ISSN: 2229-3906

JOURNAL OF UNIVERSITY INSTITUTE OF LEGAL STUDIES

Peer Reviewed and Refereed Volume XVIII, Issue II (July-December 2024)

UNIVERSITY INSTITUTE OF LEGAL STUDIES
PANJAB UNIVERSITY, CHANDIGARH

ISSN: 2229-3906

JOURNAL OF

UNIVERSITY INSTITUTE OF LEGAL STUDIES

JOURNAL OF

UNIVERSITY INSTITUTE OF LEGAL STUDIES

(Peer Reviewed and Refereed)

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

Email: director_uils@pu.ac.in

EDITORIAL BOARD DETAILS

Contact Us:

The Editor
Journal of University Institute of Legal Studies, Panjab University, Chandigarh- 160014 India
Email: director_uils@pu.ac.in, Telephone: +91 172-2784283 0172-2784397, 0172-2534696

Editorial Note

It is with great pleasure that I present before you Volume XVIII, Issue II of the *UILS Law Journal 2024*, an embodiment of rigorous academic inquiry and intellectual discourse. This issue, following the publication of the first issue of the year, carries forward the tradition of fostering scholarship on contemporary legal and socio-legal issues that shape our world. The diverse range of topics explored in this edition reflects the evolving dimensions of law and governance in an era of rapid transformation.

One of the prominent themes in this issue is the intersection of law and technology. Dr. Pooja Sood & Balwinder Kaur, in their article on *Digitalizing Succession*, examine the feasibility of electronic wills in India, shedding light on the intricate legal framework that must evolve in tandem with technological advancements. Dr. Mumtaz Zabeen Khan's paper on *Evolving Indian Copyright Laws in the Age of Digital Media* underscores the urgent need for legal adaptation in the digital age, while Diksha Pundir & Sanigdha delve into *Generative Artificial Intelligence Praxis and Intervention in International Commercial Arbitration* to highlight the ethico-legal paradigms of AI in dispute resolution.

Another crucial aspect addressed in this issue is the dynamic socio-legal challenges that demand legislative and policy attention. Dr. Bhupinder Kaur & Prateek Sharma provide a critique on *Concerns, Conflict and the Parliamentary Quandary on Data Protection Law in India*, while Rahul Dhiman's article on *Mob Lynching Law* examines the paradigm shift introduced by the Bharatiya Nyaya Sanhita. Harpreet Dhillon & Kritika further this discussion by critically analyzing *Bharatiya Nyaya Sanhita: A Justified Reform or a Misguided Approach for Bharat?* and Simaranjeet Kaur offers a

comparative analysis of *Whistleblowing Laws in India and the USA*, providing insights into global best practices.

The journal also brings into focus the intricate relationship between law and public policy. Dr. Basant & Kajal Rai Sadana, in their work on *Punjab's Rehabilitation and De-addiction Centres*, offer a crucial examination of policy implementation, while Dr. Sital Sharma's study on *Lok Adalats as People's Court* highlights the effectiveness of alternative dispute resolution mechanisms in enhancing access to justice. Harsh Mahaseth & Shifa Qureshi's paper on *Redefining Global Health Law* reflects on international best practices in managing public health crises in the wake of the Covid-19 pandemic.

Fundamental legal principles with contemporary relevance are explored by Dr. Shivani Gupta in *The Death Penalty vis-à-vis Crime Prevention*, critically examining the deterrence theory, while Dr. Sugandha Passi evaluates the impact of media interventions on judicial impartiality in *The Media-Trial: A Study of Progression on Judicial Proceedings*. The integration of sustainability with international law is explored by Rajesh Baboo in *Integrating Outer Space and Sustainability*, offering insights into how space law can contribute to achieving the United Nations Sustainable Development Goals.

Acknowledgements:

I extend my sincere gratitude to the contributors for their invaluable scholarly work, which enriches the legal academia with critical perspectives and thought-provoking analyses. I am also grateful to our esteemed Advisory Board members: Hon'ble Justice A.K. Sikri, International Judge at the Singapore International Commercial Court and Former Judge, Supreme Court of India; Prof. (Dr.) Balram K. Gupta, Professor Emeritus and Former Director of the National Judicial Academy; and Prof. Dr. Dilip Ukey, Vice Chancellor of Maharashtra National Law University, Mumbai, for their guidance and

support. Special thanks to our Patron, Prof. Renu Vig, Vice Chancellor of Panjab University, whose leadership has been instrumental in the continued success of this journal.

The diligent efforts of the Co-Editors, Prof. Gulshan Kumar and Prof. Jaimala, have played a crucial role in shaping this edition. I also extend my deep appreciation to the members of the Editorial Board: Prof. Rattan Singh, Prof. Chanchal Narang, Prof. Ajay Ranga, and Prof. Meenu Kaushik, whose dedication and meticulous efforts have ensured the publication of this edition.

Additionally, I acknowledge the faculty members, Dr. Sital Sharma for leading the editorial work on this issue and Dr. Sugandha Passi along with Kritika Sheoran, and Yuvina Goyal for their efficient execution of the process of bringing this journal to life and their valuable contributions to the editorial process.

Finally, I express my sincere gratitude to all the peer reviewers, faculty members, and administrative staff who have supported this endeavor. Their valuable insights and rigorous assessment have contributed immensely to the quality of this publication.

I hope this issue stimulates further research and dialogue among legal scholars, practitioners, and students. As always, the *UILS Law Journal* remains committed to providing a platform for intellectual engagement and scholarly discourse that drives legal thought and practice forward.

Prof. Dr. Shruti Bedi
Director, UILS
Panjab University

Journal of University Institute of Legal Studies
(Peer Reviewed and Refereed Journal)
Volume XVIII, Issue II July - December 2024 ISSN: 2229-3906

Articles

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 1-11

Digitalizing Succession: Exploring the Validity and Legal Facets of Electronic Wills in India

Dr. Pooja Sood* & Balwinder Kaur**

Abstract

The necessity for electronic wills (e-wills) is becoming increasingly apparent in our digitized world, particularly in light of recent global events like the COVID-19 pandemic, which have highlighted the limitations of traditional, paper-based estate planning. E-wills offer numerous benefits, including the ability to create and execute wills remotely, thus eliminating the need for physical interactions which can be difficult due to health concerns, mobility issues, or geographical constraints. They enhance convenience, allowing individuals to draft, store, and update their wills securely online. Despite these advantages, the Indian legal system currently does not recognize e-wills. The Indian Succession Act, 1925, which governs testamentary succession, requires wills to be in a written format, signed by the testator and attested by witnesses, thus precluding the use of digital formats. This legal stance presents significant challenges for individuals seeking flexible and modern estate planning solutions. The adoption of e-wills in India would necessitate a comprehensive regulatory framework that ensures the verification of the testator's identity, authentication of digital signatures, and secure digital storage solutions.

This paper delves into the legal facets surrounding e-wills in the Indian context. The research examines the existing legal framework, primarily the Indian Succession Act, 1925, and the Information Technology Act, 2000, to assess their applicability to e-wills. It investigates whether e-wills can be considered valid under current laws and explores the challenges and opportunities presented by their adoption. The study highlights the lack of specific provisions addressing e-wills in Indian legislation, raising questions about their legal status and enforceability. This paper contributes to the ongoing discourse on succession law reform in India by examining the implications of digitalization on will-making practices.

* Associate Professor, Department of Law P.U. Swami Sarvandand Regional Center, Hoshiarpur, Punjab
** Assistant Professor, Rayat College of law, Railmajra (Affilated to Panjab University)

This research work is entirely doctrinal in nature. The study is relies on the primary and secondary sources to ensure a comprehensive examination of the subject. Primary sources include case laws and judgments issued by Indian courts, along with relevant statutes, rules, bylaws, notifications etc. Secondary sources encompass books written by the authors and the legal experts, providing critical insights and interpretations. Additionally, reputable online legal databases like SCC Online, Manupatra, and JSTOR have been utilized to access scholarly articles and research papers.

Keywords*: Electronic Will, Digital Will, Digital Signature on Wills, Testamentary Succession, E wills.*

1. Conceptual Analysis of the Will

Succession refers to the transfer of the property, rights, and liabilities of a deceased person into their estate or beneficiaries.[1] It is an important ingredient in providing for the disposal of an individual's estate following their death, in order to maintain stability and continuity. There are essentially two types of successions: first, intestate succession and, secondly, testamentary succession. Intestate succession occurs when an individual dies without a legally valid will, and the estate is distributed according to the prevailing laws of inheritance.[2] This kind of succession is often automatic and typically applies a pre-determined legal framework that privileges certain relatives over others, irrespective of what the deceased may have preferred. Testamentary succession, on the other hand, occurs when a person dies leaving a valid will that explicitly outlines how their estate
should be distributed.[3] Testamentary succession provides individuals with control over their estate and ensures that their specific wishes are honored after their death. The importance of testamentary succession cannot be overstated. It allows individuals to plan the future of their estate, providing peace of mind that their assets will be handled according to their wishes.

A will embodies the testamentary intentions of an individual concerning the disposition of their property after death.[4] According to Section 2(h) of the

---

[1] K.K Ramani, Laws Relating to Wills, *Nomination and Succession* 56 (Bharat Law House, India, 3rd edn., 2024)

[2] Singhal Ayushi, "Female Intestate Succession under the Hindu Succession Act, 1956: An Epitome of Inequality and Irrationality" 4 *Christ University Law Journal* 98 (2015).

[3] Evolution of Succession Rights in India and Equity, available at: https://papers.ssrn.com/sol3/ (Last retrieved on April 18, 2024)

[4] T.P. Gopalakrishnan, *Law of Wills* 6 (Law Book Co., Allahabad, 2nd edn., 1965).

Indian Succession Act, 1925, a "will" is defined as the legal declaration of the intention of a testator with respect to his property, which he desires to be carried into effect after his death.[5] This definition encapsulates the essential nature of a will as a document that expresses the wishes of an individual regarding the distribution and management of their estate after their death.
Lord Penzance, in ***Leimage* v. *Goodban***[6], elaborates on the expansiveness of a will's definition. He suggests that a will encompasses not only the primary document but also all associated papers, including codicils, in a "general and comprehensive sense." Therefore, a will extends beyond its primary form to include any supplementary documents that contribute to the testator's testamentary intentions. Fundamentally, the essence of a will lies in its provisional nature, serving as a declaration of intent during the testator's lifetime. This declaration remains subject to alteration or revocation based on changes in the testator's intentions, underscoring the fluidity of its effect until the testator's death, which solidifies its provisions. In view of this definition the will must contain the following three Characteristics.

i. It should be "the legal declaration" of the intention of the testator.
ii. The declaration must be "with respect to the property of the testator.
iii. The testator should "desire the intention to be carried into effect after his death".

For a document to qualify as a will, it must include a disposition of property.[7]

In India, Hindus have the legal right to dispose of their property through a will. According to Section 30 of the Hindu Succession Act, 1956, any Hindu can transfer their property by will or any other form of testamentary disposition, provided the property is capable of being transferred.[8] This section mandates that such dispositions must comply with the provisions outlined in the Indian Succession Act, 1925, or any other prevailing laws applicable to Hindus. This legal framework ensures that Hindus can effectively manage and allocate their assets according to their wishes, thereby providing clarity and security in matters of inheritance and succession.

---

[5]The Indian Succession Act, 1925 (Act 39 of 1925), s. 2(h)
[6][1865] LR 1 P&D 57
[7] Sudhir Kumar Bose, *Law of Succession* 55 (Eastern Law House, Calcutta, 5th edn., 1974).
[8]Will Under Section 30 of the Hindu Marriage Act, 1956, *available at:* https://docs.manupatra.in/newsline/articles/Upload/ (Last retrieved on July 19, 2024)

The Indian Succession Act, 1925, primarily governs testamentary succession in India, providing a comprehensive legal framework for the creation, execution, and revocation of wills.[9] This Act applies to wills made by Hindus, Sikhs, Christians, Jains, and Buddhists, ensuring that these communities follow standardized legal procedures for managing their testamentary dispositions.[10] However, Muslims are not governed by this Act, as they follow their own personal laws regarding wills and succession. This distinction allows for diverse religious practices to be respected within the broader legal context of testamentary succession in India.

Muslim law on wills (Wasiyat) is primarily governed by Islamic jurisprudence, with specific rules and restrictions.[11] While there is no single codified law applicable uniformly across India for Muslims, the principles of Islamic law are widely followed, supplemented by judicial interpretations.

Even though India has a comprehensive legal framework governing wills through the Indian Succession Act, 1925, electronic wills remain unacceptable under current law. This research work undertakes a thorough analysis of the legal status of electronic wills within the Indian context, examining the challenges and potential pathways for integrating e-wills into the existing legal system.

1.1 Methodology Used: This research work is entirely doctrinal in nature. The study is relies on the primary and secondary sources to ensure a comprehensive examination of the subject. Primary sources include case laws and judgments issued by Indian courts, along with relevant statutes, rules, bylaws, notifications etc. Secondary sources encompass books written by the authors and the legal experts, providing critical insights and interpretations. Additionally, reputable online legal databases like SCC Online, Manupatraand JSTOR have been utilized to access scholarly articles and research papers.

2. Concept of Electronic Will

[9] Decoding Testamentary succession, *available at:* https://burgeon.co.in/blog/decoding-testamentary-succession/ (Last retrieved on April 10, 2024)

[10]Suresh Kumar Sharma, *Testamentary and Intestate Succession* 35 (Mittal Publications, New Delhi, 1st edn., 2018).

[11]Shaikh Sirajuddin, *The Muslim Law of Inheritence* 233 (Kitab Bhavan Publication, Hyderabad, 3rdedn., 2022)

Electronic wills, often referred to as e-wills or digital wills are testamentary documents that are created, signed, and attested through electronic means.[12] In an era where personal data increasingly resides on electronic devices and cloud storage, it is unsurprising that testators are turning to electronic media for the creation of their wills. This modern approach to will-making is a relatively new development in the realm of estate planning, reflecting a shift towards digital solutions in legal processes.

An electronic will facilitates the process of outlining one's wishes for the distribution of assets, financial investments, properties, and other personal belongings after death.[13] The digital nature of these wills allows individuals to compile and record their directives

online, ensuring that their intentions are clearly documented and securely stored. The creation of an electronic will involves not only writing the document but also incorporating electronic signatures and attestations, thus maintaining the legal validity and enforceability of the will. The adoption of electronic wills aligns with the broader trend towards digitization in various aspects of life, including financial management and personal record-keeping. By leveraging digital platforms, testators can easily update and manage their wills, ensuring that their latest intentions are accurately captured. Furthermore, electronic wills provide a streamlined and accessible way for individuals to document their wishes, reducing the reliance on traditional paper-based methods.

Electronic wills represent a significant advancement in the field of estate planning, offering a modern, secure, and efficient method for individuals to specify the distribution of their assets and belongings.[14] As society continues to embrace digital solutions, the prevalence of electronic wills is likely to increase, providing testators with a convenient and reliable means of ensuring their wishes are honored after their passing.

---

[12]The Pros and Cons of Electronic Wills, *available at:* https://www.forbes.com/sites/christinefletcher/2019/10/25/the-pros-and-cons-of-electronic-wills/ (Last retrieved on April 19, 2024)

[13]Scott S. Boddery, "Electronic Wills: Drawing A Line in the Sand Against Their Validity**"** 47 *Real Property, Trust and Estate Law Journal* 197 (2012)

[14] Adam J. Hirsch, "Models of Electronic Will Legislation" 56 *Real Property, Trust and Estate Law Journal* 45 (2022)

3. Legal Validity of Electronic Wills in India

To condense the matter, the Indian legal system at present does not acknowledge electronic wills those that are created, signed, attested, and stored digitally. According to Section 63 of the Indian Succession Act, 1925, specific criteria must be met for a will to be valid: it needs to be physically signed by the testator in the presence of two or more witnesses.[15] Furthermore, Section 68 of the Indian Evidence Act stipulates that to prove the will, at least one witness who attested the will must be present. Electronic signatures on wills are also not accepted, as Section 1(4) of the Information Technology Act, 2000, explicitly excludes wills, as defined under Section 2(h) of the Indian Succession Act,
1925, from its purview. This means that in India, a will must be signed and attested in a physical format to be legally valid and enforceable.

However, despite these ongoing limitations, there are emerging discussions and debates at the regulatory level concerning the simplification of the will-creation process. The Report of the Steering Committee on Fintech Related Issues 2019 has put forth recommendations to the Department of Legal Affairs, Ministry of Law and Justice, suggesting the development of digital alternatives for the execution of wills.[16] This indicates a significant shift in perspective, as there is increasing recognition of the need to adapt to technological advancements and provide more accessible methods for creating wills. These conversations hint at a future where electronic wills might gain legal recognition, aligning with broader trends of digitizing various legal and administrative procedures.

To sum up, while the traditional requirements for executing wills remain unchanged, the rise of discussions around electronic wills suggests that legal reform could be on the horizon. The potential adoption of electronic wills would mark a significant modernization of estate planning, making the process more convenient and in tune with contemporary technological advancements.

---

[15]Legal Aspect Concerning the Provision of a Will: Section 63 of the Indian Succession Act 1925 Read with Section 68 of the Indian Evidence Act 1872, *available at:* https://papers.ssrn.com/sol3/papers.cfm?abstract (Last retrieved on April 14, 2024)

[16]Government of India "Report on Steering Committee on Fintech Related Issues" (Ministry of Finance, 2019

3.1 Acceptance of the Video Recorded Wills

Video-recorded wills are recognized by Indian courts as a form of additional evidence to validate that the testator was of sound and disposing mind, and that the will was made without coercion, influence, duress, or fraud[17]. However, it is important to note that a will cannot be created solely through video. The formal requirements of the Indian Succession Act for executing a will must still be adhered to. In October 2009, the Delhi High Court ruled in a 1985 case that video recordings of wills are legally admissible evidence. This case highlighted that it is possible to video record the entire process of executing a will, and the court directed the government to develop a protocol and manual of instructions for registering authorities to follow in this regard.[18] In the case of ***Sayar Kumari* v. *State and Ors***.[19], the court was presented with a petition under Section 222 of the Indian Succession Act seeking the grant of probate for a will executed by the testatrix. The testatrix had recorded her last will on video, stating that she had given generously to the defendant out of her free will and that he had also taken from her forcibly. The will was executed in the presence of attesting witnesses, including a physician who was competent to certify the testatrix's sound health and mind at the time of execution.

Justice S. Muralidhar observed that the video recording of the will's execution significantly facilitated the court's task in determining its genuineness. Although the Information Technology Act, 2000 was not in effect at the time the video recording was made, the court ruled that such evidence is admissible for proving the will in question. This principle of admissibility of video evidence was also upheld by the Supreme Court in the case of ***State of Maharashtra* v. *Prafull B. Desai***[20] and further followed in ***Sube Singh* v. *State of Haryana***[21]and***Rajendra Singh Rana* v. *Swami Prasad Maurya***[22]**.**

Under the provisions of the Information Technology Act, there should be no difficulty for courts in accepting video or digital recordings of will executions

---

[17]Digital Wills In India: Legal Or Illegal - Wills/ Intestacy, *available at:* https://www.mondaq.com/india/wills-intestacy-estate-planning/879416/digital-wills-in-india-legal-or-illegal (Last retrieved on April 18, 2024)

[18] Editorial, "Should You Opt for Videography of Will" *The Economic Times*, July. 15, 2024.

[19] (2009) 113 DRJ 20

[20] AIR 2003 SC 2053

[21] AIR 2006 SC 1117

[22] AIR 2007 SC 1305

as evidence, provided that they comply with Section 65B of the Evidence Act, 1872. The court emphasized that with the availability of affordable technology such as webcams, portable and desktop computers, and internet connectivity, it should be feasible to video record the entire process of executing a will during its registration. This recording should focus on the executor and the attesting witnesses and include the administration of standard questions by the registering authority to the executor. A certified copy of the video recording, with date and time stamps should be issued to the concerned parties. Additionally, these recordings should be stored on hard disks with backups at secure locations for easy retrieval.

The implementation of this practice would largely eliminate doubts about the genuineness or capacity of the testator to make the will. The court recommended that the Government of the National Capital Territory of Delhi (GNCTD), in consultation with the National Informatics Centre, develop a protocol and manual of instructions for registering authorities to standardize this process.

4. Validity of Electronic Will During Covid 19

In the unpredictable time of the COVID-19 global pandemic, there has been a noticeable rise in interest regarding succession planning, particularly in the creation of Wills. This surge is understandable given the circumstances. However, drafting a Will during periods of social distancing, isolation, or quarantine presents numerous practical and legal challenges. The constraints on physical interactions make it difficult to meet the traditional requirements for witnessing and signing wills, thereby complicating the process significantly. The legal framework governing Wills in India is outlined in the Indian Succession Act, enacted in 1925. Interestingly, this legislation came into being just a few years following the Spanish flu pandemic of 1918-1919, which claimed millions of lives in India.[23] Despite this historical context, the Indian Succession Act of 1925 (ISA) does not relax the stringent requirements for drafting Wills during such crises.

Even during the COVID-19 pandemic, when many legal processes adapted to digital formats out of necessity, India did not permit the use of electronic wills. Despite the comprehensive legal framework provided by the Indian

[23] Naman Anand. "Where There is a Will, There Is No Way: Covid 19 And Case for the Recognition of E Wills in India and Other Common Law Jurisdiction" 27 *ILSA Journal of International & Comparative Law* 80 (2020)

Succession Act, 1925, which governs traditional wills, electronic wills remain legally unacceptable.

As the world adapts to remote working, technology is revolutionizing our daily lives in unprecedented ways. By adopting innovative methods like the digitalization of Will creation, the obstacles to drafting Wills can be addressed in two ways: (i) allowing Wills to be created via email; or (ii) enabling the signing and witnessing of Wills through video conferencing. However, Indian law currently does not support either of these methods.

The Information Technology Act, 2000, allows for the formation of contracts through electronic means but explicitly excludes Wills[24]. Therefore, preparing Wills via email or attaching digital signatures to documents is not permissible. Additionally, the Indian Succession Act mandates that witnesses must be physically present to observe the testator signing the Will. Thus, attestation through video conferencing is insufficient.

In other countries, discussions have begun about updating the law to facilitate the digitalization of Will creation in response to current circumstances. In the UK, the Law Society has approached the government and the Solicitors Regulation Authority (SRA) to address the legal and regulatory obstacles to executing Wills, including the requirements for witnessing Wills and the use of video conferencing.[25]

Interestingly, in India, the Report of the Steering Committee on Fintech Related Issues (formed by the Department of Economic Affairs, Ministry of Finance) last year suggested that the Department of Legal Affairs should review and consider amendments to laws to allow digital alternatives for Wills.[26] However, no amendments have been enacted so far. Although technological solutions are not yet available to assist with the execution of wills in emergency situations, it is hoped that the current challenges will expedite the law's evolution in this direction.[27]

---

[24] E Contracts in times of Covid 19, *available at:* https://www.khaitanco.com/covid-19/E-Contract-in-times-of-COVID-19 (Last retrieved on April 19, 2024)

[25] Nazuk Singhal, "Formal Wills During Covid 19 Pandemic: A Case for E Wills in India" 4 *International Journal of Law and Humanities* 99 (2022)

[26] Government of India, "Report of the Steering Committee on Fintech Related Issues 2019" (Ministry of Finance, 2019)

[27] Yuhong Meng, "Study on the legal validity of electronic will" 2 *Science of Law Journal* 14 (2023).

5. Conclusions

Despite the comprehensive legal framework governing wills in India through the Indian Succession Act, 1925, the Indian legal system has not yet adopted electronic wills (e-wills). This stands in stark contrast to the growing global trend towards digitalization in many aspects of legal and estate planning. The covid pandemic has further highlighted the limitations of traditional paper-based wills, as physical interactions have been severely restricted, making it difficult for individuals to draft, sign, and witness wills in the conventional manner. Consequently, the necessity for a legal mechanism that accommodates e-wills has become more evident and urgent. The current prohibition of e-wills in India poses significant challenges for individuals seeking to ensure that their testamentary intentions are honored without the need for physical presence. The process of drafting and executing a will typically requires multiple steps, including consultations with legal advisors, the physical signing of documents, and the presence of witnesses, all of which have been complicated by the COVID-19 pandemic. This has led to increased interest in and demand for digital solutions that can streamline the estate planning process while ensuring legal validity and security.

E-wills offer several advantages over traditional wills. They can be created and executed remotely, which is particularly beneficial for individuals who are unable to meet with legal professionals or witnesses in person due to health concerns, mobility issues, or geographic constraints. Digital platforms can provide secure methods for creating, storing, and retrieving e-wills, reducing the risk of loss, damage, or forgery associated with physical documents. Additionally, e-wills can be easily updated and amended, offering greater flexibility for individuals to manage their estate plans as their circumstances change. The adoption of e-wills in India would align the country's estate planning practices with global trends, enhancing convenience and accessibility for individuals while maintaining the integrity and security of testamentary dispositions. It would also demonstrate a commitment to embracing technological advancements in the legal field, reflecting a modern approach to addressing the needs and challenges of contemporary society. As the world continues to evolve digitally, it is imperative for the Indian legal system to adapt and provide mechanisms that facilitate secure and efficient estate planning through electronic wills.

6. Suggestions

i. **Legal Recognition and Definition**: The Indian Succession Act, 1925, does not currently recognize electronic wills. A legal amendment should define electronic wills and establish their validity under specific conditions.

ii. **Digital Execution and Authentication**: The law should mandate digital signatures or biometric authentication for executing electronic wills to prevent forgery and unauthorized alterations.

iii. **Video Recording and Witnessing**: Electronic wills should be executed in the presence of witnesses via live video conferencing, ensuring real-time attestation. Video recording should be stored as proof of execution.

iv. **Blockchain Technology for Security**: Implementing blockchain for storing electronic wills can enhance security, prevent unauthorized modifications, and provide an immutable record of execution.

v. **Increased Awareness:** Public awareness and education about e-wills are necessary to ensure that individuals understand the legal validity and procedural requirements of creating a digital will. This involves not only informing the public about the availability and benefits of e-wills but also providing clear guidance on how to navigate the digital estate planning process. Legal professionals and estate planners will need to be trained in the use of digital tools and platforms to assist their clients effectively.

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 12-26

Increasing Social Inequalities in a Speedily Transforming World

Dr. Anupam Bahri*

Abstract

The impacts of climate change disrupt the natural, economic and social systems on which we depend. This disruption affects global food security, damage infrastructure and jobs, and harms human health. These impacts are unevenly distributed across the globe, with some countries facing far greater risks than others. All countries, communities and companies are feeling the effects of climate change. Climate change is deeply interconnected with global patterns of inequality, with the most vulnerable populations bearing the brunt despite contributing the least to the crisis. As climate change impacts intensify, millions of vulnerable people face disproportionate challenges, including extreme events, health issues, food and livelihood insecurity, water scarcity and threats to cultural identity. Certain social groups, such as female-headed households, children, persons with disabilities, indigenous people and ethnic minorities, landless tenants, migrant workers, displaced persons, sexual and gender minorities, older people and other socially marginalized groups are particularly vulnerable. Their vulnerability stems from a combination of geographical location, financial and socio-economic status, cultural and gender dynamics, limited access to services, decision-making and justice. Climate change, more than an environmental crisis, is a social crisis that compels us to address inequality on multiple levels: between wealthy and poor countries, within countries, between men and women and across generations. The Intergovernmental Panel on Climate Change (IPCC) emphasizes the need for climate solutions that adhere to principles of climate justice—recognition, procedural, and distributive justice—for more effective development outcomes. This paper will explore these issues in both developing and developed countries.

Keywords*: Social Inequalities, Climate Change, marginalized group, worldwide*

* Associate Professor, UILS, PU, Chandigarh.

1. Introduction

The world is undergoing a fast revolution, with groundbreaking discoveries occurring nearly daily. With unintended and even unexpected repercussions, advances in robotics, artificial intelligence, biology and genetics, 3D printing, and other digital technologies are changing economies and society. Despite its potential, technological development usually results in winners and losers. Given its current speed, crossing unfamiliar territory presents new and pressing policy problems. How these policies are implemented will have a significant impact, particularly on how well national and international institutions handle distributional impacts and optimize the advantages and opportunities that new technologies might offer while minimizing the harm that they may cause due to meddling with nature. The possible effects of technology change on development have received a lot of attention in the workplace. However, technology typically takes the role of particular natural resources. The disruptive potential of emerging technology is frequently overlooked.

2. Research Methodology

This is purely theoretical paper, so descriptive method is used only.

Link between Inequality and Development

The links between inequality and climate change are contingent upon the channels through which climate impacts are encountered and the determinants of how these impacts are perceived by various individuals or groups. Livelihoods, health, mortality, agriculture, food prices and labor productivity are all direct and indirect consequences of climate change, which are mutually reinforcing. For example, the detrimental effects on human health, agriculture, food prices and labor productivity can exacerbate harmful health effects and undermine opportunities to earn a livelihood. The destruction of homes, infrastructure and ecological resources disproportionately affects the poor, whose wealth is often concentrated in fragile material forms such as housing or livestock, with climate change directly impacting the assets and resources necessary to earn a living. Climate-sensitive livelihoods, such as agriculture and fishing, are significantly impacted by environmental degradation, necessitating that those who depend on them pursue alternative income sources. However, these sources may not always be feasible and may necessitate the acquisition of new skills or pay high costs. Furthermore, climate change has the potential to exacerbate intergenerational inequality by

reducing future livelihood opportunities and presenting greater challenges for succeeding generations as a result of current environmental damage.

3. Climate Change Worsening Poverty and Inequality

Climate change is accelerating the environmental degradation and increase the frequency and intensity of extreme weather events. Vulnerable populations are disproportionately affected by both abrupt shocks, such as floods and cyclones and gradual environmental degradation. These impacts include the loss of lives and homes, health, resources, livelihoods and infrastructure; are substantially different across countries and population groups. The world's poorest nations have been further impoverished by the adverse impact of rising temperatures on economic growth in tropical countries, which are generally weaker than those in temperate zones. As a result, the income gap between the wealthiest and most impoverished 10% of the global population is 25% greater than it would be in a world without global warming.

4. Inequality in a Rapidly Changing World

Unaddressed, climate change may even reverse current progress in reducing inequality among countries. Within countries, people living in poverty and other disadvantaged groups including indigenous peoples and small landholders are disproportionately exposed to climate change. A majority of people in these groups live in rural areas and are highly dependent on agricultural, fishing and other ecosystem-related income. Their lives and livelihoods are finely relay on environmental conditions that are now changing rapidly. People living in poverty are also more vulnerable to infectious and respiratory diseases that climate change will aggravate. Similarly, they are more susceptible to damage from climate change than their richer counterparts living in the same regions. Finally, they have fewer resources to help them cope with and recover from both sudden- and slow-onset effects of climate change. Climate change is affecting both the prevalence and depth of poverty by contributing to inequality. It makes it harder for people to escape from poverty and increase their vulnerability to falling into poverty due to price shocks caused by sudden changes in agricultural production, natural disasters and environmentally triggered health problems. Estimates suggest that even under a low-impact scenario where powerful mitigation and adaptation strategies are successful, between 3 million and 16 million people will fall into poverty by 2030 because of climate change. Under a high-impact scenario, those figures could rise from 35 million to 122 million (Hallegatte et.al.,

2016). Climate change is also having an impact on intergenerational inequality. The disruptions caused by climate change are likely to reduce the livelihood opportunities of future generations especially in countries hardest hit and exacerbate downward intergenerational mobility. Climate action and the transition to green economies bring opportunities to reduce poverty and inequality. Economic restructuring brought about by the greening of economies will result in the loss of lower-skilled jobs in carbon-intensive sectors. However, carefully designed adaptation strategies result in the creation of many new jobs worldwide and overall net gains. Equality-enhancing transition towards green economies calls for the integration of climate action with macroeconomic, labour and social policies aimed at job creation, skills development and adequate support for those who will be harmed. Policies aimed at reducing poverty and inequality, in turn, can help to reduce the negative effects of climate change and provide the means for low-income households to engage in environmentally sustainable livelihoods.

Climate change accelerates environmental degradationand increases the frequency, duration and intensity of extreme weather and climate events. Countries and societies are now increasingly facing excessive or insufficient precipitation, rising sea levels, extreme temperature changes, storms, droughts, floods and other climate hazards that are only expected to intensify in the future (Hoegh-Guldberg, and others, 2018). Whether they manifest as individual shocks or gradual environmental degradation, the effects of climate change are contributing to the loss of lives and homes, poor health and damage to infrastructure, livelihoods and environmental resources. In extreme cases of flooding and coastal erosion, the physical survival of whole communities – or even nations, in the case of Small Island developing States – may be at stake. In 2010, deaths resulting from climate change were estimated at 400,000 (DARA and the Climate Vulnerable Forum, 2012). By the end of the century, this number increase to 1.5 million per year if the rate of emissions remains unchanged (Climate Impact Lab, 2018). Assessing the effect of climate change on displacement is challenging. However, one estimate puts the number of people forced to move as a result of weather events and natural disasters at an average of 24.1 million people per year from 2008 to 2018. In the 20 years between 1998 and 2017, losses from extreme weather events amounted to an estimated $174 billion (PPP) annually (Eckstein et.al., 2018). As climate change progresses, these losses are expected to rise and will increase in

severity unless urgent climate action is taken. Aside from the direct damage that the effects of climate change inflict on human society and the environment, emerging research indicates that they can also increase inequality within and among countries. Indeed, the effects of climate change are not uniform in their reach or magnitude – nor are the abilities of countries and communities to cope and respond. The most severe impacts of climate to date have been in tropical regions, where most developing countries are located. Such impacts are expected to become more intense. These countries often have little capacity to recover on their own and losses from climate hazards can hamper or even reverse years of development efforts. Countries in the Caribbean are severely affected by climate events such as hurricanes, with Dominica and Antigua and Barbuda suffering damages estimated at 46 per cent and 215 per cent of GDP (PPP), respectively, in 2017 (ibid.). In developing and developed countries alike, persons who are disadvantaged (socio-economically or because of where they live), or whose livelihoods are reliant on climate-sensitive resources, are disproportionately affected.

5. Disaster-Prone Areas Tend to Be More Affordable

People living in poverty are disproportionately exposed to climate change, feeding a vicious cycle of poverty and exposure. Withstanding exceptions such as prime coastal residences for high-income households, many of those who are impoverished also live in coastal and low-lying areas, which are prone to flooding and erosion. In Bangladesh, many lower-income households live in slums that tend to be in low-lying areas. During cyclone Aila in 2009, 1 in 4 poor households were affected by the storm, compared to 1 in 7 non-poor households (United Nations, 2016a; UNICEF, 2009). Similarly, in New Orleans, in the United States, a majority of residents living in low-lying districts were lower-income households that suffered disproportionately during Hurricane Katrina in 2005 (United Nations, 2016a). Income is linked to exposure to climate hazards at work as well, since less-skilled low-earning workers are more likely to do physical or manual labour out of doors. They are at greater risk of sustaining the health impacts of high temperatures including injuries, cardiovascular and respiratory diseases and even death. Their labour productivity also suffers in hot weather, making it more difficult or time-consuming to complete a task which can negatively affect wages, production of goods for sale and subsistence farming output. Women living in poverty face particular circumstances that increase their exposure to climate

change. In 7 out of 10 developing countries, women are primarily in charge of collecting water for the household (Sellers, 2016). As climate change reduces the availability of safe water sources, they often have to walk longer distances in search of water, increasing their exposure to climate hazards.

At similar levels of exposure, people in poverty are more susceptible to damage from climate change than those who are better off. Differences in housing quality and local infrastructure including whether adaptation strategies is a major determinant of their susceptibility. Overall, the assets of those who are impoverished are more fragile than those of their wealthier neighbours. During Cyclone Aila, in Bangladesh, the homes of lower-income households incurred significantly more damage than those of higher-income groups (Hallegatte et. al., 2016; United Nations, 2016a). In Honduras, lower-income households affected by Hurricane Mitch lost a greater percentage of their assets compared to affected higher-income households (Carter et. al, 2007). Many people in poverty make their living from agriculture and fishing, sectors highly susceptible to the effects of climate change. In 2013, 65 per cent of people living on less than $1.90 a day worked in agriculture (Castaneda et. al., 2016). Be it subsistence farming, fishing, full-time labour employment or seasonal work, livelihoods are threatened as climate change impacts cause losses in agricultural yields and fisheries production. The problem is compounded when the natural assets on which these livelihoods depend are located in hazard-prone areas.

6. Components to Reduce Inequality

Four components are found in successful policy approaches to reduce inequality and promote inclusive cities.

- Secure housing and land rights, with a focus on meeting the needs of people living in poverty and providing equitable public services.
- Improve spatial connectivity and promote public transportation to facilitate equal access to the opportunities and amenities that cities offer.
- Promote access to decent work and formal employment.
- Strengthen the political and administrative capacities of local governments to respond quickly to increasingly complex challenges including those related to climate change.

7. Promoting Equality and Social Justice in A Changing World

The 2030 Agenda acknowledge the intricate interconnections among major global challenges, necessitating comprehensive and integrated solutions.

Without strategic and coordinated intervention, global inequalities are poised to widen. Conversely, proactive efforts to address these inequalities can capitalize on the transformative opportunities available, thereby safeguarding marginalized groups from further disenfranchisement. This report demonstrates that policy-making through an equality lens significantly impacts the reduction of inequalities and advances the attainment of other Sustainable Development Goals (SDGs). The trajectory of these efforts remains undetermined. While halting technological progress, urbanization or migration is neither feasible nor desirable. Their effects can be managed to promote more equitable and sustainable societies. Although the immediate reversal of climate change is unattainable, and it has already caused considerable, potentially irreversible changes, adaptation and mitigation policies can and should incorporate social considerations as nation's transition towards green economies. The evidence summarized herein illustrates that these megatrends can be managed in a manner that ensures their benefits are equitably distributed and their adverse effects do not disproportionately burden those with limited resources for coping and recovery. Adopting an equality-focused approach to policy-making necessitates the implementation of judicious policies and regulations.

The report traces recent inequality trends. It discusses why inequality matters and provides an overview of the impacts of each megatrend. In considering the effects of technological innovation and of urbanization, the focus is on inequality within countries. The report assesses the effects of climate change and international migration on inequality both among and within countries. These megatrends and the policies aimed at managing them interact with each other in multiple ways. Technological change can help combat climate change. Unaddressed, climate change will affect international migration trends. Even though these multiple interactions require policy attention and analysis, the focus of this report is exclusively on the direct effect of each megatrend on the distribution of resources and opportunities.

Disaster-affected households are at risk of falling into chronic poverty (world social report 2020). These groups are at a disproportionately high risk of poverty and share many of the challenges faced by those who are impoverished typically, they live in disadvantageous locations with high exposure to climate hazards are heavily reliant on climate-sensitive natural resources for their livelihoods and have limited options in terms of coping

strategies, such as diversifying into climate-resilient income sources. Smallholder farmers tend to rely heavily on family labour to work on small agricultural lands not larger than two hectares (Rapsomanikis, 2015).

8. Inequality in A Rapidly Changing World

While these trends are global, how each of them affects specific countries, communities and population groups depends on the institutions and policies in place. The effects of new technologies, urbanization, international migration and even climate change on the distribution of resources and opportunities are not predetermined. Some countries have managed to protect the most vulnerable from the negative impacts of these trends while ensuring that their benefits are broadly shared. Despite constraints, there is still ample scope for independent national policymaking to help harness these global forces for the good. Policies can and should rectify trends that are neither socially, environmentally or politically sound nor morally acceptable. At the same time, global challenges call for global solutions. Actions taken by one country affect other countries. Coordination and collective decision-making are needed to manage global commons and the international movement of people. The evidence presented in this report affirms the critical role of multilateral action to address the driving forces of inequality under the global social contract embodied in the 2030 Agenda.

With carefully designed adaptation strategies, economic restructuring brought about by the greening of economies can result in the creation of 24 million new jobs worldwide by 2030 (ILO, 2018a). At the same time, at least 6 million jobs will be lost, including many low-skilled jobs in carbon-intensive sectors. The net increase of approximately 18 million jobs around the world should be the result of the adoption of sustainable practices, including changes in the energy mix, the projected growth in the use of electric vehicles and increases in energy efficiency in existing and future buildings. The extent to which displaced workers can take advantage of new opportunities is uncertain. The mismatch of skills is a major challenge and those who lose their livelihoods may not be sufficiently equipped to enter into new vocations. Ultimately, the overall impact on inequality will depend on the distribution of new and destroyed jobs. Where losses fall disproportionately on those in poverty and other disadvantaged population groups, inequality will rise unless efforts are made to ensure a just transition. Promoting a transition with equitable outcomes in 2015, world leaders took important steps to fulfil the promise of

eradicating poverty, reducing inequality and reversing environmental degradation. With the signing of the 2030 Agenda for Sustainable Development, they committed to take urgent action to combat climate change and its impacts while reducing inequality.

The effects of climate change are experienced to vary degrees across and within countries due to differences in exposure, susceptibility and coping capacities. If left unaddressed, climate change will lead to increased inequality both within and among countries and could leave a substantial part of the world further behind.

- Developing countries face disproportionate risks from an altered climate, while high-income countries are generally less vulnerable and more resilient.
- Within countries, people living in poverty and other vulnerable groups – including smallholder farmers, indigenous peoples and rural coastal populations – are more exposed to climate change and incur greater losses from it while having fewer resources with which to cope and recover.
- Climate change can generate a vicious cycle of increasing poverty and vulnerability, worsening inequality and the already precarious situation of many disadvantaged groups.
- Just as the effects of climate change are distributed unevenly, so the policies designed to counter them. As countries take climate action, there will be trade-offs to consider between the positive and negative effects of mitigation and adaptation measures and distributional impacts.
- An equitable transition towards green economies calls for integrating climate goals with social and economic policies aimed at reducing vulnerability, supporting those affected by climate change and creating decent jobs.
- At the international level, climate finance, technological transfer and capacity-building can support developing countries in implementing a just transition.

9. Legal Frameworks in Developed Countries

Developed countries generally have more robust legal frameworks to address climate change and social inequalities, but gaps remain.

I. **Climate Change Laws**:

- Many developed countries have comprehensive climate legislation,

such as the European Union's Green Deal, the UK's Climate Change Act, and the U.S. Clean Air Act.

- These laws focus on reducing greenhouse gas emissions, promoting renewable energy, and setting carbon neutrality targets.
- However, they often fail to address the disproportionate impact of climate change on marginalized communities, such as low-income groups, indigenous peoples, and racial minorities.

II. **Social Inequality Laws**:

- Developed countries have anti-discrimination laws, social welfare systems, and labor protections to address inequality.
- For example, the U.S. has the Civil Rights Act, and the EU has the European Pillar of Social Rights.
- Despite these frameworks, wealth disparities and unequal access to climate adaptation resources persist.

III. **Challenges**:

- Climate policies often prioritize economic growth over equity, leading to "green gentrification" and displacement of vulnerable communities.
- Insufficient integration of social justice principles into climate action plans.

10. Legal Frameworks in Developing Countries

Developing countries face greater challenges due to limited resources, weaker institutions, and higher vulnerability to climate change.

I. **Climate Change Laws**:

- Many developing countries have ratified international agreements like the Paris Agreement and have national climate action plans.
- However, implementation is often hindered by lack of funding, technical capacity, and political will.
- Climate policies in developing countries tend to focus on adaptation rather than mitigation, as they are disproportionately affected by climate impacts.

II. **Social Inequality Laws**:

- Developing countries often lack comprehensive social protection systems and anti-discrimination laws.
- Informal economies and weak governance exacerbate inequalities, making it harder to address the social impacts of climate change.

- Indigenous communities and rural populations are particularly vulnerable, as their land rights are often not legally recognized or enforced.

III. **Challenges**:

- Limited access to climate finance and technology.
- Climate-induced migration and displacement are not adequately addressed in legal frameworks.
- Overlapping crises, such as poverty, conflict, and health emergencies, divert attention from climate action.

11. Suggestions to Address Social Inequalities and Climate Change

To tackle the intertwined issues of climate change and social inequalities, both developed and developing countries need to adopt inclusive and equitable legal frameworks.

I. **Developed Countries**:

- **Integrate Equity into Climate Policies**: Ensure that climate policies prioritize vulnerable communities and include mechanisms for public participation.
- **Strengthen Social Protections**: Expand social safety nets to address the economic impacts of climate change, such as job losses in fossil fuel industries.
- **Promote Climate Justice**: Enforce laws that protect marginalized communities from environmental harm and ensure fair distribution of climate benefits.
- **Increase International Support**: Fulfill commitments to provide climate finance and technology transfer to developing countries.

II. **Developing Countries**:

- **Enhance Legal Frameworks**: Develop and enforce laws that protect vulnerable populations, including land rights for indigenous communities and gender-sensitive climate policies.
- **Build Institutional Capacity**: Strengthen governance structures to implement climate and social policies effectively.
- **Leverage International Support**: Advocate for increased climate finance and technical assistance from developed countries and international organizations.
- **Promote Inclusive Development**: Ensure that climate adaptation and

mitigation projects benefit all segments of society, particularly the most marginalized.

III. **Global Cooperation**:

- **Strengthen International Agreements**: Enhance the Paris Agreement to include stronger provisions for equity and justice.
- **Support Climate Migrants**: Develop international legal frameworks to protect climate-induced migrants and displaced persons.
- **Promote Technology Transfer**: Facilitate the transfer of green technologies to developing countries to support sustainable development.

IV. **Community Engagement**:

- Empower local communities to participate in decision-making processes related to climate action and resource allocation.
- Recognize and incorporate traditional knowledge and practices in climate adaptation strategies.

V. **Monitoring and Accountability**:

- Establish mechanisms to monitor the implementation of climate and social policies and hold governments accountable.
- Use data-driven approaches to identify and address disparities in climate impacts and responses.

12. Conclusions

Elevated and escalating inequality poses a significant barrier to advancing the Sustainable Development Goals. Societies characterized by pronounced income disparities exhibit slower economic expansion and struggle to effectively alleviate poverty compared to those with more equitable income distributions. In the absence of suitable policies and institutional frameworks, inequalities tend to concentrate political power among the already affluent, perpetuating unequal access to opportunities. However, the trajectory of increasing inequality is not predetermined. The economic disparities have generally widened across many developed nations since 1990, they have narrowed in numerous countries in Latin America, Africa and Asia, albeit from exceptionally high levels. The timing, direction and magnitude of these shifts in distributional patterns vary across nations and regions. Although there has been a relative decline in inequality among countries, it remains persistently high. Moreover, disparities within certain demographic groups have exacerbated in some countries, with trends exhibiting variation

depending on specific national contexts and the metrics employed to gauge progress. For instance, while there has been notable progress in educational attainment among individuals with disabilities, commensurate advancements in employment opportunities have not materialized. Major global trends, explored in subsequent sections, undoubtedly influence the distribution of resources and opportunities. Successful endeavors to mitigate inequality underscore the pivotal role of tailored national policies and robust local institutions.

Addressing social inequalities in the context of climate change requires a holistic approach that integrates legal, social, and economic dimensions. Developed countries must lead by example, ensuring their policies are equitable and inclusive, while developing countries need support to build resilient and just systems. Global cooperation, community engagement, and accountability are key to creating a fair and sustainable future for all.

References

- Acemoglu, D. (2003). Technology and Inequality. *The Reporter*. https://www.nber.org/reporter/2003number1/technology-and-inequality
- Acemoglu, D., & Restrepo, P. (2017). Robots and Jobs: Evidence from U.S. labor markets. *NBER Working Paper No. 23285*. https://www.nber.org/system/files/working_papers/w23285/w23285.pdf
- Acemoglu, D., & Restrepo, P. (2018). Automation and new tasks: How technology displaces and reinstates labor. *Journal of Economic Perspectives*, 33(2), 3-30.
- Acemoglu, D., & Robinson, J.A. (2002). The Political Economy of the Kuznets Curve. *Review of Development Economics*, 6(2), 183-203.
- Acemoglu, D., & Robinson, J.A. (2012). *Why Nations Fail: The Origins of Power, Prosperity and Poverty.* Random House.
- Adams, R.H., & Page, J. (2003). International migration, remittances and poverty in developing countries. *World Bank Policy Research Working Paper No. 3179* (December). https://documents1.worldbank.org/curated/pt/991781468779406427/104504322_20041117173008/additional/wps3179.pdf
- Hallegatte, S., & Rozenberg, J. (2015). The Impacts of Climate Change on Poverty in 2030 and the Potential from Rapid, Inclusive, and Climate-Informed Development. *Policy Research Working Paper 7483.*

https://documents1.worldbank.org/curated/en/349001468197334987/pdf/WPS7483.pdf

- Eckstein, D., Hutfils, M.L., &Winges, M. (2018). Who Suffers Most From Extreme Weather Events? Weather-related Loss Events in 2017 and 1998 to 2017. *Global Climate Risk Index 2019.*https://www.germanwatch.org/sites/default/files/Global%20Climate%20Risk%20Index%202019_2.pdf
- Agarwal, R. (2013). *Informal Labor, Formal Policies and Dignified Discontent in India.* Cambridge University Press.
- Baird, R. (2008). *The Impact of Climate Change on Minorities and Indigenous Peoples*. London: Minority Rights Group International.
- Banerjee, A., Paul, N., & Tavneet, S. (2019). Universal basic income in the developing world. *NBER Working Paper No. 25598*. National Bureau of Economic
- Carnoy, M. (2011). As higher education expands, is it contributing to greater inequality? National Institute Economic Review, vol. 215, pp. R34-R47.
- Carter, M. R., Little, P. D. &Mogues, T. & Negatu, W. (2007). Poverty Traps and Natural Disasters in Ethiopia and Honduras. *World Development,* 35(5), 835-856.
- Castaneda, A., Doan, D., &Nguyun, M.C. (2016). *Who are the poor in the developing world?* Policy Research Working Paper No. 7844. Washington, D.C.: World Bank.
- Dustmann, C., Tommaso, F., & Ian, P. P. (2013). The effect of immigration along the distribution of wages. *The Review of Economic Studies*, 80(1), 145–173.
- Manuel, M., & Clare, M. (2018). Achieving equal access to justice for all by 2030. ODI Working Paper No. 537. London: Overseas Development Institute.
- McDowell, Julia Z., and Jeremy J. Hess (2012). Accessing adaptation: Multiple stressors on livelihoods in the Bolivian highlands under a changing climate. Global Environmental Change, vol. 22, No. 2, pp. 342-352.
- McKenzie, D., & Hillel, R. (2007). Network effects and the dynamics of migration and inequality: theory and evidence from Mexico. *Journal of Development Economics*, 84(1), 1-24.

- World Meteorological Organization (2019). WMO Statement on the State of the Global Climate in 2018. Geneva: World Meteorological Organization.
- Zelinsky, W. (1971). The hypothesis of the migration transition. *Geographical Review*, 61(2), 19-49.
- Zhang, D., Xin, Li., &Jinjun, X. (2015). Education inequality between rural and urban areas of the People's Republic of China, migrants' children education, and some implications. *Asian Development Review*, 32(1), 196-224.

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 27-46

Punjab's Rehabilitation and De-addiction Centre: Evaluating Challenges and Opportunities for Better Working Conditions

Dr. Basant Singh* & Kajal Sadana**

Abstract

Young people represent the most vibrant and promising demographic in any nation. However, drug addiction has emerged as a significant threat, particularly to Punjab's youth, negatively impacting their mental and physical health. The misuse of substances such as alcohol, opium, and cannabis has caused severe harm to users and their families, affecting physical and mental health, financial stability, interpersonal relationships, and professional lives. Drug abuse not only brings immense suffering to individuals but also fuels illicit drug manufacturing and trafficking, leading to crime and violence. Families, especially close relatives, are severely impacted by drug misuse. Punjab faces a pervasive drug problem, as highlighted by alarming statistics. The Punjab Opioid Dependent Survey (2015) reported an annual expenditure of ₹7,525 crore on opioids. In 2024 alone, over 6,000 arrests and 4,373 cases were filed under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, with large quantities of heroin seized. The prevalence of drug addiction is evident, with 2.32 lakh individuals identified as drug-dependent and 8.6 lakh having used drugs in Punjab. Tragically, the toll includes lives lost, as seen in the 14 fatalities due to overdoses within two weeks in June 2024 in districts like Gurdaspur, Amritsar, and Ferozepur. The NDPS Act, 1985, aims to provide mechanisms for early treatment and rehabilitation of drug addicts. Ministries under the Government of India, including the Ministry of Health and Family Welfare (MOHFW), are tasked with addressing both the supply and demand of drugs while running de-addiction and rehabilitation centers. Section 7A of the NDPS Act empowers the Central Government to allocate funds to control drug misuse. However, challenges persist in implementing these measures effectively. Punjab requires robust, well-equipped de-addiction and rehabilitation centers adhering to minimum quality standards. These centers must have adequate medical, financial,

* Assistant Professor of Law,PU, Chandigarh.
** Judge Advocate General (JAG), Officers Training Academy, Chennai, Indian Army.

and infrastructural resources to provide comprehensive care and treatment. Collaborative efforts between the Central and State Governments are essential to develop policies addressing these critical aspects. By focusing on public awareness, early treatment, and rehabilitation, Punjab can better combat the menace of drug addiction and create sustainable solutions. This paper evaluates the challenges and opportunities in improving the working conditions of Punjab's rehabilitation and de-addiction centers, emphasizing the need for strategic interventions to ensure effective drug abuse prevention and management.

Keywords: *Opioid, opium, cannabis, Drugs, NDPS, ACT 1985, Rehabilitation Centre, De-Addiction.*

1. Introduction

Since youth constitute the foundation of all nations, promoting youth welfare is regarded as an essential necessity in all of them. Young people are the most vibrant and promising demographic in any nation, but sadly, drug addiction is a cancer that is wreaking havoc on Punjab's youth population's mental and physical health. Usage of drugs like alcohol, opium, and cannabis, etc. Substance users and their families experienced detrimental effects on their physical and mental health, interpersonal relationships, financial situation, and line of work. These substances were typically ritualized in social settings and found their way into people's lives. They were also used for social, recreational, and medicinal purposes[1]. The Punjab Opioid Dependent Survey of 2015 estimated that the yearly expenditure on opioid purchases was Rs 7,525 crore, or Rs 20 crore per day. Adolescents who have ample time, finances, and no parental monitoring are more susceptible to being seduced into drug use, either by friends or independently. Punjab is still plagued by the drug problem; in the first half of 2024, 6,002 persons were detained and 4,373 cases were lodged under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 by the state police. Over the past three years, the NDPS Act, 1985 has resulted in 29,010 charges being filed, 39,832 arrests, and the seizure of 2,710 kg of heroin. In Gurdaspur, Abohar, Moga, Amritsar, and Ferozepur districts, fourteen young people lost their lives to drug overdose in

[1]A Study of Drugs Addicts in the De- addiction centres of Punjab Reasons and Suggestions, *availableat:*https://www.researchgate.net/publication/360937371_A_Study_of_Drug_addicts_in_the_Deaddiction_centres_of_PunjabReasons_and_Suggestions (Last retrieved on 5th July, 2024).

a span of two weeks of June 2024. The last three years have seen the deaths of over 280 drug addicts. Drug overdoses claimed the lives of 159 people in 2022–2023, 71 in 2021–2022, and 36 in 2020–2021, this information is based on an affidavit filed by the Punjab police before the Punjab and Haryana High Court.[2]

DRUG HAUL IN PUNJAB				
Year	Cases	Arrests	Heroin Seizure	Opium
2022	12,380	16,808	593 Kg	862 Kg
2023	11,551	15,871	1349 kg	896 Kg
2024	4276	5832	456 Kg	602 Kg

(Indian Express June 26, 2024)

The study is an attempt to analysis the facilities of de-addiction centres which are available in Punjab for the prevention of drug abuse, treatment of drug addicts and the facilities available for the rehabilitation of the addicts. This analysis is based on the quality of facilities that are provided to the drug addicts. The study also recommends certain changes in the approach taken towards the treatment and rehabilitation of the drug addicts in India, and specifically in the case of Punjab.

2. Drug addiction in State of Punjab

Drug abuse results in great suffering for users, and drug manufacture and trafficking are illicit businesses that have led to crime and violence all over the world. All family members are impacted by drug misuse, but the most severely are the closest ones. In many situations, it welcomes the mayhem creating diseases like HIV/AIDS since needles used for intravenous drug injections cause family conflicts, broken marriages, divorces, debt on the family, and death. A survey was conducted, namely The 2015 Punjab Opioid Dependency Survey (PODS/POD Survey), by the Society for Protection of Youth and Masses (SPYM) and the AIIMS National Drug Dependence treatment Centre.[3] This survey highlighted certain significant points which are as follows:

---

[2]Despite efforts, Punjab battles drug menace, *available at:* https://www.newindianexpress.com/nation/2024/Jun/26/despite-efforts-punjab-battles-drug-menace (Last retrieved on July 5th July, 2024).

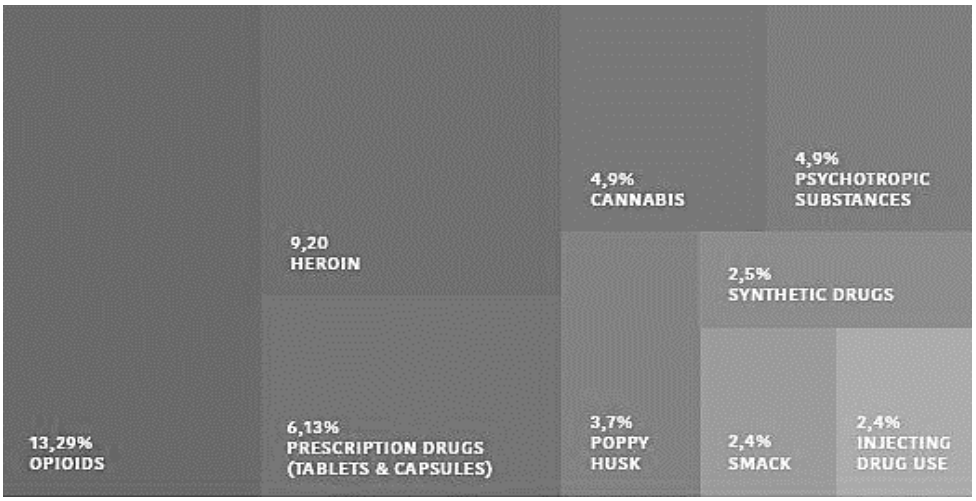
[3] Punjab Opioid Dependency Survey 2015 (n 12)

- Out of the total number of individuals dependent on opioid use, 99% of them are native Punjabi speaking men.

Table 1 (DISTRICT AND USED DRUGS)

DISTRICTS	MOST COMMONLY USED DRUGS
Abohar	Opium, Heroin, Morphine
Amritsar	Heroin, Opium, Dextropropoxyphene, Buprenorphine
Balachaur	Opioids, Cannabis, Sedatives
Barnala	Opium, Prescription drugs
Bathinda	Poppy husk, Synthetic drugs, Smack
Faridkot	Heroin, Capsules, Cannabis
Fazilka	Opium, Cannabis, Hallucinogens
Ferozepur	Poppy husk, Heroin, Opium
Gurdaspur	Heroin, Poppy husk, Synthetic drugs
Hoshiarpur	Opium, Heroin, Cannabis
Kapurthala	Heroin, Pharmaceutical drugs
Ludhiana	Cannabis, Sedatives, Injections
Mohali	Opium, Psychotropic substances, Prescription drugs
Nawanshahr	Heroin, Tablets, Injections
Phagwara	Heroin, Pharmaceutical drugs
Tarn Taran	Smack

Table 2 (DESCRIPTION OF DRUGS)



- Out of the total number of individuals dependent on opioid use, 76% of them fall under the age group of 18-35 years and amongst all of them, 89% of the users are educated and literate. Out of the total number of drug addicts, 83% of them are employed. And, out of all of them 54% of the individuals are married. The above two tables emphasise on the pattern of drug addiction, which is great concern in Punjab, as well as the use of drugs in Punjab.

The above-mentioned table no. 2 depicts the state of drug addiction in Punjab, it also emphasizes on the note that amongst all the drugs, opioids, heroin, tablets and capsules are the most frequently used drugs. The POD survey states that 'Heroin is the most often used opioid substance, i.e., 53%; followed by opium, i.e., 33%; and a variety of pharmaceutical opioids, i.e., 14%.' Moreover, the study, Drug Addiction in Punjab: A Sociological Study,[4] conducted in 2006 by Ravinder Singh Sandhu provides a better knowledge of the condition of drug addiction in Punjab. According to the survey, 20% of all respondents were hooked to synthetic narcotics.. These synthetic drugs included tablets such as Proxyvon and Diazepam. It also includes injections containing morphine. Furthermore, the study also highlighted that heroin was the second popular most drug which was consumed in Punjab. The respondents who were educated, literate and were economically stable consumed more of smack and heroin. Their population constituted 5.17% of the entire sample studied. In Punjab, 2.32 lakh people were identified as "drug dependents." In other words, 2 crore adults, or 1.2% of the total population, were drug addicts in 2011. Of the adult population in Punjab, 4.5% have at least "used" drugs, according to the poll, which estimated the number of "users" to be 8.6 lakh. In India, 2.1% of the population, or 2.26 crore people, use opioids, which include opium (or its derivatives, such as poppy husk known as doda/phukki), heroin (or its impure form, such as smack or brown sugar), and a range of pharmaceutical opioids (synthetic drugs). The Union Ministry of Social Justice and Empowerment's 2019 report, Magnitude of Substance Use in India, is the source of this data. The poll indicates that Punjab has a higher user base.[5]

3. Provisions and Safeguards for addicts under the NDPS, Act.

The NDPS Act, 1985 has the objective to provide the facilities of early treatment and rehabilitation, through its provisions, to the addicts of drugs. Additionally, if a person is a first-time offender and is caught in possession of

[4]Dr.Ravinder Singh, 'Punjab Drug problem: Let's Clear Some Misunderstandings' (Governence Now, 2015), *available at:* <https://www.governancenow.com/news/regular-story/punjab-drug-problem-lets-clear-clear-some-misunderstandings > (Last retrieved on 20th April 2024).

[5]Drug Abuse Related Deaths Continue to haunt Punjab, *available at:*https://thewire.in/rights/punjab-drug-abuse-deaths-continue (Last retrieved on 25th May 2024).

small quantity of drugs, then the person is given the option to choose for treatment and hence is not forced to face the consequences of staying in a prison.

Several ministries under the Government of India (Allocation of Business) Rules 1961 are given the responsibility to reduce the supply and demand of drugs. The responsibility of reducing the demand of drugs is given in the hands of the Ministry of Social Justice and Empowerment (MoSJE).[6] Moreover, the responsibility of providing treatment and rehabilitation to the drug addicts is given in the hands of the Ministry of Health and Family Welfare (MOHFW).[7] The funding for the de-addiction and remedial programmes if don't by both of the above-mentioned ministries. For instance, it is the duty of the Social Defence Division which works under the MoSJE 'to plan, oversee, and monitor the prevention of drug misuse, which includes assessing the problem, taking preventive action, treating and rehabilitating addicts, and disseminating information for public awareness.' The Social Defence Division also has been running a scheme, since 1985, which aims at the 'Prevention of Alcoholism and Substance (Drug) Abuse.'[8] This scheme funds different agencies which fall under the eligibility criteria for setting up 'counselling centres and treatment centres for addicts. There are also IRCAs, and these are established by the NGOs and other voluntary organisations which receive a financial backing from the Government.[9]

Ministry of Health and Family Welfare (MOHFW) also is given the responsibility of running centres for the treatment and rehabilitation of drug addicts. The Ministry also funds certain organisations, such as, 'National Drug Dependence Treatment Centres (NDDTC) at AIIMS, and de-addiction centres in Chandigarh (PGIMER), Pondicherry (JIPMER), and Bangalore (NIMHANS).'[10]

---

[6]Ministry of Health and Family Welfare, Government of India, 'Authorities for control over Drug/Substance Use', *available at:*<http://mohfw.nic.in/index1.php?lang=1&level=0&link-id=229&lid=1353>(Last retrieved on 10thMarch 2022)

[7]*Id*

[8]Ministry of Social Justice & Empowerment, Government of India,'Scheme for Prevention of Alcoholism and Substance (Drugs)Abuse', *available at* :https://www.unodc.org/pdf/india/publications/inventory_of_Schemes_and_Programmes/03_sectio1.pdf (Last retrieved on 20th April 2023)

[9]*Id*, Guidelines 2015

[10]Ministry of Helath and Family Welfare, Government of India, 'Drug De-addiction Programme (DDAP)' (2012), *available at:*

Under the NDPS Act 1985, The Central Government is authorized by Section 7A to provide funds with the goal of preventing and controlling drug misuse. In addition to highlighting the need to raise public awareness about drug addiction, Section 7 places a strong emphasis on the identification, treatment, and rehabilitation of drug users. Government agencies usually provide financial support to national funding programs, policies, and initiatives that aim to reduce drug usage and the problems associated with it. In India, the Ministry of Social Justice and Empowerment is in charge of putting several demand reduction methods into action under the Narcotic Drugs and Psychotropic Substances Act, 1985. Non-governmental organizations (NGOs) and the ministries provide financial support to other organizations for the following purposes:

- Creating and managing facilities for addiction treatment.
- Implementing peer-led initiatives in the community and awareness campaigns.
- Giving recovering addicts skill development and job training.

Funding is provided by the state governments for these programs in order to guarantee their efficacy and wide reach in the fight against drug abuse.

4. Current Status of De-Addiction and Treatment Facilities in Punjab

Under the direction of the Department of Health and Family Welfare, a network of medical facilities in Punjab has come together to offer therapy and rehabilitation services to drug users. In Each district hospital and sub-division hospital, a drug de-addiction centre has been established. This centre consists of around ten to twenty hospital beds along with a psychiatrist. OPD treatment is also available for the addicts. To date, the numbers of established de-addiction government centres are 31 in number. Out of these 31 centres, 26 are in proper functioning.[11] There are also established 21 rehabilitation and counselling centres with the approval of the state, each consisting of 50 beds. Out of these 21 centres, 17 are in proper functioning.[12] Overseeing the

https://main.mohfw.gov.in/sites/default/files/drugs%20deaddiction%20programme.pdf (Last retrieved on 20th April 2023)

[11]Yogesh Rajput, 'Punjab Drug Problem: De-addiction and Beyond' (Governance Now 2015), *available at:* https://www.governancenow.com/news/regular-story/punjab-drug-problem-deaddiction-and-beyond (Last retrieved on 20th April 2023).

[12]Punjab Government, 'Note on De-addiction', *available at:* <http://www.pbheath.gov.in/16note.pdf> retrieved on 14 March 2022; 17 pc addicts hooked on de-addiction drug in Punjab

administration of these centres in each district, a de-addiction and rehabilitation society was also created. In 2014-2015, a total budget of hundred crore Rupees was allocated to establish these centres.[13]

In majority of Punjab's districts, there are private de-addiction and rehabilitation programs in addition to government-established ones.[14] Based on the information at hand, there are around 65 licensed private rehabilitation centres in Punjab,[15]along with 10 de-addiction centres.[16]In Punjab, in various districts, the Red Cross Society also has established 8 de-addiction and rehabilitation centres[17] Furthermore, if a de-addiction or rehabilitation centre needs to be established and run, it must apply for a license under the Punjab Substance Use Disorder Treatment and Counselling and Rehabilitation Centres Rules, 2011.[18] If a centre was already in existence when the Rule came up, it will have to fetch such a license within three months of the issuance of the Rules. The rule is a significant one as it specifies the physical and medical standard a centre has to follow along with the maintenance of minimum human resource.[19] Even when the private centres are more in number, they are not established in every districts of Punjab. For instance, Fazilka, Gurdaspur, and Pathankot. Moreover, a few districts only have private de-addiction and rehabilitation centres, such as Moga and Nawanshahr.[20]

Additionally, five model centres have been built in specific regions of Punjab which has the capacity to hold around 50 beds each. These districts include

---

(The Tribune 2020) https://www.tribuneindia.com/news/punjab/17-pc-addicts-hooked-on-de-addiction-drug-in-punjab-52512 (Last retrieved on 20th April 2023).

[13]Punjab Budget 2014-15: Rehabilitation Centres, skill development for youth (Hindustan Times 2014), *available at:*https://www.hindustantimes.com/chandigarh/punjab-budget-2014-15-rehabilitation-centres-skilldevelopmentfor-youth/story-u67cs2zIpK3CvQd4ISpaQI.html (Last retrieved on 20th April 2023).

[14]Department of Health and Family Welfare, Government of Punjab, 'Information regarding de-addiction efforts by Government of Punjab', *available at*: <http://pbheath.gov.in/4rehab.pdf> (Last retrieved on 22 April 2023)

[15]*Id*

[16]*Id*

[17]*Id*

[18]Punjab Substance Use Disorder Treatment and Counselling and Rehabilitation Centre Rules 2011, *available at:* http://www.pbhealth.gov.in/pdf/substance_drugs.pdf (Last retrieved on 20th April 2023)

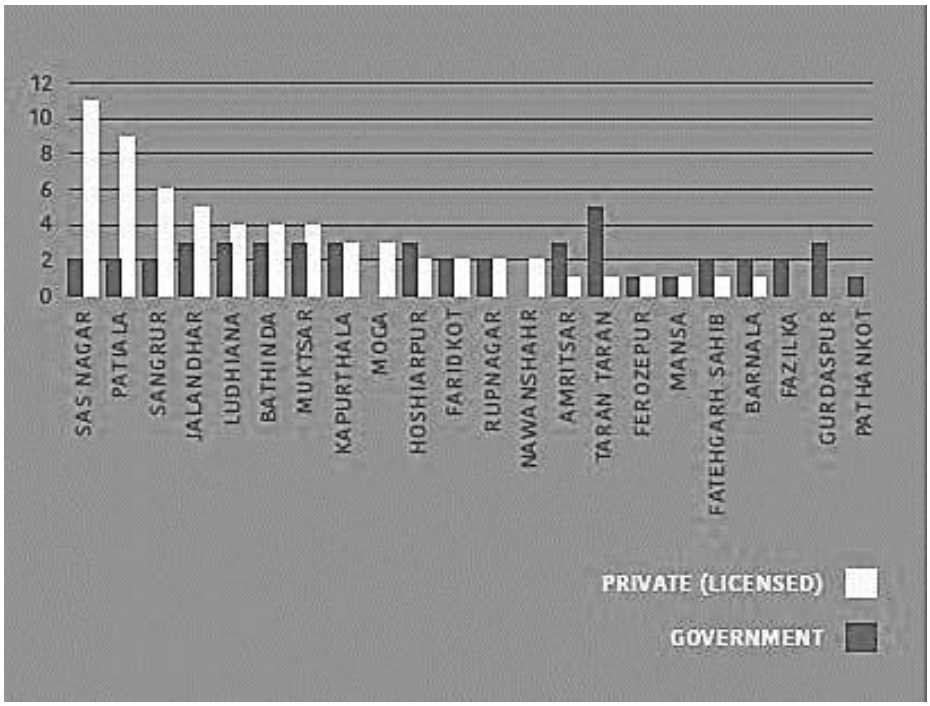
[19]*Id*

[20]Department of Health and family Welfare, 'Details of Government De-addiction Centres', available at: http://pbhealth.gov.in/Status%20of%20Govt.pdf (Last retrieved on 20thApril 2023)

Patiala, Amritsar, Faridkot, Bathinda and Jalandhar. Out of these districts, in Amritsar and Faridkot, these model centres are fully functional. These model centres function under the supervision of the medical colleges of Amritsar, Patiala, and Faridkot.[21]

In Punjab, the Assistance for Prevention of Alcoholism and Substance (Drug) Abuse also runs a scheme under which 11 NGOs are running 11 ICRAs.[22] In 2015, 28 new ICRAs were further approved by the government in Punjab.[23]

Table 3



[21] *Ibid.*

[22] Ministry of Social Justice and Empowerment, 'Drug De-addiction Centres' (Press Information Bureau, 2015), *available at:* http://pib.nic.in/newsite/PrintRelease.aspx?relid=124284 (Last retrieved on 20th April 2023)

[23] Rajya Sabha, 'Unstarred Question No. 1796, Drug Addiction Along Border Areas of Pakistan' (2015), *available at:* http://mha1.nic.in/par2013/par2015-pdfs/rs-050815/1796.pdf (Last retrieved on 28th April 2023)

5. Challenges and Drawbacks in Punjab's De-Addiction and Rehabilitation Strategy

Under S. 27 of the NDPS Act,[24] any consumption of narcotic drugs or psychotropic substances is criminalised. But criminalisation of users and addicts of drugs needs a little evidence that putting a user of drug or an addict in prison will lead to a reduction in the demand of drugs.[25] When one talks about punishing the offenders, under S. 27 of the NDPS Act, no difference is established between a habitual user of drug and a person who is using drugs for the first time or who uses it occasionally. If the latter would be differentiated from the former, the person could get the benefit of early identification, treatment and can also be educated on drug abuse. These provisions do not focus on providing services of treatment and rehabilitation to first time drug users and occasional drug users. If these issues would be addressed by the provisions of the Act, the situation of Punjab would be better handled.

The Scheme of Assistance to Voluntarily Organization for Prevention of Alcoholism and Substance (Drug) Abuse Scheme (2019-20) of State of Punjab organizes counselling, de-addiction, and awareness camps on the negative impacts of drug usage. The grant-in-aid is awarded to non-profit organizations that assist drug users in order to accomplish this goal. These voluntary organizations manage the drugs rehabilitation facilities, drug awareness programs, counselling services, and treatment/rehabilitation centres. The Department of Social Security and Women & Child Development of the Government of Punjab posted four years' worth of data on its website, indicating that the government is not eager to address the drug problem in the state.

Table 4: Grant –in –Aid to Assistance to Voluntarily Organization for Prevention of Alcoholism and Substance (Drug) Abuse Scheme (2019-20) in State of Punjab[26]

---

[24]NDPS Act 1985 (n 4), Punishment for consumption of any narcotic drug or psychotropic substance

[25]Matthew John, 'The NDPS Act: Room for greater reform' (Centre for Public Policy Research, 2015), *available at:* https://www.cppr.in/policy-briefs/the-ndps-act-room-for-greater-reform (Last retrieved on 30 April 2023)

[26]The Department of Social Security and Women & Child Development of the Government of Punjab, *available at:* https://sswcd.punjab.gov.in/en/assistance-to-voluntary-

Sr. No.	Name of the NGO	Purpose	Grant Demanded by NGO	Grant recommended by DSSO	Grant Recommended by Committee
1.	Indian Red Cross Society,Distt. Branch Moga Amritsar Road VPO JanerTeh.Dharmkot Moga (run by District Administration) 9878082100 Redcrossmoga1995@gmail.com	15 Bedded Integrated Rehabilitation Center for Addicts (IRCA) (Provide Composite/integrated services for the rehabilitation of the substance dependent persons.)	23,65,800/-	23,65,800/-	23,29,800/-
2.	District Drug De-Addiction and Rehabilitation Society, Bhatinda. (run by Health Department) 9855287700 ddrsbhatinda@gmail.com	50 Bedded Integrated Rehabilitation Center for Addicts (IRCA) (Provide Composite/integrated services for the rehabilitation of the substance dependent persons.)	49,15,632/-	49,15,632/-	31,75,200/-
3.	Guru Nanak Charitable Trust Mullanpur Mandi, Ludhiana (run by NGO)9855429901 ifo@gurmatbhawan.org	Programme for Prevention of Alcoholism and drug abuse at work pace (WPP)	21,42,198/-	21,42,198/-	21,42,198/-

organizations-for-prevention-of-alcoholism-and-substance-drug-abuse-scheme (Last retrieved on 10th July 2024).

4.	Red Cross Integrated Rehabilitation centre for Addicts Saket Hospital, New Khalsa College, Badungar Road, Patiala (run by District Admn) 9501900576 IRC.PATIALA @GMAIL.COM	30 Bedded Integrated Rehabilitation Center for Addicts (IRCA) (Provide Composite/integrated services for the rehabilitation of the substance dependent persons.)	41,07,960/-	41,07,960/-	41,07,960/-
5	Indian Red Cross Society, Red Cross Drug De-addiction Centre, Guru Nanak Sarai, Sangrur (run by District Admn) 9417148866 Redcross018@gmail.com	15 Bedded Integrated Rehabilitation Center for Addicts (IRCA) (Provide Composite/integrated services for the rehabilitation of the substance dependent persons.)	26,82,600/-	26,82,600/-	26,82,600/-
6	Indian Red Cross Society,Gill Farm Kharar, Morinda Road, Khanpur (Mohali) (run by District Admn)) 0172-2784299 Ircakhanpur76 @gmail.com	15 Bedded Integrated Rehabilitation Center for Addicts (IRCA) (Provide Composite/integrated services for the rehabilitation of the substance dependent persons.)	30,40,920/-	30,40,000/-	30,40,920/-
7	Indian Red Cross Society	15 Bedded Integrated	30,40,920/-	30,40,920/-	30,40,920/-

	S.B.S Nagar, Dharamshala Bhuchran, Near Dana Mandi, Railway Road S.B.S Nagar (run by District Administration) 01823-224898 Redcrossddacnsr@gmail.com	Rehabilitation Center for Addicts (IRCA) (Provide Composite/integrated services for the rehabilitation of the substance dependent persons.)			
8	Indian Red Cross Society ThanewalHareyali, Kissan Bazar, Near Village Babehali, Kahnuwan Road Gurdaspur (run by District Administration) 9814577709 Redcross.gurdaspur@gmail.com	30 Bedded Integrated Rehabilitation Center for Addicts (IRCA) (Provide Composite/integrated services for the rehabilitation of the substance dependent persons.)	41,07,960/-	41,07,960/-	40,75,740/-
9	Indian Red Cross Society Mansa, Red Cross Society Bal Bhawan, Court Road Mansa (run by District Administration) 9417172772 ddrcmansa@yahoo.com	15 Bedded Integrated Rehabilitation Center for Addicts (IRCA) (Provide Composite/integrated services for the rehabilitation of the substance dependent persons.)	24,73,800/-	24,73,800/-	23,17,800/-
10	Indian Red Cross Society, district branch	15 bedded Integrated Rehabilitation	28,27,800/-	28,27,800/-	28,27,800/-

	Moga, Red Cross Bhawan old DC Complex Fzr G.T. Road Moga (run by District Administration) 9855100752, redcrossmoga@yahoo.co.in (2018-2019)	Centre for addicts (IRCA) (Provide Composite/integrated services for the rehabilitation of the substance dependent persons.)			
11	Distt. De-Addiction & Rehabilitation Society, SBS Nagar(Nawa Sehar) (run by Health Department) 9815798232, dmc_nsr2000@yahoo.com (2018-2019)	10 bedded Integrated Rehabilitation Centre for Addicts (IRCA) (Provide Composite/integrated services for the rehabilitation of the substance dependent persons.)	22,08,000/-	22,08,000/-	10,10,400/-
12	Distt. De-Addiction & Rehabilitation Society, Ferozepur (run by Health Department) 9592169350 Fzrdmc2016@gmail.com (2018-2019)	Programme for Prevension of alcoholism and Drugs abuse at work place(WPP)	78,69,788/-	40,00,000/-	25,67,000/-
	Total				3,33,18,348/-

At the international level, a shift in the views on drug addiction was observed. The World Health Organisation along with several countries is of the view that legislations on drug regulation and control have failed to achieve the ascertained objective with respect to the criminalisation of drug usage.[27]

[27]Royal Society for Public Health, United Kingdom, 'Taking a New Line on Drugs' (2016)

In India as well, the experts have recommended certain reforms with respect to the criminalisation of drug addicts. The Expert Committee on Small Quantities, about which there is a mention in the second chapter,[28] had recommended in 1995 that 'drug addicts be provided with compulsory treatment by judicial order and institutional facilities for treatment and rehabilitation instead of punishment.'[29]

6. Inadequate Judicial Initiative for Addiction Therapy

Under the NDPS Act, S. 39[30] and S. 64A,[31] provides that if a person is found in possession of small quantity of drugs or with drugs for personal use, then the offender will be given the option of choosing to go for treatment and rehabilitation at the government approved centres. The offender will not have to face mandatory imprisonment[32] or prosecution.[33] On the other hand, according to the data analysed, in the times between 2013 and 2015, no offender, who was brought before the courts in Punjab, was given the choice to opt for de-addiction centres or rehabilitation centres or was directed to the same, by the court.[34] The information additionally indicates that these clauses were unknown to judges and attorneys when many advocates and judges were interviewed.[35]

Moreover, it is to be understood that even if these provisions were known to the legal practitioners and judges, it would not have brought a huge difference because it only applied to offenders who were found in possession of small quantity of drugs. Under the NDPS Act, neither is there any provision which extends discretion in the hands of the judges to prescribe offenders found in possession of intermediate quantity of drugs, which amounts to a large number of cases, to de-addiction and rehabilitation centres. In the previous chapters, it has already been discussed how the division of the quantity of drugs into small, intermediate and commercial, is in itself ambiguous and arbitrary, because the reasons behind such divisions is unclear. Because of this ambiguity in the NDPS Act, the offenders found with intermediate quantity of drugs are not

[28]Expert Committee on Small Quantities, (n 40)
[29]*Id*
[30]The NDPS Act 1985 (n 4), Power of Court to release certain offenders on probation
[31]*Ibid.*
[32]The NDPS Act, 1985 (n 171)
[33]*Id*
[34]Vidhi Centre for Legal Policy, Report 2018 (n 9)
[35]*Id*

directed or given an option to opt for de-addiction and rehabilitation centres, which they might also need.

7. Overlapping and a Lack of Concerned Ministries

While addressing the concern for rehabilitation and treatment, an overlap of responsibilities is seen between the ministries. On one hand, the Ministry of Social Justice and Empowerment (MOSJE) are responsible for regulating and reducing the demand of drugs.[36] On the other hand, Ministry of Health and Family Welfare has the responsibility to fund the centrally approved de-addiction centres and it also coordinates with other agencies to deal with the matters related to de-addiction.[37]

MOSJE has a specific agenda, but somewhere the output from that agenda is not clear. The reports published by them also highlight that the Ministry has brought no significant changes in their strategies to deal with the regulation and control of drug demand, and hence there are no significant outcome from the same. There is an emphasis in the report to 'accurately assess the extent, pattern and trends of substances consumed and adopt preventive measures to reduce both demand and supply, and also strengthen ICRAs with little evidence for any steps undertaken towards these ends.'[38] The little measures that are taken are restricted to conducting awareness about drug abuse as well as in observing the International Day against Drug Abuse.

MOSJE, regarding of being aware of these shortcomings, has yet not conducted any nation0wide survey on drug abuse, or a state-wise survey on drug abuse. In actuality, the results of the 2015 survey that was carried out in Punjab have not been made public, leaving a hazy image of the state of drug abuse in both Punjab and the States.

Addiction to drugs is a widespread problem in India, and treatment for drug users is not kept up to date with this reality. Eighty percent of respondents to the 2015 Punjab Opioid Dependency Survey stated that they have attempted to stop using narcotics; only 35% reported receiving any help or treatment.

---

[36]Narcotic Drugs and Psychotropic Substances Act 1985, 'S. 71, Annual Report 2015-16', *available at:* http://socialjustice.nic.in/writeraddata/UploadFile/SOCIAL%20JUSTICE%20ENGLISH%2015_16.pdf (Last retrieved on 28th April 2023)

[37]Ministry of Health and Family Welfare, 'Drug De-addiction Programme', *available at:* http://mohfw.nic.in/index1.php?lang=1&level=0&linked=227&lid=1350 (Last retrieved on 28th April 2023).

[38]Vidhi Centre for Legal Policy, Report 2018 (n 9)

Only about 16% said that they had received medical treatment, i.e., medicines to treat withdrawal symptoms, and less than 10% of opioid-dependent individuals received OST. Also, Punjab has only 11 ORCSs, as against 59 in Maharashtra, 34 in Karnataka and 33 in Odisha.'[39] Further evidence of the facilities' appalling condition comes from comparing the number of beds at government centres with the number of cases reported under the NDPS Act, 1985.[40]

In 2011, The Punjab Substance Use Disorder treatment and Counselling and Rehabilitation Centre Rules were enacted. These Rules provided a minimum standard which had to be followed at de-addiction and rehabilitation centres.[41] These Rules state that 'the patient will not be forced to undergo detoxification treatment without being informed of the range of treatment options available to them, including substitution therapy and psychosocial intervention. The Rules also state that rehabilitation counselling can take place only after the patient undergoes detoxification from a recognised centre.'[42] The drawbacks of this Rule are inadequate medical facilities and medical staff.

Another drawback of the Rule is that it does not provide for any specific strategy which the de-addiction centres and rehabilitation centres has to follow to bring effectiveness at their centres. This is another reason of the lack of strategies which are devised by different de-addiction centres and rehabilitation centres in order to reduce the demand of drugs. Most of the de-addiction centres and rehabilitation centres focus on counselling, and to provide recreational facilities, organise lectures and campaigns. At certain other centres, meals, different games along with facilities of television is also provided, making it fall within those several strategies used to reduce drug demand.

8. Conclusion

In India, the approach taken towards drug addiction is centred on criminalisation. From the analysis made in the above chapters, It is evident

---

[39]Drug De-addiction Centres 2015 (n 164)

[40]Ministry of Home Affairs, 'Crime in India 2014' (National Crime Records Bureau), *available at:* <https://ncrb.gov.in/en/crime-india-year-2014> (Last retrieved on 28th April 2023).

[41]Punjab Substance Use Disorder Treatment and Counselling and Rehabilitation Centre Rules 2011 (n 160)

[42]*Id*

that the NDPS Act, its various sections, and the tactics implemented have not succeeded in accomplishing the purpose for which it was intended, i.e., to curb the trafficking of drugs. But the NDPS Act somewhere got itself stuck at targeting the drug users and addicts.[43] The total prohibition of drugs and psychoactive substances has several negative effects. Smuggling and black marketing have benefited from this, and in certain circumstances, the use of hard narcotics has been encouraged.[44]Punjab's continuous fight against drug addiction highlights how important functional rehabilitation and de-addiction facilities are. There are still major issues with infrastructure quality, treatment standard adherence, and resource availability despite the frameworks put in place by the NDPS Act,1985 and the efforts of the Centre and State Governments. A multifaceted strategy is necessary due to the rising prevalence of drug abuse and its catastrophic effects on individuals, families, and communities.

The severity of the problem is highlighted by the concerning data, which include the large number of drug users, significant drug-related expenses, and rising arrests and seizures under the NDPS Act, 1985. The terrible death toll from drug overdoses also emphasizes the crisis's human cost. It is clear that in order to successfully address these issues, Punjab needs a more coordinated and planned strategy. To address these challenges, it is imperative to establish rehabilitation and de-addiction centers that meet minimum quality standards and are equipped with adequate medical, financial, and human resources. Collaboration between the Central and State Governments is essential to implement policies that emphasize early intervention, effective treatment, and holistic rehabilitation. Strengthening public awareness campaigns and integrating community-based support systems can further enhance the effectiveness of these centers.

Decriminalisation should not be done alone, but rather it will be the most effective if accompanied by an investment in the public health system and providing proper guidelines for treatment and rehabilitation of drug addicts.[45] As a result, Punjab must also take a similar tack to address the problem of drug

---

[43]Amandeep Sandhu, 'Why the Parliament Must Carefully Consider a Private Members' Bill to Decriminalise Natural Drugs' (Caravan Magazine, 2016), *available at:* https://caravanmagazine.in/vantage/parliament-consider-bill-decriminalise-natural-drug (Last retrieved on 30th April 2023).

[44] Macmillan, *Sue Pryce Fixing Drugs: The Politics of Drug Prohibition* (2012)

[45] *Ibid*

usage. The NDPS Act, 1985 neither there was a decrease in the offences under the Act not could it provide for proper facilities of de-addiction and rehabilitation, particularly in case of Punjab. Another finding of the investigation is that under the Act, a disproportionately high percentage of drug addicts were sent to prison. Thus, altogether these reasons highlight that the current approach under the NDPS Act, 1985 i.e., helping a drug addict with care through the criminal justice system, needs a change with a direction which should focus more on the public health. In case of the scenario in India, the Central Government should take measure, by cooperating with the state, to accurately capture data regarding the severity of drug misuse and implement changes to the existing legal structure. However, in contrast, the government of Punjab should take measures to provide proper drug addicts with proper de-addiction and rehabilitation centres. These centres should also adhere to the minimum quality standards while taking care of the addicts and while carrying out their treatment. They should have sufficient medical and financial resources along with a proper infrastructure. Hence, if the central and the state government together build a policy keeping in view these significant aspects, the problem and menace of drug abuse could be handled and monitored more effectively.

The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, has serious shortcomings in its application, especially when it comes to the treatment and rehabilitation of drug addicts, as Punjab's battle with drug addiction makes clear. The underutilization of regulations such as Sections 39 and 64A, which were intended to redirect addicts from the criminal justice system to rehabilitation, essentially reduces these progressive measures to mere formalities. By treating drug addiction largely as a criminal problem, the courts, police, and prosecution have neglected to acknowledge it as a health issue. There hasn't been much success in spite of suggestions by government-appointed agencies and expert committees, like the 1995 Committee on Small Quantities, which placed a strong emphasis on decriminalization, early detection, psychiatric care, and thorough rehabilitation. Although Punjab's Department of Health and Family Welfare has also emphasized the need to de-stigmatize addiction and increase public understanding of its effects, the long-standing criminalization strategy maintains stigma and obstructs significant reform.

A mindset shift that treats addiction as a public health concern rather than a criminal offense is necessary to handle Punjab's drug problem. Fostering a more humane and efficient strategy requires decriminalizing small-scale drug use and shifting accountability from criminal justice systems to administrative organizations with a health focus. Establishing de-addiction and rehabilitation facilities that are well-equipped and of high quality is equally crucial. To assist people in overcoming addiction, these facilities must place a high priority on early detection, psychiatric treatment, and extensive recovery programs. Administrative organizations should also handle drug addiction situations by providing alternatives to harsh penalties, such community work, warnings, or required rehabilitation. In addition to addressing the underlying reasons of addiction, this approach would help people reintegrate into society.

To destigmatize addiction and advance knowledge of it as a treatable illness rather than a moral failing, persistent public awareness initiatives are essential. The stigma that frequently prevents people from getting help can be lessened and communities can be inspired to support recovery efforts through educational campaigns. Furthermore, in order to alter current legal frameworks, cooperation between the federal government and state governments is crucial. The emphasis of these improvements ought to be on evidence-based procedures that emphasize rehabilitation and treatment over punishment. All of these actions taken together offer a thorough plan for addressing Punjab's drug problem and creating a more wholesome and encouraging atmosphere for rehabilitation and reintegration.

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 47-63

Concerns, Conflict and the Parliamentary Quandary on Data Protection Law in India- A Critique

Dr. Bhupinder Kaur* & Prateek Sharma**

Abstract

India enacted Digital Personal Data Protection Act in August 2023. There have been five years of uncertainty and debate in and out of the Indian Parliament on the scope, essential features, desired goals, and institutional framework to be provided in the prospective law. Two Bills tabled in the Parliament, 2019 Bill and JPC's 2021 Bill and one Bill published on the website of Ministry of Electronics and Information Technology in 2022 resulted in split opinions on data governance regime in India. Eventually in August 2023, the law was enacted, though yet not enforced. This research paper examines the points of concerns and conflicts leading to deadlock in Parliament and how they have been addressed in the newly enacted law. The new legislation has lifted the mystic digital curtain and firmly established that individuals generating personal data are the data owners, not the companies dealing with such data. They hold the data in trust for the individuals and the data protection law is obliged to protect this trust of the individuals. The companies must process the personal data after having informed consent of the Data Principals and the course of utilization of such data cannot cross the limitation of purpose set out by the Data Principal. Data cannot be bought, sold and utilized in an arbitrary manner. The data fiduciaries have been made liable to huge fines which was lacking in the IT Act. However, the Act has not addressed all the concerns and has tried to manage the conflicts by narrowing down the scope of the Act. The constitutional rights aspects such as discrimination, harassment, abuse of dominance related to data governance which needs ethical practices of data privacy have not been addressed. The Act makes purposeful let out framework for state functionaries as well as non-state actors through various non-consent clauses which are wider than the required. Industry leaders have shown concerns about compliance requirements.

---

* Assistant Professor, Amity Law School
** Legal Counsel, Wipro India LTD.

However, we see it as a temporary measure or more correctly, the first step in data privacy regime imposing liability for quantitative losses. The qualitative aspects are likely to be covered in the next installment or through future amendments to this legislation. It is in relation to all these aspects that this paper analyses the scope of the right to data privacy, its legislative execution, dilemma created by multiple Bills and the scheme of resolution of this quandary in the Digital Data Protection Act, 2023.

***Keywords**: - Consent, Data Privacy, Data Breach, Digital, Data Governance, Data Principal, Data Fiduciary, Processing.*

1. Introduction

India's first Personal Data Protection Bill was introduced in the Lok Sabha, the lower house of the Parliament, on 11th December 2019. The Bill was prepared by the Committee of Experts headed by the Supreme Court Justice B. N. Srikrishna[1]. The Bill was referred to a Joint Parliamentary Committee (JPC) which gave its report on 16 December 2021 along with its own draft called Data Protection Bill, 2021. The resultant law, when enacted, was expected to have a far-reaching impact on data privacy rights, data processing companies and the government. Surprisingly, the pending Bill, including the JPC draft, was withdrawn by the government on 3rd August 2022 contending that the proposed law was 'incompatible with the desired framework for protection of digital rights' of the citizens. The government promised to reintroduce a 'comprehensive legal framework' that will be 'designed to address all the contemporary and future challenges of the digital ecosystem'. To fulfill its promise, the Ministry of Electronics and Information Technology introduced the Digital Personal Data Protection Bill 2023 in the Parliament which has been passed by the lower house on 7th August and by the upper house on 9th August,2023. With the presidential assent on 11th August 2023, it has become law.

The whole process of five years put the IT industry, legal professionals, and data scientists into a quandary like situation about the goals, considerable factors, and legal principles of a sound data protection regime in India. Contradictory beliefs prevailed in the data governance landscape.

---

[1] Vrinda Bhandari and Renuka Sane, "Protecting Citizens from the State Post Puttaswamy: Analysing the Privacy Implications of the Justice Srikrishna Committee Report and the Data Protection Bill, *Socio-Legal Rev.* 143 (2018).

2. Research Methodology

The article is based on an extensive study of doctrinal literature. The specific purpose of this article is to highlight the main points of conflict in the original 2019 Bill and JPC's 2021 Bill which created the deadlock in Indian Parliament and to find out how they have been resolved in this much awaited Digital Personal Data Protection Act 2023.The 2019 Bill and the JPC Bill have not as such been discussed here since it needs a lengthy discussion on various aspects which is not desired within the scope of this write up. The aim is to examine the solutions put forward in the latest law to do away with the confusion and chaotic questions posed by the deadlock in Parliament. A fair attempt has been made to analyze the provisions of the 2023 Act, its objectivity and ability to serve as a sound data protection law in India.

3. The Fundamental Right to Privacy and the Need for a New Legislation

Before dwelling into the analysis of legislative wisdom, let us apprise us of the scope of right to privacy in India and how far the data privacy is included in it. The seeds of data privacy law were sown through the Supreme Court's judicial interpretation in 2017. Conventionally, India has not been much a privacy-oriented society. 'Right to Privacy' does not find place as an explicit right in the Indian Constitution. The framers of the Constitution also were not having much affirmative concern on the issue of privacy to give it a place in fundamental law of the land. In 1948, Mr. Kazi Syed Karimuddin moved an amendment to the draft Constitution to protect individuals from unreasonable search-and-seizures on the lines of the fourth amendment of the US Constitution. Dr B. R. Ambedkar, the Chairman of the Drafting Committee, pointed out that these measures find place in the Criminal Procedure Code under Section 102, which sets forth provisions for search and seizure of property by police officers.[2] While he acknowledged the significance of the amendment motion, calling it a 'useful proposition' which must be 'beyond the reach of the legislature', but, no real move to protect the right to privacy was made.[3] However, the Indian higher judiciary kept facing privacy issues in various matters, particularly relating to search and seizure by police, surveillance on recidivists, electoral disclosures, telephone interception etc. Inspired by the A.K Gopalan era, the judgments of the Supreme Court in cases

[2] Section 102, The Criminal Procedure Code, 1973, (Act No. 2 of 1974).
[3] CAD1948, *available at:* http://164.100.47.194/loksabha/writereaddata/cadebatefiles/vol7.html (Last retrieved on December 20, 2022).

such as ***M. P. Sharma and Ors.*** **v.** ***Satish Chandra, District Magistrate, Delhi*** *and Ors.*[4]***,*** ***Kharak Singh*** **v.** ***State of Uttar Pradesh and Ors****.,*[5]***,*** ***Govind*** **v.** ***State of Madhya Pradesh and Ors****.,*[6]though admitted the significance of right to privacy, but failed to proceed towards declaration of a Constitutional right to privacy. In telephone tapping case, ***People's Union for Civil Liberties (PUCL)*** **v.** ***Union of India***[7]*,* Supreme Court travelled bit more to declare that privacy is a fundamental right and it is enshrined under Art. 21 of the Constitution. Interfering in free flow of telephonic conversation without justified reasons is an encroachment of right to privacy. Supreme Court issued various guidelines to fairly exercise the power of phone tapping by the State given under Section 5(2) of the Indian Telegraph Act, 1885. Despite of this decision in 1996, right to privacy could not be established as fundamental right due the technical difficulty of bindingness of large bench decisions in M.P. Sharma and Kharak Singh cases.

Finally, in 2017, a nine judges' bench of the Supreme Court in ***Justice K. S. Puttaswamy (Retd.) and Anr.*** **v.** ***Union of India and Ors****.,*[8]firmly declared and upheld that the right to privacy is a fundamental right protected under Part III of the Constitution of India. It guaranteed the right to privacy as an intrinsic part of the right to life and personal liberty under Article 21 of the Constitution. The Court overruled the previous rulings of *M.P. Sharma* and *Kharak Singh* casesin so far as they did not expressly recognize the right to privacy. The Court observed that the right to privacy does not need to be separately articulated but can be derived from Articles 14, 19, and 21 of the Constitution of India. The court clarified that like all other fundamental rights, the right to privacy is also subject to some reasonable restrictions. State can impose restrictions on the right to privacy to protect legitimate State interests. Restrictions in national interest may be imposed in accordance with the three-pronged test i.e., existence of a law that justifies an encroachment on privacy, a legitimate State aim or need that ensures that the nature or the content of this law falls within the zone of reasonableness and operates to guard against arbitrary State action; and the means adopted by the State are proportional to

---

[4] *M. P. Sharma and Ors. v. Satish Chandra, District Magistrate, Delhi and Ors.*, AIR 1954 SC 300.
[5] *Kharak Singh v. State of Uttar Pradesh,* AIR 1963 SC 1295.
[6] *Govind v. State of Madhya Pradesh*, AIR 1975 SC 1378.
[7] *People's Union for Civil Liberties (PUCL) v. Union of India*, AIR 1997 SC 568.
[8] *Justice K.S Puttaswamy (Retd.) and Anr. v. Union of India,* (2017) 10 SCC 1.

the objects and needs sought to be fulfilled by the law. Supreme Court directed the Government to frame a specific data protection law. India is a signatory to UDHR and has ratified the International Covenant on Civil and Political Rights, 1966 which recognize the individual's right to privacy against arbitrary interferences. Therefore, it was an international legal obligation also to create a sound data protection framework in the country.

Furthering the cause of privacy, Courts have decided various matters in the light of Puttaswamy judgement. The 'right to be forgotten' has a fundamental role while establishing and implementing data privacy rights. In the case of ***Rout* v. *State of Odisha***[9], the High Court observed that India's justice system is sentence-oriented with little emphasis on the victim's loss and suffering or the victim's privacy. Victims are unable to have objectionable photographs removed from social media. The Court noted that "there is a widespread and seemingly consensual convergence" towards the adoption of the right to be forgotten but efforts in India have been slow to protect that right. The Court observed that "no person much less a woman would want to create and display gray shades of her character", and "capturing the images and videos with consent of the woman cannot justify the misuse of such content once the relation between the victim and accused gets strained as it happened in the present case". The Court reiterated the importance of the right to be forgotten, noting that if 'it is not recognized in matters like the present one, any accused will surreptitiously outrage the modesty of the woman and misuse the same in the cyber space unhindered'. Court held that Rout did not deserve any consideration for bail at this stage and that in cases of violation of privacy, the victim or the prosecution may "seek appropriate orders to protect the victim's fundamental rights" and have such content erased, irrespective of the ongoing criminal process.

In ***X.* v. *YouTube***[10]*,* the High Court of Delhi upheld an actor's right to privacy under Article 21 of the Constitution and directed internet intermediaries as well as websites to take down the explicit videos of the actor which had been uploaded on to multiple video-sharing platforms without her consent. The actor sued the defendants after they failed to remove multiple explicit clips of her, which were originally filmed for the purposes of a potential lead role in a web series. While the producer of the videos took down his footage soon after

[9]*Rout* v. *State of Odisha,* BLAPL No. 4592 of 2020.
[10]*X* v. *YouTube*, CS (OS) 392 of 2021.

the actor complained, the defendants did not do so for which the actor argued that it was in breach of her right to be forgotten and, more broadly, her right to privacy. While the actor may have consented to the shooting, the Court found her consent to have since been expressly withdrawn, as the producer of the series had also removed the videos upon her request. Although the Court was conscious that there is no statutory right to be forgotten, it ultimately held that the actor's right to privacy deserved protection. This was especially so following the clear and immediate effect on, and irreparable harm to, her personal and professional life, when the videos depicting her in a sexual nature content had been circulated against her will.The Court endorsed the privacy rights in *Zulfiqar Ahman Khan*[11], which illustrated the severe impact of a publication on the personal and professional life of the plaintiff, and the need to issue interim orders to stop republication of the content to prevent further irreparable damage. The Court held that the plaintiff should be entitled to be 'left alone' and 'forgotten'.

Information Technology Act, 2000[12] and the Rules framed thereunder, namely, The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, and the Indian Telegraph Act, 1885[13] provide for very narrow insights on rights to data protection or data privacy, therefore there was a need for a specific robust law for new age digital economy, the process for which began since the decision in K.S. Puttaswamy Case in 2017.

4. Personal Data Protection Bill 2019[14] and JPCBill 2021[15]- The Points of Conflict and Concern

The major points of conflict have been the type of data to be protected, the extent of rights of the Data Principals and the corresponding liabilities of the companies, exemptions to the government agencies and independence of data protection authority.

---

[11] *ZulfiqarAhman Khan* v. *Quintillion Businessman Media Pvt. Ltd&Ors.,* 2019 (175) DRJ 660.

[12] The Information Technology Act, 2000 (Act 21 of 2000).

[13] The Telegraph Act, 1885 (Act 13 of 1885).

[14] Personal Data Protection Bill, 2019, *available at*: 4173LS(Pre).p65 (prsindia.org).

[15] Report of the Joint Committee on Personal Data Protection Bill 2019,*available at*:eparlib.nic.in/bitstream/123456789/835465/1/17_Joint_Committee_on_the_Personal_Data_Protection_Bill_2019_1.pdf

The JPC Report focused on answering fundamental questions of data privacy and addressing public policy concerns related to data protection. It also took into consideration the judgement of *Justice* ***K.S. Puttaswamy (Retd.)*** **v.** ***Union of India***[16], and the recommendations of the *Justice B.N. Srikrishna Committee*[17]. The report highlighted the increasing number of data breaches, the need for protection of non-personal data, single independent Data Protection Authority, more liberal rights for Data Principals and strong obligations of Data Fiduciaries. However, JPC gave a clear nod to the Government for surveillance activities. Despite its best attempts, the JPC Report was criticized for unduly enlarging the scope of the 2019 Bill and its liberal nod for protecting state interests, surveillance in particular. Apart from recommendations related to data privacy, the report proposed that social media companies that do not act as intermediaries are to be treated as content publishers, meaning thereby, they become liable for the content they host, which was probably a question related to the digital media ethics code.

JPC report recommended that, 'an approximate period of 24 months may be provided for implementation of any and all the provisions of the enacted law so that the Data Fiduciaries and Data Processors have enough time to make the necessary changes to their policies, infrastructure, processes etc.'. It does not deal with data collected prior to the bill coming into force (when enacted), effect on data processing and what measures must be taken to bring such processing in conformity with the provisions of the law, especially in cases wherein consent has been collected in a manner inconsistent to the provisions of the Bill. This is different from GDPR, which repealed the earlier Data Protection Directive[18] and if processing already underway under the earlier Directive, it should be brought into conformity with GDPR within two years after which this Regulation comes into force.[19] JPC Bill relaxed some of the stringent provisions of the 2019 draft such as the obligation of data

16*Justice K.S. Puttaswamy (Retd.) and Anr.* v. *Union of India and Ors.* (W.P. (C) No. 494 of 2012.

17 Justice B. N. Srikrishna Committee. A Free and Fair Digital Economy Protecting Privacy-Empowering Indians, *available at:* https://www.meity.gov.in/writereaddata/files/Data_Protection_Committee_Report.pdf. (Last retrieved on July 30, 2023).

18 EU, Data Protection Directive 95/46/EC; Recital 171 of GDPR.

19 Graham Greenleaf, "India's Personal Data Protection Bill, 2019 Needs Closer Adherence to Global Standards" *available at*: http://dx.doi.org/10.2139/ssrn.3539432. (Last retrieved on April 20, 2020).

localization.[20] Keeping in mind the growing need of the digital economy, having a regulatory sandbox in place may be the need of the hour, however, providing the government with unregulated and absolute broad powers to exempt government agencies from the provisions of the bill may defeat the purpose of the Bill and eventually it may jeopardize an individual's fundamental right to privacy.[21]

Despite the withdrawal of the Bill in 2022, the industry consensus has been that the overall policy thrust and direction of the Government to overhaul India's privacy laws remains unchanged. The bill's withdrawal could be seen as a 'tactical' move, in part to enable a 'clean slate' for addressing concerns raised on the 2019 Bill, as well as to find solutions to issues related to regulation of non-personal data that the 2019 Bill did not contemplate. It was also said that the reasons for withdrawal were the pushback from big tech giants related to provisions of data localization, under which they needed to store a copy of sensitive personal data within India and the export of undefined 'critical' personal data was prohibited. It has been expected that the new law should have balancing provisions to protect data privacy as well as to promote and not discourage businesses, particularly start-ups, as well as to ensure smooth data flows to companies and customers in the big US and EU markets.

5. Potential Resolution of Conflict and Concerns

After a detailed analysis of 2019 Bill, JPC recommendations and their draft Bill, various data breaches, research studies, concerns expressed by different stakeholders and legal writings, it has been found that the provisions of 2019 Bill were more pragmatic than the JPC Bill, though admitting the significance of a few recommendations of the JPC Committee. Based on our analysis, some observations have been put forth: -

1. Data protection law must be focused on addressing personal data breaches. The basic feature of personal data is the identifiability of the natural person whereas the non-personal data may be any type of data including anonymized data. Anonymized data means where the natural person cannot be identified from the particulars of the data. The first instalment

[20]Rishab Bailey and Vrinda Bhandari, et al., "Comments on the (Draft) Personal Data Protection Bill, 2018" *available at*: http://dx.doi.org/10.2139/ssrn.3269735 (Last retrieved on April 15, 2022).

[21]Shaheen Banoo, "Evaluating Personal Data Protection Bill, 2019: An Appraisal of Inception of India's Privacy Legislation". *Supremo Amicus*, 18 (2020).

of the data protection regime should be in the form of 'Personal Data Protection Bill' which excludes the non-personal data as well as the anonymized data from the purview of the legislation. However, there should be strong punishment for re-identification of the anonymized data and business entities should be vicariously liable for such wrongful acts of their employees done in their due course of business. 2019 Bill provided for imprisonment for re-identification of anonymized data for making it identifiable personal data and it should be provided in the new Act also. Therefore, the JPC recommendations of inclusion of non-personal need not be accepted.

2. There is a need to have a single Data Protection Authority to regulate and adjudicate upon the matters related to data privacy. The imprisonment related criminal aspect may be regulated by courts, but the compensation and fines jurisprudence must be handled by one authority. There may be separate legislations however, the Authority may remain the same. For example, RBI in financial matters and NCLT in corporate matters deal with all matters within their domain, falling under separate legislations. Single Authority will ensure transparency, uniformity, and efficiency in data governance in India. The Data Authority must have two members from legal background (one having expertise in IT law and one in public law) and the selection committee for the Authority must have at least one data scientist in the panel. The JPC recommendations on check on the powers of enquiry officer by the Authority, a single window for deciding upon penalties and compensation and class action suits are positive points to be included in the data protection law.
3. The provision relating to data breach given in clause 25 of 2021 JPC Bill excluding the non-personal data breach, should be included in the new law. The particulars of data breach should not be publicized by the Data Fiduciary as well as the Authority. There should be provisions for protection of privacy of whistleblowers too.
4. The Data Fiduciaries dealing with data related to children must be registered with the Authority. They must be categorized as Significant Data Fiduciary. The provisions for appointment of Data Protection Officer and Data Impact Assessment should also find place in the new Bill. The JPC recommendation as to the validation of consent on attaining majority should also be included in the new Bill. The new Bill should define 'Data

Protection Officer.' The role and obligation of Data Protection Officer must be made clear in the very legislation itself.

5. Social media intermediaries need not be regulated as publishers in the personal data protection bill. It can be better dealt with under IT law and Rules made thereunder and the digital media ethics code. It will provide flexibility to the Government to maintain a balance between regulation and ease of doing business of these social media entities.
6. The exemptions from the Bill should be available to State functionaries directly related to security issues. The new Bill should not provide a blanket wide power to the Government to exempt any entity or agency designating it to be useful for security purposes, particularly in the case of personal data. For non-personal data, the State may have more surveillance, processing, and profiling. The legitimate state aim and proportionality must guide the provisions in the new Bill. The existing framework for surveillance under the Telegraph Act suffers from a lack to define the grounds of surveillance, poor oversight, and fails to protect the Constitutional rights of the surveilled. The fundamental issue with these provisions is their centralization of power with the Executive branch of Government and the lack of any judicial or legislative oversight. This promotes a complete lack of accountability and quite often results in allegations of the use of hard power for political purposes. To ensure that overbroad and illegal surveillance does not take place, this new framework, may be through Rules, must contain provisions that narrowly define grounds of surveillance, provide sufficient judicial oversight of interception orders, and inform the surveilled person of the existence of the surveillance at least after the incident to ensure that their constitutional right of post act hearing is not taken away.
7. Data localization provisions should be strengthened. The recommendations of JPC on this matter as to the retention of mirror image in India should be accepted.
8. There should be adequate protection for trade secrets of the Data Fiduciary while giving all reasonable rights of data disclosure and data portability to Data Principals. There is no IP protection for trade secrets in India, therefore the recommendation of JPC that algorithms and trade secrets are no ground to refuse data portability, does not hold weight.

9. The Data Protection regime should take into consideration the interests of the State Governments too. There are various implications at the state level in data governance. The technical mechanism in terms of infrastructure in states needs to be improved.
10. Data Governance may be added as a separate entry of legislative power in Union List in seventh Schedule of the Constitution. The 2019 Bill was passed by the Parliament under the broader interpretation of Entry 31 of List 1of the Seventh Schedule.

6. Digital Personal Data Protection Act 2023- Has the Quandary Been Resolved?

After a long wait of five years, the Digital Personal Data Protection Act has been enacted, though not yet enforced. The prominent features of the Act are:
-

1. The Act protects the digital personal data of Data Principles in India, being processed by a Data Fiduciary, Indian or a foreigner one. If an individual is identifiable through a dataset, it is covered under the definition of personal data. Information related to IDs, KYC, sexual orientation, caste, religion, medical and financial information capable of identifying a person, is considered his or her personal data under this Act. The physical files subsequently digitized are also within the scope of this Act. It makes the Government bodies liable for breach of data occurring upon digitization of old files.
2. The Act regulates all the foreign Data Fiduciaries for processing of personal data linked to offering goods or services to Data Principals within India e.g. the overseas e-commerce companies, fintech firms, online gaming platforms, travel bookings companies collecting email ids, KYC or copies of documents from Indians are within the purview of this Act. Similarly, the data collected through the Internet of things (IOT) such as RFID, face recognition devices and CCTV cameras is also liable to be protected under this Act. A major part of these data sets is held by the govt. offices, employers' institutions, hotels, malls, cinema halls etc. which they cannot mishandle or transfer to anyone else, failing which they should face penalties under this Act. Thus, the business entities, e-governance portals, public service providers, hospitals, universities, CA firms and law firms etc. are widely regulated by this Act and the Act takes hard action in the

form of huge fines for negligence, data theft, and malicious use of personal data by such entities.

3. The Data Fiduciary as well as its trading partners to whom data processing may have been outsourced, both are also liable under this Act. It means if some personal data is collected by an Indian firm and it hires an American firm for a specific processing task, both firms are within the purview of this Act for any breach of data occurring at their end even if the Data principal has no knowledge of such American partner. The Act mandates that there must be a written contract between the Indian and the American firm for such business partnerships. It will create more transparency because many a times firms don't know about other trading partners in the supply chain, and it creates difficulties for the regulator while imposing liabilities for breaches.
4. The Act is not applicable in certain instances, for example, if the data is collected by a master for domestic purposes, for example, receiving identification documents for domestic help, the Act is not applicable. It regulates commercial transactions only. Similarly, for the videos, images and stories voluntarily uploaded by bloggers, influencers and showbiz stars for public views, they cannot seek protection under this Act.
5. The Data Fiduciary must take consent of the Data Principal before processing his or her digital personal data. Consent must be free, informed, unconditional, specific, and unambiguous. The Data Principal must be informed about the purpose of data processing and the data must be used for the said purpose only.
6. The Data Fiduciary must give comprehensive notice of consent to the Data Principal mentioning the requirement of consent, consent withdrawal option and the grievance redressal mechanism, in case they have any complaint against the Data Fiduciary.
7. Consent of Parent or Legal Guardian is required for the processing of personal data of children and disabled persons. Tracking, behavioural monitoring and any form of targeted advertising directed at children is strictly prohibited. The requirement as to the appointment of a Data Protection Officer for these significant data fiduciaries and data protection assessment have been duly incorporated in the Act. For breach in observance of additional obligations in relation to children under section

9, a penalty may be imposed of an amount extending up to two hundred crore rupees.

8. Consent is not required for processing data for some legitimate uses, for instance, to get subsidy, benefit, service, certificate, licence or permit from the Government. Consent is also not required to be obtained by Government instrumentalities performing lawful functions such as to protect the sovereignty and security of India, judicial compliance, medical emergency, and disaster management. However, the Act gives room for misuse of immunity to the State. State can ignore consent compliance for any 'lawful function under any law' which is a wider and ambiguous terminology.
9. Data Fiduciaries are required to fulfil certain general obligations such as entering into valid contracts with other data processors, ensure completeness, accuracy, and consistency of processed data, prompt report of data breach to Data Protection Board and Data Principal as well. The Data Fiduciary must erase the personal data on withdrawal of consent or if in the eyes of Data Principal, the purpose of processing is not being served. Establishing a grievance redressal mechanism is mandatory for all Data Fiduciaries, whereas the significant Data Fiduciaries are required to appoint Data Protection Officers too.
10. The Act provides four rights to Data Principals, including, right to access information about personal data, right to correction, completion, updating and erasure of her personal data for the processing of which she has previously given consent (eraser not from Govt records), right to have readily available means of grievance redressal provided by a Data Fiduciary or Consent Manager and the right to nominate in case of death or incapacity. Right to data portability has not been provided.
11. The Data Principal will be punished with a fine extending up to ten thousand rupees for violation of any of the prescribed duties cast upon him or her. The duties include duty not to impersonate, not to suppress any material information and not to make false complaints.
12. The Government may exempt certain organisations and activities from the operation of the Act. State and its instrumentalities, startups and activities relating to research, archiving, or statistical purposes may be exempted from the operation of the Act.

13. The Data Protection Board is vested with the exclusive jurisdiction to try matters within the purview of the Act and appeal shall lie to Appellate Tribunal within 60 days from the date of receipt of order of the Board.
14. Each Data Fiduciary is required to implement reasonable security safeguards, failing which it shall be subjected to a penalty extending up to two hundred and fifty crore rupees.
15. The Act provides for solution of disputes through ADR, if the Board thinks it fit to do in the interest of parties to the dispute.

Digital Personal Data Protection Act, 2023 is not a comprehensive code to address all the issues and concerns raised by Parliamentarians, data scientists, privacy activists and the legal experts on the subject in hand in the last five years. Nonetheless, it is an attempt to better regulate the commercial aspects of data breaches. It has defined various terms which is very much necessary in the changed landscape of data governance. It has firmly established the fundamental principle of consent as prerequisite to data processing. It purposes to establish an expert semi-judicial body for prompt inquiry and imposition of penalties to discipline all the stakeholders in the data governance. It can be safely assumed that the Act will be supplemented by necessary logical rules in due course of time. However, the Act provokes certain questions and concerns explicit enough to be discussed in public domain. These are: -

1. Many important provisions mention ‘as may be prescribed’ instead of providing one point clarity in the provision itself. It is apprehended that it may amount to excessive delegated legislation leading to a room for uncertainty and arbitrariness.
2. There is a let-out clause in the Act under section 32 requiring voluntary undertaking for exemption from action under the Act. In small matters it may be a good tool for discipline, however in bigger matters it should not be used. The concern is that no criteria is given in which cases it would apply.
3. There is absence of compensatory measures for victims of data breaches. Only fines can be imposed on wrongdoers. Instead, Sec 43 of IT Act, 2000 provides for compensation for breach of privacy. It will lead to multiplicity of litigations and tribunals for the same data breach.

4. The data principals have no explicit 'right to be forgotten'. The Act suggests that it is not available against the government and its instrumentalities.
5. Public Information Officer can reject RTI applications based on personal data privacy. Section 44(3) of the Act abrogates the essence of Section 8(1)(j) of the RTI Act. It was not required to be inserted in the Act.
6. The Act does not provide adequate mechanism to prevent unwarranted surveillance, discrimination, or coercion through data analytics. This qualitative loss issue has not been addressed in the Act. A data breach leading to financial loss only will be regulated by this Act. The 2019 Bill, JPC Bill and 2022 Bill had all defined 'harm' quite widely including the cases of harassment, bodily harm, and identity theft[22]. This Act only provides for penalties for breach of rights of Data Principal where a financial loss/gain occurs. Harm arising out of profiling, discrimination, harassment (without financial element) has not been addressed in the new regime.
7. Companies and other stakeholders have raised concerns on some compliance issues. If the Data Principal asks for consent format in regional languages, how the companies would execute it? How will the frequent switching of social media accounts from public to personal or vice-versa be regulated?
8. If personal data collected on a paper will be dealt differently from the personal data collected digitally, how will this procedural anomaly be regulated?
9. Can the state engage private actors to have immunity from the consent requirements to perform any function under any law?
10. For how long the personal data can be retained by the Data Fiduciaries citing the security reasons? What are the guiding norms?
11. How these modern apps inappropriately asking for access to contact list, photo gallery, location be disciplined through data protection law?
12. Will the ease of consenting and the ease of withdrawing the consent have same standards?

---

[22] Section 2 (10) of The Digital Data Protection Bill 2022, *available at* :https://www.meity.gov.in/writereaddata/files/the digital personal data protection bill, 2022_0.pdf. (Last retrieved on December 22, 2023).

13. What are the guiding principles in exercising the right to eraser? Many institutions such as banks must fulfil statutory norms of data retention for certain period.
14. How is the independence of Data protection Board ensured under the Act?
15. Will the data breach occurred by mistake or hacking be specifically dealt with under this Act? How will the difference between negligence or malice be treated under this Act?

7. Conclusion

Digital Personal Data Protection Act 2023 is a welcome measure in the direction of an ethical data governance in India, however its scope is limited as compared to the 2019 draft Bill and the JPC 2021 Bill. The quandary as to the type of data to be protected has been solved. Only the personal data is the subject matter of this specific legislation which is a wise step. The definition of personal data is wide enough to cover diverse data sets of individuals. The Act has firmly established the principle of consent in data processing by any data fiduciary, including the government, and the consent measures make a harmonious balance between privacy and information requirements for welfare functions of the state. The punishable act is basically the wrongful financial gain or loss due to the breach of data privacy. The Act does not address the human rights concerns arising out of AI profiling and data analytics. By data analytics, the denial of right to equality in employments, interference with fair elections, relationship issues in marriage, divorces and other status related matters and harassment by persons having dominant influence are the deep-rooted concerns in data governance which are not addressed in this Act. Here the quandary still prevails as the global jurisprudence in the light of GDPR is broader in protection than the Indian regime. JPC tried to address these issues to some an extent. There is a need for detailed supplemental Rules for proper execution of the Act and a strong, efficient, and responsible data protection authority too. The Act has tried to fill the limited space created by deadlock in Parliament in last five years. Therefore, the quandary has not been fully resolved. Multiplicity of legislations and adjudicatory bodies will still prevail in information technology sector.

The Act should have avoided any reference to RTI because the RTI provision in section 8 is good enough to ensure a balance between the right to privacy and right to information, both being the offshoots of Art 21 of the Constitution

read with Art. 19 of the Constitution. The provision should be omitted from the Act. The prospective Rules must specify, inter alia, certain important points. It must provide an option to the data fiduciary to opt for two to three languages as per their business place in managing consent from data principal. The procedural steps for reporting data breach to the data principal and their redressal should also be clarified. The immunity through voluntary undertaking under section 32 should be allowed only up to a particular threshold of loss caused by data breach. Purpose limitation must be strictly imposed on data collected by apps in play store. State should not be permitted to get immunity from the application of consent requirements in PPP models rather it should be allowed only if the partner private enterprise is working as its agency or instrumentality only. The provisions related to data retention should be clearer. Data can be retained in back-end files for some reasonable time and may be removed from the public access on internet. It will serve the purpose of law. Rules may provide for such middle way out. The autonomy, institutional structure and composition of the Data Protection Board is a very relevant issue, which must be liberally addressed in the Rules.

The Ministry of Electronics and Information Technology of the Government of India has published a document on its website named as 'Proposed Digital India Act 2023' on 9th March 2023. This document stresses upon the need to create a new global standard cyber law for India to make her a trusted player in the global value chains for digital products, devices, platforms and solutions. The document well recognizes that the proposed Digital India Act (replacing IT Act) must be supported by four major pillars, namely, the Digital Personal Data Protection Act (DPDP Act), National Data Governance Policy, Rules framed under the Digital India Act and amended criminal law provisions. The first pillar, i.e. the DPDP Act, has been duly enacted in 2023. If the concerns raised in this paper are addressed through the Rules which are yet to be notified, most of the issues will be solved. Nonetheless, the legislation is the need of the hour and should be implemented soon.

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 64-76

Evolving Indian Copyright Laws in The Age Of Digital Media

Dr. Mumtaz ZabeenKhan*

Abstract

The advent of the digital age has significantly transformed the landscape of copyright protection and enforcement in India. This abstract explores the intricacies of copyright laws as they pertain to digital mediums, highlighting key legislative frameworks, judicial interpretations, and emerging challenges. The primary legislation governing copyright in India is the Copyright Act, 1957, which has undergone several amendments to address the complexities introduced by digital technologies. In India's copyright laws have evolved to address the demands of the digital age, continuing efforts are needed to enhance enforcement mechanisms, raise public awareness, and ensure that the legal framework keeps pace with technological advancements. Future developments in international copyright treaties and domestic legislative reforms will be crucial in shaping the future of digital copyright protection in India.

Keywords: ***Copyright Laws, Digital Medium, India***

1. Introduction

Copyright laws in India pertaining to digital media are designed to protect the intellectual property rights of creators and authors in the digital realm. These laws encompass a range of digital creations, including but not limited to software, websites, digital art, music, videos, and other digital content. The primary legislation governing copyright in India is the Copyright Act of 1957, which has been amended several times to accommodate developments in technology and digital media.[1]

In the Indian legal framework, copyright is a form of exclusive rights granted to creators for their original works, allowing them to control the reproduction, distribution, public performance, adaptation, and other uses of their creations. With the advent of digital media, copyright laws have evolved to address the

*Assistant professor at Rayat college of law, Railmajra (Affiliated to Panjab University, Chandigarh)

[1]Anupama Mahajan, "Copyright and Digital Media in India: A Review," *Journal of Intellectual Property Rights,* Volume: 16 Issue: 5 (2011).

challenges posed by the ease of copying, distributing, and accessing digital content. To be eligible for copyright protection, a work must be original, i.e., it must have originated from the author's own creativity and not be a mere copy of existing works. In the digital context, originality is assessed based on the creativity involved in the digital creation. The Copyright Act extends protection to various forms of digital works, such as computer programs, software, databases, digital art, music, videos, e-books, and more. These digital creations are considered literary, artistic, or musical works under the Act.[2]

Copyright holders of digital works have the exclusive rights to reproduce, distribute, display, perform, and adapt their creations in digital formats. These rights ensure that creators have control over how their works are used and can derive financial benefits from their exploitation. With the ease of copying and distributing digital content, piracy and unauthorized use are significant concerns. The Copyright Act provides mechanisms to take legal action against individuals or entities engaged in copyright infringement, including online piracy. The Copyright Act includes provisions for fair use, allowing limited use of copyrighted works without permission for purposes such as criticism, review, news reporting, research, education, and parody. These exceptions balance the rights of creators with the public's interest in accessing and using copyrighted content. India is a signatory to international treaties and agreements related to copyright protection, such as the Berne Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). These agreements establish minimum standards for copyright protection and enforcement.[3]

In India, copyright protection is governed by the Copyright Act, 1957, and its subsequent amendments. The Act grants exclusive rights to creators of original literary, artistic, musical, and dramatic works. These rights include the right to reproduce, distribute, adapt, and publicly display or perform their works. The Copyright Act in India does not have a separate section dedicated explicitly to digital media. Instead, the Act's provisions apply to both traditional and digital forms of content. Digital media, including text, images,

---

[2] Aparajita Lath, "Copyright Law and the Digital Millennium in India: Balancing Stakeholder Interests," *Journal of Intellectual Property Rights*, Volume: 22 Issue: 5 (2017).

[3] Yogesh Pai, "Copyright Protection in the Digital Environment: A Critical Appraisal of Indian Law," *NUJS Law Review*, Volume: 2 Issue: 4 (2009)

audio, and video, are treated similarly to their analogy counterparts when it comes to copyright protection. The Copyright Act's provisions cover the distribution of digital works online. This means that activities like uploading, sharing, or distributing copyrighted content online without authorization can constitute copyright infringement.[4]

Online platforms, such as websites, social media platforms, and streaming services, need to obtain appropriate licenses or permissions from copyright holders to host and distribute their content. The Copyright Act, 1957 governs copyright laws in India. It grants exclusive rights to creators/authors of original literary, artistic, musical, and dramatic works, including digital media. Digital media includes various forms of content produced and distributed in digital formats, such as text, images, videos, music, software, and more. Copyright grants certain exclusive rights to the creator, such as the right to reproduce the work, distribute copies, perform or display the work, create derivative works, and more. These rights extend to digital media as well. The duration of copyright protection varies depending on the type of work. For literary, artistic, musical, and dramatic works, the copyright usually lasts for the lifetime of the author plus 60 years from the year of the author's death. Copyright infringement occurs when someone uses a copyrighted work without the permission of the copyright holder. This applies to digital media as well. Uploading, sharing, or distributing copyrighted digital content without authorization can constitute copyright infringement. Online platforms hosting user-generated content (e.g., social media, video-sharing platforms) may have policies and mechanisms in place to address copyright infringement. They often have processes for reporting copyright violations and taking down infringing content.[5]

Digital copyright international laws play a critical role in shaping the modern landscape of creative expression, innovation, and content distribution in the digital age. These laws are designed to strike a balance between safeguarding the rights of content creators and fostering the sharing of knowledge and ideas in an increasingly interconnected world. The digital era has enabled

---

[4] Dr. R. K. S. Rawat, "Digital Rights Management: Legal and Technological Measures for Protecting Digital Content," *Journal of Intellectual Property Rights*, Volume: 12 Issue: 5 (2007).

[5]Dr. Anil Kr. Suthar, "Digital Copyright Issues in India: Challenges and Way Forward," *International Journal of Information Dissemination and Technology*, Volume: 4 Issue: 4 (2014).

unprecedented global connectivity, allowing creative works to be easily shared, accessed, and disseminated across borders. International copyright laws provide a framework for harmonizing the protection of these works and addressing the challenges of cross-border content distribution. Digital copyright laws ensure that creators are granted exclusive rights over their digital creations, encouraging them to produce and share innovative content while maintaining control over its use.

2. Historical Perspectives

India is a signatory to various international agreements related to copyright, including the Berne Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). These agreements influence the country's copyright laws and ensure a level of alignment with global standards. It's worth noting that copyright laws and their application can be complex and subject to interpretation. Additionally, the digital landscape is rapidly evolving, leading to on-going discussions about how copyright laws should adapt to new technologies and modes of content distribution.[6]

The Copyright Act of 1957 is the foundational legislation governing copyright in India. It was enacted to replace the previous Copyright Act of 1914. This act provided protection to various forms of creative works, including literature, music, films, and more. However, the act did not specifically address digital mediums, as digital technology was not a major consideration at the time of its enactment. The Copyright Act of 1957 is the foundational legislation that governs copyright protection in India. However, this law predates the digital era and did not explicitly address digital works and technologies. India signed the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty in 1997. These treaties aimed to address copyright issues arising from digital distribution of copyrighted works and performances. They laid the groundwork for future amendments to Indian copyright law.[7]

The Copyright (Amendment) Act, 2012, brought significant changes to copyright law to adapt to the digital environment. It introduced provisions related to digital rights management (DRM), anti-circumvention measures,

---

[6]Rajkumar Rajkhowa, "Digital Copyright Protection in India: Challenges and Solutions," *Journal of Intellectual Property Rights,* Volume: 18 Issue: 6 (2013).

[7]Shamnad Basheer, "Copyright and Digital Education in India," *Economic and Political Weekly*, Volume: 46 Issue: 43 **(**2011).

and statutory licenses for broadcasting organizations and other entities. The concept of "digital works" was introduced, recognizing the importance of digital media. This amendment to the Copyright Act introduced significant changes to address the challenges posed by the digital age. The amendment introduced provisions related to technological measures to protect digital content from unauthorized use. This aimed to address issues related to piracy and unauthorized distribution. The rights of performers in digital media were strengthened, ensuring that they received fair compensation for the digital distribution of their performances. A statutory license was introduced for broadcasting organizations to access and use copyrighted content, including in digital formats, while ensuring proper compensation to copyright holders.[8] Indian copyright law includes provisions for fair dealing, which is analogous to the fair use doctrine in other jurisdictions. This provision allows for the use of copyrighted material without permission for specific purposes such as criticism, review, news reporting, education, and research. The digital era brought challenges related to online piracy and unauthorized distribution of copyrighted content. India has seen its share of piracy-related issues, and copyright holders have taken legal actions against websites and individuals engaged in unauthorized distribution of digital content. With the rise of digital streaming platforms, licensing and distribution of digital content became more prominent. Copyright holders and platforms entered into licensing agreements to provide content to consumers legally. The landscape of digital copyright continues to evolve in India. The country has been considering issues such as intermediary liability, safe harbours for online platforms, and the balance between copyright protection and users' rights in the digital age.[9]

3. Berne Convention for the Protection of Literary and Artistic Works

The Berne Convention is an international treaty that sets out minimum standards for copyright protection among its member countries. It establishes the principle of "national treatment," meaning that authors from member countries are granted the same copyright protection in other member countries as they are in their home country. This convention provides a foundation for many aspects of copyright law, including those related to digital media. The

---

[8] Raman Mittal, "Copyright in the Digital Age: A Study of Indian Perspective," *Journal of Intellectual Property Rights,* Volume: 21 **I**ssue**:** 6 **(**2016).

[9] Archana Raghuram, "Digital Millennium Copyright Act and India," *Journal of Intellectual Property Rights,*Volume**:** 13 Issue**:** 6 **(**2008).

Berne Convention for the Protection of Literary and Artistic Works, often referred to as the Berne Convention, is an international treaty that sets out the principles and minimum standards for copyright protection among its member countries. The convention was first adopted in 1886 in Berne, Switzerland, and it has been revised multiple times to adapt to changing technologies and practices in the realm of creative works.[10]

4. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

TRIPS aims to establish minimum standards for the protection and enforcement of various forms of intellectual property rights (IPRs) in member countries. These rights include patents, copyrights, trademarks, trade secrets, industrial designs, and geographical indications. The agreement seeks to strike a balance between protecting intellectual property and promoting international trade and development.[11]

5. WIPO Copyright Treaty

The treaty aims to update and harmonize international copyright standards in the context of the digital age, addressing the challenges and opportunities brought about by advancements in technology and the digital distribution of creative works.[12]

The WCT reaffirms the protection of literary and artistic works that are covered by copyright, regardless of their form or medium of expression. This includes traditional forms of creative works as well as digital content. The treaty grants authors of literary and artistic works certain exclusive rights, such as the right to reproduce their works, distribute them to the public, and communicate their works to the public. These rights are adapted to the digital environment, where the concepts of reproduction, distribution, and communication have taken on new dimensions.[13]

6. WIPO Performances and Phonograms Treaty (WPPT)

The treaty was adopted in December 1996 and came into force on May 20, 2002. It works in conjunction with the WIPO Copyright Treaty (WCT) to

---

[10] Tomas A. Lipinski, *Digital Libraries and Copyright Compliance* 45 (Chandos Publishing, 2016).

[11] *Available at*: https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm(Last retrieved on August 02, 2024).

[12] *Available at*: https://www.wipo.int/treaties/en/ip/wct/summary_wct.html(Last retrieved on August 03, 2024).

[13] *Ibid*.

update and harmonize international copyright standards for the digital era.[14] he WPPT grants performers (such as actors, singers, musicians, and dancers) certain rights over their live performances and recorded performances, regardless of whether they are fixed in a tangible medium.[15]

7. Copyright Act, 1957

India's Copyright Act covers issues related to digital content, including online piracy and infringement of digital content. Digital piracy refers to the unauthorized copying, distribution, or use of digital content, such as software, movies, music, eBooks, and other digital media, without proper authorization from the copyright holder. It is considered a violation of copyright law and intellectual property rights. Digital piracy can occur through various means, including illegal downloading, streaming, file sharing, and distribution through online platforms.

I. **Copyright Violation**: Digital piracy involves the infringement of copyright, which is the exclusive legal right granted to creators and copyright holders to control the use and distribution of their creative works.[16]
II. **Types of Pirated Content**: Pirated content includes a wide range of digital media, such as movies, TV shows, music albums, video games, software applications, ebooks, and more.[17]
III. **Methods of Distribution**: Digital piracy can occur through torrent websites, file-sharing platforms, unauthorized streaming sites, peer-to-peer (P2P) networks, and even social media platforms. Pirated copies of content are often made available for free or at significantly reduced prices.
IV. **Impact on Creators**: Digital piracy negatively affects content creators, copyright holders, and the entertainment industry as a whole. Creators and copyright holders lose potential revenue when their content is accessed or distributed without authorization.[18]

---

[14]*Available at*: https://www.wipo.int/treaties/en/ip/wppt/summary_wppt.html(Last retrieved on August 04, 2024).
[15]*Ibid*.
[16]P. BerntHugenholtz, Ansgar Ohly, *Law of Copyright and Neighbouring Rights: National and International Perspectives* 67 (2016).
[17]*Ibid*.
[18]*Ibid*.

V. **Communication to the Public (Section 14):** Section 14 of the Copyright Act grants copyright holders the exclusive right to communicate their works to the public. This provision is relevant to digital media, as it covers activities such as streaming, broadcasting, or making works available online.[19] Section 14 also grants copyright holders the exclusive right to reproduce their works. In the context of digital media, reproduction includes creating digital copies, such as downloading or saving files. The act provides copyright holders with the exclusive right to create adaptations or derivative works based on the original work. In the digital realm, this could include creating remixes, adaptations, or translations.

VI. **Rights of Broadcasting Organizations (Section 37):** Broadcasting organizations have specific rights under the Copyright Act, including the right to communicate broadcasts to the public. This provision is relevant to digital broadcasting and online streaming.[20]

VII. **Technological Protection Measures (Section 65A and 65B):** These sections were introduced as amendments to the act and deal with technological protection measures (such as DRM) used to safeguard digital content. They prohibit circumvention of such measures and also provide for penalties for unauthorized decryption of encrypted works.[21]

VIII. **Safe Harbour Provisions (Section 52):** Section 52 of the act outlines exceptions to infringement, including fair dealing, which might apply to certain uses of copyrighted content in the digital domain, such as for research, criticism, news reporting, education, or parody. However, these exceptions have limitations and must be evaluated on a case-by-case basis.[22]

IX. **Liability of Service Providers (Section 52(1)(b) and 79):** These provisions address the liability of service providers (online platforms) for copyright infringement. Under Section 52(1)(b), transient or incidental storage of works on networks, where the provider has no control or knowledge of the infringing nature, is exempted. Section 79 of the Information Technology Act further clarifies the liability of intermediaries in the context of user-generated content.[23]

---

[19]Copyright Act, 1957, s.14.
[20]Copyright Act, 1957, s.37.
[21]Copyright Act, 1957, ss 65A-65B.
[22]Copyright Act, 1957, s.52.
[23]*Ibid*.

X. **Duration of Copyright (Section 22):** The act specifies the duration of copyright protection, which varies based on the type of work. For literary, dramatic, musical, and artistic works, copyright typically lasts for the lifetime of the creator plus 60 years.[24]

8. Information Technology Act, 2000 (IT Act)

This is the primary legislation governing digital activities in India. It deals with issues related to electronic governance, digital signatures, data protection, and cybercrimes. Section 66A, which criminalized certain online communication, was struck down by the Supreme Court in 2015. The Information Technology Act, 2000 (IT Act) in India is primarily focused on regulating electronic transactions, digital signatures, and electronic records. While the IT Act doesn't specifically address copyright law comprehensively, it includes certain provisions related to digital copyright and intellectual property rights. These provisions are aimed at addressing issues that arise in the digital environment. Here are some key provisions of the IT Act that relate to digital copyright:[25]

I. **Electronic Signature and Authentication**: The IT Act recognizes electronic signatures and provides a legal framework for their use in electronic transactions. This is relevant to digital copyright as it facilitates the creation and authentication of digital contracts and agreements, including those related to copyright licenses and permissions.

II. **Digital Signatures and Copyright Assignments**: The IT Act enables parties to use digital signatures to authenticate copyright assignments, licenses, and other related agreements. This ensures the legal validity of electronic contracts related to copyright transactions.

III. **Liability of Intermediaries**: The IT Act includes provisions related to the liability of intermediaries, such as internet service providers and online platforms. While these provisions primarily focus on limiting intermediary liability for user-generated content, they indirectly impact copyright enforcement and the management of infringing content online.

IV. **Digital Copyright Infringement**: Although the IT Act doesn't explicitly define digital copyright infringement, it has provisions related to computer-related offenses. Unauthorized copying, distribution, or sharing

[24]Copyright Act, 1957, s.22.
[25] The Information Technology Act, 2000.

of copyrighted works using digital means could potentially fall under these provisions.

9. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 are a set of regulations introduced by the Indian government to establish guidelines for digital intermediaries and digital media entities operating in India. These rules aim to provide a framework for responsible behaviour on online platforms, enhance transparency, and address issues related to content regulation and user grievances.

10. Challenges posed by digitalization to traditional copyright laws

Digitalization has brought about numerous challenges to traditional copyright laws due to the ease of copying, distributing, and accessing digital content. Here are some important challenges posed by digitalization:

I. **Ease of Reproduction:** Digital content can be easily duplicated and distributed with little to no degradation in quality. This makes it challenging to control unauthorized copying and distribution.

II. **Global Nature of the Internet:** The internet allows content to be accessed and shared globally. This raises jurisdictional challenges when it comes to enforcing copyright laws across different countries.

III. **Piracy and Infringement:** Online piracy and copyright infringement have become rampant due to the ease of sharing digital content without proper authorization. This impacts creators' ability to monetize their work.

IV. **User-Generated Content Platforms:** Platforms that allow users to upload and share content create challenges in monitoring and enforcing copyright. User-generated content may inadvertently infringe on copyrighted works.

V. **Fair Use and Transformative Use:** Determining fair use or transformative use in a digital context can be more complex due to the potential for widespread sharing and remixing of content.[26]

VI. **Digital Rights Management (DRM):** While DRM technologies aim to protect copyright holders by controlling access and usage of digital content, they can also restrict legitimate uses and infringe on user rights.

---

[26] Tapas Kumar Ray, *Intellectual Property Rights in the Digital Age: Challenges and Opportunities in India* 67 (Springer, New Delhi, 2011).

VII. **Creative Commons and Licensing:** Digitalization has given rise to new licensing models like Creative Commons, which challenge the traditional "all rights reserved" approach by allowing various levels of content sharing.

VIII. **Linking and Embedding:** The practice of linking to or embedding copyrighted content from other sources, such as images or videos, blurs the lines of copyright infringement and fair use.

IX. **Search Engines and Aggregators:** Search engines and content aggregators often display snippets of copyrighted content in search results, potentially impacting the original content's value and discoverability.

X. **Text and Data Mining:** Researchers and businesses use automated methods to analyze large datasets, which can raise questions about copyright infringement when working with copyrighted digital content.

XI. **Cross-Border Licensing and Royalties:** Digitalization has made it difficult to accurately track and distribute royalties and licensing fees, particularly when content is used and accessed globally.

XII. **Privacy Concerns:** Digital rights often intersect with privacy rights, especially when monitoring for copyright enforcement involves data collection on users' online activities.[27]

11. Enforcement of Copyright in Digital Media

Copyright in digital media refers to the legal protection granted to creators of original works in digital formats. These works can include but are not limited to, text, images, videos, music, software, and other forms of content that are created and distributed digitally. Copyright laws are designed to encourage creativity by providing creators with exclusive rights to their works, allowing them to control how their creations are used, distributed, and monetized.[28] In the context of digital media, copyright addresses issues such as online distribution, reproduction, adaptation, and public display or performance. The rapid advancement of technology and the internet has brought about unique challenges and opportunities for copyright holders, as well as users and consumers of digital content. Here are some key aspects of copyright in digital media:[29]

---

[27] Simon Stokes, *Digital Copyright: Law and Technology* 89 (Bloomsbury Professional, London, UK, 2015).
[28] Justice M. L. Singhal, *Copyright and Industrial Designs* 77 (Eastern Book Company, 2020).
[29] Sudhir Singh, *Copyright: A Guide for General Practitioners* 87 (LexisNexis, 2020).

I. **Original Works**: Copyright protection applies to original creative works that are fixed in a tangible form. In the digital realm, this includes content like articles, blogs, photographs, videos, music tracks, software code, and more.[30]
II. **Automatic Protection**: In most countries, copyright protection is granted automatically as soon as a work is created and fixed in a tangible form. There is no need to register the work or include a copyright notice, although doing so can provide certain legal benefits.[31]
III. **Exclusive Rights**: Copyright gives creators exclusive rights to their works. These rights typically include the rights to reproduce, distribute, create derivative works, perform, and display the work publicly. Creators can license or transfer these rights to others, such as publishers or distributors.[32]
IV. **Fair Use and Fair Dealing**: Many legal systems include exceptions that allow limited use of copyrighted material without permission, under the doctrine of "fair use" (in the United States) or "fair dealing" (in some other countries). These exceptions often cover purposes like criticism, commentary, news reporting, education, and research.
V. **Digital Piracy and Enforcement**: The ease of copying and distributing digital content online has led to issues of piracy and unauthorized sharing. Copyright holders and authorities face challenges in enforcing copyright in the digital age, with measures ranging from takedown requests to legal action against infringing parties.
VI. **Digital Rights Management (DRM)**: DRM technologies are used to control access to digital content and prevent unauthorized copying or sharing. While DRM can be effective, it has also sparked debates about consumer rights and limitations on fair use.
VII. **User-Generated Content**: The rise of social media and platforms that allow users to generate and share content has complicated copyright matters. Users may inadvertently infringe on copyright when sharing content without proper authorization.

---

[30] *Ibid*.
[31] Justice R.S. Endlaw, *Intellectual Property Rights: Infringement and Remedies* 56 (Thomson Reuters, 2018).
[32] *Ibid*.

VIII. **International Considerations**: The internet has made it possible for content to be accessed globally, leading to challenges in harmonizing copyright laws across different jurisdictions.

12. Conclusion

From a national perspective, copyright laws are the foundation of intellectual property protection, empowering creators to safeguard their works and derive economic value from their creations. However, in the digital age, these laws face unprecedented challenges that demand ongoing adaptation to the evolving technological landscape. The rise of digital platforms has fundamentally changed how content is created, distributed, and consumed, requiring a reevaluation of existing legal frameworks. The concept of fair use, for instance, needs to be reinterpreted to address emerging forms of creative expression such as transformative works, memes, and other user-generated content that have become staples of online culture.

In a globally connected world, national copyright laws must also confront the issue of geographic restrictions and cross-border access to content. Striking a balance between protecting regional interests and enabling global access to creative works is essential to fostering a dynamic and inclusive digital ecosystem that respects both cultural diversity and user expectations. The digital medium has shifted the traditional model of ownership to one based on licensing, which calls for greater legal clarity and consumer education. Copyright laws should ensure that the rights and responsibilities of both creators and consumers are clearly defined, with licensing terms that are transparent, comprehensible, and aligned with user rights.

Piracy remains a significant concern, underscoring the need for robust enforcement mechanisms that deter infringement without compromising digital privacy. At the same time, copyright laws must support the growth of digital industries by encouraging innovation, fostering start-ups, and enabling creators to profit from their work. In this regard, copyright laws cannot remain static; they must evolve in response to technological advancements, shifting user behaviors, and the changing nature of digital content creation and consumption.

Collaboration among content creators, platforms, legal experts, and policymakers is vital to developing frameworks that balance the rights of creators with the interests of consumers, ultimately contributing to a thriving and sustainable digital culture. As digital content becomes ever more interconnected globally, the harmonization of copyright laws across borders is critical. By aligning national frameworks with international treaties and best practices, we can create a more consistent and efficient legal environment that supports the seamless sharing of creative works while preserving the rights of creators in the digital era.

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 77-92

Women Education and Its Impact on Political Participation

Dr. Teghbir Kaur*

Abstract

Women make up about half of our population, but they are underrepresented in our political system in proportion to their numbers. At every level, from the home to the highest levels of government, women are excluded from decision-making. The gender disparity in politics indicates the need to promote education amongst women, thus, enabling greater political participation. The paper delves into their historical roots and theoretical frameworks to provide a comprehensive understanding about the access to women education and political participation. It then elucidates the background foundations upon which access to women education are built, including constitutional guarantees, statutory protections in India. The study revealed that the higher the level of women's formal education, the more their tendency to participate in politics in areas of voting in elections and occupation of political post either through elections or appointments at all levels of government. This paper explores how legal principles apply to address these challenges. Looking ahead, the paper examines emerging trends and challenges in the protection of women education, offering potential reforms and innovations to address them. This paper provides a comprehensive analysis of women political participation due to the education access offering insights into the complexities and challenges inherent in contemporary times. The paper recommends that the government, civil society and women activists need to work towards sensitization and awareness creation among the community to realize the need of the Women to participate in politics and governance. The men need to realize the women's need for political power and change the way they look at the women and the government should embark on activities which support women's political initiatives.

Keywords: *women, education, political participation*

* Assistant Professor, Department of Political Science, Colonel Degree College, Chular Kalan Sangrur (Punjab), India.

1. Introduction

Women education in India has a major preoccupation of both the government and civil society as educated women can play a very important role in the development of the country. Education is milestone of women empowerment because it enables them to respond to the challenges, to confront their traditional role and change their life. Education also brings a reduction in inequalities and functions as a means of improving their status within the family and develops the concept of participation.[1] Thus women quest for equality with man is a universal phenomenon. Women should equal with men in matters of education, employment, inheritance, marriage, and politics etc. Their quest for equality has given birth to the formation of many women's associations and launching of movements. The Constitution of our nation doesn't discriminate between men and women, but our society has deprived women of certain basic rights, which were bestowed upon them by our Constitution. Empowerment allows individuals to reach their full potential, to improve their political and social participation, and to believe in their own capabilities.[2]

2. Objectives

The study was guided by the following objectives-

- To analyses the theoretical and historical frameworks of women education and political participation.
- To analysis the relationship between education and participation of women in politics.

3. Research Methodology

In executing the present research paper, primary and secondary sources have been used. The study of reports was included in the primary sources. Secondary sources include published material in the form of books, articles, research papers, research journals, magazines and relevant newspapers. The present research problem has been analyzed from both a historical and descriptive perspective.

---

[1] Rouf Ahmad Bhat, "Role of Education in the Empowerment of Women in India" 6 *Journal of Educationand Practice* 188 (2015).
[2] *Ibid.*

4. Women Education and Political Participation: Conceptual and Theoretical Framework

"If you educate a man you educate an individual, however, if you educate a woman you educate a whole family. Women empowered means mother India empowered". Pt. Jawaharlal Nehru. Women education in India plays a very important role in the overall development of the country. It not only helps in the development of half of the human resources, but in improving the quality of life at home and outside.[3] If it is said that education is the key to all problems, then it won't be improper. Thinkers have given a number of definitions of education but out of these definitions, the most important definition is that which was put forth by M. Phule. According to M. Phule, "Education is that which demonstrates the difference between what is good and what is evil". If we consider the above definition, we come to know that whatever revolutions that have taken place in our history, education is at the base of them.[4] Education means modification of behaviour in every aspect, such as mentality, outlook, attitude etc. Educated women not only tend to promote education of their girl children, but also can provide better guidance to all their children.

Women make up nearly half of the human population. Education has been recognised as an essential agent of social change and development in any society and in any country. Education is regarded as a powerful instrument through which the processes of modernization and social change come into being. Education exposes people to new ideas and thoughts while also providing them with the necessary skills.[5] As a result, thinking about harmonious development without educating women is impossible, so education is a critical factor in women's empowerment, prosperity, development, and welfare. As a result, the emphasis in women's education should be on preparing them for their multiple roles as citizens, housewives, mothers, and contributors to the family income, builders of new societies, and

---

[3]Sowjanya Shetty and Basil V.Hans, *"Role of Education in Women Empowerment and Development: Issues and Impact", available at:*
SSRN: https://ssrn.com/abstract=2665898 (Last retrieved April 2, 2024).

[4] Rouf Ahmad Bhat, "Role of Education in the Empowerment of Women in India", 6 *Journal of Education and Practice* 188 (2015).

[5]D. K. S. Bhuyan, "Women Empowerment: The Role of Education in Women Empowerment." 29 *International Journal of Advanced Science and Technology* 15451-15456. (2020).

builders of the nation. Such strength comes from the empowerment process, and empowerment will come from education.[6]

Political participation is any number of voluntary activities undertaken by the public to influence public policy either directly or by affecting the selection of persons who make those policies.[7] Political participation derives from the freedom to speak out, assemble and associate; the ability to take part in the conduct of public affairs; and the opportunity to register as a candidate, to campaign, to be elected and to hold office at all levels of government. Under international standards, men and women have an equal right to participate fully in all aspects of the political process. In practice, however, it is often harder for women to exercise this right. In post-conflict countries there are frequently extra barriers to women's participation, and special care is required to ensure their rights are respected in this regard.[8]

Political participation matters a great deal for women as a group and as individuals. Whether women work together to protest gender-based injustices or whether they participate in non-gender-specific associations and struggles, the most important group benefit from political participation is influence on decision-making to make public policies sensitive to the needs of the group in question. For groups, participation also builds social trust and capital, and provides a form of democratic apprenticeship; it offers socialization in the norms of reciprocity and cooperation, the capacity to gain broader perspectives on particular problems in order to develop a sense of the common good.[9] For individuals, political participation builds civic skills, while successful lobbying can result in improvements in personal welfare and status. Explanations for the very slow progress women have made in gaining political office around the world have been multi-causal, including: their lack of time for politics due to their domestic obligations, their lack of socialization for politics, their lower social capital and weaker asset base than men owing to discrimination in schools and in the market, their under representation in the

---

[6]M. S. Sundaram, M. Sekar, *et.al.*, "Women Empowerment: Role of Education" 2 *International Journal in Management & Social Science* 76- 85 (2014).

[7]Robert Longley, *What Is Political Participation? Definition and Examples, available at:*https://www.thoughtco.com/political-participation-definition-examples-5198236(Last retrieved on March 4, 2024).

[8]Political Participation, Chapter-3, *available at:*https://www.un.org/womenwatch/osagi/wps/Publication/Chapter3.htm (Last retrieved on March 4, 2024).

[9] Vicky Randall, *Women in Politics* (Macmillan, London, 1987).

jobs that favor political careers, their marginalization within male-dominated parties, their inability to overcome male and incumbent bias in certain types of electoral systems.[10]

5. Women Education and Political Participation in India: Historical Perspective

Women's empowerment in India has been hampered for centuries due to a variety of factors, the first of which was depriving women of basic educational opportunities. Since the Rig Vedic period, Indian women have been denied many basic rights. During the eighteenth century, women faced a number of disadvantages, including female infanticide, sati, puradha, child marriage, illiteracy, and, later, forced child widowhood in the ninth century. Women were treated in the same way as domestic animals. Great social reformers such as Raja Ram Mohanroy, Ishwarchandra Vidyasagar, Sri Rama Krishna Paramahamsa, Swami Vivekanand, Swami Dayananda Saraswati, and Mahatma Gandhi were moved by this extreme plight and fought against social atrocities against women and emphasised women's education in India.[11] Women's education, on the other hand, received a boost after the country gained independence in 1947, when the government took a variety of steps to provide education to Indian women. Despite government efforts to improve education, women continue to lag behind men. Though female literacy has risen steadily from 8.86 percent in 1951 to 15.34 percent in 1961 to 21.97 percent in 1971 to 29.75 percent in 1981 to 39.42 percent in 1991 to 54.16 percent in 2001, and then to around 74.04 percent in 2011. It has not yet reached the desired level. Illiteracy plays a larger role in rural areas than in urban areas.[12]

6. Evolution of Women Participation in Politics in India

The gender disparity in politics indicates the need to promote education amongst women, thus, enabling greater political participation. While numerous political advancements have occurred throughout the world in

---

[10]Anne Marie Goetz,, "Women's Education and Political Participation" *Unesco, Digital Library*, *available at*: https://unesdoc.unesco.org/ark:/48223/pf0000146770 (Last retrieved on March 8, 2024).

[11] Udipta Borah, "Impact of Women Education on Political Empowerment in India" 6 *Unesco, Digital Library* 4047 – 4049 (2022*), available at:* http://journalppw.com 2022 (Last retrieved on March 5, 2024).

[12] M.K Sonowal, "Impact of Education in Women Empowerment: A Case Study of SC and ST Women of Sonitpur District, Assam." 3 *International Journal of Computer Applications in Engineering Sciences* (2013).

recent decades, the most important influence has to be on women's involvement and representation in political roles.The roots of women's participation in politics can be traced back to the nineteenth century reform movement. This movement emerged as a result of conflict between the Indian bourgeoisies, trying to wrest control from the British. This class made attempts tore form itself, mainly by campaigning against caste, polytheism, idolatry, animism, purdha, child marriage, and sati etc., perceived as elements of primitive identity.[13]

Raja Ram Mohan Roy focused on two issues, namely women's education and abolition of Sati. In the early 1850s, a campaign on widow remarriage was launched resulting in the passage of a Bill in 1856, which allowed widow remarriage. This Bill though helped the situation of widows, denied them the right to their husband's or his family's properties.[14] Several eminent women reformers participated in this movement as well as in the religious reform movement of this period. Pandit Ramabai, Manorama Majumdar, Sarala Debi Goshal who started Bharata StreeMahamandal for the education of women, Swarna Kumari Debi who started the women's organization Sakhi Samiti in 1886 for widows are few examples.[15] These activities gave momentum to women's participation in public spaces, which paved the way for their entry into the independence struggle. Swarna Kumari Debi, one of the two delegates elected from Bengal to represent the State at the 1890 Congress session is a case in point.

7. Women's Participation in the Twentieth Century

The Swadeshi movement in Bengal (1905-8) marked the beginning of women's participation in nationalist activities. Many of the women were from families involved in nationalist politics. Middle class nationalist women contributed jewelry, money and even grain to the movement. They took active part in the boycott of foreign goods and in revolutionary activities. Sister Nivedita is reported to have become a member of the National Revolutionary Council and in that capacity, organized women for nationalist activities.

---

[13]Maroju Rama Chary, "Women and Political Participation in India: A Historical Perspective" 23 *The Indian Journal of Political Science* 119-132 (2012).

[14] Priya Soman, "Raja Ram Mohan Roy and the Abolition of Sati System in India" 1 *International Journal of Humanities, Art and Social Studies* 75 (2018).

[15]Women Representation in India and the Problem of Marginalization, *available at:* http://idr.cuh.ac.in:8080/jspui/bitstream/123456789/505/6/06_chapter2.pdf (Last retrieved on March 6, 2024.

Madame Cama who was described by the Government as the recognized leader of the revolutionary movement and Kumudini Mitra who started a journal called 'Suprabalh' which linked nationalist politics to women's traditional power. The movement for independence also gave rise to the question of women's suffrage. In December 1917, Annie Besant and few other women met Mr. Montague to demand voting rights for Indian women. During the same period several all India women's organizations came into being. In 1917, Annie Besant, Dorothy Jinarajadasa, MalathiPatvardhan, Ammu Swamina than, Mrs. Dadabhoy and Mrs. Ambujamal founded the Women's Indian Association. Described as the first truly feminist organization in India, it strongly supported the Home Rule Movement. In 1926, the AllIndia Women's Conference was formed and became extremely active on the question of women's suffrage, labour issues, relief and nationalist work.[16]
The 1920s, also witnessed a second generation of feminists who were advocates of women's rights. Rajkumari Amrit Kaur, Lady Piroj Bai Mehta, Mrs. N. Sengupta, was some of the prominent women activists of this period. Several other women were active on causes other than the Independence movement including Prabhavati Mirza (a powerful trade unionist), Kamini Roy (a social reformist), and Aghorekamini Roy (founder of a social welfare women's organization).[17] Women who were strong leaders in the Independence movement were Sarojini Naidu, Kamaladevi Chattopadhyay, Aruna Asaf Ali, and Basanti Devi.[18] A strong supporter of women's rights, Sarojini Naidu worked with the Congress and the Muslim League. She was instrumental in the passage of a resolution to support women's franchise and became the first Indian woman to become the elected President of the Indian National Congress. Kamaladevi Chattopadhyay participated in the Satyagraha movement of the 1930s. Aruna Asaf Ali's first major political involvement was in the salt march at which she was arrested and prosecuted. She was also active in the Quit India movement, edited Inquilab magazine of the Congress and established the National Federation of Indian Women. She came to be

[16]Maroju Rama Chary, "Women and Political Participation in India: A Historical Perspective" 23 *The Indian Journal of Political Science* 119-132 (2012).
[17] Dr. Neha Bhartiya, "Women in Indian Politics, Research Reinforcement" 5 *International Journal of Humanities, Art and Social Studies* 99 (2017).
[18] Gurjeet Kaur, *"Women in Freedom Struggle, International Journal for Research in Applied Science and Engineering Technology",available a:t*https://www.ijraset.com/research-paper/women-in-indian-freedom-struggle, (Last retrieved on March 8, 2024).

known as the Grand Old Lady of the Independence Movement and heroine of the l942 movement. Basanti Devi took active part in anti-British activities and was arrested for picketing foreign goods shops, and in 1922 presided over the Bengal Provincial Congress Committee. Thousands of women joined in the salt Satyagraha, which is "generally remembered as the first time 'masses of Indian women' got involved in the struggle for Independence"[19]. Several women's organizations were formed to mobilize women to participate in nationalist activities including processions, pickets, and charka spinning such as the Ladies Picketing Board, Desh Sevika Satigh, Nari Satyagraha Samiti and MahilaRashtriya Sangh. Beyond any doubt, the active participation of women in the political struggles for independence consummated in a Constitution based on the principles of equality and guaranteeing equal rights to suffrage for women, in the year 1947 itself.[20]

8. Political participation and representation of women in India

Women in India raised the issue of representation in politics first in 1917. At that time, it was basically a demand for universal adult franchise and political participation. By 1930 women had gained the Right to vote, which initially benefited women from elite families. Women's involvement in struggles for political and civil rights in India were however sought to be linked to nationalist movements in alliance with males against the common foreign enemy. In any case women's involvement in nationalist struggles changed their lives in that even though they were denied equal opportunities to shape the new state, they gained constitutional and legal rights. But even after the right to vote became a reality for all women, their representation in the parliament, political parties and other decision making bodies remained low even after independence, and after the Indian Constitution came into force in 1950.[21] A few women no doubt attained positions as members of parliament and state legislatures and as leaders of opposition,etc. mostly through family dynasties of through male political patronage. However,the percentage of

---

[19] Munin Borah, "Participation of Women in Politics of Assam Upto 2014: An Analytical Overview," *International Journal of Novel Research and Dev* (2014), *available at:*HTTPS://WWW.IJNRD.ORG/VIEWPAPERFORALL?PAPER=IJNRD2204115(Last retrieved on March 7, 2024).

[20]Women's Movement in India, *available at*: https://ebooks.inflibnet.ac.in/soc14/chapter/womens-movement-in-india/ (Last retrieved on March 6, 2024).

[21]Maroju Rama Chary, "Women and Political Participation in India: A Historical Perspective" 23 *The Indian Journal of Political Science* 119-132 (2012).

women in legislatures an decision making positions always remained low. Women do not share the power of decision- making and are not involved in policy making in Indian democracy in proportion to their numerical strength. Thus, there is gap between the formal idea of women' participation and their meaningful use of power.[22] The quest for greater political representation of women is, therefore, still relevant. Women in India have lesser opportunities of public influence or for entering politics. Women also lack opportunities to move within the hierarchies without patronage of male leaders or mentors.[23]

9. Impact of Education on Participation of Women in Politics

As per the report of the Election Commission of India, women represent 10.5 percent of the total members of the Parliament. The plight of women in the state assemblies is even worse, where they nearly account for 9 percent of the leaders. Women's representation in the Lok Sabha has not even grown by 10 percent in the last 75 years of independence. Women workers abound in India's main political parties, but they are often marginalised and refused a party ticket to run in elections. However, there are several factors responsible for the poor representation of women in Indian politics such as gender stereotypes, lack of political network, financial strains, and unavailability of resources, etc. but one prominent factor that hinders the inclusion of women in politics is the lack of political education amongst women in the country.[24] According to Global Gender Gap Report 2020, India ranks 112th in educational attainment out of 153 countries, this reveals a stark involvement of education as a factor that determines women's participation in politics. Women's social mobility is influenced by their education. Formal education, such as that given in educational institutions, provides an opportunity for leadership and abilities. Due to a lack of political knowledge, women are oblivious of their basic and political rights.[25]

Majority of Indian women politicians are highly educated such as Nirmala Sitharaman, Finance Minister of India; Mamata Banerjee, Chief Minister of

---

[22] Susheela Kaushik, *Women's Participation in Politics. India* (Vikas Publishing House, 1993).

[23]Maroju Rama Chary, "Women and Political Participation in India: A Historical Perspective" 23 *The Indian Journal of Political Science* 119-132 (2012).

[24] Young Voices, *The Link Between education and Political Participation,* Jan 29, 2022, *available at:* https://www.orfonline.org/expert-speak/link-between-education-and-participation-of-women-in-politics (Last retrieved on March 7, 2024)

[25]*Ibid.*

West Bengal; Mahua Moitra, an MP from West Bengal; Atishi Marlena, an MLA from Delhi; Mayawati, former Chief Minister of Uttar Pradesh. This fuels the notion that education does play an important role amongst women when it comes to political representation. The question of literacy not only restricts to contesting but also stretches to voting; to begin with, women's total engagement is low in states where female literacy is low and high in areas where female literacy is high. Furthermore, despite improvements in female literacy over the previous decade, female voter participation has remained relatively flat. The disparities between overall voter participation and female voter participation are greater in states with low literacy rates. In states like Uttar Pradesh, where only 10 percent of the women are representing in state assemblies, out of them 77.5 percent women are graduates and post-graduates while the number is comparatively lower for men. Similarly, in West Bengal, only 14 percent of the women elected for the state assemblies have around 60 percent literacy rate, and male leaders are considerably low. The comparison here shows the stark reality of political education amongst Indian politicians, as female politicians are much more educated than male politicians but still lag in terms of representation, portrays an evident link between literacy and politics for women in India. Due to lack of political education and education in general, women fail to enter politics and gender equality remains a distant dream in India. Without a question, female representation plays huge importance to the growth of the country towards sustainable development (SDG 5 (5.5 and 5. c) goals at achieving gender equality and the empowerment of all women and girls with special emphasis on leadership and participation in public, political, and economical decision-making and the adoption of policies to facilitate this participation), as a country where half of the voters are women and the policies are made for both men and women, they deserve to get equal representation in the governing and policymaking procedures because a deficiency “Where women are more educated and empowered, economies are more productive and stronger. Where women are fully represented, societies are more peaceful and stable” (UNSC 2013), this quote from United Nations Secretary-General Ban Ki-Moon[26] emphasises the significance of education in achieving gender equality and making countries more affluent. India has a low rate of girl-child education and is still in the

[26]*Ibid*.

grips of patriarchy which results from traditionally assigned roles to women; The government did make efforts to ensure women participation in politics from the ground level by promoting women education ("Beti Bachao, Beti Padhao") and also through constitutional amendments such as reservation for women in Panchayati Raj Institutions.

10. Constitutional Guarantees

India's Constitution is a comprehensive document that embodies the hopes and aspirations of its citizens, outlining the framework for governance and the fundamental rights and duties of its people. Among its many provisions, the Constitution of India has laid down a robust framework aimed at ensuring gender equality and empowering women.[27] The government is making efforts to ensure women's participation in politics from the ground level by promoting women's education and also through constitutional amendments such as reservations for women in Panchayati Raj Institutions. Even then as per the report of the Election Commission of India, women represent 10.5 percent of the total members of the Parliament. The plight of women in the state assemblies is even worse, where they nearly account for 9 percent of the leaders.[28]

11. Safeguards on Equal Rights

The Constitution of India is based on the principles of equality and guarantees equality before law and equal protection to all its citizens. It not only guarantees fundamental rights and freedoms, but also prohibits discrimination on the basis of religion, race, caste, sex, and place of birth. However, these rights have remained de jure and have not been translated into de facto rights. As such, women have been denied social, economic, civil and political rights in many spheres. Fundamental rights are guaranteed in the constitution of India. Article 14 and 15 of the Indian Constitution provides for the right to equality for women. Article 16 in particular deals with equality in employment for women. Article 16(3) provides for reservation. Directive Principles of State policy of constitution provides women equality through the articles 39 (a), and 42. An important area where women have been inadequately represented is in the political sphere. Articles 325 and 326 of the Constitution

[27]Constitutional Provisions for Women in India, *available at*: https://lawbhoomi.com/constitutional-provisions-for-women-in-india/, (Last retrieved on March 8, 2024).

[28]Indian women @ 75, *available at*: https://scienceandsamosa.com/indian-women-75/ (Last retrieved on March 8, 2024).

of India guarantee political equality; equal right to participation in political activities and right to vote respectively.[29] While the latter has been accessed, exercised and enjoyed by a large number of women, the former i.e., right to equal political participation is still a distant dream. Lack of space for participation in political bodies has not only resulted in their presence in meager numbers in these decision-making bodies but also in the neglect of their issues and experiences in policy making. Article 243D of the Constitution ensures participation of women by mandating not less than one-third reservation for women); proposal of the Women Reservation Bill, 2008 which reserves one-third of all seats in the Lok Sabha, and in all state legislative assemblies for women. These all are the constitutional safeguards on equal rights.

11.2 Constitutional Protections for Women's Participation in Local Governance

Recognising the importance of women's participation in the democratic process and local governance, the Constitution includes specific provisions for the reservation of seats for women in Panchayats and Municipalities.[30]The 73rd Constitutional Amendment Act introduced not less than 33 per cent reservation for women in the Panchayat Raj institutions in the rural areas. Similarly, the 74th Constitutional Amendment Act introduced similar reservation for women in Nagara Palikas and Municipalities in towns and urban areas.[31] With these constitutional amendments, over three million women are now actively participating in shaping the policies and programs of the country, though only at the local levels of governance. However, such affirmative action is lacking at the higher echelons of governance at the State and Central levels.[32]

Further, states implementing the Panchayat Raj/Nagapalikas Acts show variation in their numbers as well as in their participation. Recently the

---

[29]Women and the Indian Constitution, *available at:*https://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/legal-awareness-for-women/women-and-the-indian-constitution (Last retrieved on March 8, 2024).

[30]*Ibid.*

[31]From Panchayat to Parliament: How 33 pc reservation empowered women at grassroots level, *available at:*https://economictimes.indiatimes.com/news/india/from-panchayat-to-parliament-how-33-pc-reservation-empowered-women-at-grassroots level/articleshow/103906948.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (Last retrieved March 8, 2024).

[32]Maroju Rama Chary, "Women and Political Participation in India: A Historical Perspective"

reservation for women increased to 50%. There is a rising trend of women participation in every and subsequent general election of Lok Sabha despite their continued bondage, illiteracy, socially ostracized, social taboo, frequent child births, maternity deaths, molestation, dowry deaths and torture by their husbands and in laws. This is again supported by the fact that difference between women's participation and men's participation is getting narrowed down from a level of 41.9 in the first Lok Sabha election to 4.1 in the 15 Lok Sabha elections showing a substantial reduction in the gap.[33]The Constitutional provisions for women in India are a reflection of the nation's commitment to gender equality and women's empowerment. By guaranteeing fundamental rights, promoting economic justice and ensuring participation in local governance, the constitution lays down a comprehensive framework for advancing the rights and interests of women. But women's political engagement is hampered or facilitated by a variety of circumstances, including socioeconomic status, geographical, cultural and political system. Some challenges faced by women in politics are discussed below.

12. Challenges Faced by Women in Politics

Women are prevented from participating in politics for a variety of reasons. There are many factors like; the present cultural value system, male predominance in political institutions, which are responsible for less participation of women in politics.

The most significant barriers to women being politically engaged are illiteracy, poverty and lack of awareness. They are unaware of their basic and political rights due to a lack of awareness. Poverty is also a significant barrier to women's political engagement. An impoverished family's daughter kid is the primary victim, and she faces several challenges. Women are also shown to have a greater rate of dropping out of school than men. Women's thinking is trained in a sense to accept that they are of a lesser class than males since this has been the viewpoint of many in society due to social and cultural standards.

The caste system, or social class structure, is also a significant barrier. Because of their families' poor money, women from lower castes were unable to attend school. To provide for their family, many women were involved in low-paying

[33]*Ibid*.

jobs. In India, the majority of women do not own land or property. They don't even get a piece of their parents' assets.[34]

The country's poor health situation for women is also a big barrier to their involvement. In the country, there is a disparity in access to healthcare facilities. Gender inequality in health-care settings occurs even before birth. The majority of girl children are terminated due to the family's preference for sons. Daughters are denied the same feeding services as males after they are born. Due to marital responsibilities and dowry systems, women are also seen as less fortunate. Hospitals are also said to as "gender biassed" since males attend hospitals at a higher rate than women.[35]

Violence and the prospect of violence undermines many women's ability to engage actively in various types of social and political connection, to speak publicly, to be acknowledged as respected people whose value is equal to others," writes Martha C. Nussbaum.Because of the continued unequal allocation of family care obligations, women spend significantly more time than males caring for their homes and children.

13. Some Key Steps Need to be Taken

Women participation has suffered for ages and looking at the grave circumstances:[36]

- Guidance and training programs: help women prepare for political positions and improve their political abilities. Women who work at the local level get the skills they need to advance to higher levels of government and careers in regional and national politics. As a result, measures aimed at encouraging women to join municipal politics can be especially beneficial in increasing women's political engagement. There is an urgent need for policies that can ensure better representation of women in the country such as more strict policies and implementation of girl-child education in the country.

---

[34]S. Singh, Challenges faced by women for vertical mobility in politics: A Comparative study of Sweden and India, A structural social work approach for gender empowerment, 2011.

[35]Alam S, "Participation of Women in Indian Politics and the Role of Media" 4 *International Journal of Political Science and Governance* (2015).

[36] Aradhana Sharma, "Challenges Faced by Women Leadership in Politics" 1 *International Journal of Political Science and Governance* 60-62 (2019).

- Leadership skills: Offering orientations for newly appointed women, leadership skills training, networking opportunities, and offering chances to stimulate policy discourse are all examples of ways to improve elected women's impact and leadership
- Support from government for women in politics: There should be State support for efforts to encourage women to join political parties. These organizations host seminars and training events, push for more female to get nominated, as well as provide networking opportunities for female politicians.
- Increased political party support for women participation in politics: Initiatives from the recognised political parties to ensure that women receive a minimum agreed-upon representation in state assembly and parliamentary elections. Within parties, distinct women's wings or groups should be formed. Training programmesshould be organized that are tailored to the needs of women and men. Quotas should be followed inside the party. Political parties should conduct gender audits in order to develop gender action strategies. Set goals for female attendance at party conventions and ensure that women are given safe seats. Women in campaign leadership positions should be trained and promoted.
- Transfer attitude: Obtaining favorable media coverage, whether on television, radio, social media, internet, or print media, boosts the effect of public awareness campaigns. To encourage public discussion on women's empowerment, training, and creating favorable images of women leaders, employ awareness campaigns, television shows, and radio programs.
- Education: Design and deliver gender-sensitive civic and voter education programs to women and men citizens, emphasizing why female should participate and how family help for home and childcare obligations may assist women in being politically involved.

Women, who are educated and earning, are in a much better position in our society as compared to uneducated women workers. The focus of the government has also shifted from women's development to women-led development. In order to achieve this goal, the government is working around the clock to maximize women's access to education, skill training, and institutional credit. MUDRA Yojana is one such scheme that was launched for women entrepreneurs, without any collateral. Along with all the efforts taken up by the government, the women who have been able to make their mark felt

or who are educated and independent can play a great role by lending a helping hand to the underprivileged and becoming role models to young girls.[37]

14. Conclusion

This paper set out to review evidence about the relationship between women's education and political participation, with a view to assessing whether more education for women can be seen to shift their levels of engagement in politics. Ideally, higher levels of political participation by greater numbers of women should result in more attention to gender-equity in social and economic policy, and thus promote better lives for women generally. Given the evidence above, it is difficult to assert conclusively that more and better education makes women more active in politics. Women's political participation in India still has a long way to go, particularly at greater levels of government. However, with more female political leaders and more women practicing their democratic rights, we may expect policy changes that will help India improve its political performance.

[37] Dr. Tapan Kumar Sahu, and Kusum Yadav, "Women's Education and Political Participation" 3 *International Journal of Advanced Education and Research* 65-71 (2018).

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 93-106

The Death Penalty Vis-À-Vis Crime Prevention: A Perilous Analysis of the Theory of Deterrence

Dr. Shivani Gupta*

Abstract

The effectiveness of capital punishment as a prevention to crime has been an antagonistic issue since long, and has been infuriating rigorous deliberation among academics, policymakers, and the masses at large. This paper seeks to critically appraise the deterrent effects of capital punishment by exploring legal and theoretical frameworks, and ethical considerations. Through a comprehensive study and analysis of case studies, the paper seeks to disentangle myths from realities surrounding the death penalty's role in crime prevention in India. The research shall be completely based upon the available primary and secondary data. Key findings of the study indicate that the deterrent effect of capital punishment remains unconvincing, with the present statistics and societal scenarios presenting conflicting results. The paper examines factors such as the psychological impact on potential offenders, the inevitability and fastness of punishment, and the socio-economic context. By providing a detailed understanding of the complexities involved, this piece of work pursues to contribute to the unending sermons on capital punishment, offering perceptions for well-versed policy-making and impending research. The paper ultimately underscores the need for a multidisciplinary approach to address the multifaceted nature of crime and punishment in modern society.

Keywords: *Death Penalty, Deterrence, Rarest of rare, Human Rights, Theory of Abolition/Retention*

1. Background

It has not even been five years since the execution of four convicts in the brutal Delhi gang-rape case, and there broke out another headline of a dead body being found of a 31year old girl at the R.G. Kar Medical College on August 09, 2024, who was brutally raped and murdered. The question that arises is, is death sentencing really that effective in creating the requisite amount of deterrence in the masses?

*Assistant Professor in Law, University Institute of Legal Studies, Panjab University, Chandigarh. E-mail: shivuchd@gmail.com

2. Introduction

"Whoever imposes severe punishment becomes repulsive to the people, while he who awards mild punishments becomes contemptible, but whoever imposes punishment as deserved becomes respectable."[1] – Kautiliya

Man by nature has a very strong impulse and is passionate for his good. For a society in which the state's power is not called into operation, the attainment and maintenance of civilization becomes difficult. The state through its various instrumentalities keeps man's actions in track for the overall benefits of a society. To control the situation of "Might is Right" the element of state sanctioned physical force is very necessary. This physical force helps in the maintenance of law and order. The task of maintenance of right within a politically organised society by means of physical force of the state is referred as administration of justice.[2] Here the word 'administration' means management and the word 'justice' means to do right and give fair treatment to all. Earlier administration of justice was done by kings, but today the task is assigned to Magistrates and Judges, where their main concerns are fair, just and impartial trials, upholding of rights and appropriately punishing the wrongdoer according to the rule of law.

A society based upon social contract is bound to have some repulsion or conflicts. In a legally established and run society, it is the primary duty of the state to maintain law and order. Sometimes this is achieved by the imposition of imprisonments, fines, penalties, etc. There can be no just criminal justice system which can achieve its goals without using its sanctioning power. Every criminal trial aims at determining the guilt of the accused and then prescribing suitable punishment if he is proven guilty. The determination of an appropriate sanction is a very important aspect of administration of justice, because a punishment not only impacts the individual offender or his family, but also the victim, his family and the society at large.[3] There cannot be a single standardized criterion for the imposition of punishment, as it must be just appropriate to do well to the loss done. A punishment therefore must neither be too harsh nor too soft. The choice of punishment is also dependent upon

---

[1] M. Shamim, "Capital Punishment"*Cri LJ* 54 (1989).

[2] P. J. Fitzgerald, *Salmond on Jurisprudence* 89-90 (Sweet & Maxwell, South Asian, 12th edn., 2010).

[3] David A. Thomas, *Principles of Sentencing* 6 (Heinemann, California, 1970).

the purpose sought to be achieved from it, in terms of reformation, retribution, prevention or deterrence.

The Bharatiya Nyaya Sanhita, 2023 (hereinafter referred as BNS), though it does not specifically define what 'punishment' means, however, chapter II enlists the various types of punishments, ranging from death to fine, that may be imparted under this Sanhita and also specifies the circumstances under which a particular punishment is to be imposed. It may be understood as the infliction of some pain by way of imprisonment, fine or penalty, by a person of authority, on another person for his behavior that was unacceptable to the society or its components.[4] However, it is important that a reasonable proportion has to be maintained between the gravity of the offence committed and the punishment imposed. In other terms, the sentence should neither be inexplicably harsh nor too soft so as to fail to serve its purpose.[5] The purpose for which a punishment is imposed is not one. According to the prevalent theories of punishment, its purpose of punishment should either be to retribute[6], to prevent, to reform or to deter. Keeping these theories in mind, death sentence had been inflicted since early days;[7] and different reasons had been given at different times to justify its infliction in accordance with these theories.

3. Death Penalty

The harshest form of punishment that can be imposed on any person is taking away his life. Death penalty is that highest form of punishment which involves the killing of a person under the state's judicial process, in the name of justice. According to the Universal Declaration of Human Rights,[8] death penalty being an ultimate denial of human rights violates the very basic right to life. However, death penalty is not the rule, but is an exception,[9] as it is only imposed for the most heinous crimes, generally addressed as capital crimes or capital offences. One of the motives behind death penalty may be vengeance,

---

[4] John Kleining, "R. S. Peters on Punishment" 20(3) *British Journal of Educational Studies* 259-269 (Oct., 1972).

[5] *State of Punjab* v. *Mann Singh*, AIR 1983 SC 172.

[6] David Dressler, *Readings in Criminology and Penology* 501 (Columbia University Press, 2nd edn., 1972).

[7] Michael Kronenwetter, *Capital Punishment: A Reference Handbook* (*Contemporary World Issues)* 202 (ABC CLIO, 2nd edn. 2001).

[8] The Universal Declaration of Human Rights, 1948, art.5.

[9] *Ediga Anamma* v. *The State of Andhra Pradesh*, AIR 1974 SC 799.

but when this vengeance it legally regulated and controlled, it becomes socially accepted as it prevents incidents of private disruptive revenge by the victims or their families. The fear of being condemned to death is perhaps the greatest deterrence which keeps an offender away from criminality and reminds him about the severity of law.

Abolition or retention of death penalty is a question of vigorous debate all over the world, and the philosophy changes because of political, social, historical and cultural differences.[10]However, it has already been universally accepted that death punishment is qualitatively different from any other punishment as once executed it is irreversible and un-rectifiable.

4. International Response on Death Penalty

There is no universal law at the international front that prohibits death penalty absolutely. However, there are various international instruments, which prohibit the imposition of death penalty on specific category of persons. For instance, Article (5) of the International Covenant on Civil and Political Rights, 1966 (hereinafter referred as ICCPR), Article (5) of the American Convention on Human Rights, 1969 and even Article 5(3) of the African Charter on the Rights and Welfare of the Child, 1990 prohibits death sentence to children, persons below 18 years of age, over 70 years of age and pregnant women. The United Nations General Assembly, via a non-binding resolution on 'the moratorium on the use of death penalty', attempts to call on States that maintain death penalty either in law or in practice to suspend its use with a view to abolition, and also to make efforts, to reduce the number of offences punishable with death penalty, while respecting the rights of death row convicts.[11] This resolution is adopted and repeated time and again. The last was on December 15, 2022, in which the inclination of the nation's towards this moratorium was seen on a better front.[12] According to Amnesty International 108 countries have completely abolished the death penalty, both

---

[10] In the European Union member states, Article 2 of the Charter of Fundamental Rights of the European Union, 2000 prohibits the use of capital punishment. The Council of Europe, which has 47 member states, also prohibits the use of the death penalty by its members.

[11]United Nations, Moratorium on the use of the death penalty: resolution adopted by the General Assembly on December 17, 2018, *available at:* https://digitallibrary.un.org/record/1656169?ln=en (Last retrieved on September 24, 2023).

[12] World Coalition against the Death Penalty, 9th Resolution for a moratorium on the death penalty: the trend is growing, *available at:* https://worldcoalition.org/2022/12/20/9th-resolution-for-a-moratorium-on-the-death-penalty-the-trend-is-growing/ (Lastmodified on December 20, 2022) (Last retrieved on September 24, 2023).

in law and in practice, with 55 countries, still maintaining it on its stature book. It recorded a total of 1153 executions in the year 2023, which was approximately 31 per cent more than the number recorded in 2022.[13]

5. National Response on Death Penalty

Death penalty is not a novel rule of jurisprudence to the Indian penal system. It not only finds place in ancient India, which was governed by the canons of Dharma,[14] and was inflicted in many forms like beheading, hanging, etc. During the British rule, hanging was only used as the legalized mode of inflicting capital punishment.[15]As far as the mode of inflicting death penalty is considered, the SC, in the case of ***Deena @ Deena Dayal and others* v. *Union of India***,[16] upheld the constitutionality of hanging as the method of execution in India. Many failed legislative attempts were made time and again to abolish death penalty. One of the earliest attempts was the introduction of a private Bill in 1931 in the Legislative Assembly, which was then rejected by the British Home Secretary.[17] Efforts for abolition were also made post-independence by moving bills in Lok Sabha and Rajya Sabha in 1958 and 1962, but were eventually withdrawn after some debate. Later the Law Commission in its Reports of 1967 and 1971 stated that death penalty should be retained with the executive possessing pardoning powers. The constitutional validity of death sentence was upheld as being not-violative of Article 21 of the Constitution.[18]

In the 9th resolution of the UN General Assembly on the 'moratorium on the use of death penalty', India continued to vote against it.[19] In short, India still

---

[13] Amnesty International, "Death Sentences and Executions in 2023", *available at:* https://www.amnesty.org/en/documents/act50/7952/2024/en/#:~:text=Amnesty%20International's%20monitoring%20of%20the,2022%20to%2016%20in%202023 (Lastmodified on May 29, 2024) (Last retrieved on September 24, 2024).

[14] K.S. Ajai. Kumar, "Capital Punishment- New Trends" 4 *Cochin University Law Review* 153-178 (1980).

[15] Stacey Hynd, "Killing the condemned: The practice and process of Capital Punishment in British Africa, 1900-1950s" 49(3) *The Journal of African Studies* 403-418 (2008).

[16] 1983 AIR 1155.

[17] Abhinav Gaur, "Is Death Penalty About to Die… - Indian Perspective" *SSRN,* July 5, 2012, *available at:* SSRN: https://ssrn.com/abstract=2101042 or http://dx.doi.org/10.2139/ssrn.2101042 (Last retrieved on September 21, 2023).

[18] *Jagmohan Singh* v. *State of U.P.*, AIR 1973 SC 947 and *Smt. Shashi Nayar* v. *UOI*, AIR 1992 SC 395.

[19] *Supra* note 12.

retains death penalty in law.[20] According to the report issued by National Law University, Delhi, of their Project 39A, at least 720 executions have taken place in India since independence (despite some official records found missing).[21] Some recorded ones were of Auto Shankar, a serial killer, Dhananjoy Chatterjee[22] in a rape and murder case, and then Mohammad Ajmal Amir Kasab,[23] Afzal Guru[24] and Yakub Memon,[25] who were all involved in different terrorist acts. It was in 2020, that four men (Mukesh Singh, Akshay Thakur, Vinay Sharma and Pawan Gupta) guilty and convicted in the 2012 Delhi gang rape were hanged to death at the same platform.[26] There have been no reported hangings in India after 2020.

6. The Concept of Rarest of Rare in India

The Indian Judicial system has always had the system of capital punishment and has been specifically incorporated in various provisions of BNS, the BharatiyaNagrik Suraksha Sanhita, 2023 (hereinafter referred as BNSS) and some other legislation. However, the nations that retain death penalty have to observe a certain restriction(s) for its use. Article 6(2) of the ICCPR, states that death penalty should only be imposed for the 'most serious crimes'. There is no set criterion to make out or classify as to what can be called as a 'rarest of rare case'. However, any case which is able to make out the 'special reasons' as mentioned under section 393(3) of the BNSS, may be a fit case to be called as one. In the famous case of *RangaBilla*,[27] both the accused were convicted and sentenced to death for the murder of two children Geeta and Sanjay. The Supreme Court (hereinafter referred as SC) in this case held that the punishment should be proportionate to crime and should depend upon the

---

[20]Amnesty International, *India Overview*, *available at:* https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/india/ (Last retrieved on September 24, 2023).

[21] P39A National Law University Delhi, "Death Penalty in India, Annual Statistics Report 2021" (January 2022) *available at:* https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/61f6d7e8f0e77848cc843477/1643567095391/Annual+Statistics+Report+2021+%281%29.pdf (Last retrieved on September 24, 2023).

[22]*Dhanonjoy Chatterjee* v. *State of West Bengal*, (1994) 2 SCC 220.

[23]*Mohammad Ajmal Amir Kasab* v. *State of Maharashtra*, (2012) 9 SCC 1.

[24]*State* v. *Mohd. Afzal & Ors.*, (2003) 71 DRJ 178 (DB).

[25]*Yakub Memon* v. *State of Maharashtra*, SC, CRIMINAL APPEAL No. 1728 of 2007.

[26]Soibam Rocky Singh, "Four Nirbhaya case convicts hanged to death in Tihar jail" *The Hindu* (March 20, 2020, updated December 3, 2021).

[27]*State* v. *Jasbir Singh @ Billa and Kuljeet Singh @ Ranga*, ILR 1979 Delhi 571.

facts of the case. It was further observed that neither a light sentence nor an excessively harsh sentence would lead to justice.

It was in the year 1980 and 1983 that the SC in the land mark cases of ***Bachhan Singh v. State of Punjab***[28]*and****Machhi Singh v. State of Punjab***[29] respectively, held that it should be imposed only in "the rarest of rare cases."[30]The apex court in the case of ***Machhi Singh* v. *State of Punjab***[31] laid down the principles for deciding if a particular case falls under the category of rarest of rare or not. It was held that having regard to both aggravating and mitigating circumstances, a balance sheet must be drawn between both while deciding the quantum of punishment. The court also held that the manner in which the crime was committed, the motive behind the crime, its magnitude and even the personality of the victim must be appropriately weighed to calculate, if the case must be considered to be one fit as a 'rarest of rare'. In the recent case of ***Manoj* v. *State of Madhya Pradesh***,[32] the Court emphasized that it shall be the duty of the trial courts to elicit materials on mitigating circumstances. If and only when the court feels that justice will not be done if any punishment less than the death sentence is awarded, only then it should be imposed. The factors that need to be considered are, the manner of commission of offence; the motive behind it; the nature of crime; the magnitude of crime; and the personality of the victim. In ***State (Delhi Admn.)* v. *Lakshman Kumar***[33] it was observed that in the cases of bride burning, death sentence may not be improper, as the person who perpetrates crime without any human consideration must be given the extreme penalty. In ***Kehar Singh &Ors* v. *State (Delhi Admn.)***,[34] popularly known as the Indira Gandhi assassination case, it was held that a gruesome murder committed by a security guard whose primary duty was to protect, is a sufficient reason to call this case fit to be categorized as a rarest of rare which calls for a penalty of death. Similarly, in

---

[28] AIR 1980 SC 1355.
[29] (1983) 3 SCC 470.
[30]Sanjoy Majumdar, "India and the death penalty" *BBC News*, Aug. 4, 2005 *available at:*http://news.bbc.co.uk/2/hi/south_asia/2586611.stm (Last retrieved on September 21, 2023).
[31]*Supra* note 29.
[32] Criminal Appeal No. 248 of 2015.
[33]1985 Supp. (2) SCR 898.
[34]AIR 1988 SC 1883.

***State through Superintendent of Police, CBI/SIT* v. *Nalini and Others*,**[35] popularly known as Rajiv Gandhi assassination case, the SC after taking into account all the relevant factors, convicted seven people, of whom four were sentenced to death. In this case even a woman, who was a mother, who gave birth to a child while in custody, was convicted considering the active role she played, which the SC said didn't lay down any ground for special consideration. And we have the very famous cases of Afzal Guru, Ajmal Kasab, YusubMemon, etc., who were convicted and hanged to death. One thing is clear from all these cases that every case has its peculiar facts and circumstances, which makes is unique and rare.

It was possibly for these reasons that, in the case of *Mohammed Chaman* v. *State,*[36]the court out-rightly rejected the idea of laying down standards and norms in murder cases, to qualify a particular murder case as a rarest of rare or not. It was held that before a murder takes place, such standardization is practically impossible because every case can have unforeseeable or unpredictable variations in culpability. In ***Swamy Sharaddananda*v. *State of Karnataka***[37] the rule of 'rarest of rare' was made even harder by the SC, when it was held that the 'rarest of the rare' must be measured not only in qualitative but also in quantitative terms. In 2014 in the case of *Shatrughan Chauhan* v. *Union of India*,[38] the hon'ble SC held that the execution of sentence could only take place in accordance with the constitutional mandate and declined to establish any threshold beyond which an unwarranted delay would be considered torture.

7. Death Penalty in India and The Theory of Deterrence

Indian Criminal jurisprudence is based on a combination of deterrent and reformative theories of punishment. The courts while imposing death sentence has to record its special reasons as to why the court came to the conclusion.[39] It was also made out that these special reasons should be nothing less than "compelling reasons".[40] In ***Santa Singh* v. *State of Punjab***,[41]it was held that sentencing is an important stage in which many factors like prospects for his

[35](1999) 5 SCC 253.
[36](2001) 2 SCC 28.
[37] AIR 2007 SC 2531.
[38]AIR 2014 SC (CRIMINAL) 641
[39] The BharatiyaNagrik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 393(3).
[40]*State* v. *Heera*, 1985 Cri.L.J. 1153 (Raj).
[41] AIR 1976 SC 2386.

rehabilitation, treatment, training and the probable deterrence to crime must be taken into consideration. Later in the case of ***Rajendra Prasad* v. *State of Uttar Pradesh***[42] it was held that deterrence and reformation are the primary social goals which make deprivation of life and liberty reasonable as penal panacea.

8. Deterrent Death Penalty: A Myth or Reality

Let us now try to analyze a few cases and try to make out if death penalty is actually proving to be a deterrent punishment or not. If 'yes', we would be completely satisfied that it is an inhumane necessity that is required for the upkeep of a just society; if still, the result is 'no', let us strive to find some solutions or alternatives to it.

Till the very onset of society and civilization, the general theories regarding the imposition of such severe punishments were those of deterrence and prevention. This has even been time and again declared in our popular epics such as the Mahabharata and the Ramayana, which state that if the offenders were compassionately let off, the crimes were bound to multiply.

The SC on May 3, 2023, rejected the mercy plea of *Balwant Singh Rajoana*, a singh from Babbar Khalsa, who was convicted and sentenced to death for his involvement in the assassination of then Punjab Chief Minister S. Beant Singh.[43]Rajoana has already been in jail for 27 years and his mercy petition has been going on since 11 years. The question here is, will such type of delayed executions, actually have that effect of deterrence, the one which our justice delivery system is striving to achieve?

On 13 March 2012, a court in Sirsa, Haryana, condemned to death the 22-year-old Nikka Singh for raping a 75-year-old woman and later murdering her by gagging her mouth with a shawl and strangling her neck with her *salwar*.[44] Considering the facts of the case, the additional district and session's judge imposed death sentence holding that it was a cold-blooded rape and murder of a woman, who was of grandmother's age of the accused, and thus it falls in the rarest of the rare case. No doubt he was acquitted of all charges for lack of conclusive evidences by the Punjab and Haryana High Court on July 16,

[42]AIR 1979 SC 916.

[43]Satya Prakash, "Supreme Court declines to commute Balwant Singh Rajoana's death penalty", *The Tribune*, May 4, 2023.

[44] "Chandigarh: Youth gets death for rape, murder of 75-year-old woman" *India Today*, Feb. 11, 2011.

2013.[45] It was during this time in 2012 that another brutal gang rape was committed in Delhi that we all are well versed with as the Nirbhaya Rape Case. So, why was this crime committed despite the fact that death sentence was given to Nikka Singh, and to many more in the earlier cases of alleged rape and murder? Or is it that death penalty is not thriving with the so-called notion of deterrence, as pleaded by the retentionists?

Not only one specific incidence of Nirbhaya, the year 2022 marked itself in history with imposing 165 death sentences in row by the trial's courts, of which 51.28% cases were those involving sexual offences.[46] This figure was the recorded high that outnumbered the number of death sentences in 2021, which was recorded at 146.[47] Again in 2023, the number of death sentences by trial courts numbered 120. Also, there were other convictions in cases involving murders simpliciter, murder involving sexual offences, terror offences and even kidnappings with murders. Now, these are not mere numbers, but the facts that establish the view, that death penalty, even in the rarest of rare cases have not been able to leave the expected levels of deterrence.

9. Key Outcomes

Considering the ongoing discussion, it becomes imperative to bring out the following points that shall help us consider the probable tenets and the contentions that suggest the relationship between death penalty and the impact it has on the society, and the reasons behind.

- The truth about death penalty is that death penalty is not so much a legal or constitutional issue as a sociological one. It evokes divergent responses in different people. After the 1980 Supreme Court judgment in *Bachhan Singh's* case, it has become the rule that death sentence shall be imposed only in the 'rarest of rare' cases. It said the rarest cases were those in which the "collective conscience of the community is so shocked that it will expect the holders of the judicial power to inflict death penalty." In the absence of a statutory definition of the term and with judicial guidelines giving presiding judges considerable latitude to determine what qualifies as 'rarest of rare', it is not surprising that sentencing appears rather

[45]*Nikka Singh* v. *State of Haryana*, Murder Reference No. 4 of 2012; CRA. No. D-372 DB of 2012.
[46]*Supra* note 21.
[47]*Ibid*.

arbitrary, often seemingly influenced by 'popular sentiment'. Another observation is that many death sentences are overturned in review and appeals process. Lawyers say that it is not clear how the higher courts assign weightage to different aggravating and mitigating factors that the Supreme Court only upholds a meagre number of the total convictions by the trial courts. Thus, there is a dire need of a set pattern upon which the punishment of the accused is to be decided other than being based on the subjectivity of the judges. This criterion will indeed have a deterring effect on the offender, as he will be aware of the certain probable consequences of his act.

The year 2022 represented a historic moment, when Justice UU Lalit, reconsidered the death penalty sentencing framework for the first time since 1980, through a suo motu writ, wherein it specifically highlighted the lack of uniformity in this framework and referred issues in death penalty sentencing to a Constitution Bench towards ensuring 'real, effective and meaningful' sentencing hearing for a convict.[48]

- The long delay in the actual execution of the death sentence also diminishes the deterring effect of death penalty as many of our convicts are later granted releases under the aegis of the pardoning power of the executive. The death penalty for such reasons may consider being replaced with an equally deterrent punishment like rigorous imprisonment in jail till the convict dies. Possibility of wrongful convictions and imposition of moral objections may lead to lower infliction of death penalty, thus undermining its deterrent effect. There is no second thought, that certainty and fastness in the operation of any punishment, though not as severe, as harsh- as death penalty, could have more impactful deterrence.
- Not all rare crimes are preplanned or conspired. Many times, violent crimes are committed in a fit of rage, high emotions, under the impact of substance abuse, such that all these circumstances lead to loss of rationality in the offender. Now, consideration of the ambit of deterrence connected with punishment would not be the case in such circumstances. So, even the imposition of death penalty would not bring about any

[48] In re: Framing Guidelines Regarding Potential Mitigating Circumstances to be Considered While Imposing Death Sentences, Suo Motu Writ Petition (Crl.) No 1 of 2022.

deterrence in the mind of the person who is acting under the influence of time, emotions, psychotropics', etc.

- If we are in support of the death penalty stating that it fulfils both the requirements of deterrence and retribution, then what is a need for the consideration of the accuser's case for a mercy or clemency. The general pattern that is observed is that in case of a death sentence the final verdict is given by the Apex Court. In this whole process a considerably long time is spent, and the court takes a judicious note of all the facts and circumstances of the case including all mitigating factors if any. After this all process where is the need for the executive to step in any decide upon the question of awarding a mercy. How does the executive possess that bent of mind to be able to decide on the question of desirability of the death sentence? Former President Smt. Pratibha Devi Singh Patil, granted clemency to as many as 35 death row convicts and commuted death sentence to life imprisonment of these accused persons convicted of rape and murder of children and women, which becomes another reason for the ineffectiveness of death penalty as a mode of achieving deterrence.
- Another point that needs consideration is the process to be followed after the mercy petition had been in case rejected. In ***Afzal Guru's*** Case the Presidents formal rejection was conveyed on February 3, 2013 and the order for executing him was issued the following day. Afzal Guru was secretly executed on the morning of February 9 and the condemned man was himself informed about the rejection of his mercy petition the previous evening. Guru's family came to know of his execution well after the event, through breathless news anchors reveling in the sensation of the moment. Our concern here is that there should be a morally acceptable code of conduct to be followed before a person is executed. There seems no valid reason why his family was not informed beforehand to at least allow them a last meeting with the parting sole. Such a heartless behaviour calls for nothing else but condemnation. Such incidents sham the faith of the system in the justice delivery system, giving the nation another reason to rather feel deprived rather deterred.
- Groups and individuals who for decades have been deeply concerned about all forms of violence against women, including sexual assault, and have not only consistently campaigned against such violence but also worked at different levels to provide support to and secure justice for

victims/survivors, have been arguing against the death penalty recently awarded to the four men convicted of brutally raping, torturing and eventually murdering a young woman in Delhi last December.

The Justice Verma Committee[49], set up by the government soon after the notorious gang-rape in Delhi and tasked with recommending legal reforms to effectively tackle crimes involving sexual assault, had rejected the notion that capital punishment serves as a deterrent. Unfortunately, however, the controversial Criminal Law (Amendment) Act, 2013, supposedly based on the Committee's widely acclaimed report and passed by both houses of Parliament in March included the death sentence as an option in the "rarest of rare" cases. But in my opinion, the Delhi Gang Rape has not been the first of its kind. I believe that if death penalty would have created any deterrence, then such acts of sexual violence should have already come to a pause. In such cases, the State may even consider imposing castration as a mode of punishment that would definitely be more deterrent and retributive.

10. Conclusion

The forgoing study has revealed that the debate over the deterring effects of death penalty has in the recent past acquired renewed vigor. The judiciary has been awarding the death penalty for violent crimes with increased regularity. Prima facie, the penalty of death is likely to have a stronger effect as a deterrent to normal human being than any other form of punishment, though it is difficult to unravel the innermost recesses of the mind of the potential murderers. The truth is that some crimes are so outrageous that society insists on adequate punishment, because the culprit deserves it, irrespective of whether it is a deterrent or not. Since the turn of the twentieth century, many studies have been conducted on the deterrent effect of capital punishment. More often than not, the results have proved inconclusive; no hard evidence exists to verify the theory that the threat of such a harsh punishment will sway criminals from their actions. In fact, some statistics indicate that the opposite is true; in some instances, states that employ capital punishment have a higher incidence of Homicide than neighboring states that do not employ the death penalty. The government of the day, however, has been insisting on the increased use of death penalty for crimes other than murder.

---

[49] Justice J.S. Verma Committee, “Report of the Committee on Amendments to Criminal Law” (January 23, 2013).

With the coming into force of the Bharatiya Nyaya Sanhita, 2023, a new provision, as in Section 103(2) has been added, that lays down death penalty as one of the possible punishments, where, “a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, …or any similar ground each member of such group shall be punished with death or…”. This provision in totality refers to the offence of mob lynching. Now it is up to time to decide, where the insertion of this provision in the Sanhita establishes itself to be deterring and also, if it even has any impact on making the existing provisions more deterrent.

We can thus say that retribution is still a socially acceptable function of punishment. The instinct for retribution is part of the nature of man. Thus, retribution and deterrence are not two divergent ends of capital punishment but are convergent goals.

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 107-119

Impact Assessment of Lok Adalats as People's Court: A Study

Dr. Sital Sharma*

Abstract

Lok Adalat is one of the alternative dispute redressal mechanisms, it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled or compromised amicably. Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987. Under the said Act, the decision made by the Lok Adalats is deemed to be a decree of a civil court and is final and binding on all parties and no appeal against such an award lies before any court of law. If the parties are not satisfied with the award of the Lok Adalat though there is no provision for an appeal against such an award, but they are free to initiate litigation by approaching the court of appropriate jurisdiction by filing a case by following the required procedure, in exercise of their right to litigate. The present era is called an era of consumerism. People want choice and change, and it is obvious that people want choice and change even in their dispute resolution mechanism. Lok Adalats as an alternative dispute mechanism is playing a pivotal role in disposing huge number of cases every year.

Key words: *Pre-litigation stage, Alternative dispute resolution, binding, compromise*

"Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When, only the rich can enjoy the law, as a doubtful luxury, and the poor, who needed most, cannot have it, because, it's expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness"- Justice Brennan of the US Supreme Court

1. Introduction

Impact Assessment is a means of measuring the effectiveness of organisational activities and judging the significance of changes brought about by those activities and when it comes to impact assessment of Lok Adalats various

* Assistant Professor, UILS, PU

factors need to be studied. The Constitution of India has defined and declared "to secure to all the citizens of India, Justice-social, economic and political; liberty; equality and fraternity" as the common goal for its citizens. The eternal value of constitutionalism lies in the Rule of Law, which has three facets: Rule by Law, Rule under Law and Rule according to Law.[1] The Constitutional goal as enshrined in Art 39A[2] of equal and speedy justice has therefore remained a dream for millions of Indians. The question therefore is should we accept the status quo or try to make a change? It will not be out of place to mention that litigation is thought to be an obstacle to the growth of human beings, society, country and the world. Moreover, in the present era of globalization of the 21st century, people, and country need effective and multi-door dispute resolution system.[3] In today's marketplace when we go out to buy anything, we look for and get variety of options. The present era is called an era of consumerism. People want choice and change, and it is obvious that people want choice and change even in their dispute resolution mechanism.[4] Justice has three connotations namely social, economic and political. The first two connotations are handled by the said mechanism. They not only give an opportunity to the parties to resolve disputes but such resolution - is at lowest possible cost, achieved amicably with consent of parties concerned.[5] 'Access to Justice' means an ability to participate in the judicial process. It is that human right which covers not only bare court entry but has many dimensions including time consuming factor.[6] The concept of 'access to justice 'constitutes- first a strong and effective legal system with rights enumerated and supported by substantive legislations." The second is a useful and accessible judicial/remedial system easily available to the litigant public."[7] It therefore means that the ability to approach and influence decisions of those organs

[1]Oyshee Gupta and Suhaas Arora, "Lok Adalats"*, available at*: https://www.lawctopus.com/academike/lok-adalats/#_edn1 (Last retrieved on July 1, 2024).
[2] Article 39 A of the Constitution of India: Equal Justice and Free Legal Aid – The State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
[3]*Supra* note 1.
[4]*Ibid*.
[5] Lok Adalats in India, *available at*: http://www.imlc.ac.in/docs/DPPMRP.pdf (Last retrieved on July 2, 2024).
[6]*Ibid*.
[7] Komal Audichya& Nikita Audichya, "Expanding Access to Justice to Reach the Poor and the Marginalized Communities", *BLR*, Oct-Dec, 2016.

which exercise the authority of state to make laws and adjudicate on rights and obligations."[8]

2. History of Lok Adalats in India

Lok Adalat is not a new concept in our country and evolution of this system can be traced back to Vedic times. We can find a reference of this system in the ancient classics of Kautilya, Gautama, Brihaspati and Yagnavalkya. The 'Lok Adalat' or 'People's Court was functioning in those days by the name of Kula court, Sreni court and the Gana court.[9] The Lok Adalat with different nomenclature effectively functioned through centuries and continued to exist even during Mughal regime.[10] However, things changed with the advent of British regime and the similar institution to Lok Adalat had eclipsed. The Adversial mode of dispute resolution mechanism replaced the ancient form of dispute resolution mechanism to a great extent.[11]

Three different committees were constituted to provide ways for fulfillment of the constitutional goal of access to justice to all. The report of the three committees namely the report on processual justice to the people 1973, the report of the Gujarat Legal Aid Committee 1977 and the judicare: equal justice social justice report 1977 laid the stones for the noble institution of Lok Adalat. In order to implement the report of the committee and several law commissions reports, the committee for implementation of legal aid scheme was constituted under the chairmanship of *Justice Bhagwati* to evolve appropriate structure and procedure with a view to achieve easy access to justice and equal justice to all. The first goal of providing cheap and speedy justice was achieved under the auspices of the Committee for Implementation of Legal Aid Scheme (CILAS) when the legal aid was held in Gujarat in 1982. Camps of Lok Adalats were initially established in Gujarat in March 1982 and now have been extended throughout the country.[12]The Lok Adalat originated owing to the failure of the Indian legal system to provide fast, effective, and affordable justice. The evolution of this movement was a part of the strategy

---

[8] Ghai Yash and Cottrell Jill, *Rule of Law and Access to Justice* (Routledge, New York).
[9] P.S. Narayana, *Law Relating to Lok Adalat* (Asia Law House, 2012).
[10] *Ibid*.
[11] Sarfaraz Ahmed Khan, *Lok Adalat: An Effective Alternate Dispute Resolution Mechanism* (APH Publishing Corporation, New Delhi, 2006).
[12] Functioning of Lok Adalats in India, *available at:* http://www.academia.edu/3296008/Lok_Adalat_System_in_India (Last retrieved on July 2, 2024).

to relieve the heavy burden on the Courts with cases pending disposal.[13] The seven hundred years old clarion call of the Magna Carta- To no one will we sell, to no one will we refuse or delay the right to justice very pertinently embodies the principle of legal aid. The institutions of Lok Adalats have evolved as one of the most important modes of alternative dispute resolution.[14]Lok Adalats are a blend of all three forms of traditional ADR: arbitration, mediation, and conciliation. They use conciliation, with elements of arbitration given that decisions are typically binding and are an illustration of legal decentralization as conflicts are returned to communities from where they originated for local settlement.[15]

3. Cases Suited for Lok Adalat[16]

Lok Adalats have the competence to deal with the following cases:

- Compoundable civil, revenue and criminal cases.
- Motor accident cases
- Partition Claims
- Matrimonial and family disputes
- Bonded Labour disputes
- Land acquisition disputes
- Bank's unpaid loan cases
- Arrears of retirement benefits cases
- Cases which are not under the jurisdiction of any Court.

4. Emergence of Lok Adalat as an Effective ADRMechanism:

ADR has become a global necessity. In recent times, methods of alternative dispute resolution have emerged as one of the most significant movements as a part of conflict management and judicial reform. The entire legal fraternity-lawyers, students, judges and legislators all over the world have started viewing dispute resolution in a new perspective. Many more alternatives to the litigation have emerged. ADR is now an integral part of modern legal

---

[13]*Ibid*.

[14]*Supra* note 5.

[15]Impact of Lok Adalats in India, *available at*: http://www.adrcentre.in/images/pdfs/LOK_ADALAT_FINAL_PAPER.pdf (Last retrieved on July 3, 2024).

[16]Cases suited for Lok Adalats, *available at*: http://www.legalservicesindia.com/article/article/significance-of-lok-adalats-in-present-scenario-583-1.html (Last retrieved on July 7, 2024).

practice and jurisprudence.[17] Both pre-litigation and post-litigation efforts are invited by Lok Adalats to enable the entire society to create peace and harmony. The Legal Services Authorities Act, 1987 makes provision for free legal aid which can be availed both before the Courts and Lok Adalats so constituted.[18] Adjudication in a Lok Adalat is a people oriented, speedy and summary-styled for swift settlement of disputes on compromise terms.[19] Lok Adalat is an informal forum provided by the people themselves or by interested parties including social activists, legal aiders and public spirited people belonging to every walk of life.[20] Dr. A.S. Anand, former chief justice of India, had wished that be increasing the power of ADRs, the next century would be not of litigation but rather of negotiation, conciliation, and arbitration.[21]

Section 89 has been introduced in the Civil Procedure Code, 1908, for the first time for settlement of disputes outside the Court, with the avowed objective of providing speedy justice: It is now made obligatory for the Court to refer the dispute after issues are framed for settlement either by way of -[22]

(a) Arbitration,

(b) Conciliation,

(c) Judicial settlement including settlement through Lok Adalat, or

(d) Mediation.

Where the parties fail to get their disputes settled through any of the alternative dispute resolution methods, the suit could proceed further in the Court in which it was filed. The procedure to be followed in matters referred for different modes of settlement is spelt out in sub-section (2). Clause (d) of sub-section (2) of section 89 empowers the Government and the High Courts to make rules to be followed in mediation proceedings to affect the compromise between the parties.[23]

---

[17]Lok Adalats as an ADR mechanism, *available at*: http://www.iimahd.ernet.in/publications/data/2005-11-01anurag.pdf (Last retrieved on July 6, 2024).

[18]*Supra* note 5.

[19] Prabha Bhargava, *Lok Adalat: Justice at the Door-Steps* (Ina Shree Publications, 2006).

[20] Sunil Deshta, *Lok Adalat in India: Genesis and Functioning* (Deep & Deep Publications, 1995).

[21] Law Commission of India, Government of India, 222th report on 'Need for Justice – Dispensation through ADR etc,', April 2009, *available at*: http://lawcommissionofindia.nic.in/reports/report222.pdf (Last retrieved on July 12, 2017).

[22]*Ibid*.

[23]*Ibid.*

Few advantages of Lok Adalats are that there is no court fee and even if the case is already filed in the regular court, the fee paid will be refunded if the dispute is settled at the Lok Adalat. There is no strict application of the procedural laws and the Evidence Act while assessing the merits of the claim by the Lok Adalat.[24] The parties to the disputes though represented by their Advocate can interact with the Lok Adalat judge directly and explain their stands in the dispute and the reasons therefore, which is not possible in a regular court of law. Lok Adalats can be a decent supplement to the work of courts and could contribute to justice in a good way only if awareness is increased and people are encouraged to opt for them. For illiterates and poor there are even more advantages of taking matters to Lok Adalats.[25] Proceedings are conducted faster and in simple arrangements and even in local languages. They are not strict about procedural laws or Evidence Act and are based more on merits which makes it "People's Festival of Justice."[26] Family disputes like property acquisition and matrimonial issues are far better and faster solved by these Lok Adalats in comparison to courts. Though there are family courts for these matters, people would always prefer settlement outside court and in a fair and just manner which is delivered well by Lok Adalats. It saves time and expenses and also is easier for parties to make their claims which are not the case when the matter is in court and witnesses are afraid of getting involved into legal matters.[27] Even if the case is filed in court, the expenses are refunded to the party when the case is solved by Lok Adalat which is another reason why people should be made more aware of this litigation system where there is no fee involved. According to *Justice V. V. Rao*, it will take another 320 years to clear the pending backlogs in India but if more and more people take their cases to Lok Adalats, there is a fair chance that this could be achieved earlier.[28]

The disposal of legal disputes at pre-litigative stage by the permanent and continuous Lok Adalats provides expense-free justice to the citizens of this country. It also saves courts from additional and avoidable burden of petty cases, enabling them to divert their court-time to more contentious and old

---

[24]N.V. Paranjape, *Public Interest Litigation, Legal Aid & Services, Lok Adalats and Para Legal Services* (Central Law Agency, Allahabad, 2006).
[25]*Ibid*.
[26]Advantages of Lok Adalats, *available at*: http://www.careerride.com/view/lok-adalats-advantages-and-disadvantages-26001.aspx (Last retrieved on July 16, 2024).
[27]*Ibid*.
[28]*Ibid*.

matters.[29] The Delhi Legal Services Authority has set up 9 Permanent Lok Adalats in Government bodies/departments and 7 MACT permanent Lok Adalats have been functioning regularly in Delhi. Similarly, Permanent Lok Adalats have also been set up in some other States. But there is a need to establish more Permanent Lok Adalats throughout the country.[30] National Level Lok Adalats are held at regular intervals where on a single day Lok Adalats are held throughout the country, in all the courts right from the Supreme Court till the Taluk Levels wherein cases are disposed of in huge numbers. In Punjab as on 11th February 2017, National Lok Adalat has disposed of total 22008 no of cases with total settlement amount of rupees 2946718686 and in the UT of Chandigarh it has settled total 1583 cases with total settlement amount of rupees 173398407.[31] Lok Adalats can become an additional arm of existing judicial institution, and moreover, if the process of accumulation of arrears is reversed and there is less burdening, its qualitative performance can improve. It is worthy to note that all proceedings before the Lok Adalat shall be deemed to be judicial proceedings within the ambit of sections 229[32], 257[33] and 267[34] of Bharatiya Nyaya Sanhita, 2023 (BNS). As

---

[29]*Supra* note 21.

[30]*Ibid*.

[31]Assessment of Lok Adalats, *available at*: http://nalsa.gov.in/lok-adalat (Last retrieved on July 10, 2024).

[32] Section 229 of the BNS: Punishment for false evidence.—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine which may extend to 10,000 and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine which may extend to 5000. Explanation 1.A trial before a Court-martial; is a judicial proceeding. Explanation 2.An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice. Explanation 3.An investigation directed by a Court of Justice according to lawand conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

[33] Section 257 of BNS: Public servant in judicial proceeding corruptly making report, etc., contrary to law.Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

[34] Section 267 of BNS:Intentional insult or interruption to public servant sitting in judicial proceeding. Whoever intentionally offers any insult, or causes any interruption to any public

the award passed by the Lok Adalat is deemed to a decree of a civil court, execution may be carried out, and any contrary view might defeat the purpose of Lok Adalats and the award such passed by it is taken to be final and so appeal will lie from such award.

5. Loopholes in the Effective Functioning of Lok Adalats

- Lok Adalats are not apposite for complex cases- The first important issue pertaining to Lok Adalats is with respect to the time which is spent on proceedings before a Lok Adalat. The amount of time spent assumes importance in complex matters and the same is important to secure settlements and further ensure efficacious settlements. Justice delayed is justice denied but justice hurried is also justice buried. Faster justice comes with a price of settlement made at the cost of lesser compensation and the petitioner had no time to claim higher amount which he justly should have got as seen in many cases after which apex court ordered Lok Adalat to be careful about not impairing the right of any party involved in the issue. Therefore, Lok Adalats might not be suitable for complex issues like company matters etc.[35]
- While finality seems to ensure cut back on the quantum of proceedings, it does by no means, assure a mandatory and a binding decision on parties. A major drawback of Lok Adalats is that its emphasis is on a compromise or settlement between the parties. If the parties do not arrive at any compromise, either the case is returned to the court of law or the parties are advised to seek remedy in a court of law.[36]
- The anxiety of the litigants to settle their disputes without the vexation of court litigations is exploited by the opposite parties and even by some lawyers. The person who claims the compensation would have been exhausted by the years of litigation. It might be easy to make him agree to the payment of 'contingency fee' to his lawyer and to accept an amount which is much lower than his due. After the settlement, the lawyers may

---

servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[35]Lok Adalats in India, *available at* :http://shodhganga.inflibnet.ac.in/bitstream/10603/38164/10/10_chapter%205.pdf (Last retrieved on July 15, 2024).

[36]Ashwanie Kumar Bansal, *Arbitration and ADR* (Universal Law Publishing Co. Pvt. Ltd., Delhi, 2005).

take a major chunk of the amount as 'contingency fee'. Although taking contingency fee is prohibited in our country, it is being practiced by some lawyers. They must realise that what they do is for the cause of social justice and avoid exploiting the poor people.[37]

- The goal of the Lok Adalat is to affect a compromise but in mass scale disposal of cases in Lok Adalats, it is difficult to expect that compromise settlements of mutual benefits would be searched for.[38]
- The legislation has given the judiciary an almost exclusive role in the responsibility of organising Lok Adalats and directed the observance of norms the judiciary adhere to in adjudication. There is little role for people especially trained in negotiation, mediation and conciliation.[39]
- A major drawback of Lok Adalats is that its emphasis is on a compromise or settlement between the parties. If the parties do not arrive at any compromise, either the case is returned to the court of law or the parties are advised to seek remedy in a court of law.
- Politicization of the Lok Adalats have proven to be one of the greatest detriments to the system, as the lofty ideals stand eroded with inept handling of matters due to political interference.[40]

6. Difficulties in Effective Implementation of Lok Adalats:[41]

- Lack of awareness and knowledge of litigants about the Lok Adalat process.
- Sometimes advocates are reluctant to suggest compromise to the parties, due to fear in mind about loss of their lucrative revenues.
- People have faith on decree from court than other system.
- Lack of voluntariness, impartiality, well oriented and trained panel members.

  of panel members of Lok Adalat.
- Insufficient infrastructure and untrained or unskilled manpower.
- Apathy of lawyers towards Lok Adalat process.

---

[37]*Ibid.*
[38]*Ibid*.
[39]*Ibid*.
[40]*Ibid.*
[41]Geeta Pravin Patil, A Study on Lok Adalat with Special Reference to City of Satara, 2015, *available at*: http://www.imlc.ac.in/docs/DPPMRP.pdf (Last retrieved on July 9, 2024).

- Sometimes it is used as weapon for prolonging the case or requesting adjournments falsely.
- Lack of interaction with litigants due to heavy workload particularly burden of completing quota of disposals set out by Honorable High Courts.
- Mentality of people, their ego is main difficulty in some cases.
- No active participation of bar and bench.

7. Things to be done to Promote Awareness and Use of Lok Adalat Process:[42]

- Legal literacy camps should be organized at urban as well as rural areas.
- Counseling of dispute before entry of case in the registry of court.
- Advocates must aware the litigants about Lok Adalat process.
- Wide publicity about Lok Adalat process through media in the form of television, radio, newspaper etc. should be done.
- Launch mass movements through social organisations, NGOs with specially trained personnel.
- Trained conciliators must be selected for process of compromise.
- Advocates as well as judges should take interest for implementation of Lok Adalat process.
- Government should provide proper infrastructure and appoint trained personnel to conduct Lok Adalat process.
- Arranging seminars, workshops etc. for advocates.
- Panel members of Lok Adalat should be properly remunerated.
- Frequent Lok Adalat must be conducted with prior discussion with bar and its publication by media.
- Awareness programmes, Seminars and workshops, paralegal training programmes, mobilization of public opinion against injustice and exploitation must be conducted in remote areas particularly.
- Educational institutions must take efforts to aware people about Lok Adalat process.
- Independent forum having strong decision-making power must be created to execute Lok Adalat process.
- Psychology of people should be prepared as to accept Lok Adalat process and have faith over this system.

---

[42] *Ibid.*

8. Suggestions for Effective Functioning of Lok Adalats

The Lok Adalat system has been introduced with a very lofty ideal in mind, indicating a proposed stronghold over the masses in need of legal aid. Despite the quality the system personifies on paper, one cannot help noticing the denudation in the system, on account of both, internal issues, and external influences. No system can be free from friction, but negligible friction is by far better, than glaring lacunae. A few recommendatory solutions are herein presented:

- There exist several barriers to justice in the form of financial, geographic, linguistic, and logistical. Emphasis must be put on improving quality and quantity of justice in the form of better prepared defense attorneys, more citizen-oriented court staff, more reasonable hours, better information about the justice system and a greater number of Lok Adalats in each district.[43] Although procedural conduct and rules have already been laid down, but what is important here is the strict adherence on behalf of police authorities, judges, lawyers, law officers as well as protection of legal rights.[44]
- For the success of Lok Adalat, the attitude of both bar and bench has to be changed. The bar must encourage by passing of orders regarding the reference of disputes to settlement by Lok Adalat and convey the benefits of resolving the disputes through Lok Adalat to the litigants. Essential pre-conditions for successful enforcement of Lok Adalat, is first, proper institutionalization with active participation of Bar and Bench, and formation of Advisory committees of all lawyers, judges, law professors, social activist etc. to reach at consensus on the programme and lastly educating the litigants and people at large to opt Lok Adalat as the most beneficial and appropriate mechanism to solve the dispute.[45]
- Volunteer associations, NGOs and social action groups must be encouraged to devote time and service to the Lok Adalats: While several groups are active contributors to the causes of Legal Aid and to the conduct and functioning of Lok Adalats, it is found that it is only a pocket of volunteer organizations that seem to actively participate. Participation on

[43] *Supra* note 7.
[44] *Ibid.*
[45] *Supra* note 35.

a larger scale ought to be ensured, so as to inculcate a sense of trust in the judiciary, along with the inclination for participation.[46]

- More infrastructures should be provided: Since the onus of establishing Lok Adalats come within the gamut of the concerned State's responsibility, it would be pragmatic to allot a considerable quantum of money as part of the annual budget of the State. Infrastructure is essential for Lok Adalats, given that there is a need for speedy adjudication and for the sufficient perusal of the merits of a case.[47]

9. Conclusion

The Lok Adalats are the flagship of the Indian judiciary for dispensation of justice to the poor. The ratio of judges in India is abysmally low at 12–13 per one million persons. The accumulated frustration of the people desirous of quick disposal o their cases is the biggest single reason for the people having responded with hope, excitement and zeal in holding Lok Adalats for dispute ending of pending disputes. The modern concept of Lok Adalat appeared on the concern shows by different bodies on failure of anglo-saxon judicial system to provide justice to a large number of people and on the recommendation of different committees for promoting participatory form of administration of justice.[48] The march towards making Lok Adalats a great success is a constitutional goal for which everyone has obligation to fulfil.[49] Lok Adalats, as it has been again and again iterated throughout the paper, serve very crucial functions in a country due to many factors like pending cases, illiteracy etc. The Lok Adalat is a historic necessity in a country like India where illiteracy dominated about all aspects of governance. The most desired function of Lok Adalats may seem to be clearing the backlog, with the latest report showing 3 crore pending cases in Indian courts but the other functions cannot be ignored.

Lok Adalats play a very important role to advance and strengthen "equal access to justice", the heart of the Constitution of India, a reality. Maximum number of Lok Adalats needs to be organized to achieve the Gandhian Principle of Gram Swaraj and "access to justice for all".[50]The Lok Adalats,

---

[46]*Ibid*.
[47] *Ibid*.
[48]*Supra* note 11.
[49]*Ibid.*
[50]Dr. S.R. Myneni, *Arbritation, Conciliation, and ADR Systems* (Asia Law House, 2009-10).

Nyaya Panchayats, Legal Services Authorities are also part of the campaign to take justice to the people and ensure that all people have equal access to justice in spite of various barriers, like social and economic backwardness. Lok Adalats can be viewed as an instrument to social change as well.[51]

As said by Prof. Menon, "*Lok Adalat has the potential for social reconstruction and legal mobilization for social change. It can influence the style of administration of justice and the role of the lawyer and judge in it. It can take law closer to the life of the people and reduce disparity between law in books and law in action*."[52]

[51]*Supra* note 21.

[52]N.R.Madhava Menon, "*Lok Adalat: People Program for Speedy Justice"*, Indian Bar Review, Vol (2), 1996.

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 120-138

The Media Trial: A Study of Progression on Judicial Proceedings

Dr. Sugandha Passi*

Abstract

The media plays a pivotal role in shaping public opinion, especially in cases of significant judicial proceedings. This study delves into the influence of media coverage on the progression and outcome of legal trials. It examines how media narratives can affect the judiciary's independence, potentially leading to trial by media, where public sentiment influenced by media portrayal precedes judicial verdicts. The study explores various high-profile cases to assess the correlation between media coverage and judicial outcomes. Furthermore, it investigates the ethical considerations and the balance between the public's right to know and the accused's right to a fair trial. The findings reveal that while media can bring transparency and accountability to legal processes, excessive or biased coverage can undermine the fairness of judicial proceedings. This research highlights the need for a more responsible and balanced approach in media reporting on ongoing legal cases to preserve the integrity of the judicial system.

Keywords: *media, trial, judiciary, transparency, accountability*

"Innovation must make sense. Creativity must be relevant…A well-worn anecdote has helped me gain a better grasp of what creativity may be about. Two blind beggars, we are told, were seated on different park benches. Each had an upturned hat beside him soliciting charity. One beggar had a placard on his breast, reading, "I am Blind". The other man's placard said, "It is spring, and I am Blind". The Latter's hat overflowed with money. History is silent about the other hat.[1]

-Gerson Da Cunha

1. Media Trial: Denotation

Whenever a sensational criminal case comes to be tried before the court, there is an expected upsurge in the public curiosity. Using the thirst for sensational

*Assistant Professor, UILS, PU, Chandigarh

[1]Gajendra Singh Chauhan, *Language Media and Society Essence of Advertising Communication* 23 (Rawat Publications, Jaipur, 2010).

news, Media, including TV Channels, Newspapers, News Websites etc. start publishing their own version of the facts. They call it investigative journalism, which is not prohibited in India. The impact of television and newspaper coverage on an individual's reputation by creating a widespread perception of guilt or innocence even before a court of law has announced its verdict, is called "Media Trial" or "Trial by Media".[2]

During high-publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that regardless of the result of the trail the accused will not be able to live the rest of their life without intense public scrutiny. The counter-argument is that the mob mentality exists independently of the media which merely voices the opinions which the public already has.[3]

Although a recently coined phrase, the idea that popular media can have a strong influence on the legal process goes back certainly to the advent of the printing press and probably much further. This is not including the use of a state-controlled press to criminalize political opponents, but in its commonly understood meaning covers all occasions where the reputation of a person has been drastically affected by ostensibly non-political publications. Often the coverage in the press can be said to reflect the views of the person in the street. However, more credibility is generally given to printed material that 'water cooler gossip'. The responsibility of the press to confirm reports and leaks about individuals being tried has come under increasing scrutiny and journalists are calling for higher standards. There is much debate over U.S. President Bill Clinton's impeachment trail and prosecutor Kenneth Starr's investigation and how the media handled the trail by reporting commentary from lawyers which influenced public opinion. In the United Kingdom, strict Contempt of Court regulations restrict the media's reporting restrict the media's reporting of legal proceeding after a person is formally arrested. These rules are designed so that a defendant receives a fair trial in front of a jury that has not been tainted by prior media coverage. The newspapers the "Daily Mirror" and "The Sun" have been prosecuted under these regulations, although such prosecutions are rare.

---

[2] Media Trail- General Knowledge Today, *available at:* https://www.gktoday.in>media-trial (Last retrieved Feb 26th, 2024).

[3] Trail by Media, *available at:* https://en.m.wikipedia.org>wiki>Trail_... (Last retrieved Feb 26th, 2024).

2. Constitutionality of Media Trial in India

The expression 'freedom of the press' as such has not been defined or referred to in the Indian Constitution. However, Article 19(1)(a) of the Constitution dealing with one of the fundamental rights says:" All citizens shall have the right to freedom of speech and expression".[4] This freedom is referred to in general terms, and includes not only freedom of speech which manifests itself through oral utterance, but also freedom of expression, whether such expression is by written or printed matter.[5]

The original Article 19(1) and Article 19(2) of the Constitution (before amendment of the latter in June 1951) read as follows:

"19(1) All citizens shall have the right:

(a) To freedom of speech and expression;
(b) To assemble peaceably and without arms;
(c) To form associations or unions;
(d) To move freely throughout the territory of India;
(e) To reside and settle in any part of the territory of India;
(f) To acquire, hold and dispose of property;
(g) To practice any profession, or to carry on any occupation, trade or business.

"(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law insofar as it relates to or prevent the State from making any relating to libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State."

By the Constitution (First Amendment) Act, 1951, sub-section (2) of the Article 19 of the Constitution was replaced in the form in which it exists at present. Clause (2) of Article 19, as it stands now, reads as follows:

"Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the state from making any law, insofar as such imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."[6]

---

[4]Mukul Sahay, *Media Law and Ethics* 1 (Wisdom Press, New Delhi, 2011).
[5]*Ibid.*
[6]*Supra* note 4 at 2

Democracy is the rule of the people, a system which has three strong pillars. But as Indian society today has become somewhat unstable on its 3 legs the executive, the legislature and the judiciary, the guarantee of Article19 (1)(a) has given rise to a fourth pillar known as media or press. It plays the vital role of a conscious keeper, a watch dog of the functionaries of society and attempts to attend to the wrongs in our system, by bringing them to the knowledge of all, hoping for correction. It is indisputable that in many dimensions the unprecedented media revolution has resulted in great gains for the general public. Even the judicial wing of the state has benefited from the ethical and fearless journalism and taken suo-moto cognizance of the matters in various cases after relying on their reports and news highlighting grave violations of human rights.[7]

Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. Similarly, the person in power should be able to keep the people informed about their policy and projects, therefore, it can be said that freedom of speech is the mother of all other liberties. Keeping this view in mind Venkataramiah, J. of the Supreme Court of India in ***Indian Express Newspapers (Bombay) (P) ltd*** **v.** ***Union of India***[8] has stated: freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where televisions and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate Government cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.[9]

However, there are always two sides of a coin. With this increased role and importance attached to the media, the need for its accountability and professionalism in reportage cannot be emphasized enough. In a civil society no right to freedom, howsoever invaluable it might be, can be considered

---

[7]Constitutionality of Media Trial in India: A Detailed Analysis, *available at:* http://www.lawctopus.com>academike (Last retrieved Feb 27th, 2024).
[8](1985) 1 SCC 641 at p.664, para 32.
[9]*Ibid.*

absolute, unlimited or unqualified in all circumstances. The freedom of the media, like any other freedom recognized under the constitution has to be exercised within reasonable boundaries. With great power comes great responsibility. Similarly, the freedom under Article 19(1)(a) is correlative with the duty not to violate any law. In an increasingly competitive market for grabbing the attention of viewers and readers, media reports often turn to distortion of facts and sensationalism. The pursuit of commercial interests also motivates the use of intrusive newsgathering practices which tends to impede the privacy of the people who are the subject of such coverage. The problem finds it worth manifestation when the media extensively covers sub-judice matters by publishing information and opinions that are clearly prejudicial to the interest of the parties involved in litigation pending before the courts.[10]

However, sensationalised news stories circulated by the media have steadily gnawed at the guarantees of a right to a fair trial and posed a great threat to the presumption of innocence. What is more, a pervasive influence of the press is increasingly proving to be detrimental to the impartial decision-making process of the judiciary. Such news stories cannot easily be defended under the auspices of freedom of expression. Every institution is liable to be abused, and every liberty, if left unbridled, has the tendency to become a license which would lead to disorder and anarchy. This is the threshold on which we are standing today. Television Channels are bid to increase their television rating point (TRP) ratings are resorting to sensationalized journalism with a view to earn a competitive edge over the others.

In the recent times there have been numerous instances in which media has conducted the trail of an accused and has passed the verdict even before the court passed its judgment. Some famous criminal cases that would have gone unpunished but for the intervention of media, are ***Priyadarshini Mattoo case, Jessica Lal case, Nitish katara murder case***and***Bijal Joshi rape case***. The media however drew flak in the reporting of murder of *Arushi Talwar,* when it pre-empted the court and reported that her own father Dr. Rajesh Talwar, and possibly her mother Nupur Talwar, and were involved in her murder, the CBI later declared that Rajesh was not the killer. This phenomenon is popularly called as media trial. There is a heated debate between those who support a free press which is largely uncensored and those

[10]*Ibid.*

who placed a higher priority on an individual's right to privacy and right to fair trial. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that regardless of the result of the trial the accused person will not be able to live the rest of their life without intense public scrutiny. The counterargument is that the mob mentality exists independently of the media which merely voices the opinions which the public already has. There are different reasons why the media attention is particular intense surrounding a legal case: the first is that the crime itself is in some way sensational, by being horrific or involving children, the second is that it involved a celebrity either as victim or accused. Although a recently coined phrase, the idea that popular media can have a strong influence on the legal process goes back certainly to the advent of the printing press and probably much beyond. This is not including the use of a state-controlled press to criminalize political opponents, but in its commonly understood meaning covers all occasions where a reputation of a person has been drastically affected by ostensibly non-political publications. The problem is more visible when the matter involved big names and celebrities. In such cases media reporting can swing popular sentiments either way.[11]

The practice which has become more a daily occurrence now is that of media trials. Something which was started to show to the public at large the truth about cases has now become a practice interfering dangerously with the justice delivery system. And it highlights the enormous need of what is called 'responsible journalism'. Newspaper and magazine journalism and production, radio and television journalism and production are regulated and given advice by government appointed and independent advisory bodies, which seek to ensure a balance between ethical and legal considerations and possible infringement of the right to freedom of speech in all media. Any journalist or media producer should be aware of their responsibilities either under the law or as part of self-regulation in adhering to professional attitudes and practice.[12]

Trial by media has created a "problem" because it involved a tug of war between two conflicting principles – "Free Press" and "Free Trial", in both of

---

[11]*Ibid.*

[12]S.C. Sharma & Sweta Bakshi, *Mass Media and Social Structure* 200 (A.K. Publications, New Delhi,2009).

which the public are vitally interested. The freedom of the press stems from the right of the public in a democracy to be involved on the issues of the day, which affect them. This is the justification for investigative and campaign journalism.[13]

At the same time, the "Right to Fair Trial", i.e., a trail uninfluenced by extraneous pressures is recognised as a basic tenet of justice in India. Provisions aimed at safeguarding this right are contained under the Contempt of Courts Act, 1971 and under Article 129 and Article 215 of the Constitution of India. Of particular concern to the media are restrictions which are imposed on the discussion or publication of matters relating to the merits of a case pending before a Court. A journalist may thus be liable for contempt of court if he publishes anything which might prejudice a 'fair trial' or anything which impairs the impartiality of the court to decide a cause on its merits, whether the proceedings before court be a criminal or civil proceeding.[14]

The ever-increasing tendency to use media while the matter is sub-judice has been frowned down by the courts including the Supreme Court of India on the several occasions. In ***State of Maharashtra* v. *Rajendra Jawanmal Gandhi***[15] the Supreme Court observed that: there is "procedure established by law" governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and is to guided strictly by rules of law. If he finds the person guilty of an offence he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law."

The position was most aptly summed up in the words of Justice H. R. Khanna:- "Certain aspects of a case are so much highlighted by the press that the publicity gives rise to strong public emotions. The inevitable effect of that is to prejudice the case of one party or the other for a fair trial. We must consider the question as to what extend are restraints necessary and have to be exercised by the press with a view to preserving the purity of judicial process. At the

---

[13]Right to Privacy in Sting Operations of Media, *available at:* http://odisha.gov.in/emagazine/orissareview/2013/may/engpdf,61.pdf (Last retrieved March 4th, 2024).

[14]*Ibid.*

[15] 1997 (8) SCC 386.

same time we have to guard against another danger. A person cannot as I said speaking for Full Bench of the Delhi High Court in 1969, by starting some kind of judicial proceedings in respect of matters of vital public importance stifle all public discussions of that matter on path of contempt of court. A line to balance the whole thing has to be drawn at some point. It also seems necessary in exercising the power of contempt of court or legislature vis-à-vis the press that no hyper sensitivity is shown and due account is taken of the proper functioning of a press in a democratic society. This is vital for ensuring the health of democracy. At the same time the press must also keep in view its responsibility and see that nothing is done as may bring the courts or the legislature into disrepute and make the people lose faith in these institutions."

3. Due Process of law: Connotation

The "Due Process" in common legal system is shaped and nursed by customary practices. But the American legal system went one step ahead and gave a Statutory recognition to the Due Process. The terms 'The Law of the Land' and 'Due Process of Law' were transplanted to American soil by English colonists. U.S. Congress incorporated the Human Rights in the Constitution by first ten Amendments that are known as Bill of Rights. The Fifth Amendment is most important because it lays down *that person's life, libertyor property would not be deprived without due process of law.* The history of the Bill of Rights clearly showed that the authors of the amendments to the Constitution intended to apply only to federal laws but not to state laws. Therefore, 14th Amendment has applied Due Process to State.[16]

The Due Process has derived its meaning from the word 'the Law of the Land' used in the Section 39 of *Magna Carta* of 1215. Due process is the principle that the government must respect all of the legal right that is owed to a person according to the law. Due process holds the government subservient to the law of the land and protects individuals from the excesses of state. Due process is either procedural or substantive. Procedural due process determines whether governmental entity has taken an individual's life and liberty without the fair procedure required by the statutes. When a government harms a person without following the exact course of the law it constitutes a due process violation that offends against the rule of law. It may involve the review of the general fairness of a procedure authorised by the legislation. Substantive due

[16]A.H. Hawaldar, "Evolution of Due Process in India", *Bharati Law Review,* (2014).

process means the judicial determination of the compatibility of the substances of a law with the Constitution. The court is concerned with the Constitutionality of the underlying rule rather than the fairness of the process of the law. Therefore, every form of review other than that involving procedural due process is a form of substantive review.[17]

This interpretation has been proven controversial and is analogous to the concept of natural justice. This interpretation of due process is sometimes expressed as a command that the government shall not be unfair to the people. Various countries recognise some form of due process under their legal system, but specifics are often unclear. The process of government, which deprives a person's life and liberty, must comply with the due process clause. However, the 'due process' is not a term with a clear definition and the nature of the procedure clause depends on many factors.[18]

Two major events made 1868 a landmark in the development of due process. They were publications of Thomas M. Cooley's classic work, *Constitutional Limitations* and the adoption of the XIV Amendment. In ***Wynehamer v. New York***[19] the court held that the statute prohibiting sale of liquor curtailed the economic liberty of tavern owner who had been prosecuted under the Act. The court of appeals held that state police power could not be used to deprive the tavern owner of his liberty to practise his livelihood, a liberty protected by due process clause.[20]

Following adoption of XIV Amendment lawyers representing business interests opposed growing state regulation by raising substantive due process arguments. The arguments drew heavily on the treatise "*Constitutional Limitation*". First published in 1868, the year in which the XVI Amendment was ratified, the treatise went through several editions in the late 1800s and had a significant impact on the constitutional jurisprudence of laissez-faire era. Substantive due process focuses on the reasonableness of legislation. By contrast the procedural aspect emphasizes how government should enforce the legislation in individual cases.[21]

---

[17]*Id* at 109.
[18]*Ibid.*
[19]13 NY 378 (1856).
[20]Sirajudeen M., "Due Process of Law Has Figured Prominently from the Threshold of Constitution", 34(1&2), *ALR* 115 to 134 (2010).
[21]*Id* at 118.

3.1. Due Process to Protect Liberty

In ***Express Newspapers*** **v.** ***Union of India***[22] the Supreme Court exhaustively dealt with freedom of the press but stated that it cannot be unbridled. Like other freedoms, it can also suffer reasonable restrictions. The subject of trial by media is closely linked with Article 19(1)(a) which guarantees the fundamental right of 'freedom of speech and expression', and the extent to which that right can be reasonably restricted under Article 19(2) by law for the purpose of Contempt of Court and for maintaining the "Due Process" to protect liberty. The basic issue is about balancing the freedom of speech and expression on the one hand and undue interference with administration of justice within the framework of the Contempt of Courts Act, 1971, as permitted by Article 19(2). That should be done without unduly restricting the rights of suspects /accused under Article 21 of the Constitution of India for a fair trial according to "procedure established by law".[23]

There is no difficulty in stating that under our constitution, the fundamental right of freedom of speech and expression can, by law, be restricted for purpose of contempt of court. However, this can be done only by law passed by the legislature and the restrictions that can be imposed on the freedom must be "reasonable". If the restriction imposed by any law relating to contempt of court is unreasonable, it is liable to be struck down by the courts on the ground that the restriction is not proportionate to the object sought to be achieved by the restriction.[24]

As at present, the provisions of Section 3 of the Contempt of Courts Act, 1971 restrict the freedom of speech and expression which includes the freedom of the media, both print and electronic – if any publication interferes with or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding which is actually 'pending' (i.e. when charge sheet or challan is field, or summon or warrant is issued). Further section 3(1) protects the publication, if the person who made the publication had no reasonable grounds for believing that the proceeding was pending.[25] The starting point of the pendency of the case is only from the stage where the

---

[22]1959 SCR 12.

[23]Law Commission of India 200th Report on Trial by Media, Free Speech and Fair Trial under Criminal Procedure Code, 1973; August 2006, *available at:* lawcommissionofindia.nic.in>rep200 (Last retrieved March 8th, 2024).

[24]*Id* at 120.

[25]*Id* at 121.

court actually gets involved when a charge-sheet or challan is filed under Section 173 of the Code of Criminal Procedure, 1973 or when the criminal court issues summons or warrant against the accused. Any publication before such event if it interferes or tends to interfere with rights of suspects or accused for a fair trial, is not contempt.[26]

If a publication which is made before the filling of a charge sheet or challan, interferes or tends to interfere with the course of justice in connection with a criminal proceeding, the rights of a person who has been arrested and in respect of whom the prejudicial publication is made, are not protected by the law of Contempt of Court. But if such publications are prejudicial to the suspect or accused, will they not offend the principle of "due process rights" of a suspect or an accused as application in criminal cases and as declared by Supreme Court in ***Maneka Gandhi's*** **case**[27] that the words "procedure established by law" must be a law which is fair, just and equitable and which is not arbitrary or violative of Article 14 of the Constitution of India.[28] The court not only gave wider meaning to 'personal liberty' but also brought in the concept of procedural due process under the words 'procedure established by law'. The conversion of "procedure established by law" into "due process of law" was a matter which the Constituent Assembly had rejected. In this case Chandrachud, J. held that the procedure in article 21 had to be fair, just and reasonable, not fanciful, oppressive or arbitrary.[29]

If indeed a publication is one which admittedly interferes or tends to interfere or obstruct or tends to obstruct the "course of justice" in a criminal proceeding, in respect of a person under arrest[30], but the law gives it immunity under Section 3(2) because the publication was made before the filling of the charge sheet/ challan, is such a procedure fair, just and equitable?[31]

In several countries like U.K., Australia, America and New Zealand any publication made in the print or electronic media, after a person's arrest, stating that the person arrested has had previous convictions, or that he has confessed to the crime during investigation or that he is indeed guilty and the publication of his photograph etc. are treated as prejudicial and as violative of

---

[26]*Id* at 122.
[27]*Maneka Gandhi v. Union of India* AIR 1978 SC 597.
[28]*Supra* note 25 at 123.
[29]*Supra* note 22 at 128.
[30]*See* Section 3(1) of Contempt of Courts Act, 1971.
[31]*Supra* note 25 at 125.

"Due Process" required for a suspect who has to face a criminal trial. It is accepted that such publications can prejudice the minds of the jurors or even the judges (where jury is not necessary). The Supreme Court of India has indeed accepted, in more than one case, that judges may be 'subconsciously' prejudice against the suspect/accused. We have indeed referred to some opinions to the contrary expressed by Courts in USA where the freedom of speech and expression is wider than in our country. In USA the restriction are narrow, they must only satisfy the test of 'clear and present danger'.[32]

In India restrictions can be broader and can be imposed, if they are "reasonable". Restrictions intended to protect the administration of justice from interference can be included in the Contempt Law of our country under Article 19(2), if they are 'reasonable'. It is even accepted in our country that actual prejudice of Judges is not necessary for proving contempt. It is sufficient if there is a substantial risk of prejudice. The principle that "Justice must not only be done but must be seen to be done" applies from the point of view of public perception as to judges being subconsciously prejudiced as has been accepted in UK and Australia.[33] 'Reasonableness' which is no different from 'due process' be it procedural or substantive was not to be part of Article 21. For all purposes according to the makers of the Constitution, Article 22 was supposed to provide the 'due process' standards of Article21. And the standards being fixed, a procedure under Article 21 was not justiciable on grounds of 'unreasonableness'. It could only be challenge on the grounds of competency of the legislature and of not fulfilling the conditions laid down by Article 22. According to the constitutional scheme as envisaged by the framers, procedure was supposed to be reasonable as soon as it conformed to the conditions mentioned in Article22.[34]

In other words the legislature was to be the protector of life and personal liberty instead of the judiciary, as compared to the American system. But the role has been reversed today by judicial interpretation. The court has bestowed to itself the power to decide the reasonableness of the procedure under Article 21. This has lend a 'due process' character to Article 21. The court originally had no power to review the procedure under Article 21. This was not because

---

[32]*Ibid.*
[33]*Ibid.*
[34]Solil Paul, "Was 'Due Process' Due? - A Critical Study of the Projection of 'Reasonableness' in Article 21 since Maneka Gandhi", 1, *SCC* 1-10 (1983).

the constitution-makers had rejected or misunderstood the due process concept. The makers did understand the concept very well. 'Due Process' is the world-wide concept though not the words itself. In Indian Constitution the 'due process' effect is achieved by the term 'reasonableness'. And further the concept was no put to use for the right to life and personal liberty. In these two matters the legislature would have the last say. The judiciary would have no right to review on the grounds of 'reasonableness' any law made in furtherance of Article 21 unless and until it clearly undermined any other express provision of the Constitution. For all other fields of freedom – enumerated in Article 19 – the makers followed the due process model. Under Article 19 any law which contravenes or abridges any of the enumerated freedoms can be challenged on the ground of being an unreasonable restriction. And the judiciary will have the exclusive honour of judging the legislation on the ground of 'reasonableness'. But for life and personal liberty the due process concept was intentionally abandoned by the makers. The logical interpreted outcome being that the procedure prescribed by the legislature cannot be scrutinized under the court's power of judicial review on the ground of a 'just, fair or reasonable' procedure. So, there is no cause for the induction of the 'due process' or 'reasonableness' concept in Article 21, and in fact nor was it ever envisaged.[35]

In view of the above, such a publication made in respect of a person who is arrested but in respect of whom a charge sheet or challan has not yet been filed in a court, prejudice or may be assumed by the public to have prejudice the judge, and in that case a procedure, such as the one permitted by Section 3(2) of the Contempt of Courts Act, 1971 read with Explanation, does not prescribe a procedure which is fair, just and equitable, and is arbitrary and will offend Article 14 of the Constitution of India.[36]

Once is arrest is made and a person is liable to be produced in Court within 24 hours, if, at that stage, a publication is made about his character, past record of convictions or alleged confessions, it may subconsciously affect the Magistrate who may have to decide whether to grant or refuse to grant bail, or as to what conditions have to be imposed or whether the person should be remanded to police custody or it should be judicial remand. Further, if after a publication, a bail order goes against the arrested person, public may perceive

[35]*Id* at 10.
[36]*Supra* note 25 at 125.

that the publication must have subconsciously affected the magistrate's mind.[37]

The Contempt of Courts Act, 1971 can therefore be validly amended to say that such prejudicial publication made even after arrest and before filing of charge sheet/ challan will also amount to undue interference with administration of justice and hence would-be contempt and such a restriction is 'reasonable' and proportionate to the object, protection of rights of the arrested person and the administration of justice.[38]

4. **Impact of Media Trial in Judicial Proceedings**

Media is regarded as one of the pillars of democracy. Media has wide ranging roles in the society. Media plays a vital role in moulding the opinion of the society and it is capable of changing the whole viewpoint through which people perceive various events. The media can be commended for starting a trend where the media plays an active role in bringing the accused to hook. Freedom of media is the freedom of people as they should be informed of public matters. It is thus needless to emphasise that a free and a healthy press is indispensable to the functioning of democracy. In a democratic set up there has to be active participation of people in all affairs of their community and the state. It their right to be kept informed about the current political social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider forming broad opinion in which they are being managed, tackled and administered by the government and their functionaries. To achieve this objective people, need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their future course of action. The right to freedom of speech and expression is contained in Article 19 of the Constitution. However, the freedom is not absolute as it is bound by the sub clause (2) of the same article. However, the right of freedom and speech and expression does not embrace the freedom to commit contempt of court.[39]

In India, trial by media has assumed significant proportions. Some famous criminal cases that would have gone unpunished but for the intervention of media are ***Priyadarshini Mattoo*** **case,** ***Jessica Lal*** **case,** ***Nitish***

---

[37]*Supra* note 25 at 126.
[38]*Supra* note 25 at 127.
[39]Effect of Trial by Media before Courts, *available at:* http://www.lawteacher.net>?effect-of-trial (Last retrieved March 4th, 2024).

Katara* murder case** and ***Bijal Joshi Rape* case**. The media, however, drew criticism in the reporting of murder of *Aarushi Talwar,* when it pre-empted the court and reported that her own father Dr. Rajesh Talwar, and possible her mother Nupur Talwar were involved in her murder. The media has again come in focus in its role in Arushi Murder case. The concept of media trial is not a new concept. The role of media was debated in the ***Priyadarshini Mattoo* case**, ***Jessica Lal murder case and likewise many other high-profile cases. There have been numerous instances in which media have been accused of conducting the trial of the accused and passing the 'verdict' even before the court passes its judgment. Trial is essentially a process to be carried out by the courts. The trial by media is definitely an undue interference in the process of justice delivery. Before delving into the issue of justifiability of media trial it would be pertinent to first try to define what actually the 'trial by media' means. Trial is a word which is associated with the process of justice. It is the essential component on any judicial system that the accused should receive a fair trial.[40]

Media has now reincarnated itself into a 'public court' (Janta Adalat) and has started interfering into court proceedings. It completely overlooks the vital gap between an accused and a convict keeping at stake the golden principles of 'presumption of innocence until proven guilty' and 'guilty beyond reasonable doubt'. Now, what we observe is media trial where the media itself does a separate investigation, builds a public opinion against the accused even before the court takes cognizance of the case. By this way, it prejudices the public and sometimes even judges and as a result the accused, that should be assumed innocent, is presumed as a criminal leaving all his rights and liberty unrepressed. If excessive publicity in the media about a suspect or an accused before trial prejudices a fair trial or results in characterising him as a person who had indeed committed the crime, it amounts to undue interference with the "administration of justice", calling for proceedings for contempt of court against the media. Unfortunately, rules designed to journalistic conduct are inadequately to prevent the encroachment of civil rights.[41]

The Contempt of Court Act defines contempt by identifying it as civil and criminal. Criminal contempt has further been divided into three types:

---

[40]*Ibid.*
[41]*Ibid.*

Scandalizing; Prejudice Trial; and Hindering the Administration of Justice. This provision owes its origin to the principle of natural justice; 'every accused has a right to a fair trial' clubbed with the principle that 'justice may not only be done it must also seem to be done'. There are multiple ways in which attempts are made to prejudice trial. If such cases are allowed to be successful will be that the person will be convicted of offence which they have not committed. Contempt of court has been introduced in order to prevent such unjust and unfair trials. No publication, which is calculated to poisons the mind of jurors, intimidate witnesses or parties or to create an atmosphere in which the administration of justice would be difficult or impossible, amounts to contempt. Commenting on the pending cases or abuse of party may amount to contempt only when a case is triable by a judge. No editor has the right to assume the role of an investigator to try to prejudice the court against any person.

The law as to interference with the due course of justice has been well stated by the chief justice Gopal Rao Ekkbote of Andhra Pradesh High Court in the case of ***Y.V. Hanumantha Rao* v. *K.R. Pattabhiram and Anr***[42] Where in it was observed by the learned judge that: … "When litigation is pending before a court, no one shall comment on it in such a way there is a real and substantial danger of prejudice to the trial of the action, as for instance by influence on the judge, the witnesses or by prejudicing mankind in general against a party to the cause. Even if the person making the comment honestly believes it to be true, still it is a contempt of court if he prejudices the truth before it is ascertained in the proceedings. To this general rule to fair trial, one may add a further rule and that is that none shall, by misrepresentation or otherwise, bring unfair pressure to bear on one of the parties to a cause so as to force him to drop his complaint or defence. It is always regarded as the first importance that the law which we have just stated should be maintained in its full integrity but in so stating the law we must bear in mind that there must appear to be 'a real and substantial danger of prejudice'".[43]

5. Conclusion and suggestions

The media has become the backbone of the news industry and plays the role of the public's eyes and ears. Any and every information that the public receives regarding an event is looked under the spectacles of media and then conveyed through the mouthpiece that is media itself. What is the authenticity

[42] AIR 1975 AP 30.
[43] *Ibid.*

of such information and to what extend should the public get convinced by it lands the public in a rather soupy situation After all, it is only natural for them to believe what they are sold by an upper hand authority like media. But what happens when the news supplied to the public through media and subsequently through judicial process is poles apart?[44]

In this context, there lies a minimal expectation by media to confirm to their jurisdiction of affairs and ensure that what they convey is free of bias. In the last few years, the media has not only dared to operate outside its bounds but also reach a point where they assume the role of the judiciary in deciding a case. Once there is a case which is relatively of any public importance, it will start its own investigation process, question witnesses and raise fingers upon the character or morals of the accused. In few cases it may even go to the extent of driving a case to its conclusion.[45]

Although the public may seem content with this cycle of events, it is not legal at any point. It quashes the basic principles of 'presumption of innocence until proven guilty' and 'guilt beyond reasonable doubt'. The interference of the media goes to the extent of causing a prejudice in the eye of the public against the accused even before he is extended a fair trial and this in turn affects his trial. Even if he is acquitted after the trial, it does not change the public's opinion about him based on what was conveyed by media. This amounts to double victimisation of the accused; by the media as well as the judiciary.

Cases which are driven by the media usually involve high publicity coupled with well-staged drama and is targeted at cases that could be sensational due to their horrendous nature or due to the involvement of an influential person. This is becoming a trend and seems to have substituted the lack of daily soaps on news channels. Few media driven cases in the recent past include the Arushi murder case, Jessica Lal murder case, BMW accident case, Nirbhaya rape case, Nira Radia case. Although the media did a commendable job through reopening of the cases, it only goes to raise questions about the law enforcements in the country. Also, there must be due emphasis placed upon a fair trial and court procedure which the media regularly prejudices.

---

[44] Trail by Media: Growing Influence of Media over Implementation of Law (Priyanka Mittal Final Year Campus Law Centre, Faculty of Law, Delhi University), *available at:* ijlljs.in>trial-by-media-growing-influence (Last retrieved March 8th, 2024).
[45] *Ibid.*

This brings us to the extent of freedom offered to the Indian Press and the right to privacy of the accused. For instance, in the UK, Sweden, France and Netherlands there is a need to acquire the permission of the person being photographed or published. In India there are no such guidelines to seek the consent of the person being photographed and published by the media. This result into media overstepping its boundary and publishing the pictures of an accused even before the trial proceedings. Every day the media slips over the boundaries of privacy while leaning on public interest/good and much is left to the discretion of the media especially by the new forms of electronic media where there is more ambiguity than traditional print media.

Currently, there are also no norms set for the conducting of a media trial. A media trial usually consists of involvement of a highly reputed person or company which forms the reason for the media to sensationalise the news even more. The exposing of a case by the media must not be seen as the end. It must be seen as a facilitator, the end to which shall be decided by the judicial system.

Finally, the laces of the legal shoes of the country must be tightened to avoid trios and falls. To start with, the recommendations under the 200th report of law commission titled, "Trial by Media: Free Speech vs. Fair Trial under Criminal Procedure (Amendment to the Contempt of Court Act, 1971)" must be adhered to. There must be proper regulation of media by the courts in order to avoid the regular clash. Also, instead of blindly adopting the legal provisions of other countries, we must assess our own country with respect to cultural and economic variables and accordingly arrive at a consensus between the extent of freedom of the press and contempt of court.

The above analysis shows us the gravity of the situation as it persists in India and the fact that it still at a nascent stage. The fact that there is regular clash between the media and law, goes to show that there is ambiguity about their individual roles and powers. Instead of choosing sides and blaming either one, it must be seen as a perfect time to pave the two respective bridges leading to their common road of definitive justice.

1.1 Suggestions

- **Contempt of Courts Act, 1971**: Courts should proactively take action against media reports that interfere with judicial proceedings.
- **Article 19(2) of the Constitution**: Reasonable restrictions on press freedom must be enforced in cases where reporting prejudices fair trials.

- **Indian Penal Code (IPC) & CrPC Provisions**: Strengthening sections related to defamation (Section 499), publication of false news (Section 505), and obstruction of justice.
- **Pre-trial Gag Orders**: Courts should issue restrictions on media coverage of **high-profile cases** to prevent undue influence on investigations.
- **Sub judice Rule**: Reinforce the principle that cases under trial should not be publicly debated, preventing speculative reporting.
- **Guidelines for Responsible Court Reporting**: Media must be restricted from sensationalizing or publishing **unverified allegations**.
- **Press Council of India (PCI)**: Should be given more **enforcement powers** rather than just issuing advisories.
- **News Broadcasting & Digital Standards Authority (NBDSA)**: Should impose stricter fines and penalties for unethical reporting.
- **Stronger Oversight on Social Media**: Regulations should be introduced to prevent **fake news and trial by social media**.
- **Fast-Tracking Contempt Cases Against Media Houses**: Courts must take immediate action against misleading or prejudicial reporting.
- **Issuing Suo Moto Orders Against Media Trials**: The judiciary should act on its own when media reports disrupt fair trials.
- **Special Courts for Media-Related Cases**: Dedicated tribunals could be set up to handle complaints against media misconduct in judicial matters.
- India needs a **dedicated law to regulate media trials** with clear provisions on what constitutes a **"trial by media"** and appropriate **punishments for violations**.
- This law should balance **press freedom with judicial fairness** and include provisions for **media accountability, penalties for biased reporting, and fair trial safeguards**.
- **Mandatory Media Ethics Training**: Journalists should be trained on **legal aspects of court reporting**.
- **Public Awareness on Media Trials**: The public should be educated on how media trials violate legal rights and due process.
- **Promoting Investigative, Not Sensational, Journalism**: Encourage responsible journalism that informs rather than manipulates public opinion.

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 139-161

Redefining Global Health Law: Best Practices and Responses to the Covid-19 Pandemic

***Harsh Mahaseth*[*]*& Shifa Qureshi*[**]

Abstract

The COVID-19 pandemic, characterized by the rapid development of effective vaccines, also marks the first time non-pharmaceutical interventions have been widely employed to combat respiratory disease transmission. As the pandemic continues to escalate in many regions, countries are increasingly utilizing non-pharmaceutical interventions like "lockdowns" to mitigate its impact. This study examines the approaches taken by Taiwan, Vietnam, Singapore, and New Zealand—four jurisdictions that have successfully eliminated or contained the spread of COVID-19. Comparative analyses of these strategies offer valuable insights for cross-country learning and knowledge sharing.

Contrary to expectations, Singapore, drawing from lessons learned during the 2003 SARS epidemic, responded swiftly and aggressively to the virus. Similarly, South Korea's experience with the 2015 MERS outbreak led to improved response capabilities and preparedness for the novel virus. New Zealand adopted an explicit elimination strategy, employing a four-level alert system. Taiwan, benefiting from its response to the SARS pandemic, showcased how preparedness can minimize the need for severe lockdowns. Vietnam, on the other hand, effectively implemented early-stage policy responses, regularly disseminated COVID-19 documents, and prioritized public awareness to control the spread and protect citizens.

A common feature among these countries was the imposition of travel restrictions and the implementation of accurate and effective contact tracing, often enhanced through smartphone technologies. In several jurisdictions, the dominant strategy appeared to be elimination. The responses demonstrated that rapid and systematic interventions focusing on testing, contact tracing, isolation, strict border control, and clear public health messaging can

[*]Assistant Professor and Assistant Dean, Jindal Global Law School, O.P. Jindal Global University, Sonipat, India.
[**]Law Student, Aligarh Muslim University, India.

significantly curb viral transmission. Notably, the Taiwanese approach showed that elimination or suppression does not necessarily entail lockdowns. A crucial lesson from recent years is the importance of strengthening global public health laws. The International Health Regulations (IHR), developed in the 19th and 20th centuries, serves as a pivotal document in global public health law. Unfortunately, the IHR had become outdated and less effective by the time SARS emerged as a global health challenge. This highlights the need for revitalizing global public health law. The authors aim to analyze different jurisdictions and propose amendments and recommendations to enhance the effectiveness of global public health law.

Keywords: *COVID-19; Public Health; Law; Global Health Law; Health Law*

1. Introduction

Various disease outbreaks have occurred since 1900 that have either become global pandemics or have the potential to do so. Among these instances are the 1918 (H1N1), 1957 (H2N2), 1968 (H3N2), and 2009 (H1N1) influenza pandemics, the 1997 H5N1 influenza epidemic in Hong Kong, the Middle East Respiratory Syndrome (MERS-CoV) in 2012, and the Sudden Acute Respiratory Syndrome (SARS-CoV) in 2003. It has led several countries to develop protocols and infrastructure to handle and react to such threats. Countries have reacted to the current COVID-19 pandemic (caused by the SARS-CoV-2 virus) with a variety of public health measures, including border restrictions, quarantining, and physical distancing.[1]

Under the strain of the COVID-19 pandemic, health systems across the globe have failed in ways that haven't been seen since the Great Influenza Pandemic of 1918, causing widespread disruptions throughout the world. Borders have been blocked, businesses have been stalled, and everyday life has been brought to a halt. Governments across the globe have tried to maintain physical distancing among their communities in the absence of a treatment or vaccine; nevertheless, vulnerable, marginalised, and impoverished people have encountered structural barriers in fulfilling these essential imperatives to control the disease. This uneven risk of infection is increasing health inequalities both within and between countries, with poor health systems unable to adopt mitigation measures, test at-risk populations, or treat infected

[1] Jennifer Summers et al., "Potential lessons from the Taiwan and New Zealand health responses to the COVID-19 pandemic", 4 *The Lancet Regional Health - Western Pacific* 100044 (2020).

people. As the coronavirus spreads across unprepared countries, national legal measures have proved ineffective in preventing, detecting, or responding to the pandemic, and the sheer magnitude of human, societal, and economic turmoil has placed global health law in a position of unprecedented difficulty.[2] The COVID-19 crisis has had a wide range of regional and local impacts, with major implications for crisis management and policy responses. Beyond the short-term health and economic shocks, the crisis's long-term impacts on human capital, productivity, and behaviour may be long-lasting. The COVID crisis has accelerated certain pre-existing tendencies, notably digitalisation. It has jolted the world, causing waves of change to roll over the globe on a broad variety of potential trajectories.[3] The pandemic has wreaked havoc on people's lives in all nations and communities and will have a negative impact on global economic development in 2020 unlike anything seen in almost a century. According to estimates, the virus slowed global economic growth by -3.4 percent to -7.6 percent in 2020, with a rebound of 4.2 percent to 5.6 percent expected in 2021. In 2020, global commerce has been expected to decrease by 5.3 percent, but it is expected to increase by 8.0 percent in 2021.[4]

For almost a year, governments and society have been turning inside to combat an unnamed foe, revealing conflicting structures, weaknesses, and political objectives. Taiwan, Vietnam, New Zealand, and Singapore were among the countries that efficiently handled COVID-19 disease by putting in place robust measures. Travel restrictions, quarantines, social isolation, and increased sanitation were all implemented in these nations.[5] People who missed work because of the quarantine were compensated in Singapore, where three university hostels were transformed into quarantine facilities. Officials then started actively tracking all known infected people's connections, utilising data from travel agencies, hotels, and surveillance video. Despite the

---

[2] Lawrence O. Gostin, Roojin Habibi & Benjamin Mason Meier, "Has Global Health Law Risen to Meet the COVID-19 Challenge? Revisiting the International Health Regulations to Prepare for Future Threats", 48 *J. Law Med Ethics* 376–381 (2020).

[3] Dorothée Allain-Dupré et al., "The territorial impact of COVID-19: Managing the crisis across levels of government", *OECD* (2020),*available at:*<https://www.oecd.org/coronavirus/policy-responses/the-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government-d3e314e1/> (Last retrieved Jul 1, 2021).

[4] James K. Jackson et al., "Global Economic Effects of COVID-19" (2021),*available at:*<https://fas.org/sgp/crs/row/R46270.pdf> (Last retrieved Jul 14, 2021).

[5] Syed Amin Tabish, "COVID-19 pandemic: Emerging perspectives and future trends", 9 *J. Public Health Res* 1786 (2020).

suspension of mass gatherings, schools and workplaces have remained open to reduce the outbreak's social and economic consequences. All students and staff were subjected to daily health checks and temperature checks.

Taiwan conducted post-landing screening of passengers aboard aircraft. As a result of the initial case it imported, it subsequently suspended all aircraft arriving from Wuhan and other areas of China. Despite the existence of state-run facilities, it relied more heavily on home quarantines than other nations. Non-compliance with quarantine orders may result in a fine of up to INR 2,500,000. Religious activities and mass gatherings were outlawed.

Despite its proximity to China, where the virus originated, Vietnam has had few cases and no deaths.[6] The success of Vietnam to date has been largely attributed to early governmental measures like lockdown, mobility restrictions, community isolation and quarantine, and rigorous contact tracking, among others.

New Zealand's early reaction followed its 2017 influenza pandemic plan, which focused on 'flattening the curve' and postponing the epidemic peak to minimise the pandemic's health effect.[7] Although entrance restrictions and self-isolation/quarantine measures for travellers from COVID-19 hotspots were imposed in February, cases in New Zealand began to spike in early March. On March 23, the administration signalled a new approach by announcing a complete lockdown of the nation (at the highest Alert Level 4) that went into force on March 26 with exceptions for critical workers/businesses. The lockdown was backed by a national state of emergency, which gave extraordinary authorities to deal with the epidemic.

The COVID-19 pandemic has clearly shown that human rights, the rule of law, democratic institutions, and global solidarity are all necessary components of successful public health emergency preparation and response efforts. Every debate at the World Health Assembly (WHA), which took place between May 24 and May 31, 2021, reiterates the need to improve international legislative standards to guarantee future global pandemic preparedness.[8] Despite positive comments from dozens of WHO Member States, including support for a

---

[6] *Ibid.*

[7] Summers et al., *supra note* 1.

[8] Roojin Habibi et al., "Reshaping Global Health Law in the Wake of COVID-19 to Uphold Human Rights", *Health and Human Rights Journal* (2021), *available at:*<https://www.hhrjournal.org/2021/06/reshaping-global-health-law-in-the-wake-of-covid-19-to-uphold-human-rights/> (Last retrieved Jul 1, 2021).

proposed Pandemic Treaty, there is a severe indication that human rights responsibilities may be abandoned, weakened, or misinterpreted in attempts to reform global health legislation.[9] The WHO has postponed[10] key multilateral decisions, including such '*negotiations on whether to negotiate*' a formal intergovernmental process, until a November 2021 Special Session of the WHA. However, the coming months will necessitate urgent discussions in local and multilateral fora to establish principled preparedness through human rights standards that are fundamental to international health law.

2. Methodology

To explore the evolving challenges and potential reforms in international health law, this paper employs a comprehensive methodology that integrates both qualitative and quantitative approaches. The study begins with a thorough literature review to gather relevant information on the historical development of international health law, recent global health crises, and existing frameworks such as the International Health Regulations (IHR). This involves systematically searching academic databases for peer-reviewed journal articles, books, and official reports from organizations like the World Health Organization (WHO). The literature review aims to synthesize current trends, identify gaps, and highlight emerging themes in global health governance.

Following the literature review, the paper incorporates case studies of selected countries—Singapore, South Korea, New Zealand, Vietnam, and Taiwan. These case studies analyze each country's response to recent pandemics, particularly COVID-19, focusing on their health policy measures and public health infrastructure. The case studies are based on government reports, academic evaluations, and other relevant documentation. This comparative analysis seeks to uncover effective strategies and common challenges, providing valuable insights into practical responses to global health crises.

The authors also conduct a policy analysis to evaluate the effectiveness of existing international health regulations and propose potential improvements.

---

[9] Sara (Meg) Davis, "An international pandemic treaty must centre on human rights", *The BMJ* (2021),*available at:* <https://blogs.bmj.com/bmj/2021/05/10/an-international-pandemic-treaty-must-centre-on-human-rights/> (Last retrieved Jul 1, 2021).

[10] World Health Organization, "Special session of the World Health Assembly to consider developing a WHO convention, agreement or other international instrument on pandemic preparedness and response" (2021), *available at:*<https://apps.who.int/gb/ebwha/pdf_files/WHA74/A74_ACONF7-en.pdf> (Last retrieved Jul 1, 2021).

This involves reviewing official documents and policy statements from international health organizations, analyzing previous reviews of the IHR, and considering expert recommendations. The policy analysis aims to identify legal and practical challenges in enforcing international health laws and to highlight areas where enhancements are needed.

The authors synthesize the findings from the literature review, case studies, and policy analysis, to develop actionable recommendations for improving international health governance. The synthesis process involves consolidating insights and data from various sources to form a cohesive argument for proposed changes or new frameworks in international health law.

3. Cases of Success: Taiwan, Vietnam, New Zealand, Singapore & South Korea

The unifying element in all of these nations was imposing travel restrictions and contact tracking technologies which were accurate and effective and even improved via cellphones. Elimination seems to be the prevailing approach in a number of jurisdictions. Each country's responses suggest how quick and systematic efforts focusing on testing, effective contact tracking and isolation, tight border control, and clear public health messages may significantly reduce viral transmission.

3.1 Taiwan

Taiwan has maintained its impressive performance in the fight against Covid-19, a testimony to the advantages that early intervention and diligent surveillance may bring to the table while fighting a pandemic. Unlike other nations, Taiwan didn't use the sort of harsh countrywide lockdowns.[11] In recent times, however, it has restricted inbound travel to anybody who is not a Taiwanese citizen or permanent resident.[12] Despite being a neighbour of China, the epicentre of a global pandemic, Taiwan has managed to respond admirably under difficult conditions, with just 443 cases and seven deaths this week.

To combat the virus, rather than shutting down its economy for weeks to slow the infection, Taiwan chose a different approach than many other countries. After quickly closing its borders and banning the export of surgical masks, the

---

[11] Summers et al., *supra note* 1.

[12] Nick Aspinwall, "Taiwan Tightens Pandemic Measures After First Local COVID-19 Case Since April", (2021), *available at:*<https://thediplomat.com/2021/01/taiwan-tightens-pandemic-measures-after-first-local-covid-19-case-since-april/> (Last retrieved Jul 1, 2021).

government used contact tracing and mobile Sim-tracking to identify and ensure those placed in quarantine were actually complying with the rules. Taiwan has a single-payer healthcare system, medical authorities provided daily briefings to the public, and businesses were able to remain open by taking strong preventative steps such as checking temperatures and handing out hand sanitiser before customers could enter commercial premises.

The effective management of COVID-19 in Taiwan was perhaps achieved via the combination of case-based interventions with population-based interventions that had widespread adherence.[13] In Taiwan, the experience has shown that collaboration between public health experts and members of the general population is essential to reducing the severity of the pandemic's consequences.

Taiwan's experience with SARS almost two decades ago helped prepare the territory for pandemics.[14] Taiwan has also used its own reaction as a springboard for diplomatic outreach,[15] sending much-needed medical equipment to other hard-hit nations that it could spare (including masks with the words 'Made in Taiwan' printed on them). However, despite the fact that the usage of SIM-tracking has given rise to certain valid privacy issues.[16] Nonetheless, for the time being, Taiwan's reaction is considered to be among the finest in the world.[17]

3.2 New Zealand

New Zealand, a smaller and distant nation with a population of just five million people, may have benefitted from its isolation, small size, low

---

[13] Ta-Chou Ng et al., "Comparison of Estimated Effectiveness of Case-Based and Population-Based Interventions on COVID-19 Containment in Taiwan", 181 *JAMA Intern Med* 913 (2021).

[14] Kathrin Hille, "Taiwan's early success against coronavirus cushions economy", *Financial Times*, April 20, 2020,*available at:*<https://www.ft.com/content/b59c238c-d004-44a2-bd9f-c5b1e7a5bc8a> (Last retrieved Jul 1, 2021).

[15] Nectar Gan & Brad Lendon, "Taiwan's success in fighting coronavirus has bolstered its global standing. This has infuriated Beijing", *CNN*, *available at:*<https://www.cnn.com/2020/05/15/asia/china-taiwan-coronavirus-ties-intl-hnk/index.html> (Last retrieved Jul 1, 2021).

[16] "Coronavirus: Under surveillance and confined at home in Taiwan", *BBC News*, March 24, 2020,*available at:*<https://www.bbc.com/news/technology-52017993> (Last retrieved Jul 1, 2021).

[17] Ian Bremmer, "The Best Global Responses to the COVID-19 Pandemic, 1 Year Later", *Time* (2021), *available at:*<https://time.com/5851633/best-global-responses-covid-19/> (Last retrieved Jul 18, 2021).

population density, and the late start, which allowed it to learn from others (such as China and Italy) and improve its own situation. However, thorough cooperation between leaders, agents, and followers continues to be a significant factor in the country's achievement of one of the lowest COVID-19 death rates in the world.

New Zealand's first case[18] was identified on February 28th, and the government moved efficiently compared to other governments to shut down the country—less than three weeks later, the country closed its borders to outside visitors, and a week later, the country had not only shut down non-essential businesses but had also imposed a 'level 4 lockdown'[19], which meant that people could only interact with people in their immediate vicinity (accompanied by emergency text messages that plainly explained what was expected of individuals) in an effort to completely *eliminate* the virus. The adoption of a social bubble technique allowed for the gradual formation of tiny, exclusive social groups; there was no need for physical distancing at alert level one, and mask-wearing became obligatory on public transit in August. To track and assess progress and adjust to changing conditions, the government established an Epidemic Response Committee. It played an excellent role in organising and overseeing the agents involved in the COVID-19 response. It sent the New Zealand Defence Force to assist oversee the quarantine and keep international visitors out, an expensive move for a country that is highly reliant on tourism and to determine when and how much to loosen the limitations, a four-level (highest alert) alert system was used. Despite the country's eventual success, there were some early debacles, such as the compassionate release of two women without proper testing; the failure to implement effective quarantine measures for international passengers or returning citizens (during the post-lockdown period); and inadequate security at quarantine hotels. The healthcare system had not been well equipped. Testing proceeded at a slower pace at first but eventually picked up speed. Nurses and healthcare professionals did not have enough personal protective

[18] Damien Cave, "Vanquish the Virus? Australia and New Zealand Aim to Show the Way", *The New York Times*, April 24, 2020,*available at:*<https://www.nytimes.com/2020/04/24/world/australia/new-zealand-coronavirus.html> (Last retrieved Jul 1, 2021).

[19] Chloe Taylor, "How New Zealand's "eliminate" strategy brought new coronavirus cases down to zero", *CNBC* (2020),*available at:*<https://www.cnbc.com/2020/05/05/how-new-zealand-brought-new-coronavirus-cases-down-to-zero.html> (Last retrieved Jul 1, 2021).

equipment. However, appropriate input on the flaws enabled the government to intervene and commit to investing the US $55 million to improve healthcare capacity. The government gradually learned from its errors, which were quickly rectified.

3.3 Vietnam

The Vietnamese government responded quickly and effectively. During the first wave, there were no COVID-19 fatalities for many months, according to the data. Between the first and second waves of the pandemic, the country's mortality rate per capita (0.4 per million) stayed constant. Following the identification of the first case of COVID-19 infection on January 23, 2020, the Emergency Epidemic Prevention Centre (EEPC) was established the following day, and a pandemic was proclaimed on February 1, 2020. According to the findings of one research, "*early responses prevented around 35,000 infected cases and 350 deaths from COVID-19*."[20]

Additionally, the government has imposed land-border restrictions as well as airport screening in an attempt to avoid the importation of cases from other countries. Numerous other public health measures also include quarantining infected patients, school closures, festival and social event cancellations, social distancing, temperature screening at retail stores and large buildings, and requisitioning military units, university halls, and dormitories as quarantine camps, which gained public trust. As an instance of the government's seriousness, the decision to quarantine a town of 10,000 people near Hanoi after four instances of the disease were discovered there is noteworthy.[21]

To guarantee timely distribution of information on orders, guidelines, and execution, a National Steering Committee, headed by the vice-prime minister, as well as committees in each ministry and province, was formed. As part of the information initiatives, an official website was developed. In addition, information about the infection was disseminated on a regular basis by major media outlets.

---

[20] Quang Van Nguyen, Dung Anh Cao & Son Hong Nghiem, "Spread of COVID-19 and policy responses in Vietnam: An overview", 103 *International Journal of Infectious Diseases* 157–161 (2021).

[21] Bui Thi Thu Ha et al., "Combating the COVID-19 Epidemic: Experiences from Vietnam", 17 *International Journal of Environmental Research and Public Health* 3125 (2020).

NCOVI, a smartphone application, was developed to track down high-risk patients. It has been made mandatory for individuals to use the app to disclose their health conditions as well as their travel history. The centres of disease control at all levels of administration rigorously enforced two strategies: (1) '*three in advance*,' which means identify, proactively prevent, and plan; and (2) '*four on the spot*,' which means onsite resources, onsite leadership, onsite facilities, and onsite logistics.[22]

Vietnam was confronted with a new outbreak of the disease in September 2020 in Da Nang, the country's largest city, which draws millions of visitors each year. With the help of widespread testing and tracking, this was soon brought under control. Healthcare professionals from Hanoi were sent to help the local personnel. The virus was stopped from spreading to other areas due to quick government intervention and local involvement by the people and their communities. According to the findings of a study conducted in rural and urban regions, Vietnam has only a modest degree of operational capability at the grassroots level, which has to be improved in order to successfully respond to future pandemic problems in the country.[23]

The public had a high degree of trust and confidence in the prime minister and his government. More than 62 percent of those polled approved of the Vietnam government's efforts in a study of 45 countries.[24] Despite its poverty and inadequate healthcare system, Vietnam has been one of the most successful countries in decreasing COVID-19 infections.[25]

3.4 South Korea

The South Korean administration is well-known for its foresight and for being well-prepared. Before the first case of COVID-19 was identified, quarantine facilities and screening procedures were in place. A ban on travel was imposed, the social distance was enforced, and extensive testing was carried out in testing centres, drive-in stations, walk-in centres, and public phone

---

[22] Maurizio Trevisan, Linh Cu Le & Anh Vu Le, "The COVID-19 Pandemic: A View from Vietnam", 110 *Am J Public Health* 1152–1153 (2020).

[23] Sanja Ivic, "Vietnam's Response to the COVID-19 Outbreak", 12 *Asian Bioethics Review* 341–347 (2020).

[24] Bach Xuan Tran et al., "The operational readiness capacities of the grassroots health system in responses to epidemics: Implications for COVID-19 control in Vietnam", 10 *Journal of Global Health* 011006 (2020).

[25] Bremmer, *supra note* 17.

booths, among other locations (where medical professionals were present to swab patients).

The country established a central command under the leadership of the prime minister, a Central Disaster and Safety Countermeasures Headquarters with two deputies, the Health Minister, who is supported by the Centres of Disease Control, and the Minister of Interior and Safety, whose responsibilities include, among other things, coordinating the efforts of the central and local governments. To the local authorities, a commitment was made to make up for any shortages in medical supplies or hospital beds that may exist.

It didn't take long for the private sector to mobilise in order to manufacture medical equipment and supplies, such as testing kits, to satisfy both local and international demand. The South Korean government has already begun manufacturing 100,000 kits every day and testing almost 300,000 individuals by the end of March 2020.[26] It was possible to minimise the requirement for the mass redeployment of medical resources because of the decentralisation of testing facilities.

Among the other factors contributing to South Korea's success are a well-coordinated network of public health centres at the district level, which routinely sends information to the country's centres for disease control and prevention. Aside from that, the prompt employment of epidemiologists to conduct mass testing, the centralization of decision-making, and the adoption of invasive methods (such as the deployment of drones and an app that collects medical data on people) to ensure compliance were all beneficial. IT companies (for instance, NAVER) supplied servers to facilitate the dissemination of information on patients' movements.

South Korea, as a major global economy, has a significant amount of economic and technical resources at its disposal. Aside from that, it has knowledge acquired from dealing with the MERS outbreak in 2015, as well as a population that is ready to accept the trade-offs in privacy[27] that come with deploying technology like real-time monitoring of COVID-19 patients for the

---

[26] . Sabinne Lee, Changho Hwang & M. Jae Moon, "Policy learning and crisis policy-making: quadruple-loop learning and COVID-19 responses in South Korea", 39 *Policy and Society* 363–381 (2020).

[27] Aaron Holmes, "South Korea is relying on technology to contain COVID-19, including measures that would break privacy laws in the US — and so far, it's working", *Business Insider* (2020),*available at:*<https://www.businessinsider.com/coronavirus-south-korea-tech-contact-tracing-testing-fight-covid-19-2020-5> (Laast retrieved Jul 1, 2021).

benefit of public health (and a nationalised health system). A significant government stimulus programme,[28] which includes cash transfers to the vast majority of people, is assisting the country's populace in coping with the current economic turmoil.

South Korea, like Vietnam and New Zealand, had a good communications infrastructure in place to educate the public about COVID-19. Following the unexpected deaths following flu vaccination (which were later determined to be unrelated to the vaccine), some vaccine scepticism was observed. However, public health officials were able to handle the situation quickly by conducting a transparent investigation and reducing misinformation through effective information campaigns. No matter how heated the political debate became (during the elections), not only the general public, but even the country's opposition leaders, united to support the administration.

3.5 Singapore

Similarly, to Taiwan, Singapore has been effective in its fight against the pandemic because of early and strong steps taken by its government, which included the use of technology and the use of state authority to impose rigorous monitoring to keep transmission to a minimum level.[29]

A well-deserved reputation for rigorous contact tracing (which included scanning people's IDs at supermarkets)[30] and extensive testing helped Singapore become one of the first nations to be recognised as a 'winner' for its pandemic response. As a result of the lessons learned from the SARS epidemic,[31] Singapore's small population (5.7 million people total),[32] and centralised '*nanny state*' approach to not only healthcare crises but also other

---

[28] "FACTBOX-Global economic policy response to the coronavirus crisis", *Reuters*, May 12, 2020, *available at:*<https://www.reuters.com/article/health-coronavirus-economy-idUSL3N2C11C3> (Last retrieved Jul 1, 2021).

[29] Bremmer, *supra note* 17.

[30] Low Zoey, "Customers advised to bring NRIC to enter shopping malls, supermarkets: Enterprise Singapore", CNA (2020), *available at:* <https://www.channelnewsasia.com/news/singapore/covid-19-bring-nric-supermarket-malls-entry-contact-tracing-12691114> (Last retrieved Jul 1, 2021).

[31] Benjamin Seet, "Commentary: Why Singapore is better prepared to handle COVID-19 than SARS", *CNA* (2020), *available at:* <https://www.channelnewsasia.com/news/commentary/singapore-better-prepared-to-handle-covid-19-than-sars-12535076> (Last retrieved Jul 1, 2021).

[32] Edgar Su & John Geddie, "Singapore races to build beds for COVID-19 patients as cases surge", *Reuters*, April 26, 2020, *available at:*<https://www.reuters.com/article/us-health-coronavirus-singapore-temp-hos-idUSKCN22805B> (Last retrieved Jul 1, 2021).

facets of policy, the country was well-positioned to outperform others in its pandemic response. To accommodate COVID-19 patients, the government constructed temporary bed spaces at breakneck speed,[33] resulting in a low fatality rate (less than 0.1 percent of all confirmed cases).

In the aftermath of the initial outbreak, a subsequent outbreak concentrated on overcrowded migrant housing tainted Singapore's response, exposing the city's hundreds of thousands of migrant workers' appalling living conditions (with as many as 20 individuals sleeping in the same room).[34] For a while there, 88 percent of the country's cases were located in migrant housing areas that evaded early reaction by the government, drawing attention to the enormous disparity that exists in Singaporean society.[35]

Nonetheless, the government's multiple and substantial stimulus packages (totalling 20 percent of the country's GDP)[36] to keep its economy afloat are remarkable, as is the government's ability to accumulate substantial financial reserves over the years to assist it in weathering precisely these types of financial shocks.[37] In addition, the country's central bank bolstered the economic reaction by relaxing monetary policies to levels not seen since the Global Financial Crisis.[38] Despite its appalling treatment of migrant workers, it has also managed to prevent the epidemic from spreading to the broader public, indicating that it is capable of efficiently containing new cases.

In contrast with other countries such as New Zealand, which believed that strict measures should be implemented from the start, Singapore's government has taken a more reactive rather than proactive approach to dealing with the

---

[33] *Ibid.*

[34] Weiyi Cai & K. K. Rebecca Lai, "Packed with Migrant Workers, Dormitories Fuel Coronavirus in Singapore", The New York Times, April 28, 2020, *available at:* <https://www.nytimes.com/interactive/2020/04/28/world/asia/coronavirus-singapore-migrants.html> (Last retrieved Jul 1, 2021).

[35] *Ibid.*

[36] "Singapore unveils more virus stimulus, now worth 20% of GDP", *Reuters*, May 26, 2020, *available at:*<https://www.reuters.com/article/uk-singapore-economy-stimulus-idUKKBN2320XR> (Last retrieved Jul 1, 2021).

[37] Tang See Kit, "Solidarity Budget: Singapore spends another S$5.1b to save jobs, protect livelihoods amid impending circuit breaker rules", *CNA* (2020), *available at:*<https://www.channelnewsasia.com/news/singapore/solidarity-budget-5-1-billion-save-jobs-circuit-breaker-12611090> (Last retrieved Jul 1, 2021).

[38] John Geddie & Joe Brock, "Singapore eases monetary policy sharply as virus heralds deep recession", *Reuters*, March 30, 2020, *available at:* <https://www.reuters.com/article/us-singapore-cenbank-idUSKBN21H0HF> (Last retrieved Jul 1, 2021).

virus. This has allowed the country to maintain a balance between total economic collapse and managing infection numbers. In retrospect, New Zealand's approach would have been preferable, given that Singapore ultimately implemented comparable policies.[39]

3.6 Potential lessons for other countries

So, after months of ups and downs for these strong responders, what can we conclude? These successful countries (like Taiwan, Singapore, Vietnam, New Zealand, and South Korea) have similar traits: dedicated and responsible leadership, excellent public communication, strong enforcement, high public trust and confidence, and rapid adaptation. While politicians, public agents (e.g., the civil administration), the private sector (business and scientific community), and followers (community, local people) all share leadership, strong central leadership is necessary for a solid national strategy and plan of action to combat COVID-19.[40]

- Develop or strengthen a specialised national public health agency to handle pandemic and other public health risks prevention and management. Such an agency may be a disease control and prevention centre or a more generally focused national public health agency, and it would need the power to cooperate with other ministries and agencies (like Taiwan's CECC, South Korea's Center of Disease Control; New Zealands' Epidemic Response Committee).
- Draft a generic pandemic strategy that allows for various disease agents with varied features to be addressed.
- Increase the amount of money spent on resources and infrastructure so that a government can react swiftly to future disease risks. Pre-COVID19, Taiwan improved its public health response by establishing real-time monitoring techniques and, unlike New Zealand, already had a national warning system in place. The following are some specific suggestions:

---

[39] Walid Jumblatt Abdullah & Soojin Kim, "Singapore's Responses to the COVID-19 Outbreak: A Critical Assessment", 50 *The American Review of Public Administration* 770–776 (2020).

[40] A. S. Bhalla, "Leadership Challenges and the COVID-19 Pandemic", *Observer Research Foundation* 299 (2021).

- Extend the use of sentinels and other specialised disease and outbreak detection systems at the national and regional levels, including the use of wastewater testing systems.
- Improve existing border management rules and infrastructure that can be deployed rapidly, such as Taiwan's response to the outbreak notice on December 31, 2020, which included urgent air passenger health screening.
- More stringent quarantine regulations and more secure facilities for arriving travellers should be established. Customs and flight crews were formerly excluded from quarantining regulations in New Zealand, but they have recently been replaced with more severe standards.
- Develop both traditional and digital contact tracing and isolation/quarantine monitoring systems.
- Develop a system for distributing and promoting face masks in the event of a border control failure. The Taiwanese digital approach (such as the Taiwan CECC's name-based mask distribution system and distribution and sales restrictions) prevented stockpiling and allowed distribution to those who needed it most. This method may potentially be used to distribute medication in the event of a future epidemic (eg, for antivirals).
- Examine the workforce requirements for successful pandemic management, as well as for public health development in general, and make appropriate adjustments to training programmes.
- Create mechanisms for assessing and auditing pandemic responses, as well as for testing and exercising developing infectious disease response capabilities.
- Establish the acceptability of these pandemic response methods in terms of culture, society, and the law. There are legitimate concerns about the use of big data analytics, particularly when it comes to the use of digital methods in public health responses, and there may be less cultural acceptability in some countries for people with respiratory symptoms to wear a face mask on a regular basis as a courtesy to others in their communities. Other populations may likewise be less willing than residents of these countries to tolerate the imposition of severe measures that restrict personal freedoms and liberties. Citizens juries, citizen panels, indigenous consultations, and surveys could be used to investigate these privacy concerns and determine at what levels of pandemic severity populations would be willing to accept and comply with potential

intrusions into privacy, such as the use of digital technology to aid in contact tracing. It is necessary to update public health legislation in order to facilitate outbreak and pandemic control measures while maintaining a balance between the need to preserve human rights and liberties and the need to safeguard public health.

4. Revising Global Public Health Laws to Meet future Threats

It is more essential than ever to guarantee in today's more interconnected and interdependent world, where people, commodities, and services are transboundary freely, that nations are able to react promptly and effectively to risks to public health, and, in fact, to avoid them.[41] Global health crises in recent years, such as those caused by H1N1 influenza (2009), Ebola (2014), Zika (2016), and the current COVID-19 virus, have prompted sharp criticism of the world health community's capacity to cope with such threats. Crisis situations, on the other hand, also provide chances for learning and development. An essential outcome of such criticism has been a gradual strengthening of worldwide determination and expertise in the promotion and improvement of global health security (which includes both individual and collective health security at the global/international level).[42]

The World Health Organization (WHO), as the global leader in health governance, has taken the brunt of the criticism. Reaffirming and enhancing WHO's key position, the need to properly fund the organisation, removing emergency response from WHO's jurisdiction, as well as even creating a new body altogether, have all been proposed as ways to move the health security agenda ahead. In the midst of such discussion, the WHO continues to implement a broader reform process that includes emergency response capabilities as well as efforts to promote global health security.

States are increasingly relying on international cooperation to preserve and enhance domestic health as a result of the impetus created by globalisation. As a result, in this century, we are expected to see greater use of international legal tools to manage the dangers and hazards to health connected with globalisation, as well as to take advantage of the possibilities to enhance global

---

[41] Katrina Murray et al., "Crossborder Health Threats", *European Health Parliament* (2015), *available at:*<https://www.healthparliament.eu/cross-border-health-threats/> (Last retrieved Jul 5, 2021).

[42] David L Heymann et al., "Global health security: the wider lessons from the west African Ebola virus disease epidemic", 385 *The Lancet* 1884–1901 (2015).

health offered by global change. Examples include the WHO's International Health Regulations (IHRs), which are the only international legal instruments intended to serve as a framework for multilateral efforts to fight infectious disease. Several changes were made to the International Health Regulations (IHRs) in 2005 to meet the increasing danger presented by the *transnationalization* of infectious diseases and to integrate newly established mechanisms for international cooperation and response.

5. International Health Regulations

The International Health Regulations (IHR)[43] are a legislative framework that is intended "*to prevent, protect against, control, and provide a public health response to the international spread of disease*."[44] The IHR is a set of rules that govern international health. The IHR established the minimal core capabilities that States Parties must adopt at the local, regional, and national levels in order to identify morbidity and mortality, provide critical data, and effectively react to health security risks.[45] These rules bind all 196 signed States Parties.[46] The World Health Organization (WHO) is in charge of monitoring the IHR, which is the main worldwide organisation in charge of public health-related operations. Individual nations are responsible for preserving these fundamental capabilities, with the World Health Organization (WHO) providing technical support.

Despite the explicit legal duties established in the IHR, the vast majority of States Parties do not comply with all provisions.[47] Regardless of the fact that nations may not adhere to the IHR for a variety of reasons, the IHR's inability to be enforced is a major impediment to the accomplishment of global IHR

---

[43] WHO, "International Health Regulations" (2005), *available at:*<https://www.who.int/publications/i/item/9789241580496> (Last retrieved Jul 11, 2021).

[44] *Ibid.*

[45] Lawrence O. Gostin & Rebecca Katz, "The International Health Regulations: The Governing Framework for Global Health Security", 94 *The Milbank Quarterly* 264–313 (2016).

[46] UN High-Level Panel on the Global Response to Health Crises, "Protecting humanity from future health crises", (2016), *available at:*<https://digitallibrary.un.org/record/822489> (Last retrieved Jul 1, 2021).

[47] Executive Board, "Implementation of the International Health Regulations (2005): report of the Review Committee on Second Extensions for Establishing National Public Health Capacities and on IHR Implementation: report by the Director-General", (2015), *available at:*<https://apps.who.int/iris/handle/10665/251717> (Last retrieved Jul 18, 2021).

objectives.[48] Especially considering the fact that all WHO member nations are legally required to adhere to the IHR unless they want to opt out of the agreement, there is no punishment for failing to do so. IHR does not provide WHO the jurisdiction to impose penalties, intervene, or hold States Parties responsible for breaches or non-compliance with the Agreement. As a result, WHO does not have the authority required to properly implement this agreement. Furthermore, under the IHR, the WHO does not have the resources, political self-determination, or ability to prohibit countries from disregarding its technical guidance.[49]

With no specific authority for WHO to effectively monitor and implement the IHR, the world is inadequately prepared to handle infectious disease epidemics at the global, national, and subnational levels. Rather than a coordinated network of cooperating stakeholders striving to accomplish pandemic prevention and control, the global health governance system may be better characterised as a collection of "*transnational and national actors pursuing their own interests*."[50] Rather than delegating some decision-making authority to a global organisation, most nations collaborate when their leaders decide to, such as when cooperating is in their national interests.

6. Covid-19 & Moving forward

The Covid-19 epidemic has brought these flaws to light, highlighting the urgent need for change. Tedros Adhanom Ghebreyesus, the Director-General of the World Health Organization, said in January 2021 that the pandemic has demonstrated that existing pandemic prevention and response methods are inadequate.[51] "*I think a treaty is the best thing that we can do that can bring the political commitment of member states*,"[52] he said while introducing the

---

[48]Hans Kluge et al., "Strengthening global health security by embedding the International Health Regulations requirements into national health systems", 3 *BMJ Global Health* (2018), *available at:*<https://gh.bmj.com/content/3/Suppl_1/e000656> (Last retrieved Jul 1, 2021).

[49] Johnathan H Duff et al., "A global public health convention for the 21st century", 6 *The Lancet Public Health* 428–433 (2021).

[50] Jennifer Prah Ruger, "Global health governance as shared health governance", 66 J *Epidemiol Community Health* 653–661 (2012).

[51] "WHO Director-General's opening remarks at 148th session of the Executive Board", *WHO* (2021), *available at:* <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-148th-session-of-the-executive-board>(Last retrieved Jul 2, 2021).

[52] "WHO chief welcomes EU Council proposal for pandemic preparedness treaty", *Reuters* (2021),*available at:*<https://www.reuters.com/business/healthcare-pharmaceuticals/who-

concept of a new convention. This is not a fresh call to action. A more comprehensive approach for IHR adherence and enforcement has already been advocated for by a number of voices in the global public health community. Health is a fundamental human right, and shared accountability is the basis of successful global public health security. As a result of the obvious and present threat presented by COVID-19 and other potential pandemic infections, the international community must create a more effective mechanism for ensuring compliance with international pandemic regulations, such as the IHR. An international organisation (or a number of international organisations) must coordinate global infectious disease prevention, preparation, and response activities in cooperation with national and subnational organisations in order to be effective.

A new convention to solve these inadequacies is necessitated by the lack of an appropriate mechanism to guarantee coordination, cooperation, and compliance with international public health security accords (such as the IHR). Some suggestions are made to enhance the existing system of global public health security, which we believe will be helpful.

7. Recommendations: A Global Health Law

Findings from all these nations (Singapore, South Korea, New Zealand, Vietnam, and Taiwan) converge on the need for quick and immediate action at the start of an outbreak to build strong pandemic responses. The proactive management of the COVID-19 pandemic was critical in containing the outbreak. It achieved positive outcomes in terms of preserving human lives. A passive approach to the danger of the virus results in the virus's unfettered spread across the community and the deaths of a huge number of people in the process. It is sufficient, in contrast, to implement traditional epidemiological measures such as strict border closures, quarantine for travellers coming into the nation, and a decisive reaction to each focal point with meticulous testing, tracing, and isolation of contact information. Countries must have a functioning public health infrastructure in place in order to apply conventional epidemiological methods in order to deploy this sort of successful response. This infrastructure was either undeveloped or ignored in many western nations during the early stages of the epidemic. It has been demonstrated that the

chief-welcomes-eu-council-proposal-pandemic-preparedness-treaty-2021-01-20/> (Last retrieved Jul 2, 2021).

active adoption of classic epidemiological procedures within a country's territorial borders allows for an almost normal, pre-pandemic manner of life within such limits. It helps to ensure the continuance of economic development while also saving human lives at the same time. Other methods (for example, preserving the economy rather than saving lives) will have negative consequences for either public health or the economy or perhaps for both.

As they prepare for treaty negotiations in late 2021, we urge countries and international organisations to act quickly to acknowledge the inextricable links between public health and human rights. Global health law and standards, like international human rights law and standards, are not self-contained regimes. The following recommendations serve as a foundation for harmonising global health law and standards with human rights law, realising the right to health through global solidarity, and facilitating international cooperation through global health governance, among other things.

While states and WHO must be able to act quickly in the event of a public health emergency, we caution the Member States against adopting the '*precautionary principle*' out of habit–a blunt public health framework that may provide some governments with an all-too-easy justification for discriminatory, fear-based, and xenophobic health measures, as well as unnecessary or disproportionate emergency response. In order to foster multilateral trust and information sharing, the IHR[53] promotes public health measures that are necessary, proportionate (least restrictive), non-discriminatory, clear and narrowly designed, and founded on scientific principles and evidence. A Pandemic Treaty should urge the Member States to cooperate to better understand the empirical efficacy and human rights compliance of different public health interventions, rather than pushing them to retreat inwards. Evidence-based standards must be established to support public health interventions, reconciling international health legislation with the need under international human rights law to show the necessity and proportionality of government actions taken in times of crisis.

More importantly, member states must acknowledge that, in the case of a pandemic, the precautionary principle can't replace pandemic preparedness commitments that emphasise robust and comprehensive public health systems

[53] WHO, *supra note* 43.

and infrastructure in all countries. Only through global solidarity and compliance with states' responsibilities to fulfill the right to health via international support and cooperation can adequate preparedness be accomplished. States must agree to finance efficient and coordinated funding structures that not only concentrate on pandemic preparation but also go beyond it in order to fulfil international responsibilities under the right to health. States must concentrate their efforts on progressively realising universal access to quality universal health coverage, education, food, water, sanitation, housing, social security, and other economic and social rights for all people in order to be truly prepared for the next pandemic, or even better prepared to overcome the ongoing devastation caused by the current one.

Aside from ensuring vaccine equity, nations must 'pull out all the stops[54] to provide all citizens with access to essential healthcare services and goods in order to react to the COVID-19 pandemic, in accordance with their constitutional rights. Throughout the WHA, states have emphasised the importance of vaccination equality as an urgent problem for the vast majority of nations across the world.[55] The rhetoric on solidarity has remained ambiguous, with political leaders making half-hearted attempts to conceal the harsh reality: states have overwhelmingly prioritised national interests and the interests of the powerful, even as the pandemic has deepened inequalities both within and between societies, as well as imposing disproportionate impacts on the most marginalised members of society. The only way to avert these scenarios is through a global vaccine campaign and public health response that is substantively fueled by global solidarity on a massive scale. In order to improve vaccine manufacturing and production capacity in all areas of the globe, states must coordinate their efforts via global governance in order to increase access to vaccinations as well as other important medications, healthcare services, and goods.

---

[54] Tedros Adhanom Ghebreyesus, "A "me first" approach to vaccination won't defeat Covid", The Guardian (2021), *available at:*<http://www.theguardian.com/commentisfree/2021/mar/05/vaccination-covid-vaccines-rich-nations> (Last retrieved Jul 5, 2021).

[55]Priti Patnaik, "#WHA74 WRAP: Pandemic Treaty Talks Eclipse Prevailing Vaccine Inequities" (2021),*available at:* <https://genevahealthfiles.substack.com/p/wha74-wrap-pandemic-treaty-talks> (Last retrieved Jun 30, 2021).

8. Conclusion

This article presents an overview of the steadily developing subject of international health law. Health policy is undergoing a considerable transformation at this time. Over the past decade and a half, public health has emerged as an issue of critical importance to almost every aspect of multilateralism, from weapons control to security to human rights to international trade and commerce. The global aspects of public health, on the other hand, are redefining conventional approaches to public health care. Globalization has reduced the ability of countries to safeguard health within their own sovereign boundaries alone via unilateral action, and national and international health are increasingly recognised as being linked and inseparable in their interdependence.

A world of 7.8 billion people necessitates the establishment of a state of emergency preparation in order to combat the spread of infectious illnesses. Active and targeted response is required, as well as cooperation across all government agencies, including health, security, finance, business, transportation, trade, information, and diplomatic relations. A coordinated worldwide response to emerging infectious diseases risks is required, and this includes sufficient communication, epidemiology, behavioural science, and laboratory research. It also includes a robust public health infrastructure as well as enhanced monitoring and primary prevention. The identification of the variables that cause illness, disability, and early mortality would be necessary for effective prevention and control of these issues. In the face of such evolutionary changes, extrapolating present situations into the future will not be able to anticipate future patterns. Scientists and experts, on the other hand, can make reliable predictions by applying existing facts to a variety of potential situations.

It is possible to preserve the optimum harmony between people and the environment through enhancing social resistance, environmental safety, and the availability of appropriate healthcare systems. Infectious diseases may be seen as an imbalance between people and their environment, caused by the predominance of microorganisms in the environment. Economic, social, administrative, and legal factors must all collaborate in order to improve human health outcomes.

COVID-19 has been unable to be mitigated by the global health law, highlighting the need for international legal reforms to clarify state

responsibilities, ease legal responsibility, and achieve global health security. Fundamental changes to the International Health Regulations framework or the creation of a new international legal instrument to organise global health governance will be required in order to achieve such comprehensive reforms of the international health law.

In a variety of settings, international human rights legislation and global governance institutions have the capacity to and should be significant drivers of change. However, these organisations' capacity to have a wide-ranging effect is often restricted by goals that are focused on short-term gains rather than addressing the root causes of human rights and public health problems. States must maintain a sense of urgency while engaging in thoughtful, sustained, and good-faith deliberation and consensus-building in order to create an international legal instrument that promotes solidaristic measures such as "sharing data, sharing information, sharing pathogens, sharing resources, sharing technology."[56] They must also guarantee that civil society, particularly independent public health and human rights experts, is fully engaged in these initiatives in order to enhance the efficacy and legitimacy of these endeavours.

In the years ahead, the world will undoubtedly confront many more pandemic risks, and as the Chair of the IHR Review Committee observed to the Member States last week, "if we fail to prepare, we are in fact preparing to fail."[57] States' apathy and inactivity are their own decisions. Attempts to sidestep tough political discussions and to disregard legally enforceable human rights responsibilities for the sake of short-term expediency are also ineffective. States will put current and future generations at risk if they fail to recognise the inextricable connections that exist between health and human rights protection.

---

[56] "Address by Dr Tedros Adhanom Ghebreyesus, Director-General-74th WHA", (2021), *available at:*<https://apps.who.int/gb/ebwha/pdf_files/WHA74/A74_3-en.pdf>.(Last retrieved Jun 28, 2021).

[57] "Seventy-fourth World Health Assembly", *WHO* (2021), *available at:*<https://www.who.int/about/governance/world-health-assembly/seventy-fourth-world-health-assembly> (Last retrieved Jun 28, 2021).

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 162-178

"Bharatiya Nyaya Sanhita: A Justified Reform or a Misguided Approach for 'Bharat'?"

Dr. Harpreet Kaur [*] ***& Kritika*** [**]

Abstract

The Bharatiya Nyaya Sanhita, 2023 (BNS), while aspiring to modernize India's legal framework, must transcend its current form to truly embody the spirit of India as envisioned by its sages and revolutionaries. These visionaries, from ancient rishis to freedom fighters, have always emphasized the profound purpose of human life: the pursuit of self-knowledge, patriotism, and a truthful spirit. This deeper understanding of life should be the cornerstone of our legal system, guiding individuals towards their inner conscience and fostering genuine bliss and happiness. To achieve this, the BNS should not merely be a set of punitive measures but a beacon of moral and ethical guidance. Laws should be crafted to inspire and educate, helping individuals discern right from wrong through a lens of higher purpose and inner truth. This approach would ensure that the legal system is not just a mechanism for punishment but a transformative force for social evolution. Incorporating the spirit of India as seen by its sages and revolutionaries mean embedding principles of ahimsa (non-violence) and compassion into the very fabric of our laws. Jails should be reimagined as educational reformative institutions, where individuals are given the tools and opportunities to reform and reintegrate into society as enlightened citizens. Nelson Mandela's wisdom, "education is the most powerful weapon to change the world," should be the guiding principle, ensuring that the focus is on reformation rather than retribution. By embracing these ideals, the BNS can become a guiding light for anyone who reads it, offering a deeper understanding of the purpose of life and the true essence of justice. It would not only address the immediate needs of law and order but also contribute to the long-term goal of social evolution, creating a society that is just, compassionate, and aligned with the higher values of humanity.

[*] Assistant Professor, Army Institute of Law, Mohali
[**] Legal Counsel, Wipro Ltd.

Keywords: *Bharatiya Nyaya Sanhita, Indian Penal Code, Bharat, Criminal Law*

1. Introduction

The Bharatiya Nyaya Sanhita, 2023 (hereinafter referred as 'BNS') was enacted on 25 December 2023 and came into force on 1 July 2024. It comprises of XX chapters and 358 Sections. The Sanhita, literally translated in English as 'Indian Justice Act, 2023' aims to focus on a 'justiciable' approach than a 'punitive' or a 'penalising' approach of the 'Indian Penal Code, 1860' (for brevity, 'IPC'). However, the pressing question remains: is it truly able to usher in the much-needed reform to deliver genuine and profound justice? This article will analyse the approach of the Indian Penal Code, 1860, the Bharatiya Nyaya Sanhita, 2023 and the much-needed righteous reforms for 'Bharat'.

2. Historical Background

The Charter Act of 1833 marked a pivotal moment in British governance in India. It established the Legislative Council, a unified legislative body led by the Governor General, which centralized civil, military, and commercial authority. Despite discussions about criminal law reform in 19th-century England, comprehensive codification was never achieved there. However, in other British territories, including India, codes were developed.[1]

Thomas Babington Macaulay, influenced by Jeremy Bentham's ideas, played a crucial role. Bentham advocated for codification—a systematic overhaul of existing laws to create rational, consistent, and accessible provisions. His vision aimed at enhancing the rule of law and creating a "universal jurisprudence" applicable across diverse regions like England and Bengal. Bentham even predicted he would be the "dead legislator of British India."[2]

After Bentham's death in 1832, James Mill, another utilitarian, reconstituted imperial authority in India. Macaulay, appointed as the legal representative to the Governor General's new Legislative Council, drafted the Indian Penal Code (IPC). This concise and comprehensive code aimed to minimize judicial discretion, address legal disparities, and account for local circumstances. The

---

[1]M. Banerjee, "The crisis of liberal reform in India: Public opinion, pyrotechnics, and the Charter Act of 1833" 42(5*) Modern Asian Studies* 1005-1042 (2008) *available at:* https://doi.org/10.1017/S0026749X08003588 (Last retrieved on September 22, 2023).

[2]D. Jr. Alfange, "Jeremy Bentham and the codification of law" 55(1) *Cornell Law Review* 58-82 (1969), *available at:* https://core.ac.uk/download/pdf/73977262.pdf (Last retrieved on September 22, 2023).

IPC's development significantly influenced English criminal jurisprudence and intellectual history, extending its impact to jurisdictions like Canada.

The IPC was officially enacted on October 6, 1860 and took effect on January 1, 1862. It applied to the entire Indian subcontinent, including present-day India, Pakistan, Bangladesh, and parts of Myanmar. Comprising 23 chapters and 511 sections, the IPC emerged from recommendations by India's first Law Commission, established in 1834. Lord Macaulay chaired this commission, submitting the code to the Governor-General's Council in 1835.[3]

Although the IPC came into force in British India in 1862, it did not automatically apply in the Princely states, which maintained their own legal systems until the 1940s. Over time, the IPC underwent multiple amendments and now coexists with other criminal provisions.[4]

The IPC drew inspiration from England's legal system, elements of the Napoleonic Code, and Edward Livingston's Louisiana Civil Code of 1825. Its final draft, submitted in 1837, underwent revisions. The code's passage occurred after the Indian Rebellion of 1857, following careful revision by Barnes Peacock and other future judges of the Calcutta High Court.

Macaulay did not witness the IPC's implementation, having passed away in 1859. However, the code continued to evolve. In 2019, it extended to Jammu and Kashmir through the Jammu and Kashmir Reorganisation Act, replacing the state's Ranbir Penal Code.

Post-partition, the IPC became the basis for criminal law in successor states—the Dominion of India and the Dominion of Pakistan. It remains independently as the Pakistan Penal Code. Bangladesh, after separating from Pakistan, retained the code. Additionally, British colonial authorities adopted the IPC in Burma, Ceylon (modern Sri Lanka), the Straits Settlements (now part of Malaysia), Singapore, and Brunei.

The influence of IPC extends beyond India. Several countries in the region have modelled their penal codes after it, including Bangladesh, Malaysia, Myanmar, Pakistan, Singapore, and Sri Lanka. Even Hong Kong's Crimes

---

[3] Ministry of Law and Justice, The Indian Penal Code, 1860, Government of India, *available at:*https://www.indiacode.nic.in/bitstream/123456789/15289/1/ipc_act.pdf (Last retrieved on January 2, 2025).

[4]M. P. Singh, "The Indian Penal Code: An overview" 49(2) *Journal of Indian Law Institute* 183 (2007).

Ordinance draws from the IPC. These adaptations underscore the IPC's foundational role in shaping criminal law across diverse jurisdictions.[5]

2.1. Key Legal Developments and Amendments in the Indian Penal Code

The following key developments have been made with respect to the Indian penal Code, 1860-

- ***Vishaka* v. *State of Rajasthan*[6]**: This landmark case resulted in the creation of guidelines aimed at preventing sexual harassment in the workplace. These guidelines were subsequently incorporated into the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.[7]
- **Criminal Justice Reforms (2003)**: The report of the Malimath Committee proposed significant penal reforms, advocating for the separation of investigation and prosecution to enhance the efficiency of the criminal justice system. Central to the report was the idea of transitioning from an adversarial approach to an inquisitorial system, influenced by Continental European legal models.[8]
- **Section 377, IPC**: On July 2, 2009, the Delhi High Court gave a liberal interpretation to this section, stating that it cannot be used to punish consensual sexual intercourse between two same-sex individuals (***Naz Foundation* v. *Govt. of NCT of Delhi*[9]**). On December 11, 2013, the Supreme Court of India overruled the Delhi High Court's 2009 judgment, clarifying that Section 377, which holds same-sex relations unnatural, does not suffer from unconstitutionality (***Suresh Kumar Koushal* v. *Naz Foundation*[10]**). However, on January 8, 2018, the Supreme Court agreed to reconsider its 2013 decision and, on September 6, 2018, decriminalized consensual same-sex relations,

---

[5] S. Chandra, "The Indian Penal Code and its influence on the legal systems of South Asia" 13(2) *Asian Journal of Comparative Law* 123-145 (2018), *available at:*https://doi.org/10.1017/S2194607800000345(Last retrieved on January 2, 2025).

[6] (1997) 6 SCC 241.

[7] Ministry of Law and Justice, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Government of India, *available at:* https://www.indiacode.nic.in/bitstream/123456789/2104/1/sexual_harassment_of_women_at_workplace.pdf (Last retrieved on January 2, 2025).

[8] Ministry of Home Affairs, Committee on Reforms of Criminal Justice System 2003, Government of India *available at:* https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf (Last retrieved on January 2, 2025).

[9] (2009) 160 DLT 277.

[10] (2014) 1 SCC 1.

overruling the previous judgment (***Navtej Singh Johar* v. *Union of India***[11]). Most recently, on October 17, 2023, the Supreme Court ruled in ***Supriyo Chakraborty* v. *Union of India***[12] that while the right to consensual same-sex relations is protected, the right to marry is not a fundamental right for queer persons, thus maintaining the statutory framework without extending marriage rights to same-sex couples.

• **Attempt to Commit Suicide – Section 309**: Section 309 of the IPC, which criminalizes suicide attempts with imprisonment of up to one year, faced long-standing demands for repeal. The debate around this section has been shaped by several landmark cases. In ***Maruti Shripati Dubal* v. *State of Maharashtra,***[13]the Bombay High Court held that Section 309 was unconstitutional. Similarly, in ***ChennaJagadeeswar and Anr.* v. *State of Andhra Pradesh,***[14]the Andhra Pradesh High Court upheld the validity of Section 309. However, the Supreme Court in ***P. Rathinam* v. *Union of India***[15]**,** declared Section 309 unconstitutional, only to reverse this decision in ***Gian Kaur* v. *State of Punjab***[16]**,** affirming its constitutionality. In December 2014, the Government of India decided to decriminalize suicide attempts, following recommendations from the Law Commission of India. In February 2015, the Legislative Department was asked to draft an Amendment Bill. In August 2015, the Rajasthan High Court ruled the Jain practice of Santhara punishable under Sections 306 and 309, leading to controversy. On August 31, 2015, the Supreme Court stayed this decision, lifting the ban on Santhara (***Nikhil Soni*v. *Union of India***[17]). The 2017 Mental Healthcare Act effectively decriminalized suicide attempts, presuming severe stress for those attempting suicide, and marked a significant shift towards providing care and support rather than punishment.

• ***Independent Thought* v. *Union of India***[18]: The Supreme Court ruled that sexual intercourse with a minor wife (below 18 years) would amount to rape, thereby amending the interpretation of Section 375 of the IPC.

---

[11] (2018) 10 SCC 1.
[12] (2023) 10 SCC 1.
[13] 1987 Cri LJ 743 (Bom).
[14]1988 Cri LJ 549 (AP).
[15] (1994) 3 SCC 394.
[16] (1996) 2 SCC 648.
[17] 2015 SCC OnLine Raj 8336.
[18]AIR 2017 SC 4904.

- **Criminal Law (Amendment) Act, 2013**: This amendment, also known as the Nirbhaya Act, was introduced following the 2012 Delhi gang rape case. It brought significant changes to laws related to sexual offences, including stricter punishments for rape, stalking, and acid attacks.
- **Adultery – Section 497**: Section 497 of the IPC, criticized for treating women as the private property of their husbands and protecting them from punishment for adultery, was struck down on September 27, 2018, by the Supreme Court in ***Joseph Shine v. Union of India***[19]. The Court deemed it unconstitutional and demeaning to women's dignity. Adultery remains a ground for divorce in Civil Court but is no longer a criminal offense. In 2020, two review petitions challenging the decriminalization were dismissed due to lack of substantial grounds.
- **Criminal Law (Amendment) Act, 2018**: This amendment introduced the death penalty for the rape of girls below 12 years of age and increased the minimum punishment for the rape of women from 7 to 10 years.
- **Abolition of Sedition (Section 124-A)**: The Bharatiya Nyaya Sanhita, 2023, which replaces the IPC, has abolished the offence of sedition under Section 124-A and introduced new provisions for offences against the state under Section 150. This significant change follows the landmark judgment in ***Kedar Nath Singh v. State of Bihar***[20]**,** which upheld the constitutionality of sedition but limited its application to acts involving incitement to violence or public disorder. Additionally, the recent case of ***S.G. Vombatkare v. Union of India,***[21]played a crucial role in shaping the discourse around the misuse of sedition laws, leading to their eventual abolition and replacement with more specific provisions targeting acts endangering the sovereignty, unity, and integrity of India.
- **Death Penalty Provisions**: Sections 120B, 121, 132, 194, 302, 303, 305, 364A, 396, and 376A of the IPC prescribe the death penalty for various offenses. The debate on abolishing capital punishment continues.
- **Section 303 of the Indian Penal Code (IPC)** mandated the death penalty for individuals who committed murder while already serving a life sentence. This section was declared unconstitutional by the Supreme Court in ***Mithu* v.**

[19] (2018) 10 SCC 1.
[20](1962) Supp (2) SCR 769.
[21](2022) 4 SCC 1.

State of Punjab,[22] as it violated the right to life and personal liberty under Article 21 of the Constitution. In response, the Bharatiya Nyaya Sanhita, 2023 has replaced Section 303, IPC with Section 104. According to Section 104, BNS if a person serving a life sentence commits murder, they can be punished with either the death penalty or life imprisonment, where life imprisonment means imprisonment for the remainder of their natural life.

3. Bharatiya Nyaya Sanhita

The Bharatiya Nyaya Sanhita (BNS) was introduced in the Lok Sabha on August 11, 2023, by Home Minister Amit Shah. After initial deliberations, the original bill was withdrawn on December 12, 2023, and replaced with the Bharatiya Nyaya (Second) Sanhita Bill, 2023. This revised bill swiftly passed the Lok Sabha on December 20, 2023, and the Rajya Sabha on December 21, 2023. It received presidential assent on December 25, 2023, and officially came into effect on July 1, 2024, replacing the Indian Penal Code of 1860.

The BNS was introduced to modernize India's criminal justice system by replacing the outdated Indian Penal Code (IPC) of 1860, which was inadequate for addressing contemporary crimes like cybercrime and terrorism. The BNS aims to align the legal framework with current societal norms and technological advancements, ensuring a more efficient, fair, and transparent justice system. However, critics argue that it may not effectively tackle systemic issues such as judicial delays, corruption, and lack of resources. Introduced amidst significant political and social changes, including upcoming elections, the BNS is seen by some as a political manoeuvre rather than a genuine reform effort. The government's proactive and inclusive approach involved consultations with legal experts, stakeholders, and the public, incorporating gender-neutral language and provisions for modern crimes. Despite these efforts, some feel the process was not inclusive enough, and the new code may still fall short in practical applicability and enforcement.

The Bharatiya Nyaya Sanhita, (BNS) 2023 introduces several significant changes and additions compared to the Indian Penal Code, (IPC) 1860. One of the notable additions is the inclusion of community service as a form of punishment, which was not present in the IPC. The BNS also replaces the offence of sedition with a new offence for acts endangering the sovereignty, unity, and integrity of India. Definitions have been consolidated into a single

[22] (1983) 2 SCC 277.

section for easier reference, unlike the IPC where they were spread across multiple sections. The BNS includes electronic and digital records in the definition of documents, reflecting the advancements in technology. Additionally, the term "transgender" has been added to the definition of gender, making the legal framework more inclusive[1]. A new definition for 'child' has been introduced, defining a child as any person below the age of eighteen years.

In terms of differences, the BNS uses the term "Sanhita" instead of "Code" throughout the document. The power to appoint the date of commencement is delegated to the Central Government, a provision that was absent in the IPC. The language of various sections has been simplified for clarity and ease of understanding. Certain phrases and illustrations present in the IPC have been excluded or simplified in the BNS. For example, the definition of "harbour" has been modified by excluding specific phrases related to harbouring in certain sections. These changes aim to modernize the legal framework, making it more inclusive and responsive to contemporary issues.

4. 'India V. Bharat'

According to Article 1 of the Indian Constitution, "India, that is Bharat, shall be a Union of States," indicating that both names can be used interchangeably. The origins of both "India" and "Bharat" trace back to the Indus River. The ancient Sanskrit term "Sindhu" referred to the Indus River, and over time, this term evolved. The Persians referred to the region as "Hindu," derived from "Sindhu," and the Greeks later adapted it to "Indos," which eventually became "India". The name "Bharat" has roots in ancient Hindu texts and is associated with Emperor Bharata, who is believed to have ruled over a vast territory corresponding to modern-day India.

However, considering India's socio-cultural and linguistic diversity, especially in the southern states, it is essential to use statutes in English as per Article 348(1)(b) of the Constitution. This ensures clarity and uniformity in legal matters across the diverse linguistic landscape of the country.

5. 'Bharat': As Seen by the Great Sages and Revolutionaries

The vision of some of the revolutionaries has been analysed hereinafter-

- Dr. B.R. Ambedkar, renowned as the chief architect of the Indian Constitution, first Law Minister of independent India, led numerous social movements to secure human rights for the oppressed, including the Mahad Satyagraha and the Kalaram Temple Entry Satyagraha. His vision for India

was an inclusive and egalitarian society, free from caste-based discrimination, where every individual had equal rights and opportunities. He also emphasised upon women empowerment as he said that 'I measure the progress of a community by the degree of progress which women have achieved.'

- Mahatma Gandhi, the leader of India's independence movement, is famous for his nonviolent resistance ('Ahimsa') against British rule, notably the Salt March and the Quit India Movement. His vision for India was a self-reliant nation built on the principles of nonviolence, truth, and rural self-sufficiency, emphasizing the upliftment of the poor and marginalized. He endorsed people to bring positive changes by stating that 'Be the change that you wish to see in the world.'
- Bhagat Singh, a revolutionary freedom fighter, is remembered for his role in the assassination of British police officer John Saunders and the bombing of the Central Legislative Assembly. He envisioned a socialist India free from exploitation and oppression, where secularism and unity among different communities were paramount. He lives in our hearts even today as he said 'They may kill me, but they cannot kill my ideas. They can crush my body, but they will not be able to crush my spirit.' Further, he also said that "The day we find a great number of men and women with this psychology who cannot devote themselves to anything else than the service of mankind and emancipation of the suffering humanity; that day shall inaugurate the era of liberty." Thus, the real era of liberty has to come yet!
- Subhas Chandra Bose, known for forming the Indian National Army (INA) and leading it in battles against British forces, aimed for a strong, independent India with a focus on industrial and military strength. He promoted the idea of a federal structure with equal rights for all citizens. His most inspiring quote is 'Give me blood, and I shall give you freedom!'
- Rani Laxmi Bai, a key figure in the 1857 uprising, led the rebellion in Jhansi and fought fiercely against British forces to defend her kingdom. Her vision for India was one of sovereignty and independence for Indian states, with a significant role for women in the freedom struggle.
- Mangal Pandey, whose actions sparked the 1857 revolt, is famous for attacking British officers, initiating widespread rebellion across India. He

aimed for an India free from British rule, advocating for the rights and dignity of Indian soldiers and citizens.

- The approach of such great revolutionaries, to name a few like Kasturba Gandhi, Sarala Devi Chaudhurani, Annie Besant, Rani VeluNachiyar, Begum Hazrat Mahal, Kamaladevi Chattopadhyay, BikajiCama, MatanginiHazra, Sarojini Naidu, Udham Singh, Lala Lajpat Rai, Shivaram Rajguru, Sukhdev Thapar, Kanailal Dutta, Mohammed AbdurRahiman, Gopal Krishna Gokhale, BatukeshwarDutt, Azimullah Khan, Sri Aurobindo, PritilataWaddedar, Durgawati Devi, Ramprasad Bismil, Chandrashekhar Azad, Ashfaqulla Khan, BenoyBasu, had ignited a fire in Indians. Each revolutionary has lived to the fullest by doing their best for the freedom of the nation. The real meaning of liberty cannot come to the fore, until and unless the present-day Indians are reminded of the justiciable & empowering spirit of with which 'India' as a nation was formed.

The approach for 'India' or 'Bharat' as a nation comes greatly from the jewels of India who searched and spread the light of the truth beyond this material world in the world at large:

- **JidduKrishnamurti**explicated truth, love, happiness, blissfulness, without finding any support from any religion, for he said that there is only one truth. He said 'Only the free mind can know what love is.' 'You must understand the whole of life, not just one little part of it. That is why you must read, that is why you must look at the skies, that is why you must sing, and dance, and write poems, and suffer, and understand, for all that is life.' 'Freedom and love go together. Love is not a reaction. If I love you because you love me, that is mere trade, a thing to be bought in the market; it is not love. To love is not to ask anything in return, not even to feel that you are giving something—and it is only such love that can know freedom.'
- **Baba Bulleh Shah**: Baba Bulleh Shah's poetry and teachings emphasized the unity of humanity and the rejection of man-made divisions. He advocated for love, tolerance, and understanding, urging people to seek truth and love while dismissing religious orthodoxy and rituals.
- **Lord Buddha**: Lord Buddha's teachings are encapsulated in the Four Noble Truths and the Noble Eightfold Path. He taught that life is suffering, suffering is caused by desire, and ending desire ends suffering. The path

to end suffering involves ethical conduct, mental discipline, and wisdom. He said 'AppoDeepoBhavo', i.e., 'each one shall be a light unto themselves'.

- **Lord Jesus**: Lord Jesus taught the principles of love, forgiveness, and serving others. His core teachings include loving God with all your heart and loving your neighbour as yourself. He emphasized the importance of faith, repentance, and living a life of compassion and humility.
- **Guru Nanak Dev Ji**: Guru Nanak Dev Ji preached the oneness of God and the equality of all human beings, regardless of caste or gender. He emphasized living a truthful, honest life, engaging in selfless service (Seva), and constantly remembering God (Naam Simran). His main teaching was *'keeratkar, naam jaap, vandchak',* summarising the essence of way of living life. That is, work honestly, remember God at all times and help fellow human beings for a blissful life.
- **Guru Gobind Singh Ji**: Guru Gobind Singh Ji's teachings focused on the combination of spiritual and temporal authority. He advocated for justice, equality, and the importance of standing against oppression. He also emphasized humility, selfless service, and the power of real love& truth.
- **Guru Granth Sahib Ji**: The Guru Granth Sahib, the holy scripture of Sikhism, contains hymns and teachings from Sikh Gurus and other saints. It emphasizes the oneness of God, the importance of living a truthful and honest life, and the practice of Naam Simran (meditation on God's name).
- **Saint Kabir Das,** born in 1398 in Varanasi, was a mystic poet and a prominent figure in the Bhakti movement of medieval India. Raised by a Muslim weaver family, he is revered by Hindus, Muslims, and Sikhs alike. Kabir's poetry, which often criticized the rituals and dogmas of both Hinduism and Islam, emphasized the importance of a personal connection with the divine. His verses are included in the Sikh scripture Guru Granth Sahib and continue to inspire millions with their messages of unity, love, and spiritual realization. Kabir's legacy lives on through the Kabir Panth, a religious community that follows his teachings. He says, 'Saadho, yeh murdon ka gaanvhai', i.e., Oh Seeker, this is a village of corpses, for they live as heavily socially conditioned beings. The real life dwells in truth/God, and only the one who is one with truth/God is actually 'alive'.
- **Vedanta & Shrimad Bhagavad Gita**: Vedanta and the Bhagavad Gita teach the principles of self-realization and the unity of the individual soul

(Atman) with the supreme soul (Brahman). The Gita emphasizes duty (Dharma), righteousness, and devotion to God (Bhakti) as paths to liberation.

- **Swami Vivekananda**: Swami Vivekananda Ji's teachings, based on his Guru Ramakrishna Paramhansa's teachings, focused on the potential divinity of every individual and the importance of selfless service. He emphasized the unity of all religions and the need for spiritual awakening and social reform with the teachings of Vedanta. He is renowned for introducing Vedanta and Yoga to the West, particularly through his impactful speech at the 1893 Parliament of Religions in Chicago. He founded the Ramakrishna Mission in 1897, promoting social service and spiritual development. Vivekananda emphasized the unity of all religions, advocated for social reform, and inspired Indian nationalism. His philosophical and literary contributions, including works like "Raja Yoga" and "Karma Yoga," continue to influence spiritual seekers worldwide. He said, 'Arise! Awake! and stop not till the goal is reached.' He called youth into action by stating that 'Awake, awake, great ones! The world is burning with misery. Can you sleep? Let us call and call till the sleeping gods awake, till the god within answers to the call.' 'The best way to find yourself is to lose yourself in the service of others.'
- **Neelkanth Varni**: Neelkanth Varni, 10-year-oldbal-yogi, later known as Swaminarayan, emphasized the importance of devotion to God, moral living, and selfless service. His teachings focused on the purity of mind and body, and the importance of community service and compassion. He spent his whole life in attaining and spreading the light of 'Brahmvidya', i.e., the ultimate truth beyond the material world.
- **Ramana Maharishi**: Ramana Maharishi taught the path of self-inquiry (Atma Vichara) as a means to realize the true self (Atman). He emphasized the importance of inner silence, meditation, and the realization of the Self as the ultimate truth.
- **Ramakrishna Paramhansa**: Ramakrishna Paramhansa's teachings centered on the unity of all religions and the realization of God through love and devotion. He emphasized the importance of direct experience of the divine and the practice of intense devotion (Bhakti). **Paramhansa Yogananda, his disciple** introduced the teachings of Kriya Yoga to the West, emphasizing the importance of meditation, self-realization, and the

unity of all religions. His teachings focused on achieving inner peace and spiritual awakening through disciplined practice.

- **Ashtavakra**: Ashtavakra's teachings, found in the Ashtavakra Gita, emphasize the non-dual nature of reality (Advaita Vedanta). He taught that the self is pure consciousness and that liberation comes from realizing one's true nature beyond the physical and mental realms.

All the teachings of the sages of all religions have focused on 'understanding' of life. Once born, the human beings need something beyond the fulfilment of material needs like food, clothing & shelter. Unlike other creatures, who are content with their basic needs, humans are often ensnared by the senses, falling prey to the indriyan of 'kam, krodh, madh, lobh, moh, aham', i.e., lust, anger, intoxication, greed, attachment & false sense of 'I'. While fulfilling the material needs of the body, we tend to become 'body-centric' and lead a superficial life, building our own causes of suffering. The great Sages, after years of contemplation, have identified 'self-enquiry' as a powerful means to uncover the truth. By Neti-Neti, i.e., by rejecting all that is false—recognizing that we are not merely our names, bodies, or thoughts—and contemplating upon the same in daily life, we can understand the truth and free ourselves from suffering and bondage.

However, due to modernisation, westernisation& to some extent due to secularism also, without realising that ultimately God/truth is one, and all religions are merely different paths to reach the ultimate reality, we find such teachings greatly missing from the education system as well as social conditioning. Thus, it has led to the degradation of our social structures.

6. Present Status of India

As per National Judicial Grid Data, 4,43,84,046 cases are pending in the courts across India and 17,27,96,969 cases have been disposed of in 2024. While the number of cases disposed of in 2015 was 94,12,350. The concerning factor is that the number of cases and the crime rates have kept increasing in our nation since independence.

Nelson Mandela said that 'Education is the most powerful weapon to change the world.' Contrary to it, in India, since independence, we have failed to focus emphatically on our education system. Though the literacy rates have increased since independence but not the 'educated populace'. Education, which could shape the children into becoming a conscious responsible citizen,

has been left as a mere way of learning a skill/attaining information to be able to earn income.

People should actually be able to fall in love with books after having done their schooling. A human being can actually become a 'human being' only by enhancing understanding and cultivating thoughts towards noble causes. Otherwise, the human tendencies are more animalistic and rampant as humans are not contended by fulfilment of basic material needs. Hence, the rise in the criminal activities, consumption of intoxicants and over-consumption of resources on the planet earth, leading to climate catastrophe today.

Further, the social institutions of family, religion, and communities, which could have deeply instilled self-knowledge and took human beings towards the highest and the most noble causes, have become orthodox, irrational, and corrupt which is showcased especially in the field of work. Thus, the position of India on the Corruption Index is 93 out of 180 countries with a score of 39/100 as per the Transparency International.

The status of women has also dropped down substantially. India ranks 189th in the UN Sex Ratio List of 2021. The female labour force participation rate in India is mere 25%, while it is 47% across the globe. As per a survey of 2018, 73% of women leave their jobs after giving birth, signifying that we have 'educated' 'homemakers'. The social conditioning which attributes unnecessary and illusory respect to 'bodily motherhood' is the biggest factor contributing to such status and wastage of human resources. The women should be made courageous to be the 'mother' of the whole world via consciousness, like Sarada Devi, Mother Teresa, Durga Maa, Saraswati Maa, and many more. The crippling conditioning has left women so dependent to not to be able to earn even for herself. As per the data, in India, more housewives (22,000+) kill themselves, which is even more than the number of farmer-suicides (10,349).

Hence, both the worldly knowledge as well as self-knowledge are of utmost importance for a human being. Societies should be full of libraries and sports facilities so that the people can utilise their time, hence life in the most productive manner.

Instead of eulogising consumption, unnecessary marriages, foolish celebrities' ideologies and wastage of resources, higher and higher 'karam'/'work' should be the goal of a human being. Thus, the whole social consciousness, and conclusively the individual consciousness needs a great revolution.

7. Suggestions

7.1. Jails Reforms- If the revered Father of the Nation, Mahatma Gandhi Ji, could challenge the might of the British Empire with the noble weapon of non-violence (Ahimsa), why can we not nurture our fellow beings to blossom into righteous individuals? Why can't our prisons transform into 'schools of reformation,' where daily lessons are imparted, guiding souls without corruption towards righteous paths and self-realization? If Angulimala could be transformed into a sage by Lord Buddha, and the dacoit Ratnakar could evolve into Saint Valmiki, it vividly illustrates the boundless potential within each human being to ascend towards the highest ideals. Ultimately, what every soul seeks is inner peace, bliss, and joy.

The pressing need of our times is not for stricter laws or punitive measures, but for 'awareness' and 'understanding.' Afghanistan may boast the strictest laws, but does that make it a beacon of education and upliftment? Certainly not. We need enlightened beings like Lord Buddha, who can transform not only criminals into sages but also 'sinners' like us, the common folk, into awakened beings. As Ramana Maharishi wisely states, those who have not undertaken the 'self-enquiry' of 'Who Am I?' in their lifetime are 'sinners.' This implies that if we do not strive for the highest purpose, we are committing an injustice to ourselves and society. Acting out of mere social conditioning rather than true understanding or 'Bodh' leads to irrationality. Irrationality signifies a lack of rational action, resulting in rampant behavior and subtle violence.

7.2. Call for Biocracy-Biocracy is a heartfelt plea to rekindle our sacred bond with nature, acknowledging that our lives are intricately woven into the grand tapestry of the Earth. As we witness a surge in crime, it becomes evident that our neglect of the environment has profound repercussions. The scarcity of resources, the destruction of habitats, and the pollution of our air and water not only harm the planet but also fracture our communities, leading to desperation and discord. Embracing biocracy means adopting sustainable practices, educating ourselves about the environment, and fortifying laws to safeguard our precious natural resources.

In this noble journey, the lives of animals hold profound significance. As Mahatma Gandhi once said, “The greatness of a nation and its moral progress can be judged by the way its animals are treated.” The exploitation of animals for food and other products not only inflicts immense suffering but also

contributes to environmental degradation. By embracing veganism, we can reduce our ecological footprint and foster a world where compassion and sustainability walk hand in hand. Let us cherish all forms of life and make choices that honour the delicate balance of our ecosystem. Together, we can create a society that respects and protects nature, ensuring a brighter, more harmonious future for generations to come.[23]

7.3. Implementation reforms: In the context of Indian society, there is an urgent need for implementation reforms that emphasize the importance of a truthful life and the pursuit of self-realization. The relentless drive to consume and accumulate has led to a rise in crime rates, as individuals seek fulfilment in material possessions rather than inner peace. This consumerist mindset, devoid of deeper purpose, fosters tendencies that prioritize immediate gratification over long-term well-being. To counter this, legal reforms should focus on creating and enforcing laws that promote sustainable living and environmental stewardship. By raising awareness and ensuring strict implementation of these laws, we can guide individuals towards a more balanced and harmonious way of life.

Moreover, the lack of guidance in seeking peace within has left many feeling lost and disconnected. Traditional wisdom that encourages introspection and self-discovery must be supported by legal frameworks that protect and promote these practices. As Swami Vivekananda said, "You have to grow from the inside out. None can teach you, none can make you spiritual. There is no other teacher but your own soul." By fostering environments that support meditation, yoga, and other reflective practices through legal means, we can help individuals find solace and purpose within themselves. This shift towards inner peace can reduce the compulsion to seek validation through consumption, ultimately leading to a decrease in crime and a more harmonious society.

7.4. Training Reforms- Training reforms for law enforcers and officials in India are of paramount importance to address the deep-seated roots of corruption and inefficiency. These reforms should weave a profound understanding of truth and the principles of life into their curricula, ensuring

---

[23]L K Caldwell, "Biocracy and Democracy: Science, Ethics, and the Law" *Politics and the Life Sciences* Georgetown University Institutional Repository. (n.d.) (1985) *available at:* https://repository.library.georgetown.edu/handle/10822/807361(Last retrieved on January 2, 2025).

that law enforcers are not merely custodians of the law but also guardians of the profound values they protect. By instilling a sense of purpose and clarity about their sacred role in upholding the Constitution of India, which enshrines the highest tenets of life, law enforcers can be guided towards unwavering integrity and accountability.

Regular training sessions on the importance of truth, human rights, and the significance of inner peace can help diminish the propensity towards corruption and the misuse of power. Cultivating awareness and fostering a culture of self-realization among law enforcers will ensure they are deeply committed to their duty, paving the way for a more just and harmonious society.

7.5. Statutory reforms- Statutory reforms are indispensable to encompass not only prohibitions but also the profound reasons behind them, ensuring that laws are imbued with understanding and the spirit of justice. The language of laws should resonate like spiritual texts, offering clarity on how to lead a meaningful life to all who read them. For instance, in the context of laws against rape, it should be emphasized that while the primal instinct of procreation exists within the body, a consciousness-driven approach can elevate the body to serve higher purposes, bringing true inner peace. Succumbing to animalistic behaviours only diverts individuals from their true needs. If mere physical acts like sex were sufficient for liberation, all creatures would attain it through such actions alone. However, true fulfillment arises from understanding and aligning with higher causes, which statutory reforms should clearly articulate.

8. Conclusion

In conclusion, the "Bharatiya Nyaya Sanhita" represents a crucial opportunity for reform, emphasizing not only the prohibitions but also the underlying reasons for these laws. It is essential to convey that the purpose of human life transcends mere consumption; it is about seeking truth and leading a meaningful, inner-satisfying, and peaceful existence. The profound joy and fulfilment derived from doing what is right, as exemplified by revolutionaries and sages, far surpass the fleeting pleasures of consumption. Therefore, the focus should shift from merely imposing punishments to providing transformative training in jails and courses aimed at addressing the inner world of the human mind. By guiding individuals towards righteous tasks and awakening their sense of responsibility, we can foster a society of enlightened and responsible citizens. This holistic approach will ensure that the "Bharatiya Nyaya Sanhita" is not just a set of rules but a pathway to a more just and harmonious Bharat.

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 179-194

A Comparative Analysis of Whistleblowing Laws in India and the USA

Simranjeet Kaur*

Abstract

Whistleblowing is considered as a tool to expose wrongdoing and corrupt practices within an organization. An effective whistleblowing mechanism will always encourage individuals to come forward and report wrongdoings without the fear of retaliation. It is a tool that promotes transparency, accountability and integrity within the organization.

In light of the growing significance of whistleblower protections, this article draws a comparative analysis of whistleblower protection laws in countries like India and USA, highlighting the similarities and differences in the given system. The United States, with its long- standing mature legal framework has influence on global standards and has developed strong enforcement mechanism, incentives for the whistleblowers. In contract, India's whistle Blowers Protection Act of 2014 (hereinafter referred to as WPA, 2014), while a positive step, faces issues related to implementation and enforcement reflecting the cultural and other systematic barriers. It aims to safeguards individuals who expose corrupt activities of government and public sector organizations. Apart from WPA, 2014, we have Companies Act, 2013 (hereinafter referred to as CA, 2013), section 177 (9) and (10) along with SEBI (LODR) Regulations, 2015. Despite the good intentions that the Acts and Regulations carry, it has many drawbacks, for example, it has limited scope i.e. it does not apply to private companies, complex procedural structure, no rewards system for whistleblowers, no relief or award to whistleblowers etc. The Central Vigilance Commission (hereinafter referred to as CVC) or the Audit Committee are the designated authorities to receive complaints under the Indian system, but its efficiency is hindered by various bureaucratic inefficiencies.

In comparison, The US has dozens of whistleblower laws at the state and federal level, as well as separate clauses in legislation designated to achieve

*Assistant Professor, Amity University, Mohali; Research Scholar at Rajiv Gandhi National University of Law, Patiala

other objectives such as health, safety or welfare objectives. The three principal acts are whistleblower protection act 1989, the Sarbanes- Oxley Act (hereinafter referred to as SOX Act, 2002) and the Dodd- Frank Wall Street Reform and Consumer Protection Act of 2010 (hereinafter referred to as Dodd- Frank Act). Various agencies such as SEC and OSHA are duty bound to enforce these laws, ensuring effective investigations and protections.

Despite various legislative frameworks, both countries face challenges. Challenges such as limited awareness among employees, procedural delays, the word victimization has not been defined, while the USA's system is criticised because of its fragmented laws and inconsistencies across different sectors. Strengthening the whistleblower mechanism in both countries like India and USA requires addressing various issues which are enumerated in the article below. By addressing the issues given in the article, better safeguards can be created for the whistleblowers, thus promoting transparency, and encouraging the whistleblowers to blow the whistle without the fear of retaliation.

Keywords: *Whistleblowing, WPA, 2014, SOX of 2002, Dodd- Frank Act, Central Vigilance Commission, OSHA*

1. Introduction

In the past, India has witnessed various scandals affecting the economy of the country.[1] This is when the idea of whistleblowing mechanism started gaining momentum. It is a tool used in exposing corruption activities, fraud and other unethical practices both in public and private sector. However, the whistleblowers face risks, including retaliation and personal threats. Thus, strong legal protection becomes essential for encouraging such whistleblowers to come forward and expose the wrongdoings. In recent years, the importance to corporate social responsibility, transparency and accountability has increased, so too has the need for whistleblower protection laws. Effective whistleblowing mechanisms are essential for encouraging an atmosphere where people can come forward and expose wrongdoings without the fear of retaliation. The Committee on the Standards in Public Life, 2005, is an advisory non- departmental public body of the UK Government, has highlighted importance of whistleblowing. Committee is of the judgement that

[1]Pratima Vishnu Barde, "Whistleblowing Mechanism: A Positive Step towards Enhancing Corporate Governance" 4 *International Journal of Law Management & Humanities* 1613 (2021).

effective whistleblowing mechanism is a key component to challenge any inappropriate behaviour at the different levels of organization. The whistleblowing tool supports good governance and creates an open culture.[2] India and United States have different approaches to whistleblower protection. The US has dozens of whistleblower laws at the state and federal level, as well as separate clauses in legislation designated to achieve other objectives such as health, safety or welfare objectives. The three principal acts are WPA 1989, the SOX Act, 2002 and the Dodd- Frank Act. Various agencies such as SEC and OSHA are duty bound to enforce these laws, ensuring effective investigations and protections. These laws and agencies are considered to be most developed globally and have set some influential standards which other countries including India look upto.

In India, the primary legislation are the WPA, 2014, the CA, 2013, and the SEBI (LODR) Regulations, 2015. Despite the good intentions that the Acts and Regulations carry, it has many drawbacks, for example, it has limited scope i.e. it does not apply to private companies, complex procedural structure, no rewards system for whistleblowers, no relief or award to whistleblowers etc. The Central Vigilance Commission (hereinafter referred to as CVC) or the Audit Committee are the designated authorities to receive complaints under the Indian system, but its efficiency is hindered by various bureaucratic inefficiencies.

This article undertakes to do a comparative analysis of the whistleblower mechanisms including protections provided in India and the USA. It further highlights the similarities and differences in their legal frameworks and implementation. By exploring the legislative mechanisms and enforcement mechanisms, this article aims to identify best practices and areas that can be strengthened.

2. Research Methodology

The research adopted is doctrinal. The comparative method will be used to a limited extent to compare the relative position in India as against the situations prevailing in USA. Reference contains both primary and secondary sources. Primary sources consist of statutes and legislations and secondary sources comprise of books, articles, law journals, various committee reports and e-resources.

[2] The Committee on the Standards in Public Life, "Whistleblowing" (2005).

3. Legislative Framework of Whistleblowing in India and USA

3.1 India

Whistleblowing means an action whereby information is disclosed by complainant about unethical and corrupt behaviour within an organization. In the year 2001, the Law Commission, was of the opinion that there should be a system to protect the whistleblowers and a bill was drafted to address this issue.

The SC in 2004, because of the famous NHAI official incident, directed that an independent administrative machinery to handle complaints from whistleblowers should be established. The Government in response decided to notify a resolution as "Public Interest Disclosure and Protection of Informers Resolution (PIDPIR)". Consequently, the Commission[3] (CVC) was established and was designated as an authority to receive complaints of whistleblowers. Moreover, in addition to this, report[4] of 2007 Commission also advised that there should be a law specifically to protect the whistleblowers.

Further, India is a signatory to the UN Convention since 2005 which encourages states to provide all facilities or to create an environment which encourages public officials to expose corrupt practices and to provide protection for witnesses and experts against retaliation.[5] The UN Convention further provides protection to the individuals who expose wrongdoings, thus preventing victimization of persons making complaints. With all such recommendations in mind, Whistleblowers Protection Bill (hereinafter referred to as WPB) was proposed which finally became a law in 2014.

The WPA, 2014 was passed in Parliament on February 21, 2014. After the passing of the Bill by Lok Sabha, certain amendments were circulated in Rajya Sabha on August 5, 2013, but the same were not incorporated in the bill when passed by Rajya Sabha in 2014. Thus, the amendment bill[6] of 2015 was further introduced in House of People in the year 2015 which was passed on May 13, 2015 by House of People. The Bill is still pending in Rajya Sabha.

---

[3] The Commission here refers to the Central Vigilance Commission.

[4]The report here refers to the Second Administrative Reforms Commission.

[5]Whistleblower Protection Act*, available at:* https://www.drishtiias.com/daily-news-analysis/whistleblowers-protection-act (Last retrieved on July 9, 2024).

[6] The Whistleblower Protection (Amendment) Bill, 2015.

Further, according to Section 177 (9) and (10) of CA, 2013 vigil mechanism has to be established by every listed company or such class or classes of companies that are required by rules. Such vigil mechanism is for the directors and employees so that they can raise their genuine concerns in the manner prescribed.[7] The mechanism should be such that will provide protection against victimization of persons who come forward and raise their concern against the corrupt practices and mechanism should make such provision wherein direct access is provided to the chairman of the Committee[8] in appropriate cases.

The rule 6[9] is applicable to the companies whose shares are listed on stock exchange or the companies accepting public deposits or the companies borrowing from banks and public financial institutions in excess of fifty crore rupees. Moreover, the companies that are to constitute audit committee as per law shall oversee the whistleblower mechanism through audit committee. In case where a company is not mandated to establish an audit committee, a director will be nominated by the board of directors to play the function of the committee.[10]

The rules further provide that the mechanism[11] established in the previous paragraph should provide for safety of the whistleblower and he should not be victimized. Thus, adequate safeguards to employees and directors who avail this mechanism should be provided. In case, there are repeated frivolous cases complaints are directed by an individual who happens to be part of board, the committee, or the director, can take action against such person.[12]

3.2 USA

The US has dozens of whistleblower laws. The three principal acts are whistleblower protection act 1989, the SOX Act, 2002 and the False Claims Act. In US, the SOX Act, 2002 came into light in wake of various giant collapses that had taken place. The SOX Act made major changes in every aspect of CG[13], including independence of auditor, preventing conflict of

---

[7] The Companies Act, 2013, s. 177 (9).

[8] The committee here refers to the Audit Committee.

[9] Companies (Meetings of Board and its Powers) Rules, 2014

[10] The Companies (Meetings of Board and its Powers) Rules, 2014, rule 6, *available at: https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/rules.html*

[11] The mechanism here refers to the Vigil Mechanism.

[12] *Ibid.*

[13] CG refers to Corporate Governance.

interest, corporate social responsibility, enhanced financial disclosures and imposing severe penalties for deliberate fault by managers and auditors.

The objective is to safeguard the shareholders, the stakeholders at large from various accounting and financial frauds and also to improve the disclosure mechanism of corporates. The main objective was to improve the CG[14] practices of the organization.

The SOX Act, 2002 was established with the objective firstly, to protect the investors, by giving them true information; to emphasize on the correctness of every disclosure that is being shared with the investors at large; to provide safeguard to the persons who disclose information regarding the malpractices. The Act basically dealt with the public company accounting, board oversight, board independence, independence of the auditor, corporate social responsibility, enhanced disclosures including financial disclosures, corporate tax returns etc.

4. Whistleblower Cases in India and USA

4.1 India

- Satyendra Dubey Case[15] : Indian Government started an ambitious Golden Quadrilateral project and Satyendra Dubey at that time was in charge of expansion of Aurangabad- Barachatti section of National Highway 2. He observed that Larsen and Toubro had taken the contract from the government and passed on the contract to some smaller contract mafias who were incapable of handling such a big project. Moreover, he noticed that such small contractors could not maintain the quality of work while constructing the road. After reporting to the senior NHAI officials, he reported to the Prime Minister Atal Bihari Vajpayee office. While reporting he requested to keep his identity secret. The file was circulating and Dubey was exposed to threats. Just after a year Dubey was murdered in Bihar.
- Yashwant Sonawane Case[16]: He was a Collector and posted in Malegaon. On receiving information about oil adulteration, he carried out investigation about the people involved in oil adulteration. He was attacked and was set on fire. He was declared dead on arrival at the hospital.

---

[14]*Ibid.*

[15]Whistleblowing: Balancing on a Tight Rope, *available at* https://www.icsi.edu/edia/*webmodules/45th_nc/WhistleBlowing_BalancingonaTightRope.pdf*

[16]*Ibid.*

➢ V. Saseendran Case[17]: He was a CS posted in Malabar Cements limited, a PSU. The company registered a loss of Rs 400 crores, and he was the prime witness of such fraud. He reported the issue to the management and was asked to withdraw his allegation. He finally raised his concern to the chief minister of Kerla, Industries Minister and also to the Vigilance Director. After a year he was found hanging in his house with his two sons.

4.2 USA

➢ ENRON (Year 1985-2000s)

Enron was based in Houston, Texas and was one of the country's most innovative and leading company engaged in energy trading, natural gas and electric utilities. Founded in the year 1985.[18] Its executives and senior management manipulated the financial results[19] and thus it did not depict the true nature and profitability of the company. The main motive behind this practice was to increase share price from $30 per share in 1998 to $ 80 per share in 2001 after stock split. In order to reorganize and remain protected from creditors the case ended by filing Bankruptcy.[20]

➢ WORLDCOM (Year 1983-2000s)

Two businessmen Murray Waldron and William Rector in a coffee shop in Hattiesburg, sketched out a plan on napkin to create a long- distance telephone service provider. It was founded by Bernie Ebbers and in the year 1990s it had a big success story where the asset value soared to $ 180bn before the US capital market started witnessing downtrend. In March 2002, manipulation in the financial statement had taken place. The outside auditors Arthur Anderson were accused of not disclosing the facts to the stakeholders. In defence, Andersen claimed that it could not have known because former CFO Scott Sullivan never informed them about the firm's questionable accounting practices.[21] Finally, on July 22, 2002, it filed a bankruptcy. Moreover, former CFO Scott Sullivan and ex- controller David Myers got arrested and they were

---

[17]*Ibid.*

[18]Yuhao Li, "The Case Analysis of the Scandal of Enron" 5 *International Journal of Business and Management,* 37, *available at*: http://cites eerx.ist.psu.edu/viewdoc/download? doi=10.1.1.663.9418&rep=rep1&type=pdf

[19]Dr. Twinkle Prusty, *Corporate Governance Compliances in Indian Industries* (Regal Publication, New Delhi, 2008).

[20]Meenu Gupta, "A study on 'Critical Issues & Corporate Governance Framework" 46 *Chartered Secretary* 1 (2016).

[21]Business Ethics and Education, *available at:* https://danielsethics.mgt.unm.edu/pdf/ WorldCom%20Case.pdf

criminally charged and four foreign banks agreed to pay $428.4 million for setting the class action suit by investors.[22]

5. Enforcement Agencies of Whistleblowing in India and USA

5.1 India

According to Section 3 (a) of the WPA, 2014, the CVC means the Commission which is formed under section 3(1) of the CVC Act, 2003.[23] According to this section, CVC will be constituted to exercise powers conferred under the Act of 2003.

Section 8 of the CVC Act, 2003 lay down the various powers of CVC under the CVC Act, 2003. "It states that CVC is bestowed with power to oversee the functioning and to review the investigation taken by Police Establishment[24]; it can inquire into any case or cause inquiry to be made, if the reference is by the Government(CG), as because the person involved is a worker of CG; Commission can make inquiry into any case where it is alleged that member of All India services, officers belonging to Group "A" of the CG or officers of Central Act corporations, officers of government companies, officers of local authorities or controlled by the CG; further it can tender advice to the vigilant administration of the CG, corporations that are established under the Act of the passed by the Centre, companies owned by the Government and local authorities, which are owned or controlled by the Government of India.[25] The commission may call for any data including various reports, statements and returns from the Government (CG) or from the corporations established pursuant to the Act of Centre, Government companies, societies owned by the Government (CG) to exercise general supervision.[26]

Thus, after going through the various powers provided under the CVC Act of 2003, we realize that the powers of the Commission are merely advisory in nature, such as supervisory powers, consultations powers, advisory powers, directive powers.

Power of CVC under WPA, 2014: Section 7 of WPA, 2014 states that CVC has the responsibility to confirm the identity and the name of the complainant; it is duty of CVC to conceal the identity unless complainant has done

---

[22]Meenu Gupta, "A study on 'Critical Issues & Corporate Governance Framework" 46 *Chartered Secretary* 1 (2016).

[23] The Whistleblower Protection Act, 2014, s. 3 (a).

[24]Police establishment here refers to the Delhi Special Police Establishment.

[25] The Central Vigilance Commission Act, 2003, s. 8.

[26] The Central Vigilance Commission Act, 2003, s. 8.

something to expose the same to any department while making disclosure; the concerned authority shall make inquiry, and investigation, but before it starts with investigation it shall seek opinion from the HOD on the report; and while seeking opinion it should not disclose the individuality or name of the complainant and further instruct the HOD not to expose the individuality of the complainant; If the concerned authority is of the belief that while seeking opinion it is necessary to disclose the individuality of the complainant to the HOD, than it shall ask for the previous consent of the whistleblower and only than disclose the name to the HOD.[27] The HOD is bestowed with the responsibility of not disclosing the name of the whistleblower, moreover if the authority is of the belief that the complaint is frivolous and baseless, it can close the matter and if on receiving the comments from the HOD, the commission is of the belief that misuse of power has taken place, it shall suggest to the concerned authority to initiate proceedings against the public servant; take proper administrative actions, recommend the concerned authority to initiate criminal proceedings; to take corrective actions. The public authority should take action within the period of 3 months of receipt of suggestion or within or within such period not more than three months, as commission may allow and if the public authority does not agree with the recommendation, it shall note reasons in writings; The commission after making inquiry shall inform complainant about actions that are taken and the final outcome of such complaint.[28]

5.2 USA

The enforcement of various whistleblower laws in United States are managed by various different agencies, depending on the sector. There is Office of Special Counsel (OSC) which oversee cases related to federal employees, while SEC is bestowed with financial and corporate sectors. Even the OSHA oversee cases related to corporate sectors. These agencies are empowered to investigate complaints, provide protection to whistleblowers from retaliations, and impose strong penalties on infringers.

OSHA's mission is "to ensure that all the employees or workers associated with any activity are safe and are not subject to any cruel and unethical environment. OSHA is thus responsible for setting standards or for enforcing anti- retaliation measures thus safeguarding the employees working in

[27] The Whistleblower Protection Act, 2014, s. 7.
[28] *Ibid*

America. It also provides training, guidance, education and other forms of assistance so as to assure that their workers are safe. OSHA not only covers public companies but also covers private sector. OSHA's WPP[29] provides protection to individuals who suffer retaliation in any form for engaging in undertakings that are permissible under law."[30] OSHA investigators are the neutral fact finders; they are neutral and do not work for complainant or respondent.

6. Protection Measures of Whistleblowing in India and USA

6.1 India

Section 11 of the WPA, 2014 provides some safeguards to the complainants. Section 11 states that the person who has disclosed wrongdoing should not be victimized or retaliated and the responsibility is bestowed upon the Government (CG). The aggrieved party can always make an appeal to the Competent Authority for proper redressal. A hearing must be conducted, allowing the complainant and the other party to present their cases. The burden of proof is on the public authority that no act of victimization had taken place. [31]

Further, Section 12 of the WPA, 2014, states that the concerned Authority is of the belief that the complainant needs protection, and the complaint is genuine, it shall issue instructions to the police or concerned authority to provide safety to the whistleblower.[32]

Section 13 further bestows responsibility on the Competent Authority not to disclose the individuality of an individual who has disclosed the wrongdoing to the said authority. However, if it is necessary to disclose the name by virtue of Court's order, the identity and the name of the complainant can be revealed.[33]

6.2 USA

In USA the laws regarding whistleblowing are more robust and they provide comprehensive safeguards. The WPA ensures protection against retaliation for federal employees, including reinstatement, back pay, and compensatory damages. Section 806 of SOX Act which is the nervous system of corporate

---

[29]WPP here refers to the Whistleblower Protection Program.

[30]The Occupational Safety and Health Administration: Whistleblower Protection Program, *available at:* https://www.whistleblowers.gov/about-us (Last retrieved on July 7, 2024).

[31] The Whistleblower Protection Act, 2014, s. 11.

[32] The Whistleblower Protection Act,2014, s. 12.

[33] The Whistleblower Protection Act,2014, s. 13.

governance provides that provision that no company that is publicly traded shall retaliate against an individual who blew the whistle on conduct that they reasonably believe is in breach of certain statutes and regulations.[34] The act states the four specific categories of statutes are frauds and swindles (S 1341), fraud by wire, radio, or television (Section 1343), bank fraud (Section 1344) and Section 1348 (Securities Fraud). Moreover, breach of the SEC, or any provision of Federal Law relating to fraud against the shareholders. Section 806 further provides with remedies available to the complainants, including "all relief necessary to make the employee whole". The phrase "make whole"[35] includes rehabilitation with the same status; the number of unpaid wages, with interest; recompense for any exceptional damages sustained because of the discrimination including all the litigation costs incurred, expert witness fees and attorney fees. It is however important to note that punitive damages are not available under the section.[36]

Further, the Dodd-Frank Act strengthens protections by prohibiting retaliation and offering incentives or rewards for the individuals who blow the whistle and provide information that leads to successful enforcement actions. Section 922 of the Act defines the term whistleblower, it means a person who alone or along with two or more individuals provide information relating to breach of the Securities laws to the Commission, in a manner or according to the rules established by the Commission.[37] The act further rewards a person who voluntarily provides primary information to the Commission that led to the successful enforcement of the covered judicial or administrative action or related action. The reward shall not fall below 10 percent, in total, and shall not be more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.[38] Further, the section states that any amount that will be payable will be payable from the

---

[34] The Sarbanes- Oxley Act, 2002, s. 806.

[35] Stephen B. Stern and Jonathan Cohen, "Pleading a Sarbanes- Oxley Act Whistleblower Claim: What is Required to Survive?" 23 *The Labor Lawyer* (2007).

[36] *Ibid.*

[37] The Securities Exchange Act, 1934, s. 21F(a)(6) (Note: Section 922 of Dodd Frank Wall Street Reform and Consumer Protection Act amends The Securities Exchange Act of 1934 by inserting section 21F).

[38] The Securities Exchange Act, 1934 s. 21F(b) (Note: Section 922 of Dodd Frank Wall Street Reform and Consumer Protection Act amends The Securities Exchange Act of 1934 by inserting section 21F).

Fund.[39] The Act further defines the term "Fund" which means the SEC Investor Protection Fund.[40] Determination of the award is in control of the Commission, he will consider firstly, the importance of information, the assistance or help provided by the whistleblower and the advantage of the Commission in determining violation of the securities laws by awarding the whistleblower who provide information that lead to the successful enforcement of the law. Commission may further take into consideration some additional factors in deciding the award.[41] A whistleblower is not eligible to award if the whistleblower knowingly and willingly makes any false, fictitious or fraudulent statement or representation; or uses any false writing or document knowingly the writing or document contains false or misleading information or fraudulent statement or entry.[42]

7. Challenges and Criticisms of Whistleblowing in India and USA

7.1 India

Despite various scandals like, Harshad Mehta (1992), C.R Bhansali (1992-1996), Ketan Parekh (2001), Satyam (2009), Saradha Group (2013), Bank of Baroda (2015), PNB Scam (2018) etc, the commercial and the non-government sector are outside the range of the Act even though public sector contributes only 20 percent to the national income, whereas the non-government sector contributes 40 percent of the total wages.[43]

Section 8 of WPA, 2014 excludes disclosures that may affect the national interest of India, e.g. the disclosure that affects the sovereignty, integrity, security of India, and disclosures that are against ethical and legal concerns, e.g. public order, decency, morality and contempt of court.[44]This exclusion might limit the powers of the Act in addressing critical and important issues. the definition of some important terms, like, whistleblower or complainant and the word disclosure has not been defined under the Act, leading to potential confusion. The Act does not accept anonymous complaints, which will deter whistleblower to blow the whistle because of the fear of retaliation. The

---

[39] The Securities Exchange Act, 1934, s. 21F(b)(2).
[40] The Securities Exchange Act, 1934, s. 21F(a)(2).
[41] The Securities Exchange Act, 1934, s. 21F(c).
[42] The Securities Exchange Act, 1934, s. 21F(i).
[43]Report by a domestic rating agency, *available at*: https://www.business-standard.com/article/economy-policy/public-sector-contributes-20-to-national-income-40-of-total-wages-122082900733_1.html
[44] The Whistleblower Protection Act, 2014, s. 8.

penalties imposed on the organization for retaliation are not sufficient, hence the same is against the deterrence theory. Moreover, the Competent Authority only serves as an advisory body and lacks the authority to impose huge penalty. Further section 4 of WPA, 2014 states that the disclosure can be made to the concerned authority and such disclosure first, should be in good faith, second, the name of the complainant should be disclosed.[45] Thus, this section has many challenges, firstly, no action will be taken if the complaint is anonymous, secondly, the use of the word good faith might deter the whistleblower to blow the whistle because the whistleblower who is unsure about the entire truth but has significant information might feel unsafe to blow the whistle, thirdly, requiring production of evidence poses a significant pressure because the whistleblower might not have access to the supporting documents. The limitation period of seven years on complaints may exclude older issues of public interest to come up. Granting civil court powers to CVC may result in procedural delays. No provision of Checks and balance provided under the Act. Thus, the functions of CVC could be misused.

Further, talking about the Bill of 2015[46] which is still pending in upper house has its own drawbacks. The bill prohibits disclosure if it is connected to any of the ten categories enumerated under the Amendment Bill."[47] Thus, all the ten disclosures are reducing the transparency and accountability. The wide range of exclusions can be misused to deny the legitimate requests for information; Secondly, the amendment gives undue and discretionary power to the government to decide whether the disclosure is a prohibited disclosure or not. This might lead to corruption or other mismanagement practices. Moreover, the judgement of the government is final, which further prohibits scrutiny or challenging of the decision of the government, lastly, aligning the amendment with the RTI Act, 2005 and at the same time giving authority to the government to decide which disclosure is prohibited, can undermine the RTI act, which aims to promote transparency in public administration.

7.2 USA

The enforcement mechanism under Sarbanes- Oxley Act wherein an individual who is alleging an offence having been committed has the onus of proving the same. This can deter many employees from pursuing claims. The

[45] The Whistleblower Protection Act, 2014, s. 4.
[46] Whistleblower Protection (Amendment) Bill, 2015.
[47] Whistleblower Protection (Amendment) Bill, 2015.

Act further prescribes the limitation period. The limitation period is 90 days. This is a very small period provided by the act for the employees to gather evidence in order to proof that certain violation of law has taken place. Employees of the private sector are not protected whereas only publicly traded companies are protected. Thus, the Act has very narrow scope in terms of its applicability. The Act states the relief in the form of rehabilitation with the same seniority status, the number of unpaid wages with interest and recompense for any extra-ordinary damages sustained as a result of the discrimination, litigation costs, expert witness fees and reasonable attorney fees will be paid. Thus, the Act provides for protection of employees who are providing information, but the section does not state about the other indirect ways in which a person can be humiliated. The Act does not lay down how awareness among the employees can be created so as to prevent violations of laws. The person who alleges that retaliation against him has taken place, he can file a complaint first, with the Secretary of Labor, second, to the court of law, only if the Secretary does not act within 180 days of filing of the compliant regarding unethical conduct. The dependency on both the bodies may lead to inconsistency in the decisions.

8. Recommendations on Whistleblowing for India and USA

To enhance the effectiveness of both whistleblower laws, both the countries should consider the following suggestions: -

8.1 India

a) Expanding the scope of WPA 2014 in terms of its applicability would take into purview the non- governmental sector as well. To some extent the role is fulfilled by the whistleblowing provisions under Companies Act 2013, but Section 177 (9) and (10) of the Companies Act, 2013 is applicable to every company that is listed on stock exchange and to a company which is covered under rule 4[48]. Companies covered under Rule 4 are Public Company having paid capital of 10 cr. rupees or more; or turnover of 100 cr. rupees or more; or companies having outstanding loans exceeding 50 cr. Rupees. Moreover, such companies shall constitute an 'Audit Committee' and a 'NRC of the Board'. This Audit Committee is responsible for receiving complaints of whistleblower.

[48]Companies (Appointment and Qualification of Directors) Rules, 2014.

b) Establishment of reward system for the individuals who expose wrongdoings can further encourage the whistleblowers to come up and expose wrongdoings within the organizations.
c) Giving more authority and resources to CVC could help in timely and effective investigations to take place.
d) Creating awareness about whistleblowing mechanism along with providing training to the stakeholders i.e., individuals will educate them about their rights and protections under the laws.

8.2 USA

a. USA has many whistleblower laws and if harmonization of various laws takes place this would create a compact protection mechanism across all sectors.
b. The limitation period prescribed by the Act is very short, thus increasing the limitation period beyond 90 days would give whistleblowers more time to gather evidence and support their claims.
c. An individual who alleges that retaliation against him has taken place, he can file a complaint first, with the SOL (Secretary of Labor) or the court of law. He can approach court of law only when SOL did not act within 180 days of filing of the complaint regarding unethical conduct. The dependency on both the bodies may lead to inconsistency in the decisions.
d. Awareness is a hinderance in the actual implementation of the whistleblower mechanism. Thus, creating awareness and promoting a positive organizational culture that encourages ethical behaviour and supports the whistleblowers is a must.

In addition to this OSHA has come up with advisory regulations, which are not mandatory, but countries can adopt the same in order to create an environment which supports whistleblowers. The advisory suggests that there are 5 key elements that can create an effective anti- retaliation program. First, is the Management commitment; in order to prevent retaliation, it is responsibility of the management to ensure that there is a proper system in place to report hazards and compliance concerns for maintaining the privacy of employees.

Training to managers about how to respond to reports of employees; how to separate inordinate behaviour from the concern itself. A well-designed program that prevents retaliation needs a rigorous oversight for its efficient working.

Employers should develop a strategy for overseeing so as to prevent retaliation, review the same and modified when needed. Oversight can be achieved through tracking and audit which can help employers or owners gain insight into a program's power and deficiency and reveal whether program improvements are needed or not.[49]

By implementing the aforesaid recommendations, both countries can instill a culture of transparency, accountability, thus creating a safer and more supportive environment for whistleblowers, both in public and private sectors.

9. Conclusion

Both India and USA have established whistleblower mechanisms to protect the whistleblowers or the complainants but there are significant differences in the effectiveness of the mechanism. The analysis highlights the critical role of the legal frameworks in supporting transparency and accountability. Both countries realize the importance of whistleblowers in exposing the unethical practices, yet each country face challenge in providing protection to the whistleblowers.

In India, though the legislation is well intentioned, still it lacks in its applicability. Expanding the scope of WPA 2014 in terms of its applicability would take into purview the non- governmental sector as well, establishment of reward system for the individuals who expose wrongdoings can further encourage the whistleblowers to come up and expose wrongdoings within the organizations, giving more authority and resources to CVC could help in timely and effective investigations to take place, creating awareness about whistleblowing mechanism along with proving training to the stakeholders, will educate them about their rights and protections under the laws.

In United States, while comprehensive laws like WPA and SOX Act provide significant protection, limitations still exist. For example, it has many whistleblower laws and thus harmonization of various laws would create a compact protection mechanism across all sectors. Increasing limitation period beyond 90 days would allow whistleblowers time to gather evidence and support their claims. Furthermore, creating awareness and making the complaint filing procedure simple will strengthen accountability and transparency and encourage whistleblowers to raise their complaints without the fear of retaliation.

Strengthening and addressing the above challenges in both countries can contribute to a culture which encourages individuals to expose wrongdoings without the fear of retaliation. By handling the above issues, both nations can build a strong legislative framework that will encourage whistleblowers to report wrongdoings safely, thus promoting transparency and accountability and building public trust.

---

[49] Recommended Practices for Anti- Retaliation Programs, *available at:*https://www.osha.gov /sites/default/files/publications/OSHA3905.pdf (Last retrieved July 15, 2024).

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 195-208

Embedding Formal Organization Conception in ADR System in India

Kritika Sheoran*

Abstract

Arbitration is a kind of non-judicial dispute resolution technique where disputant parties are referred to a neutral third party for an irrevocable decision or 'award'. It is of two types- Ad-hoc arbitration and Institutional arbitration. In institutional arbitration, the process of arbitration is administered by an institution in congruence with its rules of procedure. These institutes provide numerous services such as appointment of arbitrators, venues for hearing, administrative staff etc. Rapid industrialization and globalization have led to expansion of trade and commerce which in turn has increased commercial disputes. With the sole objective of resolving these commercial disputes, many arbitral institutes have been established in India but they are not functioning effectively. Moreover, Indians prefer ad-hoc arbitration over institutional arbitration because of reasons such as they have no legislative support, inflexible process, misinterpretation related to costs etc. This paper will include discussions on institutional arbitration and its advantages over ad-hoc arbitration. The paper will also focus on the status of institutional arbitration in India, challenges being faced by it in its effective functioning along with the suggestive measures in order to establish India as a center for institutional arbitration.

Keywords-*Arbitration, Ad-hoc Arbitration, Institutional Arbitration, Award.*

1. Introduction

"*Arbitration is indeed a striking feature of ordinary Indian life. And I would go further and say that it prevails in all ranks of life to much greater extent than is the case in England. To refer matters to a Panch is one of the natural ways of deciding many a disputes in India*…."

-Martin (Chief Justice)[1]

Arbitration is not a new term for Indian society. Its origin can be traced back to the ancient system of village panchayats where neutral third party

*Assistant Professor, UILS, PU, Chandigarh.

[1] *Yakub Khan v. Guljar Khan* AIR 1927 Bom. 565 (FB)

i.e.*Panchas* used to resolve disputes that arose in the respective villages. With the growth of civilization, the method of settling dispute through panchayat went through a draconian change.[2] The first statutory enactment for settling the disputes outside the court relating to arbitration came in 1899 as the Arbitration Act of 1899. The increase in trade and commerce as a result of globalization led to increase in the number of commercial disputes which could not be resolved by the Act of 1899. In order to solve these problems, our Parliament came up with the Arbitration and Conciliation Act,1996.[3]

2. Types of Arbitration

Taking from the perspective of framework in which proceedings of arbitration are administered, arbitration can be divided into two kinds-Ad-hoc Arbitration and Institutional Arbitration. Ad-hoc arbitration is one which is governed by arbitral tribunal itself whereas institutional arbitration is governed by an arbitral institution.

2.1 Ad-hoc arbitration

When the parties to an agreement include an arbitration clause w.r.t number of arbitrators, appointment of arbitrators, procedure to be followed in arbitral proceedings, etc. such type of arbitration is known as Ad-hoc arbitration. In this type, party autonomy prevails and parties are free to choose the venue, panel of arbitrators, procedure to be followed, fee structure, choice of law, etc. The whole process is not administered by the arbitral institution but by the panel appointed according to the wishes of the contracting parties. Since all the power of arbitration is given to the parties, they have to make certain arrangements as well like- venue of arbitration, administrative staff for smooth conducting of the whole process, etc.

When the parties enter into an agreement, they have cordial relations and hence they easily make up their mind to refer their disputes to arbitration and through mutual co-operation they mention the method and procedure of arbitration process. But once the dispute arises, their relations become strained and they do not co-operate in the dispute resolution process. Sometimes they do not concur on the appointment of a qualified and impartial arbitrator and a deadlock is arrived at. In order to break this deadlock, help of an institute as the appointing authority can be taken. However, both the parties should agree

---

[2] N.V. Paranjape, *Law relating to Arbitration and Conciliation in India* 1 (Central Law Agency, Allahabad, 7th edn., 2016).

[3] Hereinafter referred to as ACA.

on the name of the institute who will appoint a qualified arbitrator to conduct the proceedings.

The contracting parties who want to move forward with ad-hoc arbitration have the following options available to them which they can include in their dispute resolution process-

a. By making necessary changes in selection process of arbitrators and eliminating provisions related to superintendence.
b. Following rules framed for ad-hoc arbitral proceedings like UNCITRAL Rules (U.N. Commission on International Trade Law) which can be used in both international and domestic disputes.
c. Following ad-hoc provisions contained in another contract.
d. Including statutory provisions in the agreement like the ACA.[4]

2.2 Institutional Arbitration

When parties to an arbitration agreement agrees to refer their dispute to an arbitral institution, such type of arbitration is known as institutional arbitration. If any dispute comes up, between the parties, they straightway go to the designated institute. The institute will intervene and supervise the arbitral process according to its rules, procedure, and fixed fee schedule. The function of institution is that of an interceder for the parties in order to bridge the gap between them and give them a solution to their dispute.

Institutional arbitration comes into existence when an arbitration clause mentioning a designated organization/ institution is entered into by the contracting parties. Due to the increase in trade and commerce, there has been increase in commercial disputes at national as well as at international level thereby making it incumbent to develop the institutional arbitration which can resolve such disputes in a time bound manner. In order to develop this institutional structure, there has been emergence of the concept of International Commercial Arbitration, which means resolution of commercial disputes arising between the parties of different countries through a non-judicial method. The ACA defines 'International Commercial Arbitration' as "the arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India

[4] Edlira Aliaj, 'Dispute resolution through ad hoc and institutional arbitration', *Academic Journal of Business, Administration, Law and Social Sciences,* Vol. 2 No. 2 (2016), p.241-250, *available at* http://iipccl.org/wp-content/uploads/2016/07/241-250.pdf (Last retrieved on May 10, 2024).

and where at least one of the parties is an individual who is a national of or habitually resident in, any country other than India or a body corporate which is incorporated in any country other than India or if one of the party is government, the government is of a foreign country".[5] Since the contracting parties are of different nationalities, they prefer to refer their disputes to an international institution like- The London Court of International Arbitration, The International Centre for Dispute Resolution in the international branch of the American Arbitration Association, Singapore International Arbitration Centre, Hong Kong International Arbitration Centre, etc. The choice of institution is with the parties and they are free to make a choice among various arbitral institutions as per their requirements. Factors such as the seat of arbitration, fee structure, rules of procedure, administrative support, etc. are taken into account while making a choice of an arbitral institution.

Whether an arbitration is ad-hoc or institutional, it depends upon the choice of the parties to the agreement. While entering into an agreement, if they want to retain the power of appointing arbitrators, procedure to be followed in proceedings, amount of fees, etc. in their own hands, they can opt for ad-hoc arbitration. On the other hand, if they do not want to get into the trouble of appointing arbitrators, framing rules for the resolution process and arranging for administrative staff, it is better to go for institutional arbitration. While comprehensive data on institutional versus ad-hoc arbitrations in India is limited, available information suggests a growing trend towards institutional arbitration. According to a 2020 survey by the Mumbai Centre for International Arbitration (MCIA), there was a 93% increase in institutional arbitration cases filed from 2017 to 2019. However, ad-hoc arbitrations still dominate the Indian landscape.

3. Advantages of Institutional Arbitration

Comparing ad-hoc arbitration with institutional arbitration, latter has major advantages over the former. In ad-hoc arbitration in India, there is a small panel of arbitrators from where parties have to choose from. Since their number is less, they are not readily available for the arbitration process, causing a delay in the whole process. Moreover, this delay leads to an increase

[5] The Arbitration and Conciliation Act,1996 (Act 26 of 1996), s.2(1)(f)

in the cost of proceedings, making it even more expensive than litigation.[6] Major advantages of institutional arbitration are discussed as under-

a. ***Selection of Tribunal***: Although ad-hoc arbitration also gives flexibility to select arbitrator of one's choice, but there is a cumbersome and tedious procedure to do so. Moreover, it is more time consuming because of party autonomy and flexibility which ultimately overlook the basic concept on which ADR mechanism work i.e. time saving. Institutional arbitration has a major advantage in this regard. Once it is opted by the parties, there already exists a panel of arbitrators w.r.t that institution and parties can make a choice out of that panel. A time frame is also fixed by the respective institution within which arbitrator has to be appointed by the parties. Thus, tribunal is constituted within a fixed time frame and the proceedings can be started at the earliest.
b. ***No Interference by the Legal System***: There is intervention by the courts in the arbitration process under the statutory provisions. But once institutional arbitration comes in operation, this interference is minimal. A number of factors play a role in this regard such as panel of arbitrators is constituted by taking experts from different fields and due emphasis is laid down on experience, reputation and standing in arbitration law. The rules of an institution are framed after many deliberations and due care of statutory provisions is taken while framing them. All the technical shortcomings are removed before making the final rules and procedure by taking help from professionals and experts from the requisite background. Because of all these factors, what comes out is a sound policy related to rules and procedure of arbitration. Hence there are very less chances of them being challenged in a court of law.
c. ***Uniform Procedure and Rules***: All the arbitral institutions have a set of pre-established rules and procedure that govern the whole process of arbitration, from appointing arbitrators till the stage of passing of an arbitral award.[7] Unlike in ad-hoc arbitration, here parties need not to go through the

---

[6] Edlira Aliaj, 'Dispute resolution through ad hoc and institutional arbitration', *Academic Journal of Business, Administration, Law and Social Sciences,* Vol. 2 No. 2 (2016), p.241-250, *available at:* http://iipccl.org/wp-content/uploads/2016/07/241-250.pdf (Last retrieved on May 10, 2024).

[7]SundraRajoo, 'Institutional and Ad hoc Arbitrations: Advantages and Disadvantages', *The Law Review* (2010), *available at:* http://sundrarajoo.com/wp-content/uploads/2016/01/

statutory provisions and drafting an arbitration clause or agreement. A draft arbitration clause is available with every institution which is incorporated once the parties select a particular institution for the arbitration process. These draft arbitration clauses are unambiguous since they are framed after taking opinion of experts. This is not the case with ad-hoc arbitration where arbitration clause is generally drafted by parties and hence it suffers from several ambiguities due to which they are generally challenged in courts.

d. ***Infrastructure***: Venue of arbitration is decided by mutual consent of the parties as per their own convenience. It is not a formal place as it is in the case of litigation. This choice of selecting venue is available to the parties in case of ad-hoc arbitration as well. Unlike ad-hoc arbitration where parties have to make arrangements for venue, institutional arbitration provides proper infrastructure regarding venue where proceedings have to take place. All the facilities are readily available to the parties and they need not to worry about arranging a seat for arbitration. If there is a conflict regarding appointment of arbitrator, it can be resolved by taking assistance from experts who are appointed by the institution for their functioning. Whereas, in ad-hoc arbitration, parties are compelled to seek help from the court ultimately delaying the whole process.

e. ***Arbitral Institution Provides Secretarial and Administrative Staff*** -It helps in supervision of the arbitral process. The moment parties opt for an institution for resolution of their disputes, the whole institutional machinery becomes active and the dispute resolution process begins.

f. ***Impact of a Number of Arbitral Institutions***: Institutional arbitration is a new concept for India. When there are only one or two institutions out of which parties have to make a choice, they cannot make a smart one. More the number of institutions, better options are available to the parties. Since party autonomy is given preference in institutional arbitration as well, one is free to choose any institution which is good for him.

All arbitral institutions have certain fixed rules, panel of arbitrators, procedure conducting proceedings etc. Hence parties usually consider factors such as cost and fees of the institution, standing of the institution

---

Institutional-and-Ad-hoc-Arbitrations-Advantages-Disadvantages-by-Sundra-Rajoo.pdf (Last retrieved on April 10, 2024).

and autonomy and objectivity.[8]All these factors can be considered if there are a good number of institutions and in such a situation this method of institutional arbitration will be the best method to settle disputes without intervention of the courts.

g. ***Human Resources***- In ad-hoc arbitration, parties prefer to have retired Supreme Court/ High Court Judges as their arbitrator. Since their number is not quite large, there is no consensus between the parties and hence arbitral tribunal is not constituted in proper time which further causes delay in the dispute resolution process. This problem is resolved by institutional arbitration as the list of panels of arbitrators is already available with every institution.

h. ***Minimum Chances of Setting Aside of the Award***: Before an award is finalized by the arbitral tribunal, it is scrutinized by experienced professionals and experts. They check each minute detail in the award in order to make an effective and final award. Since before passing the award goes through substantial scrutiny, there are very rare chances of it being challenged.

4. Arbitral Institutions in India

The adoption of institutional arbitration varies across different sectors of the Indian economy. The construction and infrastructure sectors have shown a greater inclination towards institutional arbitration, with bodies like the Construction Industry Arbitration Council (CIAC) gaining traction. In the IT and telecom sectors, there's a growing preference for institutional arbitration due to the complex and technical nature of disputes. However, traditional sectors like manufacturing and retail still largely rely on ad-hoc arbitrations. The financial services sector is gradually warming up to institutional arbitration, particularly for cross-border transactions.

Some of the prominent arbitral institutions which have established in India are discussed below-

4.1 *Indian Council of Arbitration (ICA)*

ICA came into existence in the year 1965 as an arbitral organization at national level for providing dispute resolution mechanism for domestic as well as international commercial disputes with its headquarter in New Delhi. The

[8]Corporate Attitudes and Practices Towards Arbitration in India, *available at*: https://www.pwc.in/assets/pdfs/publications/2013/corporate-attributes-and-practices-towards-arbitration-in india.pdf (Last retrieved on April 28, 2024).

basic intent of ICA is to stimulate cost effective, expeditious and amicable settlement of disputes by different ADR techniques. Today, it is a leading institution in India as well as in Asia- Pacific for providing arbitration services by managing approximately 400 international cases per year.[9] Services provided by the Council includes-

4.1.1 *Panel of Arbitrators from Different Professions*- Since March 11, 2019, there are

208 Judges, 393 Advocates, 1000 Engineers, 152 Chartered Accountants, 53 Foreign Nationals, 14 Businessmen, 604 Executives and 157 Maritime Experts on its panel.[10]

4.1.2 *Infrastructural Facilities Provided by ICA* -Conference room with a sitting capacity of 80, committee room with 40 sitting capacity, commission room with 175 sitting capacity, board room with 12 sitting capacity and council room with capacity of 30 persons.[11]

The council has framed a complete set of rules for its functioning including rules for subject matter, panel of arbitrators, initiation of arbitral proceedings, defense statements, counter-claim, constitution of tribunal, fees and expenses, place of arbitration, fast track arbitration, award, etc. Rules related to some of the major issues are discussed below-

a. Constitution of Arbitral Tribunal- the number of arbitrators is determined as under-

-where claim including interest, claimed till the date of initiation of arbitral proceedings does not exceeds rupees two crore and agreement does not specify three arbitrators, reference shall be made to a sole arbitrator and when it exceeds rupees two crore, it will be decided by three arbitrators unless parties agree for a sole arbitrator.[12]

---

[9]Indian Council of Arbitration, "About us", *available at:*www.icaindia.co.in/htm/about-us.html (Last retrieved on May 5, 2024).

[10]Indian Council of Arbitration, "Arbitrators", *available at:*www.icaindia.co.in/htm/arbitrators.html (Last retrieved on May 7, 2024).

[11]Indian Council of Arbitration, *available at* www.icaindia.co.in/icanet/court/CourtandConferenceFacilities.pdf (Last retrieved on May 5, 2024).

[12]Rule 22, Constitution of the Arbitral Tribunal, *available at*: https://icaindia.co.in/pdf/ICA_Rules_of_Domestic_Commercial_Arbitration_March_2024.pdf (Last retrieved on August 13, 2024).

b. Fees, expenses, and costs- rules provide details of different types of fees levied during the proceedings- registration fees, arbitration fees and administrative charges.[13]

c. Fast Track Arbitration- parties can choose fast track arbitration and make a request before starting of the proceedings to resolve the matter in a fixed time frame of three to six months.[14]

The Expert Committee on ICA which was appointed by the Ministry of Commerce has proposed in the Report (Jan 1983) that maximum use of ICA's services be directed in order to facilitate administration of business and trade properly.[15]

4.2 The International Centre for Alternate Dispute Resolution (ICADR)

ICADR is a self- governing body headquartered at New Delhi, with regional Centres at Bengaluru, Hyderabad, and Andhra Pradesh. The Centre was established to promote ADR techniques in dispute resolution, to provide administrative services for conducting arbitration and conciliation proceedings; to compile a list of experienced and qualified persons who can serve as arbitrators, conciliators, and mediators; to make rules for different ADR techniques; to make standard clauses for arbitration and conciliation; to appoint arbitrators, conciliators and mediators when requested by the parties.[16]

The Centre provides a number of services for carrying out the arbitration and conciliation proceedings. A few of them are listed below-

a. It acts as the appointing authority to appoint arbitrators when parties choose ICADR in the arbitration clause/agreement.
b. While appointing an arbitrator, it considers the nature of dispute and accordingly include appropriate professionals in its panel.
c. It assists tribunal in fixing date, time, and place for meetings.
d. It assists the exchange of information between the arbitrators and parties.
e. Upon request, ICADR makes arrangement for translators and interpreters.
f. It provides court room and retiring room for parties and tribunal.

---

[13]Rule 31, Fees and Expenses, *available at*: https://icaindia.co.in/pdf/ICA_Rules_of_Domestic_Commercial_Arbitration_March_2024.pdf (Last retrieved on August 13, 2024).

[14]Rule 44, Fast Track Arbitration, *available at*: https://icaindia.co.in/pdf/ICA_Rules_of_Domestic_Commercial_Arbitration_March_2024.pdf (Last retrieved on August 13, 2024).

[15] Commercial Arbitration, *available at*: https://icaindia.co.in/commercial-arbitration (Last retrieved on August 14, 2024).

[16] Introduction to ICADR, *available a*t: https://icadr.ap.gov.in/SubMenu/Introduction (Last retrieved on August 14, 2024).

g. A number of administrative services are provided by the Centre such as clerical assistance, xerox copy facility and telephone and telex services.[17]

There are two ways to refer disputes to ICADR- either by including a clause in a contract for referring future disputes w.r.t that contract or by entering into a separate agreement for referring an existing dispute.[18]

4.3 Delhi International Arbitration Centre (DIAC)

Formerly known as Delhi High Court Arbitration Centre, DIAC was established under the leadership of then Chief Justice Mr. Justice Ajit Prakash Shah. It was inaugurated on 25 November,2009. It is the first High Court linked Arbitration Centre. It intends to encourage litigant parties to take arbitration as a dispute resolution mechanism which is cost and time effective. Rules framed by DIAC stimulates quick disposal of claims. The DIAC panel of arbitrators include- retired Judges of High Court and Supreme Court, advocates, engineers, retired District and Session Judges, architect, etc. Facilities provided by the Centre includes-

a. Nine hearing rooms with sitting capacity of 20.
b. Legal assistance by dedicated advocates.
c. On the same day, record of proceedings is provided by the Centre.
d. Consultation rooms for parties and agents.
e. Chambers for arbitrators.
f. Live recording and projection of proceedings.
g. All rooms have stenographers and support staff.
h. In collaboration with an agency, Centre provides transcription facilities.
i. Centre has framed DIAC (Fee) Rules, 2018 for calculating fees and expenses of the proceedings.
j. It has also framed DIAC (Arbitration Proceedings) Rules,2018 for smoothly conducting the arbitration proceedings.[19]

4.4 Construction Industry Arbitration Council (CIAC)

Construction sector has contractual disputes amounting to crores of rupees. Therefore, construction sector felt the need to have measures to resolve these disputes expeditiously. Hence, Construction Industry Development Council,

---

[17]Services offered by ICADR, *available at*: https://icadr.ap.gov.in/SubMenu/Services OfferedBy Icadr(Last retrieved on August 9, 2024).

[18]Areas of Work, *available at:* https://icadr.ap.gov.in/SubMenu/AreasOf Work(Last retrieved on August 9, 2024).

[19]Delhi International Arbitration Centre, *available at*https://dhcdiac.nic.in/#(Last retrieved on August 8, 2024).

India (CIDC) in collaboration with Singapore International Arbitration Centre (SIAC) has structured an Arbitration Centre called CIAC in India. Headquartered in New Delhi, CIAC has the following features-

a. Precise Timeline- under CIAC Rules, arbitrator has to give award within 45 days from the date of closing of hearing.
b. Skilled Arbitrators- panel has experts from construction industry and legal community. Before they are empaneled, proper training is imparted to them at training workshops in India and Singapore. There are 249 arbitrators empaneled by CIAC from different professions.
c. Fees- CIAC has a published fee scale and it charges fee as per this scale.
d. Infrastructure- CIAC provides hearing rooms, transcription, translation, and interpretation services. On request of parties, audio-video recording facility is also arranged.
e. Strict Set of Principles- appointment of arbitrator is made after checking the conflict of interest i.e. he should not have any interest in the subject matter of dispute nor should he be related to any of the contracting parties.[20]

4.5 *London Court of International Arbitration (LCIA) India*

LCIA is an international institution for commercial dispute resolution. In 2009, LCIA India started functioning with the sole objective of promoting arbitration through Indian arbitral institution. It offers cost effective and efficient administrative services as per LCIA Rules. From 1 June 2016, LCIA has started providing services to Indian users from its London based office only. It has also stopped administering referrals under LCIA India Rules for contracts entered into after 1 June 2016. The organizational structure of LCIA is as follows-

a. The Board of Directors- it looks the progress of LCIA India's business. It has a passive role in dispute resolving process.
b. The Arbitration Court- it is the final authority to check application of LCIA India Rules. The Court is responsible for appointment of tribunal, resolving challenges to arbitrator's appointment and managing costs.
c. The Secretariat- these services are now provided out of London.[21]

---

[20]Construction Industry Arbitration Council, *available at*: www.ciac.in/ (Last retrieved on May 15, 2024).
[21]London Court of International Arbitration, *available at:*www.lcia-india.org/ (Last retrieved on May 15, 2024).

5. Challenges Related to Institutional Arbitration in India

With the objective of making India as an international seat for arbitration, a number of arbitral institutions has been established with national and international roots. International institutions like LCIA, SIAC, ICC have even established their offices in India to promote arbitration. But, till now no single institution has attained global reputation. Factors responsible for the same are discussed in following points-

a. Poor Infrastructure- Institutions in India lack proper infrastructure facilities, both physically and technologically.[22] Most of the institutions do not have facility of hearing rooms for the proceedings and those who possess this facility, their seating capacity is very less. Institutions have not upgraded their infrastructure with the advancement in technology. A few institutes provide facility of video conferencing, recording of proceedings and online dispute resolution (ODR) facilities, rest all are working with the outdated technology.
b. Human Capital- Upgrading physical infrastructure will be useless if there are no professional experts. The arbitrators should be expert in dealing with arbitration matters. Arbitrators who are related to parties/ subject matter should not be appointed in the tribunal in the concerned case.
c. Misapprehensions about Institutions- People attach a lot of misapprehensions with institutional arbitration, important among them are- inflexibility and costs. Since every institution works on its own rules and procedure, most of the parties believe that there is no party autonomy in this type of arbitration. But this is not the situation. Most of the institutions try to strike a balance between party autonomy and institutionalization. Issues related to legality are kept out of the realm of party autonomy.[23]Another misbelief is related to costs that institutional arbitration is expensive than its ad-hoc counterpart. But ad-hoc is

[22]Bibek Debroy and Suparna Jain, 'Strengthening Arbitration and its Enforcement in India – Resolve in India', Research Paper of the NitiAyog (2016), p.15, *available at*: http://niti.gov.in/writereaddata/files/document_publication/Arbitration.pdf (Last retrieved on May 13, 2024).

[23]Government of India, Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India (Ministry for Law and Justice, 2017), *available at*: www.legalaffairs.gov.in/sectiondivision/report-high-level-committee-review-institutionalisation-arbitration-mechanism-india (Last retrieved on August 2, 2024).

expensive in the sense that there are additional hearing expenses, delay in constitution of the tribunal and challenging of the award in the court.

d. No Support by the Government- Arbitral institutions are not functioning properly because there are a few cases that are referred to the institutions for resolution. Lack of awareness is one of the reasons for this problem. Another important reason is lack of support by the government. There are a number of commercial disputes involving government or its agencies. When government enters into a contract, they do insert arbitration clause but as such there is no reference to institutions as such. If this step of referring to institutions is taken by government and its agencies w.r.t their commercial transactions, it will increase the caseload of these institutions.[24]

6. Suggestions

No doubt there has been a shift in the tendency to resolve more cases through institutional arbitration rather than ad-hoc, still institutional arbitration lags behind when compared with its counterpart. Some of the suggestive measures which can prove fruitful in institutionalizing the arbitration mechanism in India are discussed below:

a. Minimum criteria of qualification should be fixed for empaneling professionals as arbitrators. At present, there is no fixed criteria for their appointment by the institutions. Panels of international institutions like SIAC are appointed after the requisite condition w.r.t their qualifications are fulfilled. Indian institutions should also make a strict policy regarding criteria to be adopted for appointment of arbitrators.

b. New technologies like ODR, e-filing, video-conferencing should be introduced in the proceedings. These steps will also help in reducing the time frame of dispute resolution process.

c. Proper training should be imparted to the professionals so that they are well versed with the arbitration process. Training should be made compulsory for professionals in order to get themselves empaneled in the panel.

d. Government and its organizations should include institutional arbitration in their contracts so that institutional arbitration gets a boost. Government should co-operate to develop institutions as is done in other parts of the

[24] *Ibid.*

world like, SIAC was created in collaboration with government of Singapore.

e. Business community should give a chance to the arbitral institutions to resolve these disputes and thereby helping in the institutionalization process.

7. Conclusion

While India has made strides in developing its institutional arbitration framework, it still lags behind the established global arbitration hubs. Singapore and Hong Kong, for instance, have successfully positioned themselves as preferred seats for international arbitration in Asia. The Singapore International Arbitration Centre (SIAC) and Hong Kong International Arbitration Centre (HKIAC) are known for their efficiency, neutrality, and pro-arbitration judicial attitudes. In comparison, Indian institutions are yet to achieve similar international recognition. Learning from these successful International Arbitration institutes, India could focus on enhancing the reputation of its arbitral institutions, modernizing arbitration laws, and fostering a supportive judicial environment to compete on the global stage. The Indian government has recently taken significant steps to promote institutional arbitration. The Arbitration and Conciliation (Amendment) Act, 2019 introduced provisions for the establishment of the Arbitration Council of India (ACI), aimed at grading arbitral institutions and accrediting arbitrators. These legislative initiatives demonstrate India's commitment to developing a strong institutional arbitration framework and positioning itself as a global arbitration hub. The future of institutional arbitration in India appears promising, albeit with challenges. With ongoing legislative reforms, increasing awareness among businesses, and a more supportive judiciary, institutional arbitration is likely to further develop in future. The establishment of the ACI and the push for accreditation of arbitrators and institutions may lead to improved quality and consistency in arbitration services. However, for India to emerge as a global arbitration hub, continued efforts are needed in areas such as infrastructure development, capacity building, and marketing of Indian arbitral institutions on the international stage.

Journal of University Institute of Legal Studies
ISSN:2229-3906,VolumeXVIII, Issue II,pp. 209-221

Generative Artifical Intelligence Praxis and Intervention: *International Commercial Arbitration and Ethico-Legal Paradigms*

***Diksha Pundir*[*]& Sanigdha*[**]**

Abstract

Artificial intelligence is the buzzword of the world, at the present moment. It is not just a technological advancement, but also a very thorough step that has been taken in the direction of automating decision-making, upscaling and upskilling, innovation and infrastructure building, time management and better decision making; as well as widening the scope of the legal field, alongside enhancing multidisciplinary studies in problem solving. It can be simply defined as a machine or an enhanced robotic system that has been fed with the information to behave in a way that a human being's cognitive mindset works, while giving out innovative solutions for the problem at hand. Not a novice technology, but now in the advanced stages of development and refurbishment, artificial intelligence has upgraded itself to generative artificial intelligence, whereby data and transferrable service files like artificially generated videos and audios, etc are used and negotiated. The Generative AI models, that are sophistically supported by intricate data management systems and large language models (LLMs) can be appropriately used for interpreting and effortlessly executing the arbitration contracts, especially in trans-national and cross-country negotiations, with multitude of transactions involved. However, the advantages can turn into the disadvantages of the subject once unwanted hallucinations, lack of core intelligence in the subject, along with many other cons of the generative artificial intelligence kick in and dispute its own viability in the contractual and international commercial arbitration (ICA) arena. The present research paper seeks to delve into the aforementioned issues, in detail and also study the ethico-legal dilemmas or conundrums that are involved in the same.

[*] Research Scholar, Department of Laws, Panjab University, Chandigarh.
[**] Junior Research Fellow, Department of Laws, Panjab University, Chandigarh.

Keywords: *Generative artificial intelligence; ethico-legal dilemma; international commercial arbitration; large language models; artificial intelligence.*

1. Introduction

Since the advent of human life, homo sapiens have always been trying to make their lives full of leisure and comfort by making a number of discoveries at far and wide lands, inventions to know the unknown and have been collaborating as well as collating their thoughts with one another in order to organise a more peaceful environment, for cultured cohabitation. Whether it was the paleolithic, Mesolithic, neolithic or the early bronze ages; men and women have been able to find out the purpose and significance of wheel, fire, stone-rubbing, agriculture, hunting and gathering, eating edible fruits, and making raw eatables edible, building of houses in areas nearby the rivers- example being the room segregation in present day-Afghanistan- along with cultivating rice, wheat, and barley at the required sites. The early settlements were found near the source of water, where cultivation of immensely nutritious crops was done. From there, the civilisation moved towards easing of lifestyle choices by living in more habitable environments, and upscaling technological innovations. What started with ARPANET to help the American soldiers in the war, gradually transformed into the world wide web, and then slowly came doorstep services of networking leading to a boom in the connectivity market, and finally it is today where we are talking about- artificial intelligence, Internet of Things (IOT), Generative AIas well as use of these modern technologies in varied areas of influence such as, medicine, legal analysis, public service delivery etc.

Artificial intelligence is defined as, "artificial intelligence (AI) technology allows computers and machines to simulate human intelligence and problem-solving tasks. The ideal characteristic of artificial intelligence is its ability to rationalize and take action to achieve a specific goal. AI research began in the 1950s and was used in the 1960s by the United States Department of Defense when it trained computers to mimic human reasoning."[1]Artificial intelligence

[1]Investopedia, *available at:* https://www.investopedia.com/terms/a/artificial-intelligence-ai.asp (Last retrieved on May 12, 2024); Medium, *available at:* https://medium.com/@ulhaqahtisham419/what-is-artificial-intelligence-ai-9f8124ce5895 (last retrieved on May 12, 2024); Business Transformation and Operational Excellence, *available at:*

systems work by using algorithms and data. First, a massive amount of data is collected and applied to mathematical models, or algorithms, which use the information to recognize patterns and make predictions in a process known as training. Once algorithms have been trained, they are deployed within various applications, where they continuously learn from and adapt to new data. This allows AI systems to perform complex tasks like image recognition, language processing and data analysis with greater accuracy and efficiency over time.[2]The primary approach to building AI systems is through machine learning (ML), where computers learn from large datasets by identifying patterns and relationships within the data. A machine learning algorithm uses statistical techniques to help it "learn" how to get progressively better at a task, without necessarily having been programmed for that certain task. It uses historical data as input to predict new output values. Machine learning consists of both supervised learning (where the expected output for the input is known thanks to labeled data sets) and unsupervised learning (where the expected outputs are unknown due to the use of unlabeled data sets).[3] Artificial intelligence is the basis of a number of innovations that are coming up in the world today. These range from use of artificial intelligence in electronic appliances, language translation modules among others. Whereas, Generative AI is a step ahead from this.

Generative AI can be defined as, "it describes algorithms (such as ChatGPT) that can be used to create new content, including audio, code, images, text,

---

https://insights.btoes.com/what-is-artificial-intelligence (Last retrieved on May 12, 2024); Tech Target, *available at:*https://www.techtarget.com/searchenterpriseai/definition/AI-Artificial-Intelligence (Last retrieved on May 12, 2024); Britannica, *available at:*https://www.britannica.com/technology/artificial-intelligence (Last retrieved on May 12, 2024); University System of Georgia, *available at:* https://www.usg.edu/ galileo/ skills/unit07/internet07_02.phtml (Last retrieved on May 12, 2024); Javapoint, *available at*: https://www.javatpoint.com/history-of-the-internet (Last retrieved on May 12, 2024).

[2]Built in, *available at:* https://builtin.com/artificial-intelligence (Last retrieved on May 12, 2024); Oracle, *available at*: https://www.oracle.com/in/artificial-intelligence/ai-model-training/ (Last retrieved on May 12, 2024), Tech Target, *available at:*https://www.techtarget.com/searchenterpriseai/definition/machine-learning-ML (Last retrieved on May 12, 2024); Science Direct, available at:https://www.sciencedirect.com/science/article/pii/S2667241323000113 (Last retrieved on May 12, 2024); Max Tegmark*, Life 3.0* (2017); Yoshua Bengio, *Deep Learning (* 2015); Nick Bostron*, Superintelligence* (2014); Brian Christian, *The Alignment Problem* (2020); Stuart J. Russell, *Human Compatible* (2019); Peter Norvig, *Artificial Intelligence* (1995).

[3]*Ibid.*

simulations, and videos. Recent breakthroughs in the field have the potential to drastically change the way we approach content creation."[4] Generative AI refers to deep-learning models that can take raw data and "learn" to generate statistically probable outputs when prompted. At a high level, generative models encode a simplified representation of their training data and draw from it to create a new work that is similar, but not identical, to the original data. [5]Generative models have been used for years in statistics to analyze numerical data. The rise of deep learning, however, made it possible to extend them to images, speech, and other complex data types. Among the first class of models to achieve this cross-over feat were variational autoencoders, or VAEs, introduced in 2013. VAEs were the first deep-learning models to be widely used for generating realistic images and speech. "VAEs opened the floodgates to deep generative modeling by making models easier to scale," said Akash Srivastava, an expert on generative AI at the MIT-IBM Watson AI Lab. "Much of what we think of today as generative AI started here."[6] The growth of Generative AI has been exponential, but it has also given rise to negative uses as well, such as deepfake videos, deep fake audios, etc. According to Mike Walsh, "The potential applications for AI in the legal world are immense and include composing client briefs, producing complex analyses from troves of documents, and helping firms with limited resources compete with the largest groups. AI can help to conduct due diligence in corporate mergers and

---

[4]McKinsey and Company, *available at:*https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-generative-ai (Last retrieved on May 12, 2024); Gartner, *available at*: https://www.gartner.com/en/topics/generative-ai#:~:text=for%20IT%20Leaders-,What%20is%20generative%20AI%3F,software%20code%20and%20produ (Last retrieved on May 12, 2024); Nvidia, *available at*: https://www.nvidia.com/en-us/glossary/generative-ai/ (Last retrieved on May 12, 2024); IBM, *available at*: https://research.ibm.com/blog/what-is-generative-AI (Last retrieved on May 12, 2024).

[5] IBM, *available at:*https://research.ibm.com/blog/what-is-generative-AI (Last retrieved on May 12, 2024); Altexsoft, *available at:*https://www.altexsoft.com/blog/generative-ai/ (Last retrieved on May 12, 2024); Libguides, *available at:* https://pvamu.libguides.com/artificalintelligence (Last retrieved on May 12, 2024); McKinsey and company, *available at:* https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-generative-ai (Last retrieved on May 12, 2024; Kaggle, *available at:* https://www.kaggle.com/code/sanjushasuresh/generative-ai-creating-machines-more-human-like (Last retrieved on May 12, 2024).

[6]IBM, *available at:*https://research.ibm.com/blog/what-is-generative-AI (Last retrieved on May 12, 2024); Max Tegmark, *Life 3.0* (2017); Yoshua Bengio, *Deep Learning (* 2015); Nick Bostron, *Superintelligence* (2014); Brian Christian, *The Alignment Problem* (2020); Stuart J. Russell, *Human Compatible* (2019); Peter Norvig, *Artificial Intelligence* (1995).

significantly aid legal education and knowledge acquisition in complex and fast-moving areas."[7] The use of artificial intelligence and particularly content generation and idea simulation mechanisms can be used in enforcing and amending contracts that have transnational cross-country transactions involved, building up and saving the precious time that is used in doing these tasks manually. Thus, the use and application of Generative AI is recommended even by law- tech experts as well industrial giants.

2. Research Methodology

The present research paper analyses the mentioned issue by the way of doctrinal method of research. The main sources of the same were taken to be books, research manuscript, newspaper articles, commentaries on arbitration and commercial arbitration, etc. These sources truly proved to be an effective method of knowing about the whole concept and then inter-linking it in a way, truly justifying the approach of the authors.

3. International Commercial Arbitration and use of Generative Artificial Intelligence

Alternative Dispute Resolution is the process of resolving disputes outside the courtroom without going through an adversarial process, resulting in flexible time schedules, controlled negotiations, and open-ended discussions to arrive at a mutual conclusion. These include arbitration, negotiations, conciliations, client-counselling as well as mediation. In India, alternate dispute resolution mechanisms are supported in civil matters via Part V Section 89 of the Code of Civil Procedure 1908[8], read with the relevant statutes that deal specifically with this. Arbitration is simply defined as, "a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of

---

[7] LexisNexis, *available at:*https://www.lexisnexis.com/html/lexisnexis-generative-ai-story/ (Last retrieved on May 12, 2024); Spot draft, *available at:*https://www.spotdraft.com/blog/ai-due-diligence (Last retrieved on May 12, 2024); Mentoria, *available at*: https://blog.mentoria.com/the-ai-revolution-in-reshaping-legal-careers/ (Last retrieved on May 12, 2024); Deloitte, *available at:* https://www2.deloitte.com/content/dam/Deloitte/th/Documents/deloitte-consulting/generative-AI-dossier.pdf (Last retrieved on May 12, 2024); Emerj Artificial Intelligence Research, *available at:* https://emerj.com/ai-sector-overviews/ai-in-law-legal-practice-current-applications/ (Last retrieved on May 12, 2024).

[8] Code of Civil Procedure S. 89, 5 of 1908 (India).

going to court."[9]International Commercial Arbitration (ICA, henceforth) on the other hand is defined as, "ICA is a process of resolving disputes between parties in different countries through an arbitrator or a panel of arbitrators. It involves submitting the dispute to arbitration instead of pursuing litigation in a court of law. The arbitrator or panel of arbitrators will make a binding decision on the dispute. ICA can be used to resolve various disputes, including those related to contracts, intellectual property, investments, and construction. It is often used in cases where the parties involved in the dispute have a commercial relationship and wish to maintain a working relationship after the dispute is resolved[10].

With the expansion of cyber-physical cognitive systems such as Generative AI which is a subset of AI, ICA has seen a new dawn in dispute settlement. Generative AI can provide critical sights into cases in dispute by processing and analyzing large volumes of factual data, precedent cases and generating sore points of evidence lapses. It can also aid in analysis of contracts between parties, predict outcome of arbitration, provide settlement recommendations and optimize arbitration procedure by scheduling meetings, coordinating between parties, tracking deadlines, identifying biases in arbitration process, ethical monitoring of arbitration process with regard to compliance with principle of international norms or natural justice, real time management of language translation, document presentation in online dispute resolution etc. Additionally, generative AI in ICA can also play a significant role by framing arbitration agreements, helping in arbitrator selection, or act as an arbitrator. Several leading organizations are harnessing AI to revolutionize ICA. Entities like the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA) utilize AI to streamline administrative tasks, optimize document review, and enhance legal research. Platforms such as Jus Mundi and DISCO employ AI for comprehensive case law searches and efficient e-discovery. Tools from Kira Systems and ROSS Intelligence support contract analysis and strategic insights. AI also facilitates real-time language

[9]World Intellectual Property Organisation, *available at:* https://www.wipo.int/amc/en/arbitration/what-is-arb.html#:~:text=Arbitration%20is%20a%20procedure%20in,instead%20of%20going%20to%20court. (Last retrieved on May 12, 2024).

[10]Pepperdine Caruso School of Law, *available at*: https://law.pepperdine.edu/blog/posts/what-is-international-commercial-arbitration.htm (Last retrieved on May 12, 2024); Cornell Law School, *available at:* https://www.law.cornell.edu/wex/alternative_dispute_resolution (Last retrieved on May 12, 2024).

translation at SIAC and aids in arbitrator selection and outcome prediction at institutions like IMI and Lex Machina, thereby transforming arbitration efficiency and effectiveness.

The idea of integrating technology into adjudicatory processes is not as distant as it seemed a decade earlier. The cascading effect of Covid-19 has fortified the demand for mechanisms to deliver speedy yet cost effective dispute resolution. Legal professionals across the globe have been forced to rethink their relationship with technology and welcome it in their sometimes-obsolete chambers. Online dispute resolution (ODR) has emerged as the pivot point of the relationship between IT and law during the pandemic, and several jurisdictions have mandated court proceedings to be conducted through ODR mechanisms.[11] Even though it is not a completely formalised process, online dispute resolution or real-world dispute resolution via artificial intelligence is a still-evolving process. Hence the debate around the ethical and legal issues of using Generative Ai in ICA is critical to the sustainable use of AI in ICA. Despite the promising potential of this technological advancement, numerous ethical and legal challenges such as privacy concerns, confidentiality, bias and discrimination, accountability and transparency, enforceability of arbitral awards given by Generative AI etc. accompany the deployment of Generative AI in ICA. These issues must be thoroughly addressed to ensure a fair and equitable environment for its application to prevent miscarriage of justice.

4. Ethico-Legal Dilemmma in using Generative ArtificalIntelligence in International Commercial Arbitration

In arbitration we can categorize data of arbitration disputes data into micro data and macro data. Communication among parties, between parties and the institution, as well as among arbitrators and the institution, encompass various elements such as evidence (including email exchanges), details of expert and fact witnesses, their testimonies, transcripts, communications between arbitrators, draft awards, and more. This detailed information constitutes the

[11]International Bar Association, *available at:*https://www.ibanet.org/tchnology-and-artificial-intelligence-reengineering-arbitration-in-the-new-world (Last retrieved on May 12, 2024); Press Information Bureau, *available at*: https://pib.gov.in/PressRelease Iframe Page. aspx?PRID=1710900 (Last retrieved on May 12, 2024); Pepperdine Caruso School of Law, *available at:* https://law.pepperdine.edu/blog/posts/what-is-international-commercial-arbitration.htm (Last retrieved on May 12, 2024); Cornell Law School, *available at:*https://www.law.cornell.edu/wex/alternative_dispute_resolution (Last retrieved on May 12, 2024).

arbitral micro-data—specific to each dispute and crucial for the parties, decision-makers, and institutions involved in presenting, hearing, and resolving a specific case.[12] In contrast, the arbitral macro-data refers to broader information about the dispute resolution process and its outcomes, primarily encapsulated in the awards. This includes details like legal counsels involved, the arbitrators, the decision's outcome, reasoning behind the decision, theories and methods used for damages assessment, and valuations. For simplicity, we equate arbitral macro-data with awards, as they represent the most significant aspect of information regarding arbitral outcomes.[13]

The foremost issue is the issue of data privacy and data confidentiality. Generative AI models are trained on data and in order to generate output they have to process large volumes of data which can be composed of personal micro or macro data of the parties or arbitrators involved. This can lead to breach of their privacy and confidentiality if data is processed without their consent and due notice and in non-compliance with data protection laws such as EU's GDPR[14]. Another issue associated with the use of Generative AI in ICA is bias and discrimination. Generative AI are optimized to generate output with the aid of algorithms. An algorithm is a procedure used for solving a problem or performing a computation. Algorithms act as an exact list of instructions that conduct specified actions step by step in either hardware- or software-based routines.[15] Utilizing these algorithms, Generative AI models are trained on data which can either be structured, unstructured or semi-structured. Thus, data is tightly coupled to the functionality of these algorithms and systems. In the cases where the underlying training data contains biases, the algorithms trained on them will learn these biases and reflect them into their predictions. As a result, existing biases in data can affect the algorithms

[12] Kathleen Paisely & Edna Sussman, *Artificial Intelligence Challenges and Opportunities for International Arbitration,* 11(1) NYSBA New York Dispute Resolution Lawyer 35, 35 (2018).

[13] *Id.* At 36.

[14] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), L 119/1 O.J. (2016).

[15] Alexander S. Gillis, *Algorithm,* TechTarget (June 21, 2024, 9:30 AM), *https*://www.techtarget.com/whatis/definition/algorithm.

using the data, producing biased outcomes.[16] Algorithms can even amplify and perpetuate existing biases in the data. In addition, algorithms themselves can display biased behaviour due to certain design choices, even if the data itself is not biased. The outcomes of these biased algorithms can then be fed into real-world systems and affect users' decisions, which will result in more biased data for training future algorithms.[17] These two tendencies of data and algorithm biasness and discrimination can creep either into arbitrator selection or in another scenario when Generative AI itself is acting as an arbitrator these two biases can construct an unfair AI arbitrator.

Data and algorithm bias can lead to the appointment of a partial and non-independent candidate which as per UNCITRAL model law[18] is a ground of challenge for the appointment of arbitrator.[19] Similarly data and algorithm bias heightens the possibility of Generative AI models being a partial and discriminatory arbitrators which can lead to miscarriage of justice by the arbitral proceedings conducted with the aid of Generative AI. Transparency and accountability issues in Generative AI models have also been debatable among academicians, technology developers, legal professionals, and other stakeholders. Generative AI models in ICA are involved in automated analysis and complex decision-making process. The Black box of AI is a significant concern that compromises the transparency in AI deployment in any sector. In machine learning, these black box models are created directly from data by an algorithm, meaning that humans, even those who design them, cannot

---

[16]NinarehMehrabi et al., *A Survey on Bias and Fairness in Machine Learning,* 54(6) ACM Comput. Surv. 1, 3 (2021), https://doi.org/10.1145/3457607.

[17]*Id.*

[18] U.N. Comm'n on Int'l Trade L., UNCITRAL Model Law on International Commercial Arbitration, 2006 U.N. Doc. A/61/17, annex I, U.N. Sales No. E.08.V.4

[19] Article 12. Grounds for challenge

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unlessthey have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

understand how variables are being combined to make predictions.[20] Therefore the opacity in decision making process raises concerns for using AI in ICA. Also, another significant aspect pertains to liability of Generative AI models. Unlike traditional software, autonomous AI systems have the ability to make decisions and take actions on their own. This raises the question of who should be held responsible if an AI system causes harm or makes a mistake. Determining legal responsibility can be challenging when AI operates in ways that cannot be easily attributed to human actors.[21] Hence, it is of paramount importance to develop a transparent and accountable legal governance framework to address liability of Generative AI models.

The current legal framework of Arbitration is also not prepared for the adoption of Generative AI. In UNCITRAL model law[22], an arbitrator can be a person[23], therefore, the arbitration laws do not accommodate a scenario where a non-human entity can be an arbitrator for dispute resolution. Also, the current convention such as New York Convention[24], The Geneva conventions [25] are not prepared for the enforcement and recognition of awards passed by AI arbitrator. Additionally, the risk of hallucinations is much more than any other risk. Example- Within the context of dispute resolution, two New York attorneys were sanctioned in 2023 after filing a legal brief in federal court that referred to non-existent case law supplied by ChatGPT. Breach of confidentiality, privacy or evidence breach can still be tapped or regulated or prevented by data protection laws. But hallucinations need to be understood in context of artificial intelligence to deal with it. This is a risk where outputs generated by an AI model become untethered from the source materials, including, for example, user's prompts and input reference texts. There has, however, been continued effort and technical breakthroughs across the AI and

---

[20]Kinza Yasar, *Blackbox AI,* TechTarget (June 21, 2024, 10 PM), https://www.techtarget.com/whatis/definition/black-box-AI.

[21] M. A. Solhchi& F. Bagh Banno, *Artificial Intelligence, and Its Role in the Development of the Future of Arbitration*, 2 (2) Int'l J. L. Changing World 56, 58 (2023), https://doi.org/10.54934/ijlcw.v2i2.56.

[22] U.N. Comm'n on Int'l Trade L., UNCITRAL Model Law on International Commercial Arbitration, 2006 U.N. Doc. A/61/17, annex I, U.N. Sales No. E.08.V.4

[23] Article 11. Appointment of arbitrators

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

[24] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3.

[25] Convention on the Execution of Foreign Arbitral Awards, Sept. 26, 1927, 92 L.N.T.S. 302.

academic communities to detect, measure and mitigate such risks. Taking note of the various risks such as biases, risks of hallucinations, privacy and confidentiality breach issues, integrity of proceedings and evidence getting compromised, due process issues, etc. that are involved in making Generative AI applicable in ICA cases, an integrated and multidisciplinary approach is very essential for the sustainable use of AI technology in ICA.

5. Suggestions and Way Forward

A. LEGISLATIVE FRAMEWORK: Several arbitral institutions have already started contemplating incorporation of AI guidelines in their institutional rules governing arbitration. On 31 August 2023, the Silicon Valley Arbitration and Mediation Centre (SVAMC) led the way in publishing draft guidelines on the use of AI in arbitration (AI Guidelines). These AI Guidelines are divided into three chapters, which are respectively addressed to: (i) participants in arbitration; (ii) parties and party representatives; and (iii) arbitrators. The AI Guidelines contain proposals on: (i) the uses, limitations, and potential risks of AI applications; (ii) consent and disclosure norms; (iii) safeguarding confidentiality; (iv) duty of maintaining diligence in use of AI; (v) non-delegation of decision-making responsibilities; (vi) respect for integrity of proceedings and evidence; and (vii) respect for due process and compliance with procedural issues. The draft guidelines ensure that- uses, limitations and risks of the AI applications must be studied and kept in mind while using these applications. Confidentiality must always be safeguarded, proper disclosure mechanism must be followed, there is a bounden duty of competence or diligence in the use of Artificial intelligence, along with the respect for th integrity and safety of the procedure, while due process of law must be upheld at all times and there should be absolutely no delegation of decision-making responsibilities. The Ministry of Justice of New Zealand on 8 September 2023 has also come out with the draft Best Practice Guidelines for use of Generative AI in Courts and Tribunals. These guidelines are intended to assist participants to (i) navigate potential applications of AI; and (ii) perform informed and responsible usage of AI in arbitration. The guidelines are proof of concept of the increasing role of

AI in arbitration and serve as a useful reference point for parties attempting to safely leverage AI capabilities.[26]

B. *HUMAN OVERSIGHT:* An oversight mechanism for the Generative AI can play a crucial role for an accountable deployment of Generative AI in ICA. Example- some courts in the US and Canada now require parties to disclose the use of AI or to certify that either no GenAI tool was used in drafting or that all content created by GenAI was reviewed and verified by a human. Therefore, 'Human in the loop' method i.e. to keep human input, judgment, and intervention as a part of automated process is also essential to foster an effective oversight mechanism for utilizing Generative AI in ICA.

C. *DATA PRACTICES:*Sustainable data governance practices can shape the ability of Generative AI models to address risks associated with breach of data. These data practices include Data minimization i.e. limiting the input of training of data by restricting to its purpose, cybersecurity measures to protect clouds, transparency in operations pertaining to use of AI in ICA etc.

D. *AI FOR AI:* AI can be used for monitoring the use of Generative AI in ICA to ensure that the use of AI in ICA is as per ethical guidelines and legal requirements and to serve as an audit system to make AI models and Employers liable for regulatory violations.

6. Conclusion

Though automated technologies have the potential to revolutionize human growth, but an unbridled growth can accelerate humanity towards destruction as well. Therefore, integration of AI in ICA though can transform arbitration process, but the technology is only an aid to mankind and is not a replacement to the human driven justice process. A cautious and fair use of the technology is paramount in order to reap maximum benefit by using AI in ICA. Conclusively speaking, AI is a

---

[26] Silicon Valley Arbitration and Mediation Centre,*available at:*https://svamc.org/svamc-publishes-guidelines-on-the-use-of-artificial-intelligence-in-arbitration/ (Last retrieved on May 12, 2024); Investment ARBITRATION Reporter,*available at*: https://www.iareporter.com/wp-content/uploads/2023/08/SVAMC-AI-Guidelines.pdf (May 12, 2024); International Bar Association, *available at*: https://www.ibanet.org/tchnology-and-artificial-intelligence-reengineering-arbitration-in-the-new-world (Last retrieved May 12, 2024); Lexology, *available at*: https://www.lexology.com/library/detail.aspx?g=78035e91-228f-4169-bb18-3cb61fcf1217 (Last retrieved on May 12, 2024); Dailyjus, *available at*: https://dailyjus.com/legal-tech/2023/10/ia-meets-ai-rise-of-the-machines (Last retrieved on May 12, 2024); Yoshua Bengio, *Deep Learning (* 2015); Nick Bostron*, Superintelligence* (2014); Brian Christian, *The Alignment Problem* (2020); Stuart J. Russell, *Human Compatible* (2019); Peter Norvig, *Artificial Intelligence* (1995).

revolutionary technology that must be tackled with and used in the best sense possible, to gain maximum output from it. Along with that the legal field of commercial arbitration, is something that is gaining ground very rapidly through the past decade. It, if makes the best use of AI can become a very easy grievance redressal mechanism that will and is attracting a number of clients, both in India and abroad. Therefore, a synchronized growth in both of these measures and procedural mechanisms is essential for a better world, with a better understanding of disputes, frictions and solutions of all.

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 222-240

Integrating Outer Space and Sustainability: An Exploration of Outer Space Contribution to United Nation Sustainable Development Goals

Rajesh Baboo*

Abstract

The UN Sustainable Development Goals provide a shared blueprint for a more sustainable and equitable world by 2030. This globally agreed-upon vision aims to improve the lives of people and the planet. This research article explores the intersection of activities in the outer-space and the "SDGs". The research problem addresses the need to understand how outer space can play a significant role to achieving the "SDGs". The key objective is to identify and analyze the impact of space-based legal solutions on sustainable development. The important research question guiding this study is: How can outer space exploration and technology support the realization of the "SDGs"? The methodology employed in this study involves a comprehensive literature review and an in-depth analysis of case studies on the regulation and governance of outer space activities. Key findings revealed that satellite technology, Earth observation, and international space cooperation significantly contribute to multiple "SDGs". The study concludes that the strategic integration of space technology and applications into sustainable development strategies is essential for addressing global challenges in the United Nations 2030 Agenda for Sustainable Development.

Keywords: *United Nations, International Space Law, Sustainable Use, Space Policy, Sustainable Development Goals*

1. Introduction

uter space is an area of mankind that offers immense opportunities for innovation and development. However, this also presents significant challenges in terms of stability and governance. Space technology and applications, especially small satellites, can support the achievement of "the

* Ph.D. Research Scholar, Department of Law, Swami Ramteerath Campus, H.N.B. Garhwal (A Central) University, Uttarakhand, India, Email-rajmeerganj@gmail.com, Contact No.-6396307125

SDGs adopted by the United Nations in 2015"[1]. The United Nations has devised the 2030 Agenda for Sustainable Development, engaging more than 190 Member States, to address these problems in the form of 17 Sustainable Development Goals are also known as "SDGs" with 169 linked detailed goals [2].

The exploration of outer space has become a significant field of research due to its potential to advance the United Nations' Sustainable Development Goals. Space-based technologies, including satellite imaging, remote sensing, and global navigation systems, play a crucial role in monitoring and managing the Earth's resources, contributing to SDGs 13, 15, and 2. Furthermore, space exploration has led to advancements in renewable energy sources, such as the testing of solar panels and energy-efficient technologies on the International Space Station, which aligns with SDG 7. The collaborative nature of space exploration reflects the spirit of SDG 17, as nations work together to achieve common objectives that transcend national boundaries. However, the issue of space debris poses a threat to operational satellites and the long-term sustainability of space operations, which is relevant to SDGs 14 and 15.[3]

1.1. Overview

The "SDGs" of the United Nations, commonly known as the SDGs, are a comprehensive and interconnected framework consisting of 17 goals aimed at addressing a wide range of international issues to achieve a more equitable and sustainable world by 2030. The "SDGs", which were accepted by all UN member states in 2015, provide a common roadmap for world peace and prosperity. This brief overview outlines the key aspects of the "SDGs" and their significance in guiding international efforts towards sustainable development[4].

The "SDGs" cover a broad spectrum of interconnected issues ranging from poverty eradication to climate action, gender equality, quality education, and sustainable cities. Each goal is underpinned by a set of specific targets (169 in

---

[1]Jay N. Krehbiel, Matthew J. Gabel, et.al., *The European court of justice," 16301 Routledge Handbook of Judicial Behavior* 467–90 (*Routledge,* 2017).

[2]FAO, "Forests and Mountains in the Sustainable Development Goals: The 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals ."

[3]United Nations, "Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space" United Nations 1 (2010).

[4]Simonetta Di Pippo, "The United Nations Office for Outer Space Affairs : its role and the support it provides" 1–20.

total) that provide measurable and time-bound objectives to track progress. The goals are not isolated from one another; they recognize the intricate linkages between various challenges and emphasize the need for integrated approaches to achieve meaningful and lasting changes.

1.2. Concept of outer space and its relevance to global development

This study explored the relationship between outer space and the "SDGs" to understand how space activities, technologies, and collaborations can contribute to achieving these goals. The objectives include identifying space technology contributions to the "SDGs", exploring renewable energy solutions, highlighting collaborative opportunities, addressing ethical concerns, promoting cross-disciplinary awareness, and inspiring future directions[5].

1.3. Significance of exploring the connection between outer space and "SDGs"

This study explored the complex relationship between outer space exploration and the United Nations' "SDGs". It aims to identify the specific points of intersection between these two domains, thereby revealing the unrealized benefits of space technology applications and innovations for development. The research also evaluates the contributions of space technologies, such as satellite imagery, remote sensing, and communication systems, to the "SDGs" and analyzes their impact on environmental monitoring, disaster response, and resource management. It also examines international collaborations in space exploration and research, highlighting how global cooperation in outer space activities aligns with "SDGs" 17 principles. This study also addresses ethical and environmental implications, highlighting the need for responsible space practices to ensure long-term sustainability. Cross-domain synergies can benefit multiple "SDGs" simultaneously, such as satellite-based communication systems that provide access to educational resources in remote and underserved areas. This study proposes integrated strategies that leverage the nexus between outer space and "SDGs" for maximum impact, suggesting actionable recommendations for policymaking and research in both sectors. This study seeks to offer a comprehensive analysis of the potential for outer

[5]UN COPUOS, "Zero draft, The ``Space2030" Agenda : Space as a driver of sustainable development, Working paper submitted by the Bureau of the Working Group on the ``Space2030'' Agenda," 02137 (2019).

space to contribute to global sustainability and foster collaborative initiatives aligned with these goals.

1.4 Research Problem

The research problem is to investigate how emerging space technology and burgeoning space exploration efforts contribute to achieving ambitious "SDGs". Specifically, this study aims to analyze the pivotal role of satellite data, Earth observation, and other innovative space-based technologies in addressing pressing global challenges such as poverty, hunger, climate change, and environmental sustainability.

1.5 Research Methodology

The research methodology involved a comprehensive literature review of academic papers, UN documents, and space agency reports. It includes an in-depth analysis of case studies demonstrating the diverse applications of space technologies in supporting the "SDGs". This study will closely examine the utilization of satellite data, advanced Earth observation techniques, and various space-based solutions across a wide range of "SDGs". Furthermore, a comparative analysis is conducted to assess the distinct impacts of different space technologies on sustainable development efforts around the world.

2. Outer Space Law and "SDGs"

2.1 Understanding Outer Space Law

Outer Space Law is a framework of international and national regulations that govern space exploration and utilization. It is based on the "Outer Space Treaty, which was ratified by the United Nations in 1967".[6]The "United Nations established the Committee on the Peaceful Uses of Outer Space in 1958, which played a pivotal role in promoting international cooperation in the peaceful use of outer space"[7].In 1959, the "UN Office of Outer Space Affairs was created to serve as the COPOUS secretariat[8]. It also "prohibits the placement of nuclear weapons in orbit and establishes liability for the damage caused by space objects"[9]. "The Rescue Agreement of 1968, Liability

[6]McFarland, "United Nations Treaties and Principles on Outer Space."
[7]*Ibid*.
[8]Ranjana Kaul, *Legal Dimensions of Commercialisation of Space*, Roundtable with Indian Space Foundation at Vivekananda International Foundation, New Delhi, Held on January 18, 2023, *available at* https://www.vifindia.org/sites/default/files/Legal-Dimensions-of-Commercialisation-of-Space.pdf (Last retrieved on January 2, 2025)
[9]*Id* at 8.

Convention of 1972, and Registration Convention of 1976"[10] strengthened the legal regime by forcing states to record objects launched into outer space, fostering transparency and accountability.

The Outer Space Law plays a crucial role in maintaining order and cooperation in space activities, preventing conflict, promoting peaceful exploration, avoiding harm, ensuring transparency, and ensuring responsible resource use[11]. However, it faces challenges in keeping pace with rapidly evolving technological advancements and the increasing commercialization of space. The absence of specific regulations for emerging issues, such as space tourism, lunar bases, and satellite mega-constellations, highlights the need for continuous adaptation and development of the legal framework.

2.2 Historical context of exploration and use of Outer Space

The history of space exploration and utilization is a testament to human curiosity, ingenuity, and collaboration. With the "launch of the Soviet satellite Sputnik 1 in 1957"[12], space exploration went from an idea to reality in the mid-twentieth century. This sparked the "United States-Soviet Union space competition, culminating in the memorable Apollo 11 mission of 1969" [13].

Space exploration has evolved into a practical tool, with satellites like the "Soviet Sputnik 1 and the American Explorer 1 revolutionizing navigation and location services"[14].International cooperation and space stations have grown a lot in the late 20th century, like the "Apollo-Soyuz project in 1975 and the International Space Station in 1998"[15]. International cooperation and space stations have grown a lot in the late 20th century, like the Apollo-Soyuz project in 1975 and the International Space Station in 1998. Landers and rovers like Spirit, Opportunity, and Curiosity have taught us about the geology and

---

[10] *Id* at 8.

[11]Niklas Hedman, *UNCOPUOS, its Decision Making Process and the Role of OOSA*, ECSL Summer Course on Space Law and Policy, United Nations office at Vienna, Held on 5 September 2006, *available at* https://www.unoosa.org/pdf/pres/2006/copuos-2006.pdf (Last retrieved on January 2, 2025).

[12] Everly Driscol, "The Soviet Space Program. Science News" 99 *Science News* (1971), *available at:*https://doi.org/10.2307/3955990 (Last retrieved on July 29, 2024).

[13]NASA Administrator, "July 20, 1969: One Giant Leap For Mankind" (2015), *available at:* https://www.nasa.gov/history/july-20-1969-one-giant-leap-for-mankind/ (Last retrieved on January 2, 2025).

[14]NASA Administrator, "Explorer 1 Overview - NASA", *available at:* https://www.nasa.gov/history/explorer-1-overview/ (Last retrieved on January 20, 2025).

[15]NASA Administrator, "Apollo-Soyuz Test Project – NASA" *available at:*https://www.nasa.gov/apollo-soyuz-test-project/ (Last retrieved on January 20, 2025).

potential for life on Mars, setting the stage for future human missions there. India's Chandrayaan-3 is also making important contributions to the "SDGs"[16]. The future of space exploration is full of exciting possibilities, with "NASA's Artemis program working on sustainable lunar exploration and future Mars missions"[17], and private companies like SpaceX developing reusable rockets and commercial space travel.

2.3 Key components of outer space activities

Outer space activities involve various components, including satellites for communication and observation, space stations for scientific research, and the exploration of distant planets and celestial bodies. Satellites have two primary functions: communication and observation. Communication satellites relay signals for various applications, enabling real-time information exchange and supporting the navigation systems. Satellites that provide data for disaster management, weather forecasting, resource management, and environmental monitoring are known as observation satellites.

The "International Space Station"[18] (ISS) is a habitable platform built for long-term scientific studies and human presence in space [19]. Space exploration involves sending spacecrafts and rovers to explore distant celestial bodies, providing insights into their geology, composition, and potential habitability. Human spaceflight, beyond Earth's boundaries, is the pinnacle of outer space activities, with iconic "Apollo missions and private companies such as Space X"[20] and Blue Origin pioneering commercial human spaceflight. The space industry has expanded beyond government agencies to include commercial entities, driving innovation in satellite manufacturing, launching services, and space tourism[21].

3. The Influence of Space Technology on "SDGs"

---

[16]Indian Space Research Organisation, "LVM3-M4/Chandrayaan-3 Moon Mission", *available at:* https://www.isro.gov.in/media_isro/pdf/Missions/LVM3/LVM3M4_Chandrayaan3_brochure.pdf (Last retrieved on January 20, 2025).

[17] "The Republic of India Signs the Artemis Accords - United States Department of State. (n.d.)" *available at:*https://www.state.gov/the-republic-of-india-signs-the-artemis-accords/ (Last retrieved on September 18, 2024).

[18]Ana Guzman, "ISS Benefits for Humanity" (2015).

[19]Ana Guzman, "ISS Benefits for Humanity" (2015).

[20] The Washimgton Post, "Elon Musk's SpaceX is about to land its 50th Falcon 9 booster" *available at:* https://www.washingtonpost.com/technology/2020/02/14/elon-musks-spacex-is-about-land-its-50th-falcon-9-booster/ (Last retrieved on August 27, 2023).

[21]*Supra* note 4 at 8.

The contributions of outer space to achieving each goal under the "SDGs" 1 to 17 via data and technologies are pivotal for sustainable development. Several studies have pointed out the importance of using Earth Observation (EO) data from satellites for monitoring "SDGs" indicators, assessing resilience to extreme events, and supporting environmental land management.[22] Sustainable space discussions also underscore the importance of unified provisions for ensuring sustainability in outer-space activities that correspond to other sustainable development targets.[23] Moreover, the evidence base on "SDGs" synergies highlights a need to know how goals and indicators are connected in an "SDG", which can inform policy-making for sustainable development more effectively[24].

SDG 1: Space technology contributes significantly to poverty realization.[25] Satellite-derived data and remote sensing offer the ability to map poverty hotspots, which can help promote social welfare programs that are more inclusive, resulting in expedited change during development interventions. Such information can help policymakers and aid organizations understand the needs of communities in remote or otherwise vulnerable locations so that they deliver both services and resources more effectively. Additionally, space-based decision support tools can evaluate poverty-reduction programs and inform data-driven policies, while enabling development strategies.

SDG 2: Space technology plays an important role in supporting Zero Hunger's achievements. Using satellite data[26] and remote sensing, agricultural productivity can be monitories a priori harvest including the forecasting of crop yields at different scales as well as an examination relating to land use

---

[22]Stephen Morse et. al., *Space for Sustainability: Using Data from Earth Observation to Support Sustainable Development Indicators* 222 (2022).

[23]Vijay Kumar, K D Raju and S R Subramanian, "Long-Term Sustainability of Outer Space: Role of Sustainable Development Goals and Its Legal Consequences," 2 *Indonesian Journal ofEnvironmental Law and Sustainable Development* 123–50 (2023).

[24]Mimi Gong et al., "SDG space: Revealing the structure and complementarities among sustainable development goals in China" 5 *Fundamental Research* 360-369 (2024)*available at:* https://www.sciencedirect.com/science/article/pii/S2667325824000256 (Last retrieved on August 8, 2024).

[25]Jessica E. Steele et al., "Mapping poverty using mobile phone and satellite data," 14 *Journal ofthe Royal Society, Interface* (2017).

[26]West Africa et al., "Leveraging Satellite Imagery for Zero Hunger : Innovative Solutions to Needs-Assessments in Conflict-Affected Areas" 18–20 (2021)*available at:* https://executiveboard.wfp.org/document_download/WFP-0000133499 (Last retrieved on January 20, 2025).

pattern. These data support farmers in taking up precision farming methods, aid policymakers in better managing resources, and plan for potential food shortages. Space technology also offers early warning systems and helps generate data-driven insights that help stakeholders in the agriculture industry make informed choices.

SDG 3: The telecommunication and satellite-enabled e-health clinic[27] connects doctors to medical information in communities where they barely access quality health care output at the nearest level. Furthermore, the observatory provides an advanced alert system for infectious diseases and assists in containment of disease spread. In emergency and natural disaster responses, space technology[28] plays a crucial role in rapidly scoping out the extent of damage at an incident site; assisting rescue teams to search out for survivors or offering common images which may assist with coordinating relief efforts.

SDG 4: Space Technology as Enabling Factor for Satellite-based communication networks and digital platforms enables thousands of students to benefit from E-learning content in remote and underserved areas.[29] This has helped narrow the education gap and provide opportunities for students in any city or town. Significantly, space-based technologies have allowed for the exchange of novel pedagogical practices, such as virtual classrooms and cooperative models in learning. The said satellites and digital communication, the global education sector has been able to hack its way through traditional boundaries that have, for so long, kept inclusive access to quality education hard-to-reach.[30]

---

[27]IP Access International, "How Satellite Telemedicine Saves Lives" *available at:* https://www.ipinternational.net/how-satellite-telemedicine-saves-lives/ (Last retrieved on August 8, 2024).

[28]NASA Administrator, "NASA Announces New System to Aid Disaster Response - NASA Science" *available at:* https://science.nasa.gov/earth/natural-disasters/nasa-announces-new-system-to-aid-disaster-response/ (Last retrieved on August 8, 2024).

[29] Emma Moore, "Stellar Sustainability: Space Tech's Role in Achieving the SDGs - Participate Learning" *available at:* https://www.participatelearning.com/blog/stellar-sustainability-space-techs-role-in-achieving-the-sdgs/ (Last retrieved on August 8, 2024).

[30]Don M. Flournoy, "The Role of Satellites in Distance Education (Spring 2007)" 6 *Online Journal of Space Communication* (2021), *available at:* https://ohioopen.library.ohio.edu/spacejournal/vol6/iss12/ (Last retrieved on August 8, 2024).

SDG 5: Space technologies can make a significant contribution to the absolute necessity of "SDGs" number five, Gender equality.[31] This includes satellite imagery and land mapping, which are key tools for documenting the security of land tenure rights essential for women's economic empowerment and social inclusion.[32] This information can be utilized to better track and address gender-related inequalities in land ownership as well as provide insights on inequality of access by sex to agricultural resources, which will help policymakers or development actors make more sustainable changes.

SDG 6: Space technology plays a vital role in supporting the attainment of the "SDGs".[33] These include data on water quality[34], availability and distribution patterns generated through satellite-based monitoring and remote sensing capabilities. It provides policymakers, water resource managers and communities with the data necessary for informed decisions on managing our most vital renewable natural resource fresh water to maintain access to safe drinking water[35] And can provide early warning of areas that are susceptible to water-borne diseases, which in turn allows for intervention before the outbreak. Space technologies can contribute significantly to solving global water scarcity, pollution, and sanitation problems in core steps towards providing access to safe drinking water.

SDG 7: Space technology is a very effective tool for accomplishing this goal. Monitoring of energy infrastructure can be performed using satellite data and remote sensing capabilities, which are critical for planning the "deployment

---

[31]Goal 5, Department of Economic and Social Affairs, *available at:* https://sdgs.un.org/goals/goal5 (Last retrieved on August 8, 2024).

[32]ESA - International Women's Day: ESA promotes gender diversity for sustainable development, *available at:* https://www.esa.int/Enabling_Support/ Preparing_ for_the_ Future/ Space_for_Earth/International_Women_s_Day_ESA_promotes_ gender_ diversity_ for_sustainable_development (Last retrieved on August 8, 2024).

[33]Radoslaw Guzinski et. al., "Enabling the use of earth observation data for integrated water resource management in africa with the water observation and information system," 6 *Remote Sensing* 7819–39 (2014) *available at:* https://www.mdpi.com/2072-4292/6/8/7819(Last retrieved on August 8, 2024).

[34]Lauren Biermann et al., "Finding Plastic Patches in Coastal Waters using Optical Satellite Data," 10 *Scientific Reports* (2020) *available at:*https://www.nature.com/articles/s41598-020-62298-z.(Last retrieved on August 8, 2024).

[35]Naveen Kumar Arora and Isha Mishra, "Sustainable development goal 6: Global Water Security," 5 *Environmental Sustainability* 2022 5:3 271–5 (2022)*available at:*https://link.springer.com/article/10.1007/s42398-022-00246-5 (Last retrieved on August 8, 2024).

of renewable energy projects"[36]. This involves identifying locations that would make good places to set up solar, wind, or hydropower installations, and monitoring the reach of electricity networks.[37] Using these space-enabled tools, the global community can leapfrog low-cost and clean energy options that will help provide affordable access to non-polluting power.

SDG 8: The development of Earth observations in the form of satellite data and remote sensing capabilities has provided important clues into urbanization patterns, industrial growth trends, and labor market dynamics. This can help inform economic policies and development strategies that lead to inclusive growth and creation of decent work opportunities.[38] Space-based technologies monitor economic activities, analyze infrastructure development, and gauge employment trends, which in turn empower policymakers and researcher to make more informed decisions to bridge regional disparities and promote sustainable economic advancement.

SDG 9: Satellite navigation, communication, and Earth observation applications can help find affordable new solutions for enabling the development of 21st century infrastructure and industries.[39] They can utilize satellite data and space-based communication networks to optimize transportation, logistics, monitor industrial activities as well as plan resilient infrastructure projects. The global community can develop sustainable industrialization, optimize connectivity and enable transformative innovation to support economic progress for societal well-being using the power of space assets.[40]

---

[36] The International Energy Agency**,** "Tracking SDG7: The Energy Progress Report, 2024", *available at:* https://www.iea.org/reports/tracking-sdg7-the-energy-progress-report-2024 (Last retrieved on August 8, 2024).

[37]United Nations Environment Programme, "GOAL 7: Affordable and clean energy", *availableat:* https://www.unep.org/explore-topics/sustainable-development-goals/why-do-sustainable-development-goals-matter/goal-7 (Last retrieved on August 8, 2024).

[38]UAE Space Agency, "Goal 8: Decent Work and Economic Growth", *available at:* https://space.gov.ae/en/about-us/sustainable-development-goals/goal-8-decent-work-and-economic-growth (Last retrieved on August 8, 2024).

[39]Sumeep Bath, "Infrastructure, Industrialization and Innovation: Why SDG 9 Matters and How We Can Achieve it" *International Institute for Sustainable Development* (2018), *available at:* https://www.iisd.org/articles/infrastructure-industrialization-and-innovation-why-sdg-9-matters-and-how-we-can-achieve-it (Last retrieved on August 8, 2024).

[40]United Nations Environment Programme, "GOAL 9: Industry, innovation and infrastructure", *availableat:*https://www.unep.org/explore-topics/sustainable-development-

SDG 10: Satellite data has become a powerful tool in addressing inequality. By mapping resource distribution and identifying vulnerable communities, it enables more equitable allocation of essential services and aid.[41] During disasters, satellite imagery helps pinpoint areas in need, facilitating timely and targeted response efforts. This technology bridges geographic and socioeconomic divides, ensuring that even the most marginalized regions receive the support they require.

SDG 11: Space technology plays a critical role in contributing to the development of sustainable cities' "SDGs". With the help of satellite data and remote sensing, policymakers and urban planners can use detailed information on changes in land-use urban growth over time, infrastructure development and monitor environmental changes to make informed decisions. By incorporating space-based solutions into urban planning and development, we can move towards a future of cities that are inclusive, safe, resilient and sustainable; provide ample opportunities for all their inhabitants to enjoy economic prosperity underpinned by the private sector.

SDG 12: Satellite monitoring, improvements in remote sensing and data availability are vital tools to identify deforestation, land degradation or environmental pollution which affect all of our "SDGs" areas.[42] This knowledge can help lawmakers and authorities to apply environmental regulations, thus making the economic activities or industrial practices environmentally friendly. Space-based data can also support the development of circular economy concept that is aimed at resource efficiency and waste reduction.[43] Through their potential, the global community can achieve substantial development in creating a more sustainable consumption and production patterns by way of space technology.

---

goals/why-do-sustainable-development-goals-matter/goal-9 (Last retrieved on August 8, 2024).

[41] Maryam Rabiee, "How are countries and cities using geospatial data to monitor their SDGs?", *available at:* https://blogs.worldbank.org/en/opendata/how-are-countries-and-cities-using-geospatial-data-monitor-their-sdgs (Last retrieved on August 8, 2024).

[42]Gregory Giuliani et. al., "Monitoring land degradation at national level using satellite Earth Observation time-series data to support SDG15 – exploring the potential of data cube," 4 *BigEarth Data* 3–22 (2020), *available at*: https://www.tandfonline.com/doi/full/10.1080/20964471.2020.1711633#d1e204 (Last retrieved on August 8, 2024).

[43]Stewart R. Clegg et al., "Tackling sustainable development goals through new space," 5 *Project Leadership and Society* 100107 (2024), *available at*: https://www.sciencedirect.com/science/article/pii/S2666721523000285 (Last retrieved on August 8, 2024).

SDG 13: Space technology is considered a must in the global "fight against climate change"[44] mentioned by these goal Satellites yield vitally important information on greenhouse gas emissions, deforestation, sea-level rise and climate changes of all kinds.[45] This knowledge is critical for studies of climate, it can be used to tune models and guide increasingly important policy decisions. The integration of space into climate action plans help policymakers and researchers to take better decisions, provide a way for increased resilience and speed up the transition towards sustainable low carbon options.[46]

SDG 14: Space technology is identified as a critical enabler to the conservation and use of marine resources in support at large. Satellite monitoring is essential for information of these systems, which include data on temperature or currents in particular regional areas and detection (for example illegal fishing).[47] Concrete data provided by these tools arms policymakers, conservation organizations and communities to make policy decisions and implement targeted marine protections that protect our ocean from habitat destruction stemming for overfishing or unsustainable management of the seas. By embedding space-based solutions in marine conservation work, the world can take a giant leap toward ensuring our oceans remain healthy and productive for all from now into forever.[48]

SDG 15: Terrestrial ecosystems feature the primary object of conservation and sustainable management, according to Life on Land. The data are often used in assessing the status of forests, habitats and changes in land use which can help toward better decision-making for conservation.[49] These data can be

---

[44]"Sustainable Development Goal 13: Climate Action", *available at*: https://www.unoosa.org/oosa/en/ourwork/space4sdgs/sdg13.html (Last retrieved on August 8, 2024).

[45]*Ibid*.

[46]Annie Sturesson, Nina Weitz et.al.,"SDG 14 Life below Water-a Review of Research Needs" *Stockholm Environment Institute*, *available at https://www.sei.org/wp-content/uploads/2018/11/sdg-14-life-below-water-review-of-research-needs-1.pdf* (Last retrieved on August 8, 2024).

[47]*Ibid*

[48]"Goal 14: Life Below Water - United Nations Sustainable Development", *available at:* https://www.un.org/sustainabledevelopment/goal-14-life-below-water/ (Last retrieved on August 8, 2024).

[49]Jeffrey Sayer, D Sheil, et. al., "Chapter 15 SDG 15: Life on Land-The Central Role of Forests in Sustainable Development", in P. Katila, C. J. Pierce Colfer, et. al., *Sustainable Development Goals: Their Impacts on Forests and People* 482–509 (Cambridge University Press, 2019), *available at:*https://www.cambridge.org/core/books/sustainable-development-

used to identify deforestation, locate biodiversity hotspots and administer the effects on natural environment of human activities. The integration of space-based solutions in land-use planning and sustainable land management practices could enable policy makers, environmental organizations and local communities to take informed decisions for the conservation, restoration, as well as the sustainable use of terrestrial ecosystems; which is essential not only for biodiversity but also natural capital the foundation resource that underpins all ecosystem functions needed.[50]

SDG 16: The use of space technology now a days has been taken as one important tool to support the Peace, Justice and Strong institutions.[51] By watching troop, human rights abuses and population movements via satellite imagery and remote sensed data will assist in conflict prevention.[52] This type of information could be helpful in early warning systems, as well as would help peace-keeping forces and humanitarian aid. Space-based solutions can also improve disaster response and resilience, thereby increasing institutional capacity to respond better to natural and human-induced crises.

SDG 17: Space technology has proven itself a key contributor in fostering global partnerships and cooperation towards achieving sustainable development advocated by this goal. Due to the satellite-based communication systems, Earth observation data and information sharing platforms allow knowledge resources best practices crossing boarders.[53] This increased connectivity and data availability nurtures global collaboration, enabling actors from numerous countries, fields of expertise and industries to come together for shared developmental aims.

---

goals-their-impacts-on-forests-and-people/sdg-15-life-on-land-the-central-role-of-forests-in-sustainable-development/71022020344AF64457556C837DC669C0 (Last retrieved on August 8, 2024).

[50]"Life on land | SDG 15: Life on land", *available at:* https://datatopics.worldbank.org/sdgatlas/goal-15-life-on-land?cid=ECR_TT_worldbank_EN_EXT&lang=en (Last retrieved on August 8, 2024).

[51]"SDG Goal 16: Peace, Justice and Strong Institutions - UNICEF DATA", *available at:* https://data.unicef.org/sdgs/goal-16-peace-justice-strong-institutions/ (Last retrieved on August 8, 2024).

[52]"Sustainable Development Goal 16: Peace, Justice, and Strong Institutions | Sustainable Development Goals | U.S. Agency for International Development", *available at:* https://www.usaid.gov/sdgs/sdg16 (Last retrieved on August 8, 2024).

[53]*Supra* note 24.

4. International Cooperation and Space Governance

As space exploration continues, ensuring responsible and sustainable use is crucial. International cooperation and effective space governance mechanisms are essential for addressing challenges like orbital debris, satellite collisions, and resource sharing. The Outer Space Treaty, signed in 1967, emphasizes peaceful use, while programs such as the Space Data Association promote information sharing. Establishing policies, standards, and institutions to prevent militarization, increase transparency, and solve challenges such as debris mitigation in outer space and resource utilization are all part of space governance.

4.1 Space Law and Policy Framework

The Treaty of outer space, the cornerstone of space law, establishes principles of peaceful use, liability, and transparency in space activities[54]. It prohibits nuclear weapons and territorial claims on celestial bodies. Additional treaties, such as the Rescue Agreement and Liability Convention, promote safety, accountability, and cooperation. The Registration Convention requires states to register their space objects with the United Nations for transparency[55]. However, challenges persist due to rapid technological advancements, resource extraction, and space debris. Traditional agreements may not adequately address the legal and ethical implications of emerging technologies, while a comprehensive framework for resource extraction is lacking. The exponential increase in space debris necessitates coordinated international cooperation for debris mitigation and removal.

4.2 Collaborative Efforts for "SDGs"

International collaboration is crucial for achieving the "SDGs". Space technology has become a catalyst for this, permitting countries to pool resources, expertise, and data to address global challenges. Case studies like the "European Union's Copernicus program and the NASA-ISRO Synthetic Aperture Radar (NISAR) mission"[56] Demonstrate the power of shared

---

[54]*Supra* note 8 at 5.

[55]João Francisco Galera Monico, "United Nations office for outer space affairs GNSS web-pages," 8 *GPS Solutions* 112–4 (2004).

[56]Steve Platnick, "Over Thirty Years Reporting on NASA's Earth Science Program Senior Project Scientist" 35 *The Earth Observer* (2023), *available at:* https://eospso.nasa.gov/sites/default/files/eo_pdfs/EO%20Jan-Feb%202023-Digital%20508.pdf (Last retrieved on August 8, 2024).

resources and expertise in monitoring environmental changes and advancing climate action. Data sharing and coordination are essential components of successful international partnerships in space technology for "SDGs". Coordination fosters efficiency and avoids duplication of efforts, promoting a global approach to addressing challenges. By leveraging space technology and embracing collaboration, the international community can work towards a more sustainable and just future.

4.3 Role of International Organizations

UNOOSA and UNCOPUOS are important international organizations that help people use space technology to accomplish the "SDGs". UNOOSA promotes the use of space technology for sustainable development and catastrophe response by coordinating international collaboration in the peaceful purpose. One of its important projects is the "Access to Space for All" program, which allows all nations to benefit from space activities, such as education, disaster management, and climate monitoring.[57] UNCOPUOS develops worldwide rules and standards for the "peaceful use of outer space, as well as a forum for Member States to debate space concerns and collaborate on space operations"[58]. These organizations are critical partners in realizing space technology's potential for sustainable development.

5. Result and discussion

International space law has evolved significantly since its inception as a "branch of public international law"[59], beginning with the "United Nations General Assembly Resolution 1348 (XIII)"[60] in 1958. This resolution established the "Committee on the Peaceful Uses of Outer Space (UNCOPUOS)"[61], marking the foundation of structured international governance in space activities. The framework has progressively expanded

---

[57]André Baumgart et.al., "Space for the sustainable development goals (Space4SDGs): Mapping the contributions of space to the 2030 agenda for sustainable development" 2020-October *Proceedings of the International Astronautical Congress, IAC* (2020).

[58]Irmgard Marboe, *Study of the drafting history of the Moon Agreement,* IISL/ECSL - Space Law Symposium 2019 - The Moon Agreement Reretrieved: The Road Ahead, Held on (Vienna International Centre, April 1, 2019), *available at:* https://www.unoosa.org/documents/pdf/copuos/lsc/2019/symp-02E.pdf (Last retrieved on August 8, 2024).

[59] Peter Read et. al., Frans von der Dunk, "International Satellite Law" Oxford Research Encyclopedia of Planetary Science 39 (Oxford University Press, 2017).

[60]"RES 1348 (XIII)", *available at:* https://www.unoosa.org/pdf/gares/ARES_13_1348E.pdf (Last retrieved on January 19, 2025).

[61]"COPUOS History", *available at:* https://www.unoosa.org/oosa/en/ourwork/copuos/history.html (Last retrieved on January 19, 2025).

through various treaties and principles, creating a complex legal ecosystem that addresses the challenges of space exploration while promoting sustainable development.

The 1967 Outer Space Treaty sets the legal framework for international space activities, incorporating foundational principles aligned with SDGs. Article III of the treaty establishes the peaceful nature of space exploration by prohibiting "weapons of mass destruction in orbit or on celestial bodies"[62], while Article I declares that space exploration must benefit all humanity. This universal benefit principle directly corresponds to SDG 10 on reducing inequalities. Article IX's provisions "against harmful contamination of space and adverse changes to Earth's environment support SDG 13 on climate action and SDG 15 on protecting terrestrial ecosystems".[63]

The Moon Agreement of 1979 further reinforces sustainable development principles by declaring lunar resources as "the common heritage of mankind."[64] This designation, coupled with the agreement's call for an international regime to govern resource exploitation, reflects SDG 12's emphasis on responsible production and consumption. The agreement's Article 7, which protects the Moon's environmental balance,[65] demonstrates early recognition of the need for sustainable space practices.

Subsequent conventions have strengthened the legal framework's accountability mechanisms. The Liability Convention of 1972 established state responsibility for space object damage,[66] while the Registration Convention of 1976 implemented transparency requirements.[67] These provisions align with SDG 16's focus on justice and strong institutions. The

---

[62]"Outer Space Treaty", *available at*: https://www.unoosa.org/oosa/en/ourwork/ spacelaw/ treaties/outerspacetreaty.html (Last retrieved on January 19, 2025).

[63]J. Nick Benardini and Elaine Seasly, "Planetary Protection Policy and Technology Needs to Enable Future Robotic and Crewed Missions", 103 *Journal of the Indian Institute of Science* 683–6 (2023).

[64]Naman Khatwani, "Common Heritage of Mankind for Outer Space", 17 *Astropolitics* 89–103 (2019).

[65]"Moon Agreement", *available at:* https://www.unoosa.org/oosa/en/ourwork/ spacelaw/ treaties/moon-agreement.html (Last retrieved on January 19, 2025).

[66]Kirsten Schmalenbach, "Convention on International Liability for Damage Caused by Space Objects" *Corporate Liability for Transboundary Environmental Harm* 523–36 (2023).

[67] European Space Policy Institute, Jana Robinson, "The Role of Transparency and Confidence-Building Measures in Advancing Space Security" (2010), *available at:* https://www.espi.or.at/wp-content/uploads/espidocs/Public%20ESPI%20Reports/ESPI_ Report_28.pdf (Last retrieved on August 8, 2024).

1992 Principles on "Nuclear Power Sources in Outer Space introduced crucial environmental safeguards"[68], mandating thorough safety assessments and risk analyses to protect public health.

Recent developments have focused on addressing emerging challenges in space sustainability. The "United Nations Office for Outer Space Affairs (UNOOSA) maintains a Compendium of Space Debris Mitigation Standards"[69], while the "Inter-Agency Space Debris Coordination Committee (IADC)"[70] provides technical guidelines for debris reduction. The Space2030 Agenda, adopted in 2021,[71] represents a comprehensive framework linking space activities to sustainable development through four pillars: space economy, society, accessibility, and diplomacy.

Judicial precedents from international courts have reinforced the application of sustainable development principles to space activities. The International Court of Justice's "decisions in the Pulp Mills"[72] and "Gabčíkovo-Nagymaros"[73] cases established important precedents for balancing economic development with environmental protection. These principles have been further elaborated in the New Delhi Declaration of 2002[74] and reflected in national court decisions, such as the Philippine Supreme Court's 2019 ruling on a commercial space launch facility.[75]

---

[68]"4-2-1-1 PRINCIPLES RELEVANT TO THE USE OF NUCLEAR POWER SOURCES IN OUTER SPACE(Resolution 47/68 by UN General Assembly 47st Session, December 14, 1992)", *available at:* https://www.jaxa.jp/library/space_law/chapter_4/4-2-1-1_e.html (Last retrieved on January 19, 2025).

[69]"Space Debris Mitigation Standards Compendium - Update", available at: https://www.unoosa.org/oosa/de/ourwork/topics/space-debris/compendium.html (Last retrieved on January 19, 2025).

70 Ibid.

71 A/RES/76/3 - The "Space2030" Agenda: space as a driver, available at: https://www.unoosa.org/oosa/oosadoc/data/resolutions/2021/general_assembly_76th_session/ares763.html (Last retrieved on January 20, 2025).

72 Virginie Barral, "Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm" 23(2) European Journal of International Law 377–400 (2012), available at: https://doi.org/10.1093/EJIL/CHS016 (Last retrieved on August 8, 2024).

73 Ibid.

74 The New Delhi Declaration: India and United Kingdom-Partnership for a Better and Safer World, available at: https://archive.pib.gov.in/archive/releases98/lyr2002/ rjan2002/ 0601 2002/r060120021.html (Last retrieved on January 19, 2025)

75 Republic Act No. 11363 - An Act Establishing the Philippine Space Development and Utilization Policy and Creating the Philippine Space Agency, and For Other Purposes - Supreme Court E-Library. (n.d.), available at: https://elibrary. judiciary. gov.ph/ thebookshelf/showdocs/2/90017 (Last retrieved on August 8, 2024).

6. Future Prospects and Challenges

The relationship between outer space activities and the "SDGs" is significant, with outer space technology offering opportunities for data-driven insights, global connectivity, precision agriculture, and disaster response. Despite these advancements, significant challenges remain. The rapid commercialization of space activities has outpaced regulatory frameworks, while issues of space debris, weaponization, and environmental impact continue to grow. Economic disparities between spacefaring nations and developing countries risk perpetuating global inequalities. India's signing of the Artemis Accords in 2023[76] exemplifies ongoing efforts to expand international cooperation and address these challenges through multilateral frameworks.

This requires enhanced international cooperation, development of comprehensive regulations, and implementation of sustainable practices that protect both the space environment and Earth's ecosystems for future generations.

7. Conclusions

The integration of outer space technology into the United Nations Goals ("SDGs") is a significant step towards achieving these goals. Outer space technology, such as Earth observation satellites, plays a crucial role in monitoring climate patterns, tracking greenhouse gas emissions, and assessing deforestation, contributing to life on land goals and climate action. Satellites help us keep an eye on and take care of the oceans and the life in them, so we can protect and use them in a smart way. Life on land involves monitoring land use, deforestation, and biodiversity, preserving terrestrial ecosystems and protecting endangered species. International cooperation and space governance are essential for promoting responsible and sustainable space activities, with international organizations like UNOOSA and UNCOPUOS contributing to the development of regulations and guidelines. Emerging space technologies, such as small satellites, satellite constellations, and space-based solar power, offer innovative solutions to address global challenges, positively impacting multiple "SDGs", including education, healthcare, and clean energy. The convergence of outer space and the "SDGs" represents a synergistic relationship that holds immense potential for shaping a sustainable

[76] *Supra* note 17.

future. However, ethical dilemmas, environmental concerns, and societal implications must be addressed to ensure responsible and inclusive space exploration. By collaborating internationally, strengthening regulations, and utilizing emerging space technologies responsibly, we can harness the power of outer space to achieve the “SDGs”, exemplifying humanity's commitment to innovation, cooperation, and sustainability. In conclusion, harnessing outer space for sustainable development is a complex task that requires a multifaceted approach. It involves not just technological advancements but also international cooperation, inclusive policies, private sector participation, investment in R&D, and effective regulation.

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 241-255

Emerging E-Governance: Its Role In Citizen-Centric Governance

Anhad Singh*

Abstract

The concept of citizen-centric governance encompasses a range of principles and practices that aim to empower individuals and priorities their needs and rights within the governance framework. It aligns with the principles of democratic society that is founded on rule of law and respect for human rights it emphasizes the importance of legal frameworks that protects individual freedoms, facilitate equal access to justice and ensure accountability and transparency in government actions.

The article titled: "Emerging E-Governance: It's role in Citizen Centric Governance", provides for comprehensive analyses of the emergence, evolution, principles, benefits, challenges and role of e- governance in citizen-centric governance. It begins with the discussion for the need for citizen centric governance and it's role in ensuring the welfare of the citizenry. Historical evolution of the citizen centric governance is explored, examining the different eras and models of governance throughout time which then evolved and turned with the paradigmatic shift to the citizen centric governance, further enhanced with the concept of e-governance.

In this article the researcher tries to explain the benefits and challenges associated with citizen centric governance. Strategies to overcome these challenges are also provided to aid policy makers. The role of e-governance in the citizen centric governance is another crucial aspect examined in the paper. The researcher delves into ways in which technology facilitates transparency, accessibility, and efficiency in government services. Through the examination of case studies and strategic recommendations, the researcher effectively highlights the significance and potential of e- governance w.r.t citizen centric governance in ensuring effective public administration and citizen satisfaction.

In conducting this research, a doctrinal approach was adopted, focusing on the analysis of legal principles, statutes, and judicial decisions. This method allowed for an in-depth understanding of the existing legal framework and its practical application.

* Research Scholar, University Institute of Legal Studies, Punjab University.

1. Introduction

E-Governance signifies a transformative change in the domain of public administration, utilizing information and communication technologies (ICT) to augment the effectiveness, openness, and citizenparticipation of governmental procedures.[1] This technological integration enhances the governance paradigm by promoting greater efficiency, accountability, and inclusivity, ultimately aligning with the principles of citizen-centric governance. Effective governance places a strong emphasis on meeting the needs, preferences, and rights of the population, ensuring that the framework serves its citizens in the best possible way. This in-depth examination explores the complex role of e-governance in promoting citizen-centric governance, with a particular focus on its historical development, legal frameworks, technological infrastructure, advantages, obstacles, and future prospects, specifically within the Indian context.

2. E-Governance: Conceptual Framework

E-Governance is fundamentally supported by principles of transparency, accountability, participation, and inclusivity in a professional legal context. These principles are crucial for developing policies and services that prioritize the well-being of citizens. E-governance is expressed through various fundamental elements: e-administration, e-identification, e-services, and e-democracy.

E-administration entails the digitalization of governmental operations with the aim of improving efficiency. As an example, the e-Office initiative in India streamlines workflows and facilitates electronic file processing, thereby mitigating bureaucratic delays. E-citizenship refers to the involvement of citizens in governance processes through digital means. The Aadhaar initiative is a fundamental aspect of e-identification in India, enabling residents to obtain a unique identification[2] number and gain effortless access to a wide range of government services. E-services encompass the delivery of governmental services via digital platforms. Notable examples of streamlining procurement and tax administration include the Government e-Marketplace (GeM) and the

---

[1] *Significance of E-Governance,* Westford Online, *available at*: https://www.westfordonline.com/blogs/significance-of-e-governance/ (Last retrieved June 20, 2024).

[2] *About UIDAI,* Unique Identification Authority of India, *available at*: https://uidai.gov.in/en/about-uidai/unique-identification-authority-of-india.html (Last retrieved June 20, 2024).

Goods and Services Tax Network (GSTN). E-democracy enables citizen participation in democratic processes through digital methods. Platforms such as MyGov allow citizens to contribute to policymaking and governance by offering feedback and suggestions.[3]

E-governance offers a range of avenues for citizen engagement, such as online surveys, digital forums, and e-petitions. These tools facilitate the expression of citizens' opinions, the provision of feedback, and active participation in governance processes.[4]The heightened accessibility and convenience of these tools can greatly enhance civic engagement, promoting a more engaged and knowledgeable citizenry.[5]

As an illustration, the MyGov platform, initiated by the Indian government, enables citizens to interact with the government by offering feedback on policies, engaging in discussions, and contributing to decision-making processes. This platform has played a crucial role in promoting a participatory governance model, ensuring that policies are better aligned with the needs and aspirations of the population.[6]

2.1 Historical Context

The shift from traditional hierarchical governance structures to contemporary participatory models has had a significant impact. In the past, governance in India was characterized by a centralized control structure, bureaucratic inflexibility, and minimal public participation. The early phases of contemporary governance in post-independence India were marked by a significant amount of documentation and administrative inefficiencies.[7] Furthermore, the opening up of the Indian economy in the 1990s served as a driving force for the adoption of information and communication technology (ICT) in governance. This resulted in the introduction of e-governance

---

[3]*Request for Proposal: Selection of Managed Service Provider for Design, Development, Implementation, Operation & Maintenance of Government e-Marketplace (GeM),* Ministry of Commerce and Industry, Government of India, *available at*: https://admin.gem.gov.in/news/admin/showFile/MSPTenderNoticecompressed1666181022.pdf, at 29 (Last retrieved June 20, 2024).

[4]Ajit Satapathy, *I Governance* 44-45 (Sorting Hat Solutions Private Limited, Bangalore, 1st edn., August 2022).

[5]*Ibid.*

[6] See *Ajit Satapathy*, supra note 14, at 64-65.

[7]*Historical Context of Governance in India,*e GyanKosh, *available at*: https://egyankosh.ac.in/bitstream/123456789/25296/1/Unit-13 .pdf, at 5 (Last retrieved June 20, 2024).

initiatives with the objective of improving administrative efficiency, service delivery, and public accountability.

An early instance of e-governance in India involves the computerization of the Indian Railways' passenger reservation system. This initiative, which was implemented in the mid-1980s, brought about a significant transformation in the process of booking railway tickets. It effectively reduced waiting times and enhanced transparency.[8] In 2001, a notable development occurred with the implementation of the Bhoomi Project in Karnataka. This initiative aimed to digitize land records, providing farmers and landowners with convenient access to them. As a result, opportunities for corruption were minimized, and transparency was greatly improved.[9]

2.2 Role in Administration

E-governance has a significant influence on public sector reforms, fostering enhanced efficiency, transparency, and accountability. Digital tools optimize administrative processes, mitigate corruption, and improve service delivery, thereby fostering efficient and accountable governance. The implementation of e-procurement systems, for example, has greatly diminished possibilities for corruption in public procurement, thereby improving transparency and accountability. Through the digitization of procurement processes, e-governance mitigates the potential for fraudulent activities and corrupt practices, thereby guaranteeing the efficient and effective utilization of public funds.[10]

Digital platforms also enhance the coordination among various government departments, thereby enhancing the overall efficiency of public administration. Through the implementation of e- governance, there is an improvement in inter-departmental coordination, as well as a reduction in duplicated efforts and an enhancement in service delivery. This promotes increased efficiency and effectiveness in public administration, thereby contributing to a more responsive and accountable form of governance.[11]

---

[8] *Computerisation of Indian Railways,* Comptroller and Auditor General of India, *available at*: https://cag.gov.in/uploads/icisa_it_reports/20ba02b277fb6a643c6d2225d5a7dad5-0626647b6bdb001-18121101.pdf, at 22 (Last retrieved June 20, 2024).

[9] *Bhoomi – a flagship project of the Karnataka State Government,* Bengaluru Urban, available at: https://bengaluruurban.nic.in/en/bhoomi/ (Last retrieved June 20, 2024).

[10] Rod Hague, Martin Harrop, et.al., *Comparative Government and Politics* 209-219 (Palgrave Macmillan, Houndmills, Basingstoke, 6th edn., 2004)

[11] Shivani Singh (ed.), *Governance Issues and Challenges* 40-44 (SAGE Publications India Pvt. Ltd., New Delhi, 1st edn., 2016).

3. Socio-Legal Implications

E-governance in India represents a transformative shift in the way governments interact with citizens, businesses, and other stakeholders. It integrates digital technologies into governance processes to enhance transparency, efficiency, and accessibility. From a socio-legal perspective, e-governance holds significant implications. Socially, it democratizes access to services, bridging gaps caused by geographic, economic, and social inequalities. Citizens in rural and remote areas can now access essential services like healthcare, education, and welfare schemes online. Legally, it raises concerns about data privacy, cybersecurity, and the digital divide. The legal framework governing e-governance, including data protection laws and regulations, is crucial to ensuring that this shift not only fosters inclusivity but also protects the rights of citizens in a rapidly digitizing world.

3.1 Legal Implications

The legal framework for e-governance in India is comprehensive, consisting of various legislative instruments and regulatory frameworks. The Information Technology Act, 2000, as amended, forms the foundation of India's legal framework for e-governance. This legislation offers legal acknowledgment for electronic documents and digital signatures, thereby facilitating digital transactions and communications. This legislation has played a crucial role in tackling the complex issues arising from the digital era, including cybercrime and safeguarding personal data.[12]

The National e-Governance Plan (NeGP), initiated in 2006, seeks to enhance accessibility of government services to the general public through common service delivery outlets, while ensuring cost-effective, efficient, transparent, and reliable service provision. The National e-Governance Plan (NeGP) is organized around 31 Mission Mode Projects (MMPs) and eight components, with a specific emphasis on sectors such as agriculture, healthcare, and education. The objective of these projects is to streamline procedures, minimize expenses associated with transactions, and enhance the standard of public services.

Internationally, there are conventions and guidelines in place to ensure the interoperability and security of e-governance systems. For instance, the United

---

[12] *The Information Technology Act, 2000,* eProcure, *available at*: https://eprocure.gov.in/cppp/rulesandprocs/kbadqkdlcswfjdelrquehwuxcfmijmuixngudufgbuubgubfugbububjxcgfvsbdihbgfGhdfgFHytyhRtMjk4NzY=, at 7 (Last retrieved June 20, 2024).

Nations Convention on the Use of Electronic Communications in International Contracts, 2005, and guidelines from the Organization for Economic Co-operation and Development (OECD) serve as a framework in this regard. These international frameworks assist in ensuring that e-governance initiatives in India are in accordance with global standards and best practices.

Data management is an essential component of e-governance, where the utmost importance is placed on data privacy and security. It is imperative for governments to establish and enforce comprehensive data protection protocols in order to ensure the security and privacy of individuals' personal information. Utilizing extensive data and analytical techniques offers valuable insights for the formulation of policies and the provision of services. As an illustration, the utilization of predictive analytics can aid in the identification of regions with significant demand for public services, enabling governments to allocate resources in a more efficient manner. Through the utilization of data analytics, governments have the ability to make well-informed decisions, thereby enhancing the effectiveness and efficiency of public services.

Incorporating blockchain technology can bolster the security and integrity of data by offering unalterable records of transactions. Blockchain technology guarantees the immutability and transparency of data, thereby mitigating the potential for fraudulent activities and corrupt practices.[13] Through the implementation of blockchain technology, e-governance systems are fortified with a secure and transparent record of transactions. This integration fosters an environment of enhanced trust, bolstering accountability and transparency within the realm of public administration.

Legal and ethical considerations hold utmost importance in the realm of e-governance.[14]It is imperative for governments to adhere to data protection regulations and establish robust security protocols to safeguard the personal information of individuals. It is imperative to prioritize inclusivity and equity. E-governance initiatives should be formulated to ensure equal access to digital services for all individuals, irrespective of their socio-economic background or geographical location. Furthermore, ethical considerations encompass the conscientious utilization of data and technology, guaranteeing that e-

[13]*Blockchain,* Investopedia, available at: https://www.investopedia.com/terms/b/block chain. asp (Last retrieved June 20, 2024).
[14]*Supra* n. 12

governance initiatives do not unintentionally worsen pre-existing disparities or give rise to fresh ones.

As an example, the Personal Data Protection Bill in India has been designed to protect personal data and uphold privacy in digital transactions. This legislation aims to address the ethical concerns surrounding data protection and privacy, with a focus on ensuring responsible and secure handling of citizens' personal information.[15]

3.2 Societal and Economical Implications

E-governance in India, particularly through citizen-centric initiatives, has significantly reshaped the country's socio-economic landscape by integrating digital technologies into public administration. This digital transformation, facilitated by the Indian government through a series of strategic initiatives, not only enhances the efficiency of service delivery but also promotes transparency, accountability, and inclusivity. By reducing administrative costs and addressing disparities, especially in underserved and marginalized communities, e-governance plays a crucial role in fostering economic growth and social development. The economic and social implications of e-governance in India are profound, making it a key driver of the country's progress towards a more equitable and efficient governance system.26

One of the most significant contributions of e-governance is its ability to reduce administrative expenses and streamline public services. Traditional governance, often plagued by bureaucratic inefficiencies and excessive paperwork, has been transformed by digital platforms that facilitate faster, more transparent, and more accountable processes. For instance, the Aadhaar-enabled Direct Benefit Transfer (DBT) system has revolutionized the way subsidies and financial aid are distributed in India. By linking citizens' Aadhaar numbers to their bank accounts, the government has been able to ensure that welfare benefits reach the intended recipients directly, cutting out middlemen and reducing leakages. The DBT system has reportedly saved billions of rupees by eliminating fraudulent claims and ghost beneficiaries, showcasing how e-governance can enhance the efficiency and cost-effectiveness of public service delivery.

---

[15]*Digital Personal Data Protection Bill, 2023,* PRS India, available at: https://prsindia.org/billtrack/digital-personal-data-protection-bill-2023#:~:text=The%20Bill%20will%20apply%20to,goods%20or%20services%20in%20India (Last retrieved June 20, 2024).

Digital payment systems, such as the Unified Payments Interface (UPI) and Bharat Interface for Money (BHIM), have further contributed to the economic benefits of e-governance. These platforms facilitate real-time, low-cost financial transactions, making it easier for individuals and businesses to engage in digital commerce. The adoption of UPI has significantly reduced transaction costs and improved operational efficiency, fostering a cashless economy and increasing financial inclusion. By making financial services more accessible to citizens across socio-economic backgrounds, these digital payment systems have empowered millions of people, particularly in rural areas, to participate in the formal economy. Additionally, these systems have contributed to creating a more favorable environment for business, attracting investment, and fostering innovation.

The Digital India initiative, launched in 2015, plays a central role in promoting e-governance in India. The initiative aims to transform India into a digitally empowered society and knowledge-based economy by focusing on three key areas: digital infrastructure, digital literacy, and digital service delivery.[16] One of the flagship projects under this initiative is BharatNet, which seeks to bridge the digital divide by providing high-speed broadband connectivity to 250,000 Gram Panchayats (village councils). By extending internet access to rural areas, BharatNet enables remote communities to access essential e-governance services, such as healthcare, education, and financial services, fostering economic growth at the grassroots level.[17]BharatNet also plays a pivotal role in empowering rural businesses, farmers, and educational institutions, enabling them to harness the benefits of digital technology and contribute to the nation's economy.

In addition to improving service delivery, e-governance promotes transparency and accountability in public administration. Platforms like MyGov allow citizens to engage directly with policymakers, providing feedback, suggestions, and participating in decision-making processes.[18] This

---

[16]*Achievements Made under Digital India Programme,* Press Information Bureau, *available at*: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1885962 (Last retrieved June 20, 2024).

[17]*BharatNet Project,* Universal Service Obligation Fund, Department of Telecommunications, Ministry of Communications, Government of India, available at: https://usof.gov.in/en/bharatnet-project (Last retrieved June 20, 2024).

[18]*Overview,* MyGov, *available at*: https://www.mygov.in/overview/ (Last retrieved June 20, 2024).

participatory governance model fosters a sense of ownership among citizens and enhances trust in government processes. By making governance more accessible and inclusive, e-governance empowers citizens to hold the government accountable for its actions, thereby promoting transparency and reducing corruption. This shift towards a more open and responsive governance system is crucial for strengthening democracy and ensuring that the government remains accountable to its citizens.

E-governance also plays a crucial role in promoting inclusivity and social equity by ensuring that all citizens, regardless of their socio-economic status, have access to government services. The government's focus on digital inclusion is exemplified by the Digital Saksharta Abhiyan (DISHA), a program aimed at promoting digital literacy among marginalized communities, including Scheduled Castes (SC), Scheduled Tribes (ST), and Below Poverty Line (BPL) populations. DISHA seeks to bridge the digital divide by providing IT training to individuals who lack digital skills, enabling them to access and utilize e-governance platforms effectively.[19] By improving digital literacy, DISHA empowers these communities to benefit from a wide range of government services, such as welfare schemes, educational resources, and healthcare, thus enhancing social equity and improving the overall quality of life for disadvantaged populations.

Furthermore, Common Service Centres (CSCs) serve as vital nodes in the delivery of e-governance services to rural and remote areas. These centers provide a range of essential services, including healthcare, financial services, education, and agricultural support, to individuals who may not have direct access to government offices. CSCs play a critical role in ensuring that the benefits of e-governance reach even the most marginalized communities, overcoming the challenges of last-mile connectivity. For example, rural farmers can use CSCs to access market prices for crops, apply for subsidies, and receive expert advice, all of which contribute to improving their livelihoods and economic resilience. By making government services more accessible, CSCs help reduce the urban-rural divide and promote social inclusion.

4. Challenges in Implementing E-Governance

While the economic and social benefits of e-governance are evident, there are also significant challenges that need to be addressed to ensure the success of

[19]Available at: https://www.pmgdisha.in/ (Last retrieved June 20, 2024).

these initiatives. One of the primary challenges is the digital divide, which remains a significant barrier to the widespread adoption of e-governance services. Despite the efforts of initiatives like BharatNet, millions of citizens in rural and low-income areas still lack reliable access to the internet, limiting their ability to benefit from e-governance platforms. Moreover, digital literacy levels remain low in many parts of the country, particularly among older populations and those in rural areas, further hindering the effective use of digital services.

Another major challenge is data privacy and security. As more government services are digitized, the risk of data breaches, identity theft, and misuse of personal information increases. While the Information Technology Act of 2000 provides a legal framework for addressing cybercrimes, there is a growing need for a comprehensive data protection law that safeguards citizens' privacy and ensures the secure exchange of data in e-governance systems. The implementation of robust cybersecurity measures and data protection regulations is essential to building trust among citizens and ensuring the long-term success of e-governance initiatives.[20]

In addition to these challenges, the scalability and sustainability of e-governance services remain important concerns. The government's focus on cloud computing through initiatives like MeghRaj addresses these issues by providing shared, scalable IT infrastructure for e-governance projects. MeghRaj enables government departments to optimize resource use, reduce costs, and enhance the adaptability of their services to meet growing demand.[21] By leveraging cloud computing, e-governance platforms can be rapidly expanded to accommodate an increasing number of users, ensuring that the benefits of digital services are accessible to all citizens.

5. Benefits of E-Governance

E-governance offers numerous advantages, including increased transparency, accountability, efficiency, and public participation. The digitization of government records and processes facilitates greater accessibility of information to the public, thereby bolstering transparency and empowering

[20] Ashok Kumar, "Digital Governance in India: Bridging the Digital Divide for Inclusive Growth" 52 Indian Journal of Political Science 13-25 (2017).

[21] *GI Cloud Initiative (MeghRaj),* Vikaspedia, available at: https://vikaspedia.in/e-governance/national-e-governance-plan/gi-cloud-initiative-meghraj (Last retrieved June 20, 2024).

citizens to hold officials accountable. By implementing automated administrative processes, bureaucratic inefficiencies are minimized, resulting in enhanced service delivery. E-governance platforms also enable enhanced public participation through the provision of digital forums for citizen engagement and feedback.

Increased transparency is a key advantage of e-governance. As an illustration, the RTI (Right to Information) Online portal enables individuals to submit RTI applications and monitor their progress online, thereby fostering transparency and accountability in the realm of public administration. Through the facilitation of convenient access to governmental information, e- governance bestows upon citizens the ability to enforce responsibility among public officials, thereby diminishing corrupt practices and bolstering confidence in governmental establishments.

E-governance offers significant advantages in terms of enhancing efficiency. The streamlining of repetitive tasks and procedures minimizes the time and resources necessary for service delivery. As an example, the Passport SevaKendras (PSKs) have revolutionized the passport issuance procedure, resulting in a substantial decrease in processing times and a notable enhancement in customer satisfaction.[22]

While the adoption of e-governance offers numerous advantages, its implementation also presents significant challenges that must be addressed to ensure its success. One of the most pressing concerns is the digital divide, which refers to the unequal access to digital technologies across different segments of society. Despite considerable progress in expanding internet connectivity, a large portion of India's population, particularly in rural and remote areas, continues to face limited or unreliable access to digital resources. This disparity not only hampers the effectiveness of e-governance initiatives but also exacerbates existing socio-economic inequalities. To bridge this gap, sustained investment in digital infrastructure is crucial. This includes expanding high-speed internet access, such as through initiatives like BharatNet, and implementing robust educational programs aimed at improving digital literacy. Ensuring that underserved communities can

[22]*Passport Seva Project,* Ministry of External Affairs, available at: https://www.mea.gov.in/Images/pdf/Pasport_servic_Final.pdf, at 15 (Last retrieved June 20, 2024).

effectively use digital platforms is essential for making e-governance truly inclusive.[23]

In addition to the digital divide, cybersecurity presents a significant challenge in the realm of e-governance. As governments increasingly rely on digital systems for critical operations—ranging from welfare disbursements to public health services—these systems become vulnerable to cyber-attacks, data breaches, and hacking attempts. The potential risks to sensitive data, national security, and public trust necessitate the development and implementation of stringent cybersecurity measures. Regular security audits, the deployment of advanced encryption technologies, and the establishment of comprehensive cybersecurity frameworks are critical to safeguarding e-governance systems. Governments must allocate resources towards adopting cutting-edge cybersecurity practices, ensuring that both citizen data and public institutions remain secure. In an era of growing digital reliance, protecting the integrity of these systems is not just a technical requirement but a foundational aspect of building trust in digital governance.[24]

Moreover, resistance to change remains a considerable barrier in the implementation of e-governance initiatives. Bureaucratic inertia, combined with a reluctance to adopt new technologies, can slow down the digital transformation of public administration. Government employees, accustomed to traditional methods, may resist the adoption of digital systems due to unfamiliarity or concerns about job security. Similarly, segments of the general public, especially those unfamiliar with digital technologies, may be hesitant to engage with e-governance platforms. Overcoming this resistance requires comprehensive change management strategies. Targeted training programs for government personnel can equip them with the necessary skills to effectively use new technologies, while awareness campaigns can help inform the public about the benefits of digital governance. Encouraging a forward-thinking culture that embraces innovation and technological advancements is vital to overcoming opposition and fostering the successful implementation of e-governance systems.

By addressing these challenges—closing the digital divide, enhancing cybersecurity, and managing resistance to change—governments can ensure that e-governance not only improves service delivery and administrative

[23] *Supra* n. 11

[24] *Supra* note 4, at 64-65.

efficiency but also promotes inclusivity, security, and public trust. The success of e-governance lies not just in its technological infrastructure but in its ability to bring about meaningful and lasting change for all citizens.

6. Conclusions and Suggestions

The implementation of e-governance in India presents both remarkable opportunities and significant challenges, particularly in the context of bridging the digital divide, ensuring cybersecurity, and overcoming institutional resistance. E-governance, as a transformative tool, has the potential to create a more inclusive, transparent, and efficient public administration system. However, the digital divide remains a fundamental obstacle, as many rural and remote areas of India still suffer from inadequate internet connectivity and low levels of digital literacy. Initiatives like BharatNet, which aim to bring high-speed internet to 250,000 Gram Panchayats, have made strides in closing this gap, yet a substantial portion of the population continues to lack access to reliable digital technologies. This disparity not only hinders the equitable implementation of e-governance but also perpetuates socio-economic inequalities, as those without access are often among the most vulnerable. Furthermore, without comprehensive digital literacy programs, citizens in these regions are unlikely to fully utilize or benefit from e-governance services, exacerbating the exclusion of marginalized populations.

Another critical issue facing e-governance in India is the growing concern over cybersecurity. As government services increasingly rely on digital platforms, the risk of cyberattacks, data breaches, and identity theft becomes more pronounced. The dependency on digital systems for crucial governmental operations makes them vulnerable to security threats, potentially compromising sensitive citizen data and undermining public trust. While the Information Technology Act of 2000 provides a basic framework for cyber regulation, the rapidly evolving nature of cyber threats calls for more robust and adaptive cybersecurity policies. The need for stronger encryption technologies, regular security audits, and a comprehensive national cybersecurity strategy is more pressing than ever. Ensuring the security of digital platforms is essential not only for the protection of personal data but also for maintaining the integrity and trustworthiness of the entire e-governance framework.

Institutional resistance to change is another significant challenge in the implementation of e-governance. Bureaucratic inertia, combined with the

hesitancy of both government personnel and segments of the general public to adopt new technologies, can impede the effective roll-out of digital governance initiatives. Many government employees are accustomed to traditional, paper-based systems and may feel threatened by the introduction of digital tools, fearing job displacement or a steep learning curve. Likewise, the public, especially those unfamiliar with digital platforms, may resist engaging with e-governance services due to concerns about data security, usability, or mistrust in the system's efficiency. Overcoming this resistance requires comprehensive change management strategies, including targeted training programs for government staff, as well as public awareness campaigns to highlight the benefits of e-governance.

The socio-legal implications of e-governance also extend to issues of data privacy and the ethical use of technology. As more citizen data is collected and stored digitally, ensuring the protection of personal information is paramount. India's Personal Data Protection Bill seeks to address these concerns by establishing rules for the handling of personal data and requiring organizations to secure and responsibly manage this information. However, the legal framework surrounding data protection is still evolving, and more concrete measures are needed to safeguard citizen privacy, especially as the scope and scale of data collection continue to grow.

Despite these challenges, the potential benefits of e-governance are substantial. By digitizing public services, e-governance enhances transparency, reduces bureaucratic inefficiencies, and fosters greater citizen engagement. Initiatives like MyGov, which allow citizens to directly interact with government policies and provide feedback, have strengthened democratic participation. E-governance also reduces the costs of administrative processes, streamlining the delivery of services and enabling more efficient governance. However, the success of e-governance depends on addressing the aforementioned challenges, ensuring that digital platforms are secure, accessible, and designed to promote inclusivity.

6.1 Suggestions

1. **Enhance Digital Infrastructure**: Prioritize the expansion of digital infrastructure in rural and remote areas through increased funding for initiatives like BharatNet. Ensuring universal access to high-speed internet is fundamental to the success of e-governance.

2. **Implement Comprehensive Digital Literacy Programs**: Launch nationwide digital literacy initiatives, especially targeting rural and marginalized communities, to ensure that all citizens can effectively engage with e-governance platforms.
3. **Strengthen Cybersecurity Frameworks**: Develop a robust national cybersecurity strategy that includes regular security audits, advanced encryption technologies, and stronger regulatory frameworks to safeguard digital platforms and protect citizen data.
4. **Promote Change Management in Bureaucracy**: Implement structured change management programs within government institutions, providing targeted training and resources for government employees to familiarize them with digital tools and processes.
5. **Public Awareness Campaigns**: Initiate public campaigns that educate citizens on the benefits and security of e-governance platforms, aiming to build trust and encourage broader adoption of digital services.
6. **Enhance Data Protection Laws**: Strengthen the legal framework for data privacy, ensuring that the Personal Data Protection Bill evolves in response to emerging technologies and increasingly sophisticated cyber threats.
7. **Focus on Inclusivity in E-Governance Initiatives**: Ensure that e-governance platforms are designed to be user-friendly and accessible, taking into account the needs of elderly, illiterate, and disabled populations to avoid furthering the digital divide.

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 256-271

Mob Lynching Laws: A Paradigm Shift from Indian Penal Code to Bharatiya Nyaya Sanhita

Rahul Dhiman*

Abstract

In India, from some recent years there has been a significant high rise in the issue of Mob Lynching. Although the issue of a new lexicon in the Indian context is recent, it has been recurring in global civilization for decades. In countries such as the USA, the focus is often on issues related to race, namely the tensions between white and black communities, as well as issues related to nationality. However, in India, the situation is distinct and involves other concerns. In India, it has been mainly observed by the political parties to achieve their own private political motives. Furthermore, there have been numerous instances of heinous mob lynching throughout the country. These incidents involve the victims being killed based on rumors and accusations of various alleged crimes, such as theft, smuggling of livestock, cow slaughter, child abduction, and elopement with women of different religious beliefs. According to experts, given the increasing incidents of mob lynching, it is necessary to have a specific provisions in the Indian Penal Code (IPC) to address these hate crimes. However, rising numbers of mob lynching cases in the recent years has exposed the inadequacies of Indian Penal Code in addressing this form of hate crime effectively. The Indian Penal Code (IPC) does not include a specific provision for murder committed by a mob. As a result, the police register cases of murder under statute 302 of the IPC against all individuals who are arrested. These individuals then stand prosecution under the same statute. For ensuring fair trial and overhaul the Indian Legal System, the Bharatiya Nyaya Sanhita incorporates the more specific provisions for contemporary issues such as mob lynching. This research paper aims to delve into the evolution of legal frameworks addressing mob lynching, focusing on the paradigm shift from the Indian Penal Code to the Bharatiya Nyaya Sanhita. By examining the limitations of the IPC in effectively deterring and punishing mob lynching incidents, the paper will explore how the BNS offers a more comprehensive and targeted approach. It will also analyze

*Junior Research Fellow, Department of Laws, Panjab University, Chandigarh.

specific provisions of the Bharatiya Nyaya Sanhita, assess its impact on the prevention and prosecution of mob lynching cases.

Keywords: *Bharatiya Nyaya Sanhita, Indian Penal Code, Menace, Mob Lynching.*

1. Introduction

"The Law cannot be tested on the anvil of majoritarian morality but on Constitutional morality".[1]

Amongst high – profile incidents of hate crime against the minorities, India is also facing a remarkable catastrophe of mob lynching. This is not a latest happening in Indian framework but recent outbreak in this crime is an unanticipated and unexpected fact for those who believe in a democratic and independent system. As stated by Article 21 of the Indian Constitution the act of mob violence or mob lynching infringes the Right to life and personal liberty of sufferer's and any act which infringes this right of the sufferer is unlawful and against the fundamental principles of "due process" which is guaranteed by our Constitution.[2] This crime has justifiably been illustrated by the Indian Apex Court in its recent July 2018 Tehseen Poonawalla[3] verdict as "Horrendous acts of mobocracy". Due to this verdict the court passed a series of guidelines for Union and the State Governments to frame a new legislation particularly to deal with it and to tackle this serious issue and had passed directions to grant "precautionary, curative and penalizing measures".[4] Mob lynching refers to the phenomenon of violent behavior exhibited by a substantial gathering of people. This violent behavior is tantamount to offenses against the human body or property. The mob believes that they are administering punishment to the individual for engaging in immoral behavior, and they do it by taking matters into their own hands, disregarding any established norms and regulations. These homicides have also been seen to occur when there is a delay in the administration of justice.[5]

---

[1] *Navtej Singh Johar v. Union of India,* (2018) 1 SCC 791.

[2] Mohd Mustafa, "Mob Lynching and the Right to Life: A Human Rights Perspective in light of the Constitutional Framework of India" 11 *International Journal of Creative Research Thoughts* 205 (2023).

[3] *Tehseen S. Poonawalla v. Union of India,* 2018 SCC OnLine SC 696.

[4] Moeen, *"Mob Lynching: Horrendous Act of Mobocracy",*Legal Service India E – Journal, *available at:*https://legalserviceindia.com (Last retrieved on August 25, 2024).

[5] *Moses Wilson v.Kasturiba,* 2007 SCC OnLine SC 1160.

2. Objective

The objective of this article is to analyze the limitations of the Indian Penal Code (IPC) in addressing mob lynching incidents. The main aim of this research paper is to examine the provisions of the Bharatiya Nyaya Sanhita which means it entails a detailed analysis of the relevant sections of the BNS and their potential to provide a more effective legal framework for addressing mob lynching and to find out that the BNS offer a stronger and more wide-ranging approach to deal with the offence of mob violence as compared to IPC or not and to analyze the effectiveness of these provisions in deterring and punishing mob violence and finally to identify any gaps or shortcomings in the existing legal framework.

3. Research Methodology

This research employs a doctrinal legal research methodology to analyze the laws governing mob lynching in India. The primary focus is on a detailed examination of relevant provisions in the Bharatiya Nyaya Sanhita (BNS) and Indian Penal Code (IPC) including their historical context. Primary data was collected through relevant Statutes available on the internet whereas secondary sources such as legal commentaries, case law analysis, and academic articles and journals available on the internet are also consulted to provide additional insights and perspectives.

4. Meaning of Mob Lynching

Mob Lynching or Mob Violence is a crime of hatred, no matter for whatever grounds is very pitiable and antisocial act where a large crowd without following "Due Process of Law" takes the law in their own hands and target and kill a human being. Lynching is referred to "extra judicial Punishment" administered by mob without a trial. This action clearly infringes upon the fundamental and essential rights of humans, specifically the right to life and human dignity. Mob Lynching is also defined by some institutes in their own words which are given as follows:

According to **Britannica** "Lynching is a violent act where a crowd, without conducting a trial, executes someone they believe to be guilty of a crime. This is generally done after subjecting the person to torture and physical mutilation".[6]

---

[6] Geoffery Abbott, *Lynching: References & Edit History,* (Aug 17, 2024), *available at:*https://britannica.com (Last retrieved on August 25, 2024).

According to **Merriam-Webster** "a group of individuals who unlawfully kill or attempt to kill someone as a form of punishment."[7]

According to **Collins Dictionary,** "a lynch mob refers to a furious gathering of individuals who seek to execute someone without a legal trial, based on their belief that the person has committed a crime."[8]

The **Manav Suraksha Kanoon**also known as the Protection from Lynching Bill (44 of 2017), is a proposed law by the National Campaign against Mob Lynching also defined **lynching** as "any act or series of acts of violence or aiding, abetting or attempting an act of violence, whether spontaneous or planned, by a mob on the grounds of race, religion, sex, caste, place of birth, language, dietary practices, sexual orientation, political affiliation, ethnicity or any other related grounds" under **Section 2(c)** while **mob** is defined as "two or more individuals gathered with the intention of lynching" under **Section 2(d).**[9]

5. History Behind Mob Lynching

During the American Revolution in the mid-18th century, the term "Lynch" was coined by the American people. The inaugural instance of lynching occurred in St. Louis in 1835, when a sheriff was murdered by a Mclntosh Black individual while being transported to jail. He was publicly executed by being bound to a tree in front of a large crowd. Lynching incidents were commonly perpetrated in several countries as a result of racism.[10]

In India also, during the revolt of 1857, British civilians attacked by mobs. During partition of India mobs attacked individuals of a different religion and their families in villages and burned their properties also.[11]

India has had numerous instances of distressing incidences of lynching, particularly in the states of Bihar, Madhya Pradesh, Rajasthan, Maharashtra, and Western Uttar Pradesh. Furthermore, in recent years, this trend has also

---

[7] Merriam-Webster, Definition of Lynch Mob, *available at:*https://merriam-webster.com (Last retrieved on August 25, 2024).

[8] Collins Dictionary, Definition of Lynch Mob, *available at:*https://collinsdictionary.com (Last retrieved on August 25, 2024).

[9]Ayush Agarwal and Shriyaditya Shrivastava, *"Criminalisation of Mob Lynching under the Bharatiya Nyaya (Second) Sanhita 2023",NUALS Law Journal*, *available at:*https://nualslawjournal.com (Last retrieved on August 28, 2024).

[10] Varun Kumar, "Mob Lynching in India: An overview" 4 *Law Audience Journal* 92 (2022).

[11] Tanvi Yadav and Nagendra Ambedkar Sole, "Mob Lynching in India: Sine Qua Non of Legal Intervention" 4 *Asian Law and Public Policy Review* 299(2019).

been observed in the southern Indian states. According to a Reuters investigation, there were a total of cow vigilante incidents in India between the years 2010 to 2017.[12] Due to mob lynching, The Quint records one hundred and thirteen deaths from 2015 to 2019 across India. Unquestionably, Lynching is rising as a national phenomenon.[13]

6. Root Causes Behind the Menace

6.1 Social media: Social media platforms can serve as a means for disseminating misinformation. In the current era, technology is often regarded as a boon for humanity. Social media platforms such as WhatsApp, Twitter, Facebook, Instagram, etc. provide individuals with a fast means of communication, allowing them to connect with others worldwide regardless of their location. However, these platforms also facilitate the rapid spread of misinformation. This rumor incites individuals to take matters into their own hands and is the primary cause of mob lynching incidents throughout India. Social media facilitates the rapid dissemination of rumors such as cow slaughtering and child lifting, leading to the unjustified targeting and harm of innocent individuals by mobs.[14]

Social media has a detrimental impact on individuals' well-being and can lead to negative outcomes. It not only consumes time but also causes harm to individuals of all genders, including men, women, and transgender individuals. Over 200 million Indians utilize WhatsApp, while an even greater amount maintains profiles on Facebook. However, social media may also become anti-social when manipulated by individuals who spread rumors, ultimately resulting in acts of lynching. In 2018, these occurrences resulted in the fatalities of 22 individuals, including one transgender person.

6.2 Lack of Education: Lack of education and ineffective penetration of teaching or instruction among the people might contribute to the proliferation of false information on social media. This would persuade such people leading to mass demolition and mob lynching.[15]

---

[12] Kuldeep Singh and Dr. Dwarika Prasad, "Law against Mob – Lynching in India: An Analytical Study" 19 *RJPP* 203(2021).

[13] *Supra*note 2 at 204.

[14] Saloni Sharma and Aditya Singh Rana, *"Law on lynching in India", available at*: https://blog.ipleaders.in/lynching-laws-in-india/ (Last retrieved on August 28, 2024).

[15] Khurana & Khurana, *"Introduction of provisions for mob lynching in BNS, 2023"*(3rd May 2024) *available at:*https://khuranaandkhurana.com (Last retrieved on August 29, 2024).

6.3 Misguidance of Youth: A massive portion of youth left unemployed would make their minds subject to misguidance by vested interests and brainwashing through diverse beliefs.[16] As a result of being misled, people engage in actions that are directed against certain groups in order to seek revenge or are driven by excitement and passion.

6.4 Failure of State and Lack of appropriate mechanism: Due to the failure of State machinery and lack of appropriate mechanism, citizens are losing their trust in law enforcement and are taking laws in their hand which allow hate crimes to escalate.[17]

6.5 Biased View: Mob is over and over again motivated to commit a hate crime by various biases based on class, race and religion and due to some historical or social reasons. For instance, the labeling of Muslims as terrorists resulted in a crowd engaging in an act of lynching against them.[18]

6.6 Lack of impunity: Impunity isone of the most important causes for the increase in mob lynching crime. Some people get benefit of it because police officers find it difficult to register cases against mob. It finds no mention in IPC and there was no separate law to deal with this issue before BNS. That is why, over and over again anyone responsible for get away with it.[19]

7. International Laws to Deal with Mob Lynching

Although mob lynching is not explicitly addressed in any international treaty or convention, it is implicitly protected from by a number of international laws and human rights norms. The international laws that can be used to address this crime include the Universal Declaration of Human Rights (UDHR) and Human Rights Treaties. These laws ensure the safeguarding of people' fundamental human rights against infringement by both state and non-state actors that frequently exploit such laws.[20]

---

[16] *Supra*note 15.

[17] Forum IAS, "*What is mob-lynching? What are various reasons for a rise in mob-lynching incidents in India?"* (August 29, 2024) *available at:*http://forumias.com/blog/ (Last retrieved on August 29, 2024).

[18] *Supra*note 14.

[19] *Ibid.*

[20] Ali Oladimeji Shodunke, "Establishing the nexus among mob justice, human rights violations and the state: Evidence from Nigeria" 72 *International Journal of Law, Crime and Justice* (2023).

7.1 Universal Declaration of Human Rights, 1948: Delegates from every corner of the globe, representing a wide range of cultural and legal traditions, came together to draft what would become an iconic text in the annals of human rights: the Universal Declaration of Human Rights. Every person has worth and equal rights, and this agreement acknowledges that. It states that "everyone has the right to life, liberty and security of person."[21] Mob lynching infringes against this fundamental human right and is thus seen as a breach of international human rights law.[22]

7.2 International Covenant on Civil and Political Rights, 1966: The International Covenant on Civil and Political Rights (ICCPR) is a legally binding treaty that sets out the civil and political rights that are protected under international law. It provides that "every human being has the inherent right to life" and that this right shall be protected by law.[23] It also prohibits "torture and cruel, inhuman, or degrading treatment or punishment".[24] Mob lynching, characterized by the application of violence and pressure to harm an individual, violates both articles of the ICCPR.[25]

7.3 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984: The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is an international treaty that forbids torture and other forms of cruel, inhuman or degrading treatment or punishment. The treaty defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person."[26] Mob lynching, characterized by the deliberate infliction of pain and suffering, is a form of torture and is hence forbidden under this convention.[27]

7.4 International Convention on the Elimination of All Forms of Racial Discrimination, 1966: This convention mandates that all governments end discrimination based on race and make sure no one is ever attacked

---

[21] The Universal Declaration of Human Rights, 1948, art. 3.
[22] Civils Daily, *"[Burning issue] Mob lynching in India"* (February 25, 2023) *available at:* http://civilsdaily.com/mob-lynching-india-civilsdaily/ (Last retrieved on August 30, 2024).
[23] International Covenant on Civil and Political Rights, 1966, art. 6.
[24] International Covenant on Civil and Political Rights, 1966, art. 7.
[25] *Supra* note 22.
[26] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, art. 1.
[27] *Supra* note 22.

because of their race or encouraged to do so.[28] This norm is flagrantly broken in mob lynching, which frequently target people because of their religion or race.[29]

7.5 Mob Lynching under the Indian Penal Code, 1860 and its Deficiencies

Prior to the establishment of Bharatiya Nyaya Sanhita, there was no formalized legislation specifically addressing mob violence in India. However, the provisions of the Indian Penal Code were utilized to some extent in dealing with cases pertaining to mob lynching. According to the Indian Penal Code, mob lynching is not considered a distinct crime. Therefore, the person responsible for it can be charged with Murder under Section 302 of the IPC. All those who are arrested in connection with mob lynching may also face trial under the same section or for culpable homicide not amounting to murder under Section 304. In addition, crimes relating to "Voluntarily causing hurt" "Voluntarily causing grievous hurt", attempt to murder under section 307 may be applied on the basis of facts and circumstances of the case. These sections may be read in combination with Section 34 of the IPC (Common Intention), Section 141 (unlawful assembly), Section 144 (Joining unlawful assembly joined with deadly weapon), Section 147 (Rioting), Section 148 (Rioting with deadly weapon), Section 149 (Offence committed in furtherance of a common aim).[30]

In particular, hate crimes have been recognized and addressed in the Indian Penal Code through the inclusion of Section 153A, which deals with "promoting enmity between groups and acts prejudicial to the maintenance of harmony," Section 153B, which addresses "acts prejudicial to the maintenance of national integration," Section 295A, which addresses "acts intended to outrage religious feelings," and finally Section 295B, which addresses "words intended to hurt religious feelings." Still, these Sections hardly ever come across cases related to mob violence or mob lynching.[31]

---

[28] International Convention on the Elimination of All Forms of Racial Discrimination, 1966, art. 5.

[29] *Supra* note 22.

[30] Sajidur Rahman, "Need of the hour: Legislative reforms to prevent Mob Lynching",1 *Brillopedia* 1 (2021).

[31] *Supra* note 10.

The failure to recognize the aforementioned offense as a distinct offense was unable to fully grasp the seriousness of a crime that is motivated by caste and religion, and targets or results in the death of an individual. The aspect of abhorrence remains unnoticed, failing to punish the offenders who perceive themselves as superior to the law, as they violate the rights of both fellow human beings and victims. Furthermore, the absence of any option for prompt trial in these situations greatly jeopardizes the right to a fair trial due to the unique complexities involved, such as a great quantity of doers and challenging socio-economic constraints at every level. Occasionally, when reported, the delay and continuation of a just and reasonable trial might result in a severe failure of justice.[32]

8. Mob-Lynching under the Bhartiya Nyaya Sanhita, 2023

The Bhartiya Nyaya Sanhita Bill was presented in the Lok Sabha on 11 August 2023 with the aim of substituting the Indian Penal Code, which dates back to the colonial era. The law has addressed the shortcomings in the Indian Penal Code by introducing a comprehensive provision for mob lynching, along with specific penalties for individuals found guilty of this crime, ranging from seven years of imprisonment to the death sentence.[33]

Along with additional alterations, **Section 103(2)** of the Bhartiya Nyaya Sanhita provides punishment for mob lynching. The provision stipulates that "*when a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other ground each member of such group shall be punished with death or with imprisonment for life or imprisonment for a term which shall not be less than seven years and shall also be liable to fine".*[34]

The necessary components of this offence are:[35]

a) Collective of five or more individuals
b) Acting in concert
c) Engages in the act of killing another person intentionally and unlawfully

---

[32]*Supra* note 10.

[33] Hindustan Times, *"Capital Punishment for mob lynching under the new Bharatiya Nyaya Sanhita Bill"* (August 11, 2023) *available at:*http://hindustantimes.com (Last retrieved on August 30, 2024).

[34]Taxmann, *NewCriminal Major Acts* 142(Taxmann Publications Private Limited, New Delhi, 2024).

[35] Drishti Judiciary, *"Mob lynching under Bharatiya Nyaya Sanhita, 2023"* (July 12, 2024) *available at:*http://drishtijudiciary.com (Last retrieved on August 30, 2024).

d) On the ground of
- Race
- Caste
- Community
- Sex
- Place of birth
- Language
- Personal belief
- Or any other similar ground

Each individual who falls into this category will face the penalty of death or a life sentence, in addition to being subject to a fine.

One could contend that a 7-year prison sentence may not be commensurate with the heinousness of the offense. Simultaneously, it empowers the courts to mete out punishment in accordance with the level of involvement of the accused in the mob action, while also allowing for flexibility.[36]

6.1 Voluntarily causing grievous hurt

Section 117(4) of BNS grants that "when a group of five or more persons acting in concert, causes grievous hurt to a person on the ground of his race, caste or community, sex, place of birth, language, personal belief or any other similar ground, each member of such group shall be guilty of the offence of causing grievous hurt, and shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine".[37]

The fundamental components of this offence are:[38]

a) Collective group of five or more individuals
b) Acting in concert
c) Causes grievous hurt
d) On the ground of
- Race
- Caste
- Community
- Sex

[36] *Supra* note 10.
[37] *Supra* note 35 at 149.
[38] *Supra* note 36.

- Place of birth
- Language
- Personal Belief
- Any other similar ground

Every individual within this group will be held responsible for the crime of inflicting serious injury and will face a prison sentence of up to seven years, as well as a fine. In this particular scenario, rather than resulting in fatality, the crowd is inflicting severe bodily harm onto the individual.

It is important to mention that the inclusion of these clauses, in addition to the existing clauses of "murder" and "grievous hurt" points out the seriousness of these crimes. They are considered equivalent to murder and grievous hurt, respectively. Furthermore, the element of "hate" in targeted mob violence is given due consideration.[39]

6.2 Deficiency in the above provision

A significant deficiency in the aforementioned BNS provision is its failure to address the term 'religion', therefore lacking express recognition of mob lynching driven by religious motives. This becomes significant in relation to other aspects pertaining to hate crime, such as inciting violence and fostering animosity among social-cultural groups, where any action carried out based on religion is acknowledged as a criminal offense.[40]

The provisions concerning the responsibilities and legal obligations of police in respect to mob lynching are not mentioned. Furthermore, the absence of any reference to victim compensation program and victim protection is particularly pertinent in cases of severe injury caused by mob lynching. The Bhartiya Nyaya Sanhita does not include provisions for preventing mob lynching, as outlined in Tehsin Poonawala's proposed legislation and other special Bills, despite the broad coverage of the penal code.[41]

Furthermore, despite several appeals to categorize mob lynching as abhorrence crime, the New Penal Code does not address this matter. These actions not only harm people but also have a detrimental impact on society as they are driven by prejudice towards a specific group. Hate crimes arise from a lack of acceptance, the imposition of certain beliefs, and prejudiced attitudes,

[39] *Supra* note 10.
[40] *Supra* note 36.
[41] *Supra* note 10.

which should not be accepted. Categorizing lynching as a hate crime is a proactive measure that will effectively address the problem of lynching.[42]

9. Terrifiying Cases of Mob Lynching

Dimapur Lynching case (2015): In the year 2015, Dimapur Lynching case took place in Dimapur, Nagaland India. An enraged crowd of approximately seven to eight thousand individuals forcibly entered the Demapur Central Jail, extracted a guy from within, and apprehended him on the grounds of alleged rape. Subsequently, they publicly exhibited him in a state of nudity and subjected him to fatal physical assault, exemplifying an instance of vigilante justice.[43]

Dadri Mob lynching case (2015): In the same year another case of mob lynching happened. The incident occurred during the nighttime of September 28, 2015, in Bisara village, near Dadri, Uttar Pradesh, India. A group of villagers launched an assault on the residence of Mohammed Akhlaq, a 52-year-old individual, resulting in his death. The motive behind the attack was suspicion of his involvement in cow slaughter.[44]

Jharkhand Mob Lynching Case (2019): On 17 June 2019, Tabrez Ansari of Jharkhand was lynched by a mob. He was bound to a tree and subjected to severe physical abuse based on the allegation of stealing a bicycle. Ansari, a Muslim individual, was compelled to recite the phrase 'Jay Shree Ram', which is a Hindu expression. He passed away after a few days. The footage of the incident gained widespread attention on various social media platforms and became widely known around the country.[45]

Hapur Verdict (2024): On 12 March 2024, a trial court in Hapur, Uttar Pradesh, handed down a historic ruling by sentencing the perpetrators of a cow protection-related lynching of a Muslim man to life imprisonment. In June 2018, Qasim Qureshi was killed by a Hindu mob in the Bajhera Khurd hamlet. He was accused of cow-slaughter, which was later found to be incorrect. Additionally, Samiuddin was severely attacked during the same incident. Shweta Dixit, the judge of the extra district and session's court, has imposed life sentences on 10 men and fined them ₹59,000 apiece. These penalties were given for their involvement in crimes like as murder, attempted murder,

[42] *Supra* note 10.
[43] *Supra* note 36.
[44] *Ibid.*
[45] *Ibid.*

rioting, and inciting religious hatred. The significance of the conviction in this case lies in the fact that illegal vigilante acts are collaborative endeavors involving both state and non-state actors; however, the consequences are borne solely by the non-state actors.

The surge in cow vigilantism in India has been fueled by the government's involvement in the movement to safeguard cattle from being slaughtered. The ensuing violence has obscured the distinctions between vigilantes and the state and has acquired legal validity. The governments in Haryana, Rajasthan, and Uttar Pradesh have modified their legislation on cow slaughter prevention and established dedicated task forces to ensure compliance. These circumstances have enabled cow vigilantes to operate without restraint, with the approval of the state and the awareness of the police. Consequently, there have been few instances where legal proceedings have been initiated to penalize individuals who engage in anti-Muslim violence in the name of cow protection.[46]

10. Judicial Approach

"The Landmark verdict in ***Tehseen S Poonawala and others*** **v.** ***Union of India***[47]case delivered on 17 July, 2018, comprising a three-judge bench of Chief Justice Dipak Misra and Justices A.M. Khanwilkar and D.Y. Chandrachud, a judge of Supreme Court suggested that the parliament should pass a particular law on mob lynching. This is because having a strong legal system and respecting the authority of the law are essential for a civilized society. The writ petition was filed under Article 32 of the Constitution in order to promptly and indispensably addresses the cow protection groups engaging in acts of violence."

While discussing the significance of protecting constitutional and statutory law in each individual court, the Krishnamoorthy case was referenced. "In ***Krishnamoorthy*** **v.** ***Sivakumarand others***[48]*,* the Supreme Court declared that "the law holds supreme authority in a civilized society." The integrity of the legal system cannot be tarnished merely because an individual or a group believes that they have the authority, based on legal principles, to enforce the law independently and administer punishment to offenders according to their

[46]Nidah Kaiser *"Hapur verdict, challenging vigilantism"* (April 18, 2024) *available at:* https://www.thehindu.com/opinion/op-ed/hapur-verdict-challenging-vigilantism/article68075590.ece (Last retrieved on August 30, 2024).

[47] Writ Petition (Civil) No. 754 of 2016.

[48] (2015) 3 SCC 467.

own judgment and preferences." The Court emphasized that no one is permitted to take matters into their own hands based on their subjective and limited understanding. One has the right to defend their rights in a legal context, while the other has the right to be presumed innocent until proven guilty through a fair trial."

"In the case of ***Nandini Sundar and others* v. *State of Chhattisgarh***[49] the court expressed the view that it is the responsibility of the states to make continuous and consistent efforts to foster a sense of brotherhood among all citizens, in order to safeguard, nurture, and enhance the dignity of every individual. The court determined that it is the duty of the States to take measures in order to prevent such incidents."

"In ***Mohd Haroon and others* v. *Union of India and another***[50] case the court establishes that the State Administration, in collaboration with both State and Central intelligence agencies, bears the obligation of preventing the reoccurrence of communal violence in any region of the State. If any law enforcement personnel is found to be careless in their duty to maintain law and order, they should be held accountable under the law." In the current case, the Supreme Court ruled that "Mob lynching constitutes a violation of the principles of the rule of law and the values enshrined in the Constitution." It is imperative to prevent the occurrence of lynching by disorderly mobs and savage violence that stems from provocation and instigation, since it should not become a common practice. The act of vigilantism, regardless of its motive or origin, has the consequence of weakening the established legal and official institutions of the State and disrupting the constitutional framework."

"In ***St. Stephen's College* v. *University of Delhi***[51], the Court highlighted the importance of Unity in Diversity. The Court observed that our Constitution aims to promote unity among Indians by embracing and integrating their diversities, while discouraging any tendencies that may lead to division. The phrase "diversity" encompasses a wide range of connotations, including variations in geography, religion, language, race, and culture. It is imperative to emphasize that India embodies a wide range of social, religious, and cultural diversity."

---

[49] (2011) 7 SCC 547.
[50] (2014) 5 SCC 252.
[51] (1992) 1 SCC 558.

The court emphasized the immediate necessity for the state to intervene in safeguarding the rights of its citizens. The Supreme Court has stated that in order to maintain cohesiveness and unity, a dynamic contemporary constitutional democracy must embrace the essential characteristics of accommodating pluralism in thought and approach. The court has also emphasized the need to prevent acts such as cow vigilantism, any other form of vigilantism, and lynching, which it refers to as "extra-judicial" acts. In this regard, the court has issued guidelines to both the central government and the state governments. The court also called upon Parliament to enact specific laws to address the challenges presented by vigilante groups. It emphasized that until such legislation is passed, the recommendations will be legally binding.

"In the legal case of ***Archbishop Raphael Cheenath S.V.D.*** **v.** ***State of Orissa and another***[52], a Writ Petition was submitted to address the State of Orissa's negligence in providing sufficient police presence to uphold law and order in the Kandhamal District of Orissa. The petition also highlighted the state's failure to protect its citizens in the assassination of Swami LaxmananandaSaraswati and others by collectivists. The court emphasized that it is the responsibility of the State Government to investigate and determine the reasons behind the community unrest, and to enhance the police infrastructure in the district in order to prevent the repetition of such communal violence. The court also underscored the importance of implementing peace-building initiatives concurrently."

11. Suggestions

a) **Effective Implementation:** Make sure the law is applied correctly by training law enforcement agencies to handle mob lynching instances.
b) **Addressing Root Causes:** Recognize social concerns including misinformation, communal conflicts, and prejudice that contribute to mob lynching instances.
c) **Faster Trials:** To ensure fair trials, prioritize the cases of mob lynching in the judicial system.
d) **Public Awareness Campaigns:**Conduct extensive public awareness campaigns to educate communities about the gravity of mob lynching and the legal ramifications of engaging in such atrocities.

[52] (2009) 17 SCC 86.

e) **Legal Aid for Victims:** Ensure that victims of mob lynching have easy access to legal aid so that they can navigate the judicial system and get adequate compensation.

12. Conclusion

Mob lynching is an offence that was absent in the colonial – era Indian Penal Code. It is a recently established offense under the Bharatiya Nyaya Sanhita. Undeniably, the creation of this offense was necessary given the prevalence of similar incidents in our culture. The act of classifying mob lynching as a different criminal offense signifies a significant step towards acknowledging and addressing the growing threat it poses to societal stability. Punishment is but one aspect of combating mob lynching, which occurs after to the conduct of the act. The key to preventing such incidents is deterrence and vigilant monitoring. Various sections of the Indian Penal Code (IPC) of 1860 were used to charge the accused individual. The court must address multiple charge sheets in order to render a verdict in the instance of mob lynching. The charge sheets are consolidated, and the judge comprehends that the offense has been perpetrated by a collective of individuals. They could be charged with the offense of unlawful assembly to enhance clarity. However, according to Section-103(2) of the BNS, 2023, the entire group responsible for participating in such acts of lynching will be legally charged. In this case, the law has precisely focused on the offense. The composition of the group has been determined. The recognition of the offense has led to the establishment of a specified punishment, which provides a clearer understanding of an individual's involvement in committing the offense as a member of a larger group. This provision provides an introduction to comprehend the modern offense that was extensively discussed by civil society in the past.

The study's findings indicate that although the Indian Penal Code establishes a broad legal structure, it lacks precise restrictions to effectively discourage mob lynching. The Bharatiya Nyaya Sanhita now ensures a more focused and precise legal response by including additional clauses. Nevertheless, the efficacy of this new legislation in managing and curbing such undesirable occurrences can only be determined with the passage of time.

Journal of University Institute of Legal Studies
ISSN: 2229-3906, VolumeXVIII, IssueII, pp. 272-285

Misuse of Women-Specific Laws: An Ignominy for Indian Society

Gurleen Kaur*

Abstract

This paper gives a theoretical understanding into the various facets and nuances of women-specific laws. It entails the deplorable condition of the males in Indian society when the laws which are made for the benefit of the females are used as a legal weapon against them. It focuses upon the laws which are grossly misused such as The Dowry Prohibition Act, The Domestic Violence Act, Maintenance of wife by the husband, Medical Termination of Pregnancy Act, Sections 85, 63, 75, 77 and 78 of the BNS, 2023 are still contemplated to be the revolutionary laws in the Indian subcontinent in the name of equality. It highlights various contentions and judgements pronounced by the courts where such laws are applied maliciously such as Catena of Jabalpur Rape Cases, 'ND' Extortion Group Case, Atul Subhash Suicide Case, Puneet Khurana Suicide Case and others. Further, it enumerates the two public interest litigations filed before the Hon'ble Court to ensure justice to men as well. Unfortunately, the plea was refuted blatantly and henceforth no strict action was taken. It talks about how the BNS, Section 377, Sections 117 and 118 of the BharatiyaSakshyaAdhiniyam has played and not played its role with regard to the gender-bias system in our society. To address this issue, it is imperative for the authorities or the standing committees to examine the same and eliminate such lacunae through legal reforms and awareness campaigns for the economy to burgeon.

Keywords: Misandry, voyeurism, iddat, euthanasia, sodomy and indictment.

1. Introduction

In the era of optimism and feminism, misandry still remains a bone of discord. The exploitation of gender-specific laws by women themselves which were made for their own welfare is an impediment in the developmental operation of law and justice. Moreover, gender-specific rape laws among other legislations is not an approbation in the historical development of mankind.

* Student, Punjab University, Regional Centre, Ludhiana.

It is an act which can be committed against any individual regardless of sex. The bogus allegations made by women against men for their personal vendettas in the name of feminism is deplorable and dishonorable. A sham indictment is a matter of ignominy, which for the accused is hard to prove in the court of law. This makes men prone to suicides or for that matter euthanasia as they undergo mistreatment and are seen through an evil eye in the society even if they get acquitted. Is the word 'humanity' still existent in our dictionaries? What are the legislators working upon when 74% of the rape cases against men are fake according to the National Crime Records Bureau (NCRB), 2023[1]? Are they using the ill-gotten money and muscle power for elections or sometimes working upon making our laws gender-neutral? When other countries including most of Europe, North America and even Asian countries such as South Korea, Bhutan, Kazakhstan and Kyrgyzstan[2] can enact and work towards becoming gender-neutral then why can't India?

2. Methodology

This paper aims to strike a balance between the legal protection furnished to women in our society and sham indictments associated with it. This article employs both quantitative and qualitative research methodology, primarily relying on secondary sources such as books, academic articles, and legal journals. It is of a descriptive nature and the research process involved an extensive review of relevant legal literature, case laws and scholarly opinions to critically examine the topic. For the case study method, cases from 1970 to 2024 are selectively taken into consideration. Additionally, a doctrinal research approach was applied to assess existing legal norms and principles. The analysis was conducted by synthesizing information from these sources.

3. Relevant Legal Framework

The prominent laws which are grossly used as a legal weapon against men are;

1. The Dowry Prohibition Act, 1961
2. The Domestic Violence Act, 2006
3. Section 85 of the Bharatiya Nyaya Sanhita, 2023 (Section 498A of the Indian Penal Code, 1860)

---

[1]Shehryar Edibam, "False Rape Allegations Against Men In India" 4 *Journal For Law Students And Researchers* 2582-306X (2023).

[2]"Is India Ready For Gender-Neutral Laws?"*available at:* https://www.argumentativeindians.com/post/is-india-ready-for-gender-neutral-laws (Last retrieved on October 10, 2023).

4. Sections 63, 75, 77 and 78 of Bharatiya Nyaya Sanhita, 2023 (Sections 375, Section 354A, Section 354C and 354D of the Indian Penal Code, 1860)

3.1. The Dowry Prohibition Act, 1961 and Domestic Violence Act, 2006

Violence can take any form and shape in our society. It can be physical, sexual, emotional or physiological. However, such torture is gender-neutral which our people fail to accept or rather understand. Even men by virtue of being social beings have the right to be protected under our penal laws which has been denied to them since millennium. In certain cases, after years of advancement and modernisation we still stand where we stood centuries ago. A man and his family is succumbed by legal repercussions if a woman dies within seven years of marriage under***Section 304-B,the Dowry Prohibition Act,1961***. No doubt that the practice of dowry or what is popularly known as DahejPratha is a greater plight prevalent in Indian society. However, the odious practice of false indictments by women makes it a flawed legislation and unexpectedly no effort has been made by the legislators to curtail such a menace against men and their family. Why is there no provision for males who die within seven years of marriage and why does the offence of domestic violence only cover females? Despite numerous cases being lodged against women committing violence against men. Are they not humans who can suffer the same inhumane treatment as women?

3.2. Section 85 of the Bharatiya Nyaya Sanhita, 2023 (S. 498A of IPC)

Section 85 of BNS deals with subjugation of women to cruelty by husband [3]or his relatives. Here, cruelty refers to an act which causes pain and distress which can either be physical, emotional or economical.[4] A non-bailable, cognizable and non-compoundable offence which shall be punishable with imprisonment which may extend to three years and shall also be liable to fine. [5]This section again fails to deal with atrocities suffered by men and only deals with women subjected to cruelty.

---

[3]"Women-centric laws: consequences faced by males" *available at:* https://blog.ipleaders.in/women-centric-laws-consequences-faced-males/ (Last retrieved on September 21, 2023).

[4]ShaluGothi, "Cruelty under the hindu law," *available at:* https://blog.ipleaders.in/cruelty-under-the-hindu-law/ (Last retrieved on September 22, 2023).

[5]"Women-centric laws: consequences faced by males" *available at*: https://blog.ipleaders.in/women-centric-laws-consequences-faced-males/ (Last retrieved on September 21, 2023).

When after marriage many women refuse to take care of her husband's ageing parents or rather reside with them which is to separate, does this not amount to cruelty? This section along with **Section 63** is the most misused of all which has been even widely accepted by the judiciary through various pronouncements. It has been asserted as 'legal terrorism' by the court of supreme authority.

Few courts have made pronouncements relating to cruelty against men but not suffice to make a change in our laws and the society. The **High Court of Karnataka** had contended that insulting a man for being 'dark-skinned' by his wife constitutes cruelty and is reasonable ground for granting divorce. Hence, the petitioner, a 44-year-old man was granted divorce considering his appeal regarding the same. The perceived notion or stereotype which is loathsome in our society is that men by their virtue are contemplated to be heroic. A body which is strong enough to rebel, undergo pain and the one which cannot in any circumstance shed tears because it is considered to be a symbol of weakness or failure. However, the notion held for the females is contrary in our culture. Therefore, the need to protect the male population in our nation has never been felt, which is one of the paramount lacunae that our society supports or rather promotes.

3.3. Section 63 and 75 of the Bharatiya Nyaya Sanhita (S. 375 and 354A of IPC)

Section 63 of BNS deals with the offence of rape or sexual intercourse against the will of the person and Section 75 deals with sexual harassment at the workplace. Further, ***Section 77***deals with voyeurism i.e., watching or capturing the image of a woman engaging in a private act where it is not expected to be observed [6]and ***Section 78*** which criminalises the act of stalking. In all the scenarios, the 'person' refers to a female and not a male as the victim. Wistfully, men are always looked upon by the society as a perpetrator but never as a victim. Nevertheless, the ratio of women being victims as compared to men is tremendously high but that does not mean that those 18% men constituting not even half of the population must be left ablaze.

Why do we have ***Article 15(1)***enumerated in our constitution if there are laws which only safeguards women predominantly? Where is this equality which

[6]"Sexual Violence Against Men In India" *available at:* https://www.legalserviceindia.com/legal/article-4685-sexual-violence-against-men-in-india.html (Last retrieved on September 21, 2023).

has been promised regardless of sex? So, does that not mean denial of justice based on gender? No doubt, the government has the power to make special provisions with regard to women for their upliftment under***Article 15(3)*** and men are the privileged sex with regard to the patriarchal or patrilineal society but that does not imply discrimination against men under the law or misuse of those very laws which are implemented for their own good. According to the survey, the Delhi based Centre for Civil Society reported that around 18% of Indian adult men reported that they had been forced for sex. Among those cases, the female perpetrators were 16% and male perpetrators were 2%.[7]

3.4. Maintenance of Wife by the Husband

A man is an 'able-bodied individual' asserted, the Mumbai court which in its judgement created an obligation on the husband to maintain his estranged wife even after he claims to have no income.What seems astonishing is that it is a compulsion to maintain his wife even though the person himself is not self-reliant and ironically the wife is earning enough to maintain herself or her progeny.It is arguably a matter of ignominy for our Indian legal system which predominantly supports the cause of 'women and children' and not of an individual which makes up our society. Can our legal system be saved which already seems half submerged?

The following provisions obligates the husband to maintain his wife and children after the marriage is annulled:

Section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023 (**S.** ***125*** of The Code of Criminal Procedure, 1973) deals with the legal obligation of the husband to maintain his wife, children and parents who are unable to maintain themselves.[8]Whether the child is legitimate or illegitimate, the code creates an accountability upon the husband to do so.

Section 18of The Hindu Adoption and Maintenance Act, 1956 deals with the concept that the Hindu wife is entitled to maintenance by her husband during her lifetime provided that she is leading a chaste life and has not converted herself to some other religion.**[9]**

---

[7]"Women-centric laws: consequences faced by males" *available at:* https://blog.ipleaders.in/women-centric-laws-consequences-faced-males/ (Last retrieved on September 21, 2023).

[8]*Ibid.*

[9]"Section 18 in The Hindu Adoptions and Maintenance Act, 1956" *available at:* https://indiankanoon.org/doc/1727980/ (Last retrieved on September 21, 2023).

Section 37 of the Divorce Act, 1869 deals with the power of the District Court to order permanent alimony, monthly or weekly alimony to wife for a term not exceeding her life after a decree of dissolution of marriage or judicial separation has been passed.[10]

Section 37of the Special Marriage Act, 1954 deals with the power of permanent alimony and maintenance. It provides that the wife is entitled to maintenance from the property of her husband after divorce until there is a change in circumstances of either of the parties and that she switches to an unchaste life [11]or remarries.

Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 provides that it is the right of a wife to be maintained by her husband till the period of iddat.[12]

The matter that irks us the most being a citizen of a nation whose preamble itself enumerates the term '**equality**' which is contemplated to be the foundation of our constitution is that why are men not entitled for any sort of maintenance? As a matter of truth universally we reside in an era where women are also the breadwinners of the family. According to the survey, 90% of women contribute to household expenses and 23% are in the Rs 5-10 lakh annual income bracket.[13]

Therefore, why is there a discrepancy with regard to the right of maintenance? Why is it solely the right of the females and not of males, not even in certain cases. Here, 'certain cases' means that in a situation where the wife is the breadwinner of the family and the husband earns relatively less or where the wife is well established financially.

---

[10]"Section 37. Power to order permanent alimony," *available at:* https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00033_186904_1523268113865&sectionno=37&orderno=39#:~:text=%5BWhere%20a%20decree%20of%20dissolution,her%20own%20life%2C%20as%2C%20having (Last retrieved on September 21, 2023).

[11]"Women-centric laws: consequences faced by males" *available at:* https://blog.ipleaders.in/women-centric-laws-consequences-faced-males/ (Last retrieved on September 21, 2023).

[12]"Women-centric laws: consequences faced by males" *available at:* https://blog.ipleaders.in/women-centric-laws-consequences-faced-males/ (Last retrieved on September 21, 2023).

[13]"90% women contribute to household expenses yet 67% are dependent on men for financial decisions: Survey," *available at:* https://yourstory.com/herstory/2023/03/working-women-finance-womens-day (Last retrieved on September 21, 2023).

3.5. Medical Termination of Pregnancy Act, 1971

An act which furnishes the sole right to the mother to terminate her pregnancy without the consent and knowledge of the husband if she deems fit (Section 3(4)(b)). A draconian legislation which excludes the right of the husband to know about abortion of their progeny which appears to be a flaw of this legislation. It should be a decision which both the parents must take unanimously even though the mother must possess certain add-ons than the father as she bears a child for 9 months in her womb which is phenomenal in itself. In ***Anil Kumar Malhotra* v. *Ajay Pisricha (2017),*** the Supreme Court held that father's consent is not required for abortion.[14] Therefore, father's rights are not recognised and protected under our penal laws which needs an amendment as soon as possible.

In ***Suman Kapur* v. *Sudhir Kapur*** (7 November 2008),[15] the wife had terminated her two pregnancies without the consent and knowledge of the husband. Therefore, after hearing both the sides the Supreme Court of India asserted that termination of pregnancy without the consent of the husband amounts to mental cruelty. Therefore, amendments must be made keeping in view the welfare of the society.

3.6. Section 117 and 118 of the BharatiyaSakshyaAdhiniyam, 2023 (S. 113a and 113b 0f the Indian Evidence Act, 1872)

The provisions under the BharatiyaSakshyaAdhiniyam act as an instrument to recognise and safeguard the rights of the women while granting secondary rights or limited recourse to the males in our Indian society.

It lays down the burden of proof on the husband to prove beyond reasonable doubt that he is innocent with regard to such an offence. It may be presumed by the court that the husband or his relatives has abetted suicide if there was any history of cruelty in their matrimonial alliance except in cases of natural death or other relevant reason.

It enumerates.

***Section 117*:** Presumption of fact as to abetment of suicide by a married woman within 7 years of marriage. It may be presumed by the court that the

---

[14]"Father's rights in abortion cases: a critical analysis," *available at:* https://www.lawyersclubindia.com/articles/father-s-rights-in-abortion-cases-a-critical-analysis-14692.asp (Last retrieved on 9 October, 2023).

[15]"Termination of Pregnancy without the consent of husband is cruelty," *available at:* https://shoneekapoor.com/termination-pregnancy-without-consent-cruelty/ (Last retrieved on 9 October, 2023).

husband or the relatives abetted suicide if there has been any instance of cruelty recorded.

***Section 118*:** Presumption as to dowry death as to presumption of law. The legislature has chosen to use the expression 'shall presume' which indicates that it is mandatory for the courts to apply the same. It can only be repelled by strong, distinct, satisfactory and conclusive evidence. [16]

4. The Contentions and Judgements

Numerous courts along with the apex court have accepted that the cases of misuse have incremented considerably and while pronouncing their judgements certain courts did favour men. However, much has not been done to protect the male population from such false indictments or sexual assaults like codifying a law in the interest of the male population.

a. The Uttarakhand High Court observed that anti-rape law is misused as a weapon by women these days when they have differences with their partner. The court has blatantly remarked and accepted the prevalence of this greater menace in our social culture and legal arena while quashing criminal proceedings in a recent case where a man was alleged to have committed the offence of rape after he refused to marry her and then he married another woman instead. However, they had a consensual relationship since 2005 and even after being aware of his marriage and all the circumstances she voluntarily continued with him thereafter. Therefore, the court contended, "The element of consent automatically gets involved when the complainant had voluntarily continued their relationship even after knowing that the accused was already married." [***Manoj Kumar Arya* v. *State of Uttarakhand*][17]
b. A case where a **minor girl accused her father of rape**, a matter of ignominy and disgrace for our society. Based upon the allegations the man was convicted and was imprisoned for three years for an offence which he did not commit. Later, upon investigation and her statement at record it was confessed that she had implicated her father in a false case.

---

[16]"Presumption of law and fact under section 113-A and 113-B of Evidence Act 1872," *available at:* https://www.legalserviceindia.com/legal/article-6701-presumption-of-law-and-fact-under-section-113-a-and-113-b-of-evidence-act-1872.html (Last retrieved on 9 October, 2023).

[17]"Anti-Rape law misused as weapon by women these days: Uttarakhand High Court," *available at:* https://www.outlookindia.com/national/anti-rape-law-misused-as-weapon-by-women-these-days-uttarakhand-high-court-news-304954 (Last retrieved on September 21, 2023).

c. A well-known case of fallacious rape in lieu of extortion. The respondents namely Rajesh, Surrender, Meenu Handa and Sejal Sharma were leading a racket to implicate people falsely and black mail them for money. Rajesh had invited the petitioner, Haripal to his flat where he intoxicated him and captured pictures of him and Sejal to blackmail him and extort a sum of 2 lakh rupees. The Punjab and Haryana High Court contended that there was inadequate and misleading substance to support that he committed the offence of rape. Thereafter, it was held that no case must be lodged in the name of the defendants without prior and appropriate inquiry.**[*Sejal Sharma* v. *State of Haryana*][18]**
d. A case that revolves around 6 rape cases with similar pattern of commission on pretext of marriage during the period 2016 to 2022 in Jabalpur. Along with the offence of rape the woman also alleged that the defendant had blackmailed her with obscene pictures and videos of her. However, upon systematic investigation and when she was asked to summon before the court on 22nd September, 2022 it was held that all the commissions were of similar nature and thereby convicted her under the Indian Penal Code (now referred to as Bharatiya Nyaya Sanhita) for the offences of extortion and criminal intimidation.**[*A Series of Jabalpur Rape cases*][19]**
e. A battle fought behind the bars for 20 years, a crucial lifetime that no person can afford to lose. The accused was convicted for the offence of rape and beating her when she was five months pregnant. His case was dismissed due to inadequate paperwork in 2005 and 16 years later the Allahabad High Court acquitted him and pronounced him innocent upon further inquiry and trial.[20] Sixteen might be just a number for many but every single day spent is a black hole in their life and moreover for an offence which he did not commit. Even though the person has been acquitted, society does not consider him one. The mark remains for life.**[*Vishnu Tiwari Case*]**
f. In this case it was alleged that the respondents had committed the offence of gang rape. She had filed the complaint in Dwarka South and upon

[18]Swapnil Pandey, "Extortion behind fallacious rape cases" 2 *Journal of Legal Research and Juridical Sciences* 2583-0066(2023).
[19]*Ibid.*
[20]*Ibid.*

investigation it was found that she held an unauthentic and fabricated voter identification card. Further she had filed for the same offence in Delhi, Dwarka South and Haryana. A case of extortion that is led by a group of people is being investigated further to put an end to this racket. **[*'ND' Extortion Group Case*][21]**

g. In this case, the Supreme Court acknowledged the misuse of Section 498A and observed that it was being used as a weapon for harassment in many instances. The court directed the police to follow the guidelines issued in the Bhajan Lal case to prevent arbitrary arrests. **[*Social Action Forum for Manav Adhikar* v. *Union of India*][22]**

h. This case pertained to the misuse of Section 498A and highlighted the issue of arrest and detention of accused individuals without proper investigation or evidence. The Supreme Court ruled that arrests in such cases should only be made after a thorough investigation and with proper justification. **[*Arnesh Kumar* v. *State of Bihar*][23]**

i. In this case, the court stated that, "By the misuse of the provision (Section 498A), a new legal terrorism is unleashed. The provision is intended to be used as a shield and not an assassin's weapon.". The hon'ble court expressed their views that this provision is to be used as an aid and protection for those in need of it and abstain its use for any revengeful and manipulative motive. It was asserted that whenever, any court comes to the conclusion that the charges and allegations made under Sec 498A are unfound, stringent actions should be taken against a person making such allegations which according to the petitioner will discourage people to come to courts with unclear and mischievous intentions.**[*Sushil Kumar Sharma* v. *Union of India and others*][24]**

4.1. Atul Subhash Suicide Case

It has been asserted that this suicide has been a sacrifice for India's men's rights movements in India. Atul Subhash, a 34-year-old engineer committed suicide in Bengaluru on December 9, 2024. He left behind a 24-page suicide note and a 80-minute video which provides a detailed account of his alleged

---

[21]*Ibid.*

[22]2018 WRIT PETITION (CIVIL) NO. 73 OF 2015.

[23]2014 Criminal Appeal no. 1277 OF 2014.

[24]Salini Mohanty and Madhubrata Mohanty, "Misuse of Women-Centric Laws Affecting The Social Fabric In India" 23 *YMER* 277 (2024) *available at: https://ymerdigital.com/uploads/YMER230847.pdf* (Last retrieved on January 21, 2025).

harassment by his estranged wife and his in-laws pressuring him to pay Rs.3 Crore for divorce. Further, he had criticized the legal system by stating that 'Justice is due'. His tragic death has reignited debate over the misuse of Section 498A of the former 'Indian Penal Code (IPC)', now replaced by Sections 85 and 86 of the 'Bharatiya Nyaya Sanhita (BNS)'.

Atul's sudden death, a result of legal battles triggered by false accusations and extortion attempts by his wife and family, serves as a stark reminder of a disturbing pattern emerging across the nation. The misuse of Section 498A of the then IPC, originally crafted to protect women from cruelty and dowry related violence, has increasingly led to significant injustices against men. A grim reminder of how legal tools intended for justice can be weaponized, leading to profound harm beyond the immediate legal consequences.

Such baseless practices have tarnished reputations of many individuals, with little recourse to clear their names. This growing trend of misuse is not an isolated incident. More and more similar cases are surfacing, revealing a deeply troubling pattern that is raising questions about the broader implications for society as a whole.[25]

4.2. Puneet Khurana Suicide Case

After Atul's case came to light, a 40-year-old Delhi based cafe owner committed suicide amid marital discord and divorce leaving behind a series of video statements outlining his ordeal on December 31, 2024. He alleged harassment by his wife and in-laws which drove him to commit suicide. They were pressuring him to pay additional 10 lakh rupees which he could not afford despite having conditions already settled in mutual divorce.

It was asserted by his sister that Puneet's wife, ManikaPawha was emotionally harassing him and even hacked his social media accounts to torture him through different channels. She threatened him to file false cases against him, further escalating the fight and now Manika's family has filed counter allegations against him [26]in order to play the woman card.

---

[25]"Misappropriation of Women-Specific Laws in India: A Critical Perspective From The Atul Subhash Case" *available at:* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5093856 (Last retrieved on January 21, 2025).

[26]"Extremely Tortured By Wife, In Laws": Delhi Cafe Owner's Video Note Before Suicide" *available at:* https://www.ndtv.com/india-news/puneet-khurana-manika-pahwa-delhi-cafe-owner-suicide-extremely-tortured-by-wife-in-laws-delhi-cafe-owners-video-note-before-suicide-7384401 (Last retrieved on January 21, 2025).

Such harassment in the form of alimony by women is becoming a common practice and hence acting as a slow poison in our society day by day. Amends are very crucial in deciding the amount to be granted as alimony by the courts. To ensure that adequate protection is provided to men as well and are required to pay a reasonable sum which they can afford and not the sum which would drive them to commit suicide. Moreover, as it has been already mentioned that reforms must be made in respect of various laws in order to prevent its misuse by women and if this is not considered as of utmost importance then we are not far away from the day when there will be a series of cases like Puneet Khurrana or Atul Subhash.

4.3. Public Interest Litigations

a. In 2018, a public interest litigation was filed in the Supreme Court to make the offences of rape, sexual assault, outraging the modesty, voyeurism and stalking gender neutral. 'Any man' must be replaced by the term 'any person' and should be declared ultra vires as it violates the principles of Article 14 and 15 of the Indian Constitution.[27] However, no stringent action has been taken in this regard which is indubitably an act of sham.
b. On July 3, a petition was filed in the Supreme Court for setting up of a national commission for married men who commits suicide after marriage due to domestic violence or other relevant issues. Among the facts mentioned in the petition it was contended that as per the National Crime Records Bureau report 2021, a total of 81,063 married men died by suicide.[28] However, the court refused to entertain the plea asserting the fact that it is a one-sided picture and can the petitioner show the data of how many young girls commit suicide soon after marriage. It depends upon the individual case, the court stated [29]vehemently. However, there is a national commission for women who looks into their interests and safeguards their

[27]"PIL in Supreme Court to declare rape, sexual assault gender-neutral," *available at:* https://www.hindustantimes.com/india-news/pil-in-supreme-court-to-declare-rape-sexual-assault-gender-neutral/story-itw7OEbHC9T3X0cCtsOOaP.html (Last retrieved on September 21, 2023).

[28]"Suicide by married males: SC to hear PIL for setting up of national commission for men," *available at:* https://www.outlookindia.com/national/suicide-by-married-males-sc-to-hear-pil-for-setting-up-of-national-commission-for-men-news-299051 (Last retrieved on September 21, 2023).

[29] Ashish Tripathi, "Suicide by married men: SC refuses to entertain PIL for setting up of 'National Commission for Men'," *available at:* https://www.deccanherald.com/india/suicide-by-married-men-sc-refuses-to-entertain-pil-setting-up-of-national-commission-for-men-1233487.html (Last retrieved on September 21, 2023).

rights. Therefore, is this not a one-sided picture? Shouldn't the interests of the men be protected too? Is this too much to ask for? [***Mahesh Tiwari*v. *Union of India]***[30]

5. The Bharatiya Nyaya Sanhita, 2023

The new code proposed to bring a positive development in the legal arena and eliminate the colonial system so that it is Bharatiya in spirit and essence. However, it fails to entail the feature of gender-neutrality which is the major necessity and need of the hour.

Moreover, women and children have been prioritised under the new penal code while men again have not been safeguarded with regard to different offences and the misuse of women centric laws. Furthermore, ***Section 377*** of the Indian Penal Code has been completely repealed which appears to be one of the crucial snags under the new code. The Bharatiya Nyaya Sanhita does not include any provision that criminalises sexual offences against trans persons, men or even animals. It would leave no recourse for the community under the law against sexual offences. Therefore, where do the rights of the lgbtqia+ community stand?

6. Conclusion

The laws are made in contradiction with the statement that every person is equal before the law and has equal protection of law. Every individual has the right to be protected and the misuse of certain laws by women are undermining the credibility of those laws. It is crucial that necessary amendments are made in the existing legislations and new laws are enacted which would ensure gender neutrality. The rights of both men and women must be taken into consideration while crafting new legislation and properly dealing with actual abuse and crimes against women.

Addressing this issue requires implementing measures that ensure fairness and appropriate application of women centric laws while raising awareness about their intended purpose and benefits. The government must establish stringent guidelines regarding the same and enact such provisions which would hold such fraudulent women liable for their spiteful actions.

---

[30] Abhimanyu Hazarika, "Supreme Court declines to entertain PIL for creation of National Commission for Men to look into suicides among married men," *available at:* https://www.barandbench.com/news/litigation/supreme-court-declines-entertain-pil-creation-national-body-look-into-suicides-married-men (Last retrieved on September 21, 2023).

A thorough investigation must be conducted by the investigating authorities before holding any innocent person accountable. Moreover, the government must examine all the structures involved in the legal system and take appropriate initiatives to eliminate corruption within different branches. The Union government must also promulgate an ordinance penalising the offence of forced unnatural sex and sodomy as suggested by the Delhi High Court earlier. Additionally, a national commission for men must also be established to ensure that their rights are also protected as any other individual in our society.

Therefore, it is imperative for the authorities or the standing committees to examine the same and eliminate such lacunae through legal reforms and awareness campaigns so that the economy may burgeon. Thereby, India would be known as a welfare state in its true sense of the word.