and communicate information has changed with the emergence of different platforms like Facebook,

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<sup>15</sup> “Case Analysis: Rajbala v. State of Haryana (2016) 2 Scc 445”, available at: <https://vidhinama.com/case-analysis-rajbala-v-state-of-haryana-2016-2-scc-445/> (last visited on July 5, 2024).

<sup>16</sup> *Supra* note 14 at 446 para 64-65.

<sup>17</sup> ADR, “Analysis of Criminal Background, Financial, Education, Gender and Other Details of the Candidates and Analysis of Assets Comparison of Re-Contesting MPs in the Lok Sabha Election 2024 (Phase 1 to 7)”, May 2024.

<sup>18</sup> PTI, “LS Polls, ‘121 candidates declare themselves as illiterate, finds ADR”, *The Economic Times*, May 23, 2024.

<sup>19</sup> Hanumanthappa D G, “The Importance of Voter Education in India”, Vol. 9, No. 2, *International Journal of Political Science*, 77 (July-Dec 2023)



Twitter, YouTube and Instagram.<sup>20</sup>

The social issue during the electoral process is the abuse of social networks by providing false news, offensive comments through fake profiles, network colloquially called 'human bots', spread of hate speeches, misinformation and rumors. There has been increased use of social media for political campaigns since the last ten years, with Facebook being the most relevant, where a fan page of the candidate on Facebook is a regular practice. But again, there have been cases of fake profiles which leads to negative campaign to denigrate opponents.<sup>21</sup>

It can be said that the 2019 Indian elections were victim of hate speeches and disinformation, however, now the technology that has evolved even faster. The 2024 elections are witnessing the rise of Artificial Intelligence. In a YouTube video, Mr. Narendra Modi was seen speaking about Sardar Vallabhbhai Patel in Hindi followed by the same speech in three different languages in the same video. His lip movement was synced and his voice timbre was maintained. It was hard to say if it was fake or real, however, it was a mix of both. Other than this, two fake videos of famous actors, Aamir Khan and Ranveer Singh have gone viral in 2024, where they can be seen criticizing Mr. Modi and asked people to vote for the opposition Congress. Such deepfakes are increasing and are being used in other countries as well like USA.<sup>22</sup>

In India, as per Rule 3(2) of the Information Technology Rules, 2021, anyone can report a deepfake on the respective social media platform's grievance section or India's cyber-crime portal. After being reported, the social media platform is required to take down the content within 24 hours. However, it is feared till the content is taken down, the unregulated use of Artificial Intelligence during elections not only pollutes the election process but also affects the opinion of society.<sup>23</sup>

Then another issue is third party online campaigning and expenditure. Although the 2019 has been termed as one of the most expensive elections, the parties have reported very small amounts towards their social media spendings.

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<sup>20</sup> Professor Doctor Suad Arnautovic, "The Role of Social Media in Electoral Process- Guidelines for Election Stakeholders", Vol. I, No. I, *A Web India Journal of Elections* (October 2021-March 2022)

<sup>21</sup> *Ibid.*

<sup>22</sup> Aditya Kalra, Munsif Vengattil, Dhvani Pandya, "Deepfakes of Bollywood stars spark worries of AI meddling in India election", *available at*: <https://www.reuters.com/world/india/deepfakes-bollywood-stars-spark-worries-ai-meddling-india-election-2024-04-22/>. (last visited on Apr. 27, 2024)

<sup>23</sup> *Supra* note 20.

This reflects that the spendings on online campaigns is not by the parties directly but through people associated with the parties or the candidates. The present mechanism to know social media campaign expenditure includes '2019 Handbook for Media' rules on third party disclosure and manner of submitting election expenses including social media platforms.<sup>24</sup>

Various initiatives and guidelines like code of conduct for the parties and Internet companies on use of digital media for campaigns and digital campaign expenses have been formulated for ethical use by the ECI. However, not everyone follows these codes. The voluntary codes have limited effectiveness. Further with respect to online campaign expenditures, the parties do not report the actual amount spent by them. The need is to make such non-compliance a punishable offence, which will make the parties adhere to the rules

### 2.3. Bribes and Freebies

Bribes to the voters are used to influence the voting choices of the poorest and the most vulnerable. Attempting to buy votes with cash and other gifts is rampant in India. Competition tempts the parties to distribute cash and gifts in kind, like liquor.<sup>25</sup> An example of bribery case in 2015, the Telangana Congress President, Revanth Reddy had been accused by Anti-Corruption Bureau of paying 50 lakh cash to an Independent Member of the Legislative Council (MLC) to vote in favor of a Telugu Desam Party nominee in 2015 MLC polls in Telangana. The leader had allegedly promised the MLC another 5 crore after voting. Mr. Reddy had then filed a plea seeking closure of the case, which is due in the Supreme Court for hearing.<sup>26</sup>

Then in another recent case of *Arulraj and another v The Inspector of Police and Others*<sup>27</sup>, the Madras High Court criticized the police force for not acting in the correct manner in bribery cases suspecting some kind return expected by the police from the accused. The court further remarked that such inaction on part of the police has encouraged the people to commit more offences. The court passed

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<sup>24</sup> Niranjan Sahoo, International IDEA, "Political Finance in the Digital Age: A case study of India", 11-12, April 2024.

<sup>25</sup> Soutvik Biswas, "Why bribes usually don't buy votes for politicians", *BBC News*, May 22, 2018.

<sup>26</sup> "Cash for votes case: Supreme Court to hear plea by Telangana Congress President Revanth Reddy on January 5", available at: <https://www.barandbench.com/news/cash-for-votes-case-supreme-court-hear-plea-telangana-congress-president-revanth-reddy> (last visited on Jan 5, 2024)

<sup>27</sup> 2024 Live law (Mad) 290.

these remarks while hearing a petition booked under Section 171E of IPC<sup>28</sup> for allegedly distributing money in favor of the accused's wife who was contesting the Panchayat elections. The petition was filed to quash proceeding after reaching a compromise. The complaint was lodged in 2019; however, the police had not submitted the final report after the FIR. Taking note of it, the court directed the Director General of Police to furnish details of the bribery cases reported in 2019 and 2014 Tamil Nadu Parliamentary and Local Elections.<sup>29</sup>

Other than the bribes, the tradition of freebies has been part of the Indian politics since Independence. The first thing to be understood is whether the freebies are bribes in disguise. If yes, then taking or giving of bribes is an offence. Further, whether the freebies are akin to welfare schemes. The issue on freebies, whether the pre-election promises constitute 'corrupt practice of bribe' under Section 123(1)<sup>30</sup> of the RPA, 1951 was addressed by the court in *S. Subramaniam Balaji v Tamil Nadu*<sup>31</sup>. Mr. Balaji, a resident of Tamil Nadu, moved to the Madras High Court challenging the schemes of freebies adopted by two parties, i.e., DMK (Dravida Munnetra Kazhagam) and AIADMK (All India Anna Dravida Munnetra Kazhagam). He believed the promises of freebies by the State from its exchequer were unauthorized and unconstitutional. Further, the AIADMK also promised free gifts (like grinders, laptop's, green houses) if it won.<sup>32</sup> The court held that the pre-election promises do not form part of bribe as per Section 123(1) of the RPA, 1951. It is not a corrupt practice. It was observed that such schemes of the parties are schemes to enforce the Directive Principles of State Policy.<sup>33</sup> Thus, how does the State wish to implement the Directive Principles is decision of the State and the court cannot interfere in it. The courts will interfere only if the policy is against the statute, the Constitution or completely arbitrary in nature.<sup>34</sup>

Bribery is prevalent across the system. Even if bribery is reported, the culprits somehow manage to escape the liabilities. Section 173 of the Bharatiya Nyaya

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<sup>28</sup> Section 171 E of the Indian Penal Code has been replaced by Section 173 of Bharatiya Nyaya Sanhita, 2023. The punishment for bribery is the same and only the section has been changed.

<sup>29</sup> Upasana Sajeev, "Madras High Court Laments Political Favors Preventing Police from Acting Against Voter Bribery in Elections", available at: <https://www.livelaw.in/high-court/madras-high-court/madras-high-court-bribery-in-election-destroys-democracy-police-inaction-expecting-favours-264616?infinitemscroll=1> (last visited on July 28, 2024).

<sup>30</sup> The Representation of People's Act, 1951, s. 123(1). It provides: "Corrupt practices: Bribery."

<sup>31</sup> 2013 9 SCC 659

<sup>32</sup> Krishnadas Rajagoapl, "Revisiting the S. Subramaniam Balaji v Tamil Nadu judgement", *The Hindu*, Aug 28, 2022.

<sup>33</sup> *Supra* note 31 at 662 para 85.

<sup>34</sup> *Id.* para 84

Sanhita, 2023 (BNS)<sup>35</sup> deals with punishment for bribery. For bribery, the punishment may extend up to one year of imprisonment, or fine, or both, while in case of bribery by treating, punishment is fine only.<sup>36</sup> The laws alone cannot put an end to bribery, the people in authority like the police officials need to take charge, report and follow up cases of bribery and hold the culprits accountable.

#### 2.4. Booth Capturing

Booth capturing means casting of unauthorized votes by persons other than the genuine voters either by intimidating or threatening the polling officials to surrender the ballot papers or by preventing the voters from going to the polling stations.<sup>37</sup> In *Ruli Ram and Anr. v State of Haryana*<sup>38</sup>, the court expressed its concern over the rising criminalization of politics. The elections are being fought by bullets instead of ballots. The court stated “in a case linked with political battles, stringent punishment is desirable without exception. Choice to vote for a candidate cannot be suppressed by intimidation. That would be against the spirit of democracy.”<sup>39</sup>

The Supreme Court held that the attempt of booth capturing or bogus voting should be dealt with iron hands as it ultimately affects the rule of law and democracy. The statement was made while dismissing the appeal of Lakshman Singh, who was convicted under Section 323<sup>40</sup>, punishment for voluntary causing hurt and Section 147<sup>41</sup> rioting of IPC, for rioting at a poll booth in Jharkhand in the case of *Lakshman Singh v State of Bihar (now Jharkhand)*<sup>42</sup>. The court also stated that it is important that the voters cast their vote without fear and being victimized

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<sup>35</sup> Earlier, the ‘Punishment of Bribery was dealt under Section 171E of Indian Penal Code, 1860. However, the punishment for bribery and bribery by treating is the same and only the Section has been changed under the Bharatiya Nyaya Sanhita, 2023.

<sup>36</sup> Bharatiya Nyaya Sanhita, 2023, s. 173.

<sup>37</sup> The Representation of People’s Act, 1951, s. 123 (8)

<sup>38</sup> 2002 7 SCC 691.

<sup>39</sup> *Ibid* 695 para 23.

<sup>40</sup> The provisions with respect to punishment for voluntary causing hurt are now dealt under Section 115 (2) of Bharatiya Nyaya Sanhita, 2023. The clause provides that a person who voluntarily causes hurt shall be punishable with imprisonment for a term which may extend to one year or fine which may extend to ten thousand rupees or with both. The provisions of BNS, 2023 has replaced Section 323 of Indian Penal Code, 1860. The fine amount has been increased from rupees 1000 to 10,000 in BNS, 2023.

<sup>41</sup> The provisions with respect to ‘rioting’ are now dealt under Section 191 of the Bharatiya Nyaya Sanhita, 2023.

<sup>42</sup> LL 2021 SC 319

if their vote is disclosed.<sup>43</sup>

According to State Election Commission, various incidents of violence were reported in parts of West Bengal during the rural poll in July, 2023. Incidents of violence were reported, where continuous bombing was reported. Armed miscreants were seen roaming in the area who intimidated the voters and independent candidates could be seen clashing with one another. A young boy even received bullet injury during the clash. Further, trouble got worse and BJP workers in East Midnapore's Nandakumar protested vote loot and booth capturing by burning tyres. Not only BJP, but Congress and ISF, Independent and common people also demanded repolling after alleged false voting, death of 15 persons and large-scale violence. As a result, repolling was ordered in 697 booths after two days.<sup>44</sup>

Section 135 of RPA, 1951 provides punishment to a person engaged in booth capturing. It is punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.<sup>45</sup> The punishment as mentioned above does not serve as a deterrent, as the instances of booth capturing are reported during every election. What is needed is strict implementation and reporting of the cases. In addition to this, additional securities at the polling stations which will help in maintaining peace during the process.

## 2.5. Lack of Transparency in Campaign Finance and Expenditure

Transparency in campaign financing and expenditure is must for equality among the candidates, including the opposition and the parties, so that the voters are free to make a fair choice.<sup>46</sup> In *Gajanan Krishnaji Bapat v Dattaji Raghobaji Meghe*<sup>47</sup>, the Supreme Court observed that the practice followed by the political parties is to not maintain the accounts of receipts of donations as well as the expense incurred by them in connection with the elections of the candidates, which is not a good practice. This practice spoils the purity of elections. Thus, it is appropriate for the EC or the legislature to intervene and prescribe by rules the requirement for maintaining true and correct accounts of the receipts and expenditure by the

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<sup>43</sup> Editorial, "An attempt of booth capturing, bogus voting should be dealt with iron hands", *The Economic Times*, July 23, 2021.

<sup>44</sup> "Repolling at 697 West Bengal Polling Booths today after violence rocks panchayat elections", *The Economic Times*, July 10, 2023.

<sup>45</sup> The Representation of People's Act, 1951, s. 135.

<sup>46</sup> United Nations Human Rights, Office of the High Commissioner, Human Rights and Elections, a Handbook on International Human Rights Standards on Elections, 56 (2021)

<sup>47</sup> AIR 1995 SC 2284.

political party by disclosing the sources of receipt as well.<sup>48</sup>

The elections in India have two issues when it comes to financing, first is the illicit financing and second is increasing campaign costs. The limits on campaign expenditures are few. The candidate can spend in elections as per the limits set by the respective State. Incurring expenditures in excess is a corrupt practice and a punishable offence. Further, an expenditure done by party or third person in connection with campaign for the candidate is included in the expenditure done by candidate. However, where a party is promoting the party's program and not a candidate in particular, then that expenditure has no limit. Most of the times, the expenditures are more than the limits, which makes the candidates and parties to submit false statements of spendings.<sup>49</sup>

The contravention of the provisions of Section 77 of RPA, 1951 amounts to a 'corrupt practice' as stated in Section 123(6) of the RPA, 1951<sup>50</sup>. The non-compliance to maintain the accounts does not amount to corrupt practice but it gives power to the Election Commission to conduct scrutiny and disqualify a candidate as per Section 10A of RPA, 1951.

The ECI lacks strict oversight with respect to disclosure, as there is rampant falsification of statements. Further, non-disclosure is not a corrupt practice but expenditure in excess is a corrupt practice, which is often manipulated and shown less by the parties<sup>51</sup>. Thus, in the Indian elections it is difficult to know the true estimates of campaign spendings. To curb the issue, the non-compliance should also be made a punishable offence and not just a ground to disqualify a candidate.<sup>52</sup>

In funding elections, the electoral bond scheme grabbed everyone's attention. The abolition of the Electoral Bond Scheme was a welcome move by the Supreme Court of India. It was in February, 2024 in the case of *Association for Democratic Reforms and anr. v Union of India Cabinet Secretary and ors*<sup>53</sup>, the five-judge bench unanimously struck down the electoral bond scheme and the amendments

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<sup>48</sup> *Id.* at 349 para 40.

<sup>49</sup> Editorial, "Funding elections in India: Whose money has the most influence", *The Hindustan Times*, July 24, 2018.

<sup>50</sup> The Representation of People's Act, 1951, s. 123(6).

<sup>51</sup> The Representation of People's Act, 1951. Section 123 (6). It provides that when expenditure is incurred or authorized to be incurred in excess of the prescribed limit in contravention of the provisions of Section 77 of RPA, 1951, it amounts to a corrupt practice. it is only the incurring or authorizing of election expenses in excess of the prescribed limit, which is a corrupt practice.

<sup>52</sup> *Supra* note 49.

<sup>53</sup> Writ Petition (c), No. 880 of 2017, Interlocutory Application No. 183625 of 2019 and Interlocutory Application No. 36653 of 2021.

done to the Income Tax Act and The RPA.<sup>54</sup> Out of the data received during the hearing of the electoral bond case, the party with the highest contributions through electoral bonds was BJP with 6986 crores, followed by Trinamool Congress of West Bengal with 1397 crores and Congress with 1334 crores since 2018.<sup>55</sup> However, at present, another petition has been filed for SIT on the information received on the electoral bonds, for alleged ‘quid pro quo between corporates and political parties’. The electoral bond scheme is being called the largest scam of all times.<sup>56</sup>

## 2.6. Issue of Holding Simultaneous Elections

In 2023, eight-member High Level Committee (HLC) headed by former President Mr. Ram Nath Kovind was formed for examining the issue of holding simultaneous elections (Lok Sabha, State Assemblies, Municipalities and Panchayats) in the country, which would further require various legal and procedural changes. In those changes, the change required would also include common voter ID and electoral roll.<sup>57</sup> The simultaneous elections are not a new concept, they were held back in 1951 to 1961 in India. However, due to premature dissolution of the Lok Sabha and Legislative Assemblies at different occasions, the elections were then conducted separately.

On March 14, 2024, the High-Level Committee released its report on ‘Simultaneous Elections in India 2024’.<sup>58</sup>, favoring the conduct of simultaneous elections. However, the conduct of simultaneous elections is not easy. It has democratic and constitutional concerns. India is a federal country, where the State and Centre have their own set of responsibilities and powers. At the same time, they have their own issues distinct from one another. With the conduct of simultaneous elections, the national issues will overpower the state issues. Also, this would lead to greater power to the national political parties over the regional parties, which would further hinder the federal character of the country. It will give

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<sup>54</sup> Debayan Roy, “Supreme Court directions on Electoral Bonds: SBI should immediately stop issue; political parties should refund and more”, *available at*: <https://www.barandbench.com/news/supreme-court-directions-electoral-bonds-sbi-immediately-stop-issue-political-parties-refund>. (last visited on Feb. 28, 2024)

<sup>55</sup> HT News Desk, “Electoral bonds: Election commission releases data. Which party received how much? 10 points”, *The Hindustan Times*, Mar. 18, 2024.

<sup>56</sup> The Hindu Bureau, “SC to hear plea to set up SIT probe ‘quid pro quo’ through electoral bonds”, *The Hindu*, July 19, 2024.

<sup>57</sup> Deeksha Bhardwaj, “One Nation, One Election: Kovind led panel discusses common ID, electoral roll”, *The Hindustan Times*, Sept. 24, 2023.

<sup>58</sup> High Level Committee Report on Simultaneous Elections 2024, *available at*: <https://onoe.gov.in/HLC-Report-en> (last visited on Mar.14, 2024).

rise to autocratic form of government.<sup>59</sup>

With respect to the constitutional concerns, certain amendments would be required. The introduction of Article 324A for simultaneous elections in Panchayats, Municipalities along with General elections of Lok Sabha and State Legislative Assemblies, which would require ratification by the states.<sup>60</sup> Another amendment would be to Article 83 (duration of Houses of Parliament) and Article 172 (duration of State Legislature), which will not need ratification by the States.<sup>61</sup> With respect to the electoral roll, amendment to Article 325 would be needed for a single electoral roll and a single Electoral Identity Card, which shall be prepared by the Election Commission in consultation with the State Election Commission. The committee is of the view that the simultaneous elections will help in deepening the democratic roots of the country. It is also believed that the conduct of simultaneous elections will bring down the expenditures that are done on elections at present. However, the concept of one nation one election would require various changes in the laws.<sup>62</sup>

## 2.7. Unequal Representation of Gender in the Parliament

Women have been denied social, political, civil and economic rights in many spheres. In the past, women have had no place in the political system and even in the political parties as decision making partners.<sup>63</sup> Certain prevalent societal value systems and male dominance in political institutions stops women from exercising their electoral rights and in participating fairly in the elections. Further, the lower the women representation, the lower is the bargaining power of women during the allotment of key cabinet berths in India, such as finance, home, defense, health etc., which are usually allotted to men and are considered heavy weight ministries. The women participation in Indian politics is much discussed issue with different opinions and views. Some believe that the electoral process in India is full of male patriarchy and dominance that prevents women participation. While others have the view that increased women participation in the elections as voters since 1990's and sharing of political power in India is no more gender exclusive but it's quite inclusive.<sup>64</sup>

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<sup>59</sup> Rangarajan R., "The pros and cons of simultaneous elections", *The Hindu*, Mar. 15, 2024.

<sup>60</sup> *Supra* note 58 at 276

<sup>61</sup> *Id.* at 279

<sup>62</sup> *Id.* at 280

<sup>63</sup> Raju Kumar, "Women's Reservation Bill: BJP, Opposition on same page, but why the issue still hangs fire", *India Tv*, Mar. 10, 2023.

<sup>64</sup> Praveen Rai, "Electoral Participation of Women in India, Key Determinants and Barriers", Vol. 46, No. 3, *Economic and Political Weekly*, 47-55 (Jan. 15-21, 2011)



In India, both in the past and present, there have been powerful women in top political positions, known for their strong personalities and governance. While on the other hand, women in political parties and parliament have been very few. It has been alleged that the former has reached the position because they are either wives or daughters of well-known political leaders. However, in the recent years, we can see the trend changing, which shows women's role in politics a little different. There has been rise of political parties with leaders such as Mayawati, Mamata Banerjee or Late Jayalalitha, who were strong in their States.<sup>65</sup>

After many years, on September 29, 2023, the Women Reservation Bill, which provides 33% reservation to women in Lok Sabha and State Assemblies received President Droupadi Murmu's assent. It is the Constitution (128<sup>th</sup> Amendment) Bill, 2023.<sup>66</sup> The law will become effective after the next census (expected to be conducted after 2024) and the subsequent delimitation, which will determine the particular seats that are to be reserved for women. However, the need is to make it effective without any further delays.<sup>67</sup>

For the 2024 Lok Sabha elections, women constituted only 8% of the total 2823 candidates in the first two phases. The women candidates were 235 in the two phases, out of which Tamil Nadu had the maximum 76 women in the first phase and Kerala had maximum 24 women in the second phase. Party wise, BJP had 69 women candidates and Congress had 44 women. Despite efforts from the political parties, the representation is still less. The need is for the parties to proactively bring in women on their own before the bill is implemented, which might take time.<sup>68</sup> The major blocks that women face when it comes to their political participation are the social disadvantages. In order to make increased women participation a reality, the need is to first achieve social empowerment and then the implementation of the reservation bill.

### 3. Conclusion and Suggestions

In order to have credible elections, the need is to understand the issues the voters and candidates are facing. The Government should continue to spread awareness

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<sup>65</sup> Sudha Pai, From Dynasty to Legitimacy: Women Leaders in Indian Politics, Vol 39, No. 3 / 4, India International Centre Quarterly, 107-121(Winter 2012-Spring 2013)

<sup>66</sup> The Constitution (128<sup>th</sup> Amendment) Bill, 2023, *available at*: [https://images.assettype.com/barandbench/2023-09/819222ac-c75c-4f01-bfa0-f6e362993b10/Constitution\\_\\_128th\\_Amendment\\_\\_Bill\\_\\_2023.pdf](https://images.assettype.com/barandbench/2023-09/819222ac-c75c-4f01-bfa0-f6e362993b10/Constitution__128th_Amendment__Bill__2023.pdf) (last visited on Oct.2, 2023)

<sup>67</sup> The Hindu Bureau, "President gives assent to women's reservation Bill," *The Hindu*, Sep. 29, 2023.

<sup>68</sup> "Just 8% women candidates in the first two phases of the Lok Sabha polls", *The Hindu*, Apr. 28, 2024.

and contribute towards voter education through various digital initiatives in a uniform manner in all States across the country. Then with respect to educational qualifications for the candidates, time and again there have been suggestion from various stakeholders to include education as one of the qualifications to contest elections. A minimum educational qualification should be made a requirement for the candidates who wish to contest elections. The minimum educational qualification should be at least graduation, as an educated candidate will be able to fulfill his duties in a more efficient manner.

To tackle the misuse of social media, the ECI should encourage the parties and candidates to comply with the voluntary codes for ethical use of social media for political purposes. In addition to this, the ECI should seek support from the social media/internet companies who can ensure better monitoring of compliance by the parties and also encourage the parties/candidates to follow the compliance standards set by the companies. For the third-party online campaign expenditure, the ECI should make violations of non-disclosures of online spendings a punishable offence, which will serve as a deterrent.

The laws against bribery and booth capturing alone do not stop the political parties. The issue is, even if the laws are made more stringent, will they be enforced in a fair manner? There should be appropriate reporting of cases by the public and the police officials and follow up of the cases as well. In addition to this, the courts and the ECI should send a strong message that there will be no tolerance of corrupt practices.

Another issue which requires attention is the lack of transparency in election funding. The political parties are not required to disclose the expenditure on party agenda. A law requiring the parties to disclose such expenditures should be formulated. Also, the non-filing of the campaign expenditures statement should also be made a punishable offence and not just a ground of disqualification of a candidate. No doubt the government's move to abolish the electoral bond scheme has been welcomed by the society, which a step towards reduction of corruption. With respect to challenges associated with the conduct of simultaneous elections, the federal character of the country would be damaged, which will further give more power to the national parties over the regional parties, thus giving rise to autocratic form of government. In addition to this, various constitutional amendments would be needed. Thus, the simultaneous elections need more deliberations to overcome such issues and challenges.

Further, there has always been debate on unequal representation of women in the Parliament. The women reservation bill has been passed but it is yet to be

implemented. The implementation will be after the new census, which was expected to be done in 2024 but it has again been delayed. In order to reap the benefit of the reservation bill, it should be implemented without any delays and alternatively, the parties should act in a proactive manner to include women in their parties and not wait for the bill to be implemented.

The issues discussed affect the elections which contributes to lesser confidence of people in the political system. There have been reforms in electoral system to deal with the issues, yet they are not full proof, as the culprits manage to escape the laws. The ECI should adopt a stricter approach along with the cooperation of the voters, candidates and the parties to abide by laws to eliminate anything that hinders the conduct of free and fair elections.

**Small Voices, Big Concerns: Childhood during Kashmir Insurgency through the Study of *Munnu* and *Rumours of Spring***

**Kanchi Jain\***

**Abstract**

*Kashmir has a long history of violence, which intensified after the creation of two nations – India and Pakistan in 1947. The Valley has found itself caught on the wrong side of the political table, with the two nations continuously waging wars and inciting violence to gain the upper hand on geo-political scale. The rise of insurgency in Kashmir since 1989 and its aftermath resulted in uprooting people culturally and socially, thus affecting the psyche of the collective mind and creating a performative dialogic “flashpoint” in the lives of Kashmiris. The paper reads two life-narrative genres in the narrative voice of children growing up during the insurgency. The research will probe how witnesses and survivors of trauma use life-narratives polemically to narrate lived histories and “cultural memories” from the margins adding depth and translating the collective fear and anxiety of the whole cultural group embroiled in troubled times against the backdrop of recorded institutionalized history.*

**Keywords:** *Life writing, cultural memory, trauma, identity struggles*

**1. Literature Review**

A lot of literature has been produced on Kashmir to bolster its political and historical understanding. Radha Kumar’s *Paradise at War: A Political History of War* (2018), *Demystifying Kashmir* (2006) by Navnita Chadha Behera, and *The Parchment of Kashmir: History, Society, and Polity* (2012) edited by Nyla Ali Khan discuss the historical background of Kashmir from ancient times to the modern present-day era and how it has shaped the political environment of the Valley and its strenuous relationship internationally. The thinkers have critically observed the historical landscape of Kashmir along with its social life that had deep secular and cosmopolitan roots. With a continuum state of affairs, Kashmir has also been a fertile ground providing fodder to the creative minds as well, who have delved into its beauty with a semi-autobiographical gaze and an autobiographical voice, alike. The pristine beauty of the Valley and the juxtaposing reality has provided considerable material to poets and writers, such as Agha Shahid Ali (*The*

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*Country Without a Post Office*; 1997, *Postcard from Kashmir*; 1991, *The Half-Inch Himalayas*; 1987, etc.) Naseem Shafaie (*Neither a Shadow nor a Reflection*; 2017), Amin Kamil's short story *Kokar Jang* translated as *The Cockfight*, published in the mid-1960s, Ghulam Ahmad Mahjoor's *Bage Nishat Ke Gulo* and *Sahibo sath cham* etc., with a semi-autobiographical voice. Rahul Pandita's *Our Moon has Blood Clots: A Memoir of a Lost Home in Kashmir* (2014) provides a personal and poignant autobiographical account of Kashmiri Pundit's exodus following the rise of insurgency in the Valley and *Curfewed Night* (2010) by Basharat Peer gives a searing first-person account of Kashmir dealing with the separatist movement.

It has also caught the attention of film producers and directors with who have brought the attention of the world to the cataclysmic events happening in the Valley. Most notable among those have been *Roja* (1992), *Mission Kashmir* (2000), *Yahaan* (2005), *Harud* (2010), *Valley of Saints* (2012), *Haider* (2014), *Fitoor* (2016), *Shikara* (2020), and *The Kashmir Files* (2022). A few movies have also employed a child narrator as the main protagonist to highlight the plight of Kashmiris such as – *Tahaan* (2008), *Inshallah, Football* (2010), and *Hamid* (2018). Film critic Roger Ebert reviewing the movie *Valley of Saints* (2012), observes, “If a place on the earth can lay claim to paradise, it is Kashmir, and if there is a place that embodies all the dark consequences of humanity, it too is Kashmir. It is a special land of forced contradictions” (Ebert 2015).

## 2. Introduction

Kashmir is often called as Switzerland of the East and its portrayal in popular culture always bears it out. What however is overlooked is the fact that it has gone through turbulent times since its recorded history. After independence from British colonial rule in 1947 and the division of the country, India and Pakistan have continuously fought over this bone to establish their political, strategic, and geographical supremacy and the matter subsequently became an international affair, further cornering the local Kashmiris. Punjab and more recently Bengal have gained merit in Partition studies, further marginalizing Kashmir even though it has seen more political and military presence since 1947. The rise in insurgency during the 1990s, draconian laws imposed by the Indian government, and the constant presence of the army to counter terrorist attacks have left the valley bleeding – metaphorically and literally.

Kashmir witnessed its first attack from the Pakistan-backed raiders in Muzaffarabad (now in Pakistan) in October 1947, with wars following in 1965, in 1971 as a result of the Bangladesh Liberation War, and the Kargil War in 1999.

Along with major wars, India and Pakistan have been involved in proxy wars, and military standoffs with Kashmir experiencing insurgency since the late 1980s' with the exodus of Kashmiri Pundits, who became internally-displaced refugees (Behera, 2006; Misri, 2014). Kashmir, as a historical, cultural, and social place, has experienced one of the longest conflicts in the world. Political authorities and media reporters have woven narratives suitable for their populace, and it has found itself as a place of contention for social and political scientists as well.

These literary, scholarly and cinematic texts, though, offer a comprehensive realistic view of the problems faced by the Kashmiris, the outsider gaze dominates, identifying and providing the sympathetic gaze and viewpoint from outside Kashmir. While reams and reels have depicted the situation in Kashmir, Farah Bashir and Sajad Malik shed light on the violence perpetrated by the Indian military forces and the constant fear and trauma the Kashmiris live under by offering an inside account through the narrative voices of children. Their poignant autobiographical voices give meaning to the crisis of Kashmir, which has been plagued with conflict since the division of the country and has piled on more problems over the years. Their narratives move beyond the narratives of Peer and Pandita, who are forced to leave their homeland when the insurgency rises in the Valley and the youth is under the mesmerizing illusion of the terrorists to join them or because of their religious affiliation, respectively.

This paper reads the memoirs *Munnu* and *Rumours of Spring* to highlight the trauma, fear, anxiety, paranoia, and post-traumatic disorders Kashmiris have suffered in the heavily militarized conflict zone. The memoirs fill the gap in witness literature being produced out of Kashmir from the narrative focal viewpoint of children. They provide meaning to the context of insurgency in the Valley and how it has impacted, uprooted, traumatized, and violated the basic right of privacy of the local population. Malik uses the formulaic properties of the graphic genre in portraying the trauma, violence, and fear of the Kashmiris against the authoritarian regime through the vantage point of a male child. Bashir, on the other hand, re-collects anecdotes from her life growing up during the rise of insurgency, near the deathbed of her Bobeh (her grandmother), and the subsequent funeral the following day. The memoirs have a stark difference in their writing and narrative styles, corroborating Nadine Gordimer's position of defending the role of a witness writer after the 9/11 terrorist attack, when she opines:

“Meaning is what cannot be reached by the immediacy of the image, the description of the sequence of events, the methodologies of expert analysis. If witness literature is to find its place, take on a task in relation to the enormity of what is happening in acts of mass destruction and their aftermath, it is in the

tensions of sensibility, the intense awareness, the antennae of receptivity to the lives among which writers experience their own as a source of their art. Poetry and fiction are processes of what the *Oxford Dictionary* defines the state of witness as ‘applied to the inward testimony’ – the individual lives of men, women, and children who have to reconcile within themselves the shattered certainties which are as much a casualty as the bodies under rubble in New York and the dead in Afghanistan” (Gordimer, 2009).

### 3. Pictorial Storytelling in *Munnu*

*Munnu: A Boy from Kashmir* (2015) is an example of *kunstlerroman* with a picaresque hero while also functioning as a graphic witness of contingencies of everyday life in occupied territory. It weaves a political biography of Kashmir, and especially Sajad’s native city – Srinagar, during the period of insurgency lasting almost three decades. It traces the historical background and political biography of Kashmir from ancient times to the contemporary period of insurgency that has affected millions of people in the Valley. The personal narrative is comparatively uncensored, while the task of graphing the formal political situations stretches the representational abilities of the graphic memoir to its breaking point.

Sajad starts with a portrait of the family in the year 1993, and a seven-year-old Munnu introduces his family to the readers. Right below the family photograph is the local cartographic map explaining the valley’s geography to its readers, with an inset placing the valley on an international map, with India to its south, Pakistan to its west, and China to its north (Figure 1). The readers are made aware of the intertwined story and history they are going to read and visualize from its cover page’s subtitle, “A Boy from Kashmir,” to the cartographical panel on the book’s second page. Malik, through this panel, puts forward the intention to tell the story of Kashmir, despite various parties claiming it.

Initially, *Munnu* seems derivative of Art Spiegelman’s *Maus: A Survivor’s Tale* (2003), the biography of a Jewish Holocaust survivor from Poland, though it is much more than a “survivor’s tale” (Spiegelman, 2003). Like Spiegelman, Malik tells his tale through the capitulating race depicted as an animal. While Spiegelman portrays Jews as mice, Germans as cats, and Poles as pigs, Malik portrays Kashmiris as the endangered Kashmiri red stag – the hangul, which has dwindled to a critically low population because of mass encroachment on their habitat by the Indian army and urbanization processes. On the other hand, all the non-Kashmiris—armed forces, journalists, state heads, politicians, mythical and historical figures such as the Buddhist monk (who helped free the land from a water monster), the Mughal, Afghan, and Sikh invaders, and eventually the Dogra

Maharaja Gulab Singh (who sold Kashmir to the British under The Treaty of Amritsar), and tourists are depicted as humans. (Figures 2, 3, 4, 5) (Sajad, 2015, p. 200–203; Wani 126).

After recurrent cycles of violence and conflict that have marred Kashmir from within, Sajad has highlighted the intertwined lived histories of humans and non-humans by portraying Kashmiris as red stags through an evolutionary process based on mythological-political histories of Buddhist and Hindu traditions (Sajad, 2015, p. 198–199). Sajad engages in the history of Kashmir only halfway through the novel in the chapter “Footnotes,” (Sajad, 2015, p. 196) shedding light on the vulnerable status of Kashmiris against the backdrop of picturesque snow-capped mountains and the serene beauty of the Valley. In Hindu and Buddhist traditions, the demon and the dragon, respectively, are slain, and Sajad draws our attention with a right-inset panel, “The demon died and Kashmir became Kashmir” (Sajad, 2015, p. 198). In tracing the history from pre-historical, legendary, and mythological times to the slow unfolding of modern historical times, lattice and mural-style frames disappear and are populated by bipedal hanguls. The panel captures the Darwinian theory of origin from the Kashmir point of view by replacing apes with Hangul stags, and a developmental narrative is woven as the four-legged stag evolves into a humanoid hangul (Figure 2).

Malik, the storyteller, narrates the valley’s history from time immemorial, guiding and teaching the history of Kashmir to novice readers while simultaneously springing the traumatic action unfolding in modern times through the naiveté of Munnu. Being a skilled graphic artist who was taught to master drawing ‘fish scales’ and ‘the rays of the sun’ on rough sketches before progressing to wooden blocks, he leads the reader’s sympathetic gaze into the tale of a young boy who discovered drawing an AK-47 rifle was simpler and is therefore hounded by other students for similar sketches at school (Sajad, 2015, p. 6) (Figure 7). Using narratological techniques such as focalization, Sajad provides vital insights into the representation of consciousness in a memoir by juxtaposing the narration of a story with the mental processing of it by a character—or by the narrator. It nudges the reader to use their cognitive abilities, ideological orientation, and judgment to make meaning in a graphic narrative (Genette 1980; Hatfield 2005; Herman 2009; Pedri 2011).

### **3.1. Focalization in *Munnu***

Drawing and narrating the story of “Munnu - A Boy from Kashmir,” Malik Sajad, the author, becomes the narrator as well, who is well trained in the art form and hence takes a departure from the unskilled Munnu’s attempts at sketching to draw



the map of Srinagar with refined “fish scales” filled with “the rays of the sun” (Sajad, 2015, p. 11). Sajad invests in multiple dreams and lived experiences constituting the conflict zone instead of relying on abstract and individualistic experiences to engender a strong consciousness so that inhabitants can focus on *what is* rather than *what is not* all the time. Through a wholly internal process of coping with the trauma, he points out specific and socially distributed events targeting peculiar purposes and goals. Sajad underscores the personal-political conflict and struggle that underscores his profession when he remarks, “Munnu never sought any meaning from his scribbling, but after growing into Sajad, he used it to criticize, to express, to expose, and to seek revenge against time passing by without fulfilling the promises” (Sajad, 2015, p. 346).

Narratology geared towards graphic narrative necessarily has to account for several semiotic features that distinguish comics from still or moving images on the one hand and verbal narrative on the other. Besides multimodality, these include – the encoding of space and time, or “spatio-topia” of graphic narrative’s semiotic system (Groensteen, 2013, p. 23); the structuring of this time-in-space through frames and gutters, which means the gaps that are integral to every narrative are self-consciously exposed in comics (McCloud, 1994); and “braiding” (Groensteen, 2007, p. 146) of graphic narrative that puts every panel in potential, if not actual, relation with one another, leading to the elaboration of detail. The relations between individual panels can be of an iconic as well as a rhetorical nature, and this results in a semantic over determination.

The concept of “braiding” describes a “model of organization that is not that of the strip nor that of the chain, but that of the *network*” (ibid., 146). It accounts for the medium-specific nature of part-whole interaction in a graphic narrative by “highlighting the plurivectorality of work-internal iconic references” (Pedri, 2011, p. 336). These references lead to both the densification of detail and the multi-directionality of the graphic narrative’s reception. Charging layout with meaning, braiding suggests a repetition that folds in on what precedes it, forcing readers to re-evaluate previous certainties. Groensteen develops the concept to integrate the two dimensions of graphic narrative’s spatial composition and the temporality of its reading (Groensteen, 2007, p. 147), thus solidifying its place as an important building block in the cognitive model of comics narratology.

Silke and Nancy develop two aspects related to braiding: first, the role of iconic repetition – identical repetition of entire frames and repetition with a difference, and the potential of iconic solidarity to function as a focalization-marking device. It helps evaluate focalization in *Munnu*, where the complexity of making a distinction between character-bound and narratorial focalization in a graphic

narrative (or in a graphic memoir), between the focalization of an experiencing-I and that of narrating-I, is complicated. Sajad uses woodblock printing to design Munnu's (the protagonist's) artwork. The pictorial map of Srinagar (Figure 1) drawn by Munnu animates an assemblage not only of everything drawn on it but also of everything that goes into its making, namely: locally sourced materials (wood blocks, paper, and ink), artistic legacies (woodblock printing and drawing strategies Munnu learns from his father), and sentiments and memories associated with this learning process. With this exercise, the narrative also becomes a pedagogical tool for the readers who are familiarized with the pernicious geography of the Valley, which enriched its cultural, religious, creative, artistic, social, and political history as a cosmopolitan space as it was a strategic point on the Silk Route (Figure 6).

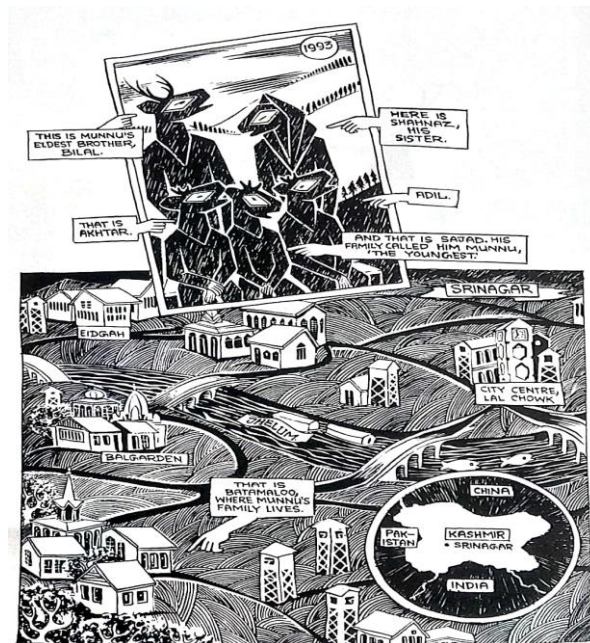


Figure 1. The figure shows the geographical map of Kashmir surrounded by its international neighbors – China, Pakistan, and India in a circular inset on the full-scale page panel. The background scales the city of Srinagar and the author situates his home in the Valley using traditional artistic style of fish scales and introduces the readers to his family members.

Munnu learns to draw chinar leaves to fill the paisley design drawn on the wood block. His father gives him “draft sketches” to practice on paper and breaks down the drawing process for the young first-timer; “draw fish scales first and then fill each scale with lines like the rays of the sun” (Sajad, 2015, p. 11). Munnu and his father are so absorbed in the art form that they are immersing and emerging from

the leaves they are drawing, and moments of time and body positions of the father-son duo are encapsulated within the same apprenticeship panel. The pictorial map bears witness to the Kashmir story as co-produced by past and present experiences and affinities, memories, and multiple encounters of the family with the world outside, and that of Munnu particularly.



Figure 2. Sajad explains the Hindu myth of the evolution of the land of Kashmir and the original inhabitants, set into motion by Sage Kashyap. Source Malik Sajad, *Munnu: A Boy from Kashmir*, Fourth Estate London, 2015, 198.

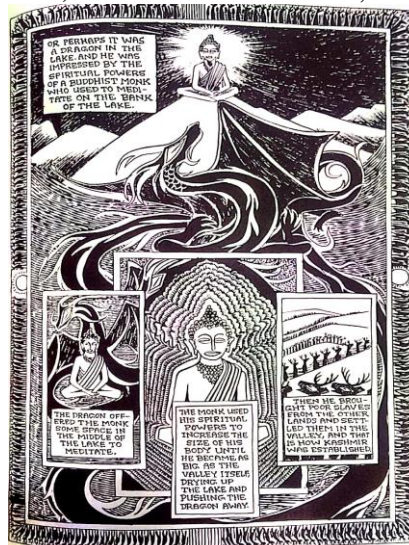


Figure 3. Sajad unravels the Buddhist myth of the evolution of Kashmir and its original inhabitants, where a dragon was pushed away from his home by the Buddhist monk. Source: Malik Sajad, *Munnu: A Boy from Kashmir*, Fourth Estate

London, 2015, 199.



Figure 4. The armies of Mughals, Afghans, and Sikhs fighting over the land of paradise on earth – Kashmir, over the dead bodies of Kashmiris. Source: Malik Sajad, *Munnu: A Boy from Kashmir*, Fourth Estate London, 2015, 201.



Figure 5. Defeat of the Sikhs in Anglo-Sikh war and the accession of Kashmir to Gulab Singh with the Treaty of Amritsar. Source: Malik Sajad, *Munnu: A Boy from Kashmir*, Fourth Estate London, 2015, 202.



Figure 6. The panel depicts the cosmopolitan culture, the creative work people engage in, and the peaceful nature of people in Kashmir. Source: Malik Sajad, *Munnu: A Boy from Kashmir*, Fourth Estate London, 2015, 200.



Figure 7. Munnu meeting the growing demand of AK-47s in his school. He creates a rubber stamp of AK-47 and plasters it in his mates' notebooks. Source: Malik Sajad, *Munnu: A Boy from Kashmir*, Fourth Estate London, 2015, 6.

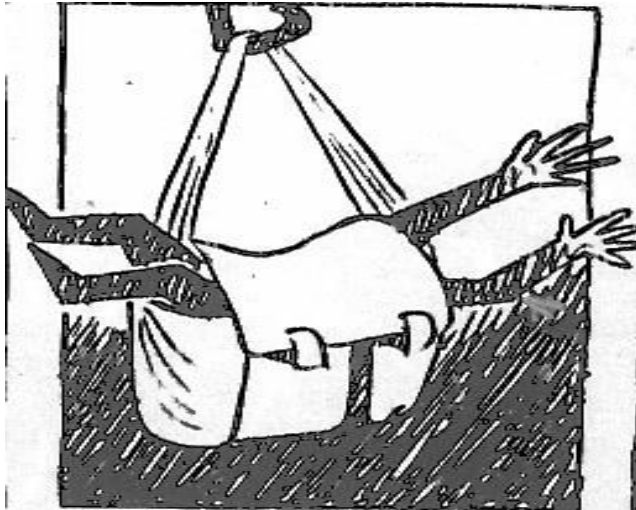


Figure 8. The Burden of Education. Munnu depicts a child being hanged by a school bag. The school bag becomes a symbolic representation of education burden. Source: Malik Sajad, *Munnu: A Boy from Kashmir*, Fourth Estate London, 2015, 159.

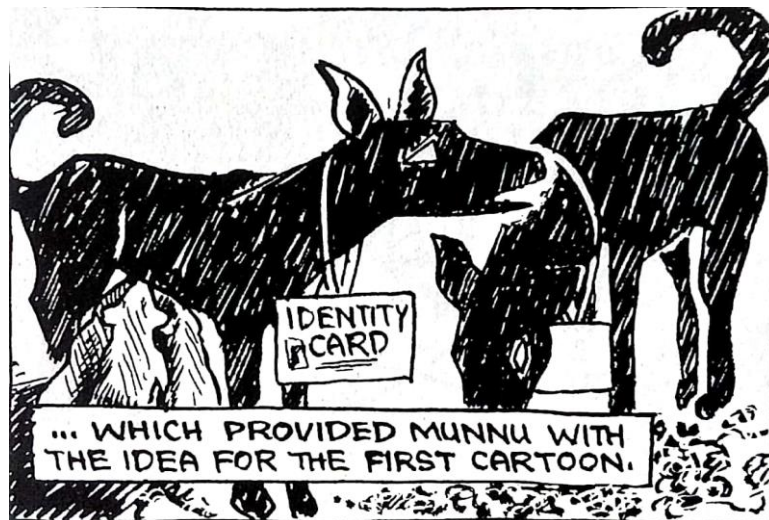


Figure 9. Kashmiris shown as dogs wearing an identity card due to security reasons in lieu of India's Republic Day. The strict imposition of the security forces on the locals gave Munnu the idea for his first cartoon. Source: Malik Sajad, *Munnu: A Boy from Kashmir*, Fourth Estate London, 2015, 163.

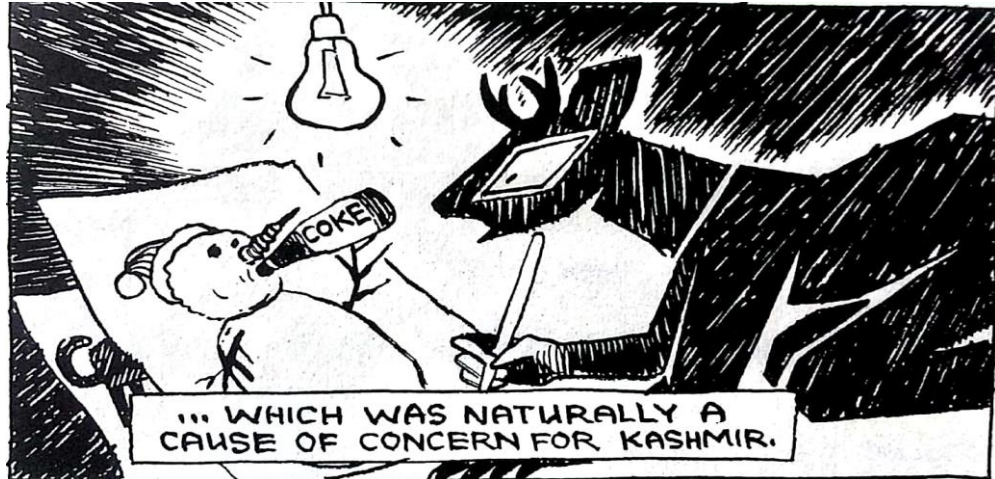


Figure 10. A sunny winter – a cause of concern for the Kashmiris. Sunny winters are not considered viable for the economy of Kashmir as it hampers the cultivation of its local fruits and vegetables. It also means less snow which results in low volume of water in the rivers. Source: Malik Sajad, *Munnu: A Boy from Kashmir*, Fourth Estate London, 2015, 163.



Figure 11. The Indian Army portrayed as bear safeguarding the roads before the Republic Day of India. Munnu emphasizes the Darwinian theory but the policemen usually portrayed as humans now take the form of a giant fearsome bear who is ready to pounce on Kashmiris depicted as hanguls. This is the first cartoon Sajid submits of the Inside Out column in the G.K. Source: Malik Sajad, *Munnu: A Boy from Kashmir*, Fourth Estate London, 2015, 166.

#### 4. Memorialization of Death in *Rumors of Spring*

Farah Bashir, like Malik Sajad, is not interested in educating her readers on the history and political turmoil that have brewed tensions in the lives of the Kashmiri people. She expects the reader to be familiar with the political history of the Valley kickstarting the narrative by delving into the memory of her possible death and situates the reader within a grief-stricken and claustrophobic environment at home and in the Valley at large. The first chapter, “The Day I Was Dead,” (Bashir, 2021, p. 3) in the first section of the book titled *Evening* starts in the year 1994, at the peak of the insurgency in the Valley, and a demonizing presence of the Indian military and curfews set up the narrative with the death of her beloved grandmother in the first few lines itself. Bashir slips into the mind of an 18-year-old girl and how she was “grateful for the dusk-to-dawn-curfew” (ibid.) for the first time in her life because it allowed her to spend some extra time with her Bobeh.

Farah weaves the narrative of fear, anxiety, uncertainty, helplessness, and trauma through short stories that unfold in the span of a night, with the theme of death and casualties running deeply through the entire book. Farah uses the literal and metaphorical deaths, accounted for by natural deaths and murders by stray bullets, during crackdowns or identification parades by the Indian military, and juxtaposes them against the beautiful Valley of Srinagar. The warring factions and the neglect of the Kashmiri people by authorities at the local, national, and international levels have left the people hoping for a Spring, a season traditionally attributed with regeneration, regrowth, and the blooming of flowers, with a gleam of hope shining every once in a while. The natural death of Bobeh in December becomes a symbolic beacon of hope for another rumor of spring in the Valley after the stillness of December.

*Rumors of Spring* is a meta-narrative of memories that starts in 1994, when Farah’s grandmother dies, and soon travels back in time to 1989 when the insurgency in the Valley began. The recollection of Bobeh’s natural death and subsequent funeral the next day triggers the recollection of memories of people who live in constant vigil, fear, anxiety, hopelessness, and trauma, and a normal and mundane way of life that has been lost for the people of Kashmir with the mushrooming of Indian military bunkers across the city in people’s homes, near chowks, in markets, near places of worship, etc. Remembering is a reconstructive act, suffused with the memories of other people, people we have met, pictures and videos we have seen, and the memories of other people’s lived experiences as well. While remembering the death and funeral activities of her Bobeh, Farah doesn’t rely on her memories alone while describing how the curfews and crackdowns controlled every single soul in the Valley. She remembers the experiences of her



friends, family members, and neighbors to provide the reader with a comprehensive outlook on how the insurgent Kashmir felt without describing the real-life recorded historical events in the Valley like the fateful incident of Kunan Poshpara, the kidnapping of a political leader's daughter, and the subsequent political bargains, which ensued to broker some kind of peace.

While looking at the pale and lifeless face of her dead Bobeh, she recalls the day when Bobeh looked exactly the same, and she goes back to the evening before the Eid of 1989. She recalls the excitement of buying new clothes, preparing delectable food, her sister Hina's visits to the salon for perfectly styled hair, in anticipation of enjoying Eid. Farah, the protagonist, visits the salon with her sister Hina as a rite of passage in 1989 to participate in the festivities of Eid as a young child, but when they leave the salon, the city is enveloped in deadly silence with shops being shut down and people rushing back to their homes. Hina quickly grasped the meaning of the quietness and yet the steadfastness the air had and at once uttered, "Looks like a curfew. Like we're under Gul Karfi again. Hold my hand and don't look up" (Bashir, 2021, p. 9).

Farah's first encounter with a curfew comes with Hina's accumulated knowledge of previous lockdowns she experienced during the tenure of the Chief Minister of Jammu and Kashmir, Ghulam Mohammad Shah. Farah and Hina reach home after experiencing a panic-stricken situation and are met with an equally tensed atmosphere at home, where she introduces the reader to her grandmother, who bursts into tears upon seeing them, her parents, and Ramzaan Kaak, who works with her father at his cloth shop. After the fateful events of 1989 and pall of horror that clouded the festival, Farah, the twelve-year-old girl, starts associating the festival with sadness and melancholy, and never celebrates the festival with the same ease and happiness.

Bashir establishes the tone of the memoir, which deals with the unease that one experiences in a conflict zone. She writes with an objective feminine lens without any intention to educate her readers but to shed light on the trauma inflicted upon them as a routine procedure. As an observant witness, she weaves stories around small routines which soon take horrific turns and create a sense of fear and anxiety, which loom large in the narrative itself. Farah evokes the senses and how they have a way of internalizing the conflict. The wafty, rich aroma-infused air from the delicacies prepared for the Eid celebration soon changes into dreadful and heavy air with a sense of foreboding death, curfew, anxiety, and the helplessness to know for sure if the person is alive or dead. Bashir recollects how the twelve-year-old girl, in a state of confusion, fear, guilt, and reproach, starts plucking her hair and forms a habit of plucking chunks of her scalp hair to get her "through the fear-filled

sleeplessness” (Bashir, 2021, p. 17). The burning sensation from the plucking of hair roots soothed the fear that emanated from the curfewed streets of Kashmir. The plucking of hair becomes a symbolic act of violence inflicted upon herself as the Valley embroils in systematic violence purposefully inflicted upon it.

## 5. Women and Silence

Women in conflict and war zones have gained traction in the modern understanding of war, which looks beyond the heroism, courage, and machoism of men on the battlegrounds. Women’s courage and trauma in the face of adversity merit understanding through a different lens, devoid of the protection traditional patriarchy provides in the security of their homes under the watchful eyes of men—fathers, brothers, husbands, and sons. The Kunan Poshpara mass rape and the struggle against injustice have brought the women of Kashmir together, and since 2014, February 23 has been observed as Kashmiri Women's Resistance Day. The Kunan Poshpara incident had a subtle impact on Haleema's home, close to Jama Masjid. The paramilitary forces expelled their chicken farmer and built a bunker beneath the house. Haleema developed paranoia and limited her outings to shrine visits only in order to protect her daughter Anjum, whom she forbade from even going near the window. Haleema's prayers were answered; one of the shooters killed himself, the military left, and their base was moved (Bashir, 2021, p. 38–39).

The Kashmiri women's intended prevention strategy of avoiding public spaces did not prove to be the most successful. Farah discovered another form of military crackdown and search operations at the home of her aunt Nelofar, a Persian Professor at a college whose residence was near Nigeen Lake. The aquatic-patrolling troops checked the area on motorboats, where they flashed “bright halogen lights” from across the lake, which felt like “someone held a full moon right in our faces” in the middle of the night (Bashir2021, p. 158). This had a devastating effect on Farah’s little cousin Nida, who grew afraid of the bright light and clutched her amulet for protection. Farah notes that when she was “Nida’s age, only darkness scared” her (ibid.) and joins the fraught, fearful, and anxious behavior of Nida when she couldn’t “shake off the effects of the epilepsy-inducing flashes of light” in a ritual where the house was “searched without anyone entering it physically” (Bashir, 2021, p. 159).

The mushrooming of military bunkers across the city with lecherous men peering at women resulted in women covering themselves up in scarves and hijabs, something the hardliners had failed to accomplish. Religious factions such as Dukhtaran-e-Millat (Daughters of the Nation) failed to denounce the Western ways

of dressing and propagate the Islamic code for women as it came into motion in Iran during the Islamic Revolution of 1989 under the rule of Ayatollah Khomeini. Farah remembers her classmate Nuzhat, a victim of an acid attack when she was wearing jeans with her head uncovered, who became an “object of warning for us” (Bashir, 2021, p. 57) under the new Islamic laws. After the failure of the new codes of living, the troops stationed at every corner didn’t let the scarf or the hijab slide away. It became a shield to protect one from the staring. In the chapter titled “I Miss Walking,” Farah remembers the walk she took from the bus stop near her father’s shop to her home. Her father’s shop was half shut as he and Ramzaan Kaak were away for one of the identification parades, and she could -

hear my heartbeat outside of my body with warm tears swelling up my eyes. My vision blurred. I took my school bag down from my shoulders and hugged it instead. On the deserted streets of my neighborhood, in the presence of so many military bunkers and the gaze of the unknown men inside them, I suddenly became aware of my body, and its contours. My breasts had just assumed their distinct, slightly protruding shape. I felt naked. I tried to fold into the school bag clutched in front of me. That was how I developed a hunch in my upper back (Bashir, 2021, p. 105–106).

Munnu, the protagonist, suffers anxiety and fear of losing his brother and father to one of the identification parades. A sexual harassment encounter as a young boy at his brother’s shop further dents his confidence and self-esteem, and he becomes more reclusive. Unlike Farah and the women, who find their shields in an additional layer of clothing such as chador, scarves, or hijabs, Munnu finds comfort in drawing and spends hours carving chalk and drawing on the floors and ceilings of his home’s attic. His brother’s encouragement brings him out of his shell, and he begins to draw for the local newspapers. As he grows from a naive Munnu to a skilled cartoonist and is invited to participate in an international delegation to raise awareness about Kashmir and Kashmiris, he soon realizes the bogus promises, hopes, and aspirations promised to Kashmiris.

The delegates enjoy good food and spend the evening joking and presenting Munnu with a solar-powered flashlight to raise awareness about the declining environmental state of the Valley and the world at large (Sajad, 2015, p. 340–342). Munnu’s inability to react and respond to violence is evident throughout the book but becomes significant as an adult when he witnesses two men raping a young girl and walks away in complete silence under the light of the same flashlight, indicating the systematic silencing of the voice of the witness (Sajad, 2015, p. 348). He masks violence with ambiguity, so much so that his moral ethic seems to be hanging on the edge of a criminal disposition. This immoral and unethical standing

comes from a long exposure to violence in the homeland without a say, just to witness it in silence, in mourning.

## 6. Cartoons and Obituaries

Munnu's initiation into becoming a man happens quite early in his life when his love for the craft helps in overcoming the anxieties that arise from around-the-clock lockdowns by the Indian army, his fear of losing his brother and father in cross-firing or identification parades in the spate of revenge from adversaries, beatings by Maulvi Sahab at the Darasgah for cutting his hair in a fashionable manner, the sexual harassment encounter at the hands of military personnel, and the absence of his Kashmiri Pundit friends. He finds solace by venting out on paper and chalk, and his skills fetch him a job painting and sketching on the walls of a makeshift school in the house of the Kashmiri pundit who fled during the rise of the insurgency and constant ransom demands from the terrorists. Later, his brother Bilal's attention and praise for his paintings encourage him to find a better venue to pour out his feelings, and he starts submitting cartoons to local newspapers.

After a successful start at *Alsafa*, where his drawings depicted several problems faced by Kashmiris on a daily basis—the electricity crisis, the burden of education, India's Republic Day and the restrictions faced by Kashmiris in lieu of it, etc. (Figures 8, 9, 10), Munnu suffers from a bout of self-doubt and defeat when his drawings do not find any place in the newspapers. A helpful man at the office of the daily *Mustafa* sends him to the office of the Greater Kashmir (G.K.) newspaper. Once at the office of the G.K., Munnu faces a real challenge to his creative instinct and begins learning about the history of Kashmir on the advice of his brother and an ex-militant to better understand the current political scenario in the Valley. Sajad takes his readers on the fruitful journey along with Munnu to understand the socio-cultural and political history of his homeland, and the graphic medium later excels itself through cartoons by Munnu for the daily.

The very first cartoon drawn for G.K. (Figure 11) depicts an army man as a bear, ready to jump and attack the hangul stag as a Kashmiri. The cartoon titled "Inside Out" (Sajad, 2015, p. 166) depicts the bogus and sanctimonious behavior of the Indian government, which calls itself a Republic and a Sovereign state and pledges to safeguard the justice, equality, and fraternity of its citizens and is indifferent to the Kashmiris claimed as citizens of India. The panel depicts the political cartoon Munnu has drawn for the newspaper, stretching the limits of a graphic narrative and its unities. Sajad, here as Munnu, uses a predatory animal bear to represent the army men, usually drawn in their anthropomorphized form in the graphic novel, shouting at a stag for crossing the road closed due to security

reasons in lieu of India's Republic Day.

The reader is again familiarized with the docile position of the Kashmiris in a large political space with the help of Darwinian theory, and it places the onus on the reader to understand the implications it has. While Munnu uses his newly found independence as a political cartoonist at a young age with a major newspaper in the valley, it is Sajad who retrieves the cartoon from his memory and archives and uses it in the graphic novel to express the vulnerability of Kashmiris. The narrator Munnu and the author Sajad join hands in showcasing the ground reality of continuous surveillance and the brutal encounters Kashmiris face in the name of security. Their identities are still jeopardized, and they are prone to threats and brutality at the hands of the Indian army empowered under the Armed Forces (Special Powers) Act 1958, commonly known as AFSPA.

The political cartoons by Sajad in the Greater Kashmir and other local newspapers of Kashmir offer the dissenting position of a local Kashmiri boy who slowly climbs the success ladder and becomes a skilled graphic artist. Dissent has a long history of being voiced through different art forms, such as poetry, prose, and graffiti. Like Munnu, Riyaz, the neighbor of Farah Bashir and the son of her father's cousin, found his expression of dissent in the letters Q.K. An introvert by nature, self-absorbed with his books, he would write the letters *q* and *k* in different styles and fonts. He would scribble on the wall outside his home, which was visible from Bashir's house and what Farah had started calling the "wall of resistance" (Bashir, 2021, p. 178). His mother would erase it by all means, but he persisted. After the 1992 Cricket World Cup, the acronym gained life, and he started scribbling "Quit Kashmir" (Bashir, 2021, p. 180) on the wall despite his mother's advice and constant trials and tribulations to erase it, but it left its shadow marks, offering his undeterred resistance towards his mother's relentless erasure and the troops' violent presence.

With the theme of death running exclusively in *Girlhood in Kashmir*, Farah draws the readers' attention to the stark difference in the newspapers of the Valley and the English daily the family had the chance to read when the curfews were lifted and their deliveries were made possible. Reading one such newspaper from the Valley, her grandmother inquired about the "shoes and slippers scattered all over a street. In uneven pairs. That military *voal*<sup>1</sup> looks alert. Can you tell me what he is looking at so keenly? Where were all the people now, whose shoes were left behind" (Bashir, 2021, p. 48)? Farah doesn't answer, falls asleep, and dreams about the unarmed dead civilians that have become a routine in the newspapers of the

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<sup>1</sup> *Waalah*. It connotes the male gender of a person (Bashir 216).

Valley. Knowing that people were passing away from accidents and natural causes in addition to being torn apart by bombs or rendered paralyzed by stray bullets or shrapnel seemed to bring comfort, ease, and peace.

The obituaries had a poetic beauty in the acknowledgment that people were dying without being named as collateral damage, and their loved ones didn't have to run from one jail to another to inquire about their state of being. The newspapers that came from outside Kashmir, usually the English daily, carried a different version of the situation in Kashmir, with stark differences in style. The newspapers had colored advertisements of mattresses, crossword puzzles, comics, film releases, and horoscope readings (Bashir, 2021, p. 49), and headlines such as "A Territorial Dispute Sold as the Rock-bed of Terrorism!" (Bashir, 2021, p. 207), which her father often used to point out in respect to the presentation of Kashmir to the outside world.

## 7. Conclusion

Sajad and Farah use their childhoods to depict the entrenched anxiety that prevails in the minds of Kashmiris and especially young children, who try to come to terms with violence's constant threat to their own and their loved ones' lives. The dreams of state-afflicted violence that Munnu and Farah suffer directly and indirectly continue to harm and shape their lives as young individuals. These autobiographical projects come as responses to external pressures put on them by warring nation-states, terrorist organizations, and innocent Kashmiris whose sole demand is freedom from tyranny. The violence inflicted on them is not just physical but is also perpetrated on their identities; it is the trauma that fleshes itself out. The memoirs are in many ways directed to the outside world, which receives a sanitized version of events unfolding in the Valley. Additionally, it also succeeds in portraying the Kashmiris, who share a long tradition among oppressed peoples of understanding duplicitous uses of state machinery and language for survival.

The memoirs shed light on militarization, constant vigil, fear, siege, helplessness, and strained political relationships set against the celestial landscape of Kashmir. The Valley becomes a character that offers limited opportunities for the people to grow under the watchful eye of the armed forces in the name of security. Sajad and Bashir draw from three areas of Kashmiri lives to subtend the development of their narratives: the local Kashmiri life bereft of any freedom and clouded with fear, anxiety, lung diseases, and post-traumatic disorders, which Bashir's friend suggests be re-named "Perennially Traumatic Stress Disorder" in the context of Kashmir (Bashir, 2021, p. 79); and the narrators' own fearlessness, coming of age; and having the courage to tell the world their authentic, realistic

stories by dexterously employing cultural, literary, historic, and religious traditions in their narratives.

The narrative of Kashmiris portrayed as *hangul* offers a vision of surplus violence and brutality under a constant state of emergency. Sajad invests in multiple archives of fables, dreamscapes, and everyday lived experiences that, when combined, represent a conflict zone. There are tangible and intangible effects of violence that have left marks on the bodies and minds of people. *Munnu* exhibits both of these effects on Munnu and, by extension, on Kashmiris. Violence rendered through the graphic format compels from the reader to make an emotional and ethical response. In closing the narrative, Sajad draws disturbing panels highlighting the effects of violence, and he looks back at how Munnu became Sajad, started extracting meaning from his drawings, expressed his criticism, exposed authorities, and sought revenge against time. Sajad's Munnu acts as an art historian who constantly undercuts authorial credibility and truth claims at the intersections of the novel's written, visual, and structural components by foregrounding the narrator-protagonist Munnu's subjective position.

*Rumors of Spring* through the spirals of memory archives represent the shredded and disjointed lives people in Kashmir have been forced to dispense with. The mundane nature of life is rendered a luxury or an impossible achievement. The stories are a testament to a lost innocent childhood with its small episodes of rebellion to dress up or apply makeup while still in school. In an interview with Nafeesa Syeed for the *Los Angeles Review of Books* (2021), Farah talks about the trauma and the erasure or non-documentation of the social history of the Kashmiris in the last 150 years and finds herself at a point where the crisis looms large and is ongoing without a solution or Kashmiri voice in sight. She also mentions that the book underwent numerous revisions to ensure she could not be charged with sedition and that there were at least 14 situations in the first draft where she could have been tried for sedition (Bashir, 2021). Sajad details his struggles and desperation in his attempt to persuade the publisher to accept his book, "Endangered Species" (Sajad, 2015, p. 335), which he wrote based on the cartoon he created for a newspaper, where Munnu positions a hangul and a Kashmiri next to one another in the cartoon with the phrase "Endangered Species." In order to prevent the drawing from spoiling on the drawing board, he gives in to pressure to change the title to *Munnu: A Boy from Kashmir* (ibid.).

## The Importance of Communication Skills for Engineering Graduates in the Indian Job Market: A Survey of Multinational Companies

Neha Setia \*

### Abstract

*In today's world, where globalization has made the world a smaller place, effective communication skills have become even more critical. The main objective of this research paper is to determine how important communication skills are in the workplace, and it does so by surveying employees from various multinational companies in India. The findings demonstrate that Communication skills are still essential in the workplace, and the respondents confirmed that these skills play a vital role during recruitment and on the job. Furthermore, the respondents identified speaking skills as the most critical skill during recruitment and in the workplace. So, from the findings, it was clear that there still exists a disparity between the communication skills of engineering graduates and what the industry demands.*

**Keywords:** *Communication skills, Speaking skills, Corporate employees, Engineering graduates, English Language Teaching (ELT), English for Specific Purposes (ESP).*

### 1. Introduction

The English language plays an undeniably crucial role in career advancement in today's globalized era. Although English proficiency isn't the sole criterion that contributes to career development, its importance in corporate development is widely acknowledged. It is the bridge needed for the interaction between different fields and acts as a link between many countries, communities, cultural groups, organizations and companies. As quoted by Rao (2019), "Almost 2 billion people out of the world population of 7.5 billion speak English. It means nearly 25% of the population on the earth speaks English. Among them, 400 million people speak English as their first language whereas the others speak it as a second or foreign language" (p. 11). Additionally, English is universally prominent for its power and supremacy, as it helps to shape the career and profession of students globally. So, in this competitive world, English has become an absolute need and basic survival skill of the twenty-first century.

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Due to globalization and liberalization, there is a vast job market available for engineering graduates who possess strong communication skills in English. However, communication skills are often overlooked in engineering education, which leads to many engineering graduates struggling with communication in their future careers. Students who perform well academically but lack strong communication skills face difficulty finding jobs, whereas those who excel in both academics and communication skills are more likely to secure employment. An article by Roshni Chakrabarty (2020), “Only 7 per cent engineering graduates employable”, published in India Today states that “A New Delhi-based employment solutions company, Aspiring Minds, conducted an employability-focused study based on 150,000 Engineering students and found barely 7 per cent suitable for core engineering jobs” (para. 1). Even students with average grades but exceptional communication skills have a higher chance of being selected during campus placements or multinational company interviews. Conversely, students who pass their exams with good grades but struggle with English communication may find it challenging to secure jobs compared to their counterparts in the job market, even after completing their engineering studies.

The current job market in India is highly competitive and requires engineering graduates to have employable qualities to succeed in job interviews. One of the essential employability requirements is excellent soft skills, and candidates are expected to articulate their ideas confidently and clearly without any fear. However, the challenge lies in equipping students with these soft skills and implementing them effectively, as a considerable number of engineering graduates in India find it challenging to speak or write fluently and accurately in English. So, providing better ways for faculty to work with students and enhance their people-related skills is essential. We need engineers who can effectively communicate, collaborate, innovate, and have the courage to pursue their ideas.

## **2. Statement of Problem**

As a science student with an engineering background, the researcher is intimately familiar with the challenges that recent engineering graduates encounter. These graduates often struggle to communicate effectively in a variety of situations, such as job interviews, group discussions, and other professional settings. During the recruitment process, many companies and HR managers express dissatisfaction with students' English language skills, particularly their ability to effectively communicate their technical knowledge. Another study named “1.5 million Engineers Pass Out in India Every Year, Fewer Getting Hired” conducted by Dazeinfo is that “Nearly 1.5 million Engineers pass out in India every year, but 20 - 33% of Engineers do not get recruited at all” (Choudhary, 2020, para. 1). Also,

the engineering colleges have almost doubled up in the last decade. Thus, one of the reasons for the unemployment of engineers is the lack of good communication skills. There are many pieces of evidence and research conducted on Engineering students which show that Indian engineering graduates lack the desired standard of communication skills required to meet industry needs globally. So, the education system should be revised as per the needs of companies and engineering students.

### **3. Objectives**

The focus of this research is to address the following main questions:

1. Which specific Communication skills are considered significant for recruitment and job perspective?
2. How essential is proficiency in Communication skills for engineering graduates to find appropriate employment?

### **4. Review of Literature**

Numerous research suggests that individuals with good communication skills can contribute significantly to their organization's development and play a vital role in multinational companies (MNCs).

The study conducted by Jeffrey A. Donnell, et al. (2011), states the disparity that exists between the communication skills taught in engineering classrooms and what the industry anticipates our students to know. The researchers insist that the new curriculum should be more inclined towards the needs of industry and add technical sponsored courses so that they can help in improving the academic-industry interactions.

Clement and Murugavel (2015), in the article English for Employability, examine the reality of English classrooms in engineering colleges and understand the main cause behind the un-employability of engineering graduates in India. They advised providing proper training to English professors and they should come in touch with industry professionals to design a syllabus by keeping in mind the current needs of the industry.

In an article by Tarjani Sheth (2015), the author highlights the significance of communication in an engineer's life. The researcher's objective is to enhance communication and professional skills using the English language as a mediator to shape future engineers. The article emphasizes the importance of an engineer possessing both communication and technical skills to compete globally.

Almeida (2019), in his qualitative research, addresses that employers are dissatisfied with the communication skills of engineers, indicating a gap between communication instruction in engineering programs and expectations from professionals. It also highlights the specific communication skills required for engineers to succeed in the workplace.

Suvarna Lakshmi, et al. (2020), in their research paper, discusses that the industry consistently laments the inadequate communication abilities of engineering graduates, and those with a proficient command of English communication are more likely to succeed in interviews than those lacking in this skill. In the era of globalization, engineering students must improve their English communication skills in order to enhance their employability in the job market.

## **5. Research Methodology**

The objective of the survey was to gain the perspective of corporate employees towards the importance of English Communication skills during recruitment and at the workplace. So, the researcher employed a survey method to collect data by administering a questionnaire to 30 corporate employees from different multinational companies such as Emerson, TCS, Deloitte, Ernst & Young etc. All the participants were from an engineering background. The data was collected based on various aspects such as age, gender, experience, and job designation. Further, the collected responses of the participants were precisely analysed by the researcher to extract meaningful insights and to ensure that the collected data is representative and reliable.

## **6. Result Analysis**

Now, below we have the analysis of the questionnaire filled out by corporate employees. Furthermore, the questionnaire was evaluated utilizing a Five Percent Likert scale, with corresponding scores assigned to different levels of agreement: 1 = Strongly Agree, 2 = Agree, 3 = Indecisive, 4 = Disagree, and 5 = Strongly Disagree.

**Table 1: Questionnaire filled by Corporate Employees**

| S. No. | Questions  | Strongly Agree (%) | Agree (%) | Indecisive (%) | Disagree (%) | Strongly Disagree (%) |
|--------|--|--------------------|-----------|----------------|--------------|-----------------------|
| 1.     | Are Communication Skills essential for success in a professional career?   | 95                 | 5         | 0              | 0            | 0                     |
| 2.     | Can individuals with strong Communication Skills make a greater contribution to the development of the organisation? | 11.7               | 52.2      | 27.5           | 8.6          | 0                     |
| 3.     | Do poor Communication Skills reduces the chances of selection in an interview, during recruitment?                   | 63.7               | 36.3      | 0              | 0            | 0                     |
| 4.     | Does Communication Skills impact your career in various aspects?   | 65.4               | 24.6      | 0              | 0            | 0                     |
| 5.     | Are Communication Skills necessary for finding a suitable job?   | 35.6               | 50.3      | 14.1           | 0            | 0                     |
| 6.     | University/College education system should focus on Communication Skills essential for employability?                | 65.7               | 34.3      | 0              | 0            | 0                     |
| 7.     | Did your English professors provide you with effective training in University/College?                               | 0                  | 21.6      | 31.2           | 40.7         | 6.5                   |
| 8.     | Should companies offer language training programs to enhance the quality of employees' Communication Skills?         | 72.5               | 27.5      | 0              | 0            | 0                     |

9. According to you, which Communication Skill is most important during the recruitment process?

| Listening (%) | Speaking (%) | Reading (%) | Writing (%) |
|---------------|--------------|-------------|-------------|
| 23.5          | 34.7         | 19.6        | 22.2        |

10. According to you, which Communication Skill is most important for employees working in any company?

| Listening (%) | Speaking (%) | Reading (%) | Writing (%) |
|---------------|--------------|-------------|-------------|
| 32.7          | 44.3         | 5.6         | 17.4        |

11. According to you, which Communication Skill are you weak in?

| Listening (%) | Speaking (%) | Reading (%) | Writing (%) |
|---------------|--------------|-------------|-------------|
| 22.8          | 38.7         | 11.3        | 27.2        |

12. Apart from meetings, how frequently do you communicate in English at your workplace?

| Frequently (%) | Occasionally (%) | Rarely (%) | Never (%) |
|----------------|------------------|------------|-----------|
| 20.7           | 63.9             | 15.4       | 0         |

13. In retrospect, what do you think would have helped you improve your English language skills during your engineering studies?

- More language courses (**Nil**)
- Mentorship from English-speaking professionals (**18.7%**)
- Language Labs (**14.8%**)
- Opportunities to practice English language skills in group projects and presentations (**66.5%**)
- Other (please specify)

14. Would you be ready to invest your time and resources to enhance your communication skills?

| Yes (%) | No (%) |
|---------|--------|
| 89.65   | 10.34  |

15. According to you, which training mode is suitable for you?

| Online (%) | Offline (%) |
|------------|-------------|
| 20.68      | 79.31       |

This section presents an analysis of the data collected from a questionnaire filled out by corporate employees. There were no assumptions or hypothetical information added to the data, ensuring that the findings were based solely on the information collected through the questionnaire. The group of people surveyed

consisted of 35.5% women and 64.5% men. Most of the respondents, about 72%, were between the ages of 20 and 30, while 22% were aged between 31 and 40, and 6% were between 41 and 50. In terms of their qualifications, all of the participants were from the fields of IT, holding various job titles such as Interns, Developers, Senior Analysts, Team Leads and Project Managers. Out of this, most of the applicants were individuals who had just entered the workforce, such as interns or those with job experience ranging from 0 to 4 years.

Based on the findings from questions 1 and 2, it is evident that the majority of the respondents recognize the importance of strong communication skills in achieving success in their careers. Based on the analysis of question 3, it is evident that all respondents agreed that the negative impacts of poor communication skills on interview success. This emphasizes the crucial role that communication plays in the recruitment process. Question 4 reveals that a significant majority of respondents recognize the wide-ranging influence of communication skills on their professional paths, underscoring their significance beyond the initial hiring process. Questions 5 and 6 pertain to the employability of Engineering students. The findings indicate that all participants acknowledge that English language skills have an impact on their career prospects in various ways, thus, affirming that English Communication skills are essential in finding suitable jobs. This highlights a notable gap in the existing education system. In question number 7, it is evident that around 21.6% of the respondents expressed satisfaction with the performance of their English professors at the university, while the remaining majority were dissatisfied with the level of effective instruction provided by the professors. Further, in the next question, a combined 47.2% expressed their dissatisfaction with the quality of English instruction provided by the English Professors. When questioned about the language training programs in question 8, the majority of the respondents agreed that companies should offer language training programs. This reflects a recognition of the importance of ongoing skill development.

From the analysis of Questions 9 and 10, it is evident that most of the respondents believed that speaking skills are the most important language skill during recruitment and in the workplace, followed by listening skills. Next, from the analysis of question 11, roughly 38.7% of the participants identified their speaking abilities as an area in need of improvement. This percentage encompasses mostly freshers who are new to corporate culture and have limited work experience. In contrast, those with over four years of job experience tend to excel in speaking skills due to their frequent participation in calls and meetings, allowing them to become fluent with regular practice. asked about their frequency of English usage in the workplace (question 12), a majority of respondents (63.9%) reported

using English for work communication on an occasional basis. This suggests that they may not have many opportunities for regular practice outside of meetings. Further, based on the analysis of question 13, the data suggests that students find group projects and presentations (66.5%) to be the most beneficial, highlighting a preference for hands-on learning rather than traditional coursework or lab work. From question 14, it is evident that almost 90% of the respondents were ready to invest their time and money in enhancing their communication skills, recognizing that poor communication proficiency can limit employment opportunities during interviews. At last, from question 15, most of the participants expressed a preference for offline training as their favoured method of learning, as it provides opportunities for interaction. At the same time, some chose online learning due to their busy work schedules.

### **6.1 Written feedback provided by the participants**

Participants were allowed to express their thoughts on English Communication skills. According to some participants, English is the language that enables effective communication regardless of location. They emphasized the importance of being bold and confident in speaking, regardless of errors or pronunciation. The IT industry specifically requires strong English skills for communicating with customers and stakeholders, as well as for giving presentations or business reviews to international units. Also, in the words of Sheth (2015), “Nowadays, the employers don’t look for engineering nerds who will spend all work time in the office with an engineering calculator. Even if you are the greatest engineer nobody will recognize you if you cannot explain to others your thoughts and ideas” (p. 52). Therefore, all participants agreed that Communication skills are crucial for success in today's world, and are essential for every employee.

Several participants emphasized the importance of Communication skills during job interviews. In the post-globalization era, being proficient in English is no longer optional but compulsory. Even if an employee possesses strong technical expertise, they should also be efficient in Communication skills during the interview process. Additionally, in countries like India, employers prefer employees with better communication skills, particularly when sending them overseas for projects. Many participants regarded oral communication skills as the most crucial one, given that they interact in English daily. Although their companies do not provide English language training, participants expressed a desire to enrol in courses that would assist them in improving their English skills.

## 7. Research Findings

According to the survey, "Speaking" is regarded as the most crucial skill in the workplace. This indicates that effective oral communication remains a key skill in the workplace, such as during meetings, presentations, and conversations. The ability to interact with others and exchange ideas are necessary for effective problem-solving, negotiating solutions, and decision-making. Also, being able to express ideas clearly and using the right language at the right time is crucial for successful job interviews.

In his thesis, Almeida (2019), "presented a list of the most important oral communication genres for practicing engineers: public speaking, meetings, interpersonal or informal communication, training, and selling" (p. 27). Therefore, the employees emphasize the need for in-house language training programs, preferably through offline modes. Additionally, they need to possess communication skills to communicate effectively via emails, presentations, and other means.

Also, to ensure that English courses meet global industry demands and prepare students to tackle real-world issues, the syllabus must be designed accordingly. Syllabus designers should be aware of both industry and HR requirements when creating the curriculum. By doing so, students can focus on the specific aspects necessary for job selection, and the syllabus should be periodically updated to align with student needs. Although university-industry collaborations are highly valuable, it is the responsibility of the university to specify the communication aspects that we aim to impart to the students. We should also work towards creating precise definitions of the communication skills that our industry partners desire from our students.

Furthermore, the key aim of the Communication skills course is to enhance the student's communication abilities in all four aspects i.e., listening, speaking, reading, and writing (LSRW). This course is instructed by professors holding qualifications of M.Phil. or PhD degrees, with many having completed their master's degree in English literature. However, ESP (English for Specific Purposes) and CLT (Communicative Language Teaching) are unfamiliar terms to many English professors in India, as they have not been trained in ELT (English Language Teaching) methodologies. The study of ELT methodologies is a relatively new field in India, and the professors must be provided with exposure to these areas. This would enable them to enhance the teaching-learning experience, making it more engaging and productive.



## 8. Conclusion

As stated by Shrestha et al. (2016), “The use of English language is widespread in the career of the engineering students in both the global and local contexts” (p. 187). Similarly, the purpose of this study was to assess the significance of English communication skills in the corporate sector. The findings indicate that employees recognize the importance of English language skills both during recruitment and in the workplace. Strong English communication skills are crucial for achieving career excellence and increasing employability. However, there exists a noticeable disparity between the communication proficiency of entry-level engineers and the expectations of the multinational industry. Respondents prefer practical chances and guidance for increasing their English communication skills and are ready to invest in their growth. In addition, offline training modes are preferred. These findings highlight the need for educational institutions to increase their emphasis on practical communication skill development. Thus, universities should take a leading role in developing communication skills in addition to technical skills.

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## Nourishing Consumerism: A Rights Based Approach

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### Abstract

*In today's era of coterminous world under the aegis of globalization and liberalization, free market and open trade has led to unrestricted industrial development, turning the whole world into market village. Also, the initiation of the laissez faire theory in the 18<sup>th</sup> century gave more autonomy to the businessmen which in turn led to the unethical and unfair trade practices resulting in the exploitation of the consumers both in developed and developing nations. It was from the ancient era that the concept of consumer protection came to be known by the masses but its importance has gained momentum from 19<sup>th</sup> century. There was an exordium of new concept of 'consumerism' - basically a movement by various consumer organizations to make consumers more conscious and vigilant about their rights and remedies if they fall prey to the mal practice of the manufacturer. Analysing the increased demand for consumer protection the United Nations in 1985 gave certain guidelines, by passing the resolution in the General Assembly. Keeping in view of these guidelines various countries enacted consumer protection laws including India in 1986 enacted the Consumer Protection Act to give legal backup to the concept. To supplement the legal sphere, the independent organizations play a pivotal role in providing consumer protection not only by educating people but also helping them to get justice in case of victims of the unscrupulous practices of the manufacturers. Also, now along with these organizations' consumer cooperatives have also come into picture. Hence, analysing their effectiveness, scenario has changed from caveat emptor to caveat venditor.*

**Keywords:** globalization, liberalization, consumerism, unscrupulous practice, caveat emptor, caveat venditor.

### 1. Introduction

*"The goal is to normalize trade relations based on sound science and consumer protection".*

-Mike Johanns

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Consumer protection having been remained as a vintage concept have gained momentum in the last few decades and have found its worthy place and has become one of the cardinal constituents of the modern concept of law. As with accretion in globalization and development in the international trade and commerce, there has been resultant increase in the heterogeneity of consumer goods and services. In this regard, there has been a greater public concern over the consumer protection issues all over the world. Hence, with the interdependence of the world economy, the national consumer protection policies have now acquired international dimensions, which the researcher tries to analyse through the doctrinal method in the present research.

## 2. Meaning of consumer

Before proceeding further, first we understand the meaning of the consumer.

According to **Section 2(d) of the Consumer Protection Act, 2019**, ‘consumer’ means any person who has bought any goods or services in consideration of something which is promised or paid in cash or kind or through a system of deferred payments and such goods are exclusively used for the purpose of personal consumption and not for resale or commercial purpose.

According to the **Black’s Law Dictionary**, the word ‘consumer’ refers to the customer or the buyer of goods or services.

So, the emphasis is on the exchange of goods and services in lieu of some consideration or contemplation which is similar to a contractual obligation under the contract law.

## 3. Consumer Protection- A Historical Consideration

Consumer Protection has its deep roots in the rich soil of Indian civilization, which dates back to 3200 B.C. In ancient India, human values were cherished and ethical practices were considered of great importance. However, the rulers felt that the welfare of their subjects was the primary area of concern. They showed keen interest in regulating not only the social conditions but also the economic life of the people, establishing many trade restrictions to protect the interests of buyers.

In ancient India, *Dharma-sastras* (“*Dharma*”) was followed almost by all the sections of the society, which laid out social rules and norms, and served as the guiding principle governing human relations. Also, during that period, the king had the power to confiscate the entire property of a trader in two instances: (1) when the king had a monopoly over the exported goods; and (2) when the export of the

goods was forbidden. There was also a mechanism to control prices and punish wrongdoers. The king fixed the rates for the purchase and sale of all marketable goods. In the period from 400 and 300 B.C., the director of trade was made responsible for the changes in the market situations and hence, controlled them also. During Chandragupta's period, consumer justice and its easy access was considered of great importance and the king was the central power to render justice.

In the medieval period also, consumer protection continued to be of prime concern of the rulers. Further, during Muslim rule, a large number of units of weights were used in India. The prices used were determined by local conditions. Similarly, during the rule of Alauddin Khalji, strict controls were established in the market place. In those days, there was unending supply of grain to the city and grain-carriers sold at prices fixed by the Sultan. There was a mechanism for price-enforcement in the market. Similarly, shop-keepers were punished for under weighing their goods.

With the outbreak of World War II, there was shortage of essential goods in the country. As the private traders indulged in profiteering and black marketing along with manipulations in prices, the government had to control the prices as well as the distribution of essential commodities. In order to check the nefarious activities of private traders, the government identified the consumers' cooperatives as efficient and reliable means for the distribution of scarce essential commodities. After the outbreak of World War II, the consumer cooperative movement made significant progress. During 1943 rationing was introduced in many provinces of India. The provincial governments issued instructions to Collectors of districts to encourage the consumers' cooperative stores by grant of necessary licenses and quotas.

#### **4. Consumerism: Conceptual Dimensions**

The term "consumerism" acquired its meaning in reference to individuals taking possession of goods and services for personal use. Since 1970s, however, this concept had often come to be used in negative connotation when "consumerism" for various reasons became identified relatively with radical social and political activism and reform. While many consumer groups and organizations work to protect the consumer, it is often not unheard of for activist groups to use this concept to advance hidden political agendas.

Although the term consumerism remained unpopular until the 1960s, legal and social protection of consumers goes far back into history of the biblical references which had provisions for merchants regarding maintaining fair standards of

commerce, as does the Hammurabi's code. The ancient Romans also had laws to protect consumers, and were known in consumer and business circles for the Latin phrase *caveat emptor* or "let the buyer beware".

This concept of consumerism has been examined in different aspects by many eminent scholars and writers, some of them are as follows:

- Hassan (1974) stated that consumerism as a movement would remain a weak slogan as long as public confidence was not restored in the administrative and enforcement machinery of Governments, and as long as voluntary public cooperation remained shy. He also emphasized that it was not only the consumer who should be conscious of his rights or the producer and the marketer who should be mindful of their duties and responsibilities but it also required an incorruptible machinery to enforce the measures adopted and a very watchful public to discourage the wrong doer, so that consumer felt safe.
- Pat Tucker (1976) describes the role played by the consumer union in the United States. The consumers union in the US has grown to be a giant. It provides an extensive series of manual and other instructional materials for courses in consumer education, and it produces radio and TV programmes on consumer topics. It cooperates with the local and states consumer organizations as well as the Consumer Federation of America and makes financial grants and offers fellowships for research on consumer problems. It testifies before legislative committees and Government bodies on consumer issues, and it has an office in Washington to step up its monitoring and litigation efforts on behalf of the consumers.
- Reddy and Murthy (1978) in their study conclude that consumers have to play a major role in protecting themselves from the clutches of businessmen. First of all they must know their rights as consumers. Secondly, they should not hesitate to exercise their rights. They must inculcate in themselves the spirit of cooperation and self help, and be aware of all the laws, which are enacted by the Government in this regard. But in actually consumers in India are not aware of their rights and responsibilities as consumers. The authors maintain that consumer organizations must educate consumers and make them alert and vigilant citizens.

It is the consumer who is special in the market place. Adam Smith, more than two centuries ago emphasized that 'consumer is the sole end- purpose of all production and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer.

The basic reasons for the emergence of consumerism in India are quite different from those of the western countries. Shortage in essential consumer goods, persistence of inflation, low level of technology, inferior quality of goods, unethical business practices, misleading advertisements and the like, are among the most readily available. The main objectives of this movement can be discussed as follows:

- To restore better balance in the buyer- seller relations in the market place,
- To safeguard consumer rights,
- To prevent exploitation of consumers by unscrupulous traders,
- To organize consumer resistance against unfair trade practices and creates strong public opinion in favour of fair-trade practices,
- To present consumer interests before the Government and pressurize the Government to provide meaningful consumer protection by legislation,
- To undertake programmes of consumer education, consumer information and comparative testing and ensure the practices of consumer-oriented marketing programmes by business enterprises.

## **5. Consumer Protection: International Perspective**

Transcending the national level, it found poignancy by the United Nations Organization and as a result the consumer interest found expression at the 29<sup>th</sup> session of the United Nations Commission on Human Rights held at Geneva in 1973. In August 1977, the UN Economic and Social Council passed a resolution on consumer protection.

The United Nations General Assembly adopted Guidelines for Consumer Protection on 9<sup>th</sup> April, 1985. The Guidelines provide a framework for Governments, to use in elaborating and strengthening consumer protection along with the following objectives:

- To assist countries in achieving or maintaining adequate protection measures for their population as consumers,
- To facilitate production and distribution patterns responsive to the wants, needs and desires of consumers,
- To invigorate utmost levels of ethical conduct of those engaged in the production and distribution of goods and services to consumers,
- To assist countries in restraining abusive and unfair corporate practices by all enterprises at the national and international levels which adversely affect consumers,



- To facilitate the development of independent consumer groups for protection of their interests,
- To enhance international cooperation in the field of consumer protection,
- To encourage the development of market systems which provide consumers with increased choices at cheaper rates,
- Thus, the legitimate needs which the Guidelines are intended to meet include the protection of consumers from hazards affecting their health and safety; promotion and protection of the economic interests of consumers; and the availability of effective consumer redress.

In July, 1988, the United Nations Economic and Social Council passed another resolution which prompted all Governments to implement the above-mentioned guidelines. Apart from these, other developments include:

- The 1985 Food and Agriculture Organization International Code of Conduct on the Distribution and use of Pesticides;
- The UN General Assembly resolution of December 17, 1982 on protection against products whose consumption and use have been banned, withdrawn, severely restricted or not approved by the Governments.

### **5.1.America's Case**

In the United States, the market scene was shaken by three distinct consumer movements during the early 1900's, the mid 1930's, and the mid 1960's. The first consumer movement was propagated by the rising prices, ethical drug scandals and other related factors. During the quarter of 20<sup>th</sup> century there was an upsurge in consumer consciousness. The second phase of the movement was fanned by factors like an upturn in consumer prices in the midst of the great depression, the sulfanilamide scandals and widely imitated Detroit housewives strikes. By the end of 1960, consumerism had emerged fully and spread to other countries to become an international social power. As a result, the consumers of the US established the International Organization of Consumers Union in The Hague. Moreover, countries like Britain, Australia, Belgium and Netherlands extended world-wide cooperation in promoting consumer information, education and testing of goods and services.

On 15<sup>th</sup> march, 1962, President John F. Kennedy called upon the U.S. Congress to accord its approval to the Consumer Bill of Rights. The following Rights were given to the public:

- Right of choice
- Right to information

- Right to safety
- Right to be heard
- Right to consumer education (added by President Gerald R. Ford)

Hence, in the US, the anti-trust legislations like the Sherman's Act of 1890, the Clayton Act, which was substantially amended in 1936 by passage of the Robinson Patman Act, Federal Trade Commission Act, 1914 and the Uniform Commercial Code since 1952, have all been protecting the consumers. Other similar legislations include: the Consumer Credit Protection Act, the Truth in Lending Act, the Consumer Leasing Act, the Fair Credit Billing Act and the Magnuson Moss Warranty Act etc.

### **5.2.Situation in Britain**

In the United Kingdom also, various laws were brought in to regulate, control or prohibit unfair trade practices and to protect the interests of the consumers. Some of them are the Consumer Protection Acts 1961 (along with Amended Acts of 1971 and 1987), the Consumer Credit Act 1974, the Consumer Safety Act 1978, the Price Commission Act 1977 and the Price Commission Amendment Act, 1979. The main aim of the Fair-Trading Act is to encourage free and fair competition by ensuring improved trading standards, discontinuing abuses of monopoly position, or practices. Also, various consumer organizations were formed to protect the interests of the consumers.

### **5.3.India's position**

Recognizing the consumer democracy and to ensure basic redressal rights, the Government of India enacted the Consumer Protection Act, 1986 (COPRA) (latest being the Consumer Protection Act, 2019). Now, the consumer is not only protected from the effects of the restrictive and unfair trade practices but also from the unscrupulous exploitation of the manufacturers in the form of defective goods or deficient services, overcharging of prices etc.

Most often poverty which is considerably widespread, does not lend the consumer necessary strength and to resist the attempts of victimization.

This Act is a comprehensive legislation having its main thrust on giving speedy Redressal and compensation to the aggrieved consumers.

The object of this Act has been aptly described by the Supreme Court in the case of *Lucknow Development Authority v. M.K. Gandhi*, as follows:

*“An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers’ disputes and for matter connected therewith.”*

The Act under section 2(9) also enshrines the basic rights of the consumers which are discussed as follows:

- a. The right to be protected against the marketing of goods and services which are hazardous to life and property;
- b. The right to be informed about the quality, quantity, potency, purity, standard and price of the goods or the services, as the case may be, so as to protect the consumer against unfair trade practices;
- c. The right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
- d. The right to be heard and to be assured that consumers’ interests will receive due consideration at appropriate fora;
- e. The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- f. The right to consumer awareness.

Moreover, to provide speedy and simple redressal to consumer disputes, quasi-judicial machinery has been set up at District, State and Central levels. These quasi-judicial bodies while observing the Principles of Natural Justice have been empowered to give reliefs of specific nature and to award, wherever appropriate, compensation to consumers. The Act also seeks to establish the Consumer Protection Councils at the Union, State and district level along with Central Consumer Protection Authority – investigative agency in coordination with state and district level officers for better protection of the interests of the consumers.

## **6. Independent Bodies: Cardinal to Consumer Protection**

Mere legislation cannot assure protection to the consumers. Along with it, voluntary action is indispensable on the part of consumers. Therefore, in supplement to the legislation, consumers should establish their independent organizations or non-governmental organizations (NGOs) to fight against such unfair and malpractices.

Several guidance associations have been doing distinguishable work in reprimanding unfair trade practices like adulteration and use of inaccurate weights and measures. There are a number of organizations working for the welfare of the consumers all over India as well as at the international level. The role of these

consumer organizations is not only to educate and guide the consumers with respect to redressal of complaints, but also to make awareness among the consumers and thus, making consumer movement a reality, through the coordinated efforts from all angles.

For an individual consumer, it is quite hectic to take on the erring traders and manufacturers, especially the big corporates, to secure his/her rights. Also, for a poor consumer it has always been improbable to check the sub-standard articles and understand the mischief of misleading advertisements and high pricing of goods and services. In this scenario of the so called competitive market and plunder through adulteration, galloping prices of consumer goods and services, the consumers have no option but need to forge a collective resistance to such practices.

In the previous two decades certain social workers and activists have been there to assist the consumers in getting redressal for their grievances by forming non-governmental organizations. Some of them are: Akhil Bhartiya Grahak Panchayat, Maharashtra; Consumer Education & Research Society, Ahmadabad; Common Cause, New Delhi; and Society for Civil Rights, Consumer Unity and Trust Society, Jaipur; Mumbai Grahak Panchayat, Voluntary Organization in the Interest of Consumer Education, New Delhi; All India Consumer Council, Hyderabad; Federation of Consumer Organization, Tamil Nadu etc.

In 1974, the then existing consumer organizations at the Second All India Consumer Conference which was convened at Bangalore, stated that a time has come for the consumer organizations in India, not only to work in small groups but also to work with the help and guidance of a central agency so that the Indian consumers can organize and voice their opinion to the government and act as a cohesive to defend and faster their interests. This conference was determined to form a federation and its purpose was to inform, educate and guide its affiliate to the greater advantage to the Indian consumer. Unfortunately, the central agency could not take off at that time because of the paucity of the required 7 members to sign as founding members. In 1989, some consumer activists tried to form a central agency and in February 1991, the Confederation of Indian Consumer Organizations, was formed with the primary objective to make the consumer movement a popular grass roots movement. For effective accomplishment of goals, it has established four working groups to deal with different arenas of consumer protection such as standards, price and public distribution systems, quality control and product safety, consumer protection laws and redressal machinery, along with problems of rural consumers.

At the international level there is Consumers International, which is the global campaigning voice for consumers. Established in 1960, it is the world federation of consumer rights groups. With over 240 member organizations spanning 120 countries, it serves as the only independent and authoritative global voice for consumer rights. It is a registered UK charity. Their goal is to ensure that consumer rights can never be ignored.

Along with this, there is International Organization for Consumers' Union based in Hague, Netherlands, which is the world's centre for consumer affairs. It was founded in 1960 by five consumer unions from the US. It aims for providing comparative testing of all consumer goods and services in all aspects of consumer information, education and protection. Linking different consumer organizations in more than 70 countries, it covers wide fields from food standards to monopolies and from safety of products to environmental protection.

The role of these NGOs is not confined merely to help the aggrieved consumers to make complaints, but also to make consumers aware of their rights and to provide adequate guidance and opportunities for the enforcement of their rights. Through consumer education, these NGOs can create general awareness and solidarity among consumers coupled with social awareness and social responsibility. It can further contribute towards the development of consciousness and responsibility among consumers by their active involvement and improvement in social and economic conditions for the advancement of consumer movement. Moreover, consumer guidance societies have been formed in different areas to guide consumers in ascertaining whether there is any defect in goods or deficiency in services. Their activities should be extended to other areas or localities and local NGOs should be constituted which work in cooperation with bigger NGOs. The consumer concerns should be widely expressed through the publication of special magazines throughout the country, in different languages.

It is noteworthy that these organizations and NGOs have been instrumental in persuading the corporate houses to set up complaint cells for direct interaction with consumers. To become more effective and to have better reach, the consumer organizations should build partnerships with developmental oriented organizations and thus extend activities to the remote rural and tribal areas.

## **7. Conclusions**

Analysing the present scenario regarding the protection of consumer interests, these independent organizations play as important role as played by the government as there is increase in the filing and disposal of the consumer cases i.e.

91% (approx.) being total disposal by District, State and National Consumer Commission.

As per the empirical research undertaken by Neelam Chawla and Basanta Kumar it has been observed that the Consumer Protection Act, 2019 is hailed as an all inclusive regulatory regime that would raise customer interest investment in e-commerce. The grievances redress mechanism provided under the E-Commerce Rules, 2020 is a calibrated step ensuring neutrality in the e-commerce market place, greater transparency, stringent penalties and a striking balance between the commitments of e-commerce firms and vendors in the marketplace.

As a result of the pressure exerted by such organizations, number of large corporations has set up Consumer Grievance Cells as an in-house redressal mechanism. Life Insurance Corporation of India (LIC) has set up Claims Review Committees at the zonal and central level. Petroleum Companies, Railways, Banks, Income Tax Departments, have also set up Public Grievance Cells.

The Government of India has also set up a separate Directorate called Directorate of Public Grievances at Sardar Patel Bhavan, Sansad Marg, New Delhi. They deal with complaints relating to roads, railways, insurance, education, health, pensions and related matters. Along with it there is a Centralized Public Grievance and Monitoring System (CPGRAMS) under the Department of Administrative Reforms and Public Grievances, Ministry of Personnel which is a dedicated 24X7 compliant platform for the citizens and it covers all the Departments of the Government. Further specifically, the Ministry of Consumer Affairs, Government of India had launched 'National Consumer Helpline' application, on which consumer complaints can be registered. The Government has also mandated the publication of a 'Citizen Charter' for every corporate and public sector enterprises along with some public offices.

The nationalized banks are observing 15th of every month as the 'Customer Grievance Day.' where an aggrieved consumer can walk into the top managers' offices in their respective town, district or zone. The Council of Fair Business Practices, of more than 20 years standing, is also trying to help in the redressal of complaints against business from individual consumers or groups. Federation of Indian Chambers of Commerce and Industry (FICCI) has set up a Consumer Business Forum which meets once a quarter in different cities of the country. All stock exchanges in the country have also set up similar cells. The Advertisement Standard Council of India (ASCI), Confederation of Indian Industry (CII) and FICCI have evolved a code of ethics for their consortium. Another noteworthy accomplishment has been the representation given to consumer organizations in

respect to the policy making bodies (regulator machinery) of governments and Advisory and Welfare Committees of corporates and business organizations and the service sector. Central and State (Government) Consumer Protection Councils, regulatory departments of Preventions of Food Adulteration, Supplies of Food and Drugs, Weights and Measures Department, Quality Control Institutions like Bureau of Indian Standards (BIS) and AGMARK, Petroleum Product Department, Railway Commuters Welfare Committees, Regional Advisory Committees for Indian Airlines Services all have representatives of the various consumer organizations. Thus, consumer has got an opportunity to participate in policy making aspects, thereby manifesting a paramount role.

Hence, analyzing their effectiveness, there is an upgradation from *caveat emptor* (let the buyer beware) to *caveat venditor* (let the seller beware) and we are achieving a balance between the rights of both the buyer and the seller which is the ultimate objective of any legislation. But, however, there is something more which needs to be done in terms of quality education and awareness about their rights by making an informed citizenry.

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