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CPJ LAW JOURNAL

Volume XVIII JULY-2025

Editorial Advisory Board

MESSAGE FROM MANAGEMENT'S DESK

In today's competitive and globalized world, having a professional and specialized education becomes an imperative for future success. We, at the CPJ College of Higher Studies & School of Law, are committed to providing academic excellence in the fields of Management, Commerce, IT and Law. The research skill has been the most important part of legal field along with other intern disciplinary subjects. Keeping this in mind, we sought to create a platform which appreciates and accepts each and every idea and thoughts which are there in the form of treasure.

The initiative of the Chanderprabhu Jain College of Higher Studies & School of Law in regularly publishing CPJ Law Journal containing insightful research papers is an appreciable attempt by the Editorial Team in spreading legal awareness and knowledge. Quality legal research and standard publications constitute one of the important mandates of CPJ Law journal.

I am confident that readers will find the present issue of the Law Journal interesting and thought provoking. My highest regards to the Editorial Board to have meticulously worked and created this impeccable issue. We are also indebted to all our authors whose contributions in the form of article, legal studies etc. have made CPJ Law Journal listed with UGC CARE.

We hope that this July-2025, Volume XVIII of our prestigious Journal will make a strongmark in the legal research fraternity.

Dr. Abhishek Jain

General Secretary

CPJ College of Higher Studies
& School of Law

MESSAGE FROM EDITOR-IN-CHIEF

While welcoming you to the July-2025 Vol. XVIII edition of **CPJ Law Journal**, it is, indeed, our honour to share that CPJ Law Journal has been recognized by the legal fraternity as a leading Law Journal. It is a Peer reviewed Journal that aims to create a new and enhanced forum for exchange of ideas relating to all aspects of Legal Studies and assures to keep you updated with recent developments and reforms in the legal world in the form of Articles, Research Papers, Case Studies etc. Research Studies have always been challenging with positive outcomes witnessed as a result of meticulous and persistent efforts. Researches in the field of Law have benefitted both the Industry and the Academia and it has always been our continuous endeavor to publish such scholarly Research Papers in this Bi-Annual National Journal of **CPJ School of Law**.

CPJ Law Journal is an open access Journal that aims at providing high-quality teaching and research material to Academicians, Research Scholars, Students & Law Professionals. This issue Includes papers from Same-Sex Marriage, Constitutional Right, Income Tax Act, Women Empowerment, Media Freedom, Fingerprint Science, Judicial Interpretation of Reservations, Corporate Governance, Juvenile Justice Act, Waqf (Amendment) Act 2025, Legal Positivism, Religious Fundamentalism, Climate Change, Copyright and Trademark, Copyright Law etc.

We appreciate the tremendous response towards our **"Call for Papers"** and this compelled us to publish our CPJ Law Journal Bi-Annually (in January & July) from the year 2022. We once again welcome contributions in the form of unpublished original Articles, Case Studies or Legal Research Reviews for publication. We are obliged to our widespread readership for their continued support and encouragement in our endeavor to strengthen every issue of **CPJ Law Journal.** The credit to this achievement also goes to all Authors, Law Academicians, Editorial Board & Advisory Committee who have contributed to make CPJ Law Journal a quality journal. We highly solicit to have your continuous support and feedback for further growth of the Journal with quality learning for all the readers.

With this note, welcome once again to **CPJ Law Journal**, **July-2025** edition!!

Dr. Yugank Chaturvedi
Director General
CPJ College of Higher Studies
& School of Law

MESSAGE FROM EDITOR

It is with pride and enthusiasm that I present Volume XVIII (July-2025) of the CPJ Law Journal (CPJLJ). It consists of words and complete analysis of the articles/research papers covered. This issue of the Journal touches upon a number of issues worthy to note in present scenario. A highly evolved and complex justice system makes enormous demands on the people who work in it. Therefore, academicians, law students and legal professionals need upto date information as well as professional analysis on land mark judgments. CPJLJ delivers this vital information to them.

It is pertinent to mention that CPJLJ is a blind two fold Peer Reviewed Annual Journal. Accordingly, it brings to the readers only selected articles/research papers of high standard and relevance. In a country governed by the rule of law, it is important that awareness about the research is created among those who are supposed to be concerned with these researches. Academicians can play a very important role in the development of the higher research, and there is need to encourage young minds to participate in development of research based on the needs of the changing society and technical advances. This Journal provides an excellent platform to all the Academicians and Research Scholars to contribute to the development of sound research for the country.

I would like to express our gratitude to the Editorial Advisory Board and the Panel of Referees for their constant guidance and support. Appreciation is due to our valued contributors for their scholarly contributions to the Journal. Finally, and perhaps most importantly, I wish to thank the entire Editorial team of the CPJ Law Journal for the hard work, positive attitudes and dedication that make this Journal excellent in so many ways.

I, therefore, hope that this issue of CPJLJ will prove to be of interest to all the readers. We have tried to put together all the articles/research papers coherently. We wish to encourage more contributions from academicians as well as research scholars to ensure a continued success of the journal.

Prof. (Dr.) Amit Kr. Jain

Director, Corporate Affairs

MESSAGE FROM CO-EDITOR

It is the supreme art of the teacher to awaken joy in creative expression and knowledge- Albert Einstein

Dear Readers,

We are presenting to you July-2025, Vol. XVIII of CPJ Law Journal. Our aim behind introducing this journal is to create a new forum for exchange of ideas on all aspects of legal studies and we assure to keep you updated with recent developments in the legal world. Future scope of journal is open to your suggestions. You are invited to contribute for the Journal and your submissions should include original research articles, criticism and commentaries on legal aspects.

The CPJ Law Journal is published Bi-annually. The journal publishes scholarly articles and commentaries on various aspects of law contributed by jurists, practitioners, law professors and students. The primary aim of this journal is to provide close insights into the various contemporary and current issues of law to the readers. Contributing to this journal provides an opportunity to authors to take an in-depth study in specific areas of the law and enhances their skills in Legal Research Writings and Analysis.

Talking about this Journal, it is great to be part of such a great initiative which provides all possible services to legal fraternity. Since it is not just confined to being a paper collection activity, rather it aims at providing services for all round development of law students, professionals and all others in this field. Also, being from law background, we feel that it is our prime duty to contribute for development of the society and we have taken many initiatives in this regard also by organizing various events of social relevance as well. Many exciting years for the journal have passed. Some notable developments might have been recognized by most of our readers but others probably have passed unnoticed to the majority. Therefore, this CPJ Law Journal is not only a retrospective on the previous years but also a good opportunity to summarize recent developments.

I hope you find this issue of Journal informative and interesting. The success of this enterprise depends upon your response. We would appreciate your feedback. You are also requested to submit your articles for the next issue Jan-2026 of CPJ Law Journal.

Dr. Shalini Tyagi
Principal
CPJ School of Law

MESSAGE FROM HON'BLE JUSTICE RAJESH TANDON

Any democratic country with rule of Law as its core value principle must guarantee Freedom of Speech and Expression. It is considered the mother of all freedoms. At times, the right to ask is more important than the right of life. Unless we express, we cannot live. It is, therefore, the social responsibility of any Educational Institution to further the understanding of Democratic Governance. It is in this context that a journal like CPJ Law Journal adds importance and relevance.

The CPJLJ is being launched with the aim of remedying the lack of authoritative academic writing devoted to the critical analysis of Law and Legal Institutions. It is intended to serve as a platform where Students, Academicians, Lawyers, Policymakers and Scholars can contribute to the ongoing Legal, Political Disciplinary research in the field. The Faculty of Law at CPJ aims at excelling in interdisciplinary research in the field of Law and other disciplines like Sociology, Political Science, Public Policy and Economics etc. As one of the first academic journals, it will have to look at the inter-disciplinary aspects between Law, Development and Society, which are three value-loaded terms in themselves.

I believe that it is the obligations of the academia to initiate discussion, analyze the various issues that are being faced by India and the world at large and offer solution for the same. The CPJLJ provides a forum for interdisciplinary legal studies and offers intellectual space for ground–breaking critical research. It is not committed to any particular theory, ideology or methodology and invites papers from a variety of standpoints, ideologies, perspectives and methods. The journal aim to explore and expand the boundaries of law and legal studies.

I wish the CPJLJ and the Editorial Board success in all their endeavours and hope that they will keep up their academic work, which may provide some guidelines for the betterment of Socio-legal scenario in India in particular, and across the world in general.

Justice Rajesh Tandon

Former Judge

High Court of Uttarakhand

MESSAGE FROM SH. R.S. GOSWAMI

Dear Readers,

CPJ Law Journal is in its 18th year of continuous publication with a diverse, professional, highly engaged and expert global readership. This Law Journal is a box filled with original research-based papers, articles etc., which is an attempt to cover almost all the subjects relating to legal field.

Getting published is something all Law professionals strive to achieve, and it feels great to me that Chanderprabhu Jain College of Higher Studies & School of Law is providing that platform by bringing out the 16th Volume of the CPJ Law Journal with eagerness and enthusiasm.

The CPJ Law Journal Team deserves very high appreciation for this endeavor. I cherish my association with this journal since its inception and wish it all success and endurance. Such a journal for the practitioners, Law professors and Law students is the need of hour.

Adv. R.S. Goswami
Ex-Chairman
Bar Council of Delhi

MESSAGE FROM SH. MURARI TIWARI

I feel extremely exhilarated to be a part of CPJ Law Journal which aims to create all aspects of Legal Studies and also gives a highly readable and valuable addition to the recent developments and reforms in the legal world. It also helps to provide a different outlook to various legal issues that are prevalent in the contemporary society and also to extract exact solutions for the same. As Nelson Mandela said and I quote, "Education is the most powerful weapon which you can use to change the world."

The journal is a great way to invite one's thoughts for a fruitful experience in Legal Research and Drafting and especially for Academicians, Lawyers and the Law students as it has become a demanding area for the highly complex legal system. The relation between the Bar Council of India and Law Colleges/University of Delhi is exceptional and the Bar Council of India also promotes Legal Research such as conducting Seminars, Workshops, Conferences etc.

In my entire career as an Advocate, I have always affirmed with the idea that Journals and Research Work have quintessential means for advocating Societal Issues and thereby, changing the entire horizon of the Indian Legal system and for the betterment of Legal Fraternity.

I honor CPJ School of Law for giving me an opportunity to be a part of the Law Journal Advisory Board.

Adv. Murari Tiwari
Ex-Chairman
Bar Council of Delhi

CONTENTS

Recognition of Same-Sex Marriage in Australia and Papua New Guinea (PNG): Navigate the Privacy in Digital Age

Dr. Ankur Sharma & Ms. Ritanshi Jain***

ABSTRACT

This paper explores the recognition of same-sex marriage in Australia and Papua New Guinea (PNG) within the context of privacy concerns in the digital age. It examines the legal, social, and technological frameworks that influence the rights and protections afforded to LGBTQ+ individuals in bothOceania countries. The recognition of same-sex marriage and the privacy of LGBTQ+ individuals have become pressing issues in the digital age. While many nations have embraced equal marriage rights, others maintain restrictive laws that limit LGBTQ+ rights. This disparity creates a complex landscape for privacy in an era where personal data is increasingly stored and shared online. This paper investigates these issues in the contrasting contexts of Australia and Papua New Guinea.

INTRODUCTION

The recognition of same-sex marriage in Oceania has been marked by contrasting legal and cultural landscapes, particularly between Australia and Papua New Guinea (PNG). In Australia, the legalization of same-sex marriage was a significant milestone, achieved through the passing of the Marriage Amendment (Definition and Religious Freedoms) Act 2017. This change followed a national postal survey in which a majority of Australians supported the legal recognition of same-sex couples. Australia's approach reflects a broader trend towards LGBTQ+ rights and equality in many Western nations. In stark contrast, Papua New Guinea maintains a strict stance against same-sex marriage, with homosexuality being criminalized under the country's laws. This legal framework reflects deep-rooted cultural and religious opposition to LGBTQ+ rights within PNG, making any recognition of same-sex marriage unlikely in the near future. The divergent legal realities in Australia and Papua New Guinea underscore the broader social, political, and cultural divides within Oceania regarding LGBTQ+ rights and the recognition of same-sex unions.

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Key Sustainable Development Goals Related to LGBT Rights Include:

1. GOAL 5: GENDER EQUALITY

- While primarily focused on gender equality for women and girls, Goal 5 also includes the need for non-discriminatory access to opportunities and services for all, regardless of gender identity or sexual orientation. This is essential for advancing LGBT rights and ensuring their full inclusion in society.
- Target 5.1 specifically calls for the elimination of all forms of discrimination against all women and girls, which can be interpreted to include discrimination based on sexual orientation and gender identity.

2. GOAL 10: REDUCED INEQUALITIES

- Goal 10 focuses on reducing inequalities within and among countries. This includes addressing social, economic, and political inequalities faced by marginalized groups, including LGBT individuals.
- Target 10.3 emphasizes ensuring equal opportunity and reducing inequalities of outcome, which can be crucial in advancing the rights of LGBT people and ensuring their inclusion in society.

3. GOAL 16: PEACE, JUSTICE, AND STRONG INSTITUTIONS

- Goal 16 seeks to promote peace, justice, and strong institutions, with an emphasis on providing access to justice for all and building accountable, inclusive institutions.
- Target 16.b encourages promoting and enforcing non-discriminatory laws and policies, which are essential for protecting LGBT individuals from violence, discrimination, and persecution.

LEGAL RECOGNITION OF SAME-SEX MARRIAGE: AUSTRALIA

Historical Context[1]:

- Prior to 2017, same-sex couples could enter into civil unions or domestic partnerships in some Australian states and territories.
- The Howard Government's 2004 amendment to the Marriage Act explicitly defined marriage as a union between a man and a woman, setting back efforts for marriage equality.

1 The legal recognition of same-sex marriage in Australia was achieved through the *Marriage Amendment (Definition and Religious Freedoms) Act 2017*, which came into effect on January 9, 2018. Prior to this, same-sex couples were denied the right to marry despite ongoing debates and legal battles. In 2004, the federal government amended the *Marriage Act 1961* to explicitly define marriage as between a man and a woman, effectively prohibiting same-sex marriage. After years of activism and public support for equality, the Australian government held a postal survey in 2017, in which 61.6% of respondents voted in favor of legalizing same-sex marriage, leading to the eventual legislative change.

The Role of Public Opinion[2]:

- The postal survey played a pivotal role in demonstrating public support.
- Advocacy by LGBTQ+ groups, allies, and public figures contributed significantly to shifting societal attitudes.

In Australia, same-sex marriage has been legally recognized since December 9, 2017, following a nationwide postal survey and amendments to the Marriage Act 1961. This milestone granted equal legal rights to same-sex couples, encompassing areas such as inheritance, property ownership, and legal recognition of familial relationships. These advancements reflect Australia's commitment to equality and inclusion.

Legal Recognition of Same-Sex Marriage: Papua New Guinea

LEGAL CONTEXT[3]:

- Same-sex sexual acts are illegal under Section 210 of the PNG Criminal Code, carrying penalties of up to 14 years imprisonment.
- No legal protections exist for LGBTQ+ individuals against discrimination or violence.

CULTURAL AND RELIGIOUS INFLUENCES[4]:

- PNG's society is deeply rooted in conservative Christian values and traditional customs, which largely reject homosexuality.
- Religious leaders and cultural norms play a significant role in shaping public opinion and policy

In stark contrast, Papua New Guinea does not recognize same-sex marriage. Homosexual acts are criminalized under Section 210 of the PNG Criminal Code, which penalizes "acts of gross indecency" and "unnatural offences." This legal framework not only denies marriage rights but also perpetuates discrimination and marginalization of LGBTQ+ individuals.

LEGAL FRAME WORK & POLICY

Australia

The legalization of same-sex marriage in Australia was preceded by several key legal developments. Notable milestones include:

2 Australian Bureau of Statistics, *Australian Marriage Law Postal Survey: Final Results*, 2017, https://www.abs.gov.au/statistics/people/people-and-communities/marriage-law-postal-survey-results

3 Human Rights Watch, *"We Live in Fear": Lack of Legal Protection for LGBT People in Papua New Guinea*, 2017, https://www.hrw.org/report/2017/11/01/we-live-fear/lack-legal-protection-lgbt-people-papua-new-guinea

4 Kawar, M. (2015). *Sexuality and Gender Identity in Papua New Guinea: Cultural and Religious Perspectives*. Pacific Studies, 38(2), 45-60

1. **De Facto Recognition**: Same-sex couples in Australia began to gain legal recognition in the early 2000s through de facto relationship laws, which granted them rights similar to those of heterosexual couples in areas such as property and inheritance.
2. **Federal Reforms**: In 2008, the Australian government enacted reforms to remove discrimination against same-sex couples in areas such as taxation, social security, and health care. These changes, however, stopped short of recognizing same-sex marriage.
3. **Marriage Equality Act**: The 2017 Marriage Amendment was the final step in ensuring full legal equality for same-sex couples. It also provided religious protections, allowing clergy and religious organizations to refuse to perform same-sex marriages if it conflicted with their beliefs.

PAPUA NEW GUINEA

The legal framework in PNG remains firmly opposed to same-sex relationships and marriage. Key aspects include:

1. **Criminalization of Homosexuality**: Same-sex sexual activity is illegal under PNG's Criminal Code, reflecting the nation's adherence to conservative social values.
2. **Constitutional Ambiguity**: While PNG's Constitution recognizes the rights of all citizens, it also allows for laws that align with "Christian principles," which are often interpreted to exclude LGBTQ+ rights.
3. **No Legal Protections**: Unlike Australia, PNG provides no legal recognition or protections for same-sex couples. There are no provisions for civil unions, domestic partnerships, or anti-discrimination laws that specifically protect LGBTQ+ individuals.

PRIVACY PROTECTIONS IN THE DIGITAL AGE

Australia[5]

Australia's privacy landscape is governed by the **Privacy Act 1988**, which establishes stringent regulations for handling personal data. Sensitive information, such as sexual orientation, is safeguarded under this framework. Government and private entities must ensure that data is collected, stored, and shared responsibly, protecting individuals from discrimination and privacy breaches.

In the context of same-sex marriage, these privacy protections are crucial. Digital systems, including government databases and social media platforms, must ensure that LGBTQ+ individuals' data is not exposed or misused. Cyberbullying, online

5 Australian Law Reform Commission, *Serious Invasions of Privacy in the Digital Era*, ALRC Report 123, 2014, https://www.alrc.gov.au/publication/serious-invasions-of-privacy-in-the-digital-era-alrc-report-123/

harassment, and data breaches remain risks, but ongoing advancements in cybersecurity and legal frameworks aim to mitigate these challenges.

PAPUA NEW GUINEA[6]

Privacy protections in PNG are less robust, with limited legal frameworks addressing data security. The **Cybercrime Code Act (2016)** focuses on combating cybercrime but offers minimal safeguards for sensitive personal data. LGBTQ+ individuals in PNG face significant risks in the digital realm, where exposure of their sexual orientation can lead to discrimination, ostracism, or violence.

Digital platforms often serve as safe spaces for the LGBTQ+ community in PNG to connect and advocate for their rights. However, the lack of privacy protections and societal stigma creates an environment where individuals are vulnerable to surveillance, harassment, and outing.

CULTURAL AND SOCIAL IMPLICATIONS

Australia has seen increasing societal acceptance of LGBTQ+ rights, supported by legal reforms and advocacy efforts. However, challenges such as online harassment and discrimination persist. In PNG, deeply rooted cultural and religious beliefs oppose LGBTQ+ rights, creating significant barriers for social acceptance and legal recognition. This cultural divide underscores the importance of privacy protections to shield individuals from societal backlash.

CHALLENGES AND OPPORTUNITIES IN THE DIGITAL AGE[7]

Australia

The digital age presents opportunities for LGBTQ+ advocacy, including social media campaigns and online communities. However, it also exposes individuals to risks such as cyberbullying and data breaches. Strengthening cybersecurity measures and promoting digital literacy are essential to safeguarding privacy.

Papua New Guinea

For LGBTQ+ individuals in PNG, the digital space offers limited avenues for advocacy and connection. However, the risks of exposure and discrimination often outweigh these benefits. Advocacy efforts must focus on building legal frameworks and cultural awareness to support LGBTQ+ rights and privacy.

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[6] *Privacy and Data Protection in Papua New Guinea: Challenges and Opportunities*, 2020, https://privacy.org.au/publications/papua-new-guinea-privacy-data-protection

[7] Sultana, M., & Peni, B. (2019). *Challenges of Digital Privacy and Data New GuineaProtection: An Analysis of Legal and Societal Barriers*. Journal of Pacific Studies, 41(3), 223-245.

KEY COMPARISONS

Aspect	Australia	Papua New Guinea
Legal Status	Same-sex marriage is recognized.	Same-sex marriage is not recognized; homosexuality is criminalized.
Privacy Protections	Comprehensive privacy laws protect sensitive data.	Limited privacy protections, with few safeguards for sensitive data.
Digital Risks	Cyberbullying and data breaches are risks but addressed.	Risks include surveillance, outing, and online harassment, with minimal recourse.
Cultural Acceptance	Broad societal acceptance, though challenges persist.	Strong cultural and religious opposition to LGBTQ+ rights.

IMPLICATIONS IN THE DIGITAL AGE[8]

- In Australia, the digital landscape facilitates greater inclusivity but requires constant vigilance to address evolving threats to privacy and security.
- In PNG, the digital age presents both opportunities and risks for LGBTQ+ individuals, with the lack of legal protections amplifying privacy concerns and societal challenges.

Addressing these disparities involves strengthening privacy laws, promoting digital literacy, and fostering a culture of inclusion and respect in both nations.

CONCLUSION

The recognition of same-sex marriage and privacy protections in the digital age highlight stark contrasts between Australia and Papua New Guinea. While Australia has embraced equality and robust privacy laws, PNG's restrictive legal and cultural environment poses significant challenges for LGBTQ+ individuals. Addressing these disparities requires a multifaceted approach, including legal reforms, digital literacy programs, and cultural advocacy to ensure privacy and equality for all individuals.The recognition of same-sex marriage in Australia and Papua New Guinea highlights the stark contrasts between two neighboring countries in their approach to LGBTQ+ rights. Australia's legalization of same-sex marriage represents a significant achievement in the global movement for equality, demonstrating the power of advocacy, public support, and political will. In contrast, Papua New Guinea's resistance to same-sex marriage underscores the challenges faced by LGBTQ+ individuals in societies where tradition and religion dominate public discourse.

While Australia serves as a beacon of progress in the Oceania region, PNG's journey toward equality remains fraught with obstacles. Bridging this divide requires sustained efforts to challenge prejudices, promote understanding, and advocate for the universal recognition of human rights.

8 Smith, J., & Rukavina, M. (2021). Digital Privacy and Legal Implications in the Pacific: A Comparative Study of Australia and Papua New Guinea. International Journal of Digital Law & Ethics, 27(4), 312-335.

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Air Pollution and the Constitutional Right to a Pollution-Free Environment: A Study of Judicial Precedents

Dr. Ashish Kumar Singhal[*] *& Mr. Abdul Samad Suhail*[**]

ABSTRACT

India is faced with a serious threat to public health, the environment, and the quality of life caused by air pollution that requires major legal and judicial responses. Although the Indian Constitution does not expressly affirm a right to a clean environment, Article 21 of the right to life has been judicially interpreted to include the right to pollution-free air. The constitutional framework, the judicial precedents, and statutory schemes that deal with the problem of air pollution are looked into in this study to understand how the judiciary has shaped environmental law jurisprudence. M.C. Mehta case and Subhash Kumar case are landmark cases that show how the courts have been proactive in directing polluters, granting stay orders against illegal mining and deforestation, stating the polluter pays principle and precautionary principle as an inherent part of laws, etc.The analysis further brings out the emerging role of the judiciary in balancing developmental necessities with ecological compulsions by way of the adoption of measures such as the Graded Response Action Plan (GRAP) and interventions to curb stubble burning and vehicular emissions. Yet continued legislative gaps, inefficient enforcement, and poor public participation continue to erode the efficacy of judicial orders. Against air pollution and breaches of constitutional rights, this study argues for a multipronged reform of law, technology, administration, and public engagement. This qualitative discourse reinforces the need to uphold more sustainable practices and bolster enforceability to help achieve environmental justice and safe environments for future generations.

Keywords: Air Pollution, Article 21, Graded Response Action Plan (GRAP), Sustainable Development, Constitution of India, Fundamental Rights, Polluter Pays Principle

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INTRODUCTION

Air pollution is one of the biggest environmental problems facing India and is also causing public health degradation, ecosystem degradation, and an adverse impact on quality of life. The problem is that Gujarat and Indian cities regularly feature in the list of some of the most polluted cities in the world, as per the World Health Organization (WHO) and other agencies that promote environmental issues. Industrial emissions, automotive exhaust, crop residue burning, construction dust, and the rampant use of fossil fuels as sources of energy are the principal contributors to air pollution. The complex entanglement of these factors makes for alarming concentrations of pollutants like particulate matter (PM2.5 and PM10), nitrogen oxides (NOx), sulfur dioxide (SO2), and volatile organic compounds (VOCs) in the atmosphere. These pollutants aggravate respiratory and cardiovascular diseases and hamper India's climate change mitigation and sustainable development commitments alike.[3]

Human survival and societal well-being depend on a clean and healthy environment, and hence air pollution is critical for protecting public health. Several provisions of the Indian Constitution provide for a habitat that promotes the health and well-being of all citizens. Article 21, which grants the basic right to life and personal liberty, has been suitably construed judicially to embody the right to a healthy and clean environment. In this interpretation, air pollution is brought within constitutional bounds of scrutiny to reinforce the ability of individuals and communities to advance claims for effective regulation and enforcement. The constitutional mandates of health, environment, and human life have been translated into a framework of actionable basis for dealing with air pollution by judicial interventions in cases like "*M.C. Mehta v. Union of India*"[4].

This research is designed to find out the constitutional basis of the right to live in a clean environment, and the same is ground via judicial precedents. The Constitution of India does not expressly declare the right to a clean environment, but the judiciary has read into articles 14, 19, 21, and 48A a right to the environment and protection of environment values into the constitutional scheme. This study is important because of how the judiciary has helped consolidate environmental jurisprudence in the country, particularly about the complex issue of air pollution.

The study examines landmark judgments to point out how the judiciary has been proactive in directing regulatory authorities, holding polluters accountable, and enforcing compliance with environmental norms. Examples of cases include "*Subhash Kumar v. State of Bihar*"[5] and "*Vellore Citizens' Welfare Forum v. Union of India*[6]", where constitutional provisions related to the air quality concern were invoked by the courts. The study

3 Astutya Prakhar and Raj Shekhar, *Air Pollution and the Constitution of India: A Critical Analysis of the Right to Clean and Healthy Environment*, available at https://docs.manupatra.in/newsline/articles/Upload/d08a625b-13b6-49a9-936e-ee5520d83366.pdf.

4 [1987] 1 SCC 395.

5 [1991] 1 SCC 598.

6 [1996] 5 SCC 647.

further examines the interface between such statutory enactments as the 'Air (Prevention and Control of Pollution) Act, 1981' with constitutional principles to underline the role of the judiciary to reconcile legislative intent with constitutional mandate.

In addition, the study sheds light on the broader implications of these judicial interventions about environmental justice and sustainable development. In the face of the twin tasks of economic growth and environmental conservation in India, the judiciary becomes even more important in protecting the constitutional right to live in a pollution-free environment. The study provides contributions to India's emerging discourse on environmental governance, providing analyses of the legal strategies employed to combat air pollution and protect constitutional rights.[7]

1.1 Constitutional Framework

Many of the provisions for the protection of the environment are laid down in the constitutional framework of India, and some of these address the current need to control air pollution. This framework synthesizes fundamental rights, directive principles, and fundamental duties for the protection of the environment. Although the Constitution does not explicitly speak of the right to a pollution-free environment, judicial interpretation has widened its content to include the preservation of air quality. An analysis of these provisions demonstrates how the conjuncture of constitutional directives and judicial activism, combined, can be used to tackle problems of air pollution.

1.1.1 Fundamental Rights

The Right to a Clean and Healthy Environment—in Article 21 of the Indian Constitution, read along with Articles 14, 15, 21A, 48, and other provisions of the Constitution—the right to life and personal liberty guaranteed under Article 21 has been expanded. This interpretation highlights the very close coupling between environmental quality and the primary right to life. In *Subhash Kumar v. State of Bihar*[8], the Supreme Court held that the right to life as per Article 21 includes the right to enjoy pollution-free water and air for the enjoyment of life. Like in *"M.C. Mehta v. Union of India"*[9], the Court made the directives to control industrial emissions since it considers pollution as a direct attack on life and health. The two cases discussed above illustrate the role of Article 21 in tackling the problem of air quality because Article 21 has provided a way for citizens to seek judicial redress for environmental degradation.

Additionally, Article 14, which provides for the right to equality, has been relied upon to vindicate the effects of the actions of the authorities that aggravate air pollution. In the case *Bangalore Medical Trust v. B.S. Muddappa*[10], the Supreme Court overturned

7 Diva Rai, *Fundamental Rights for Environment Protection Through the Lens of Judicial Precedents*, iPleaders (Nov. 15, 2021), https://blog.ipleaders.in/fundamental-rights-for-environment-protection-through-the-lens-of-judicial-precedents/.

8 [1991] 1 SCC 598.

9 [1987] 1 SCC 395.

10 [1991] 4 SCC 54.

the action of conversion of a public park into a private property because the public at large needed equal access to green space and clean air. The judiciary has played an important role in safeguarding environmental justice while also ensuring that state actions comply with constitutional precepts, as such rulings show.

1.1.2 Directive Principles of State Policy

Although the Directive Principles of State Policy (DPSP) are nonjusticiable and provide a guiding framework for the state to promote environmental protection, Article 48A directs the state to utilize its best endeavors to protect and improve the environment and to safeguard forests and wildlife. This provision expresses a constitutional commitment to sustainable development and ecological balance. Article 48A has been held of considerable import by the Supreme Court in "*Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*"[11], in that case, limestone quarries in the Dehradun area, when closed to prevent environmental degradation and protect air quality, have been held to conform with the requirement of Article 48A.[12]

Article 48A is complemented by Article 47, which requires the state to do everything to enhance the general public health. Addressing air pollution is the state's obligation to protect public health, as clean air is important to prevent respiratory and other pollution-related diseases. Together with judicial interpretations, these articles reinforce the constitutional obligation for regulation of air quality and preservation of public health.

1.1.3 Fundamental Duties

Every citizen must protect and improve the natural environment, including forests, lakes, rivers, and wildlife [Article 51A(g) of the Constitution]. The provision emphasizes air pollution being a collective task of all citizens. In *L.K. Koolwal v. State of Rajasthan*[13], the Rajasthan High Court observed that article 51A(g) imposes on citizens a duty… which entitles them to read with article 51A(f) a right to a clean environment as its corollary. In addition, the Court ruled that the citizens could invoke this provision to use it as a means for necessitating the state to take steps to protect the environment.

The fundamental duties mandate facilitates participatory environmental governance and encourages citizens to contribute to improving air quality. Thus, a constitutional framework that aligns state obligations with citizen responsibilities brings a holistic approach to tackling the problem of air pollution and protecting the right to a pollution-free environment.[14]

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11 [1985] 2 SCC 431.

12 Natalie S. Mousa, *A Right to a Pollution-Free Environment Through the Right to Life* (2021), Honors Undergraduate Theses, 940, available at https://stars.library.ucf.edu/honorstheses/940.

13 AIR 1988 Raj 2.

14 L. Sarmiento and A. Nowakowski, *Court Decisions and Air Pollution: Evidence from Ten Million Penal Cases in India*, 86 *Environ. Resource Econ.* 605, 605–644 (2023), https://doi.org/10.1007/s10640-023-00805-2.

1.2 EVOLUTION OF ENVIRONMENTAL JURISPRUDENCE IN INDIA

The development of environmental jurisprudence in India is a dynamic interaction of legislative laws, judicial decisions, and evolving demands of society. Initially concerned with particular cases of environmental degradation, judicial methods later extended to more comprehensive principles of environmental and public health sustainability. This in turn has helped deal with air pollution and bring forth the right to a pollution-free environment.

1.2.1 Judicial Approaches

In the formative years, Indian courts tended to address environmental issues sporadically; the issues were brought before the courts under the headings that applied in a given case rather than as part of an environmental agenda. Cases of this initial phase may be cited that are similar, such as *Ratlam Municipality v. Vardichan*[15]. In a landmark ruling, the Supreme Court's judgment earned wide applause for directing municipal authorities to take positive steps regarding issues of sanitation and pollution so that public health is protected by the state. However, this case was not explicitly concerned with air pollution; rather, it illustrated the judiciary's readiness to be involved in environmental issues.

"Pai v. State of Himachal Pradesh"[16] was another major case out of this period, where the Supreme Court held on the ecological impact of limestone quarry in the Doon Valley *[Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh]*[17]. The issue, while not primarily one of deforestation or soil erosion, brought to the fore the interrelation of many environmental issues, among them air quality. By recognizing the primacy of these early judgments, which have provided a sound base for a more comprehensive approach to environmental jurisprudence by linking the principles essential for the constitution to ecological necessities.

1.2.2 Expansion of Article 21

Article 21 of the Constitution was judicially interpreted to include environmental rights as an important turn in India's environmental jurisprudence. The right to a pollution-free environment was expressly recognized as an integral part of the right to life by the Supreme Court in *"Subhash Kumar v. State of Bihar"*[18] The enhancement of Article 21's ambit provided a constitutional ground for handling pollution through the air, enabling citizens to seek recourse to regulatory action and accountability, both public as well as private.

15 [1980] 4 SCC 162.
16 [1986] 2 SCC 198.
17 [1985] 2 SCC 431.
18 [1991] 1 SCC 598.

This shift is further exemplified by the seminal case of *"M.C. Mehta v. Union of India"*[19]. The Court issued detailed orders on how to bring down industrial pollution in the Ganga basin and bring it in abeyance until due compliance with environmental norms. Though the focus was on water pollution, the principles from this case were used to tackle air quality concerns and serve as further examples of the judiciary's thought process.[20]

1.3 LANDMARK JUDICIAL PRECEDENTS

India's judiciary has been very important in interpreting constitutional rights as they pertain to protecting the environment. The courts over some times have also recognized the very inherent link that a healthy environment has with a right to life under 'Article 21 of the Constitution of India.' The link with environmental preservation as a constitutional obligation has been cinched by landmark cases. In addition, these judicial precedents not only broadened the sweep of fundamental rights but also established important benchmarks for maintaining a balance between environmental sustainability and the need for development.

1.3.1 Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh

In *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*[21], the Supreme Court of India took up the deterioration of the Dehradun Valley by limestone quarrying. However, unregulated mining causes deforestation as well as soil erosion and pollution and threatens the ecological balance, the petitioners said. In urging sustainable development, the Court awarded the closure of several quarries, though they offered economic benefits. It declared that being a part of 'Article 21' (Right to Life) meant also the right to a wholesome environment. This case set a milestone for judicial environmental activism that established, in part, the idea that environmental protection is a manifestation of fundamental rights.

1.3.2 M.C. Mehta v. Union of India

Many environmental cases, such as *"M.C. Mehta v. Union of India"*[22], the Ganga pollution case, demonstrated the courts' preparedness to solve large environmental issues. Filed as a Public Interest Litigation (PIL), the case argued that rampant pollution is impacting the water quality of the Ganges River by industrial waste, which is going untreated, and municipal sewage. The Supreme Court directed industries along the river to install effluent treatment plants and made the principle of absolute liability applicable to any enterprise that undertakes a hazardous activity. The judgment also held that

19 [1987] 1 SCC 395.

20 G. N. Gill, *Environmental Standards and the Right to Life in India: Regulatory Frameworks and Judicial Enterprise*, in *Environmental Rights: The Development of Standards* 222, 222–246 (S. J. Turner et al. eds., Cambridge Univ. Press 2019).

21 (1985) 2 SCC 431.

22 [1988] 1 SCC 471.

'Article 21', which speaks about the right to life, comes under attack when the environment gets degraded and causes a hampering in the quality of life. The case is a landmark in India's environmental jurisprudence.

1.3.3 Subhash Kumar v. State of Bihar

In *Subhash Kumar v. State of Bihar*[23], the Supreme Court positively established that "Article 21" has on its anvil the "right to pollution-free air and water." The discharge of sludge into rivers by the Tata Iron and Steel Company caused pollution, the petitioner alleged. A court also made remarks that environmental rights are crucial to human dignity and that the state has a responsibility to prevent ecological harm. This case importantly further developed the realm of fundamental rights; environmental protection is not separable from human rights.

1.3.4 M.C. Mehta v. Union of India (Vehicular Pollution Case)

The case in point is *"M.C. Mehta v. Union of India"*[24], in which the Supreme Court took up the issue of very high levels of air pollution in Delhi caused by vehicular emissions. It ordered the authorities to compulsorily convert public transport vehicles to compressed natural gas (CNG) and to enforce stringent emission norms. According to the judgment, the judiciary is taking a proactive role in fighting air pollution and also emphasizing 'Article 21' as well. The case is a classic example of how judicial intervention may turn policy to protect the public's health and the environment.

1.3.5 Vellore Citizens Welfare Forum v. Union of India

Environmental principles such as the "polluter pays principle" and "precautionary principle" were brought into Indian jurisprudence in *'Vellore Citizens Welfare Forum v. Union of India'*[25]. The case revolved around the pollution by tanneries in Tamil Nadu causing untreated effluent discharge into rivers. The Supreme Court declared sustainable development is a constitutional imperative while at the same time stressing the need to achieve environmental protection through industrial growth. In this case, it makes definitive some principles of a magnitude that would modify future legislation and judicial decisions.

1.3.6 Taj Trapezium Case

In *"M.C. Mehta v. Union of India"*[26], the iconic Taj Mahal was severely damaged by industrial pollution. The Supreme Court said discoloration and degradation of the monument were primarily due to emissions from nearby industries. It also ordered polluting industries to relocate outside the Taj Trapezium Zone and to adopt fewer polluting fuels. The exemplar judgment showed how the judiciary plays a role in

23 [1991] 1 SCC 598.
24 [1998] 6 SCC 63.
25 [1996] 5 SCC 647.
26 [1997] 2 SCC 353.

preserving cultural heritage and environmental conservation at the same time. And the Court invoked 'Article 21' to connect environmental protection to pride in the nation and human dignity.

1.3.7 Recent Case: M.K. Ranjitsinh v. Union of India

Article 21 received a new fillip when, in *'M.K. Ranjitsinh v. Union of India,*[27]' the Supreme Court accorded the right to protection against climate change impact a facet of Article 21. Yet the petitioners argue that climate inaction infringes fundamental rights because citizens are exposed to grave environmental hazards. The Court urged the government to adopt more radical climate mitigation measures, including a swift transition to renewable energy. A landmark judgment in Indian constitutional history in terms of recognition and understanding of the two significant trends regarding the evolving meaning of environmental rights and the judiciary's approach to these issues using the doctrines of our Constitution.

These cases establish that through fundamental rights we must protect the environment. The precedents discussed indicate the need for active judicial protection of the fine balance to be struck between development and ecological sustainability and, therefore, a healthy environment for generations to come.

1.4 ROLE OF GRADED RESPONSE ACTION PLAN (GRAP)

The Graded Response Action Plan (GRAP) is a pivoting landmark in India's incessant war against air pollution, especially in the National Capital Region (NCR). This framework mandated by the Supreme Court offers a phased and structured mechanism to address a downslide in air quality. The introduction of GRAP was aimed as a response to the serious public health problem of air pollution in Delhi-NCR to facilitate faster and more efficient action during pollution peaks.[28]

1.4.1 Introduction of GRAP

The order of the Supreme Court to devise GRAP is in *"M.C. Mehta v. Union of India"*[29]. The framework was developed to address Delhi-NCR, where air pollution regularly tops hazardous levels. Air pollution is classified as moderate, poor, very poor, and severe by GRAP, and remedial actions are taken accordingly. Its chief purpose is to lay down clear guidelines to the authorities for preventing, containing, and dealing with air quality emergencies to protect public health and align with the constitutional mandate under "Article 21."[30]

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27 [2024] 10 SCC 1.

28 Sarita and Arun Klair, *Accessing Environmental Justice Through the Lens of the National Green Tribunal in India*, available at https://www.hpnlu.ac.in/PDF/b6ff7c9c-1fb1-450f-b28f-bcc6709c77ec.pdf.

29 [2016] 14 SCC 744'

30 Lovleen Bhullar, *Environmental Constitutionalism and Duties of Individuals in India*, 34 *J. Envtl. L.* 399, 399–418 (2022), https://doi.org/10.1093/jel/eqac010.

1.4.2 Implementation Mechanism

GRAP works on a phased action plan based on the levels of air quality. For moderate and poor levels, there are actions on preventive measures, for example, regulating construction activities and ensuring compliance with dust mitigation standards. In very poor conditions, further measures such as the prohibition on diesel generator sets and limiting the entry of heavy vehicles are initiated. Pollution is brought under control up to moderate levels, but reaching severe levels means shutting down industries, stopping construction activities, restriction vehicular movement, etc. Such an approach is tiered, guaranteeing a targeted response to minimize the impact of pollution.

1.4.3 Key Features

GRAP's core features are dynamic and action-oriented. It limits construction activities, industrial operations, and vehicular emissions by the real-time air quality data availability. Moreover, GRAP stresses interagency coordination for involving purposes of local government, pollution control boards, and law enforcement agencies. GRAP needs to leverage public awareness campaigns and community participation to ensure compliance and build up a collective effort to tackle air pollution.

1.4.4 Effectiveness and Challenges

During critical periods, GRAP has so far achieved measurable success in reducing pollution levels. For example, the ban on high-emission vehicles and strict regulations of construction activities have led to short-term shifts in air quality. Gaps, however, exist in enforcement, and interagency coordination does not always work seamlessly. It has little overall impact, as there is no long-term planning and because it depends on emergency responses.

1.5 DEVELOPMENTS AND JUDICIAL INTERVENTIONS

Air pollution has also received renewed judicial focus in recent years, most recently with landmark interventions by Indian courts. These connote the judiciary's pledge of safeguarding the constitutional right to a pristine and fit environment, which has been regarded as an indispensable part of the essential right to life as specified under "Article 21 of the Constitution of India." This proactive stance of the judiciary is in the path of a custodian of constitutional values and a protector of public welfare and takes on environment while staking off alternative interests.[31]

1.5.1 Court's 2024 Affirmation

The Supreme Court in its historical 2024 judgment once again maintained that the right to a pollution-free environment was a corollary [sic] to the fundamental right to life and dignity in Article 21. This judgment had however further stretched the environmental jurisprudence of the Supreme Court that was established in earlier cases such as *'Subhash Kumar v. State of Bihar'*[32], wherein the right to life was perceived

31 Sharon S., *Supreme Court and Environmental Justice: A Historical Analysis*, 14(2) *J. Polity & Soc'y* 137, 137–148 (2022).

32 [1991] 1 SCC 598.

to incorporate the right to have pollution-free air and water. A PIL on alarming levels of air pollution in metropolitan cities resulted in the 2024 affirmation. Referring to "Article 51A(g)," which enunciates a duty of citizens to protect and improve the natural environment, including its wildlife and forests, and "Article 48A" of the Constitution, which lays down the state's duty to protect and improve the environment and to safeguard the forests and wildlife of the country, the Court observed that the duty is of considerable importance. It ordered the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) to draft stricter norms for emissions and come up with scientific ways to curb pollution monitoring. Further, this ruling underlined the importance of sustainable development and also established regulatory authorities' accountability to enforce effective environmental safeguards.

1.5.2 Measures Against Stubble Burning

Pivotal has been the Supreme Court's intervention in the pollution problem caused by stubble burning by farmers in North India. Noting that the practice was causing severe environmental and health hazards, especially in Punjab and Haryana, the Court has issued directions to check the menace. In the 2023 judgment in "*Aditya Dubey v. Union of India*"[33], the Court directed the state governments to incentivize the farmers to adopt eco-friendly alternatives like the Happy Seeder machine, which makes possible the sowing without burning the crop residues. In addition, the Court had directed the setting up of a proper compensation mechanism to dissuade stubble burning and penalize rolling back of progress. The Court invoked "Article 21" to rule that on stubble burning, the government's inaction infringes on citizens' right to clean air. In addition to accelerating enforcement, the measures have also shed light on what is required, in terms of a coordinated effort among farmers, policymakers, and environmental activists, to mitigate this recurring problem.[34]

1.5.3 Firecracker Bans

Another important step in the fight against air pollution is the judicial order to curb the use of firecrackers. The Supreme Court in "*Arjun Gopal v. Union of India*"[35] banned the sale and use of firecrackers in Delhi NCR to dilute air quality in the already bedeviled region during festive seasons. This precedent was continued in the following cases in 2021 and 2023, as the Court expanded on restrictions on festivals, while also continually reinforcing that festivals must be compatible with public health and the protection of the environment. The Court clarified in 2023 that only green firecrackers can be manufactured and sold, which produce less emissions. It prescribed strict enforcement of strict monitoring methods to control compliance and referred to 'Articles 14,' '21' as it served to regulate individual rights against the collective right of a clean environment. Okonjo Iweala was hailed as a 'pathfinder,'

33 2023 SCC Online SC 912.

34 Rhuks Temitope, *The Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India*, 3 *NUJS L. Rev.* 423, 423–424 (2010).

35 [2017] 16 SCC 280.

hailed by some as the first of many to come. Okonjo Iweala was hailed as a 'pioneer' heading the WTO in gender equality first. Okonjo Iweala celebrates appointment as first female WTO director general.

Judicial innovation involving innovative legal frameworks and constitutional mandates can be seen from recent judicial developments given the courts' engagement in addressing air pollution in recent times. The judiciary notes air quality as a basic aspect of life and indoor air quality (IMQ), and these indicators are upheld to ensure environmental rights and fit in with reasonable practices over a wide range of businesses.[36]

1.6 Challenges in Enforcement

The effective enforcement of environmental laws and judicial orders is held back by systemic weaknesses that also reflect societal apathy. Courts have had a central role in shaping and shielding the fundamental constitutional right to a pollution-free environment, but making legal principles operational remains a daunting task. The fight against air pollution suffers from these challenges stemming from legislative deficiencies, implementation bottlenecks, and limited public engagement.

1.6.1 Legislative and Policy Gaps

Although India has a comprehensive legal structure that includes the 'Air (Prevention and Control of Pollution) Act, of 1981', comprehensive research reveals that there are gaps in the existing legal structure to address the emerging sources of air pollution. For example, pollutants causing the greatest health risks, like particulate matter (PM2.5 and PM10) and ozone, fall out of the current legislative regime's specific regulation. The lack of very concrete norms on industrial emissions and vehicular pollution aggravates the problem. It is noteworthy that in "*M.C. Mehta v. Union of India*"[37], the Supreme Court has pointed out that the existing policies to combat vehicular emissions in Delhi are insufficient and therefore have directed that compressed natural gas (CNG) must be used in public transport. Such piecemeal solutions, though, are a symptom of broader problems, in particular that of fragmented policy-making and enforcement. While progress has been made, this has also largely been confined to the effective implementation of regulatory frameworks, where dynamic legislation that confronts and responds to emerging environmental issues has failed to materialize, resulting in the need for a common sense and forward-looking approach.[38]

36 R. Singh and A. Frank, *The Importance of Public Participation in Framing Air Pollution Policy: Outcome of a Judicial Review in New Delhi, India*, 13(4) *Pub. Health Action* 169, 169–172 (2023), https://doi.org/10.5588/pha.23.0047.

37 [2002] 4 SCC 356.

38 S. Iyengar, N. Dolšak, and A. Prakash, *Selectively Assertive: Interventions of India's Supreme Court to Enforce Environmental Laws*, 11(24) *Sustainability* 7234 (2019), https://doi.org/10.3390/su11247234.

1.6.2 Implementation Issues

While we might have robust laws and judicial directives, the enforcement of these laws is usually marred by administrative inefficiencies and failure to account for anyone. Bureaucratic delay, coupled with under-resourced regulatory agencies such as CPCB and SPCB, has made these agencies unable to effectively control and monitor pollution. For instance, the failure to impart compliance can be exemplified by the Supreme Court order in '*Vellore Citizens Welfare Forum v. Union of India*'[39], wherein the Supreme Court ordered stringent action against the industries polluting the Noyyal River. Likewise, in 'Aditya Dubey v. Union of India,' directions to check the practice of stubble burning have not been followed because the farmers are not allocated sufficient financial resources and because agencies of the state are not in coordination with each other. Further emboldened by the lack of punitive measures for noncompliance, violators require strong enforcement mechanisms and periodic judicial review to enforce compliance.[40]

1.6.3 Public Awareness and Participation

However, citizens' role in combating air pollution is of paramount importance but insufficiently informed and low engaged. Although "Article 51A(g)" of the Constitution provides a duty for every citizen to protect the environment, there exists limited environmental literacy that impedes active participation in protecting the environment. In *Bangalore Medical Trust v. B.S. Muddappa*[41], the Supreme Court stated that citizens ought to be instruments for sustained public vigilance to be exercised over the maintenance of the ecological balance. Yet, efforts to sustain awareness of the environment are still sparse and not up to the mark. This gap can be filled by community-based programs, public consultations, and cooperative platforms that enable people to hold authorities accountable and participate in practicing sustainability. There is an imperative for civil society to play a more assertive role in environmental governance such that environmental interests are considered along with other interests and constituents in this newly mandated body policy.

The enforcement challenges demand a multipronged approach combining legislative reform, administrative efficiency, and citizen participation. These systemic issues need to be addressed to achieve the constitutional vision of a pollution-free environment and secure public health for future generations.[42]

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39 [1996] 5 SCC 647.

40 Yogender Singh and Umesh Kulshrestha, *An Analysis of GRAP Task Force Directions for Improved AQI in Delhi During 2018*, 15(1) *Curr. World Environ.* 67, 67–79 (2020), http://dx.doi.org/10.12944/CWE.15.1.06, available at https://cwejournal.org/vol15no1/an-analysis-of-grap-task-force-directions-for-improved-aqi-in-delhi-during-2018.

41 (1991) 54 SCC 4.

42 Ananthakrishnan G, *Delhi Air Pollution: SC to Decide on Monday if GRAP 4 Measures Need to Continue, Directs Setting Up More Check Posts*, *Indian Express* (Nov. 22, 2024, 16:23 IST), https://indianexpress.com/article/india/delhi-air-pollution-examine-grap-4-measures-sc-9683679.

1.7 CONCLUSION

Article 21 of the Indian Constitution is regarded as the main source of the constitutional right to a pollution-free environment, and it is the primary responsibility of the judiciary to protect the health of people and the environment by using this right. However, the judiciary has given life to the intrinsic nexus between preserving the environment and protecting human dignity by progressively interpreting fundamental rights, directive principles, and fundamental duties. Not only have the landmark cases of M.C. Mehta v. Union of India and Subhash Kumar v. State of Bihar broadened the meaning of the right to life, but they have also set important standards for environmental governance in India.

According to the analysis, judicial interventions have made it possible to control air pollution by exploiting polluters, asking for regulatory action, and directing the making of frameworks, including the Graded Response Action Plan (GRAP). The constitutional mandate for environmental protection has been further strengthened by these interventions in the form of innovative principles like "polluter pays," "precautionary principle," etc., which they have introduced into India's environmental jurisprudence.

Matters, however, remain a challenge, particularly the enforcement of the judicial directives and legislative frameworks. These measures are undermined by systemic inefficiencies, fragmented policy approaches, and low levels of public participation. Despite the judiciary's apparent reliance on circuitous governance involving the public, the deficiency in these policies and consequent enforcement mechanisms are still prominent barriers to progress.

Efforts to curb air pollution demand a multifaceted approach involving judicial oversight, comprehensive legislation, exemplary enforcement, and public awareness. We need to place a priority on sustainable development by fusing economic growth and environmental conservation. Finally, the judiciary's determination to protect people's constitutional right to a clean environment demonstrates the significance of the judiciary dealing with the issue and, thereby, of the judiciary in securing a healthy and equal future for all. To make this constitutional vision a reality and to overcome this endemic challenge of air pollution, it is imperative to strengthen institutional frameworks and increase community participation.

1.8 SUGGESTIONS

To address India's pervasive problem of air pollution, a multipronged approach—which combines judicial oversight, legislative reform, administrative efficiency, and active public engagement—is required. Below are detailed suggestions to combat air pollution effectively:

- Existing environmental laws, like the "Air (Prevention and Control of Pollution) Act, 1981," need to be revised and updated from a PM 2.5, PM 10, ozone, and microplastics point of view. Provide dynamic provisions that precede future environmental challenges.

- Provide CPCB and SPCBs adequate funding plus technical and human support necessary for the proper autonomous functioning for the prevention and monitoring of air pollution. Data acquisition and management need enhancement to make them integrate well with other agencies for effective solutions, especially on sources such as vehicle emissions and industries.
- Support the transition to cleaner technologies throughout industries and transportation subsectors. Promote economic and commercial functioning of electric vehicles, renewable energy, and efficiency in industries. Make use of sophisticated technologies to monitor the air quality to address the problem in nearly real-time.
- Fund for helping farmers financially and technologically to produce near-zero burning as an alternative to Happy Seeder and bio-decomposers, etc. Establish effective waste management practices to use the products of crop residues either as biofuels or manure.
- Pull air quality into the urban development policies. Green areas must be increased, rigorous regulation of construction dust is sedimented, and respect zoning law to avoid proximity to sources of pollution and residential areas.
- Promote the use of non-auto modes of transport through better metro connectivity, improved bus rapid transit services, and hopefully cheaper, green modes of transport. Construct well-connected pathways or systems that encourage walking and provide cycling tracks so that their dependency is decreased.
- Deepen several awareness-raising campaigns to raise the level of understanding the population has towards HIT, with particular regard to air pollution and the measures to take to reduce it. Promote other forms of behavior, for instance, cutting down on the use of firecrackers and SWOT analysis of waste disposal.
- Grant the industries and individuals successful in practicing sustainable policies special incentives like tax credits and subsidies for adopting solar power, biofuels, etc. Encourage and reward those actions that are reducing pollution levels in the environment.
- Make it necessary to perform constant checks and stock-taking of any fresh or new judicially crafted directives regarding air quality. Formulate specialized environmental courts for speedy trial of pollution cases and compliance with the orders made therein.
- Increase public participation in environmental management by decentralization of local organizations, consultation, and partnership. Promote compliance and provide methods through which the public can report violations and get involved in monitoring air quality increments.
- Develop integrated national and regional air quality management strategies that are responsive to internationally acceptable environmental standards. The plan should give specific targets and schedules and ensure that those corresponding with the plan are held responsible for the implemented measures or working plan.

- Slap hefty penalties and work the law against industries, vehicles, and people that are polluting the environment. Promote a clear, open grievance channel through which people may report infringements of air quality standards.

These strategies show how coordinated and thus comprehensive a plan towards tackling air pollution needs to be to align development initiatives with sustainable economic growth as well as population health. The constitutional provisions have been largely progressive in directing the realization of a clean and healthy environment; however, their effective implementation can only happen with cooperation from governments, industries, and the citizenry.

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A Critical Analysis of the Power and Function of the Authorities under the Income Tax Act

*Dr. Bibhabasu Misra**

ABSTRACT

The concept of "Tax" is well known from the ancient time. The ancient sovereign used to collect hefty tax from their subjects. In return the sovereign used to maintain peace and order in their realm. The sovereign protected the subjects from the external invasion. In the modern era, all the civilized countries collect tax directly or indirectly. The revenue generated from the collection of tax is used in developing infrastructure, providing welfare schemes to the citizens, as for example affordable health care, education, justice delivery system, good governance etc. There should be a transparency in collection of tax, justly balancing the rights of the assesse vis-à-vis State. The amount of corruption in paying/collecting taxes must be reasonably reduced. The Authorities under the Income Tax Act possess vast power for collection of tax. This paper will analyse the nature of power and function of the Authorities under the Income Tax Act.

Keywords: Constitution, Law, Tax, Power, Civil Court, Search, Seizure, Authority.

INTRODUCTION

Article 265 of the Indian Constitution provides that, "Taxes not to be imposed save by authority of law-No tax shall be levied or collected except by authority of law". Section 10(1) of the Income Tax Act exempts agricultural income from imposition of tax. Entry 82, of the Union list, Seventh Schedule of the Indian Constitution provides the power to the Parliament to enact law imposing tax on subjects other than "Agricultural income". Article 266 of the Indian Constitution provides for the "Consolidated fund of India" and the "Consolidated fund for the State". The revenues, tax received by the Government of India are collected in the "Consolidated fund of India". And same received by the State government are collected in the "Consolidated fund for State". All public money received by the Government of India and the Government of States are credited to the public account of India and public account of State. No money in the Consolidated fund of India and Consolidated fund of State can be appropriated save by the authority of the Indian Constitution and law.

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Article 267 of the Indian Constitution provides for the "Contingency fund of India" and "Contingency fund of States" to meet any kind of contingency. These above funds draw revenue from various kind of direct/ indirect taxes and duties.

The term "Authority", apart from evoking one's psychological response, has special existence as per the scheme of the Indian Constitution and law. If we examine the inclusive definition of the Article 12 of the Indian Constitution, we find the mention of the local and other authorities as part of the State. The implications of being "State" and "Authority" are many, as for example having the liability under the "Writ jurisdiction" of High Courts and Supreme Court,[1] Special leave petition (jurisdiction) of the Supreme Court[2], the duty to always act in far, just, reasonable manner, for upholding the interest of people. The Writ of "Quo-warranto" may be applied against the person holding on unethically to the office maintained by the tax payer's money. A writ of "Mandamus" can be applied against an "Authority" under the scheme of the Income Tax Act, for failure of fulfilling statutory duty.

CHAPTER-XIII OF THE INCOME TAX ACT PROVIDES PROVISIONS CONCERNING VARIOUS "AUTHORITIES".

Section 116 of the Income Tax Act provides about,

A. The Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963).
B. Principal Directors General of Income-tax or Principal Chief Commissioners of Income-tax.
C. Directors-General of Income-tax or Chief Commissioners of Income-tax
D. Principal Directors of Income-tax or Principal Commissioners of Income-tax,
E. Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals).
F. Additional Directors of Income-tax or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax (Appeals).
G. Joint Directors of Income-tax or Joint Commissioners of Income-tax.
H. (d) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy Commissioners of Income-tax (Appeals).
I. (e) Assistant Directors of Income-tax or Assistant Commissioners of Income-tax.
J. (f) Income-tax Officers.
K. (g) Tax Recovery Officers.
L. (h) Inspectors of Income-tax.

1 See Article 226 and 32 of the Indian Constitution.
2 Article 136 (Special Leave Petition) of the Indian Constitution.

Section 117 of the Income Tax Act provides the power to appoint an "Authority" to the Central Government. The Central Government may authorize the "Board, or a Principal Director General or Director-General, a Principal Chief Commissioner or Chief Commissioner or a Principal Director or Director or a Principal Commissioner or Commissioner to appoint income-tax authorities below the rank of an Assistant Commissioner or Deputy Commissioner." An income-tax authority authorised in this behalf by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.

Under section 118 of the Income Tax Act (Control of Income Tax Authorities), "the Board may, by notification in the Official Gazette, direct that any income-tax authority or authorities specified in the notification shall be subordinate to such other income-tax authority or authorities as may be specified in such notification".

Section 119 of the Income Tax Act provides that, the Board may issue order, instruct, and direct the subordinate Authorities as per notification in the official Gazette, as it deems fit to administer the Act.[3] The Proviso of the section provides some illustration, where the Board can / cannot issue order, instruction and direction. As for example, no such orders, instructions or directions shall be issued—"(a) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner"

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise ,"any income-tax authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law;"

Section 120 of the Act provides about Jurisdiction of income-tax authorities:[4] - The Authority will exercise its jurisdiction in the following criteria.

(a) territorial area;
(b) persons or classes of persons;
(c) incomes or classes of income; and
(d) cases or classes of cases.

3 Section 119 of the Income Tax Act.

4 (1) Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities. 2 [Explanation.—For the removal of doubts, it is hereby declared that any income-tax authority, being an authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions of the income-tax authority lower in rank and any such direction issued by the Board shall be deemed to be a direction issued under sub-section (1).] (2) The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.

Section 124 of the Act provides, Jurisdiction of Assessing Officers:-—"(1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction—

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area."

Clause (5) of this section provides that, Notwithstanding any provision in this Act (Read as for example, order by a superior authority under section 120 of the Act)or in this section, all the Assessing officer will have all the power vested in the Act, provided he has the jurisdiction.[5]

Under section 127 of the Income Tax Act, the Authority, that is Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, transfer a case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him. Assesse must be given a reasonable opportunity of being heard.

If the assessing officer is under the jurisdiction of different Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner, then these different Principal director general, principal chief commissioner must be in agreement. Here also assesse must be given the reasonable opportunity of being heard.

Analysing the phraseology of the section 127 of the Act, it seems that any transfer order will be always a written, reasoned order.

Under section 131 of the Income Tax Act, the Authority will have the power of a Civil Court, under Civil Procedure Code, 1908, regarding discovery, production of evidence.

The power are (a) discovery and inspection; (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath; (c) compelling the production of books of account and other documents; and (d) issuing commissions.

Thus, the Income Tax Act mainly being a substantive law, the relevant provisions of the procedural law of Civil Procedure Code will also apply to make the power of the "Authority under section 131 of the Income Tax Act" effective.

5 (5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of section 120.

Section 132 of the Income Tax Act provides, the power of search and seizure, where the prescribed Authority for fulfilling some purposes of the Act,

enter and search any building, place, vessel, vehicle or aircraft, where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept; (ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available; [(iia) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing; [(iib) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents;] (iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search:

Provided that, if the jewellary, bullion, valuable article are stock in trade, then such things will not be seized but a note/inventory will be made by such authorized officer.

Again following the same logic as applied for the "Civil Procedural law", the relevant provisions of the Bharatiya Nagarik Surakha Sanhita 2023 will apply, as for example giving a chance to withdraw, to a "Pardansin woman", who by custom[6], does not appear in public.[7]

As per the section 132A of the Income Tax Act, "Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner", in consequence of information in his possession, has reason to believe that, any person under any legal obligation failed to produce any book of accounts, other documents, , which is in his possession, any assets represent either wholly or partly income or property which has not been, or would not have been, disclosed for the purpose of Income Tax Act 1922, this Act by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force, the prescribed Authority under this section, may cause to deliver such important documents[8] to the requisitioning officer.

Section 132B of the Income Tax Act, provides the application of seized or requisitioned assets, where the seized property consists of solely money, or partly money or partly other property.

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6 See Article 13 of the Indian Constitution, where it has been mentioned that, custom and usages have the force of law.

7 Section 44 of the Bharatiya Nagarik Surakha Sanhita

8 "Document" includes "Electronic document" as per the I.T. Act, 2000.

Under section 133 of the Income Tax Act, provides "Power to call for information".[9]

Under section 133A of the Income Tax Act, "Power of Survey" has been provided. Notwithstanding any provisions of this Act, an income-tax authority may enter any place within his jurisdiction, may inspect book of accounts, check money, bullion, stock etc. This place also includes any charitable place. The concerned Authority mentioned in the section can also make an inventory or note. Section 134 of the Income Tax Act provides the power to inspect the Companies register.

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9 The Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals) may, for the purposes of this Act,—

(*1*) require any firm to furnish him with a return of the names and addresses of the partners of the firm and their respective shares;

(*2*) require any Hindu undivided family to furnish him with a return of the names and addresses of the manager and the members of the family;

(*3*) require any person whom he has reason to believe to be a trustee, guardian or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian or agent, and of their addresses;

(*4*) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage, or any annuity, not being any annuity taxable under the head "Salaries" amounting to more than 5[one thousand rupees, or such higher amount as may be prescribed], together with particulars of all such payments made;

(*5*) require any dealer, broker or agent or any person concerned in the management of a stock or commodity exchange to furnish a statement of the names and addresses of all persons to whom he or the exchange has paid any sum in connection with the transfer, whether by way of sale, exchange or otherwise, of assets, or on whose behalf or from whom he or the exchange has received any such sum, together with particulars of all such payments and receipts;

(*6*) require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the Assessing Officer, the Deputy Commissioner (Appeals) the Joint Commissioner or the Commissioner (Appeals), giving information in relation to such points or matters as, in the opinion of the Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals), will be useful for, or relevant to, any enquiry or proceeding under this Act: Provided that the powers referred to in clause (*6*), may also be exercised by the Principal Director General or Director General the Principal Chief Commissioner or Chief Commissioner, the Principal Director or Director or the Principal Commissioner or Commissioner or the Joint Director or Deputy Director or Assistant Director: Provided further that the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of Principal Director or Director] or Principal Commissioner or Commissioner , other than the Joint Director or Deputy Director or Assistant Director, without the prior approval of the Principal Director or Director or, as the case may be, the Principal Commissioner or Commissioner.

Section 136 of the Income Tax Act provides that, Proceedings before income-tax authorities to be judicial proceedings. Thus, any Authority when acting judicially[10] makes a mistake of fact, and then he is not liable. If he is prevented to discharge his duty as Authority, the concerned persons will be criminally liable.[11]

Conclusion: - Taxing statutes are always interpreted strictly[12]. Thus, the Authorities must act within the bounds of the Constitution and law. Some changes are suggested, to be made in future, like rich and well off farmers may be brought under the net of taxation. To initiate such change, Article 368 of the Indian Constitution may be applied, where using the "Constituent power", the Parliament may amend, Schedule VIII, Entry 82, and the consent of the "Half the states" of the Union of India will be required. Another important observation can be made, where the Authorities does not provide justice to the "assesse", if the remedial scheme of the "Taxing statute" is not properly implemented, then one can approach the principal Civil Court having the jurisdiction.[13]

10 See section 14 of the Nyaya Sanhita.

11 Section 223 of the Nyaya Sanhita 2023.

12 See Commissioner of Income Tax v M/S Calcutta Knitwears (AIR 2014 SC 2970)

14 See section 9 of the Civil Procedure Code. Dhulabhai, etc. v. State of Madhya Pradesh and others reported in A.I.R. 1969 S.C. 78 (Constitutional Bench) "Where the statute gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure".

Women Empowerment: Socio-Legal Aspects

*Dr. J.P. Arya**

ABSTRACT

The empowerment of women is often identified as an important national aim of sustainable development policies. Besides governments several philanthropic organizations now include women's empowerment in their development strategies. There can be progress in women's socio-economic empowerment in our country if the right policies are adopted. Governments need to adopt appropriate provisions of Law and policies in consultation with employers' groups, workers' associations and civil society forums, including those representing women and girls. In the modern industrial societies with digital technology it is usually implicitly assumed that higher levels of women's empowerment represent a change from a pre-existing situation. The pre-existing situation would be in which women have limited power, less influence, limited freedom, or restricted autonomy. Despite all the religious teachings, international treaties, states laws, government schemes and programs for women empowerment, equal rights and the girls education the condition of women in north western region of India is deplorable. The social status of women in the patriarchal society seems to be dependent on their men. There are several instances of violence against women. The access to social justice and equality are denied to them. But through the positive socio-political and legal efforts the situation can change to more power, adequate influence and more autonomy. Nevertheless, such changes have been witnessed on a slow pace. This paper tries to highlight how governments, in coordination with civil society, UN, G7 and the European Union, can exert their influence to ensure building a gender-equal future society in self reliant, new India of the vision of our Prime Minister Narendra Modi. The paper also describes various provisions of statutes as well as case laws favoring women empowerment and suggests how to combat the challenges facing in regard to women equality and empowerment.

Keywords: Women, empowerment, law, policies, modern, technology, patriarchal, new India.

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INTRODUCTION

In recent times there is a great significance of women empowerment not only in India but across all world countries. Everyone is pointing on the empowerment of women. It is right to say that women's empowerment has become the demand of the time. Women should possess liberty, faith, and self-worth to opt for their needs and cosmetic accessories. Discrimination based on gender is useless and is having little worth by looking at the growth of women in the last couple decades. Women are paid less and are treated as a cook and subordinate in families, and their real potential fails to get highlighted. Women empowerment initiatives undertaken by government in India are trying to overcome situations of such types and to provide them with their independent role in Indian society. Empowering women is a necessary right of women. They should have proportional rights to contribute to society, economics, education, and politics. They are approved to gain higher education and receive a similar treatment in finding employment in every domain of workforce as men are receiving.

In ancient Indian culture and society traditionally women were considered to be full-time homemakers. Their responsibilities were to take care of their children and family. Indian Sociologist Yogendra Singh regards culture as unique human reality emanating from humankind's unity with nature and manifesting in the technological, mental, moral, social aesthetic and spiritual achievements of humankind. It gives meaning to our relationships and forms our subjective identity. He said, "Culture, therefore, enters into the process of social change in many forms and at various levels. It defines the quality of social change as its indicator. By selective adaptations to outside cultural forces, it has large measure of resilience. With all its institutional pervasiveness it has a core which acts as filter or a moderator to the outside forces of cultural contact and change."[1]

Since culture is community made, in tradition bound society, its impact is immense. Culture's anchoring in folk psychology, level of group conscience and the extent of creative leadership – either of cultural agents or of political persons – are the factors that substantively decide the phase, extent and direction of change in culture. In all countries, be it democratic or communist, it is recognized that the powers of cultures is deeply rooted in the vitality, creativity and cohesion of a nation; that culture is interactive with economic and political activities; and that its status and functions are becoming more and more outstanding in the competition in overall national strength.[2]

Law is a part of nation's culture, being product of group conscience and group activity. Born in commonly accepted moral principles, partly influenced by enduring metaphysical principles of religion and grown in the warmth of ethical considerations of coexistence and welfare of all, law mirrors culture of the community. Historical school of legal thought argued that Constitution and laws should be the outcome of a gradual and

1 Yogendra Singh, Culture Change in India, Rawat Publications, New Delhi 200 at page 25.

2 Bhikhu Parekh, Rethinking Multiculturalism, 2nd Edition, Palgrave MacmillanNew York, 2006, at pp. 74-75

organic development. Law is not a product of accidental or arbitrary origin. It grows with the growth, and strengthens with the strength of the people and finally dies away as nation loses its identity.[3] Law is to be found in the customs, popular faith and traditions of people or in the internally operating silent forces rather than in the wish of the lawgiver. Law varies with culture. Donald Black says, "Where culture is sparse so is law; where it is rich law flourishes."[4] If law's flourishing is to be understood in a limited sense of people's acceptance of law in their day-to-day behavior because of norm abiding practice of culture, the analysis does not address the larger issue.

In fact, modernization poses tall challenge to changeless continuation of culture and tradition. The human rights values and welfare goals of the modern age try to bring lot of rationality and humanism in individual and social conduct, and dispel the faults of patriarchy and caste discriminations. The impediments in the name of protection of culture to the efforts of introducing gender justice reforms in personal law or to the social reform policies that eradicate social evils need to be surmounted by synthesizing the major thrust of Indian culture and humanist values in modern thoughts. The instances of cultural policing against beauty show and the awareness created by feminist writings call for greater social alertness through widespread and meaningful education.

PATRIARCHY HINDERS WOMEN EMPOWERMENT

The North-Western Region of India consists of Haryana, Himachal Pradesh Punjab, and the Union Territory of Jammu & Kashmir, Ladakh[5] and Chandigarh. In these states and Union Territories women were deprived of their basic rights. They are not able to enjoy the liberty and decision making capacity. The definition of patriarchy, understood as 'the structural and ideological system that perpetuates the privileging of hegemonic masculinities' Thus, it is a hegemonic system of power relations based on gender norms, which establish the expected roles of men and women. In this system, women and girls[6] have historically, and overwhelmingly, been oppressed, exploited or otherwise disadvantaged. So too have groups who do not conform with gender norms, the predominant binary approach to gender and sexuality, and/or hetero-normative expectations. These include lesbian, gay, bisexual, transgender and intersex (LGBTI) populations, as well as certain groups of men and boys.[7]

The North-Western Indian society, like a number of classical societies, is still patriarchal. Patriarchal values regulating sexuality, reproduction, and social productions are expressed through specific cultural metaphors. Overt rules prohibiting women from certain important specific activities and denying certain rights did exist.

3 W.Friedmann, Legal Theory, 5th Edition , Universal, New Delhi, 1960, reprint 2003, at pp.210-11

4 Donald, J.Black, The Behaviour of Law, Academic Press London, 1976, at p.63.

5 The state of Jammu and Kashmir ceased to exist at midnight Wednesday, and was converted into two union territories from Thursday, October 31, 2019 under the Jammu and Kashmir Reorganisation Act, 2019; 86 days after Parliament abrogated its special status under Article 370.

6 Recardo Fal –Dutra Santos: Challenging patriarchy: gender equality and humanitarian principles, ReliefWeb 18 July, 2018, Available at https://reliefweb.int/report/world/challenging-patriarchy-gender-equality-and-humanitarian-principles

7 Ibid

Due to binding effect of the ancient custom, traditions and cultural values patriarchal system and the gender stereotypes in the family and society have always shown a preference for the male child. Sons are regarded as a means of social security and women remained under male domination.

Patriarchy – which is the conceptualization of how men, especially cis men, and masculinity are seen as better than, are more respected than, and hold more privileges than women and nonbinary people or femininity—permeates nearly every aspect of our lives. Although patriarchy is set up in a way to benefit men, it can also hurt men in many ways, as men are under the constant scrutiny of the fabricated norms that patriarchy has put in place. Many men don't like to admit, or perhaps don't even know, that what feminism represents can directly affect the harm caused by patriarchal norms for men.

The exploitation of women within a marriage reflects deeper structural inequalities within a male-dominated society. As an ideology, feminism seeks to highlight the disastrous impact of patriarchy upon women's lives.

Indian society, particularly people living in North-West region of India places high stakes on both honor and reputation. Because of its largely patriarchal standpoint, this honor and reputation often get related to the man of each family. Thus, any news that could potentially ruin a man's public reputation will be hidden. Of course, this creates an unsafe environment for women suffering at the hands of a man. In such circumstances women face heinous crime against them in the form of honor killing. This is because they risk facing shame and further abuse for ruining a man's reputation.

IMPACT OF SOCIO-RELIGIOUS REFORMS ON WOMEN EMPOWERMENT

The Indian Society in the first half of 19th century was caste ridden, decadent and rigid. Some enlightened Indians like Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, Dayanand Saraswati and many others started to bring in reforms in society so that it could face the challenges of the West. The reform movements could broadly be classified into two categories:

1. Reformist movements like the Brahmo Samaj, the Prarthana Samaj, and the Aligarh Movement.
2. Revivalist movements like Arya Samaj and the Deoband movement.

The Most Distressing was the Position of Women.

- The killing of female infants at birth was prevalent.
- Child marriage was practiced in society.
- The practice of polygamy prevailed in many parts of country.
- The widow remarriage was not allowed and the sati pratha was prevalent on a large scale.

These social reformers fought against social evils particularly they spread awareness in the society to abolish Sati pratha, Child marriage, and they advocated western education, widow re-marriage, struggled for woman equality and to gain property right.

LEGAL PROVISIONS FOR WOMEN EMPOWERMENT

CONSTITUTIONAL PROVISIONS

A.12 : Definition—In Part III of the Constitution dealing with Fundamental Rights, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities.

A. 14 : Ensures equality before the law and equal protection of the laws by the State.

A. 15 : Prohibits discrimination on grounds of religion, race, caste, sex or place of birth-

(1) State not to discriminate on grounds of religion, race, caste, sex or place of birth or any of them.

(2) No citizen to be subjected to any disability, liability, restriction or condition, on grounds of religion, race, caste, sex or place of birth or any of them with regard to access to public spaces and facilities.

(3) Empowers the State to make special provisions for women and children

(4) Empowers the State to make special provisions for the advancement of socially backward classes of citizens or Scheduled Castes and Scheduled Tribes.

(5): .....

A. 16: Equality of Opportunity in matters of Public Employment-

(1) Ensures equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2): Prohibits discrimination on the grounds of religion, race, caste, sex, etc. in employment or appointment to any office under the State.

(3) ……

(4) .....

LEGISLATIONS

1. **Protection of Human Rights Act, 1993:** To provide for the constitution of NHRC10 for better protection of human rights.
2. **National Commission for Women Act, 1990:** To provide for the constitution of NCW11 for the protection of women's rights.
3. **Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989:** Legislation to check and deter crimes against SC/ST.
4. **Indecent Representation of Women (Prohibition) Act, 1989:** Prohibits indecent representation of women through advertisement or in publication, etc.
5. **Maternity Benefit Act, 1861:** Regulates the employment of women for certain periods before and after childbirth and to provide maternity benefit. Maternity Benefit Act (MBA), **1961 and Maternity Benefit (Amendment) Act, 2019:**

a. S. 5: Provides all the maternity benefits available to a woman working in an organised sector and the amount of leave available to her
b. S. 9: Provides for paid leave in case of miscarriage.
c. S. 12: States that it is unlawful to discharge/dismiss a woman absent from work due to her pregnancy in accordance with the Act

6. **Industrial Disputes Act, 1947:** Provided for same wages and other facilities to women workers and provision of creches, feeding intervals, etc. at the workplace.
7. **Equal Remuneration Act (ERA), 1976:** S. 4: States that the employer has to pay equal remuneration to men and women workers for same work or work of a similar nature.
8. **The Companies Act, 2013:** As per the second Proviso to Section 149(1) read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014, every listed company, every public company having paid-up share capital of Rs. 100 crore or more, and every public company having a minimum turnover of Rs. 300 crore or more, makes provision for at least one woman director.

POLICIES AND REPORTS

1. **The Committee on the Status of Women in India, 1971:** Undertook a comprehensive review of women's status in India in all spheres. 'Towards Equality,' its report made extensive recommendations to address discrimination and marginalization of women. and gave useful guidelines for the formulation of social policies and mechanisms to address gaps in equality for women. Committee looked into Constitutional, legal and administrative provisions and their impact on women, especially rural women and also suggested measures to enable women to play their role in building up the nation.
2. **National Policy for the Empowerment of Women, 2001**: The goals of the policy are- Advancement, development and empowerment of women; Equal access to participation and decision making for women in social, political and economic life of the nation; Mainstreaming gender perspective in the development process. Building and strengthening partnerships with civil society, particularly women's organizations.
3. **Draft National Policy for Women, 2016:** Titled 'Articulating a Vision for Empowerment of Women,' the policy states that, the empowerment of women can only be achieved when advancement in the conditions of women is coupled with their ability to influence the direction of change through equal opportunities in all spheres of life, including political life.
4. **Report of the High-Level Committee on Status of Women, 2015:** The Committee's mandate was to undertake a comprehensive study on the status of women since 1989, and to evolve appropriate policy interventions based on a contemporary assessment of women's economic, legal, political, educational, health and socio-

cultural needs. One of the key recommendations includes ensuring at least 50 per cent reservation of seats for women in the local bodies, State Legislative Assemblies, Parliament, Ministerial levels and all decision-making bodies of the government.13

LANDMARK JUDGEMENTS

1. **Charu Khurana V/s UOI (2015) 1 SCC 192:** A female Petitioner was refused membership as a make-up artist in the Cine Costume Make-up Artists and Hair Dressers Association, the rules of which allowed only men to be make-up artists. The Court held that the Petitioner could not be denied membership, as discrimination on grounds of gender was a clear violation of her right to equality and denial of "her capacity to earn her livelihood which affects her individual dignity
2. **The Secretary, Ministry of Defence v. Babita Puniya & Ors. MANU/SC/0194/ 2020:** Women engaged on Short Service Commissions in the Army seek parity with their male counterparts in obtaining PCs. SC, allowed women a permanent commission in Army.
3. **Kush Kalra vs Union Of India & Anr. on 5 January 2018:** Institutional discrimination by UOI against women by not recruiting them into the Indian Territorial Army. Delhi High Court opened the doors of Territorial Army for women.
4. **State of Jammu and Kashmir and Ors. v. Susheela Sawhney and Ors. AIR 2003 J&K:** The bench, in the landmark judgment on 7 October 2002, held by a majority view that the daughter of a permanent resident of Jammu and Kashmir will not lose her status as a permanent resident upon her marriage to a person from outside the state.
5. **MCD v. Female Workers Special Leave Petition (Civil) 12797 of 1998:** SC held that the maternity benefit is applicable to all casual workers and daily wage workers.

IMPORTANT STATISTICS RELATED TO WOMEN PARTICIPATION IN WORKFORCE

Table-1

State/UT wise estimated female Worker Population Ratio (WPR) (in per cent) according to usual status for age group 15 years and above for year 2019-20.

State	Female Worker Population Ratio (WPR)
Punjab	21.8
Haryana	14.1
Himachal Pradesh	63.1
Jammu & Kashmir	33.1
Chandigarh	52.1

Source: Periodic Labour Force Survey (PLFS), July 2019- June 2020, M/o Statistics & Programme Implementation.

This information was given by Shri Rameswar Teli, Minister of State, Ministry of Labour & Employment in Lok Sabha today.

Worker population ratio is defined as the ratio between the total number of workers in a country and the population in the country, multiplied by 100. Symbolically,

Worker Population Ratio = Total Number of Workers/Total Population×100

Despite all the effort and policy support, the female labour force participation data in respect of Punjab, Haryana, Himachal Pradesh, Jammu & Kashmir and Chanigarh reflected 21.8, 14.1, 63.1, 33.1 and 52.1 respectively. It revealed the fact that more women of the above mentioned states require job in various sectors.

Indian adults nearly universally say it is important for women to have the same rights as men, including eight-in-ten who say this is *very* important. At the same time, however, there are circumstances when Indians feel men should receive preferential treatment: 80% agree with the idea that "when there are few jobs, men should have more rights to a job than women," according to a new Pew Research Center report.[8]

Table 2: Process of Women Empowerment and its Dimensions

Dimensions	Explanation	Parameters
Cognitive	Women having an understanding of the conditions and causes of their subordination at the micro and macro levels. It involves making choices that may go against cultural expectations and norms	Raising self-esteem and self-confidence of women. • Elimination of discrimination and all forms of violence against women and girl child. •Building and strengthening partnership with civil society particularly women's organisations. • Enforcement of constitutional and legal provisions and safeguarding rights of women. • Building a positive image of women in the society and recognising their contributions in social, economic and political sphere. • Developing ability among women to think critically. • Fostering decision-making and collective action. • Enabling women to make informed choices. • Ensuring women's participation in all walks of life. • Providing information, knowledge, skills for self-employment
Psychological	Belief that women can act at personal and societal levels to improve their individual realities and the society in which they live	
Economic	Women have access to, and control over, productive resources, thus ensuring some degree of financial autonomy. However she notes that changes in the economic balance of power do not necessarily alter traditional gender roles or norms	
Political	Women have the capability to analyse, organise and mobilise for social change;	
Physical	Element of gaining control over one's body and sexuality and the ability to protect oneself against sexual violence to the empowerment process	

(Courtesy from Source: Mokta, 2014)

As the governments at centre and states have been doing best endeavors to achieving the SDG Goals, the Government needs to focus on these two segments more to achieve gender parity. There is urgent need of reassessing India's affirmative action's, giving

8 Key findings on Indian attitudes toward gender roles, available at: https://www.pewresearch.org/fact-tank/2022/03/02/key-findings-on-indian-attitudes-toward-gender-roles/ retrieved on 25/4/2022.

fresh impetus on empowering girls and women not only through conventional education but also hand holding for skill acquisition and providing them with equitable economic opportunity with providing them with fitting medical and healthcare. The findings open up several avenues for policy discussion and intervention towards women empowerment.

ROLE OF NGOS IN WOMEN EMPOWERMENT

Reliance Foundation: Congratulations to the owner of Mumbai Indians Mrs. Nita Mukesh Ambani (renowned Director of Reliance Industries Ltd.) is the founder Chairperson of Reliane Foundation. She is an all time positive thinking woman. She is the richest woman in net worth as well as in cultural ethos. She is an excellent social activist, eminent educationist, and world's one of the best philanthropists. She has a passion and vision for the children education, health and women's empowerment and enhancing sports in India. She is committed to social service and believes the human body is made to serve humanity. Mrs. Nita Mukesh Ambani is doing consistent endeavors enhancing national sports and patriotism. Her Reliance foundation is doing great help to weaker sections of society. The tribes, ladies, and rural communities are receiving due assistance to enhance their income. She owns an adorable, reputed image and acquired position of the best philanthropist by her own hard work and virtuous qualities and versatility. This is why she is deserving of praise for her accomplishments of encouraging patriotism and doing social services in the interest of society at large.

This year on 8th March 2022 on the occasion of International Women's Day Her Circle is celebrating its first anniversary and reach of over 42 million by launching a Hindi version of its app.

On the occasion of the launch of the "Her Circle Hindi App", Mrs. Nita Ambani, Founder-Chairperson, Reliance Foundation said, "Her Circle is an evolving platform meant for all women, irrespective of region and language. I want our reach and support to expand un-hindered. And to reach more women in their language of ease, we are first launching Her Circle in Hindi. We go live in March 2022 and I hope it gets as much love as the English platform has received till now."

'Her Circle' is designed as a one-stop destination to provide women-related content that is engaging and upliftment-oriented even as it connects women to each other through a social platform.

Breakthrough NGO: The 360 degree campaigns of this NGO and media work reaches millions across the country to change behaviors and attitudes, and to provide people with a sense of personal accountability in prevention of violence and discrimination against women and girls. This NGO works at three level – School level, community level and University level and making a great stride in achieving its targets in respect of women empowerment.

Besides, these two renowned NGOs there are various other NGOs that are working to contribute their might towards "Women Empowerment".

RECOMMENDATIONS

During the course of reading the varied literature on the topic Women Empowerment it has been observed there is a gap in fulfilling the aims and intent of CEDAW, Constitution of India and provisions of other Statutes relating to Woment empowerment. In this regard following suggestions are recommended:

1. To improve the representation of women in the upper echelons of lawmaking, affirmative actions are required including legislature to reserve 33 per cent seats for women in Lok Sabha, and in all State Legislative Assemblies.
2. Fundamental Rights as enshrined in the Constitution are only enforceable against the State. Thus, only the State has an obligation not to discriminate on the basis of sex. However, there is a vacuum in law with regards to the prohibition of discrimination against women by any private person, organization or enterprise. It is suggested that this legislative vacuum should be filled by enacting appropriate legislation.
3. To eliminate discrimination efforts should be made to discourage prejudices and eliminate customs and practices that discriminate against women by enacting appropriate legislation(s) and other necessary social measures to be taken.
4. Crèches for children of working women should be ensured at/ near the workplace/home to enable and encourage women to work.
5. The vacancies reserved for women in the board should be filled up in a time bound manner.
6. Role of Judiciary is important that a judge while administering the laws, if deprived of requisite sensitivity may frustrate the objectives sought to be achieved by the best of the laws.

Justice Lahoti Suggests the Following Principles to Be Kept in Mind By the Judges to Achieve the Goal of Gender Justice:[9]

1. Be informed of the historical and cultural background in which the women have lived over the ages and understand their feelings and have regard to their needs as a class;
2. Because the women are weaker sections of the society, strike a balance in your approach in dealing with any issue related to gender, or where a woman is victim, in such a way, that the weaker are not only treated as equals but also feel confident that they are equals;
3. Treat women with dignity and honour and inculcate confidence in them by your conduct, behaviour and ideology whenever they come to you as victims or seekers of justice;

9 Quoted by Justice R.C. Lahoti in WOMEN'S EMPOWERMENT" ROLE OF JUDICIARY AND LEGISLATURE, (2005) 2 SCC (Jour) 49, please see: http://www.supremecourtcases.com/index2.php?option=com_content&itemid=1&do_pdf=1&id=885

4. Do not allow them to be harassed and certainly do not do anything yourselves which may amount to harassment of a woman; and make efforts to render a woman victim quick, speedy, cheaper and effective justice—true to its meaning.

CONCLUSION

The issue of gender injustice should not be perceived as a war between the two sexes. Long before, when consciousness in society towards gender injustice was not present then resentment on the part of women was justified; but now the approach should be of complementing each other rather than competing on perceptions, which may not be real or may be non-existent. Societal bonds are based upon integration, mutual dependence and respect. They are not just contractual but based on deep organic unity. It is true that the male sex is most of the time blamed as the inflictor of gender injustice; but it cannot be ignored that the male sex also suffers from and feels pained at gender injustice, as the woman subjected to injustice is sometimes his mother or his daughter or sister or wife. Therefore, perceptional change is needed for greater social awareness and sensitization which breeds equality of the sexes and not rivalry of the sexes.

The Honorable former Chief Minister of Haryana Shri Manoharlal Khattar while emphasizing the "VISION 2030" for Haryana said:

"We envisage Haryana as a vibrant, dynamic and resurgent unit of federal India. A state where farms overflow with produce; the wheels of industry grind uninterrupted; none feels deprived; people have a sense of fulfillment, the youth sense of pride, and women enjoy not only safety, security and equal opportunities but also feel empowered. "Antyodaya", minimum government and maximum governance, and making the state a better place to live in, constitute the bedrock of our vision." May God bless Haryana to fulfill their cherished dream.

Integrating Media Freedom Through the Lens of Indian Knowledge Systems: New Perspectives on Expression, Culture & Identity

Dr. Vivek Kumar & Ms. Aryika Patel***

ABSTRACT

Speech is god's gift to mankind. We convey our thoughts, feelings and sentiments to others through speech. Even the Infants express themselves very effectively through sounds. The freedom of speech and expression is therefore a fundamental right that we possess from birth. Freedom of expression, often viewed as a fundamental human right, embodies the spirit of democracy and individuality. In India, this freedom is not absolute but is shaped by legal frameworks and cultural traditions. The Indian Knowledge System (IKS), encompassing the intellectual heritage of ancient India, offers a valuable perspective on the responsible exercise of this freedom. This article investigates the interplay between freedom of expression, IKS, and media laws, and their relevance in shaping ethical and constructive discourse in contemporary India.

Keywords: Indian Knowledge System (IKS), Speech & Expression, Media, Hate speech

INTRODUCTION TO INDIAN KNOWLEDGESYSTEM (IKS)

India's prosperity has held the world in thrall. Indian Knowledge System (IKS) represents the splendid geographical location of India and the uniqueness of Indian culture which is protected and nurtured by Himalayas, the Sindhu-Ganga plain and the great coastal plains, the great rivers, Abundant rains, sunshine and warmth, vegetation, animals, mineral, wealth, &the timeless wisdom and intellectual traditions of India, offering insights into every aspect of human life and the natural world which is rooted in ancient texts like the Vedas, Upanishads, Puranas, and epics, as well as in oral traditions and regional practices.[1] The comprehensive knowledge system of our heritage demonstrates the 'Indian way' of doing things to the world.

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1 Centre for IKS, IIT Kanpur at https://iitk.ac.in/iks/about.html

IKS reflects a unique blend of science, spirituality, and ethics. It views knowledge as a holistic pursuit, integrating disciplines such as mathematics, astronomy, medicine, arts, governance, and philosophy, emphasizing their interconnectedness.[2] Principles like Dharma (righteous duty), Satya (truth), and Ahimsa(non-violence) serve as ethical foundations, ensuring that knowledge is not just a tool for progress but also a force for harmony and well-being. From the development of the zero and advanced metallurgy to the creation of Ayurveda and classical arts, IKS has contributed profoundly to global culture and science. Its emphasis on sustainability, interconnectedness, and the unity of all existence offers a valuable framework for addressing modern challenges while celebrating the diversity and depth of India's cultural heritage.[3]

The NEP, 2020 recognizes this rich heritage of ancient and eternal Indian knowledge and thought as a guiding principle. that have evolved out of experience, observation, experimentation, and rigorous analysis. This tradition of validating and putting into practice has impacted our education, arts, administration, law, justice, health, manufacturing, and commerce. "Knowledge of India" in this sense includes knowledge from ancient India and, its successes and challenges, and a sense of India's future aspirations specific to education, health, environment and indeed all aspects of life. This would also include tribal knowledge and indigenous and traditional ways of learning.

The main objective of drawing from our past and integrating the Indian Knowledge Systems is to ensure that our ancient systems of knowledge represented by unbroken tradition of knowledge transmission and providing a unique perspective (Bhartiya Drishti) is used to solve the current and emerging challenges of India and the world.

PHILOSOPHICAL FOUNDATIONOFSPEECH AND EXPRESSION IN IKS

In IKS, speech is regarded as divine, sacred power symbolizing wisdom and creativity. The Rigveda exalts speech as a medium to convey truth (Satya) and uphold societal harmony. Truth is a cornerstone of Indian philosophy. The pursuit of Satya demands factual reporting and media accountability, resonating with mechanisms like the Press Council of India, which ensures ethical journalism. Speech is not merely a tool for communication but a means to foster ethical discourse. (Dharma) i.e. righteous duty emphasizes ethical responsibilities over absolute rights. In the context of expression, it mandates that speech must contribute to societal welfare, avoiding harm or discord. This philosophy aligns with media laws that restrict hate speech and misinformation. underscores the coexistence of rights and duties. Media laws mirror this balance by safeguarding freedom while imposing restrictions to prevent harm. For instance, defamation Laws which uphold individual dignity, reflecting the IKS emphasis on respecting societal harmony. And hate speech regulations which emphasis on curbing the speech that incites violence or discrimination, resonating with the Dharmic principle of promoting peace.

2 https://www.education.gov.in/nep/indian-knowledge-systems

3 Knowledge-Systems-Kapil-Kapoor.pdfhttps://orientviews.wordpress.com/2013/08/21/how-colonial-india-destroyed-traditional knowledge-systems/

OBJECTIVES OF IKS

1. Support Research: IKSaims to support and facilitate further research to address contemporary societal issues in various fields, including health, Psychology, Environment, and Sustainable development.
2. Integration of Ancient Knowledge: The primary objective is to draw from the past and integrate Indian knowledge systems to solve contemporary and emerging problems, utilizing the uninterrupted tradition of knowledge transfer and the unique perspective of 'BharatiyaDrishti' (Indian viewpoint)[4]

HISTORICAL CONTOURS OF SPEECH AND IKS PRACTICE

In the Indian Knowledge System (IKS) speech is regarded as a sacred and divine force, embodying the power of expression, communication, and creation. It is deeply revered, both as a medium for conveying truth and as a tool for connecting individuals with the divine, society, and themselves. The philosophical and spiritual significance of speech in IKS is that speech is seen as Divine Power personified with goddess Saraswati in the Vedas, particularly in the Rigveda, where she is associated with knowledge, wisdom, and creation. The goddess, the deity of learning and eloquence, is closely linked to speech. It is a belief that goddess Saraswati comes in our speech once in a day and whatever we say gets true, which resembles a motion that one should be fair and kind in his/her speaking. Speech is seen as the means through which the universe was brought into being, reflecting its creative and transformative power.

The Vedas, particularly the Rigveda and Upanishads, describe speech as existing on four levels, each representing a deeper understanding of its essence: The ultimate, transcendental level of speech, connected with universal consciousness. Secondly, Pasyanti: The intuitive, inner speech that exists as thought before articulation. Thirdly, Madhyama: The mental and intellectual level of speech, where thoughts are organized for expression, fourthly Vaikhari: The external, spoken word that manifests as audible sound. This hierarchy underscores that speech is not merely verbal but begins as a profound internal processes.

Speech is also considered a means of conveying Satya (truth), which is central to the ethical and spiritual framework of IKS. Words are seen as tools for expressing reality and fostering understanding, making the truthful use of speech a moral imperative. Misuse of speech, such as lying or harmful words, is regarded as a violation of Dharma (righteousness) and disrupts societal harmony. Speech is deeply tied to Dharma, serving as a tool for upholding moral and social order. It is expected to be constructive, kind, and beneficial, contributing to the well-being of the individual and society. The Manusmriti and other texts emphasize the responsibility to use speech wisely, avoiding harsh, deceitful, or harmful words.

In ancient India, oral traditions were the primary means of preserving and transmitting

[4] https://www.sanskritimagazine.com/india/traditionalknowledge-systems-of-India/

knowledge. Vedic chanting, shlokas, and mantras relied on precise articulation and pronunciation, highlighting the sacredness and discipline associated with speech. The act of reciting and hearing sacred texts was seen as a spiritual practice, linking speech to personal and collective enlightenment.[5]

Speech and Silence- In IKS, silence (Mauna) is regarded as a form of elevated speech, emphasizing the wisdom of speaking only when necessary and meaningful. Silence is seen as a way to connect with higher truths and reflect on one's inner thoughts.

THE FREEDOM OF SPEECH AND EXPRESSION

"The right to swing your fist ends where the other man's nose begins.

Similarly, the right to free speech ends where hate speech begins."

Right means a recognised entitlement, and these rights are crucial for both individual well-being and the collective welfare of society. The rights granted in India's Constitution are fundamental because they are part of the highest law of the land and can be upheld in court. However, it is essential to recognize that these rights are not unlimited and may be modified through constitutional amendments. Fundamental Rights protect civil liberties, ensuring that all Indians can live in peace and unity as members of the nation. If these rights are infringed upon, penalties are applied as specified in the Bhartiya Nyaya Sanhita, with the judiciary having the authority to enforce them. These Fundamental Rights are recognized as vital human freedoms that every Indian citizen is entitled to for their complete and balanced development. They are applicable to all citizens without discrimination based on race, place of origin, religion, caste, creed, colour, or gender, and can be enforced by the courts within certain bounds.

The Freedom of speech and expression is acknowledged as one of the most important rights in a democratic system, serving as a cornerstone of individual liberty. Free speech and expression are essential principles that underpin the functioning of a democratic society.[6]Because democracy is essentially based on free debate and open discussion[7].Our constitution protects every citizen's fundamental right[8] of free speech and expression under **article 19(1)(a)[9].**"In the case of RomeshThappar V. The State of Madras[10] The Supreme Court ruled that the freedom of speech and expression encompasses the right to share and circulate ideas. It emphasized that these freedoms are fundamental to all democratic institutions and crucial for the effective operation of democratic processes. Article 19 is only for citizens of the country. A foreigner is not a citizen of India and therefore he can't claim his right under Article 19.[11] Freedom

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5 https://iksindia.org/about.php

6 F. A. Picture international V. Central board of film certification and Anr. AIR 2005 Bom 145

7 S.Rangarajan V. P. Jagjevan Ram and Ors. 1989

8 Fundamental Right is a charter of rights contained in the Constitution of India.

9 Ambikesh Mahapatra and Ors. Vs. The state of West Bengal and Ors. W.P. No. 33241(W) of 2013

10 1950 SCR 495

of expression holds immense value in a democratic society grounded in the rule of law. Although various competing values, such as the right to reputation, national integrity, sovereignty, and standards of decency and morality, are also significant, they must be balanced with this freedom but as Charles Bradlaugh[12], famously observed:better a thousand-fold abuse of free speech than denial of free speech. The abuse dies in a day, but the denial slays the life of the people and entombs[13] the hopes of the race."

REASONABLE RESTRICTIONS

Human nature being what it is, there is general consensus that freedom cannot be unlimited, because if it were so, it would result in a state wherein there would be no check upon the way one behaves towards others. Such freedom would lead to social chaos. Human rights conventions acknowledge that freedom of expression is not an unconditional right. It can be limited by laws that are necessary to protect the reputations of others in a democratic society, as individual rights can intersect and conflict with one another."In S. Rangarajan V. P. Jagjivan Ram and Ors.[14] The court outlines the correct method for analyzing the extent of 'reasonable restrictions' permitted under Article 19(2) of the Constitution regarding the freedom of speech and expression:

Freedom of expression is legitimate and constitutionally protected right and cannot be held to be ransom by an intolerant group of people. The fundamental freedom under article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restrictions must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a groundfor restricting expression. We must practice tolerance of the views of others. Intolerance is as much dangerous to democracy as to the person himself."

Protection of reputation is a matter of importance not only to an individual and his family but to society as a whole for public good. And for that, certain reasonable restrictions are imposed. The legislature's definition of what constitutes a 'reasonable restriction' is not definitive; it is subject to judicial review.[15] The expression 'reasonable restriction' seeks to strike a balance between the freedom guaranteed under article 19(1) and the social control permitted by clause (2)[16]. This means that any restrictions placed on an individual's right must not be arbitrary or excessively burdensome beyond what is necessary for the public good.[17] A law cannot be deemed unreasonable simply because it has a harsh impact in specific situations, even if it affects very few people only.

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11 Louis De Raedt V. union of India,1991

12 Political activist & founder of National secular society in 1866.

13 To place in or as if in a tomb or grave.

14 1989 2 SCC 574

15 Chintamanrao V. State of M.P. 1950 SCR 759

16 Supra, 23

17 P. Enterprises V. Shantilal Mangaldas, AIR 1969 SC 634

THE OUTREACH OF IKS

The outreach of Indian Knowledge System is beyond Indian boundaries from the ancient times. It extends to East, Southeast, Central and Southeast Asia of Indian phonetic script, decimal value place system-based arithmetic, algebra, astronomy and calendar, medical pharmacopeia, architecture, methods of making iron and steel, cotton textiles, etc. The transmission of Indian linguistics, knowledge of plants, iron and steel metallurgy, textiles and dyeing, shipbuilding etc., to Europe in 17-19th centuries. The current global outreach is of Ayurveda, Yoga and Indian Fine Arts and Culture.

INTERPLAY BETWEEN IKS AND MODERN MEDIA LAW

IKS advocates for contextual morality and decency in adapting ethical standards to societal needs. Media laws like the Cinematograph Act, 1952, consider cultural sensitivities when certifying content, echoing this adaptable approach.It also emphasis uponprotecting cultural heritage. Media plays a pivotal role in preserving and promoting IKS. Other legal frameworks such as the Copyright Act, 1957, protect indigenous knowledge while enabling its dissemination through films, documentaries, and digital platforms. Media also plays a role of balancing Privacy and Expression; Surveillance and data breaches pose threats to privacy. IKS emphasizes individual dignity, aligning with modern debates on balancing personal freedoms and accountability. Though there exist certain challenges and Opportunities in the Digital Age like spread of misinformation, challenging the principles of Satya and ethical expression. Laws like the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 aim to curb this menace. Online platforms have become breeding grounds for hate speech, undermining societal harmony. Strengthening hate speech regulations and promoting and incorporating education rooted in IKS ethics, principles of truth and responsibility can mitigate this issue and can enhance these efforts.

HATE SPEECH

One man's lyric may be another man's vulgarity. The freedom of speech and expression is a fundamental right that holds great value and importance in all the democratic societies. This essential liberty entails not only the ability to share thoughts and opinions that individuals Favor, but also the important right to articulate views that they may vehemently oppose or dislike. Embracing this wide-ranging perspective on freedom of expression is crucial for promoting open dialogue and facilitating a rich exchange of diverse ideas in a healthy democratic environment.

According to Law commission report[18] "hate speech is an incitement to hatred primarily against a group of persons in terms of race, ethnicity, gender, sexual orientation, religious belief and the like." The Black's Law Dictionary identifies hate speech as the "speech that carries no meaning other than expression of hatred for some group, such as a particular race, especially in circumstances in which the communication is

[18] 267th law commission report.

likely to provoke violence".[19] In some free societies, discussion of ideas is crucial. It is not permissible to prohibit genuine attempts to influence societal beliefs through the expression of opinions, advocacy for alternative viewpoints, or by challenging the current state of affairs.

I. Recent Events of Hate Speech

Nearly few years ago, an event called 'DharamSansad' was held (in the city of Haridwar)[20] where there a string of hate speeches by Hindutva supremacists against minorities were delivered and propagated. This kind of speech, everyone would widely agree is hate speech. [Unfortunately, these examples were lamely prosecuted by complicit state authorities and the matter is subject of litigation in the Supreme Court of India, presently.]

A similar example was the recent case before the Supreme Court against a TV Channel called Sudarshan TV which broadcasted a program named 'BindassBol' (Free Talk) in which hateful remarks were made against Muslim candidates who cleared the UPSC examination, hinting at some larger conspiracy and bias. Even this has been frowned upon by the Supreme Court.

'Deshkeghaddaronko, golimaaron s****n ko': Anurag Thakur, Member of Parliament, Minister of State for Finance in 2020

'Defeat of Mughals couldn't be attained during preparation of NRC': HimantaBiswa Sharma in 2021

'Theatres will burn if KomaramBheem shown in Muslim outfit': Sanjay Kumar, MP, Telangana BJP chief in 2020

'If you are concerned about your community, do not say a word about maharaj': FIR registered against BJP MLA over hate speech in 2024

There are many examples of public figures and politicians making hateful statements, along with the dissemination of harmful and malicious information intended to reinforce prejudiced attitudes and stereotypes. A key question that arises in both legal and academic circles is how to rigorously differentiate between the free speech and hate speech.

II. Effective Response to Hate Speech

In India, the legal framework uses various methods to address hate speech. Primarily, the law criminalizes the expression of certain types of hate speech, with penalties that include imprisonment for varying durations, with or without fines. Many of these provisions are cognizable, non-bailable, and non-compoundable, making the legal consequences severe. Additionally, depending on the medium of propagation—whether print, television, or the internet—hateful content can be banned, censored, or result in the shutdown of the

[19] Black's Law Dictionary, 9 th edition, 2009.

[20] 'Dharam Sansad in Haridwar': Supreme Court says its spoiling the atmosphere of the country.

hosting site. In the case of print media, authorities are empowered under the criminal procedure code to seize the offending material.[21]

Despite this comprehensive legal structure, cases of hate speech continue to rise. This increase is not due to leniency in the law, but rather due to issues in the implementation of the law. The challenge of effectively enforcing these laws remains a significant hurdle. The harm caused by hate speech is not only harmful but also poses dangerous consequences. As outlined, the legal framework works within a limited scope, offering no solution for repairing the broader societal damage or providing avenues for victim rehabilitation or redress. Therefore, it is crucial to explore options beyond criminal law in order to find a more effective response to hate speech.

THE LEGAL PROVISIONS GOVERNING EXPRESSION

Indian media operates under specific laws that regulate freedom of expression. Key legislations include several sections of 'Bhartiya Nyaya Sanhita (BNS) and BhartiyaNagarik Suraksha Sanhita (BNSS)'and by other laws which puts limitations on the freedom of expression. "They are as follows:

1) Bhartiya Nyaya Sanhita, 2023
   a) Section 192 BNS – Giving provocation to cause riots.
   b) Section 196 BNS - It imposes penalties for inciting hostility among various groups based on religion, race, birthplace, residence, language, and for actions that harm the preservation of social harmony.
   c) Section 197 BNS – Assertions prejudicial to national integration
   d) Section 299 BNS - It outlines and stipulates a penalty for intentional and harmful actions aimed at provoking religious sentiments by insulting a particular faith or its beliefs.
   e) Section 302 BNS – Uttering words, with intent to wound religious feelings of any person.
   f) Section 353 BNS - It penalizes statements that contribute to public mischief.
2) The Representation of the People Act, 1951
   a) Section 8 - disqualifies individuals from contesting elections if they are convicted of offenses involving the unlawful use of freedom of speech and expression.
   b) Sections 123(3A) and 125 - forbid the promotion of enmity based on religion, race, caste, community, or language in relation to elections, classifying such actions as corrupt electoral practices and prohibiting them.
3) The Protection of Civil Rights Act, 1955

[21] National Law University Delhi, Report on Hate Speech Laws in India (April, 2018) available at: https://www.latestlaws.com/wpcontent/uploads/2018/05/NLUD-Report-on-HateSpeech-Lawsin-India.pdf.

a) Section 7 - imposes penalties for inciting or promoting untouchability, whether through spoken or written words, signs, visible representations, or other means.

4) The Religious Institutions (Prevention of Misuse) Act, 1988

a) Section 3(g) - prohibits religious institutions or their managers from allowing their premises to be used for promoting or attempting to promote disharmony, enmity, hatred, or ill-will among different religious, racial, linguistic, regional groups, castes, or communities.

5) The Cable Television Networks Regulation Act, 1995

a) Sections 5 and 6 - forbid the transmission or re-transmission of programs viacable networks that violate the prescribed programme or advertisement codes. These codes are outlined in Rules 6 and 7 of the Cable Television Network Rules, 1994.

6) The Cinematograph Act, 1952

a) Sections 4, 5B, and 7 grant the Board of Film Certification the authority to regulate or prohibit the screening of films.

7) The BhartiyaNagarik Suraksha Sanhita, 2023

a) Section 98 –Power to declare certain publications forfeited and to issue searchwarrants for same.

b) Section 126 – Empowers the Executive Magistrate to ensure security for keeping the peace in other cases.

c) Section 163 –Empowers the District Magistrate, etc. to issue order in urgent cases of nuisance or apprehended danger."

8) The Information Technology Act, 2000. Addresses digital expression, focusing on curbing harmful and false information.

The state cannot stop open dialogue and expression, even if it contradicts its policies.[22] And there is absence of a criteria on which the validity of a 'speech can be classified into hate speech or general speech.' This absence of scale is the loophole in the system because not everyone is measured in the same parameter. India requires a definition of hate speech that reflects recent legal developments and moves beyond the colonial framework of its penal laws. To quote Mr Sen, he says: 'In a diverse society characterized by various cultures, ethnicities, languages, religions, castes, and identities, it's essential to clearly differentiate between free speech and hate speech.'

CONCLUSION

Media serves as a tool for preserving Indian Knowledge System, by disseminating Indigenous Knowledge & showcasing its richness through educational programs, digital

[22] The central board of film certification V. yadavalaya films AIR 2007.

archives, and traditional storytelling and drama. Documentaries on Ayurveda, Yoga, and classical arts promote global awareness of India's intellectual heritage. For example, during COVID19 media telecasted the epics like Ramayana and Mahabharata, and their important regional versions, on different platforms which contribute in the enhancement and development of Indian knowledge and values into the minds of younger generation who are involved mostly in digital world. Media emerged as an educating platform for the new generation. such epics and Puranashelps in understanding the Vedas. These are the foundational texts of Indian Philosophies, including the Jaina and Buddha from the Vedic period to the Bhakti traditions of different regions which contribute to Indian literatureLaws like the Geographical Indications of Goods Act, 1999, protect traditional knowledge and cultural practices from exploitation, ensuring their integrity and authenticity.By integrating IKS principles into journalism curricula, media professionals can be trained to prioritize ethical reporting, balancing freedom with responsibility. It will encourage ethical media practice.

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Participation of Women in Local Governance: A Study of Dumraon Block in Buxar District, Bihar, India

Dr. Pradeep Kulshreshta & Mr. Animesh Kumar***

ABSTRACT

After establishing the Constitution of India, local administrations were placed under the States, granting them sole legislative authority. Village panchayats were included in the Directive Principles of State Policy, and after 42 years, the 73rd Constitutional Amendment in 1992 recognised them. Many states have made legislative changes that support democratic concepts and practices. The Bihar Panchayati Raj Act, 2006 provides women with up to 50% reservation in Panchayati Raj Institutions. This law strengthens and improves local self-governance bodies. Even thirty years after local governments were constitutionalised, implementing changes had remained a significant concern. Rural decentralisation laws are challenging to implement. This study relies on survey data from Buxar District's Dumraon block. This study will address how elected women representatives in the Dumraon block of Buxar District, Bihar, may be marginalised and rely on their husbands or other male family members for support.

Keywords: *Grassroots Democracy, PRIs, Local Governance,Bihar Panchayati Raj Act, 73rd Constitutional Amendment.*

1. INTRODUCTION

The foundational tenets of democracy and decentralisation have been profoundly embedded in India's administrative framework and cultural legacy since ancient times. The emergence of foreign invasions, followed by the British colonisation of India, initiated the establishment of a centralised administrative framework.These developments have significantly impeded the progress of decentralisation efforts to transfer governance authority to local entities. In light of the progressive centralisation of governance, it can be observed that local entities have been effectively reduced to a nominal role, serving primarily as symbolic endorsements.In 1950, upon the adoption, enactment, and self-bestowal of a constitution by the Indian populace, a framework was established for the nascent democracy. Within this framework, the authority to legislate over

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local governments was vested exclusively in the States, as delineated in the Seventh Schedule. The inclusion of rural local governments in the Directive Principles of State Policy is duly noted; however, it is observed that urban local governments are conspicuously absent from the constitutional text.Following the pronouncement of Mahatma Gandhi, who proclaimed, *"Panchayatiraj embodies the actualisation of genuine democracy,"* it is pertinent to note that the acknowledgement of local entities was confined exclusively to the Constitution (Malik, 2005).

Article 40 contemplated that due attention shall be accorded to advancing and providing essential resources to village panchayats, enabling them to operate as self-sufficient entities effectively. India has been a jurisdiction with a long-standing history of adhering to patriarchal norms and practices. The demographic composition of the country reveals that rural women constitute a substantial portion, approximately fifty percent, of the overall population. However, it is important to note that these women have yet to attain comprehensive and significant engagement in political affairs (Ghose, 2002). Strengthening local government is one of India's most critical governance challenges (Raghunandan, 2018).The Government of India, through the implementation of the 73rdconstitution amendment, has taken measures to extend the concept of a level playing field to facilitate the active involvement of women in local self-governmentand extended constitutional recognition to the rural local bodies in India after a wait of 42 years. The amendment is a significant step toward ensuring that women can effectively participate in local decision-making (Kumar, 2022).The States passed conformity legislation following the constitutional amendments. Nevertheless, given that local government operates within the purview of state legislative authority, which affords states considerable discretion, the execution of these amendments has exhibited significant variation among the states.While certain states have demonstrated success in the decentralisation of governance and the devolution of funds and functions, others have struggled to maintain comparable progress.The framers of the Panchayat Raj Institutionenvisioned equitable involvement of women in the village panchayats alongside their male counterparts (Ansari, 2014).The Apex Court has also recognised the importance of panchayats. While emphasising the constitutional status enjoyed by panchayats, it was determined that panchayats possess the authority to devise their programs aimed at economic development and social justice, as they are endowed with constitutional status (Supreme Court, 2012).

The decentralisation initiatives in India represent a significant transformation aimed at restructuring governance frameworks, enhancing the empowerment of local communities, and fostering participatory democratic processes (Fowmina, 2024).Under the provisions outlined in the 73rdConstitution Amendment Act, a panchayat election was convened in Bihar in 2001 after a substantial period of inactivity. The Bihar Panchayats Raj Act of 2006 introduced provisions about the devolution of power concerning 29 specific subjects. The allocation of seats for women at all three levels, reaching a maximum of up to fifty percent, emerged as a ground-breaking precedent within the nation. Consequently, numerous states were inspired to adopt similar measures. Based on available data, it has been observed that approximately 50% of the women are elected at the panchayat level in the state of Bihar. However, the

presence of many women does not suffice the case (Singla, 2007). The underrepresentation of women in the governance process is a notable disparity compared to men. The matter at hand pertains to the necessity of comprehending the gender-based disadvantages encountered by elected women at the panchayat level, taking into consideration the conservative patriarchal and caste-hierarchical backdrop prevalent in Indian society.The pertinent question that persists is whether, in light of the prevailing conservative context, the elected representatives will indeed have the capacity to engage in the Panchayati Raj Institutions. There exists a prevailing suspicion regarding the involvement of females within a society predominantly governed by male influence, wherein social status has historically been overlooked(Gochhayat, 2013).

Bihar Panchayati Raj Act 2006, a provision was introduced mandating a reservation up to 50% for women across the three tiers of the PRIs. Following prevailing norms, it is typically observed that a mere 33% of seats are designated for women. However, the State of Bihar has demonstrated a commendable initiative by reserving a more substantial proportion of 50% for women. As per the present state of affairs, it is duly noted that the proportion of female individuals holding elected positions in Bihar's Panchayat stands at an impressive 54% (Nagaraju, 2022). The aforementioned reform exhibits a distinctive nature, which is unparalleled not only within the confines of the nation but also in the global context. Notwithstanding, it is frequently posited that many inhibitory elements encumber the efficacious influence wielded by women within the PRIs of India.

Many empirical investigations have been conducted about the involvement of women in the Panchayati Raj system.Researching the relationship between decentralisation and gender equality represents a critical undertaking with profound implications for societal transformation, extending beyond mere academic research (Singh & Sharma, 2024). The present discourse endeavours to expound upon the findings derived from a comprehensive analysis of extant research about the pivotal role played by women's participation in PRI.

The global community has been compelled to pursue the establishment of gender equality due to the recognition that women possess substantial influence across all domains of human endeavour. The influence exerted by these factors on a nation's development trajectory is of considerable magnitude. It is increasingly recognised by a growing number of individuals that the presence of a greater number of women in political institutions, both in terms of quantity and quality, has the potential to significantly alter the landscape in which women pursue progress and development (Chaurasia, 2022).

In a writing piece, a comprehensive examination is conducted on the exceptional characteristics of the local governance system in Bihar. The present article serves the purpose of generating awareness regarding a distinctive attribute of the PRIs, thereby enhancing the level of democratic participation in rural areas within the state (Pal, 2019).

In a research paper, it contextualised the experience of women representatives of Bihar and their struggle. The author observes how, historically, the male-centred approach

and arguments have always taken centre stage and have excluded women from politics(Pandey, 2018).

In a study, it is also found low participationof disadvantaged groups in PRI bodies in their study. In the study conducted by Sen, it was determined that addressing the matter of empowerment of female members necessitates action in both the political and administrative spheres. The issue ought to be discussed, inter alia concomitantly, in conjunction with other pertinent concerns, such as attaining economic self-sufficiency (Ghatakand Ghatak, 2002) (Sen, 2003).

In a study it is observed that rural communities in India exhibit a pronounced dichotomy between genders. This division effectively delineates and governs the respective roles, obligations, entitlements, advantages, prospects, entry, authority over resources, and the decision-making mechanism. It was found that husbands and male individuals exert a certain level of influence or pressure upon elected female representatives to secure their endorsement of proposed plans and policies. The aforementioned individuals disregard the recommendations put forth by the latter party and fail to accord them the appropriate level of deference (Mandal, *et. al*, 2014).

In her scholarly publication, Asha Rani elucidates the factors contributing to the diminished societal standing of women in the region of Bihar. She underscores the deleterious amalgamation of feudalistic structures, pervasive caste dynamics, and entrenched patriarchal systems as the primary sources of oppression (Rani, 2014).

2. STUDY AREA

Buxar district is one of the 38 district of Bihar, India. Located in the southwestern part of the state, it is a primarily agricultural-baseddistrict. The district headquarters is in the town of Buxar.The districtconsists of 2 subdivisions have 11 blocks in total. As per the last census in 2011, Buxar district has a population of 1,706,352 or 1.6% of the total population of Bihar. The district has a population density of 1,003 inhabitants per square kilometre (2,600/sq mi). Its population growth rate over the decade 2001-2011 was 21.67%. Buxar has a sex ratio of 922 females for every 1,000 males and a literacy rate of 70.14%. 9.64% of the population lives in urban areas. Buxar has 11 administrative blocks.

Dumraon is one of the blocks that consists of 14 Gram Panchayats, of which five are reserved for women. 14 Gram Panchayatsconsist of 192 Panchayat Members, of which 83 are reserved for women candidates.

3. OBJECTIVES

The overarching aim of this study is to evaluate the level of engagement and obstacles encountered by the elected female representatives of Gram Panchayats of Dumraon Block in the Buxar District of Bihar.

- To ascertain the extent of their engagement,
- To elucidate the obstacles encountered by women representatives in the realm of Gram Panchayat,
- To ascertain and accentuate the determinants influencing their engagement.

4. METHODOLOGY

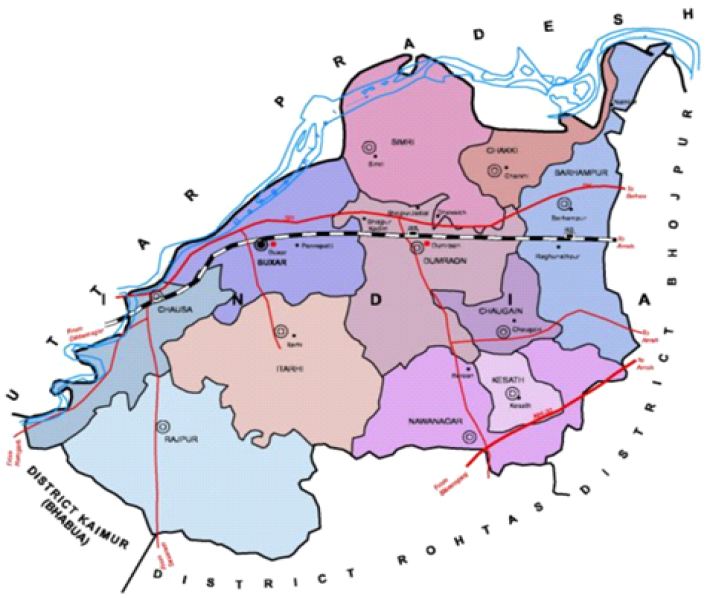

Fig. 1: Political Map of Buxar

Source: https://buxar.nic.in/map-of-district/

The present study is based on empirical data collected from the Dumraon block of Buxar district of Bihar. For this study, structured questionnaires were canvassed to collect data from the elected women mukhiya (*Ataon, Chilahari, Koransarai, Nuaon, &Sowan*) and women panchayat memberof 14 Gram Panchayats (*Ataon, Arioan, Chhatanvar, Chilahari, Kanjharua, Kashiyan, Koransarai, Kushal, Mugaon, Mathila, Lakhandihra, Nandan, Nuaon, and Sowan*), of Dumraonblock Buxar district. Also, while collecting data,the authors had a vigilant eye on the role of proxy members and assistance to the elected female members of14 Gram Panchayats, consisting of 192 Panchayat Members, of which 83 were reserved for women candidates. In total, the elected women members of gram panchayat in Dumraon reach 05 + 83 =88.

The sample size for this research is limited to 50.In the current study, 50 women panchayat representatives were interviewed from different Gram Panchayats of Dumraon block. These 50 respondents were Mukhiya and Panchayat members from various Gram Panchayats Secondary,and data like data cited in the literature, panchayat records, etc.,were also used in the study. The data were collected in the month of September-October 2023.

5. FINDINGS OF THE SURVEY

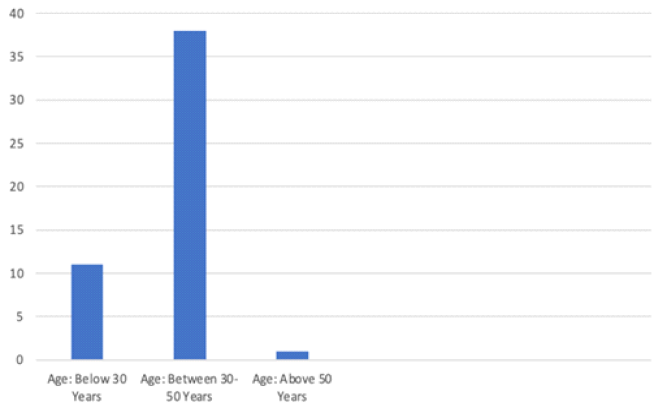

Figure 2: Age Group of elected women panchayat members

Source: Primary Survey, All value in absolute number (N = 50)

Figure 2 shows the age group of elected women panchayat members of the Dumraon block from whom data were collected. There are 38 highest members in the 30-50 age group;11 were below the age of 30, and only 1 was above 50 years of age.

Figure3 reflectsthat 33elected women panchayat members are literate, 04 were 10th passed, 06 were 12th passed, 06 were graduates, and no member was found to be post-graduate. A panchayat member from Kanjharuawas found to be illiterate. Among all Seema Devi of Gram Panchayat,Koransarai was the youngest of 22 years of age while contesting election in 2023.

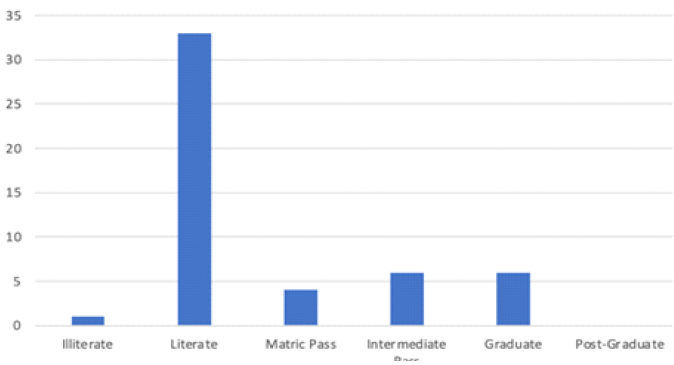

Figure 3: Educational Qualification of Elected Women Representatives

Source: Primary Survey, All value in absolute number (N = 50)

Out of the 50 elected panchayat representatives,all showed interest in social work for the development of panchayat. However, none of them were aware of the development initiatives going on in the panchayat.

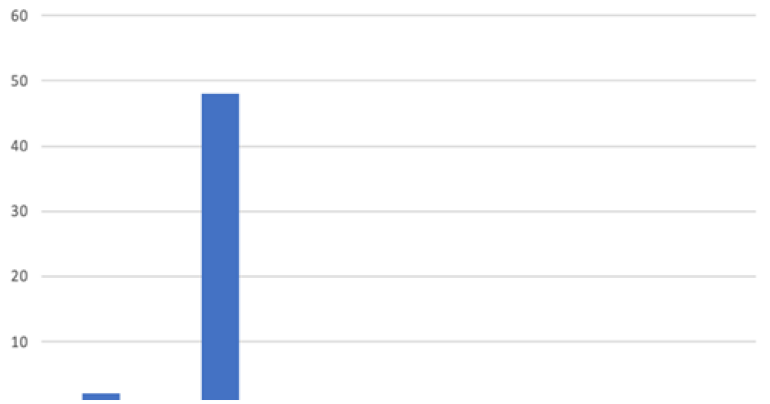

Figure 4: Attendance of Elected Women Representatives

Source: Primary Survey, All value in absolute number (N = 50)

A significant proportion (48) of the participants displayed irregular attendance at the meetings, while the remaining two individuals reported consistent attendance. The gathering was graced by the male constituents of the familial unit. The individuals attended meetings and training sessions solely in accordance with the directives of the governing body, demonstrating their commitment to maintaining their attendance record.

The study revealed a notable trend wherein female participation in panchayat and gramsabha meetings was infrequent, with women displaying limited engagement in active discussion. This pattern can be attributed to their low attendance rate at these meetings. The study revealed that all participants exhibit a passive role during meetings, primarily engaging in attentive listening. While some individuals actively participate in discussions initiated by others, none of the respondents take the initiative to initiate discussions themselves. Nevertheless, it is customary for male individuals to advocate for women in such situations. In the majority of instances, meetings are documented on paper to preserve comprehensive records.

When inquired about the means by which they attend meetings and engage in official duties at panchayats, as well as occasionally at the block level for official work and training, it was discovered that none of the representatives undertake these tasks independently. On every occasion, they are accompanied solely by male counterparts. 45 participants indicated that their spouse or offspring accompany them, while 5 participants reported that, rather than their spouse or offspring, other male relatives from their family accompany them to such gatherings and workshops.

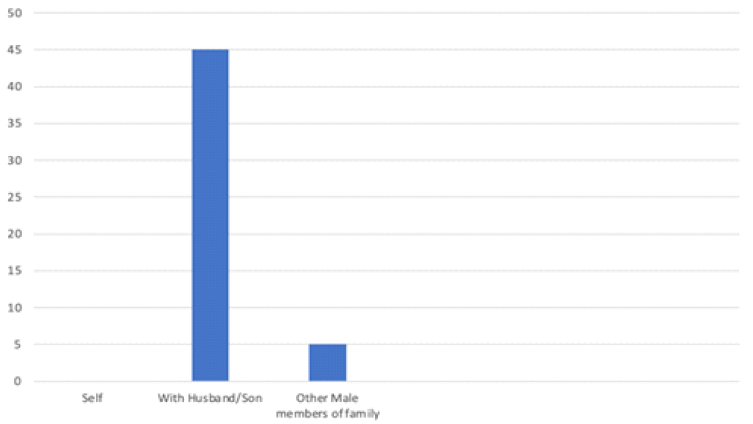

Figure 5: Means of Participation of Women Representatives

Source: Primary Survey, All value in absolute number (N = 50)

Various domains of engagement in panchayat decision-making endeavours were discerned, whereby panchayat members were requested to specify their modes of involvement in said activities. The study unveiled the engagement in various endeavours such as strategic planning, financial allocation, beneficiary selection, project site determination, scheme inspection and supervision, dissemination of scheme-related information, and advocacy for constituency-related concerns.

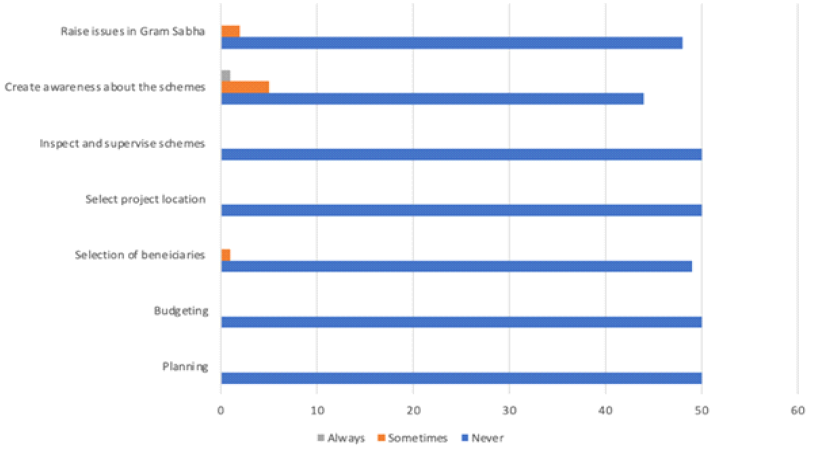

Figure 6: Participation of Women in Decision Making

Source: Primary Survey, All value in absolute number (N = 50)

Figure6 illustrates the significantly low participation of female representatives in all the aforementioned activities. It was observed that their level of participation in various aspects of the project was notably low. This includes areas such as planning (50), budgeting (50), beneficiary selection (49), project location selection (50), scheme

inspectionand supervision (50), scheme awareness creation (44), and raising concerns in Gram Sabha meetings (45). One member of the group consistently expressed her commitment to fostering awareness regarding the scheme. Only one individual asserted that she personally chooses the recipients and determines the project's location. The analysis reveals that the true authority is exercised by their husbands or sons, as well as other male relatives or the esteemed local elite, on whose behalf they have participated in elections as their representatives.

The female panchayat members encounter a multitude of challenges. Authors have investigated the factors that impede their complete engagement in the panchayat and governance process, encompassing lack of awareness or low literacy levels, transportation challenges, domestic responsibilities, and adherence to the purdah system or cultural norms.

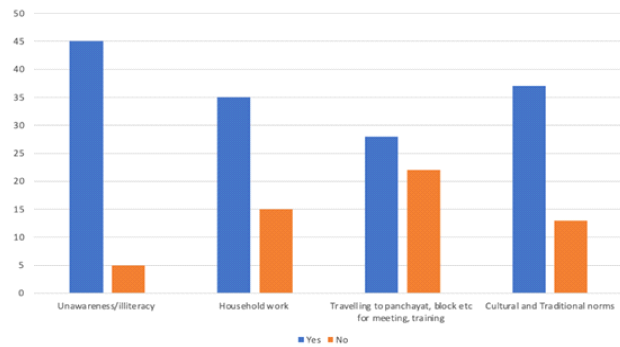

Figure 7: Factors for Low Attendance

Source: Primary Survey, All value in absolute number (N = 50)

The study identified several factors contributing to the low attendance at panchayat and gram sabha meetings and decision-making processes. The lower participation of elected women in the panchayat and governance process can be attributed to several significant factors. These include social restrictions, limited literacy or lack of awareness (45), challenges in accessing transportation to attend block and panchayat meetings (28), responsibilities related to household work (35), and the influence of the purdah system (37). These factors collectively hinder the active involvement of elected women in the panchayat and governance The prevalence of the Purdah system was higher in rural Bihar. In his comprehensive study, It was also discovered that the presence of social restrictions poses a significant barrier to women's meaningful engagement in panchayat affairs(Inbanathan 2001).

6. DISCUSSION

One notable observation pertaining to the panchayats in Dumraon, Buxar, is the conspicuous predominance of male participation during gram panchayat elections despite the implementation of policies aimed at fostering gender empowerment through the reservation of up to fifty percent of seats for women. After interactions with the

villagers, the participation of the female representatives was observed to be significantly deficient. It has been determined that on numerous occasions, the panchayat and gramsabha meetings were discovered to be lacking in substance, serving merely as perfunctory procedures that were duly documented despite their non-occurrence in actuality. Upon careful examination, it has been determined that a substantial number of the convened meetings were conducted without any prior notification being provided to the gram sabha member. Pursuant to the convening of proxy meetings, it is duly noted that the proceedings were meticulously documented. The attendance register, in accordance with established protocol, contains the signatures and thumb impressions of all members, including those who were absent from the aforementioned meetings, with particular emphasis on the elected women. In his comprehensive investigation conducted in the state of Orissa, Patnaik discovered several noteworthy findings. Among these findings were the prevalence of male dominance, the concern about low attendance by female representatives, and the occurrence of proxy gramsabha meetings, among other pertinent factors (Patnaik, 2005).

The substantial occurrence of illiteracy among women residing in rural regions constitutes a highly relevant factor contributing to the phenomenon of proxy politics in said areas. Due to the aforementioned obstacle, women find themselves in the position of passive observers rather than active participants in the processes of policy formulation and the responsibilities associated with the gram panchayat (Singh *et al.*, 2022).

Throughout the process of data collection from Dumraon, it was observed that male members of the family exhibited a prevailing reluctance to grant permission for interviews with elected women. Additionally, these individuals frequently intervened during the interviews, thereby exerting influence over the proceedings and interactions with the author. Panchayat representatives duly recognised the involvement of male members who accompany them to panchayat offices, meetings, and training venues, all of which are typically located at a distance from their residences and cannot be traversed unaccompanied. According to the prevailing consensus, the attendance of the aforementioned individuals is contingent upon the accessibility and participation of said male constituents. It has come to light that on numerous occasions, the male escorts accompanying these women have been observed providing them with guidance regarding their statements during the meeting and, in certain instances, even speaking on their behalf.In his comprehensive study, Patnaik observed a discernible pattern wherein women in Orissa exhibited a notable reliance on their husbands or male family members as circumstances dictated (Patnaik, 2005). The presence of social restrictions has a hindering effect on the active involvement of women in village politics (Inbanathan, 2005).

The majority of womendid not engage in the electoral process independently. The husband or male relative's interests drove political activity. Some local elite members, who were unable to participate in the electoral process due to seat reservations, have sought to influence the outcome by enlisting their spouses and scheduled castes/ tribes to act as their authorised representatives during the election. Husbands or male relatives who wanted to challenge the election but couldn't due to seat

reservations for marginalised groups, including women, appointed proxies or name lenders to vote in the panchayat election. These men act as *de facto* representatives. In a shocking 46 cases, husbands, male constituents, or important local individuals persuaded women to run for office. It was found that husbands (30%) and other family members (12%) were major influencers in encouraging women representatives to run for office (Tiwari, 2012).

Based on the available data, it is evident that there exists a prevailing opposition among husbands, who are male members, towards the active involvement of their wives, who are female members, in panchayat activities. It is noteworthy that these same husbands played a significant role in facilitating the inclusion of their wives, who are female family members, in the governance process. The situation at hand presents a paradoxical scenario wherein husbands, who previously enlisted the support of their wives and female family members during elections, are now expressing opposition towards their wives or female family members' active involvement in panchayat affairs. It is evident from the statement that the husbands, who are male relatives of elected women, have been unable to secure formal positions of authority due to the reservation policy. Consequently, they appear to be endeavouring to exert influence indirectly by utilising their wives as proxies or engaging in the practice of lending their names for representation purposes.According to a study conducted, it has been found that a significant number of women in leadership positions have acknowledged that their spouses have discouraged their attendance at meetings or impeded their engagement in post-related endeavours (Kumatakar& Trembley, 1998).In a separate study, it was ascertained that the exercise of decision-making authority about the panchayat responsibilities allocated to women was predominantly undertaken by their male relatives, preferably husbands, with the women themselves merely affixing their signatures or thumb impressions on the requisite official paperwork(Kaul & Sahni, 2009).

One of the respondents, hereinafter referred to as "the declarant," attested that she was inclined towards political matters, albeit refraining from active involvement in the said domain due to adherence to traditional norms. The declarant further asserted that her participation was hindered by discouragement from her male counterparts. Based on observation, education and awareness have established a negative correlation. It has been determined that individuals lacking literacy skills and possessing limited education levels tended to refrain from making decisions pertinent to their designated responsibilities or engaging in any activities associated with their official positions without the explicit instructions or guidance of their husbands or male counterparts. This reliance on external direction extended to tasks such as providing a thumbprint or signature on a document.It has been determined that individuals possessing literacy and education also did not independently exercise decision-making authority or undertake tasks associated with their respective positions without their husbands' or male counterparts' explicit instructions or guidance.

Despite the bulk of respondents' claims of irregular panchayat attendance, the registers show significant attendance by lawfully elected delegates. In addition, attending panchayat meetings has become a formality of signing registers, with a focus on women's

participation. Registers are usually taken to the homes of electors without a residence to obtain their signatures, thumb impressions, or, in some cases, male representatives' counterfeit signatures and thumb impressions. It has been determined that a greater percentage of female representatives exhibited irregular attendance at gram panchayat meetings, primarily attributable to cultural or rural norms.In the study conducted by Patnaik, it was further ascertained that panchayat meetings have undergone a transformation wherein their purpose has been diminished to a mere formality of signing registers. Notwithstanding the relatively low presence of members, particularly female representatives, the attendance registers evince commendable robustness in the proceedings. In instances where it is deemed indispensable for individuals to be in attendance, such as during the organisation of training sessions held at remote locations, women would accompany their husbands or other male relatives (Patnaik, 2005).

The low female participation in panchayats and related meetings, combined with their limited ability to articulate concerns within their wards, often hinder comprehensive deliberations on their challenges. Thus, this obstacle hinders decision-making. The individual's attendance at the meeting and affirmative head motions indicate low engagement. The research shows that female participation is low. The majority of women in all panchayats did not participate in regular speech during meetings, except for a few women interviewed.

The author examined women's panchayat participation and behaviour in this study. The folks participate in gram panchayat sessions through various activities. These activities include attending meetings and actively contributing to the agenda, which involves identifying and discussing ward issues. They also help decide on project location, planning, finance, and beneficiary selection. Gender and caste differences contribute to gram panchayat meeting problems. Women rarely raise local issues during meetings. Careful examination revealed that women were involved little in the above tasks. Their husbands or male relatives took over these responsibilities with little input from them. Even though higher-educated women were more assertive and articulate, they did not make independent decisions. As needed, they asked their spouse or male relative for help.

While certain women claimed occasional involvement in said domains of decision-making, it is essential to note that their actual awareness of said activities was severely lacking. The individuals in question, upon the directive of their husbands or male relatives, proceeded to affix their signatures or thumb impressions subsequent to the determination made by the de facto male members. Notwithstanding the apparent familiarity exhibited by certain women with concepts such as "planning,""budgeting," and "developmental work," it is imperative to acknowledge that their comprehension of the inherent importance of these terms within the operational framework of the panchayats was indeed lacking.

Participants were asked how they raised issues during panchayat meetings to assess their ability. The research shows that elected women representatives, particularly Muslim ones, struggle to address issues during panchayat meetings. Many times, women did not independently raise concerns in their domains or address local issues. Instead,

they asked others, mostly men, for help. The male escort sometimes represented them and conveyed their ideas.In a panchayat meeting, elected women representatives were using third parties to express their opinions. The women or their male kin or spouse have frequently informed the assembly president or other participating members of their constituencies' concerns and challenges. This strategy assigns meeting voice to the aforementioned individuals rather than the women. However, some female representatives, mainly Hindus, met with the president before or after the meetings. Due to shyness and uneasiness when speaking in public, the individual chose not to speak during a meeting or training session.

Lack of awareness and illiteracy were the biggest hurdles to active participation and responsibility. Research shows that the Purdah system is the second biggest barrier to their full engagement. According to empirical data, homework is the third most important element. The purdah system is similar across social classes, but higher-caste women are less likely to practise it. Female constituent engagement may be reduced by the gram panchayat office's proximity. Except for a few socially active women delegates, women representatives rarely have time for panchayat activities after cooking and raising children. Attending panchayat meetings and trainings is difficult due to the time investment, especially in remote regions like blocks. According to research, many women from poor households must live on limited means and cannot participate in government. Also, due to increasing inflation, contesting elections has been a risky factor, especially for those who belong to the labour class. In rural elections also, a new pattern has emerged wherein the elite class of the society participate. Male relatives of many women testify that their political participation is impractical due to a lack of pay.

Empirical evidence shows that many people, including distinguished Gram Sabha members, are unaware of their properly elected women representatives as a woman representative does not participate qualitatively because of both internal and external obstacles (Kumar, 2022). It is considered that the spouse or a male relative is the de facto representative, exerting authority and executing all panchayat tasks. However, there are various news reports that break thesecustomary practices, too, but very few in numbers.

7. CONCLUSION

There exists a discernible disparity between the policies aimed at enhancing the agency of women through the reservation of up to fifty percent of seats and the accompanying policies and measures implemented by the government to guarantee equitable conditions for women's engagement in the governance sphere. The lack of active involvement of women in the developmental activities subsequent to their election as panchayat office bearers can be attributed to a multitude of factors. These factors encompass the prevailing patriarchal societal structure, inadequate levels of literacy and education, adherence to sociocultural norms and traditions, economic constraints, limited employment opportunities, insufficient infrastructure impeding mobility, and inadequate allocation of resources by the respective states to enable them to discharge their responsibilities associated with their positions effectively. The aforementioned circumstance is

compounded by the government's lack of initiative in delegating the responsibilities and personnel associated with the allocation of funds. In the event that individuals are summoned to attend the meeting, it is solely for the purpose of fulfilling the quorum requirement. Accordingly, it can be observed that female constituents are currently devoid of any active involvement in the decision-making procedures, consequently assuming the role of mere representatives. The proposition of reserving seats for women may not effectively achieve the objective of integrating women into the political process and rectifying the historical injustices they have faced. In the event that the state demonstrates genuine commitment towards the devolution of power to the panchayats and the effective implementation of reservation policies for marginalised groups, particularly women, it is imperative to acknowledge that a lacklustre and fragmented approach will prove inadequate. In light of the state's intention to transfer all 29 subjects to the panchayats, it is imperative that the elected women representatives, who currently possess inadequate skills, be provided with the requisite knowledge, resources, personnel, and other necessary means. This preparation is essential prior to the complete devolution of power and subjects to the panchayats. The aforementioned provisions necessitate the allocation of requisite resources, funds, functions, and functionaries to panchayats. Furthermore, it is imperative to enhance the capabilities of women representatives, specifically, through the implementation of customised training programmes that are sensitive to cultural nuances. Additionally, the establishment of infrastructure in rural regions to enhance mobility, alleviate poverty, and challenge the prevailing patriarchal mindset within society are essential objectives. The inquiry must additionally encompass an examination of potential avenues for furnishing compensation to the ward members, with particular emphasis on addressing the needs of the underprivileged demographic. Lastly, it is imperative to allocate resources towards the enhancement of quality education in order to facilitate the cultivation and development of prospective female leaders.

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A Quantitative Approach to Analyse the Public Knowledge in Understanding of Fingerprint Science

Dr. J R Gaur, Ms. Prachi Kathane** & Ms. Pallavi A Rao****

ABSTRACT

Fingerprint analysis has been one of the pillars of forensic science, which has been instrumental in criminal investigations for over a century, and yet the public familiarity and understanding regarding this key tool remain grossly underexplored. In this present study a quantitative analysis investigates public awareness, perception, and ease of understanding of fingerprint sciences across the general populace. Research of 15 carefully crafted questions was given to 342 randomly selected respondents from Gujarat, India. This research assesses the level of familiarization with fingerprint science, the perception regarding its advances in terms of a person's life journey, as well as the judiciary's role in it. The study findings hold insights into how the general public conceives the accuracy and limitations of fingerprint analysis while at the same time indicating misconceptions that might dampen the trust in forensic evidence. This research is in itself a stepping toward enhancing public awareness and perceptions of fingerprint science, which is important for informed discourse and trust in its application in criminal investigations. The study shows that there is a great need for concerted communication strategies that reduce the gap between public understanding and clear knowledge of forensic practices. This will provide future horizons for research and policy initiatives to bolster fingerprint science integration into the criminal justice system in a way mindful of public concern and instilling much-needed confidence in forensic approaches.

Keywords: Public Awareness, Perception, Fingerprint Sciences, Quantitative Analysis.

INTRODUCTION

Around the world, varied investigative departments have employed fingerprint identification techniques to identify both suspected offenders and crime victims. The classic fingerprinting method has a straightforward foundation [1]. Papillary ridges are formed by the skin on the palmar surface of the hands and feet. These ridges are

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specific to each person and do not alter over time. The fingerprints of identical twins, who share the same DNA, are not identical [2]. Being a challenging evidence, fingerprint is delt with utmost care and protection at the scene of crime. To create a high degree of visual contrast between the ridge patterns and the surface where a fingerprint has been deposited, a 'developer' often a powder or chemical reagent is typically required. From controlling physical access to safeguarding our devices, biometric technologies are becoming more and more integrated into our daily lives [3].The forensic expert'sfundamental task is to gather, document, and analyze material to generate proof of the incident. It is not a practice that can be done alone. Several specialists from various disciplines are needed for forensic inquiry. A forensic team is a collection of skilled experts who investigate crimes, gather evidence, record that evidence, and present that evidence in court. Their main responsibility is to conduct investigations and testify to support the administration of justice [4]. To uncover the truth about complicated situations, forensic teams are essential. Fingerprint-based criminal identification is one of the most effective ways to apprehend fugitives who could otherwise evade capture and carry on with their illegal activities indefinitely. This kind of identification also enables a precise assessment of the number of prior arrests and convictions, which naturally leads to the judiciary imposing more equitable sentences because the person who consistently breaks the law cannot successfully pretend to be a first-time or juvenile offender. The prosecution makes his case based on the offender's prior record with the help of this identifying mechanism. It gives the governor, parole board, and probation officials solid information to work with when dealing with criminals in their regions.

The problems regarding fingerprint identification have less to do with analysis and more to do with how easily fingerprints are compromised and stolen. A person's fingerprint is readily tampered if they come into contact with a surface. This is among the factors that have made it simple to place fingerprints at crime scenes. Individuals who harbour resentment against others choose to remove their fingerprints and place them at murder sites. It has been known for years that fingerprint identification is very effective in individual identification as well as a difficult evidence to handle at the scene [5].

The study specifically created a matrix of 15 Likert scale questions constructed to extract participants' thoughts, feelings, and perspectives on this subject [6]. Respondents are given the option to select how much they agree or disagree with each item, ranging from 'strongly disagree' to 'strongly agree' [7]. Its application would allow for quantification and standardization in the measuring of subjective opinions. The population for this study is around 342 research participants from Gujarat, India, and the data response was collected by giving questionnaire to the individuals in person. This research includes randomly selected participants to ensure representativeness so that different respondents can provide their opinions. This is a good prerogative with which real and comprehensive data can be collected to fuel the accomplishment of research objectives.

OBJECTIVE OF THIS RESEARCH

This study aims to present how most people understand the science behind the fingerprint, with attention, and resolve their attitudes, degree of knowledge, and misunderstanding. Also to find out the elements that shape public opinion, such as media portrayals, education, cultural influences, and individual experiences. This is an attempt to see the impact of misinformation and misconceptions, such as beliefs in fingerprint infallibility, on trust in the criminal justice system.

LITERATURE REVIEW

In 2024 Zhang *et al*. [8] proposed a contentious information technology framework to examine the contradictory nature of biometric traits, which at the same time provide advantages and cause issues that show up as conflicting impacts on users' switching behaviour. They started by doing semi-structured research using a sequential mixed methods technique. Interviews revealed three important biometric traits two advantages and two drawbacks related to them. To investigate the interactions between each discovered component, a follow-up survey was carried out.In 2023 Gibb & Riemen [9] addressed the problem by outlining AFIS standard practices and procedures for forensic settings. The conversation is broken up into three sections. First, they list three variables that affect how well AFIS functions in forensic settings. Second, they go over the search procedure and emphasize the methods used by the Netherlands National Police (NPN) to reduce bias and inaccuracy in their AFIS workflow. They wrap off by quickly going over other factors to take into account while creating best practices. In 2021 Arikpo&Egeonu [10] developed the formation of a biometric mortuary system based on fingerprints for the identification and claim of deceased people. The object-oriented analysis and design technique using the UML served as the foundation for the system design methodology. Java was used for the system's front end and processing logic, while MySQL Server was used for transaction management at the back end. In 20027Furnell *et al.* [11] examined public awareness and perceptions of biometrics among UK population which showed their understanding as well as fear for biometric. In 2024Martins *et al.* [12] proposed an effective technique that will be used immediately to cut down on the amount of time and human resources spent on physical labour in crime scene investigations. They designed four steps for speedy investigation provided on the basis of survey based studied on opinion of the officials.

METHODOLOGY

This methodology of research design included questionnaires formulated on a Likert-type scale with quantitative analysis [13]. A Likert scale has been used to measure respondents' attitudes, perceptions, and opinions on a graded continuum. The sample of the study drawn from the 350 randomly selected individuals, guarantees a varied representation regarding the demographic parameters such as age, gender, education level, and socioeconomic background.This randomization minimizes the selection bias while enhancing the reliability of the findings. Data collection is held in Gujarat, India. It is quite easy for convenience for the engagement of the participants and

ensures that all data directly represent those familiar with or confined to the state. Figure 1 shows the flowchart in this result.

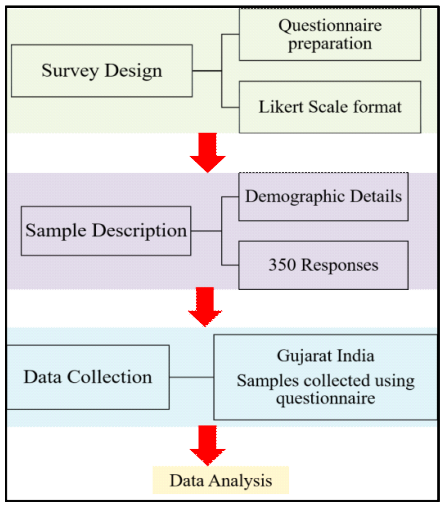


Fig. 1: Flowchart of this Research

RESEARCH DESIGN

The research exclusively designed a matrix of 15 questions on the Likert scale that are well-crafted to elicit the opinions, attitudes, and perceptions of participants on this topic. Each question provides the opportunity for respondents to indicate the extent of agreement or otherwise against a spectrum that runs from 'strongly disagree' to 'strongly agree'. Its use enabled standardization in the measurement of subjective viewpoints while allowing for quantification. There is much more than mere capturing of responses through a Likert scale; it also captures varying degrees of responses, attitudes, and opinions yielding valuable results.

SAMPLE DESCRIPTION

The sample of the study involved 350 respondents, out of 350, 8 samples were rejected due to incomplete submission of whom 100 were female and 242 males selected randomly for the research. This brings in an age diversification of people, which assures balance across the population. Education-wise, the respondents were varied, comprising people who hold primary, secondary, and tertiary levels of education hence making them a mixed educational qualification. Such demographic diversity included differences in experiences, opinions, and behaviours pertinent to the aims and objectives of the study, making it more reliable and generalizable. Bias minimization was the intention of selection for inclusiveness in the representation of populations about which investigation was being made.

DATA COLLECTION

The population for this study is around 342 research participants from Gujarat, India, and the data response was collected using a printed questionnaire in person. This research includes randomly selected participants to ensure representativeness so that different respondents can provide their opinions. This is a good prerogative with which real and comprehensive data can be collected to fuel the accomplishment of research objectives.

ETHICAL CONSIDERATION

The participants have submitted the consent before answering the questionnaire. The researchers haveagreed and presented all relevant facts in an intelligible and transparent wayAll information gathered is kept private and anonymous [14-17].

RESULT AND DISCUSSION

In this quantitative research, survey data have been collected from a general educated people who are familiar with investigative sciences. The research consists of 15 carefully formulated questions to represent the major objectives of the study. Survey responses were obtained from 342 of the respondents, thus ensuring a substantial sample size for data analysis. That continued to provide a dataset for meaningful interpretation and exploration of trends, opinions, and levels of knowledge within the science of fingerprints.

The Questionnaire Covered Following Major and Generalised Aspect:

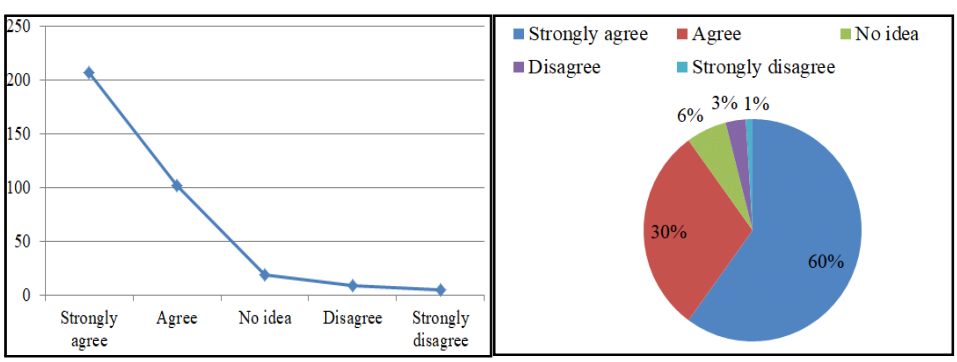
- Innate Presence of Fingerprints at Birth
- Uniqueness of Fingerprints to Humans
- Age Variability in Fingerprints
- Fingerprint Transfer During Surface Contact
- Role of Fingerprints in Personal Identification
- DNA Extraction from Fingerprints
- Individual Uniqueness of Fingerprints Across the Population
- Permanence and Removal of Fingerprints
- Application of Fingerprints in Crime Resolution
- Distinctiveness of an Individual's Ten Fingerprints
- Sex Determination Through Fingerprint Analysis
- Admissibility of Fingerprints in Legal Proceedings
- Vulnerability of Fingerprint Evidence to Contamination
- Lifting of Fingerprints from Surfaces
- Impact of Environmental Factors on Fingerprint Integrity

The responses received for each of these aspects are discussed and summarized below.

INNATE PRESENCE OF FINGERPRINTS AT BIRTH

Fingerprints of a person remain unique and indelible, as they are formed long before birth. Thus, they serve as sufficient proofs of identity throughout life [18]. This is kept to the extent that even a newborn or very young child can undergo biometric identification. Using fingerprints to identify extremely young people would need taking into account the skin's physiological and mental development traits and how those factors would affect fingerprint recognition [19]. It is also crucial to remember that while infants' and young children's fingerprints can be scanned, reading them would be more difficult than it is for adults. This is because their patterns are smaller and less distinct, which causes issues when they are used in fingerprint scanners and typically results in lower image quality or accuracy [20].As age increases, fingerprints tend to grow in size proportional to age, yet the unique patterns remain, thus making the fingerprints much more reliable by comparison across ages.

Graph 1 represents the response collected for the opinion on presence of finger ridges are from birth or not.The results indicated a tendency toward idea adoption and comprehension. Out of the respondents, 207 people (60.5%) strongly agreed with understanding the scientific basis behind fingerprint formation. 102 individuals (29.8%) were found to agree, indicating a total agreement rate of 90.3%. 19 respondents (5.6%) indicated that they had no idea about the subject, which indicates a gap in awareness or understanding. There was little scepticism because only 9 respondents (2.6%) disagreed with the idea, while an even smaller group of 5 individuals (1.5%) strongly disagreed with it. Most of the public seems to have favourable perceptions or to understand fingerprint science, a small fraction is either lacking knowledge or doubts about it. This great level of agreement could mean that scientific education or exposure to forensic practices is quite strong in public opinion. However, there are respondents with no idea about the formation of fingerprints, leading to the basis for a call toward more outreach in education to fill the gaps and make it a more knowledgeable populace. Small disagreement indicates that misconceptions or alternative beliefs regarding fingerprint science can exist only at a marginal level. These findings imply the need to continue promoting awareness and understanding of scientific concepts such as fingerprint formation to draw greater public confidence in this area of forensic science.

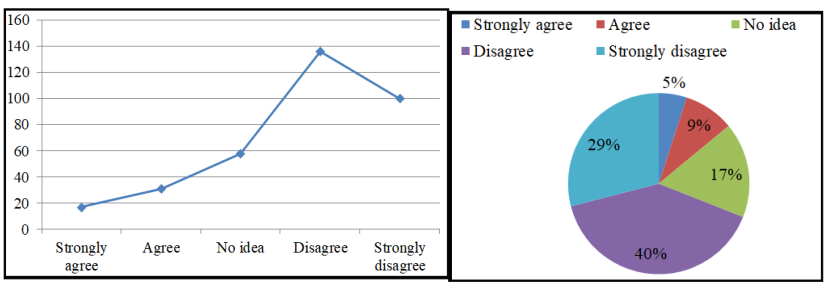


Graph 1: Innate Presence of Fingerprints at Birth

UNIQUENESS OF FINGERPRINTS TO HUMANS

Finger ridges serve the purpose of gripping using palms and thus are likely to be present in other species. Like human fingerprints, animal soles form distinctive patterns [21].Most animal species, not only mammals, can be included in the concept of a 'fingerprint' if traits other than actual fingerprints are permitted [22].Since fingerprints are unique to each individual, they have been used for identification for a very long time [23]. Koalas are one of those animal species which shows similarities in ridge structure. It is important to consider the surroundings while interpreting the finger ridges present on the surface [24].

Graphs 2 shows the answers gathered for the presence of fingerprint other than humans. The results tend to suggest an inclination toward idea adoption and comprehension. The question of 'who has fingerprints' was answered somewhat variously, indicating the degree of agreement or sometimes the understanding regarding the question by respondents. Only a minority either strongly agreed (17) or agreed (31) to the statement that they believe it is true or otherwise relevant for everyone. The most common response (58), indicates a lack of understanding or clarity on the topic. A large majority disagreed (136) or strongly disagreed (100) with the same, suggesting that the issue was interpreted differently or with suspicion.



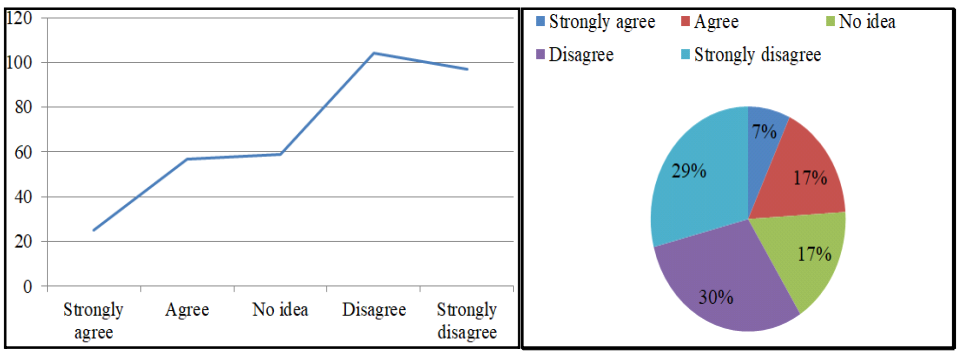
Graph 2: Uniqueness of Fingerprints to Humans

AGE VARIABILITY IN FINGERPRINTS

There is no change in fingerprints. Nevertheless, as we become older, it may become more challenging to get our fingerprints. This is because as people age, their skin becomes less elastic, and the deepening of ridges and furrows makes the patterns less noticeable. Our fingertips' surface is impacted when our skin's pores become less moisturized [25].The fingerprint ridges of elderly people are less firm than those of young people, although they are not significantly different [26]. Biometric scanners may find it difficult to correctly read fingerprints in these circumstances and determine whether or not they belong to the same individual [27].

The responses obtained for changes of fingerprint during the life of a person are displayed in Graph 3. The findings generally point to a propensity for concept understanding.A research study on the effect of age on fingerprints gathered varied opinions. 25 strongly agreed and 57 agreed from the respondents. Some believed

that age influenced fingerprint changes. Respondent number 59 representing expressing uncertainty says the complexity of the issue. The majority numbers say 104 of the respondents disagreed while 97 strongly disagreed with the view that age does not affect fingerprints. Therefore, the mixed responses underscore the call for more research and raising awareness on the issue.

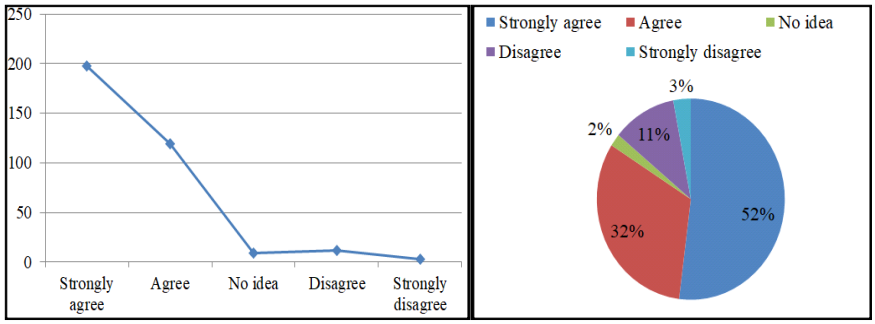


Graph 3: Age Variability in Fingerprints

FINGERPRINT TRANSFER DURING SURFACE CONTACT

In criminal investigations, the greatest benefit of these invisible fingerprints known as latent fingerprints is that offenders unintentionally leave them at the crime scene [28]. But it also takes a lot of work for the police to locate them. Certain surfaces retain fingerprints better than others because they are formed from the natural oils and residue that are left on our fingertips [29]. Because nonporous materials like plastic, glass, and metal don't have pores that may collect perspiration and grease from our fingertips, fingerprints are simpler to locate on these surfaces [30].Fingerprint analysis is still a very useful technique for police enforcement, having been used for over a century to identify criminals and solve crimes [31]. Investigators may use fingerprints to connect one crime scene to another involving the same individual, which is one of its most significant applications [32]. A criminal's record, past arrests, convictions, and sentencing, probation, parole, and pardoning choices may all be tracked by detectives with the use of fingerprint identification [33].

Graphs 4 present the answers gathered for transfer of fingerprints on the surface when both comes in contact with each other. In general, the results indicate a tendency toward idea understanding.The data indicates a very strong agreement regarding fingerprint transfer methods. Strongly agree with the number 198, agree with a count of 119, it would mean that there is a general acknowledgement or belief on whatever techniques or methods in transferring fingerprints. An insignificant part of Participant 9 commented as not sure, which means these people do not know or understand the method. Disagreed is very few at only 12, and then strong disagree counts to just 3, showing an extremely small extent of skepticism regarding the information. This simply indicates a very strong collective agreement about fingerprint transfer on the surface.

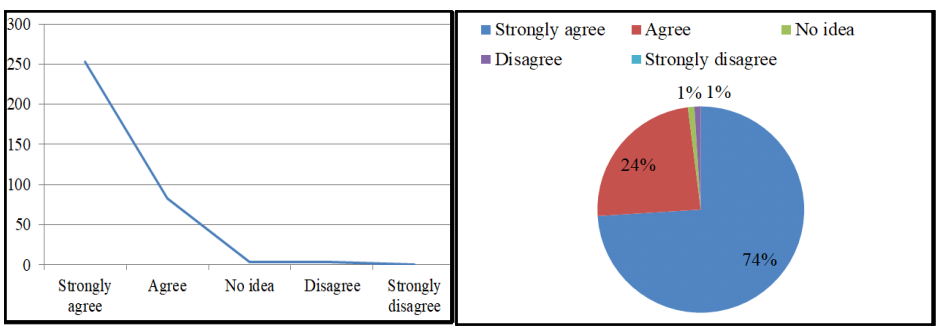


Graph 4: Fingerprint Transfer During Surface Contact

ROLE OF FINGERPRINTS IN PERSONAL IDENTIFICATION

Persistence (permanence) and uniqueness are the two fundamental tenets of fingerprint identification. Identical twins are also not the two persons who have ever been found to share fingerprints [34]. The identical fingerprint has never been discovered on more than one finger in a single person [35]. In forensic science and biometric identification, fingerprint identification has been an essential technique for more than a century. This approach precisely develops personal identification by utilizing the distinctive patterns that each person has at their fingertips [36].

The responses collected for use of fingerprints in individual identification are displayed in the Graph 5. The findings point to a propensity for concept comprehension.The data reveals that there is predominant support for the fingerprints, with 253 individuals responding strongly agree, with 83 agreeing. This seems to show that there is a consensus on the appreciation of this utility. Very few individuals showed any uncertainty (3) or disagreement (3), and (0) strongly opposed it. This indicates the common perception that fingerprints are trustful and efficient tools likely owing to their individuality and their extra dimension in security as well as identification and authentication activities. The absence of almost any opposition leads to a conclusion of high confidence in the accuracy and relevancy of this method for several applications, from law enforcement to technology, thus making it a trusted practice.

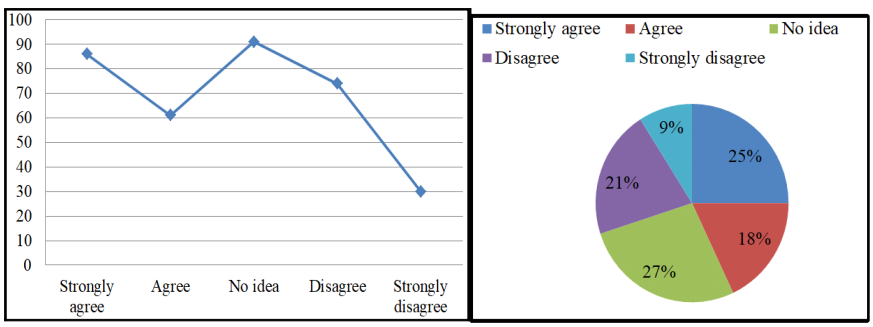


Graph 5: Role of Fingerprints in Personal Identification

DNA EXTRACTION FROM FINGERPRINTS

This is one of the advancements in the impression evidence that the DNA can be extracted from the ridges as they are left behind due to body secretions. This technology is also referred as touch DNA. In accordance with Pang & Cheung's (2007) [37] technique, employed the double swab (wet and dry) approach to extract the DNA from the fingerprint. [38]. The overlapped fingerprints may give ideation on number of persons involved in the crime scene in case of DNA extraction from the sweat residue.

The data obtained for extraction of DNA and personal identification through sweat residues is displayed in the Graph 6. The findings point to a propensity for concept comprehension. According to the statistics, there is a high degree of agreement on fingerprint transfer techniques. The opinion in public is whether DNA can be derived from fingerprints or not. About 86 people belong to the category of strong agreement and 61 people come under the general agreement as far as believing that such technology can be feasible or expected. 91 show indecisiveness, perhaps due to ignorance or not a proper understanding. 74 disagree but 30 strongly disagree, therefore indicating scepticism about the new option possibly not believing it would work, perhaps for scientific or ethical issues. The distribution above shows a little polarized and, nevertheless, a more inquisitive attitude toward an emerging possibility.

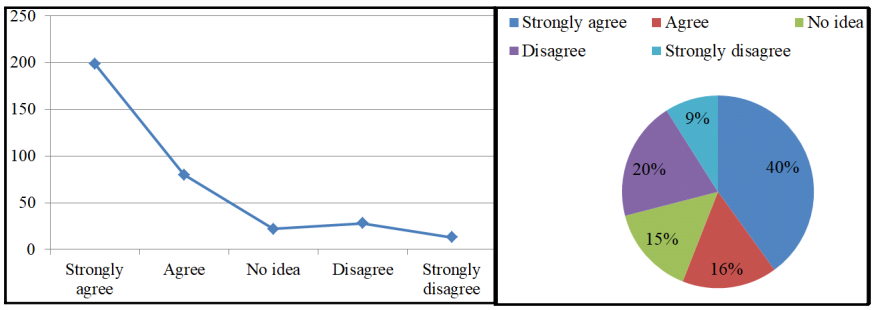


Graph 6: DNA Extraction from Fingerprints

Individual Uniqueness of Fingerprints Across the Population

No two person's fingerprints are the same, and that is the one thing we are certain of. There wouldn't be two prints that we could say were exactly comparable in every way, even if we took hundreds of thousands from as many people. Perhaps if there were two or perhaps many more of them with the same overall design, a close study would reveal that they were quite different so different that we could readily distinguish the two prints when comparing them [39]. Friction arises as a result of one force slowing down ridge growth and another attempting to speed up ridge formation, which results in the production of distinctive ridges [40]. This force creates what are called whorls, or strips, on the fingers. The force imparted to the ridges varies from person to person, thus each fingerprint is distinct [41]. No two people have the same fingerprint patterns, and even identical twins cannot have the same prints [42].

Research measuring public opinion and understanding of fingerprint science that is, the evolution of fingerprints is highlighted in Graphs 7. The results typically suggest a tendency toward idea comprehension. There were differing views on the impact of aging on fingerprints.Among the respondents, 199 strongly agreed to it because of its highly unlikely propositions along with the uniqueness that could largely be supported by scientific studies. An additional 80 agree but perhaps a little hesitantly, acknowledging that fingerprints were distinct. 22 had no idea. 28 disagree, perhaps under skin-deep misconceptions and, as such, 13 strongly disagree, probably having doubts about the evidence or scientific consensus. This spectrum showed the dynamics of awareness and education in recognition of the uniqueness of fingerprints.

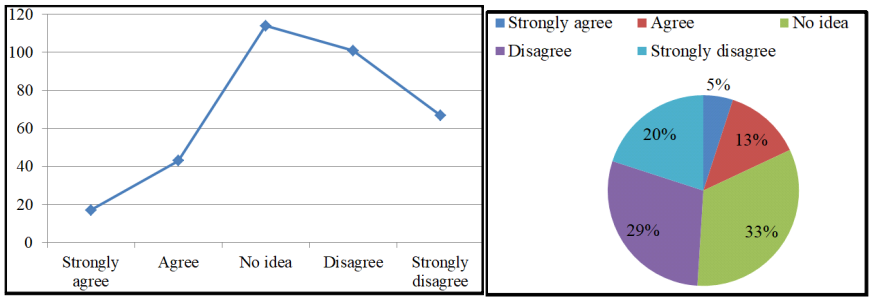


Graph 7: Individual Uniqueness of Fingerprints Across the Population

PERMANENCE AND REMOVAL OF FINGERPRINTS

Persistence, sometimes called permanence, is the idea that a person's fingerprints don't really change throughout the course of their life. They stay embedded in the current friction ridge and furrow pattern when new skin cells develop. Indeed, several studies have been carried out to verify this persistence by documenting the same fingerprints over many years and noting that the characteristics don't change. When the new skin forms, even attempts to destroy or remove one's fingerprints will be prevented, unless the damage is really severe, in which case the new arrangement created by the damage will remain and be unique [43].

Graphs 8 display the responses gathered for permanence and removal of finger ridges. The findings usually point to a propensity for understanding concepts. Divergent opinions exist on how aging affects fingerprints.A considerable number, 17 subjects, strongly agree most likely for purposes of privacy or security. 43 agree, suggesting support for the same reasons. But the largest group of 114 people has no idea, signifying some form of unawareness about it. A popular figure of 101 disagrees; probably because people think fingerprints as significant in identity recognition or forensic uses, and 67 are strongly against it which could indicate staunch opposition. That is such a variety of views concerning the very complex balancing act between the technological possibility, ethical consideration, and eventually public awareness or acceptance of such practices.

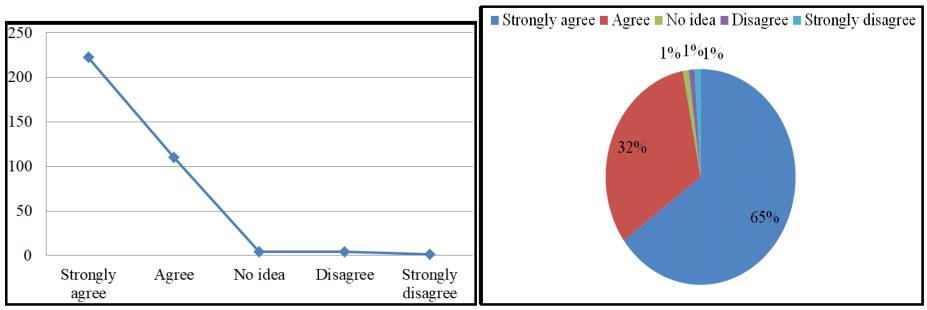


Graphs 8: Permanence and Removal of Fingerprints

APPLICATION OF FINGERPRINTS IN CRIME RESOLUTION

Fingerprints are difficult to remove and unintentionally leave traces of a person's whereabouts; as a result, they are crucial in investigative investigations. Human fingerprints are distinctive, hard to copy or change, and long-lasting, making them appropriate as permanent indicators of a person's identity. As a result, they leave prints on everything that is touched and cannot be erased. Police can easily use fingerprints to identify someone, either to connect them to a crime or to identify death or incapacity [44]. If detectives have grounds to compare fingerprints or if prints from an unsolved crime appear as a match in a database search, they can connect a culprit to additional unsolved crimes [45]. These unidentified prints that connect several crimes might occasionally provide police enough information to identify the offender [46]. When DNA is not available, the criminal justice system uses fingerprints to confirm the identities of convicted criminals and to trace their past arrests, convictions, criminal inclinations, known associates, and other pertinent information [47]. Court officers may also utilize these documents to inform their choices on a criminal's sentencing, probation, parole, or pardon [48].

Graphs 9 show the answers collected for its use in crime investigation. Generally speaking, the results indicate a tendency toward conceptual comprehension.Fingerprints are the most important aspect of solving crimes as shown by the public debates regarding their utilization. To respond 222 of the respondents strongly agreed and 110 agreed quite spreading on fingerprint study in a criminal case. Of the rest of the population, 4 showed neutral opinion and 5 disagreed given the small number of voices doubting its reliability. Fingerprints are unique to every individual and provide irrefutable evidence when matched properly keeping them as the backbone of forensic science. Their ability to link them with crime scenes and identify suspects well makes them one of the important modern law enforcement tools.

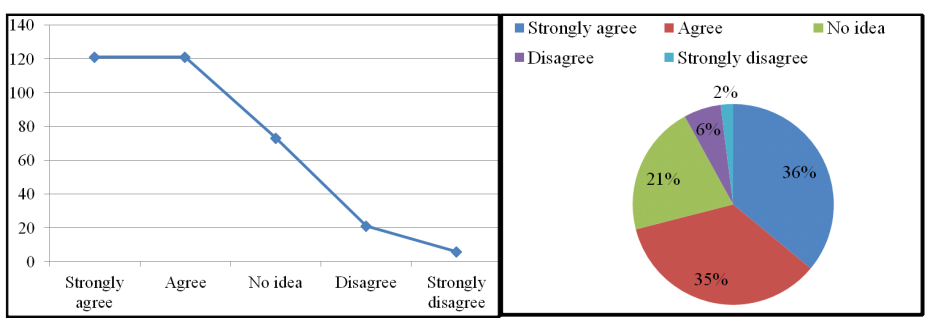


Graphs 9: Application of Fingerprints in Crime Resolution

DISTINCTIVENESS OF AN INDIVIDUAL'S TEN FINGERPRINTS

Every one of the 10 fingers has a distinct fingerprint. Despite their similarities, the patterns are not the same. For this reason, investigative agencies collect fingerprints from each finger. They take pictures and compare them to the databases [49]. To understand why fingerprints differ, one must understand the science behind their creation. The formation of fingerprints is significantly influenced by environmental factors such as pressure and nutrition availability in the foetus of a women. Two fingerprints that experienced greater pressure during pregnancy will thus develop in distinct ways [50].

Graphs 10 that show the opinion on having different or same finger ridges on all ten fingers. The results indicate a tendency toward conceptual comprehension.The study reveals varying opinions on how distinctive a person's 10 fingerprints are. According to the agreement (121) and strong agreement (121) assertions, each person's fingerprints are unique. The failure of 73 participants to select any one group may indicate a lack of awareness or comprehension that each person's fingerprints are distinct. The majority are those who disagreed at 21 or strongly disagreed (6), whoare skeptical about this idea or perhaps have different levels of knowledge about it. In general, therefore, results indicate strong consensus regarding the uniqueness of fingerprints but a significant minority undecided or unconvinced, thus showing the need for more public awareness concerning this scientific fact.

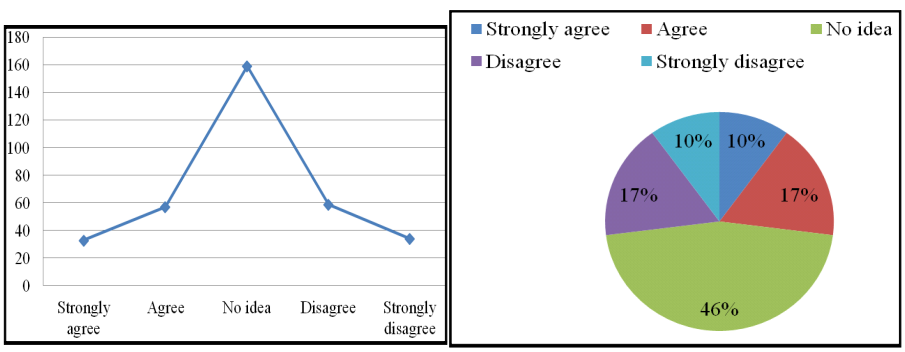


Graphs 10: Distinctiveness of an Individual's Ten Fingerprints

SEX DETERMINATION THROUGH FINGERPRINT ANALYSIS

A person's fingerprint can be used to determine their sex based on the number of finger ridges. Similarly, the composition of sweat residues can also be used for estimating the age of an individual from fingerprint. According to the study, a fingerprint with a ridge density of fewer than 13 ridges/25 mm^2 is probably male, whereas one with a ridge count of more than 14 ridges/25 mm^2 is probably female [51].

Graphs 11 illustrating the responses gathered for identification of sex of a person from fingerprints. The findings point to a propensity for conceptual understanding.The idea of using fingerprints to identify the sex of an individual is one of those issues that have caused plenty of mixed feelings, as the research indicated. A small portion of the population strongly agrees (33) and agrees (57) with such an application, showing some belief in the possibility of this application; there are still many who showed no idea or lack of knowledge through most of the population (159). It shows that there is a great gap in general awareness or understanding of the concept. On the other hand, another equal number of people disagree (59) or strongly disagree (34), likely because of some doubts regarding such techniques' reliability and feasibility because a question on whether an individual could gather some preference appears. These responses therefore call for more research, public education, and clarification of the accuracy or scientific basis for using fingerprints for sex determination.

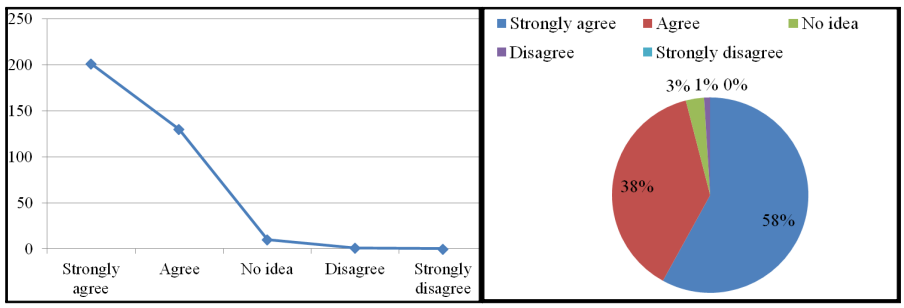


Graphs 11: Sex Determination Through Fingerprint Analysis

ADMISSIBILITY OF FINGERPRINTS IN LEGAL PROCEEDINGS

Relevance and admissibility are the two main tenets that courts use when deciding whether to accept forensic evidence. This also holds true for forensic fingerprints. Forensic fingerprints are evaluated and their evidential value quantified based on these two tenets [52]. The Indian Evidence Act almost ever uses the phrase 'admissibility,' and the two are essentially synonymous under Act. The scientific reports places on record following the standards of the courts amount to admissibility of this importance piece of evidence in court of law. It is evident from the various court judgements where fingerprint evidence is used, that this piece of evidence is considered by the court of law is placed on record correctly and beyond reasonable doubt. [53].

Graph 12 displaying the answers collected for the understanding of admissibility of fingerprint evidence in court of law. The results suggest a tendency toward conceptual comprehension.Fingerprints that would be found at a crime scene are so unique and reliable for identifying an individual when one attempts to prove the identity of such a person in a court of law. This is highly reflected in the research results: 201 participants strongly agree and 130 agree on the great importance of this. Only 10 had no idea, with very little oppositionrepresented by only 1 disagreement and no one is strongly disagreeing. They were also very important to the investigation, linking his suspect's crime scene more closely, proving the relevance to any undertaking investigation. When accepted in the court, they become credible, making them a very important instrument in the deliverance of justice and in ensuring accurate verdicts in criminal cases.

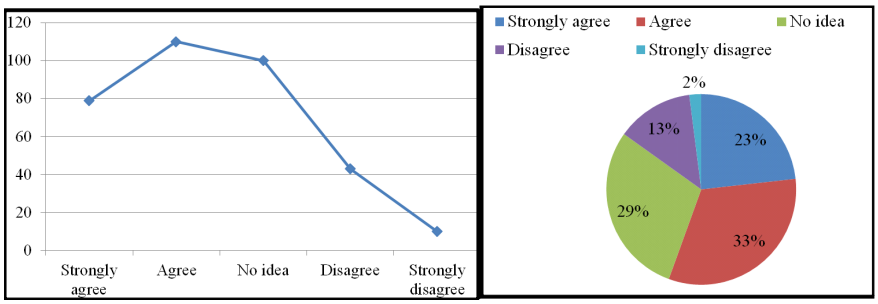


Graph 12: Admissibility of Crime Scene Fingerprints in Legal Proceedings

VULNERABILITY OF FINGERPRINT EVIDENCE TO CONTAMINATION

Fingerprint evidence is extremely easily susceptible to contamination or tampering, especially in crime locations where it is not properly secured or handled. Even stamping or handling one's tiny little finger can cause contamination through improper collection, storage, or accidental transfer of prints, which can lead to unwanted extraneous fingerprints or alteration of the original ones. Harmful environmental elements such as intense heat, moist, and dirt make the fingerprint analysis quite difficult. Such prints may be claimed by the defence to be someone else's obtained at the crime scene, thereby incriminating the innocent or creating at least some doubts as to the reliability of evidence [53].

Graph 13 show the answers to the information obtained for vulnerability of fingerprint evidence.The fingerprints are tampered with sounded like everybody in the survey had a different opinion about it. Out of 79 people, they believed to have a strong agreement factor that fingerprint evidence can be tampered with. 110 others agreed, showing apprehension about the overall fact that this evidence could not be reliable for everyone. 100 shared neutral opinions, which could mean ignorance or apathy about the matter, while the number of those who disagreed was 43. Just a mere 10 countered that that suggests a lesser population who would trust that kind of evidence. These findings call for more proper transparency, education, and robust measures to establish the credibility of fingerprint evidence in forensic investigations.

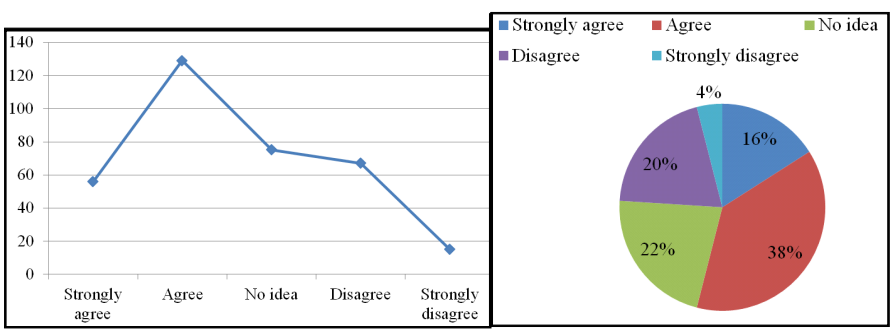


Graph 13: Vulnerability of Fingerprint Evidence to Contamination

LIFTING OF FINGERPRINTS FROM SURFACES

At the crime scene, latent, patent and plastic prints can be located. The investigator has to identify the possible locations of the incident for the presence of impression of fingertips such as entry and exit point. The investigators can develop the latent or invisible fingerprint from the crime scene by developing them. The patent and plastic impression can be lifted by photography or any other lifting methods. Silicone, sticky tape, quick lifter, and fingerprint gelatine are used to lift powdered finger impressions. [54]

Graphs 14 shows the opinion on the presence of fingerprint on incident and its collection by lifting it from the scene.The premises regarding the fact that fingerprints can be lifted from any surface differed: 56 had a "strongly agreed" rating while 129 agreed. It also states that 67 respondents and 15 of them had not applied any fingerprints; thus, there is not a clear consensus regarding the universal applicability of the method, and less than 75 were uncertain due to a lack of forensic science or understanding. This study reinforces the importance of educating people about the limitations and advancements in forensic technologies so that misconceptions are cleared up and an informed perspective on the procedures used to gather evidence can be fostered.



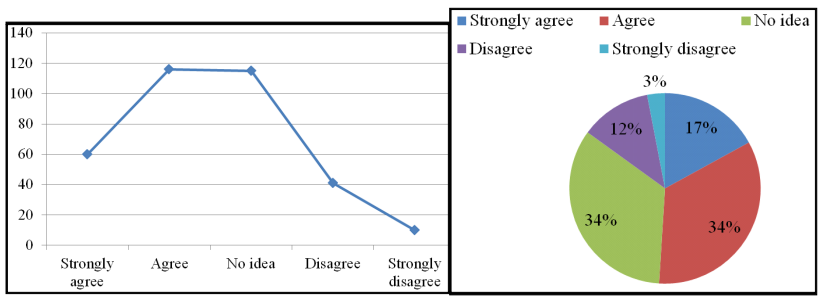
Graphs 14: Techniques for Lifting Fingerprints from Surfaces

IMPACT OF ENVIRONMENTAL FACTORS ON FINGERPRINT INTEGRITY

The fingerprint is affected by multiple environmental factors including, time, temperature, humidity, fresh-salt water, and pressure effects [55]. Some studies have identified

that the fingerprint's oil coating, which forms up to 300°C, demonstrates resilience. In comparison to plastic, nylon, paper, and wooden surfaces, fingerprints left on metal and glass surfaces at all temperatures have been found to be more acceptable for identification.[56]

Graph 15 highlights the opinion on the knowledge about the factors affecting the fingerprint. Environmental factors affect fingerprints as proved by the survey results which indicated 60 strongly agree, 116 agree, 115 with no idea, 41 disagree, and 10 strongly disagree. This implies that most people regard factors such as humidity, temperature, and surface conditions as influential factors in the clarity and preservation of fingerprints. A high 'no idea' response requires creating awareness among the masses on the topic, given its importance in both scientific research and in practical applications like law enforcement.



Graphs 15: Impact of Environmental Factors on Fingerprint Integrity

CONCLUSION

In conclusion, this study highlights the critical gaps in public awareness and perception of fingerprint science, emphasizing the need for targeted educational and communication strategies to bridge these gaps. By uncovering both the misconceptions and the levels of trust in forensic evidence, the findings underscore the importance of fostering an informed understanding of fingerprint analysis and its judicial implications. Enhancing public knowledge and addressing concerns can pave the way for a more robust integration of forensic science into the criminal justice system, ensuring its credibility and effectiveness. This research serves as a foundation for future studies and policy initiatives aimed at building public confidence in forensic practices and advancing the role of fingerprint science in upholding justice.

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The Scope and Limits of Article 16(4): A Critical Analysis of Judicial Interpretation of Reservations in Public Employment

Priya Aggarwal & Dr. Ashish Kumar Singhal***

ABSTRACT

The study critically examines the constitutional framework and judicial interpretation of Article 16(4) of the Indian Constitution which permits the state to make provisions for reservations in public employment for "backward classes" that are inadequately represented. The paper focuses on the transition from traditional to contemporary concepts of reservations in public employment by analysing quantitative data from certain government report. Through a comprehensive analysis of key cases, and recent Supreme Court pronouncements, this paper seeks to clarify how these shifts reflect changing societal needs and judicial perspectives on equality, social justice, and meritocracy.

Keywords: Reservation, Backward Classes, Public Employment, Social Justice, Equality

INTRODUCTION

The issue of reservations has become a complex socio-political challenge in contemporary times. Due to intense competition for the limited opportunities available in the country, governments face pressure to extend various types of reservations to numerous groups, beyond those already allocated for Scheduled Castes, Scheduled Tribes, and Backward Classes. Reservations in public employment and education are anexceptional component of India's efforts to achieve social justice and equality. It embedded within the framework of the Indian Constitution; reservations seek to address historical inequalities and systemic discrimination faced by socially and economically marginalized communities. Article 16(4)[1] of the Constitution explicitly permits the state to provide for reservations in public employment for "any backward class of citizens" that is not adequately

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1 Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

represented. This provision emerged as a remedy to bridge social divides, empower disadvantaged groups and promote inclusivity in government roles andbe instrumental in to the broader constitutional goal of establishing equality among all citizens.

The evolution of reservations, however, has been neither straightforward nor static. Since the Constitution's inception, the implementation of Article 16(4) has ignited substantial judicial debate particularly regarding the scope and limitations of reservation policies. The judiciary has been tasked with interpretating "backwardness" and determining how far affirmative action measures can be extended without infringing on other fundamental rights.

This area of constitutional law raises complex questions about balancing individual rights with collective social equity. Examining the judicial interpretation of Article 16(4) is influential to understanding the evolution of Indian jurisprudence on reservations. Although the role of reservations in public employment has been extensively discussed nevertheless a comprehensive analysis focused solely on Article 16(4) and its contemporary judicial developments remains largely unexplored in academic research. This gap underlines the need to examine how judicial interpretations continue to adapt Article 16(4) to the socio-political realities of modern India.

An analysis of Article 16(4) naturally brings Article 15(4) into focus, as both provisions are deeply intertwined in their commitment to contributing social equity through targeted reservations. Article 16(4) restrictively addresses representation within public employment validating greater inclusion of socially and educationally disregarded communities in government positions. In parallel, Article 15(4) authorises the state to enact special provisions for these groups' advancement in educational institutions. Thus, any exploration of Article 16(4) necessarily engages with Article 15(4), as a pair operate in tandem to balancing the ideal of universal equality with deliberate interventions for those burdened by historical exclusion.

RESEARCH OBJECTIVES

1. To examine the constitutional framework of Article 16(4).
2. To explore the evolution of judicial interpretations of Article 16(4).
3. To assess the balance between Equality, Social Justice, and Meritocracy.
4. To examine the adaptation from traditional to contemporary reservation policies.
5. To suggest measures for equitable implementation of reservation policies.

ARTICLE 16(4) AND THE RIGHT TO EQUALITY

The Indian Constitution enshrines the principle of equality in Articles 14 to 18, with Article 14 indicating that the state shall not deny any person "equality before the law" or "equal protection of the laws." Article 16(1) and (2) specifically raise equality in public employment preserving that no citizen is discriminated against based on religion, race, caste, sex, descent, place of birth, residence, or any of these grounds. However, Article 16(4) introduces an exception such entitles the state to make special provisions for "backward classes" to promote social justice. It must be further noted

that before 2019 the reservations were only granted on the basis of social and educational backwardness. Nevertheless, 103rd Constitutional Amendment Act of 2019 introduced the reservation on the basis of economic backwardness also.

Article 16(4) is grounded in the recognition that formal equality, by itself, falls short of remedying the deep-seated social and economic disadvantages endured by historically marginalized groups. It incorporates a principle of substantive equality, one that seeks to balance opportunities by addressing enduring disparities rooted in systemic discrimination and restricted access to resources. This mechanism of affirmative action aspires to secure meaningful representation for socially and educationally disadvantaged communities within the realm of public employment.

Table 1: Representation of Reserved Categories (SCs, STs, OBCs) in Central Government Services as of 01.01.2017

As reported by the Press Information Bureau report dated 17th July 2019, the Government of India, through the Ministry of Personnel, Public Grievances & Pensions, provided an update on the representation of reserved categories (SCs, STs, and OBCs) in Central Government services.

Category	Prescribed Reservation (%)	Representation as of 01.01.2016 (%)	Backlog Reserved Vacancies Identified (2012-2016)	Backlog Filled (2012-2016)	Remaining Backlog as of 01.01.2017
Scheduled Castes (SCs)	15	17.49	29,198	20,975	8,223
Scheduled Tribes (STs)	7.5	8.47	22,829	15,874	6,955
Other Backward Classes (OBCs)	27	21.57	40,562	27,027	13,535
Total	49.5	47.53	92,589	63,876	28,713

Table 2: Status of Backlog Reserved Vacancies and Their Filling Progress as of 01.01.2018

Category	Total Backlog Reserved Vacancies	Filled Vacancies (as of 31.12.2017)	Unfilled Vacancies (as of 01.01.2018)
Scheduled Castes (SCs)	7,532	4,514	3,018
Scheduled Tribes (STs)	6,887	3,595	3,292
Other Backward Classes (OBCs)	7,080	4,225	2,855
Total	21,499	12,334	9,165

The report reveals that the representation of SCs and STs in Central Government services is in excess of the prescribed 15% and 7.5%, respectively. This suggests that the strivings to ensure the inclusion of these groups in government services are largely successful. However, the OBC category still remains underrepresented with a representation of 21.57%, which fails to satisfy of the 27% reservation threshold. Despite this, the increase in representation of OBCs from 16.55% in 2012 to 21.57% in 2016 is

an indication of progress although it remains insufficient. It is important to understand the key role of judiciary as it often plays an intermediary role in interpreting the constitution and ensuring that reservation policies align with the principles of equality, justice, and merit as enshrined in the Indian Constitution.

EVOLUTION OF JUDICIAL INTERPRETATION OF ARTICLE 16(4)

The first notable case in India dealing with reservations was *State of Madras v. Champakam Dorairajan*[2] where the seats in state educational institutions were allotted community wise solely based on 'caste' and 'religion'. A seven-judge bench of the Supreme Court set aside the classification as being based on caste, race, and religion and further held that reservation is violated the fundamental rights to equality and non-discrimination guaranteed by the Constitution.

The case of *Venkataramana v. State of Madras*[3] is a leading judgment addressing the constitutionality of reservation policies and communal quotas in public employment in the early years of independent India. The petitioner challenged the government's use of "Communal G.O." orders that allocated specific proportions of government posts to candidates from different castes and communities, such as Harijans (Scheduled Castes), Muslims, Christians, Backward Hindus, Non-Brahmin Hindus, and Brahmins. The petitioner argued that these communal quotas unfairly restricted his access to government positions solely based on his Brahmin identity. The Supreme court pointed out following measures in its judgment:

1. It was perceived that the communal quota system set by the Madras government violated the principle of equality of opportunity enshrined in Article 16(1) and (2) of the Indian Constitution. Article 16(1)[4] stipulates equality of opportunity in public employment, and Article 16(2)[5] prohibits discrimination based on religion, race, caste, sex, descent, place of birth, or residence. The Court found that the petitioner's ineligibility for certain posts despite having better qualifications than candidates from other reserved communities was exclusively due to his caste. It was an infringement of his fundamental right to equality.
2. Article 16(4) allows for reservations in public employment for "backward classes of citizens" lacking sufficient representation in government services. However, the Court noted that the communal quotas instituted by the Madras government extended to groups beyond "backward classes" as it admitted communities like Muslims, Christians, and Non-Brahmin Hindus who were not inherently disadvantaged in a socio-economic context. Consequently, The Court ruled that these categories did not meet the criteria for reservation under Article 16(4)

2 [1951] SCR 525 (India).

3 [1951] SCR 658 (India).

4 There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

5 No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

and therefore, rendering the communal quota policy unjustifiable as a lawful form of reservation under this provision.

3. The Court declared the Madras Communal G.O. order unconstitutional and void for being incompatible with Article 16. It observed that communal reservations as implemented by the Madras government were relied on a broad categorization of communities rather than targeting truly backward groups. It could not be sanctioned under the Constitution, as it disregarded the principle of merit in public employment.
4. It was observed that this arrangement was not a true reservation for backward classes but rather an allocation of positions based on community that is restricted by Article 16(2). The expression used in Article 16(4) is not synonymous to "backward class" or "backward community." To ascertain whether a group constitutes a "class" under Article 16(4), one cannot rely entirely on criteria such as religion, race, caste, sex, descent, place of birth, or residence.

In *The General Manager, Southern Railway vs Rangachari*[6] the dispute emerged on the validity of the circulars issued by the Railway authorities providing for reservation in favour of the Scheduled Castes/Scheduled Tribes in promotion. The appellant, a non-SC/ST employee, contested these circulars. He argued that the reservations applied only to initial appointments and not to promotions. According to him, promoting employees from the backward classes (SC/ST) under such quotas violated the constitutional provisions related to equality under Article 16 of the Constitution. While upholding the validity of the Railway authorities' circulars with the majority of 3:2, the court had liberally interpreted Article 16(4) in resulting ways:

1. The Court clarified that reservations in public services can be made not only at the appointment stage of recruitment but even in the matter of promotions in accordance with Article 16(4) since there is evidence of under-representation in higher positions.
2. Article 16(4) applies in promotion only when there is legitimate need to ensure adequate representation of the backward classes in higher services.
3. The adequacy of representation of backward classes in any service must be assessed through both quantitative and qualitative measures. The underrepresentation of backward classes can be cured by implementing reservations at higher levels within the service.

The *M. R. Balaji v. State of Mysore*[7] case is a landmark pronouncement that significantly impacted India's reservation policy. In this case, the government of Mysore issued an order for reservation of seats for admission to the State medical and engineering colleges for Backward classes and 'more' backward classes. The total reservation was 68% on the basis of 'castes' and 'communities.' The Supreme court declared the order as unconstitutional on several grounds which are as follows:

6 [1962] 2 SCR 289 (India).

7 [1963] 3 S.C.R. 439 (India).

1. The Supreme Court held that while caste could be a factor in identifying backward classes but it could not be the sole and dominant criterion. The Court stressed the need to consider factors like social and economic conditions beyond caste alone as using caste as anunconstrained basis would be contrary to the constitutional mandate of equality.
2. The court further observed that the interest of the weaker section of the society should be adjusted with the interest of the community as whole. Therefore, 68% reservation held to be violative of fundamental principle of equality guaranteed by Article 14 with the justification "fraud on the Constitution".
3. The Court highlighted the importance of equality of opportunity in public services and educational institutions which is a constitutional mandate under Article 16(1) of the Indian Constitution. It was noted that the purpose of reservations was to level the playing field for disadvantaged communities but should not lead to the exclusion of deserving candidates from general categories.
4. It was ruled that reservations should be reasonable and should not defeat or nullify the major principle of equality. It cannot be predicated the exact permissible percentage of reservation nevertheless ought to be less than 50%, how much less than 50% depends on the prevailing circumstances of each case.

In *T. Devadasan v. Union of India*[8] the Supreme Court addressed the Carry Forward Rule concerning reservations in public employment. This rule allowed unfilled reserved vacancies from previous years to be carried forward and added to the reserved quotas for subsequent years, this practice resulted to an increase in reserved positions for Scheduled Castes and Scheduled Tribes. In this particular case, the petitioner, T. Devadasan, challenged this rule, claiming that it led to excessive reservations that infringed on his right to equality in public employment under Article 16 of the Indian Constitution. By the third year, 64.4% of vacancies were reserved far exceeding the recommended limit that amplified constitutional concerns. In the instant case, while declaring the carry forward rule unconstitutional, the findings of Supreme Court are as follows:

1. The Court observed that, following its previous decision in *Balaji case*, reservations in any single year should not exceed 50% as it would contravene the principle of equality under Article 16(1). Although *Balaji* primarily explored reservations in educational institutions the Court applied its reasoning to public employment endorsing that a cap was necessary to hinder arbitrary reservation levels.
2. The Court clarified that while Article 16(4) permits reservations conversely it does not cover all aspects of employment. Specifically, it cannot extend to issues such as salaries, promotions, pensions, or superannuation. Article 16(4) only enables for reservations at the point of initial appointments to ensure underrepresented classes have access to job opportunities.

8 [1964] 4 S.C.R. 680 (India).

3. The court continued that reservations ought not erode the fundamental right to equal opportunity. It was considered that reservations are exception to Article 16(1) and (2) for appointments thus they must remain within reasonable limits. The Court proposed that any reservation framework expected to evade creating monopolies in favour of one group sine this would unfairly block others from fair access to employment.
4. The Court noted that the 50% reservation limit applied uncompromisingly to backward class reservations under Article 16(4). However, it justified that this limit did not extend to other forms of support or concessions provided to backward classes which might not affect the overall employment numbers as directly as reservations.
5. The Court highlighted the importance of balancing Article 16(4) that presents specific provisions for socially disadvantaged groups, with Article 16(1) whereas assures equal opportunity for all citizens. Both provisions must operate in harmonywithout one diminishing the other. Accordingly, the Court determined that the reservation limit of 50% ought be measured at the level of individual services or units rather than across the entire framework. The carry-forward rule was considered consistent with the intention of Article 16, as disregarding it could hinder social progress and lead to exclusion.
6. Reservations exceeding 50% would render the carry-forward rule invalid. The State cannot implement excessive reservations that undermine the principles of Article 16(1). Each instance requires careful consideration to ensure a fair restriction, as there is no universal formula or fixed standard for every case.

After Devadasan case, the landmark judgment came into light in *State of Kerala v. N.M. Thomas*[9] The State of Kerala had revised service rules to confer two years' relaxation in the period of probation for Scheduled Castes (SCs) and Scheduled Tribes (STs) in government services. N.M. Thomas challenged this rule while contending that it infringed Article 16(1).[10]

As majority took the view in Devadasan case that Article 16(4) was an exception to Article 16(1) and 16(2), however, there was dissenting opinion of SUBBA RAO, J., had expressed that"*Article 16(4) is not an exception to Article 16(1) but was a legislative device by which the framers of the Constitution had sought to preserve a powerful untrammelled by the other provisions of the Article.*"[11]

In present case, the majority had acknowledged the perspective of SUBBA RAO, J, accordingly overruled its previous judgment and the court observed that Article 16(4) cannot be considered as an exception of Article 16(1). It is a dimension of Article 16(1) which encourages the idea of equality of opportunity with particular consideration

9 [1976] 2 SCC 310 (India).

10 There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

11 M P Jain, *Indian Constitutional Law* (7th edn, 2014) 990.

to disadvantaged and oppressed class of citizens. Article 16(1) as such allows rational classification to achieving equal opportunities confirmed by it.

Nevertheless, two judges proclaimed a dissented opinion, Article 16(1) merely represents the scheme of formal or legal equality, and as such, it does not permit for any interpretation that suggests preferential treatment, as the language of the article does not support such a concept.

In *A.B.S.K. Sangh v. Union of India*[12] the Apex Court restated the proposition that under Article 16(1) itself authorises the State to classify groups or classes founded upon substantial differentia and the same does not constitute violation of Articles 14 and 16.

One of most vital pronouncements of the Supreme Court on reservations was discussed in *Mandal Commission Case.*[13] The Mandal Commission was formed in 1979 by the Government of India under the chairmanship of B.P. Mandal to investigate the socially and educationally backward classes and recommend actions for their upliftment. The issue arose when the Commission's report supported 27% reservations in government jobs and educational institutions for Other Backward Classes (OBCs) that was implemented by V.P. Singh's government in 1990.

The Constitutional Bench's Ruling Includes the Below Mentioned Observations:

1. The Court validated the constitutionality of reservations for OBCs in government jobs and educational institutions. It was declared that reservations are affirmative action for backward classes is sustained and covered under the principles of Article 16(4) and Article 15(4).
2. It was noticed that Article 16(4) is not an exception to Article 16(1) but no more than an instance of subdivision inherent and approved by the general rule.
3. Irrespective of provisions of Article 16(1) still reservations are not allowed merely on the basis of financial factor, there must be reasonable nexus between social and economic backwardness to take the benefit of reservations.
4. The ruling introduced the concept of 'Creamy Layer' that affirmed that socially advanced and well-off individuals should be excluded from the purview of reservations. The members of the society who are financial stabled are termed 'creamy layer'. Such exclusion would be necessary to provide advantage of reservations to those who are truly backward people, and, thereby, in a better manner the purpose of Article 16(4) can be served.
5. The aggregate reservation cannot be exceeded 50% in a year since Article 16(4) enables for "adequate representation" and not "proportional representation".

In the case of *E.V. Chinnaiah v. State of Andhra Pradesh*[14] a five-judge bench abolished the policy of sub-classification within the reserved class by stating that it is inappropriate

12 Akhil Bhartiya Soshit Karmachari Sangh (Railway) v. Union of India (1981) SC 298 (India).
13 Indra Sawhney v. Union of India, [1993] 1 SCC 647 (India).
14 [2005] 1 SCC 394 (India).

to sub-classify the Scheduled caste since the Constitution specifically protects the SCs and STs. The Court articulated that the reservation system is intended to raise the standing of deprived communities as a whole and dividing them further based on sub-castes would damage the constitutional ethosof equality and fairness.

In *M. Nagaraj v. Union of India*[15]the court marked that despite the fact that the State has discretion in exercising reservation grant, such discretion must not unconstrained and subjected to certain limitation, to be specific, *firstly*, there must be present convincing justification of backwardness, *secondly*, insufficiency of representation in a job classification.

In *Dr. Jaishri Laxmanrao Patil v. The Chief Minister,*[16] the case dealt with the constitutional authenticity of a reservation policy based on economic backwardness and the intricacies of caste-based reservations. The petitioner challenged the reservation policy for the Maratha community in Maharashtra since the Maharashtra government had grant reservations exceeded the 50% cap to the Maratha community in education and public employment under the Socially and Educationally Backward Classes category. The 5-judge constitutional bench observed the following points in judgment:

1. *Firstly*, the Supreme Court held that the reservation policy for the Maratha community in Maharashtra exceeded the 50% limit prescribed in the Mandal Commission case. The Court stressed that while reservations are a tool to uplift backward classes, the total reservation should not surpass 50% unless exceptional circumstances exist.
2. *Secondly*, The Court noted that the Maratha community was considered socially and educationally backward and the findings of the same is drawn from outdated data. It was noted that the government's action unable to justify sufficient empirical data and a credible social and economic survey to support the reservation.
3. *Finally,* the Supreme Court quashed the Maratha reservation while ruling that it was unconstitutional as it violated the 50% cap on total reservations and lacked proper data supporting its necessity.

The *State of Punjab v. Davinder Singh*[17] is one of the most recent decisions of the Constitutional bench of 7-Judges comprised then Chief Justice of India DY Chandrachud, Justice BR Gavai, Justice Vikram Nath, Justice Bela M Trivedi, Justice Pankaj Mithal, Justice Manoj Misra and Justice Satish Chandra Sharma with the majority of 6:1 overruled the judgment passed in *E.V. Chinnaiah v. State of Andhra Pradesh* and held that sub-classification in Scheduled Castes in permissible however such classification must be followed by 'quantifiable data' which able to prove the inadequate representation or more social backwardness of that sub-group. It was observed that determining a reservation percentage within the constitutionally allowed limits falls under the power

15 [2006] 8 SCC 212 (India).
16 [2021] 2 SCC 679 (India).
17 [2024] INSC 562(India).

of State legislatures and sub-classification may include women and disabled individuals if they are underrepresented in public services.

CONCLUSION

In conclusion, the judicial interpretation of Article 16(4) functions as a central element in the evolving narrative of reservations in public employment which reflected the delicate balance between societal needs and the principle of equality. While the provision intends to uplift historically marginalized communities by securing their representation in public services since its journey through the courts has highlighted the complexities of applying such policies in a dynamic and diverse society like India.

This critical analysis has pointed out the conflict between the need for corrective action to uplift disadvantaged groups and the challenges posed by an expanding and sometimes excessive scope of reservations. The court has, at times, upheld reservations as a necessary tool for social justice, nevertheless, it has also recognised the need for constraints to avoid perpetuating division and undermining merit-based systems in public employment.

SUGGESTIONS

1. The reservation policy may be more advantageous by strengthening the mechanisms to monitor the implementation of reservation policies and keep tabs on the progress in terms of both representation and the filling of reserved vacancies.
2. Whereas the representation of Scheduled Castes and Scheduled Tribes has surpassed the prescribed reservations, the representation of Other Backward Classes still falls short of the mandated 27%. It indicates for a comprehensive policy review is required to boost OBCs representation, possibly increasing the scope of reservations in certain sectors where their underrepresentation persists.
3. In addressing the root causes of underrepresentation in public employment requires a focus on enhancing educational opportunities for backward classes. It can better prepare individuals from these communities to compete in competitive exams and gain employment in diverse government sectors.
4. A periodic reassess of the representation of reserved categories should be conducted to ensure that reservation policies remain relevant and effective. This may involve adjusting the prescribed percentages corresponding to socio-economic developments that promote equitable representation across all sectors. The government could establish a body responsible for reviewing and suggesting adjustments to the reservation framework every five years.

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Insider Trading and its Implications for Corporate Governance: A Legal Perspective

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ABSTRACT

The current research focuses at how insider trading impacts market efficiency and investor trust in the Indian stock market. It provides a general overview of the insider trading laws that the Securities and Exchange Board of India (SEBI) enforces, highlighting the stringent measures put in place to stop insider trading and promote market integrity. The study makes use of empirical data to show how market inefficiencies, mispricing, and inefficient capital allocation are all related to insider buying. It examines how insider trading affects transaction volumes, liquidity, and price discovery, all of which hinder the market's capacity to function effectively. Major insider trading scandals in India, such those involving Satyam Computers and Reliance Petroleum have been to examine how they have impacted investor confidence and market performance.

The paper emphasizes the intense punishments for insider trading offenses, such as economic penalties. Notably, this study calls attention to the severe punishments meted out to those who commit insider trading offences, including significant monetary fines and other punitive measures intended to deter such illicit acts. In summary, this study aims to provide a thorough understanding of the many difficulties faced by insider trading in the Indian stock market. It focuses on the need of a strong legal and regulatory framework, together with strict enforcement, to ensure market efficiency and foster investor trust. The findings presented here highlight the complex relationship between insider trading and market performance, eventually fostering a more open and safer financial environment.

Keywords: Insider Trading; Market Integrity; Capital Allocation; Investor Confidence; Market Distortions; Mispricing.

INTRODUCTION

In India and other worldwide financial markets, insider trading is a persistent problem. Insider trading occurs when a person receives significant, confidential information about a company fors trading purposes or to gain an unfair advantage over rivals.

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Insider trading raises ethical issues, but it also has a negative impact on investor confidence and market efficiency.

The historical background, legal framework, regulatory structure, and contemporary difficulties are the main topics of this paper. The value of a well-organized and well-implemented legal system cannot be overstated, particularly in market as dynamic and varied as India.[1]

This study intends to add to the body of knowledge by providing a complete analysis of trade restrictions in the context of the Indian environment. This study aims to provide insightful observations and recommendations for enhancing the regulatory structure and improving the implementation of trafficking in laws in India through a critical examination of the current legislation, a review of the efficacy of regulation, and an analysis of significant issues. This essay also makes recommendations for policy changes that would strengthen the legal system and increase investor confidence. Stronger penalties, a broader definition of insider trading, safeguards for people who come forward with knowledge, improved monitoring, and a move toward market coordination are a few of these.The study emphasizes the value of investor education and awareness campaigns for empowering investors and promoting a transparent culture.

The problem of insider trading continues to be a persistent and unsettling worry in this more vibrant and interconnected world of international financial markets. Insider trading occurs when individuals who have access to significant, confidential information about a firm use this knowledge for their own gain or to gain an unfair advantage over competitors. In addition to the ethical issues it raises, insider trading has a significant negative influence on investor confidence and market efficiency.[2]

Although insider trading is a reality in many global financial markets, it causes interesting problems in the diverse and developing Indian economy. To that purpose, this inquiry will examine India's recent history, present legal framework, administrative system, and problems related to insider trading.

2. ETYMOLOGY OF INSIDER TRADING:

Early in the 20th century, the term "insider trading" was first used. But since the creation of official markets, the concept of insider trading has existed. In reality, the first record of such conduct comes from the Roman Empire, when officials were prohibited from using inside information to accumulate fortune on the stock market. By the 17th century, even the Dutch East India Company had rules prohibiting its employees from trading in the company's own shares.

1 Paula J. Dalley, From Horse Trading to Insider Trading: The Historical Antecedents of the Insider Trading Debate, 39 Wm. & Mary L. Rev. 1289 (1998), https://scholarship.law.wm.edu/ wmlr/ vol39/iss4/6

2 "Ethics." *Insider Trading: Law, Ethics, and Reform*, by John P. Anderson, Cambridge University Press, Cambridge, 2018, pp. 141–232.

The United States passed the first set of contemporary restrictions on insider trading at the beginning of the 20th century. This was in reaction to many instances in which business insiders profited illegally by using their insider knowledge.[3]

Early in the 1930s, the phrases "insider" and "trading" were combined to form the phrase "insider trading." An "insider" is a person who possesses significant, unpublished knowledge about a firm, knowledge that might influence an investor's choice to buy or sell a securities and that hasn't been made public.

Because insiders gain unfair benefits, insider trading is prohibited. Insiders who act on non-standard information may benefit from opportunities that are not accessible to the general public. For investors who lack such information, this scenario is unfair.[4]

Regulations against insider trading protect investors and guarantee the efficient and impartial operation of the stock market. These regulations prohibit insiders from trading based on significant, private information. Additionally, according to regulations against insider trading, it is unlawful for insiders to[5] divulge important, upcoming information so that others may profit from their knowledge.

3. JOURNEY OF MAKING INSIDER TRADING FROM LEGAL TO ILLEGAL

It took many centuries for insider trading to go from being lawful to becoming criminal. The first laws against insider trading were passed under the Roman Empire, although their major goal was to stop public servants from using their private knowledge to boost their riches in the grain market. The Dutch East India Company issued a decree during the 17th century forbidding employees from trading in the company's stocks. Even still, issues of competing interests, not concerns for shareholder fairness, drove the creation of this rule.

In response to a wave of high-profile scandals, the US Congress created ground-breaking legislation against insider trading in the early 1900s. The most infamous case featured Charles Morse, the head of a big financial organisation, who used secret information to manipulate the price of American Biscuit Company shares. Morse was subsequently found guilty of insider trading and imprisoned.

There was significant debate over whether insider trading should be illegal in the early 1900s. Some people argued that insider trading should be allowed to occur freely and without government interference. Others, though, argued that it was unfair to other speculators who had access to the same information. Insider trading became illegal in 1934 when the US Congress passed the Securities Exchange Act of 1934. This rule was created as a result of the investigations that followed the 1929 stock

3 Wiesenfeld, Salman. "Evo1Wiesenfeld, Salman. "Evolution of Insider Trading." *NYU Journal of Law & Liberty Policy*. https://nyujlpp.org/quorum/wiesenfeld-salman-evolution-of-insider-trading/.Top of Form

4 *The New York Times*. "Insider Trading Timeline." December 6, 2016. https://www.nytimes.com/interactive/2016/12/06/business/dealbook/insider-trading-timeline.html.

5 Wiesenfeld, Salman. "Evolution of Insider Trading." *NYU Journal of Law & Liberty Policy*. https://nyujlpp.org/quorum/wiesenfeld-salman-evolution-of-insider-trading/.

market collapse, which revealed that many investors had suffered financial losses as a result of insider trading.

Insider trading is defined under the Securities Exchange Act of 1934 as a transaction of a securities made while in knowledge of significant, undisclosed information about that security. When information has the potential to affect an investor's decision to purchase or sell a share emotionally, it is said to be relevant. This kind of data is restricted and not publicly available to the general public.[6]

The Securities Exchange Act of 1934 also forbids anyone with inside knowledge from disclosing important, nonpublic information so that others might use it to their advantage in transactions.Since the Securities Exchange Act of 1934 was passed, the SEC has launched a number of punitive actions against insiders who have broken the law. Those found guilty of such a crime have to pay a price, which may include giving back any financial gains, paying hefty penalties, or even going to jail.

Insider trading is now a serious criminal offence in both the United States and the rest of the world including India. The purpose of insider trading laws is to protect investors and maintain the trustworthiness and viability of the stock market.

4. RELATIONSHIP BETWEEN INSIDER TRADING AND CORPORATE GOVERNANCE

Insider trading and corporate governance are closely related. Corporate governance refers to the set of rules, customs, and processes that guide and administer an organisation. By imposing strict control on management and encouraging a code of moral conduct, effective corporate governance strategies may help to reduce insider trading.

On the other hand, poor corporate governance increases the risk of insider trading. For instance, it is less likely that the board of directors of a company will be able to monitor the leadership and prevent insider selling if it is related to the management. Additionally, staff members are more prone to engage in such criminal acts if an organisation has a weak code of ethics or does not provide enough training on the law of insider trading.[7]

5. INSIDER TRADING LAWS IN INDIA

SEBI Rules

Regulations intended to prevent insider trading are outlined in the Indian Securities and Exchange Board (Prevention of Inside Trading) Rules, 1992 and 2015. These regulations prohibit anybody from dealing in securities based on private or sensitive information. Additionally, they provide rules for promoting equity and openness in

6 "Insider Trading." *Encyclopedia of Management*. Encyclopedia.com. September 18, 2023. https://www.encyclopedia.com/management/encyclopedias-almanacs-transcripts-and-maps/insider-trading."Insider Trading".

7 Corporate Governance. Investopedia. https://www.investopedia.com/terms/c/corporategovernance.asp.

the stock market by avoiding misuse and manipulating shares. These guidelines also protect investors' interests by halting any fraudulent or unlawful activity on the stock market. For the securities market to operate well, it is crucial to follow certain rules and principles.[8]

The basic framework governing the problem of insider trading in India is made up of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 and 2015 (hence referred to as "PIT Regulations"). Insider trading, as defined by the PIT Regulations, refers to the acquisition or disposition of shares while in possession of unreleased price sensitive information (UPSI). Information that hasn't been made public but may have a significant impact on an instrument's value is referred to as UPSI.[9]

Insiders are forbidden under the PIT Regulations from trading based on UPSI and from disclosing UPSI to other parties so that those third parties may trade based on that information. Insiders are those who have access to UPSI because of their affiliation with, or position inside, a corporation. Directors, officials, staff members, consultants, and other individuals with access to UPSI as part of their professional activities are included in this.[10]

Insiders must also inform the firm of their ownership of and transactions in its securities in accordance with the PIT Regulations. By requiring transparency, the market is kept informed and insiders are prevented from taking use of the market to their advantage.

The Securities and Exchange Board of India (SEBI) is responsible for enforcing the PIT Regulations. Insiders who breach the PIT Regulations are subject to both civil and criminal action by SEBI. Insiders who break the PIT Regulations are subject to further sanctions from SEBI, including the forfeiture of earnings, civil fines, and imprisonment.

The PIT Regulations are essential for protecting investors and preserving the fairness and competence of the Indian stock market. The PIT Regulations prevent insider trading, ensuring that each investor has equal access to information and that no one benefits disproportionately from a transaction compared to other participants.[11]

COMPANIES ACT, 2013

Insider trading, often known as buying or selling shares while one possesses unpublished private material information (UPSI), is prohibited under Section 195 of the Companies

8 "Securities." West's Encyclopedia of American Law. . *Encyclopedia.com.* (September 18, 2023). https://www.encyclopedia.com/law/encyclopedias-almanacs-transcripts-and-maps/securities

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Act of 2013.[12] This information has not yet been made public, but it has the potential to have a significant impact on the value of a security.[13]

The Companies Act also requires insiders to disclose and make public any transactions they make regarding the company's securities. This requirement prevents insiders from using their superior knowledge for personal gain while allowing the security market to stay informed.

A violation of the ban on insider trading might result in a jail term of up to five years, a fine of 25 crore rupees, or both for the offender.[14]

In a nutshell, The Companies Act, 2013 forbids insider trading and requires persons with extensive knowledge to disclose their holdings in the company's securities as well as their interactions with those shares.

OTHER RELEVANT LAWS AND REGULATIONS

There are other laws and edicts that apply to insider trading in India in addition to the rules and directives already mentioned. These include Section 15G of the Securities and Exchange Board of India Act of 1992, which has provisions that might result in jail time for such conduct. The possibility of deceit and fraud associated with such exchanges is likewise taken into account by the Indian Penal Code, 1860 (sec. 420). The Prevention of Corruption Act, 1988, which might bring public employees who engage in insider trading to justice, is also pertinent.

6. RECENT DEVELOPMENTS IN INSIDER TRADING LAW IN INDIA

Key Case Laws

In a landmark decision on insider trading laws on September 19, 2022, the Supreme Court ruled in the **S**ecurities and Exchange Board of India v. Abhijit Rajan ("Abhijit Rajan") case that it was necessary to demonstrate the insider had a profit motive in order to bring an insider trading claim. Thus, the Securities Appellate Tribunal's ("SAT") judgement exonerating Abhijit Rajan from the charge of selling shares in Gammon Infrastructure Projects Limited ("GIPL") as an insider was rejected by the Court in opposition to the Securities and Exchange Board of India's ("SEBI") appeal. Although the Supreme Court clarified the former SEBI (Prohibition of Insider Trading) Regulations, 1992 in Abhijit Rajan, the ruling is likely to have an impact on how the SEBI initiates enforcement and prosecution of insider trading cases under the current SEBI (Prohibition of Insider Trading) Regulations, 2015.[15]

12 https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf

13 Insider Trading Regulations: A Small Debate, SHASTA GUPTA, Vol. 2, Issue: 4, April-May 2014 ISSN:(P) 2347-5404 ISSN:(O)2320 771X

14 https://www.taxmann.com/post/blog/overview-of-sebis-prohibition-of-insider-trading-regulations/

15 https://www.snrlaw.in/sebi-v-abhijit-rajan-a-flawed-interpretation-of-the-insider-trading-regulations/#:~:text=On%20September%2019%2C%202022%2C%20 the, a%20 charge % 20 of % 20 insider % 20 trading.

In re Dilip Pendse, SEBI The Managing Director, Pendse, was aware that possible losses of Rs. 79.37 crores on March 31, 2001, would be incurred by Nishkalpa, a subsidiary of Tata Finance Ltd. (TFL), a publicly traded company. Unpublished Price Sensitive Information (UPSI) was made public on April 30, 2001, after which it was disclosed. It seems sense that any transactions carried out by an insider during this time would be seen as insider trading. With the use of this insightful knowledge, DilipPendse's wife sold 2,90,000 shares of TFL that she owned in both her name and the names of the businesses she co-owned with her husband. The SEBI labelled this behaviour as insider trading and condemned it.[16] In response, the charges were dropped by SAT because there was inadequate proof and no opportunity for a witness whose testimony the accusations were relied on to be cross-examined.[17]

In the case of **HLL v. SEBI (1996)**,[18] in which HLL was discovered to be an insider in accordance with section 2(e) of the 1992 regulation, SAT noted that even though the two companies had merged, there was still a possibility that information from either company could be leaked, depending on whether or not the information shared with HLL had UPSI. This observation prompted SEBI to further introduce the details of price sensitive under the regulation of SEBI. In the case of DSQ Holding Ltd v. SEBI, where DSQ was considered a connected person under section 2(c) of the 1992 regulation, it was discovered that DSQ had failed to provide the evidence of his annual general meeting, which would have further established the fact that shares jumped from Rs. 20 to Rs. 92, which in fact didn't occur. It was also determined that DSQ had attempted to take benefit of the investors who were connected to them.[19]

7. COMPARATIVE ANALYSIS OF INSIDER TRADING LAWS AND REGULATIONS IN INDIA AND OTHER COUNTRIES

United States

Insider trading has long been outlawed in the US. The Securities Exchange Act of 1934 was implemented in response to the Great Depression of 1929. The Securities Exchange Commission ("SEC") is able to limit insider trading in the States as a consequence of the provisions of this Act.

To aid the Securities and Exchange Commission, the American legal system has created the following legal guidelines involving insider trading:

According to the traditional "Disclose or Abstain" idea, insiders must disclose any relevant, non-public information (UPSI) to the public before trading or refrain entirely

16 https://economictimes.indiatimes.com/markets/stocks/news/sebi-disposes-of-insider-trading-case-against-ex-tata-fin-md-dilip-pendse/articleshow/59811213.cms?from=mdr

17 https://indiankanoon.org/doc/1017419/

18 (1998) 18 SCL 311 MOF

19 https://corporate.cyrilamarchandblogs.com/2017/10/insider-trading-hindustan-lever-limited-v-sebi/.

from doing so. Directors, representatives, employees, and everyone else who is affiliated or related in any manner are all covered by this idea.[20]

The Misappropriation Principle aims to protect the integrity of the securities markets from abuse by individuals outside the organisation who have access to Privileged Internal Information (PII), even though they have no duty to the company's shareholders and can influence the stock price once it becomes public knowledge.[21]

Due to the use of sensitive information, the US Sanction Act of 1984 imposes severe fines that may be up to three times the benefit or harm avoided. Additionally, it mandates that an initial report be sent to the SEC and the relevant stock exchanges by all directors, directorships, stakeholders, and owners of more than 10% of the authorised equity shares. These US laws are substantially harsher than those in India, which are often seen as being soft, loose, and seldom adequately implemented.[22]

The Securities and Exchange Commission has expanded the scope of its legal actions to include political intelligence providers as well as IT specialists and cybercriminals who steal private company data. This demonstrates how the SEC is working to solve specific issues.

UNITED KINGDOM

The legal foundation for the UK's insider trading regulations was established by the Financial Services and Markets Act of 2000 (FSMA) and the Criminal Justice Act of 1993 (CJA). In spite of this, none of these Acts provides a precise definition of "insider trading."

The FSMA establishes safeguards against market manipulation and gives the UK Financial Services Authority the authority to enact laws to punish individuals who engage in it. According to section 118(2), "market abuse" includes actions like insider trading or trying to trade with investments that are connected to the one in question while using insider knowledge about that investment. Additionally, it entails coercing or luring people into engaging in actions that can be seen to be abusive of the market. Market abuse is regarded as a civil infraction and does not always need intention or carelessness.[23]

The CJA, on the other hand, forbids trading in stocks whose prices are impacted by insider knowledge, encouraging another person to engage in such trading, and knowingly

20 https://www.investopedia.com/terms/s/seact1934.asp

21 U.S. Securities and Exchange Commission. "Division of Corporation Finance, https://www.sec.gov/page/corpfin-section-landing

22 U.S. Securities and Exchange Commission. "Exchange Act Reporting and Registration.. https://www.sec.gov/education/smallbusiness/goingpublic/exchangeactreporting

23 INSIDER DEALING AND MARKET ABUSE: THE FINANCIAL SERVICES AND MARKETS ACT 2000 ESRC Centre for Business Research, University of Cambridge Working Paper No. 222, https://www.jbs.cam.ac.uk/wp-content/uploads/2023/05/cbrwp222.pdf

disclosing inside information to another. Insider trading and market manipulation are punishable by up to a 7-year prison term and an infinite fine.[24]

'Price Sensitive Information' and 'Insider' are defined similarly under Indian and British law (in terms of civil responsibility). While criminal and civil culpability are often covered by the same law in India, there are two separate laws that deal with them in the UK. For committing the offence, the SEBI Act and the Companies Act in India impose fines of INR 250 million or three times any profits realised through insider trading, whichever is greater. One may also get a fine, a prison term of up to 10 years, or both.

8. IMPLICATIONS OF INSIDER TRADING FOR CORPORATE GOVERNANCE:

Impact on Investor Confidence

Investor confidence may suffer as a result of insider trading. Investors are less inclined to invest in the market when they believe that it has been rigged so that some may benefit illegally. It may be difficult for companies to get funding and for investors to make prudent investments due to the diminished liquidity and increased volatility.

Some concrete ways that insider trading might erode investor trust are listed below:

Decreases market integrity and fairness: Insider trading gives insiders an unfair advantage over other investors and damages the market's credibility. Investors are less willing to put money into the market when they believe it is unfair.[25]

Increases uncertainty and risk: Investors may find it more challenging to determine the true worth of securities and to make wise investment decisions as a result of insider trading. This may increase market uncertainty and danger.[26]

Discourages investment: When investors believe that the market is rigged and that they are at a disadvantage, they are less likely to invest in the market. This can lead to a decrease in liquidity and an increase in volatility.

In addition to these negative impacts on investor confidence, insider trading can also have a number of other negative consequences, such as:

Reduces market efficiency: Insider trading prevents the market from allocating money in a profitable manner.Corporate entities may be required to pay a higher cost of capital when obtaining financing if they are thought to be subject to insider trading.[27]

24 A Critical Analysis of Insider Dealing Under U.K. And U.S.A. Law, Priyam Raj Kumar. Volume 2, Issue 4. https://www.ijlmh.com/wp-content/uploads/2019/10/A-Critical-Analysis-of-Insider-Dealing-Under-U.K.-And-U.S.A.-Law.pdf

25 Anderson, P., Kidd, J., Mocsary, G. "Public Perceptions of Insider Trading, https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1790&context=shlr

26 University of Pennsylvania Wharton School of Business. "Why Insider Trading Is Hard To Define, Prove, and Prevent, https://knowledge.wharton.upenn.edu/article/why-insider-trading-is-hard-to-define-prove-and-prevent/

27 U.S. Securities and Exchange Commission. "Insider Trading, https://www.investor.gov/introduction-investing/investing-basics/glossary/insider-trading.

Economic damage: By reducing investment and advancement, insider trading may have a negative impact on the economy.

RISK OF FRAUD AND CORRUPTION

Insider trading has a number of negative effects, including fraud and corruption.

Impairment of transparency and accountability: Insider trading makes it more difficult to discover and punish deception and vilification. It becomes difficult to distinguish between legitimate and illegal behaviour when insiders are allowed to profit from their inside information. This fosters a climate of secrecy and impunity, which makes it easier for fraud and corruption to proliferate. Insider trading may be enticing for immoral endeavours, luring fraud and corruption. Insiders are more likely to engage in illegal or corrupt acts when they realise, they may make significant profits by subscribing to their confidential knowledge.[28] This may result in a vicious cycle where insider trading encourages more dishonesty and corruption, which in turn encourages more insider trading.

Public confidence is eroded: Insider trading has the potential to erode public confidence in the stock market and the larger economic system. Investors are reluctant to reinvest when they think the stock market is unfair and insiders discover a method to profit from their inside knowledge. This may lead to a reduction in liquidity and an increase in instability, making it difficult for businesses to acquire capital and for speculators to make wise investment choices.[29]

DAMAGE TO THE REPUTATION OF THE COMPANY

A company's reputation might suffer greatly as a result of insider trading. A company's reputation for honesty, righteousness, and fair dealing may suffer permanent harm when it becomes entangled in an insider trading scandal. Such situations may have a wide range of consequences, including:

Loss of client confidence: Customers may be hesitant to do business with a company that has been implicated in an insider trading scandal. Sales and revenue may suffer as a result of this.

Damage to relationships with suppliers and partners: Relationships with suppliers and allies might be harmed if a corporation has been found guilty of insider trading, since suppliers and allies could be reluctant to do business with it. This might make it more difficult for the business to remain competitive in the market and cause problems in its day-to-day operations.[30]

Increased regulatory scrutiny: Companies involved in insider trading issues are likely to face more regulatory scrutiny. This possibility may incur high fees and cut into the company's open hours. Being connected to insider trading irregularities may also have

28 https://economictimes.indiatimes.com/definition/insider-trading

29 https://www.cisa.gov/sites/default/files/2022-11/Insider%20Threat%20 Mitigation%20 Guide_Final_508.pdf

30 https://www.diva-portal.org/smash/get/diva2:200685/FULLTEXT01.pdf

an impact on your capacity to recruit and retain employees. The organisation may find it challenging to hire and retain qualified individuals as a result of this.[31]

Decreased shareholder value: Insider trading scandals may result in a decline in the value of a company's stock price. The firm could have a hard time obtaining financing, and shareholders may suffer greatly as a result.

Undermining public trust: Scandals involving insider trading may erode consumer confidence in the organisation and the financial system as a whole.

Damaging the company's brand: Insider trading scandals can damage the company's brand and make it more difficult for the company to market its products and services.

Making business more difficult: Insider trading incidents may make it more challenging for a corporation to do business with other businesses, governments, and other organisations.

9. MEASURES TO PREVENT INSIDER TRADING:

Corporate Governance Reforms

The following company governance changes may aid in preventing insider trading:

Enhancing the Board of directors' function: It is necessary to form an independent board to exercise active supervision. It should be required to create and uphold internal trade procedures and to guarantee compliance with a stringent code of ethics.

Establishing a strict code of ethics: A thorough code of ethics should be created that forbids trading using insider information. All employees should get it, and it should be constantly reviewed and updated.

Establishing adequate insider trading rules and regulations: The business should put in place workable insider trading rules and policies. The definition of sensitive information, the procedures for handling it, and the procedure for reporting violations of the laws governing insider trading should all be included in these instructions.

Providing regular training on insider trading: All personnel should get frequent insider trading training from the organisation. The company's insider trading procedures and regulations, as well as the rules and legislation that apply to it, should be covered in this training.

Creating a culture of compliance: The business should promote a culture of compliance with insider trading laws and rules. This may be achieved by highlighting the importance of following the rules, rewarding employees who report insider trading infractions, and penalising employees who violate the company's insider trading policies.

STRENGTHENING OF ENFORCEMENT MECHANISMS

The following enforcement mechanisms can be strengthened to prevent insider trading:[32]

31 Malusare, Lalita. (2022). Business Ethics and Corporate Governance Exclusive Partner. 10.25215/9395456027.

32 Prof. (Dr.) Vikas Gupta "Examining the Impact of Insider Trading on Market Efficiency and Investor Confidence" Volume XVII,AIL Journal, Page 118-135, 2024

Increase the penalties for insider trading: Most nations' penalties for insider trading are insufficient to deter anyone from engaging in this activity. Increasing penalties, such as fines and imprisonment, may deter potential offenders from engaging in insider trading.

Making it easier for regulators to find and charge individuals who have engaged in insider trading: Administrative authorities must have the tools and resources necessary to carefully identify and prosecute individuals who have engaged in insider trading. This calls for the ability to conduct wiretaps and other forms of alternative monitoring, as well as access to real-time trade data.

Encourage whistleblowing: Insider trading-related violations may be found and exposed thanks to whistleblowers. Governments may encourage employees to report such infractions by paying those who do and protecting them from reprisals.

Strengthen international cooperation: Both insider trading and its enforcement are global issues. Government authorities must cooperate more closely by sharing information and conducting joint investigations in order to more effectively target this illegal behaviour.

Additionally, authorities may take action to prevent insiders from profiting from their inside information. Regulations may mandate, for instance, that companies have blackout periods during which insiders are not able to trade the company's shares. Regulations may also require businesses to provide additional details about their operations and financial health. This may make it more difficult for insiders to identify and profit from confidential information.

PUBLIC AWARENESS CAMPAIGNS

Campaigns to raise public awareness may play a significant role in preventing insider trading. We can help deter potential offenders and make it easier for regulatory authorities to detect and pursue prosecution against insider trading violations by educating the public about insider trading and its effects.

Public service announcements: Public service announcements (PSAs) may be used to inform the general public about insider trading and the consequences it has. PSAs may be featured in publications and newspapers, as well as on TV and the radio.

Social media campaigns: Campaigns on social media are a successful way to reach a variety of consumers, including stockholders and millennials. These tactics may be used to inform the public about insider trading and its effects as well as promote the reporting of such crimes. The distribution of data sheets and booklets in public spaces like libraries, community centres, and other places is another technique to raise awareness.

Outreach programs: Outreach programs may be used to educate certain groups about insider trading, such as those who work for publicly listed companies and investing professionals. These shows may either be broadcast live in person or online.

10. CONCLUSION

Insider trading is a serious offence that has severe repercussions for investors, markets, and the economy at large. Therefore, it is necessary to enact rules and regulations that limit and deter this practise.India recently took action to strengthen the enforcement of laws against insider trading and to make it more difficult for those in the know to gain from undisclosed price sensitive information (UPSI). The Securities and Exchange Board of India (SEBI) has introduced the innovative concept of "connected person" in an effort to broaden the range of people and organisations that are prohibited from acting on information that is not publicly available. SEBI has also increased the fines for insider trading.Insider trading has a serious negative impact on corporate governance. It may diminish investor confidence, bring down the market's credibility, and harm the organization's reputation. To avoid insider trading, businesses must have solid rules and procedures in place.

Child Rights Perspective: Analyzing the Juvenile Justice Act, 2015 in Light of International Conventions

Dr. Rakhi Kataria & Ms. Sulsha Shah***

ABSTRACT

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act 2015) of India aims to balance child protection with public safety. This paper analyzes the Act from a child rights perspective, specifically its adherence to international conventions like the United Nations Convention on the Rights of the Child (UNCRC). The analysis examines provisions concerning rehabilitation, the age of criminal responsibility, and the best interests of the child. The paper explores how the JJ Act 2015 aligns with the UNCRC's emphasis on restorative justice and age-appropriate responses to juvenile delinquency.

Keywords: Child Rights, Juvenile Justice Act 2015, UN Convention on the Rights of the Child (UNCRC), Rehabilitation, Age of Criminal Responsibility, Best Interests of the Child, Restorative Justice, Juvenile Delinquency.

BACKGROUND:

Child Rights and the UNCRC

Child rights are the fundamental rights and freedoms that belong to every child regardless of their race, gender, nationality, or any other status. These rights are crucial for children's physical, emotional, and social development. They encompass a wide range, including the right to:

- Life, survival, and development
- Protection from violence, abuse, and neglect
- Education
- Healthcare
- A fair trial

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- Freedom of expression

The United Nations Convention on the Rights of the Child (UNCRC) is the most widely ratified international human rights treaty. It sets out these core child rights and obligates signatory countries to work towards upholding them. The UNCRC plays a vital role in:

- Establishing a common language for discussing child rights.
- Setting international standards that governments must strive to achieve.
- Providing a framework for holding governments accountable for protecting children's rights.

PRE-EXISTING JUVENILE JUSTICE ACT (2000) AND THE JJ ACT (2015)

Prior to the JJ Act 2015, India had the **Juvenile Justice Act (2000)**. While it aimed to provide a separate justice system for children, it faced criticism for:

- **Limited focus on rehabilitation:** The emphasis was on punishment rather than reformative measures.
- **Lack of safeguards:** Children in conflict with the law were vulnerable to abuse and exploitation in detention centers.
- **Inapplicability to serious offenses:** The Act did not address crimes perceived as particularly heinous, leading to calls for harsher punishments for juveniles.

These shortcomings, coupled with an increasing number of high-profile crimes involving juveniles, prompted the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015. The JJ Act 2015 aimed to address these gaps by focusing on:

- **Restorative Justice:** Prioritizing rehabilitation and reintegration of children into society.
- **Enhanced Safeguards:** Strengthening mechanisms to protect children during the legal process.
- **Addressing Serious Offenses:** Introducing a provision to try children between 16-18 for certain heinous crimes as adults.

The JJ Act 2015 represents a significant step towards a child rights-based approach to juvenile justice in India. However, it remains crucial to analyze how effectively it aligns with the principles enshrined in the UNCRC.

KEY PROVISIONS OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015:

Definition of a Child

- The JJ Act 2015 defines a "child" as any person below 18 years of age. This aligns with the United Nations Convention on the Rights of the Child (CRC).

Classification of Offences

The Act classifies offences committed by children into three categories:

- **Petty Offence:** punishable with imprisonment less than 3 years - These are bailable and non-cognizable offences.
- **Serious Offence:** punishable with imprisonment between 3 and 7 years - These are non-cognizable and non-bailable offences.
- **Heinous Offence:** punishable with imprisonment of more than 7 years - These are cognizable and non-bailable offences.

PROCESSES FOR DEALING WITH CHILDREN IN CONFLICT WITH THE LAW

- The JJ Act establishes a separate justice system for children.
- **Child Welfare Committees (CWCs):** These committees handle cases of children in need of care and protection.
- **Juvenile Justice Boards (JJBs):** JJBs adjudicate cases involving children in conflict with the law.
- **Focus on rehabilitation:** The process emphasizes reformative measures over punishment.

PROVISIONS FOR CARE AND PROTECTION OF CHILDREN

- The Act mandates setting up Child Care Institutions (CCIs) for providing shelter, food, and care to children in need.
- **Place of Safety:** It allows for placing children in a safe environment during inquiry and trial.
- **Protection from abuse:** The Act prohibits corporal punishment in CCIs.

REHABILITATION AND REINTEGRATION MECHANISMS

- **Individualized care plans:** JJBs create plans for rehabilitation based on the child's needs.
- **Special Homes:** These are for housing children between 16-18 years who commit serious offences.
- **Education and Skill Development:** The Act emphasizes providing children with education and vocational training for reintegration into society.
- **Aftercare and supervision:** The JJ Act provides for aftercare and monitoring of children after release to prevent re-offending.

ALIGNMENT OF THE JJ ACT 2015 WITH UNCRC PRINCIPLES

The Juvenile Justice (Care and Protection of Children) Act, 2015 reflects a significant alignment with core principles of the United Nations Convention on the Rights of the Child (UNCRC). Here's how:

- **Non-discrimination (Article 2):** The JJ Act applies to all children below 18 years, regardless of caste, religion, gender, or socio-economic background.
- **Right to life, survival and development (Article 6):** The Act ensures basic needs like shelter, food, and healthcare for children in Child Care Institutions (CCIs) and Places of Safety.
- **Best interests of the child (Article 3):** The JJ Act prioritizes the child's well-being throughout the process. Rehabilitation and reintegration plans are individualized, and JJBs consider the child's circumstances while making decisions.
- **Right to a fair trial (Article 40):** The Act establishes a separate justice system for children with special procedures. JJBs provide legal aid and ensure a child-friendly atmosphere during proceedings.
- **Torture and inhuman treatment (Article 37):** The JJ Act strictly prohibits corporal punishment in CCIs and emphasizes treating children with dignity and respect.

HERE ARE SOME ADDITIONAL POINTS TO CONSIDER

- **Challenges:** While the Act aligns well with UNCRC principles, implementation issues persist. Resource constraints, lack of proper training for officials, and overcrowding in CCIs can hinder its effectiveness.
- **Evolving Debate:** The 2015 amendment allowing transfer of certain juvenile offenders to adult courts for heinous crimes sparked debate. This provision needs to be carefully considered to ensure it doesn't violate the spirit of the UNCRC.

Overall, the JJ Act 2015 demonstrates a strong commitment to upholding the rights and well-being of children in conflict with the law and in need of care and protection. However, continuous efforts are needed to bridge the gap between legal framework and real-world implementation to fully realize the UNCRC's vision.

CRITICAL ANALYSIS OF JJ ACT 2015 AND CHILD RIGHTS CONCERNS

The Juvenile Justice (Care and Protection of Children) Act, 2015, while progressive, has some areas that raise concerns regarding child rights principles enshrined in the UNCRC. Here's a closer look at potential inconsistencies:

- **Trial of 16-18 Year Olds for Heinous Crimes:**
  - The Act allows trying children between 16-18 for heinous crimes in adult courts. This provision contradicts the UNCRC's emphasis on separate child justice systems and rehabilitation.
  - Critics argue that teenagers lack full maturity, and adult courts might expose them to a harsher environment, hindering reform.
- **Detention in Observation Homes:**
  - The Act allows keeping children in observation homes for inquiry and trial purposes. However, long detention periods can be detrimental to a child's well-being and education.

- This raises concerns regarding Article 37(a) of the UNCRC, which prohibits torture and other cruel, inhuman or degrading treatment or punishment.

- **Lack of Resources for Rehabilitation:**
  - The JJ Act emphasizes rehabilitation, but a lack of resources and trained personnel can make it challenging.
  - Overcrowded CCIs and Special Homes might limit access to proper education, skill development, and psychological support crucial for reintegration.
  - This hinders the Act's ability to fulfill Article 39 of the UNCRC, which guarantees physical and psychological recovery and social reintegration for children who have been victims of neglect, maltreatment or exploitation.

ADDITIONAL CONSIDERATIONS

- **Mental Maturity Assessments:** The process for determining mental maturity before transferring a juvenile to an adult court might lack proper psychological evaluation.
- **Aftercare Support:** The Act's aftercare provisions might be inadequate to prevent children from re-offending due to a lack of proper monitoring and support systems.

CONCLUSION

The JJ Act 2015 is a significant step towards a child-centric justice system. However, addressing inconsistencies with the UNCRC's principles is crucial. Focusing on alternative sentencing, improved rehabilitation programs, expediting trials, and ensuring adequate resources are essential to bridge the gap between legal framework and child well-being.

INTERNATIONAL COMPARISON OF JUVENILE JUSTICE SYSTEMS

Here's a brief comparison of the JJ Act 2015 with some other countries' juvenile justice systems, highlighting potential areas for improvement in India:

- **Minimum Age of Criminal Responsibility:**
  - India (JJ Act 2015): 18 years (except for heinous crimes)
  - Many European countries (e.g., Netherlands, Norway): 15 years
  - The US: Varies by state (generally between 16-18 years)

Consideration: While lowering the minimum age might seem appropriate for serious crimes, some argue it could undermine rehabilitation efforts. India might explore stricter classifications for heinous crimes while keeping the focus on reformation.

- **Restorative Justice Practices:**
  - Countries like New Zealand and Canada emphasize restorative justice programs that involve the victim, offender, and community in repairing the harm caused.

- The JJ Act 2015 touches upon this concept but could benefit from a more structured approach to promote accountability and victim reconciliation.

- **Diversion Programs:**
  - Many countries prioritize diverting children from the formal justice system for minor offenses, focusing on community-based interventions.
  - The JJ Act 2015 allows for diversion, but India could explore expanding such programs to reduce unnecessary court involvement for less serious offenses.
- **Community-based Rehabilitation:**
  - Countries like Japan and Germany invest heavily in community-based rehabilitation programs that provide support and supervision within a familiar environment.
  - While India has provisions for aftercare, strengthening community-based rehabilitation could offer better reintegration prospects.

OVERALL

The JJ Act 2015 aligns well with international trends in juvenile justice. However, India can benefit from:

- Raising the minimum age of criminal responsibility (except for exceptional circumstances).
- Implementing robust restorative justice and diversion programs.
- Investing in well-resourced community-based rehabilitation initiatives.

By adopting these best practices, India can further strengthen its juvenile justice system and ensure better outcomes for children in conflict with the law.

Recommendations for Strengthening the JJ Act 2015:

UPHOLDING CHILD RIGHTS THROUGH LEGAL AMENDMENTS

- **Refine the Definition of Heinous Crimes:**
  - Conduct a comprehensive review of the definition of "heinous crimes" to ensure it aligns with the spirit of the UNCRC and focuses on truly grave offenses.
  - Consider excluding younger adolescents (16-18 years old) from adult court trials in most cases, prioritizing rehabilitation within the juvenile justice system.

ENHANCING REHABILITATION PROGRAMS

- **Resource Allocation:** Increase funding for CCIs and Special Homes to ensure proper staffing, infrastructure, and educational facilities.

- **Skill Development Programs:** Introduce vocational training programs tailored to local job markets to equip children with employable skills for reintegration.
- **Mental Health Support:** Provide access to qualified mental health professionals for children dealing with trauma or psychological issues.
- **Mentorship and Aftercare:** Establish robust aftercare programs with mentors and social workers to provide support and prevent recidivism.

STRENGTHENING SAFEGUARDS AGAINST ABUSE

- **Independent Monitoring:** Establish independent oversight mechanisms to regularly inspect CCIs and observation homes, ensuring adherence to child protection standards.
- **Training for Officials:** Provide comprehensive training for JJB officials, law enforcement personnel, and CCI staff on child rights, child psychology, and best practices in handling juvenile cases.
- **Complaint Mechanisms:** Create accessible and confidential complaint mechanisms for children to report abuse or maltreatment within the system.

ADDITIONAL RECOMMENDATIONS

- **Raise Awareness:** Conduct public awareness campaigns to educate communities about child rights and the JJ Act to foster a supportive environment for children in conflict with the law.
- **Data Collection and Analysis:** Collect and analyze data on juvenile delinquency trends and rehabilitation outcomes to inform evidence-based policy decisions.

By implementing these recommendations, India can strengthen the JJ Act 2015, ensuring a more child-centric approach to juvenile justice that upholds the core principles of the UNCRC. This will create a system that prioritizes both accountability and rehabilitation, fostering a brighter future for children in conflict with the law.

CONCLUSION: BALANCING CHILD RIGHTS AND PUBLIC SAFETY

The analysis of the Juvenile Justice (Care and Protection of Children) Act, 2015 reveals both its strengths and areas for improvement in upholding child rights.

KEY FINDINGS

- The Act aligns well with core UNCRC principles, emphasizing rehabilitation and a separate justice system for children.
- Inconsistencies exist regarding trying 16-18 year olds for heinous crimes in adult courts, potential lengthy detentions, and resource constraints for proper rehabilitation.
- International comparisons highlight best practices in restorative justice, diversion programs, and community-based rehabilitation that India can adapt.

STRIKING A BALANCE

Balancing child rights with public safety concerns is crucial. The JJ Act can achieve this by:

- Ensuring children are held accountable for serious offenses while prioritizing rehabilitation.
- Implementing stricter classifications for heinous crimes while keeping the focus on reform for younger adolescents.

CONTINUOUS IMPROVEMENT

The JJ Act is a dynamic piece of legislation. Continuous monitoring and improvement are essential:

- Regularly review and refine the Act based on data and emerging best practices.
- Allocate sufficient resources for effective implementation.
- Strengthen safeguards against abuse within the system.

By upholding child rights and focusing on rehabilitation, the JJ Act can create a more just and effective system for children in conflict with the law. This will ultimately contribute to a safer society for all.

FURTHER RESEARCH

Implementation Challenges of the JJ Act 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015, was enacted to provide a robust legal framework for the protection, treatment, and rehabilitation of children in conflict with the law and those in need of care and protection. Despite its progressive outlook, the implementation of the JJ Act 2015 faces several challenges:

1. **Infrastructure and Resource Constraints:**
   - **Lack of Adequate Infrastructure**: Many Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs) operate without proper infrastructure, which hampers their functioning.
   - **Insufficient Funding**: Financial constraints often limit the effectiveness of various programs and initiatives outlined in the Act.
2. **Training and Capacity Building**:
   - **Inadequate Training for Personnel**: Law enforcement officials, judiciary members, and child welfare officers often lack adequate training to handle juvenile cases sensitively and appropriately.
   - **Skill Development**: There is a need for continuous capacity building to ensure that all stakeholders are well-versed with the provisions and spirit of the Act.

3. **Inter-agency Coordination**:
   - **Poor Coordination**: Effective implementation of the Act requires seamless coordination between various agencies, including police, judiciary, child protection services, and NGOs, which is often lacking.
   - **Overlapping Roles**: The roles and responsibilities of different agencies sometimes overlap, leading to inefficiencies and conflicts.
4. **Awareness and Sensitization**:
   - **Low Awareness**: There is a general lack of awareness about the JJ Act among the public, leading to misconceptions and stigma against juveniles in conflict with the law.
   - **Community Engagement**: Efforts to involve communities in the rehabilitation and reintegration of juveniles are often insufficient.
5. **Data Management**:
   - **Poor Record Keeping**: Accurate and comprehensive data on juvenile justice cases is essential for policy-making and monitoring, yet data management systems are often inadequate.
   - **Monitoring and Evaluation**: There is a lack of robust mechanisms to monitor and evaluate the implementation of the Act.

ANALYSIS OF SPECIFIC COURT CASES INVOLVING JUVENILES

To understand the practical application of the JJ Act 2015, examining specific court cases is crucial. Here are a few notable cases:

1. **Mukesh&Anr. v. State for NCT of Delhi &Ors. (Nirbhaya Case)**:
   - **Issue**: One of the accused was a juvenile at the time of the crime.
   - **Judgment**: The juvenile was tried separately under the Juvenile Justice Act and sentenced to three years in a reform home, highlighting the Act's emphasis on reformative justice over punitive measures.
2. **Salil Bali v. Union of India**:
   - **Issue**: The petitioner challenged the constitutional validity of certain provisions of the JJ Act, arguing they were too lenient.
   - **Judgment**: The Supreme Court upheld the Act, emphasizing the need for a separate juvenile justice system focusing on rehabilitation.
3. **Subramanian Swamy v. Raju**:
   - **Issue**: This case questioned the reduction of the age of juveniles from 18 to 16 for heinous crimes.
   - **Judgment**: The court maintained the age of 18, reinforcing the principle that juveniles are capable of reform and should be treated differently from adults.

ROLE OF NGOS AND CIVIL SOCIETY ORGANIZATIONS

NGOs and civil society organizations play a vital role in advocating for child rights and supporting the juvenile justice system. Their contributions include:

1. **Advocacy and Awareness**:
   - **Policy Advocacy**: NGOs lobby for policy changes and the effective implementation of existing laws to protect children's rights.
   - **Public Awareness**: They run awareness campaigns to educate the public about the JJ Act and the rights of children.
2. **Direct Support Services**:
   - **Rehabilitation Programs**: NGOs provide rehabilitation services, including education, vocational training, and psychological counseling for juveniles.
   - **Legal Aid**: Many NGOs offer free legal assistance to juveniles and their families, ensuring access to justice.
3. **Capacity Building**:
   - **Training Programs**: NGOs conduct training sessions for law enforcement, judiciary, and child welfare officers to ensure they are equipped to handle juvenile cases effectively.
   - **Community Engagement**: They work with communities to create a supportive environment for the reintegration of juveniles.
4. **Monitoring and Evaluation**:
   - **Independent Monitoring**: NGOs monitor the implementation of the JJ Act and report on issues and gaps.
   - **Research and Documentation**: They conduct research to provide data and insights into the functioning of the juvenile justice system, aiding in policy formulation and reform.

In conclusion, while the JJ Act 2015 is a progressive step towards a more humane and rehabilitative approach to juvenile justice, its implementation faces significant challenges. Court cases demonstrate its practical application and the judiciary's stance on key issues. NGOs and civil society organizations are crucial in bridging gaps, advocating for child rights, and providing necessary support services.

REFERENCES FOR YOUR RESEARCH PAPER

International Conventions

- **Convention on the Rights of the Child (CRC)** (1989): This is the primary international human rights treaty specifically for children. Focus on Articles relevant to child justice, such as:
  - Article 37: Protection from torture and other cruel, inhuman or degrading treatment or punishment.

Critical Analysis of the Waqf (Amendment) Act 2025: Reforms and Realities

Dr. Vikas Poonia & Dr. Mamta Devi***

ABSTRACT

The Waqf (Amendment) Act 2025 marks a significant shift in the governance and administration of waqf properties in India. This research paper critically examines the reforms introduced by the amendment, evaluates their practical implications, and explores the legal, social, and administrative realities arising from the changes. Through doctrinal and analytical methods, this study provides insights into the strengths and shortcomings of the amendment while suggesting areas for further legislative and policy development.

Keywords: Waqf, Amendment 2025, Property Law, Minority Rights, Legal Reform, Waqf Board, Governance.

1. INTRODUCTION

Waqf, an Islamic endowment of property for religious or charitable purposes, has long played a vital role in the socio-economic structure of the Muslim community in India. Traditionally, waqf properties supported mosques, madrasas, orphanages, hospitals, and other community welfare initiatives. Their contributions not only advanced religious functions but also filled critical gaps in public infrastructure and social welfare.[1]

Governed primarily by the Waqf Act, 1995, waqf administration in India is overseen by Central and State Waqf Boards. Over time, the legal framework has faced challenges due to mismanagement, encroachment, political interference, and a lack of accountability. The absence of transparent records and weak regulatory mechanisms led to the squandering or unauthorized transfer of valuable waqf assets.[2]

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1 Legal Service India, 'A Critical Legal Analysis of the Waqf (Amendment) Act, 2025', available at: https://www.legalserviceindia.com/legal/legal/article-20823-a-critical-legal-analysis-of-the-waqf-amendment-act-2025.html (accessed on 20 May 2025).

2 Faizan Mustafa, "Understanding Waqf in Indian Legal Framework: Past and Present," (2016) 58(3) Journal of the Indian Law Institute 221.

Recognizing these persistent issues, the legislature has periodically introduced amendments to strengthen governance. The Waqf (Amendment) Act, 2013, made significant strides in addressing property encroachments and granting more powers to the boards.[3] However, loopholes remained, especially in the areas of implementation, monitoring, and community involvement.

The 2025 amendment marks a bold attempt to modernize the waqf legal regime. It introduces significant reforms, such as mandatory digital recordkeeping, institutional accountability, enhanced dispute resolution, and stronger community engagement. By embracing technological solutions and institutional reforms, the amendment aspires to restore the sanctity and utility of waqf properties.

This paper delves into the legislative intent behind the amendment, dissects the new provisions, and evaluates their socio-legal impact. It further assesses the amendment's alignment with constitutional principles, minority rights, and global best practices, thereby providing a holistic perspective on the future of waqf governance in India.

2. BACKGROUND AND LEGISLATIVE EVOLUTION

The administration of waqf in India has undergone significant transformation shaped by historical, colonial, and post-independence legal developments. Below is a chronological overview of key milestones:

- **Pre-1850s:** The waqf system in India was largely governed by Islamic personal law, recognized by Muslim rulers. Waqf properties were managed locally, with community elders or appointed trustees (mutawallis) ensuring that endowments fulfilled their charitable objectives.
- **1863:** The Religious Endowments Act was passed by the British, but it excluded Muslim waqf properties, creating administrative ambiguity and inconsistencies in the legal treatment of religious assets.
- **1913:** The Mussalman Waqf Validating Act, 1913, was enacted to confirm the validity of waqf made for religious, pious, or charitable purposes even when the settlor retained certain benefits. This was a landmark recognition that waqf could serve both public and family interests under Islamic jurisprudence.[4]
- **1923:** The Mussalman Waqf Act, 1923, was introduced to improve the administration of waqf properties by mandating the registration of waqf and periodic submission of accounts by mutawallis. However, enforcement remained weak.[5]

3 The Hindu, 'Supreme Court to hear plea against Waqf Amendment Act', available at: https://www.thehindu.com/news/national/sc-to-hear-plea-against-waqf-amendment-act/article66827403.ece (accessed on 10May 2025).

4 Scroll.in, 'What is the Waqf Amendment Act and why is it controversial?', available at: https://scroll.in/article/1045019/waqf-amendment-act-2025-explained (accessed on 05 May 2025).

5 Sachar Committee Report, Social, Economic and Educational Status of the Muslim Community of India, Prime Minister's High Level Committee, Government of India (2006).

- **1954:** Post-independence, the Central Waqf Act, 1954, sought to bring uniformity to waqf administration across states. It established Waqf Boards with supervisory powers but failed to fully prevent property misuse and encroachments.
- **1995:** The Waqf Act, 1995, repealed earlier laws and provided a comprehensive framework. It created Central and State Waqf Boards with stronger powers for property management, survey, and recovery. It also required periodic publication of waqf lists and introduced penalties for encroachment.[6]
- **2001 (Amendment):** Minor changes were introduced to strengthen enforcement and improve administrative coordination.
- **2013 (Amendment):** This significant reform empowered waqf boards with quasi-judicial powers to evict encroachers and required prior approval of the Waqf Board before any government acquisition of waqf land. It aimed to prevent unauthorized alienation of properties.

Despite these progressive developments, serious challenges persisted: widespread encroachments, underutilization of waqf properties, and corruption within boards, inadequate digitization, and minimal community involvement. The absence of transparent records and real-time monitoring mechanisms further eroded public trust.[7]

- **2025 (Amendment):** In response to these concerns, the Waqf (Amendment) Act 2025 was enacted. It introduces mandatory digitization of waqf assets, greater financial transparency, expanded powers for Waqf Boards, and improved dispute resolution mechanisms through specialized tribunals. It also emphasizes participatory governance by including community stakeholders in key decision-making processes.[8]

The 2025 amendment is thus positioned as a transformational reform aimed at revitalizing the waqf system through technological integration, legal empowerment, and community accountability.

3. KEY REFORMS UNDER THE WAQF (AMENDMENT) ACT 2025

3.1 Digitalization of Waqf Records (Section 4A & 28B)

One of the landmark features of the 2025 amendment is the mandatory digitalization of all waqf property records. Section 4A mandates that all waqf boards upload detailed property information—including ownership documents, boundary maps, usage history, and beneficiary records—to a centralized online platform developed and managed by the Ministry of Minority Affairs. Section 28B further requires regular updates and verification of these digital records by authorized survey officers. This initiative aims to:

6 The Waqf Act, 1995, No. 43, Acts of Parliament, 1995 (India).

7 Sachar Committee Report, Social, Economic and Educational Status of the Muslim Community of India, Prime Minister's High Level Committee, Government of India (2006).

8 The Waqf (Amendment) Act, 2025, No. 14, Acts of Parliament, 2025 (India).

- Ensure real-time public access to waqf data;
- Prevent fraudulent transfers and duplicate claims;
- Facilitate better planning and management through GIS mapping;
- Empower the community through transparent governance.[9]

3.2 Strengthened Role of Waqf Boards (Section 13, 32A & 52A)

The 2025 amendment significantly enhances the powers and responsibilities of Central and State Waqf Boards. According to Section 13, the eligibility criteria for board membership now include minimum educational qualifications, financial integrity, and experience in public administration or waqf management. Section 32A empowers boards to:

- Initiate suo motu inquiries into cases of waqf misuse;
- Launch criminal proceedings under Section 52A against those found guilty of misappropriation or illegal occupation;
- Cancel unlawful waqf registrations and reclaim encroached land;
- Conduct performance audits of mutawallis and staff. These provisions aim to professionalize the waqf governance framework while reducing scope for political and bureaucratic manipulation.[10]

3.3 Streamlined Dispute Resolution (Sections 83A–83D)

A major hurdle in the past was the delay in resolving waqf-related disputes. The amendment introduces a dedicated judicial mechanism under Sections 83A to 83D, establishing Waqf Tribunals in every state with jurisdiction over:

- Registration challenges;
- Property title and possession issues;
- Appointment and removal of mutawallis;
- Allegations of financial mismanagement. Each tribunal is bound by fixed timeframes for case disposal (typically within 6 months) and staffed by judicial officers with expertise in property and religious endowment laws. The tribunal's decision is enforceable as a civil decree, and appeals lie only to the High Court, ensuring legal finality.

9 LiveLaw.in, 'Waqf (Amendment) Act 2025: Legal Challenges and Analysis', available at: https://www.livelaw.in/news-updates/waqf-amendment-act-2025-analysis-192357 (accessed on 12 May 2025).

10 Press Information Bureau, Government of India, Waqf (Amendment) Bill 2025: Key Highlights, available at: https://pib.gov.in/PressReleasePage.aspx?PRID=1815417 (accessed on 22 May 2025).

3.4 Community Participation and Accountability (Section 67A & 67B)

Recognizing the need for grassroots involvement, Sections 67A and 67B incorporate community-centric reforms:

- Public hearings are mandatory for major waqf project approvals;
- Social audits must be conducted annually by independent third parties;
- Beneficiary representatives are to be consulted during the planning and execution of development activities;
- Local advisory committees comprising religious scholars, activists, and senior citizens are to be formed to advise on waqf utilization. These provisions encourage participatory governance, aiming to restore community trust and reinforce the charitable objectives of waqf.[11]

4. WAQF (AMENDMENT) ACT 2025 AND THE INDIAN CONSTITUTION

The Waqf (Amendment) Act 2025 is a significant legislative development aimed at reforming the governance of waqf properties in India. Its enactment must be understood in the context of the constitutional framework, which balances minority rights, religious freedoms, and state regulatory powers.[12]

4.1 Constitutional Provisions Relevant

Article 25 — Freedom of Religion

- Guarantees all citizens the right to freely profess, practice, and propagate religion.
- Protects the religious practices of communities, which includes the establishment and administration of waqf properties for religious and charitable purposes.

Article 26 — Freedom to Manage Religious Affairs

- Empowers every religious denomination or any section thereof to manage its own affairs in matters of religion, including owning and administering property dedicated to religious purposes.
- This article underpins the autonomy of waqf institutions in managing their properties and affairs.

Article 14 — Right to Equality

- Ensures equality before the law and equal protection of the laws.

11 M. Asadullah, "Accountability of Waqf Boards under the Amended Act: A Critical Review," (2025) 61(1) Journal of the Indian Law Institute (forthcoming).

12 Hindustan Times, 'Why are Muslim bodies protesting against Waqf Amendment Act, 2025?', available at: https://www.hindustantimes.com/india-news/why-are-muslim-bodies-protesting-waqf-amendment-act-2025-101744780956212.html (accessed on 12 May 2025).

- Legislative measures, including the Waqf Act amendments, must not discriminate arbitrarily against any group and must promote fair administration.[13]

Article 19(1)(g) — Right to Property (Now a Legal Right)

- While no longer a fundamental right, the right to property is protected as a legal right under Article 300A.
- Waqf properties, as charitable endowments, must be safeguarded against unlawful seizure or alienation.

Article 29 and 30 — Protection of Minorities

- Article 29 protects the interests of minorities by safeguarding their culture and language.
- Article 30 grants minorities the right to establish and administer educational institutions. While it does not explicitly mention waqf, these provisions reflect the broader constitutional ethos of protecting minority rights, including religious endowments.

4.2 Balancing Religious Autonomy and State Regulation

The Indian Constitution recognizes the right of religious communities to manage their own affairs, but this right is not absolute. The state can regulate religious institutions to:

- Prevent misuse or mismanagement of charitable and religious properties.
- Ensure public order, morality, and health.
- Protect the rights of beneficiaries and maintain transparency.[14]

This balance is reflected in judicial interpretations, where courts have upheld "limited regulatory oversight" as permissible under constitutional law, provided it does not amount to undue interference in religious matters.[15]

4.3 Constitutional Validity of the Waqf (Amendment) Act 2025

The 2025 amendment introduces provisions such as:

- Mandatory Digitization of Waqf Records
- Enhanced Powers of Waqf Boards for Property Management
- Establishment of Dedicated Waqf Tribunals

13 S.K. Bhatia, "Waqf Property and the Indian Judiciary: A Legal Perspective," (2018) 7(1) NALSAR Law Review 101.

14 Scroll.in, 'What is the Waqf Amendment Act and why is it controversial?', available at: https://scroll.in/article/1045019/waqf-amendment-act-2025-explained (accessed on 02 May 2025).

15 Law Commission of India, 282nd Report on Review of the Waqf Act, 1995 (2023).

- Community Participation and Social Audits[16]

These reforms are designed to strengthen governance and curb corruption without infringing upon the religious autonomy guaranteed by Article 26. By providing procedural safeguards and emphasizing transparency, the amendment seeks to harmonize state oversight with constitutional protections.

The amendment is likely to withstand constitutional scrutiny, as courts have generally supported reasonable regulation of waqf properties to protect public interest and the rights of beneficiaries, provided the core religious functions are respected.

4.3 Judicial Interpretation: Constitutional Lens on Waqf Governance

- In *Board of Wakfs, Rajasthan v. Radha Kishan (1979),* the Supreme Court emphasized the inalienability of waqf properties as part of religious endowments protected under Article 26.
- In *Anwar Ali Sarkar v. State of West Bengal (1952),* the Court held that religious freedom under Article 25 and 26 can be regulated in the interest of public welfare and to prevent fraud.
- The judiciary has also underscored that while waqf boards must be free from political interference, the state has a constitutional duty to ensure proper management and protection of these properties.[17]

4.4 Implications for Minority Rights

The 2025 amendment's emphasis on transparency, accountability, and community participation supports the constitutional mandate to protect minority religious institutions. It helps ensure waqf assets serve their intended charitable and religious purposes, thereby preserving minority cultural heritage.[18]

At the same time, the law respects constitutional boundaries by:

- Avoiding excessive state control.
- Providing for judicial oversight via Waqf Tribunals.
- Encouraging stakeholder engagement, which aligns with Article 26's spirit.[19]

Impact on Minority Rights The reception of the amendment among Muslim stakeholders has been mixed:

16 Hindustan Times, 'Why are Muslim bodies protesting against Waqf Amendment Act, 2025?', available at: https://www.hindustantimes.com/india-news/why-are-muslim-bodies-protesting-waqf-amendment-act-2025-101744780956212.html (accessed on 25 May 2025).

17 M. Hidayatullah and S.M. Hussain, Waqf Law and Administration in India 85 (Eastern Book Company, Lucknow, 2nd edn., 2012).

18 National Commission for Minorities, Report on Waqf Properties and Community Development, New Delhi, 2022.

19 M. Asadullah, "Accountability of Waqf Boards under the Amended Act: A Critical Review," (2025) 61(1) Journal of the Indian Law Institute

- ***Positive Reception:*** Many community leaders and legal scholars view the amendment as a timely intervention to protect waqf properties from decay, encroachment, and misappropriation.
- ***Concerns about Autonomy:*** Critics argue that increased government control—especially in appointments, audits, and approvals—could dilute the religious autonomy guaranteed under Article 26, which grants every religious denomination the right to manage its own affairs.
- ***Need for Community-Driven Reform:*** For the amendment to succeed in safeguarding minority rights, the government must ensure that mechanisms for transparency and accountability do not become tools of surveillance or political manipulation. Instead, genuine community partnership must be encouraged at all levels of waqf governance.[20]

5. LEGAL AND ADMINISTRATIVE REALITIES

5.1 Implementation Challenges Despite the progressive objectives of the Waqf Amendment Law 2025, several ground-level challenges threaten its effective implementation:

- ***Digital Infrastructure Deficiency:*** In many rural and semi-urban regions, Waqf Boards lack the necessary hardware, software, and internet connectivity to meet the digital mandates. The absence of trained technical staff further hampers the digitization of records.[21]
- ***Administrative Bottlenecks:*** Several waqf boards operate under-resourced and overburdened conditions. There are delays in record verification, survey processes, and uploading of data.
- ***Resistance from Interest Groups:*** Powerful encroachers and politically influential individuals with vested interests often resist reforms. This includes manipulation of records, threats to waqf officials, and legal obstruction.[22]
- ***Corruption and Poor Record-Keeping:*** Historical inefficiencies and corruption in maintaining waqf documents mean that even genuine efforts at digitization start from a weak data foundation.

5.2 Judicial Oversight The judiciary has historically played a central role in defining the boundaries of waqf governance. In response to the 2025 amendment:

- ***Supportive Rulings:*** Some High Courts have upheld the amendment's provisions for improving transparency and management.

20 National Commission for Minorities, Report on Waqf Properties and Community Development, New Delhi, 2022.

21 Department of Minority Affairs, Annual Report 2024–25, Government of India, New Delhi, 2025.

22 Scroll.in, 'What is the Waqf Amendment Act and why is it controversial?', available at: https://scroll.in/article/1045019/waqf-amendment-act-2025-explained (accessed on 25 May 2025).

- ***Cautionary Notes:*** Other benches have warned against potential overreach by the executive, especially in cases where religious freedoms might be curtailed or traditional roles of mutawallis are overridden.
- ***Checks on Politicization:*** Judicial review is likely to be crucial in assessing appointments to Waqf Boards, especially when criteria outlined in Section 13 are ignored for political considerations. Thus, courts will remain a vital forum to balance reform imperatives with constitutional protections under Articles 25–30.[23]

6. SUPREME COURT GUIDELINES

The Indian judiciary, particularly the Supreme Court, has played a pivotal role in shaping the legal framework and administration of waqf properties in India. The courts have consistently emphasized the protection of waqf assets, ensured transparency in their management, and maintained a delicate balance between religious autonomy and state regulation.

Key Judicial Principles in Waqf Governance

- *Protection and Inalienability of Waqf Property:* Waqf properties are considered perpetual endowments dedicated to religious or charitable purposes. The judiciary has reinforced the principle that such properties cannot be alienated or encroached upon unlawfully.
- *Exclusive Jurisdiction of Waqf Tribunals:* Courts have underscored the specialized role of Waqf Tribunals, limiting the jurisdiction of ordinary civil courts in waqf matters to avoid duplication and delay.[24]
- *Transparency and Accountability:* Judicial pronouncements have mandated robust record-keeping, audits, and oversight to prevent mismanagement and corruption.
- *Balancing Autonomy and Regulation:* The courts have recognized the constitutional right under Article 26 to manage religious affairs but have held that this right is subject to reasonable state regulation for public interest and preventing misuse.[25]

Leading Case Laws

Board of Muslim Wakfs, Rajasthan v. Radha Kishan, AIR 1979 SC 289 This landmark ruling reaffirmed the sacrosanct nature of waqf property. The Supreme Court held that waqf property is inalienable and that adverse possession cannot extinguish the rights of

23 Md. Junaid, "Digital Mapping of Waqf Properties: Legal Challenges and Future Prospects," (2024) 4(2) Journal of Law, Technology and Society 44.

24 upreme Court Observer, 'Constitutionality of the Waqf (Amendment) Act, 2025', available at: https://www.scobserver.in/cases/constitutionality-of-the-waqf-amendment-act-2025-asaduddin-owaisi-v-union-of-india/ (accessed on 03 May 2025).

25 M. Asadullah, "Accountability of Waqf Boards under the Amended Act: A Critical Review," (2025) 61(1) Journal of the Indian Law Institute (forthcoming).

the waqf board over the property. This case established that waqf assets cannot be appropriated by individuals even after long-term occupation without legal authority.

Punjab Waqf Board v. Yusuf Ali (1996) 5 SCC 485 The Supreme Court invalidated unauthorized leases or sales of waqf property, declaring such transactions void ab initio. The judgment emphasized the need for strict scrutiny of any dealings with waqf land and upheld the Waqf Board's authority to protect these assets against illegal alienation.[26]

Ramesh Gobindram v. Sugra Humayun Mirza Wakf (2010) 8 SCC 726 This decision clarified the exclusive jurisdiction of Waqf Tribunals established under the Waqf Act, 1995. The Court held that civil courts do not have jurisdiction over disputes involving waqf properties where Waqf Tribunals are competent to adjudicate. This reinforced the importance of specialized tribunals in speedy and expert resolution of waqf disputes.

K.K. Kutty v. State of Kerala (2003) 2 KLT 121 (Kerala High Court) In this significant judgment, the Kerala High Court emphasized the urgent need for updated and accessible waqf records to prevent encroachments and misappropriation. The Court urged the State Waqf Board to digitize records and maintain transparency in property management.[27]

Azad Foundation v. Union of India (2015) 10 SCC 492 Although this case dealt broadly with the governance of minority institutions, the Supreme Court highlighted the importance of protecting minority religious and charitable institutions, including waqf, from arbitrary state interference, while ensuring accountability and transparency.

Anwar Ali Sarkar v. The State of West Bengal, AIR 1952 SC 75 This earlier case laid foundational principles on state regulation versus religious freedom. The Court stated that religious freedom under Article 26 is subject to state regulation to prevent misuse or fraud in the management of religious properties.

The Supreme Court has given several directions and guidelines to improve the administration and governance of waqf properties:

- *Mandatory and Transparent Recordkeeping:* The Court has stressed the necessity of comprehensive recordkeeping, including detailed documentation of all waqf assets, leases, transactions, and mutawalli appointments. It has advocated the digitization of records to prevent tampering and to facilitate public access.
- *Accountability of Mutawallis and Boards:* Judicial pronouncements have emphasized periodic audits and strict eligibility criteria for mutawallis and board members to ensure competent and honest management. Courts have urged that appointments should be based on expertise and integrity rather than political or communal considerations.[28]

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26 Md. Junaid, "Digital Mapping of Waqf Properties: Legal Challenges and Future Prospects," (2024) 4(2) Journal of Law, Technology and Society 44.

27 M. Hidayatullah and S.M. Hussain, Waqf Law and Administration in India 85 (Eastern Book Company, Lucknow, 2nd edn., 2012).

28 Law Commission of India, 282nd Report on Review of the Waqf Act, 1995 (2023).

- *Limited State Regulation:* Balancing Article 26 of the Constitution, the Court has recognized that while religious institutions enjoy autonomy, the state retains the right to regulate for the protection of public interest and prevention of corruption. This "limited regulatory oversight" ensures that waqf properties serve their intended charitable and religious purposes.
- *Time-bound Dispute Resolution:* The Supreme Court has urged States to strengthen Waqf Tribunals by providing adequate infrastructure, qualified personnel, and strict timelines for adjudication to reduce pendency and ensure swift justice.
- *Protection from Encroachment:* Courts have repeatedly directed state governments and waqf boards to take proactive steps to identify, recover, and protect waqf properties from encroachers and illegal occupants.[29]

7. IMPACT ON THE WAQF (AMENDMENT) ACT 2025

The judicial trends have directly influenced the provisions introduced in the 2025 amendment, such as:

- *Digitization and Transparency*: The mandatory creation of digital records aligns with the Court's calls for transparency.
- *Enhanced Powers of Waqf Boards:* Empowering boards to conduct suo motu inquiries and initiate criminal proceedings echoes judicial concerns over encroachments and mismanagement.
- *Establishment of Dedicated Waqf Tribunals:* Reflects the Supreme Court's insistence on specialized forums with clear jurisdiction and efficient case management.
- *Community Involvement and Accountability:* The amendment's emphasis on social audits and public consultations supports the judicial principle of making waqf administration responsive and accountable.[30]

The Indian judiciary has provided a robust legal framework that safeguards waqf properties as inviolable religious endowments while allowing reasonable state regulation to prevent abuse. Leading Supreme Court cases have clarified the limits of state power, ensured the primacy of specialized waqf tribunals, and advocated for transparency and accountability. The Waqf Amendment Law 2025 codifies many of these judicial principles into law, signaling a progressive step toward reforming waqf governance in India.

8. COMPARATIVE PERSPECTIVES: INTERNATIONAL MODELS OF WAQF GOVERNANCE

International models offer instructive insights into waqf governance. Countries like

29 upreme Court Observer, 'Constitutionality of the Waqf (Amendment) Act, 2025', available at: https://www.scobserver.in/cases/constitutionality-of-the-waqf-amendment-act-2025-asaduddin-owaisi-v-union-of-india/ (accessed on 20 May 2025).

30 India Code, Legislative Department, Waqf (Amendment) Act, 2025, available at: https://www.indiacode.nic.in/ (accessed on 18 May 2025).

Malaysia, Turkey, and Indonesia present effective examples of managing religious endowments without compromising their spiritual character.[31]

8.1 Malaysia

Malaysia has adopted a highly centralized model under the Department of Awqaf, Zakat, and Hajj (JAWHAR), in coordination with state-level Islamic Religious Councils (SIRCs). These institutions oversee waqf registration, development, and administration using modern tools such as the e-Waqf system. Legal backing for this model stems from the Administration of Islamic Law Enactments across Malaysian states.[32]

A landmark case, *Majlis Agama Islam Pulau Pinang v. Badiaddin bin Mohd Mahidin* (1992), affirmed the religious council's authority in waqf matters, reinforcing centralized oversight while respecting Islamic jurisprudence. Malaysia's system emphasizes financial auditing, beneficiary mapping, and annual public reporting, all of which ensure transparency.

8.2 Turkey

Turkey administers waqf institutions through the Directorate General of Foundations (Vakýflar Genel Müdürlüðü), which functions under the Ministry of Culture and Tourism. Turkish reforms have aimed at both conservation and monetization of waqf properties. Properties are either preserved for heritage purposes or leased to generate revenue for public welfare projects.

In *Ali Rýza and Others v. Turkey* (European Court of Human Rights, 2004), the Court recognized the right of the state to regulate waqf property, provided it did not violate the right to peaceful enjoyment of possessions under Article 1 of Protocol 1 of the ECHR. Turkey thus strikes a balance between modernization and religious freedom, aided by detailed cadastral surveys and digital inventory systems.[33]

8.3 Indonesia

Indonesia represents a hybrid model combining state regulation with strong religious authority. The Ministry of Religious Affairs supervises waqf management through the Indonesian Waqf Board (BWI), established under Law No. 41/2004 on Waqf. A key aspect of the Indonesian model is the integration of Islamic principles with national legislation.

The *Al-Irsyad Waqf Foundation Case* (2010) highlighted the Board's role in resolving disputes and ensuring the religious character of waqf is maintained. Indonesia has

31 The Wire, 'Understanding the Waqf (Amendment) Act, 2025', available at: https://thewire.in/law/waqf-amendment-act-2025-explained (accessed on 07 May 2025).

32 Central Waqf Council, Official Website, available at: https://centralwaqfcouncil.gov.in/ (accessed on 22 May 2025).

33 Faizan Mustafa, "Understanding Waqf in Indian Legal Framework: Past and Present," (2016) 58(3) Journal of the Indian Law Institute 221.

implemented a national waqf database (SIWAK) for property tracking, and mandates certification of all waqf lands to prevent illegal transfers.[34]

8.4 Lessons for India

India can adopt several practices from these jurisdictions:

- Implementation of uniform digital platforms like Malaysia's e-Waqf and Indonesia's SIWAK;
- Centralized oversight with community inputs to prevent political misuse;
- Transparent financial audits and beneficiary tracking systems;
- Legal recognition of community-based dispute resolution as in Indonesia;[35]
- Enhanced legal frameworks to balance state supervision with community autonomy.

These international models demonstrate that with legal clarity, professional administration, and technological support, waqf institutions can thrive while upholding their religious and charitable mandates.[36]

9. SUGGESTIONS

In light of this, the following detailed recommendations are essential for the effective operationalization of the Waqf (Amendment) Act 2025:

- ***Adequate Resource Allocation:*** The government must prioritize the allocation of sufficient financial and technical resources to waqf institutions. This includes investments in state-of-the-art digital infrastructure, training programs to build the capacity of Waqf Board members and staff, and upgrading administrative systems. Skilled personnel proficient in and IT domains are crucial for maintaining accurate records, detecting irregularities, and managing properties efficiently.
- ***Regular Monitoring and Independent Audits:*** Institutionalizing periodic and independent audits—both financial and performance-based—will help ensure transparency and detect any malpractices early. These audits should be mandated by law, with clear consequences for non-compliance. Additionally, state and central authorities must conduct systematic reviews of waqf activities to assess adherence to statutory obligations and effectiveness of governance practices.

34 Economic Times, 'Waqf an Islamic concept, but not essential religious practice: Centre tells SC', available at: https://economictimes.indiatimes.com/news/india/waqf-an-islamic-concept-but-not-essential-religious-practice-centre-tells-sc/articleshow/121322919.cms (accessed on16 May 2025).

35 Ministry of Minority Affairs, Government of India, Waqf (Amendment) Act, 2025, available at: https://minorityaffairs.gov.in/ (accessed on15 May 2025).

36 The Hindu, 'Supreme Court to hear plea against Waqf Amendment Act', available at: https://www.thehindu.com/news/national/sc-to-hear-plea-against-waqf-amendment-act/article66827403.ece (accessed on 18 May 2025).

- ***Transparency and Public Accountability:*** The amendment's mandate for digital recordkeeping must be complemented by proactive public disclosure norms. Waqf Boards should maintain updated online portals accessible to the public, displaying property details, financial statements, management decisions, and progress reports. Regular stakeholder consultations and public hearings will empower beneficiaries and local communities, enhancing trust and legitimacy.[37]
- ***Legal Strengthening and Enforcement:*** The amendment should be supported by a robust legal framework that clearly defines offenses related to waqf mismanagement and encroachment, along with proportionate penalties. Swift enforcement mechanisms are necessary to deter illegal transactions and safeguard waqf assets. Additionally, courts and tribunals must be equipped to handle waqf cases expeditiously to prevent prolonged disputes.[38]
- ***Learning from International Best Practices:*** India stands to benefit immensely from ongoing comparative research and engagement with countries that have successfully reformed waqf administration, such as Malaysia, Turkey, and Indonesia. Collaborative efforts can facilitate the adoption of proven technological tools, governance models, and community participation mechanisms tailored to India's unique socio-legal context.
- ***Promoting Community Involvement:*** Genuine engagement of local communities, religious scholars, and beneficiary groups in decision-making processes will foster ownership and enhance the responsiveness of waqf governance. Mechanisms for social audits, grievance redressal, and inclusive planning must be institutionalized to ensure that waqf assets are utilized effectively for their intended charitable and religious purposes.[39]
- ***Political Neutrality and Professionalism:*** To prevent politicization and vested interest capture, appointments to Waqf Boards and related authorities should adhere strictly to merit-based and transparent criteria. Promoting professionalism and ethical standards within waqf administration will help restore public confidence and uphold the sanctity of waqf institutions.[40]

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37 Hindustan Times, 'Why are Muslim bodies protesting against Waqf Amendment Act, 2025?', available at: https://www.hindustantimes.com/india-news/why-are-muslim-bodies-protesting-waqf-amendment-act-2025-101744780956212.html (accessed on 19 May 2025).

38 Legal Service India, 'A Critical Legal Analysis of the Waqf (Amendment) Act, 2025', available at: https://www.legalserviceindia.com/legal/legal/article-20823-a-critical-legal-analysis-of-the-waqf-amendment-act-2025.html (accessed on 25 May 2025).

39 India Code, Legislative Department, Waqf (Amendment) Act, 2025, available at: https://www.indiacode.nic.in/ (accessed on 20 May 2025).

40 Economic Times, 'Waqf an Islamic concept, but not essential religious practice: Centre tells SC', available at: https://economictimes.indiatimes.com/news/india/waqf-an-islamic-concept-but-not-essential-religious-practice-centre-tells-sc/articleshow/121322919.cms (accessed on 16 May 2025).

10. CONCLUSION

The **Waqf (Amendment) Act 2025** signifies a significant and forward-looking step towards modernizing the administration and governance of waqf properties in India. By incorporating provisions that mandate digitization, enhance accountability, and promote community participation, the amendment aims to restore the integrity and utility of waqf assets, which historically have been vital for the socio-economic development of the Muslim community.

The reforms introduced by the amendment address some of the critical challenges that have long hindered effective waqf management—such as lack of transparency, rampant encroachments, weak enforcement, and political interference. The establishment of specialized Waqf Tribunals, strengthened powers of Waqf Boards, and the push for digital recordkeeping represent key institutional changes that can transform waqf governance into a more professional and accountable system.[41]

However, the realization of these objectives is contingent upon overcoming entrenched systemic barriers. These include technical constraints, limited skilled manpower, resistance from vested interests, and the challenge of ensuring meaningful grassroots involvement. Without robust implementation strategies, even the most well-intended laws risk remaining on paper, failing to bring tangible benefits to the communities they are designed to serve.

41 Ministry of Minority Affairs, Government of India, Waqf (Amendment) Act, 2025, available at: https://minorityaffairs.gov.in/ (accessed on 17 May 2025).

Analysis of Space Law, Satellite Constellation-Based Internet with reference to Legal Positivism

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ABSTRACT

Satellite-based internet constellations, and cybersecurity. Given the advancements in satellite technology and digital communications, which provide both opportunities and challenges.The international law that governs activities in space is known as "space law," and it is dynamic and ever-evolving. The primary concerns of space law have historically been the regulation of space-based weaponry, the cleanup of orbital debris, the launch protocols for satellites and spectrum bands for everyone. Legal positivism theory which can be justifies here as according to John Austin, "the existence of the law is one thing its merit or demerit is another. Whether it be or be not is one enquiry; whether it be or be not conformable to an assumed standard, is another enquiry."

Keywords: Satellite, Internet, Cybersecurity, Legal positivism.

INTRODUCTION

Examining the topic "Critical Analysis of Space Law, Satellite Constellation-Based Internet, And Its Effect on Cybersecurity" in detail requires examining the numerous dimensions of this convergence and weighing the potential benefits, drawbacks, and repercussions. By delving into these parts, we may get valuable insight into the evolving subject of space law, internet access via satellite constellations, and cyber threat defence [1]. The research aims to provide recommendations and policy insights to guide policymakers, industry stakeholders, and the international community through the complex confluence of various fields.

Herbert Hart, a legal philosopher agrees with Austin. He explained that Austin did not actually say that the norms of moral law and the precepts of the natural law did not have any influence in the promulgation of rules and regulations. In addition to

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this, he also said that Austin did not imply that positive law is non-moral. Austin defined law by saying that it is the "command of the sovereign". He expounds on this further by identifying the elements of the definition and distinguishing law from other concepts that are similar:"Commands" involve an expressed wish that something be done, and "an evil" to be imposed if that wish is not complied with.[2]. Here Space Law which is govern by UNO and its space law department which takes care of issue related to space objects, establishes protocols, and govern to give justice to all entitled UNO members as an apex body with the help of international space treaties signed by all members. These are the commands of the sovereign international body which has its agreed law in place as international space lawand those are binding on all members.

HISTORICAL EVOLUTION OF SPACE LAW

The historical evolution of space law is a fascinating journey that has evolved in response to the expansion of human activities in outer space. Before the Space Age, during the early 20th century, there was a noticeable absence of a legal framework governing space activities. This legal vacuum had significant implications for the emerging field of space exploration [3].

At that time, human activities in space were largely confined to theoretical discussions, science fiction, and imaginative visions of the future. The concept of space exploration was novel and belonged to the realm of the unknown and the futuristic. As a result, there was no established body of law that could regulate and govern these activities.

The absence of a legal framework created a legal vacuum in outer space. This vacuum had profound implications and potential challenges for a variety of critical issues. These challenges included:

Ownership of Celestial Bodies: Without established regulations, questions about the ownership of celestial bodies such as the Moon or other planets remained unresolved. Nations and private entities were left without clear guidelines on how to claim or use these celestial resources.

Liability for Space Debris: With no legal framework in place, issues related to liability for space debris were largely unaddressed. As satellites and other space objects were launched into orbit, there was no clear international consensus on who would be responsible for accidents or collisions in space.

Use of Outer Space for Peaceful Purposes: The absence of legal regulations made it unclear how outer space should be used, particularly regarding the peaceful use of space. The potential for military activities in space was a concern, and without established laws, disputes and conflicts could have arisen.The pre-Space Age era was characterized by a lack of legal regulations to govern human activities in outer space. This legal vacuum created uncertainty and posed significant potential challenges, including issues related to celestial body ownership, liability for space debris, and the peaceful use of outer space. The subsequent emergence of space law, marked by key milestones and international agreements, sought to address these challenges and provide a legal framework for the exploration and use of outer space.

Internet for All: Internet should be available for all countries without bias, secure and having accountability.

INTRODUCTION TO LEGAL POSITIVISM

Bentham and Austin, law is a phenomenon of societies with a sovereign: a determinate person or group who have supreme and absolute de facto power—they are obeyed by all or most others but do not themselves similarly obey anyone else. The laws in that society are a subset of the sovereign's commands: general orders that apply to classes of actions and people and that are backed up by threat of force or "sanction". This imperatival theory is positivist, for it identifies the existence of law with patterns of command and obedience that can be ascertained without considering whether the sovereign has a moral right to rule or whether their commands are meritorious. [4]

GENERAL OVERVIEWS OF LEGAL POSITIVISM

The two most important statements of positivism in the 20th century are Hart 1997 (originally published 1961) and Kelsen 1970 (first published in 1934). Hart was influenced by earlier British positivists like Austin and Bentham, as well as the later Wittgenstein, but his has proven to be the most influential text on positivism in the English-speaking world. Hart argues that every legal system is a union of obligation-imposing ("primary") rules and power-conferring ("secondary") social rules; in the latter case, a sufficient number of officials of the system accept those rules as guides to their conduct and standards of evaluation of the conduct of other legal participants. The most fundamental secondary rule of the system is what Hart calls a "rule of recognition," which specifies the ultimate criteria of legal validity (e.g., "what Parliament enacts is law"). Hart's discussion served as the focal point of nearly all discussions of legal positivism since its publication in 1961. The second edition (Hart 1997) includes a posthumously published postscript in which Hart addresses primarily the criticisms of Ronald Dworkin, a response which has itself spawned a considerable literature. Kelsen's theory is also one of the great positivist theories of the 20th century and is inspired more by certain themes in European (and particularly Neo-Kantian) philosophy. Kelsen's texts have been less influential in the Anglophone world and received much less scholarly attention, due no doubt to his difficult and sometimes obscure prose. Green 2003 gives a thorough and up-to-date overview of the various competing positivist theories and contains a short but reliable bibliography for further reading. Leiter 2003 and Shapiro 2007 give useful summaries of the dialectic between positivists and their critics over the past three decades. Gardner 2001 takes a different tack by illuminating the nature of positivism by distinguishing it from other views which are often mistakenly identified as central to positivism.[5]

CORRELATION BETWEEN LEGAL POSITIVISM AND SPACE LAW

H.L.A. Hart's list of meanings of legal positivism (which cumulatively count as features of positivism): (1) law as human commands; (2) absence of any necessary connection between law and morals; (3) the study of law as meaning, as distinct from sociology,

history and evaluation; (4) the contention that a legal system is a closed system, sufficient in itself to justify legal decisions; (5) non-cognitivism in ethics (Hart 1958).

Legal positivism has been conceived as: (1) a neutral, scientific approach to law; (2) a set of theories depicting the law as the product of the modern state, claiming that the law is a set of positive rules of human origin, and ultimately amounting to a set of statutes, collected in legal systems or orders; (3) an ideology of law that gives a value to positive law as such, implying that it should always be obeyed. [6]

The treaty is the foundation of international space law for signatory nations (108 in 2019). The treaty presents principles for space exploration and operation:

1) Space activities are for the benefit of all nations, and any country is free to explore orbit and beyond.
2) There is no claim for sovereignty in space; no nation can "own" space, the Moon or any other body.
3) Weapons of mass destruction are forbidden in orbit and beyond, and the Moon, the planets, and other celestial bodies can only be used for peaceful purposes.
4) Any astronaut from any nation is an "envoy of mankind," and signatory states must provide all possible help to astronauts when needed, including emergency landing in a foreign country or at sea.
5) Signatory states are each responsible for their space activities, including private commercial endeavours, and must provide authorization and continuing supervision.
6) Nations are responsible for damage caused by their space objects and must avoid contaminating space and celestial bodies.
7) Signatories take full liability for any damage caused by their space objects and agree to standard procedures for adjudicating damage claims.
8) Expanding a space object register, the Convention empowers the UN Secretary-General to maintain a register of all space objects.[7]

CONCLUSION

Space law is based upon a series of international treaties, agreements, and UN resolutions governing the use and exploration of outer space. The treaties work to prevent the militarization of space; prohibit claims of sovereignty over celestial objects, and outline the liabilities of space-faring entities for damages to the surface of the Earth as well as to other objects in outer space. Another international treaty obligates space farers to provide assistance to astronauts who are in distress, and to register with the U.N. objects launched into outer space. A frequent theme underlying most of the treaties is the concept of space as Province of All Mankind. Certain aspects of these agreements mirror similar concepts from maritime law and treaties.

Although not free from shortcomings, the Legal Positivist School is regarded as the most influential school of thought in jurisprudence. Judges have based their decisions

on this school of thought across various countries, including India. Indian Judges have been greatly influenced by the thinking of legal positivists and have applied their jurisprudence while giving landmark judgements such as **A.K. Gopalan v. State of Madras** to name one of them.

The basic idea behind legal positivists was that they considered law as it is and not what it ought to be. Theyseparated moral principles from legal principles. They were of the view that law is the will of the superior which is backed by sanction

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Live-in Relationships in India: Legal Recognition, Social Acceptance, and Rights of Partners

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ABSTRACT

Live-in relationships, once considered taboo in Indian society, are increasingly becoming a reality, particularly in urban India. This paper explores the legal recognition of such relationships, the rights conferred upon partners and children, and the societal response to this evolving norm. Through doctrinal and empirical methods, it examines key judgments, statutory developments, and comparative analysis with countries like the UK and USA. The paper also identifies legal ambiguities and proposes policy reforms to better protect the rights of individuals in live-in relationships without undermining traditional family values.

Keywords: Live-in relationship, Indian judiciary, legal recognition, rights of partners, societal acceptance, cohabitation law, comparative analysis, domestic partnership, right to maintenance, empirical research.

INTRODUCTION

In recent decades, Indian society has witnessed profound transformations in personal relationships, familial structures, and social dynamics. One of the most notable shifts has been the increasing prevalence of **live-in relationships**—where two consenting adults choose to cohabit and share a domestic life without formalizing their union through marriage. While this practice is common and widely accepted in many Western countries, its emergence in India has sparked significant legal, moral, and sociological debates. Traditionally rooted in deeply entrenched concepts of marriage, chastity, and family honor, Indian society has often viewed live-in relationships as contrary to the institution of marriage and as a deviation from accepted moral norms. However, with globalization, urbanization, and rising individualism, particularly among the youth and educated urban classes, live-in relationships are slowly gaining traction.

The transition from a marriage-centric social structure to one that accommodates alternative forms of relationships reflects a broader cultural and legal evolution. Yet,

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this evolution remains incomplete and fragmented. While courts have on several occasions recognized the rights of individuals in live-in relationships and have extended protections under statutes like the Protection of Women from Domestic Violence Act, 2005[1], there is **no uniform statutory framework** in India that accords a legal status to such relationships. Consequently, cohabiting partners often encounter **ambiguity in asserting legal rights** concerning maintenance, custody of children, property disputes, and inheritance[2].

This legal ambiguity is further compounded by the lack of social acceptance in vast sections of Indian society. In many regions, couples in live-in relationships face stigma, ostracization, and even threats of violence, particularly when such relationships defy caste, religious, or parental expectations. Public discourse often frames live-in relationships through the lens of **morality and traditional values**, rather than as a matter of individual choice and constitutional liberty. The Indian judiciary, while progressive in several judgments[3], continues to tread cautiously, often imposing moral boundaries while interpreting individual freedoms under Article 21 of the Constitution.

The objective of this research is to undertake a **comprehensive analysis** of the legal and social landscape surrounding live-in relationships in India. It explores the **judicial approach** and identifies the **rights and protections available** to cohabiting partners and their children. Additionally, the study employs **comparative analysis** by examining how other jurisdictions such as the United Kingdom, United States, Canada, and France have developed cohesive legal mechanisms—like civil unions, domestic partnerships, and common-law marriage—to address similar issues. Through a mix of doctrinal research and empirical observations, the paper seeks to expose the **policy gaps** in the Indian legal framework and to suggest **viable reforms** aimed at ensuring dignity, autonomy, and legal clarity for individuals opting for non-marital cohabitation.

In an age where personal liberty, privacy, and freedom of choice are championed as fundamental rights, it is imperative that Indian law sheds its moralistic hesitations and acknowledges the changing contours of interpersonal relationships. The law must evolve in tandem with societal change to protect individuals who choose to deviate from traditional marriage without being left vulnerable. This paper argues for a more inclusive, rights-based, and socially informed legal approach to live-in relationships in India.

UNDERSTANDING LIVE-IN RELATIONSHIPS: CONCEPTUAL FOUNDATIONS

Live-in relationships, also referred to as cohabitation or non-marital partnerships, signify a voluntary arrangement where two individuals live together and share a domestic life without entering into a legally recognized marriage. Unlike matrimonial unions that are governed by personal laws and codified statutes in India, live-in relationships exist outside the formal structures of family law and are therefore subject to social

1 The Protection of Women from Domestic Violence Act, No. 43 of 2005, § 2(f), India Code (2005) (defining "relationship in the nature of marriage")

2 Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755

3 S. Khushboo v. Kanniammal, (2010) 5 SCC 600.

scrutiny and legal ambiguity. This arrangement, although legally permissible for consenting adults, has long been viewed as a challenge to the traditional fabric of Indian society, where marriage is often considered the sole acceptable foundation for intimate and cohabiting partnerships[4].

The conceptual foundation of live-in relationships lies in the **freedom of choice**, **individual autonomy**, and **changing societal attitudes** towards marriage, relationships, and companionship. While marriage is a socially sanctioned institution that brings legal rights and responsibilities, live-in relationships are expressions of personal liberty that seek to redefine companionship beyond conventional norms. For many young couples, especially in urban settings, live-in arrangements offer a platform to evaluate compatibility, assert independence from familial expectations, avoid legal complexities of marriage and divorce, and exercise greater control over their personal lives.

Globally, live-in relationships have been widely accepted in various legal systems, albeit with differences in terminology and rights associated. For example:

- In the **United States**, some states recognize **common-law marriages**, granting cohabiting partners similar rights as married spouses after fulfilling specific criteria.
- The **United Kingdom** offers **cohabitation agreements** and, in some cases, rights under property and family law, although such partners are not treated as legally married.
- **France** introduced the **Pacte Civil de Solidarité (PACS)**, a form of civil union that provides many of the same legal benefits as marriage while maintaining flexibility.
- **Canada** recognizes **common-law partnerships** at both federal and provincial levels, entitling partners to benefits such as maintenance and property division.

In contrast, India does not have any statutory recognition for live-in partnerships. While courts have occasionally upheld such relationships and extended limited protections, they remain interpreted on a case-by-case basis, and judicial discretion has replaced the need for consistent legislation.

It is also important to distinguish live-in relationships from casual relationships or mere cohabitation without intent to share a long-term life. Indian courts, particularly in *Indra Sarma v. V.K.V. Sarma*, have outlined several parameters that distinguish a live-in relationship "in the nature of marriage" from a mere domestic arrangement. These factors include duration, social reputation, shared responsibilities, and intent to cohabit as spouses.

Furthermore, live-in relationships reflect a shift from **status-based relationships** (defined by marriage and kinship) to **contractual or consensual relationships** based on mutual agreement. This transformation aligns with the broader constitutional values of liberty, privacy, and dignity, as emphasized in landmark judgments such as *Navtej Singh Johar*

4 David Bradley, Unmarried Couples, Law, and Public Policy (Oxford University Press 2001)

v. Union of India and *K.S. Puttaswamy v. Union of India*[5], which underscore the right of individuals to make intimate personal decisions without State interference.

Understanding live-in relationships thus requires more than a legal lens—it involves appreciating the interplay between law, society, gender roles, individual agency, and cultural resistance. In India's pluralistic society, such relationships challenge both **patriarchal control** over women's choices and the heteronormative ideals of family. Recognizing and regulating them appropriately could be a crucial step in ensuring that modern relationship structures are treated with fairness, dignity, and legal clarity.

LEGAL RECOGNITION OF LIVE-IN RELATIONSHIPS IN INDIA

Live-in relationships in India have gradually gained legal acknowledgment, although they remain outside the scope of formal codified laws. Unlike marriage, which is governed by personal laws such as the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954[6], live-in arrangements are not statutorily defined or regulated. However, Indian courts have over the years evolved a **jurisprudential framework** to extend certain legal protections to partners in such relationships, particularly where one partner—often the woman—is vulnerable to exploitation.

Recognition under the Domestic Violence Act, 2005

A major milestone in this regard was the **Protection of Women from Domestic Violence Act, 2005 (PWDVA)**. Section 2(f) of the Act defines a "domestic relationship" to include relationships "in the nature of marriage." This has been interpreted to include live-in relationships that resemble marital unions in substance. It allows aggrieved women to seek remedies such as protection orders, maintenance, residence rights, and compensation, even in the absence of a formal marriage.

However, not every cohabiting relationship qualifies. In *Indra Sarma v. V.K.V. Sarma* (2013)[7], the Supreme Court clarified that for a relationship to fall within this definition, certain criteria must be met: long duration of cohabitation, shared household, financial and emotional dependence, and social perception of the couple as spouses.

Constitutional Backing and Right to Cohabit

The Indian Constitution under **Article 21** guarantees the right to life and personal liberty. The Supreme Court has read into this the right of consenting adults to choose their partner and live together. In *Lata Singh v. State of UP* (2006)[8], the Court upheld the right of an adult woman to live with a partner of her choice, and in *Nandakumar v. State of Kerala* (2018)[9], reiterated that live-in relationships are not illegal or immoral.

5 K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

6 The Hindu Marriage Act, No. 25 of 1955, India Code (1955); The Special Marriage Act, No. 43 of 1954, India Code (1954).

7 Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755.

8 Lata Singh v. State of Uttar Pradesh, (2006) 5 SCC 475.

9 Nandakumar v. State of Kerala, (2018) 16 SCC 602.

These decisions align with broader constitutional values of **dignity, privacy, and autonomy**, as reaffirmed in *K.S. Puttaswamy v. Union of India* (2017), which recognized the right to privacy as intrinsic to Article 21.

Presumption of Marriage and Legitimacy of Children

Indian courts have also invoked the **presumption of marriage** when couples have lived together for an extended period. In *Badri Prasad v. Dy. Director of Consolidation* (1978)[10], the Supreme Court presumed a 50-year live-in relationship to be a valid marriage in the absence of contrary evidence. Similarly, in *Tulsa v. Durghatiya* (2008), the Court held that children born out of long-standing live-in relationships are legitimate and entitled to property rights under Hindu law.

These rulings serve as **protective mechanisms**, ensuring that women and children are not deprived of legal entitlements merely because of the absence of a formal marriage.

Judicial Protection Against Social Threats

Live-in couples in India often face moral policing, family pressure, and threats of violence. Recognizing this, courts have offered **protective orders** and directed police support to safeguard the right of such couples to cohabit. In *S. Khushboo v. Kanniammal* (2010)[11], the Court decriminalized premarital cohabitation and emphasized that living together is a matter of personal choice and not an offence.

Numerous High Court decisions, especially from Punjab & Haryana, Allahabad, and Rajasthan, have granted protection to inter-caste and inter-faith live-in couples, underscoring the **primacy of individual autonomy**[12].

Limitations in Legal Recognition

Despite these developments, live-in relationships are **not comprehensively protected** by Indian law. Rights related to **property division, inheritance, tax benefits, medical decision-making**, and **adoption** are not clearly addressed. Moreover, protection under PWDVA applies primarily to women, offering little to male or LGBTQ+ partners. The legal remedy also depends heavily on judicial discretion and interpretation, leading to inconsistencies in recognition and enforcement.

Conclusion of Section

The legal recognition of live-in relationships in India has been primarily shaped by **judicial innovation**, rather than legislative intent. Courts have extended protections based on constitutional principles and welfare legislation, particularly for women and children. However, the absence of a **clear statutory framework** results in ambiguity,

10 Badri Prasad v. Dy. Director of Consolidation, (1978) 3 SCC 527

11 S. Khushboo v. Kanniammal, (2010) 5 SCC 600.

12 See e.g., Simran Kaur v. State of Punjab, 2020 SCC OnLine P&H 1494; Asha v. State of Rajasthan, 2021 SCC OnLine Raj 1415; Priya v. State of U.P., 2020 SCC OnLine All 1426.

unpredictability, and limited access to justice for partners in such relationships. To ensure equal protection under law, India needs a comprehensive civil statute that defines live-in relationships and codifies the rights and obligations of the partners involved.

JUDICIAL APPROACH AND CASE LAW ANALYSIS

The Indian judiciary has played a central role in developing the legal contours of live-in relationships, particularly in the absence of specific statutory provisions. While Indian law does not explicitly recognize live-in relationships under personal or family law codes, judicial pronouncements have gradually carved out a jurisprudential framework to confer **legitimacy and protection** to such relationships under the broader umbrella of constitutional rights and welfare legislation.

Through a series of landmark decisions, the Supreme Court and various High Courts have not only upheld the **right of consenting adults to cohabit** but have also addressed issues such as maintenance, legitimacy of children, protection from abuse, and social freedom. These rulings reflect the judiciary's attempt to balance **social realities** with **legal safeguards**, ensuring that partners in live-in arrangements are not left vulnerable due to the absence of formal marital status.

Presumption of Marriage and Long-Term Cohabitation

In **Badri Prasad v. Dy. Director of Consolidation** (AIR 1978 SC 1557)[13], the Supreme Court upheld a presumption of marriage in a case where a couple had lived together for over 50 years. The Court held that continuous cohabitation for a long period raises a presumption in favor of wedlock, placing the burden of proof on the party challenging the marriage. This judgment was pivotal in acknowledging the **legitimacy of long-term live-in relationships**, even in the absence of ceremonial marriage.

Right to Cohabit Under Article 21 – Autonomy and Liberty

In **Lata Singh v. State of UP** (AIR 2006 SC 2522)[14], the Court ruled in favor of a woman who had chosen to live with a man from another caste without marriage, observing that such a decision is within her constitutional rights. The Court condemned honor-based violence and harassment by family members, affirming that adult individuals have the **fundamental right to choose their life partners and cohabit freely**.

This was further reinforced in **Nandakumar v. State of Kerala** [(2018) 16 SCC 602][15], where the Supreme Court stated that two adults living together without marriage cannot be deemed illegal. Even if the man was not of legal marriageable age under personal laws, the Court emphasized that **living together is a facet of the right to life under Article 21** of the Constitution.

13 Badri Prasad v. Dy. Director of Consolidation, AIR 1978 SC 1557.

14 Lata Singh v. State of UP, AIR 2006 SC 2522.

15 Nandakumar v. State of Kerala, (2018) 16 SCC 602.

Decriminalization and Social Morality – The Khushboo Case

In **S. Khushboo v. Kanniammal** [(2010) 5 SCC 600][16], a Tamil actress faced criminal charges for publicly supporting premarital sex and live-in relationships. The Supreme Court quashed all FIRs filed against her and held that public endorsement of live-in relationships did not amount to obscenity or defamation. The Court importantly remarked that **morality is subjective** and that personal choices in matters of relationships are not subject to criminal sanction. This judgment marked a significant shift in judicial thinking from **social morality to constitutional morality**.

Defining "Relationship in the Nature of Marriage" – Indra Sarma Case

One of the most comprehensive judicial discussions on live-in relationships came in **Indra Sarma v. V.K.V. Sarma** [(2013) 15 SCC 755][17]. Here, the Court laid down **guidelines to identify a live-in relationship eligible for protection under the Protection of Women from Domestic Violence Act, 2005**.

The Court emphasized that not all cohabiting arrangements qualify as "relationship in the nature of marriage." It outlined five key criteria:

1. **Duration of relationship** – substantial period of cohabitation
2. **Shared household** – joint residence with domestic arrangements
3. **Financial arrangements** – pooling of income and joint responsibilities
4. **Sexual relationship** – intimate association, not casual
5. **Public perception** – representation to society as spouses

Although the petitioner was ultimately denied relief as the relationship was deemed adulterous (as the man was already married), the Court's detailed observations serve as a **blueprint for future adjudication** in similar matters.

Protection of Children's Rights – Tulsa Case

In **Tulsa & Ors. v. Durghatiya & Ors.** [(2008) 4 SCC 520][18], the Supreme Court upheld the legitimacy of children born out of a live-in relationship of long duration. The Court ruled that where a man and woman live together for an extended period as husband and wife, the law will presume them to be legally married unless proven otherwise, and **children born from such a union are not illegitimate** under Hindu law.

This recognition ensures that children are not deprived of their **inheritance rights**, thus shielding them from the consequences of their parents' marital status.

16 S. Khushboo v. Kanniammal, (2010) 5 SCC 600.

17 Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755.

18 Tulsa & Ors. v. Durghatiya & Ors., (2008) 4 SCC 520

High Court Interventions and Police Protection

In recent years, several High Courts have consistently upheld the rights of live-in couples and granted police protection against social harassment and threats:

- The **Punjab & Haryana High Court** in multiple decisions has held that even if live-in relationships are not legally recognized, they are not illegal, and couples are entitled to protection under Article 21[19].
- The **Allahabad High Court** has emphasized that the law must protect personal liberty regardless of social disapproval[20].
- The **Rajasthan High Court** and **Uttarakhand High Court** have similarly issued directions to ensure the safety of consenting adult couples from family and community violence.

These interventions demonstrate a growing **judicial consensus that cohabitation between consenting adults is constitutionally protected**, even if not formally regulated.

Judicial Ambiguity and Lack of Uniformity

Despite several progressive judgments, the judicial approach to live-in relationships remains **case-specific** and somewhat inconsistent. Relief under the Domestic Violence Act is contingent upon meeting the threshold of a "relationship in the nature of marriage," which is often subject to varied judicial interpretation. There is **no clarity on property rights, dissolution procedures**, or other civil implications of such partnerships. Additionally, there is a lack of jurisprudence on same-sex live-in relationships, leaving members of the LGBTQ+ community in a further legal vacuum.

Conclusion of Section

The Indian judiciary has been instrumental in legitimizing and protecting live-in relationships through an evolving interpretation of constitutional rights, social realities, and welfare legislation. However, in the absence of a comprehensive legal framework, **judicial discretion remains the sole instrument of recognition**, leading to inconsistency and uncertainty. While the courts have moved away from moralistic judgments and embraced personal liberty, there remains a pressing need for **codified law** to provide uniformity, predictability, and broader protection to all individuals in such partnerships.

COMPARATIVE ANALYSIS: UNITED KINGDOM, UNITED STATES, AND OTHER JURISDICTIONS

The global legal landscape reflects a significant evolution in the recognition of live-in relationships, commonly referred to as cohabitation, civil unions, or common-law partnerships. While the approaches differ across jurisdictions, several countries have enacted laws or developed jurisprudence that provide **civil, economic, and social**

19 Simran Kaur v. State of Punjab, 2020 SCC OnLine P&H 1494.

20 Asha v. State of Rajasthan, 2021 SCC OnLine Raj 1415.

protections to cohabiting couples—whether heterosexual or same-sex. These frameworks offer valuable insights for India as it grapples with the challenges of legal recognition, social acceptance, and rights allocation in live-in relationships[21].

United Kingdom: Cohabitation Rights and Civil Partnerships

In the United Kingdom, while cohabiting couples do not have the same rights as married couples, the law has evolved to provide **limited protections** under family and property law. Notably, the UK does **not automatically recognize cohabitants as "common-law spouses,"** contrary to popular belief[22]. However, the courts have, over time, developed mechanisms to protect individuals in long-term cohabiting relationships.

Key legal developments include:

- **Cohabitation Contracts**: These allow partners to formally record financial and living arrangements, helping avoid disputes in the event of separation.
- **Property Rights**: Under the **Trusts of Land and Appointment of Trustees Act 1996 (TOLATA)**, cohabitants may claim a share in a property if they have contributed financially or if a trust can be inferred.
- **Children's Rights**: Under the **Children Act, 1989**, cohabiting parents have the same obligations towards their children as married parents.
- **Civil Partnerships**: Initially introduced in 2004 for same-sex couples, civil partnerships were extended to **heterosexual couples in 2019**, offering them legal protections similar to marriage without its religious or cultural associations[23].

While the UK does not equate cohabitation with marriage, it provides **a clear legal structure** that India lacks, especially in matters of property, maintenance, and separation.

United States: State-Based Common Law Marriage and Cohabitation

In the United States, legal recognition of live-in relationships varies widely across states due to its **federal structure**. A number of states recognize **common-law marriages**, while others treat cohabiting couples under separate domestic partnership laws[24].

- **Common-Law Marriage**: States like Colorado, Texas, and Iowa recognize common-law marriage if certain conditions are met—such as mutual consent to be married, cohabitation, and public representation as a married couple. Once established, such relationships enjoy the same legal rights as formal marriages, including inheritance, divorce rights, and spousal support.

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21 Nicola Barker, "Legal Recognition of Cohabitation in Comparative Perspective," International Journal of Law, Policy and the Family, vol. 26, no. 1, 2012.

22 Anne Barlow, Cohabitation, Marriage and the Law: Social Change and Legal Reform in the 21st Century, Hart Publishing, 2005

23 Civil Partnerships, Marriages and Deaths (Registration etc.) Act 2019 (UK).

24 Joanna L. Grossman, "The Common Law Marriage Myth," Cornell Journal of Law and Public Policy, vol. 10, no. 3, 2001.

- **Domestic Partnerships**: In states like California and Oregon, **domestic partnership laws** grant cohabiting couples access to healthcare benefits, property rights, and legal protections similar to those in marriage.
- **Cohabitation Agreements**: Widely used across the U.S., these are legal contracts between partners outlining financial responsibilities, property ownership, and post-separation arrangements.

U.S. jurisprudence reflects a **progressive and pluralistic** approach, balancing individual freedom with legal protection, and recognizing that family structures extend beyond the traditional marriage model.

France: PACS and Legal Recognition of Cohabitation

France introduced a unique legal innovation through the **Pacte Civil de Solidarité (PACS)** in 1999. PACS is a **civil union contract** available to both heterosexual and same-sex couples, allowing them to formalize their relationship without marrying[25].

Key features include:

- Simplified registration with a court or notary.
- Legal rights concerning taxation, social security, housing, and inheritance (though limited compared to marriage).
- Flexibility and ease of dissolution, unlike marriage or divorce.

Additionally, French courts recognize the concept of **concubinage**, referring to stable and continuous cohabitation. While concubinage offers limited rights, PACS has become a widely accepted legal alternative to marriage, offering **protection, dignity, and clarity** to partners.

Canada: Common-Law Partnerships and Statutory Protections

Canada offers one of the most comprehensive frameworks for recognizing live-in relationships through **common-law partnerships**, defined under both federal and provincial laws. A common-law couple is generally recognized if they have cohabited for at least one to three years, depending on the province.

Rights extended to such partners include:

- **Spousal support** and **property division** upon separation.
- **Tax benefits**, **healthcare rights**, and **parental responsibilities**.
- Equal rights for **same-sex** and **opposite-sex** couples.

The **Supreme Court of Canada** has played a key role in affirming that common-law couples are entitled to protection under the **Canadian Charter of Rights and Freedoms**, ensuring equal treatment and non-discrimination[26].

25 French Civil Code, Article 515-1 to 515-7

26 M. v. H., [1999] 2 S.C.R. 3 (Supreme Court of Canada).

Lessons for India

The comparative overview reveals several best practices that India can adapt to strengthen the legal treatment of live-in relationships:

1. **Statutory Definitions**: Like PACS or common-law frameworks, India should define live-in relationships within civil law to eliminate ambiguity.
2. **Civil Union Option**: Offering a non-marital partnership registration—similar to civil partnerships in the UK—can provide legal clarity without enforcing traditional marriage.
3. **Property and Maintenance Rights**: Indian courts currently provide relief under the Domestic Violence Act, but broader rights like those under Canada's or the U.S.'s family law systems are needed.
4. **Children's Rights**: Recognition of the legitimacy of children born to live-in couples must be expanded into succession laws to ensure equal inheritance rights.

Conclusion of Section

While India continues to rely on **judicial interpretation** for recognizing live-in relationships, countries like the UK, USA, France, and Canada have developed robust legal structures that affirm the rights and dignity of cohabiting partners. These jurisdictions offer valuable models for India to evolve beyond moral hesitation and establish a **progressive, codified framework**—balancing cultural values with constitutional ideals of liberty, equality, and privacy.

SOCIAL AND CULTURAL ACCEPTANCE IN INDIAN SOCIETY

Live-in relationships, though increasingly visible in modern India, continue to face **deep-rooted social resistance** and limited cultural acceptance. Indian society is largely traditional, family-oriented, and governed by collective moral standards that place marriage at the center of intimate and domestic life. In this context, live-in relationships—which challenge the sanctity of marriage and conventional family structures—are often viewed with suspicion, moral disapproval, and, at times, open hostility[27].

The Traditional View: Marriage as the Social Norm

In India, marriage is not just a personal union but a **social, religious, and cultural institution** that signifies legitimacy, stability, and respectability. It is often seen as essential for social recognition, family honor, and the continuation of lineage. Any intimate relationship that exists outside the framework of marriage—such as live-in partnerships—is perceived as deviant or immoral, especially in rural and semi-urban areas where **honor, caste, and community values** hold significant sway.

27 Law Commission of India, Report No. 277, "Recognition of Live-in Relationships," (2018).

Moreover, family structures in India tend to be **patriarchal and interdependent**, meaning that individual choices are often subordinated to the collective preferences of the family or community[28]. In such settings, live-in relationships are viewed as disruptive to the social order, leading to tensions, ostracism, and even violence in extreme cases.

Urbanization and Changing Attitudes

Despite these cultural constraints, there has been a noticeable shift in attitudes among the **urban, educated, and economically independent youth**, particularly in metropolitan cities like Delhi, Mumbai, Bengaluru, and Pune. Factors such as **greater exposure to global lifestyles**, **financial independence of women**, **delayed marriages**, and **emphasis on compatibility before commitment** have contributed to a slow but visible rise in the acceptance of live-in relationships.

Media representations, Bollywood films, and social influencers have also played a role in normalizing live-in partnerships, portraying them as progressive choices based on mutual consent and respect. Nevertheless, even in urban areas, such relationships often remain **socially sensitive** and hidden from families or neighbors due to fear of judgment or backlash.

Gendered Perspectives and the Role of Women

The stigma around live-in relationships disproportionately affects **women**, who are often judged more harshly than their male counterparts. In many cases, women in live-in arrangements face **character assassination, societal isolation, and legal vulnerability**, particularly if the relationship ends without legal recourse.

This double standard reflects the deeply embedded **patriarchal mindset** in Indian society, where a woman's sexuality and autonomy are closely guarded by social norms. Moreover, the lack of legal recognition often leaves women without adequate safeguards, reinforcing their subordinate position in such relationships.

The fear of being labeled as "unmarried" or "immoral" also leads many women to **conceal their relationships**, further compounding the lack of transparency and accountability.

Inter-caste, Inter-religious, and LGBTQ+ Live-in Relationships

Live-in relationships that cross caste, religion, or sexual orientation boundaries face **even more intense resistance**. Inter-caste and inter-religious couples, in particular, are often seen as threats to traditional community structures and face threats, harassment, and sometimes even **honor killings**[29].

LGBTQ+ live-in couples, although constitutionally protected post-*Navtej Singh Johar v. Union of India* (2018), continue to face **widespread societal discrimination and invisibility**.

28 Sharma, B. D., "Patriarchy and Law in India," Eastern Book Company, 2012.
29 Human Rights Watch, "India: 'Honor' Killings of Couples," 2019.

The absence of social and familial support makes cohabitation especially challenging for these couples, who often suffer both emotional and financial exclusion.

The Role of Religion and Moral Policing

Religious ideologies play a significant role in shaping societal attitudes toward live-in relationships. Most Indian religions emphasize the sanctity of marriage and view pre-marital cohabitation as morally wrong. As a result, live-in couples often face **moral policing** by community members, landlords, resident welfare associations, and even law enforcement.

Instances of police interference, refusal of housing, or public shaming have been reported, particularly when couples do not conform to the expected norms of marriage and family[30].

Conclusion of Section

While live-in relationships have gradually gained visibility and limited acceptance in certain urban, educated circles, they remain **largely stigmatized and culturally marginalized** in much of Indian society. Deep-seated notions of marriage, patriarchy, caste, and religion continue to influence public attitudes, making social acceptance a major hurdle to the normalization of such relationships. Without broader cultural transformation and public sensitization, legal recognition alone may be insufficient to fully integrate live-in relationships into the Indian social fabric.

RIGHTS OF PARTNERS IN LIVE-IN RELATIONSHIPS

While live-in relationships are not formally codified in Indian law, courts have gradually extended **limited legal rights and protections** to individuals in such relationships—primarily through judicial interpretation and welfare legislation. These rights are, however, **fragmented and conditional**, often depending on the nature, duration, and public perception of the relationship.

Right to Protection from Domestic Violence

The most significant legal safeguard comes from the **Protection of Women from Domestic Violence Act, 2005 (PWDVA)**. Section 2(f) of the Act includes relationships "in the nature of marriage" within the definition of a domestic relationship. As a result, women in live-in relationships can seek:

- Protection orders from physical or emotional abuse
- Residence orders ensuring their right to stay in the shared household
- Maintenance or monetary relief
- Custody orders for children
- Compensation for mental or physical harm

30 Indian Express, "Live-in couple harassed by police, seek HC protection," 2021

However, courts have clarified—most notably in *Indra Sarma v. V.K.V. Sarma* (2013)—that such protection is limited to relationships that closely resemble a marital arrangement.[31] Casual, secretive, or adulterous relationships are excluded.

Right to Maintenance

While there is no explicit statutory provision granting maintenance to a live-in partner, courts have awarded **maintenance to women** under both the **PWDVA** and **Section 125 of the Criminal Procedure Code**, provided the relationship satisfies the criteria of a de facto marital union.For example, in *Chanmuniya v. Virendra Kumar Singh Kushwaha* (2011), the Supreme Court observed that a woman in a live-in relationship may be entitled to maintenance if the relationship is stable, exclusive, and resembles a marriage[32]. The Court emphasized the need to interpret "wife" broadly in socially sensitive cases to prevent injustice.

Legitimacy and Inheritance Rights of Children

Children born from live-in relationships are now legally considered **legitimate** under Indian law. In *Tulsa & Ors. v. Durghatiya & Ors.* (2008), the Supreme Court held that if a man and woman lived together as husband and wife for a significant period, the children born of such a union are to be presumed legitimate.

Such children are entitled to:

- Inheritance of property under **Section 16 of the Hindu Marriage Act, 1955** (though limited to the parents' property)
- Protection under **child custody and guardianship laws**

Property and Succession Rights of Partners

Currently, there is **no codified right of inheritance or property division** between partners in live-in relationships. Unlike married spouses, live-in partners cannot automatically claim a share in the partner's self-acquired or ancestral property unless they can prove joint ownership, contribution, or an express agreement[33].

While courts have occasionally recognized implied trusts or financial contributions under civil law principles, such claims are difficult to prove without formal contracts.

Rights Under Constitutional Law

Indian courts have consistently affirmed that live-in relationships are protected under **Article 21 of the Constitution**, which guarantees the right to life and personal liberty. This includes:

31 Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755.

32 Chanmuniya v. Virendra Kumar Singh Kushwaha, (2011) 1 SCC 141.

33 Batra v. Batra, (2007) 3 SCC 169.

- The right to choose a partner and cohabit
- Protection from moral policing and family interference
- Right to seek police protection if threatened

In *Nandakumar v. State of Kerala* (2018), the Supreme Court reiterated that two consenting adults have the **constitutional right to live together**, even if not legally married.

Absence of Uniform Rights for LGBTQ+ Partners

Despite the decriminalization of homosexuality in *Navtej Singh Johar v. Union of India* (2018), **same-sex live-in couples still lack statutory protection** under Indian family laws, including the PWDVA[34]. As a result, their rights remain largely undefined, and access to remedies such as maintenance, adoption, or inheritance is legally uncertain.

Conclusion of Section

While Indian courts have extended basic protections to live-in partners—particularly women and children—the absence of a **comprehensive civil statute** continues to result in legal uncertainty. Most rights are derived from judicial discretion, and men, same-sex partners, and vulnerable individuals often remain outside the protective ambit. To ensure equality and clarity, legislative intervention is essential to formally recognize the rights and obligations of all partners in live-in relationships.

EMPIRICAL OBSERVATIONS AND PUBLIC PERCEPTION

Understanding live-in relationships in India requires not only a legal and theoretical lens but also an examination of **public perception and lived realities**. Despite gradual judicial recognition and changing urban lifestyles, live-in relationships remain largely stigmatized in much of Indian society. Empirical observations reveal a **disconnect between law and societal attitudes**, with significant regional, gender-based, and cultural disparities.

Public Opinion and Societal Acceptance

Empirical studies and surveys conducted by academic institutions and research bodies like **Centre for the Study of Developing Societies (CSDS)** and **Pew Research Center** have shown that:

- A **majority of Indians still disapprove of live-in relationships**, considering them morally unacceptable[35].
- Acceptance is relatively higher among the **urban youth**, particularly those who are financially independent and educated.
- **Parents and elders** are often opposed to such relationships due to concerns about family honor, social image, and religious values[36].

34 Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

35 Pew Research Center, Indians' Views of Gender Roles, Family Life and Religion, March 2022.

In a **2019 India Today Mood of the Nation poll**, nearly **66% of respondents across India disapproved** of live-in relationships, with rural disapproval being as high as 80%.

Regional and Class Variations

- **Metropolitan areas** like Delhi, Mumbai, Bangalore, and Pune report a higher prevalence of live-in relationships, often among professionals, students, or creative industry workers.
- In contrast, **semi-urban and rural areas** still strongly associate cohabitation with social deviance or immorality.
- Class differences are also evident—while upper-middle-class couples may have more social leeway, economically weaker sections often face **institutional hurdles** such as housing discrimination and police scrutiny.

Landlords, Housing, and Discrimination

Several anecdotal reports and media investigations have documented **housing discrimination** faced by live-in couples. Landlords often refuse to rent homes to unmarried couples, citing "moral reasons" or concerns about neighborhood reactions[37]. Even in progressive cities, cohabiting couples are sometimes forced to lie about their marital status.This practical barrier significantly **limits the freedom** of couples to cohabit openly and safely.

Media Representation and Normalization

Indian cinema and television have increasingly portrayed live-in relationships in a **more neutral or positive light**, particularly in urban-focused narratives. Movies like *Salaam Namaste*, *Shuddh Desi Romance*, and *Luka Chuppi* have brought the subject into the mainstream[38].

However, these portrayals often gloss over the **social and legal vulnerabilities** involved and may represent only a narrow slice of urban privilege.

Feedback from Legal and Academic Professionals

Interviews and surveys conducted among **legal practitioners, judges, and academicians** indicate:

- Growing concern over the lack of codified rights for live-in partners[39].

36 CSDS-Lokniti, Youth Survey 2017–18: Attitudes towards Gender and Family, Centre for the Study of Developing Societies.

37 India Today, "Live-in Couples Denied Housing: Moral Policing in Urban India," October 2020.

38 The Hindu, "Changing Scripts: Bollywood's Portrayal of Live-in Relationships," February 2021.

39 Interview with Prof. Faizan Mustafa, Vice-Chancellor, NALSAR University of Law (2021).

- A general consensus that courts have been proactive but **law needs to catch up** with social change[40].
- Divergent views on whether live-in relationships should be equated with marriage or regulated as a distinct union.

Conclusion of Section

Empirical evidence suggests that while live-in relationships are **slowly gaining visibility**, they continue to face **social stigma, practical barriers, and cultural rejection** in most parts of India. There remains a substantial gap between **judicial recognition and public acceptance**, underscoring the need for **awareness campaigns, legal education, and inclusive policymaking** to bridge this divide.

CHALLENGES AND LEGAL GAPS

Despite evolving judicial recognition, live-in relationships in India continue to exist within a **fragmented and ambiguous legal framework**. While some protections are extended under existing laws, they are **limited in scope**, **gender-specific**, and **heavily reliant on judicial discretion**. This creates multiple challenges—legal, social, and procedural—for individuals in such relationships, particularly for women, children, and LGBTQ+ partners.

Absence of Statutory Definition

One of the foremost challenges is the **lack of a statutory definition or dedicated legislation** recognizing live-in relationships. Unlike many other countries where such relationships are codified under civil union laws or common-law marriage doctrines, Indian law treats live-in relationships **on a case-by-case basis**, often requiring judicial interpretation to determine rights and remedies.

This leads to legal uncertainty and inconsistency, especially in matters involving **property division, succession rights, custody, and dissolution** of relationships.

Gender Bias and Limited Protection

The existing legal protections under the **Protection of Women from Domestic Violence Act, 2005** are available **only to women**. Male partners, same-sex partners, or non-binary individuals in live-in relationships do not have equal access to remedies such as protection orders, maintenance, or residence rights.

This creates a **gendered imbalance**, leaving large sections of the population without recourse to justice in the event of domestic abuse or breakdown of the relationship.

Property and Inheritance Issues

Live-in partners do not enjoy automatic rights to **joint property, alimony, or inheritance**

40 Bar and Bench, "Panel Discussion: Evolving Jurisprudence of Live-In Relationships," November 2022.

unless proven through a contractual agreement or legal presumption. Courts may apply equitable principles in long-term relationships, but there is no **uniform guideline or enforceable provision** under Indian civil or family law.

Similarly, while the **legitimacy of children** born out of live-in relationships is now accepted, **their inheritance rights** are limited to the self-acquired property of their parents and not ancestral property under Hindu law.

Lack of Protection for LGBTQ+ Partners

After the landmark *Navtej Singh Johar v. Union of India* (2018) decision decriminalizing homosexuality, same-sex couples gained the constitutional right to cohabit. However, **there is still no legal recognition** of their relationships under personal, family, or civil law. As a result, same-sex live-in partners face **exclusion from property, adoption, and succession rights**, and are often denied police or housing protection.

Enforcement Challenges and Moral Policing

Even when courts affirm the rights of live-in couples, **enforcement on the ground remains weak**. Couples frequently face:

- **Social stigma** and **harassment by families or neighbors**
- **Housing discrimination** from landlords and resident welfare associations
- **Interference by police**, often based on moral or religious grounds rather than legal merit

These practical barriers deter couples—especially women—from exercising their legal rights and accessing justice mechanisms.

Judicial Inconsistency and Subjectivity

Judicial decisions on live-in relationships vary widely across jurisdictions. Some High Courts have granted protection to live-in couples regardless of marital status, while others have denied relief citing morality or public policy.

This **lack of consistency** increases the vulnerability of partners, especially in conservative or rural areas where courts may be more inclined to uphold societal norms over constitutional freedoms.

Conclusion of Section

Live-in relationships in India face multiple legal and societal challenges due to the **absence of a comprehensive legal framework**, **gender-specific limitations**, and **implementation gaps**. Although courts have attempted to fill these voids through progressive interpretation, the lack of codified rights continues to leave live-in partners in a **precarious position**, both legally and socially. Legislative intervention is imperative to ensure **uniformity, inclusivity, and equal protection** under the law.

POLICY RECOMMENDATIONS AND REFORMS NEEDED

The growing prevalence of live-in relationships in India calls for **comprehensive legal reform** that bridges the gap between constitutional rights, judicial precedents, and societal realities. While courts have taken progressive steps to protect individuals in such relationships—especially women and children—this judicial activism must now be **supplemented by clear legislative policy**. Codification of rights, responsibilities, and procedures is essential to remove ambiguity, ensure uniform protection, and uphold the dignity and autonomy of all partners, regardless of gender, sexual orientation, or social background.

Enactment of a Comprehensive Live-in Relationship Law

India needs a dedicated legislation that:

- **Defines live-in relationships** clearly (e.g., based on duration, mutual commitment, cohabitation, and public perception).
- Provides a **registration mechanism** for couples who wish to formalize their union without marrying—similar to civil unions or domestic partnerships in the UK, USA, or France.
- Codifies the rights and responsibilities of partners with regard to **maintenance, property sharing, inheritance, separation**, and **custodial rights**.

This would remove legal uncertainties and bring live-in relationships under the protective ambit of civil law, reducing dependency on judicial discretion.

Gender-Neutral and Inclusive Protections

Legal protections—particularly under laws like the **Protection of Women from Domestic Violence Act, 2005**—must be expanded to cover **all genders and sexual orientations**. Live-in relationships involving **male partners, non-binary individuals, and LGBTQ+ couples** must be equally eligible for legal remedies such as protection from abuse, maintenance, and property disputes.

A **gender-neutral domestic partnership law** can help ensure fairness, address modern family structures, and align with India's constitutional commitment to equality under Articles 14 and 15.

Clarification of Property and Succession Rights

Reform is needed in both **family law** and **succession law** to:

- Allow live-in partners to claim a **share in jointly acquired or contributed property**.
- Enable **nominations, next-of-kin rights**, and **inheritance of self-acquired property** through codified provisions.

- Clarify **inheritance rights of children** born to live-in couples, ensuring parity with children of formally married parents in terms of succession and welfare benefits.

Such reforms will help protect vulnerable partners—especially homemakers or dependent partners—from being left destitute after separation or death.

Housing and Anti-Discrimination Measures

A national policy or model guidelines should be framed to prevent **housing discrimination** against live-in couples. This could include:

- Directions to state governments and municipal bodies to **prevent moral policing** by housing societies, RWAs, or landlords.
- Mechanisms for redressal of discrimination based on **marital status**, **gender**, or **sexual orientation**.
- Sensitization programs for law enforcement, housing authorities, and real estate associations to promote inclusive housing rights.

Sensitization and Awareness Campaigns

Law reform must be accompanied by **extensive public education** to address social stigma. Government and civil society organizations should collaborate to:

- Conduct **media campaigns** promoting awareness about the legal rights of individuals in live-in relationships.
- Organize **legal literacy drives** in schools, colleges, and communities.
- Train police, welfare officers, and judiciary in **handling live-in partnership issues** with sensitivity and constitutional objectivity.

Changing the legal landscape without changing public perception will not ensure access to justice in real-world scenarios.

Judicial Training and Uniform Guidelines

To minimize inconsistency in verdicts across courts, the Supreme Court or Parliament should consider:

- Issuing **model judicial guidelines** on the recognition and assessment of live-in relationships under existing laws.
- Promoting **judicial training modules** on interpreting Article 21 and gender-inclusive rights in the context of non-traditional partnerships.

This will ensure a more **uniform, principled approach** rather than case-by-case subjectivity.

Incorporation into National Family Policy

India is in the process of updating its **National Family Policy**. This is an opportune moment to:

- Acknowledge and include **diverse family structures**, including live-in partnerships and same-sex families.
- Extend **social security schemes**, **welfare benefits**, and **taxation policies** to all recognized forms of cohabitation.

A family policy that embraces legal pluralism and personal autonomy will reflect the **progressive, rights-based ethos** of the Constitution.

Conclusion of Section

The time has come for India to move beyond ad hoc judicial recognition and address live-in relationships through **inclusive, forward-looking policy reforms**. By adopting a rights-based legislative framework, ensuring gender-neutral protections, and combating social discrimination, India can protect individuals' autonomy while fostering a more just and equal society. Legal recognition should no longer be contingent upon marital status alone, but should extend to all adult consensual partnerships built on mutual respect and shared domestic life.

SUGGESTIONS AND WAY FORWARD

As Indian society transitions toward modernity, the legal system must keep pace with the **realities of evolving social relationships**. Live-in relationships, once considered taboo, are increasingly a part of urban and semi-urban life. Yet, the absence of statutory recognition, coupled with societal resistance and legal ambiguity, continues to place individuals—especially women and LGBTQ+ persons—in a vulnerable position. Hence, a **multi-pronged approach combining legal, institutional, and social reforms** is imperative.

Below are key suggestions and the proposed way forward:

Enact a Uniform Civil Code or Special Statute on Cohabitation

While the debate around a **Uniform Civil Code (UCC)** remains politically sensitive, there is growing consensus that a **special statute dedicated to live-in relationships** is needed. Such legislation should:

- Clearly define what constitutes a live-in relationship.
- Provide eligibility criteria for legal recognition (e.g., duration, mutual consent, shared household).
- Outline the rights and obligations of partners, especially regarding **maintenance, child custody, property sharing, and dissolution procedures**.
- Incorporate **gender-neutral provisions** and **inclusive language** to ensure applicability across all genders and sexual orientations.

This would offer legal clarity, reduce reliance on judicial discretion, and prevent abuse of legal loopholes.

Develop a Voluntary Registration Mechanism

To address the ambiguity surrounding proof of cohabitation, the government may consider introducing a **voluntary live-in relationship registration system**, akin to **civil partnerships in the UK** or **PACS in France**. This registry could:

- Serve as prima facie evidence in legal disputes.
- Help facilitate access to welfare schemes, insurance, and housing rights.
- Provide couples an opportunity to define terms of cohabitation through **cohabitation contracts**.

Such a framework would empower individuals to formalize their domestic arrangements while respecting their choice not to marry.

Ensure Equal Access to Legal Remedies

Existing laws such as the **Protection of Women from Domestic Violence Act, 2005** must be revised to:

- Extend protections to **male**, **transgender**, and **non-binary** partners in abusive live-in arrangements.
- Recognize **same-sex live-in relationships** explicitly, ensuring access to maintenance, protection, and legal redress.
- Standardize judicial interpretation of "relationship in the nature of marriage" to avoid arbitrariness and exclusion.

These steps would help align India's domestic laws with its **constitutional commitment to equality under Article 14** and non-discrimination under **Article 15**.

Promote Sensitization in Law Enforcement and Housing Sectors

One of the most urgent needs is to **sensitize police officers, landlords, and resident welfare associations (RWAs)** to the legality of live-in relationships. This can be achieved by:

- Issuing clear government circulars to **prevent moral policing** and ensure protection of consenting adult couples.
- Conducting **training workshops** and awareness programs for local law enforcement and public housing authorities.
- Encouraging state commissions for women and LGBTQ+ rights to develop **helplines and legal support cells** for couples in distress.

These initiatives would help reduce harassment, arbitrary evictions, and threats from hostile community members.

Incorporate Relationship Diversity in Academic Curricula

To address **long-term cultural stigma**, the education system must foster **awareness**

and tolerance from an early age. Law schools, sociology departments, and civil service academies should:

- Integrate modules on **relationship diversity**, **family law reform**, and **constitutional rights**.
- Promote empirical research on family structures, gender roles, and legal pluralism.
- Encourage student-led legal aid clinics to support couples facing legal or social challenges due to cohabitation.

State-Level Policy Initiatives and Pilot Projects

State governments can play a pioneering role by:

- Enacting **state-specific live-in relationship recognition schemes**, especially in progressive states like Kerala, Maharashtra, or Delhi.
- Launching **pilot projects** for live-in partner welfare (e.g., cohabitation benefits in housing schemes or local municipal recognition).
- Including cohabiting couples in existing **domestic violence, mental health, and gender sensitization policies**.

These decentralized efforts can act as models for national legislation in the future.

Engage Civil Society and Media in Re-shaping Narratives

Non-governmental organizations, women's rights groups, and LGBTQ+ collectives must collaborate with legal bodies to:

- Conduct **community-level dialogues** to reduce stigma.
- Use **media platforms and storytelling** to humanize the experiences of cohabiting couples.
- Advocate for **data collection and academic research** on live-in partnerships to build evidence for policy change.

By normalizing alternative relationship models, these interventions can gradually erode deep-rooted cultural resistance.

Conclusion of Section

The way forward lies not in dismantling traditional values, but in **reconciling them with constitutional liberties, evolving social realities, and global legal trends**. Live-in relationships, as a personal choice among consenting adults, must be seen not as a threat to Indian culture but as an expression of individual autonomy. Through inclusive legislation, public sensitization, and institutional reform, India can ensure that all forms of familial bonds are treated with **equal dignity, legal security, and human compassion**.

CONCLUSION

Live-in relationships represent a significant shift in India's socio-legal fabric, where

individual autonomy and modern notions of companionship are gradually gaining ground against deeply entrenched norms of marriage, patriarchy, and moral policing. Though once stigmatized and seen as illegitimate, such relationships have slowly gained **judicial recognition** and a degree of **social visibility**, especially in urban India.

However, despite notable Supreme Court decisions and protections extended under statutes like the **Protection of Women from Domestic Violence Act, 2005**, the legal framework around live-in relationships remains **fragmented, ambiguous, and exclusionary**. Most rights available to cohabiting partners—such as protection from abuse, maintenance, legitimacy of children, and limited recognition of the right to cohabit—are subject to **judicial interpretation** rather than codified statutory guarantees. This results in **legal uncertainty** and **unequal access to justice**, particularly for **same-sex couples, non-binary individuals, and economically vulnerable women**.

The societal acceptance of live-in relationships continues to lag behind legal recognition. Strong resistance from family structures, religious groups, and community elders often leads to social ostracism, housing discrimination, and even threats to life and liberty. Moreover, the gendered lens through which cohabitation is viewed places a disproportionate burden of social stigma and vulnerability on women.

Comparative analysis with countries like the **UK, USA, France, and Canada** shows that it is possible to develop **inclusive legal models** that protect cohabiting partners without undermining the institution of marriage. These countries offer civil union systems, cohabitation contracts, and common-law partnerships that provide clarity, dignity, and enforceable rights to all partners.

As India evolves, it must embrace this shift by framing a **comprehensive, inclusive, and gender-neutral legal framework** for live-in relationships. Legislative reform, coupled with public sensitization and institutional safeguards, is essential to bridge the existing gap between **constitutional ideals of liberty and equality** and the **ground realities of legal and social discrimination**.

In conclusion, live-in relationships should no longer remain in a legal grey zone. A well-defined statutory recognition, along with policy support and societal dialogue, is the way forward to ensure that individuals who choose such partnerships are treated not with suspicion, but with **dignity, equality, and legal certainty**.

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The Double-Edged Sword: Fintech Growth and Its Cybersecurity Challenges

Dr. Shikha Gupta, Manasvi Pilani** & Sakshat Sharma****

ABSTRACT

This paper emphasizes the rise, growth of fintech along with its cybersecurity challenges in which we addressed the problem of cybersecurity threats and cyberattacks and the growth with the help of technological advancements with new systems. As per this paper we understand the importance of cybersecurity challenges and role of cybersecurity along with the rise of fintech. This study seeks to accomplish the growth, innovation and rise of fintech with literature reviews in which different authors state many things about fintech and cybersecurity. The aim of this research is to show the rise in financial companies and the role of cybersecurity or threat that they were faced in between with deep research .This research is conducted with secondary data which includes the research objectives like to study the rise, growth and innovation along with the role of cybersecurity risks or you can say challenges.This paper involves deep descriptive research with growth graphs and tables for better understanding in research methodology. This study shows the prevention strategies along with some cyberthreats which include attacks like phishing , malware and cyberthreats . So that customers can learn from this and can't be fooled by the threats and attacks. Prevention strategies like patch management, zero trust security, network segmentation and many more which guides us to prevent cyber threats and cyber attacks. This study provides a unique perspective on the subject,enabling researchers and practitioners to re–evaluate the direction, the rise, growth and innovation of fintech as shown above and states the challenges that they are facing due to cyberthreats and attacks in cybersecurity infringement.

Keywords: Fintech growth, Cybersecurity challenges, Technological innovation, Cyber threats & attacks, Prevention, Strategies.

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INTRODUCTION

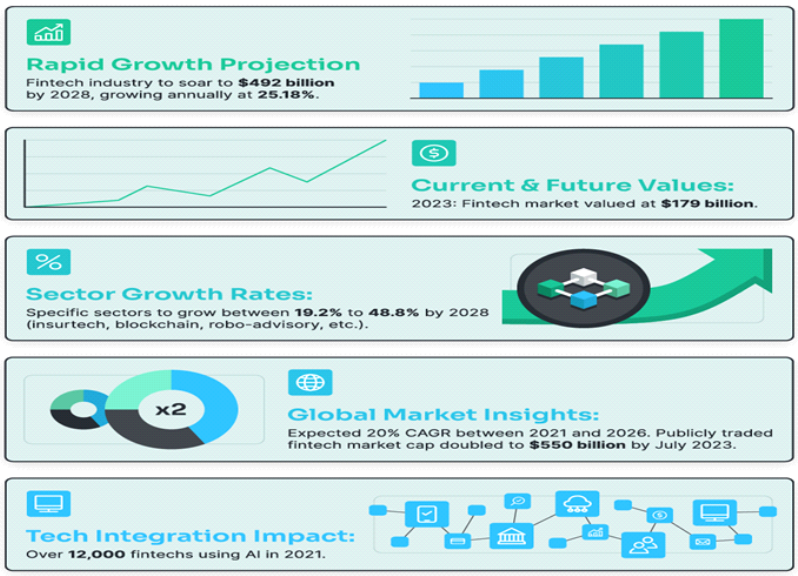
What does fintech actually mean? Fintech, also known as financial technology, is a service that shows price, time and many other dimensions as well. Fintech integrates mathematical, statistical, computational and economic things or you can say concepts with an analytical system (rahma wahyu idayani). As we all know that fintech is a fast becoming global phenomenon which is led and followed by innovators, by academics and now attracts the attention of regulators. On a wider scale, Fintech is a modern term that refers to modern things, tech driven services and it helps in many businesses (Anne laure). The use of fintech itself has been proven to help in the process of transactions for many years. This is of course nicely balanced with the development with the user interface and its experience over the period of time. Currently, there are hundreds of mobile payment services in the world which aim at facilitating the transaction process . In this case or you can say in this case, the use of fintech varies, ranging from payments which are required by users for casual things (Rahma Wahyu Idayani). Fintech has completely transformed how we manage our money—making things like banking, investing, and payments quicker and more convenient. But as the industry grows, so does the risk of cyberattacks. Because fintech companies handle a lot of sensitive financial and personal information, they've become attractive targets for hackers. So, while fintech offers great advantages, it also brings serious security challenges. To keep progressing safely, the industry needs to prioritize cybersecurity just as much as innovation. With the growth of the fintech industry at an unpredicted rate, it is critical to protect the cybersecurity and privacy. We have to be sure about privacy and data breach as nowadays it's growing at a very huge rate. This research also shows the challenges along with the risks and many other things faced by financial technology companies, highlighting the risk which is posed by the malware and other network vulnerabilities. (Rajath karangara). As fintech continues to shake up the traditional financial world, it's important to take a closer look at what this shift means for cybersecurity and data privacy. (Milian E.Z. et al, 2019), (Cocco et al., 2017). With more people relying on digital platforms and online transactions, strong security systems and clear regulations are more important than ever to guard against cyber threats. (Sangwan, V. et al, 2020), (Arner et al., 2016). On top of that, as fintech keeps evolving—with technologies like blockchain and AI entering the scene—new challenges and risks are emerging that need careful attention.(Catalini & Gans, 2016). Fintech is growing rapidly at a very nice rate and in the future as well, we all will see the results in the future in this sector surely.

FINTECH BOOM: CHANGING THE FACE OF FINANCE

Over the past few years, the financial technology (fintech) industry is emerging as one of the most informative and transformative forces in the global economy, by reshaping the way individuals and businesses interact with some financial services. By blending advanced technologies such as applications in mobile, blockchain systems, data analysis and cloud computing. Fintech has redefined traditional banking, lending, investments and insurance processes by making them faster, more accurate, more accessible and more efficient with effective manners. The rise of fintech can be attributed

to a combination of many factors, including increased smartphone usage, evolving consumer expectations, regulatory support for innovation and growing investor interest in finance and digital solutions. All this rapid expansion has led to many fintech startups, strategic partnerships between technology firms and many financial institutions and development of new financial products tailored towards population. Fintech is playing a key role in expanding access to financial services in developing regions, while also intensifying competition in more established markets. This competitive pressure is prompting conventional banks to speed up their adoption of digital technologies. However, alongside these positive advancements, the rapid rise of fintech has introduced several complex challenges—such as unclear regulatory frameworks, issues surrounding the protection of user data, and growing concerns over cyber threats. This research seeks to investigate the primary factors fueling the expansion of the fintech industry, assess its influence on the broader financial services landscape, and highlight both the potential benefits and challenges that accompany its ongoing development. By analyzing relevant literature and current market trends, the research aims to offer a detailed insight into the ways fintech is transforming financial systems on a global scale.

Growth in this sector (fintech) is impressive and is emerging at a nice rate which is useful for all of us and for the GDP of the country as the fintech companies are growing. The GDP of India is also growing at an impressive rate which is beneficial for the country also.



The rate of growth of the fintech sector in the past decade has been exceptional, and successfully reshaped traditional financial services by employing multi-dimensional technologies. By 2022, global estimates projected the fintech market would exceed $492 billion in market valuation, demonstrating tremendous growth. Growth is being propelled by swift consumer expectations for greater access, speed and usability of

financial products and services. There has been significant growth in many areas of fintech, but a revolution of sorts is currently being witnessed within digital payments, blockchain innovation, robo-advisory, Insurtec online lending etc. With this rise in fintech products and services being largely attributable to the proliferation of smartphones in society, we have also seen the widespread acceptance of mobile wallets and touchless payment options for making cashless purchases. Additionally, the growth of funding to the fintech startup ecosystem raised historic levels of investment from traditional financial institutions and venture capital firms into the disruptive fintech space in 2021.

Furthermore, the favorable regulatory environment for fintechs, combined with advances in technologies, including artificial intelligence, machine learning, and big data analytics, increased security, customization of solutions, and expedited delivery of financial services.

Fintech Segments

Fintech, as a dynamic and expansive industry can be segmented into different categories which caters to specific financial needs and transforming different traditional practices. These segments include things like payments, leding, digital banking and wealth operations each have a huge role in the financial landscape.

Payments: This area of payment includes some digital tools such as mobile wallets , contactless payments and many other digital systems. Advancements of technology in fintech have transformed the way both individuals and businesses handle the transactions, prioritizing speed, easy usage and enhanced security level. Through mobile payments platforms, users can conduct instant transfers, make purchases online and pay in stores.

Lending: Fintech-based lending services utilize modern digital tools to make the loan application and approval process more efficient, often functioning without the involvement of traditional banks. Platforms that support peer-to-peer lending directly link individuals seeking loans with private investors, cutting out intermediaries. Online lenders also assess credit eligibility using innovative evaluation methods and alternative sources of information beyond conventional credit scores. This model supports faster loan processing and enables tailored financial solutions for individual borrowers and small businesses.

Digital Banking: This segment focuses on the full digital transformation of banking services, offering customers access to their finances through web portals, smartphone applications, and banks that operate entirely online. These fintech-enabled banks eliminate the need for physical branches, delivering low-cost, user-friendly services such as checking and savings accounts, credit products, and investment tools—all designed to improve accessibility and efficiency.

Wealth Management: Fintech firms in this space provide modern investment solutions and financial advisory services. Automated platforms, commonly known as robo-advisors, use algorithmic models to deliver affordable, data-driven investment strategies, broadening access to wealth management services. Additionally, platforms offering

fractional ownership allow users to invest in smaller portions of high-value assets like stocks or real estate, making investing more inclusive and flexible.

INNOVATION IN FINTECH: RESHAPING FINANCE

Following the rapid expansion in the world, the fintech industry has become a technological innovator in financial services. A wide range of new such tools and platforms have merged beautifully, changing how people access, manage and move money. One of the most eye-catching developments is in the area of digital payments like mobile wallets, qr code and contactless or seemless payment systems which replaced cash and traditional card use for billions of consumers.These are not only convenient to us but also helps in speed up transactions and improve security .

Lending services have also undergone a significant transformation recently. Nowadays online platforms allow individuals and small businesses to apply and receive loans with minimal paperwork and faster processing time. Peer- to peer lending has further expanded access to credit by connecting all borrowers directly with lenders, often using alternative data sources to evaluate risks.

In the banking sector, digital-only banks or non banks — are gaining traction by offering fully online services through mobile apps. These banks reduce operational costs by eliminating physical branches, passing the savings on to customers through lower fees and better interest rates. They also focus heavily on user-friendly interfaces and real-time account management, making banking more accessible and transparent.

Wealth management has also seen innovation through digital platforms that allow users to invest with small amounts of capital. These tools simplify investing by offering educational resources, goal tracking and personalized recommendations. Likewise, the insurance industry has been disrupted by Insurtech firms, which use technology to streamline policy management and claims processing. Customers can now buy coverage, submit claims and track their status entirely online.

Another area witnessing notable innovation is the integration of financial services into non-financial platforms, commonly known as embedded finance. This trend enables users to access lending, payments, insurance, or savings options directly within apps and services they already use, such as e-commerce websites, ride-sharing platforms, or social media. For example, “buy now, pay later” services are now frequently offered at online checkout, giving consumers flexible payment options without interacting with a separate financial provider.

CYBERSECURITY: THE SHADOW SIDE OF FINANCIAL TECHNOLOGY

Cybersecurity involves the methods, tools, and rules put in place to stop digital attacks or lessen the harm they cause. It also involves the strategies, and things designed to stop cyberattacks or reduce their damage. Its main purpose is to keep computer systems, software, digital devices, sensitive information and financial resources safe from threats like ransomware, viruses, phishing, data breaches and other harmful online activity. It also plays a key role in protecting the people and organizations using these technologies.

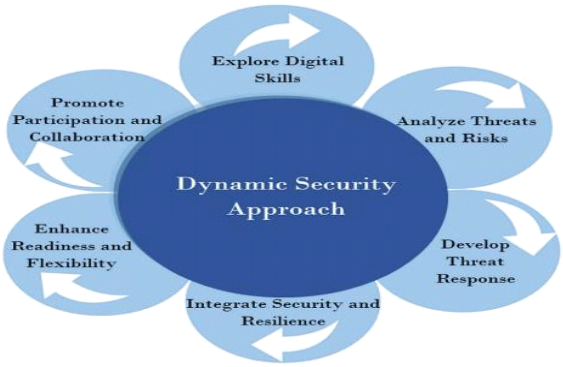


Figure 1: Counterattacking Cyber Threats: A Framework for the Future of Cybersecurity

A framework for the future of cybersecurity shows the dynamic security approach which counter attack cyber threats by the terms mentioned above - Explore digital skills, analyze threats and risks, develop threat response, integrate security and resilience and many other things as well.

The merging of cybersecurity and fintech, brought us new kinds of security issues that demand new and different approaches. With the rise of digital currencies like DeFi which means decentralized finance and systems like blockchain and the structure of modern finance is evolving rapidly. Offers new transparencies, decentralization and secured encryption which isn't completely safe from cyberattacks. Which have been the real world incidents involving flaws in smart contracts, some encrypted keys and many hacked exchanges - each leading towards significant financial damage.

Modern cybersecurity tools have made significant progress in improving how financial threats are identified, fraud is prevented and large amounts of financial data are monitored for unusual activity. At the same time, cybercriminals are developing more advanced methods to bypass traditional defenses, pushing financial institutions to upgrade their security systems to better handle these evolving threats. In response, major regulatory organizations—including the European Central Bank (ECB), the U.S. Securities and Exchange Commission (SEC), and the Financial Action Task Force (FATF)—have established strict cybersecurity requirements aimed at protecting financial systems. Meeting these standards, such as the General Data Protection Regulation (GDPR), the Payment Card Industry Data Security Standard (PCI DSS), and the Cybersecurity Maturity Model Certification (CMMC), is crucial for reducing security risks and maintaining overall financial stability. To stay protected, financial institutions need a well-rounded security strategy that includes multiple layers of defense, strong data encryption, and real-time monitoring to quickly detect and respond to threats.

ROLE OF CYBERSECURITY

So the importance of cybersecurity in fintech cannot be overestimated , as the world nowadays increasingly relies on superior technology to supply the services effectively

and in a most securable way(Jameaba MS). Fintech companies handle a very huge amount of sensitive and crucial financial data which includes personal information, transaction details and payment credentials (Nicoletti B, Nicoletti W, Weis A). To protect the data from cyber threats is not only the essential thing for maintaining consumer trust but also for complying with the straight data protection regulations which are enforced by the authorities like general data protection regulation (GDPR) in Europe and payment card industry data security standard (PCI DSS) globally . Businesses in fintech rely heavily on customer trust, which is based on one guarantee that their data is protected (Aldboush HH, Ferdous M). A company's image is single handedly harmed by the breach of data or any kind of cyberattack which majorly results in loss in business.

These businesses need to make some investments through cybersecurity frameworks that are adapted to unique operating requirements and some kind of dangers (Kaur G, Lashkari ZH, Lashkari AH). Robust encryption mechanisms in place to safeguard data while it's in motion and at rest , making sure that the data is private is in unreadable form so that an unauthorized party can not decrypt it easily by breaching the password (Mäkitalo N).

CYBERSECURITY CHALLENGES IN FINTECH

Fintech companies are increasingly grappling with serious cybersecurity challenges due to the rapid pace of digital transformation and the rising sophistication of cyber threats. Positioned where finance and technology meet, these organizations rely on advanced tools such as robo-advisors, mobile payment platforms, blockchain technology and online banking services to boost operational efficiency and enhance user experience (Khayer A).However, these innovations also heighten exposure to cyber risks, emphasizing the urgent need for robust security frameworks to protect sensitive financial data and maintain customer trust.

One of the most pressing concerns in this space is the threat of data breaches (Najaf K, Mostafiz MI).Because fintech firms handle large volumes of confidential data—including personal information, transaction histories and payment details—they have become prime targets for cybercriminals seeking to exploit gaps in digital infrastructure.The consequences of a successful breach can be severe, leading to major financial losses, reputational harm and regulatory sanctions. This underscores the necessity for strong data protection practices and a forward-looking approach to cybersecurity

Fintech companies must navigate not only technical vulnerabilities but also a complex regulatory landscape that oversees cybersecurity, financial operations, and data privacy (Allen F, Gu X). Compliance with frameworks such as the General Data Protection Regulation (GDPR), the Payment Card Industry Data Security Standard (PCI DSS) and other industry-specific guidelines is essential to protect consumer rights, maintain smooth operations, and avoid legal consequences (Kim S.).

REVIEW OF LITERATURE

The rapid advancements and growth which we see nowadays in financial technology

(fintech) has significantly managed all the landscapes of financial services by providing or we can say integrating tools like cutting edge digital tools into banking, investing, lending and in insurance. As fintech is evolving rapidly nowadays, it introduces a new spectrum of cybersecurity threats or challenges. Many researchers have explored these risks and emphasized how the digitalization of the financial system has created new threats , and vulnerabilities. So, according to arner barberis and (Buckley, 2016), the transformative effects of fintechs on its financial services has broadened attack surfaces due to its reliability on cloud computing systems and different mobile applications . These technologies enable much greater efficiency and user accessibility which simultaneously opens the door for malicious activities like data breach, data leak, identity theft and many different types of cyber attacks. (Kshetri, 2017) further said that by pointing out that fintech companies store and process large volumes of important and sensitive data with them, so they become the high value targets for cyber-criminals. The increasing rate of hacking techniques has forced fintech firms to prioritize not only its sensitive data but their cyber defense mechanisms as well. By exploring some specific areas of concern, (Mhlanga, 2020) argues on the regulatory gaps and inconsistencies in different jurisdictions cybersecurity risks. Fintech companies often operate across many things via different digital platforms, they are subject to a variety of different regulatory things, some of which may be lacking in the cyber security chain. Moreover, the reliance on the third party app or you can say other service providers such a cloud computing system adds another layer of risk. A key issue analyzed in recent studies stems from the inability to identify cyber threats with sufficient speed in the quickly evolving contexts of fintech. Transactions take place in sub-second intervals, thereby making it impossible for security systems to identify malicious activity in real-time. Security monitoring systems, especially with multi-stage sophisticated attacks which are not easy to detect at the onset, have very limited automation. For these reasons, many fintech firms are looking into advanced technologies such as blockchain to improve preemptive security and reaction mechanisms always active in real-time for immediate adjustments. Due to a lack of funding, fintech startups tend to face greater risks in the realm of cybersecurity. (Nicoletti, 2017) notes that these businesses usually prioritize product development and marketing over all else, and security is deprioritized, leading to a myriad of dangers. These companies can find themselves in scenarios wherein new services are deployed without adequate encompassing defenses, which makes it far easier for cybercriminals to exploit. Larger fintech firms and established banks that implement fintech solutions, however, manage cybersecurity with greater effectiveness and efficiency due to more comprehensive budgets and advanced risk management systems. Moreover, customer actions, or the lack thereof, add to the cybersecurity risk within fintech companies. (Suri and Jack, 2016) noted that poorly chosen passwords, credential recycling, and app neglect are common user behaviors, which expose even the most protected systems. This illustrates the urgent need for user training campaigns, improved authentication frameworks and encryption-by-default policies. One of the greatest challenges in protecting fintech platforms is the ability to detect cyberattacks shortly after they occur. (Gai, Qiu, and Sun, 2018) explain that the incredibly rapid rate as which financial transactions are processed in

the fintech environment does not afford a lot of time for detection and prevention of harmful activity in real-time. Traditional security systems typically lag behind, and because of this lag, they often struggle to respond quickly to advanced threats that take advantage of unknown software vulnerabilities. (Johnson and Shadab, 2019) also notes how companies that do not have continuous surveillance systems to monitor their networks may not recognize a breach until they have done significant damage. To solve this issue, more organizations are searching into blockchain technology as a more reliable and secure method to verify financial transactions. New fintech organizations are especially vulnerable to security-related threats due to their limited financial and operational resources. (Nicoletti, 2017), observes how new fintech startups typically spend a considerable amount of time trying to grow their user base and optimising their product, which often results in the postponement of essential cyber-investments that are vital to prove safety for every consumer using their products. Subsequently, rather than being cycled through the proper security processes, products are released that could, and oftentimes do contain grave vulnerabilities. (Puschmann, 2017) provides a similar argument noting how the fintech môi trýÝng is competitive in nature, and that as a result requires companies to act quickly or get left behind, and to that end security generally gets left behind. On the other hand, large and more developed companies, such as traditional banks or well funded fintech companies, likely have the financial resources and the luxury of strategic thinking to account for security at the foundations of their operations. Users contribute to the lack of cybersecurity in fintech as well. In the early stages of adopting electronic transactions and network-based operations, cybersecurity in the financial sector was primarily regarded as a matter of business functionality rather than a strategic priority (Gai et al., 2016). During this period, various studies were conducted to help financial institutions establish reliable information security frameworks (Gai & Steenkamp, 2013, 2014). A common concern among financial organizations was the uncertainty surrounding the effectiveness and return on investment (ROI) of implementing advanced security technologies (Farzan et al., 2013). Additionally, financial service institutions often struggled to categorize and comprehend cyber incidents, which hindered their ability to make informed and timely strategic decisions (Gai et al., 2016). In response to these challenges, research by (Chai et al., 2011) indicated that higher investments in cybersecurity tended to yield proportionate returns, suggesting a positive correlation between investment level and security benefit. Further findings by (Liao et al.,2011) emphasized that addressing user's privacy concerns and developing strong trust frameworks are essential for ensuring the safety and reliability of digital financial transactions. At the same time, several studies have focused on identifying the origins of cyber threats within financial operations. For instance, (Roumani et al. 2016) explored the relationship between cybersecurity weaknesses and the internal records of financial institutions. Their research analyzed how factors such as the organization's operational scope, financial performance, market presence, and sales figures could influence vulnerability levels. In a related context, (Duan and Da, 2012) suggested that adopting financial technology (fintech) tools could serve as a strategic approach to enhance operational efficiency and improve various elements of financial business. As we are talking about the fintech companies it is

said that Over the past decade, fintech companies have played a crucial role in advancing key European Union policy initiatives such as the Capital Markets Union and the Banking Union. According to (Milne 2016), these firms act as engines for value creation across a range of entrepreneurial ventures. Fintech businesses benefit from numerous technological advantages that enable them to meet rising consumer expectations, navigate fewer regulatory obstacles, enhance user experience, streamline operations, and adopt innovative business models that support rapid expansion (Pollari, 2016). These innovations have led to transformative changes across multiple sectors, including big data analytics (Yin & Gai, 2015), mobile communication technologies (Topol, 2019),(Wen et al., 2012), (Zhang et al., 2012) Zhang & Soong, 2004), mobile embedded systems (Gai et al., 2017),(Zhang et al., 2011), trust and security frameworks (Abawajy et al., 2016), (Zhang et al., 2015), cloud computing (Castiglione et al., 2015),(Gai et al., 2018), and image processing technologies (Castiglione et al., 2007). Furthermore, one of the significant developments in the fintech ecosystem has been the increased participation of traditional banks in fintech ventures, which is helping to shape the future landscape of financial services. Technological progress in this space is also driving financial inclusion, expanding the accessibility and credibility of financial services, opening up new market opportunities for smaller enterprises, and giving fintech ventures a competitive advantage (Medeiros & Chau, 2016).

As the literature illustrates, cybersecurity risk in fintech is a complicated litany of factors technological, regulatory, organizational, and social. With the development of fintech and its embracement within the traditional financial ecosystem, firms and regulators should take initiative proactively to collaborate on efforts to enhance cybersecurity. The future research emphasis should be cross-border regulatory alignment AI-based detection systems and security-by-design ethos for innovative financial technologies.

RESEARCH OBJECTIVES

The aim of this study is to do a detailed analysis about the growth of financial technology, current challenges faced by this industry because of cybersecurity , and understanding the importance of cybersecurity for fintech firms. It lists various cybersecurity threats that fintech firms are likely to face and suggest ways to stop them. The objectives of this study are as follows:-

1. To study how the fast rise of FinTech services leads to more cyber risks.
2. To check if more people using FinTech results in more financial cybercrimes.
3. Find possible cyber threats and suggest ways to stop them.

RESEARCH METHODOLOGY

This research is descriptive in nature. In this research secondary data was used. The type of data used in this research was qualitative (words, images etc) in nature.

DATA COLLECTION

1. Data for this research was collected from sources like published research papers from google scholar, online articles, project reports etc.
2. The study uses previous data from various sources , as it perfectly fits the objectives of this research. Firstly, since the data was already collected and approved, it saves time and avoids the lengthy process of data collection. Because the data collected for the past decade offers a historical perspective that would be hard to get and it also serves as a basis for future research. To make sure our findings were reliable, we also checked newer studies on the same topic. This saved this research from any possible biases from using previous data.

HOW THE FAST RISE OF FINTECH IS FUELING CYBERCRIME

Fintech Market Growth (2015–2025): A Global Overview

Over the past few years, the financial technology which is also known as fintech is growing at a rapid speed. It provides many services like mobile banking, payment apps, cryptocurrency platforms and online investment tools. Fintech is changing the way we manage money. But with this brighter side comes a darker side: a sharp rise in cybercrime.

Fintech Growth vs. Cybercrime Costs (2015–2025)

Year	Global Fintech Market Size (USD Billion)	Estimated Annual Cybercrime Costs (USD Trillion)
2015	105.4	3.0
2016	131.9	3.5
2017	165.1	4.0
2018	206.7	4.5
2019	258.8	5.0
2020	324.0	6.0
2021	405.6	7.0
2022	514.9	8.0
2023	644.6	9.0
2024	814.7	10.0
2025	1,000.0 (Projected)	10.5

OBSERVATION

From 2015 to 2025, the fintech industry is expected to grow from about $100 billion to over $1 trillion. But as the fintech industry grows, the risk also grows . The Cybercrime is also expected to cost the world $10.5 trillion each year by 2025.

KEY FACTORS BEHIND INCREASING CYBER THREATS

The rapid growth of financial technology (fintech) can lead to an increased rate of cybercrimes for several key reasons:

1. **Larger Attack Surface:** As fintech services increase by introducing services like mobile apps, online platforms, digital wallets, blockchain technologies and APIs. This increases the digital surface area for the attackers. This means each new service can become a new entry point for them.
2. **High Value Targets:** Fintech platforms deal directly with money, sensitive personal information, and financial transactions, credit card details etc which makes these platforms attractive to hackers to steal money. Unlike general tech platforms, successful break in in the fintech systems can lead to direct financial gain to them.
3. **Rapid Innovation Outpacing Security:** The fast pace of fintech innovation often prefers user experience and market speed over good cybersecurity infrastructure. Startups, in particular, may spend less money in the security infrastructure which may be used by the attackers to disrupt the security system
4. **Increased Use of Third-Party Services:** Fintech companies often depend on third-party companies like payment gateways, cloud providers and analytics services which can create indirect entry points for attackers to break in. A breach in one point of supply chain can fail the entire system
5. **Growing User Base with Varying Digital Literacy:** As fintech platforms are adopted by everyone which means a huge amount of users will use these apps and some of these people would not be aware about safe online behaviour which makes them a easy target for frauds
6. **Data-Rich Environments:** Fintech apps store huge amounts of personal and financial data like banking details, credit scores, and transaction histories. Cybercriminals are motivated to steal or ransom this data, which can be resold or used for identity theft
7. **Global Connectivity"** Fintech services are basically internet based which means global connectivity (it can operate across borders). This global connectivity can sometimes become a big nightmare as it makes us vulnerable to attacks anywhere in the world.

CYBER THREATS

The different types of Cyber threats are here as follows:-

Phishing : Phishing is a type of cyber attack in which scammers send fake messages and trick people to send their personal information like passwords and credit card numbers. It is mostly done through emails and these attacks are getting more advanced and use more advanced tricks to fool people.The 2019 Kaspersky phishing report states that 17% of phishing victims were in the Philippines, 16% were in Malaysia, and 14% were in Indonesia. Scam targets in the Southeast region are most prevalent in these nations.

Ransomware: Ransomware is a type of malware that gets into the system and encrypts certain data and makes it impossible for users to view it. They ask the user to pay

ransom and then they will be able to see that data. Many large corporations worldwide have become a target of this cybercrime.

Botnet: A botnet is a type of network which consists of computers and devices under the control of cybercriminals that can be used to target financial institutions and their customers.

Cryptojacking : Cryptojacking is a type of cyber threat in which a hacker uses someone else's computer to mine bitcoin. This slows down the victim's device. According to Interpol, 18% of the world's cryptojacking cases happen in southeast Asia. It is now becoming a growing issue that affects both businesses and individuals. The main reason behind this attack is the money earned from bitcoin

Malware: Malware is a type of harmful software which shows itself as a safe software but it actually damages the computer after being installed in that computer. It is constantly evolving. For example, Emotet was used to steal banking information but now it distributes other types of malware.

Insider Threats: It occurs when workers, subcontractors or partners from external partners misuse their right to access the important system. These threats can be unintentional and intentional as well. This could happen because of carelessness and inadequate instruction. For example in 2022 , an employee at a fintech startup leaked a private client's information which shows weak internal security controls. These type of incidents shows the need of strong identity and strong access management systems, regular employee training and building a culture of security awareness (Chukwunweike JN, Adeniyi SA, Ekwomadu CC,Oshilalu)

PROACTIVE MEASURES AGAINST CYBER THREATS

The prevention strategies of the Cyber threats are as follows :-

1. **Patch management-** Patch management means regularly updating software, operating systems, and apps to fix problems and improve security.(I. Whitepaper, B. M. Felicia Nicastro, and B. M. Felicia). These updates often fix serious weaknesses that hackers could use to break into the systems and damage the system. By keeping everything up to date with the latest fixes, organizations can lower the risk of cyberattacks and keep their systems safer.(Goni, A., Jahangir, M. U. F., & Chowdhury, R. R) .
2. **Security Awareness Training**: Mistakes made by humans is an important element in cybersecurity breaches. The purpose of this training is to educate employees and users about potential threats and how to identify them and respond to them. It motivates them to be alert, especially for common attacks like phishing and social engineering(D. Ghelani)
3. **Intrusion Detection and Prevention Systems (IDPS):** IDPS (K. A. Scarfone and P. M. Mell,) are important tools that help keep an eye on what's happening in networking in real time. They look at networking traffic and system activities closely to identify and stop anything that looks suspicious. These systems help organizations in identifying and responding to possible threats, which can reduce

damage if something goes wrong. (Goni, A., Jahangir, M. U. F., & Chowdhury, R. R)

4. **Zero Trust Security**: This model challenges the traditional trust within the networks . as it works on the principle of "never trust, always verify". This technique requires daily verification of the identity and trustworthiness of devices and users, irrespective of their location within or outside the network (Goni, A., Jahangir, M. U. F., & Chowdhury, R. R) .
5. **Access Control:** Access control (S. Abraham) Involves managing that who has the permission to access specific resources or areas within a single network . the principle of least benefits is important here , as it ensures that only a minimum number of users will have access to only those resources which are necessary to perform their task which will minimize the chances of cyber attacks (Goni, A., Jahangir, M. U. F., & Chowdhury, R. R).
6. **Network Segmentation:** Branches of networks involve dividing a network into many segments or zones. This practice separates critical assets from a broader network , making it more difficult for attackers to move accordingly within the network if they breach one segment segment (P. Mell, T. Bergeron, and D. Henning), (R. Syed and H. Zhong).
7. **Threat intelligence :** This gives organizations real time information about the all new threats along with the weaknesses . This helps them to quickly update their security to stay protected against these cyber risks.(D. Ghelani), (R. Syed and H. Zhong) .
8. **Regular Security Audits and Testing**: Doing regular checks like vulnerability assessment, penetration tests and security audits is important to find weak spots in an organization's security defense. These regular check help to focus on fixing serious problems and to make sure that security systems are working efficiently (D. Ghelani)
9. **Multi-Factor Authentication (MFA)**: Requires users to confirm their identity using more than one method before they are granted access. This extra layer of protection significantly lowers the chances of unauthorized access, even if someone manages to steal or guess the user's password. (S. Abraham)
10. **Continuous Monitoring:** Continuous monitoring of network and system is required for detecting and responding to the abnormal patterns quickly and efficiently .Which allows organizations to identify and tackle all security threats in real-time (I. Whitepaper, B. M. Felicia Nicastro, and B. M. Felicia) .
11. **User and Entity Behavior Analytics (UEBA)**:UEBA tools help us to monitor how users and systems normally behave, and how they look for unusual activity or changes. This also helps organizations to spot possible security problems or threats from inside the company. (R. Syed and H. Zhong).
12. **Regular Backup and Recovery**: Data is an important asset, and so the regular backups are , It ensures the safety concerns. As , in case of data loss due to

cyberattacks or other incidents, backups help in easy and smooth recovery of data (S. Abraham).

The Future of Fintech

The fintech industry continues to grow and change , the importance of good cybersecurity becomes more important. With more people using financial apps and making digital transactions, protecting sensitive financial information is a top priority. Here's what the future may look like:

Quantum Computing

As quantum computing makes new innovations it will bring both challenges and solutions in cybersecurity. Quantum-resistant encryption will be key to protecting data from quantum computing attacks..

Biometric Security

Biometric authentication methods like facial recognition, fingerprints, and voice recognition. These methods will be used more often to improve security and fraud detection.

Blockchain for Security

Blockchain offers services like decentralization, immutability, and transparency and these features make it useful for safe transactions, identity management, and reducing fraud. Blockchain ensures that the data shared between banks and financial systems is accurate, secure, and can't be easily changed or faked.

Zero Trust Architecture

The zero trust model suggests not to trust anyone inside or outside of the network and it will become a standard. In the future every action will request a verification making systems difficult to hack.

RegTech (Regulatory Technology)

As the rules of government are becoming more strict, the companies will turn themselves into regtech solutions to stay compliant with complex regulations. These tools will automatically obey the rules and reduce the risk of legal trouble..

Smarter Cyber Threats

With advancement in technology the defence mechanism is improving which is accompanied by improved attacks. Future threats like **a**dvanced phishing, ransomware, and APTs (Advanced Persistent Threats will be more complex and not easy to detect. Fintech firms will need stronger and smarter protection.

Mobile & Endpoint Security

All the financial activities are happening on smartphones and tablets so protecting these device is important, Advanced Endpoint Detection and Response (EDR) tools will protect them from cyber attacks

IoT Security

As IoT devices are being mostly used nowadays , they open up new ways for hackers to get in the system. Securing these devices are critical and securing them would be a key part of fintech cybersecurity plan

Global Data Protection & Privacy Laws

The concerns of data privacy are growing worldwide. The fintech firms must follow some tight global regulations to avoid breaches. Obeying these privacy laws is necessary for fintech firms

CONCLUSION

This paper shows us the rise , growth and innovation of fintech by enhancing speed , user experience . However this success comes with the significant cyberthreats and cybersecurity attacks that cannot be ignored . As this sector grows , so do the risks and the major risks and challenges are shown above in the paper which is cybersecurity challenges along with the risks. This challenge is navigated with the help of technological advancements which lead to the growth in the fintech sector .

This paper shows the future of fintech with the help of prevention techniques . The sustainability of fintechs growth will depend not only on its ability to innovate but also depends on its capacity to grow without any inconvenience , which is caused due to cybersecurity infringements nowadays. This paper ensures the balance which is crucial for the long term growth and trust in the fintech ecosystem .

This expansion of fintech has redefined how financial services can operate while bringing greater efficiency and broader access to digital finance . As said earlier , fintech companies nowadays are facing challenges of not only driving innovation along with cybersecurity but also establishing secure infrastructure into financial ecosystems .

This paper ends by showing us the prevention strategies , by which we can understand the cyberthreats and not fall again in any such types of cyberthreats or cyberattacks.

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Legality in Sustainable Urban Planning:Environmental Issues and Challenges

*Dr. Yuvraj Dilip Patil**

ABSTRACT

The rapid growth of population and urbanization is the major problem which is faced by developing countries like India.. nature. The Research paper gives deep insights on topics ranging from urban planning and its issues and challenges to various land use policies which are also discussed.The research paper seeks to provide various insights into the complex dynamics of the legality of sustainable urban planning and offer valuable perspectives for the policymakers, and urban planners.The research paper also gives information on various judgments by the Honorable Court of India.

The objectives of the research paper are

1. To understand & analyze the importance of environment in the urban planning.
2. To study the issues & challenges in urban planning specifically relating to the environment.
3. To analyze the laws relating to urban planning.
4. To make recommendations for the best practice for urban planning which leads towards "smart city planning

Keywords: Urbanization, Legal, Environment, Sustainable Urban Planning.

INTRODUCTION

The rapid growth of population and the urbanization is the one of the major problems which is faced by developing countries like India. The paper gives deep insights on topics ranging from urban planning and its issues to challenges for which various land use policies are discussed. The paper gives analyses of the legal aspect of urban planning in which various acts ranging from the Biodiversity Act and Forest Conservation Act to punishment and rules for violation of the act. The paper also gives information on various judgments given by the honorable Court of India

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The paper is Socio-Legal in Nature. In this research paper researchers have used doctrinal research methodology. It is armchair research that involves analysis of papers and case laws relating to legality and urban planning.

URBAN PLANNING: ENVIRONMENT ISSUES & CHALLENGES

Urban Planning: Environmental Issues & Challenges The topic explores the connection between urban development and the environmental concerns, highlighting the need for sustainable strategies amidst rapid urbanization as well as environmental degradation. The study aims to provide insights into various policies balancing urban development and along with Heritage preservation.

i. **Land Use Policy for Railway (1989)**

To ensure transparency in processes which are related to the development of highways and land acquisition, the National Highway Act was introduced in the year 1956. According to this act the set guidelines for the construction of buildings must be 45-60 meters from the four-lane road and also extra setbacks which are decided by the planning authority. According to the Indian Road Congress building is set at 80m and the control line which helps in the management of urban sprawl is set at 150m. Right of way which ensures the effective and efficient functioning of the highway is 150 m according to the National Highway Authority of India

ii. **Land Use Policy for Airport**

The amended National Highways Act defines property acquisition forhighway development. Minimum distances for building construction vary, typically 45-60 meters for four-lane roads, with additional setbacks determined by planning authorities. Indian Road Congress guidelines specify building lines at 80 meters and control lines at 150 meters for highways, with a right of way of approximately 90 meters.

iii. **Land Use Policy for Highway**

The amended National Highways Act of 1956 guides land acquisition for highway development, ensuring transparency and due process. Minimum distances for building construction along highways range from 45-60 meters for four-lane roads, as per guidelines. Indian Road Congress standards establish building and control lines at 80 meters and 150 meters, respectively, with a right of way approximately 90 meters wide, according to the National Highway Authority of India.

iv. **Issues and Challenges for the Protection of Ancient Monuments Act (2010)**

The prime focus of the act is to ensure conservation, preservation of the historical identities and attracting tourism to generate growth and development. It safeguards old and heritage structure which are over 100 years old from excavation. The act mandates prohibition for any construction within 100 meter of heritage and monument site along with special permission within 200m in buffer zone.

Directive principles

Articles 48: It states that state are directed to modernize animal husbandry and agricultural along with preserving cattle breed.

Article 51-A(f) It is Citizens prime value to safeguard diverse cultural heritage of the nation

Article 51-A(f) Encourage the citizens for humanism and Scientific temper.

Law regarding protection of river

For the developing Country like India river pollution fall as one of the major problems. According to the Central pollution control board data which was published in the year 2018 around 351 river stretches are polluted in India. According to the CPCB board untreated wastewater is one of the biggest problem. According to the report of the 2021 around 72,368 million liters per day (MLD) of sewage is being generated and out of it only 26,889 million liters per day is treated.

v. Laws regarding the Protection of River

River pollution has become one of the major problems in countries like India. According to the Central Pollution Control Board data, in 2018 around 351 river stretches are polluted in India. According to the CPCB (Central Pollution Control Board), untreated wastewater is the biggest problem in India. According to the 2021 report 72,368 million litres per day (MLD) of sewage is generated and only 26,889 MLD capacity is treated.

vi. The laws related to the Water Pollution Act (1974)

The Act prohibits the exceeding prescribed pollutant standards in water bodies and also mandates obtaining consent for industrial operations, hazardous substance handling, or pollutant discharge. It grants authorities the power to set water quality standards, authorize inspections, and monitor and analyze water quality.

vii. Construction and Demolition Waste (2016)

According to this law, waste generators, local authorities, and government bodies must manage the construction and demolition waste. Waste generators must segregate and store waste properly, while the stakeholders must ensure waste is handed to authorized facilities. Rules mandate local authorities to identify and authorize waste processing facilities, promoting the recycling and reuse to reduce landfill burden.

viii. Formation of NITI Aayog

In 2015, NITI Aayog replaced the Planning Commission, adopting a consultative approach with input from multiple governments. Its priorities include accelerating economic growth, enhancing healthcare and also education infrastructure in cities, focusing on infrastructure and urbanization, promoting digital transformation and innovation, addressing environmental sustainability and climate change, and supporting rural development and agriculture modernization.

LEGAL ASPECT OF URBAN PLANNING

Implementation of the Legal laws plays a very important role in developing countries like India. This topic drives into the various acts and laws ranging from Hazardous waste management, the Biodiversity Act for sustainable development, and various punishments for violation of laws. The chapter also highlights EIA regulation green zone and waste management rules.

i. Hazardous Waste Management Rule (2016)

- The act mandates municipalities to levy fees for the disposal of waste management and also makes the individual responsible for the disposal of their garbage.
- It Includes steps to handle hazardous waste ranging from Prevention, Minimization, reuse, recycling, and safe disposal.
- The law was amended in the year 2019 (Management & Transboundary Movement) and the rules are as follows.
- Solid waste import has been prohibited which includes SEZ (Special Economic Zone).
- Electrical and Electronic assemblies and the defective components are required to be directly exported without permission of the Ministry of Forest and Climate Change.
- Industries that do not require consent from the Water Act 1974 and Air Act 1981 are exempted from requiring authorization to provide hazardous waste if it is generated and also given to proper disposal facilities.

ii. Noise Pollution Control Rule (2000)

- The Air (Prevention and Control of Pollution) Act considers noise as a pollutant. The Central Pollution Control Board sets the noise level criteria for different zones, ranging from 50 dB to 75 dB during the day and 40 dB to 70 dB at night.
- Silence zones around hospitals and schools prohibit loud noises, including horns and firecrackers. Public gatherings are limited to 75 dB for loudspeakers.
- Manufacturing noise for two-wheelers should not exceed 75 dB, and busy airports must maintain noise levels below 70 dB during the day.

iii. Offences and Punishments Under the Air Pollution Act (1981)

Operating an industrial plant without permission can lead to the jail time of 1.5 to 7 years and a daily fine of up to Rs. 5,000, while unsafe vehicle use incurs fines of Rs. 1,000 or Rs. 2,000. Violating PUC certificates results in a fine of Rs. 10,000, while environmental pollution can lead to jail time of up to 5 years and fines up to Rs. 1,00,000, with daily non-compliance fines of Rs. 5,000. Releasing harmful pollutants incurs a fine of Rs. 500.

iv. Punishment for Environment, Air, Water Act

Non-compliance with the stream or well pollution bans can lead to 1.5 to 6 years imprisonment. Disobeying Pollution Control Board directives results in up to three months jail time and a Rs. 10,000 fine, with an additional Rs. 5,000 daily penalty for continued non-compliance. Disregarding court orders leads to 1.5 to 6 years imprisonment and a Rs. 5,000 daily fine. Intentional contamination of public water sources results in up to 3 months jail time and a Rs. 500 fine.

v. Biodiversity Act (2002)

The Biodiversity Act is one of the most important acts enacted in India. The act mainly focuses on the prevention of habitat destruction. It acts as a need to conserve sustainable management for the various biological diversity. The act prevents citizens from over-exploitation of resources. The act gives legality to the sustainable urban planning as it provides a systematic legal framework for the sustainable development of projects by taking various biodiversity clauses and considerations.

This act will ensure efficient urban planning of any which will take into account ecological and sustainable development meeting the current needs as well as taking into account future generations. Therefore it acts as a way of interlinkage link of urban development initiatives and biodiversity conservation.

The prime objective of the act was the conservation of various types of biodiversity which also include species that have genetic resources. The act throws light on the sustainable use of resources which also keeps in mind long-term viability. It focuses on the idea of benefit sharing. One of the most important aspects is maintaining Indigenous and community rights which are useful for their traditional knowledge and resources. It also provides various benefit-sharing mechanisms.

FOREST CONSERVATION ACT (1980)

The Forest Conservation Act is one of the important acts in the Constitution. Its main goal is toprotect the integrity of the forests, preventing the industrial encroachment and alsobiodiversity loss.

Section 2 mandates in the act give special permission for the non-forest uses like tea as well as spices cultivation, while Section 3 of the act allows the forming advisory committees to the preserve forests. The act also aims to protect flora and fauna and prevent the conversion of forest land into the industrial buildings. It also ensures efficient utilization of funds for the purpose of afforestation, reforestation, and also wildlife management.

One of the important amendments is the development of compensatory afforestation according to which special funds will be provided and this Act ensures efficient utilization of funds for afforestation, reforestation, and also for wildlife management endeavors.

EIA REGULATION (2006 AMENDED IN 2020)

It is an act that gives priority to various processes of evaluating the environmental effects that happen due to various activities.

EIA helps companies to identify the environmental impact and ways to mitigate it by doing CSR which is corporate social responsibility activities. The act can be understood using a small example if a company is planning to invest their money in renewable project. EIA will help them to identify the impacts the projet carries if project is constructed.

EIA regulations require a certain percentage of the land within real estate projects which are known as green zones, typically 10% to 30%. These zones aim to preserve the natural ecosystems like forests and mitigate environmental impacts and to promote environmental sustainability.

NATIONAL GREEN TRIBUNAL ACT (2010)

NGT, founded in the year 2010, resolves environmental disputes swiftly, aiming for the conservation and protection. It offers relief for damages and operates regional benches for accessibility, ensuring compliance with environmental laws in India.

NGT(NationalGreenTribunal)wasestablishedinOctober2010asaspecializedbodythatcanhandle any environmental dispute. The objective of the NGT includes expeditious and effectivedisposal of the cases that are related to the protection and conservation of the environment,forests, as well as other natural resourcing formed to give relief and compensations for anydamages that are caused to persons and their properties. To handle the environmental disputeswhichinvolvemulti-disciplinaryissues.

DISPOSAL OF WASTE MANAGEMENT RULE (2016)

The Waste Management Rules (2016) in India address the significant waste management challenges brought about by rapid urbanization. Emphasizing scientific disposal methods like segregation and recycling, the rules aim to mitigate environmental impacts. Key initiatives include mandatory waste segregation at the source, in-house waste management for new developments, and allocating space for recycling facilities in industrial areas. With municipal solid waste (MSW) generation projected to reach 165 million tons by 2031 and 436 million tons by 2050, efficient waste management is crucial. The planning commission reports an unused potential of 439 MW of power from waste, highlighting the need for improved waste-to-energy conversion.

Salient features of the rules include mandatory segregation of waste at the source for reduction, reuse, and recycling. Generators are required to segregate waste into categories like wet waste, napkins, and empty containers and hand over the segregated waste to authorized collectors. New townships and group housing societies must develop in-house waste handling and processing systems for biodegradable waste. Additionally, developers of Special Economic Zones, industrial estates, and parks must earmark at least 5% of the total area or a minimum of five plots for recovery and recycling facilities.

SALIENT FEATURES INCLUDE:

Sources of segregation should be channeled for reduction, reuse, and also recycling.

The generator has been introduced which can segregate the waste into Wet, napkins, empty containers of cleaningagents, mosquito repellents, etc.) and hand overs egregated wastes to authorized rag-pickers or waste collectors or the local bodies.

New townships and Group Housing Societies have been made responsible for developing in-house waste handling, and processing arrangements for bio-degradable waste.

Judicial Scenarios

1. M.C. Mehta vs Union of India (2002)

Issues: In the landmark ruling on September 23, 1986, the Court compelled the Delhi Administration to address pollution from vehicles, setting a precedent for environmental protection. Measures included a sulfur reduction in diesel, lead-free petrol, catalytic converters, pre-blend 2T oil, phasing out old cars, and benzene reduction. This directive aimed to fulfill constitutional duties, safeguard public health for current and future generations, and underscore the responsibility of authorities in curbing emissions, ensuring cleaner air, and mitigating environmental degradation

Judgments: The court found that these hazardous industries contribute to the growth and development of people. For instance, they produce chlorine, which helps in the disinfection of water. These industries also contribute to the employment of people. Therefore, the final decision of the judges was to move such factories to a less populated area so that they do not pose a risk to human life. The court suggested that the government should adopt a national policy on the location of these toxic plants. The government should thoroughly check if the plants are posing a risk to the community.

2. M.C. Mehta vs Union of India (1987)

Issues: In the landmark decision environmental issues arising from hazardous industries near Delhi were addressed. Violations of environmental laws led to degradation and health hazards. The case highlighted the State responsibility, strict liability of industries, and also the role of public interest litigation in environmental activism, shaping Indian environmental jurisprudence.

Judgments: The court recognized the importance ofthe polluting industries in the growth of the economy and the creation of jobs. For example, chlorine is used to disinfect the water. The court ruled that such factories should be moved to the less populated areas to reduce the risk of human fatalities. The court also advised the government for establishment of a national policy on the location of such polluting plants and to ensure they do not endanger the community.

3. Indian Council for Enviro-Legal Action vs Union of India (2011)

Issues: The case addressed illegal mining activities in the state of Karnataka and Goa, highlighting environmental law violations and the state's duty to protect the natural resources. It emphasized sustainable development and the PIL's role in holding authorities accountable and influencing environmental governance in India.

Judgments: The court annulled the amendment as it violated Article 21. The Supreme Court found that the authorities responsible for implementing the CRZ Notification have been overworked and have very limited control. The court ordered the establishment of Coastal Zone Management Authorities to oversee the implementation of the CRZ Notification and provide advice to the Ministry of Foreign Affairs and the Government of India on matters related to coastal regulation.

4. Gujarat Water Pollution Control Board vs Kohinoor Dyeing and Printing Works (1993)

Issues: In the case canteredon theuntreated effluent discharge, violating environmental laws like the Water (Prevention and Control of Pollution) Act, 1974, and the Environment (Protection) Act, 1986. It emphasized regulatory responsibility, urging the industries to adopt pollution control measures for environmental sustainability.

Judgments: The judgment and the order of the Learned Session Judge Surat is annulled and annulled. The order of the Learned Magistrate Surat is confirmed. This Court hereby, of its motion for a preliminary ruling, stays the execution, execution, and also enforcement of the judgment for one month from this date.

5. Delhi Pollution Control Committee vs Splendor Landbase Ltd. (2012)

Issues: the focus was on the company's breach of environmental regulations, notably the Water (Prevention and Control of Pollution) Act, of 1974, and the Environment (Protection) Act, of 1986. The judgment stressed the regulatory accountability, urging industries to adopt effective pollution control measures for environmental preservation.

Judgments: The court maintained the position that residential complexes are exempt from the Water Act's application, whereas the retail centres and commercial buildings are. The DPCC's actions about residential complexes were ruled null and illegal, and also writ petitions were granted in this context. Prior authorization is required for retail malls and commercial complexes under the Water Act and the Air Act. The court granted cross objections while rejecting the DPCC's appeals. All interim orders are void, and each party is responsible for the expenditures.

RECOMMENDATION

1. Review and update laws like the Forest Conservation Act and National Environment Policy to improve sustainable urban planning in India. This can be achieved by revisiting the existing laws, such as the Forest Conservation Act (1980) as well as the National Environment Policy (NEP 2006).

2. Strengthen enforcement of urban planning and environmental laws with more resources and authority for implementing agencies. Enforcement of the laws which are related the urban planning and the environment should be followed up in a better manner.
3. Involve citizens in decision-making through forums and awareness campaigns to promote ownership of sustainable urban planning. Educating and training the public about the importance of environmental conservation and their role in promoting sustainable practices is crucial.
4. Use technology and smart solutions for waste management, energy conservation, and infrastructure development. Smart tech aids sustainable, resilient cities.
5. Develop waste management strategies with source segregation and recycling to reduce pollution and promote resource efficiency. Segregating waste, recycling, and proper disposal mitigate pollution, promote resource efficiency, and enhance environmental sustainability in urban areas.
7. Promote green building practices, urban green spaces, and nature-based solutions to mitigate urbanization's impact on the environment.
8. Provide capacity-building programs for urban planners, government officials, and stakeholders.
9. Foster collaboration among government agencies, NGOs, academia, and community organizations for sharing knowledge and best practices. Promote collaboration among government, NGOs, and academia for sustainable urban planning.
10. Offer incentives and recognition for adopting sustainable practices in urban development projects.
11. Establish monitoring and evaluation mechanisms to assess the effectiveness of sustainable urban planning initiatives.
12. Conduct workshops and campaigns to educate communities about sustainable practices and environmental conservation.
13. Develop robust disaster management strategies to protect heritage sites from natural calamities. Regular assessments and feedback loops can help identify gaps, measure progress, and inform future policy decisions for continuous improvement.
14. Use advanced technologies like 3D scanning and digital mapping for preserving and restoring historical monuments. Advanced technology should be used in a precise manner.
15. Promote responsible tourism to minimize negative impacts on heritage sites and ecosystems while promoting cultural appreciation.
16. Enforce environmental laws rigorously and ensure proper river protection and waste management practices.

17. Involve local communities in river conservation efforts and decision-making processes related to environmental policies.
18. Invest in modern waste management facilities to streamline disposal processes and encourage recycling.
19. Implement strict regulations and monitor dumping sites to prevent environmental contamination and health hazards.
20. Collaborate for holistic, sustainable urban solutions among planners, scientists, and policymakers.
21. Support research initiatives aimed at developing innovative technologies and approaches for sustainable urban planning and environmental management.

CONCLUSIONS

In conclusion, the given paper delves into the critical intersection of sustainability, environmental challenges, and urban planning, particularly in the context of rapid urbanization and population growth observed in developing countries like India. It also highlights the pressing need for sustainable urban planning practices to mitigate environmental degradation and also to promote the well-being of the residents amid exponential urban expansion.

Despite existing laws that safeguard the environment, inadequate and legal frameworks, enforcement mechanisms persist which leads to issues such as pollution, unplanned urbanization, and inadequate waste management. Through the comprehensive analysis of legal dimensions, challenges, and recommendations, the given paper emphasizes on the urgency of strengthening legal frameworks and governance to ensure effective sustainable urban planning and various mitigate environmental risks.

Furthermore, the paper also encompasses various policies, acts, and the initiatives such as the, Biodiversity Act which are aimed at promoting sustainable urban development and addressing environmental concerns. The incorporation of the renewable energy, waste reduction strategies and the heritage conservation efforts underscores India's commitment towards achieving more inclusive and more sustainable growth. With the establishment of the NITI Aayog, India's approach to the planning has evolved to embrace consultative processes and diverse stakeholder input, emphasizing on the importance of collaborative efforts the in promoting sustainable development and addressing environmental challenges for a more resilient future.

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Evidential Value of DNA Profiling: An Insight on its Utility and Admissibility in India

*Dr. Sumit Jaiswal**

ABSTRACT

Our judiciary believes in the principle that the innocent person must not be punished and at the same time, the guilty person must not be escaped. To punish the guilty person or to save the innocent person evidence plays an important role. The present era of technology has affected us in all the spheres of our life. Using DNA profiling as evidence is one of the best examples of how modern technology has transformed the justice delivery system. DNA contains general information common to all humans, so it is also known as the blueprint of life. two randomly selected individuals, from anywhere in the world, are supposed to be 99.9 percent genetically similar that is why the number of arms, legs, fingers, and toes remains exactly the same in all individuals but some parts of the stored information of DNA are unique and relate to only a specific person. On the basis of that unique information, offenders can be identified with the help of the DNA sample as well as innocents can easily be exonerated from suspects. In other words, DNA profiling is a very useful tool in the cases where we have to identify the perpetrator(s), the suspect(s), or victim(s) through the biological evidence traced from the body of the suspect(s), the victim(s), crime scene, or weapons used for committing the crime, etc. So, due to its utility, DNA Profiling has been getting increasing acceptance during the past thirty years and at present, it is extensively used by police, investigation agencies, prosecution, and defence advocates in courts across the globe. But in criminal cases, identity is not a major issue than *mens rea* or consent, for which ascertainment, DNA profiling is not helpful at all.

Keywords: DNA Profiling, Evidence, Victim, Crime, Justice.

RESEARCH METHODOLOGY

This research paper is techno-legal in nature which involves an analysis of various national and international legal provisions with regard to statutory requirements of

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using DNA profiling as evidence in judicial proceedings, leading court judgments in this area, policies, etc. The research conducted for this paper is analytical in nature which has been done by using the doctrinal method.

INTRODUCTION

"*Satyamev Jayate*"[1] is the hallmark of our justice system, which has been taken from "*Mundaka Upanishad*" it means "Truth alone triumphs". Our judiciary works on the principle that the innocent person must not be punished and at the same time the guilty person must not be escaped. To punish the guilty person or to save the innocent person depends on the evidence which is used for the purpose of investigating a crime, proceedings of the crime, and adjudicating that crime.

Today, we are living in an era of technology. We are using smart phones, smart home appliances, smart vehicles, etc. everything is becoming smarter. Technology, at present, has sufficiently affected us in all the spheres of our life. So, the present technology-based era has also altered several facets of the judicial proceedings. Using DNA[2] profiling as evidence is one of the best examples of how modern technology has transformed the justice delivery system. It is, perhaps, the most significant advancement which is very useful to identify the criminals as well as to exonerate other persons as suspects at the investigation stage.

The use of DNA tests on skin tissue, saliva, semen, and hair is very helpful in identifying the suspects to be convicted for crimes. That is the reason why DNA technology has been getting increasing acceptance for the last thirty years and at present, it is extensively used by police, investigation agencies, prosecution, and defence advocates in courts across the globe. On the other hand, in criminal cases, identity is not a major issue than *mens rea* or consent, for which DNA profiling is not helpful.[3] Apart from this, it has also raised the questions of the reliability of methods applied for conducting DNA tests, interpretation of results of those tests, and the implications for human rights.[4] So, its acceptance in our justice delivery system keeping in mind these issues with necessary amendments in existing laws is the paramount need of the hour.

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1 Mundaka Upanishad, 3.1.6, "Satyameva Jayate Na-anrtham satyena panthaa vitato devayaanah | Yen-aakramanty-rsayo hyaapta-kaamaa – Yatra tat satyasya paramam nidhaanam ||6|| (Truth alone triumphs, not falsehood. By truth is laid out the divine path, which the seers who are free from desires, reach to the supreme adobe of truth)."

2 DNA is an abbreviation of Deoxyribonucleic acid also known as 'Genetic Material', establishes a unique genetic code for every person determining the unique characteristics of a person. It is much like an individual's own personal barcode or the blueprint of life.

3 Dr. A. K. Srivastva, *DNA Testing and Human Rights Implication in Civil and Criminal Investigation*, 6 Crim. L. J. 81 (2007).

4 Peter Alldridge et al., DNA Profiling and the Use of Expert Scientific Witnesses in Criminal Proceedings, Phil Fennell et al. (eds.), Criminal Justice in Europe: A Comparative Study 269-270 (Oxford: Clarendon Press, 1995).

MEANING OF DNA AND DNA PROFILING

Before analyzing the utility of DNA technology in the judicial system, we have to understand the meaning of DNA and DNA profiling. DNA or Deoxyribonucleic acid is also called the blueprint of life because it contains information about functional abilities and physical characteristics.[5] DNA is regarded as one of science's most significant discoveries, which was first discovered by a Swiss biochemist Johann Fredrich Miescher in 1868.[6] He successfully isolated 'Nuclein' which is a compound of nucleic acid. Adenine, thymine, cytosine, and guanine presence in thymus nucleic acid (presently known as DNA) was demonstrated by Ascoli in 1900 and Levene in 1903.[7] The theory of DNA was further developed and described by various scientists. In the year 1953, two scientists, James D. Watson and Francis H.C. crick discovered the Double-Helix DNA structure that appears like a twisted ladder. They also defined the function of DNA as the substance which forms the genetic code of a living organism.[8] Both the scientists were awarded the Novel prize in 1962 for their discovery. Alternating units of deoxyribose sugar and phosphate form the sides of the Double-helix structure of DNA, while the ladder connectors are made of bases such as Adenine (A), Cytosine (C), Guanine (G), and Thymine (T). Owing to their chemical composition, thymine is always combined with adenine, and guanine is always combined with cytosine.[9] Each rung on the ladder consists of two bases making a T-A, A-T, G-C, or C-G the only possible combinations.

DNA contains general information common to all humans, so it is also known as the blueprint of life. two randomly selected individuals, from anywhere in the world, are supposed to be 99.9 percent identical genetically[10] which is the reason the number of arms, legs, fingers, and toes remains the same from individual to individual. However, some parts of the stored information of DNA are unique and relate to only a specific person, which makes use of DNA profiling as evidence very valuable because there is no chance of someone else may have identical DNA to that person except in identical twins cases.[11] Only identical twins have identical DNA. DNA profiling was discovered

5 National Commission on the Future of DNA Evidence, National Institute of Justice, U.S. Dept. of Justice. *Post Conviction DNA testing: Recommendation for Handing Request* quoted by Allision Puri, *An International DNA Database: Balancing, hope, privacy and scientific error*, 24, Boston College Int'l C. L. R. 349 (2001).

6 Abhijeet Sharma, Guide to DNA Tests in Paternity Determination and Criminal Investigation 5 (Wadhwa & Co., 2007).

7 *Id.*

8 Dr. Nirpat Patel et al., *The role of DNA in criminal investigation- admissibility in Indian legal system and future perspectives*, 7 Int'l J. H. S. S. I. 15 (2013).

9 *Supra* note 6, at 3.

10 Roger Highfield, *DNA survey finds all humans are 99.9pc the same*, The Telegraph (Dec. 27, 2019, 11:15 PM), http://wwwtelegraph.co.uk/news/worldnews/northamerica/usa/1416706/DNA-survey-finds-all-humans-are-99.9pc-the-same.html.

11 R. Usha Rani, *DNA Evidence and the Courts*, 1 K. L. J. 2 (2008).

by Sir Alec John Jeffreys to identify individuals in 1984 at the University of Leicester.[12] The process of extracting a particular DNA sequence, also known as profile, from a person's body tissue sample is termed as DNA profiling. The DNA profile is very useful to determine the source of a DNA sample on a crime scene.[13] A DNA profile is not read in laboratories but made readable or comparable through the procedures performed on a bodily sample.

DNA IDENTIFICATION TECHNIQUES

With the development of science and technology, there are various techniques available in recent time to identify and analyze DNA samples, i.e. RFLP or Restriction Fragment Length Polymorphism,[14] PCR or Polymerase Chain Reaction,[15] Mt. DNA or Mitochondrial DNA analysis,[16] Amp. FLP or Amplified Fragment Length Polymorphism, etc. but among these all techniques, RFLP and PCR are mostly used to conduct DNA tests. The RFLP technique supports only a greater volume of DNA sample and, for proper testing, the sample must be uncontaminated. A small amount of DNA cannot be tested through the RFLP technique, whereas in the PCR technique, a smaller volume of DNA sample can also be tested.[17] However, the procedure of the PCR test is a particularly sensitive procedure and the findings may be compromised by slight contamination at the crime scene.

UTILITY OF DNA PROFILING FOR LEGAL PURPOSES

DNA profiling is a very useful tool in the cases where we have to identify the perpetrator(s), the suspect(s), or the victim(s) through the biological evidence traced from the body of the suspect(s), the victim(s), crime scene, or weapons used for committing the crime, etc. At the same time, DNA profiling is also useful to exonerate innocents from suspects. DNA profiling can be utilized in the following legal purposes:-

In Sexual Crimes

In crimes relating to sex, the history of incidents helps forensic experts to trace and obtain samples of forensic significance. In such cases, hair, saliva, semen, and blood

12 Alec J Jeffreys, *The man behind the DNA fingerprints: an interview with Professor Sir Alec Jeffreys* (Dec. 27, 2019, 11:40 PM), http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3831583/

13 *DNA profiling*, Science Learning Hub (Dec. 28, 2019, 10:16 PM), https://www.sciencelearn.org.nz/resources/1980-dna-profiling.

14 R. C. Lewontin, *The use of DNA profiles in forensic contexts*, 9 Statistical Sci., 18 (1991).

15 Gaurav Solanki, *Polymerase Chain Reaction*, 3 I. J. P. R. 98, 98-102, (2012).

16 Vikash C. Mishra et al, *mtDNA analysis: A valuable tool to establish relationship in live related organ transplant*, 1 I. J. N. 14, 14-20 (2020) (Apr. 29, 2019, 11:33 PM), https://www.indianjnephrol.org/text.asp?2020/30/1/14/266083.

17 Donald E. Riley, *DNA Testing: An Introduction for Non-Scientists*, Sci. Testimony (2005) (Dec. 27, 2019, 01:25 PM), http://www.scientific.org/tutorials/articles/riley/riley.html.

may get exchanged between perpetrators and victims during the sexual assault.[18] Perpetrators can be identified through DNA evidence traced and gathered from a number of sources, such as semen, saliva, hair, or tissue, etc. left on the apparel or the body of the victim or at the crime scene in sexual crimes or rape cases. Similarly, the presence of blood, vaginal smear, or tissue of the victim on the body of suspect is a potential tool to identify the perpetrator.

In Physical Assault or Murder Cases

Perpetrators can be identified by employing DNA tests with the help of his blood, or tissue present on the apparel, or body of the victim, or at the crime scene. Similarly, the presence of blood or tissue of the victim on the culprit's body, crime weapon, or at the crime scene also provides a link to prosecute the perpetrators through DNA technology. DNA profiling can be a game changer even in cold murder cases. If samples are degraded or affected by UV light, heat, or moisture, there are techniques that may be employed for DNA profiling in such situations. The innovative technology of DNA has made it easier for scientists to do more with less.[19]

In Cases of Accidents, Unidentified Bodies / Mass Disaster

In any of accidents, unidentified bodies, or mass disaster cases, disfigured, mutilated or burnt bodies can be identified by comparing DNA profile with close blood relatives, for instance, DNA profiling was used to identify the 2013 Kedarnath deluge victims.[20] Even late Prime Minister Rajiv Gandhi's alleged assassins Dhanu and Sivarasan were also identified through employing DNA profiling.[21]

In Paternity or Maternity Disputes

In any disputes pertaining to paternity or maternity which may arise in case of Adoption, Assisted reproductive technologies (ARTs), false paternity, Child swapping,[22] etc., the

18 Auroshree, *Management of DNA Sampling in Rape Incidents* [SCC Archives] (Dec. 27, 2019, 02:15 PM), http://www.scconline.com/blog/post/2018/11/29/management-of-dna-sampling-in-rape-incidents/amp/.

19 Jill Hilbrenner, *DNA evidence and cold murder cases: when hidden clues catch killers*, The Guardian, Mar. 09, 2016 (Dec. 28, 2019, 09:30 AM), http://www.theguardian.com/how-to-solve-a-murder/2016/mar/09/when-evidence-speaks-how-forensic-scientists-make-cold-case-breakthroughs.

20 *Identities of 18 Uttrakhand tragedy victims established*, The Hindu, July 07, 2014 (Dec. 28, 2019, 11:10 AM), http://www.thehindu.com/news/national/identities-of-18-uttarakhand-tragedy-victims-established/article6186583.ece.

21 L. Sanmiha & M. Yokesh, *A study on role of DNA technology in criminal investigation*, 5 Int'l J. P. A. M. 4435, 4433-4453 (2018).

22 A. K. Sharma, *DNA profiling: Social, legal, or biological parentage*, I. J. Hum. Genetics (Dec. 29, 2019, 10:15 AM), http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3168143/.

DNA profile of the child can be used by comparing it with that of mother and father in order to resolve such disputes. Even the first case of India, in which the DNA test was employed, was also a paternity dispute.[23]

In Organ Transplantation

Under section 2 (i) of the Transplantation of Human Organs Act, 1994 in accordance with Rule 4(c) of THOA[24], DNA test may be used to improve graft survival as well as to curb unethical and illegal commercial dealings in the human organs transplantation.

In Non-Human DNA Cases

Wildlife specimens used in trafficking like rhino horn, tiger skin & bones, bear bile, tortoise skin & shell, biological warfare agents, etc. can be identified with the help of DNA technology.[25]

Miscellaneous Cases

Cases for identifying sources of a threatening letter from licked stamps, fake blood donors, etc. can be solved by using DNA profiling.[26]

LEGAL RECOGNITION OF DNA PROFILING

The first conviction in any criminal justice system with the help of DNA profiling occurred in Britain in October 1987. A disabled woman was raped in her home near Bristol, England, but she was unable to identify her rapist due to her mental unsoundness. A suspect on providing a blood sample and subsequently being notified of a "match" with the sample found from the crime scene changed his plea to guilty.[27]

However, it was *Colin Pitchfork* case that launched the DNA technique in the public arena, teenage girl Lynda Mann was murdered in 1983 after being raped, and in 1986; another girl Dawn Ashworth was killed in a similar manner. Initially, police had a suspect, *Richard Buckland* whose DNA did not match with DNA samples found from both crime scenes when a DNA test was conducted by *Alec John Jeffreys*. Then the police undertook the world's first DNA dragnet in order to find the real culprit. After testing DNA profiling of more than 4000 men, the killer's profile didn't match until a man, *Ian Kelly*, was overheard boasting that he had provided his sample in DNA dragnet while masquerading as one of his friends, *Colin Pitchfork*. When the DNA sample of Colin Pitchfork was analyzed, it matched with the DNA samples

23 Kunhiraman v. Manoj, Ï [1991] D.M.C. 499 (India).

24 The Transplantation of Human Organs (Amendment) Rules, 2008.

25 *DNA profiling in justice delivery system*, Central Forensic Science Laboratory, Directorate of Forensic Science, Ministry of Home Affairs, Government of India, Kolkata, (2007).

26 *Id.*

27 Jane Maria Taupin, *Impact of DNA Profiling on the Criminal Justice System*, 16, (1994) (Unpublished thesis for M.A. of University of Melbourne, Australia).

recovered from the crime scenes. Later he confessed and sentenced to life in prison for both murders in 1988.[28]

In Florida, United States, in the case of *State* v. *Andrews*[29], Tommy Lee Andrews became the first culprit of the US who was convicted with the help of DNA evidence, for the charge of raping a woman. He was sentenced to 22 years imprisonment on November 6, 1987.

The first case in India to employ DNA test was of paternity dispute titled *Kunhiraman* v. *Manoj*[30] the DNA analysis by the Centre for Cellular and Molecular Biology (CCMB), Hyderabad proved that suspect Mr. Kunhiraman was the child's biological father. The chief judicial magistrate, Thalassery (telicherry), Kerala, announce the following verdict on April 24, 1990:

> "*Expert opinion is admissible under section 45 of the Indian Evidence Act, 1872. So also, the grounds on which the opinion is based are also relevant u/s 51 of the Act. The senior scientist attached to the CCMB is a molecular biology expert and the evidence, he has tendered, is quite convincing and there is no reason why it should be rejected. Just like the opinion of a chemical analyst or a fingerprint expert, the opinion of the senior scientist of the CCMB, who is also an expert on cellular and molecular biology, is also acceptable.*"[31]

The decision was challenged in the Kerala High Court which upheld the decision.

ADMISSIBILITY OF DNA PROFILING

United States

In the United States, DNA profiling plays a crucial role in the justice delivery system. Courts in the US use one of the following tests with respect to the admissibility of DNA profiling. The first test is the *Frye test*, pronounced by the US Circuit Court for the District of Columbia in the case of *Frye* v. *United States*.[32] As per the principles established by the Frye test, to be admissible in the court, the new scientific techniques must already have been widely accepted by the scientific community specialized in that subject.

The second test focuses on the basic relevancy standards of the Federal Rules of Evidence. The relevant evidence has been defined by the federal rule 401 as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." The federal rule 403 makes the evidence more reliable by "the exclusion

28 R v Pitchfork, E.W.C.A. Crim 963 (2009).

29 State v. Andrews, 533 SO 2d 841 (Fla. Dist. Ct. App. 1988).

30 Kunhiraman v. Manoj, Ï (1991) D.M.C. 499; (1991) 3 Crimes 860 (Ker.) (India).

31 *Id.*

32 Frye v. United States, 293 F. 1013, 1014 (D.C. Cir.1923).

of relevant evidence on grounds of prejudice, confusion, or wastage of time." The federal rule 702 provides for "testimony by expert witnesses."

In *Daubert* v. *Merrell Dow Pharmaceuticals,*[33] the Supreme Court of the United States held that the Frye test has been superseded by the federal rules of evidence in the trails of the federal court and thus the court laid down a new standard for assessing the admissibility of the novel scientific evidence.

So in the US, some states follow the Frye test and some follow the Daubert test whereas some states of the US have developed their own tests and legislatures regarding the admissibility of novel scientific evidence in which DNA profiling also comes within.

United Kingdom

In the United Kingdom, the usage of DNA evidence in the legal system is very common. In fact, the UK is known for the application of DNA profiling in criminal justice. English geneticist Dr. Alec Jeffery introduced the DNA technology in criminal identification first ever in the world in the very famous Colin Pitchfork's case.[34] DNA profiling and DNA database have been essential elements of the criminal investigation process in the UK. After establishing the National DNA Database (NDNAD) in the year 1995, England became a global leader in the development of innovative methods to use DNA profiling for identification of the suspects, protection of the innocents and to ensure the conviction of the guilty persons.[35]

India

Indian Constitution under articles 51A(h)[36] and 51A(j)[37] directs its citizens, "to develop the scientific temper, humanism and the spirit of inquiry and reform." and "to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement." So, our constitution promotes a scientific approach among Indians. At present, there is no specific legislation relating to DNA profiling in India. However, sections 53[38],

33 Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579.

34 R v Pitchfork, (2009) E.W.C.A. Crim. 963.

35 Subhash Chandra Singh, *DNA profiling and the forensic use of DNA evidence in criminal proceedings*, 53 J. I. L. I. 207 (2011).

36 INDIA CONST. art. 51A, cl.(h).

37 INDIA CONST. art. 51A, cl. (j).

38 "Examination of accused: (1) when a person is arrested on a charge of committing an offence …. and … there are reasonable grounds …. that an examination ….. will afford evidence ..... a registered medical practitioner, acting at the request of a police officer, not below the rank of sub-inspector, ….. to make such an examination ….. which may afford such evidence, and to use such force as is reasonably necessary for that purpose. (2) Whenever the person of a female ……. the examination shall be made only by, or under the supervision of, a female registered medical practitioner."

53A[39], and 54[40] of the Code of Criminal Procedure, 1973[41] are used for the purpose of DNA evidence collection in order to investigate criminal cases. To ensure justice, the court has wider power to issue directions to the police for the collection of accused blood samples to conduct DNA tests for further investigation in criminal cases pursuant to sections 173 (8)[42] and 293 (4) (e) of the Cr. P. C., 1973.

Indian Evidence Act, 1872, under section 9, sets out the necessary facts to explain or establish the facts in issue or the relevant facts,[43] and section 45 of the act provides for the expert opinion[44] in case of scientific matters which also includes DNA profiling. Section 46 of the evidence act deals with the facts which support or oppose the opinion

39 "Examination of accused of rape: (1) When a person is arrested on a charge of committing … rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence ……., it shall be lawful for a registered medical practitioner …….. at the request of a police officer not below the rank of sub-inspector, …….. to make such an examination of the arrested person ……. (2) The registered medical practitioner …….. shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely; (i) the name and address of the accused ……, (ii) age, (iii) marks of injury, if any, (iv) 'the description of material taken from the person of the accused for DNA profiling', and (v) other material particulars in reasonable detail."

40 "Examination of the arrested person at his request: When a person who is arrested, …... the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body, the Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice."

41 Hereinafter referred to as the Cr. P. C., 1973.

42 "Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

43 "Facts necessary to explain or introduce a fact in issue or relevant facts, or which support or rebut an inference suggested by a fact in issues or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose."

44 "When the court has to form an opinion upon point of foreign law or of science or art, or as to identity of handwriting [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting] [or finger impressions] are relevant facts. Such persons are called experts."

of expert[45] and section 51 makes the grounds of the expert opinion also relevant.[46] These all provisions of the Indian Evidence Act are used in dealing with the DNA evidence in the court proceedings. Besides these provisions, section 293 of the Cr. P. C., 1973 takes into consideration the reports by certain Government scientific experts.

As per section 293 (2) of the Cr. P. C., the court, by using its power, may summon and examine the expert on the content of the report submitted by him. Under section 164A of the Cr. P. C., rape victims undergo a medical examination so that DNA evidence can be collected.

On the issue of admissibility of DNA evidence, the Andra Pradesh High Court observed in the case of *Patangi Balrama Venkata Ganesh* v. *State of Andhra Pradesh*[47] that if a person's DNA profile matches with a sample, it indicates that the sample belongs to that particular person only. The likelihood that two people, except in the case of identical twins, would have the same DNA profile is around one in 30 billion people in the world whereas the world's existing population is much less than it. Thus, as per the opinion of the court DNA profiling provides the perfect identity.

In the case of *Raghuvir Desai* v. *State,*[48] the High Court of Bombay ruled that the DNA test provides a clinching piece of evidence. If two samples match, it allows a virtually positive identification which helps to exonerate the innocents and to prosecute the guilty persons.

In a very important decision of *Gautam Kundu* v. *State of West Bengal,*[49] the Supreme Court of India decided that request for blood test cannot be approved without mentioning any reason whatever to have recourse to the test. The court further ruled that No person would be coerced to provide blood samples to be tested against his or her will and if he or she refuses for such a test, no adverse inference could be made against him or her. But the Apex Court in *Sharda* v. *Dharampal*[50] changed its stand and ruled that the court can order a person to undergo a test for the medical purpose. If the applicant has a clear prima facie case and also there is ample evidence before the court, in such cases, the court should issue such an order. If despite the court order, the respondent does not cooperate to be a part of that medical test, the court shall make an adverse inference against him or her.

In *Rohit Shekhar* v. *Shri Narayan Dutt Tiwari,*[51] the Apex Court declined to dismiss the decision of the High Court of Delhi ordering the Congress party leader Mr. Narayan

45 "Facts not otherwise relevant are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant."

46 "Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant."

47 Patangi Balrama Venkata Ganesh v. State of Andhra Pradesh, (2003) Cri. L. J. 4508 (India).

48 Raghuvir Desai v. State, (2007) Cri. L. J. 829 (India).

49 Gautam Kundu v. State of West Bengal, (1993) 3 S.C.C. 418 (India).

50 Sharda v. Dharampal, A.I.R. 2003 S.C. 1950(B) (India).

51 Rohit Shekhar v. Shri Narayan Dutt Tiwari, (2011) (121) D.R.J. 562 (Delhi), I.L.R. (2010) Supp. (3) Del. 573 (India).

Dutt Tiwari to give a sample for the DNA test. In this famous case, Mr. Rohit Shekhar claimed to be Mr. N.D. Tiwari's biological son, but the Congress leader was not ready for DNA test arguing that it would violate his right to privacy and would also trigger him to be publicly embarrassed. The Apex Court did not accept his arguments, stating that there was no point in being embarrassed if the report of the DNA test would not be disclosed to anybody and would be handed over only to the court inside a sealed envelope. The court further said that we want to ensure justice; this young man should be not left without any remedy. In this case, Delhi High Court also ordered to use appropriate force to take the blood sample.

The Supreme Court approved the importance of DNA profiling in the case of *Dharam Deo Yadav* v. *State of Uttar Pradesh*,[52] in this case, the court observed:

> *"Deoxyribonucleic acid or DNA is the biological blueprint of all life on this earth. DNA consists of a double-helix structure of phosphate black bone and deoxyribose sugar, cross-linked with two groups of nucleic acids known as Adenine & Thymine, and Cytosine & Guanine. The most significant function of the DNA profile is to classify individuals and their blood ties, such as father, mother, brother, and so on. Effective identification of skeleton remains can also be done through DNA profiling. The DNA profile can generally be extracted from biological materials such as hair, skin, saliva, semen, blood, bones, etc. The issue as to whether DNA tests are practically infallible may be a moot question, but the truth remains that such a test has come to stay and is commonly used for the purpose of the criminal investigation, and the court often takes into consideration the expert opinions, particularly where cases are focused on circumstantial evidence. More than half a century ago, human DNA samples started to be used in the criminal justice system. No doubt, there is an ongoing debate about the safeguards that should be needed during the samples testing process and while presenting the evidence before the court. However, the DNA profile is held to be accurate and reliable; but overall, it depends on the quality management and quality assurance techniques of the laboratory. Close relatives have more genes in common than in individuals and different techniques have been suggested to deal with the likelihood that the real source of forensic DNA is a close relative."*[53]

In *Vishal Yadav* v. *State of Uttar Pradesh*[54] (popularly known as "*Nitish Katara Murder Case"*) in this case, It was very difficult to identify the victim's dead body because the murderers had burnt his dead body and only a small portion of one un-burnt palm with fingers was available. Here too, DNA profile helped to locate the remains of the corpse by comparing the DNA profile with the deceased's parents which enabled the High Court of Delhi to uphold the conviction of the accused.

DNA PROFILING: SOME LEGAL ISSUES

India doesn't have any specific legislation to deal with DNA profiling. Provisions of existing laws are old enough and do not support the modern technology of DNA

52 Dharam Deo Yadav v. State of Uttar Pradesh, (2014) 5 S.C.C. 509 (India).
53 *Id.*

profiling due to which some legal confusions and controversies arise, for example, the Indian Evidence Act, 1872, under section 112, determines a child's parentage by stating that a child born from a legally valid marriage between his/her mother and a man, or within the period of 280 days from the dissolution of such a marriage when the child's mother does not remarry, legally confirms the man as the child's father, if it is not proved otherwise. This presumption of law is of conclusive nature and does not support scientific techniques like DNA profiling to determine the paternity of a child. The only exception to this section is when the husband proves that at the time of conception of the child, he had no access to his wife (child's mother). The foundation of this section is the Latin maxim "*Pater est quem nuptiae demonstrant*" which means the father is the one shown by the nuptials.

In the case of *Nandlal Wasudeo Badwaik* v. *Lata Nandlal Badwaik*[55] the Apex Court held that "Truth must triumph is the hallmark of justice." in this landmark case, a baby girl was born during the course of the legally valid marriage, and thus, pursuant to section 112 of the Indian Evidence Act, the appellant would be regarded the legitimate father of the girl. However, the result of the DNA test excluded him to be the biological father of that baby girl. The DNA test was re-conducted on the wife's request but the fresh report also confirmed the husband's exclusion. At that point, the wife requested the court to decide about the legitimacy as per the provision of section 112. The presumption of paternity under section 112 is conclusive and irrebuttable by DNA evidence, this approach has been recognized by the court in a number of cases, so in such circumstances, the justice is not arrived at in real sense but in this case, science prevailed upon the apex court and not the law. The court concluded:

> "*The plea of the husband that he did not have access to the wife when the baby was begotten stands proved by the result of DNA test, and in the face of it, we cannot force the appellant to accept the fatherhood of a baby if the scientific findings show otherwise. We are aware that an innocent baby may not be bastardized as the marriage between her mother and father was subsisting at the time of her birth, but in view of the result of the DNA test and what we have observed above, we cannot forestall the consequence. It is denying the truth. Truth must triumph is the hallmark of justice*."[56]

This revolutionary decision of the Supreme Court has made the background to change the existing provision of section 112 of the Indian evidence act and to make it supportable to DNA evidence.

Sometimes, the use of DNA profiling as evidence is criticized on the ground that it is a threat to "the right to privacy" recognized by "the right to life and personal liberty" under Article 21, and "the right against self-incrimination" under Article 20(3) of the Constitution of India, but it was decided by India's Supreme Court that the right to life and personal liberty is not an absolute fundamental right. In the case of *Govind*

54 Vishal Yadav v. State of Uttar Pradesh, (2014) S.C.C. online Del. 1373 (India).

55 Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik, (2014) 2 S.C.C. 576 (India).

56 *Id.*

Singh v. *State of Madhya Pradesh*,[57] the Apex court ruled that fundamental rights must be subject to limitations on the ground of legitimate public interest. Being not contrary to the right to life and personal liberty, the various courts of the country have permitted the use of DNA profiling in the investigation and in developing the evidence. In order to ensure the effective use of the modern technology of DNA profiling in the justice delivery system, there is an immediate need for the enactment of specific legislation to provide the regulating guidelines of DNA testing in India.

CONCLUSION

DNA profiling is more definitive than traditional techniques. In the present technology-oriented era, it is very useful in judicial proceedings to arrive at justice but it also has some issues such as, it is an expensive technique which could be afforded by the prosecution because of the state's financial assistance, on the other hand, for the defence, it is very difficult to afford. With the help of DNA evidence, a person can be identified due to his/her participation in the crime or a person may also become a suspect because of his/her DNA sample found at the crime scene due to his/her presence at the crime scene, but DNA evidence cannot prove *mens rea* which is one of the main elements of the crime. This technique is complex and may be difficult for judges and advocates to understand. It may increase the police power and may be a threat to civil liberties, for example, the provisions of sections 53 & 53A of the Cr. P.C., 1973, enable the taking of bodily samples by a medical practitioner on receiving a request from a police officer, who is not below the rank of sub-inspector, without the consent of the accused person. Apart from this, contamination at any stage of DNA profiling can change the result of the DNA test. Contamination typically occurs while touching the samples without gloves, coughing, sneezing, and a number of other mishaps. These all issues should be sorted out and it is possible only by enacting specific legislation to deal with the matters relating to DNA profiling. Moving on this direction, the government has introduced '*the DNA Technology (Use and Application) Regulation Bill, 2019*' in *Lok Sabha* in July 2019 for the purpose of regulating the usage of the DNA evidence for the identification of certain people.

57 Govind Singh v. State of Madhya Pradesh, A.I.R. 1975 S.C. 1358 (India).

The Role of Independent Director: Examining Legal Frameworks to Ensure Board Independence

*Mr. Vibhor Tewari**

ABSTRACT

This research paper delves into the role of independent directors and their role in modern corporate governance by focusing on the independence of the board. These directors play an important role in making sure the companies are fair and honest in their dealings. The papers try to analyze the national and international legal framework dealing with the appointment, responsibilities and performance of an independent director focusing on their need to safeguard the shareholder's interests. The paper also talks about the fiduciary duties of these directors along with the composition of the board and its effectiveness while addressing the modern challenges faced by the companies in ensuring the independence of the board. The paper will also suggest various recommendations that would be helpful in ensuring the independence of the board and enhancing the corporate governance practices and will try to show if or not independent directors are necessary in ensuring transparency and accountability within the company and towards the shareholders.

Keywords: Independent directors, corporate governance, legal frameworks, board independence, fiduciary duties, board composition, appointment process, director qualifications, board effectiveness, challenges, future directions, recommendations.

1. INTRODUCTION

It is the fundamental concept in corporate governance that an independent board stands as a foundation to maintain transparency, accountability and ethical decision-making within the organization.[1] To maintain transparency within the organizations we have the independent directors, these are the individuals who play an important role to balance the interest of various stakeholders and maintain the integrity in the

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1 Organization for Economic Cooperation and Development. Principles of Corporate Governance. 2022. https://www.oecd.org/daf/ca/corporate-governance-principles-eng.pdf. (Accessed on 23rd August 2023) corporate governance and also the debate on granting of additional rights to the minority.

functioning of the organization. This research work delves into the concept of independent directors, examining the legal framework that have been established to ensure their autonomy and effectiveness and their relevance in the independence of the board. These directors are introduced to serve as a balance to executive management and the shareholders in a corporation, neither are they affiliated with the day to day management of the company nor are they its major shareholders therefore they have the capacity to provide unique unbiased judgment. Their primary function is to act in the best interest of the company ensuring the long term sustainability in mind.

But the question arises is the board really autonomous and independent with an independent director over the head. Or is the independent director really independent and without any undue influence or pressure from the board? These questions must be addressed to find out the independence of board and the legal framework surrounding it to ensure a good corporate governance.

2. LITERATURE REVIEW

2.1. Independent Directors And Controlling Shareholders (Lucian A. Bebchuk and Assaf Hamdani)

This research paper talks about the independent directors and controlling shareholders in corporate governance. The primary area of focus of this research is to talk about the role of independent director in decision making process and the potential conflict of interest that may arise. The research paper focuses on the framework of European Union's corporate governance and also the debate on granting of additional rights to the minority shareholders. The paper provides some insights into the prevalence of concentrated ownership around the world and the benefits and perks of introducing the independent directors in various countries. The paper also deals with the potential conflict of interest that may arise and a clear guideline on such conflicted decisions. The authors have further tried to explore the European Union's corporate governance framework and the debates on granting additional rights to minority shareholders. The research paper argues for the need of introducing independent directors worldwide and the importance of an effective board environment that creates cooperation and trust between board members. Overall, the research paper focuses on to contribute to the understanding of corporate governance dynamics and the potential impact of different governance structures.

2.2. Should Independent Directors Have Term Limits? The Role of Experience in Corporate Governance (Ying Dou, Sidharth Sahgal and Emma Jincheng Zhang)

This research paper talks about the role of independent directors and their tenure on corporate boards. The paper delve on to explore the question of whether implementing the term limits for independent director is beneficial or if the experienced directors should be retained. The paper provides information about the composition of the board, committee membership and the benefits of an independent directors. The authors argues that there should not be a term limit and suggests that the experienced directors bring value to the table and should not be replaced by fresh blood. The paper primarily

argues that the term limit for firectors is not good as the experinced directors bring insights in the company while focusing on the importance of director heterogeneity and the benefits of independent directors with extra tenure.

2.3. Board Independence and Corporate Governance: Which Way Forward? (Jayati Sarkar and Subrata Sarkar)

This research paper focuses on the independence of the board and the corporate governance, the paper talks about the opinions regarding the minimum number of independent directors in a board, people who should be qualified to be an independent director and the role of financial institutions on corporate board. The research paper also examines the current regulations and the recommendations for a proper board composition and a proper board size. The paper talks about the need of identifying the good recommendations and implementing them for the independence of the board. The paper emphasizes on the need of implementing the newly introduced definition of independence and the importance of lowering down the requirement for independent director to give a company more flexibility. The author have taken an international approach and have talked about the importance of board independence and the corporate governance in the wake of corporate scandals. The paper also focuses on the need of independent directors on the board to ensure the best interest of the shareholders. The paper also deals with various committees and initiatives that have recommended measures to ensure the independence of the board. This research paper suggests implementing stricter criteria for independence and excluding nominee directors to ensure the true independence of directors. It also emphasizes on the need and importance of monitoring compliance and the need to balance the demand and supply of independent directors.

2.4. Board Independence & Corporate Governance in India: Recent Trends & Challenges Ahead (Jayati Sarkar)

This research paper focuses on corporate governance and board independence in India it focuses on the recent trends and challenges in the area and provide insights on the board governance by highlighting the importance of board quality rather than just the board independence for effective governance. It also deals with various policy issues regarding board independence and examines the impact of board composition on the performance of a company. This paper also focuses on the relationship between the board independence and governance by highlighting the gap between the policy prescriptions and the actual results. It talks about the absence of the statistical relationship between board independence and the performance of the company and suggests that it might be due to the selection of board and the mix of directors. The author emphasizes on the need of effective monitoring of the board and provides the data on the composition of the board in India, including the numbers of directors and the percentage of independent directors. The research paper also talks about the regulations and the reforms that are necessary to ensure the board independence and improving the quality of board governance in India, the author has raised various policy questions regarding the optimal proportion of independent directors and the criteria for their selection

and their role in corporate governance. To say this paper gives some important insights to the current state of board independence and corporate governance and highlights the future prospects available in this area.

2.5. Beyond "Independent" Directors: A Functional Approach to Board Independence (The Harvard Law Review Association)

This research paper deals with the concept of board independence in corporate governance. It discusses about the limitation of existing standards and suggests for a tripartite board structure to enhance independence. The paper highlights the need of balancing the role of various parties like the monitors, mediators and the managers in the board to achieve effective governance. It highlights various benefits of the tripartite approach as suggested. The paper critiques the present approach and also talks about the limitation of the approach and the potential risks to the investor confidence and suggests that a collaborative nature of board to be a better approach for avoiding conflicts in board decision making and also discusses the potential benefits of the proposed approach like increased accountability and the voice of shareholders in the governance of the company. To say this research paper acknowledges the challenges faced by the board and suggests a design to have a completely independent board.

3. HYPOTHESIS

The boards with a diverse composition of independent directors,including gender and ethinic diversity shows a better decision making and better governance and the enhanced legal protections for these directors reduces their liability risks and at the same time the legal framework that allows shareholders to have a direct say in the appointment or the removal of an independent director ensures a greater board accountability.

4. RESEARCH OBJECTIVE

The main objective of this research paper is to examine the legal frameworks that ensures the independence of the board and the role of the independent director in ensuring such independence and a good corporate governance. The following sub-objectives will help in achieving the primary objective.

- **4.1.** To understand the challenges and benefits that are associated with achieving a diverse board composition of independent directors.
- **4.2.** To analyze the legal regulation and framework on promoting diversity in independent director appointments.
- **4.3.** To examine the relationship between the legal safeguards for the independent directors and their decision making independence.
- **4.4.** To explore the extent of the involvement of the shareholders in the independence and the accountability of the board.

4.5. To understand the need of independent directors in the board and their relevance with regard to the independence of the board.

5. RESEARCH QUESTIONS

This research paper will delve into and try to answer the following research questions:

5.1. What are the main challenges and the benefits that are associated with having a diverse board composition of independent directors and how does such diversity impact the decision-making processes and overall governance performance of a company?

5.2. What are the legal regulations and frameworks available to promote diversity in the appointment of independent directors, and how do they vary across different jurisdictions?

5.3. What is the need for having independent directors in the board of the company, and how do they impact the independence of the board?

6. METHODOLOGY

This research paper is based on the doctrinal model of research and has tried to investigate the relationship between the legal frameworks, independent directors and the independence of the board in corporate governance. The research is primarily qualitative and is based on articles and research papers by different scholars This research seeks to provide a comprehensive understanding of the role of an independent director and various legal frameworks that are there to ensure the independence of the board. The paper seeks to answer all the research questions by being in consonance with the research objective. The scope of the research is limited to the understanding of the independent directors in the Indian context and this paper only deals with the Indian legal framework however the legal framework in the UK has also been analyzed to understand the same in the Indian context. This study, however, is not without limitations. The doctrinal research though provides for a comprehensive analysis, there are various books, commentaries and documents that have not been taken into consideration due to the lack of time and resources.

7. ANALYSIS

7.1. The History of Independent Directors

When we talk about the concept of independent directors, it has evolved over time due to the need for greater transparency and more accountability in corporate decision making i.e. to improve the overall corporate governance. This concept of independent directors could be traced back to the time when joint-stock companies were formed, as in those days the board of directors consisted of members of the company and the large shareholders due to which there were issues regarding the conflict of interest.[2]

[2] Berle, Adolph A., and Gardiner C. Means. The Modern Corporation and Private Property. Pg. no. 25, Macmillan Company, 1932.

However, the concept of independent directors got prominence after the publishing of the Cadbury report, which was published as a response to the ongoing corporate scandals in those days.[3] This report primarily focused on improving the corporate governance practise and recommended the inclusion of non-executive directors (independent directors) on the board to ensure a better corporate governance. Similarly, in the US, the Enron and WorldCom scandals in the early 2000s led to the passing of the Sarbanes-Oxley Act (SOX).[4] This SOX act mandated greater independence and paved way for the independent directors and let to the improvement of financial reporting. During the same time in India, the Kumar Mangalam Birla Committee report recommended the introduction of Independent directors which paved the way for independent directors in India.[5] Also, the committee created by SEBI and led by N.R. Narayana Murthy also suggested to make the appointment of Independent directors mandatory in the listed companies and keeping all these things in mind the Companies Act, 2013 introduced comprehensive provisions regarding the appointment, roles, responsibilities, and liabilities of independent directors and recently the government is trying to make the board more diverse by including provisions like mandatory appointment of one women independent director.

A large number of countries and regions have developed their laws in such a way that mandates the appointment of independent directors and also contains their roles and duties.[6] With the passage of time the independent directors have also been given various new tasks like the risk management, strategy development, and compliance with ethical and legal standards.

7.2. The Role and Impact of Independent Directors

The independent directors play a very important role when it comes to corporate governance like providing oversight and expertise to the board of the directors and at the same time enhancing transparency, accountability and an effective decision making.[7] These directors are appointed to protect the shareholder's rights and are expected to act impartially and without any conflict of interest. They are expected to provide a fresh perspective on company matters and keep an eye on its management. They also play an important role in forming strategies to shape the long term direction of the company by assessing financial and non financial risks and ensuring that the company moves in the right direction.[8] These directors often sit on the audit committees

[3] Committee on the Financial Aspects of Corporate Governance. Report of the Committee on the Financial Aspects of Corporate Governance. London Stock Exchange, 1992.

[4] Wikipedia, "Enron and WorldCom scandals lead to Sarbanes-Oxley Act", accessed 28th August 2023).

[5] National Foundation for Corporate Governance, "Kumar Mangalam Birla Committee report recommends introduction of Independent directors", accessed 28th August 2023

[6] OECD, OECD Principles of Corporate Governance, 2011 Ed. (Paris: OECD, 2011).

[7] G20/OECD Principles of Corporate Governance, G20/OECD Principles of Corporate Governance (Paris: OECD, 2015).

[8] National Association of Corporate Directors, Board Leadership: The Role of Independent Directors (Washington, DC: NACD, 2022).

to ensure the accuracy of financial reporting and also serve on various board committees like the compensation committee, the governance and nomination committee and serve to represent the interest of the shareholders and ensure the company is well aligned with the shareholder value and most importantly these directors play an important role in times of crisis of scandals by investigating and addressing the issues and restoring the trust of the share holders and the general public by implementing important changes.[9]

Having independent director in the board ensures that the members or the directors of the company does not have any conflict of interest and the company does not work in any unethical way and as these directors are from diverse background they bring a broader perspective to the board and help in taking well-informed decisions.[10] There presence increases the investors confidence as they make the management accountable for their actions and plays an important role in aligning the interest of the management with that of the shareholders and ensures transparency in reporting the finances of the company. However, their effectiveness can vary depending on a lot many factors such as their qualifications, independence and the commitment of the company in good governance. However, the biggest problem can be when these directors are not really independent due to factors like undue influence and coercion otherwise they are really very important to protect the shareholders interest and the smooth functioning of the company.[11]

7.3. The Impact of Board Composition on Corporate Governance

The composition of the board of director plays an important role in the governance of the company as the the entire fate of the company lies in the hands of the board.[12] The independence, qualification, diversity, expertise etc of the individuals who make up the board influences the effectiveness of the management of the company, its strategic behaviour and its corporate behaviour.[13] Sometimes, people are blinded by their own judgement and therefore it is very important to have sufficient numbers of the independent directors as these directors, being not affiliated with the management or the shareholding of the company, could provide with an objective perspective and their independence helps in ensuring the decision of the management is impartially scrutinized. Apart from that the diversity on the board and the expertise and skills of the board members can greatly impact the corporate governance as members from different backgrounds can effectively see the various aspects of the operation of the

[9] National Association of Corporate Directors, Board Leadership: The Role of Independent Directors (Washington, DC: NACD, 2022).

[10] OECD, OECD Principles of Corporate Governance, 2011 Ed. (Paris: OECD, 2011).

[11] Organization for Economic Cooperation and Development. Principles of Corporate Governance. 2022. https://www.oecd.org/daf/ca/corporate-governance-principles-eng.pdf.

[12] Cadbury, Adrian. The Cadbury Report: Report of the Committee on the Financial Aspects of Corporate Governance. London Stock Exchange, 1992.

[13] Fama, Eugene F., and Michael C. Jensen. “Separation of Ownership and Control.” The Journal of Law and Economics 26, no. 2 (1983): 301-325.

company and can lead to better decision-making.[14] The board members also need to be an expert in the risk management to mitigate any potential risk as well as be ethical in their values with a good ability to resolve any conflict within the company. The members of the board should be good at communication and should have the ability to engage with the shareholders to build trust and a positive relationship with the company and the investors.[15] Also, a good board will be able to have a good CSR plan that aligns with the values of the company and really brings a positive impact on the society and at the same time will be able to work and oversee all the statutory and legal compliances. To say, the composition of the board of directors has a profound impact on corporate governance. With a diverse board, the company can have an effective oversight and ethical and responsible corporate practices and a company with a good board composition seem to achieve long-term success and better trust with shareholders and stakeholders.[16]

7.4. Legal Regulations and Frameworks for Promoting Board Diversity

As we already talked about the importance of diversity in the board it is important to understand the legal provisions surrounding it. Many countries and regions have implemented various legal regulations and frameworks to promote diversity in the composition of the board in both public as well as private companies and these provisions aim to improve the representation of women, ethnic minorities and other under-represented groups on the board of directors.[17] Several countries have introduced gender quotas, which make it compulsory to have a certain percentage of the board to be represented by women. An example of this is Norway which makes it mandatory to have around 40 percent of board members to be women in public companies. There are certain countries like the UK which follow a "comply or explain" approach i.e. the companies must have a diverse board and if they do not they have to explain the reason for not having a diverse board and the steps they are taking to make their board diverse.[18] Also, some countries are required to disclose information regarding board diversity in their annual reports and this transparency sometimes encourages the company to have diversity as part of their governance practices.

Also, there are many voluntary initiatives by companies and individuals itself which voluntary commit to achieving board diversity like the 30% club, which is a global campaign that seeks to achieve 30 per cent of women on corporate boards and

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[14] Deloitte & Touche. Corporate Governance Handbook: A Guide to Best Practices for Public and Privately Held Companies. 89, 6th ed. Wiley, 2021.

[15] Organization for Economic Cooperation and Development. Principles of Corporate Governance. 2022. https://www.oecd.org/daf/ca/corporate-governance-principles-eng.pdf.

[16] Investor Relations Society of America. The Handbook of Investor Relations. 6th ed. Wiley, 2021.I [17] Margaret M. Blair, Diversity on Corporate Boards: A Critical Assessment 2, Routledge, 2016.

[18] Margaret M. Blair, Diversity on Corporate Boards: A Critical Assessment 130, Routledge, 2016.[19] International Labour Organization. "Women on Boards: A Global Review of Progress and Challenges." International Labour Review 158, no. 3 (2019): 411-432.

following the footsteps, some countries like France, have implemented gender quotas specifically for state-owned companies, which requires the government to have certain percentage of women in their boards.[19] Talking about India the Companies Act, 2013 has introduced several provisions related to board diversity one of which is the mandatory inclusion of at least one women director on the board of certain companies having a certain paid-up capital or turnover. Also, the "SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015" have mandated having one women director on the board of every listed company the failure of which might impose various penalties.[20]

Governments around the world can also run various initiatives to ensure diversity in the composition of the boards like having fixed targets and a proper timetable to ensure that every company includes under-represented members of society like women, ethnic minorities etc. in the board[21] and penalties for failure of not meeting the deadlines, also, the institutional investors could use their voting powers to create diversity in the board. Various educational and training programmes could be run to help people gather relevant skills and gain experience to serve on the board of the companies or there could be other types of regulatory framework that mandate having a diverse board.

7.5. Shareholder Involvement and Accountability

Shareholders play a very important role in the functioning of the company and their involvement and accountability are very essential for good corporate governance.[22]It is therefore very important that the companies maintain complete transparency with their shareholders and uphold ethical and responsible business practices. When we talk about the involvement of the shareholders the shareholders are typically given voting rights on important corporate matters like the appointment of the directors, the approval of mergers and acquisitions or changes in the bylaws of the company along with other important decisions and for that purpose an Annual General Meeting (AGM) is conducted where the shareholders are appraised about the important issues and are allowed to discuss and vote on the issues.[23] This is a platform where the shareholders can communicate with the board directors. Also, if a shareholder is unable to attend this meeting they can use a proxy to cast their votes.[24]

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[20] Kashif, Azhar. "SEBI's Mandate on Women Directors: A Step Towards Gender Diversity on Corporate Boards." National Law Journal 54, no. 4 (2016): 25-27.

[21] Organization for Economic Cooperation and Development. "Principles of Corporate Governance." 2022. https://www.oecd.org/daf/ca/corporate-governance-principles-eng.pdf.

[22] Blair, Margaret M. "The Role of Shareholders in Corporate Governance." The Business Lawyer 61, no. 4 (2006): 1457-1475.

[23] Margaret M. Blair, Corporate Governance: Theory, Practice, and Evidence, 150, Oxford University Press, 2005.

[24] Black, Bernard S. "The Role of Proxies in Corporate Governance." The Business Lawyer 61, no. 4 (2006): 1423-1455.

As the shareholders are the actual owners of the company they can also propose various resolutions on various different matters dealing with corporate governance or social responsibility matters and these resolutions are voted on during the AGMs. Apart from the resolution the institutional shareholders or other shareholders also engage with the management of the company or the board by way of letters, meetings or public statements. The shareholders can also hold the board of directors accountable for the performance of the company and for not working in the interest of the shareholders. The shareholders of the company do not have enough options to judge the functioning of the company and therefore they rely on the financial statements to make decisions and therefore they can hold the board responsible for not providing them with statements that comply with standards and regulations.[25] The directors and the officers owe fiduciary duties to the shareholders and the shareholders can hold them liable for any breach of these duties including for any ethical lapse or misconduct. The shareholders also have a say on the executive compensation packages and excessive or poorly structured compensation can be a source of shareholder concern. To say, the shareholders have an indirect say in the management of the company and they can hold the company accountable for not working as per their demands and independent directors play an important role in ensuring that the companies work as per their memorandum and the demands of the shareholders are not neglected by the management of the companies and therefore the independence of an independent director for long term success and sustainability of the company

8. CONCLUSIONS AND CONTRIBUTIONS

The independent directors play a very important role in the functioning of the company and these directors play the role of the guardians of the corporate governance. Governments across the world have worked a lot to implement various legal provisions to ensure the independence of the board and its accountability, transparency and ethical conduct in the corporate world. While conducting this research I realized that the presence of independent directors within the framework of the board is very important to ensure the proper governance of the company and to protect the rights of the shareholders as these directors bring impartiality that is important to mitigate the conflict of interest and uphold the interest of the shareholders. These directors play an important role in monitoring the functioning of the company and ensuring its adherence to regulations, ethical standards and good practices. These directors often possess diverse backgrounds and expertise and help in effective risk management by serving as ethical leaders within the organization by upholding the highest standards of integrity and ethical behaviour. It is because of them the shareholders have an increased sense of trust and commitment towards the company and a sense of security that the company will very vigilantly and ethically follow all the regulatory compliances and the investment of the shareholders will be safe and not be subjected to the irregularity of the directors of the company. However, there are certain lacunas in

[25] Blair, Margaret M. Corporate Governance: Theory, Practice, and Evidence. 152, Oxford University Press, 2005.

the legal frameworks and the board is not completely independent. Theoretically, it seems that these directors would ensure 100 per cent board independence and the companies and the investor's money are safe and secure, however, there still remain challenges of undue influence, corruption and coercion that might sway the independence of the directors and make the functioning of the company unethical. The government therefore need to ensure the independence of the board by making provisions to have a diverse board and extending the powers of independent directors and regulatory control over their activities as well.

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Depletion and Diminution: The Hurdles of the Eastern Coast

*Mr. Aparna Tripathy**

ABSTRACT

Waste cluttering is a fundamental problem in the eastern coast of India causing soil erosion at the beaches and diminution of wetlands. National-Bureau-Of-Soil-Survey-And-Land-Use-planning (NBSSLUP) and national-Pollutant-Discharge-removal-system (NPBES), pronounced on how the tourism in Puri has reduced the soil quality on the seashore leading to soil erosion and water pollution. WWF in its document has stated how cluttering of waste has resulted in diminishing-of-wetlands. Although waste cluttering is extensively regarded as an issue there has been little to no research performed at the policy component of it.

The authors emphasize and assess the impact of waste cluttering on the environment while focusing on the eastern coast, where it has led to issues such as soil erosion and water pollution, (as reported by NBSSLUP). The authors compare the policies-in-force in other parts of the world, like, the-waste-framework-directive (Europe), so as to examine its relevance and applicability to the eastern-coast.

The methodology used is empirical-research of qualitative and quantitative data, assessing the impact of waste cluttering on the inhabitants, and comparative analysis of laws and policies such as, The soil-conservation-and-domestic-allotment act by the US federal-law, evaluating its applicability in India.

The authors give suggestions as to how the soil depletion in the Puri seashores and the diminishing wetlands in the eastern-coast, can be tackled efficiently and simultaneously by targeting waste cluttering through policy ideas which can be adopted from other sovereigns and treaties.

This authors analyze, the issue of garbage cluttering through comparative study and, its various implications on health and wellbeing of the animals and humans through reports from WWF and WHO.

The authors address the policy issue pertaining to garbage cluttering which has not been analysed to a great extend through various reports from organisations like, IIRS, WWF, NPBES, etc, defining it as a source of many environmental hazards and through a comparative study understand provide policy solutions for the same.

Keywords: Climate Change, Diminishing wetlands, Environmental Policy, Pollution, Soil Depletion, Waste Cluttering.

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INTRODUCTION

Soil depletion is an issue which is on an ever-alarming rise. It is both because of the disturbances caused due to natural phenomenon and the human inflicted processes. It has huge impact on the biodiversity, agricultural productivity, wildlife and food security. According to a report on the climate change and land of the intergovernmental panel on climatic change, they have observed that about a quarter of the Earth's ice free land area is subject to human induced degradation[1].

Due to the chemical and physical degradation of the soil, it has long ranging implications on productivity and agricultural produce as said by a recent report of IFPRI[2]. Huge rampages of deforestation and unethical use of the land also contribute to the change in the soil's structural condition. Some amount of soil depletion has occurred naturally but a large portion is a result of anthropogenic activities.

The status of the World's soil resources[3], produced by, FAO'S intergovernmental technical panel on soils, conglomerates a number of soil scientists on "the world soil day", December 4, stating the importance of the soil and how it is depleting at an alarming rate. The director general Jose Graziano Da Silva implicated his concern by stating that further loss of productive soil would severely damage the food production and food security, increase food price volatility, and potentially plunge millions of people into hunger and poverty. Drenched with chemicals and high amount of waste cluttering, the eradication of soil fertility is not more than 30 years away[4].

The depletion of soil in wetlands comes on in a similar trend due to constant irresponsibility when it comes to accountability; forested wetlands are being subjected to erosion. They are one of the prominent sources of timber, flood water storage, wildlife habitat and recreational opportunities. According to environmental ministry of India, research suggests that one-third of Indian wetlands have already been wiped out or severely degraded. Wetlands are a method of sustainable livelihoods providing 62 million people their daily jobs. They replenish underground water and act as nature's sponges this demands for instant corrective steps before it is too late.

Even after various projects being introduced inorder to spread awareness about garbage disposal and environment protection, the failure of implementation has lead to serious environmental hazards. One such environmental issue affecting the people in the holy city of Puri is the cluttering of garbage on the seashores which has lead to issues such as soil depletion and water pollution. Such garbage cluttering is also seen as a problem not only at the Puri seashores but also in the rest of the country. Another major issue that such cluttering has lead to is the diminishing wetlands. Such pollution of natural resources has also lead to serious climatic consequences

1 UNEP. (1999). report on the climate change and land. intergovernmental panel on climatic change.

2 IFPRI. (2000). Report on Productivity and Agricultural Produce.

3 FAO. (1998, December). The status of the World's soil resources. FAO'S intergovernmental technical panel on soils.

4 The United Nations Framework Convention On Climate Change (UNFCCC), 1992.

and ecological imbalances which have become very difficult to cope up with and therefore pose a huge threat. All these are the reasons because of which it becomes important for a solution to be discovered and implemented inorder to save the society from eventual destruction.

REASONS FOR SOIL DEPLETION IN PURI

The soil depletion is a major problem that is currently being witnessed in the lands of Puri. The change in the soil's physical, biological and chemical the whole environment in general. The future productive capacity and fertility is in an all time low as said by UNEP[5] there are several physical as well as chemical factors affecting soil depletion. Loss of top soil due to waves and wind form the physical factors, while depletion of nutrients due to acidity or alkalinity, water logging, eutrophication as a result of the soil pollution form the chemical factors.

Recently due to the eco-retreat festival in the beaches of Puri, which is an annual festival organised to promote tourism organised by the state government of Odisha, the depletion of pure nutrients was inevitable as published by the national bureau of soil survey and land use planning[6]. The huge amounts of urban run-off, sewage overflow, and recreational events have lead to the depleting quality of soil. Apart from that, the melting glaciers cover more and more soil land, affecting the wildlife underneath the blue ocean to a fear of extinction.

Trash and litter like plastic bags, bottles, cigarette filters, bottle caps, etc; left at the soil of these beaches are non-biodegradable. They form a part of the high levels of cluttering near the seashore and reduce the quality of the soil as said by National Pollutant Discharge elimination system (NPBES) permit program[7]. It poses a frightening threat to the rich biodiversity beneath the ocean.

The tourism centred events conducted out by the government through "eco-retreat" is not effective in saving the beaches. Human and garbage clutter causes the soil to deplete in a much faster rate. Month long festivities with no control over the soil contamination through garbage has proved fatal to the already persisting conditions.

Being one of the four holy places for Hindu pilgrims, the land of Puri witnesses about 5-6 lakh tourists per week[8], and as the Puri sea-beach also poses itself as a great source of tourist attraction, it also experiences a huge footfall. Unfortunately, even after various number of steps been taken by the state government and the local authorities to make sure that there is no garbage cluttering at the seashore, these steps fail in implementation and therefore due to the huge number of people at the seashore, a large amount of garbage is generated which is dumped in the sand at the

5 United Nations Environment Program, 1993.

6 National Bureau Of Soil Survey And Land Use Planning

7 National Pollutant Discharge Elimination System (NPBES) Permit Program.

8 *Odisha Tourism : Visit Odisha | Travel & Tourism | Official Site*. (n.d.). Odisha Tourism. Retrieved December 20, 2021, from https://www.odishatourism.gov.in/content/tourism/en.html

beach. This has eventually lead to the cluttering of a large amount of waste at the seashore. Even though the use of plastic has been significantly reduced[9], the plastic that has trashed the seashores prior to such limitations being imposed finds itself in quantities large enough to make it difficult to eradicate as a whole. Even though a lot of local NGOs along with the government are taking various steps in order to remove all the garbage that has found its way to the cluttering at the seashores, it is this lacuna which is causing immense threat for such schemes to be successfully completed.

In the same way the future of Wetlands are also facing threatening challenges resulting to their rapid decline. Newly published articles show that 64% of the worlds' wetlands have disappeared since 1900. This also means a reduction to the fresh water supply while traditional wetland livelihood suffers. It has declined to a 76% between 1970 and 2010 according to WWF's living planet index.[10] The input of high amounts of pollutants reduces the wetlands' natural ability to absorb and causes degradation. The scenario of the sundarbans of West Bengal and other parts of the eastern coast show high amount of disturbances also affecting the surrounding landscape. The removal of vegetation, construction and filling directly impact these wetlands. The increased accumulation of sediments which alters the chemical and hydrologic characteristics of the ecosystem of wetlands is concerning.

Therefore, it can be said that human activities stand as a dominating factor in, the depletion of soil in the eastern coastal beaches of Puri, and the diminution of wetlands in the eastern coast Out of all the forms of ways in which the human civilization has affected the sustenance of the natural treasures of the East, Waste cluttering can be seen as the predominant factor.

PROBLEMS ARISING DUE TO THE GARBAGE CLUTTERING

Water Pollution

The garbage cluttered on the seashores enters the sea along with its tides thereby polluting it. Such pollution causes immense danger to the marine life and has led to the death of a lot of fishes and other aquatic animals. The death of olive ridley turtles that regularly enter the Odisha coast in order to lay their eggs has also been linked to the constant pollution witnessed in the sea. Olive Ridley turtles form a major portion of the problem that the state needs to look into, as thousands and thousands of turtles are found death on the Puri sea coast every other day. In the landmark case of R. S. Lal Mohan (Dr.) V. The Executive Engineer (WRO) Kanya Kumari[11] it was held that in environmental law the preservation of water bodies is important and therefore this undetected and uncontrolled pollution of the water bodies that is leading to this huge amount of destruction stands in violation of that.

9 Regulation by Odisha government, 2019. *Odisha Tourism : Visit Odisha | Travel & Tourism | Official Site*. (n.d.). Odisha Tourism. Retrieved December 20, 2021, from https://www.odishatourism.gov.in/content/tourism/en.html

10 WWF Living Planet Index

11 2010 (1) C.W.C. 193 (Mad.)

Soil Deplition

Due to the immense amount of garbage cluttering at the seashore the sand is becoming loose, which is leading to easy loss by way of sea tides. The amount of plastic on the sea beach has reduced the tightness and cohesiveness of the soil to hold itself which is leading to the rapid loss of the Odisha coast. Due to the loss in coast the state of Odisha has become more susceptible to natural calamities like tsunamis, cyclones and floods. In the past three years Odisha has faced three major cyclonic storms which have lead to a mass destruction and one of the many reasons behind such frequency of storms stands to be the loss of soil, as the sand that helped in reducing the vigor of such impact has been lost, due to which the intensity with which these cyclones fall on the coasts has subsequently increased to a very high level.

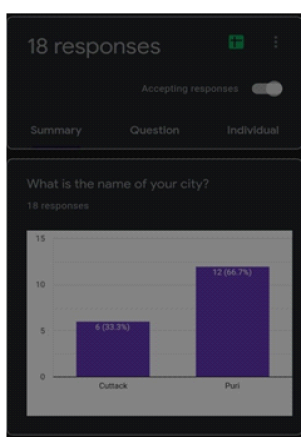
Other Impacts

A part from these two major issues the garbage cluttering also gives rise to unhygienic conditions which forms a major reason behind the spread of a lot of diseases. Such a situation gives rise to spread of major diseases and reduction in the immunity of the people living in and around such areas. This kind of an issue has also been seen in the case the areas in and around Puri where there has been a huge increase in the number of cases of diseases being witnessed.[12] This is something that has formed a major portion of the government's concern as this has lead to the loss of human life.

A part from that such clutters also lead to the loss of tourism which is definitely a hit on the state's economy. Therefore giving rise to the need for a solution.

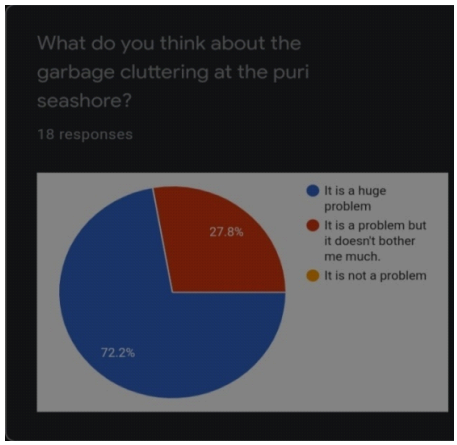
Empirical Research

In order to understand the awareness about this particular situation, a survey was conducted and results were derived. The survey was taken by 18 people out of which 6 are residents of Cuttack and 12 are residents of Puri.



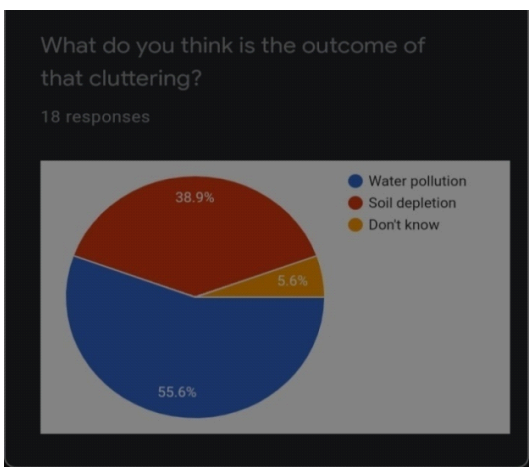
12 WHO report

The first question asked in the survey was about, their views on the garbage cluttering at the Puri sea beach and what they thought about it. In the survey, 72.2% people said that it was a huge problem for them where as the rest 27.8% people said that they consider it to be a problem but are not majorly affected by it.



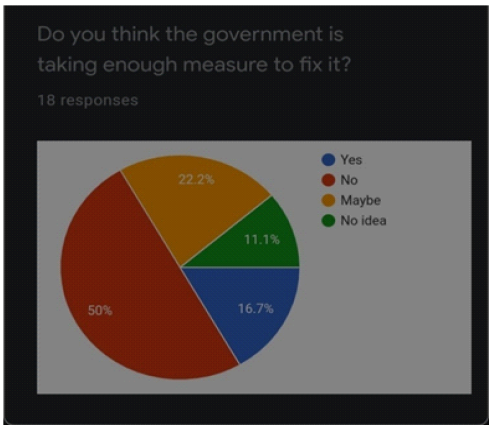
From this it can be deduced that irrespective of whether it bothers them or not, it is pretty clear that each one who took this survey considers it to be an issue.

The second question put forth in the survey was as to how the people thought this cluttering was affecting the environment to which the response was that, 55.6% people thought that it leads to water pollution, 38.9% people were of the view that it leads to soil depletion and the rest indicated ignorance about the subject.



From this it can be deduced that while a major portion of the survey takers are aware of the problems caused due to such cluttering while, even though small, a portion of the people still remain ignorant to the situation. This also draws attention to the fact that there is a need on the part of the government to spread awareness about this situation.

The last question which was presented to the survey takers was that whether they thought that the government was taking appropriate measures to tackle the situation, to which the survey takers had a response of, 50% people stating that no steps have been taken, 22.2% people responding with a maybe where as yes and no idea got 16.7% and 11.1% each.



From this we can deduce that a sizable portion of the survey takers think that the government has not taken enough steps to deal with the situation at hand and therefore a scope for improvement can be seen on the part of the government.

ANALYSIS

From this survey it can be analyzed that the garbage cluttering is actually a problem which needs to be paid attention to. Even though the government under various schemes, such as swachch bharat has taken steps to work towards the de-cluttering of these areas, it can be clearly seen that the people living in and around this region do not consider these efforts to be appropriate enough when it comes to the issue at hand. Therefore it becomes important for the government to take more acute steps towards finding an appropriate the solution in order to tackle the gist of this very pertinent issue.

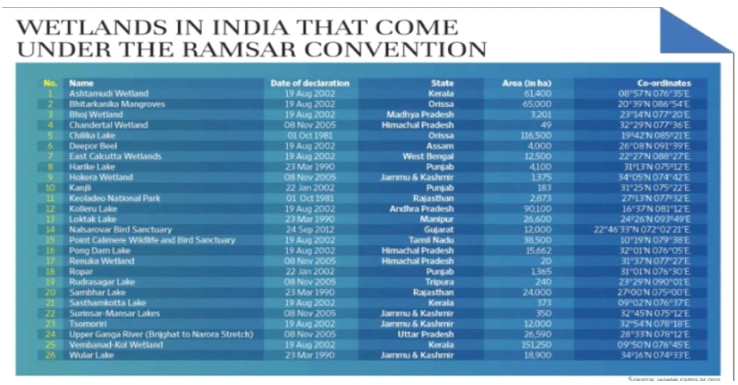
Diminution of Wetlands in the Eastern Coast

This issue that the state of Odisha is facing at present is an issue which has also been seen in various other parts of the country. Therefore in order to tackle this issue, it becomes necessary, to study such situations and thereby derive an appropriate solution to the issue.

Another environmental belle which has faced the consequences of such cluttering are the wetlands. It has been witnessed in various states of the Eastern coast that such as, Andhra Pradesh, west Bengal etc; which are the states that are known to possess the rich heritage of wetlands. They are facing similar issues with garbage cluttering in and around the wetland area, just as is being witnessed on the Puri seashore. One of the prominent sources of such cluttering can also be traced back to the factor of

tourism. This gradual cluttering of waste has lead to the subsequent diminution of this wonder of nature.

In order to save these wetlands, various steps have been taken by the government. Efforts to conserve wetlands in India began in 1987 and the main focus of governmental efforts was on biological methods of conservation rather than adopting engineering options. A national wetland-mapping project has also been initiated for an integrated approach on conservation. In certain wetland sites it is heartening to see the Government, NGOs and local community coming together to save our wetlands and thus realize the objectives of Ramsar Convention[13]. 37 wetlands in India have been categorized for protection under Ramsar Convention. Therefore, it can be said that various steps are being taken by the local, state and Union Authorities so as to tackle this issue in the most effective manner.



WETLANDS IN INDIA THAT COME UNDER THE RAMSAR CONVENTION

No.	Name	Date of declaration	State	Area (in ha)	Co-ordinates
1	Ashtamudi Wetland	19 Aug 2002	Kerala	61,400	08°57'N 076°35'E
2	Bhitarkanika Mangroves	19 Aug 2002	Orissa	65,000	20°39'N 086°54'E
3	Bhoj Wetland	19 Aug 2002	Madhya Pradesh	3,201	23°14'N 077°20'E
4	Chandertal Wetland	08 Nov 2005	Himachal Pradesh	49	32°29'N 077°36'E
5	Chilika Lake	01 Oct 1981	Orissa	116,500	19°42'N 085°21'E
6	Deepor Beel	19 Aug 2002	Assam	4,000	26°08'N 091°39'E
7	East Calcutta Wetlands	19 Aug 2002	West Bengal	12,500	22°27'N 088°27'E
8	Harike Lake	23 Mar 1990	Punjab	4,100	31°13'N 075°12'E
9	Hokera Wetland	08 Nov 2005	Jammu & Kashmir	1,375	34°05'N 074°42'E
10	Kanjli	22 Jan 2002	Punjab	183	31°25'N 075°22'E
11	Keoladeo National Park	01 Oct 1981	Rajasthan	2,873	27°13'N 077°32'E
12	Kolleru Lake	19 Aug 2002	Andhra Pradesh	90,100	16°37'N 081°12'E
13	Loktak Lake	23 Mar 1990	Manipur	26,600	24°26'N 093°49'E
14	Nalsarovar Bird Sanctuary	24 Sep 2012	Gujarat	12,000	22°46'33"N 072°02'21"E
15	Point Calimere Wildlife and Bird Sanctuary	19 Aug 2002	Tamil Nadu	38,500	10°19'N 079°38'E
16	Pong Dam Lake	19 Aug 2002	Himachal Pradesh	15,662	32°01'N 076°05'E
17	Renuka Wetland	08 Nov 2005	Himachal Pradesh	20	31°37'N 077°27'E
18	Ropar	22 Jan 2002	Punjab	1,365	31°01'N 076°30'E
19	Rudrasagar Lake	08 Nov 2005	Tripura	240	23°29'N 091°01'E
20	Sambhar Lake	23 Mar 1990	Rajasthan	24,000	27°00'N 075°00'E
21	Sasthamkotta Lake	19 Aug 2002	Kerala	373	09°02'N 076°37'E
22	Surinsar-Mansar Lakes	08 Nov 2005	Jammu & Kashmir	350	32°45'N 075°12'E
23	Tsomoriri	19 Aug 2002	Jammu & Kashmir	12,000	32°54'N 078°18'E
24	Upper Ganga River (Brighat to Narora Stretch)	08 Nov 2005	Uttar Pradesh	26,590	28°33'N 078°12'E
25	Vembanad-Kol Wetland	19 Aug 2002	Kerala	151,250	09°50'N 076°45'E
26	Wular Lake	23 Mar 1990	Jammu & Kashmir	18,900	34°16'N 074°33'E

Legislations Implemented in Various parts of the World for Soil Conservation:-

The soil conservation and domestic allotment act by the US federal law showcases an important method of paying attention to the pertinent problem. In this the government pays the farmers to reduce production so as to conserver the soil and prevent erosion. In Europe, directive on industrial emission, the waste framework directive and reach regulations in particular contribute to the provisions pertinent to soil protection. The EWU commission had submitted an official proposal for a soil framework directive on 22nd September 2006; it prevents detoriation of soil quality and preserves soil functions. Damage soils must be treated with a view to restore functionality and cost containment. Three main important international treaties which contain relevant provision on soil protection are the UN convention to combat desertification[14], the convention on biological diversity[15] and the climate framework convention. FAO's legislative principles renders the idea of stringent policy making to protect the depleting to soil as seen in the case of Beugel V. City of Grand Folks[16] the court established high compensation as exemplary damages for the misuse of land. In the case of Southeast cash water resource district V. Burlington Morgan Rail Road the court held that police and other governing bodies have a right to pay helping reforms in order to protect the depletion of soil.

13 Ramsar convention on Wetlands, 1971.

The soil and land use survey of India which is under the integrated Nutrient management division is a department under the government of India to look into soil depletion. This department is playing a leading role to the clarity of soil and water conservation requirements of the state and serves as the information hub for scientific and reliable information on soil and land resources and formulates the corrected implementation of various soils. It optimizes the natural resource utilization by adopting scientific land use as per as required. It has helped in the rejuvenation of the ecosystem then propagation of eco friendly and cost effective conservative mechanisms. Soil erosion and preventive premature siltation from various reservoirs is one of the ambitions under this scheme, it also helps to prevent silting up of natural water bodies. The river valley project of Kambini is an initiative by the government of India to help the soil depletion in its shores by various activities in order to mitigate agrarian distress in fragile ecosystems, this project forms to give a good structure to the upcoming conservative plans. According to a 2015 report of the Indian Institute of Remote Sensing (IIRS) the estimated amount of soil erosion that occurred in India was about 147 million hectors. In the year of 1962, an early initiative of soil conservation was seen in the catchments of river valley projects which were started in India then. The scheme promoted control of premature siltation of reservoirs which in turn enhances the productivity of the catchment areas.

Similarly, the Ramsar Convention is a historical convention in many aspects particularly as it is one of the oldest ecosystem specific conventions which speak the conservation as well as the wise use of Wetlands. It also enjoins the parties to the convention to formulate and implement their planning so as to protect the listed wetlands as far as possible. A preliminary draft of wetland policy and corresponding action plan for India within the mandate of central ministry of Environment and forest lays down the rules of wetland, 2017[17]. It prohibits a large range of activities like setting up and expansion of industries, waste dumping and discharge of effluents into these natural sponges, there are 115 identified wetlands which is, more than the 26 wetlands mentioned in the Ramsar convention. The National Green Tribunal also takes solid steps in preventing soil depletion as seen in the case of Mr. Alok Kumar V. Mr. Y. Suryanarayan who were held guilty for chromium dumping; the rule of solid waste management was laid.

CRITICAL ANALYSIS

The soil depletion in the coastal region of Odisha especially Puri is a problem of great concern, the local people and wildlife who have been staying in the area face grave problems. Most of the people consider the problems to be towering along the

14 *United Nations Convention to Combat Desertification*. (n.d.). United Nations Convention to Combat Desertification. https://www.unccd.int/

15 *The Convention on Biological Diversity*. (n.d.). The Convention on Biological Diversity. https://www.cbd.int/convention/

16 Beugel V. City Of Grand Folks; 475 N.W. 2d 133 (Nd 1991)

17 Wetland Rules, 2017.

shores of Puri. Due to rapid urbanization, expansion of slum, garbage cluttering, failed government projects, industrialization and water erosion the rate at which the top soil is depleting is sky-scraping.

The problem is considered to be a pertinent issue by the local people which showcases the huge impact it has on the surrounding environment. Similarly the soil depletion on the wetlands has an enormous effect on the life and environment surrounding it. The wetlands are considered to be a natural habitat to 1 lakh known fresh water species; it bursts with biodiversity and offers breeding and migration ground for many. Along with that it supports the livelihood of millions of people mainly consisting of fishing, timber, medicinal plants, animal fodder etc; Wetlands fight climate change by keeping in store more than twice as much carbon as world's forest, they reduce typhoons and tsunamis and resist erosion.

The steps taken by government to find a solution to this problem has never been enough which has also been voiced by the domestic people around, the governments' have hearted attempts have turned out to be huge failures as seen in the recent eco-retreat tourism stunt wherein the accumulation of garbage was a visible defeat. The cleanliness programs initiated by the government are often taken to be as public stunts rather than serious implications. The dire situation needs to be acknowledged and a concrete solution must be legislated. The afforestation campaigns fail to impugn the seriousness of soil depletion on the local people, the lack of awareness in people portrays the lack of effective legislation.

Similarly, the wetlands are detoriating in a rapid rate, land use changes and waste dumping are posing a major threat to the wetlands despite India having a national wetlands conservation program since 1985-86 that provide financial support for the protection of 115 wetlands in different states, there is nothing to show for this on the ground conversationalist blame state governments for not being proactive and letting the issue slide away with no working plans being drawn upon by the states the funds of the centre remain unused, the outlined threats by experts include habitat destruction, landfill, overexploitation of fish, discharge of waste water, weed infestation and pesticide runoff.

However there are various legislations and Conventions in the world that work towards the protection of the wetlands from any kind of soil depletion due to waste cluttering. The Authors believe that these legislations can be an effective source for the policy development so as to form appropriate legislations to ensure the protection of the Puri coast from soil depletion. In this way actions for soil conservation can be taken up on a rapid rate and subsequently the issue can be eradicated as a whole.

IMPACTS OF SOIL DEPLETION

Due to reducing level of soil along with climatic change presents a huge risk to Global Food security it contributes to climatic change with throngs of bacteria cascading the surfaces. Constant drainage of the top soil by wind and water carries away with it the soil nutrients leaving the land barren and infertile. The waste cluttering at the seashore gives rise the loosening of the soil strata because of which the soil

becomes susceptible to loss by erosion with tides. The seashore is therefore facing acute erosion which in turn get it into the risk zone of flood and other such natural calamities. The Odisha sea coast is therefore facing more and more of such natural disasters which are in turn leading to great loss of life and property. Wildlife destruction becomes an inevitable outcome due to the destruction of habitat and migration grounds for example; the Olive Ridley turtles that form their breeding grounds by the shores of Puri have raged into the line of extinction due to the unavailability of habitat and breeding ground.

The deficiency of moisture due to coagulation of metals and bacteria leaves the soil arid reducing its productivity and efficiency to a large extent, 40% of agricultural land is lost due to the depreciation of soil quality caused by agro-chemical measures and soil erosion. Lack of soil results in increased flooding due to the unavailability of clay to bind on the water molecules. Agriculture suffers the most due to the resultant infertility.

CONCLUSION

The depleting soil quality is not something that cannot be restored with corrective measures, good governance and stringent legislatures. Agenda 21[18] which emphasizes on the land degradation particularly through UN organizations has started to envelope the coastal region of Odisha and spread the awareness and help conserving the soil quality. A database on land degradation is being made available to enable the government make effective policies concerning the use and management of resources.

The National Green Tribunal has shown significant interventions in maintaining the soil quality as seen in the case of Central Pollution Control Board V. State of Andaman and Nicobar & Ors.[19] Wherein the tribunal voiced their concern about waste management and plastic destructing the quality of soil. Same was seen in the case of Himmat Singh Shekhawat V. State of Rajasthan and Ors.[20] Where the practice of illegal sand mining reducing the nutrients of top soil was shunned as it obtained environmental clearance.

The soil quality as well as Wetlands have been the most important assets in the preservation of sustainable resources, the mismanagement of land can lead to catastrophic results which maybe threatening to many parts of the region since environment and agriculture are intrinsically linked the value of the soil must be adhered to. The soil of the Wetlands often considered to be wastelands should not be converted for other purposes, these marshes hold 3% of the world's fresh water reserves, and the paddies there are a rich source of food and employment. Therefore the concern of its sustainability and preservation is something of optimum importance.

18 United Nations Conference on Environment and Development. (1992, June 13). *The Earth Summit* [Summit]. The Earth Summit, Rio De Janerio, Brazil.

19 Central Pollution Control Board V. State of Andaman And Nicobar & Ors. (O.A.247/2017)

20 Himmat Singh Shekhawat V. State of Rajasthan (O.A.No.671/2017)

In conclusion it can be said that the constant cluttering of garbage at the Puri seashore is a huge issue that poses threat to various sectors of the environment and the method which is being followed by the government is not strong enough to deal with the issue at hand. Odisha has already suffered a large amount of loss due to this situation and is moving towards more loss, therefore it becomes more necessary for the government, local NGOs and the people who subsist in that region to come together inorder to tackle the situation and come up with a concrete solution, in order to solve this issue, inspiration can be derived from how the diminishing wetlands are being saved and work be done in the same direction in order to save the coast. The government should come up with schemes to implement the same in a proper manner and thereby do its bit in order to achieve the ultimate goal of sustainable development.

RECOMMENDATIONS

Even though the situation at hand is of grave concern and danger that does not indicate to the fact that it is not possible to find a solution to this situation. Taking the situation about the wetlands for instance it can be said that there are ways to solve even this very pertinent issues. These are some suggestions that the Authors think can be helpful in achieving the same:

- It is important that the state as well as the central government understands the depth of the situation and works in collaboration with other nations of the world, which a view of mutual development and exchange of ideas, in order to tackle the base or gist of this issue.
- It is important that the government works with various NGOs and Local groups who possess more knowledge about the situation in order to target the issue at the very ground level.
- It is important to spread awareness about this problem among the people who live in and around the seashore, in order to ensure that there is no increase in the already present problem of garbage cluttering
- Help should be taken from the people present and living in such areas in order to clean the garbage clutters in a faster and more efficient way.
- Governments should set up policy frameworks with regulations to ensure the smooth functioning of the whole de-cluttering process of the already deposited garbage on the shores.
- Governments should take steps to encourage the scientific community to aid and implement programs, methods and standards monitoring soil depletion and resource identification.

Protecting Array of Indigenous Knowledge - A Comparative Study Between India and China

Ms. Urvi Shrivastava & Ms. Apurva Sharma***

ABSTRACT

Traditional knowledge is crucial to the identity of a culture. It is such skills, knowledge and practices which has been possessed by the indigenous communities since time immemorial and has been passed down from generation to generation within such communities. However, the lack of awareness of their rights amongst these communities often leads to their exploitation.

India is a hub of communities which boasts a rich culture, heritage and knowledge, however the obstruction of social evils such as illiteracy, untouchability etc. haunts its protection and preservation. Similarly, the traditional healthcare system in China is inspired by Traditional knowledge that is more than 3000 years old. A number of practices are included in traditional Chinese medicine, such as acupuncture, qigong, herbal medicine, and food therapy. However, obstacles to its preservation include public mistrust, language barriers, urbanisation, and technological intrusion. The authors through this paper will analyze the existing protection mechanism of traditional knowledge in India and China in the light of international instruments as well as local barriers. Also, the authors will draw a comparison between the existing machineries in both the countries and will attempt to suggest the changes required for safeguarding the traditional knowledge of indigenous communities in India.

INTRODUCTION & HISTORICAL DEVELOPMENT

The richness of cultural diversity in the world is undeniable. Be it about the ethnic minorities or marginalized populations, they are particularly significant. The life they live predominantly in frontier or geographically peripheral areas and rarely known greenwoods pledge them a strategic role as conservationist of culture, skill and know-hows unknown to others. This relationship between the knowledge organic to the existence of indigenous people and their survival is not new. It has no certain history either. It has been with the communities ever since they have been in existence. The social and cultural traditions are unique to communities holding them. As a component

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of kinship, cultural, and social traditions of passing down lived experiences of our habitat, humans have always passed on knowledge about life, living, livelihoods, lifestyles, nutrition, health care, and cleanliness throughout generations. As they live and follow these basics of knowledge, it is necessary to ensure continuity in such traditions.

India is rich in biogenetic resources and traditional knowledge, which are as valuable as its modern scientific advancements. Traditional Knowledge (TK) plays a vital role in achieving sustainable development. However, its accessibility makes it vulnerable to exploitation.[1]

India safeguards the traditional knowledge through its initiative of the Traditional Knowledge Digital Library (TKDL). Launched in 2001, it digitizes ancient texts, including Ayurveda, Unani, Siddha, and Yoga, into multiple languages. TKDL helps prevent biopiracy by providing evidence for patent authorities worldwide, ensuring India's heritage is protected.[2]

However, the TKDL is not publicly accessible which leads to patent filing of data technically protected by Traditional Knowledge, unlike China which has a publicly accessible database of TK on payment of fees which prevent biopiracy.

Because of free access agreement India has to provide the traditional knowledge data free of cost, thus improving the patent system in other countries. While China has a developed mechanism which charges hefty fees for the same, while the Indian Council of Scientific and Industrial Research is investing crores of rupees in data in making the TKDL, there is no financial or monetary benefit in return.[3]

TKDL is primarily acting as a preemptive defense mechanism instead of protecting the rights of indigenous communities in India. While China has prioritised ensuring the integration of its traditional knowledge with contemporary Western scientific understanding, India has centered its policies on preserving traditional knowledge in its original form and perspectives. This paper delves into the in-depth meaning and significance of traditional knowledge, as well as the international instruments that protect it. The authors will examine in detail the mechanisms for the protection of traditional knowledge in India and China, drawing a comparison between the two systems to offer recommendations for improvement.

MEANING AND DEFINITION OF TRADITIONAL KNOWLEDGE

Native, indigenous, and local communities have built a body of knowledge that has been passed down through the years to the point where it has become integral to their identity. Many notions, including time calculations, food items, plant characteristics, spice applications, yoga poses, etc., are rooted in traditional knowledge. Traditional

1 Chouhan and Vishwas Kumar, *Protection of Traditional Knowledge in India by Patent: Legal Aspect,* 3 IOSR Journal of Humanities and Social Science, Issue 1, 3-5 (2012).

2 Traditional Knowledge Digital Library Unit (TKDL), https://www.csir.res.in/documents/tkdl. (December 26th, 2024, 3:35 PM).

3 Damodaran, *Traditional Knowledge, Intellectual Property Rights and Biodiversity Conservation: Critical Issues and Key Challenges*, 13 Journal of Intellectual Property Rights, 17-19 (2008).

knowledge's most important characteristics are its long history and frequent oral transmission.[4] "*Vidya Dadati Vinayam, Vinaya Dadati Paatrataam* I *Paatratva Dhanamaapnoti, Dhanaat Dharmam Tatah Sukham* II" According to this shloka, true or complete knowledge bestows discipline, which in turn bestows worthiness, wealth, and from wealth one practices good deeds to attain joy. The strength and importance of knowledge are echoed in this age-old Sanskrit saying. Furthermore, it reiterates the necessity of safeguarding customary knowledge.[5]

Contrary to popular belief, traditional knowledge does not get its name from its antiquity. Within a community, it is a living body of knowledge that is created, maintained, and transmitted from generation to generation; it frequently contributes to the community's sense of cultural or spiritual identity. Because of this, it is difficult to protect under the current intellectual property laws, which normally only provide temporary protection to inventions and creations of individuals or businesses. Because of its dynamic nature, "traditional" knowledge is also difficult to define.[6] Essentially culturally oriented or based, traditional knowledge (TK) is fundamental to the cultural identity of the social group it operates within and is perpetuated. A broad definition of "traditional knowledge" includes any and all tradition-based innovations and creations arising from intellectual activity, including literary, artistic, or scientific works; performances; inventions; scientific discoveries; designs; marks, names, and symbols; undisclosed information; and all other tradition-based innovations and creations.[7]

There is no such specific definition of Traditional Knowledge which has been accepted widely, but the World Intellectual Property Organizations (WIPO) has defined the said term in two different senses-

- **In General Sense –** *"It embraces the content of knowledge itself as well as traditional cultural expressions, including distinctive signs and symbols associated with TK."*
- **In Narrow Sense - "***It refers to knowledge as such, in particular the knowledge resulting from intellectual activity in a traditional context, and includes know-how, practices, skills, and innovations."*[8]

UNESCO followed the concept of *Ejusdem Generis* and accordingly defined Traditional Knowledge as the "*the cumulative and dynamic body of knowledge, know-how and representations possessed by peoples with long histories of interaction with their natural milieu. It is intimately tied to language, social relations, spirituality and worldview, and is generally*

4 Vatsala Singh, *IPR Vis-à-vis Traditional Knowledge,* Mondaq, https://www.mondaq.com/india/patent/743482/ipr-vis—vis-traditional-knowledge (May 5th, 2024, 5:27 PM)

5 SCC Online, https://www.scconline.com/blog/post/2018/04/23/protecting-traditional-knowledge-the-india-story-till-date/ (May 5th, 2024, 6:35 PM).

6 Ibid.

7 Speech of Hon'ble Mr. Justice Vijender Jain, Chief Justice, Punjab And Haryana High Court, Chandigarh In A Seminar Of Asia Pacific Jurist Association (Apja) On *Safeguarding The Traditional Knowledge In India*, May 8th, 2024.

8 World Intellectual Property Organizations https://www.wipo.int/tk/en/tk/#:~:text=Traditional%20 knowledge%20 (TK)%20is%20 knowledge,its% 20 cultural%20 or%20 spiritual% 20 identity (May 8th, 2024, 4:42 PM).

held collectively."[9] The indigenous groups have been able to employ this precious traditional knowledge for sustainable life and survival, the knowledge pertaining to food crops, biologically significant and life-saving medicinal plants and herbs.[10]

Globally the indigenous and local groups' knowledge, inventions, and customs are collectively referred to as traditional knowledge. Oral transmission of traditional knowledge occurs between generations. It is derived from years of experience and customized to the local environment and culture. Cultural values, beliefs, traditions, proverbs, music, rituals, folklore and community, laws, local language, agricultural methods, emergence of new plant and animal species are examples of how it is typically bestowed.[11]

IMPORTANCE OF PROTECTING TRADITIONAL KNOWLEDGE

Traditional knowledge occupies a distinctive space between intellectual property and the public domain, sharing traits and limitations of both. Lacking elements like innovation or an identifiable owner, it cannot be protected by exclusive intellectual property rights (IPR). Consequently, it becomes part of the public domain, leaving it open to potential exploitation. Therefore, it has proven to be a challenge to protect traditional knowledge. Because of its unique nature, this information needs to be protected because it is integral to the communities' identity and might be exploited by businesses or individuals who could patent it without providing any benefits to the communities.[12]

Traditional knowledge is directly associated with ecology, because of their relationship with the environment and the experiences they have gained from personal formal education and interactions. It is possible to argue that traditions and personal experiences form the foundation of indigenous ecological knowledge. Controversial topics like bioprospecting are also part of traditional knowledge. The term was coined to characterize the tradition of indigenous and local groups to collect and screen plants and other biological material for use in the production of new seeds, cosmetics, medications, and other products. Bioprospecting may be justified as beneficial to biodiversity, but it is also sometimes accused of being biopiracy because it does not fairly compensate indigenous and local communities for giving access to their resources and because products and patents derived from traditional knowledge are so similar to traditional knowledge that they violate intellectual property rights and are therefore considered intellectual piracy. Misappropriation of indigenous communities have been taking place ideally because of the lack of knowledge of rights that these communities themselves hold, and hence, unfortunately have been taken advantage of blatantly at various stages of history.

9 Vrinda Singh & Vishal Singh Thakur, *Biopiracy and the Eclipse of Traditional Knowledge in India*, 6 Supremo Amicus 491 (2018).

10 Ibid.

11 Malgosia Fitzmaurice, *The Dilemma of Traditional Knowledge: Indigenous Peoples and Traditional Knowledge*, 10 INT'l COMM. L. REV. 255 (2008).

12 Abha Nadkarni & Shardha Rajam, *Capitalising the Benefits of Traditional Knowledge Digital Library (TKDL) in Favour of Indigenous Communities*, 9 NUJS L. REV. 183 (2016).

In emerging nations, corporate sectors are making every effort to industrialise their economies. A number of discussions have focused on how the commercialization of traditional knowledge and traditional economic experiences is robbing people of their identities and their cultural heritage. WIPO's Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources was formed in 2000 to handle concerns related to these sectors, and groups. The IGC was created with the goal of addressing intellectual property rights and the problems that surround them, as well as the benefit sharing framework as a discussion point for the preservation of traditional knowledge and technological innovations.[13] The intellectual property system has expanded to include new stakeholders in the global information society, such as indigenous and local communities. Their knowledge base, particularly their traditional knowledge, forms a body of prior art that is becoming more and more relevant, and its proper identification is becoming crucial to the system's operation. A traditional knowledge documentation data is a non-patent literature with specific characteristics and certain characteristics may require tailored measures to ensure that traditional knowledge data is properly integrated and recognised as relevant non-patent literature.[14]

INTERNATIONAL LEGAL INSTRUMENTS SAFEGUARDING TRADITIONAL KNOWLEDGE

Although traditional knowledge is protected by national and regional regulations, its effects are felt on a worldwide scale. Traditional knowledge has been discovered to be founded on specific moral and ethical precepts worldwide, regardless of its local applicability (often restricted to a clan or perhaps exclusively to a family or a community). The impact that TK's uniform behavior produces transcends national boundaries.[15]

The international law, intellectual property rights, and environment law all contain a number of legal documents, declarations, and rules that offer protections for indigenous knowledge. It is crucial to recognize, nonetheless, that these clauses occasionally diverge and contradict one another due to the existing disagreements regarding the purpose and subject matter. Some legal frameworks address the protection of the environment and the preservation of rights of indigenous peoples, while other legal frameworks deal with intellectual property rights, international trade, and other commercial matters where the primary goal is profit maximization. Time and again, the Corporation and the Indigenous communities have had a "clash of interest" as a result of the discrepancies in these laws.[16]

Not only is it economically unfair to these communities to use their cultural property without their consent, but it also violates their rights as people who have contributed

13 Ratula Datta, *Indigenous Communities in India and the Protection of Traditional Knowledge: An Inadequate Legal Initiative*, 25 Supremo Amicus 392, 2021.

14 Supra note 7.

15 Chakrabarty, S.P., Kaur, R. A Primer to Traditional Knowledge Protection in India: The Road Ahead. Liverpool Law Rev 42, 401–427 (2021). https://doi.org/10.1007/s10991-021-09281-4

16 Vrinda Singh & Vishal Singh Thakur, Biopiracy and the Eclipse of Traditional Knowledge in India, 6 Supremo Amicus 491 (2018).

for generations to the development of certain words, images, and patterns that have traditionally had spiritual and cultural significance for them. Thus, it is essential—and always has been—that actions be done to safeguard their rights to economic and cultural freedom.[17]

The International Frameworks Protecting Traditional Knowledge are Mentioned Below-

1. CONVENTION OF BIOLOGICAL DIVERSITY, 1992

In addition to acknowledging indigenous people's reliance on biodiversity, the Convention on Biological Diversity also highlights their special contribution to the preservation of life on Earth. The first international treaty to recognize the importance of local and indigenous populations in biodiversity protection and sustainable usage is the Convention on Biological Diversity.[18]

The Convention places general requirements on the preservation, sustainable use, information exchange, and fair distribution of biodiversity benefits. As per their specific national circumstances, each party is required to create national legislation as soon as feasible. This is done in ordere to respect, preserve, and uphold the knowledge, innovations, and practices of indigenous and local communities that represent traditional lifestyles relevant for the conservation and sustainable use of biological diversity. This further encourages their wider application with the consent and involvement of those who possess these knowledge, innovations, and practices and also promotes the equitable sharing of the benefits arising from their use.[19] Additionally, the convention acknowledges the notion of state sovereignty, which permits the state to exercise its sovereignty over its resources.[20]

The CBD Convention's Article 8J addresses traditional knowledge in a major way. It is also necessary to discuss Article 15, paragraphs 5 and 7, which establish the requirement for prior informed permission and sharing under conditions that are mutually agreeable. Articles 10(c), 17(2), and 18(4) also make reference to traditional knowledge. In addition to adopting many rulings and guidelines relating to traditional knowledge, CBD also offers a comprehensive institutional structure.[21]

2. THE NAGOYA PROTOCOL, 2010

The guidelines and procedures for implementing the Convention on Biological Diversity are outlined in the 2010-ratified Nagoya Protocol. Shared benefits and access are the main topics of this protocol. Better control over access to genetic or biological resources

17 Ratula Datta, *Indigenous Communities in India and the Protection of Traditional Knowledge: An Inadequate Legal Initiative*, 25 Supremo Amicus 392 (2021).

18 Supra note 15.

19 Supra note 7.

20 Vrinda Singh & Vishal Singh Thakur, *Biopiracy and the Eclipse of Traditional Knowledge in India*, 6 Supremo Amicus 491 (2018).

21 Malgosia Fitzmaurice, *The Dilemma of Traditional Knowledge: Indigenous Peoples and Traditional Knowledge*, 10 INT'l COMM. L. REV. 255 (2008).

is the goal of the Nagoya Protocol, which also urges the government to establish an institution where businesses and researchers can apply for operating licenses. The establishment and maintenance of a fair system for allocating gains resulting from resource utilization should also be guaranteed by states.[22]

In order to access and utilize a genetic resource, parties must first secure permission from the resource's traditional owners and come to an agreement on the parameters of resource extraction and benefit sharing. This was outlined in the Nagoya Protocol. A review of India's Traditional Knowledge Digital Library sheds light on how to preserve traditional knowledge internationally while balancing national and communal interests.[23]

3. DOCTRINE OF COMMON HERITAGE OF HUMANKIND, 1967

The International undertaking on Plant Genetic Resources for Food and Agriculture, 1983, established by the FAO, is outlined in Article 1(1). Its foundation is "the universally accepted principle that plant genetic resources are a common heritage of mankind and consequently should be available without restriction." That is to say, nobody can assert any kind of sovereignty over these resources.[24]

4. DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE (UNDRIP), 2007

In terms of internal affairs, it upholds the rights of indigenous peoples to self-recognition and sovereignty. It also acknowledges their "right to maintain, control, protect, and develop their cultural heritage, traditional knowledge, and traditional cultural expressions.[25]

5. THE TRADE-RELATED ASPECT OF INTELLECTUAL PROPERTY RIGHTS (TRIPS) AGREEMENT, 1995

In 1955, the World Trade Organization developed the TRIPs Agreement as a global framework for the protection of intellectual property rights. albeit with limited success, the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO). TRIPS has not really protected the rights of indigenous people over traditional knowledge in fact it has served as a framework for enforcing international intellectual property laws that permit traditional knowledge to be commercialized worldwide rather than serving as a means of safeguarding it for the benefit of its traditional custodians.[26]

6. THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE, 2001

Concerning the genetics of agricultural plants, it safeguards the customary knowledge

22 Supra note 20.

23 Balancing community rights and national interests in international protection of traditional knowledge: a study of India's Traditional Knowledge Digital Library.

24 Supra note 20.

25 Supra note 23.

26 Ibid.

held by farmers. It additionally ensures that farmers receive an equal share of any profits made from their contributions.[27]

7. WIPO

World Intellectual Property Organization (WIPO) jumped into the world of protection of traditional knowledge back in the seventies through its folklore provisions with the UN. In the nineties, WIPO came up with its own idea of protection traditional knowledge in 28 countries. However, what can be summarized about the attempts of the World Intellectual Property Organization in protecting traditional knowledge is that they believe in understanding the requirements of the locals when it comes to the current manner of protecting traditional knowledge. This has led it into collecting massive amounts of information, a manner of collecting Traditional Knowledge, and the creation of an apparent system. It is also trying to widen its database so as to make it easier to find traditional knowledge to protect. It has also worked to find the rationale behind protecting traditional knowledge.[28]

The Inter-Governmental Committee on Intellectual Property and Genetic Resources assists WIPO in handling Traditional Knowledge as well. The IGC was created with the goal of addressing intellectual property rights and the problems that surround them, as well as the benefit sharing framework as a discussion point for the preservation of traditional knowledge and technological innovations. Its purpose is to resolve disputes over international legal agreements pertaining to the protection of indigenous populations and the knowledge that has been derived from them. It is necessary to make recommendations to Member States of the Paris Convention or those that follow WIPO's guidelines on the protection of these communities.[29]

LEGAL PROTECTION OF TRADITIONAL KNOWLEDGE IN INDIA & CHINA

Traditional knowledge by its very nature of being intrinsically developed through practical understanding has enriched itself into an asset that is widely threatened. Efforts to utilize traditional knowledge for business or industrial purposes directly attack the beneficiaries of the knowledge. TK holders' interests must be taken into consideration while creating strategies to safeguard and cultivate TK in the face of such threats. Especially for emerging nations, it is crucial to preserve, safeguard, and promote the innovative and rich practices rooted in traditional knowledge. Their abundance, biodiverse-attributes and sustainability is vital in all aspects as they consider environment, trade, development, identity, health care, and food security. But in many places across the world, this priceless asset is in danger.[30]

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27 Maitreyi Shishir, *Protection of Traditional Knowledge in India*, 1 LAW Essentials J. 74 (2021).

28 Ibid.

29 Supra note 17

30 WIPO,https://www.wipo.int/wipo_magazine/en/2011/03/article_0002. html#:~:text= India's%20 TKDL% 20 is%20 a% 20 unique, protecting%20 the%20 country's%20 traditional% 20 knowledge. & text= 1%20 Prior%20art% 20 constitutes% 20 all, claim%20 of%20 novelty% 20 and%20 inventiveness (May 20th, 2024, 8:20 AM).

MECHANISM IN INDIA

Concerns have been raised about the fact that third parties are using and patenting knowledge from indigenous communities without the traditional knowledge holders' prior informed agreement, and that very little, if any, of the benefits of this use are being shared back with the communities from whom the knowledge originated. A spirited discussion about how to maintain, safeguard, advance, and use traditional knowledge responsibly has resulted from these worries, which have elevated traditional knowledge to the top of the international agenda. It's working well to preserve traditional knowledge and keep outsiders from stealing it by digitizing and documenting TK-related information into a Traditional Knowledge Digital Library (TKDL). India is leading the way in this area. In an attempt to prevent patent offices worldwide from granting patents for applications based on India's abundant rich heritage, the Department of AYUSH and the Council of Scientific and Industrial Research (CSIR) collaborated on the TKDL initiative. The concept of creating a TKDL emerged from India's attempts to cancel the patents on the antifungal qualities of neem and turmeric issued by the European Patent Office (EPO) and the United States Patent and Trademark Office (USPTO). These efforts proved to be quite expensive and time-consuming, even though they were effective.[31]

The TKDL expert committee calculated that approximately 2,000 patents pertaining to Indian medicinal systems were mistakenly issued by patent offices worldwide each year around the time the TKDL was founded in 2001. National patent law specifies requirements that must be met in order for a patent application to be approved. Specifically, the applicant must demonstrate that the invention being sought is new and has never been used before. So why were there so many Indian medical system-related patents granted? The asserted inventions were not found in the previous art searches that were conducted when patent examiners evaluated these applications for patentability. As a result, they were declared patentable. However, a large portion of India's traditional medical knowledge was only available in Sanskrit, Tamil, Hindi, Urdu and Arabic at that time. The patent examiners in the major patent offices to whom the applications had been submitted were neither conversant in these languages nor able to access them. Much anguish was brought to the country because so many patents had been improperly obtained in the United States and Europe. India's citizens believed that their knowledge was being unfairly taken away from them. Furthermore, these patents that were deemed "incorrect" granted the sole authority to utilize the invention within the nation where patent protection was bestowed. This presented a serious risk to Indian producers' ability to make a living and their ability to enter international markets.[32]

The TKDL has organized and transformed ancient texts into a 34 million standard format of a patent application using information technology techniques and a brand-new Traditional Knowledge Resource Classification System (TKRC). With the help of

31 Ibid.

32 Supra note 30.

its TKDL, India may now protect around 0.226 million pharmaceutical formulations for free. Early identification of applications that blatantly fail to meet the novelty criteria is made easier for patent examiners with access to the database. Removing a patent can be an expensive and time-consuming procedure without a TKDL database. The typical time to dispute a patent granted by a patent office is five to seven years, and the cost can range from 0.2 to 0.6 million US dollars. This multiplied by the 0.226 million pharmaceutical formulations in India makes it evident that the expense of protection in the absence of a TKDL would be unaffordable. TKDL attempts to categorize and then translate the uses, traits, and reference materials of various plants establishing a capable and strict method to prove traditional knowledge's precedence in cases of biopiracy. This translates into the true goal of this digital library.[33]

One of the world's first and most comprehensive databases of its era established in 2001 to facilitate effortless patent search and being made accessible in five foreign languages: English, German, French, Japanese, and Spanish for easy access and prior art review made finding information regarding historical understanding of the Indian System of Medicine impressively systematic. Patent offices worldwide have access to this database including USPTO, EPO, German Patent and Trademark Office (DPMA), Canadian Intellectual Property Office (CIPO) *et al*. Nonetheless, if one complies with Traditional Knowledge Digital Library's requirements, access might be obtained outside the agreement too.[34] It is undoubtedly a significant step toward safeguarding the nation's traditional medical knowledge in particular as it has resulted in the application of traditional knowledge being established in up to 324 instances that have been rejected, withdrawn, cancelled, etc.[35]

The system however is clouded into mists since TKDL was created with the intention of assisting indigenous communities and receives substantial funding for its operation. Despite its promising nature, it now serves just as a protective measure as it lacks the other functions of an intellectual property regime. The primary purpose of an intellectual property rights (IPR) regime is to safeguard intellectual property while also generating financial gains for the creators. Instead of benefiting the information bearers, the current TKDL structure only serves one purpose—that of protecting the knowledge[36].

An analysis of TKDL's finances and economy reveals several areas of criticism. Firstly, there is no financial gain that can result from a contractual arrangement because TKDL does not provide access to third parties. Only the CSIR and Patent Offices, who sign the "Free Access Agreements," are parties to a contract. Secondly, it does not substantially benefit the indigenous population, who are the real beneficiaries and the original bearers of the traditional knowledge. Thirdly, traditional knowledge is

33 Supra note 20.

34 Supra note 27.

35 CSIR, Traditional Knowledge Digital Library Unit.

36 Wu L, Chen W, Wang Z. Traditional Indian medicine in China: The status quo of recognition, development and research. J Ethnopharmacol. 2021 Oct 28;279:114317. doi: 10.1016/j.jep.2021.114317. Epub 2021 Jun 8. PMID: 34111541.

not acknowledged by TKDL as a component of the public domain. Some argue that in order to avoid the frequently invoked defense of ignorance regarding a formulation's status as "prior art," the TKDL should be made publicly available and easily accessible to all. On several occasions, the lack to produce a source of the knowledge (which is many times passed on orally than being scripted), raised the defense's claim of non availability of the knowledge in the public domain in turn strengthened the request for grant of patent. This highlights the issue of non documentation of generational knowledge rising from ignorance of India's ancient knowledge systems. These indigenous knowledge systems need to be widely publicized so that patents cannot be claimed for the glaring lack of novelty, rather than fighting every single one of them.[37]

Another issue arising out of the current legal regime in India is lack of inventive-step. Mostly composed of products that are natural in nature, there is a challenge to prove an inventive step, a fundamental prerequisite for patent.[38]

Traditional Knowledge also has ownership complexities involving collective ownership against the patent regime granting patent only to individual or corporate. Also the entire IP system affects the intergenerational communication of knowledge, limiting the protection to a few years or decades while the knowledge continues to be used, difficulty in determining the first inventor to complex mechanisms for sharing benefits adds to the challenges still required to overcome by the Indian IP regime protecting traditional medical knowledge. For example, databases developed in China are made available to the general public for a cost, which deters biopiracy. In essence, this makes sure that the concept of this kind of usurpation never develops into a patent application in the first place. The biodiversity authority's registry, another significant resource, is not accessible online. According to the 2004 Act's regulations, one of the authority's primary responsibilities is to compile a Register following consultation with the various locals. The primary goal of this record is to gather all the comprehensive information about the biological resources in the area, their usage, and any other information that might be relevant to their protection from the local population. The secret to the register's effectiveness in assisting with the preservation of traditional knowledge is its comprehensiveness.[39]

MECHANISM IN CHINA:

China takes extremely careful steps towards achieving this goal, even if it has been said that the country is "highly concerned about TK protection." This is because the matter is highly complex. The traditional knowledge in China is categorized into

37 Hirwade, Mangala and Anil Hirwade, *Traditional Knowledge Protection: An Indian Prospective*, 32 DESIDOC Journal of Library & Information Technology, 3 (2021).

38 Intellectual Property and traditional medical knowledge, background brief no.6, WIPO, 2016, <https://www.google.com/url?sa=t & source=web & rct=j&opi=89978449 & url=https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2023-5-6-en-intellectual-property-and-traditional- medical- knowledge.pdf & ved= 2 ahUK Ewiu7Oa O49GKAxVDy Tg GHeJGOXQQ Fno ECBkQAQ & usg= AOv Vaw0 RB orwLkcCU Nob Ar4 n5IEX> (December 30th, 2024, 11:25 AM).

39 Supra note 27.

traditional medical knowledge, traditional agricultural knowledge and traditional ecological knowledge identifying with its deeply rooted culture and history. It makes up almost 50% of the entire healthcare systems in china. However its background shrouded in myths and superstition has made it archaic, raw and in desperate need of modern commercial values. Highly affected by the allegations and in need of restoring the historical cultural significance and dignity, protection of the traditional medical knowledge was brought under the Patent Law in 1992 and 2000 which started to shape the protective measures in China. Legislation pertaining to genetic resources and associated technology that would allow for the use of Convention on Biological Diversity (CBD) was also created, as well as access and benefit-sharing agreements were accordingly being concretized. Furthermore China has consistently been making efforts to bring its Chinese traditional medicine updated with the contemporary Western scientific understanding. However, even though the call resonates with the international IP requirements they do not aptly fit the box since the nature of western practices and traditional knowledge do not go hand in hand.

All things considered, only recently invented TK is protected by the above laws and the public domain is thought to include all other types of Traditional Chinese Medicine known. To assist patent examiners, the Chinese State Intellectual Property Office created the Traditional Chinese Medicine Patent Database, which includes over 40,000 formulations that have been patented and are, therefore not in the public domain. However the traditional Chinese medicine knowledge is still not satisfactorily protected because it guarantees only the creation of achievements and not the source of resources that gives no scope of protection to development and innovation in TMK. As of right now, not much is done to preserve traditional medical knowledge in china, and it is largely a vicious circle of unfulfilled promises where numerous policies, suggestions and committees and strategic plans were organized but not to much avail.[40]

A COMPARISON OF TRADITIONAL KNOWLEDGE IN INDIA & CHINA

India and China are richly diverse in their traditional Knowledge and ancient wisdom shaping their healthcare systems before the advent of western cures but both face the challenges of a developing country trying to strengthen their ancient knowledge through a modern intellectual property regime.

Below are the highlights of a comparative study on the ip regime protecting TK in India and China.

• BROADER AREA OF LAW:

Chinese regulations on the protection of Chinese traditional medicine varieties and the People's Republic of China's 2000 Patent Law with regulation on protection of varieties of Chinese traditional medicine are examples of what China has as legislation protecting TK, while India has its Biological Diversity Act, 2002, Patent Act, 1970 with rules and Traditional Knowledge Digital Library.

40 Nair, *TRIPS, WTO and IPR: Protection of Bioresources and Traditional Knowledge*, 16 Journal of Intellectual Property Rights, (2009

• **ACCESSIBILITY (PAID V. FREE)**

Indian TKDL is not publicly accessible which causes patent filing of data technically protected by Traditional Knowledge unlike China which has a publicly accessible database of TK on payment of fees which prevent biopiracy. Because of free access agreement India has to provide the traditional knowledge data free of cost, thus improving the patent system in other countries. While China has a developed mechanism which charges hefty fees for the same. 'The free tree will stay free.' TKDL is primarily acting as a pre emptive defense mechanism instead of protecting the rights of indigenous communities. China has prioritized ensuring the integration of its traditional knowledge with contemporary western scientific understanding, but India has concentrated its policies on safeguarding traditional knowledge in its original form and perspectives.

The scriptures of India were composed in numerous languages, most of which are no longer in use. In contrast to the understanding of Traditional Chinese Medicine. Because patent examiners were unable to screen Indian traditional knowledge in their searches for prior art, the information became susceptible to exploitation by corporations. It should be noted that revocation of a patent once granted is difficult and costly. Given that India is a multiethnic nation, all indigenous communities' rights are respected, and the Traditional Knowledge of various ethnic groups is acknowledged. Consequently, a culturally heterogeneous TK network has been developed. However although china being an ethnically diverse country is particularly dominated by one single ethnic group the han chinese which has influenced their TK protection strategy also that has largely neglected the TK of ethnic minorities and has been too focused on PCM.

• **LEGAL AND POLICY FRAMEWORK**

China- Intellectual property regime in China is broad including legislations but no access and benefit sharing frameworks, indigenous rights and repression of unfair competition.

India- India has legislations but none specific to Traditional knowledge but still provides for Access and benefit sharing framework.

• **POLICY TOOLS UTILIZED**

China- Exclusive Rights are granted to right holders though there is no acess regulation or customary laws.

India- India has Access Regulation but no customary laws or exclusive rights.

• **SCOPE OF SUBJECT MATTER**

China- Sectoral in nature only granted to Traditional Medicine

India- India has Biological Resources held by local people only

• **POLICY OBJECTIVE**

China- it is limited to Innovation and Promotion

India- It goes to + biological resources- Conservation of TK and elements and Fair and Equitable benefit Sharing.

India, jointly with Brazil and other Latin American countries has taken a leadership role in this arena by making proposals in several IGOs to include obligatory benefit sharing mechanisms and disclosure of source and origin requirements into the TRIPS agreement. Although China has sometimes joined these groups, its political leaders have not appeared to be very convinced of these proposals. They seem to prefer the status quo to any "immature rule that would surprise interested industries"[41]

CONCLUSION AND SUGGESTIONS

The Researchers has Suggested Some Suggestions which are Mentioned Below-

- Commercial access to traditional knowledge should be allowed because it will eventually benefit the indigenous communities.
- Legislation that oversees these local or indigenous populations' entire environment and their traditional knowledge is still lacking.
- Inculcating more information to indigenous people the information related to the protection of their traditional knowledge using various international or national laws.
- Because TK is so widely used and susceptible to transboundary misuse, it cannot be protected solely by domestic means. For all kinds of TK to be better protected, the International Legal Instrument is consequently necessary.
- Commercial access to traditional knowledge should be allowed because it will eventually benefit the indigenous communities.
- Unlike the expertise of Traditional Chinese Medicine, the texts of TK in India were written in a multitude of languages, of which only a small number are still in use today. Because patent examiners could not check Indian traditional knowledge (TK) in their prior art searches, it became open to corporate exploitation.
- It should be mentioned that it is difficult and expensive to revoke a patent after it has been issued.

India is a multi ethnic country and respects the rights of all indigenous communities and recognition is given to TK of several ethnic groups. Thus an ethnically diverse TK mechanism has been established. However, although China being an ethnically diverse country is particularly dominated by one single ethnic group the Han Chinese which has influenced their TK protection strategy also that has largely neglected the TK of ethnic minorities and has been too focused on PCM. Knowledge has emerged as one of the most vital resources for both social and economic advancement with

41 Comparative Summary of Existing National Sui Generis Measures and Laws for the Protection of Traditional Knowledge, https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_7/wipo_ grtkf_ic_7_6- annex1. pdf (December 30th, 2024, 9:25 AM).

the growth of the knowledge economy. A few nations have put up plans to safeguard their own ancient knowledge. Chinese customs-based knowledge on health and cleanliness is referred to as traditional knowledge of Chinese medicine. It is passed down from one generation to the next, yet it is always changing. All inventions and innovations arising from intellectual work in this subject are included, and it has real or potential commercial worth.

Religious Fundamentalism in India

*Ms. Soma Gupta**

ABSTRACT

Fundamentalism basically means adhering to one own pre conceived notions largely based on religious texts having their own rigid meaning and interpretation . *It* is a term that typically refers to," *a strict adherence to certain foundational or core principles, often in the context of religion, but also in politics and other ideologies.*he growth of religious fundamentalism in India highlights the urgent need for dialogue, greater interfaith understanding, and a reaffirmation of the country's commitment to religious tolerance and national unity. Only through such efforts can India hope to preserve its tradition of coexistence while navigating the complexities of modern identity politics.

INTRODUCTION

It can be broadly explained, "as a tendency which is largely prejudice on pre-conceived philosophies and ideologies amongst certain groups – mostly, but not being exclusively – in religious following a specific ideology, when they stringently and precisely follow convinced unambiguous scriptures, dogmas or ideologies with a strong importance of maintaining ingroup and outgroup distinctions.

Fundamentalism is a term drawn from Protestant Christianity. It is an American coinage that refers to a group of early twentieth-century Protestant activists who organised against Darwinian evolution and who championed the literal reading of the Bible. However, today the western analysts describe religious revivals around the world in terms of the growth of fundamentalism. But not all revivals are fundamentalist. There is an uprising of religion all over the globe, except in Europe, where secularism has taken root.[1]

It is characterized by the belief in the absolute, literal truth of foundational texts, doctrines, or traditions, and a rejection of modern interpretations or reforms that challenge these core beliefs,it is often associated with confrontation to pluralism and tolerance, and sometimes with extremism or conflict with other faiths and believes.

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To have a further understanding it refers to," when individual's comings together in a group who have unyielding firmacceptance and unwavering belief in the soundness of the religious/philosophical scriptures in all matters of faith, religion and philosophy. The belief is at time so strong that they at times disapprove the law of the land if it is inconsistent with theirbeliefs and faiths astheir main purpose is to have the dominance of their religious practices It is generally understood to have religious connotation but it can be non-religious also which can be based on geographical, political or a newpoliticalapproach. They detect the idea of unity of in diversity and want their ideologies to be followed monopolistically.

Fundamentalism can be seen in many different religions, such as Christianity, Islam, Judaism, Hinduism, and others, each with their own specific characteristics. It can also extend to political or ideological movements, where it signifies a rigid, purist stance on issues like nationalism, capitalism, or socialism.Refusal of multiplicity of practise as applied to these established "fundamentals" and their accepted interpretation within the group often results from this tendency.

RELIGIOUS FUNDAMENTALISM: MEANING AND ORIGIN

Religious fundamentalism denotes to a stern, precise, and often unyielding interpretation of religious texts and doctrines, following the traditions beliefs faiths practise and customs.With the belief that these traditions are the absolute, static truth needed for the maintenance of the society even though the beliefs are inconsistent with the sovereignty or integrity. They denounce the principle of liberalism and excessive secularism.[2]

It encompasses a commitment to preserving and returning to what adherents believe are the original, pure practices and beliefs of their faith, often rejecting modern interpretations, reforms, or external influences that challenge traditional understandings. Literal interpretation of sacred texts, rejection of modernity and secularism, moral and social conservatism, exclusivism, intolerance of dissentare some Og the key features of religious fundamentalism.

RELIGIOUS FUNDAMENTALISM: IN INDIA

In the Indian context, fundamentalism fundamentally means that, a particular group of people belongingly from the same group based on region, religion or ethnicity particularly have their own rigid ideologies have given there rigid understanding and explanation of their religious texts, there customs and traditions, and lay emphasizes either monopolistically practising or inveterately following to what is perceived as the "core" or "pure" values of a religion. It is stereotypicallyconnected with the resurrection of religious individualities and the desire to execute those principles in political and social domains.

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Today the initiative in defining communalism in India has been seized by fundamentalists in the majority community, which is projecting communalism as true nationalism; the nation belongs to the majority and is formed by their history, culture and struggles.[3]

Nationalism and communalism are made synonymous, and Indian nationalism is imputed a Hindu religious character.[4] And so fundamentalism re-enters the picture, as the focus is now on the religious consciousness in society and its mobilization for political ends.[5]

HINDU FUNDAMENTALISM:

This term refers, "to a form of religious and political philosophy that supporters, promotes and based on encouraging the reign of Hinduism as both a religious and cultural distinctiveness, regularlyemphasizingon reappearance to what is apparent as the "fundamental" or "traditional" values of Hindu society based on religious texts.

It encompasses a stern interpretation of Hindu religious texts, customs, and practices, and tends to resist modernity, secularism, and pluralism. This movement is closely associated with the rise of Hindutva (Hindu nationalism), ,Hindutva was coined by Vinayak Damodar Savarkar in his 1923 book, *Hindutva: Who is a Hindu?*.

It focuses on the idea that India is primarily a Hindu nation, and that Hindu culture, civilization, and religion should define the nation's identity, it should be practiced and adhered in socio legal practices This dogmaat times in certain geographical areas by certain groups goes beyond religious practice specially in legal and social conditions particularly when someone either from their own ethnicity or other deject and denounce there ideas and philosophy, therby emphasises on promoting a integrated uniform cultural identity rooted in Hindu traditions, and the idea that India's political and cultural heritage.

Hindu fundamentalism often involves a strict adherence to Vedic texts (like the Vedas, Upanishads, Puranas) and Hindu epics (like the Mahabharata and Ramayana), with an emphasis on traditional practices and rituals. This rejection of modern interpretations of Hinduism can lead to conflicts with secularism, modern education, and scientific advancements. It also emphasizes ritual purity and the preservation of traditional ways of life, often resisting social reforms like women's rights, caste-based discrimination, and interfaith marriage.

This often comes in conflict with secularism and realism as it might invariably and vicarious result in *Religious Exclusivism* ,this belief in the superiority of Hinduism can lead to calls for religious conversion back to Hinduism, and efforts to "protect" Hindu practices from what is seen as foreign influence. As indirectky it denounces the idea

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and is the Opposition to Secularism:, Hindu fundamentalism is often critical of India's secular constitution, which guarantees freedom of religion and promotes the idea that the state should not favor any one religion. Say for example the idea of "uniform civil code"—a single set of laws governing personal matters for all Indians—has also been advocated by these groups, as they often argue that the current system allows Muslim personal laws, which they view as incompatible with Hindu laws.

In the recent years Political Involvement in Hindu fundamentalism has increasingly become a prominent part of Indian politics, political figures and leaders have promoted policies that reflect Hindu nationalist values, such as the Citizenship Amendment Act (CAA), which provides a path to citizenship for non-Muslim refugees from neighbouring countries. This law has been criticized by many as discriminatory toward Muslims.

All of this collectively leads to Exclusivismas Hindu fundamentalism stresses the importance of Hinduism as the core identity of the nation and often opposes the influence of other religions, especially Islam and Christianity. It can manifest in intolerance toward minority religious practices and calls for policies that favor Hindu religious practices, like the promotion of cow protection or the construction of temples at disputed sites.

ISLAMIC FUNDAMENTALISM

Islamic fundamentalism in modern India refers to a movement within the Muslim community that seeks to strictly adhere to the core principles of Islam, often advocating for a more conservative lifestyle and interpretation of religious law, sometimes manifesting as social and political activism, and in extreme cases, violence, fuelled by perceived threats to their identity and cultural practices within a predominantly Hindu society; this can include concerns about the dilution of Muslim traditions, the influence of Western culture, and political marginalization.

It refers to a political and religious ideology that advocates for a strict and literal interpretation of Islamic teachings, often in opposition to modernity and secularism. It emphasizes returning to what adherent's view as the original practices of Islam, seeking to implement the religion in all aspects of life, including law, governance, and social norms.

Islamic fundamentalism in India is connected to groups and individuals who advocate for a strict, literal interpretation of the Quran and Hadith. Some groups aim to create a society governed by Islamic law (Sharia) and oppose secularism, modernity, or pluralism.

Vital characteristics of Islamic fundamentalism include: Literal Interpretation of Religious Texts: Desire for Sharia Law, Opposition to Secularism, Anti-Western Sentiment and Revival of Islamic Identity. Fundamentalists often interpret the Quran and Hadith (sayings and actions of the Prophet Muhammad) in a very literal and conservative way, rejecting more flexible or modern interpretations. They believe that the answers to social, political, and personal issues are found directly within these texts.? Islamic fundamentalists generally oppose the separation of religion from politics, which is a

hallmark of secularism. They believe that Islam should guide both the spiritual and temporal aspects of society, rejecting the notion of secular governance.

THE IMPACT OF RELIGIOUS FUNDAMENTALISM ON INDIAN SOCIETY

Religious fundamentalists normally have a political agenda and the media are used to further this agenda.[6]

The religious fundamentalism at times leads to disputes and tension specifically where there are cosmopolitical groups as India is a very diverse country where its basic is Unity in diversity

Few incident of conflicts where people try to over owe the religious practices it often results in *Sectarian Tensions and Violence at several* indene's Religious fundamentalism in India has been a significant source of communal violence and division, with flare-ups of violence between Hindu-Muslim, Hindu-Sikh, or other religious groups. High-profile events like the Babri Masjid demolition in 1992 and the Gujarat riots in 2002 have deepened religious fault lines in the country.

It often leads to,*Political Exploitation a***s** Fundamentalist ideologies are often used for political gain, with parties and leaders exploiting religious sentiments to garner votes and strengthen their position. This can lead to policies that favor one religion over others, further polarizing communities.

This all have led to *Secularism Under Strain* , India's Constitution enshrines secularism, the idea that the state should not favour any religion. However, the rise of fundamentalism, especially in political discourse, challenges this ideal, as there are calls for laws or policies that align with the beliefs of particular religious groups.

Hindu and Islamic fundamentalism in India has significantly impacted the country's social, political, and cultural fabric, contributing to religious polarization, communal tensions, and a shift away from its pluralistic traditions.

Hindu fundamentalism, advocates for a "Hindu Rashtra" (Hindu nation) and the primacy of Hindu cultural and religious values in the public sphere. This movement has fuelled identity-based politics, influencing elections and policy decisions. Hindu nationalist groups often frame their rhetoric around the protection of Hindu interests, which sometimes leads to communal violence and clashes, particularly between Hindus and Muslims. Incidents like the Babri Masjid demolition (1992) and the Gujarat riots (2002) have deepened mistrust between religious communities, contributing to ongoing communal strife. Hindu fundamentalism has also led to the marginalization of Muslims and other religious minorities, with policies such as the Citizenship Amendment Act (CAA) raising concerns about religious discrimination and threatening India's secular fabric. Additionally, the promotion of Hindu symbols, festivals, and cultural practices in public life has further alienated religious minorities and undermined the country's multicultural identity.

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On the other hand, Islamic fundamentalism in India has emerged as a response to perceived political and social marginalization, particularly among the Muslim community. While not as widespread or politically influential as Hindu nationalism, Islamic fundamentalism has found expression in groups like Jamaat-e-Islami and the Students Islamic Movement of India (SIMI), which challenge the secular state and advocate for a stronger role of Islam in public life. Islamic fundamentalist ideologies often stem from feelings of alienation, economic disparity, and a history of communal violence, which have led some Muslims to seek more radical paths. While Islamic fundamentalism in India has not led to widespread terrorist attacks like in some other countries, terrorist incidents linked to groups like the Indian Mujahideen have occasionally stirred tensions, especially in regions like Kashmir. The Kashmir conflict, in particular, has been a flashpoint for Islamic fundamentalism, where calls for autonomy or independence from India have been fueled by both religious and political grievances.

Both Hindu and Islamic fundamentalism have eroded India's secular foundations, creating a more polarized society where religious identity often trumps national unity. Interfaith relations have become strained, and incidents of religious violence have intensified, undermining the spirit of coexistence that historically characterized India. These movements have also pushed for the inclusion of religious laws, whether Sharia for Muslims or Hindu religious laws for Hindus, in public policy, challenging the separation of religion and politics. The growing prominence of both religious ideologies has deepened the sense of division between communities, making it harder to bridge gaps and promote social harmony. Ultimately, the rise of Hindu and Islamic fundamentalism poses a serious challenge to India's pluralistic, secular identity and its vision of unity in diversity.

CONCLUSION

Fundamentalism in India is not confined to one religious group but is a broader phenomenon that affects multiple communities. It is often a response to perceived threats—whether political, cultural, or social—against a community's identity and values. While some individuals and groups use fundamentalist ideologies to promote social cohesion and political power, it frequently leads to social fragmentation, communal violence, and a decline in tolerance for religious and cultural plural.

The rise of religious fundamentalism in India, both Hindu and Islamic, has had profound and far-reaching effects on the nation's social, political, and cultural landscape.This ideology has fueled communal violence, deepened interreligious divisions, and reshaped political discourse, emphasizing identity-based politics over inclusive governance. On the other hand, Islamic fundamentalism, though less politically dominant, has emerged as a response to the perceived marginalization of Muslims in Indian society. It has fostered a sense of alienation and sometimes radicalized segments of the Muslim community, contributing to sporadic acts of violence and reinforcing a sense of division between religious groups.

The intersection of these two forms of religious fundamentalism has further polarized India, complicating efforts to uphold its constitutional values of secularism, pluralism,

and social harmony. As religious identity increasingly dominates political and social discourse, India faces the challenge of reconciling its diverse communities within the framework of democracy and secularism. The growth of religious fundamentalism in India highlights the urgent need for dialogue, greater interfaith understanding, and a reaffirmation of the country's commitment to religious tolerance and national unity. Only through such efforts can India hope to preserve its tradition of coexistence while navigating the complexities of modern identity politics.

A Jurisprudential and Contemporary Analysis of Law and Order with Special Reference to Manipur

Mr. Ujjwal Ray Rajbangshi & Ms. Mona Sehgal***

ABSTRACT

Though the rule of law and order is considered a backbone to regulate society, unfortunately there are other various anti-social elements for which the rule of law and order is not fully utilized. The contravention of the rule of law in the state is not a new concept in India. Crimes like deterioration of public property and ethnic clashes are not new instances of violating the rule of law in the state. Breakdown of law and order, human rights violence, and many other instances can be seen in contemporary India, and it also shows how society itself ignores the mechanisms of the rule of law. Northeastern states of India like Manipur also highlight the political and social turmoil that resulted in disturbance of law and order in the state. The political mayhem are also the reasons that result in social atrocities and tensions. The need of accountability of the state and judiciary are both necessary to regulate rule of law and order in the state. The purpose of the study is twofold: *first*, to highlight the jurisprudential notion of rule of law; *second*, to highlight the critical scenarios of law and order in Manipur.

Keywords: Rule of Law, Equality, Human rights, Violation, Northeast India.

INTRODUCTION

The rule of law and order is a governance approach and principle that ensures accountability to laws enforced, equally and equitably enforced, and independently adjudicated, in line with international human rights norms and prerequisites. It requires measures to uphold principles like supremacy and preeminence of law,equality, obligation and accountability, fairness and transparency, separation of powers, active participation in legitimate decision-making, legal-certainty, procedural & legal transparency and, avoidance of arbitrariness. The rule of law is crucial for national as well as international peace, security, political stability, economic growth and stability, and safeguard the

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people's rights. It is indispensable for access to public services, combating bribery and corruption, constraining exploitation of power, and maintaining social compacts. The 2030 Agenda and SDGs aim for a stronger and equitable rule of law and order-based society, ensuring more just and equitable world.[1]

Inclusive justice systems and rule of law changes enhance government legitimacy, prevent human rights violation, and enable individuals to use judicial processes and mechanisms to preserve paramount human rights. These changes ensure genuine responsibility and quality services for citizens. Solidifying the rule of law and order involves respecting international legal standards and states' duty and responsibility to protect populations from genocide and atrocity, brutal acts against humanity, war related crimes and, ethnic violence & racism. And it is crucial for humanitarian and human rights, addressing displacement and statelessness.[2] Law, order and violence have minimal connection. Individual prioritise the moral meaning over safety and prosperity, leading to a higher value for moral meaning than the law. Some people find violence-suffering more appealing than peace-prosperity in certain places. This is due to the thrust for power and wealth as well as the perceived significance of killing or dying for a moral cause. These preferences are stronger than the rule of law.[3]

The scenario of rule of law in Northeast India is different. Northeast India faces a long history of ethnic group autonomy struggles; however, it is now experiencing stability. Northeastern states strife stems from local rivalries, resource disputes, and inhabitant conflict between tribal areas, hills, and plains.[4] The state of Manipur has been experienced a political instability due to armed insurgency and ethnic violence. The state's history reveals issues related to hills-valleys, social elements, and ethnic identity, with ongoing disputes stemming from long-standing ethnic group rivalries. The prevailing disturbances is the result of a complex interaction of social and political variables affecting equitable distribution.[5] Maintaining the approach of rule of law and order in Manipur is still challenging, unfortunately.

JURISPRUDENTIAL ASPECT OF THE RULE OF LAW AND ITS APPROACHES

Any advancement in society, the insights of jurisprudential philosophy are regarded as quite vital. The rule of law may be successful in the state if it is supported by a philosophy of legal value system. Constructive approaches in states through rule of

1 What is the Rule of Law - United Nations and the Rule of Law, *available at*: https://www.un.org/ruleoflaw/what-is-the-rule-of-law/#:~:text=It % 20 requires % 20 measures % 20 to % 20 ensure, and % 20 procedural % 20 and%20legal % 20 transparency. (Last visited on August 7, 2024).

2 *Ibid.*

3 R. E. Brooks, The New Imperialism: Violence, Norms and the Rule of Law 101(7) *Michigan Law Review* 2305 (2003).

4 B. Lacina, The Problem of Political Stability in Northeast India: Local Ethnic Autocracy and the Rule of Law 49(6) *Asian Survey* 998–1002 (2009).

5 Leishipem Khamrang, "Manipur Mayhem: A Latent Enmity, Generalized Violence and State's Apathy" 15 Journal of Management & Public Policy 5 (2023).

law is not that easy. It is to be understood by various social & jurisprudential factors and constructive interpretation.

Rule of law and democratic values are desirable political features. Democratic revolutions aim to create democracy and rule of law simultaneously, aiming to achieve both under authoritarian control. The rule of law aims for government to enforce its agenda through general laws and regulations, subject to governors' jurisdiction. Democratic values and the rule of law are reflected in separate institutional structures, with electoral institutions, governments, and legislatures, while courts and police enforce rules and regulations. Legal institutions have broad authority to regulate and mould social interaction, but democratic rule appears to be relatively limited.[6] The spirit of democracy is heavily influenced by political insights which may create a havoc towards the rule of law of the state. The courts and police in India have broad authority under the laws to uphold law and order, but in order to do so, rule of law too be and must be backed by a jurisprudential philosophy. Otherwise, it may appear that the rule of law is being imposed via totalitarianism. Hence, the rule of law and democracy are both supplementary and complimentary with each other.

For instances, Hong Kong's constitutional jurisprudence incorporates comparative law, offering benefits and drawbacks. Hong Kong Bill of Rights reflects global standards, offering numerous advantages. Hong Kong's position differs from those of jurisdictions like the USA and Australia, which drafted constitutions before the advent of the concept of human rights and basic freedoms law.[7]Hence, it can be seen how an insight into comparative jurisprudence is so important for making a law. Because in all countries around the world, different notions, aspects, and interpretations of rule of law are applied.

Hans Kelsen advocates for positive law, stating that moral discourse and ideals are comprehensive and final. Pure Legal Theory does not replicate transcendental notions but also not view law same as legacy of justice. Other eminent jurist like Rahardjo's Progressive Law is based on norms and behaviour. Regulations will contribute to the development of positive & enthusiastic legitimate legal system. The behavioural attitude human factors will guide the development of norms & procedures.[8] Hans Kelsen's views law as a set of standards based on what it is reasonable to be. Law, a product of jurisprudential-philosophical thinking & research, relies on ethical morals and philosophical principles to establish written standards in law. The foundation for identifying norms as a legal decision category is inherent in legislation's methodological character. These standards basically are unavoidable in social life but lack coercive strength. To become an efficient law, written legislation must be enforced by official agency authorized to carry out instructions and legitimate coercion. Argument for

6 A. Przeworski and J.M. Maravall (eds.), *Democracy and the Rule of Law* 242-243 (Cambridge University Press, New York, 2003).

7 Anthony Mason, "The Place of Comparative Law in the Developing Jurisprudence on the Rule of Law and Human Rights in Hong Kong" 37 *Hong Kong Law Journal* (2007).

8 Muhammad Harun, "Philosophical Study of Hans Kelsen's Thoughts on Law and Satjipto Rahardjo's Ideas on Progressive Law" 1(2) *Walisongo Law Review (Walrev)* (2019).

the separation of law and moral suggest that the credibility of positive law norms does not depend on compliance with the moral order. So, a positive law norm is valid regardless of adherence with moral order. Law is not just legalised rules but is inherent in human behaviour, which is dynamic in nature. Understanding and communicating accepted standards and values are closely connected to the dynamic instincts of human behaviour.[9] So, this can be seen how the jurisprudence of morality and rule of law can be two sides of the same coin to regulate the society. Morality and rule of law both are supplementary and complimentary with each other to understand the needs and emotions of the society. Jurisprudence philosophy is the key to interpret the morality so that so that it can regulate with law of the state for the better implementation of rule of law policy.

HYPOTHETICAL PERSPECTIVE OF RULE OF LAW

Rule of law is more seems to be a hypothesis than a general law of the state. It is more like a complicated theory when it comes to a practical implementation. Every circumstances of the state is not equal in nature and it may vary from one place to another place. In some places full implementation of the rule of law is possible, but in other places this scenario is not that much seen to be effective. The rule of law sometimes has the political influence which constitute the state monopoly and consequently affect the democratic vibe of the society. Hence, it is to be seen how the authorities and courts of the state implements rule of law policy, and how responsible citizen of the state accept such policy to uphold the rule of law which subsequently leads to justice.

Indeed, we can see that democracies have the greater potentiality than authoritarian regimes to produce independent courts as well as the rule of law. But there are instability of the legitimate institutions particularly in the developing country which focuses that democracy not only sufficient to foster rule of law. In any country, the spirit of constitutionalism is very much vital to enforce rule of law in democratic way. The approach of constitutionalism is also important to maintain the independent of the judiciary, if the judiciary is independent than only it can check whether the compliance & execution of rule of law is authoritative or in a tyrant way. Judicial independence, sometimes, it very hard to achieve in non-democratic countries. In any country, if an unchecked law bill is passed by the legislature than it could be considered as tyranny of the majority. Thus, independence and neutrality of the court is very much important to review such unchecked law bill which may have a bad consequences on rule of law.[10] Hence it is proved that independence of the court is far more important than the strict compliance of rule of law. It is the only court who have the power to interpret any circumstances and to uphold the effective law and the justice.

Politicians, who always for the craving of power, always wants to maintain their autonomy particularly in various decision-making policy. It is the citizen who do not want any abuses or partiality in the form of rule of law. However, the citizen has

9 *Ibid.*

10 Gretchen Helmke and Frances Rosenbluth, "Regimes and the Rule of Law: Judicial Independence in Comparative Perspective" 12 *Annual Review of Political Science* 345-347 (2009).

the instrument to overthrow such any tyranny government in two ways: *first,* by the way of election method; *second,* to enforce the legal limitation i.e., rule of law through the statutory institution to the political discretion. Basically, the citizen do not like or interested in those politicians/ministers who implements rule of law in a partial and abusive manner which is not so democratic in nature.[11] So we can see that how the independence of the court is very important for uphold the true spirit of rule of law, its interpretation. If rule of law becomes a political weaponto abuse the citizen, then the principles of rule of law will be considered as dead.

RULE OF LAW AND HUMANITARIAN CRISIS: THE MANIPUR CHAPTER

Manipur, a state in India, located at eastern part of the country. It is bordered by the Indian states of Nagaland to the north, Assam to the west, Mizoram to the southwest and Myanmar to the south and east. Like other northeastern states, it is largely isolated from the rest of India geographically.[12] Manipur, also known as the land of jewels, surrounded by mountain ranges and is blessed with diverse nature. The sensitive geopolitical status, as well as the presence of numerous ethnic groups with varied historical origins, differentiates these states from the rest of the country. Manipur as the remaining of the six other states of the North-Eastern region is multi lingual, or multi ethnic. Most of the communities and people inhabiting Manipur are tribal and indigenous.[13] That is why the Constitution has granted many provisions and rights relating to the tribals and indigenous for their betterment and upliftment, which is essential as they are also part of our India and our nation must take utmost care to protect them. When the components of multi linguistics, multi ethnic & cultures are there, then the role of rule of law and accountability of the state and judiciary is very crucial. But there has been a lot of tension and conflicts in the northeastern state of Manipur. It is evident these days how state machinery and the rule of law have collapsed, and because of that lots of residents have migrated to other places to protect themselves. Through this paper, we will highlight the incidents of conflicts, and how it can be dealt with because whatever may be the reason the local people including women and children are suffering in terms of their education and daily life.

The violence and disturbances are not new in Manipur and other parts of India as well, historically the Manipur state has witnessed high levels of violence for example when there was a protest against the 'AFSPA' (Armed forces). There has been a continuous engagement on the part of the state to address issues and crises in the northeast but it has remained unresolved to date due to its complexities and cross-cutting issues prevailing in the region, particularly in the northeastern state of Manipur.

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11 José María Maravall, "The Rule of Law as a Political Weapon" *Instituto Juan March De Estudios E Investigaciones* 1 (2001).

12 Lodrick, Deryck O. and Standley, Barbara A. "Manipur". Encyclopedia Britannica, available at https://www.britannica.com/place/Manipur. (Last visited on 16 August 2024).

13 Dr. Lucy Zehol, Ethnicity in Manipur - Experience, Issues and Perspectives 1-2 (Daya Books, New Delhi, 1998).

It is true that given the multifaceted issues, it is extremely difficult on the part of the state to come up with a solution that is acceptable to all ethnic groups.[14]

Scheduled tribes were previously among the most socioeconomically disadvantaged communities in India, denied access to school and employment prospects, forcing the government to legally recognise select groups in an attempt to right years of injustices. Other ethnic groups in Manipur said that they were worry that they would not have an equal chance for jobs and other advantages if the Meitei community is granted scheduled tribal status. Conflicts and a perceived sense of neglect and hardship are inextricably linked, which might lead to a fertile environment for conflict. Its repercussions limit people's growth and well-being, which eventually leads to societal instability.[15] We can also see the same tense of Meitei community that if the government will not fulfil the ST status to Meiteis then may be there will be a tense of not getting equitable opportunity of the Meitei community.

Several studies also demonstrated that economic-social disparities, conflict andcompetition for few resources, lack of equitable opportunityand, exclusion from revenue generation are the major factors of long term contradiction and conflict.[16] That is why there should not be any kind of discrimination against any people as they are also part of our country and if proper means are given to them like education, proper infrastructure and reservations in jobs, etc then they can also contribute to development the state as well as the nation. For example, in northeastern state literacy and women empowerment is very good there if we compare to northern states, the thing is youth and women require access to high-quality education that promotes critical thinking, civic involvement, intercultural communication, and conflict resolution abilities. Youth and women's organisations play an important role at the grassroots level in mobilising, organising, promoting, and implementing peacebuilding efforts. They require money, training, mentorship, coaching, and technical help to improve their abilities, knowledge, and confidence. They also require access to platforms, forums, coalitions, and networks where they may share their experiences, difficulties, best practices, and lessons gained with other youth and women's peacebuilding organisations. So, from this perspective a proper mechanism of rule of law is a must to check and review in all sectors.

Also in 2023, there has been a lot of tension and violence have been created resulting in death displacement, destruction, and trauma in the northeast region of Manipur. Many have lost their homes, properties, and loved ones as a result of the clashes. Over 70,000 people are currently displaced from their homes in this dangerous and dynamic scenario, with 142 documented casualties and over 6,000 wounded. According to Sphere India, a national alliance of humanitarian organisations, these displaced

14 Raile Rocky, "Issues, Responses, and Consequences: An Analysis of Persistent Imbroglio in Manipur" 2 Journal *of North East India Studies* 49-63 (2012).

15 Uttam Kr Pegu, "Media Coverage on Ethnic Conflict in North-East India: An Analysis on the Issues and Challenges in Conflict Communication." 6 *Global Journal of Finance and Management,* 3 (2014).

16 Ashild Kolas, "Framing the Tribal: Ethnic Violence in Northeast India" 18 *Asian Ethnicity* 5 (2017).

people are seeking refuge in 253 relief camps spread across 10 districts of Manipur. The Inter-Agency Coordination Committee meetings and the mapping of responses from over 100 local groups using the United Response Strategy (URS) matrix are the basis for these reports.[17] They are facing acute shortages of food, water, medicine, and other essentials; as well as facing trauma and insecurity. The violence has also disrupted the education, health, and transport services in the state, affecting the normal life of the people. Some have been living in temporary relief camps for months, awaiting the government's provision of prefabricated housing. But the question is, is it enough for these people, will they get justice in the true sense? Why the breakdown of rule of law has been happened?

A better understanding of civics and government is needed, with citizens represented and communities consulted. Current regimes often use the sympathy as a tool for violence and apathy, perpetuating electoral politics. Manipur may struggle to recover from this state of apathy, stereotypes, and violence, highlighting the lack of significance of democracy.[18] Legislation is a crucial tool for social transformation and balancing the state-citizen relationship, promoting well-being and pleasure. It should reflect public desires and be just, fair, and reasonable, safeguarding citizens' rights and freedoms. It plays a vital role in every human civilization. The harmony between rulers and subjects, maintaining a friendly atmosphere between the state and its citizens, and respecting the principles of rule of law and constitutionalism, is crucial for peace, harmony, and development in the northeastern state of Manipur.[19]

The solution to the Manipur violence lies in dialogue,reconciliation and development. The state and central governments must engage with all stakeholders, including civil society groups, ethnic leaders, religious organisations, and insurgent groups, to find a political solution that respects the rights and aspirations of all communities. They must be very ensured so that the justice shall be done to the sufferer of human rights violations. They also have to ensure that sufficient and appropriate relief and rehabilitation measures are provided to those who are suffered from unfortunate violence events and also provide long term adequate development and solution initiatives to ethnic issues and socio-economic problems in Manipur.It asks for a united front from all segments of society to stand up for India's constitutional fundamentals and values. It also calls on all levels of government to reassert their commitment to ensuring that every person in India has equal rights, dignity, and opportunity.

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17 Anand Zachariah and Ramani Atkuri, "Manipur 'S Medical and Humanitarian Crisis," *Deccan Herald*, Aug. 16, 2023, *available at*: https://www.deccanherald.com/opinion/manipur-s-medical-and-humanitarian-crisis-2648857#:~:text=The%20 humanitarian%20and%20public% 20 health, and% 20 long % 2 Dterm % 20 health % 20 consequences. (Last visited on Aug. 16, 2024).

18 Shiv Visvanathan, "Manipur May Not Recover from This Indifference" Deccan Herald (2023).

19 N. Pramod Singh, "Overwhelming Legislative Intervention and its Impact on NE State of Manipur" 6 International Journal of Social Science and Human Research (2023).

CONCLUSION

Rule of law and order can be possible and effective if there is arationalunderstanding between the authority and the citizens. Value and equitable oriented decisions of the state and the society to counter many issues and challenges which disturb the spirit & values of rule of law. It is not the only obligation of the state to uphold the spirit of rule of law but it is also the responsibility of every members of the society to understand the spirit of rule of law and to uphold equitable justice in every sphere.

Globalization, shifting Indian economy and politics have led to governance difficulties, particularly in rule of law. The criminal & civil judicial systems are under strain, making law schools crucial for providing appropriate legal education and training law students as rational & legitimate thinkers and social engineers. This is very essential for future of legal education and the progression of a knowledge economy in India. Law universities must recruit bright attorneys to teach, study, and research, fostering rule of law society in India. This will encourage future generations to strive for this goal.[20]

Further to stop the conflict and violence which deteriorate the law and order in the civilized society, some proposed initiatives are to be followed to improve law and order in such conflict states. The suggestions are based on experiences and own perspectives: -

I. Meaningful discourse and settlement to be done because it is very vital to understand the emotions and legitimate needs of the people in conflicted state.
II. Strict Accountability Policy of the state to be followed.
III. The judiciary approach onSuo motoregarding any such grievous social conflict situation in the state.
IV. Foster development of tourism culture and peace centric culture.

20 C. Raj Kumar, Legal Education, Globalization, and Institutional Excellence: Challenges for the Rule of Law and Access to Justice in India 20(1) *Indiana Journal of Global Legal Studies* 221 (2013).

Imposing State Responsibility for Climate Change with the Help of Duty of Care Principle

*Christopher Thomas**

ABSTRACT

Duty of Care principle is potent weapon at the hands of the judiciary to enforce the climate goals of each member countries who have pledged to combat climate change. The main aim of this work is to establish that there is a liability imposed on the state actors to take necessary measures to combat climate change. In the absence of taking such necessary steps, there are no enforcement mechanisms at present as we only have climate change conventions and certain laws at state levels; even then, it is not enough to attribute an element of liability towards state actors. The principle of duty of care can be employed in imposing liability for states for not taking necessary measures to combat climate change. The liability can be the individual liability of the ministers and the collective liability of the state. This work is focused on the shared responsibility of the countries and the obligation of the state towards future generations and Indigenous communities who are much affected by climate change. The balance between development and mitigating climate change impacts is also an area to be looked into and addressed in this work.

Keywords: Duty of Care, Climate Change, State Liability, Individual Responsibility, Collective Responsibility.

INTRODUCTION

State responsibility for climate change includes various complex issues such as international law, human rights being affected by climate change, damages for climate disasters and adaptation and mitigation for climate change in accordance with international and national obligations. The states have a wider duty to protect the interests of their citizens, as the world we now live in is a welfare state. The concept of welfare states mandates that states take necessary care and protection of the citizens. These involve developing social welfare policies with a view to protecting them from old

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age, unemployment, accident and sickness.[1] The welfare theories and policies of each state differ from one to another depending on the structure of the government and the mode of administration.[2] These models include conservative models and social democratic models.[3] The conservative model focuses on the traditional family to promote well-being; we can see the example from countries such as Germany, Austria, France, and Italy. The social democratic model is based on universalism, and therefore, benefits are equally shared; this model is seen in Scandinavian countries.[4] It should be noted that all the countries follow a multimodal approach to ensuring the welfare of their people. There have been disagreements in the early theories of welfare states since the 1980s; there is a growing recognition of the importance of understanding how different market, government, and social arrangements impact well-being. This broader focus on social protection extends beyond traditional welfare state studies and encompasses a wide range of policies and interventions aimed at promoting social inclusion and reducing poverty and inequality. The welfare principles change with the changing times, and as of today, climate change is a growing concern. Protecting the people from the effects of climate change should also be a part of the larger welfare policy of the state because of the health impacts[5], displacement and migration of people, economic stability[6], poverty and intergenerational justice. Thus, welfare state principles now incorporate the climate change aspects as it can directly affect the global food supply as climate change affects food production and increases health hazards, leading the states to take more measures to prevent these and also provide for those already affected by climate change.

The duty imposed on the State is quite large as it involves protecting the human rights of individuals who can be affected by climate change; these rights include the right to life, the right to livelihood, the right to a safer environment, the right to safe and drinkable water, right to pollution free air, right to secure the future of their children etc.[7]

1 M Weir, 'Welfare State' in Neil J Smelser and Paul B Baltes (eds), International Encyclopedia of the Social & Behavioral Sciences (Pergamon 2001) <https://www.sciencedirect.com/science/article/pii/B0080430767010949> accessed 10 May 2024.

2 Ibid.,

3 Ibid.,

4 Ibid.,

5 'Climate Change: A Threat to Human Wellbeing and Health of the Planet. Taking Action Now Can Secure Our Future — IPCC' <https://www.ipcc.ch/2022/02/28/pr-wgii-ar6/> accessed 10 May 2024; 'Review of IPCC Evidence 2022: Climate Change, Health, and Well-Being' <https://www.who.int/publications/m/item/review-of-ipcc-evidence-2022—climate-change—health—and-well-being> accessed 10 May 2024.

6 Emmanuel Skoufias, The Poverty and Welfare Impacts of Climate Change: Quantifying the Effects, Identifying the Adaptation Strategies (The World Bank 2012) <http://elibrary.worldbank.org/doi/book/10.1596/978-0-8213-9611-7> accessed 10 May 2024; Andries F Hof, 'Welfare Impacts of Climate Change' 5 Nature Climate Change 99(2015).

7 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 6; UNHRC, 'General Comment

1. Shared Responsibility of States towards Climate Change

Climate Change is an area of 'diabolical policy challenge' and a 'super wicked problem' that often creates a legal problem to redress.[8] There are many actors who are involved in climate change, which makes it a nasty business to formulate public policies. The emitters in each state contribute to the accumulation of GHG in the atmosphere, and we cannot pin it down on a state because there is no particular reason to suggest that only because of their GHG emission climate change occur and because of that flood or sea level has risen. Thus, the effects of climate change will be experienced by even those countries which have net zero emissions.[9] These actions of the multi-state actors call for the need for shared responsibility in mitigating climate change.[10] The shared responsibility for climate change finds its foundation in UNFCCC under Article 2.[11] The Kyoto Protocol, which supplements the UNFCCC, focuses on the principle of CBDR, thereby putting the Annex I countries on a higher pedestal when it comes to climate change mitigation, because of the historical responsibility they have, as the industrial development of those countries had resulted in the present accumulation of GHG in the atmosphere of Earth.[12] The Paris Agreement, which was the result of COP 21 held in Paris, France, had the goal of holding the global rise in temperature well below 2 degrees Celcius and preferably below 1.5 degrees Celcius.[13] The regime had made provisions which indicate that there is a shared responsibility.

The customary law obligation also points to the state's obligation to limit the activities within its jurisdiction so as not to cause harm to the environment of other states. The no-harm rule established in *Trail Smelter* arbitration is providing the groundwork for

No. 17' (Thirty-fifth session, 1989) Compilation of General Comments and Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 23 (1994); Ibid 'General Comment No.36'.

8 Ross Garnaut, 'The Garnaut Climate Change Review' (Cambridge: Cambridge University Press 2008) Cambridge Books <https://econpapers.repec.org/bookchap/cupcbooks/9780521744447.htm> accessed 10 May 2024; Richard Lazarus, 'Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future' [2009] Georgetown Law Faculty Publications and OtherWorks<https://scholarship.law.georgetown.edu/facpub/159>.

9 Michelle Mycoo and others, 'Small Islands' in Hans-Otto Pörtner and others (eds), Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (Cambridge : Cambridge University Press 2022).

10 Jacqueline Peel, 'Climate Change' in André Nollkaemper and Ilias Plakokefalos (eds), The Practice of Shared Responsibility in International Law (Cambridge: Cambridge University Press 2017) at 1010 <https://www.cambridge.org/core/product/277EAF168E248EF1DE8E772552AB35CA>.

11 United Nations Framework Convention on Climate Change (9 May 1992, in force 21 March 1994) 1771 UNTS 107 art.2.

12 Kyoto Protocol to the United Nations Framework Convention on Climate Change (11 December 1997, in force 16 February 2005) 2303 UNTS 162).

13 Paris Agreement (12 December 2015, in force 4 November 2016) (2016) 55 ILM 740.art.2(a).

establishing the state's responsibility claims for climate change.[14] While extending the no-harm rule to climate change, one of the arguments is that the emission of CO2 is not considered a harmful substance because it does not have a direct effect on the planet; the increased concentration can lead to global warming, although it makes it harmful; each state specifically emits CO2.[15] Even though such arguments are raised most of the authors do not contest its applicability in climate change.[16] The application of the no-harm rule can be assessed by the principle of due diligence and prevention principle. The due diligence taken by states in assessing the harm and taking preventive action for the harm to be averted also forms a part of the shared responsibility of the states as they are obliged by customary practices to do so.

1.1 Duty of Care Principle and State Action Plans

The need for positive action by the State was always one aspect of the negotiations under the climate change regime. The Kyoto Protocol was the first instrument directly aimed at mitigating climate change, and the underlying principle of Kyoto was to make states take prompt actions to mitigate the effects of climate change.Even though Kyoto was not effective in its entirety, it was able to harness the spirit of nations in combating climate change. After Kyoto, the coming negotiations also paved the way for action. Such a decision taken at COP held in Bali in 2007 paved the way for the formation of a National Action Plan on Climate Change in States. The Bali Action Plan aimed at increased national and international actions for mitigating the effects of climate change with a view to achieving the objective of the convention. [17]The Bali Action Plan calls for urgent actionswith long-term vision.[18] The adaptation and mitigation strategies were also a point of discussion.[19] The Bali Action Plan focused on the need for enhanced action on technology development and financial resources to support mitigation, adaptation, and technology cooperation.[20] The result of the Bali COP was the formulation of a 'Road Map for Climate Action'; as a result,parties to the convention adopted several National and Sub-national level action plans. Many countries, such as Germany, France[21], India, the United States, and the UK, have formulated their own

14 Trail Smelter Arbitration (United States of America/ Canada) (1938 and 1941), Award 3 RIAA 1905.

15 Roda Verheyen, 'Climate Change Damage and International Law: Prevention Duties and State Responsibility', Climate Change Damage and International Law (Brill Nijhoff 2005) at 166-167 <https://brill.com/display/title/12139> accessed 11 May 2024.

16 Peel, Supra note 10, at 1031.

17 Conference of Parties, Bali Action Plan https://unfccc.int/files/meetings/cop_13/application/pdf/cp_bali_action.pdf accessed on 11th May 2024

18 Ibid.

19 Ibid.

20 Ibid., at para 1(e).

21 Ministry for the Economy, and Finance and the Recovery, 'CLIMATE ACTION PLAN OF THE MINISTRY FOR THE ECONOMY, FINANCE AND THE RECOVERY' <https://www.economie.gouv.fr/files/files/2021/Plan_Action_Climat_EN.pdf?v=1662539696> accessed 10 May 2024. Accessed on 11th May 2024

climate action plans and revised them in accordance with their ambitious goals through NDCs. The European Union has also advised each of its member states to create National and State level action plans for the period 2012- 2030 and has made them binding through the EU's climate and energy legislation.[22]

The duty of care principle can be applied to make the state more responsible in formulating an action plan to effectively mitigate climate change and its effects. The main aim is to make the goals laid down in the action plan to be achieved, and for that, duty of care can play a very significant role. The duty of care should be used in climate litigations to make the states comply with their own action plan. A strong criticism against climate change policies and laws is that there is no efficient compliance mechanism. Employing the principle of duty of care can make states take reasonable steps to achieve their own action plans, as there is a chance of backlash if it reaches court.

1.1.1. National Action Plan

The States have followed the roadmap for action in the Bali Action Plan and come up with their own action plans to combat climate change. National Action Plans are effective ways to communicate the goals and ambitions and the scientific ways to achieve these targets, the approach in each State differs accordingly. In India, after COP 13 in 2007, which was held in Bali, The Prime Minister of India, Dr Manmohan Singh, released the National Action Plan on Climate Change (NAPCC) in the year 2008. The NAPCC portrayed the climate action plan of India over the years and had 8 missions focusing on agriculture, water, solar, energy efficiency, sustainable habitat, sustaining the Himalayan ecosystem, green India, and strategic knowledge for climate change.[23] The NAPCC called for the creation of State Action Plans in India and Sub-State level Action Plans. The goal of NAPCC was to make India adapt to climate change and also, on the other hand, to take measures to mitigate climate change. But the Action Plan has certain short comings mainly because of the absence of any specific target for emission reduction.

The United States of America has adopted 'The Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050', which aims to make the US a zero country in GHG emissions.[24] The Climate strategy has outlined the 2030 Target, which is to reduce net greenhouse gas emissions by 50-52% below 2005

22 'Climate Action in France: Latest State of Play | Think Tank | European Parliament' <https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)690686> accessed 11 May 2024.

23 'National Action Plan on Climate Change (NAPCC)' <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/dec/doc202112101.pdf> accessed 10 May 2024.

24 'The Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050.' (United States Department of State and the United States Executive Office of the President) <https://www.whitehouse.gov/wp-content/uploads/2021/10/US-Long-Term-Strategy.pdf> accessed 10 May 2024.

levels.[25] It has a 2035 goal to achieve 100% clean electricity[26]. The ultimate goal is to reach net-zero emissions economy-wide, not including international aviation or shipping emissions, by 2050.[27] The Strategy also highlights the importance of federal leadership in achieving the climate goals.[28]

France had also formulated National Climate Change Adaption Plan (PNAPCC), the first one covered the period from 2011 to 2015 and the second one from 2018 to 2022.[29] The adaptation plan aims to improve the knowledge of the impacts of climate change on water resources and the effects of various adaptation scenarios.[30] The plan has focused on 20 core areas which include cross-cutting actions, health, water, biodiversity, natural hazards, agriculture, forests, fisheries and aquaculture, energy and industry, transport infrastructures, urban planning and the built environment, tourism, information, education and training, research, funding and insurance, coastlines, mountains, European and international actions and governance.[31]The plan is based on national consultations and recommendations from the assessment of the previous plan (PNACC 2011-2015), ensuring a comprehensive approach to adaptation.[32]

The National Action Plans are adopted by each state those are party to the Convention and have longer and shorter goals to be achieved by those plans. These plans also show the vulnerability of each sector to climate and the effect the climate change can cause, even after outlining the action plan; if the governments are lethargic in achieving the goals, then the only recourse is to make them liable for non-compliance and duty of care principle can be used in doing so.

1.1.2. Sub-National level Action Plan

National Action Plans alone can not achieve anything, the countries have different states and districts, and action should be reflected at the grass root level to ensure that the National Action Plan is achieved, for Sub-national level entities play a crucial role, and local governments and State governments should adopt State level action plans and local action plans in conformity with the national objectives. The bottom-up approach is rightly applied in such a situation, thereby aligning with the needs of the particular locality. In India, there are various State-level action plans adopted by

25 Ibid., at 13.

26 Ibid., at 4, 11.

27 Ibid.

28 Ibid.

29 'National Climate Change Adaptation Plan 2018-2022 - Climate Change Laws of the World' <https://climate-laws.org/document/national-climate-change-adaptation-plan-2018-2022_248a> accessed 12 May 2024.

30 'French National Climate Change Impact Adaptation Plan 2011 2015 (PNACC) | UNEP Law and Environment Assistance Platform' <https://leap.unep.org/en/countries/fr/national-legislation/french-national-climate-change-impact-adaptation-plan-2011-2015> accessed 12 May 2024.

31 Ibid.

32 Ibid.

individual states such as Kerala[33], Tamil Nadu[34], Andhra Pradesh[35], Uttar Pradesh[36], etc. In India, Delhi became the first state to adopt a climate action plan.[37] There are also climate action plans adopted at municipal and panchayat levels. The Meenamgadi Panchayat in the District of Wayanad in Kerala had made plans to make the Panchayat Carbon-neutral.[38] The Mumbai Action Plan envisions a climate-resilient Mumbai by 2050.[39]

Germany's decentralisation in the policy aspect of climate change is also noteworthy. The federal states of Germany have their own adaptation and mitigation strategies.[40] German states exhibit a range of adaptation strategies, from non-committal recommendations to more institutionalised guidance.[41] The federal government's absence of mandates allows for flexibility but also results in varying degrees of state commitment to adaptation.[42] The strategies are assessed based on indicators like vulnerability assessments, policy goals, and institutional organisation.[43]

Sub-national Action Plans on Climate Change are an effective way of combating climate change if properly implemented. Mainly because of the amount of emphasis these state plans can put on the sectors which are identified. And another because of the bottom-top approach envisaged under the state plans. Even though it was a reality that Sun-National Action Plans on Climate Change were a product of a top-bottom

33 Directorate of Environment and Climate Change, Government of Kerala, 'State Action Plan on Climate Change for 2023-2030, <https://moef.gov.in/en/division/environment-divisions/climate-changecc-2/state-action-plan-on-climate-change/> accessed 12 May 2024.

34 Department of Environment and Climate Change, Government of Tamil Nadu, 'Tamil Nadu State Action Plan on Climate Change', 2019, <https://moef.gov.in/en/division/environment-divisions/climate-changecc-2/state-action-plan-on-climate-change/> accessed 12 May 2024.

35 Government of Andhra Pradesh, 'State Action Plan on Climate Change 2012', <https://moef.gov.in/en/division/environment-divisions/climate-changecc-2/state-action-plan-on-climate-change/> accessed 12 May 2024.

36 Department of Environment and Climate Change, Government of Uttar Pradesh, 'UP State Action Plan on Climate Change', 2014,<https://moef.gov.in/en/division/environment-divisions/climate-changecc-2/state-action-plan-on-climate-change/> accessed 12 May 2024.

37 'State Action Plan on Climate Change' (The Official Website of Ministry of Environment, Forest and Climate Change, Government of India) <https://moef.gov.in/en/division/environment-divisions/climate-changecc-2/state-action-plan-on-climate-change/> accessed 12 May 2024.

38 'Vikaspedia Domains' <https://vikaspedia.in/aspirational-districts/kerala/wayanad/best-practices/meenamgadi-gram-panchayat> accessed 12 May 2024.

39 Priyali Prakash, 'Explained | What Is the Mumbai Climate Action Plan?' The Hindu (18 March 2022) <https://www.thehindu.com/news/cities/mumbai/explained-what-is-the-mumbai-climate-action-plan/article65231102.ece> accessed 12 May 2024.

40 Julie P King, 'Sixteen Ways to Adapt: A Comparison of State-Level Climate Change Adaptation Strategies in the Federal States of Germany' (2022) 22 Regional Environmental Change 40.

41 Ibid.

42 Ibid.

43 Ibid.

approach, in the end, after the formulation of the Sun-National Action Plans on Climate Change, the plate has changed, providing scope for improving and setting targets within the grassroots level, which can contribute to the nation at large when taken in toto. Thus, the targets and goals in the action plan should be brought under the duty of care principle so as to ensure proper compliance.

2. Obligation of State towards future generations

There is a general notion that the present generation has an obligation towards future generations.[44] As Annet Baier has said, we are obliged not to injure or harm the common interests they have, like the rest of us, for the use of good earth and traditions without destroying the hospitability of human life.[45] The basis for these obligations is founded for some on justice while others on rights. Intergenerational equity, if enforced as a right, will have more command and force as it will act as a strong basis for the obligation.[46] The rights of future generations are always complex as we will have to look into the moral and constitutional scheme. Therefore, justice for the future generation seems apt in deciding whether States have obligations for future generations. John Rawl's argument in his influential *Theory of Justice* (1972) about the concept of "justice as fairness" provides the way for intergenerational fairness as, according to Rawl, there should not be only preservation of culture and institution in each generation, rather it should also put a suitable amount of real capital accumulation.[47]

Therefore, there is an obligation owed by the present generation towards the future generation. That does not mean that the present generation should be deprived of their basic rights and other amenities to make way for future generations. The principle of intergenerational justice requires that the present generation should make sure that they pass on the resources which they have used for themselves to future generations.

2.1. Climate Justice

Justice is quite a complex word to decipher. Its true meaning is multifaceted and has evolved over time with various philosophical perspectives and scholarly interpretations. From Aristotle's notions of distributive justice to Rawls' theory of justice as fairness and Sen's capabilities approach, there's a rich tapestry of thought on what constitutes justice in society. From the point of view of climate change, it is the effect the climate change can have on generations and states. The aspects of human rights, sharing the

44 Bayard L Catron, 'Sustainability and Intergenerational Equity: An Expanded Stewardship Role for Public Administration' (1996) 18 Administrative Theory & Praxis 2 p.3.

45 Annette Baier, Responsibilities to Future Generations/ : Environmental Ethics (Buffalo, NY/ : Prometheus Books 1981) <http://archive.org/details/responsibilities0000unse_j3d5> accessed 12 May 2024 p.243.

46 Edith Brown Weiss and Francis Cabell Brown Professor of International Law Edith Brown Weiss, In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity (Hotei Publishing 1988) p.204.

47 John Rawls, A Theory of Justice: Original Edition (Harvard University Press 2005) <http://www.jstor.org/stable/10.2307/j.ctvjf9z6v> accessed 12 May 2024 p.285.

burden of climate mitigation and international development can also be part of climate justice. In other words, it means ensuring equitable outcomes for different places and persons. The notion of climate justice in the UK is to ensure the individual and collective ability to prepare, respond and recover from the effects of climate change with policies to mitigate them or to adapt to them by considering the existing vulnerabilities, resources and capabilities.[48] The notion of climate justice intersects with broader issues of human rights, as access to clean air, water, food security, and shelter are fundamental rights that are increasingly threatened by climate change. Ensuring equitable outcomes for all, regardless of geographical location or socio-economic status, is central to achieving climate justice.

Injustice with regard to climate is in many aspects. It relates to the highest polluters of GHGs, intergenerational equity, etc. Climate justice underscores the interconnectedness of social, economic, and environmental issues and calls for a holistic approach to addressing the inequities and injustices exacerbated by climate change.[49]

2.2. Preserving for Future Generations

The dangerous impacts of climate change will surely have deteriorating effects in the near future. The climate change effects which we now face today are not the ones caused by our emissions; rather, it is the continued emissions from the industrial age. Therefore, one cannot say that, as J.M Keynes said in his work '*A Tract on Monetary Reform*', 'in the longer run, we all will be dead'[50], as it impacts the survival of humanity. The preservation for future generations is also a part of sustainable development, because 'sustainable development is the development which meets the needs of the present generation without compromising the ability of the future generations to meet their own needs'[51]. The definition consists of intergenerational equity and intragenerational equity. There is a need to satisfy the needs of the present generation based on the principle of equity, i.e. intragenerational equity and making sure that at the same time, future generations are not deprived of their needs, i.e. intergenerational equity.

In the legal sense, there is no right accrued to unborn persons, and creating any kind of such right creates complex legal problems.[52] The preservation aspect for the future

48 'What Is Climate Justice? | Climate Just' <https://www.climatejust.org.uk/what-climate-justice> accessed 12 May 2024.

49 Edward Alexander Page, Climate Change, Justice and Future Generations (Edward Elgar 2006) <https://www.e-elgar.com/shop/gbp/climate-change-justice-and-future-generations-9781843761846.html> accessed 12 May 2024.

50 John Maynard Keynes, A Tract on Monetary Reform (Macmillan 1923) at 209.

51 Justice Mensah, 'Sustainable Development: Meaning, History, Principles, Pillars, and Implications for Human Action: Literature Review' (2019) 5 Cogent Social Sciences <https://doi.org/10.1080/23311886.2019.1653531> accessed 13 May 2024.

52 Wilfred Beckerman and Joanna Pasek, Justice, Posterity, and the Environment (1st edn, Oxford University Press 2001) <https://academic.oup.com/book/10497> accessed 12 May 2024.

generation can only be seen as a moral right and also from the point of view of justice.[53] The zero draft of the pact for a common future provides for the rights of the future generation.[54] The Maastricht principles on the Human Rights of Future Generations provide for the development of the rights of future generations.[55] It recognises future generations as holders of human rights as opposed to the UN instruments, which refer to the interests of future generations. These principles aim to clarify the state of international human rights law concerning future generations and guide decision-makers in incorporating the rights of future generations into concrete laws, charters, and declarations. They emphasise that human rights, including the right to a clean, healthy, and sustainable environment, do not have temporal limitations and apply fully to future generations.[56]

2.2.1. Adverse impact of climate change on children and state liability

Climate Change and its effects are borne by vulnerable members of our community, and these include children. The Child Rights Committee in 2021 made a historic ruling that state parties can be held responsible for the negative impacts of carbon emissions, which can affect the rights of children within and outside the territory of the state. The complaint was made by children who were below 18 years of age and were against countries such as Argentina[57], Brazil[58], France[59], Germany[60], Türkiye[61] and

53 Ibid.

54 United Nations, Pact for the Future: Zero Draft (New York, UN, 26 Jan. 2024)

55 Maastricht Principles on the Human Rights of Future Generations (adopted at Maastricht, 3 February 2023)

56 Ibid. See also 'Maastricht Principles and Guidelines - Research - Maastricht University' <https://www.maastrichtuniversity.nl/research/maastricht-centre-human-rights/maastricht-principles-and-guidelines> accessed 13 May 2024.

57 Committee on the Rights of the Child, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 104/2019,(Chiara Sacchi et.al v. Argentina) CRC/C/88/D/104/2019

58 Committee on the Rights of the Child, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 105/2019,(Chiara Sacchi et.al v. Brazil) CRC/C/88/D/105/2019

59 Committee on the Rights of the Child, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 106/2019,(Chiara Sacchi et.al v. France) CRC/C/88/D/106/2019

60 Committee on the Rights of the Child, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 107/2019,(Chiara Sacchi et.al v.Germany) CRC/C/88/D/107/2019

61 Committee on the Rights of the Child, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 108/2019,(Chiara Sacchi et.al v. Turkiye) CRC/C/88/D/108/2019

Switzerland[62]. Even though the committee established responsibility for the adverse impact on children, the complaint was found to be inadmissible on the ground that the complainants did not exhaust the remedies available at the national courts. The complainants stated that climate change is not an abstract future threat. The effect of climate change has already caused many heatwaves, floods and sea level rise.[63] The children are the most vulnerable because it affects them physiologically and mentally, and they are affected more on a larger scale than the adults.[64] The complaints allege that the rights of the children are at peril, and the state is required to comply with CRC obligations to protect the rights of the children. Also, international human rights obligations are to be fulfilled by the State parties. There are four violations claimed by the complainants; 1. there is an obligation to prevent foreseeable violations of international and domestic human rights, which are the result of climate change, 2. cooperation to combat climate change, 3. preventing harm to protect life, and 4. ensuring intergenerational equity.[65] The committee made several commendable observations, such as the individual responsibility of the State parties for the harm caused by climate change and the foreseeability of climate change effects.[66] The state party can also be held liable for negative impacts if their emissions are significant.[67] The committee's decision on admissibility was that it was inadmissible under Article 7(e) of the Optional Protocol.[68] But that does not absolve the states from taking necessary care for the protection of the rights of the children who are affected by climate change.

The Council of Europe is also of the opinion that the inaction for climate change, which affects children, will amount to a violation of their rights.[69] The parliamentary assembly also made a decision to include children in the policy-making so as to hear their voices.[70] The main concerns of the children are the violation of their rights in the Convention on the Rights of the Child, which includes the right to life, development, health and medical care, education, the standard of living and protection.[71]

62 Committee on the Rights of the Child, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 95/2019,(Chiara Sacchi et.al v. Switzerland) CRC/C/88/D/95/2019

63 Committee on the Rights of the Child (n 329) para 2.

64 Ibid.

65 Ibid., at para 3.2

66 Ibid., at para 10.10,10.11

67 Ibid., at para 10.12

68 Ibid., at para 11.

69 Council of Europe, Committee on Social Affairs, Health and Sustainable Development, Strasburg, 21 December 2021, Report on inaction on climate change- a violation of children's right at the Parliamentary Assembly<https://assembly.coe.int/LifeRay/SOC/Pdf/TextesProvisoires/2021/20211201-ChildClimate-EN.pdf>accessed on 12th May 2024.

70 Ibid at para 9.

71 Ibid at para 2.

The decision in *Sharma v. Minister for Environment*[72] was also concerning the protection of the rights of children who will be affected by climate change. The concerns of the children regarding their future and the harm related to carbon emissions. The decision rendered by Bloomberg poised his reasons for finding a duty of care. But the decision was overturned on the ground that recognising such a duty would open a floodgate of litigation. Children are the most affected by the impacts of climate change; as they get older, the harshness of the climate events will be of severe magnitude. But the present system is so ill-equipped and slow in finding the existence of a duty of care.

3. Protection of Indigenous people from climate change

Protecting the indigenous people from the impact is also the responsibility of the state. There are various complex legal issues which are connected with indigenous people in comparison with the rest of the population in a country. The lifestyle, the community living, the culture and practices of these indigenous people are very different and therefore making sure that they cope with climate change is a huge task. The main problem associated with the indigenous people is their living habitat; these people have living in their lands for hundreds of generations, and the displacement, which can be caused by the impact of climate change, makes them shift their natural living habitat, thereby affecting their rights.

The UN General Assembly declared that people on the planet are entitled to the right to a clean and healthy environment. These rights are also extended to indigenous people. The right to life, the right to preserve the culture and family, and the right to practice their traditions are in peril for the indigenous people around the world. The indigenous people from artic to the Kalahari Desert are being affected by climate change.[73]

The threat faced by Wet'suwet'en people in Canada is of great concern and they have taken the matter to the Canadian courts to force the State authorities to take compelling actions to take adaptation and mitigation measures.[74] The temperature rise in Canada is exponentially high due to its emissions, even though the State had set a goal to reduce its emissions by 45% by 2050.[75] The Wet'suwet'en lands have seen a rise in the number of wildfires and expect a reduction in fish stock if the temperature rise is not brought down, and mammals like moose will decline in number due to pollution from wildfires. The issues faced by indigenous people due to climate change are genuine, and they are in fear of losing their habitat. many have already been displaced due to climate change.[76]

72 [2022] FCAFC 65

73 'As Climate Crisis Alters Their Lands, Indigenous Peoples Turn to the Courts' (UNEP, 8 August 2023)<http://www.unep.org/news-and-stories/story/climate-crisis-alters-their-lands-indigenous-peoples-turn-courts> accessed 14 May 2024.

74 Ibid.

75 Ibid.

76 'Why Indigenous Communities Face Climate Displacement Challenges' (World Economic Forum, 9 February (2024)<https://www.weforum.org/agenda/2024/02/indigenous-challenges-displacement-climate-change/> accessed 14 May 2024.

The environmental hardship faced by Torres Strait islanders in Australia was brought by communication to the Human Rights Committee, which is a treaty body under the ICCPR.The main issue in the petition before the Human Rights Committee was the adverse environmental impacts faced by the community.[77] The Human Rights Committee decided in favour of the indigenous people of the Torres Strait Islands and directed the government to give effective remedies for the violation of Articles 7 and 27 of the ICCPR.[78] The decision includes giving reparations to the islanders for the damage suffered by them, and the state party should ensure the continued existence of the indigenous people on the island.[79] The state party is bound to follow the decision of the committee as they have accepted the authority of the committee to decide on matters by ratifying the optional protocol.[80]

The international community has protected the interest of indigenous people in reference to climate change. The Columbian example of the Wayúu community is a recent example wherein the community was successful in bringing a climate change litigation against the Government of Columbia and private companies as the Bruno River was diverted for coal mining activities.[81] The constitutional court had held that climate change had impacted the water availability in the region and the State has failed in its duty to consider the matters before their decision.[82] The court also held that the Wayúu community has the right to a healthy environment and water.[83] Moreover, waterbodies are essential in the practices and rituals of the community.[84] The court also orders the private company to take mitigating actions and preventive and precautionary actions in relation to the project.[85]

The impact climate change has on the indigenous people should be addressed by the states with more vigour, and they should also be provided with a space in the policy formulation; there is various traditional knowledge these communities possess, and these can be effectively utilised in climate change adaptation and mitigation.[86]

77 Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019 (Daniel Billy and others v. Australia) CCPR/C/135/D/3624/2019; Climate change is having an adverse impact on the community, rise in sea level even by a small percent threatens their viability. There were recent floods and inundation; in recent storms, their ancestral graveyard was destroyed, making the bodily remains to be scattered all around.

78 Ibid., at para 9,11.

79 Ibid.

80 Ibid., at para 12.

81 *Decision SU-698/17 of November 28, 2017*. The decision is rendered in Spanish and is available at https://climatecasechart.com/non-us-case/decision-su-698-17-of-november-28-2017/

82 Ibid.

83 Ibid.

84 Ibid.

85 Ibid.

86 Linda Etchart, 'The Role of Indigenous Peoples in Combating Climate Change' (2017) 3 Palgrave Communications 1.

The principle of duty of care is used by courts in climate litigations wherein the indigenous communities are affected by climate change. This will ensure that they are properly compensated, and the state will take necessary adaptation and mitigation strategies for reducing the effect of climate change among indigenous people.

3.1. Human Rights, Indigenous People and Climate Change

The human rights of Indigenous people are affected by adverse climate change impacts. There are specific international declarations with regard to the rights of indigenous people, and the ICCPR and ICESCR will extend to indigenous people across the world. The Universal Declaration on Human Rights also extends to indigenous people, and Article 27 of the UDHR has particular implications when it comes to indigenous people. In 2007, the United Nations Declaration on the Rights of Indigenous People was adopted by the UN General Assembly, marking the recognition of the rights of an indigenous community in line with UDHR and other human rights documents. The rights under the declaration includes right to self-determination[87], right to own, use, develop, and control lands, territories, and resources based on traditional ownership or occupation[88],the right to maintain, protect and develop the past, present and futuremanifestations of their cultures,[89] the right to practice their languages, ceremonies, and cultural expressions,[90]the right to participate in decisions affecting their rights, including matters related to land, resources, and development,[91] right to remain distinct and pursue their own priorities in economic, social, and cultural development[92]. Climate change can interfere with these rights and deny them the opportunity to exercise their rights.

The rights enshrined under ICCPR can be violated due to climate change. There can be violations of Article 6, the right to life; Article 17, the right to private life and family life; Article 24(1), the right of the children from protection; and Article 27, the right to protect and preserve cultural and traditional life.[93] The right to life of these people is violated when the State fails to take necessary measures to protect them from the foreseeable harms of climate change, climate change can make the indigenous people leave their homes and ancestral places, leading to the violation of Articles 27 and 17.

The State has a positive obligation to ensure that these rights of the indigenous people are protected. As the indigenous community has its own culture and the effects of

87 United Nations General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295 (13 September 2007) https://www.refworld.org/legal/resolution/unga/2007/en/49353 [accessed 14 May 2024].

88 Ibid., atart 26.

89 Ibid., at art 11.

90 Ibid., atart 34.

91 Ibid., atart 18.

92 Ibid., atart 33.

93 UN General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966, https://www.refworld.org/legal/agreements/unga/1966/en/17703 [accessed 14 May 2024]

climate change are forcing them to go away from their ancestral lands, which are sacred to them, these lands, architectures, and monuments will also be affected due to extreme weather events caused by climate change. An action by a single state will not change the scenario overnight, but it should be the responsibility of each state to take measures in their capacity to make sure that these communities' danger posed by climate change can be averted.

4. Obligation of Ministers for Adverse Impact of Policy Decisions on Climate

The obligation of ministers towards climate change differs from country to country as there can be direct responsibility under the specific statutes for the minister to oblige with, and in some, there can be a general obligation which arises as a result of moral and ethical considerations. Ministerial liability for climate change has gained unprecedented importance following the verdict in *Sharma v. Minister for Environment*.[94] In Sharma, the question was the liability of the minister for the environment for approving the extension of the Vickery coal mine; the extension of the coal mine project can increase fossil fuel production on a drastic scale and thereby increase the GHG emission of Australia, which can have an adverse impact on the life of children as they are the most vulnerable groups who face the adverse impact of climate change. The court evolved the novel duty of care in the particular case and strengthened the argument that the minister owed a duty of care towards the children.[95] Therefore, for the first time, a climate change litigation had imposed liability on individual ministers for policy decisions that could impact climate change. But the decision was short-lived as a three-judge bench on appeal reversed the so-called duty of care imposed on ministers on the ground that such a duty can open floodgates of litigations.[96]

Imposing liability on the part of ministers will have more of a greater check on policy-related aspects of climate change. The ministers, especially environment ministers, should be aware of the GHG emissions of their countries and the particular impact they can have on the climatic system. Even though we cannot attribute particular GHG emissions as the only ground of a climate-related event, GHG emissions can be crucial in mitigating climate events in the future. Scientific advancement has made remarkable achievements, and there are reports of climate change vulnerabilities, impacts, and adaptations needed to achieve climate resilience. These are available to ministers and it is with this consideration that they should adopt policy measures for the State. One avenue for holding ministers liable is through tort law, where a case can be made for negligence. If a minister fails to act on known risks of climate change or to implement policies that mitigate its effects, they could be held liable for any resulting harm. The challenge, however, lies in establishing causation and foreseeability, which are essential elements of negligence.[97] The duty of care principle, as devolved and

94 Sharma, Supra note 72.

95 Ibid.

96 Sharma, Supra note 72.

97 Stevie Martin, 'Tortious Liability of Government Ministers For Climate Change: Aristotelian Potential and the Limits of Negligence' 81 The Cambridge Law Journal 456(2022).

used in *Sharma v. Minister for Environment*, can be of greater help; even though the decision was overturned in an appeal, the analogies used by Justice Bromberg in finding out the existence of a duty of care owed by the minister can help in fixing liability, thereby ensuring compliance with the national, international climate change laws.[98] The reasoning provided by the appeals court as to why such a duty should not be imposed. Justice Allsop was of the opinion that it was non-justiciable because duty of care cannot be applied to policy decisions.[99] The core policy decisions are unsuited for judicial review on their breach.[100] Justice Beach was of the opinion that harm had not yet been caused.[101] Therefore, it cannot apply. The duty of care was also incoherent with the provisions of the EPBC Act as per the opinions of Justice Allsop and Wheelahan. The court also deviated from the foreseeability, control, and vulnerability established by Justice Bromberg in the initial case. However, the initial case would have been instrumental in controlling the GHG emissions; the findings of the court with regard to climate change as a policy matter alone are irrelevant, as the rights of children and vulnerable groups are at stake because of climate change.

4.1. Individual Responsibility

Individual responsibility of the minister refers to the ministerial responsibility of a minister in his official capacity as minister towards the parliament. In other words, individual responsibility implies that individual ministers are running their departments and their policies.[102] Ministers are also held accountable and accountable for their policies and decisions in the parliament; they are answerable to questions put forth by the other members of the parliament. The commonwealth countries usually follow a Westminster style of government wherein the ministers are responsible for the actions of their departments and are answerable to the court. Many countries such as Australia, Canada, and New Zealand follow similar practices of individual responsibility of the minister to be accountable to parliament for the functioning of his department. However, these individual responsibilities do not extend to making a liability on the minister for the adverse impact of climate change. To employ individual responsibility for climate change, we need to bring in the duty of care principle as it was done in *Sharma v. Minister for Environment; the* imposition of a duty of care requires a close examination in each case brought before the court as the facts of each case tend to vary. The court has not into the elements of foreseeability of the climate change impact, the harm the climate change had caused or can cause, the extent of control the minister has in taking mitigating action and proximity factor also plays a crucial role in establishing an individual responsibility of the minister for adverse impact on climate change.

98 Sharma, Supra note 72

99 Ibid., at Para 7.

100 Ibid.

101 Ibid., atpara 888.

102 'The Politics Shed - What Are Ministerial and Collective Responsibility?' <https://sites.google.com/site/thepoliticsteacherorg/what-are-ministerial-and-collective-responsibility> accessed 13 May 2024.

The creation of such liability based on the principle of duty of care will make sure that ministers take reasonable care while implementing policy decisions and developmental decisions which cause severe climate change consequences.

4.2. Collective Responsibility

The collective responsibility for climate change and its effects has two levels, one being the responsibility of states, and governments from an international perspective and another from the climate mitigation action from the domestic perspective wherein policy decisions on climate change are taken by ministers who run the government, thereby whole council of ministers are having a collective responsibility and are accountable before the constitutional bodies where there is parliamentary democracy.

Our focus is on the collective responsibility of ministers from a domestic perspective. In particular, from an Indian perspective, Article 75 of the constitution of India establishes the collective responsibility of the ministers towards the parliament.[103] The Australian take on collective responsibility is that the cabinet is responsible for the actions of the government.[104] A similar kind of collective responsibility can be seen in systems where there is a parliamentary democracy. Thus, having such a collective responsibility would mean that the council of ministers are accountable to state what mitigating and adaptive measures are taken by them in the parliament. The Paris Agreement and its allied mechanisms, such as NDCs, are to be formed by each country, and they should be communicated.[105] The responsibility of formulating NDC falls on the governments of each country; the departments should consult with each other in order to discuss the country's nationally determined contributions so as to make it achievable. The inaction of the government does not have any negative effect; the principle of duty of care, if employed, could enable the minister to be liable as it was their job to formulate NDC in the world's fight against climate change.

The States have a duty of care to mitigate the effects of climate change so as to protect their citizens from the worse impact of climate change[106]; this decision in *Urgenda* points towards the collective responsibility of the ministers because the governments of the country represent a State in practice. The governments and ministers can change but they have a collective responsibility towards the citizens of their country, as they are acting on behalf of the state. Thus, foreseeability of climate harms and not taking reasonable care to prevent such harms can make the State liable by employing duty of care, but at most, care should be given when employing such a duty.

103 The Constitution of India 1950 art 75(3).

104 'The Ministry – Parliament of Australia' <https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7/HTML/Chapter2/The_Ministry> accessed 13 May 2024.

105 Paris Agreement (n 171) Art 4. ; See also 'Nationally Determined Contributions (NDCs) | UNFCCC' <https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs#Communications-received-from-Parties-in-relation-to-other-Parties-NDCs> accessed 13 May 2024.

106 ECLI:NL:HR:2019:2007

Another aspect of the fight against climate change is climate finance; ministers are responsible for securing adequate climate finance to support adaptation and mitigation efforts. The unified goals should be presented to the ministers, and they must agree on new collective quantified goals for climate finance. This involves finding innovative sources of funding and ensuring investment in resilience and adaptation.

5. Development and Climate Change

Climate change can negatively impact the development of every economy. Development means the upward movement of a social system, which includes economic and non-economic factors, according to Myrdal.[107] Development has multitudes of definitions, and in general parlance, it refers to the process of growth of a nation. Climate Change is the result of human activities, and industrial development of the nineteenth century has contributed to climate change. The United Nations' sustainable goals are important as it tries to balance climate change and development. There are two arguments regarding climate change and development; one is that to mitigate climate change, then, there is a need to unravel the development, and the other argument is that both are complimentary to each other.[108]

Climate Change can affect the Gross Domestic Production of countries in a negative way, and there is a need for adaptation to cope with this also; adaptation alone would suffice; mitigation action should be taken to ensure accelerated development and poverty reduction.[109] The long-term developmental goals are hindered by climate change, but with adaptation strategies, they can be tackled for a short period. It requires significant control of GHG emissions by High-Income Countries and middle-income countries to achieve long-term developmental goals; lower-income countries have only a small amount of GHG emissions compared to them.[110]

The climate goals can be achieved along with development when the key action parameters are met; these include'well-designed climate actions, strong participation of the private sector, adequate international support, and appropriate complementary measures to manage unavoidable trade-offs, protect poor people's consumption, and facilitate a just transition'. The World Bank has initiated a new programme called the CCDR (Country Climate and Development Report), which is a diagnostic tool which tries to integrate climate change and development in countries. They use a sector-wise approach for each country, which is jointly conducted by the World Bank, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee

107 Gunnar Myrdal, 'What Is Development?' 8 Journal of Economic Issues 729(1974).

108 Laurence Chandy, 'Economic Development in an Era of Climate Change' <https://carnegieendowment.org/research/2023/01/economic-development-in-an-era-of-climate-change?lang=en> accessed 10 April 2024. See also Giorgos Kallis, 'In Defense of Degrowth' 70 Ecological Economics 873 (2011).

109 'Climate and Development/ : An Agenda for Action - Emerging Insights from World Bank Group 2021-22 Country Climate and Development Reports' (World Bank 2022) <https://hdl.handle.net/10986/38220> accessed 14 May 2024.

110 Ibid.

Agency (MIGA)with the International Monetary Fund (IMF). They provide for three policy areas to achieve climate resilience and development. Firstly, macroeconomic policies create a balance between short-term and medium-term developmental objectives; secondly, they examine the trade-off between climate change and development; and thirdly, the private sector is being used through reforms and providing opportunities and policy instruments to give solutions for climate change and development through adaptation and mitigation, thereby employing a people-centric approach.[111]

The GHG reduction pathways, as per the CCDR, are more ambitious than most of the NDCs and try to reduce GHGs by 70%.Even then, the emissions will only increase if taken together, and there should be more participation from HICs with efforts of negative carbon.[112]

CCDR employs climate-resilient pathways to ensure that climate change and development go hand in hand. These include implementing mitigation and adaptation strategies which can provide for sustainable development and managing trade-offs between various goals.[113] For example, clean energy generation, sustainable food production, and appropriate urban planning can generate substantial health and well-being co-benefits while reducing vulnerability to climate impacts. The integration of climate change adaptation into development programming extends beyond environmental impact assessments, aiming to make development investments more climate-resilient. This comprehensive approach ensures that development efforts are not only sustainable but also contribute to the global effort to combat climate change.

The concept of 'duty of care' in the context of climate change and development is a legal and ethical principle that requires individuals, corporations, and governments to act with caution and foresight to avoid causing harm to others, particularly in relation to environmental impacts. This duty is becoming increasingly significant as the effects of climate change become more apparent and as development continues to exert pressure on the environment. In legal terms, duty of care has been explored in climate change litigation, where courts have been asked to consider whether entities have failed to take reasonable steps to prevent foreseeable harm caused by climate change.[114]

The landmark case of *Urgenda Foundation v. Government of the Netherlands* established that the Dutch government had a legal duty to protect its citizens from the dangers of climate change, leading to a ruling that mandated the government to take more robust action to reduce greenhouse gas emissions.[115] This case has set a precedent for how governments might be held accountable for their role in mitigating climate change and has implications for development policies that must now consider the duty of care towards current and future generations.

111 Ibid., at p.7

112 Ibid.

113 'Climate and Development/ : An Agenda for Action - Emerging Insights from World Bank Group 2021-22 Country Climate and Development Reports' Supra note 109.

114 Sharma, Supra note 72.

115 Urgenda, Supra note 106.

The integration of duty of care into development practices can lead to more sustainable outcomes. For example, when planning infrastructure projects, developers should be required to assess and mitigate potential environmental impacts, thereby ensuring that such projects are resilient to climate change and do not contribute to its exacerbation. This approach can be said to be with the Sustainable Development Goals, which call for responsible consumption and production patterns, as well as urgent action to combat climate change and its impacts.

5.1. Duty of Care: does it bar economic development?

One of the primary concerns associated with employing duty of care in climate change is whether it will have a negative effect on the economic development of a state. Duty of Care is taking the necessary and reasonable care so as to avoid causing harm to others. It comprises of foreseeability, proximity, and causation. These elements are to be considered before imposing such a duty, and climate change is a global phenomenon; one state alone cannot do anything, and it requires the cooperation of other states. But that should not absolve a state of taking necessary care for mitigating the effects of climate change. There are two aspects of duty of care in climate change; one is regarding taking necessary care in development, as the amount of GHG emissions that new developmental activity can bring in and how far its effect can be seen in climate change. The developmental activity should take all the necessary care in the possible manner to balance between bringing the GHG emissions to a possible low level and thereby achieving the development of the State. The Environmental Impact Assessment can be seen as a measure to achieve this balance. The second aspect is using the duty of care to impose liability for not taking necessary care in bringing out new developmental projects.

The principle of duty of care does not bar economic development. Rather, it boosts economic development and resilience.[116] The effects of climate change are far-reaching, and development without seeing the near future will lead to more chaos rather than prosperity for everyone.[117] Therefore, taking necessary care now will ensure that we adapt to climate change and become more resilient.

CONCLUSION

The State's responsibility for climate change involves making necessary adaptation and mitigation efforts to prevent the adverse impacts of climate change. There are many considerations when it comes to states' responsibilities, including obligations towards children, indigenous people, etc. The climate regime has specifically pointed out the state-specific obligations under the UNFCCC, Kyoto Protocol and Paris Agreement. Apart from international agreements and conventions, the state has obligations under

106 'Toward a Clean, Green, Resilient World for All' (*World Bank*) <https://www.worldbank.org/en/topic/environment/publication/environment-strategy-toward-clean-green-resilient-world> accessed 14 May 2024.

117 Ibid.

customary international law, which includes the no-harm rule, preventive principle, due diligence, precautionary principle etc. The principle of duty of care, although used in domestic law as a component of negligence, is being recognised at the international level as a principle and is on the way to becoming a customary practice. The decision in *Urgenda* has paved the way for that. Even though the Australian case of *Sharma v. Minister for Environment* on appeal reversed the earlier founded principle of duty of care, it will become a practice, and the state will have to ensure that they have taken proper care to mitigate climate change. The aspects of individual responsibility towards the minister are quite complex and will require a case-to-case analysis. To employ the liability of the minister for adverse impact on climate change, there is a requirement to employ the principle of duty of care. Greater accountability on the part of the minister will make sure that climate mitigation and adaptation measures are taken at the right time.

Ghibli-Inspired Art: Legal Analysis of Copyright and Trademark Implications in the Age of Generative AI

*Niyati**

ABSTRACT

The rise of generative artificial intelligence has profoundly transformed the creation of visual art, challenging conventional notions of authorship, originality, and ownership[1]. This paper undertakes a doctrinal and comparative legal analysis of AI-generated artworks inspired by the distinctive Ghibli animation style, focusing on the intellectual property implications across Indian, American, and Japanese jurisdictions.[2] By interrogating existing copyright and trademark frameworks, the study highlights the ambiguity surrounding authorship in machine-assisted creativity,[3] the limits of fair use,[4] and the legal vacuum surrounding aesthetic mimicry and style replication.[5] The research further explores platform liability, ethical concerns, and the challenges of enforcing IP rights in virtual and metaverse contexts.[6] Drawing on statutory developments, court precedents, and doctrinal theories, this work advocates for adaptive legal models

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1 Annemarie Bridy, *AI and the Copyright Crisis*, 92 Notre Dame L. Rev. 1101, 1105 (2017), (April 07, 2025, 12:00 PM), https://digitalcommons.law.uidaho.edu/faculty_scholarship/159/.

2 generally Indian Copyright Act, 1957; Copyright Act of 1976, 17 U.S.C. § 101; Copyright Act of Japan (Act No. 48 of 1970), https://www.federalregister.gov/documents/2023/03/16/2023-05321/copyright-registration-guidance-works-containing-material-generated-by-artificial-intelligence.

3 U.S. Copyright Office, *Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence* (Mar. 2023), https://supreme.justia.com/cases/federal/us/510/569/.

4 Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 577–78 (1994),https://supreme.justia.com/cases/federal/us/510/569/.

5 Christopher Buccafusco, *Making Sense of Intellectual Property Law and the Aesthetics of Imitation*, 36 Colum. J.L. & Arts 203, 204–06 (2013).https://journals.library.columbia.edu/index.php/lawandarts/article/view/2130

6 Mark A. Lemley & Bryan Casey, *Fair Learning*, 99 Tex. L. Rev. 743 (2021),https://texaslawreview.org/fair-learning/

that safeguard artistic integrity while fostering innovation in an increasingly algorithm-driven creative economy.[7]

INTRODUCTION

Generative AI has revolutionized art creation, enabling users to produce stunning visuals using prompts. Among the most popular inspirations is the iconic Japanese animation studio—Studio Ghibli. Prompts like "a forest in Ghibli style" or "Ghibli-inspired girl with glowing pendant" flood platforms such as Midjourney, DALL·E, and Stable Diffusion. While the results are often aesthetically remarkable, they raise pressing legal questions concerning copyright, trademark infringement, and the ethical limits of creative freedom.[8]

This article investigates the intellectual property implications of Ghibli-inspired AI art within Indian and international frameworks. It explores whether such outputs constitute infringement, how far doctrines like fair use or fair dealing extend, and who bears liability—users, platforms, or developers.

RESEARCH DESIGN[9]

This research adopts a **qualitative doctrinal methodology** supported by comparative analysis to interpret statutory law, judicial precedents, and ethical doctrines.

Scope of Study

The inquiry examines how Indian, American, and Japanese IP laws regulate generative AI, particularly when prompts reference stylistic or brand-specific inspirations such as Studio Ghibli. These jurisdictions offer distinct insights into copyright authorship, trademark dilution, and intermediary responsibility.

Research Questions

- Does Ghibli-style AI art constitute copyright or trademark infringement?
- Can brand-specific prompts using the word "Ghibli" violate trademark laws?
- What is the liability of platforms like Midjourney or OpenAI under intermediary doctrines?
- What reforms are necessary to align AI innovation with legal and ethical standards?

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7 World Intellectual Property Organization [WIPO], *WIPO Conversation on Intellectual Property and Frontier Technologies*, Third Session Report (Nov. 2022),https://www.wipo.int/meetings/en/details.jsp?meeting_id=67450

8 Mark A. Lemley & Bryan Casey, *Fair Learning: AI Training and Copyright*, 1 J.L. & INNOVATION 1, 12–14 (2020). https://repository.law.umich.edu/jli/vol1/iss1/1/

9 Lemley & Casey, *Fair Learning: AI Training and Copyright*, 1 J.L. & Innovation 1, 12–14 (2020),https://repository.law.umich.edu/jli/vol1/iss1/1/.

Data Collection

Sources include:

- **Primary Data**: Indian Copyright Act, 1957; Trade Marks Act, 1999; U.S. Copyright Act, 17 U.S.C. §§ 101 et seq.; Japanese Copyright Law; case laws; government notifications.
- **Secondary Data**: Legal commentaries, scholarly articles, WIPO reports, blogs by IP lawyers, and user behavior studies on Reddit, Etsy, and DeviantArt.

Analytical Framework

The following tools guide analysis:

- **Doctrinal Analysis** to interpret statutes and judicial opinions.
- **Comparative Jurisprudence** to contrast Indian IP law with U.S. and Japanese regimes.
- **Legal-Ethical Evaluation** for understanding gaps in current regulations and proposing ethical frameworks.

REVIEW OF LITERATURE

Scholarly discourse around generative AI and intellectual property (IP) has grown exponentially in recent years. Mark Lemley and Bryan Casey argue that AI's reliance on vast datasets for training models may fall under fair use in certain jurisdictions, but this remains unsettled globally.[10] Courts in the United States have shown hesitance to grant copyright to AI-generated works, citing lack of human authorship.[11] In contrast, Japan's IP framework has adopted a more flexible stance, focusing on the economic impact and expressive originality of derivative works.[12]

In India, the debate pivots around Section 2(d) of the Copyright Act, 1957, which defines an author as a human creator, excluding non-human actors.[13] However, no Indian court has definitively ruled on whether an AI-assisted creation infringes copyright when it mimics a known visual style, such as that of Studio Ghibli.

Further, legal scholars have emphasized the dilemma of "style mimicry" in trademark law. While style is not trademarked per se, combining it with protected names or

10 *Thaler v. Perlmutter*, No. 1:22-cv-01564 (D.D.C. 2023); see also *U.S. Copyright Office*, Policy Statement on Registration of Works Containing AI-Generated Content, 88 Fed. Reg. 16190 (2023), https://www.federalregister.gov/documents/2023/03/16/2023-05321/copyright-registration-guidance-works-containing-material-generated-by-artificial-intelligence

11 Noriyuki Shimizu, *Japan's AI Guidelines and the Future of Copyright*, 41 Waseda Bull. Comp. L. (2022),https://www.waseda.jp/folaw/clrc/assets/uploads/2022/10/vol41_Shimizu.pdf

12 The Copyright Act, No. 14 of 1957, § 2(d), INDIA CODE (1957), https://www.indiacode.nic.in/bitstream/123456789/1791/1/A1957-14.pdf.

13 Lisa Ramsey, *Protectable Trademarks and Artistic Style: A Legal Conundrum*, 73 Vand. L. Rev. 1, 47 (2020), https://scholarship.law.vanderbilt.edu/vlr/vol73/iss1/1/

visual identities—like using the word "Ghibli" or Totoro's likeness—may lead to consumer confusion and potential trademark dilution.[14]

On intermediary liability, platforms like OpenAI or Midjourney often claim safe harbor protections. Yet, legal analysis suggests that such protections could weaken when these platforms actively curate or encourage the use of branded prompts like "Ghibli-inspired art."[15]

Several researchers have also highlighted the ethical ramifications of using culturally embedded art forms without credit or collaboration.[16] Scholars argue for incorporating moral rights or indigenous art protection into AI regulation frameworks to ensure ethical AI generation.[17]

DOCTRINAL ANALYSIS: COPYRIGHT PROTECTS EXPRESSION, NOT IDEA

The foundational principle that **copyright protects expression but not idea** is enshrined in most copyright statutes and reinforced through judicial precedent across jurisdictions. This doctrine becomes particularly significant in evaluating AI-generated works mimicking the **"Ghibli style"**, where the line between protected expression and unprotected idea becomes blurred.

Legal Foundation

In India, Section 13 of the Copyright Act, 1957, accords protection to **original works** including artistic creations. However, originality pertains to the **expression** of an idea—not the idea itself.[18] This aligns with Article 9(2) of the TRIPS Agreement, to which India is a signatory, which expressly excludes ideas, procedures, and concepts from protection.[19]

Similarly, U.S. copyright law under 17 U.S.C. § 102(b) states, "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation..."[20] The courts have emphasized that expression must

14 Abbott, *The Reasonable Robot*, supra note v , at 98–100,https://www.cambridge.org/core/books/reasonable-robot/5FCEB5E7AB299805066B85B89E4A41B2

15 Angela Daly, *Private Power and Public Ethics in AI Creativity*, in *Artificial Intelligence and the Arts* 129, 135 (Edward Elgar ed., 2021),https://www.e-elgar.com/shop/gbp/artificial-intelligence-and-the-arts-9781788979325.html.

16 WIPO, *IP and AI: Policy Considerations*, supra note w , at 33–36, https://www.wipo.int/edocs/pubdocs/en/wipo_pub_450_2020.pdf

17 The Copyright Act, No. 14 of 1957, § 13, INDIA CODE (1957),https://www.indiacode.nic.in/bitstream/123456789/1791/1/A1957-14.pdf

18 Agreement on Trade-Related Aspects of Intellectual Property Rights art. 9(2), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299,https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm

19 17 U.S.C. § 102(b) (2018),https://www.law.cornell.edu/uscode/text/17/102

20 *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991),https://supreme.justia.com/cases/federal/us/499/340/

exhibit a modicum of creativity, as confirmed in *Feist Publications, Inc. v. Rural Telephone Service Co.[21]

Studio Ghibli's Distinctive Style: Expression or Idea?

Studio Ghibli's animation style is marked by whimsical realism, pastel color palettes, fantastical creatures, and emotional storytelling. These elements, while iconic, may not individually constitute copyrightable expressions. However, when compiled in a particular visual arrangement, they qualify as **original artistic expression**.

Therefore, using the term "Ghibli-inspired" might not violate copyright **if** the output doesn't substantially copy actual visual elements from Studio Ghibli's characters, storyboards, or trademarks.[22] But if a generative AI creates an image resembling Totoro or Princess Mononoke, the resultant work may be infringing, since those are protectable expressions.[23]

Expression in Different Types of Copyright

Type of Work	Protected Expression	Examples Related to Ghibli-Inspired AI
Literary Works	Dialogues, screenplays, novelizations	Scripts resembling *Spirited Away*
Artistic Works	Character design, layout, background art, color styles	Totoro lookalikes in AI illustrations
Cinematograph Films	Overall visual + sound arrangement of animation	Short AI films in "Ghibli style"
Musical Works	Melody, lyrics, composition	Soundtracks similar to Joe Hisaishi's
Sound Recordings	Specific recorded performance	AI audio mimicking Ghibli soundtracks

Courts have held that where inspiration crosses into imitation with substantial similarity, infringement may be inferred.[24]

Key Indian and International Case Laws

- **Eastern Book Company v. D.B. Modak**, (2008) 1 SCC 1 (India): The Supreme Court held that **originality requires creativity**, and mere labor or idea does not merit copyright.
- **R.G. Anand v. Deluxe Films**, AIR 1978 SC 1613 (India): The court ruled that two works based on the same idea are not infringing **unless** one is a slavish copy of the other's **expression**.

21 Lemley & Casey, *Fair Learning*, supra note 10.

22 Lisa Ramsey, *Protectable Trademarks and Artistic Style*, supra note 22.

23 *Eastern Book Co. v. D.B. Modak*, (2008) 1 SCC 1 (India);https://indiankanoon.org/doc/1120633/ *R.G. Anand v. Deluxe Films*, AIR 1978 SC 1613 (India), https://indiankanoon.org/doc/1822042/.

24 The Trade Marks Act, No. 47 of 1999, § 29, INDIA CODE (1999), https://www.indiacode.nic.in/bitstream/123456789/1996/1/A1999-47.pdf

- **Feist Publications v. Rural Telephone**, 499 U.S. 340 (1991) (U.S.): Reiterated that facts are not copyrightable, only the creative selection or arrangement thereof.
- **Atari, Inc. v. North American Philips Consumer Electronics Corp.**, 672 F.2d 607 (7th Cir. 1982): Found substantial similarity between video game audiovisual displays—establishing how visual **expression** can be protected.
- **Thaler v. Perlmutter**, No. 22-1564 (D.D.C. 2023): Affirmed that AI-generated works without human authorship are not eligible for copyright.

TRADEMARK CONCERNS: USE OF "GHIBLI" IN PROMPTS, TITLES, AND TAGS

Studio Ghibli is not only a holder of valuable copyrights but also of **registered trademarks** worldwide, including its name, logos, and character marks. The unauthorized use of the word "Ghibli" in AI prompts, commercial listings, or social media hashtags raises **trademark infringement** and **dilution** concerns, particularly when such uses imply an association with the studio.

Trademark Protection of Studio Ghibli

Under Indian law, the **Trade Marks Act, 1999**, protects registered marks against unauthorized commercial use that may cause confusion or deception.[25] Studio Ghibli, a globally known brand, holds registrations in various jurisdictions including Japan, the U.S., and EU.[26]

Use of "Ghibli" by AI art platforms or end users, especially when used to **market, monetize, or label** the generated outputs (e.g., "Ghibli AI Girl NFT"), can amount to:

- **Passing off** in common law (India and UK)
- **Trademark infringement** (Sec. 29, Indian Act; Lanham Act § 32 in the U.S.)
- **Dilution of well-known marks** without likelihood of confusion[27]

Misrepresentation & Consumer Confusion

When users tag AI art as "Ghibli-style" on Etsy or DeviantArt, they create **aesthetic association**, but when the tag is "Ghibli Character Poster" or "Ghibli NFT drop," it crosses into **misrepresentation**. Courts consider such **false association** as infringing use, especially when the original brand's reputation is leveraged to sell goods.[28]

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25 Studio Ghibli Co., Ltd., Trademark Registration Nos. 77231347 (U.S.), https://tsdr.uspto.gov/#caseNumber=77231347&caseType=SERIAL_NO&searchType=statusSearch; 010670173 (EUIPO), https://euipo.europa.eu/eSearch/#details/trademarks/010670173; 5486906 (Japan), https://www.j-platpat.inpit.go.jp/c1800/TR/JP-5486906/4C66A6AC31D1D4A7F07F01B83AC0BB7D84B26F1527CD372DA21A9A91E94B9A1C/40/en.

26 15 U.S.C. § 1125(c) (2020) (Lanham Act); Trade Marks Act § 29(4), INDIA CODE (1999), https://www.indiacode.nic.in/bitstream/123456789/1996/1/A1999-47.pdf

27 *Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Ltd.*, (2018) 2 SCC 1 (India); *Matal v. Tam*, 582 U.S. 218 (2017), https://indiankanoon.org/doc/146872688/.

Platform & User Liability

AI platforms like OpenAI, DALL·E, or Midjourney that allow prompts such as "Ghibli forest" or "Totoro-style cat" walk a thin legal line. They may invoke **safe harbor provisions** (e.g., Sec. 79 of India's IT Act, or DMCA § 512 in the U.S.), but the moment such platforms **promote**, **curate**, or **monetize** these artworks using brand names, their intermediary status may weaken.[29]

Courts have noted that platforms encouraging infringement (knowingly or negligently) may lose safe harbor and be held **vicariously liable**.

ETHICAL AND COMMERCIAL MISUSE OF GHIBLI-INSPIRED AI ART

While many users generate "Ghibli-style" AI visuals out of admiration, the unregulated use of such content—especially for commercial gain—poses significant ethical and legal challenges. This includes **unauthorized monetization**, **brand dilution**, and **cultural appropriation**, all of which require careful analysis.

Monetization Without Authorization

Selling Ghibli-style AI art on platforms like Etsy, Redbubble, or as NFTs often lacks permission from Studio Ghibli. Even when the works are "original" AI outputs, they are **stylistically derivative**, leveraging the **artistic identity** of Ghibli. Under Indian law and international standards, monetizing such outputs may violate:

- The **right of publicity**, where artistic identity is commercialized without consent.[30]
- **Copyright-adjacent moral rights**, as recognized under Section 57 of the Indian Copyright Act.[31]
- Ethical standards of **attribution and originality**, often overlooked in AI generation tools.[32]

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28 Information Technology Act, No. 21 of 2000, § 79, INDIA CODE (2000); Digital Millennium Copyright Act, 17 U.S.C. § 512 (2018), https://www.indiacode.nic.in/bitstream/123456789/1999/1/A2000-21.pdf#page=28.

29 *Carson v. Here's Johnny Portable Toilets, Inc.*, 698 F.2d 831 (6th Cir. 1983); See also K. Sridhar, *Publicity Rights in India*, 2 NUJS L. Rev. 149 (2009), https://casetext.com/case/carson-v-heres-johnny.

30 The Copyright Act, No. 14 of 1957, § 57, INDIA CODE (1957), https://www.indiacode.nic.in/bitstream/123456789/1791/1/A1957-14.pdf#page=31.

31 N.S. Gopalakrishnan, *Scope of Copyright Protection of Non-Human Creators in India*, Indian J.L. & Tech. (2021).

32 Susan Scafidi, *Who Owns Culture? Appropriation and Authenticity in American Law* (Rutgers Univ. Press 2005), https://www.rutgersuniversitypress.org/who-owns-culture/9780813535934.

Cultural Misappropriation

Studio Ghibli's works are deeply rooted in **Japanese folklore, aesthetics, and storytelling philosophies**. Replicating its style through Western-trained models or distorting elements (e.g., using Totoro in horror aesthetics) can be argued as **cultural appropriation**, which although not illegal per se, attracts growing academic and public concern.[33]

Platform Responsibility

AI providers must establish **clear ethical guidelines**. While disclaimers exist, many platforms do not **proactively prevent or flag brand-invoking prompts**. Midjourney recently banned words like "Disney" or "Pokemon," but "Ghibli" remains unmoderated in many tools.[34] This inconsistent enforcement leaves gaps for misuse.

LEGAL REFORMS AND POLICY PROPOSALS

As Ghibli-inspired AI art blurs the boundary between homage and infringement, legal reforms must address emerging gaps in existing IP frameworks—particularly in jurisdictions like India, where AI regulation is still nascent.

Strengthening Copyright Frameworks for AI

While current copyright laws in India (and many countries) do not recognize AI as an author, there is a pressing need for amendments that:

- **Assign liability to human contributors** (prompt engineers, developers, or publishers) for infringing AI-generated content.[35]
- **Include derivative style protections**, especially when works replicate the recognizable aesthetics of specific artists or studios.[36]
- Define the **scope of 'substantial similarity'** in stylistic imitation and provide fair dealing exceptions for parody, education, or criticism.[37]

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33 Midjourney Banned Word List, *Reddit Discussion on Ethical Prompting*, r/AIArt (2024), https://www.reddit.com/r/aiArt/comments/10r8e2f/midjourney_banned_words_list_and_prompt_ethics/.

34 Tanya Aplin & Lionel Bently, *Gower and Davies' Principles of Modern Copyright Law* 142–144 (Sweet & Maxwell, 2020).

35 N.S. Gopalakrishnan & T.G. Agitha, *Intellectual Property Rights: Text and Cases* 189–194 (Eastern Book Company, 2022).

36 Copyright Act, No. 14 of 1957, § 52, INDIA CODE (1957); See also *Campbell v. Acuff-Rose Music*, 510 U.S. 569 (1994), https://supreme.justia.com/cases/federal/us/510/569/.

37 IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Rule 3(d), https://www.meity.gov.in/content/intermediary-guidelines-and-digital-media-ethics-code-rules-2021.

Trademark Law Reform

Trademark dilution via AI-generated outputs using keywords like "Ghibli" is hard to regulate. Policymakers may consider:

- Creating **blacklists for registered brands and styles** on AI platforms to prevent deceptive prompting.t [38]
- Introducing **digital watermarking or tagging mechanisms** to flag outputs referencing protected artistic styles.
- Clarifying **intermediary liability** under the Indian IT Rules and safe harbor doctrines in the U.S. and EU for AI service providers.[39]

International IP Harmonization

Since generative AI and digital art transcend borders, international IP frameworks must adapt through:

- Updates to **TRIPS Agreement** under WTO and guidance from **WIPO** to include style-based misappropriation.[40]
- Bilateral and multilateral agreements that enforce **ethical AI practices** and preserve indigenous or cultural expressions.
- Regional collaborations between **India, Japan, and the U.S.** to exchange best practices and case precedents in AI regulation.[41]

CONCLUSION AND RECOMMENDATIONS

The rise of Ghibli-inspired AI art represents both the beauty and legal complexity of the generative age. While these tools empower creativity at an unprecedented scale, they also blur the legal lines between homage, imitation, and infringement. The stylistic mimicry of brands like Studio Ghibli—whether by direct prompt usage or visual approximation—raises critical questions for copyright, trademark, and moral rights law.

This paper concludes that current Indian IP laws are ill-equipped to address the nuances of generative AI, especially in the absence of defined authorship, liability structures,

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38 *Viacom Int'l Inc. v. YouTube, Inc.*, https://casetext.com/case/viacom-intl-inc-v-youtube-inc-2;676 F.3d 19 (2d Cir. 2012); Shreya Singhal v. Union of India, (2015) 5 SCC 1, https://indiankanoon.org/doc/110813550/

39 WTO TRIPS Agreement, art. 10, 11, 13; WIPO IP, https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm;& AI Policy Paper (2020), https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=499504.

40 WIPO, *AI and Intellectual Property: Mapping AI Policy Frameworks Across Jurisdictions*, WIPO/PUB/1055/2021, https://www.wipo.int/publications/en/details.jsp?id=4569.

41 Tanya Aplin & Lionel Bently, *Gower and Davies' Principles of Modern Copyright Law* 241 (Sweet & Maxwell, 2020).

or artistic attribution mechanisms. The U.S. and Japanese frameworks, while comparatively evolved, also grapple with style-based infringement and platform accountability.

Key Recommendations

1. Amend Indian Copyright Law

   Introduce a provision for **style-based protection** in derivative works where imitation of iconic art styles (like Ghibli) amounts to economic harm or public confusion.[42]

2. **ClarifyTrademark Dilution via Prompting**

   Guidelines should restrict AI platforms from accepting **commercial prompts using brand names**, unless licensed or in clearly permissible contexts (e.g., parody, education).[43]

3. **Establish AI Attribution and Licensing Systems**

   Encourage AI platforms to integrate **attribution tracking and ethical watermarking**, especially for widely replicated visual styles.[44]

4. **Intermediary Accountability Framework**

   Amend intermediary liability clauses under India's IT Rules and propose shared responsibility between prompt users, AI developers, and commercial redistributors.[45]

5. **Promote International IP Dialogue**

   Collaborate with bodies like **WIPO and WTO** to address cross-border generative art disputes, define 'AI originality,' and harmonize safe harbor policies.[46]

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42 IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Rule 3(d), https://www.meity.gov.in/content/intermediary-guidelines-and-digital-media-ethics-code-rules-2021.

43 Ryan Abbott, *The Reasonable Robot: Artificial Intelligence and the Law* 88–91 (Cambridge Univ. Press 2020), https://www.cambridge.org/core/books/reasonable-robot/55D8B5BC1BE67255A8E3545BB8DE33F9.

44 Shreya Singhal v. Union of India, (2015) 5 SCC 1, https://indiankanoon.org/doc/110813550/

45 WIPO, *AI and Intellectual Property: Mapping AI Policy Frameworks Across Jurisdictions*, WIPO/PUB/1055/2021, https://www.wipo.int/publications/en/details.jsp?id=4569.

46 Tanya Aplin & Lionel Bently, *Gower and Davies' Principles of Modern Copyright Law* 241 (Sweet & Maxwell, 2020).

47 IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Rule 3(d), https://www.meity.gov.in/content/intermediary-guidelines-and-digital-media-ethics-code-rules-2021.

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48 Ryan Abbott, *The Reasonable Robot: Artificial Intelligence and the Law* 88–91 (Cambridge Univ. Press 2020).

49 Shreya Singhal v. Union of India, (2015) 5 SCC 1.

50 WIPO, *AI and Intellectual Property: Mapping AI Policy Frameworks Across Jurisdictions*, WIPO/PUB/1055/2021. https://www.wipo.int/publications/en/details.jsp?id=4569.

Meme Culture and Copyright Law: Fair Use or Infringement?[1]

Ms. Pankaj Nagar & Ms. Neerja Gautam***

ABSTRACT

The rise of meme culture as a dominant form of online expression has created complex legal challenges in the realm of copyright law. Memes often rely on the unauthorized use of copyrighted images, videos, or text, raising the critical question of whether such use constitutes copyright infringement or falls under the doctrine of fair use. This paper examines the legal status of memes through the lens of fair use jurisprudence, focusing on key factors such as purpose, transformation, and market impact. It also explores relevant case law, comparative legal frameworks, and enforcement difficulties in the digital ecosystem. By analysing the interplay between creativity and copyright, the paper argues for a nuanced, balanced legal approach that upholds both intellectual property rights and the evolving norms of digital expression.

Keywords: Meme Culture, Copyright Law, Intellectual Property, User-Generated Content Social Media Law.

INTRODUCTION

In the digital age, the internet has given rise to various forms of creative expression, but none have gained as much prominence and cultural influence as memes. Memes, often characterized as humorous, satirical, or poignant images, videos, and texts, are shared virally across social media platforms, creating a massive, often anonymous, global communication network. What was once a niche form of entertainment has now transcended into a ubiquitous and powerful tool for communication, social commentary, and political activism. Memes have become a primary mode of digital communication, often used to express opinions, criticize societal norms, and respond to current events in real-time. However, memes are not created in a vacuum—they frequently rely on the remixing, transformation, and re-contextualization of existing copyrighted works, such as images, videos, and text, that are often taken without permission from the original creators. This gives rise to significant legal concerns, particularly surrounding the issue of copyright infringement. The rapid growth and

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accessibility of meme creation have brought into sharp focus the question of whether such creative activities fall within the bounds of copyright law, or if they can be justified under the doctrine of fair use. In many cases, memes borrow heavily from copyrighted works whether it be a snippet from a famous movie, an image from a television show, or a clip of a song. The transformative use of these original works raises important legal questions about how copyright law, which was designed to protect the rights of original creators, applies in a digital world where remixing and creative reuse are common practices. Should creators of memes be held liable for infringement, or can their use of these copyrighted materials be defended under the fair use doctrine? At its core, this issue centres on whether the practice of meme creation should be treated as an act of creative expression or as a violation of copyright law. While memes may appear to be a relatively harmless form of entertainment, they often involve the use of highly recognizable copyrighted works, which, under traditional copyright rules, are protected by exclusive rights granted to the original creators. This raises an important question: can a meme that uses, alters, or appropriates someone else's work be justified as a fair use of copyrighted material, or does it amount to infringement? This paper explores this question, examining both the fair use provisions under copyright law and the way in which they interact with the digital phenomenon of memes.

THE RISE OF MEME CULTURE AND THE DIGITAL TRANSFORMATION OF CREATIVE EXPRESSION

To understand the legal implications of meme culture, it is important to first explore the cultural and technological evolution that has led to its proliferation. A meme, in its most basic form, can be defined as a unit of cultural information or behavior that spreads rapidly among individuals, often evolving in the process. While memes have existed in various forms throughout human history, the modern digital meme has emerged with the rise of social media and digital communication platforms. Memes often involve the remix culture, a practice of taking pre-existing material and adding new meaning, context, or humor. This approach has become the foundation of digital creativity, allowing users to participate in a shared culture of creativity, satire, and parody.The rise of meme culture has been closely intertwined with the advent of social media platforms such as Facebook, Twitter, Instagram, and Reddit, which have provided an unprecedented ability for individuals to create, share, and distribute content with a wide audience. Memes are often created by ordinary users who engage in remixing and transforming existing content, making them a form of participatory culture that breaks down traditional boundaries between creators and consumers. Unlike traditional forms of media, which are created by professionals or institutions, meme culture encourages user-generated content, where anyone with an internet connection can participate in the creation and dissemination of cultural expressions.This democratization of content creation has led to an explosion of memes across the internet, with billions of memes shared daily. As a result, memes have transcended from mere entertainment to a significant cultural phenomenon that plays a crucial role in shaping public discourse, political debates, and social movements. From political memes that

challenge authority and comment on governance, to memes that act as an escape from the pressures of everyday life, the diversity and versatility of memes have cemented their place as a dominant form of expression in the digital age.

COPYRIGHT LAW AND THE ORIGINS OF LEGAL CONCERNS

With the rapid rise of meme culture, legal concerns surrounding copyright infringement have become more pressing. Copyright law is designed to protect the creative works of authors, providing them with exclusive rights to use and distribute their work. The basic premise of copyright is to incentivize creators by allowing them to control the use of their intellectual property. However, in the context of meme creation, the balance between protecting the rights of original creators and fostering a creative, participatory culture becomes increasingly difficult to maintain.

The traditional view of copyright law revolves around the idea of the exclusive rights of creators. These rights include the right to reproduce, distribute, display, perform, and create derivative works based on the original creation. Copyright infringement occurs when a person uses a copyrighted work without permission from the copyright holder and does so in a way that violates the exclusive rights granted under copyright law.

For the creators of memes, the problem arises when they use someone else's copyrighted material be it a clip from a movie, an image from a video game, or a famous quote from a television show in order to create new content. While these memes may be transformative in nature sometimes altering the original material significantly by adding new context, humor, or meaning this transformation does not automatically exempt them from copyright protection. If the use of copyrighted material does not fall under one of the exceptions or limitations in copyright law, it may be deemed as an infringement.This issue has led to an ongoing debate about the **fair use doctrine**a legal provision that permits certain uses of copyrighted works without permission from the copyright holder, under specific circumstances. Fair use is designed to allow for **critical commentary**, **education**, **parody**, **news reporting**, and **creative expression**, among other uses. The question becomes whether the creation of a meme can be justified as fair use, or whether it crosses the line into infringement.

THE DOCTRINE OF FAIR USE: A DOUBLE-EDGED SWORD

The doctrine of fair use is a critical element in understanding how memes can interact with copyright law. Fair use provides a **limited** exception to the exclusive rights of copyright holders, allowing others to use copyrighted material under certain conditions without permission. This doctrine is particularly important in the digital realm, where remixes, parodies, and transformative uses are a common part of online culture.In the United States, the **four-factor test** is used to determine whether a specific use of copyrighted material constitutes fair use. These factors include:

1. **The purpose and character of the use** – Whether the use is for commercial purposes or is non-commercial and transformative in nature.

2. **The nature of the copyrighted work** – Whether the original work is factual or creative.
3. **The amount and substantiality of the portion used** – How much of the original work is used and whether the use of that portion is essential to the new work.
4. **The effect of the use on the potential market for the original work** – Whether the use competes with the original work and harms its market value.

Memes, in many cases, meet the criteria for transformative use, which is a key factor in determining fair use. For example, a meme that takes a famous image from a movie and adds humorous text or a political message significantly alters the original work. This transformation may be considered as falling under fair use, particularly if the use is non-commercial and is intended to create new meaning or commentary. However, in some cases, memes may use large portions of copyrighted works or may not provide sufficient transformation, leading to concerns about potential infringement.The **fair use doctrine** is not a blanket protection and requires careful analysis of the four factors. Memes often fall into a gray area, where their use may seem to be transformative and fall under fair use, but they may also pose a threat to the original market for the copyrighted work, particularly when they are used in commercial contexts or go viral across the internet.

LEGAL PERSPECTIVE UNDER INDIAN COPYRIGHT LAW

In India, the legal status of memes is governed primarily by the **Copyright Act, 1957**, which outlines the rights of creators and the limitations on those rights. Memes often involve the use of copyrighted images, film stills, dialogues, or audio clips—materials typically protected under the Act. The growing popularity of memes raises critical legal questions about **infringement**, **fair dealing**, and **transformative use**, especially as these humorous creations are widely shared on digital platforms without seeking the permission of original rights holders.

• Copyright Protection in India

Under **Section 14 of the Copyright Act, 1957**, the copyright holder is given the exclusive right to reproduce, adapt, distribute, and communicate the work to the public. Any reproduction of a copyrighted work be it in whole or substantial part—without permission constitutes **infringement**, unless it falls within a statutory exception.In the case of memes, using a copyrighted image (like a frame from a Bollywood film or a celebrity photograph) may prima facie amount to infringement, especially when the original work is used **without significant transformation** or **proper attribution**.

• The Fair Dealing Exception

India does not follow the broad **fair use** doctrine like the United States but instead recognizes a narrower concept called **"fair dealing"** under **Section 52 of the Copyright Act**. The provision lists specific situations where the use of copyrighted material does not amount to infringement, such as:

- Private or personal use, including research;
- Criticism or review, whether of that work or any other work;
- Reporting of current events and affairs;
- Judicial proceedings or proceedings before a legislative or statutory authority.

The challenge lies in determining whether memes fall under any of these permissible uses. If a meme is clearly satirical, political, or used to criticize or comment on a social event, it might be protected under the fair dealing provision. However, the law does not explicitly mention **parody** or **satire** as exceptions, which creates ambiguity and makes enforcement highly subjective.

JUDICIAL INTERPRETATION AND CASE LAW

Indian courts have addressed the scope of fair dealing in several decisions, though not specifically in the context of memes. In **Civic Chandran v. AmminiAmma (1996)**, the Kerala High Court held that fair dealing must be assessed based on the purpose of the use and the degree of transformation. The court emphasized that if the new work comments on or critiques the original, it is more likely to be considered fair dealing.

In **Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd. (2010)**, the Delhi High Court clarified that mere reproduction, even for entertainment, does not automatically qualify for fair dealing. The court held that transformative use is crucial, and if the intent is purely commercial, the defense of fair dealing may not succeed.

These judgments suggest that meme creators in India must ensure that their works are not mere reproductions but are **transformative** and **commentative** in nature. Memes that simply replicate copyrighted material for humor or entertainment—without any critical commentary—are less likely to be protected.

PLATFORM LIABILITY AND SAFE HARBOUR

Under the **Information Technology Act, 2000**, intermediaries like Instagram, Facebook, and Twitter enjoy a degree of immunity under **Section 79**, provided they act as neutral platforms and take down infringing content upon receiving notice. However, this safe harbour is conditional on due diligence, and platforms are increasingly pressured to implement **automated content moderation**.

While copyright holders can send takedown notices to platforms under Section 51 of the Copyright Act or use the IT Act, meme creators often lack the legal awareness or resources to challenge wrongful takedowns. Additionally, the **absence of a mechanism** to assess whether a meme is "fair dealing" before removal often results in **over-censorship**, chilling online creativity.

THE NEED FOR LEGAL REFORM

Given the rise of user-generated content and evolving digital culture, Indian copyright

law is arguably **ill-equipped** to handle the complexities of meme culture. The current statutory framework does not provide a clear exception for **transformative parody**, leading to legal uncertainty. There is a growing call from scholars and digital rights activists for reforms that recognize memes as a distinct form of **digital expression**, deserving protection under a broadened interpretation of fair dealing.

Until such reforms are introduced, meme creators must tread carefully, especially in commercial contexts or when using content owned by well-resourced rights holders. Legal literacy, clearer guidelines, and possibly judicial recognition of memes as **modern-day parody or critique** are essential steps forward.

THE CHALLENGES OF ENFORCEMENT IN THE AGE OF DIGITAL MEDIA

The proliferation of meme culture in the digital age presents unique and formidable challenges to the enforcement of copyright law. As memes are shared, reshaped, and re-posted across global platforms at lightning speed, the ability of copyright holders to monitor and control the use of their protected works becomes increasingly difficult, if not impossible in practical terms. Traditional enforcement mechanisms, designed for slower and more traceable forms of media distribution, struggle to cope with the decentralized, anonymous, and viral nature of digital communication.Memes are inherently viral; their very purpose is to be replicated, modified, and circulated within online communities. Platforms like **Facebook**, **Instagram**, **Twitter**, **Reddit**, and **TikTok** function as high-speed conduits for this flow of content, enabling memes to reach vast audiences within minutes. Often, the creators of these memes are anonymous or use pseudonyms, and once a meme gains traction, it can be copied and re-shared by thousands or even millions of users across different platforms, regions, and jurisdictions. This reality renders the enforcement of copyright law exceedingly complex. A rights holder who identifies one instance of infringement may find it already replicated across countless sites and accounts, making comprehensive enforcement akin to a game of digital "whack-a-mole."

Adding to the difficulty is the role that **social media platforms** play as intermediaries in the sharing of memes. These platforms are governed, in jurisdictions like the United States, by frameworks such as the **Digital Millennium Copyright Act (DMCA)**, which provides a notice-and-takedown system to address claims of copyright infringement. Under the DMCA, copyright holders can submit takedown notices to platforms, requesting that infringing content be removed. In response, platforms are typically obligated to act promptly to remove the content and avoid liability. While this mechanism offers a formal legal avenue for addressing unauthorized uses, it is inherently **reactive**intervention only begins after an infringement is reported. Given the speed with which memes spread, the content may have already gone viral or been reposted by the time a takedown notice is processed.Moreover, the DMCA and similar processes often fail to address the more nuanced issue of **fair use**. Many memes are potentially **transformative**they comment on, parody, or criticize the original work, thus raising a valid legal defense under fair use doctrine. However, automated systems and even human moderators reviewing takedown requests may lack the legal sophistication to

assess the context and intent behind a particular meme. As a result, content that should be protected under fair use may be wrongly taken down, raising concerns about over-enforcement and the chilling effect on free expression.

To manage the overwhelming volume of content, many platforms have turned to automated content identification systems such as YouTube's Content ID, Facebook's Rights Manager, or TikTok's automated filters which scan uploads against databases of known copyrighted works to detect potential matches. While these tools have improved the efficiency of enforcement, they are far from perfect. They may flag and remove content that merely resembles copyrighted material, even if it is legally permissible under fair use, satire, or parody. Conversely, they may fail to detect subtle uses of copyrighted elements that are cleverly integrated or altered. This creates a paradox: while rights holders demand better enforcement, users demand fairer treatment of their expressive works.

Another major challenge lies in the anonymity and ephemerality of online content. Many meme creators use anonymous accounts or temporary usernames that leave little to no trail. Even when a copyright holder wishes to pursue legal action, identifying the actual person behind an infringing meme is often difficult, requiring cooperation from platforms and, in some cases, court orders. Additionally, content on platforms like Instagram Stories or Snapchat may disappear within 24 hours, erasing the evidence of infringement before action can be taken. In such cases, even the most vigilant rights holder may be unable to enforce their rights effectively.

The global nature of digital media also complicates enforcement. A meme may originate in one country, use copyrighted material from another, and be viewed by users in dozens more. Copyright laws vary widely across jurisdictions what qualifies as fair use in the United States may not be considered fair dealing in countries like the UK, Canada, or India. Cross-border enforcement of intellectual property rights is fraught with legal, procedural, and diplomatic hurdles. International treaties like the Berne Convention and TRIPS Agreement attempt to harmonize copyright standards, but enforcement mechanisms remain largely national and difficult to coordinate on a global scale.

Finally, there is an increasing recognition of the cultural value of memes and the need for balance between copyright enforcement and the protection of digital expression. Overzealous enforcement risks stifling legitimate creativity, social critique, and commentary core purposes that copyright law itself was meant to foster. Memes often serve as a form of political speech, satire, or communal storytelling, and their value cannot be reduced solely to whether they infringe on a copyright. Courts and policymakers are increasingly being called upon to consider these broader social contexts when interpreting copyright law in the digital sphere.

The enforcement of copyright law in the age of digital media is facing unprecedented challenges. The speed, anonymity, and global reach of meme culture have outpaced traditional legal frameworks and enforcement tools. While mechanisms like the DMCA provide a foundational structure for responding to infringement, they are ill-equipped

to handle the scale and complexity of online meme dissemination. Automated systems offer some assistance but are prone to errors and legal misjudgements. The future of copyright enforcement in the meme era will likely require a combination of technological innovation, legal reform, and a deeper understanding of the balance between intellectual property rights and digital creativity. It is clear that a rigid enforcement approach may no longer be viable what is needed is a nuanced, adaptive legal framework that respects both the rights of creators and the evolving dynamics of digital expression.

CONCLUSION: NAVIGATING THE TENSION BETWEEN COPYRIGHT PROTECTION AND DIGITAL CREATIVITY

As meme culture cements its role as a defining mode of communication and expression in the digital age, the law must grapple with unprecedented challenges in balancing the rights of creators with the freedoms of users. The rapid evolution of internet culture has blurred the traditional boundaries between authorship, ownership, and audience engagement. In this context, the legal frameworks that were developed in an era of analog media are increasingly being tested by the participatory, decentralized, and remix-based nature of digital content. Copyright law, at its core, is designed to incentivize creation by protecting the rights of original authors. However, in the case of memes where humor, satire, commentary, and cultural critique are often built on pre-existing works rigid enforcement of copyright can unintentionally stifle the very creativity and dialogue it seeks to promote.The doctrine of fair use emerges as a key mediator in this legal tension, offering a mechanism through which transformative and socially valuable uses of copyrighted works can be shielded from claims of infringement. Nevertheless, the application of fair use is far from automatic or universal. It requires a nuanced, fact-specific analysis of several factors, including the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used, and the effect on the market for the original. In the context of memes, where content is frequently modified, recontextualized, and used for commentary or humor, the potential for fair use is significant—but not guaranteed. Courts must tread carefully, recognizing both the rights of original creators and the evolving norms of digital creativity that value transformation and communal engagement.Moreover, the legal system must consider the broader social and cultural implications of meme creation and sharing. Memes often serve as vehicles for political expression, social critique, and collective identity. Overzealous copyright enforcement, particularly when deployed through automated content takedown systems, may disproportionately impact marginalized voices who rely on memes as a low-barrier tool for expression. As such, a more flexible and context-sensitive approach is necessary—one that prioritizes balance over rigidity and acknowledges that digital creativity often builds upon the past to comment on the present.Looking ahead, a forward-thinking legal response to meme culture will require not only judicial clarity but also legislative innovation, platform accountability, and public education. Legislators may need to refine existing copyright statutes to better accommodate the realities of digital media. Online platforms, as intermediaries, should adopt transparent policies and improved mechanisms for resolving fair use disputes. Educators and creators alike

should be equipped with a better understanding of copyright rights and exceptions, empowering users to make informed decisions while respecting original works.

In conclusion, the evolution of meme culture underscores the urgent need for copyright law to adapt to the digital era. Rather than viewing copyright protection and digital creativity as inherently conflicting goals, the law must evolve to support both encouraging original creation while also allowing room for remixing, parody, and commentary that enrich the cultural commons. Only by adopting a balanced, adaptive, and inclusive approach can we ensure that copyright law continues to serve its dual purpose: protecting authors and promoting the progress of creativity in a world increasingly shaped by the dynamics of digital expression.

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E-Waste: A Burgeoning Human Rights Solicitude

Ms. Reenu Rana & Prof. (Dr.) Namrata Luhar***

ABSTRACT

With the hasty boom in the technological innovations, the demand for novel and improvised electronic goods has increased multifariously resulting in thunderous escalation in the obsolete electrical and electronic goods that have not even reached their end of life. The WHO has also considered E-Waste as a biggest global challenge and has raised concerns about its effects on human health.[1] The paper aims to spotlight the way human rights are violated due to perilious e-waste dumping and disposal techniques. The researchers have highlighted the major concerns and the hazardous implications of e-waste on human rights.

Keywords: E-waste, Human Rights, Electrical and Electronic Equipment, Hazardous, Environment, Informal Sector.

INTRODUCTION

Technological boom has led to the outburst of electrical and electronic gadgets making life of people more comfortable and serene. Novel and innovative electrical equipments are being introduced in the market on quotidian basis resulting in shortened life span of electrical and electronic equipments (EEE) thereby making them obsolete much before they reached end of their life. Electronic gadgets are not always propitious due to the embodiment of highly toxic and hazardous components. These hazardous components in turn affect the environment and health of the living beings on earth in a catastrophic manner.

The enormous generation of e-waste is a matter of real solicitude not only for the developing nations but also for the developed countries. In the contemporary society one cannot think of existence without EEE making it really important to dispose e-waste in an environment friendly manner as more reliance on electronic components

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1 https://www.who.int/news/item/15-06-2021-soaring-e-waste-affects-the-health-of-millions-of-children-who-warns ((last visited on October 10, 2022).

would result in huge pile of e-waste that would pose a serious threat for the environment and human health.The problem would accelerate manifolds in the near future due to the excessive dependence on computers, mobile phones and other electrical gadgets.

E-Waste comprises of hazardous as well as valuable and precious components mandating its treatment and disposal in an environment friendly manner. Due to the inclusion of toxic components, e-waste is not always benevolent for mankind as well as flora and fauna. Some of the hazardous components of e-waste are arsenic, beryllium. Barium, mercury, lead, brominated flame retardants, polyvinyl chloride, Phthalate esters, hexavalent chromium, cadmium, brominated flame retardants and many more.[2] These components have the tendency of causing life threatening impact on the living beings. E-Waste includes electronic equipments that lights out or is discarded by the ultimate user. E-Waste (Management) Rules, 2016 defines E-waste as "Any electrical and electronic equipment, whole or in part discarded as waste by the consumer or bulk consumer as well as rejects from manufacturing, refurbishment and repair processes".[3] This definition seems to be exhaustive as it imbibes all the components of electronic equipment. As per UN, "E-Waste is any discarded product with a battery or plug, and features toxic and hazardous substances such as mercury, that can pose severe risk to human and environmental health".[4] This definition provides a comprehensive overview of the austere nature of e-waste components. It seems to provide that e-waste is a serious source for disquietude in the modern times.

MAGNITUDE OF THE E-WASTE PROBLEM

According to Global E-Waste Monitor 2020, nearly 53.6 million metric tonnes of e-waste was generated worldwide in the year 2019 which has increased up to 21 per cent in just five years which would reach 74 million metric tonnes (MT) by 2030.[5] Out of total worldwide generated e-waste in the year 2019, only 9.3 MT amounting to about 17.4 per cent of the total e-waste generation was collected and recycled.[6] Apart from this 17.4 per cent, remaining is illegally dumped in the developing nations where it is treated by the informal sector in a very unscientific method by making use of primitive techniques.[7] As per Global E-waste Monitor 2020, the world's fastest growing domestic waste stream is the e-waste because of its ephemeral life span. Asia is the tempestuous generator of e-waste in the year 2019 to nearly about 24.9 MT followed

2 Human Rights Impacts of E-Waste, Available at: https://www.ciel.org/wp-content/uploads/2015/10/HR_EWaste.pdf (Last visited on April 10, 2023).

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5 The Global E-waste Monitor 2020 – Quantities, flows, and the circular economy potential, Available at: https://ewastemonitor.info/gem-2020/ (last visited on July 10, 2022).

6 Ibid.

7 Growing Threat of E-waste Affecting Millions of Children Worldwide, WHO Warns, Available at: https://sdg.iisd.org/news/growing-threat-of-e-waste-affecting-millions-of-children-worldwide-who-warns/ (Last visited on November 1, 2022)

by America and Europe generating nearly 13.1 MT and 12 MT respectively.[8]As per the report, the e-waste generated in 2019 weighs more than all the adults in Europe and is equivalent to 350 cruise ships of the size of Queen Mary 2 that is copious to form 125 Km long line.[9]E-Waste is stipulated as one of the major quagmire by the International Telecommunication Union.[10] In one of the report of 2015, by the United Nations Environment Programme, titled as 'Waste Crimes, Waste Risks: Gaps and Challenges in the Waste Sector', it was reckoned that nearly 60 per cent to 90 per cent of e-waste having worth of about USD 19 billion is dumped or traded illegitimately each year.[11] Retired Justice Arun Kumar Mishra, the chairperson of National Human Rights Commission had shown dismay regarding illegal dumping and trading of e-waste by the developed nations in the developing and under developed countries.[12]

Director General of WHO, DrTedrosAdhanomGhebreyesus, has expressed his deep concern over e-waste by asseverating it as "With mounting volumes of production and disposal, the world faces what one recent international forum described as a mounting 'Tsunami of E-Waste', putting lives and health at risk".[13] The WHO has manifested perturbation for protecting the health of the most vulnerable group – the children from the clutches of the ever-growing e-waste menace.

Hazardous Components of E-Waste and their occurrence in Electrical and Electronic equipment with their relative effect on Human Health[14]

Components	Effect on Human Health	Occurrence in Electrical and Electronic Equipment
Lead (Pb)	It affects brain development, damages the central and peripheral nervous system, harmful for human reproductive system, DNS dent, affects metabolism and neuropsychological functions, skin lesions, headache, nausea, gas, malfunction of kidneys, learning disability in kids, affects the circulatory system and the endocrine	Plastic stabilizer, Printed Circuit Boards, Rechargeable Ni-Cd batteries, Printer ink, Toners, Cathode Ray Tube (CRT) screens, Semiconductor chips
Arsenic (As)	It causes nausea, allergic reactions, dermatitis, vomiting, abnormal heart rate, decreases production of red blood cell and white blood cell	LED
Beryllium (Be)	Potential human carcinogen, lung damage and allergic reaction	CRT and Circuit Boards

8 Supra Note 3.

9 Ibid.

10 Supra Note 2.

11 Ibid.

12 NHRC chairperson expresses concern over dumping of e-waste by developed countries, Available at: https://www.thehindu.com/sci-tech/energy-and-environment/nhrc-chairperson-expresses-concern-over-dumping-of-e-waste-by-developed-countries/article65890308.ece (Last visited on April 1, 2023).

13 Soaring e-waste affects the health of millions of children, WHO warns, Available at: https://www.who.int/news/item/15-06-2021-soaring-e-waste-affects-the-health-of-millions-of-children-who-warns (Last visited on April 1, 2023).

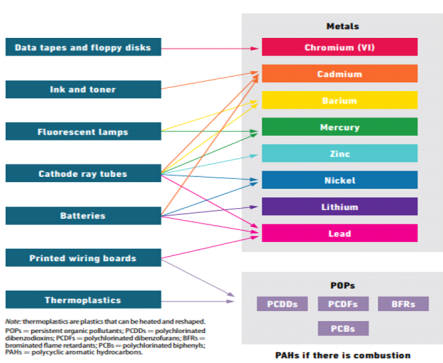
14 Dr.Navtika Singh Nautiyal and Shuchita Agarwal, "Future of E-Waste Management Challenges and Opportunities"109, (Thomas Reuters, Legal 2021).

Copper (Co)	Irritation in Intestine and Stomach, Anaemia, Kidney damage and Liver damage	Electrical Wirings, CRT
Cadmium (Cd)	Bone fragility and damage of Kidney and lungs, DNA damage, Neurological and Respiratory disorders in kids	Light sensitive resistors, Rechargeable Nickel Cadmium Batteries, Phosphor Emitters in CRT Screens, Printed Circuit Boards (PCB) and Semiconductors
Mercury (Hg)	High Blood Pressure, Kidney and Lung Damage, Increased Heart Rate, Chronic Brain Related Disorders, DNA damage, Behavioural Disorder, Impair Foetus Enlargement, Effects Human Food Chain, Damages Central and Peripheral Nervous System, Ataxia,	Alkaline Batteries, LCD backlights, Monitor Thermostats
Zinc (Zn)	It causes Skin Damage, Cytotoxicity, Ischemia and Trauma	Anticorrosion coating in CRT
Chromium (Cr)	Causes Liver and Kidney Damage	Floppy discs, Metal housing and plates in the Computer
Nickel (Ni)	Causes Allergic Reactions, Asthma, skin Allergy, Malfunctioning of Lungs	Electron Gun in CRT Screens Rechargeable Nickel Cadmium Batteries, PCB, CRT Tubes
Rare Earth Elements	It causes Irritation in the Skin and Eyes	Fluorescent Layer
Plastics	It causes Cancer, Immunology of Humans and affects the Reproductive System	Electronic Equipment

Source: Future of E-Waste Management Challenges and Opportunities"109, (Thomas Reuters, Legal 2021).

Apart from these components e-waste also contains other hazardous substances such as polychlorinated biphenyls (PCBs), polybrominated biphenyls (PBBs), polybrominated diphenyl ethers (PBDEs), brominated flame retardants (BFRs), and valuable substances such as iron, steel, copper, aluminium, gold, silver, platinum and palladium.[15]

COMMON TOXICANTS RELEASED IN THE ATMOSPHERE DUE TO PRIMITIVE WASTE MANAGEMENT TECHNIQUES



Source: Children and digital dumpsites: e-waste exposure and child health.

15 G. Gaidajis, K. Angelakoglou and D. Aktsoglou, "*E-waste: Environmental Problems and Current Management*", 3 JESTR 193-199 (2010), available at: http://www.jestr.org/downloads/volume3/fulltext342010.pdf (last visited on June 2, 2022).

RIGHT TO LIFE AND HEALTHY ENVIRONMENT

Article 21 provides "No person shall be deprived of his life or personal liberty except according to procedure established by law".[16] Initially Article 21 provided a restricted view and Right to Personal Liberty was not considered to imbibe 'Right to pure environment'. But in Rural Litigation and Entitlement Kendra, Dehradun Vs. State of U.P.[17], Right to Wholesome Environment was incorporated in Article 21 to give it a wider scope thereby making Right to Pollution Free Environment as a Fundamental Right.[18] Judiciary acts a guardian of fundamental rights of the people. The judiciary through the activist approach has taken commendable steps for ensuring the people with pollution free environment. Through judicial activism, judiciary has kept a very vigilant eye for protecting the environment. The Supreme Court has ensured the Right to Pollution Free Environment as a fundamental right under Article 21 through the approach of Judicial Activism.

Right to life, as per Supreme Court, includes the right to live in a pollution free and healthy environment.[19] The Supreme Court has made the Right to Pollution Free Environment as justiciable and enforceable. The Supreme Court made it clear that the material resources like forests, ponds, lakes, mountains, tanks are the rewards of nature as they help in maintain ecological balances so, they need to be protected for enabling people of the country in enjoying a quality life free from pollution which is the very essence of Article 21 of the Indian Constitution.[20]

But E-Waste has emerged as one of the major pollutant of our environment and has been considered as the pre-eminent violator of the Right to Pollution Free and Healthy Environment. E-Waste contains extremely hazardous substances that require a specific treatment for its disposal and cannot be dumped in landfills. Because of the presence of toxic components present inside the e-waste, the trade related to e-waste is restricted by the United Nations Basel Convention.[21] The objective of Basel action Network is to ensure the proposal for disposal of e-waste rather than dumping it into less developed nations.[22]

Despite Basel Convention regulation regarding e-waste trade, e-waste is exported to developing nations because of the availability of low cost labour and imperfect

16 The Constitution of India, Article 21.

17 Available at: https://indianlawportal.co.in/rural-litigation-and-entitlement-kendra-dehradun-others-v-state-of-uttar-pradesh-others/ (Last visited on April 8, 2023).

18 Dr. H.N. Tiwari, Environmental Law 89 (Allahabad Law Agency, 6thedn., 2019).

19 M.C. Mehta Vs. Union of India, AIR 1987, SC 965, M.C. Mehta Vs. Union of India, AIR 1988, SC 2217, Vellore Citizens Welfare Association Vs. Union of India, AIR 1996, SC 2715, Indian Council of Enviro Legal Action Vs. Union of India, AIR 1996, SC 1446.

20 Hinch Lal Tiwari Vs. Kamala Devi, 2001, Available at: https://indiankanoon.org/doc/147864248/ (Last visited on April 8, 2023).

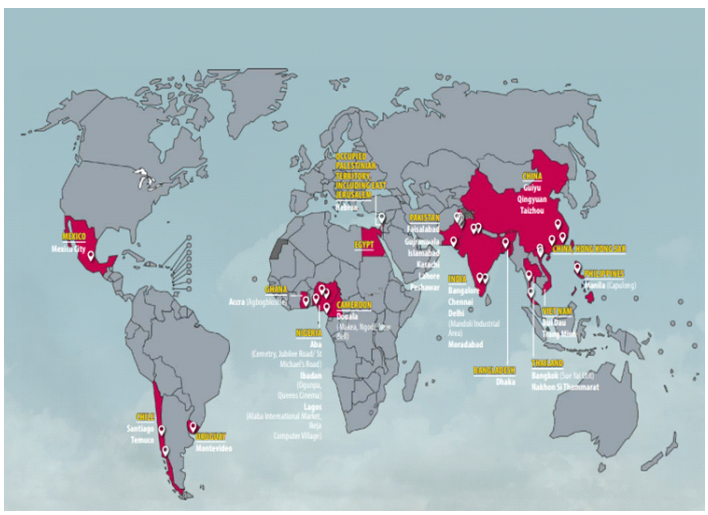
21 Global E-Waste Monitor 2020.

22 Ibid.

environmental regulations.[23] The informal sector dealing with e-waste is not vigilant about the health and environmental hazards associated with the unscientific handling of e-waste.[24]

Recycling in informal sector means burning of circuit boards, soaking of microchips in acid and burning of plastics which in turn proves very harmful for the health of the workers and the environment.[25] The workers are exposed to great risk as soon as they start disassembling of the old electrical equipment.

LOCATIONS OF INFORMAL E-WASTE DISMANTLING AND RECYCLING SITES[26]



Source: Children and digital dumpsites: e-waste exposure and child health.

HUMAN RIGHTS TRANSGRESSION DUE TO E-WASTE

Right to Food:

Right to food has been recognised by several international conventions and Human Rights Treaties as one of the important Human Right. Right to Food, is further connected and interlinked with other Human Rights. Hence, non-realisation of any Human Right would have a direct impact on Right to Food.Right to Food is guaranteed to everyone through Article 25(1) of Universal Declaration of Human Rights divulging that "Everyone

23 Decent work in the management of electrical and electronic waste (e-waste), Available at: https://www.ilo.org/wcmsp5/groups/public/—ed_dialogue/—sector/documents/publication/wcms_673662.pdf (Last visited on: April 8, 2023).

24 Ibid.

25 Ibid.

26 Children and digital dumpsites: e-waste exposure and child health, Available at: https://www.who.int/publications/i/item/9789240023901 (Last visited on June 2, 2022).

has the right to a standard of living adequate for the health and well-being of himself and of his family, including food".[27]

Article 11 of International Covenant on Economic, Social and Cultural Rights stipulates that the "States Parties "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing...".[28] Paragraph 2 of Article 11 of the Covenant recognizes that it is the fundamental right of everyone to be free from hunger and it also provided for the measures by the States individually and through international cooperation for bringing an end to the hunger.[29]

Article 27(1) of the United Nations Convention on the Rights of a Child (UNCRC) provides that "children and young people should be able to live in a way that helps them reach their full physical, mental, spiritual, moral and social potential".[30] The Article further stipulates that for giving effect to said provision, the children should have access to adequate food and clothing. The UNCRC stipulates that "all children up to 18 years of age are human beings in their own right, and are entitled to inalienable rights – inherent to human dignity – including the right to healthy food and adequate nutrition, the right to non-discrimination, and the right to consider their best interests in all mattersthat affect them".[31]

Principle 4 of the Declaration of the Rights of the Child provides that, "The Child shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to child and the mother, including adequate pre-natal and post-natal care and the child shall have the right to adequate nutrition, housing, recreation and medical services".[32]

Article 12(2) of The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) incorporates that, "The States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation".[33]

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27 The human right to adequate food and freedom from hunger, Available at: https://www.fao.org/3/w9990e/w9990e03.htm (Last visited on: May 5, 2023).

28 Ibid.

29 Ibid.

30 Convention on the Rights of the Child, Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child (Last visited on: May 5, 2023).

31 Protecting Children's Right to a Healthy Food Environment, Available at: https://www.unicef.org/media/96101/file/Protecting-Childrens-Right-Healthy-Food-Environment.pdf (Last visited on: April 5, 2023).

32United Nations Declaration of the Rights of the Child (1959), Available at: https://www.humanium.org/en/text-5/#:~:text=Principle%204,natal%20and%20post%2Dnatal%20care. (Last visited on: April 5, 2023).

33 Convention on the Elimination of All Forms of Discrimination against Women, Available at: https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf (Last visited on: March 5, 2023).

Article 6 of the Declaration on the Protection of Women and Children in Emergency and Armed Conflict stipulated that, "the Women and children belonging to the civilian population and finding themselves in circumstances of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence, or who live in occupied territories, shall not be deprived of shelter, food, medical aid or other inalienable rights, in accordance with the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration of the Rights of the Child or other instruments of international law".[34]

Article 1 of the Universal Declaration on the Eradication of Hunger and Malnutrition stipulates that' "Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties".[35]Right to adequate food is also stipulated in 'Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security'.[36]

E-Waste entails extremely deleterious components that perambulate into sources of our food through the soil that possesses toxic qualities due to landfills. The primitive e-waste recycling activities lead to the generation of Polyaromatic Hydrocarbons (PAH) into the soil resulting in detrimental effects on human health and environment.[37] The food articles grown near the dismantling sites contain high value of PAH making it dreadful for the life of living creatures. Such contaminants in the tissues of livestock and are excreted in the form of eggs and milk.[38] E-Waste violates with the provisions of Right to Food ensured by various international conventions.

***Right to Life*:**

Article 3 of UDHR ensures that "Everyone has the right to life, liberty and security of person".[39] Article 6 of ICESCR provides that "Every human being has the inherent

34 Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-protection-women-and-children-emergency-and-armed (Last visited on: April 5, 2023).

35 Universal Declaration on the Eradication of Hunger and Malnutrition, Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/universal-declaration-eradication-hunger-and-malnutrition#:~:text=1.,competence%20to%20achieve%20this%20objective. (Last visited on: April 5, 2023).

36 VOLUNTARY GUIDELINES to support the progressive realization of the right to adequate food in the context of national food security, Available at: https://www.fao.org/3/y7937e/y7937e.pdf (Last visited on April 2, 2023).

37 Supra Note 18.

38 Ibid.

39 Universal Declaration of Human Rights, Available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%203,liberty%20and%20security%20of%20person. (Last visited on: April 5, 2023).

right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."[40]

Article 6 of the UNCRC entails that, "States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child."[41]

ILO Declaration on Fundamental Principles and Rights at Work has also given recognition to safe and healthy working environment.[42]

Apart from these, almost every Human Right Treaty recognizes Right to Life. E-waste is immensely precarious for the right to life guaranteed by these international covenants due to the potential of releasing extremely toxic substances in the soil and the environment because of the unscientific and uncontrolled methods of treatment disposal and dismantling activities causing headaches, vertigo, skin diseases, neurological disorders, still birth, chronic gastritis, duodenal ulcers, psychological disorders, kidney failures, cancer and many more disorders in the humans.

Right to Highest Attainable Standard of Health:

Article 25(1) of UDHR incorporates that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".[43]

Article 12(1) of the ICESCR recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."44 The rights of workers to healthy working conditions are also recognized under this covenant.

Article 24 of the UNCRC recognizes, "the right of the child to the enjoyment of the highest attainable standard of health".[45] Article 24 also takes into consideration the dangers and risks related to environmental pollution affecting the child's health.[46]

Article 12 of CEDAW also recognizes the human right to health. "The treaty obligates all State parties to take all appropriate measures to eliminate discrimination against

40 International Covenant on Civil and Political Rights, Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights (Last visited on: November 5, 2022).

41 Convention on the Rights of the Child, Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child (Last visited on March 5, 2023).

42 ILO Declaration on Fundamental Principles and Rights at Work, Available at: https://www.ilo.org/declaration/lang—en/index.htm (Last visited on: April 5, 2023).

43 Universal Declaration of Human Rights, Available at: https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf (Last visited on: April 5, 2023).

44 The Right to Health, Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf (Last visited on April 5, 2023).

45 Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf (Last visited on April 5, 2023).

46 Ibid.

women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services".[47] Article 12(2) ensures "States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation".[48]

"The ILO Constitution sets forth the principle that workers must be protected from sickness, disease and injury arising from their employment."[49]The enjoyment of the highest attainable standard of health as a fundamental human right is also affirmed by the WHO Constitution.[50]

The behavioural and developmental status of children makes them vulnerable to the exposure of e-waste. The e-waste constituents can impact the function and structural development of the lungs and neurological development.[51] The vulnerability of children to infection and injury is quite high. The bodies of children react differently to toxic substances than adults and are not able to break down hazardous substances and thereby eliminate them.[52] The outmoded techniques of e-waste recycling and dismantling have resulted in contaminating the soil and water to an enormously different level. As a result, divergent health problems gets associated with our skin, respiratory tract, brain, lungs, kidney, liver and other organs of the body. Further, even for adults E-waste can cause similar health problems.

Human Rights of the Vulnerable Workers:

Article 23 of UDHR affirms that "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment".[53]Article 7(2)(ii) of ICESCR ensures that "the States Parties must recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure a decent living for themselves and their families and safe and healthy working conditions".[54]

Article 32(1) of the UNCRC provides that "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that

47 Ibid.

48 Ibid.

49 Available at: https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang—en/index.htm#:~:text=safety%20and%20health-,International%20Labour%20Standards%20on%20Occupational%20Safety%20and%20Health,injury%20arising%20from%20their%20employment. (Last visited on April 6, 2023).

50 Ibid.

51 Supra Note 21.

52 Ibid.

53 Available at: https://www.humanrights.com/course/lesson/articles-19-25/read-article-23.html (Last visited on: April 6, 2023).

54 Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights#:~:text=Article%206-,1.,2. (Last visited on April 6, 2023).

is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development".[55] Article 36 of the said Convention provides that "States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare".[56]

Article 18 of International Labour Organization states that "Workers shall have the right to remove themselves from danger resulting from the use of chemicals when they have reasonable justification to believe there is an imminent and serious risk to their safety or health".[57]

Recycling in the informal sector includes burning of circuit boards, soaking of microchips in acid and burning of plastics that prove very harmful for the health of the workers and the environment.[58]

The workers are exposed to great risk as soon as they start disassembling the old electrical equipment. The hazardous substances are also released in the environment due to manual dismantling techniques. Due to acid leaching techniques and open burning of the e-waste containing hazardous components, many toxic substances like arsenic, chromium, lead, nickel and beryllium seep into the soil resulting in landfills.[59]

The workers in the informal sector are often unskilled and lack adequate training required for e-waste disposal and handling making them vulnerable to the dreadful health hazards. These workers do not use the protective equipment required at the time of processing of e-waste.[60] Women and children work for about 12 to 14 hours in the informal sector exposing their health at a great peril. As per the documents of International LabourOrganisation, the workers in this sector carries out dismantling processes through bare hands without using any masks in the unventilated and dark rooms with inadequate lighting facilities.[61] These workers do not have the awareness about the perilous aftermath of the techniques they are undergoing for e-waste treatment. The occupational conditions of these workers are not at all workers friendly.[62]

A number of health hazards are associated with the unscientific and primitive method used by the informal section in e-waste dismantling and recycling. Despite the serious environmental and health perils, the informal sector often engage in such activities without paying much heed to the use of personal protective equipment. The informal

55 Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child (Last visited on: April 6, 2023).

56 Ibid.

57 C170 - Chemicals Convention, 1990 (No. 170), Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312315 (Last visited on April 3, 2023).

58 Ibid.

59 Human Rights Impacts of E-Waste, Available at: https://www.ciel.org/wp-content/uploads/2015/10/HR_EWaste.pdf (Last visited on April 3, 2023)

60 Ibid.

61 Ibid.

62 Ibid.

sector generally consists of women and children who work for about 12-14 hours a day.[63]

The workers in the informal sector carry out the processing of e-waste with bare hands. They often complain about breathing problems, skin allergies, headaches, eye infections and many more.[64] The informal sector lacks awareness about the harmful effects of e-waste and quite often exposes themselves to the certain risk to their health due to improper handling of e-waste and thereby polluting the environment.

Right to Receive and Access Information:

Article 19 of UDHR provides "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".[65]

ICESCR stipulates that "everyone has the freedom to seek, receive and impart information and ideas of all kinds".[66]

Article 13 of UNCRC incorporates that "The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice".[67]Article 17 of the said Convention incorporates that "States Parties shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health."[68]

The ILO Chemicals Convention incorporates the right of the workers to receive information pertaining to hazards related to chemicals used at the workplace and also make the employers duty-bound to intimate workers about it.[69]

But despite of these international stipulations, the human rights pertaining to access to information is often violated. The workers in informal sector have very little awareness

63 Ibid.

64 Ibid.

65 Available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%2019,media%20and%20regardless%20of%20frontiers. (Last visited on: April 6, 2023).

66 International Covenant on Civil and Political Rights, Article 19.

67 Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child (Last visited on April 6, 2023).

68 Convention on the Rights of the Child, Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child (Last visited on April 4, 2023).

69 ILO CHEMICALS CONVENTION No. 170 & ITS RECOMMENDATION No. 177, Available at: https://www.ilo.org/wcmsp5/groups/public/—ed_protect/—protrav/—safework/documents/publication/wcms_731982.pdf (Last visited on April 3, 2023).

and comprehension about the perilous activities they are engaged in ultimately exposing them to heightened threat to their lives.

E-Waste management in India is still in its nascent stage mandating a lot of endeavors at all front. It is now well established that the individual chemicals located in the e-waste have deleterious health impact. Exposure to some highly toxic chemicals not only hampers the immediate growth, development and health of a child but also causes certain chronic ailments after attaining adulthood.

E-Waste certainly causes human rights violation. The dismantling of e-waste is done in a crude manner by large number of unskilled workers mandating a proper strategical planning for preventing the health hazards to those involved in the dismantling procedure. These workers should be provided with the relevant information for facilitating cautious e-waste management. Operational research and evaluative studies must be done for ensuring human rights to those whose lives might be affected by the e-waste disposal and handling.

CONCLUSION

India emerged to be one of the major producers of e-waste. E-Waste is posing a real threat for the entire world. This entire world is engulfed with theproblemofe-waste.Effortsarebeingtakenattheinternationalaswellasnationallevelto curb the e-waste peril. India is the only country in South Asia having E-Waste legislation inthe form of E-Waste Rules right from 2011 for the efficient handling of the e-waste probleminthecountry.The Rules have been amended in 2016 and 2018.

But Despite of the E-Waste Rules, thee-waste menaceisbecominguncontrollable day by day due to ineffectiveness of the e-waste legislation. The Rules are not sufficient for dealing with the unorganized informal sector. The government has not streamlined the informal sector where maximum dismantling and recycling of e- waste isdone.[70]

E-Waste management in India is still in its nascent stage mandating a lot of endeavors at all front. It is now well established that the individual chemicals located in the e-waste have deleterious health impact. Exposure to some highly toxic chemicals not only hampers the immediate growth, development and health of a child but also causes certain chronic ailments after attaining adulthood.

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70 Supra Note 13.

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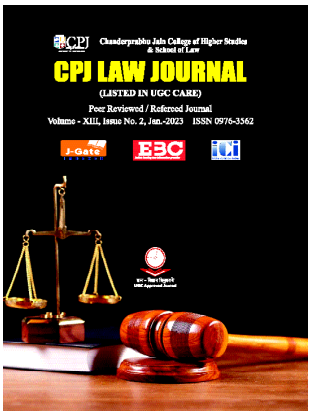

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The Journal is accepting contributions for Research Papers, Articles, Essays, Notes and Comments (Case Comments, Book Comments, Legislative Comments, Policy Comments and Scholarship Comments). Contributions should be sent by email to **lawjournal@cpj.edu.in** in MS word.

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- **Main Text –** Times New Roman, font size 12, 1.15 spacing, justified, with a margin left 1.5 inch and right 1.0 inch, top 1.0 inch and bottom 1.0 inch.
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