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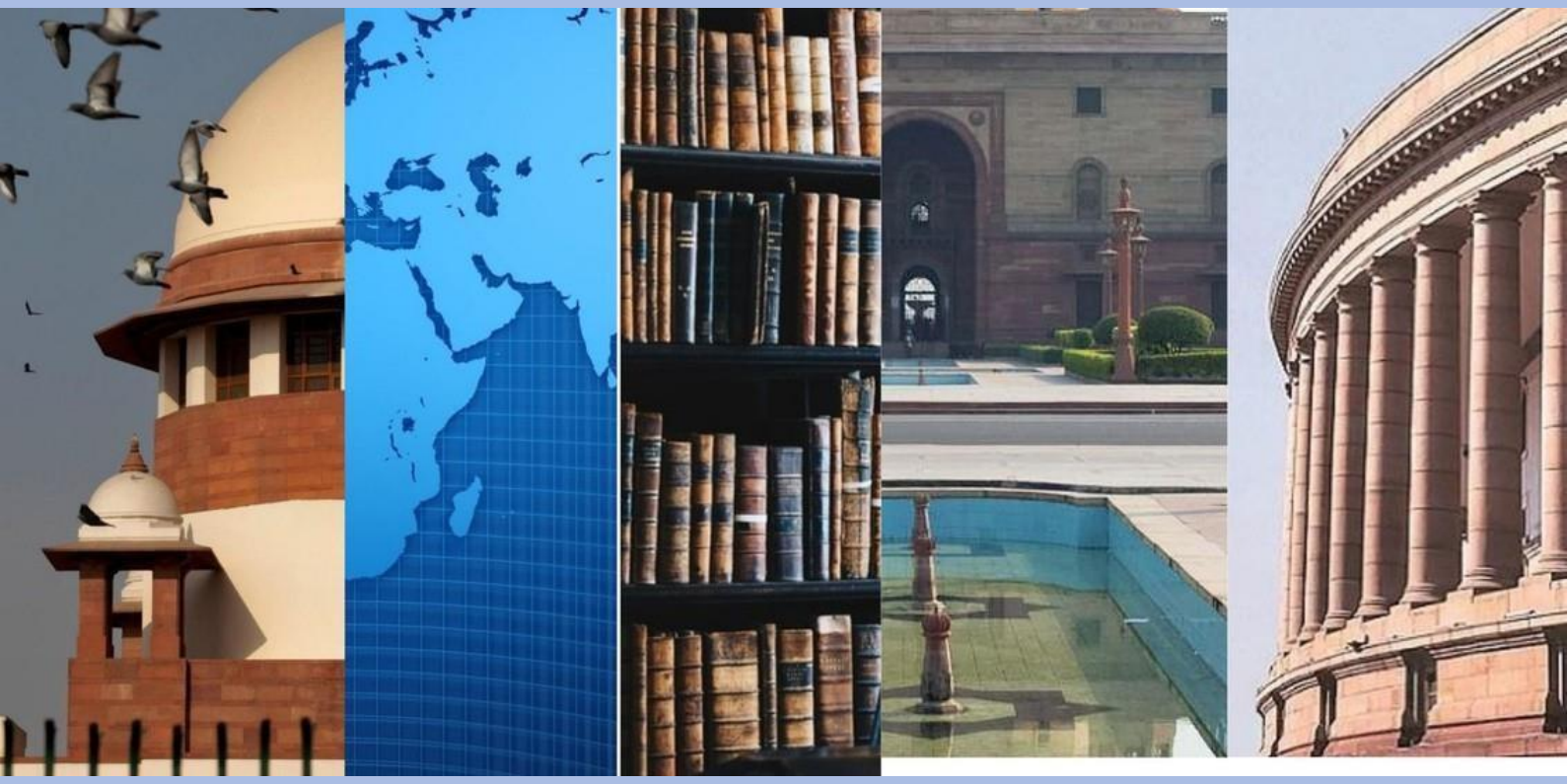

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Oceans of Law: International and National Frameworks Governing Marine Environments

Swarlata Pandey*

"The good man is the friend of all living things." - Mahatma Gandhi

The Earth's surface is predominantly covered by oceans, accounting for over 70% of its expanse. It is deeply troubling that human activities are rapidly contaminating these oceans, posing a severe threat to marine life and the ecological balance. Sewage discharge, industrial waste, and oil spills are among the culprits responsible for inflicting serious harm on marine ecosystems. Despite the alarming expansion of maritime pollution, there has been a noticeable lack of stringent regulations to control these detrimental activities.

At the global level, numerous initiatives have been undertaken to acknowledge the importance of marine life. For instance, during the United Nations Conference on Human Environments in Stockholm in 1972, significant concerns were raised regarding marine pollution. On the national front, India has taken steps to protect its marine environment through legislation such as the Maritime Zones of India Act of 1976, which grants the government authority to implement policies safeguarding the marine environment. Additionally, the Indian Coast Guard Act of 1978 entrusts the Indian Coast Guard with the responsibility of preserving and protecting the marine environment and controlling marine pollution.

India's Constitution, adopted in 1950, includes two Directive Principles of State Policy. Article 48A emphasizes the protection and enhancement of the environment, forests, and wildlife, while Article 51A(g) places a duty on citizens to protect and improve the natural environment, including forests, lakes, rivers, wildlife, and to show compassion for all living creatures. Furthermore, India upholds principles such as the polluter pays principle, public trust doctrine, and the Precautionary principle as core governance principles for environmental protection, recognizing their importance in achieving sustainable development.

In India, various legislations, including the Fisheries Act of 1987, the Wildlife Protection Act of 1972, and the Forest Conservation Act of 1980, contain provisions aimed at environmental

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protection and pollution control. Additionally, a landmark case, S. Jagannath vs. Union Of India & Ors, on December 11, 1996, demonstrated the Supreme Court's deep concern regarding marine pollution and the nation's negligence in addressing it. The court issued directives for appropriate action in accordance with Section 3(3) of the Environment Protection Act of 1986.

More recently, India has been contemplating a Blue Economy policy aimed at preserving marine life while also harnessing economic opportunities from it. The Blue Economy refers to the sustainable utilization of ocean resources for economic development, job creation, and environmental sustainability. This policy underscores India's commitment to safeguarding its marine environment and promoting responsible and sustainable ocean resource management.

1. UNDERSTANDING MARINE POLLUTION AND ITS UNDERLYING CAUSES

The oceans have historically been used by humans as a means of trade, transportation, and subsistence. But tragically, because of its size, humanity has over time tended to view the sea and its resources as boundless and inviolable, no matter what. No matter how many resources are taken out or how many toxins are thrown into it. It is clear from the historical context of marine pollution that over the decades, marine pollution has been a phenomenon that has progressively increased as a result of unchecked human exploitation of the ocean's biological riches.

"Pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.[1]

Marine environment includes all the organic existence inside sea and near the coastal regions and any pollution which results in disturbance of the ecological balance results in the pollution.

[1] United Nations Convention on the Law of the Sea, opened for signature 10 December 1982, 1833 UNTS 3, (entry into force 16 November 1994), Art 1(1)(4).

In one recent report of UNEP it has been found that around 23-37 million tonnes of waste could end up in the ocean a year by 2040, up from 9-14 million tonnes a year in 2016.[2]

In the 5th session of the UNEP,2021 the countries have expressed concern about the marine situation and also proposed their upcoming policies for its conservation. The Secretary General of the UNEP in his opening statement has said that,

We require a strong post-2020 framework for the sound management of chemicals and waste; and intense efforts to prevent the decline of the oceans by ending unsustainable fishing practices, expanding marine protected areas and drastically reducing maritime pollution, including plastic.[3]

Also, an European Union funded project at the University of Kerala to document underwater diversity finds plastic bottles, bags, fishing nets, and fragments of single-use plastics beyond 40-meter depth off Kerala coast.[4]Thus, the existence of the urgency is undeniable and for maintaining the ecological balance of nature, proper measures should be taken.

The following are some of the elements that contribute to marine pollution:

A. Industrial Wastage

Industrialization is definitely a positive move towards the economic development of a nation but this development is taking a toll on our environment condition. The industrial wastes are going directly into the seas and Ocean and affecting the ecological balance. Many industries such as paper, textile, plastic, food, leather contribute to the waste and particular attention has to be paid to heavy metals like lead zinc cadmium, mercury and elements such as chromium used in leather industry. [5]

[2] Sushan Chako,*Plastic pollution in aquatic systems may triple by 2040: UNEP, (*Sept 22,2023 at 4:10pm)

[3] UNEA, 5th Sess,,Agenda item 1.,UNEP/EA.5/25 (24 February 2021).

[4] The Hindu, Study *finds disturbing evidence of marine plastic pollution off Kerala coast(*Sept 22,2023 at 4:15pm)

https://www.thehindu.com/news/national/kerala/study-finds-disturbing-evidence-of-marine-plastic-pollution-off-kerala-coast/article66941751.ece.

[5] G. P. Glasby and G. S. Roonwal, *Marine pollution in India: An emerging problem* (Sept 23, 2023 3:00pm) https://www.jstor.org/stable/pdf/24096463.pdf

Recent impact on Thane Creek has been surveyed and it has been found that almost 11 tonnes of copper, 400 tonnes of Zinc and 7 tonnes of mercury has been discharged annually. [6]

B. Plastic Wastage:

Problem of plastic wastage into the environment has been a matter of great concern.India generates 55 million tonnes of municipal waste annually, of which only 37 percent is treated, according to the Central Pollution Control Board.[7]Untreated plastics are going inside the seas and oceans and cause danger to the life of the marine creatures resulting in ecological disturbance.

Recently the government has taken several initiatives to tackle the issue. In a recent Session o f Lok sabha on 8th Feb 2023, Dr. Jitendra Singh, Ministry of Science and Technology and Earth Sciences has said that *as part of coastal marine pollution monitoring, Swachh Sagar, Surakshit Sagar and Azadi Ka Amrit Mahotsav, beach cleaning activities have been performed by NCCR since 2018 along the east coast of India. A 75-day citizen-led campaign "Swachh Sagar Surakshit Sagar", was conducted for improving ocean health through collective action. The campaign ended with the largest beach cleaning event on Sept 17, 2022 (International Coastal Cleanup Day) covering 75 beaches across India's 7500 plus km coastline.*[8]

C. Oil spilling

Daily oil spills pose a hazard to millions of kilometers of rivers, lakes, and terrestrial environment, especially in areas with intensive oil drilling, refining, and shipping. The complexity and size of the problem posed by managing oil spills globally are growing. Recently,On 28 January 2017 two ships collided off Kamarajar Port Limited's (KPL) harbor and resulted in a major oil spill disaster. The Chennai Oil Spill resulted in

[6] *Ibid 5.*

[7] Ashish Kumar Chauhan,*Plastic waste woes: A primer on India's marine litter problem*, Down to Earth,(Sept 23, 2023 at 3:15pm) https://www.downtoearth.org.in/blog/pollution/plastic-waste-woes-a-primer-on-india-s-marine-litter-problem-87059#:~:text=Plastic%20contributes%20significantly%20to%20the,the%20Central%20Pollution%20Control%20Board.

[8] Lok Sabha Session,8th Feb 2023, Unstarred Question No. 1123. (23 Sept 2023 at 3:00pm) https://pqals.nic.in/annex/1711/AU1123.pdf

irreversible environmental damage.[9] Also,such mishappening creates a long lasting impact on the sea and oceans and its marine creatures.

D. Biocides

Chemical contaminants can now be found in every section of the marine ecosystem, from the Arctic to the tropics, and from the smallest estuary to the bottom of the seas. The bulk of these contaminants have terrestrial origins, where they were first used for a variety of purposes and benefits. However, they frequently have unfavorable and unanticipated effects in the marine environment.A total of 381,000 tonnes of pesticides are used every year out of which 55,000 tonnes are used in agriculture.These pesticides are persistent in the environment and their repository is the sea. [10]

2. GLOBAL AGREEMENTS FOR THE CONSERVATION OF MARINE ENVIRONMENTS

In the 1960's and 1970's, several regional and multilateral conventions emerged governing various aspects of the marine environment.The principles and standards incorporated in the Declaration and in these various conventions served as a basis for the negotiation of a comprehensive regime for the protection and preservation of the marine environment at the Third United Nations Conference on the Law of the Sea.[11]

The United Nations Convention on the Law of the Sea (UNCLOS)1982 is the most comprehensive of the ocean treaties which addresses the issue of protection by obliging all nations to protect and preserve the marine environment. Another of the main international conventions for vessel source pollution is the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL).[12]

[9] Jayanthi Natarajan,*A disaster that's still unfolding* THE HINDU (Sept 23, 2023 at 3:15pm)

https://www.thehindu.com/opinion/op-ed/a-disaster-thats-still-unfolding/article62113615.ece

[10] G. P. Glasby and G. S. Roonwal, *Marine pollution in India: An emerging problem* (Sept 25, 2023 11:00am) https://www.jstor.org/stable/pdf/24096463.pdf

[11] Louis B. Sohn and Kristen Gustafson, J.D.; "The Law of the Sea in a Nutshell", (193-194.) ST.Poul, Minn. West Publishing Co.1984.

[12] International Convention for the Prevention of Pollution from Ships, opened for signature 2 November 1973, 1340 UNTS 184 (entry into force 2 October 1983).

We can find a brief of all the international conventions that have been introduced at the international Level for the protection of the marine environment.

2.1 The United Nations Convention on the Law of the Sea (UNCLOS)1982

The UNCLOS's Part XI and Part XII on protecting and preserving the marine environment offer the overall framework for safeguarding the marine environment from any negative effects that might result from activities in the Area. The broad obligation of States to safeguard and maintain the maritime environment is outlined in Article 192[13]. In addition, Article 209[14] states that in order to avoid, limit, and control contamination of the maritime environment resulting from operations in the Area, international norms, regulations, and procedures must be created in accordance with Part XI.

2.2 International Convention for the Prevention of Marine Pollution from Ships, 1973 as modified by the Protocol 1978 (MARPOL)

The International Convention for the Prevention of Pollution from Ships (MARPOL) is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes.[15]

The MARPOL Convention was adopted on 2 November 1973. The Protocol of 1978 was adopted in response to a spate of tanker accidents in 1976-1977.

As the 1973 MARPOL Convention had not yet entered into force, the 1978 MARPOL Protocol absorbed the parent Convention.

The Convention has six technical Annexes, containing rules intended to prevent and minimize pollution by ships i.e., both unintentional contamination and that from ordinary operations. Most Annexes have Special Areas with severe restrictions on operating discharges.

Annexure 1	Regulations for the Prevention of Pollution by	Came into force on 2nd

[13] United Nations Convention on the Law of the Sea (UNCLOS)1982.

[14] United Nations Convention on the Law of the Sea (UNCLOS)1982.

[15] International Maritime Organisation adopted on 2 November 1973. https://www.imo.org/en/KnowledgeCentre/ConferencesMeetings/pages/Marpol.aspx (Sept,25 2023 3:00pm)

	Oil	October 1983
Annexure 2	Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk	Came into force 2 October 1983
Annexure 3	Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form	Came into force1 July 1992
Annexure 4	Prevention of Pollution by Sewage from Ships	Came into force 27 September 2003
Annexure 5	Prevention of Pollution by Garbage from Ships	Came into force 31 December 1988
Annexure 6	Prevention of Air Pollution from Ships	Came into force 19 May 2005[16]

MARPOL applies to ships entitled to fly the flag of a Party to the Convention and to ships not entitled to fly the flag of a Party but which operate under the authority of a Party.MARPOL does not apply to any warship, naval auxiliary or other ship owned or operated by a State and used only on government non-commercial service pursuant to Article 3 (3).[17]

The primary responsibility for ensuring compliance with MARPOL rests with the Administration. To fulfill this obligation the Administration must have necessary resources to administer, enforce and ensure compliance with the provisions of the convention.[18]

2.3 International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC 1969), and Protocol of 1976, 1984 and 1992

[16] Ibid.

[17] Yoshifumi Tanaka, "The International Law of the Sea", p.289.

[18] MARPOL Art.2(5).

The purpose of the Convention is to pay compensation to those suffering oil pollution damage in a state party to the Convention. However, spills from tankers during ballast voyages and spills of bunker oil from ships other than tankers are not covered by the 1969 Convention.[19]

In this way, international organizations have tried from time to time to reduce environmental pollution, but the effectiveness of all agreements remains a fact. Almost every year there is an oil spill in the news. In addition, sovereign nations care least about the environment, rather their economic development, which leads to increased industrialization and increased environmental damage

THE EFFICACY OF INDIAN LEGISLATION FOR MARINE CONSERVATION

Environmental Principles

a. **Pollutant Pays Principle**: In environmental law, the fundamental tenet of "polluter pays" applies. It has mostly remained uncontested. The person or entity responsible for inflicting the environmental damage is required to pay for environmental repair and remediation.The Organization for Economic Cooperation and Development (OECD) supported the polluter-pays idea in the 1970s. At this time, there were calls for the government and other institutions to establish laws and other safeguards to protect the public and the environment from the dangers posed by pollution in a contemporary industrialized society.

M.C. Mehta v. Union of India [20]

According to the court, the enterprises that generate the pollution or manufacture the goods that cause the pollution shall be responsible for paying the financial costs of preventing or resolving the damage caused by pollution.

b. Public Trust Doctrine: Private ownership of natural resources like forests and water bodies is extremely unusual in India. All natural resources belong to the state as their trustee. In the landmark case of

[19] Theint Nandar Htet, Protection of Marine Environment under the Law of the Sea

[20] AIR 1987 SC 1086

***M.C. Mehta v. Kamal Nath*[21]**

The Supreme Court of India has held that the State is a trustee and it should protect the environment which is considered as a public trust. Further the court imposed a legal duty on the court to protect the environment.

c. **Precautionary Principle:** The Earth Summit, also known as the 1992 United Nations Conference on Environment and Development, is where the precautionary principle first appeared. In the Rio Declaration created at the conference, **Principle 15**[22] reads as follows,

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Indian National Legislations Addressing Marine Pollution

1. **The Water (Prevention and Control of Pollution) Act, 1973**: This legislation primarily deals with preventing and controlling water pollution in India. It applies to coastal waters and includes provisions for the regulation of discharges of pollutants.
2. **The Environment (Protection) Act, 1986**: This act provides a legal framework for the protection and improvement of the environment. It allows the central government to take measures to protect and conserve marine and coastal areas.[23]

3. **The Coastal Regulation Zone (CRZ) Notification, 2011**[24]: The coastal and marine areas of India are intended to be managed and preserved by this law. Within a certain radius of the coastline, it imposes limits on a variety of activities, including building and industrial operations.

[21] (1997) 1 SCC 388.

[22]Rio Declaration on Environment and Development, Principle 15 (Sept. 27, 11:00 AM), available at https://www.cbd.int/doc/ref/rio-declaration.shtml.

[23] Section3, The Environment (Protection) Act, 1986.

[24]The Coastal Regulation Zone (CRZ) Notification, 2011 http://www.environmentwb.gov.in/pdf/CRZ-Notification-2011.pdf (September 30,2023 3:00 p.m)

4. **The Hazardous Waste Management Rules, 2016**[25]: These regulations control the handling and disposal of hazardous waste, particularly trash produced by coastal businesses. To avoid marine pollution, hazardous trash must be disposed of properly.
5. **The Merchant Shipping Act, 1958**: This Act has rules for preventing marine pollution and oil spills from ships and other vessels. The International Convention for the Prevention of Pollution from Ships (MARPOL), for example, is incorporated into Indian law.[26]

In addition to these laws, there are other laws that are emphasizing the protection of the marine environment. Marine legislation often includes provisions for public awareness and community participation in conservation efforts, empowering local communities to take an active role in protecting their coastal and marine environments.

The impact of marine legislation in India depends on its effective implementation, enforcement, and adaptation to evolving environmental and economic conditions. Regular monitoring and assessment are essential to ensure that these laws continue to address emerging challenges and opportunities in marine conservation and sustainable development.

CONCLUSION

It is impossible to overestimate the necessity of comprehensive regulation and international collaboration in light of the growing dangers to our seas and marine ecosystems, as well as the rising levels of marine pollution.

Unquestionably, human activity has an impact on the maritime environment; contaminants like plastics, industrial waste, and oil spills present serious ecological problems. International standards for the preservation and protection of the marine environment have been established at the global level thanks to programs and agreements like the United Nations Convention on the Law of the Sea (UNCLOS) and the International Convention for the Prevention of Pollution from Ships (MARPOL).

[25] GOVERNMENT OF INDIA MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE.

https://cpcb.nic.in/displaypdf.php?id=aHdtZC9IV01fUnVsZXNfMjAxNi5wZGY=

[26] PART XB, Civil Liability on Oil Pollution Damage, THE MERCHANT SHIPPING ACT, 1958

https://www.dgshipping.gov.in/WriteReadData/userfiles/file/MS%20Act,%201958%20-%20With%20Hyperlinks.pdf (30 September 2023 at 3:00pm)

These accords emphasize how all countries have a shared obligation to protect our waters. These accords emphasize how all countries have a shared obligation to protect our waters. A framework for dealing with marine pollution is provided in India by laws and legal precepts.

In order to prevent pollution and regulate activities close to coastal areas, laws like as the Coastal Regulation Zone (CRZ) Notification, the Environment (Protection) Act, and the Water (Prevention and prevent of Pollution) Act are essential.

Importantly, India also abides by environmental concepts that highlight environmental conservation as a public trust and hold entities accountable for environmental damage, such as the Polluter Pays Principle, the Public Trust Doctrine, and the Precautionary Principle.

ARTICLE- SACRED OFFENCES: A COMPARATIVE LEGAL STUDY OF INDIA AND THE UNITED KINGDOM.

Swapnil Shankhwar*

Abstract-

This research paper delves into the sensitive and complex issue of blasphemy laws in India, discussing the colonial-era case of Rajpaul v. Emperor, which led to the enactment of Section 295A. It explores how this provision has been used to curtail free speech and rational inquiry into religion, citing cases like the murder of Narendra Dabholkar and the suspension of Nupur Sharma for allegedly blasphemous remarks. The paper argues that such laws stifle intellectual discourse and hinder the progress of a democratic society.

Drawing parallels with other countries, such as the United Kingdom, where blasphemy laws have been abolished, the paper advocates repealing Section 295A. It argues that the law not only infringes on the fundamental right to freedom of speech and expression but also undermines the secular fabric of the Indian Constitution.

Through a meticulous analysis of historical, legal, and sociopolitical perspectives, this paper sheds light on the complexities surrounding blasphemy laws in India. It calls for a nuanced approach that balances religious sensitivities with free speech and secularism principles. Ultimately, it underscores the importance of reevaluating and potentially repealing blasphemy laws to uphold the values of democracy, pluralism, and human rights.

Keywords: Blasphemy, UK, India, Freedom to speech and expression, Indian Penal Code.

* PhD Scholar, Dr. Ram Manohar Lohiya National Law University (RMLNLU), Lucknow.

1. Introduction

'From the beginning, men used God to justify the unjustifiable.'

-*Salman Rushdie.*

The word blasphemy is taken from a Greek word that means 'speaking evil.' it has always beena susceptible issue over time and used as a potent weapon to curse free speech to ensure reverence towards one's religious feelings and faith. Anti-blasphemy law in India demands fanaticism by curtailing even the analytic and rational approach towards any religion. For ages,committing blasphemy has been treated as a crime; this can be portrayed in several anti-blasphemy cases in India, starting from the colonial era *Rajpaul V. Emperor* [1]commonly known as 'Rangila Rasul', which ultimately enacted section 295A. In 1927, the Indian Penal Codecreated a provision of cognizable offence for hate speech that penalises those who deliberatelyand maliciously create hatred by insulting any class's religion or religious belief. Several recent cases in India caused this susceptible issue, such as the murder of Narendra Dabholkar in 2013[2] and the suspension of Nupur Sharma for communal remark over Prophet Mohammed in 2022.

Globally, in some countries, the punishment provided for blasphemy is the death penalty (Pakistan, Afghanistan, Saudi Arabia, Nigeria, and Iran). Blasphemy law has been abolished in some countries, such as the U.K., New Zealand, and Greece. In India, Sec 295A of I.P.C. talks about blasphemy that was constitutionally upheld in the case *Ramji Lal Modi V. State of Uttar Pradesh*[3] in 1957 on the ground of protecting 'public order' under Article 19(2)[4], but the concept of this section is always seen to be misinterpreted, which leads to conflict, communaldispute, mass destruction, and an obstacle to the ideology of secularism.

1.1.Historical perspective of blasphemy law.

The origin of the word blasphemy in human society can be traced back to the Mosaic Law, where any blasphemous act was strictly forbidden and was considered a great sin against the holy God. The blasphemer was amount to death by stoning. During the medieval period,

[1] *Raj Paul v. Emperor*, AIR 1927 Lah 590.
[2] Ganesh Kumar Radha Udayakumar, "Narendra Dabholkar: A Champion of Rationalism," *The Times of India*, June 11, 2016, *available at:* https://timesofindia.indiatimes.com/city/mumbai/narendra-dabholkars-legacy/articleshow/52702261.cms last visited on 24-10-2023
[3] *Ramji Lal Modi v. The State of U.P.*, AIR 1957 SCR 860.
[4] The Constitution of India, art. 19(2).

monotheistic Judaism, Christianity, and Islam faiths held a strong perspective towards blasphemy and heresy. During the 17th century, the law was designed to protect the churches from heresy against their religious faith and belief. By the end of the 19th century, this law became more ruthless against any disrespectful act towards God.

In 1920, when communal tension arose between Arya Samaj and Punj's Muslim community, ahistorical controversy occurred in British India through a book named "Rangila Rasool" by Pandit Chamupati. This satirical pamphlet was written in Urdu and published through a 'RajpalPublishers' based in Lahore, Punjab. The publication of this book was in retaliation of other two books written by 'anonymous' author, titled "Krishna Teri Geeta Jelani Padegi" and Nineteenth-century lustful Maharishi" Both of these two books depicted vulgarism, abusive things and obscene sketches towards lord Krishna and Hinduism. The publisher "Mahashay Rajpal" described the author of "Rangila Rasool" as someone who made 'doodh ka doodh aurpanni ka panni."The book revealed the details of Mohammad's marriage and sex life of Mohammad. This created considerable controversy and communal hatred, touching the religious sentiment of Hindu-Muslim communities and causing tension in Indian society. It posed a significant threat to the freedom of expression, religious tolerance, and communal harmony. Muslim community demanded to ban this book, and the publisher, Mahashay Rajpal,was charged under sec 153A of I.P.C. but was soon acquitted since this provision does not provide any punishment for blasphemous acts or historical perspective of any religion. Still, the acquittal of Rajpal made the Muslim community more outraged to murder and spread massacres. However, on April 6 1929, he was assassinated by a 19-year-old carpenter named llm ud din[5]. Since no provision could punish the blasphemous act or any religious insult to the Muslim community for such legislation, the British government in the year 1927 enacted sec 295A under IPC that penalizes any person for three years who deliberately or maliciously intends tooutrage the religious feeling or insult any religious faith or believe[6]. Thus, this case gave birth to Sec 295A under Indian statute and directly conflicted with freedom of speech and expression, leading to many controversies and disputes in Indian history.

1.2. Secularism and Blasphemy

"Sarva Dharma Sama Bhava" is a concept used by Mahatma Gandhi for the first time in the

[5] Richa Raj, "A pamphlet and its (Dis) contents: A case study of Rangila Rasul and the controversy surrounding it in colonial Punjab, 1923-29", 9(2), *History and sociology of South Asia* 146-162 (2015).
[6] The Indian Penal Code, 1860 (Act 45 of 1860), s. 295A.

year 1930, which means that all religion leads to the path of the same destination, and there must be equal respect for all faiths. This concept was used to unite Hindu-Muslim communities and the people of different castes into an anti-colonial movement. This represents the conceptof secularism in the Indian Constitution. The word 'secular' was inserted by the 42nd Amendment Act 1976, making India a religious-free state. Freedom of religion in India is alsoan individual's fundamental right depicted under articles 25-28[7] of the Indian Constitution, which says that every person has the freedom to profess, propagate, and practice religion. Unlike theoretical regimes in Islamic countries such as Pakistan, Saudi Arabia, and Iran, Indiafollows the concept of secularism that does not discriminate against any religion. It is provided not only for the citizens of India but also for non-citizens; this basic fundamental right is subjected to certain restrictions such as public order, health, and morality. In *Keshavananda Bharati V. State of Kerela*[8], Supreme Court mentioned that secularism is the basic structure of the Indian Constitution and cannot be amended by parliament.

Article 18 of UDHR[9] guarantees a right to religion and belief. It also protects the rights of theistic, non-theistic, and atheistic. According to the concept enriched under U.D.H.R., all faiths must be given the same footing to contribute to democracy and social peace. Religious freedom and equal treatment of religion are essential elements of secularism in our Indian Constitution. Along with the right to religion, the Indian Constitution also guarantees freedom of speech and expression as a fundamental right inserted under Article 19(1) (a)[10] of the Constitution. This right allows freedom to freely express one's opinions, thoughts, and beliefs.This freedom is also subject to certain reasonable restrictions such as public order, decency, morality, and security of the state.

There is always an ongoing controversy over the implementation and interpretation of freedomof speech and expression under Article 19 of the Constitution with section 295A of I.P.C. This section of I.P.C. can be held as a contour to the freedom of speech concerning religious offences.This provision draws a thin line between free speech and hate speech. A vast misuse of the lawalways creates an easy way to give rise to a communal conflict and suppress innocent people. There have been several conflicts in history where this law was used for a purpose other than what it wasmeant for.

[7] The Constitution of India, art. 25-28
[8] *Kesavananda Bharati v. State of Kerala* AIR 1973 SC 1461.
[9] Universal Declaration of Human Rights, art. 18
[10] The Constitution of India, art. 19(1) (a).

2. Conflict over blasphemy.

In 1988, when "The Satanic Verses" written by an India-born British-American author, Salman Rushdie, was published by Viking Penguin, considerable controversy and mass violence spreadaround the Islamic world on the view that it tried to challenge the divine nature of Muslims bymocking their faith and targeting their core beliefs. Later, in 1989, the supreme leader of Iran,Ayatollah Ruhollah Khomeini, issued a fatwa allowing the Muslims to kill Rushdie and publishers; thus, he was under the protection police force for many years[11]. During the regimeof Rajiv Gandhi's government, India became the first country to ban this novel soon after its publication on October 5, 1988. MP Syed Shahabuddin of the Janata party opposed the book, stating it was a deliberate insult to Islam[12]. There were several attacks on Salman Rushdie.The most recent was on August 12, 2022, when he was stabbed several times on stage when he was about to deliver a public lecture at Chautauqua Institution, New York. However, he survived but lost sight of one eye[13].

Taslima Nasrin, a Bangladeshi author internationally known for her secular humanist and feminist views, had several controversies over her novels that show criticism of religion, particularly Islam. Her first book 'Lajja' published in 1993, was banned by the Bangladesh government, and the militants declared a fatwa to kill her and offered $2,000 for such killing; thus, she fled from Bangladesh in 1994 to Europe. The Bangladesh government blacklisted her[14]. This situation can be linked to Salman Rushdie, who also faced a death threat for his publication. Taslima Nasrin's several books banned by the government of Bangladesh 'Amar Meyebela' in 1999, ‘Utal Hawa’ in 2002, ‘Dwikhandito’ in 2003 was banned by the West Bengal government[15]. In 2004, she took refuge in Kolkata after several years spent in Europe, but in 2007, the West Bengal state government of India forced her to leave Bengal dueto several Muslim protests against her. Though U.N.H.R.C. guarantees a fundamental goal of theindividual's right to flee from their country and seek asylum in another country, she was

[11] Nomia Iqbal, Pennsylvania & Paulin, “Salman Rushdie: Author Believed Fatwa was Old and Life Relatively Normal” *BBC News*, August 13, 2022, *available at:* https://www.bbc.com/news/world-us-canada-62532200 lastvisited on 20-09-2023.
[12] Chakravorty, Pinaki. “The Rushdie incident as law-and Literature Parable.” 104 *The Yale Law Journal*, 2213-43 (1995).
[13] Jay Root, David Gelles, Elizabeth A. Harris, Julia Jacobs, “ Salman Rushdie is Attacked onstage in Western New York," *The New York Times,* August 12, 2022, *available at:* https://www.nytimes.com/2022/08/12/nyregion/salman-rushdie-attacked.html last visited on 20-09-2023.
[14] Ansari, Iqbal A. “Free Speech-Hate Speech: The Taslima Nasreen Case” 43(8), *the Economic and Political Weekly,* 15-19 (2008).
[15] Md. Mahmudul Hasan “Free Speech, ban and Fatwa: A Study of the Taslima Nasrin Affair” 46(5), *Journal of Postcolonial Writing*, 540-552 (2010).

forcedto leave India, and only after four years did she get permission to live in Delhi. In 2012, the Kolkata Book Fair committee cancelled her book 'Nirbasan' from being released at the KolkataBook Fair.[16]

Besides providing free speech, India also puts firm boundaries regarding religion, as in the case of B.J.P. spokesperson Nupur Sharma's controversial remark over Prophet Mohammad[17]. In 2022, Violence and mass protests erupted across the Muslim community in India over Nupur Sharma's comment, demanding legal action against her. The All India Muslim Personal Law Board (AIMPLB) demanded more strict legal action and said that her suspension was "inadequate" and insufficient. Various restrictions have been imposed on free speech over theyears; any sentimental hurt of someone or any community has to face censorship.

3. Blasphemy law in India.

Indian Penal Code has dedicated chapter XV from section 295 to section 298 dealing with offenses against religion in which only section 295 A predominantly claimed to be a blasphemyoffense available in the Penal Code. Many scholars believe that Section 295A is not a blasphemy law but an offense against hate speech. The legislature believes that this law was introduced to criminalize blasphemy and restrict the inciting of violence from blasphemous acts. Many debates were also strongly raisedbefore post-independence. On one side, the makers of the Constitution believed in establishinga secular state by granting the right to speech and expression as a fundamental right and, on theother hand, providing the right to practice and propagate religion, which is a very new setup introduced by any country.

[16] Anuradha Sharma, "Kolkata Book Fair Courts Controversy of its own," *The New York Times*, February 2,2012, *available at:* https://india.blogs.nytimes.com/2012/02/02/kolkata-book-fair-courts-controversy-of-its-own/ last visited on 20-Sep-2023.

[17] Rahul shrivshankar, "Nupur Sharma case: Decoding the disturbing message behind the furies unleashed on Friday", *The Times of India*, June 11,2022, *available at:* https://timesofindia.indiatimes.com/blogs/beyond-the-headline/nupur-sharma-case-decoding-the-disturbing-message-behind-the-furies-unleashed-on-friday/ last visited on 20-sep-2023.

India is a secular state where the state will not interfere in religion or irreligion but in imposing specific penal provisions that act as anti-blasphemy laws against the irreligious. In contrast, the practice and propagation of irreligion may also amount to blasphemy for some religions. India is a culturally diverse country where, every 100km, beliefs and faiths vary to the same sect. For example, celebrating Mahisasur Divas in some areas is blasphemous to Hindu beliefs; being a secular state in a pluralistic society, it will be unethical for a state to interfere in religious matters of conflicting ideas. State interference in religious conflicting issues will bias the decision of the state. For example, in 2012, two women sharing a Facebook post and liking a post against a Hindu Nationalist leader regarding some Hindu mythology were booked under section 295A of I.P.C[18].

After post-independence, the section has been defined as a reasonable restriction over the rightto speech and expression to maintain public order, in Ramji Lal Modi's case[19], S.C. held that the Constitution in Article 19(2) permits[20] State to restrict freedom of speech and expression in the interest of public order and stated that the term "In the interests of" gave it a vast ambit,and the state can make any law for it. While commenting on this case, S.C. also stated that thelaw is for an aggravated form of speech intended to disturb public order. However, the court rejected the idea of proximity between speech and expression and violence, which the state should fear.

In Ram Manohar Lohiya[21] in this case court rejected the above opinion and stated that "limitationimposed in the interests of public order to be a reasonable restriction, should have a proximateconnection or nexus with public order, but not one far-fetched, hypothetical or problematical or too remote in the chain of its relation with the public order" but in the case of S.Rangarajan[22], Supreme Court held that "alleged expression should be like a spark in the powder keg & intrinsically dangerous to the public interest."

[18] Rajini Vaidyanathan, "India Facebook arrests: Shaheen and Renu speak out," *BBC News*, November 25, 2012, *available at:* https://www.bbc.com/news/world-asia-india-20490823 last visited on 25-Oct-2023.
[19] *Ramji Lal Modi v. The State of U.P.*, AIR 1957 SCR 860.
[20] Gautam Bhatia, "The Constitutional Case against India's Blasphemy Law," The Wire, January 18, 2016, *available at:* https://thewire.in/law/the-constitutional-case-against-indias-blasphemy-law last visited on 25-Oct-2023.
[21] *The Superintendent, Central Prison, Fatehgarh vs. Ram Manohar Lohia,* AIR 633, 1960 SCR (2) 821.
[22] *S. Ranga rajan ETC Vs. P. Jagajivan Ram*, 1989 SCR(2) 204

The same approach was widely used in the case of Arup Bhuiyan[23], Justice Markandey Katju, under the light of *Clarence Brandenburg v/s State of Ohio*, stated that "speech cannot be restricted unless it provokes imminent lawless action." As per judicial interpretation, free speech has a broad scope, but practically, it is challenging to identify what statement contains an element of blasphemy and what will spark violence.

4. Blasphemy law in U.K.

During the medieval period in UK, Blasphemy laws are protected under the influence of Cathholic Chruches. Catholic Churches had a considerable say in Society and State, especially when it comes to religion. The legal and moral essence of every statute should have faith in its prefix; it cannot contradict religion and interpretation of the religious text by Catholic Churches. British Legislatures had a strong significance of religion in medieval times; there are many reported cases of criminalisation on the basis of Blasphemy, even the persecution of John Wycliffe (famous English poet and Professor at Oxford University), and the Lollards were commanded by Pope Gregory XI in 1378[24]. In 1401, an act was passed, "De Heretico Comburendo[25]", under which writing and speaking against the ethics and beliefs of the religion would be criminalized, and interestingly, hearsay evidence would also be admissible against the accused. Historically, in the U.K., blasphemy law was an offence against Christianity only. The death penalty was awarded for 'blasphemous libel' during the medieval period.

A major development in the Blasphemy law in Britain was reported in 1697 when the grievance of the Blasphemy law was significantly changed, under which the punishment of Blasphemy was reduced from death to 3 years of punishment under Blasphemy Act 1697[26]. The evolution of theatre provided a wide scope of discussion and space for common people to connect in these discussions, that was the reason that new legislation was introduced which repealed the 1697 draconian rule of 1697 to Theatres Act 1968[27], under which blasphemy law was totally abolished. Still, unfortunately, ideologies and political agendas take time to leave the set of state. No doubt specific act on blasphemy was removed but there was another

[23] *Arup Bhuyan Vs. State of Assam,* Criminal Appeal No. 889 of 2007
[24] John Wycliffe and the Lollards, available at: https://chaucer.fas.harvard.edu/pages/john-wycliffe-and-lollards. (last visited on 29th November 2024)
[25] Watson, Nicholas (1995). "Censorship and Cultural Change in Late-Medieval England: Vernacular Theology, the Oxford Translation Debate, and Arundel's Constitutions of 1409". *Speculum*. **70** (4): 822–864. doi:10.2307/2865345. ISSN 0038-7134
[26] William III, 1697-8: An Act for the more effectual suppressing of Blasphemy and Profaneness. [Chapter XXXV. Rot. Parl. 9 Gul. III. p.6.n.4.]', in *Statutes of the Realm: Volume 7, 1695-1701*, (s.l, 1820) pp. 409.
[27] 1968 Chapter 54, Theatres Act 1968.

act dealing with Blasphemy under the scope of the Offences against the Person Act 1861[28]. Society and the state were moving towards a more secular approach we can see that in the case of *Bowman v/s Secular Society,* Lord Sumner summarized in a blasphemous case by using latin phrase, "deorum injuriae diis curae" which means offencees to the gods are dealt with by the gods[29].

Blasphemy was in practice in Britain from a long period of time due to which some laws based on religion was in practice in England at that time as well such as Protection of the Church of England and its doctrines from vilification was a long discourse. In 1977 a famous case Whitehouse v/s Lemon[30], James Kirkup published a poem 'The Love that Dares to Speakes its Name' where it describe the love of a Roman Centurion for Christ which involves Gay News. In this case accused were penalized and blasphemy was only accepted against christianity for blasphemy but the important opinion was recorded by Lord Scarman that Blasphemy law should cover all religions and not just Christianity and sought strict libility for those who "cause grave offence to the religious feelings of some of their fellow citizens or are such as to tend to deprave and corrupt persons who are likely to read them[31]". Lord Denning, in 1949, declared it a "dead letter law[32]," butstill, in 1967, when the editor of the magazine gay news published a poem, he was imposed fine considering that his poem was a blasphemous act against the Christian religion. Having proved that the letter was not a "dead letter law" as declared by lord denning previously, therewas a call for the abolition of this law in 2008.The House of Lords appointed a committee on 15th of May, 2002 to make a report on laws relating to religious offences[33], this committee report was published in 2003 which clearly states that present law on blasphemy can't be accepted on present time for persecution it need reforms and all the religion should be considered but no consensus on the demand of new blasphemy law was reported but all faiths will be considered in the report. In 2006 a new act was introduced only to deal with the incitement to religious hatred which was known by Racial and Religious Hatred Act, 2006[34] but on passing of Criminal Justice and Immigration Act, 2008[35], all common law offences of blasphemy and libel were

[28] 1861 Chapter 100, Offences Against the Person Act 1861.
[29] [1917] A.C. 406
[30] [1979] AC 617
[31] R v Lemon [1979] AC 617, 664
[32] FREEDOM UNDER THE LAW, THE HAMLYN LECTURES (First Series) by Sir Alfred Denning, Published by Stevens & Sons Limited (1949)
[33] House of Lords Reform, available at: The House of Lords: Reform Cm 7027 (last seen: 5th June, 2024)
[34] 2006 CHAPTER 1, Racial and Religious Hatred Act, 2006.
[35] 2008 CHAPTER 4, Criminal Justice and Immigration Act 2008.

abolished totally in England and Wales. As per the recent trend blasphemy cases are not entertained by statutes and courts of the UK but many incidents on religious issues are reported for example, in 2021 at Batley Grammar School[36] recorded an exhibition of a caricature of Prophet Muhammad for educational curriculum which resulted in mass protests against school due to which teacher was suspended and a committee was made for investigation second incident was also reported in Kettlethrope High School at 2023[37] where a student handle Quran in the college which was all over the news in U.K. John William Gott was the last person who was imprisoned for blasphemous acts in the year 1922.

However, the law was abolished only in England and Wales, but it remained valid in Scotland and Northern Ireland. It was repealed in 2021 when the Hate Crime on Public Order (Scotland)Act was passed.

Religious freedom is protected under the law. In 2023, the U.K. scored 4/4 in freedom of practice of religious faith or non-belief in public or private[38]. In reviewing these developments and reported incidents it is very evident that the offences against religion was developed over the time but a core theme of religion and demand of blasphemy law still prevails in U.K.

5. Criticism of the blasphemy law.

India and the U.K. followed the same criminal laws due to a long history of colonisation. U.K. laws, as discussed above, reformed with time; no doubt many cases of blasphemy were reported even after the abolition of Blasphemy, but no statute or court entertained the cases of blasphemy. The U.K. legal system accepts all people's faith and beliefs, which contradicts believers of different religions and ethnicities. The 2011 census of England clearly shows that 25 % of England's citizens declared no religion, and almost 1/3rd of Wales and Scotland declared no religion[39]. Citizens who do not believe in religion may be atheists, non-believers and agnostics who do not believe in god or religion. Their opinion may be blasphemed to the

[36] Batley Grammar School protest report 'deeply disturbing' – MP, available at: https://www.bbc.com/news/uk-england-leeds-68659435 (last seen 09th April, 2024)
[37] Four Wakefield pupils suspended after Quran damaged at school, available at: https://www.bbc.com/news/uk-england-leeds-64757799 (last seen 28th May, 2024)
[38] Freedom in the World 2023, United Kingdom, *available at*-https://freedomhouse.org/country/united-kingdom/freedom-world/2023. (last visited on October 25, 2023).

[39] Census 2011: One third in Wales have no religion, available at: https://www.bbc.com/news/uk-wales-20678136 , (last Seen 5th June, 2024)

identity of their belief. This is one of the reasons that their freedom of speech and expression is widely open to sharing their opinions without the fear of persecution. Demand to make personal law based on religion is highly criticised by the UK government, whereas, in the case of India, it is quite different in the case of Blasphemy. Section 295 A of the Indian Penal Code is still in practice in the courts of India, due to which Article 19 (1) (a) of the Indian Constitution provided a very restrictive approach to the citizens of India. Article 19 (1) (a) provides the right to speech and expression, and Article 19(2) of the Indian Constitution provides restriction to the right to speech and expression under which this right cannot affect any existing law in force and law made by the state which is a very restrictive approach. An offence under Section 295 A is a cognizable and non-bailable offence, a severe issue when anyone, either guilty or not, must undergo bail after that, whether or not his act is blasphemous will be inquired. Section 295 A states, *deliberate and malicious acts intended to outrage religious feelings or any class by insulting its religion or spiritual beliefs … by words, either spoken or written, or by signs or by visible representations or otherwise shall be punished with imprisonment of either description for a term which may extend to three years, or fine, or with both*[40]. Interpretation of this act by the court totally depends on the people of different sects of religion, whether any act will be considered a malicious act to outrage religious feelings or not so in that case person are restricted to not criticize malpractices of any religion because criticizing it can easily include deities, god, holy books and local practices of the citizens. There are many eminent Indian Scholars like Dr. B.R. Ambedkar, Erode Venkatappa Ramasamy Periyar, Lalai Singh Yadav and many others who criticizes religion on terms of facts rather than mere stories but unfortunately, facts will not be a considered a valid argument in the court but the outrage of the people regarding religion will be sole ground of this section. In the Rangila Rasool case, Ilam Din was the main accused in the murder of Raj Pal; this case was defended by Jinnah (the First Governor of Pakistan); in this case, it was proved that Ilam Din was an illiterate 20-year-old boy who could not read, and he murdered Raj Pal based on a Pamphlet which was made by Raj Pal. Ilam Din was found guilty of the murder and sentenced to death punishment. Similarly, in many cases, people get outraged by religion. Still, the question is whether the factual or rational argument will be considered a right to speech and expression or if it is restricted to the outrage of the people, whether the fact and rational argument will be viewed as a malafide act against religion to hurt the feelings of the people. Famous comedian Kiku Sharda was

[40] Section 295 A, Indian Penal Code 1860.

imprisoned only for mimicking Gurmeet Ram Rahim Singh[41], a Facebook user posted a post questioning the band in Maharashtra on the death of Bala Shaheb Thackrey[42], Rehana Fatima was arrested only to wear Lord Ayappa devotee cloth[43] and many other issues like Dhoni dressed up like Lord Vishnu[44] and O.N.I.D.A. using Goddess Durga[45] in the advertisement are very famous cases registered under Section 295 A which doesn't seem like a sewer offence and with malafide intention to hurt the religious feeling. In contrast, many cases are registered against those who are the sole believers of those faiths over the outrage of which these cases are registered over them.

6. Conclusion.

Blasphemy law should be abolished to advance religious tolerance and pluralism in society. The U.K. has shown that upholding the ideal of free speech while respecting religious values is feasible. This strategy promotes respect amongst different communities and helps minimise disagreements and conflicts by implementing the blasphemy law. In the U.K., people no longerworry about facing legal consequences when sharing their thoughts and beliefs or criticising any religious faith or trust.

As a result, society has become more diverse, encouraging the practice of freedom of speech and active discussion in public. Abolishing blasphemy laws aligns with global human rights concepts, such as freedom of opinion, conscience, religion, and speech. Human rights requirements are becoming more significant in today's society. Countries can more easily conform to international standards by repealing such laws. India should look into the amendment in this said provision or make it more specific regarding the offence so intellectuals and commoners can freely express their opinions as individuals with the right to practice without the fear of long legal proceedings. It will provide administrators and legislatures with a way to discuss controversial topics efficiently so the issues and practices

[41]Comedian Kiku Sharda arrested for mimicking Gurmeet Singh, apologises, available at: https://www.hindustantimes.com/tv/tv-actor-kiku-sharda-arrested-for-hurting-religious-sentiments/story-R5L0x1xIfJ5bgsOHOVCRJK.html, (last Seen 23rd January 2024)

[42]Two Mumbai girls arrested for Facebook post against Bal Thackeray get bail, available at: https://www.indiatoday.in/india/story/2-mumbai-girls-in-jail-for-tweet-against-bal-thackeray-121882-2012-11-18?onetap=true , (last seen 18 April, 2024)

[43] Sabarimala: India activist held for 'explicit' thigh photo, available at: https://www.bbc.com/news/world-asia-india-46369651 (last seen 29th January 2024)

[44]Mahendra Singh Dhoni gets Supreme Court relief in 'Lord Vishnu on cover' case, available at: https://www.hindustantimes.com/cricket/mahendra-singh-dhoni-gets-court-relief-on-lord-vishnu-on-cover-case/story-GpmsdiZcdVr1x6dWNVqwAM.html, (last seen 23rd March, 2024)

[45] Aveek Sarkar v/s State of Jharkhand, 2006CRILJ4211

can easily be resolved peacefully. As an accepted practice in many other developed democratic countries India also need to reform the offences against religion.

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THE "DOUBLE HAT" DEBATE IN INTERNATIONAL ARBITRATION

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ABSTRACT

This paper examines the feasibility and implications of banning double hat arbitration in international commercial arbitration. This paper will explore double hat arbitration and its prevalence in the arbitration. It analyses the need for independence and impartiality in arbitration and the impact of double hatting on it.

This paper will evaluate the potential reduction in the arbitrator pool that a ban might cause, weighing this against the benefits of increased impartiality. The paper explores a possible framework to limit double hatting, considering both stringent and flexible approaches.

Furthermore, this paper will examine the disclosure obligations for arbitrators and their effectiveness in reducing concerns about bias. This paper will conclude by providing recommendations on addressing the challenges posed by double hatting while maintaining the efficiency of arbitration as a system.

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1. INTRODUCTION TO INVESTOR-STATE DISPUTE SETTLEMENT (ISDS)

It is a legal mechanism in which investors from one contracting state to an international investment agreement are able to file for dispute against another state in which it has made certain investments. This is advantageous since utilising the courts of the party against which it is bring a claim may be time-consuming and filled with Hurdles.[1]

This system aims at filling the gaps and deficiencies left by the weak domestic courts of the contracting states. It serves as an impartial forum to help resolve investor-state disputes.[2]

2. UNDERSTANDING DOUBLE HATTING.

It is a practice wherein an individual occupies multiple roles in related or overlapping arbitration proceedings simultaneously or within a short period of time. A controversy arises when in one rule, the individual may be acting as a counsel while in the other role, the individual may be presiding over the matter as an arbitrator.

3. THE NEED FOR INDEPENDENCE AND IMPARTIALITY IN INTERNATIONAL ARBITRATION

The UNICITRAL Model Law serves as a foundational document for International Arbitration jurisprudence. Article 12 of the model law establishes “justifiable doubts as to his impartiality or independence” as a valid ground for the challenge of the arbitrator.[3] Thereby enforcing the concept of arbitrator’s impartiality as fundamental to the legitimacy of international arbitration as whole.

The independence of the arbitrator is further set forth in the International Centre for the Settlement of Investment Disputes (ICSID) convention. Article 14(1) of the convention requires the panel of arbitrators to exercise independent judgement.

In context of international arbitration, independence and impartiality of an arbitrator ensures decisions are taken purely from an objective basis, without the influence of external factors which may affect the arbitrator’s ability to decide on the merits of the dispute.

[1] Marta Latek, “Investor-State Dispute Settlement (ISDS): State of play and prospects for reform” *European Parliamentary Research Service* (2015).
[2] Sucharitkul, Vanina and Arb, "The Ban on Double Hatting in Investment Arbitration: A Double Edged Sword?," 7 *National Law School Business Law Review* (2021).
[3] UNICITRAL Model Law, Art. 12.

The terms "independence and impartiality" are not synonymous terms. 'Independent' refers to the lack of a connection to a party in the dispute while 'impartiality' signifies no particular pre-disposition or favouritism to any of the disputing parties. [4]

According to Philippe Sands, counsels who also serve as arbitrators in ISDS proceedings may not be independent and impartial as they may be utilizing their role as an arbitrator to influence the outcome of dispute in which they are acting as a counsel. Moreover, counsels acting as arbitrators have access to contacts and information that may benefit disputing parties in another matter in their role as counsel.[5]

An arbitrator may include a portion in their decision which might be useful in their role as a counsel in another decision.[6] Furthermore, an arbitrator will be reluctant to defer from opinion he may have voiced in the capacity of a counsel even if doing so would better serve the interests of justice. This may be done to avoid any allegation of hypocrisy against the arbitrator.

Thus, such self-serving behaviour may be unfairly benefiting or harming a party in another matter. This behaviour may happen even subconsciously and not deliberately.

4. PITFALLS OF A STRICT PROOF STANDARD

In Amco Asia, a strict proof standard was laid down. There had to be actual proof which made it highly probable that the arbitrator is not independent or impartial.[7] The issue is, this standard places an excessive burden on the disputing party looking to challenge the arbitrator's appointment. Independence and impartiality are mental states that are not easily proven, making it very difficult to provide actual proof of an arbitrator's bias.[8]

As per Jan Paulsson, clear evidence of bias mostly arises when an inexperienced arbitrator unintentionally reveals his partiality. In contrast, more serious misconduct often goes undetected, hidden by courteous behaviour and deception, making it nearly impossible to monitor and detect effectively.[9]

[4] Sheppard, Audley, "ARBITRATOR INDEPENDENCE IN ICSID ARBITRATION" *International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer* 131-156 (2000)
[5] Philippe Sands, "Conflict of Interests for Arbitrator and/or Counsel" *Building International Investment Law: The First 50 Years of ICSID* (2015).
[6] Sucharitkul, *supra* note 2.
[7] Amco Asia Corporation and others v. Republic of Indonesia ICSID Case No. ARB/81/1.
[8] Cleis, M.N, "The Independence and impartiality of Icsid Arbitrators: Current case law, alternative approaches, and improvement suggestions" *Brill Nijhoff (*2017).
[9] Jan Paulsson, "The Idea of Arbitration" 17 *Oxford University Press* (2013).

This high burden of proof essentially prevents parties from successfully challenging an arbitrator and doesn't allow a party to have the right to an independent and impartial arbitrator. As a result, partial arbitrators will be shielded from the repercussion of unethical conduct. Applying such a stringent standard to ICSID arbitrator challenges risks deepening perceptions of the international arbitrator community as an exclusive "club," a reputation that can completely undermine the legitimacy of the entire arbitral system and should be avoided.

5. THE JUSTIFIABLE DOUBT STANDARD TO COMBAT DOUBLE HATTING

In case of double hatting, a key test to determine the bias of the arbitrator is the "justifiable doubt test". In order the challenge the arbitrator's appointment, the opposing party must exhibit that multiple roles of the arbitrator's creates a genuine concern about his independence and impartiality. Requirement for actual evidence of partiality is irrelevant. The mere perception regarding the arbitrator is sufficient for the challenge to succeed.[10]

However, reaching this threshold of perceptible bias may be difficult to reach as evidenced by multiple challenges failing.

However, the case of *RSE Holdings*[11], a challenge to disqualify an arbitrator succeeded. RSE Holdings AG (RSE) filed a suite against Latvia claiming that the state made changes to its regulatory framework regarding electricity. Over the course of the proceedings, Lativia opted to challenge the arbitrator appointed by RSE.

The decision confirmed the use of the "justifiable doubts" standard mentioned both in the UNICTRAL Model law and rules.

It stated that even though the arbitrator's cases as a counsel did not include any of the current parties in this arbitration, it did concern the interpretation and application of the investment treaty that was an issue in the current arbitration proceeding.[12] There was a "serious risk" that the interpretation and application of the treaty will overlap with some of the arbitrator's counsel case.

Furthermore, the disclosures made by the arbitrator could not be used to come to a clear conclusion that any decision made by the arbitrator would be completely independent and impartial. Challenge was upheld disqualifying the arbitrator.

[10] Dennis Hranitzky, "The 'Double Hat' Debate In International Arbitration" *New York Law Journal* (2010)
[11] RSE Holdings AG v Republic of Latvia PCA Case No AA861.
[12] Id.

As per Karel Daele, 3 factors seemed to have an impact on the decision. First, the counsel cases and the RSE case were all under the same treaty, Second, all the counsel cases and the current arbitration proceeding had multiple overlapping issues. Third, the arbitrator has represented the claimant side in multiple disputes.[13]

Exeteco v. Peru[14] is another such case where the challenge to remove the arbitrator has succeeded. Even though at the time of the challenge, the arbitrator did not possess any knowledge could have influenced his judgement, it was not possible to predict the future influence on his decision.

More importantly, the involvement of the arbitrator as a counsel for Peru in a large number of unrelated cases did raise justifiable doubts regarding his independence and impartiality in current arbitration.

In *Liberty Seguros,* the arbitrator was disqualified since there was a risk of prejudgement and information asymmetry arising from his role as an arbitrator in 2 parallel arbitrations with substantial factual and legal overlap. [15] Therefore, it is possible for an arbitrator to be removed even if he hasn't assumed 2 contrasting roles if he is unable to judge a dispute on its merits

Historically, many challenges based on this ground have failed.

In KS Invest v. Spain,[16] the appointment of an arbitrator was challenged since the arbitrator was concurrently acting as a counsel in another Energy Charter Treaty arbitration due to which there multiple overlapping legal issues. However, this challenge failed since there were many differences such as different claimants, respondents and subsectors.

The court applied a "third party" standard where it determined that a third party undertaking a reasonable assessment of the case wouldn't raise justifiable doubts regarding the arbitrators independence and impartiality.

In an unpublished SCC arbitration, [17] a challenge was dismissed since the concerned arbitrations were based on different laws, different facts and other evidence. The only commonality was an issue regarding jurisdiction. Furthermore, it was apparent from the point

[13] Karel Daele, "RSE Holdings AG v Republic of Latvia: When Does Double-Hatting Justify the Disqualification of an Arbitrator?" 38 *ICSID Review - Foreign Investment Law Journal* 541-546 (2023).
[14] Exeteco International Company v Republic of Peru PCA Case No AA535.
[15] Liberty Seguros, Compañía de Seguros y Reaseguros SA (Spain) v Bolivarian Republic of Venezuela PCA Case No 2021-35.
[16] KS Invest GmbH and TLS Invest GmbH v Kingdom of Spain ICSID Case No ARB/15/25.
[17] Anja Ipp, "SCC Board Decisions on Challenges to Arbitrators 2016–2018" *SCC Practice Note* (2019).

of view of a third party that the decisions made by the arbitrator would not have any impact on his cases as a counsel.

A common pattern among these cases is that if there is substantial factual and legal overlap between 2 disputes contributing to a perceptible bias, the challenge to disqualify an arbitrator succeeds. However, despite the threshold of a perceptible bias being low (no actual evidence required), rulings are reluctant to uphold the challenge to an arbitrator. Challenges to the appointment of an arbitrate are generally upheld only when there is a substantial overlap in legal issues, concerns about the arbitrator's independence or other factors that may prevent the arbitration from being decided on its merits.

5.1. Situations giving rise to a justifiable doubt

A common scenario that can raise justified doubts about an arbitrator's impartiality is the repeated appointment of the same arbitrator by a party or its affiliate (or even by the same counsel or law firm) in cases involving claims with highly similar facts or legal foundations. Whether these appointments occur in parallel or sequentially, the arbitrator is placed in a position to address very similar issues, often with the implicit expectation of ensuring consistent, favourable outcomes for the appointing party in each case.

It is reasonable to assume that the appointing party may prioritize the arbitrator's ability to influence deliberations in its favour over the coherence of decisions across cases. Thus, repeated appointments suggest a level of trust from the appointing party and an expectation of outcomes that align with its interests. To a reasonable observer, such a pattern could create the perception that the arbitrator might feel a sense of loyalty to the appointing party or hold a fixed opinion that effectively guarantees a favourable decision for that party. In either situation, the arbitrator's independence and impartiality would be compromised.

6. NECESSITY OF COUNSEL EXPERIENCE AS ARBITRATORS.

Professional competence is an important factor in being an arbitrator. The only way to gain this profession competence is by working as a counsel. [18] The experience gained by being a counsel brings in technical knowledge and practical perspective regarding the matter at hand.[19] It is a near impossible task to completely segregate arbitrators and counsels into watertight

[18] John Crook, "Dual Hats and Arbitrator Diversity: Goals in Tension" 113 *American Journal of International Law* 288 (2019).
[19] *Supra* note 2.

compartments. The justifiable doubts standard serves as an important tool to remove the biasedness from this connected network of counsels serving as arbitrators.

7. SOLUTIONS TO DOUBLE HATTING

7.1. Detailed Disclosure Obligations.

With the aim of preventing double hatting, Article 9 of the UNICITRAL Code of Conduct for Judges in International Investment Dispute Arbitration [20]lays down disclosure obligations. They are recurring obligations rather than being a one-time only disclosure obligation. These obligations include information such as financial, business, professional or close personal relationship within the last 5 years with the parties and their legal representatives or any other relevant party along with any financial and personal interests. [21]

The benefits of such disclosure obligations remain to be seen. These disclosure obligations may deter individuals from accepting appointments since it is difficult for many to document the relationship with parties within the past 5 years along with identifying a financial or personal interest. An ambiguity regarding the definition and scope of relationship remains present since such a scope has not been mentioned in the Code of Conduct. For example, does a personal relationship require an arbitrator to have close correspondence with the disputing parties or can it arise by merely interacting with the other parties? What is the degree at which such a relationship arises? These questions require further analysis and clarification.

Furthermore, the effects of violating these obligations are unclear. Since no ramifications of the violation of these obligations are spelt out, its implementation may result in some resistance since an excessive burden is placed on the arbitrator to disclose such information.

It may be assumed that the failure to abide by these obligations may impact the perception of the independence and the impartiality of the arbitrator and form grounds of challenge. However, this is an implied sanction.

7.2. Blanket ban on Double Hatting

When choosing a panel of arbitrators, individuals who have been practicing as counsels are usually chosen as arbitrators considering their technical and practical knowledge. Counsels

[20] UNCITRAL Code of Conduct for Judges in International Investment Dispute Resolution, Art. 9.
[21] *Supra* note 2.

tend to maintain their practice until they receive a sufficient number of arbitrator appointments after which they can shift to a permanent arbitrator role.[22]

If a blanket ban on double hatting were to be implemented, arbitrators who are concurrently maintaining their practice as a counsel will be forced to choose one role. In most instances, they may choose to continue working as a counsel thus reducing the pool of arbitrators. Parties will be deprived of choice to choose an arbitrator with in-depth expertise and practical experience, which in most cases happens to be a senior counsel. Such a restriction goes against the principle of "party autonomy", which is one of the fundamental tenets of arbitration. Only experienced arbitrators with multiple secured arbitral appointments along with already existing financial stability will be able to pursue a role as an arbitrator.

For a blanket ban to work, there needs to be a limitation period to ensure their prior work as a counsel since does not create bias since the intent is to ensure that their role as a counsel doesn't affect the independence and impartiality of the arbitrator. Arbitrators will need to give up financial stability with counsel work and focus on securing arbitrator appointments. Expecting these from arbitrators is unrealistic and will only serve to shrink the pool further.

Furthermore, with the shrinkage in arbitral pool, a single arbitral may be adjudicating upon multiple arbitrations which may result in information asymmetry affecting their judgement and more time-consuming arbitration proceedings. Thus, the entire purpose of the ban and arbitration as a process is defeated.

A ban will also concentrate power in the hands of "power brokers".[23] If an absolute ban is implemented, only those who have already secured multiple arbitral appointments will be able to work as an arbitrator. Therefore, it may possibly secure power only in the hands of a few arbitrators who have had extensive experience. This will deter other counsels from seeking arbitral appointments since they will be forced to compete against well known and experienced power- brokers[24] along with giving up their current practice. This competition may starve new arbitrators of appointments resulting in them being unable to gain experience in the field.[25]

The purpose of the ISDS system is to create a system able to fill the deficiencies left by the domestic courts of the dispute parties. It aims to create an efficient system of quick redressal

[22] Id.
[23] Malcolm Langford, "The Revolving Door in International Investment Arbitration" 20 *Journal of International Economic Law* 301 - 326 (2017).
[24] Id.
[25] Id.

with complete party autonomy over the process. However a ban will force parties to dip into a short pool of arbitrators who may be already engaged by multiple arbitral appointments. Thus, arbitrations may be delayed due to shortage of time available with the arbitrator and negating one of the benefits of the arbitral process. Even if parties are willing to go through such a time-consuming process, due to counsels being unable to take up arbitral appointments, a considerable amount of knowledge and expertise will simply become unavailable.[26]

Instead of a blanket ban, John Crook[27] has suggested a "time phased" method wherein lawyers may continue to function as counsels for a particular period of time until they have secured enough arbitrator appointments.

7.3. Four Condition Proposal

Mohit Kumar Tanwar has offered a solution to double hatting. It may not completely solve this issue but it serves to alleviate some of the problems arising out of the existing issue. [28]

He introduces a set of four conditions that are aimed at addressing the issues arising out of double hatting. Out of these 4 conditions, at least 3 must be met.

1. Temporary Ban (Condition One) : The individual must not have acted as counsel or in a related role in cases involving the same party within the past three years.

2. Concurrent Role Restriction (Condition Two) : The individual must not concurrently act in cases involving the same party or cases with overlapping legal issues. .

3. Disclosure Requirement (Condition Three) The individual must disclose prior relationship from the past three to five years in ISDS cases involving the same party or treaty.

4. Ex-Post Ban (Condition Four) : After acting as an arbitrator, the individual cannot serve as counsel in cases involving the same party for three years.

The first condition serves as a restriction for "same party" cases, while Condition Two imposes a concurrent ban. Condition Three emphasizes transparency, and Condition Four imposes a post-appointment restriction, together covering different stages of an arbitration proceeding to holistically address double hatting.

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[26] Mohit Tanwar, "Addressing the Inadequacies: A New Multi-Faceted Solution to Double Hatting in ISDS" *LSE Law Review* (2021).
[27] John Crook, "Dual Hats and Arbitrator Diversity: Goals in Tension" 113 *American Journal of International Law* 288 (2019).
[28] *Supra* note 25.

Inspired by the IBA Guidelines, this proposal structures its conditions like the "List system," categorizing conflicts by severity. For example, non-compliance with the first two conditions which is similar to the Non-Waivable Red List mandates automatic disqualification. Similar to the Orange List, Condition Three allows parties a specified period of time to object to the disclosure, and a challenge under any of the first two conditions or lack of qualifications could lead to disqualification.

This structured approach neither bans double hatting entirely nor fully legitimizes it, thus aiming to balance party autonomy with the fundamental values of independence and impartiality in ISDS. Complying with conditions one and two is unlikely to substantially narrow the pool of arbitrators. Furthermore, the disclosure requirements do not place an excessive burden on most arbitrators. Therefore, these conditions essentially aim to offer most of the advantages of the earlier mentioned ‘solutions’ while aiming to minimize its drawbacks.

8. CONCLUSION

The practice of double hatting presents significant challenges to the integrity of international commercial arbitration. While it brings valuable expertise to the arbitration process, it also raises valid concerns about impartiality and independence. As the paper shows, a complete prohibition on double hatting could severely limit the pool of experienced arbitrators, thereby undermining party autonomy and negating the benefits of arbitration.

Solutions such as detailed disclosure obligations, temporary and permanent bans have certain drawbacks. Therefore, implementing the Four Condition Proposal is a suitable attempt at applying the advantages of these solutions while negating the drawbacks.

In conclusion, balancing these conditions will allow the mitigation of these biases while not severely harming the arbitration system. The implementation of these solutions serve as an important tool to uphold the efficiency and legitimacy of arbitration.

FROM ALGORITHMS TO COURTROOMS: NAVIGATING CHALLENGES OF AI-DRIVEN CASUALTIES IN CRIMINAL LAW

Shambhu Nath Mishra* & Vibhantika Dwivedi**

ABSTRACT

The rise of self-driving cars, especially Tesla's Autopilot feature, has transformed the way we travel with the help of Artificial Intelligence (AI). However, as this innovative technology becomes more widespread, a crucial question arises: when AI-driven vehicles are involved in accidents, who is accountable? This research paper delves into the complex and nuanced aspects of criminal liability in autonomous car accidents, addressing legal frameworks, ethical implications, and technological complexities. Tesla's Autopilot system is a prime example of how AI and transportation are converging, using advanced algorithms to analyse sensor data and guide vehicles with minimal human involvement. Although it holds great potential for enhancing road safety and efficiency, the occurrence of accidents involving Tesla cars in Autopilot mode has sparked intricate debates surrounding responsibility and morality. When determining the criminal liability in AI-driven car accidents, critical factors must be considered, such as Negligence, foreseeability, and causation. However, the traditional legal frameworks, which are based on human agency, face new challenges due to the autonomous decision-making abilities of AI systems. Furthermore, the responsibility of human operators in supervising autonomous vehicles adds a significant level of complexity to the issue of liability. While AI plays a crucial role in driving functions, humans are ultimately accountable for overseeing vehicle operations and taking action when necessary. As a result, determining criminal liability requires a thorough evaluation of how the AI and human agents interact within the driving setting. With Tesla showing keen interest in exhausting its potential in Indian market, the AI driven accidents in United States will soon be a reality in India. The settlement (Plea Bargaining) in cases of death caused by AI driven car in USA, is not a possibility in Indian Criminal Justice System. Tesla also getting fined by the jury is another aspect of criminal liability of AI. This paper discusses Culpability in cases of AI driven casualties including human responsibility while shedding light on the different models of criminal jurisprudence to hold Artificial Intelligence liable while conducting a few case studies.

Keywords: Artificial Intelligence, Autonomous Vehicle, Causalities, Culpability, Personality.

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INTRODUCTION

Artificial intelligence (AI) has transformed many aspects of human existence, resulting in unmatched advantages in a wide range of fields. Automation has revolutionized several industries, such as healthcare, banking, entertainment, and transportation, by enhancing production, accuracy, and efficiency. One of AI's most significant benefits is its ability to quickly and effectively evaluate vast amounts of data, generating previously unattainable insights. AI-powered diagnostic technologies in healthcare have helped doctors detect diseases early, thereby improving patient outcomes and potentially saving lives. Predictive modeling, powered by AI, also assists in identifying patterns and trends that aid in creating personalized treatment plans and disease prevention.

At this moment, too, when we are grappling with identifying and understanding ever-expanding context and nature of Artificial Intelligence, we lack a universally recognized definition of Artificial Intelligence. It is defined by various organizations and scholars according to their own understanding. Few of them are summarized below:

WIPO describes Artificial Intelligence in the following terms-

> "*There is no universal definition of artificial intelligence (AI). AI is generally considered to be a discipline of computer science that is aimed at developing machines and systems that can carry out tasks considered to require human intelligence. Machine learning and deep learning are two subsets of AI. In recent years, with the development of new neural network techniques and hardware, AI is usually perceived as a synonym for deep supervised machine learning.*"[1]

European Patent Office defines Artificial Intelligence as-

> *"Artificial intelligence (AI) is the ability of computers and machines to perform mental tasks commonly associated with humans, such as learning, reasoning, and problem-solving. Although core AI technologies, including neural networks, deep learning, and rule-based systems, have been known for a long time, they have developed dramatically in the past decade, bringing AI to the forefront of our lives. AI is here to stay and promises to be a disruptive force for years to come."*[2]

[1] WIPO, Artifical Intlligence and Intellectual Property. Available from: https://www.wipo.int/about-ip/en/frontier_technologies/ai_and_ip.html (Accessed 16 December 2024).
[2] European Patent Office, AI. Available from: https://www.epo.org/news-events/in-focus/ict/artificial-intelligence.html#:~:text=1%20Artificial%20intelligence%20and%20machine,in%20a%20field%20of%20technology (Accessed 16 December 2024).

Artificial Intelligence is:

"the ability to adapt or improvise according to the feedback received in order to solve problems and address situations that go beyond the predefined set of queries and instructions that the AI was programmed with."[3]

"*the use of technology through which human intelligence could be mimicked, following a detailed, expansive and exhaustive process of creating as well as applying algorithms, using a dynamic technological environment within computing.*"[4]

"any kind of man-made entity that has the ability to use working memory to utilize cognitive functions like abstract reasoning and logical deduction and able to learn new things autonomously."[5]

In simple terms, Artificial Intelligence is a subset of computer science programming in which the programmer imbibes in a machine, capability of cognitive reasoning through a source code. This is understood as Artificial Intelligence. This intelligence is below the level of human intelligence that the strong Artificial Intelligences are presumed to be capable of. Though this intelligence is very much capable of performing numerous activities at a very rapid speed and performance and the human mind is generally not capable of comprehending that speed and performance. The definition provided by Dafni Lima in his research paper provides by far the best and most comprehensive definition of AI in following terms:

"*It is the ability to adapt or improvise according to the feedback received in order to solve problems and address situations that go beyond the predefined set of queries and instructions that the AI was programmed with.*"[6]

There are possible two explanations of Artificial Intelligence from the above-mentioned definitions. One understands the concept of Artificial Intelligence from the lenses of Intellectual Property Rights and other explains it as a computer program cum algorithm. Thus, the journey of Artificial System begins as an Algorithm.

INTEGRATION OF LAW AND TECHNOLOGY

[3] Matilda Claussen-ICarlsson, Artificial Intelligence and the External Element of the Crime: An Analysis of the Liability Problem 7 (2017).
[4] OECD, Artificial Intelligence in Society (OECD Publishing, Paris 2019).
[5] Jessica Peng, How Human is AI and Should AI Be Granted Rights?, Available from: http://blogs.cuit.columbia.edu/jp3864/2018/12/04/how-human-is-ai-and-should-ai-be-granted-rights/ (Accessed 20 January 2024), see also, OECD, Artificial Intelligence in Society (OECD Publishing, Paris, 2019).
[6] Dafni Lima, *Could AI agents be held criminally liable: Artificial Intelligence and the Challenges for Criminal Law*, 69 S.C.L. REV. 682 (2018).

These days, intelligent technologies are increasingly being integrated into many areas of human activities. For example, on September 27, 2019, an unmanned aerial vehicle "Hunter" successfully completed a flight autonomously and entered the airborne alert area.[7] There are ongoing developments in software that can recognize human emotions from facial expressions and eye movements. Furthermore, a biometric sensor-equipped learning algorithm is being developed, which is expected to outperform current medical services in some of the top healthcare organizations in the world.

During an experiment, researchers at Georgia Tech Institute deployed two autonomous aircraft, which are also known as auto-piloted airplanes. These aircraft used data transmission software and Wi-Fi networks to communicate and share information with each other, without any need for human control.[8] The literature refers to the capability of AI systems for self-improvement as Artificial Super Intelligence (ASI), which enables society to have robots with autonomous needs and objectives.[9]

The European Economic and Social Committee's resolution from August 31, 2017, titled "*Artificial intelligence - the consequences of AI in the (digital) single market, in production, consumption, employment, and society*," suggests that incorporating AI into social practices can improve their effectiveness in achieving various goals. These include eradicating poverty, enhancing transportation safety, providing high-quality healthcare, offering personalized education, and promoting industrial development.[10]

CONCERN REGARDING INTEGRATION OF AI WITH TECHNOLOGY

Artificial Intelligence has vast presence in very human and non-human aspect of life. It is the essential part of automated cars, a driving force for drones, and a system running the computers. It is providing more improvised results in medical science research and artificially intelligent assistant on phones. This is also revolutionising judicial administration in form of artificially intelligent attorneys. In a nutshell, there is hardly any sphere of everyday life which has remained untouched from it. AI has helped to make human life easier, better and efficient,

[7] The newest drone "hunter" made the first joint flight with the su-57. RIA "Novosti", Retrieved from: https://ria.ru/20190927/1559199891.html (Accessed 18 December 2024).
[8] Toon, J. (2017) Swarms of Autonomous Aerial Vehicles Test New Dogfighting Skills. [online] Atlanta: GeorgiaTech. Available from: http://www.rh.gatech.edu/news/590743/swarmsautonomous-aerial-vehicles-test-new-dogfighting-skills [Accessed 18 December 2024].
[9] Radutniy, O.E. (2017) Criminal Liability of the Artificial Intelligence. Problems of Legality, (138), p. 136.
[10] Opinion of the European economic and Social Committee on "*Artificial intelligence-implications of artificial intelligence for the (digital) single market, production, consumption, employment and society*", Official Journal of the European Union, 31.08.2017, No. 2017 / C 288/01. (2017).

saving valuable time and energy.[11] This basic capability of machine operating on Artificial Intelligence is not a matter of concern but it's the application of this Artificial Intelligence on machines which raises multiple questions before the law. Out of all the things happening with and about Artificial Intelligence, two major international events caught the eyes of every individual and posed a challenge to enforcement of law.

- Use of Artificial Intelligence in autonomous cars that resulted in various fatal accidents[12],
- Alleged killing of Iranian Nuclear Program Chief Dr. Mohsen Fakhrizadeh Mahabadi by use of Artificial Intelligence[13]

When the whole world was celebrating and focussing on harnessing the potential of Artificial Intelligence, the news of the killing / assassination of the first human *Kenji Urada* by a robot shock the world.[14] In March 2018, an Uber vehicle running on artificial intelligence hit and killed a woman who was traveling perpendicular to the road due to an equipment malfunction. The AI mistook it for a "false operation."[15] This incident raises the question of whether AI should be considered a criminal offense, which requires presenting theoretical and doctrinal arguments. One view is that the potential to grant AI rights and impose obligations depends on resolving the question of AI's criminal responsibility.[16]

At the very outset, it may be argued that these two instances do not necessarily impact India at this stage but there is no denying that India is the premier country in the world to adopt Innovation and Technological advancement. With International brands like Apple and Tesla opening their offices and planning to launch their product '*MADE IN INDIA*', the time is not far when these Auto-motive cars would be a reality on the Indian roads. Though, it is unanimously agreed that there has been literally no development in the legal development associated with Artificial Intelligence but the questions raised are very grave and they require a comprehensive legal structure to regulate Artificial Intelligence. The entire word is grappling with the question about the concept and the possible expansion of Jural Correlative of Liability

[11] Matilda Claussen-Karlsson, *Artificial Intelligence and the External Element of the Crime: An Analysis of the Liability Problem* 7 (2017).
[12] Edward Helmore, *Tesla behind eight-vehicle crash was in 'full self-driving mode*', The Guardian, published 22nd September, 2022.
[13] Ronen Bergman and Farnaz Fassihi, *The Scientist and the A.I.- Assisted, Remote-Control Killing Machine*, The New York Times, published 18th September, 2021.
[14] Robert Whymant, From the Archive, 9 December 1981: Robot Kills Factory Worker, The Guardian, Available https://www.theguardian.com/theguardian/2014/dec/09/robot-kills-factory-worker (Accessed 19 December, 2024).
[15] E. M. Projdakov, Current State of Artificial Intelligence, Scientific Research, 2018.
[16] P. M. Morkhat, Problems of determining Legal Responsibility for the actions of Artificial Intelligence, Law and State: Theory and Practice, 9 153, (2017).

and Immunity in respect of Artificial Intelligence. It is at this very exact moment when the debate has already begun about the criminal liability of Artificial Intelligence, the researcher aims to explore the domain of criminal liability in cases of artificial intelligence.

The paramount issues at the intersection of law and technology are the complex realm of criminal liability concerning artificial intelligence. The concept of attributing criminal responsibility to non-human entities challenges traditional legal frameworks designed for human actions. As AI systems gain autonomy, decision-making capabilities, and the ability to interact with their environment, the potential for unintended consequences and ethical dilemmas grows. This prompts an urgent need to address the question of who, or what, should be held accountable when AI systems are involved in criminal activities or cause harm.

This exploration delves into the intricate dimensions of criminal liability in the realm of artificial intelligence, examining the existing legal frameworks, ethical considerations, and the evolving discourse surrounding the responsibility of AI developers, operators, and the AI entities themselves. As we navigate this uncharted territory, it becomes imperative to strike a balance between fostering technological innovation and ensuring accountability in the face of the unforeseen challenges posed by increasingly autonomous AI systems.[17]

Many people have expressed concerns regarding the increasing risks in a world that is becoming more computerized. Physicist Dr. Stephen Hawking, during a tech conference in Lisbon, Portugal on November 6, 2017, cautioned us about the hazards of AI, stating that it could be the worst example of human intelligence.[18] Elon Musk, an entrepreneur, has also voiced his worries, claiming that AI will most likely cause World War III. He advocates for the creation of a regulatory body to oversee AI research.[19]

The worries expressed by these individuals are validated by the US Air Force (USAF), which currently employs some semi- and fully autonomous technology and plans to improve these systems' autonomy in the future.[20] Researchers from Yale and Oxford Universities have found

[17] I. R. Begishev & Z. I. Hisamova, Legal Regulation of Artificial Intelligence, Baikal Scientific Journal, Vol. 10 Issue 2, 2019.
[18] See, for example: Murphy, M. (2017) Stephen Hawking: AI Could Be Best – or Worst – Thing in Human History. [online] New York City: MarketWatch. Available from: https://www.marketwatch.com/story/stephen-hawking-ai-could-be-best-or-worst-thing-inhuman-history-2017-11-06 [Accessed 19 December 2024].
[19] See, for example: Osborne, S. (2017) Elon Musk Calls for Urgent Laws on Robot as They Will Soon Be Risk to Public. Express, 28 November. [online] Available from: https://www.express.co.uk/news/science/885344/elon-musk-artificial-intelligence-roboticsregulation [Accessed 19 December 2024].
[20] Palmer, A. (2010) Autonomous UAS: a partial solution to America's future airpower needs. [pre-print] Submitted to: Air University in partial fulfilment of the graduation requirements. Available from: https://apps.dtic.mil/dtic/tr/fulltext/u2/1018416.pdf [Accessed 19 December 2024].

that AI systems will perform better than humans in a variety of tasks over the next ten years.[21] Similarly, in India, during the grand Ram Mandir Consecration at Ayodhya, the Indian security agencies employed AI to monitor any threats. Although the machines are precise, AI's self-learning and automation aspects are a matter of concern.

CRIMINAL LIABILITY OF ARTIFICIAL INTELLIGENCE

To attribute criminal liability on Artificial Intelligence the basic essentials of criminal liability of Indian as well as international jurisprudence of criminal law, must be satisfied. As discussed earlier, the criminal liability of any person depends on four factors - actus reus[22], mens rea, injury and human being. If we discuss these necessary elements one by one the essentials of criminal liability, actus reus and injury is present in form of some act or omission.[23] This injury is another essential element of criminal liability which is present in the case of Artificial Intelligence. The other two elements of mens rea and human being raises two important questions which the criminal jurisprudence of any country has no concrete answer in the present context.

To make an Artificial Intelligence criminally liable it must be a human being and bear mens rea to complete all the necessary elements for criminal liability. But the absence of these two elements raises two important questions:

- Can machine possess mens rea?
- Weather artificial intelligence can be conferred within personality?

In a nutshell, India's legal framework primarily holds human beings accountable for criminal actions, relying on concepts of mens rea (guilty mind) and actus reus (guilty act).[24] However, Artificial Intelligence system operates based on algorithms and data, devoid of human intent and consciousness, which complicates the attribution of criminal liability.

The criminal liability of Artificial Intelligence can be discussed on three main models depending upon the involvement and independence of application of Artificial Intelligence. The first discussion examines the **Direct Liability of AI Systems**. It considers the possibility that, soon, robots may become highly intelligent with human-like abilities. The study explores

[21] Grace, K. et al. (2018) Viewpoint: When Will AI Exceed Human Performance? Evidence from AI Experts. Journal of Artificial Intelligence Research, 62, pp. 729–754.
[22] J. C. Smith & Brian Hogan, Criminal Law, 1992, 7th ed., pp. 28-29.
[23] Joshua Dressler, Cases and Materials on Criminal Law, 2007, pp. 126.
[24] David Ormerod, Smith and Hogan's Criminal Law, 13th ed., 2011, pp. 46.

whether AI agents can be held criminally responsible for their actions and whether they should be granted legal personhood. The second discussion investigates the idea of **Liability of Agents (Liability of Humans)** involved in the production chain. This includes placing significant liability on people who operate AI agents, such as owners, programmers, designers, and other manufacturing process participants. Lastly, the research paper discusses the **Joint Liability of AI and Humans,** which may be a viable solution for addressing the wrongdoings of autonomous systems. The research paper argues that the current criminal code and judicial system are unsuitable for balancing the development of artificial intelligence and industrial robots while ensuring public safety. From a normative perspective, the concept of direct liability of AI systems presents challenges. The idea of AI systems acquiring legal personhood is still theoretical since no regulatory framework is in place to establish their legal standing. The concept of AI as a tool and the manufacturers' strict responsibility are complicated, as it may be challenging for the plaintiff to prove that the AI system was flawed from the beginning.

DIRECT LIABILITY OF AI SYSTEMS

There are two key requirements that must be met for intentional offenses to be considered criminal under criminal law. The first requirement is the factual element (actus reus), which involves the actual criminal activity. The second requirement is the mental element, which refers to the offender's general intent or mens rea.

The mens rea encompasses the concept of guilt and refers to an individual's intention or desire to bring about a particular outcome through their actions.[25] As Calo points out,

> "*Humans are, or are not, like robots, is a critical distinction that informs the legal issue before the court*"[26]

The question of whether AI systems can satisfy both the mental and factual elements of criminal responsibility is a difficult one. The mens rea element is particularly challenging to establish, as it requires proving the intentions of a non-human entity that is not sentient.[27] Scholars are looking into regulatory strategies that can account for the status of intelligent agents in society and the legal system. Some have even proposed giving AI systems "personhood" in a legal sense, although there are differing views on this matter. Numerous scholars are searching for

[25] Hallevy, G. (2013) When Robots Kill: Artificial Intelligence under Criminal Law. Boston: Northeastern University Press, p. 85.
[26] Calo, R. (2016) Op. cit., p. 25.
[27] Hallevy, G. (2013) Op. cit., p. 85

regulatory strategies that would take into account the status of intelligent agents in society and the legal system. Maybe inspired by the story of Hercules and Leo, two chimpanzees who were given "personhood" by the Manhattan Supreme Court in 2015[28], academics have begun to consider giving artificial intelligence (AI) systems "*personhood"*. It primarily depends on whether they accept the robot as a legal subject, i.e. "*metaphors or similes that support a particular verdict*"[29] or see it just as an object, i.e. "*artifacts in the world that have legal disputes*."[30]

One situation that was particularly intriguing was demonstrated by a fictitious trial. During the San Francisco convention of the International Bar Association, Dr. Martine Rothblatt, an attorney, discussed the legality of a corporation unplugging or shutting down an intelligent computer on September 16, 2013, contending that the computer has the right to continue existing.[31]

Legal experts argue that robots are human-made objects and are therefore viewed as property or items, devoid of any legal rights. As such, they cannot be held liable for criminal offenses. However, as artificial intelligence continues to develop, robots may eventually be able to create their own intentions and goals, potentially making them subject to criminal liability laws. The arguments given by American writer Isaac Asimov deliberates and discusses this aspect very well in his writings.[32]

LIABILITY OF HUMANS (STRICT LIABILITY)

Many academics who study law agree that the person who created or is the robot's owner bears legal liability for the actions of AI systems. In light of this, artificial intelligence (AI) entities are traditionally viewed as innocent agents—machines devoid of human characteristics—and as such, an AI system cannot be held accountable for committing a crime. According to this

[28] Bekoff, M. (2015) Judge Recognizes Two Chimpanzees as Legal Persons: A First Two Chimpanzees, Hercules and Leo, Are Determined to Be Persons in NY Court. [online] Available from: www.psychologytoday.com/us/blog/animal-emotions/201504/judge-recognizes-twochimpanzees-legal-persons-first [Accessed 26 December 2024].
[29] Calo, R. (2016) Op. cit., p. 44.
[30] *Ibid.*
[31] Rothblatt, M. and Angelica, A.D. (2003) Bio-Cyber-Ethics: Should We Stop a Company from Unplugging an Intelligent Computer?. [blog entry] 28 September. Available from: http://www.kurzweilai.net/biocyberethics-should-we-stop-a-company-from-unpluggingan-intelligent-computer [Accessed 24 December 2024].
[32] Asimov explores the "three law of robotics", which are as follows: "*(1) a robot may not injure a human being or, through inaction, allow a human being to come to harm; (2) a robot must obey orders given it by human beings except where such orders would conflict with the First Law; and (3) a robot must protect its own existence as long as such protection does not conflict with the First or Second Law*". See: Houvast, F. Timmerman, R. and Zwaan, Y. (2018) Exploring the Legal Rights & Obligations of Robots: A Legal Book Review of I, Robot by Isaac Asimov reviewed in Law Literature Project, Utrecht University, pp. 1–8.

perspective, the real offender is the robot's programmer, who creates software with specific instructions that cause the robot to commit crimes.[33]

It's crucial to remember that this model implies that AI is only a tool—like a hammer—that the user or programmer can utilize. Based on the study, sellers, distributors, and users view AI systems as instruments in their hands, and they are held liable for their specific interaction with the AI systems rather than for any wrongdoing on their part. Because an AI system's behavior is inextricably linked to the real person it represents, that person is responsible for any harm the AI system causes, regardless of whether the behavior was deliberate or not.[34]

The workable answer is to create accountability frameworks that encourage creativity and the creation of sophisticated, self-governing artificial intelligence while skillfully controlling the risks and potential detrimental behaviors. In response to the concern about promoting safety without undermining the market's supply of robots, Calo advocates for offering distributors and producers of open robotics protection akin to that afforded to gun makers.[35]

LIABILITY OF BOTH AI AND HUMANS

Failure to exercise reasonable caution to protect oneself or others is considered Negligence. Either acting or not doing so can constitute Negligence. A person is considered negligent if they take a course of action or fail to take a course of action that a reasonably careful person would have taken in identical circumstances.[36] Hallevy contends that in line with this perspective, the person who programmed the robot or the person using it is accountable if they could not anticipate the offense the robot would conduct and take appropriate action to stop it. This is known as the Natural-Probable-Consequence liability model in Hallevy's study. [37]

This paradigm suggests a connection between an AI system's offense and an action taken by the maker or user. If there is proof that the maker or the user should have taken corrective action to stop the incident from happening, even though they had no intention of committing an offense, they will still be held responsible. This concept is predicated on the reasonable

[33]Asaro, P.M. (2006) What Should We Want From a Robot Ethic? International Review of Information Ethics, 6 (12), pp. 2–15. Available from: http://cybersophe.com/writing/AsaroIRIE.pdf [Accessed 20 December 2024].
[34] For an overview of vicarious liability, see: Lederman, E. (2000) Models for Imposing Corporate Criminal Liability: From Adaptation and Imitation Toward Aggregation and the Search For Self-Identity. Buffalo Criminal Law Review, 4 (1), pp. 641–708.
[35] Calo, R. (2011) Open Robotics. Maryland Law Review, 70 (3), pp. 101–142. Available from: http://ssrn.com/abstract=1706293 [Accessed 25 December 2024].
[36] Judicial Council of California. (2017) California Civil Jury Instruction 2017 Edition ("CACI") No.401. [online] Available from: https://www.justia.com/trials-litigation/docs/caci/400/401/ [Accessed 26 December 2024].
[37] Hallevy, G. (2010) Op. cit., pp. 15, 16.

programmers' and manufacturers' obligation to anticipate possible misbehaviours by the robots, i.e., to guarantee that their goods are free from design faults and to prevent roadblocks by alerting customers to potential hazards. [38] In this view, failure to warn about a known risk or to provide sufficient instructions to prevent harm makes manufacturers, sellers, or distributors legally accountable.

There are no established guidelines for assigning liability to producers for Negligence. AI system operators may not be well-positioned to anticipate hazards and exercise due diligence, as the self-learning entities may be difficult to predict in terms of behaviour and identifying cause-and-effect patterns. It is reasonable to argue that corporate liability needs to be given greater attention from researchers, academia, and politicians, given the vast power that AI holds in the hands of large tech companies. However, a global regulatory response is required to establish fundamental guidelines addressing this issue.

HOW DO YOU PUNISH AI

The issue of whether robots can be punished by the court or feel guilty is still up for debate. When it comes to machines and crime, the problem is complex. A machine doesn't have thoughts or goals, so it's different from a person doing a crime. The issue of inflicting punishment on AI primarily faces two challenging questions: Can Machines (running on AI) have *mens rea*? And how can a machine be punished?

Various jurists have addressed the first challenge by drawing a parallel with the criminal liability of corporations. They argue that if a corporation, which is an abstract entity, can be prosecuted for criminal conduct, why can't an AI be? A parallel can be drawn between a corporation's and AI's criminal liability.[39] The judicial creation of concepts like the Lifting of the Corporate veil can lead the way in ascertaining and punishing the AI involved in criminal acts.[40] Here, the question of why we punish a machine also arises. Bentham's concept of utilitarianism is rational, i.e., maximum happiness for the maximum number of people. Punishing AI is necessary to create a deterrent effect on the people perpetrating crimes through AI.[41] It will also bring some emotional harm to the victims.

[38] Ibid, pp. 14, 15.
[39] Ying HU, Robot Criminals, 52 U. MIch. J. L. Reform 531 (2019).
[40] Ryan Abbot, The Reasonable Robot: Artificial Intelligence and Law, 111-112 (2020).
[41] *supra note at 32, at 508-510.*

The second challenge challenges the jurisprudential notion of the criminal justice system. Punishment is intended to cause suffering or loss as a consequence of wrongdoing. According to Bentham, punishment involves inflicting pain with utilitarian goals such as reformation and deterrence.[42] H.L.A. Hart further elaborates on the topic and lists five essential characteristics of punishment, which are as follows:

1. Punishment must cause some level of discomfort or unpleasantness;
2. It must be imposed for the violation of the law;
3. It must be imposed on the actual offender;
4. It must be imposed by someone other than the offender; and
5. The state affected by the offense must impose it.[43]

Considering the above justification for the punishment, pain and suffering leading to reformation and deterrence are necessary for inflicting punishment. Punishments inflicted for various offenses around the globe are different, such as retributive punishment (AI systems and software be permanently shut down or wholly deleted, leading to the death of AI entity as vengeance for severe AI crimes[44]), preventive punishment (AI systems be put behind bars or incarcerated[45]), reformative punishment (AI system be diagnosed by experts to reduce delinquency and to resuscitate AI entities into function[46]) and compensatory punishment (AI system cannot compensate in monetary terms but it can be employed for public goods[47]). All these are theoretical concepts and discussions.

Our laws aren't ready for blaming non-human things. Instead, we usually blame people related to the machine, like those who made it, run it, or are in charge. Explorations into regulating machine accountability highlight the crucial role of human stakeholders in programming and implementing AI systems. A more practical approach to addressing accountability is establishing liability frameworks that hold individuals or organizations accountable for the actions of AI machines rather than solely punishing the machines. However, this presents a complex challenge as we strive to balance technological progress and ethical governance. Ongoing discussions between legal, ethical, and technological experts are essential to navigate

[42] Mark Tunick, Punishment Theiry and Practice, University of California Press, 1992, pp.70-73.
[43] Herbert Lionel Adolphus Hart & John Gardner, Punishment and Responsibility: Essay in the Philosophy of Law, Oxford University Press, 2008, pp. 4-5.
[44] Gabriel Hallevy, When Robot Kills: Artifcial Intelligence under Criminal Law, Northeastern University Press, 2013, pp. 166-167.
[45] *Id.* at 167-168.
[46] *Id*, at 170.
[47] *Id*, at 173.

the ever-evolving world of AI and criminal liability. Many human characteristics, such as fear, suffering, and mobility, do not apply to robots, so the concept of robotic captivity would be meaningless. Thus, robot "personhood" remains a contentious topic with no clear resolution.

CASE STUDY OF TESLA CAR ACCIDENTS

Tesla, a pioneer in electric vehicles and autonomous driving technology, has been at the forefront of developing self-driving cars. While Tesla's Autopilot and Full Self-Driving (FSD) systems have garnered attention for their potential to improve road safety, there have been instances of accidents involving Tesla vehicles equipped with these features. This case report examines a few notable accidents caused by Tesla autonomous vehicles, highlighting the challenges and controversies surrounding self-driving technology.

Case 1: Joshua Brown's Fatal Crash (2016):

In May 2016, a Tesla Model S operating in Autopilot mode was involved in a fatal accident in Florida, USA. The vehicle's Autopilot system failed to detect a tractor-trailer crossing its path, resulting in a collision that led to the death of the driver, Joshua Brown. The National Highway Traffic Safety Administration (NHTSA) conducted an investigation and found that the Autopilot system was not designed to handle this specific scenario, as it could not distinguish the white side of the trailer against the bright sky. Tesla made updates to improve Autopilot safety and clarified its limitations.[48]

Case 2: Tesla Model 3 Collision with a Semi-Truck (2019):

In 2019, a Tesla Model 3 operating in Autopilot mode collided with a semi-truck in Delray Beach, Florida. The driver was killed in the accident. Preliminary reports suggested that the Autopilot system was engaged at the time of the crash. Investigations were initiated to determine if the Autopilot system played a role in the accident. The incident raised concerns about the reliance of some Tesla drivers on the autonomous features.[49]

Case 3: Tesla Model Y Crash (2021):

In April 2021, a Tesla Model Y crashed into a tree in Texas, resulting in a fire that claimed the lives of two passengers. It was initially reported that there was no one in the driver's seat at the

[48] Rachael Abrams, Joshua Brown, Who Died in Self-Driving Accident, Tested Limits of His Tesla, The New York Times, 1st July, 2016, Available at https://www.nytimes.com/2016/07/02/business/joshua-brown-technology-enthusiast-tested-the-limits-of-his-tesla.html (Accessed 26 December, 2024).

[49] Thrisa Thadani, The final 11 seconds of a fatal Tesla Autopilot crash, The Washigton Post, 6th October, 2019, Availabe at https://www.washingtonpost.com/technology/interactive/2023/tesla-autopilot-crash-analysis/ (Accessed 26 December, 2024).

time of the crash, and the vehicle may have been operating in a fully autonomous mode. This case intensified discussions about the responsible use of autonomous technology and whether Tesla's driver monitoring systems were effective[50].

These three case studies have raised important questions about the capabilities and limitations of self-driving technology. While Tesla continues to develop and refine its autonomous systems, it is crucial for both manufacturers and regulators to ensure that users are well-informed about the technology's capabilities and limitations. But the major question remains the same, who should be held criminally liable for all these accidents involving death of the drivers and other people? There is no concrete answer.

Tesla car accidents raise complex questions about criminal liability in the context of autonomous driving technology. When accidents occur, it becomes crucial to determine whether the responsibility lies with the human driver, the vehicle's Autopilot system, or a combination of both. Criminal liability typically depends on factors like driver negligence, adherence to safety protocols, and the role of automation. Prosecutors must assess whether drivers misused or over relied on Autopilot, and whether Tesla adequately communicated its system's limitations. Moreover, questions about product liability and corporate responsibility may arise. As autonomous technology continues to advance, legal frameworks must evolve to address these novel challenges, ensuring a fair and just approach to criminal liability in Tesla car accidents.

Elaborating the above discussion, in another case where Mrs. Emily Smith's died in a terrible Uber car accident, her husband, Mr. John Smith, and their daughter, Sarah Smith, filed a landmark lawsuit against Uber Technologies Inc. in the US judicial system.[51] According to the lawsuit, Uber neglected to vet and train its drivers properly, which led to Negligence and ultimately caused the deadly accident. The driver in question, according to Mrs. Smith's family, had a history of moving violations and was not adequately trained to handle traffic in places with heavy traffic, which finally resulted in the unfortunate death of the driver.[52]

[50] Tesla's Autopilot faces US investigation after crashes with emergency vehicles, The Guardian, 16th August, 2021, available at https://www.theguardian.com/technology/2021/aug/16/teslas-autopilot-us-investigation-crashes-emergency-vehicles (Accessed 26 December, 2024).
[51] *Thornton v. Uber Technologies*, 359 Ga. App. 790.
[52] Rebekah Riess, Uber self-driving car test driver pleads guilty to endangerment in pedestrian death case, 29 July 2023 Available from https://edition.cnn.com/2023/07/29/business/uber-self-driving-car-death-guilty/index.html (Accessed 28 December, 2024).

Following an extensive court struggle, Uber Technologies Inc. agreed to pay the Smith family damages for their tragic loss in an out-of-court settlement. The settlement probably included money to cover the survivors' emotional suffering, burial fees, and medical bills. An important turning point in the ongoing discussion concerning ride-sharing businesses' accountability and the necessity of improved safety protocols in the transportation sector has been reached with the *Smith v. Uber case* settlement. It emphasizes how crucial it is to have thorough driver screening procedures, extensive training programs, and strict safety measures in place in order to avoid incidents like this one in the future.

Interestingly, this sort of settlement is not recognized under the Indian Criminal Justice System. Thus, this approach of the US settlement system presents no solution to the emerging problem of accidents caused by automated cars. It cannot act as a pathway for the evolving jurisprudence in the Indian discourse.

CONCLUSION

Artificial intelligence (AI) has become increasingly prevalent in various domains, particularly in autonomous vehicles like Tesla cars. However, this raises important questions regarding criminal liability and accountability. This research paper explored the complexities surrounding AI's role in accidents involving Tesla vehicles and highlight the blurred lines of responsibility between human operators, AI systems, and manufacturers. As Tesla's Autopilot and Full Self-Driving features continue to evolve, the issue of assigning culpability in accidents becomes increasingly intricate. While AI systems are designed to enhance safety and efficiency, incidents involving Tesla cars underscore the need for clear legal frameworks to address liability when accidents occur. The lack of explicit regulations governing AI's role in such incidents exacerbates these challenges, leaving victims, manufacturers, and regulators grappling with questions of fault and accountability.

To inform future regulatory efforts aimed at establishing accountability for AI-related accidents, we can learn from existing legal precedents, such as product liability laws and the principle of foreseeability. Collaboration between policymakers, legal experts, technologists, and industry stakeholders is imperative to develop comprehensive frameworks that balance innovation with safety and accountability. In navigating the complex terrain of criminal liability in AI-related accidents involving Tesla cars, it is essential to prioritize public safety while fostering innovation in autonomous technologies. By addressing these challenges proactively,

society can harness the transformative potential of AI in transportation while mitigating risks and ensuring justice for all parties involved in accidents.

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SOCIAL MEDIA'S EFFECT ON ELECTIONS: A CRITICAL ASSESSMENT OF ITS POTENTIAL TO ENHANCE VOTER ENGAGEMENT AND MITIGATE THE DISSEMINATION OF MISINFORMATION

Rudrabhishek Chauhan*

ABSTRACT

This paper argues the significance of social media regarding modern elections with respect to its ability to increase voter involvement and address false information in relation to Indian elections. Political parties and candidates use platforms such as Facebook, Twitter, WhatsApp among others for accessing voters, spreading their messages and mobilizing support. The prompt dissemination of information through these platforms can boost voter participation and knowledge. Nevertheless, the cons of using social networks include rumours, fake news, and divisive content that may distort the electoral process. To tackle these weaknesses, there is need for strong regulations and guidelines on use of social media during election which include monitoring political advertisements, content moderation as well as enforcing election laws on platforms. Besides this promoting digital literacy will also help voters recognize credible from misleading information they come across online. In conclusion, although social media has great potential in fostering voter participation and curbing misinformation during Indian elections; nevertheless, it poses certain risks that require vigilance and proactive measures for ensuring a fair open democracy based electoral landscape.

KEYWORDS: *Social Media, Elections, Voter Engagement, Dissemination Of Misinformation, Election Commission of India.*

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1. INTRODUCTION:

A pivotal area of study is the fusion of social media and electoral processes that sheds light on how digital platforms interact with democratic procedures intricately. In an era dominated by online connectivity, the impact of social media on elections has been under intense scrutiny, bringing out the opportunities and challenges in utilizing these omnipresent networks within the political domain.

Twitter, Facebook and Instagram are some examples of social media platforms that have completely changed how political campaigns are run due to their ability to offer candidates and parties unheard-of avenues through which they can engage voters, share their messages and mobilize support. Social media is instantaneous hence real-time conversations through which politicians directly talk to people who will elect them or vote for/against a referendum. This change in approach has led to traditional campaign tactics being reversed allowing individuals vying for a position to customize their message targeting specific demographics while at the same time building up grass root movements faster than before with more convenience[1].

Nonetheless, there are challenges and complications involved in the use of social media in elections. The democratisation of information sharing through these platforms has generated concerns about information overload, echo chambers and algorithmic biases that distort public sentiment and manipulate voters' decisions. The viral nature of social media content, along with potential for exploitation and manipulation is a major challenge to the integrity of the electoral processes, as well as building an informed electorate capable of making judicious choices.

Research on how social media affects elections has produced a wide range of findings that demonstrate the complex interaction between digital technology and democratic practices. Some studies have shown how social media can help increase voter engagement by fostering conversation, promoting civic participation, and expanding access to political information[2]. Some like Facebook have been praised for their ability to engage people into political conversations, mobilize supporters and create a sense of community among politically active citizens.

[1] Mirza Sarah Alam and Md Yousuf, "Use of Social Media in Politics- A Quantitative Study of How Political Activities on Social Media Affect People Aged 20-39 in South East Asia" (Masters Thesis, 2021) <https://www.diva-portal.org/smash/get/diva2:1608836/FULLTEXT01.pdf> accessed 30 December 2024.
[2] Ibid.

On the other hand, this has highlighted the hidden side of social media and its effect on elections whereby fake news has increased, division words have been used widely, and trust towards well established institutions is being eroded. Filter bubbles is another phenomenon that has raised alarm about public discourse disintegration and the digital space entrenchment of ideological polarization.

The findings from the research on social media's impact on elections reinforces its strong influence on voting behavior, participation and election results. To cope with a rapidly changing digital communication environment in relation to democratic processes, it is important for policy makers, organizations and voters to understand how social media works during an electoral process.

2. LEGAL DOCTRINES AND PRINCIPLES:

Legal systems are based on legal doctrines and principles. These provide a framework containing rules, procedures, as well as tests to guide judicial decisions and shape interpretation and application of laws. Common law jurisdictions often establish these doctrines in the course of time, thus giving resolution to legal disputes in an organized manner[3].

Loss of rights occasioned by the failure to act promptly is covered under one important legal doctrine known as Doctrine of Laches at common law[4]. In English common law, this rule describes unnecessary delay in bringing a party for non-performance before the court leading to possible dismissal due to operation of laches[5].

Besides that, there is also another notable legal principle known as Doctrine of Substantial Performance which allows for partial execution instead of full performance of a contract. This principle serves as an equity defense when one party has performed substantially all its obligations under a contract prior to committing the breach such that it would be inequitable for the aggrieved party to take advantage once the breaching party has performed a major part.

To be clearer, the Doctrine of Attribution includes a number of legal doctrines that hold someone responsible for acts that he did not commit directly. This doctrine allows that an actor

[3] "Guides: Legal Research Resources for the Public: Types of Resources" <https://libguides.law.umich.edu/c.php?g=748873&p=6725487> accessed 30 December 2024.
[4] "Judicial Doctrines" (*Drishti IAS*) <https://www.drishtiias.com/to-the-points/Paper2/judicial-doctrines> accessed 30 December 2024.
[5] Xymon Bassig, "Legal Doctrines and Principles" (*Scribd*).

may be held accountable for things done on his behalf or under his authority even if he was not personally engaged in the misconduct[6].

The Doctrine of Tipsy Coachman also stands for the law that is okay with a right conclusion made by a lower judge though based on faulty reasoning at a higher court. This concept allows appellate courts to affirm judgments in any case having any valid grounds no matter whether the lower court's basis is wrong or not, so long as justice will prevail despite mistakes made by subordinates.

These legal doctrines and principles together with others are vital in shaping legal systems, guiding judicial decision-making and ensuring consistent and fair application of laws. With recourse to established legal doctrines, courts can interpret statutes, settle disputes and maintain justice and equity through their proceedings.

3. STATUTORY PROVISIONS:

The major statutory provisions related to social media and elections in India include:

- **Representation of the People Act, 1951:** During the period of forty eight (48) hours ending with the hour fixed for conclusion of poll, there shall be no display to the public through any means, whether audio or visual, television or other similar apparatus of any matter intended or calculated to influence or affect the result of an election held in a constituency[7].
- **Election Commission of India (ECI) Guidelines:** The ECI issued guidelines on conduct for free and fair elections which provided that candidates should provide details of their social media accounts while filing nominations and that political advertisements on social media platforms should be pre-certified[8].
- **Voluntary Code of Ethics:** During elections, Facebook itself along with its counterparts, Google, WhatsApp, ShareChat, TikTok along with Internet & Mobile Association of India (IAMAI) have consented to voluntarily abide by a code they developed together[9].

[6] Ibid.
[7] "The Big Picture – Election Code and New Age Media" (*Drishti IAS*) <https://www.drishtiias.com/loksabha-rajyasabha-discussions/the-big-picture-election-code-and-new-age-media> accessed 30 December 2024.
[8] Times Of India, "Election Commission Issues Social Media Guidelines for Candidates" (*The Times of India*, March 10, 2019).
[9] Nishtha Vishwakarma, "Social Media Companies Raise Concerns over Election Commission's Voluntary Code of Ethics" (*MEDIANAMA*, September 20, 2019) <https://www.medianama.com/2019/09/223-social-media-companies-raises-concerns-over-election-commissions-voluntary-code-of-ethics/> accessed 30 December 2024.

- **Model Code of Conduct:** The ECI has introduced a model code governing political party use of social media platforms advocating the need for content and advertisement monitoring while considering freedom expression principles[10].
- **Information Technology Act, 2000:** The ITA regulates digital communication and content as well and has provisions on transmission of information electronically which includes dissemination of false or offensive information.

The scamsters aim to ensure free and fair elections, suppress hate speech, disinformation, propaganda and maintain transparency in the electoral process.

4. USE OF SOCIAL MEDIA PLATFORMS DURING ELECTIONS:

Election Commission of India (ECI) has issued guidelines for candidates about use of social media platforms during elections. ECI guidelines are meant to ensure a ethical use of social media platforms by candidates without compromising the integrity of the electoral process. Some key guidelines include:

- **Pre-certification of Political Ads:** For any political advertising on social media platforms, it should be pre-certified first by Media Certification Monitoring Committees (MCMCs) at district/state levels before posting them in public domain[11].
- **Expenditure Reporting:** Candidates must record all the costs incurred in adverts on social media in total election expenses[12].
- **48-Hour Silence Period:** All major social media platforms, such as Facebook, Twitter, Google, WhatsApp and Share Chat are subject to the 48-hour silence period before the polls when no new advertisement can be posted or promoted[13].
- **Model Code of Conduct:** All provisions of the model code of conduct shall apply to the content being posted on social media by candidates and political parties[14].
- **Accountability for Expenditure:** Candidates are required to provide comprehensive financial statements for all expenses associated with social media campaigning. This includes payments made to internet companies and websites to carry advertisements,

[10] Faraz Alam Sagar, "May The Best Man Win: ECI's Social Media Code of Conduct | India Corporate Law" (*India Corporate Law*, January 25, 2022).
[11] "Election Commission to Keep a Close Watch on Social Media Campaigns" (*The Hindu*, April 6, 2023).
[12] Ibid.
[13] "Model Code & Political Ad Rules Will Apply to Social Media Too" (*The Economic Times*, March 11, 2019).
[14] Ibid.

campaign-related operational expenses for creating creative content, as well as salaries and wages paid to employees responsible for maintaining the social media accounts[15].

- **Monitoring and Regulation:** The ECI is keeping a close watch on social media campaigns and has appointed a grievance officer to take complaints related to these advertisements on all social media platforms[16].

These guidelines aim at ensuring that political advertisements on social media platforms are fair, ethical and in compliance with the model code of conduct issued by the Election Commission of India.

5. USE OF SOCIAL MEDIA IN POLITICAL CAMPAIGNS TO ENGAGE WITH VOTERS, DISSEMINATE INFORMATION AND MOBILIZE SUPPORT[17]:

- **Contacting Voters:** Direct connection between political candidates or parties with their voters takes place through social media networks such as Facebook, Twitter, Instagram, YouTube and LinkedIn where they share policy positions, hold campaign events, raise funds and recruit volunteers[18].
- **Communicating Policy Positions:** Social-Media enables candidates to directly connect with supporters and potential voters about their policy agenda, campaign messages and other things.
- **Campaign Event Promotion:** Social media is used to increase awareness on campaign events like rallies, town halls among other activities aimed at increasing participation by the electorates.
- **Fundraising:** On social media platforms candidates ask for donations from potential donors who are willing to offer financial resources for running their political campaigns.
- **Marshaling Volunteers:** Social-Media can be an instrumental tool for marshalling volunteers towards the organization of political campaigns activities spearheading grassroots activities that back either the candidate or party's rally.
- **Demographic Targeting:** In order to effectively target specific voter groups, campaigns select social media platforms that have distinct features and user demographics.

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[15] Ibid.
[16] Times Of India, "Election Commission Issues Social Media Guidelines for Candidates" (*The Times of India*, March 10, 2019).
[17] Chunav Parchar, "In What Ways Can Social Media Be Used In Election Campaigns?" (June 9, 2023) <https://www.linkedin.com/pulse/what-ways-can-social-media-used-election-campaigns-chunav-parchar> accessed 30 December 2024.
[18] Christina Newberry, "Social Media and Politics: Rules and Best Practices" (*Social Media Marketing & Management Dashboard*, January 10, 2024).

- **Creation of Official Accounts:** Candidates create official social media accounts and pages for the purpose of maintaining an online existence and having direct conversations with the public.
- **Outreach Improvement:** However, by utilizing social media tactics, campaigns can now reach out to a much larger audience regardless of their location; this creates two-way communication where candidates engage in dialogue with voters[19].
- **Real-time Feedback:** This allows campaigns to interact directly on social media platforms for getting real time feedback which helps them understand better how people feel about certain issues, what they want done or expected by the politicians hence allowing them to make necessary amendments.
- **Creating Online Communities:** By creating online communities that engage with their campaign, take action, donate or support the candidate's initiatives are some of the ways in which political campaigners utilize this platform[20].

These strategies illustrate various approaches used in politics for social network sites that involve voters in discussions concerning themselves and shape public opinion resulting into electoral victory.

6. EXAMPLES OF POLITICAL CAMPAIGNS IN INDIA USING SOCIAL MEDIA TO SPREAD MISINFORMATION:

- **WhatsApp:** In India, the most significant source of false news online is WhatsApp, which is used for spreading fake stories and instigating violence leading to lynching and other forms of aggression fuelled by propaganda against particular communities[21].
- **WhatsApp Forwarding:** The forwarding component on WhatsApp has been taken advantage of to proliferate untruths and misinformation, culminating in episodes of violence and social turmoil in India, revealing how destructive social media platforms can be when they are used to spread fake information during political campaigns[22].
- **Twitter:** In addition to that Twitter have also been known as a tool which has been used for circulating information which is not accurate so as to influence how people think and determine the course of political events in India.

[19] Ibid.
[20] Brandon Blumenherst and Brandon Blumenherst, "Politics and Social Media: How to Create a Winning Strategy" (*NGP VAN*, December 14, 2023).
[21] Md Sayeed Al-Zaman, "Social Media Fake News in India" (February 28, 2021).
[22] "Misinformation during Indian Elections: The Saga from 2019 to 2024" (*The Hindu*, March 26, 2024).

- **YouTube:** The popular video-sharing platform YouTube has seen a lot of content being published on it aimed at spreading lies by deceiving members of the public thus disseminating false narratives within Indian politics[23].
- **Facebook:** Facebook, as one of the many social media platforms has served as an avenue for political propaganda, exposure to fake news and misleading information, hence shaping public opinions misinforming people about politicians' activities in India.
- **Deepfakes and AI:** Technological developments have allowed for the use of deepfakes and generative AI as part of misleading political campaign materials. Deepfakes, text-to-image generators, and AI-driven tools make it easy for perpetuators to target marginalized populations with disinformation campaigns through propaganda which could undermine electoral integrity and public trust[24].

The examples above highlight the extent to which India's social media is plagued with falsehoods that have a considerable influence on shaping public discussions, guiding voter perceptions and influencing electoral processes.

7. IN THE 2024 INDIAN ELECTIONS, MISINFORMATION ON SOCIAL MEDIA IS SPREAD INCLUDING BY:

- **WhatsApp Misinformation:** Ahead of the Indian elections, WhatsApp has been one of the major platforms through which false information campaigns have circulated misleading voters[25].
- **Fake Circular on Election Dates:** This led to many people believing that a fake circular had been issued by the Election Commission of India (ECI) about Lok Sabha elections, confusing the voters about when exactly they would be held[26].
- **Deepfakes and AI-generated Misinformation:** In terms of political discourses over 2024 general election in India, deepfakes and other AI-generated contents became means for spreading misrepresentation thus; these technologies have facilitated generation of content capable of deceiving electorate as well as distorting public debates[27].

[23] "Google Launches Anti-Misinformation Campaign in India" (*The Indian Express*, December 6, 2022).
[24] "Misinformation during Indian Elections: The Saga from 2019 to 2024" (*The Hindu*, March 26, 2024).
[25] "Fighting Misinformation during the 2024 Indian Elections" (March 28, 2024) <https://meedan.com/post/fighting-misinformation-during-the-2024-indian-elections> accessed 30 December 2024.
[26] Nitin Kumar, "FACT CHECK: Fake Circular Spreads Misinformation on Lok Sabha Election Dates | CHECK HERE" (*https://www.indiatvnews.com*, February 27, 2024).
[27] Aroon Deep, "2024 India General Election | How Far Will Artificial Intelligence Go?" (*The Hindu*, March 31, 2024).

- **Misinformation on Social Media Bots:** Twitter, Meta and YouTube are some of the social media platforms that have been grappling with fake news and propaganda, which in turn has allowed misinformation to thrive on their sites and risk affecting India's electoral scenarios by influencing public opinions and shaping political narratives[28].
- **Myth vs Reality Project:** The "Myth Vs Reality" project is an initiative of the Election Commission of India to fight against false information and fake narratives available in social media during the Lok Sabha polls with a primary goal being reducing spread of misinformation as it also provides voters with true verified information to counteract this influence in election process[29].

For instance, these cases show various ways through which false information was spread through social media during 2024 election campaign in India thus underscoring the significance of fact checking, vigilance and critical thinking as strategies for fighting deceptive digital content dissemination.

8. DIFFERENT COUNTRIES REGULATIONS FOR SOCIAL MEDIA IN ELECTIONS:

India has experienced significant effects of social media on its elections with increased use of social media being at the forefront in shaping political debates and public engagement. Social media platforms like Facebook, Twitter, YouTube, Google among others played a significant role during the 2014 (General Elections) as well as 2019 general elections[30]. The term 'Democracy 2.0' is used to describe the utilization of social media during Indian elections, thus showing how AI and social media shape electoral outcomes.

Other countries have also experienced social media's influence on their election processes as compared to India. The United States, for example, faced challenges in its elections with the spread of false information and hate speech through Facebook among others which raised issues of voter manipulation as well as effects of AI content on political behaviour[31]. The Cambridge Analytica scandal in the US was an example of the dangers that exist in misusing

[28] Ibid.
[29] "'Myth vs Reality' Project to Be Launched to Counter Fake News, Misinformation during Lok Sabha Polls: ECI Chief" (*The Times of India*, March 16, 2024).
[30] Narasimhamurthy N, "Use and Rise of Social Media as Election Campaign Medium in India" (Bangalore University, 2014).
[31] N. Sharma & G. Sivakumar, (2023). Social media, political discourse and the 2019 elections in India: Journalists' perspectives on the changing role of the mainstream media in setting the political agenda. Global Media and Communication, 19(2), 185-205.

social media data for political purposes thereby emphasizing the need for regulation around this area.

From a global perspective, concerns have arisen around the use of social media platforms in elections resulting in echo chambers where people are exposed to information that reinforces their existing opinions hence promoting polarization and reducing exposure to different views. Misinformation campaigns involving fake news materials and deep fakes compete fraudulently with conventional gatekeepers (election commissions), who otherwise protect voters from such falsehoods[32].

However, social media is also a means to increasing voter engagement and ensuring transparency. An instance is the Election Commission of India which has been able to use AI and social media in improving voter registration procedures, information sharing, as well as grievances redressal showing how technology can be used for democratic consolidation[33]. Misinformation could be countered by utilizing chatbots as well as fact-checking algorithms based on AI for the purpose of encouraging participation throughout multiple societal groups[34].

To sum up it all, the way social media affects elections differs from one country to another with India and some other nations grappling with the dichotomy that exists in technology influencing political discourse. While there are prospects of using social media for enhancing voter participation and communication, it is also associated with misrepresentation, dividing lines and foreign meddling.

9. IMPACT OF SOCIAL MEDIA ON VOTER ENGAGEMENT

Social media has made a huge impact on Indian politics, shaping voter engagement, political talk and mobilization. Social media platforms have now become vital tools for politicians, political parties and citizens in terms of interaction, information dissemination and political participation.

- **Increased Political Participation:** Political parties dialogue with people through social media leading to greater levels of political participation in politics[35]. Facebook among other

[32] Shahana Sheikh, "How Technology Is (and Isn't) Transforming Election Campaigns in India" (*Carnegie Endowment for International Peace*, March 7, 2024).
[33] "Democracy 2.0: How AI and Social Media Impact Indian Elections" (*Express Computer*, January 23, 2024).
[34] Idrees Ali, "Social Media Played Big Role in India's Election" (*Voice of America*, June 9, 2014).
[35] M Rushi Abheeshai, "Impact of Social Media on Politics in India," vol 10 (School of Business, Woxsen University, 2022).

platforms is commonly used for election promotion, sharing political content and even sensitizing voters especially during the election period.

- **Role in Election Campaigns:** In India, social media has reshaped election campaigns by enabling parties to share post-rally content, interact with electorates as well as shape public opinion. More recently, use of platforms such as WhatsApp, Facebook or Twitter is common among politicians and even smartphone users thereby impacting voter mobilization and political communication[36].
- **Influence on Voter Behavior:** Studies have indicated that voter behavior, political attitudes and participation are influenced by social media. It is a driver of change in politics which allows people to express themselves, talk about issues and get political information. Social media usage has been associated with enhanced political interaction, physical participation and the sharing of political materials[37].
- **Digital Transformation:** The emergence of social media in India mirrors a wider digital revolution with smartphones and web platforms playing a major part in determining how politics is communicated and engaged with. The affordability of mobile data bundles along with high penetration rates for social networks are some factors behind increased democratization of information as well as communication channels[38].

In sum, there are various ways in which social media affects India's politics such as increasing voter involvement, political efficacy, and real-world participation. Digital revolution has changed the dynamics of politics in regard to communication strategies during campaigns, interaction between politicians and citizens showing technology's changing role in democratic process.

10. MITIGATING DISSEMINATION OF MISINFORMATION

Dissemination of misinformation is a major problem in Indian elections that affects voter perception, political discourse, and electoral integrity. Through review of the given sources, we can locate strategic approaches and efforts to curb the spread of false information on social media platforms during electioneering period.

Addressing Misinformation:

[36] Shahana Sheikh, "How Technology Is (and Isn't) Transforming Election Campaigns in India" (*Carnegie Endowment for International Peace*, March 7, 2024).
[37] Supra Note 36.
[38] Aijaz Ahmad Mir and A Nageswara Rao, "The Use Of Social Media In Indian Elections: An Overview" (*ResearchGate*, November 6, 2022).

- **Meta's Initiatives:** Meta has announced some proactive actions to combat misinformation ahead of the Indian elections. These include setting up an India-centric Elections Operations Centre with experts who can identify and mitigate any potential hazards. It will also use keyword detection technology as well as AI tools to remove misleading content from its sites across all its service[39].
- **Fact-Checking Partners:** Meta has enabled Indian fact-checking partners to access the Meta Content Library, which helps them to quickly identify and rate untruths. This shared undertaking allows baobab fruit checkers to authenticate material while debunking wrong impressions supported by public statistics thereby improving data quality for users and reducing propagation rates of misguiding interpretations[40].
- **Educational Campaigns:** Safety campaigns on social media are aimed at educating the users on how to identify and address misinformation. "Know What's Real" campaign is an initiative that intends to enlighten users on information verification, identification of wrong information and improve digital literacy as a way of fighting false content[41].
- **Regulatory Engagement:** Meta's relationship with Election Commission of India is close through Voluntary Code of Ethics which provides for a platform where Commission could report illegal contents. This regulatory collaboration indicates the significance of collaboration between industry and government in election integrity and combating digital platforms' falsehoods[42].

Collaborating with fact-checkers, implementing these measures, engaging regulatory authorities, and so forth are proactive steps towards mitigating the spread of misinformation during Indian elections by such social media platforms as Meta. These efforts are meant to increase transparency, accountability, and dependability in respect to digital platforms along with ensuring democracy is safeguarded while promoting civic participation that is informed.

11. ETHICAL CONSIDERATIONS AND RECOMMENDATIONS ON THE IMPACT OF SOCIAL MEDIA ON ELECTIONS IN INDIA:

Ethical problems are raised by the impact of social media on elections in India requiring some recommendations to encourage voter participation while countering misinformation.

[39] Toi Tech Desk, "Lok Sabha Elections 2024: India-Specific Elections Operations Center and More, How Facebook Parent Meta Is Preparing for Elections in the World's Largest Democracy" (*The Times of India*, March 19, 2024).
[40] Ibid.
[41] Id.
[42] Id.

Ethical Considerations:

- **Transparency and Accountability:** During voting, social media corporations should be clear about moderation of content and their algorithms need to be open to criticism.
- **Misinformation and Manipulation:** The prevalence fake news, deep fake videos, lies among others is a matter of great importance if only the electoral process integrity has any value that must be preserved but not manipulated for political reasons.
- **Privacy and Data Protection:** Voter data must be kept safe in order to maintain confidence in electoral institutions as well as prevent biases characterized by political misuse of personal information.

Recommendations:

- **Regulatory Framework:** There should be strong regulations governing social media usage during elections especially concerning sharing guidelines and policies, privacy issues concerning data use, and transparency guidelines for political advertising.
- **Media Literacy Programs:** They use digital literacy and media education projects to embolden voters by examining information, uncovering fake news as well as selecting what's best for them.
- **Collaboration with Election Authorities:** It will foster better relations between social media firms and electoral bodies in tackling disinformation, ensuring just elections and educating voters.
- **Ethical AI Integration:** The development and deployment of AI tools should be ethically-minded so it cannot be abused to manipulate the electorate or involve itself in misinforming campaigns.
- **Citizen Engagement Initiatives:** It encourages active citizen participation through social media platforms that allow dialogue, civic engagement, constructive political discourse.

India can actualize these ethical considerations and adopt the prescribed measures to unlock the potential of social media towards facilitating voter participation, enhancing transparency mechanisms and protecting the democratic process from misinformation and manipulation impacts.

12. CONCLUSION

The impact of social media on Indian elections is huge and has substantially changed the way politics is done and how political information is disseminated. For instance, social media

platforms have become a very significant tool for politicians who would like to reach out to their supporters especially the youth age bracket thereby leading to higher levels of participation during an electoral period. With this regard, it should be noted that conventional campaign strategies are being transformed and voter engagement amplified through real-time interaction, personalized messaging, and targeted outreach which have been made possible by interactive nature of social media. Nevertheless, what makes social media so promising is its flipside with the spread of untruths, fake news as well as divisive ideas affecting voters' perception about any given election hence undermining democratic principles.

Efforts to curb such misinformation dissemination using social media channels hold the key to ensuring transparency in India's electoral process. In India, there are instruments such as Election Commission guidelines as well as other legislations that play crucial roles in monitoring or regulating these activities during election time. To fight fake news, this therefore requires collaboration between social media companies, fact-checking organizations and regulatory authorities. In order to reduce the impact of misinformation on election outcomes and create a more informed electorate, educational campaigns should be implemented in addition to enhancing digital literacy as well as proactive content moderation by stakeholders.

A comprehensive approach that recognizes both the opportunities and risks of digital platforms is necessary in order to address the merits and demerits of social media in enhancing voter engagement while also mitigating misinformation. This means that even though social media allows for unprecedented reach, connectivity and engagement potential there is an equally vital need for vigilance, accountability as well as ethical use to protect democracy. By building responsible digital citizenships, encouraging media literacy and strengthening collaboration among actors in this sector; India can make use of the transformative power of social media for inclusive political participation which will help combat disinformation especially during elections hence it will promote free and fair elections.

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CHANGING FACETS OF PROPERTY RIGHTS AND OF HINDU WOMEN

Sana Parab *

Introduction

"I raise up my voice - not so that I can shout, but so that those without a voice can be heard .... we cannot all succeed when half of us are held back."

- Malala Yousafzai

Women have struggled to build their position in a patriarchal society for aeons. The women's struggle was not only fought by women alone but also supported by the men in society. The goal of women has always been women's empowerment and gender equality in society, and many hurdles have been encountered along the way. However, the question which genuinely makes me ponder is whether the women have been successful in achieving the goal. The reason responsible for the abysmal position of women in society was the personal laws and customary practices, which were based on patriarchal ideology to an extent.

The term property means any property of kind, which can include immovable and immovable property and thus can be tangible or intangible property.

It was held in G*uru Datta Sharma* v. *State of Bihar*, it was held that property is 'the sum of a bundle of rights and in the case of tangible property would include the right of possession, the right to enjoy, the right to destroy, the right to retain, the right to alienate, and so on.'

However, in terms of women's right to property, it mainly focuses on the right to movable and immovable property, that is, the right to participate in the transaction related to the property or property in the name of women. Regarding succession, inheritance, adoption, marriage, divorce and maintenance the personal laws are referred to in India, which thus is a distinctive feature of India.

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In the present paper, the authors try to deal with the issue of 'whether economic independence has made women achieve their rights to property.' The paper is divided into subtypes, the first types deal with the women's social position in ancient and medieval period, second part deal with the legislature's effort of changing upholding the women's rights through evolving time and third part deals with way forward.

POSITION OF HINDU WOMEN IN ANCIENT AND MEDIEVAL PERIOD

According to various Hindu Scripts, the women were worshipped as goddesses and played a significant role in society. The society depicted women as the backbone of the man who inspired and motivated the man to achieve success. The gods were always accompanied by their wives. Thus, it emphasised the fact that the position of a woman was equivalent to a woman. [1]Goddess Saraswati is often described as the goddess of education, art and music. The Ghosa, Viswavara, Maitreyi, Lopamudra, Savitri, Juhu, Kadru, Romasa, Apala and various others attained the rank of the Rishis. the girls were allowed to pursue upanayana and brahmacharya. Therefore, equal opportunity for education was provided to men and women. With evolving times, women were deprived of their position in society.[2]

- Manusmriti

The women's position in ancient India had different dimensions. The occurrence of the same can be seen in manusmriti. According to Manu, women should be respected by their family members[3]The women in the society were considered goddesses and, ergo, honoured. Furthermore, Manu stated that the gods are pleased when women are treated with respect; nonetheless, no sacred rite can be observed in such a place without consequences. The text further clarifies that men who seek welfare should respect the woman and fulfil her wishes by providing her with gifts, clothes, ornaments and food.

However, concomitantly, the laws of Manu governing the society are not women-centric and are patriarchal in ideology. Even the wife's beauty was considered an essential aspect in assessing the aura of the household. The wife's beauty was relevant and a consideration of the relationship of the cohabitants. Women's beauty was held guilty for the falling marriage and failure to produce offspring.

1 Naresh Rout, Role of Women in Ancient India, Odisha Review (Jan. 2016)
https://magazines.odisha.gov.in/Orissareview/2016/Jan/engpdf/43-48.pdf

2 **Prof. P. Bhaskar Reddy, Prof. V. Venkata Ramana Reddy, and Prof. V. Kannan, Vedic Women Rishies,2024**
https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000829IC/P001497/M015107/ET/14600120574ET.pdf

3 Manu, Chap III, 55.

The role of women in ancient times was limited only to domestic chores, and they had the responsibility of child-rearing and taking care of the family members. Femininity was considered vulnerable to face the challenges of the outside world. Therefore, women had no economic rights in ancient times, and thus, no pay or share of women was considered in husbands' emoluments. She was utterly dependent on the man of the house, which led to the hierarchy of the genders as the female was answerable to the male; hence, the male gained a superior position in society, and the female gained the inferior position. The consequence of the same resulted in a patriarchal society and mindset. Being the special class, the males of the house performed the religious rites, and the women were only expected to make the arrangements required to complete the rites. The shraddha ceremony was only allowed by a son or distant male relative but not by the daughter.

Due to the biological differences between men and women, men are considered physically stronger than men. Every month, the woman faces menstrual issues. During this period, the woman was treated as untouchable when facing menstrual challenges and hence should not be touched, looked at, or even eaten in her company when she was in her courses[4]. This ideology of considering women impure during the menstrual course leads to more obstruction for the women to step outside of the domestic chores and financial dependence.

According to Manusmriti, the girl or woman cannot do any work, even in the household. Therefore, the father, husband or sons of the woman are the woman's guardians, and hence, she is incapable of being independent. The women's lives are thus divided into three parts, and every portion of the life and guardian is assigned to look after the women. In childhood, the father is responsible for looking after the girl child. After marriage, the husband and after the husband's death, the son of the woman. The consent of the woman in marriage was considered irrelevant and was expected to live with him for eternity. The wife was expected to worship the husband like a god. Therefore, this manifests the superiority of masculinity and the concept of the second sex.

In various instances, the text of Manusmriti seems to have contradicted itself. Even if women were considered incapable of being independent, yet the woman was employed at king service or for any other service. The employer had the burden to pay without any discrimination [5]But the women are not worthy of respect in the eyes of the Manu. According to Manu [6], women are

4 Manu, Chap V, verses 40-43

5 Manu, Chap VII, verse,125

6 Manu, Chap, VII, Verse,221

only for sexual pleasure and reproductive purposes and thus are not worthy of being given respect. Women, however given the choice of getting married to a person of their choice, yet there were consequences, and those were

'A girl who chooses her bridegroom should not take with her the jewellery given to her by her father, mother, or brothers; if she took that away, she would be a thief'[7].

The women, thus, were denied their right to property if they did things out of free will. In the eyes of Manu, the women's nature is to corrupt men and to distract them from their aim, so on that account, the men should keep their distance from women, and they should not stay in isolation with even their sisters, mother or daughter because the women are fickle minded and hence the men should protect themselves from the women.[8] [9]

- Arthashastra

  Resembling the ideology of Manu, even Kautiliya in arthashastra mentions that the woman is entitled to property which is known as stridhan, 'stri' means women and 'dhan' means property or something which has value of the money. However, the property of the women was restricted to movable and did not include immovable property. The stridhan thus included jewellery and other movable property such as clothes, vessels and gifts received from the husband, and only the women had the right to stridhan. However, the stridhan was only given at the time of marriage; therefore, if the woman remained unmarried, then she had no right to stridhan, and the brothers or the male members of the family were responsible for looking after her stridhan. Therefore, it can be said that security given to the married woman from her maternal home should be used in unforeseen circumstances.

  Kautilya gave no rights to the property of the husband after his death. The responsibility was cast on the male members, specifically on the sons of the deceased, to take care of the dead's wife.

  The part of stridhan she incurred from her marital home was supposed to be confiscated if she remarried. The woman was entitled to the husband's property only if she remained a widow and led a righteous life after the death of her husband. After her death, the property was returned to the heirs of the deceased husband and not to the wife's heirs. The nature of

7 Manu, Chap IX, verse 92

8 Manu, Chap IX, verse 15.

9 Naseera N.M & Moly Kruvilla, The Sexual Politics of the Manusmriti: A Critical Analysis with Sexual and Reproductive Health Rights Perspectives, Journal of International Womens studies, Vol.23,2022.

the property or the share in the husband's property had no independent character as it resulted back onto the husband's heirs. As mentioned above, the women were not wholly the owners of the property but the temporary owners or the mere occupants of the property, as they exercised only limited access to the ownership of the land. The property of the childless wife belonged to her husband in case the woman died first. However, if the husband died before his wife, the property would be positioned upon the heirs and, in the absence of heirs, upon the husband. The claim on property devolved upon the husband due to the death of the wife first is independent. Still, in the case where the property is passed upon the woman due to the reason for the death of her husband, the ~~reign~~ right on the property devolved upon her is not independent; she has to act under the guidance of the Guru. [10]The Arthashastra gave daughters the right to inherit from fathers' property even after marriage. Ergo, for these reasons, women had the right to property according to arthashastra; however, some conditions were placed upon women that indicated when a woman could inherit. [11]It can thus be established that the women in the times of Kautilya were not given inferior positions and were not wholly forbidden from exercising their rights to property.

The concepts of possession and ownership are closely related, however different. Possession denotes larger rights over the property, that is, having ownership over the property and occupational rights. On the other hand, ownership means having only the legal title over the property and not occupying it. [12]

It can be observed that the women in ancient India merely had occupational rights over the property and were not considered capable of being independent owners of the property.

In earlier times, women were employed in various services. These services were mainly related to domestic or subsidiary works. During the Vedic period, women were usually seen in the king's or queen's court as attendants who carried on their work as lamp bearers, umbrella bearers, and cooks. Therefore, their work was to assist in day-to-day work. Women were not employed in militaries for a reason: the women were considered vulnerable, and their primary duty was child-rearing. It was believed that the male family

10Sudhirranjan Das,The position of women in Kautilyas arthashastra, Proceedings of Indian history congress,vol.3,1939.
https://www.jstor.org/stable/44252408?seq=27

11 Bandyopadhyay, Jana. "Women Empowerment in Kauṭilya's Arthaśāstra and Kālidāsa's Abhijñānaśākuntalam: A Comparative Study." IMR Journal 2, (2020)
https://imrjournal.info/wp-content/uploads/2020/06/Jana-Bandyopadhyay.pdf

12 Tahir Mahmood, Family Law in India, 2023.

members should protect the women from outside threats. According to Arthashastra, it is mentioned that "On getting up from the bed, the king shall be received by troops of women armed with bows". Women participated equally in various activities such as agriculture, the medical profession, painting, dancing, etc. Even prostitution was considered a profession in the olden times. They were known as Ganikas who were treated respectfully.[13]In Buddhism, the women's position was little elevated. The core teachings of Buddhism were liberation and equality in every sphere. Buddhism respected the biological differences between males and females and emphasised women's duties towards their family members. Buddhism, however, discriminated between males and females. Women were considered inferior to males and could contaminate men. Bhikkhunis, the female nuns, were expected to follow certain restrictions that did not apply to the Bhikkhus, male monks. The women, however, allied their entry into the sangha, yet their bodies were not considered fit for enlightenment. The only way a woman can achieve enlightenment in Buddhism is through the way of rebirth as a male. Arthashastra, which in a pure sense means the economics of society. Arthashastra lays down how the society is supposed to work and the duties of the subjects, as well as the king, towards each other. Women were given the right to work and paid wages accordingly. Kautilya even recognised prostitution as an errand and recognised her right to earn a living from the same. Women were allowed to work from their households, and even factories were set up in specific areas. Restrictions were set on men and women who used to work in the factories. Only so much light was provided, which was necessary for work; men were not expected to look and communicate with women unless necessary, and if any of the men broke the rules, then punishment was inflicted upon them. The time for the women to work in the factory was before dawn. The provision for liberty to women to work was made specifically for those who were unmarried, widows, disabled or belonged to a marginalised sector of society. [14] In medieval period the women's recognition in the society started deteriorating due to socio-economic and cultural reasons. The instances of sati, honour killing, female infanticide started growing during this period. The rights of women over property and economic rights kept on oscillating due to changing times and ideology. It is important to note that the women's views were not considered, and the men had complete autonomy to enforce laws.

13 Anita singh, Contribution of Women to the Early Indian Economy (1500 B.C to 600 A.D), the international journal of Indology, vol.1 no.1, 2023. https://indologyjournal.org/index.php/ijoi/article/view/11/9

14suvira jaiswal, female images in arthashastra of kautilya, social scientist, vol.29, no3/4,2001. https://www.jstor.org/stable/3518338?seq=9

HINDU WOMEN'S PROPERTY RIGHTS ACT 1937

The Hindu women's property act was introduced with the intent of creation of property rights to women. The act strived to provide successions rights to widows. The women were given the property rights however failed to provide coparcenary rights.[15] The women were only given limited shares in the property. The woman was given the right to only representation that is to enjoy the property of the deceased husband. Another critique of the women's property act 1937, is that it only focused on uplifting the rights of widows and did not include daughters, sisters and mother within its ambit. The core principle of the Hindu women's property act was based on Mitakashara law, as the widow was allowed to enjoy the property in limited sense and not permitted to alienate the property in any sense.[16]

HINDU SUCCESSION ACT 1937

Regarding personal laws in India, which include those concerning marriage, divorce, succession, and other matters, the Hindu population was regulated by a combination of Shastric and Customary laws that differed depending on the location. Hindus are now subject to various laws introduced at multiple schools and sub-schools, including Mitakshara and Dayabhaga. The main areas of disagreement between the two schools include the Joint Family System and the law of inheritance[17]. The Mitakshara School acknowledges survivorship and succession as the two ways property devolves. Property held jointly by family members is subject to the rule of survivorship, while property owned by the last owner is subject to the rule of succession. Only succession is acknowledged by the Dayabhaga School as a mechanism of property devolution. As a result, Hindu property laws have grown highly complicated. Joint family property passes down via survivorship inside the coparcenary under the Mitakshara system. This implies that for every male in the family, whether by birth or death, the share of every other male who survives increases or decreases. The Mitakshara law also acknowledges succession inheritance, but only concerning property that is individually possessed by a person, regardless of gender. Mitakshara law recognises women as heirs to this type of property. Only five female relatives were recognised as entitled to inherit before the Hindu Law of Inheritance (Amendment) Act 1929 by the Bengal, Benares, and Mithila sub-schools of Mitakshara. These

15 dr.r. sathiya bama & dr. n. neela, shanlax international journal of arts, science & humanities, vol.1, no 4,2014 https://www.shanlaxjournals.in/pdf/ash/v1n4/ash_v1_n4_001.pdf

16 shaurya shrestha awasthi, hindu women's right to property act, 1937: a critique, ile family & private law review, 1 (1) of 2023. https://fplr.iledu.in/wpcontent/uploads/2023/03/v1i11f.pdf?_gl=1*1spy9j4*_ga*mtc2ndiynzk5nc4xnza3mtm2ndiy*_ga_z0n9e7csvy*mtcwnzeznjqyms4xljeumtcwnzeznjy2oc4wljauma

17 https://lc2.du.ac.in/DATA/Women,s%20Right%20to%20succession%20and%20Inheritance%20in%20Hindu%20Law.pdf

were the widow, daughter, mother, paternal grandmother, and paternal great-grandmother. The Dayabhaga school recognises joint families and joint property but does not grant rights based on birth or survivorship. It establishes a single line of succession, and the same inheritance laws hold regardless of the size of the family or whether the property was gained by inheritance or other means. Sons and daughters do not acquire any rights to the family property during their father's lifetime, nor do they become coparceners upon birth. They do, however, inherit as tenants-in-common upon his death. One noteworthy aspect of Dayabhaga School is that daughters receive equal shares besides their brothers or male co-parceners[18]. As they may be coparceners, now women have the positions as karta recognised under the customary and succession laws and are looking after the property for the other members of the Hindu undivided family as head of the family. Not the Legislature, but Several judicial pronouncements have been significant for the recognition of women, making her the head of the family and giving them the complete power and absolute property rights to deal and dispose of the property the way they want. In Sujata Sharma vs Shri Manu Gupta & Ors[19], the issue is whether, in a Mitakshara Hindu Undivided Family, the oldest female member is eligible to serve as the Karta. the court decided that there was no justification for denying Hindu women the role of Karta Since the woman satisfies the requirement of becoming a coparcener to become a Karta of the family. Thus, the woman (plaintiff) can become a Karta by being the oldest daughter. Therefore, in the same line as the widow of the HuF got the right of being the Karta - as per the judgment of Shreya Vidyarthi vs Ashok Vidyarthi & Ors[20], The Hindu widow cannot act as a Karta since she is not a coparcener in her husband's Hindu Undivided Family, the court noted. Nevertheless, suppose his spouse passes away, and there are no male coparceners left in the family. In that case, the widow may take on the manager role to oversee the household's daily operations. The minor male coparcener's mother may assume parental responsibility for the family. In certain situations, she can make decisions for the family as well. The Nagpur High Court once believed that in the absence of adult male members, a mother could serve as the Karta even though she was not a coparcener[21]. But despite this, women were granted two types of property. The most important was stridhan, which means "woman's property", and typically, stridhan consists of such moveable property given as gifts by family members. It is the property that the woman receives as a present upon marriage. The

18 https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022082470.pdf

19 Sujata Sharma vs Shri Manu Gupta & Ors, (2011) 11 SCC 1.

20 Shreya Vidyarthi vs Ashok Vidyarthi, AIR 2016 SC 139

woman has total and total control over the property she has acquired in the form of her stridhan. Before the Hindu Succession Act of 1956, a woman's assets were categorised as -

(a) her stridhan and (b) her estate. The 1937 Right to Property Act gave some Hindu women additional inheritance rights, which increased the amount of women's estate. However, other than its impact on joint family property, the Act did not change the fundamental division of women's property into stridhan and women's estate. The most important was stridhan, which means "woman's property", and typically, stridhan consists of such moveable property given as gifts by family members. The woman has total and total control over the property she has acquired in the form of her stridhan. Therefore, the true meaning and understanding of Stridhan were by Smritikars, and He defined the stridhan as - the possessions that a lady got as gifts from her relations. These gifts often included movable items like jewellery, clothing, and ornaments. However, occasionally, a house or a plot of land was additionally given to the woman in the form of a gift. Her stridhan also consisted of the gift that strangers gave her during the bridal procession or before the nuptial fire. Hindu law prior to 1956 categorised stridhan based on several factors, including the source from which the property was obtained, the female's status at the time of acquisition (i.e., whether she was a maiden, married, or widow), and the school to which she belonged. Since the stridhan is a woman's only property, she is fully entitled to its alienation. This implies that she can exchange, buy, sell, mortgage, and gift. Whether she is a widow or a maiden, this is all true. Some limitations on her disposal authority were acknowledged if she was a married woman. If she got married, her stridhan was divided into two categories: (a) the Saudayaka, which is defined as a gift of love and affection, and (b) the non-Saudayaka, which includes all other types of stridhan such as presents from strangers, assets obtained by hard work, or mechanical art. With regard to the former, a woman had complete disposal rights; nevertheless, with regard to the latter, she was not entitled to alienate without her husband's permission, and he also had the authority to utilise it. She was a separate lineage from everyone else. All of the stridhan belonged to her heirs upon her death.

The succession law to stridhan was established differently in Hindu law before 1956. Distinct schools had distinct laws, and different types of stridhan had other laws. Meanwhile, women's estate was the following category of property, including the following:

1. Property inherited: A Hindu woman may inherit property from a male or female, either from her parents' side or from her husband's side. The Mitakshara school saw all inherited property as stridhan, but the Privy Council held in several decisions that such property was a woman's estate. In one set of cases, the Privy Council held that property inherited by a woman from a male was not her Stridhan but rather a woman's estate. In other instances, it adopted the same stance on assets inherited from women.

The female successors to a male's property are divided into two categories:

(a) those who marry into the father's gotra, like the mother, widow, or intestate, and

(b) those who are born into the family, like daughters, sisters, or brother's daughters, among others. Her stridhan is inherited in the second scenario, whereas the woman's estate is in the former. Following the implementation of the Hindu Succession Act of 1956, a woman is entitled to keep all inherited property as her own. In other instances, it adopted the same stance on assets inherited from women.

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(b) those who are born into the family, like daughters, sisters, or brother's daughters, among others. Her stridhan is inherited in the second scenario, whereas the woman's estate is in the former. Following the implementation of the Hindu Succession Act of 1956, a woman is entitled to keep all inherited property as her own partitioning share: In Devi Prasad v. Mahadeo[22], the law established that the women's estate, not Stridhan, was the partitioned share. The Hindu Succession Act of 1956 also made this property her absolute property, or stridhan.[23]

The Hindu Succession Act of 1956 abolished the previous system of succession to stridhan. The Hindu Succession Act, 1956's sections 15 and 16 set forth the new Law of succession to women's property.

COPARCENARY RIGHTS OF DAUGHTERS

22 Devi Prasad v Mahadeo, 39 I.A. 121, (1912)

23 Divya Singh, Feminist Justice by way of women rights to property: An India approach after Independence, 2021.

All people are entitled to equality under the Indian Constitution, regardless of race, religion, caste, sex, or place of birth. Gender equality is stipulated in the Constitution as one of the Fundamental Rights that are legally binding. Nevertheless, gender equality has not been fully attained even after the Constitution has been enforced for more than seventy-five years. Laws created by the legislature itself also exhibit discrimination against women, in addition to social discrimination. One such instance relates to women's property rights. Following independence, the Hindu Succession Act of 1956 administered Hindu intestate succession rules. Initially, The Hindu Succession Act of 1956 gave sons, grandsons, and great-grandsons the ability to inherit property from birth in a joint Hindu family. They also had the right to ask for ancestral property to be divided. They are passed down only to the oldest male counterpart for up to three generations, excluding female family members. The preservation of the Mitakshara Coparcenary Property does not include the females, as they are not eligible to inherit the ancestral property like their male counterparts. The law has undermined and oppressed the daughter's fundamental right to equality guaranteed by the constitution, which forbids her from taking part in coparcenary ownership. This is in addition to contributing to her gender-based discrimination, given the importance of providing social justice for women.[24] Under Section 6 of the Hindu Succession Act of 1956[25], a woman had no fundamental right to a portion of the ancestral property because she could not be a coparcener. As mentioned earlier, examining the provision clarifies that the Hindu Succession Act 1956, breaches the constitutional guarantees of equality for women by maintaining the Mitakshara coparcenary, which mentioned only men as coparceners. It is discriminatory and unjust to exclude women from coparcenary solely on the grounds of their sex. Women should have equal property rights to meet basic economic demands, eventually contributing to a balanced society. Thus, the idea emerged at the time when the parliamentary standing committee report stated - "*Remove the discrimination as contained in Section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have"*[26]

Later, an amendment acknowledging women's inheritance rights in the ancestral property of a joint Hindu family was first introduced into the society in 2005 in the Hindu Succession (Amendment) Act 2005. Which granted them the same coparcenary rights as sons concerning

24 justice p.s. narayana & ahmer afaq: hindu law (2nd edn, asia law house hyderabad, 2019)

25 the hindu succession act, 1956, s6.

26 http://www.hrln.org/admin/issue/subpdf/Report_of_the_Parliamentary_Standing_Committee_05May.pdf

joint family property. This act aims to increase the rights of daughters, married or single. After Section 6 of the Act was amended, it said –

"*In a joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall -*

1. by birth, become a coparcener in her own right in the same manner as the son;

2. have the same rights in the coparcenary property as she would have had if she had been a 3. son; be subject to the same liabilities in respect of the coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener."[27]

As a result, the Amendment significantly alters things by designating daughters as coparceners. The coparcenary's customary patriarchal structure has drastically altered. The Mitakshara coparcenary has undergone a major alteration due to this development. Because a daughter has the same rights and obligations as a son, the modifications to Section 6 aim to end prejudice against her. This suggests that a daughter may now get a claim to the coparcenary property, request its division, and dispose of it through a testamentary disposition. The recent adjustments enable daughters to form joint families on their own. In summary, a daughter has equal access to all the privileges and special status of being a boy in the family.[28]

After that, still recognising women as coparceners, there were some questions about her rights that existed. The battle for property rights was in continuation until the new. The Hindu Succession Act of 2015 introduced the reformation of the legislation. Section 6 of the Act was revised to grant women the same coparcenary rights as males. And now, they would also have the right to partition and take ownership of their father's inherited and privately owned property.[29] One of the seminal cases in this regard was Prakash v. Phulvati,[30] in which the respondent filed a request in 1992 with the Belgaum preliminary Court, ensuring her right to inherit her father's property, which had passed away in 1988. Her suit was generally allowed by the primary court. She was upset with the ruling and filed an appeal with the High Court, claiming that the changes to the Hindu Succession Act gave her a right to a legacy. Since the amendment's only goal was to eliminate the disparities between sons and daughters regarding

27 The Hindu succession act, 1956, s6(1)

28 Poonam Pradhan Saxena, Family Law Lectures Family Law 2, 3rd Edition (Lexis Nexis Butterworths Wardha Nagpur)

29 Tanisha Maheshwari, Women's Property Rights - Hindu Successions Act, 2022,

30 MANU/SC/1241/2015 Prakash vs Phulvati

their coparcenary liberties, she would be eligible to inherit her father's tribe and personal property from birth. The High Court upheld the applicability of the revised provisions. The Supreme Court said the act would have a planned and prospective application, overriding the High Court's order that it not be stated directly in the statute. The act introduced some gender-neutral adjustments.[31]Entitled women with coparcenary privileges since birth, like a son of a Hindu Joint household. In addition to section 6, which dealt with women's rights to seek division and ownership of the home or a widow's right to inherit her husband's property upon remarriage, other sections were also changed or repealed. Section 4(2) was removed, and words in section 30 were altered to promote gender neutrality better. Section 23, about the division of a dwelling house and Section 24, about a widow's right to inherit her husband's assets upon her remarriage, were also repealed.[32]

A recent ruling titled "Vineeta Sharma vs Rakesh Sharma "[33] that was rendered on August 11, 2020, reversed the status of women's coparcenary rights. Regardless of when they were born—before or after the amendment—the ladies, in this case, will be eligible for coparcenary status and the same liberties as sons. Fathers don't need to be alive on September 9, 2015, when the act was passed. The act's application was declared "retroactive" by the court. Women were granted equality after overturning the bench's decision in the Prakash against Phulavati case. Prioritising women's equal coparcenary freedoms from birth and disregarding the father's existence on the date of the amendment, the court decided between the two perspectives. Everything unclear and confusing regarding women's rights to succession was made clear.

Daughters as coparceners will henceforth receive the same treatment as males and be entitled to the same coparcenary rights in their father's property from the moment of their birth. Whether or not their father is living, daughters will always be coparceners. They will thus continue to be a part of their father's Hindu Undivided Family after marriage because nothing, not even their marital status, will take away from the rights granted to them by amendment. Daughters will have unambiguous access to the alienation of their portion of the property. The division of their father's coparcener property is now open to daughters, who assert that their equal portion, along with that of their brothers and other coparceners, cannot be withheld on the grounds of an oral family agreement. A female coparcener may leave her Hindu Undivided Family part to

31 The Hindu Succession Act, 1956.

32 Tanisha Maheshwari, Women's Property Rights - Hindu Successions Act, 2022,

33 MANU/SC/0582/2020 Vineeta Sharma vs Rakesh Sharma

any beneficiary of her choosing, exclusive of any other beneficiaries, in her will after obtaining a share in a coparcener property[34]

SUCCESSION RIGHTS OF WOMEN

Regarding personal laws in India, which include those concerning marriage, divorce, succession, and other matters, the Hindu population was regulated by a combination of Shastric and Customary laws that differed depending on the location. Hindus are now subject to various laws introduced at multiple schools and sub-schools, including Mitakshara and Dayabhaga. The main areas of disagreement between the two schools include the Joint Family System and the law of inheritance.[35] The Mitakshara School acknowledges survivorship and succession as the two ways property devolves. Property held jointly by family members is subject to the rule of survivorship, while property owned by the last owner is subject to the rule of succession. Only succession is acknowledged by the Dayabhaga School as a mechanism of property devolution. As a result, Hindu property laws have grown highly complicated. Joint family property passes down via survivorship inside the coparcenary under the Mitakshara system. This implies that every male in the family, whether by birth or death, increases or decreases the share of every other male who survives. The Mitakshara law also acknowledges succession inheritance, but only concerning property that is individually possessed by a person, regardless of gender. Mitakshara law recognises women as heirs to this type of property. Only five female relatives were recognised as entitled to inherit before the Hindu Law of Inheritance (Amendment) Act 1929 by the Bengal, Benares, and Mithila sub-schools of Mitakshara. These were the widow, daughter, mother, paternal grandmother, and paternal great-grandmother. The Dayabhaga school recognises joint families and joint property but does not grant rights based on birth or survivorship. It establishes a single line of succession, and the same inheritance laws hold regardless of the size of the family or whether the property was gained by inheritance or other means. Sons and daughters do not acquire any rights to the family property during their father's lifetime, nor do they become coparceners upon birth. They do, however, inherit as tenants-in-common upon his death. One noteworthy aspect of Daya Bhaga School is that daughters also receive equal shares in addition to their brothers.[36]. As they may be coparceners,

34 Prerona Sil, Property Rights of Daughters in India: Post - Supreme Court Ruling, June 24 2022,

35 Prof. Sumita Parmar, Prof. Kiran Gupta, Dr. Alok Kumar, Prof. Sumita Parmar, Women,s Right to succession and Inheritance in Hindu Law,

36Law Commission of India, property rights of women: Propose reforms under the Hindu law, 174th Report, 2000.

women in the Daya Bhaga School could also take on the role of Karta, looking after the property for the other members.

174TH LAW REPORT VIS-À-VIS 2005 AMENDMENT

The 174th Law Commission report proposed giving women property rights. The commission recognised the demand for social justice needed by society in the economic and social sphere. Women, since time immemorial, have been an integral part of society; however, with the terms of property rights, access to these rights was denied to women for a more extended period. Shastri customary laws governed the society. The ideology of different schools, such as Mitakshara, Dayabhaga, Mayuka, Marumakkathayam, Namudri, etc., governs the Hindu culture. The ideology of all these schools, however men-centric, denied the right to succession of women. However, some schools recognised women's inheritance of succession of separate property. The degrees of the women eligible to inherit differed from region to region. Thus, denying uniformity and achieving equality amongst women.

Equality is the fundamental right provided by the Constitution of India. The constitution is the parent act; therefore, the Grund norm is the primary norm, and the other legislations are the secondary norms deriving their power from the Grund norm. Equality is enshrined under the constitution of India under Art 14, according to which legislations have derived their ability to enshrine the concept of equality and non-discrimination irrespective of caste, gender and race into the legislation. Kelsen's pure theory of law explains the difference between ‘what law is’ and ‘law ought to be’. The laws in India for an extended period have remained male supremacist and thus have not focused on ‘what law ought to be’. The 174th report has focused on what ought to be. Art 14, 15(2), and Art 16 along with part IV of the constitution were introduced to not merely proclaim that the constitution is unbiased and gender equal but also to achieve the same.

The Commission observed various loopholes in the Hindu Succession Act and pointed out the same, which are as follows-

- The succession, according to the Hindu Succession Act, only happened through a patrilineal system. One can be a coparcener only by birth; hence, the married woman enters the family not by birth but by marital relationship. Only the male can become a coparcener, barring the daughter from being entitled to her share in ancestral property.

- When the woman dies intestate, her property is also devolved according to the patrilineal system that is first upon her heir and husband and in the absence of them upon husband heirs or father heir and in the absence of all upon mother heirs. However, only if she inherits the property from her father or mother does it devolve first upon her heirs, then upon her father's heirs and in her absence, upon her mother's heirs. If the property is inherited from the husband's side, it must be devolved upon the husband's heirs. Therefore, the property continues to proceed in patrilineal ways, whether upon husbands' heirs or fathers' heirs.
- The son, when by birth becomes the coparcener in the ancestral property, has some share in the property reserved in his name, which keeps on changing according to the births and deaths of the male members in the family; however, when the father of the son dies then he gets double share that is his share as being the independent coparcener and deceased share as being his heir, and if his mother dies then her share provided that she has inherited the property from the father in law of the husband.
- Sec 23 of the Hindu Succession Act denied the married daughter the right to residence in the parental home. She was only allowed in the circumstances where she is deserted, widowed or separated.
- Sec 8 of Hindu Succession Act mentions the hierarchy in which the property of the male deceased would devolve; first, it would devolve upon class 1 of the schedule, and the remaining classes represent the deceased person. Notably, the principle of representation in males goes up to two degrees; however, in females, it is only up to one degree.
- According to the schedule of the Hindu Succession Act, the son's son's son and son's son's daughter get a share, but a daughter's daughter's son and daughter's daughter's daughter do not get anything.
- The husband of the predeceased daughter or granddaughter is denied the right of succession. Still, the widows of predeceased sons and grandsons are considered heirs.

The need to extend the concept of the coparceners to women was felt even before the enactment of the Hindu succession bill, but the idea was rejected. However, some states in India infused in themselves the ideology of giving statutory rights to women. Andhra Pradesh, Maharashtra, Tamil Nadu, Kerala and Karnataka. Even though the aim of these five states is identical, their course of action and perspective towards achievement was thus different. Kerala abolished the concept of the right to coparcenary by birth and the right to claim partition. The 4 states (Andhra

Pradesh, Tamil Nadu, Karnataka, and Maharashtra gave coparcenary rights to the daughter and the right to ask for partition in ancestral property, which were equal to that of the son. Due to these, the women achieved rights to coparcenary in the parental and marital homes, however, the husband of the daughter does not have coparcenary rights in the house of the daughter. Further, according to the Supreme Court in Savita Samvedi v Union of India[37], no discrimination is supposed to be made between married and unmarried daughters. But due to these amendments certain crucial issues were raised such as the increase in the shares due to the presence of daughters. It leads to increase in shares in succession however decreases the share of the widow of the deceased. The Kerala model on the other hand abolished the concept of coparceners by birth and held that the coparceners are tenants in common. This approach was followed due to the existence of both patrilineal and matrilineal families in Kerala. But both the models failed to achieve their aim as the property can be disposed of by testamentary succession as no conditions were presented which are presented in Muslim law.

The law commission while comparing both the models stated that the Kerala model is recommended as it completely abolishes the concept of a joint Hindu family, and the members shall be made tenants in common, however before doing so the women should be given the rights of coparcenary so eradicate discrimination which is the ultimate objective. The commission further advances the need of Uniform Civil Code. but further the commission in its conclusion held that both the models should be combined and applied and hence the Hindu Succession Act was amended

WAY FORWARD

The role of women in ancient India and medieval period as well was only confined to the domestic chores and thus the duty and responsibilities upon them were not economic in nature. Due to patriarchal nature the men had the responsibility to look after the wellbeing if the family and to earn and protect. The women after marriage were considered the part of the husband's family and thus the property rights were such that they did not devolve upon women but upon men as an incentive for providing and taking the lineage forward. However, with the changing ideology and awareness due to education the women started to step outside the 4 four walls and took the responsibility and financial security of the family. As a consequence, the women felt the need for equal right in property.

37 *Savita Samvedi* v. *Union of India*, (1996) 2 SCC 380

Since the Hindu Succession (Amendment) Act of 2005, the status of Hindu women concerning their property rights has experienced an unparalleled metamorphosis. The Mitakshara Coparcenary has transitioned tremendously from excluding to acknowledging Hindu daughters. Despite significant advancements made possible by the Hindu Succession (Amendment) Act of 2005, women in the majority patriarchal society continue to be denied their legal rights. Women's self-denial and silence on their inferior property rights serve to legitimise and extend injustice. The 2005 amendment to some extent uplifts the women, yet does not completely justify to achieve the aim of gender justice as it can be seen that the property of deceased women devolves in patrilineal method. According to the researcher's, the Kerala model of succession should be adopted on uniform level as it would insure to achieve the gender justice to truest sense that is by abolishing the concept of HUF and coparcenary. Hindu women must be educated about their property rights through legal literacy campaigns and social awareness initiatives, enabling them to assert their birthright as human beings. however as per the data produced by Ministry of Labour and employment, 2021 – around 44.5% women are not able to contribute in financial/economic work due to child care and obligation towards domestic work.[38] Although only 0.8% of men are not able to contribute to labour force due to the same reason. Therefore, even if in developing amendments brought in law for achieving gender justice yet the societal expectations in the both the genders differs etc.

To achieve gender equality, there should be a combined effort made by the public, women, non-governmental groups, and the government to shift public opinion in favour of gender justice.

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SUCCESSION OF PROPERTY AFTER DEATH OF PERSON AS PER SECTION 111 OF THE BHARATIYA SAKSHYA ADHINIYAM, 2023

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ABSTRACT

Research paper discusses the law concerning property succession specifically mainly focusing on Section 108 of the Indian Evidence Act, 1872 which is replaced by the new Act Bharatiya Sakshya Adhiniyam under Section 111. Explores how legal aspects and regulations impact the transfer of property after an individual's demise. Analyzes the nuances of property inheritance in accordance with established legal frameworks. Section 108 of the Indian Evidence Act, 1872, establishes a legal presumption of death for a person who has not been heard from for seven years by those who would naturally have heard from them if they were alive. The burden of proving that such a person is still alive falls on the person asserting that fact and how burden of Proof and death is presumed, and also this paper mainly focuses on Procedure for Succession of Property ie. Declaration of death, Application of Succession Certificate and Letters Of Administration, Submission of Documents and Court Hearing and Distribution of Estate and how the legal formalities of Procedure in determining the date of death establishing the start date, Seven Year Calculation, Legal Declaration, Evidence, court decree comes into function. The legal process involving careful judicial procedure by referring to multiple case study, in establishing the fact and timing of death, followed by the application for succession rights under the Indian Succession Act, 1925. The burden of proof and the precise legal steps ensuring that the rights to the deceased's estate are appropriately and legally transferred to rightful heirs. Thus, investigating the application of Section 108 in documenting evidence related to property succession in India.

Keywords-

Property, Inheritance, Presumption, **Evidence Act**, **Succession Certificate**

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I. INTRODUCTION

Section 108 of the Indian Evidence Act, 1872 which is replaced by the new act Bharatiya Sakshya Adhiniyam under Section 111. The burden of establishing the existence of a person who has been missing for seven years. The question is whether a man is living or dead, and since it has been established that he has not been heard from by people who would have known about him if he were alive, it is up to the affirmer to show his existence.

It underlines the significance of Section 108 of the Indian Evidence Act, 1872 and Section 372 of Indian Succession Act regarding grant of Succession Certificate in determining the rightful heirs and the procedure for succession of property after the death of an individual. Highlighting how understanding the legal provisions laid out in Section 108 is crucial for individuals and families to secure their property rights and ensure a smooth transition of assets. It emphasizes the importance of clarity and adherence to legal procedures in cases of property inheritance to avoid potential disputes and ensure a fair distribution of assets among the legal heirs.

II. DETERMINING THE TIME OF DEATH AS PER SECTION 108 OF THE INDIAN EVIDENCE ACT, 1872

As per **Lal Chand Marwari vs Ramrup Gir**[1]

- The suits were filed on the grounds that the plaintiff, who was the math's or asthal's Mahant at the time and lived in Paprikhan Karan, was entitled to compensation from the defendants for various properties and math endowments that were then in their ownership. It was claimed that Bhawan Gir, the plaintiff's immediate predecessor and deceased mahant, had alienated these estates without a warrant.
- The principle was well established in this case that the death of death has to established on evidence by a person who claims a right for establishment or succession. However, it is to be noted that the death of a person cannot be registered until the period of 7 years is complete from the last record of that person’s existence.

As per **Smt. Narbada And Anr. vs Ram Dayal**[2]

- In the village of Gulgaon, Ram Prasad owned a home and some land for agriculture. He was not heard of by his wife Mst. Pani for more than seven, years and therefore she made a gift of theproperty of Ram Prasad in favour of plaintiff Ram Dayal on In this case, The Privy

[1] Lal Chand marwari vs Ramrup Gir [1925] Privy Council, [1925] 28BOMLR855
[2] Smt. Narbada And Anr. vs Ram Dayal [1967] Privy Council, [1967] AIR1968RAJ48

Council established that no one who has not been heard from for seven years may be presumed to have passed away during or at the end of that time. If the delay is more than seven years, say three or four times, the presumption that such a person is dead would remain the same; however, the date of his death will always be the subject of evidence, just like any other fact.

- If a party depends on a particular date of death for an individual who has been missing for seven years or longer, he has to provide evidence of that precise date. It was also established that the earliest date on which it can be assumed that a person was not alive is the date the suit was filed, and it cannot be granted a further retrospective, in cases where a person has not been heard from for seven years or more and no precise date of death has been or can be proven.

As per Tadepalli Ram Rathnam vs Kantheti Varadarajulu And Ors[3]

It is clear from a careful reading of section 108 that death is presumed after a specific period of time—seven years—but the exact moment of death is not presumed. The plaintiff must establish the precise time of death—whether through direct or indirect evidence—just like he would any other fact before asserting any rights.

It is true that while a presumption on section 108 is established, it must be determined through a suitable inquiry that the individual was not heard from by those who should have been heard from for seven years. It is acceptable to refute the claim in that investigation that the individual hasn't been heard from for more than seven years and present proof that he is still alive or is being heard from recently. It is evident that any presumption of death in section 108 is inapplicable if it is demonstrated that the individual has been heard from within seven years.

The duty of showing the precise moment of death rests on the evidence rather than a presumption, and it is not assigned under section 108 but rather under the general rules of the burden of proof. The burden of proving that a death occurred at any certain period, whether it was seven years before the lawsuit was filed or less than seven years ago, rests with the party asserting a right to the establishment, for which the deceased person's precise date of death is crucial. On the day the lawsuit was instituted, there it did not exist any presumption that the death occurred at the end of the seven-year period or earlier. No legal provision supports this

[3] Tadepalli Ram Rathnam vs Kantheti Varadarajulu And Ors [1970] Andhra High Court, [1970] AIR1970AP246

kind of assumption.

After considering some further references for the Equity Courts, the learned Lord alluded to the landmark case of ***Doe v. Nephean, (1833-37) 5 B. & Ad, 86.*** The Exchequer Chamber adopted the Court of the Queen's Bench doctrine in these terms: "***We adopt the doctrine of the Court of the Queen's Bench, that the presumption of law relates only to the fact of death, and that the time of death, whenever it is material, must be a subject of distinct proof".*** (1837) 2 M & 894 (914). And that there is evidence that he is still alive or has been heard of within that time span. If it is established that the person has not been heard from in seven years, the assumption of death under section 108 cannot be invoked.

Proving the exact time of death is a matter of evidence, not presumption, and falls under the normal burden of proof principles rather than section 108. That death occurred at any given moment, whether prior to or within seven years prior to the filing of the suit, is the responsibility of the person who claims a right to the establishment, for which the exact date of death is required. There is no presumption that death occurred within seven years or on the date the complaint was filed. No provision of the law justifies such a presumption.

In the case of Re Phene's Trusts, (1870) 5 Ch. A. 139 has been read and it follows: "The legal presumption that an individual is deceased if they go missing for seven years is based on evidence rather than presumption. The burden of establishing the precise time of death falls on the party asserting a right to the establishment, for which proof of death is crucial."

As per Narayan Nayak vs State Bank Of India And Ors.[4]

When someone disappears for seven years, the legal assumption that they have passed away is founded on evidence, not conjecture. The person claiming a title to the establishment bears the duty of determining the exact time of death, and proof of death is essential for this purpose. Publications in newspapers were also produced. Over seven years have elapsed since then.

The petitioner had requested an appointment on the grounds of compassion, assuming his father would pass away. It seems from hearing the respective Lawyers representing the parties that the petitioner's father has been missing since 1992. For all intents and purposes, the date of such missing is assumed to have been seven years ago.

Analysis-

The 12-year and 30-year time presumptions found in the Hindu Law and Hanafi Law,

[4] Narayan Nayak vs State Bank Of India And Ors [2002] Calcutta High Court, [2002] IIILLJ1013CAL

respectively, are superseded by the provision in Section 108 of the Evidence Act. Due to the wording used in Section 108 of the Evidence Act, even though the individual in question has not been heard from by those who would have known about him if he were alive for seven years, the onus of proving his existence rests with the one who claims it. In legal terms, the presumption of fictional death or civil death as a result of Section 108 of the Evidence Act is equivalent to physical death.

It is his responsibility to provide evidence if someone claims he is still alive. Insofar as the onus is on the one making the affirmative claim, Consequently, unless the suitor seeks to demonstrate that he is entitled to a legal title or property right, no suit may be filed to declare someone dead after they haven't been heard from for seven years. According to the ruling in the case of K. Naga Hema (above), a Division Bench of the Andhra Pradesh High Court actually held that, in accordance with Section 108 of the Evidence Act, a person's death is presumed to have occurred when he or she has not been heard from by those who would have normally heard from them if they had been alive for seven years. Consequently, the Bank had already inferred the death in light of the legal proposition, especially since it had already recognised the legal dead by its actions—namely, by paying retiral benefits to the absent employee's relative.

M. Chellamal v. C. Shanthi[5]

Facts of the case:

The plaintiffs, Shanthi and her daughter Gomathi, filed a suit for partition and possession of properties, claiming that Chandrababu Naidu, Shanthi's husband, had been missing for 13 years and was presumed dead. The properties in question were allegedly the self-acquired properties of Madhava Naidu, Chandrababu's father, who died intestate. The defendants, who are Madhava Naidu's other children, disputed Chandrababu's presumed death and claimed that one property was self-acquired by the first defendant and that Chandrababu had already collected his share of another property.

Relevant issues:

I. Can the plaintiffs get a decree stating that Chandrababu Naidu has passed away?
II. Whether the respondents 1 and 2/plaintiffs 1 and 2 are entitled to 1/7 th share in the suit properties in their capacity as legal heirs of Chandrababu Naidu?

Rule (Statutes and legislations applied):

[5] M. Chellamal v. C. Shanthi [2004] Madras High Court, [2004] A.S.No.127

1. Section 108 of Indian Evidence Act, 1872.
2. Sections 8 and 15 of the Hindu Succession Act, 1956.

Judgement:

Issue 1: As per Section 108 of the Indian Evidence Act, 1972, the burden of proof lay on the plaintiffs as they were affirming Chandrababu's death and through the recounting of events they were able to provide sufficient evidence to prove that they had not heard from Chandrababu for 13 years (specifically over 7 years).

After a thorough examination of the evidence and a clear application of the law's correct principles, the learned trial judge concluded that Chandrababu Naidu was presumed dead under Section 108 of the Indian Evidence Act, 1872, as he had not been heard from for more than seven years.

This Court did not discover any flaw or imperfection in the aforementioned decision made by the experienced Trial Judge that would have required it to interfere with its ability to file an appeal. Issue No. 1 is addressed appropriately.

Issue 2: The court found that the trial judge erroneously granted the plaintiffs a 1/7th share of Madhava Naidu's properties, excluding his widow Chellammal from inheriting. Correcting this, the appellate court ruled that all children, including Chellammal, should receive an equal share, making it 1/8th each. Upon Chellammal's death intestate, her 1/8th share was further divided among her remaining children as per Section 15 of the Hindu Succession Act, 1956. and her deceased son's daughter, Gomathi. Consequently, Gomathi's share increased to 1/7th, while the plaintiffs, being the wife and daughter of Chandrababu Naidu, received his 1/8th share, split equally between them. The preliminary decree was modified to reflect these adjustments, directing the partition of the revised shares.

In the case of *L.I.C. Of India vs Anuradha* [6]

Hon'ble Supreme Court held :

Based on the assumption that the guy was deceased when the question was posed, the only conclusion that can be made is that he was not known to have passed away prior to the seven-year mark.

If the opposing party is unable to provide evidence showing the man was alive on the date the dispute began or at any earlier point in time, the presumption remains unchallenged, thereby

[6] L.I.C. of India vs Anuradha [2004] Supreme Court of India, [2004] SC 20700

ending the seven-year period that is counted backwards from the date the question arose for determination. When the person passed away depends not on conjecture but rather on factual or circumstantial evidence. Although it will be assumed that the person has passed away, the precise moment of death is not presumed to have occurred. Regarding the events and facts that may have led to the person's death, there is no assumption.

According to Section 108, the presumption of death would only become applicable once seven years had passed; it could not be raised earlier, by any means, or after six years and three sixty four days, or at any other time. There would only be a reason to bring up the presumption if it were brought up in front of a tribunal, court, or other authority that has the ability to determine someone's status. As long as the disagreement is not brought up in a forum or during judicial procedures, there is no reason to raise the presumption.

Nathu Ram vs . State [7]

Suresh, the third brother, has been absent for more than seven years despite having been given notice on the previous date. Thus, in accordance with the petition submitted by their two other brothers under Sections 107 and 108 of the Indian Evidence Act, all three of them are classified as Class I legal heirs under the Hindu Succession Act.

A proviso to Section 107 is found in Section 108. The underlying idea of these two parts is that it will be assumed that a guy will always be alive if it can be demonstrated that he lived at a specific time period.

It is possible to refute this assumption. The burden of proof in this kind of situation is covered in these two parts. According to Section 107, if a man is questioned about whether he is living or dead and it can be demonstrated that he was alive for at least 30 years, it is assumed that he is alive; the onus then shifts to the person making the claim that the individual is dead to give evidence of that fact.

According to Section 108 of the Indian Evidence Act of 1872, an individual is deemed deceased if they are not contacted by individuals who would typically hear from them after a period of seven years. The Supreme Court emphasised in LIC of India v. Anuradha that this presumption of death only materialises upon the full expiration of the seven-year period, and that it is not flexible for a shorter period of time. Moreover, although Section 108 assumes the existence of death, it does not establish the precise moment of death; this needs to be demonstrated by concrete or indirect evidence. The analysed instances, which include

[7] Nathu Ram vs . State [2008] Delhi District Court, [2008] 214/05

Tadepalli Ram Rathnam vs. Kantheti Varadarajulu, Smt. Narbada vs. Ram Dayal, and Lal Chand Marwari vs. Ramrup Gir, constantly state that when establishing the precise moment of death through evidence, it is necessary for the resolution of legal issues. The consistent judicial approach underscores that, in the absence of substantial proof, the presumption of death under Section 108 cannot be imposed retroactively to a particular date within the seven-year term or shortly after its conclusion.

III. HOW IS THE DATE OF DEATH CALCULATED? –

- There has been a serious conflict of judicial opinion in cases regarding Section 108 of the Indian Evidence Act, 1872. The learned judge in ***N. Pankajam v. State of Tamil Nadu in 2006***[8] held the date of expiry to grant pension benefits to the petitioner as the date on which her husband went missing. However, this was offset by the High Court of Madras in ***The Managing Director v. E. Tamilarasi, 2015***[9] which essentially laid down **that there is an inherent danger in presuming the same as many claims that would be made by legal heirs would be barred by time**, and the fact that the presumption of death can only be raised only after the lapse of seven years deems it all the more incorrect to follow the same.
- The date on which person went missing or the date of registration of complaint (F.I.R) is taken as the start date, from which 7 years is calculated to specify date of death. Further, the immediate expiry of 7 years since that date will not be considered for date of civil death of the person, if the police enquiry/ investigation is still ongoing and the date on which endorsement was given by Police station that the missing person is "not traceable" is to be considered as the relevant date ***(as per Sri Pradeep Anantha Rao Terwad and Dakshayani Terward v. Nil)***[10]

IV. WHAT IS THE PROCEDURE FOR FILING DECLARATORY SUIT TO DEEM THE MISSING PERSON AS "DEAD?"

- By invoking plenary jurisdiction under Section 9 of the Civil Procedure Code, 1908, a civil declaratory suit can be filed to declare the missing person dead as per Section 34 of the

[8] N. Pankajam v. State of Tamil Nadu [2006] Madras High Court, [2006] W.P. No. 5480 of 1998
[9] The Managing Director v. E. Tamilarasi [2015] Madras High Court, [2015] W.A(MD)No.1101 of 2013
[10] Sri Pradeep Anantha Rao Terwad and Dakshayani Terward v. Nil [2019] City Civil & Sessions Judge Mayo Hall, [2019] OS No.26776/2019

Specific Relief Act, 1963. (**As per *Sou. Swati W/O. Abhay Deshmukh and … v. (Bombay HC)***[11]

- Court will examine the evidence the documents and the oral evidence of the parties contesting the member is missing in order to prove any malafide intention and not done for any unlawful gains because of it is proved that, Under Sec 108 of Indian Evidence Act- A person had not been heard for 7 years, the burden of proving the fact that, he is alive he shifted on the person, who affirms it. (**as per *Sri Pradeep Anantha Rao Terwad and Dakshayani Terward v. Nil***)[12]
- Unless there is a contest to the notification issued by the court in the local newspaper regarding the missing person's whereabouts, a declaration stating that the missing person is indeed dead is granted by the court as per Section 108 of the Indian Evidence Act, 1872. (**as per *The Managing Director v. E. Tamilarasi, 2015 (Madras HC) (W.A(MD)No.1101 of 2013)***[13]

V. WHEN IS THE PERSON PRESUMED TO BE DEAD? –

- Presumption is limited solely to establishing the fact of the person's death, without presuming the date, time, or circumstances of death.
- Presumption only after a lapse of seven years and cannot be invoked prematurely.
- Presumption does not arise unless the matter is formally raised in legal proceedings ie. only when the question is raised in a Court, Tribunal or before an authority who is called upon to decide status of the person alive o dead **as *per L.I.C. of India v. Anuradha*** [14]

VI. PROCEDURE FOR SUCCESSION OF PROPERTY AFTER DEATH OF PERSON AS PER SECTION 108 OF THE INDIAN EVIDENCE ACT, 1872.

It is important to note that where death itself is not a fact, and the death itself is in question, it is necessary that the civil court passes a decree with respect to declaration of death of the concerned person, and only thereafter would the benefits of the estate of the deceased fall to the appellants/petitioners. It must also be noted that the Indian Succession Act proceeds on the actual factum of death and not because of a deemed civil death on account of non- availability

[11] Sou. swati w/O. abhay deshmukh and vs Shri. Abhay S/O. Purushottam Deshmukh [2016] Bombay High Court, [2016] SA NO. 18/2016

12 Ibid, 10

13 Ibid, 9.

14 Ibid, 6

of the concerned person for a particular period of time. ***As per Sanju Devi and Ors. V. State and Anr in 2014*** [15]

Under Part IX and Part X of the Indian Succession Act, 1925. ***As per Sri Pradeep Anantha Rao Terwad and Dakshayani Terward v. Nil*** [16] To access the benefits of the estate of the deceased and claim succession, the claimants must file a suit under the Indian Succession Act, 1925.

- **Letter of Administration (LoA)** is mandatory for the person claiming the property of the deceased. According to Section 218, if the deceased died intestate and was a Hindu, Muhammadan, Buddhist, Sikh, or Jaina, or an exempted person, administration of his estate can be granted to any person who, under the rules for estate distribution applicable in the particular circumstance of such deceased, would be entitled to the entire or any part of such deceased's estate. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death as per Section 220. The same shall be pleaded for before the District Judge with competent jurisdiction as per CPC, 1908.
- **A Succession Certificate (SC)** is also significant, especially when it comes to relief for claiming movable property of the deceased. Under the Indian Succession Act, a succession certificate is a document that authorises the person who acquires it to represent the deceased in the collection of obligations and securities owed to him or payable in his name. In the event of the absence of a will, a succession certificate is typically the main document by which heirs can lay a claim to the assets of a deceased relative.
- Application for a SC is governed by Section 372 of the Indian Succession Act, 1925. This certificate authorises the claimant to: (a) receive interest or dividends on the securities; (b) negotiate or transfer the securities; or (c) both receive interest or dividends on the securities and negotiate or transfer any of them.

Sudarshan Shaw vs Subhas Shaw on 6 July 2005 [17]

Calcutta High Court case regarding the appeal at the instance of an applicant under Section 372 of the Indian Succession Act, 1925

[15] Sanju Devi and Ors. V. State and Anr [2014] Delhi High Court, [2014] FAO No.477/2013
16 Ibid, 10

[17] Sudarshan Shaw vs Subhas Shaw [2005] Calcutta High Court, [2005] (2005(3)CHN456)

The appellant filed the proceedings under Section 372 seeking a Succession Certificate to manage the debts and assets of his father, who went missing but absence of death certificate of the deceased the proceedings under Section 372 of the Act was not maintainable unless the applicant gets a declaration as to the death of deceased by filing separate proceedings in a Civil Court.

The Act was passed in 1925, when India's municipal rules were not as strict as they are today, making death registration mandatory. In isolated communities, there was not even a practice of issuing Death Certificates by any doctor due to limited quantity.

Issue-

Whether "**the time of death of the deceased**" in the application is necessary for the issuing of a succession certificate.

Analysis-

Applying under **Section 372 clause (a) of the Indian Succession Act, 1925** requires an approximate time of death, which will suffice to comply with the provisions. In this case, however, it will be the applicant's responsibility to persuade the court during the hearing that the person in question had passed away at the time the application was presented. To prove this, the applicant must provide oral or documentary evidence, and the court must base its determination of the death and approximate time of death on specific or circumstantial evidence.

The court opined that -

As a result, an application cannot be denied on the grounds that no precise date of death has been provided, nor is the applicant obliged to provide documentary evidence to bolster the statement made in the application, if the applicant simply states in his application that the person in question is not traceable for a period of seven years prior to the date of application presentation.

1cases where an objection is raised, disputing the claim of death or asserting knowledge of the person within the seven-year period, the court must assess the evidence presented by both parties to arrive at a conclusion

In a similar vein, the court cannot deny an application for grant of probate just because the date of death stated in it was determined to be incorrect, even if it is demonstrated through evidence

that the executor's provided date of death is incorrect but the testator passed away either before or after that particular date but before filing the application. Therefore, failing to provide the precise date of death does not necessarily mean that the application will be rejected if it can be shown by proof that the applicant was deceased at the time the application was filed. This same principle also holds true for the processes involved in granting succession certificates.

Court found that the learned Chief Judge, City Civil Court refused to exercise jurisdiction vested in him by law by holding that in the absence of Death Certificate or other certificates it was not possible for him to grant the relief claimed. But the law **does not require** that the fact that a person is dead must be proved only by documentary evidence. In a civil litigation finding on all disputed question of facts including the time of death can be arrived at from the evidence on record by applying the **principle of preponderance of probability**.

Similar to this, in the Act's proceedings, the Court will determine whether or not the person in question was actually dead, whether or not they had a fixed place of residence within the Court's territorial jurisdiction at the time of their death, and whether or not all of the people who may have been his natural heirs in the event of an intestate succession have been served. This determination will be made based on the evidence presented by the parties.

the court held that the Act does not mandate the precise date of death in applications for succession certificates, probate, or letters of administration. The court can determine the fact of death based on evidence presented, and it has the authority to grant relief accordingly

Even so, there is no need to file a separate civil suit to declare the missing person dead before making an application under the Act, as the court handling the application has the authority to make such a pronouncement. In order to exercise jurisdiction under the Act, the Court must determine, after reviewing an application under the Act, whether the missing person was deceased on the date the application was presented based on evidence in the records.

VII. SUPREME COURT VIEWS ON THE FACTUM OF DEATH AS PER SECTION 108 OF THE INDIAN EVIDENCE ACT, 1872 FOR SUCCESSION OF THE ESTATE OF DECEASED.

Ram Bilas v. Jagat Narain Shrivastava [18]

[18] Ram Bilas v. Jagat Narain Shrivastava [1994] Supreme Court of India, [1994] Supp (2) SCC 113

Para 4- Son unheard for more than 7 years - in this case 22 years - Son's wife and children execute a sale deed where house owner's son will we be presumed to be dead prior to the execution of sale deed.

Darshan Singh v. Gujjar Singh [19]

Two brothers, were involved in a murder case. While One brother (A) was granted pardon, other brother (B) absconded during their jail confinement. Upon release, A took possession of the entire land, including B's share. After A's death in 1920, Smt. Har Kaur, a collateral, took possession of the land.

C, adopted son of A, contested the mutation and possession of Har Kaur, leading to a lawsuit. The courts ruled in favor of C, and his name was mutated in the revenue records in 1930. After C's death, his grandsons, the present appellants, also got their names mutated. D, a collateral of B, challenged the mutation unsuccessfully.

Issues:

1. Whether plaintiff, Gujar Singh, a sixth-degree collateral of Jagjit Singh has the right to inherit land of Jagjit Singh?
2. Is it possible for Rulia Singh and the current appellants, who have had their names changed and have owned the land since 1930, to have perfected their title by adverse possession over Jagjit Singh's land after his death?

Analysis and Judgement:

Issue 1: Both the High Court and the First Appellate Court ruled that Jagjit Singh, who had not been heard in court for over seven years, could be deemed legally "dead only on the date on which the present suit was filed." It was also decided that the appellants bore an unassailable burden of proof on Jagjit Singh's date of death.

The court examined the provisions of Sections 107 and 108 of the Evidence Act in **Sri Vidya Mandir Education Society (Regd.) versus Malleswaram Sangeetha Sabha and Others [1995 Supp.1 SCC 27]**. After taking note of the Privy Council's ruling in **Lal Chand Marwari versus Mahant Ramrup Gir and Another [AIR 1926 Privy Council 9]**, the court held that there is no presumption of the precise time of death under Section 108 of the Evidence Act and that the date of death must be established through evidence by the person claiming a right for

[19] Darshan Singh v. Gujjar Singh [2002] Supreme Court of India, [2002] 2 SCC 62

establishment of which that fact is essential. In the current case, the plaintiff was required to establish the date of death since he was claiming succession to Jagjit Singh's fortune. Regarding Jagjit Singh's date of death, the plaintiff-respondent has not made any claims or made any pleadings. The High Court's opinion that the date of the current suit's filing would be regarded as Jagjit Singh's death because he had not been heard for more than seven years is in conflict with the aforementioned legal rules.

Because the plaintiff, Gurjit Singh, was unable to establish the exact date of Jagjit Singh's death, his succession to his estate did not begin on the day the lawsuit was filed, and the decisions made by the appellate courts are not legally tenable.

Issue 2: The appellants relied on the Lahore High Court case **Sardar Amar Singh v. Sadarni Shiv Datt Kaur ((AIR 1937 Lahore 890))**, in which the learned Judge ruled that removing the absentee co-sharer's name from revenue records at the request of other co-sharers amounts to an overt act of ousting and begins the co-sharers' adverse possession. This is because the name removal was done in an open manner, and if the absentee co-sharer had taken an interest in the land, he would not have failed to notice of it in the normal course of events, so it is reasonable to assume that he was aware of the other co-sharer's adverse claim.

wherein the knowledgeable A solitary judge determined that when multiple co-sharers own a piece of property and one of them is in possession of the entire amount, that co-sharer's possession cannot be considered adverse to the other co-sharers; rather, he must be considered in possession on behalf of all other co-sharers. Adverse possession cannot be justified on the basis of exclusive possession like this unless other co-sharers have been ousted. With regard to the change in the revenue record, the learned judge ruled that unless it can be demonstrated that the name of one co-sharer was gained following a clear declaration stating that the title of the other co-sharers was rejected, the name change of one co-sharer cannot be indicative of adverse possession.

The Supreme Court ruled that, instead, the proper position is one in which the possession of property by one co-sharer on behalf of the others is deemed to have occurred unless there has been a clear ouster by that co-sharer, through which he denies the title of the other co-sharers. Moreover, a change in the revenue record in the name of one co-sharer would not constitute ouster unless there is a clear declaration that the other co-sharers' title was denied.

Rulia Singh questioned the claim that Smt. Har Kaur, a collateral, had taken control of the property when Hira Singh passed away. After a legal battle involving both parties, Rulia Singh

was granted title of the land and had his name changed in the revenue records. The plaintiff unsuccessfully contested the existing appellants' names when Rulia Singh passed away since his grandsons had also had name changes. It is therefore established that the current appellant and the other present appellants had their names changed as a result of their denial of Jagjit Singh's co-lateral status.

VIII. CONCLUSIONS FROM THE PAPER

The paper discusses the procedure for the succession of property after the death of a person as as per Section 111 of the Bharatiya Sakshya Adhiniyam, 2023 which replaced the Section 108 of the Indian Evidence Act, 1872. Understanding the legal framework surrounding property succession is crucial in India. Role of Indian Evidence Act plays a significant role in determining how property is inherited after an individual's demise. It is important for individuals to be aware of the laws and procedures outlined in the Indian Evidence Act to ensure a smooth transfer of property post-death. Ensuring compliance with these laws and being informed about property succession can help avoid disputes and confusion among family members.

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INDIAN KNOWLEDGE SYSTEM AND NEP 2020: A BRIEF STUDY

Dr. Kuldeep Chand•

ABSTRACT

The New Education Policy (NEP) 2020 has been launched to transform the Indian education system using holistic development of the learners. This framework provides a comprehensive and integrated strategy for the growth of the education system. The Indian Knowledge System (IKS) is one of the significant aspects of the NEP curriculum. IKS encompasses diverse and rich heritage knowledge of India that covers various domains such as science and technology, literature, philosophy, culture, medicine (ayurveda), and yoga. NEP has focused on interdisciplinary and transdisciplinary knowledge, and it can integrate the contemporary knowledge vested with IKS to address current and future challenges. The National Education Policy (NEP) 2020 in India represents a significant overhaul aimed at revitalizing the country's education system. Central to its objectives is the integration and revitalization of the Indian knowledge systems (IKS), aiming to restore and promote traditional knowledge alongside contemporary education. The National Education Policy 2020 is the first education policy of the 21st century and aims to address many growing developmental changes in our country. This policy proposes the revision and revamping of all aspects of the education structure including its regulation and governance to create a new system that is aligned with the inspirational goals of education including sustainable development goal while building upon India's traditions and value systems.

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Keywords: Indian Knowledge System, New Education Policy, Contemporary Knowledge, Interdisciplinary Knowledge and Holistic Development.

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I. INTRODUCTION

India is a country with an ancient civilization history and practices that are known to mankind. It is expected to accumulate some knowledge throughout its existence. This ancient knowledge was preserved on palm trees and transferred from generation to generation orally. The National Education Policy (NEP) 2020 is a comprehensive framework designed to transform the Indian education system to meet the challenges of the 21st century.[1] One of its fundamental aspects is the recognition and integration of the Indian knowledge systems (IKS), which traditional encompass traditional and indigenous knowledge that has been integral to India's cultural and intellectual heritage. Indian Knowledge Systems (IKS) encompass a vast array of disciplines, including Ayurveda, Yoga, Sanskrit, classical arts, and ancient Indian mathematics and sciences. In 2020 India unveiled its first and most comprehensive education policy of the 21st century. As the first education policy since 1986 the New Education Policy (NEP) 2020 has the task of addressing multiple crises facing India's education system. The NEP 2020 is truly a path breaking document in every sense. The policy amongst others aims to address pedagogical issues structural inequities broadening of access apart from making the learner's future ready while meeting the demands of 21st century India.

The NEP 2020 recognizes the importance of these systems and proposes their integration into the modern curriculum. These systems encompass a wide range of disciplines including but not limited to medicine, agriculture, astronomy, philosophy, linguistics, and arts, often rooted in indigenous cultures and practices.

"Indian Knowledge Systems (IKS) refers to the comprehensive and diverse knowledge systems developed and nurtured in the Indian subcontinent over centuries. These systems encompass traditional knowledge in various domains such as science, technology, medicine, arts, and social organization, deeply rooted in India's cultural and philosophical heritage." [2]

The NEP 2020 emphasizes the integration of Indian Knowledge Systems (IKS) to promote cultural awareness, holistic learning, and problem-solving skills. The National Educational Policy 2020

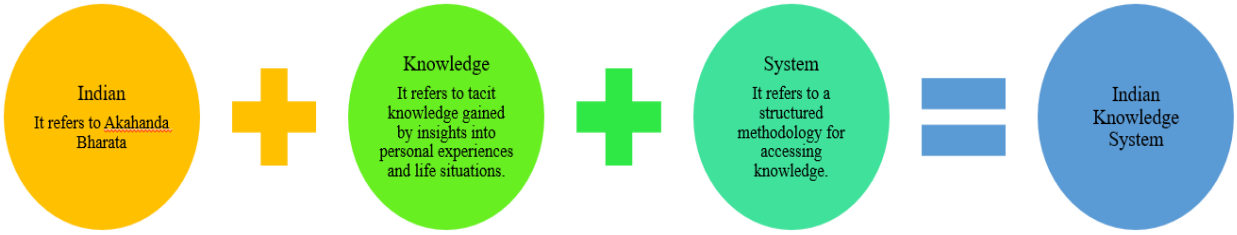
[1] Bhardwaj, A. (2020). Revitalizing Indigenous Knowledge Systems through NEP 2020. International Journal of Multidisciplinary Educational Research, 9(4), 123-130.
[2] Indian National Science Academy, 2018

(NEP 2020) recommends the incorporation of Indian Knowledge System (IKS) into the curriculum at all levels of education.[3]

II. Nature and Concept of Indian Knowledge System

Indian Knowledge System (IKS) comprises three words namely: Indian, Knowledge, and System.

- **Indian:** It refers to Akhanda Bharata i.e. undivided Indian subcontinent.
- **Knowledge:** Knowledge refers to the unstated knowledge and it lies in the wisdom of knowledge seekers. It is gained by insights into personal experiences, through observations, facing real-life problems, and solving them.
- **System:** System means a well-organized methodology and classification scheme used to access a body of knowledge. The classification is based on the need, interest, and capacity of the knowledge seeker so that he may access the inherent knowledge.



The IKS is the systematic transfer of ancient and modern knowledge from one generation to another. It covers ancient knowledge from various domains to address current and future challenges. In the view of Kautilya, Education should aim at three outcomes such as, Vidya- Creation of new Knowledge, Vivek -Wisdom to use the right knowledge in right time and place for right purpose, and Vichashaknata – the skill set to get the proper results of knowledge in real life. These outcomes are possible only when the education system is properly balanced with the

[3] "The heritage of ancient and eternal IKS and thought has been a guiding light for this Policy. The pursuit of Knowledge (Jñāna), wisdom (Prajñā), and truth (Satya) was always considered in Indian thought and philosophy as the highest human goal. … The Indian education system produced great scholars such as Charaka, Susruta, Aryabhata, Varahamihira, Bhaskaracharya, Brahmagupta, Chanakya, Chakrapani Datta, Madhava, Panini, Patanjali, Nagarjuna, Gautama, Pingala, Sankardev, Maitreyi, Gargi and Thiruvalluvar, among numerous others, who made seminal contributions to world knowledge in diverse fields such as mathematics, astronomy, metallurgy, medical science and surgery, civil engineering, architecture, shipbuilding and navigation, yoga, fine arts, chess, and more. Indian culture and philosophy have had a strong influence on the world. These rich legacies to world heritage must be nurtured and preserved for posterity and researched, enhanced, and put to new uses through our education system."

integration of knowledge and skill in an appropriate manner. In today's education, organization of knowledge content "what to know" has taken over the best of knowledge seeking "inquiry" i;e; "how to know". The entire Indian Knowledge System has always focused on "how" rather "what".

III. India's Prosperity and Ancient Knowledge System

Indian Knowledge Systems (IKS) is a division of the Government of India's Ministry of Education which supports to promote indigenous Indian systems of knowledge, located in the AICTE Headquarters was established in Oct. 2020. One of the key pillars of India's ancient knowledge systems is the Vedic literature. The Vedic texts, comprising the *Rigveda, Samaveda, Yajurveda, and Atharvaveda,* hold immense importance in Indian culture and spirituality. These texts contain a vast storehouse of knowledge, encircling various disciplines such as philosophy, science, mathematics, linguistics, astronomy, and more.[4] The Vedic literature serves as a guiding light, providing insights into the reflective understanding and wisdom of ancient Indian sages. It offers thoughtful philosophical teachings, decent principles, and practical knowledge that have shaped the Indian way of life for millennia. The hymns, rituals, and philosophical concepts found in the Vedas have influenced diverse fields, including literature, arts, music, architecture, and governance.[5]

The National Education Policy (NEP), as enacted in 2020, emphasizes the inclusion of IKS into curriculums at all levels of education, in line with this, the National Credit Framework (NCF) has made it possible for students to earn credit in courses relating to Ancient Indian Sciences and arts. IKS is also being included under the Vision 2047 for Bharatiya Rasayanasastra initiative. Under University Grants Commission (UGC) guidelines, it is advised that 5 per cent of a student's total credits should be in IKS courses at the undergraduate and postgraduate levels. The UGC aims to train 1.5 million teachers in IKS by 2025, and has launched an online IKS MOOC course.

IV. NEP 2020 and Integration Of IKS:

The NEP 2020 has emphasized that IKS will be part of the curriculum and will be included scientifically. IKS along with tribal knowledge will be included in mathematics, engineering,

[4] Sharma, A., & Gupta, M. (2020). Promoting Critical Thinking through Traditional Indian Knowledge Systems. Educational Review, pp.345-360.
[5] Mukherjee, R. (2022). Developing Balanced Curricula: Integrating Traditional and Modern Knowledge. Education Research International, pp. 201-214.

philosophy, yoga, medicine, sports, games literature, languages, and various other domains. NEP has paying attention on precise courses in tribal ethno medicinal practices, forest management, and natural farming. Under NEP, IKS will be taught as an elective course for secondary school students. These inputs will be delivered through modern technologies, fun games, and cultural exchange programs among different states. NEP focuses on multilingualism and the IKS storehouse has many languages. Under NEP students will be delivered curriculum in their native languages and Sanskrit the most ancient language will be taught to all. By learning different languages, they will know the rich and miscellaneouscivilization of the country. The multi-language formula will cover up the aspects of Constitutional provisions and it will create unity and veracity across the nation ("National Education Policy 2020"). It would be easy to include the history of Indian mathematics in normal math classes. The same could be done for architecture, philosophy, and Ayurveda.

In designing teaching methodologies for Indian Knowledge Systems, it is crucial to draw insight from India's chronological methods of knowledge distribution. An ideal model is the 'Gurukula' system, which emphasized a reflective bond between the teacher (Guru) and the student (Shishya), laying the foundation for effective learning and personal growth. Implementing such methodologies has the probable to promote critical thinking, creativity, and a holistic understanding in students, better preparing them to confront modern challenges. To successfully integrate these teaching methodologies, it is crucial to: Develop well-structured courses that highlight key aspects of traditional Indian Knowledge Systems.

- Provide training for educators in the principles and techniques of these systems to ensure effective teaching.
- Promote interdisciplinary learning by establishing connections between traditional Indian knowledge and
- Modern subjects.

The inclusion of Indian Knowledge Systems in higher education is paramount for the holistic development of the nation. This approach not only revitalizes the education system but also contributes to the preservation and endorsement of Indian languages, arts, and culture. The National Education Policy of 2020 underscores the significance of these systems and advocates for their integration into higher education institutions.

V. Implementation of Indian Knowledge System

With the advent of globalization there is a race to change the traditional education system and to make it of global standard by modernization. There is a dramatic change in pedagogy, curriculum, and medium of instruction.[6] This has led to social imperialism and cultural imperialism. In cultural imperialism, countries with high social status dominate the societies and cultures of countries having low social status

There are certain challenges when it comes to integrating IKS with NEP. There is a lack of awareness among the community and stakeholders about the importance of IKS. IKS is generally present in non-literary form, and it has been passed orally from one generation to another. It makes it difficult to develop and implement IKS based courses and programs in educational institutions. There is no clear-cut curriculum about IKS, and it is leaving educationists perplexed in many stakeholders may see it as irrelevant or outdated. As IKS is available in different languages it may create barriers to those who are not well-versed with these languages. Moreover, the colonial system of education has created a bias against the IKS in the Indian education system. The Indian education system is largely focused on the western knowledge system, and it can create difficulty in accommodating this system.

Integration of Indian Knowledge Systems (IKS) into the mainstream education system can have numerous benefits, including fostering a better understanding of India's rich cultural heritage and providing innovative solutions to contemporary challenges faced by the country. The main objective of integrating IKS into the education system is to ensure that India's ancient knowledge systems, such as Ayurveda, Yoga, and traditional arts, are preserved and promoted for future generations. By revitalizing the Indian education system through the inclusion of IKS, students can develop a deeper appreciation for their nation's unique history and cultural identity.[7]

VI. Challenges of Implementation

One of the primary challenges is the lack of adequate resources and infrastructure to support the integration of IKS into the curriculum. Additionally, resistance from educators and policymakers

[6] Sharma, A., & Joshi, A. (2018). Impact of Globalization on Education in India: Towards Global Standards or Cultural Imperialism? *The Globalization Conundrum—Dark Clouds Behind the Silver Lining, pp.257–265.*

[7] Ghosh, A. (2015). Traditional Knowledge: Problems and Prospects. *Lokodarpan - A Peer-Reviewed Bilingual Annual Research Journal,* pp. 553-562.

who may be doubtful about the significance and value of traditional knowledge in the modern world can pose a significant barrier to the successful implementation of IKS in the education system. Furthermore, there may be concerns about the potential loss of the unique cultural context and practices associated with traditional knowledge systems if they are integrated into the mainstream curriculum.[8]There are certain challenges when it comes to integrating IKS with NEP. There is a lack of awareness among the community and stakeholders about the importance of IKS. IKS is generally present in non-literary form and it has been passed orally from one generation to another. As IKS is available in different languages it may create barriers to those who are not well-versed with these languages. Moreover, the colonial system of education has created a bias against the IKS in the Indian Education system. The Indian education system is largely focused on the Western knowledge system and it can create difficulty in accepting this system. There is also a deficiency of well-qualified teachers to teach the IKS because it is not widely adopted yet.[9]

The inclusion of IKS in India may help the stake holders to know their cultural heritage and they may develop a deep understanding of the environment. As IKS is based on tacit knowledge it can help students to face and tackle the challenges they are going to face in their real life such as challenges of climate change and food security. The Indian government has taken a step under NEP to integrate IKS into the curriculum. There is an emergent need for proper training of the teachers so that they have proper knowledge of IKS and can deliver it in a meaningful way. The mother tongue or regional language received primacy in the NEP the same has been introduced in several states on a pilot basis. In order to attain the goal of education with excellence and the corresponding multitude of benefits to this nation and its economy this Policy unequivocally endorses and envisions a substantial increase in public investment in education by both the central government and all state governments. Education is the transmission of the normative heritage of a people from one generation to the next. Their sentiments were found to be similar to the attitude of teachers in one of the provinces with the findings of the particular study showing that teachers did not perceive IK as important while the indigenous ways of knowing were not recognized by some teachers.

[8] Qaisur, R., (2021). Higher education and quality enhancement of teacher's role in India: Issues and challenges. *Journal of Education and Development,* pp. 56-66.
[9] Sharma, A., & Tiwari, A. (2021). Integrating Traditional Indian Knowledge Systems in Modern Education: A NEP 2020 Perspective. Journal of Education and Practice, pp. 45-52.

VII. Analysis of NEP 2020 In Teacher Education

An educational institution performs a significant function of providing learning experiences to lead their students from the darkness of ignorance to the light of knowledge. The key personnel in the institutions who play an important role to bring about this transformation are teachers. The teacher is the most important element in any educational program. It is the teacher who is mainly responsible for implementation of the educational process at any stage.[10] This shows that it is imperative to invest in the preparation of teachers, so that the future of a nation is secure. India has reached the threshold of the development of new technologies and innovative methods to trained teachers which are likely to revolutionize the classroom teaching. It is common knowledge that the academic and professional standards of teachers constitute critical components of the essential learning conditions for achieving the educational goals of a nation.[11] The social and economic development of nation is fundamentally an education process in which people learns to create new institutions, utilize new technologies, cope with their environment, and alter their patterns of behavior. The higher education plays an extremely important role in promoting human as well as societal well-being and in developing India as envisioned in its constitution the democratic socially conscious cultured and humane nation upholding liberty equality fraternity and justice for all. Higher education significantly contributes towards sustainable lively hoods and economic development of the nation. As India moves towards becoming a knowledge economy and society more and more young people's are likely to aspire for higher education. Teaching is the oldest most indispensable and inevitable of all the professions in the world. Teacher education is vital in creating a pool of schoolteachers that will shape the next generation. Teacher preparation is an activity that requires multi-disciplinary perspectives and knowledge formation of dispositions and values and development of practice under the best mentors. Teachers must be grounded in Indian values languages knowledge ethos and traditions including traditions while also being well-versed in the latest advances in education and pedagogy.

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[10] Gautam, M, Singh, S., Fartyal, G., Tiwari, A. and Arya, K., (2013). Education System in Modern India. *International Journal of Scientific Research,pp.* 478-480.

[11] Jeder, D. (2014). Trans-disciplinarily the advantage of a holistic approach to life. *Procedia-Social and Behavioral Sciences,* pp. 127-131.

VIII. Conclusion

The inclusion of IKS in India may help the stakeholders to know their cultural heritage and they may develop a deep understanding of the environment. As IKS is based on tacit knowledge it can help students to face and tackle the challenges they are going to face in their real life such as challenges of climate change and food security. But this inclusion of IKS has certain challenges and these challenges need to be addressed before inclusion. The Indian government has taken a step under NEP to integrate IKS into the curriculum. There is an emergent need for proper training of the teachers so that they have proper knowledge of IKS and can deliver it in a meaningful way.

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EVOLVING DIMENSION OF HUMAN RIGHTS: REDEFINIG CAPITAL PUNISHMENT

Raghav Sharma*

ABSTRACT

This paper seeks to understand the relationship between death penalty and the right to life arguing whether continuation of the death penalty infringes the right to life. While the tide has slowly turned against the practice globally, there are still controversy as to why capital punishment is right or wrong, legal or unlawful, and whether or not is should be exercised at all. The paper uses pro and con arguments on the death penalty concerning the aspects such as deterrence, retribution, violation of rights, and the casualties' side. Based on the international human rights instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, this work examines the function of capital punishment and punishment in general, in legal systems founded on the proclaimed right for life. Thereby, in examining how countries with abolitionist, retentionist or restrictionist policies concerning capital punishment work in connection with a brief assessment of highlights for constitutional protection of this right, this paper assesses how different jurisdictions influence the outlook of this right. In addition, this paper focuses on the ethical issues of sovereignty in externing life, arguing over the proportionality and dignity, as a punishment that entails. Thus, based on analysis of case data on individual human rights claims, derived from the right to life under Article 21 and national security concerns, the paper offers policy measures to reconcile justice with human rights and security obligations at Westminster. In so doing, this research advances the literature on possible direction of capital punishment in a world that is slowly shifting towards the protection of human rights.

Keywords: Capital punishment, right to life, systems of criminal justice, International Instruments, policy measures

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INTRODUCTION

Sanctity of life can be viewed as an affirmation that every human being has value of life and equality in human dignity despite the context and circumstances.[1] This one entitles people to life because it claims that nobody is more important than anyone else.[2] Capital punishment is the most stringent punishment that can be imposed by a state but more than 70% of the countries worldwide have done away with it.[3] Death penalty has remained a debated subject concerning the criminal justice system and human rights. Supporters stand to say that it helps to reduce the cases of crime while enhancing retributive justice on some of the heinous offenses, its critics on the other hand claim that it is a violation of human rights, especially the right to life and human dignity. However, it is wanted in several countries like India even though it is obligatory only in the 'rarest of rare' cases.

Opponents stress that the death penalty implies deadly danger of mistrial and political discrimination violation of constitutional rights to equality, liberty, and life. J. Bhagwati's dissent in the Bachchan Singh case addresses all these issues by characterizing the death penalty as inconsistent with the modern civilized legal system. The equal protection clause under Article 14[4] applies to the judicial process during sentencing.[5] However, ever since its inception in India, Capital punishment has remained discretionary.[6] The award of the death penalty is quite subjective and relies heavily on the personal beliefs and inclination of the judge.[7] It may not only violate the idea of equal protection but may not also meet the requirement of due process.[8]

World Organization resolutions, which are the Second Optional Protocol to the ICCPR, reflect an ongoing process of the abolition of death penalty, respecting the inviolability of the life of every

[1] Nico P Swartz, "Sanctity of Life and Human Dignity as Human Rights Values Vis-A-Vis The Death Penalty: A Religio-Ethico Reflection", 2(4) *Advances in Social Sciences Research Journal* 33 (2015), *available at:* https://doi.org/10.14738/assrj.24.653
[2] Ibid.
[3] "More than 70% of the world's countries have abolished capital punishment in law or practice. The U.S. is an outlier among its close allies in its continued use of the death penalty", *Death Penalty Information Centre*, *available at*: https://deathpenaltyinfo.org/policy-issues/international
[4] The Constitution of India, art. 14.
[5] S.B. Sinha, "To Kill or Not to Kill: The Unending Conundrum", 24 *NAT'l L. Sch. INDIA REV*. 1 (2012), available at : https://repository.nls.ac.in/nlsir/vol24/iss1/11
[6] Jill Cottrell, "Wrestling with the Death Penalty in India", 7 *S. AFR. J. On HUM. Rts.* 185 (1991), *available at* : https://heinonline.org/HOL/LandingPage?handle=hein.journals/soafjhr7&div=22&id=&page=
[7] Swamy Shraddananda v. State of Karnataka, (2008) 12 SCC 288 para 33
[8] Santosh Kumar SatishbhushanBariyar v. State of Maharashtra, (2009) 6 SCC 498

person and the ban on torture and inhuman treatment. Yet, the retentionist countries continue to use the practice citing culture, security and prevention as reasons for the continued practice. This research paper aims at analyzing the efficacy of the capital punishment with respect to its adherence to the core human rights, thus considering the workable aspects of the capital punishment decision, in domestic and the international jurisdictions and comparatively. In line with the intent of the paper, an assessment of capital punishment in the light of justice, equity and human dignity will be made from the constitutional and global legal frameworks as well as policies to enhance the compatibility of justice and human rights will be recommended.

LITERATURE REVIEW

Passell, Peter., & Taylor, J.B.(1977)[9] questions the paradoxical conclusion of Isaac Ehrlich whose econometric mode of analysis showed that there was an inverse relationship between executions and rates of murder. Another asserted to be highly deterrent was Ehrlich's model, complete with conviction rates, socio-demographics, and unemployment. However, the study by the authors itself questions these conclusions on methodological grounds and shows how Ehrlich's model behaves when parameters and data shapes are varied. It highlights the point that, although Ehrlich's work stimulated the debate on capital punishment effectiveness, the research evidence on the dissuasive potential of capital punishment remained ambivalent because of the variability of statistical and theoretical evidence.

Jr., Powell F.L.(1989)[10] looks at how the death penalty has been concretely defined in the constitution and real meaning in the realm of the American justice system. Concerning, death penalty constitutes reformatory and preventative intention, and most judicial proceedings and Furman v. The steps that Georgia takes to guarantee that all is fair. Powell offers his view on a collateral review system that involves two separate reviews; the process delays deterrence and erodes people's trust. He writes on political reforms and ways to improve efficiency to avoid erroneous convictions. As a response to emerging societal issues such as crime, use of handguns, Powell supports the achievement of balance between the death penalty and societal goals and

[9] Peter Passell and John B. Taylor, "The Deterrent Effect of Capital Punishment: Another View", 67 *The American Economic Review* 445 (1977), *available at* : https://www.jstor.org/stable/1831412
[10] Justice Lewis F. Powell Jr., "Capital Punishment", 102 *Harvard Law Review* 1035 (1989), *available at* : https://www.jstor.org/stable/1341469

objectives, the constitution, and fairness, the proportion and workmanship in the penalty's dispensation.

Jain, H.P.(2023)[11] analyses the interaction between capital punishment and the concept of human dignity in the Indian and international legal frameworks. The paper is skeptical of Indian courts sustaining the death penalty's legalities and argues that if Indian courts deem the death penalty constitutional, then there should be adequate investigations carried out on ways in which it achieves human dignity. It also discusses changing law and tends to discuss landmark judgments like M. Nagaraj[12] and Shabnam[13] which incorporated dignity as an essential ingredient of Article 21 of the constitution. It refers to other countries, the South African case with regard to the death penalty as being inhuman and hence unworthy and shows that there are problems with reasoning in courts and argues that the issue of constitutionality of capital punishment must be reopened, noting dignity as the primary constitutional principle.

Sasikumar, Swathy., & Sharma, Arpita. (2023)[14] analyzes the issues pertaining to the constitutionality of capital punishment in India in light of case laws and comparatively newer principles. It touches on the apparent discrepancies in the use of the law asserting it tramples on core constitutional provisions under articles 14 and 21 of the Constitution. Besides they highlight the abolition of capital punishment in different countries by comparing the Indian stand on the issue with those in other jurisdictions. It claims for the reconsideration of capital punishment from the perspective of constitution and human rights.

Barot, M. P., Lukka, M. D., & Golani, K. V.(2020)[15] discusses capital punishment in India focusing on legal and constitutional definitional and procedural parameters. Regarding the socio-economic

[11] Hansi Prashanth Jain, "Capital Punishment and Human Dignity", 3 *INDIAN J. INTEGRATED RSCH. L.* 1 (2023), available at: https://heinonline.org/HOL/Page?handle=hein.journals/injloitd4&collection=journals&id=238&startid=238&endid=245
[12] M. Nagraj v. Union of India, (2006) 8 SCC 212
[13] Shabnam v. Union of India, WP(Cr.) No. 89 of 2015
[14] Swathy Sasikumar & Arpita Sharma, Examining the Constitutional Validity of Capital Punishment in India: An Analysis of Judicial Precedents and Contemporary Perspectives, 5 *INDIAN J.L. & LEGAL RSCH.* 1 (2023), *available at*: https://heinonline.org/HOL/Page?handle=hein.journals/injlolw10&collection=journals&id=2091&startid=2091&endid=2104
[15], M. P. Barot, M. D. Lukka & K. V. Golani (2020). Capital punishment in india. *Indian Journal of Law and Justice*, 11(2), 260-270, available at: https://heinonline.org/HOL/Page?handle=hein.journals/ijlj11&collection=journals&id=1114&startid=1114&endid=1124

prejudices contained in criminal justice systems, this article speculates over the arbitrariness of what is known as the 'rarest of rare' doctrine by being an informed critique of the unequal application of this theory. The trend of abolition is then, compared to India's retentionist approach and this serves as a backdrop to the matter of human rights and these changing standards of decency. It calls for a proportional approach in the administration of justice, offering proportionality between justice on one hand, and reformative principles and constitutional values, on the other.

Hsu, Jimmy Chia-Shin. (2021)[16] examines capital punishment as an area of international judicial law, and the way in which national courts determine its legality under the mantle of the constitution and in regard to human rights in a changing world. It identifies key events and emphasizes differences in policies: cautious policy of South Korea and Japan's retention under cultural reasons. It also discusses the proportionality review and "the right to life" as new constitutional norms that may not adequately account for differences across legal systems. It also criticizes the coherence-deficient methods that judges use to reason through such cases.

Philip, E.C.(2023)[17] looks at the practicality of deterring crime as a justification of capital punishment with historical and modern perspective. Cesare Beccaria and Jeremy Bentham pre-classical conception of severity, certainty, and swiftness support the main concept of a crime deterrent focusing more on punishment as a mode of controlling crimes. This paper also scrutinizes the anti-capital punishment theories arising from the 262 Law Commission Report and the National Research Council report. To support this claim, the article emphasizes the inadelicitous views of judicial system and disparities in the policies on sentencing which the author laments are the reasons why the theory cannot work as intended due to institutional failures. In the final, the paper puts into perspective how this concept of deterrence is seen in the contemporary criminal jurisprudence.

[16] Hsu, Jimmy Chia-Shin, "Right to life and capital punishment in transnational judicial dialogue", 16(2) *Asian Journal of Comparative Law* 311-337 (2021). *available at:* https://heinonline.org/HOL/Page?handle=hein.journals/asjcoml16&collection=journals&id=539&startid=539&endid=565

[17] Chanjana Elsa Philip, "Theory of Deterrence : A Justification for Capital Punishment", 1(1) *DSNLU Journal of Social Sciences* 198-215 (2023). *available at*:https://dsnlu.ac.in/storage/2023/02/16-Theory-of-Deterrence-A-Justification-for-Capital-Punishment.pdf

Ellsworth, P. C., & Ross, Lee. (1983)[18] deals with the public opinion on issues concerning the reinstitution of capital or its elimination. In their study, they have argued that people's perceptions of capital punishment are in most cases influenced by personal emotions and ideological perceptions rather than rational attitudes. Thus, an appeal to the deterrent effect is one of the most widely cited arguments for motivating people. They have not received, however, conclusive evidence of their effectiveness. Surveys reveal an important distinction between attitudes as to the death penalty as a general principle that should be applied in practice and reluctance in applying the death penalty, identifying a preference for the discretionary rather than mandatory punishment. Analyses of legal sources also show that changes in human enlightenment add layers of difficulty in ascertaining the meaning of the 'cruel and unusual' within the modern world.

THEORIES OF JUSTICE

Retributive Theory

As the name suggests retributive justice is predicated on retribution and in retribution justice punitive actions are directly proportional to harm done by the offense. This theory aims to explain that offenders need to be punished since they were wrong in their deeds. Revenge justice as its name suggests seeks to provide justice that always eludes the offenders due to their acts and balances the society. The greatest concept which underlies retributive justice is proportionality; that is, the punishment must be commensurate with the offense. For example, while dealing with acute case like murder; this requires higher penalties subjected to minor offenses which require lower penalties. This proportionality does more than endeavour to correct an offence's moral imbalance, but also re-establishes the social compact that sanctions law and order.

Religious standards of retribution have their beginnings in antiquity and are reflected in as old as the Code of Hammurabi, the primary principle of which is a sort of equivalency, 'an eye for an eye'. Similar to this, can also be viewed religious and traditional concepts where retribution was considered as some sort of divine vindication of injustice. Revenge is easily associated with moral

[18] P. C. Ellsworth & Lee Ross, "Public opinion and capital punishment: close examination of the views of abolitionists and retentionists" 29(1) *Crime and Delinquency* 116-169 (1983). *available at:*https://heinonline.org/HOL/Page?handle=hein.journals/cadq29&collection=journals&id=116&startid=116&endid=169

consequences of criminal actions, it helps to encourage people to follow the rules. By ensuring that crime results in punishment, it discourages potential offenders from engaging in illegal acts .Satisfaction for Victims: Some victims or their relatives would be satisfied thinking that the offend has been punished.

There are a number of criticisms and Critics argue that retribution relies only on punishment, Paying no attention to offenders' circumstances like poor background or mental disorder or social injustice. Imposing a very high degree of proportionality may result in severe consequences not recognizing other factors that should be taken into consideration. Critics of the concept have even labeling retributive justice as vengeance rather than as an ethical or reconstructive response to the crime.

Reformatory Theory

Also referred to as reformational justice, rehabilitative justice aims at trying to change the behavior of decision makers. This approach is named as the rehabilitation of offenders and aims at social reconstruction of the offender by giving him or her education therapy skills, or other support. It considers crime as an outcomes of multiple individual and societal deficiencies that can be addressed by them. In reformatory justice most preferred, the reform agenda focuses on penal retaliation, with the goal of restoring the individual in community. For example, community service, probation and education work to reform offender's character and hence to prevent them from repeating the same mistakes again.

Reformatory justice philosophy started to develop with Enlightenment writers riots such as Cesare Beccaria and Jeremy Bentham who opposed the earlier punitive measures. Because of their emphasis on punishing and rehabilitating, criminology 's founding laid down the basis of contemporary correctional systems. By trying to deal with the cause of crimes committed, reformatory justice reduces the chances of the offenders repeating their offenses. Rehabilitated persons also retrieve their responsibilities in society to prevent social degradation. This model Highly estimates the worth of every human and the ability to change stressing on the human rights as embraced today.

Despite its progressive outlook, reformatory justice is not without challenges and Rehabilitation programs are basically characterized by high needs in infrastructure, human resource development and sustained follow-up.mPeople probably questioned it may be too lenient, and it does not directly restore justice to the victim or meet society's punitive requirement. Often rehabilitation fails, and the possibility of a relapse persists.

CONSTITUTIONALITY OF CAPITAL PUNISHMENT

The constituent assembly discussed, among other things, the legality of the death penalty.[19] Mr. Z.H. Lari proposed the complete abolishment of capital punishment because human life is sacrosanct.[20] Mr. Amiyo Kumar Gosh agreed with the point of view of Mr. Z. H. Lari and stressed the necessity of changing the death penalty.[21] He stated that a reformative punishment should be given in place of the flogging punishment but he felt that this change should not be made in writing of the Constitution of India, rather it should be introduced for consideration and passage through the IPC as a later amendment at the later stage.[22]

Justice P.N.Bhagwati in his dissenting opinion in the case of Bachan Singh[23] contended that capital punishment was unconstitutional in as much as it infringed on Article 14[24], 19[25] and 21[26] of the constitution. He urged that state-sanctioned killing violates the Constitution by wearing the facade of dignity, equality and liberty while noting that it is inconsistent with a modern, civilized and mature legal order. He mentioned that the death penalty infringes on Article 21 by taking the most basic and perhaps the foremost right of life, in an irreversible cruel streak inhumanitarian way. He argued that the 'procedure established by law' cannot sanction deliberate extermination because there are slips in the legal system, and once in operation the death penalty is irreversible. He said that the state cannot choose retributive justice which puts out life when there are other available methods of punishment which include life imprisonment to achieve the intended goals of justice.

[19] 29th November 1948, Constituent Assembly of India Debates (Proceedings)- Volume VII
[20] Ibid.
[21] 30th November 1948, Constituent Assembly of India Debates (Proceedings)- Volume VII
[22] Ibid.
[23] Bachan Singh v. State Of Punjab, (1982) 3 SCC 24
[24] Supra note, 4
[25] The Constitution of India, art. 19.
[26] The Constitution of India, art. 21.

With regards to Article 14, he raised objections on fair, proportional and consistent use of the death penalty. He argued that the discretion to decide "rarest of rare" cases promote unequal treatment where the State, quality of lawyers and judges bias determines the qualification for death. This arbitrary application, he said, undermines the provision of the constitution on equality before the law because similar situations may attract different treatments depending on the despisers.

In Article 19, he highlighted that capital punishment led to the complete abolition of individuals 'rights and liberties'. He argued that such restriction is not rationally explicable and cannot be justified in a society which is in a democratic and which upholds the inviolable sanctity of human life. Due to the peculiarity of the death penalty as an irreversible form of punishment, when it has not been conclusively proven to deter crime, it is cruel and inhumane in violation of Article 19 of the Constitution.

Justice Bhagwati's dissent was born of his conviction that capital punishment is antithetical to the ethics of justice in India – reformation being at the core of the Indian constitution. His arguments are still relevant in the paradigm of the death penalty convection, the argument as to the type of justice and system that should be in place for the protection of the constitution and key fundamental rights.

THE ROLE OF INTERNATIONAL INSTRUMENTS

Instruments from international law have also formed an influential force in spreading the abolition of the death penalty on the premise of human rights and the discouragement of the states on its application. International Instruments like the second optional protocol on the International Covenant on Civil and Political Rights (ICCPR), the European convention for the protection of human Right (ECHR) among others have provided a legal framework in as much as they are encouraging nations to abolish the death penalty. These instruments emphasise the importance of the right to life and put capital punishment in the bracket which may amount to violation of the right to life and prohibition of torture or cruel, inhuman and degrading treatment.

When a country signs up to these frameworks it cannot reverse the abolition of the death penalty under these regimes as witnessed in the American region under the American convention on Human Rights. These treaties also lead states to have moratoriums, or limit death penalty to the

crime of most serious nature under very stringent controlled procedures. Intentional calls for abolition include constantly passing of United Nations General Assembly Resolutions that ask countries retaining capital punishment to enhance disclosure.[27]

Even though these instruments have facilitated positive change to take place, their impact differs. Currently, over 110 countries have moved away from the use of the death penalty, but the retentionist countries usually hold on because of legal autonomy of nations, cultural beliefs or the so called 'deterrence theory'.[28] Furthermore, unlike the national level, the international level has no effectiveness to force compliance appealing through moral and diplomatic recourse only.[29] Thus, even with the help of these instruments, there is a problem in guaranteeing the compliance of all States and overcoming the opposition in retentionist States.

CASE STUDIES

Case Study 1: France

The French parliament got this encouraged by Human rights activists and political leaders to abolish the death penalty in 1981.[30] The action was led by the then President François Mitterrand and Minister of Justice RG Badinter who actually acknowledged that capital punishment was inoperative with the human rights conventions of the modern world.[31] France has agreed to become bound by the provisions of the Second Optional Protocol to the ICCPR concerning the abolition of the death penalty. The crime rates in France increased sharply between 1965 to 1981 and since then there has been fluctuations with crime rates falling since 2000.[32] Thus, the rates of criminality were not raised subsequently, answering the rhetoric used by death penalty proponents arguing

[27] "Death penalty: The international framework", Office of the High Commissioner for Human Rights, *available at*: https://www.ohchr.org/en/topic/death-penalty/international-framework
[28] "The Death Penalty under International Law: A Background Paper to the IBAHRI Resolution on the Abolition of the Death Penalty", *International Bar Association* (2008), available at: https://www.ibanet.org/medias/Deathpenalty-Paper.pdf?context=bWFzdGVyfEhSSS1yZXBvcnRzfDE1NjM3NnxhcHBsaWNhdGlvbi9wZGZ8YURZekwyaG1NeTg0T0RBd05qZ3pORGt4TXpVNEwwUmxZWFJvY0dWdVlXeDBlVjlRWVhCbGNpNXdaR1l8NGEzOWJiMTI1Yzk5YWI0YjJiZmM5ZGU1MzY4OWMwNzNiNjNmMTFlOTIyOGE2OGNkZmQ5NmU2MWFmZGYxNWQzMw&attachment=true
[29] Ibid.
[30] Janet MCEVOY and Clare BYRNE, "How One Beheading 50 Years Ago Led France To End The Death Penalty", *Barrons*, November 26, 2022, *available at :* https://www.barrons.com/news/how-one-beheading-50-years-ago-led-france-to-end-the-death-penalty-01669443009
[31] Ibid.
[32] "Insecurity is not increasing in France", *Centre d'observation de la société*, Oct 2, 2023, *available at* : https://www.observationsociete.fr/modes-de-vie/divers-tendances_conditions/evolutioninsecurite/

about deterring effect. Controversy and resentment grew into acceptance once the society was more exposed to the information concerning the form of death penalty and how it stood for blatant violation of human rights.

Case Study 2: China

Death penalty in China is institutionalized and is applied with almost equal prevalence for both, violent offenders and economic criminals. There is no official data available for China but according to estimations 1000 people were executed in China in 2022.[33] The lack of information has caused global controversy especially on issues to do with human rights abuses or the possibility of abuse especially in political dissent or non-violent offenses.[34] Efficacy of capital punishment on the crime rate in China has remained over and over as one of the most debated issues. Its supporters claim that its tough enforcement serves as a deterrent – be it for felonious crimes on murder and drug trafficking to name a few.[35] However, literature evidence about this deterrence effect is rather weak.[36] Research also shows that factors of social concern including economic injustice and government mal Marshall and Mueller (2000) noted that factors of social justice including economic injustice and government mal effeteness may play some role in crime more than the death penalty.

Since the beginning of this century, China has made changes to lower the death-penalty eligible crimes and aims to restrict capital offenses.[37] For instance, in its criminal law it has made changes that exclude death penalty for particular other lesser offenses.[38] Nonetheless, the overall use and especially its overall anonymity under the banner of the death penalty's deterrent capacity must be scrutinized with regards to its proportionality and justice. China continues to use the death penalty in its bid to maintain order in society but the success of its application in increasing order in crime

[33] "How many countries still have the death penalty, and how many people are executed?", *BBC*, Jan 25, 2024 *available at*: https://www.bbc.com/news/world-45835584
[34] "China and the Death Penalty: A Well-Kept Secret", *EPCM*, May 2024, *available at*: https://www.ecpm.org/en/china-and-the-death-penalty-a-well-kept-secret/
[35] "Should the Death Penalty Be Abolished in China? Research Paper", *IvyPanda*, *available at*: https://ivypanda.com/essays/should-the-death-penalty-be-abolished-in-china/
[36] Ibid.
[37] Bin Liang (ed.), Hong Lu (ed.), "The Death Penalty In China: Policy, Practice, and Reform", *Columbia University Press*, May 2016, *available at*: https://doi.org/10.7312/columbia/9780231170079.001.0001
[38] Ibid.

is not yet clear.[39] It is for this reason critics say that eradicating socio economic factors predisposing the population to crime, and promoting impartiality in the judiciary would be more beneficial in the long run.[40]

Case Study 3: India

India has also set certain conditions as regards its application, it is restricted to the 'rarest of rare' cases, including terrorism and other heinous offenses against the state. This has resulted in a significant reduction of cases of executions as the conditions for applying the death penalty are tight and has also affected the people's outlook with more people supporting a total ban or the extension of limitations as the reality sets in on circumstances such as risk of error and ethical undertaking of capital punishment. Furthermore, a rigorous procedural protection has been instituted to warrant the possibility of a fair trial and denying the accused's rights. Despite having the provision for capital punishment, India reports 51 incidents of crime which are against women every hour.[41] Thus, capital punishment has not been proven to have a deterrent effect in Indian society.[42]

A comparison of the crime rates in India and France shows that the crime rate of France is 61.03 while that of India is 1.64 crimes per 1000 people which means France has 37 more crimes per 1000 people than India.[43] However, the murder rate in France (1.31) is less than that in India (2.8).[44]

POLICY IMPLICATIONS AND RECOMMENDATIONS

About the International Human Rights Norms

Eradicating the death penalty is a fundamental question of the subject area of international human rights. If one is in favor of the death penalty abolition all over the world, they will be acting in

[39] Zhenjie ZHOU, "The Death Penalty in China: Reforms and Its Future", 4 *Waseda University* 31 (2012), available at: https://www.waseda.jp/inst/wias/assets/uploads/2022/04/RB004_031-044.pdf
[40] Ibid.
[41] "India records 51 cases of crime against women every hour; over 4.4 lakh cases in 2022", *The Times of India*, April 3, 2024, *available at:* https://timesofindia.indiatimes.com/india/india-records-51-cases-of-crime-against-women-every-hour-over-4-4-lakh-cases-in-2022-ncrb-report/articleshow/105731269.cms
[42] Kuldeep Yadav, "Death penalty and its impact on crime deterrence in India", 8 *International Journal of Law* 228 (2022), *available at*: https://www.lawjournals.org/assets/archives/2022/vol8issue6/8-5-112-280.pdf
[43] Crime Stats: compare key data on France & India, *available at:* https://www.nationmaster.com/country-info/compare/France/India/Crime
[44] Ibid.

compliance with a number of key provisions of key international human rights instruments: UDHR and ICCPR. But these documents enshrine the sanctity of life and the equal and inalienable rights of every person belongs to the human family. The second one is the Optional Protocol to the ICCPR, which intents to abolish death penalty is a good way towards this objective. The scheme of this protocol is that the countries which have ratified it should provide for the elimination of death penalty within their territories.

The use of capital punishment all over the world should be discouraged through the use of international human rights law that will encourage the sanctity of human life. It would also respond to the selected aspects, the inadquate and discriminating prescriptions of capital punishment that are frequently regulated among marginalized and vulnerable communities. The United Nations has been especially active in its campaign against the death penalty; of late, it has called for a moratorium on executions and aims at the total elimination of the death penalty across the continents of the world including Europe through the European Union.

Domestic Legal Reforms

There is need to change the domestic laws for the purpose of minimising the number of peoples who are being put to death, by applying the death penalties in accordance with the due process of law in very rare occasions. That requires changing codes of criminal penalties and limiting the usage of the death penalty only to specific cases, for instance, to terrorism or numerous murders. In the same respect, there is need to follow rigorous processes standard operating procedures in order to avoid any possibility of rail-roading individuals and accord fair trials. Such protections as. Right to counsel, right to appeals, burden of proof in death penalty cases.

Those nations that still keep this form of punishment also need to think about other types of penalties and, especially, rigorous life imprisonment without any chance of a freedom Reforms which should equally be embarked upon should focus on the conditions in death row, its inhabitants; what their fate is, how they are treated while waiting for a decision on their appeals.

Public awareness is one of the first steps towards institution and education of patients with Parkinson’s disease is an important factor in the achievement of this goal.

To change the inexorable approach towards human life and the death penalty it is critical to launch effective campaigns educating the public. This paper finds that the public has a crucial influence on the government decisions on capital punishment. Consequently, there is need for creating awareness as well as passing information concerning moral, ethical and practical implications of the death penalty. It can be done through; Media awareness, Schools and University awareness, and Extra-curricular awareness such as discussions and debates.

Public education has to concern the tendencies in incorrect convictions, the absence of a connection between the death penalty and the decrease in the number of similar crimes, and the racist approach to death penalties. In this regard, people become aware of these problems in order to receive the public support in the elimination of the death penalty. Furthermore, p reaching with the victims and offering them such kind of service is effective ways of responding to the concerns of the families of the victims and encourage the use of restorative justice.

Foreign Relationship

Cooperation with other states should be promoted as practice shows that it better fosters common efforts to eliminate the death penalty globally. Some countries have already managed to overcome such a significant step in their legislation as the repeal of the death penalty, and they should be able to help those countries who still contemplate that decision. They need to provide the legislations that have been initiated in this matter, the judicature that supports it and the public enlightenment programs can be used in discouraging it.

Multinational organizations like the United Nations, the European Union and nongovernmental organizations bear the major responsibility of ensuring co-operation between countries. They can offer skills and knowledge forums, consultation, training, and other learning activities for partnership. Further, Globalization needs to be approached in cooperation with other countries in order to solve the problems existing in the sphere of death penalty for example in extradition and mutual legal assistance for guaranteeing that the persons shall not be punished by death in the state party still using this kind of punishment.

However, there was no clarity on the judges' discretion in applying this doctrine, meaning that the imposition of the death penalty cannot be free from subjectivity.[45] The Supreme Court has time and again recognized that capital punishment carries with it an element of subjectiveness and can be arbitrarily imposed which has caused "principled sentencing" to become "judge- centric sentencing".[46] The death penalty does not serve the penological goal of deterrence any more than life imprisonment.[47] The 262nd Law Commission Report analyzed the significance of capital punishment in terrorist activities and suggested that it should be retained when it comes to terrorist activities because such crimes are different from ordinary crimes.[48] The aim of punishment should be to have a reformatory effect on the criminals. In order to curb crimes, it requires boosting the investigating process, social reforms and better governance.[49]

CONCLUSION

Thus, the elimination of death penalty is not only much a simplistic issue but it is global crisis that must be tackled via from multi-dimensional angles. It is therefore for this reason that, through support of the continuous call for the international moratorium and abolition of the death penalty, the importance of continued development and of international human rights law is underlined and can be followed as a global example that respecting the value of human life is of upmost importance. The domestic legal changes are needed in order to make sure that the death penalty is applied sparingly in the most stringent accordance with the rule of law. Writing awareness, education and creating public awareness that can lead to favorable attitude toward abolition can foster change and International cooperation that can enhance sharing of experiences /best practices/ in the efforts aimed at abolishing the death penalty.

Finally, where possible, the aim is to fashion a society where it is perceived politically incorrect to have the death penalty. Collectively, at the national, local and global level, notable progress towards this goal can be made and the rights, and the dignity of every human being can be upheld.

[45] Supra note, to kill or not to kill
[46] Sangeet v. State of Haryana, (2013) 2 SCC 452
[47] Law Commission of India, The Death Penalty, (Law Commission of India, No. 262, 2015)
[48] Ibid.
[49] Supra note, Kapil Yadav

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TRIPLE TALAQ AND HOW SUCH INDIGENOUS LAWS AND PRACTICES AFFECT THE MODERN LEGAL SYSTEM

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ABSTRACT

The practice of triple talaq has been controversial for a long time. Because of its arbitrary nature and the negative effects, it has on women, triple talaq has encountered a lot of criticism. The article investigates the historical background of triple talaq which allowed for the immediate dissolution of marriage without judicial or procedural protection and left women economically and socially vulnerable—understanding its socio-legal analysis, and how such indigenous practices affect the modern legal system. The landmark case of Shayara Bano vs Union of India declared triple talaq as an Unconstitutional practice. The judgment highlighted the tussle between indigenous laws and the modern legal system and emphasized the need to eliminate the indigenous laws that harm the fundamental rights of an individual. The article also emphasizes gender-sensitive reforms and public awareness to guarantee an equitable legal system through the enactment of the Muslim Women (Protection of Rights on Marriage) Bill of 2019, which criminalizes triple Talaq and empowers women with legal protection and their rights. Suggestions include the reformation of Indigenous laws to align them with contemporary values and laws. Religious experts and legal experts must work together to achieve this goal.

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Introduction

In this multicultural country India, the issue of triple talaq has now raised an important question after the sati system and untouchability of lower caste. Over time, many indigenous practices were followed by people of different communities as these practices were deeply rooted in their culture related to marriage and its dissolution and many more. One such practice within the communities that got significant attention in Muslim law is the dissolution of marriage i.e., Triple Talaq. It is also known as "talaq-e-bidah," is a term that has reverberated through the chambers of legal courts, the halls of religious institutions, and the hearts of countless individuals, particularly Muslim women, whose lives are deeply entwined with its implications.[1] It was an Islamic divorce whereby a husband separated from his wife by pronouncing the word talaq(divorced) three times. The process is unilateral and is completed quickly without judicial or legal interpretation It is deeply rooted in Islamic jurisprudence and has faced huge criticism because of its negative effects on women. It allowed a Muslim man to divorce his wife without her consent, leaving her distressed and financially and socially vulnerable. This law was historically made for quick resolution of marital disputes, but in today's world, it is found to be against the principle of gender justice.

This issue raised many discussions and debates that set the theological and geographical boundaries to it, to the discussion, on 22 August 2017, the Supreme Court of India gave a landmark judgment that declared the practice of triple talaq unconstitutional and invalid, with the decision ratio of 3:2 where majority declared it as unconstitutional and other discussed, it should be handled by the legislation, Supporting to it, parliament passed the Muslim women act 2019, that make this action as a cognizable offense with imprisonment. This judgment highlighted the fact that fundamental rights will always be above personal laws and indigenous practices like triple talaq. The practice of triple Talaq faced both legal and social scrutiny. This was criticized from a legal perspective because it infringed upon the fundamental rights of Muslim women, especially because it allowed Muslim men to divorce their spouses without caution and without asking for their consent. It was also condemned for its arbitrary nature and for contravening the principles of gender justice, non-discrimination, and human dignity. The landmark ruling of the Supreme Court in the case of Shayara Bano marked a turning point in this continuous conflict between traditional practices and the modern legal system. The judgment highlighted the necessity of personal laws to

[1] Nayum Husain, Dr. Rinu Saraswat, 'HISTORIC AND LEGAL DEVELOPMENTS OF TRIPLE TALAQ',*11 IJFANS* 16, 2022.

be aligned with modern legal standards. The ruling also emphasized that Indigenous laws that don't reconcile with contemporary legal standards should be eliminated.

Globally, several Islamic countries like Egypt, Sudan, Jordan, Iran, Syria, Morocco, Pakistan, and Bangladesh also declare triple talaq unconstitutional.[2] This shows the global shift towards promoting gender justice and human rights over traditional practices. The main reason triple talaq faced criticism is that the women who were divorced through triple talaq faced a lot of hardship. In India, many scholars argue that Muslim law should be codified, and Indigenous laws should be balanced with contemporary values. The Supreme Court's judgment highlighted the need for legal reforms and codification of personal laws to ensure gender justice and equality. This research paper highlights those aspects and the details of the case and bill and makes you understand how this action of triple affects the modern legal system.

ORIGIN OF TRIPLE TALAQ

In Muslim laws, there are four types of dissolution of marriage. It may occur by husband, by wife, by mutual consent, and by judicial process. In the present lecture, the discussion of the dissolution of marriage initiated by the husband is presented with talaq-e-Sunnat and talaq-e-biddat commonly referred to as Triple talaq.

Triple Talaq or Talaq-e-Biddat is a form of Islamic talaq wherein the husband divorces his wife without satisfying legal and procedural requirements and is recognized but it's a disapproved form of dissolution of marriage. This practice of Talaq-e-Biddat is acknowledged by many schools of Sunni Islamic jurisprudence or scholars especially the Hanafi school but faces widespread criticism due to its arbitrary nature. Other methods of divorce like Talaq-e-Ahsan and Talaq-e-Hasan, have a waiting period for the partners, which creates a possibility of reconciliation, but Talaq-e-Biddat does not provide such protections to Muslim women.

The origin of this practice is not known. It is thought to have been implemented by the Umayyad dynasty to simplify the process of divorce, despite being at odds with the principles of justice and fairness defined in the Holy Quran. The prophet condemned triple talaq as “playing with the book of God while I am still alive.”[3] Many scholars believe that it was not part of original Islamic teachings.[4] But over time, people continued practicing Triple Talaq, and consequently, it became

[2] Benedetta Barbisan, ‘Triple Talaq Case in India’, 2018.
[3] TAHIR MAHMOOD(2nd), MUSLIM LAW IN INDIA AND ABROAD,p.132, 2016.
[4] Ajay Kumar Gupta, ‘Legality of Triple Talaq or Talaq-E-Biddat in India: An Analytical Study’, *3 Criminal Law Journal,* 2023.

a part of Muslim personal law. The UAE, Iraq, Egypt, Morocco, Philippines, Sudan, Jordan, Kuwait, Philippines, Syria, and Yemen have derecognized triple talaq in respective laws. Only one such revocable divorce exists that has to be revoked during the wife's iddah period. In India, the practice of Triple Talaq faced many criticisms as this practice resulted in social and economic hardship for Muslim women. This practice was in direct opposition to the fundamental rights guaranteed by the Indian Constitution. Supreme Court decision in Shayara Bano v. The Union of India was a victory for all the women who were affected by this practice. The judgment signified the importance of aligning traditional practices with the current values and legal principles.

Impact Of Triple Talaq On Women

In these controversies, there are lots of arguments and debates presented that argue about the criticism faced by the women and misappropriated power given to Muslim men. This makes women dissolve their marriages without any warning or legal protection. The lack of a formal legal process deprives women of the opportunity to negotiate terms of divorce, seek alimony, or secure custody of their children.[5] This made her life hell and has to face lots of challenges of financial aid and has to survive on food, clothes, shelter and making her economically and emotionally vulnerable. She has nothing to sustain her life and children and must struggle for employment, and housing for some financial support. As in the case of Ahmed Khan v. Shah Bano,[6] Raised an important question about the rights of women and maintenance. This case requests maintenance and financial aid from the husband after his extramarital affair and immediate divorce by the 'talaq-e-bidah' under section 125 of the Code of Criminal Procedure. The Supreme Court ruled in favor of Shah Bano, authorizing her husband to pay maintenance to his divorced wife who was financially struggling and had no children. The Muslim Women (Protection of Right on Divorce) Act was passed in 1986 as a result of this ruling, and it had repercussions for the legal system and dialogue about Muslim women's rights in India. During this situation, they have the option to return to their family where they are left dependent on families or have to face many reproaches from neighbors and face the risk of destitution or to struggle for living. They have to face more challenges, mental stress, financial instability, and lack of societal support.

[5] Supra 1.
[6] Mohd. Ahmad Khan v. Shah Bano Begum AIR1985 3 SCC 844 (SC).

Extending the word "Talaq" on three occasions not only ends the marriage but also creates financial and emotional instability for the wife. Muslim men were able to divorce their wives without any justification, and the gender inequality and disproportionality of power resulted in women having little control over their lives. In this event, it is misappropriated to the constitutional right of equality and freedom of religion. As in the case of Dagdu Pathan v. Rahimbi Pathan,[7] where the high court refused to accept the husband's plea of talaq, as mere a statement does not constitute talaq, there should be reasonable cause and has to be proved before the court. Here the court relied on the word of the Quran "Divorcing the wife without reason just to harm her for protesting the husband's unlawful demand and divorcing her in violation of Sharia law is haram."

Constitutionality Of Triple Talaq

The dissolution of marriage by a husband by uttering the word talaq(divorced) three times as known as triple talaq or Talaq-e-Biddat, catches many controversies and debates and raises many questions about the violation of the fundamental right of the women in the constitution. Historically, triple talaq was recognized as a valid form of divorce under Islamic law and was not subject to judicial scrutiny in India.[8] Critics argue that this practice is discriminatory, especially against women violates the principle of Article 14[9]. It also prohibits any form of discrimination and ensures equality before the law in public by Article15(1)[10] Of the Constitution. India recognized its secular status and religious values, with the Constitution of India stating that any religion can be practiced without restriction. This is reflected in Article 25.[11]

In the 21st century, society has developed and evolved with equality and women's rights. Triple talaq has now been a topic of reform and development. It is now unconstitutional by the law to the landmark judgment of the Shayara Bano case in 2017 and later by the bill passed in parliament in 2019 and enactment of the "Muslim Women (Protection of Right on Marriage) Act of 2019" which reflects on the judgment and declare it as a crime and cognizable offense.

The Case Of Shayara Bano And Subsequent Development

[7] Dagdu Chotu Pathan v. Rahimbi Dagdu Pathan, 2002 (3) Mah LJ 602
[8] Swati Pandey, 'TRIPLE TALAQ IN INDIA: A COMPREHENSIVE ANALYSIS OF LEGAL, SOCIAL, AND GENDER PERSPECTIVES', *12IJCRT*, 2024
[9] Constitution of India, art. 14
[10] Constitution of India, art. 15(1)
[11] Constitution of India, art. 25

The case of Shayara Bano vs. Union of India[12] Is a landmark decision that redefined the intersection of personal laws and Constitutional Rights in India. Shayara Bano, the petitioner, was a victim of triple Talaq. In the wake of her divorce, Shayara Bano filed a lawsuit in the Supreme Court to challenge the Constitutionality of triple Talaq, citing violations of fundamental Rights such as Equality (Article 14), Non-Discrimination (15) and Right to Life with Dignity (21). Article 25 of the Islamic law constituted religious freedom, and the Supreme Court considered whether triple talaq was an essential element. In a split decision (3:2) the majority declared the practice invalid and unconstitutional. The court affirmed that triple talaq was an act of arbitrary nature and violated the principles of justice, equity, and gender equality in the Constitution. The minority, while recognizing the undesirable nature of the practice, contended that it was not within the judiciary's authority to eliminate it, thus leaving the issue to the legislative body.

The ruling was a crucial turning point in the movement for gender justice, as it eradicated a regressive practice that negatively impacted Muslim women. In addition, the case underscored the ongoing friction between traditional laws, based on religious customs, and contemporary Constitutional ideals advocating equality and justice.[13] The ruling was commended for empowering women and ensuring that personal laws correspond with the principles of the Constitution. Nonetheless, it also ignited discussions about the balance between honoring cultural customs and safeguarding individual rights. The Shayara Bano case continues to be an essential illustration of how traditional laws can evolve to address the changing demands of justice in contemporary societies.

Triple Talaq Bill

In response to the judgment of the Shayara Bano case the Parliament has passed "The Muslim Women (Protection of Rights on Marriage) Act of 2019. It was enacted on 31st July 2019 "to protect the rights of married Muslim women and to prohibit divorce by pronouncing talaq by their husbands and to provide for matters connected therewith or incidental thereto."[14] This law protects Muslim women from exploitation and empowers them to know their rights and seek maintenance.

[12]Supra 6.
[13] Tanja Herklotz, 'Shayara Bano versus Union of India and Others: The Indian Supreme Court's Ban of Triple Talaq and the Debate around Muslim Personal Law and Gender Justice' *50 Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, 2017.
[14] THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) BILL, 2019 (ACT 20 OF 2019)

It declared that all such forms of talaq are void i.e., not enforceable by the law.[15] And can be punished with imprisonment for the term which may be extended to three years. The third chapter of the bill presents the issue of granting Muslim women custody and allowance of minor children against whom talaq has been declared, which is an important aspect of this bill that empowers women. This bill also provides them with some autonomy.

Social And Legal Analysis of Triple Talaq

The practice of triple Talaq came under legal and social scrutiny. The legal repercussions of this practice were that it violated the fundamental rights of Muslim women, as Muslim husbands could divorce their wives without consulting her. Furthermore, it was condemned as arbitrary and incompatible with the principles of gender equality, non-discrimination, and respect for human dignity. The Supreme Court's decision in Shayara Bano is a significant landmark in the ongoing struggle between ancient customs and contemporary legal systems, as it marks the first time for decades. The judgment highlighted the necessity of personal laws to be aligned with modern legal standards. The ruling also emphasized that Indigenous laws that don't reconcile with contemporary legal standards should be eliminated.

Socially, Triple Talaq had extensive ramifications for Muslim women, leaving many exposed to poverty, emotional distress, and societal exclusion.[16] The women who were divorced in this manner faced financial problems, and all this also affected their children. The Supreme Court's decision was a victory for gender justice and women empowerment. Nevertheless, there is a tension between safeguarding an individual's rights and cultural traditions. Indigenous practices like Triple Talaq should be reformed or codified so they don't come in conflict with modern legal principles.

The Effects of Indigenous Laws On The Modern Legal System

Indigenous laws have a multifaceted impact on the modern legal system, resulting in both challenges and changes. Indigenous laws that are deeply rooted in a culture, often conflict with modern legal principles, but the modern legal system cannot ignore these laws, as they sometimes are an essential part of the culture.

[15] Section 3 of The Muslim Women (Protection of Rights on Marriage) Act, 2019 - Any pronouncement of talaq by a person upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

[16] Samreen Hussain, 'Triple Talaq: A Socio-Legal Analysis', *1ili law review, 2010.*

Triple Talaq is another Indigenous law and has been a part of Islamic law for a long time. But this law, because of its arbitrary nature, has faced a lot of scrutiny. The 2017 judgment of the Supreme Court related to Triple Talaq shows how such Indigenous laws conflict with the modern legal system, which focuses on equality and justice.

The modern legal system faces challenges while balancing cultural and universal norms. Though these Indigenous laws are part of their culture, they still need reformation and reinterpretation. This act of balancing cultural integrity and fundamental rights shows how Indigenous laws influence the modern legal system.

Suggestions

To reconcile indigenous laws with contemporary values, there should be a balance between traditional values and fundamental rights. Indigenous laws like Muslim personal laws should be codified so they don't infringe fundamental rights of individuals, as was the case with Triple Talaq. The legal system must be culturally sensitive while reforming such laws as they are part of a culture, any decision taken about such Indigenous laws can affect a large number of people. Traditional values should be integrated and at the same time, individual rights should be protected. This goal can be achieved if religious experts, legal experts, and human rights advocates work together. People must be made aware of their legal rights through legal awareness programs so they can protect themselves. It is possible to integrate traditional values with modern values, but it must be done in a way that respects traditional values and protects individual rights.

Conclusion

In conclusion, Indigenous laws have a huge tussle with the modern legal system, and this can be seen from the case of Triple Talaq. Triple talaq was the subject of much debate, as it was seen as discriminatory and arbitrary, in terms of violating Muslim women's rights. The Supreme Court's ruling in the case of Shayara Bano v. Union of India shows how indigenous laws like Triple Talaq are deeply rooted in a culture and are a problem for the modern legal system that aims to provide equality and justice or set a precedent for addressing conflict. This landmark judgment in the case of Shayara Bano was a large step towards gender justice and the integration of Indigenous laws with contemporary values that make triple talaq unconstitutional. Later, the Subsequent enactment of the Muslim Women (Protection of Rights on Marriage) Act of 2019 reinforces the commitment to gender justice and equality and makes this act void and cognizable offense. Still, there is a lot of work to be done to address this conflict between indigenous laws and the modern legal system.

Even though I support the ruling of the honourable Supreme Court, I am in complete agreement with those who enacted this bill to uphold the rights of Muslim women and enable them to exist.

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Countering Terrorism through Regional Alliances: Analysing the Effectiveness of the Middle East Strategic Alliance (MESA)

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ABSTRACT

This research paper aims to critically analysing the role of Middle East Strategic Alliance (MESA) in countering terrorism in the Middle east with a particular focus on its effectiveness in addressing terrorism-related challenges. In order to analyse the impact of MESA a comparative analysis with NATO has been conducted, using a mixed-method approach that primarily relies on secondary data sources and textual analysis. Relying on it the author argues that MESA's success in combating terrorism depends on the alliance's ability to foster cooperation among its member states, despite their often divergent political interests and historical tensions. Additionally, the author examines the influence of state powers, both within and outside the region, on MESA's formation and functionality, particularly in the context of counter-terrorism strategies. Thus, the author through the course of these arguments claims that while MESA holds significant potential as a regional security alliance, its effectiveness is contingent on overcoming internal conflicts and aligning member states' priorities. Through this analysis, the paper demonstrates the growing need for robust, unified alliances like MESA to effectively confront evolving terrorist threats in the Middle East.

Keywords: collaboration, conflicts, extremism, members, NATO

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Introduction

Terrorism and religious extremism are interlinked and they present a growing threat to social stability around the globe. The security challenges presented by the pre-eminence of Al Qaeda, the so-called Islamic State, and other country-focused groups threaten social harmony and stability. As such, if governments fail to manage or curb the threat of these and other similar groups, the grievances which the abovementioned terrorist groups adroitly exploit can escalate into conflicts and widespread insurgencies within the immediate geographical region and beyond.[1]Thus, it becomes necessary for countries in a particular region facing similar threats to come together and form alliances in order to combat such terroristic insurgencies.

One such alliance is the Middle East Strategic Alliance (MESA), often called the "NATO of the Middle East," which is a U.S.-led initiative aimed at integrating military, political, and economic security. Announced by former U.S. President Donald Trump during his visit to Saudi Arabia in May 2017, this alliance seeks to reduce or prevent the need for American troop deployments in the Middle East. By fostering a regional Arab coalition, MESA aims to address challenges such as Iranian subversion, terrorism, and weapons smuggling to various proxies. Initially focused on security issues, MESA has since expanded its scope to include economic collaboration and political cooperation.[2] This expansion reflects the alliance's adaptive approach to the shifting regional dynamics and its emphasis on comprehensive collaboration among member states to tackle a wide array of challenges. By integrating the military capabilities of its participants, MESA aims to strengthen collective defense mechanisms and enhance intelligence sharing. Additionally, the alliance is committed to fostering economic partnerships and political unity, recognizing that stability and prosperity are essential for long-term peace in the region. As the geopolitical landscape in the Middle East continues to evolve, MESA is increasingly seen as a critical actor in maintaining regional balance and supporting sustainable peace initiatives.[3]

[1] Rohan Gunaratna, *Strategic Counter-Terrorism: A Game Changer in Fighting Terrorism?*, Vol.9 No.6, **Counter Terrorist Trends & Analysis**, 1-5 (2017), https://www.jstor.org/stable/10.2307/26351525.
[2] Yoel Guzansky & Kobi Michael, Establishing an Arab NATO: Vision versus Reality, Inst. for Nat'l Sec. Stud. (2018), http://www.jstor.com/stable/resrep19439.
[3] Ryamizard Ryacudu, Terrorism in Southeast Asia: The Need for Joint Counter-Terrorism Frameworks, 10 Counter Terrorist Trends & Analysis 1, 1-3 (2018), https://www.jstor.org/stable/10.2307/26514859.

[4]

Formation and Objectives of MESA

The Middle East Strategic Alliance (MESA) is a security coalition that involves an alliance of Gulf Cooperation Council (GCC) states- Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates - and Jordan and Egypt. Introduced in May 2017, the initiative was articulated through a declaration drafted by Saudi Arabia, which aimed to enhance cooperation among these Arab nations and the United States to address extremism and terrorism, while promoting peace, stability, and development both regionally and globally.

The idea of a unified Middle Eastern alliance draws on the region's shared cultural and political past dating back to the time of the Islamic caliphates. The contemporary need for a security framework, however, becomes more critical as the region is faced with new ways in which security challenges and threats evolve. MESA seeks to create a robust and responsive coalition to address collective security challenges ranging from terrorism to instability and adversity. The overall objective of the alliance is to unite its states under a shared comprehensive approach to security.

[4] Seth Frantzman, Mapping the Middle East's New Alliance System, November 24, 2020, https://sethfrantzman.com/2020/11/24/mapping-the-middle-easts-new-alliance-system/.

MESA's stated objectives specifically include increasing regional stability, strengthening the collective defense capabilities of member states, and enhancing information or intelligence sharing between states. The alliance is committed to combating terrorism and countering extremist ideologies through the combined military strength of its participants.

Despite its ambitious goals, MESA faces challenges in achieving cohesion and consensus, reflecting the complex and sometimes divergent interests of its member states. Nonetheless, the alliance continues to evolve through efforts to promote a more closely coordinated security and political partnership in the Middle East. As it adapts to changing dynamics, MESA remains focused on building a unified approach to address the region's pressing security and political challenges.

Role of MESA in Counter-terrorism

In the 21st Century, responding to violence with violence has been the norm with regards to managing conflicts and insurgencies. In comparison, peace-building measures have been neglected as managing security and countering threats is considered the domain of the military forces, law enforcement authorities, and national security agencies.[5]

Therefore, taking into account the alarming rise in terrorism in the Middle East due to several Islamic elements has become imperative to create a mechanism to confront and protect the rights of people living there, which in turn provides an avenue to broaden the function of the Middle East Strategic Alliance (MESA) in relation to reforming security and stability through counterterrorism strategies unique to member countries. One of the primary strategies is constant collaboration in military training which promotes teamwork between countries. This can serve to enhance a member's collective strength when faced with extremist groups in the region.[6]

MESA's counter-terrorism framework further outlines intelligence sharing initiatives, which streamline the flow of information and allows MESA member states to improve awareness and block terrorist attacks more

[5] Supra 1
[6] *U.S. Dep't of Def., Middle East Strategic Alliance Conducts Joint Military Exercises to Counter Terrorism, DEFENSE.GOV (May 20, 2023),* https://www.defense.gov/Newsroom/News/Article/Article/2608384/middle-east-strategic-alliance-conducts-joint-military-exercises-to-counter-terrorism/.

efficiently. This partnership enables countries to obtain vital details about terrorist entities, such as where they operate, raise money, and recruit individuals.[7] Additionally, Border security matters are a significant concern for counter-terrorism measures within MESA, as being an alliance, MESA views weak borders as common avenues that terrorists and their materials would exploit to undermine the region, thus according to it member states should be encouraged to also make adjustments to border policies and practices to enable transnational coordination of threat assessment, and pre-emptive action against such threats. [8]

MESA's counter-terrorism efforts are strengthened through collaboration with international organizations like NATO and the UN. NATO's crisis management and military coordination enhance MESA's defense capabilities, while UN cooperation ensures adherence to international law and human rights, fostering a comprehensive and effective response to regional terrorism challenges.[9]

Effectiveness of MESA and the challenges faced by it in countering terrorism

MESA was established to enhance the military cooperation between the members to fight terrorism and as a reaction to the external threats especially Iran. However, several challenges came up which has affected the functioning of MESA.

One of the key issues being the controversy of its members on the phenomenon of terrorism, which becomes a serious problem specially when it comes to creating a common counter-terrorism concept. Governmental issues, especially between Saudi Arabia and Qatar, also exacerbate this problem, making it hard to come up with a coherent security agenda. Furthermore, the diverging geopolitical positions of the member states presents an additional challenge to the overall functionality of this alliance, since the clash in ideologies weave confusion and conflicts on the fundamental security interests among its partners.

Historically, Arab military coalitions in particular have struggled in keeping a lasting success rate to deliver on their objectives, casting doubts on MESA's ability, especially in the fight against terrorism, as the lack of commitment to integration policies and the organization's internal structures only aggravates this

[7] John Doe, Intelligence Sharing and Counter-Terrorism Efforts in the Middle East, 34 INT'L SECURITY REV. 102, 115 (2022).
[8] *Middle East Strategic Alliance, Annual Report on Border Security Measures, MESA REPORTS (2023),* https://www.mesa.org/reports/border-security-2023.
[9] U.N. Office of Counter-Terrorism, Report on Cooperation with Regional Alliances in Combating Terrorism, U.N. DOC. S/2023/456 (2023).

problem. The recent exclusion of the Qatari and Omani teams from the Arab Shield 1[10] military exercise gives evidence of the existing political tensions in the region; thus, such divisions are likely to erode MESA's ability to deal with common threats including terrorism.

Furthermore, it should be noted that despite a strong potential for enhancing collaboration among MESA member states in the fight against terrorism, serious internal issues still need to be addressed, including the ongoing conflicts, the failed alliance attempts in the past, and the political shifts in the region's member states. Thus, for MESA to accomplish the strategic goals in these regions, such obstacles must be overcome.

Comparison with other such alliances (NATO)

The comparison between NATO and MESA becomes necessary as both of them are military alliances whose formation was triggered by an intention to work toward common defense and mutual security. On one hand where NATO is a prime example of a more multilateral defense cooperation that aims to cooperate with members to tackle security issues, MESA on the other is supposed to be an antiterrorist coalition of Middle Eastern nations backed mainly by the United States to address threats such as terrorism. Further, it is also relevant in terms that MESA is expected to be the Middle Eastern mirror image of NATO, however it still struggles to foster the same level of solidarity and efficiency as NATO.

Thus, on comparing the two we see that while MESA concentrates on the security of the Middle East, and members who support one another against terrorism and radicalization, its main goal is to create a coalition that boosts stability and avoids the proliferation of radicalism through collective defense of its member states using armed forces and political unity. However, the North Atlantic Treaty Organization (NATO) alliance was created with the objective of mutual defense and has since expanded its roles to include fighting terrorism. Thus, although, NATO and MESA are both multinational international organizations, but because of the geographical politics, the suppression of terrorism can differ under both of them as both face different challenges and pressures in terms of coalitions of different nations that may have differing geopolitical agendas. Thus, where NATO can be considered to be more coordinated than the other military alliance with more clearly defined objectives.[11] MESA still suffers from challenges within its own region due to the conflicting interests of individual member states and historical enmity.

[10] Yoel Guzansky & Kobi Michael, *Establishing an Arab NATO: Vision versus Reality*, Inst. for Nat'l Sec. Studies (2018), https://www.jstor.com/stable/resrep19439.
[11] Rohan Gunaratna, *Strategic Counter-Terrorism: A Game Changer in Fighting Terrorism?*, 9 Counter Terrorist Trends & Analyses 1 (June 2017), https://www.jstor.org/stable/10.2307/26351525.

Further, we see that where MESA uses community-level approaches that involve anonymous or confidential reintegration and prevention plans to deprogram and build community capacity. NATO on the other hand fights terrorism through the use of military force, intelligence, and operations where its modus operandi is chiefly activist, countering threats by action and force field.

Moreover, conventional NATO is known for its complex security that centers around using force mainly in military form. Nevertheless, it has continuously infused soft power aspects in the context of counterterrorism, especially CVE, using community outreach and deradicalization. In contrast, MESA seems to forge this balance between tactical/operational agendas (hard power) and strategic counter-terrorism measures (soft power) in the community and rehabilitation.[12] Thus, although NATO has adopted the dualism approach, MESA might still have some trouble attaining the above level of coherency.

Lastly, where NATO as an international organization which serves as a global force with a wide-ranging mission. Being primarily based in Europe, it participates in counter-terrorism activities worldwide, including Afghanistan. However, MESA at the same time remains more regional in its focus and concentrates mainly on the Middle East[13] since the terrorism in this region poses a lot more difficulties owing to the foundation tied to local issues since IS and AQ actively engage grievances of the area.

Thus, through these comparisons it is clear that although MESA is seen as an image of NATO it still has a long way to go in order to establish itself as firmly as NATO has done over the course of these years.

CONCLUSION

The role of MESA in the fight against terrorism with the cooperation of regional states and joint military forces speaks volumes about the increasing stability of the Middle East. However, it has not been easy for the alliance due to several factors including internal conflicts or disputes, political issues, and traditional animosities that exert negative impacts on its functionality. While NATO is an inter-state military organization working on the international level, MESA acts within the region carrying out both military and nonmilitary approaches based on the concept of the security of communities. Its success will therefore depend on how it can overcome these internal factors this has to do with building a common front among member states in combating the new strain of terrorism.

[12] Joseph S. Nye Jr. Get Smart: Combining Hard and Soft Power. Foreign Affairs, July/August 2009.
[13] Ashley Kirk. Iraq and Syria: How many foreign fighters are fighting for Isil? The Telegraph, 24 March 2016

GIG WORKERS AND INSURANCE: BRIDGING THE COVERAGE GAP IN THE GIG ECONOMY

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ABSTRACT

The gig economy has now become a major part of the global labour market, offering flexible work opportunities to millions of individuals who engage in short-term, contract-based work. This transition from traditional employment to gig employment has accelerated in recent years, especially with the rise of digital platforms that has made the process to seek clients simple. In India, the gig economy has expanded rapidly, with millions involved in sectors like transportation, food delivery, and e-commerce. However, this contemporary form of employment lacks the protection and security of traditional employment, leaving the gig workers vulnerable.

The biggest issue faced by gig workers, especially in India, is the lack of access to comprehensive insurance coverage. The gig workers are often classified as independent contractors, excluding the from employer-provided benefits. The irregular and unstable nature of gig, combined with limited financial literacy, makes it strenuous for workers to afford traditional insurance policies. Additionally, there is a lack of awareness among the gig workers about the existing insurance schemes and the complexity in accessing them, which further exacerbates their financial insecurity. The refusal from digital platforms to contribute to the welfare funds and administrative incapacity in managing decentralised insurance schemes also pose significant challenges.

The study will be conducted by analysing existing laws, the Code on Social Security, 2020, and various state-level regulations, to recognise the lacunas in insurance coverage for gig workers. By reviewing public-private partnerships, welfare boards, and innovative schemes like flexible insurance products and portable benefits, the research aims to provide a thorough overview of the present legal landscape. Through this analysis, the study shall propose recommendations to enhance gig worker protections including reforms to ensure wider insurance access and stronger enforcement mechanisms to make platforms accountable for worker welfare.

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INTRODUCTION

The Gig Economy

The Gig Economy has been defined as, a way of working that is based on people having temporary jobs or doing separate pieces of work, each paid separately, rather than working for an employer[1]. It may be understood as, a labour market, identified by short-term, flexible, and freelance work arrangements, in contrast to traditional full-time employment. In this system, workers engage in often temporary or project-based work, often through digital platforms that connect them with clients.

The Gig economy, broadly consists of, Freelancers, who are professionals offering specialised servives; Independent Contractors, are the workers who are hired for specific tasks or services; Platform Workers, are the individuals who use digital platform, to acquire clients and provide specific services; Seasonal Workers, those who take on occasional jobs to supplement their income.

The idea of a gig workforce is not novel, and can be traced to pre-capitalist Europe, where there was a stark increase in the participation of non-standard part time workers in the economy, due to a mixture of demand and supply factors[2]. This workforce was often seen as liberating and empowering, often allowing access to livelihood, to those who were earlier unable achieve employment at any formal establishment, in early stages of capitalisation, this allowed the women of the household to be involved in the economy. The gig economy today may be divided into two broad categories, first, the highly educated participants, who are professionals in their fields, and provide services to their clients wiithout being tied to a single place of emplyment[3], second, the less skilled labour force, that largely comprises of rather unfortunate individuals, who often lack the adequate skills to be employed elsewhere.

In the contemporary market, the impact of the Gig Economy has been two-sided, on the workers and the economy as a whole, on the positive side, it provides, flexibility, autonomy, and income-

[1] Gig Economy, Cambridge Dictionary, *available at*: https://dictionary.cambridge.org/dictionary/english/gig-economy (last visited on October 13, 2024).
[2] Alex De Ruyter and Martyn Brown, "The Gig Economy: Old Wine in a New Label?" (Newcastle-upon-Tyne: Agenda Publishing, forthcoming).
8 Gerhard Bosch, "Towards a New Standard Employment Relationship in Western Europe," British Journal of Industrial Relations 42, no. 4 (December 2004), 617–36
[3] Andrew Hill, "When McKinsey Met Uber: The Gig Economy Comes to Consulting," Financial Times (October 2016).

earning opportunities to those who are unable or unwilling to procure employment in the formal sector. However, the workers engaged in gig jobs, often lack basic social security, stable income, and benefits such as health insurance or retirement plans, exposing them to financial risks.

Importance of Insurance in the Gig Economy

Gig economy, being a non-traditional workforce, ordinarily even the most basic forms of employer provided modes of social security, hence an additional mechanism for securing the financial security of the gig workers becomes paramount. Since, gig workers are seldom recognised as 'employee' and are rather categorised as freelancers or independent contractors or partners, this classification has allowed the companies to exclude the gig workers from accessing basic benefits, further leaving them vulnerable to financial instability.

To ratify this, insurance can play a crucial role allowing the gig-workers to secure the much-needed safeguard and protection, following are the key reasons, why insurance is essential for the financial wellbeing of the gig workers:

i. *Protection Against Health and Medical Expenses*

Gig workers lack the access to employer-sponsored health insurance, making them personally liable for bearing the costs of the medical facilities. Without health insurance, even a minor illness or injury, may result in large out-of-pocket expenses, which would swiftly deplete the little savings that these workers have, this makes health insurance pivotal for ensuring gig workers the necessary medical care without facing unnecessary financial difficulties.

In India, some central government or state government schemes provide a level of health coverage, but majority of the workers remain outside this safety net. By acquiring third party insurances, or by receiving the benefits of government funded schemes, gig workers can protect themselves from catastrophic medical costs and the financial ruin that might result from paying for the treatment personally[4].

ii. *Income Protection During Illness or Accidents*

[4] The Story of Rakesh, who was financially destroyed when the platform he used to work at, took away his insurance when he failed to meet his weekly quotas. This story highlights, how crucial constant insurance coverage is for gig workers. *See*, Varsha Bansal, "This delivery app takes away health insurance when workers don't meet quotas", *Rest of World*, Apr. 12, 2024.

One of the major issues faced by the gig workers is income instability, as these workers rely on daily or project-based earnings, if such a person is injured or falls ill, they might be unable to support themselves or their families during this time. Disability insurance or accident insurance can provide much-needed financial support during such times, ensuring that gig workers have a safety net to rely on while they recover.

This becomes particularly crucial for the gig workers in high-risk sectors, such as delivery services or ride-hailing, as the likelihood of accidents in such jobs is higher. Without any form of insurance, these workers end up facing double burden of health expenses and income loss, which may lead to long-term financial consequences.

iii. Liability and Legal Protection

A large number of gig workers, especially those freelancers working in the fields like IT, design and consulting, offer hyper-specialised services that carry potential risk of legal liability. Professional indemnity insurance protects these workers from claims of negligence, errors, or malpractice by clients. In the absence of such coverage, gig workers could face hefty legal costs or out-of-pocket compensation payments, threatening their financial security and wellbeing.

Such type of insurances is becoming highly relevant, in the industires where the gig workers provide professional services, as disputes with clients over quality, deadlines, or contract fulfillment are not uncommon. Having liability insurance ensures gig workers are protected from the financial fallout of legal claims, allowing them to work with peace of mind.

iv. Long-term Financial Stability

Employees working traditional roles are generally entitled to pensions and retirement benefits, often supported by employer contributions. However, since there is no actual employer-employee relationship in the gig economy, or contractors have largely been able to avoid any post-retirement benefits, leaving the employee to fend for themselves. Life insurance and retirement savings plans can provide gig workers with long-term financial security, allowing them to build a retirement fund and secure their families' future.

In India, there are multiple government schemes regulating pensions and post-retirement benefits to informal workers, however majority of the gig workers remain

uncovered. Private pension schemes, life insurance policies, or long-term savings plans can address this issue, enabling gig workers to plan for the future and post-retirement life and ensure financial stability for themselves and their dependents.

v. *Reduction of Dependence on Government Welfare Programmes*

By providing workers with access to insurance, governments and private insurers can reduce the strain on public welfare systems. In the absence of insurance plans, gig workers end up relying on government welfare schemes during emergencies, such as during health crisis or unemployment. Expanding insurance coverage to gig workers through public-private partnerships can help reduce their reliance on welfare schemes, allowing empowering them to remain financially independent.

The Rise of the Gig Economy

Growth of Gig Economy in India

The demand for remote work across the nation is rising, due to which gig workforce has emerged as one of the levers for these enterprises to balance the demand-supply gap, in the workforce. India's gig economy is one of the largest across the globe, both, in terms of the number of gig workers and the rate at which the market has grown. According to a report by the Boston Consulting Group and the Michael & Susan Dell Foundation[5], India had over 15 million gig workers in 2022, a number projected to grow to 90 million by 2030. This represents a 17% annual growth rate, driven by the increasing demand for flexible labor. The growth may be attributed to the urabanisation and digitisation of the Indian population, the Gig Economy is expected to grow rapidly, NITI Ayog predicts that by 2030, this workforce would account for almost 23.5 million jobs[6].

Gradually, the Indian youth has started to opt for gig work due to its flexibility and potential for multiple income streams. The demand for freelance and flexible work life is at an all-time high, as more sectors, such as education, healthcare, and finance are likely to incorporate gig work opportunities. The rise of the Indian gig economy, is a substantial shift in the employment

[5] Boston Consulting Group & The Michael & Susan Dell Foundation, "Unlocking the Potential of the Gig Economy in India" 11 (2021).
[6] NITI Ayog, "India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work", 24 (2022).

landscape, driven by digital platforms, economic necessity, and demographic factors. As millions of workers, especially in the urban regions, transform into gig-based employment.

Factors Contributing to the Growth of Gig Economy

The Indian gig economy has witnessed a massive growth in recent years, due to a combination of economic, technological, and social factors, especially post the Covid-19 Pandemic, below are the key reasons for the growth of the gig economy in India:

i. *Digital Transformation and the Growth of Platforms*

The ubiquitous presence of affordable smartphones and the penetration of the internet, especially through the various government initiatives such as Digital India and the roll-out of 4G networks across the nation by various companies, have laid the foundation for various digital platforms that host these gig workers[7]. These digital platforms, act as intermediaries which connect the gig workers with customers, making it effortless for these workers to find desirable work.

The swift rise of on-demand service platforms has empowered the growth of India's gig workforce, as digital platforms have made it more convenient to connect the supply and demand.

ii. *Flexible Work Preferences*

Many workers, particularly millennials and the Gen-Z, prefer flexible working hours and conditions over traditional working hours. The gig economy offers freedom and autonomy to the workers, allowing them to choose when, where, and how much they work, which attracts the younger and tech-savvy generation[8].

iii. *Economic Factors*

India faces challenges in providing enough full-time and formal jobs to its fast-growing population, the youth unemployment being particularly high. The gig economy has

[7] Public Affairs Forum of India, "Gig Work Big Impact: The Role of Digital Platforms in Generating Sustainable Livelihoods in the Gig Economy", 11 (2024). *See also*, Kempe Gowda & Manasa, *Effects of Digitization on Employment: Unlocking India's Gig Workforce Potential through Digital Transformation*, 8th International Conference on Economic Growth and Sustainable Development: Emerging Trends, (Nov. 29 & 30, 2023, Mysuru, India), *available at* < https://www.sdmimd.ac.in/iec2023/papers/IEC23210.pdf> (last visited on Oct. 15, 2024).
[8] Nasscom, "Future of Workforce: Decoding the Gig Workforce 2.0", 21 (2023).

allowed those who are unable to secure permanent positions, a temporary solution which offers immediate remuneration[9].

For many small-scale businesses, especially logistics, transportation, and food delivery, hiring gig workers for their less significant work, has allowed these businesses to reduce their operational costs. Since gig workers are not admitted as traditional employees, the employers generally escape the liability of employer benefits, which would have to be paid to the full-time employees.

iv. *Low Barriers to Entry*

Majority of the opportunities in the gig economy require minimal qualifications, all a worker needs is a smartphone, basic digital literacy, and in some cases, a vehicle to begin working. This scanty barrier to entry to the gig economy, has allowed a large section of the population to gain employment and a source of income including those with limited formal education.

These workers are generally engaged for shorter terms of employment, allowing for an increased flexibility for both the employer and the workers.

The ambition for additional income, the digital transformation, a youthful and tech-savvy workforce, flexible work schedules, and other reasons have all contributed to the growth of the gig economy in India. Urbanisation and migration patterns, in addition to economic issues like unemployment and underemployment, have further increased this growth. The gig economy will have a huge influence on India's labour sector as a whole and change preconceived ideas about what constitutes employment and work arrangements, all of which would be unfolding in the upcoming decade.

Socio-economic Impact of the Gig Economy on the Labour Market

The gig economy has had an extreme impact on the Indian labour market, altering the traditional employment structures and designing a new socioeconomic dynamic. While it provides both opportunities and challenges, it particularly effects a country like India, where a significant portion of the population is young, and unemployment is a constant issue.

[9] Tanmay Sachdeva, "The Gig Economy in India: Unpacking the Economic and Social Implications", 15 International Journal for Research Publication and Seminar 169 (2024).

The gig economy has fabricated millions of jobs across the nations, particularly for those who are unable to access formal employment opportunities. Digital platforms have significantly enlarged the employment avenues in various sectors. According to NITI Aayog's 2022 report, the gig economy could expand to 23.5 million workers by 2029-30, with gig workers accounting for 4-5% of the total workforce[10]. For majority of the workers across India, the gig economy serves as a source of secondary income, this is particularly significant in rural and semi-urban areas, where traditional job opportunities are limited and scarce[11]. Gig work has allowed workers to supplement their income and control economic fluctuations. Gig work provides the flexibility to set their schedules, take on multiple jobs, and choose the type of work they engage in. This flexibility is particularly beneficial for workers with familial obligations or those who want to balance multiple income streams.

Challenges Faced by Gig Workers in Accessing Insurance

Unlike traditional full-time employment, gig work comes with its own challenges, especially in terms of social security and insurance coverage. Gig workers are often categorised as independent contractors or partners, making them ineligible for employer-provided social security schemes, such as health insurance, pensions, or accident cover. In every labour market, safety and security measures are crucial, the absence of an accessible system of insurance for the highly vulnerable gig workers, further exposes them to financial difficulties. Despite the need for insurance, several barriers make it difficult for gig workers to secure the protection they require.

Many gig jobs are associated with high risk, such as delivery, transportation, and manual labor, where the likelihood of accidents or health issues is higher. Without insurance, a single medical emergency or accident could destroy any savings that a gig worker might have managed to secure, further amplifying their financial instability.

Regardless of the clear need for an insurance scheme for gig workers, there exist several barriers, preventing gig workers from securing it. Following are the few reasons preventing the gig workers from securing appropriate insurance coverage:

[10] *Supra* note 6 at 5.
[11] Gautam Bali, *Role of Direct Selling in Gig Economy Fulfilling the government's vision through opportunities and skill development*, Gig Economy: Aligning Consumer Preferences: The Way Forward, (Jan. 24, 2020, New Delhi, India), *available at* < https://www.assocham.org/uploads/files/1628143386.pdf> (last visited on Oct. 16, 2024).

i. *Lack of Formal Employment Contracts and Employer-Provided Benefits*

Gig workers are classified as independent contractors or partners, which means they are not entitled to traditional employment benefits, such as health insurance or retirement savings, provided by employers or contractors. In majority of the cases, the platforms which host these workers do not undertake any liability for providing insurance through a formal contract, leaving the workers without any assistance in times of illness, injury, or accidents. This lack of formal employment structure, makes the gig workers miss out on various employer provided benefits, including group insurance coverage and contributions toward social security.

ii. *Income Instability and Its Impact on Affordability of Insurance*

A major barrier for gig workers in securing insurance is income instability. Since their income is not fix, rather based on the number of tasks undertaken and completed, these workers often struggle to consistently pay for the insurance premiums. Income fluctuations make it difficult for these workers to make the payments for the premium, leaving them outside the insurance coverage, even though, these workers are often more prone to risks, due the ultimate nature of their work. The gig economy is also subjected to external impacts, such as changes in demand, economic slowdowns, or global crises like the COVID-19 pandemic, which can further hinder workers' income, making insurance seem unaffordable or a lower priority.

iii. *Awareness Gaps Among Gig Workers Regarding Insurance Options*

Majority of the gig workers, especially those from low-income or rural backgrounds, are rarely aware about the insurance options or the importance of having such a coverage. The gig workforce generally comprises of individuals with low literacy rates, a lack of financial awareness[12], and restricted access to formal insurance systems.

In India, there is a scarcity of awareness campaigns specially targetting gig workers, and insurance platforms and apps hardly provide adequate information or simple access to policies suited to gig workers' unique needs. This gap in awareness leaves many gig workers uninsured even though, products suitable to their needs might exist in the market.

[12] Surbhi Gloria Singh, "66% of gig workers file zero returns, 78% earn under Rs 2.5 lakh: Survey", *Business Standard*, Aug. 23, 2024.

iv. *Complexity in Qualifying for Traditional Insurance Policies*

Majority of the traditional insurance policies are tailored around stable and consistent employment models, with regular income flows, and gig workers do not fit this composition. Many policies require proof of employment, salary statements, steady incomes, or contributions over time to qualify for coverage[13]. Gig workers, often lack proof of steady working or long-term employment, finding it difficult to qualify for comprehensive insurance policies. Even if such polices are available, the complex terms and condition may consequently deter gig workers, particularly those with limited knowledge and experience in navigating formal financial systems. This often results in the gig workers being uninsured or underinsured, lacking adequate coverage for medical or financial emergency.

These issues indicate why imaginative strategies are required to handle the unique conditions faced by gig workers in India and guarantee that they have access to the money protection that is essential to their wellbeing. Reforming regulations, reaching out specifically, and creating flexible, reasonably priced insurance plans that meet the requirements of gig workers are all necessary to address these problems.

Current Legal Framework for Gig Workers in India

The rapid growth of the Indian gig economy has resulted in a major shift in the country's labour market. The notion of a traditional full-time employment is now becoming obsolete, as large number of people are engaging in non-traditional, gig employment. The flexibility provided by gig employment is attractive, particularly to those in pursuit of balancing multiple jobs, pursue education, or work part-time due to personal constraints. Nonetheless, this flexibility comes at the cost of job security and social protection, as these gig workers fall outside the ambit of formal and traditional labour laws and employer-provided benefits[14], especially insurance.

To address these concerns, The Indian government and various states have taken an initiative to introduce or enforce legal frameworks aimed at protecting the rights and welfare of gig workers. These initiatives seek to provide a basic security measure for the gig workers, particularly in the

[13] PwC India, "India's insurance vision: Challenges and the way forward", 8 (2023).
[14] Ulka Bhattacharyya and Soumya Jha, "Understanding Social Security for Gig Workers: Anlysing Recent Developments", 11 NLIU Law Review 80 (2022).

area of fair compensation, safety measures, and social welfare schemes. Regardless of these advancements, the current legal landscape of the country remains fragmented and without any proper implementation, with majority of these gig workers currently operating in unregulated conditions, leaving them highly vulnerable to exploitation and financial instability[15].

The evolving legal framework in the country showcases, the recognition of the crucial role that gig workers play in the Indian economy. While some progress has been achieved at state level, there is a substantial need for a comprehensive nation-wide policy to ensure that the gig workers get appropriate protection and social security. As the gig economy in the nation, continues to evolve and expand, the challenge to establish a robust legal mechanism that balances flexibility with the social security needs of this growing workforce.

The Social Security Code, 2020[16]

The Code of Social Security, 2020 (herein after 'the Code'), was enacted to streamline and modernise India's old, complex and fragmented social and employee welfare legislations. Taking into account the rise of informal and gig employment, and millions of workers who lacked access to essential employer provided benefits. The previous system included multiple outdated laws, which failed to address the needs of an evolving labour market. The code was needed to consolidate and simplify social security provisions, ensuring broader coverage and inclusivity, especially for gig and platform workers. It strives to establish a safety net for these workers, while address the gaps in existing social protection schemes, and ensuring the access to vital welfare benefits, ultimately fostering a more inclusive and resilient workforce and economy.

Section 2 (35) of the Code[17] defines a gig worker as any person who either works or participates in a work arrangement and earns from any such activity that falls outside the scope of traditional employer-employee relationships.

Section 2 (60) of the Code[18], defines platform work any work arrangement that falls outside the scope of traditional employer-employee relationship, and where the organisations or individuals

[15] The Constitution of India, under Article 39, ensures every individual a decent working condition, and Article 43 ensures every worker adequate wage for their sustenance, though these articles are not enforceable through writs, these prove as crucial mechanisms and objectives that lay down the foundation for laws and policies for the ultimate benefit of gig workers and ensure their well-being.
[16] The Code on Social Security, 2020 (Act 36 of 2020).
[17] The Code on Social Security, 2020 (Act 36 of 2020), s. 2 (35).
[18] The Code on Social Security, 2020 (Act 36 of 2020), s. 2 (60).

use an online platform to access other organisations or individuals to solve problems or provide specific services, or any other activity as notified by the Central Government, in exchange of which they are paid.

Further, the Code under Section 2 (61)[19] defines a platform worker as any person who is engaged in, or who undertakes platform work.

Section 114 of the Code, empowers the Central Government to formulate a social security scheme, for the welfare of gig and platform workers, covering, life and disability cover; accident insurance; health and maternity benefits; old age pension; creche facility; and any other facility or benefit as the Central Government deems fit. The section also states that, the scheme may either funded wholly by the Central Government, or in partnership with State government, or wholly funded by the contributions of the aggregators; or may be funded by the collaborative efforts of all three of these parties.

However, this section fails to establish any obligation on the Central Government for the formulation of such a scheme, as it reads, "the central government 'may frame a scheme'", this has resulted in no such framework being established by the Central Government to this date. For the Code to provide any actual benefits to these gig and platform workers, mandatory provisions must be introduced through amendments, to make the state accountable for framing such a scheme, otherwise the provision, would become obsolete, and no policy or scheme would ever stem from it.

State Legislations

Due to the lack of any comprehensive legislation or scheme by the Central Government, a few state governments have now framed their own schemes to protect the interests of the gig workers in their respective states; these legislations have been discussed below:

1. *The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023*[20]
   The Rajasthan Government on July 24th, 2023, enacted the Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023, making Rajasthan the first state in India to

[19] The Code on Social Security, 2020 (Act 36 of 2020), s. 2 (61).
[20] The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (Act 29 of 2023).

pass a legislation to regulate and protect the rights of gig workers, with an object to provide social security and other benefits to platform-based gig workers.

Under this act, as per Section 2 (e)[21], a gig worker is a person who performs work or participates in a work arrangement, and earns from any such activity outside the scope of traditional employer-employee relationship and works on a contract that results in a given rate of payment, based on terms and conditions laid down in such contract and includes all piece-rate work.

The act is applicable to aggregators, defined as digital intermediaries that connect buyers and sellers, as well as to primary employers, which are individuals or organizations engaging platform-based gig workers[22], the definition of gig worker under this act, closely follows that of the Social Security Code. The Act also includes the workers employed on contracts that offer payment based on a predetermined rate, as stipulated by the contract's terms and conditions, covering all piece-rate work.

The Act establishes the Rajasthan Platform-Based Gig Workers Welfare Board ("Board") with major duties and powers, which includes, but is not limited to; registering platform-based gig workers, aggregators, and primary employers operating in Rajasthan[23]; ensuring that the welfare cess deduction mechanism is integrated into the platforms of aggregators or primary employers; issuing notifications for schemes aimed at the social security of registered platform-based gig workers; guaranteeing that workers receive the benefits provided under these schemes; and collaborating with registered unions representing gig workers and conducting regular consultations with them.

The act mandates the aggregators and principal employers to register with the Rajasthan Platform-Based Gig Workers Welfare Board and submit updated data on all gig workers they engage[24]. All the gig workers associated with any platform must be registered by their respective aggregators or employers with the Board. Upon registration, the status as a gig employee remains valid indefinitely, regardless of the length or nature of the work relationship. Every registered worker will be assigned a Unique Identification Number by the Board, ensuring continuous recognition of their status as platform-based gig workers.

[21] The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (Act 29 of 2023), s. 2(e).
[22] The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (Act 29 of 2023), s. 2(a).
[23] The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (Act 29 of 2023), s. 3.
[24] The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (Act 29 of 2023), s. 8.

Aggregators and primary employers are required to deposit a Platform-Based Gig Workers Welfare Cess to the board, the rate of which shall be determined by the state of Rajasthan, and will range between 1% to 2% of the value of each transaction involving platform-based gig workers. The act also provides for the creation of a Rajasthan Platform-Based Gig Workers Social Security and Welfare Fund[25], which shall be made out of all the amount accumulated out of the welfare cess, contributions from individual gig workers, grants from the State Government, donations, and other sources. This fund shall be used to ensure benefits and social security for the registered gig workers.

All the transactions conducted through these platforms, which are operating as online systems connecting service providers with recipients, shall be tracked with the help of a Central Transaction Information and Management System (CTIMS)[26], overseen by the Board. The system will monitor and analyse key transaction details, such as commissions charged, GST deducted, and welfare cess collected, deducted, or spent, specifically concerning platform-based gig workers.

The act also establishes a grievance mechanism[27], where the registered gig workers, have a right to file complaints before an authority designated by the Government of Rajasthan, to resolve issues related to their entitlements, payments, and other benefits under the Act. The act also imposes substantial fines for any violations of the act by the aggregators or principal employers.

2. *The Karnataka Platform based Gig Workers (Social Security and Welfare) Bill, 2024*

The Karnataka government's Labour Department unveiled the draft Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024 on June 29, 2024. The purpose of this bill is to safeguard the rights of gig workers who work on platforms by imposing certain requirements on aggregators. These obligations include making sure social security is provided, upholding safety and health regulations at work, and enhancing the working environment for independent contractors in the state of Karnataka. This move can be seen to resolve the various issues faced by the gig workers in urban centers.

[25] The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (Act 29 of 2023), s. 10.
[26] The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (Act 29 of 2023), s. 18.
[27] The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (Act 29 of 2023), s. 14.

Under Section 2 (e) of the Bill[28], a gig worker is any person, who performs work or participates in a work arrangement that results in a fixed rate or payment, according to the terms and conditions of the contract and includes all includes all piece-rate work, and whose work is sourced through a platform, in the services specified.

A platform is distinctly defined in the Bill as an "arrangement that provides services electronically at the request of a recipient, involving the organization of work carried out by individuals at a specific location for payment, and incorporating the use of automated monitoring and decision-making systems."[29] This definition is unique because it explicitly requires the arrangement to involve automated monitoring and decision-making systems, a feature not included in the Code on Social Security, 2020 or the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, 2023.

The bill mandates the aggregator to provide to the platform-based gig workers with information on any aspect that affects their work, including the criteria for work allocation, distribution, and assessment, and the reasons for denial of work. The aggregators must disclose details regarding the rating system, the categorisation of gig workers, personal data, and other relevant information as required by the State Government. Additionally, the gig workers must be made aware about the process on how to request details regarding automated monitoring and decision-making systems used by aggregators, especially those details which affect the working conditions, such as fares, earnings, and customer feedback. The Bill also mandates that aggregators must ensure that their systems are free from any discrimination based on religion, race, caste, gender, or place of birth. These provisions in the bill, will establish a transparent system, where the gig workers will be able to access previously hidden factors influencing their work, further empowering them to make informed decisions and challenge unfair automated decisions[30].

The draft Bill proposes for the establishment of the Karnataka Gig Workers Welfare Board[31], which shall be responsible for registering gig workers and aggregators, and implementing the various state-notified benefits. All the platform-based gig workers operating in the state shall have the right to register with the State Government and gain

[28] The Karnataka Platform based Gig Workers (Social Security and Welfare) Bill, 2024, s. 2 (e).
[29] The Karnataka Platform based Gig Workers (Social Security and Welfare) Bill, 2024, s. 2 (f).
[30] The Karnataka Platform based Gig Workers (Social Security and Welfare) Bill, 2024, s. 14.
[31] The Karnataka Platform based Gig Workers (Social Security and Welfare) Bill, 2024, s. 3.

access to general and specific social security schemes based on their contributions. Once gig workers are onboarded by a platform, the Board must electronically register them within a specified period, the aggregators are also mandated to register with the Board and submit their gig worker database to the Board, and any subsequent change in the data must be periodically reported to the Board.

The draft bill requires all the gig workers to be notified of any changes to contract terms at least 14 days in advance, in simple and clear language[32]. The State Government shall issue sector-specific guidelines for these contracts. Aggregators do not have the authority to terminate gig workers without providing written, valid reasons and giving 14 days' notice. Under the Bill, the gig workers shall be compensated at least weekly, and aggregators must adhere to sector-specific occupational safety and health standards as prescribed by the State Government. To establish and promote communication, a human contact or physical space must be available for gig workers to seek clarifications from the aggregators. Karnataka Gig Workers' Social Security and Welfare Fund shall be constituted from the contributions made by gig workers, welfare fees from aggregators[33], and government grants. All platform payments shall be tracked through a Central Transaction Information and Management System, the same as seen in the legislation passed by the Rajasthan Government, and the activity shall be overseen by the State Government and monitored by the Board, with records of payments and welfare fees included.

The Karnataka State government already runs an insurance scheme for the gig workers entitled 'Karnataka State Gig Workers Insurance Scheme', it is a first of its kind scheme across the nation, every delivery worker, working for a platform and all other unorganised gig workers are eligible to claim benefits under the same, to claim the benefits these workers must be registered on the Sevasindhu Portal, through which they can avail, accidental insurance, life insurance, permanent disability insurance and reimbursement of hospital expenses consequent to an accident. The insurance benefits will be available for all sorts of accidents, whether on or off duty, and the workers need not pay anything towards the contribution, as the scheme is completely funded by the State Government.

[32] The Karnataka Platform based Gig Workers (Social Security and Welfare) Bill, 2024, s. 12.
[33] Anagha, "Karnataka to impose cess on Zomato, Uber, Swiggy payments to support gig workers", *India Today*, Oct. 19, 2024.

3. *Jharkhand Platform Based Gig Workers (Registration and Welfare) Bill, 2024*

The Jharkhand Bill closely mirrors the Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill 2024. While its primary goal is to safeguard the welfare and social security of platform-based gig workers, however the analysis by industry experts has revealed several significant concerns with the proposed provisions[34]. The prime object of this proposed enactment is to ensure proper protection, welfare and support for the growing number of gig workers, especially with regards to wages and welfare.

The draft bill is applicable to platforms, their aggregators and the gig workers procuring work through them and operating within the state of Jharkhand. Under Section 2 (f) of the Bill[35], a gig worker is an individual who performs works or participates in a work arrangement and earns from any such activities outside of traditional employer-employee relationship and who works under such contracts that results in a given rate of payment or remuneration, based on the terms and conditions of such a contract and includes all piece-rate work; and any person whose work in sourced through a platform, in the sectors specified in the Schedule to this Act.

The draft bill has enumerated certain rights to the gig workers in the state of Jharkhand, Aggregators must pay gig workers weekly without delay, providing reasons for any deductions in the invoice[36]. Gig workers are entitled to general and specific social security schemes once notified by the state government. Aggregators are also responsible for ensuring a safe work environment and complying with occupational health and safety standards.

The act also lays down certain criterions for contracts between the aggregators and the gig workers, such as, Contracts must be written in clear, simple language and made available in English, Hindi, or any other language from the Eighth Schedule of the Indian Constitution[37]. Aggregators must notify gig workers of any changes 14 days in advance, and workers can terminate contracts without losing previous benefits. Likewise, aggregators cannot terminate a contract without 14 days' notice. Gig workers have the right

[34] Nasscom Public Policy, Feedback on the Draft Jharkhand Platform Based Gig workers Bill, 2024, available at: https://community.nasscom.in/communities/public-policy/nasscoms-feedback-draft-jharkhand-platform-based-gig-workers-bill-2024 (last visited on Oct. 19, 2024).
[35] Jharkhand Platform Based Gig Workers (Registration and Welfare) Bill, 2024, s. 2 (f).
[36] Jharkhand Platform Based Gig Workers (Registration and Welfare) Bill, 2024, Ch. V.
[37] The Constitution of India, Schd. VIII.

to decline a specified number of projects per week without facing penalties, as outlined in the contract. The state government will issue sector-specific guidelines for contracts and review templates provided by aggregators. Additionally, aggregators must offer a human point of contact and physical spaces for gig workers to engage and seek support[38].

Workers must be made aware about the functioning of the algorithms on which the platforms work, Aggregators must inform gig workers about how platform algorithms operate, including work allocation, ratings, worker categorization, and personal data processing, in a clear and simple manner, available in English, Hindi, or any Eighth Schedule language. They must also ensure that these algorithms do not discriminate based on religion, race, caste, gender, or place of birth.

All the gig workers in the state of Jharkhand must register on a state government platform, where they shall be assigned a unique ID, which can be used across different platforms. The platforms must provide details of the gig workers, procuring work through their platforms to the Gig Workers Welfare Board, which shall maintain a database of these workers and details of their engagement with different platforms[39].

The act also lays down a mechanism for dispute resolution, through the Internal Dispute Resolution Committee, which must be established by every aggregator, with more than 50 workers, and whose proceedings must be completed within 30 days.

The Jharkhand Government will also set up 'Gig Workers' Social Security and Welfare Fund', which will be primarily funded by a welfare fee paid by each and every aggregator, as a percentage of the value of each transaction on its platform. The percentage shall be specified by the state government, the other sources may include voluntary contributions made by gig workers, grants and funds received by the government, or any other source.

All the above state legislations have been enacted due to absence of a nation-wide comprehensive legal framework for the welfare of the gig workers, to address this, various state governments have taken it upon themselves to secure the interests of the gig workers within their territory, till a nationwide welfare scheme is launched by the Central Government, the ultimate aim of all these

[38] Jharkhand Platform Based Gig Workers (Registration and Welfare) Bill, 2024, s. 16.
[39] Jharkhand Platform Based Gig Workers (Registration and Welfare) Bill, 2024, s. 11.

state legislations is to address the lack of welfare and social security for a highly vulnerable group of workers, for which no central legislation exists.

Policy Recommendations for the Benefit of Gig Workers

The Indian gig economy has grown exponentially in a very small period of time, this line of work has provided flexible work opportunities to millions, yet these gig workers remain highly vulnerable due to lack of formal employment benefits. Ensuring their welfare and social security has become a major issue. Present legislations have started to address these gaps, however, there are still various challenges such as, transparency, fair treatment, and access to benefits like insurance and occupational safety. In light of these challenges, there exists a pressing need for policy reforms that enhance gig workers' protection by ensuring fair work conditions, transparent contract terms, and social security coverage. These reforms can empower gig workers while promoting a more equitable and sustainable gig economy in the country, some of the probable policy changes have been discussed below:

1. *Developing Gig-Specific Insurance Products with Flexible Premiums*
   Traditional insurance policies are often rigid and inflexible for gig workers, whose earnings are not stable due to the nature of their work, A tailored and customised approach to insurance, with adjustable premiums, based on the activity and engagement level of the workers, would resolve this issue. These insurance models could leverage financial technologies to calculate the premium calculations dynamically, and ensuring that, the gig workers are not financially overwhelmed during low-income periods. A flexible insurance coverage remains affordable and uninterrupted. Insurance companies could develop specific customised products specially to address health, life, and accident coverage, linked to the financial status of the gig workers. Further, micro-insurance models, where workers pay premiums in smaller amounts, would further ensure that gig workers are not overburdened with premium payments.
2. *Extending Government-Subsidized Insurance through Public-Private Partnerships*
   To extend the insurance and social security benefits for gig workers, the Government could create public-private partnership, provision for which is already enshrined under section

114 of the Social Security Code[40], this could further assist in extending subsidised insurance to gig workers. Existing government welfare schemes could be amended to include gig workers through partnerships with digital platforms. The aggregators could also contribute to a part of the insurance premiums or provide subsidies, in collaboration with the government, to reduce the overall burden on the gig workers. These schemes and partnerships would ensure that, gig workers are included in the existing social safety nets, allowing them to life, accident, and health insurance at lower costs. This approach allows the scaling of insurance penetration within the gig economy, particularly among informal workers who often lack awareness and access to such schemes and securities.

3. *Encouraging Platforms to Provide Group Insurance Policies*

   The digital platforms used by the gig workers to procure work, can play a more proactive role in ensuring the welfare of their workers by offering them group insurance schemes. Platforms that engage a huge number of gig workers, could use these numbers to negitoate group insurance plans with insurance companies. This approach benefits both the gig workers and platforms, as it provides an affordable insurance option to the gig workers, which in most cases is highly expensive for them, and the platforms that offer such schemes could drastically increase their retention and job satisfaction, potentially reducing worker turnover.

   To ensure compliance, government can incentivise these initiatives by offering tax breaks or subsidies[41], or the government could create regulations that mandate platforms to contribute a certain portion of their revenue towards worker welfare schemes.

4. *Implementing Multi-Platform, Portable Insurance Options*

   A characterising feature of the gig economy is lack of ties with a single platform, as the process to switch aggregators is simple and the gig workers may work at multiple platforms simultaneously, in such scenarios, employer-specific insurance is not proper. To counter this problem, the option of portable insurance may be introduced amongst gig workers, under which the gig workers would maintain a single insurance policy, that follows them

[40] The Code on Social Security, 2020 (Act 36 of 2020), s. 114.
[41] Nii K. Sowa, The Role of Subsidies as a Means to Increase Welfare, (2006) (Unpublished Manuscript EDPRI, Accra).

across different platforms. For instance, if a person procures service at platform A and B simultaneously, the policy would remain the same, regardless of the platform.

Portable insurance would be funded through contributions made by multiple platforms based on the workers' activities. A Centralised Digital Insurance Framework could be implemented to track workers' activity across different platforms, and deduct a proportionate premium based on their earnings on different platforms. This portability would create a continuous safety net, addressing the erratic and transitory nature of gig work. Platforms could contribute through a small cess on each transaction[42], creating a pooled and unified fund for the welfare of gig workers.

5. *Raising Awareness through Educational Campaigns*

Various reports have indicated a substantial lack of awareness amongst gig workers[43], since a majority of the gig workers come from a lower-income background[44], they are not fully informed about the benefits and advantages provided by an insurance or about the schemes available to them. To curb this issue, the government and the platforms can organise awareness campaigns.

These campaigns could include, public awareness drives, supported by the government and conducted in collaboration with gig platforms, insurance companies, and civil society organisations. Using both online and physical mediums, platforms could educate workers on the importance of insurance and the process to access it. This would help break down barriers related to complex insurance policies, ensuring gig workers understand the importance of protecting themselves against unforeseeable financial risks arising.

Challenges in Implementing Insurance for Gig Workers

Introducing and enforcing insurance for gig workers in India, is a major step in providing these workers with basic financial protection and social security. However, this implementation is not simple, as various challenges arise when attempting to make insurance accessible and affective for this highly vulnerable workforce. These challenges stem from the unique nature of the gig

[42] Shilpa Elizabeth, "1% to 2% welfare cess to be levied on each online transaction", *The Hindu*, Oct. 19, 2024.
[43] Abhyjith K. Ashokan, "78% of India's delivery gig workers earn less than 2.5 lakh a year: Report", *Hindustan Times*, Aug. 24, 2024
[44] International Labour Organisation, "Digital labour platforms and the future of work: Towards decent work in the online world", 41 (2018).

economy itself, the ever-evolving landscape, the resistance of digital platform, and administrative hurdles. Following is an analysis of these obstacles in India:

1. *Barriers to Enforcing Gig Worker Protection Laws*

   The Code on Social Security, 2020, and the state-level laws like those in Karnataka and Rajasthan provide a legislative framework for gig worker protection, properly enforcing these laws is a major challenge. The Gig Economy, is decentralised, and majority of the workers operate outside traditional employer-employee relationships. This makes it complex to monitor compliance easily.

   The digital platforms operate across multiple jurisdictions, and the workers procure work from multiple platforms simultaneously, ensuring that each platform complies with their proportionate legal obligations with respect to a particular gig worker, requires comprehensive monitoring systems. However, many states and regions lack the infrastructure to track these platforms effectively, as this system is highly complex and resource demanding.

   Different states across India, are at varying stages of developing a law for gig workers, which has led to inconsistencies in protection and enforcement, as states like Rajasthan and Karnataka have made strides with specific laws for gig workers, other states currently lack any comprehensive legal framework for the protection of gig workers in their state, leaving workers in those regions without adequate legal protection[45]. This disparity is the consequence of an absent nationwide central scheme for the protection of gig workers, due to the nature of Section 114[46] being directory and not obligatory.

2. *Resistance from Platforms Regarding Contribution to Social Security Funds*

   Major digital platforms, that operate as intermediaries, between the gig workers and the consumers have historically resisted any and all efforts to formalise gig worker benefits. The resistance has been due two major reasons:

   i. Increased Costs: Digital Platforms generally operate on thin profit margins, and mandating contributions to social security or welfare funds could lead to higher operating costs. To balance these costs, the platforms may pass these costs on to

[45] Since only Rajasthan has enacted a legislation for the welfare of gig workers, and Karnataka and Jharkhand, have presented bills in their respective state legislative assemblies, other states and the central government still lacks behind in this regard.

[46] The Code on Social Security, 2020 (Act 36 of 2020), s. 114.

consumers or reduce the pay of gig workers, ultimately damaging the industries or the livelihood of the workers.

ii. Loss of Flexibility: The gig economy is characterised by flexibility, that it provides to both the workers and the platforms. The digital platforms have stated that imposing formal social security contributions could reduce the flexibility they offer to gig workers, consequently transforming the nature of the employment relationship and increasing regulatory burdens.[47]

3. *Administrative Challenges in Managing Insurance Schemes for a Decentralized Workforce*

Te gig workforce is highly diverse and decentralised, and unlike traditional employment, where a single organisation manages the employee benefits centrally, gig workers often work for multiple platforms simultaneously or switch platforms frequently, this creates the following administrative issues:

i. Tracking and Aggregating Worker Contributions: Gig workers, procuring work through multiple platforms, coordinating and monitoring contributions the social security schemes becomes complicated. A system that tracks earnings across multiple platforms and calculates contributions based on the aggregated income, is required to be implemented. The proposed Central Transaction Information and Management System (CTIMS), mentioned in the Rajasthan Act, is a probable solution, but the implementation would require robust digital infrastructure and cooperation from all platforms involved[48], as any issues arising from such a system, would severely impact the livelihood of millions of gig workers.

ii. Portability of Benefits: The insurance schemes for gig workers must be easily portable across different platforms, making the coverage uninterrupted as they switch between different jobs or platforms. This requires a strong coordination between all the parties involved, to ensure constant coverage. A centralised public database carrying, regularly updated worker information, is also required to

[47] This argument, however, is often seen as the platforms avoiding any liability that may arise out of any formal relation with the gig workers, ultimately destroying the exploitative nature of these employment tactics. *See also*, Ayesha Minhaz, "Rajasthan's gig law a step in the right direction, but more needed to protect platform workers", *Frontline by The Hindu*, Aug. 10, 2023.

[48] The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (Act 29 of 2023), s. 18.

properly implement portable insurance schemes, however, this only increases the complexity of the system.

iii. Payment and Contribution Management: The income of gig workers is often irregular, unstable and fluctuating, affecting the means to pay insurance premium. This irregularity further complicates the administration of insurance schemes, as for a smooth integration of an insurance system must take into account these income fluctuations. As previously discussed, a possible solution to this is a flexible, income-adjusted insurance product, however, these schemes also require sophisticated management to ensure timely and accurate premium collection, while ensuring that, these payments do not financially destroy the gig workers.

4. Limited Financial Literacy and Awareness Among Gig Workers

A major barrier to expanding insurance coverage for the gig workforce in India, is the widespread lack of financial literacy[49]. Majority of the gig workers are unaware of the benefits of insurance, how it works, and how to access available schemes, especially those gig workers who hail from lower-income backgrounds, often visioning insurance as a luxury rather than a necessity. This issue may be elaborated as under:

i. Low Awareness of Insurance Products: There are a number of affordable government-backed insurance schemes, however, many gig workers lack the awareness about these programmes, and fail to enroll in the same. The digital platforms can play a significant role in ensuring that these gig workers are aware about the basics of financial literacy, however, this could further increase costs for these platforms, a probable solution could be subsidies for the platforms for providing these educational campaigns, or partnering with other educational platforms to educate the gig workers.

ii. Mistrust of Financial Institutes: A large number of gig workers, especially the ones in lower-income or rural areas, are highly distrustful of financial institutions, viewing them as complex and opaque. This mistrust acts as a barrier, preventing gig workers from seeking out insurance policies, even when they are available at affordable rates.

[49] *Supra* Note 12 at 9.

iii. Complex Contracts: Insurance contracts are generally written in complex language preventing gig workers from completely understanding these insurance schemes, ensuring that contracts are written in simple and a language that is understandable to particular gig workers is critical for gig workers to grasp their rights and obligations under insurance schemes. This lack of comprehension may result in reluctance and ultimately leaving these workers uninsured, or may hamper their ability to use their coverage effectively.

Significant challenges exist in expanding the scope of insurance to gig workers, however, these hurdles, can be overcome with a combination of robust enforcement, collaboration between public and private sectors, and focused educational efforts. By addressing these challenges, India can ensure that gig workers, who are highly vulnerable to financial instability, receive the social protection and financial security they deserve.

Conclusion

The ever-evolving legal and policy landscape for the Indian gig workers, reflects an increasing recognition of the necessity to protect this swift growing labour industry. The Code on Social Security, 2020, along with various state-specific legislations in Karnataka, Rajasthan, and Jharkhand, marks significant strides in ensuring gig workers' access to social security benefits. These legislations aim to address critical gaps and paucity that exists in the current insurance and welfare system surrounding gig workers. However, these legal frameworks are promising, but thier implementation and enforcement is challenging, especially regarding compliance, overcoming resistance from platforms, and addressing administrative complexities.

A significant challenge now lies in bridging the coverage gap that still exists with insurance for gig workers. Despite the existing and promising legal frameworks, enforcement of these remains a significant hurdle. The digital platforms must be mandated to register their workers, contribute to welfare funds, and ensure compliance with the new transparency requirement, in the use of algorithms for work allocation and worker assessment. The creation of a centralised system, Central Transaction Information and Management System and state specific gig worker welfare boards highlights a crucial step in the right direction, but these systems must be enforced through

strong enforcement mechanisms, this will not only challenge the administrative capacity of state institutions, but also the political will of the nation.

The legal and policy framework of the country is headed in the right direction for the protection and welfare of gig workers across the country, but work is far from being finished. Ensuring protection for gig workers requires the participation of the government, platforms, and workers themselves, alongside robust enforcement of existing laws, this sector is still budding in India, and has a huge scope in the upcoming years, a balanced approach would ensure that interest of all the parties is administered.

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NAVIGATING CYBERSECURITY CHALLENGES IN INDIA'S RAPIDLY EXPANDING ONLINE GAMING INDUSTRY

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ABSTRACT

The online gaming sector in India has experienced a rapid growth, with an anticipated $8.6 billion market by 2027. This growth is attributed to factors such as internet access, smartphone usage, and affordable data plans. However, concerns over cyber security regulation and ethical issues have emerged due to the industry's rapid expansion. The rise of e-sports, live-streaming services, and gaming communities has provided new options for players, producers, and businesses. However, there have been ongoing cyber security concerns in online games, attracting the attention of game developers, as virtual gamers often face issues like data leaks and attacks. As a consequence of these issues, gamers will incur financial hardships, either directly or indirectly. This study examines the cybersecurity dangers of online games by discussing the history, some common cybersecurity issues, and possible remedies. The primary focus of the research is the significance of cyber security in Gaming Technology. The study addresses the prospects for this industry to expand in the coming years and the obstacles that the government will need to overcome to guarantee the responsible and secure operation of online gaming.

Keywords: Online Games, Cybersecurity, AI, Cybercrime, Information Technology

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1. INTRODUCTION

The gaming business has significantly advanced from the era of arcade games to expansive multiplayer titles like Fortnite, FIFA 17, Call of Duty, GT Sport, Metal Gear Solid, and PUBG. Gaming platforms have significantly advanced, including browser and app-based games across Windows, macOS, Android, iOS, numerous gaming consoles such as Xbox and PlayStation, as well as online casinos. The sector has seen significant growth, and substantial financial investments are at stake. Gaming sector revenues are projected to reach 180.1 billion by 2021. The gaming phenomenon has become so considerable that media conglomerates like Netflix see Fortnite as a more formidable rival than HBO. This a legitimate worry with billions of individuals from diverse demographics participating in gaming worldwide. The lucrative nature of the sector has undoubtedly attracted the attention of cybercriminals. The gaming sector has seen significant assaults, with hackers executing 12 billion attacks over 17 months, as reported by Akamai. *"The online gaming community will be an emerging hacker surface, with cybercriminals posing as gamers and gaining access to the computers and personal data of trusting players."* ---- 2019 Experian Data breach industry forecast.[1]

The gaming business has a wealth of valuable data, including extensive instances of "Personally Identifiable Information" (PII) and payment card details of players globally. The industry is responsible for safeguarding this information and ensuring that its platforms provide a secure environment for players.

The repercussions of a consumer data leak may be extensive, as shown by other sectors like banking and retail. In addition to exposing players to risks via the revelation of sensitive personal information, gaming firms face potential financial and brand harm. Regulations concerning privacy and personal data protection are becoming more severe to safeguard gaming corporations, players, financial institutions, and taxpayers. The gaming business must adhere to the worldwide "Payment Card Business Data Security Standard" (PCI DSS), which mandates the safe retention of players' credit card information. The GDPR (General Data Protection Regulation) empowers regulatory authorities to impose fines on non-compliant organizations up to €20 million or 4% of

[1] Денисова, Лоліта, and Віталій Лавров. "Esports And Cybersecurity: Modern Digital Solutions." (2024) *Спортивна наука та здоров'я людини* 1 (11).

worldwide annual sales, whichever is higher. Numerous municipal legislations mandate that gambling transactions be subject to auditing.[2]

What was once seen as a niche industry in the past has now, in recent years, reached acceptance into mainstream society. This change is perhaps most easily seen in India where the sector has become increasingly popular in recent years and particularly during the pandemic. Amid the COVID-19 crisis, enforcing the strict lockdown measures means that the gaming business in India saw a 50 percent jump in revenue. Also, the users further extended their gaming from the previous average of 2. pre-COVID-19, it was 5 hours and now reduced to about 4 hours. One hour after the pandemic.[3] However, the recent increase in the number of online activities has been accompanied by the rise in cyber threats, highlighting the need to secure the game industry against such threats. A study done by cybersecurity firm Norton LifeLock said it found out that as many as 75 percent of gamers in India had fallen prey to hacks on their gaming accounts. The respondents were asked if they were aware of any dangerous software installed in a gaming device; 35% said that they knew about the existence of hazardous software in a gaming device, while 29% said that they knew about a third-party gaining access to an online gaming account.[4]

The internet's rapid growth has led to a surge in digital technology usage across various sectors. However, cybersecurity has become a significant challenge, particularly during the COVID-19 pandemic. The shift from offline to online environments poses privacy and data security risks, particularly in online learning. Online video gaming has become popular among the younger generation, but hackers exploit these platforms to manipulate user credentials and steal data. Cybersecurity is now a highly sought-after discipline in the IT industry, with threats in critical sectors like finance and banking.[5]

The video gaming industry is adapting to changing threats and opportunities by setting new codes and implementing higher safety measures. Cybersecurity has grown by 7% between 2024 and

[2] Zhao, Tiange, et al. "Thriving in the era of hybrid work: raising cybersecurity awareness using serious games in industry trainings." (2024) JSS 210.
[3] Chattopadhyay, Saumitra, Mohit Tiwari, Tripti Tiwari, and Dhiraj Kapila. "Role of Cyber security in Gaming technology." In 2023 3rd ICACITE, pp. 446-451. IEEE, (2023).
[4] Sharma, Kalpit, and Arunabha Mukhopadhyay. "Cyber-risk management framework for online gaming firms: An Artificial neural network approach." Information Systems Frontiers 25, no. 5 (2023).
[5] Ansari, Areena Parveen. "A Critique on Cybercrimes Concerning Online Games and Content: Need for Comprehensive Legal Framework in India." Res Militaris 13, no. 3 (2023.

2031, highlighting the importance of enhanced security systems.[6] However, the recent increase in the number of online activities has been accompanied by the rise in cyber threats, highlighting the need to secure the game industry against such threats. A study done by cybersecurity firm Norton LifeLock said it found out that as many as 75 percent of gamers in India had fallen prey to hacks on their gaming accounts. The respondents were asked if they were aware of any dangerous software installed in a gaming device; 35% said that they knew about the existence of hazardous software in a gaming device, while 29% said that they knew about a third-party gaining access to an online gaming account.[7]

The communities that exist inside the realm of online gaming serve as dynamic platforms where gamers engage in virtual battles, establish strategic alliances, and engage in social interactions. Despite this, there is a darker reality that lies behind the friendly exterior, and it is characterized by instances of online abuse having taken place. Within the realm of online gaming, the purpose of our research is to shed light on the complex factors that motivate individuals to engage in such conduct. It is common for anonymity to operate as a potent trigger, prompting individuals to exhibit behaviors that they may avoid when interacting with other people directly. The allure of power and authority acts as a further driving element, pushing some players to use intimidation methods in order to prove their superiority over other players.[8]

Furthermore, the competitive dynamics of gaming environments heighten tensions and promote a zero-sum mindset. This is a mentality in which the success of one player is seen as a danger by other players, which results in hatred and intimidation. In addition, the pursuit of fun and amusement is not something that should be completely ignored. Some people find that engaging in bullying behavior online provides them with a sense of relief or pleasure. It provides them with an outlet for suppressed emotions or a way to elicit responses from other people. Through the occurrence of this phenomenon, the complex interaction that exists between psychological elements and social dynamics among communities of online gamers is brought into focus. In order

[6] Chawla, Rakesh Kumar, J. S. Sodhi, and Triveni Singh. "Study of the Need for Effective Cyber Security Trainings in India." Singapore: Springer Nature Singapore, (2023).
[7] Mohanty, "A study on building awareness in cyber security for educational system in India using interpretive structural modellings." (2024) IJSAEM 1-11.
[8] Tanwar, Ritesh, and Mamata Mahapatra. "Decoding Digital Deception: Exploring Motivations in Online Gaming Bullying, Cyber Frauds and Deep Fake AI." International Journal of Interdisciplinary Approaches in Psychology 2, (2024) no. 5 1847-1856.

to effectively prevent bullying in online gaming, solutions need to use a variety of different strategies. The establishment of efficient moderation systems, the cultivation of a culture of tolerance and respect, and the advancement of digital citizenship and empathy are all essential steps. The ability to create individualized solutions that encourage safer and more inclusive gaming environments for all players is made possible for stakeholders when they have a thorough understanding of the reasons that underlie harassment in online gaming.[9]

2. CYBERCRIMES CONCERNING ONLINE GAMES

As a complicated concept, cybercrime does not have a single definition that can be applied everywhere. The term incorporates criminal behavior in cyberspace, which includes threats to cyber security, violations of data, and challenges in obtaining an appropriate license. Theft of data, fraud, and the spreading of content are also included in this category. Technology improvements impact the online gaming industry, and in order to improve user experience, outperform competitors, and strengthen market position, developers and designers are willing to sacrifice quality content, data security, social norms, and legal compliance. It is generally acknowledged that the phrase is a big problem in our day and age despite the fact that it is not mentioned in any legislation. In some countries, games that include monetary transactions are prohibited, whereas in others, they are permitted under certain restrictions.

On the other hand, these games are still accessible because of fraudulent software and online games that have been pirated. Because of the intricacies of the internet, it is difficult to identify platforms or applications that are illegal. The huge digital database does not include information on imposters, unlawful manufacturers of software, and distributors. As a result, authorities have a difficult time detecting, identifying, and monitoring pirated channels and the persons who operate them.[10]

The following cyber threats have been noted in the research that Wipro has produced on the significance of cybersecurity in the gaming industry:[11]

[9] Chagas, B. T., D. Jesus, and A. Palma-dos-Reis. "Blockchain's value proposition for online gambling: The operators' perspective." (2024) TFSC 200 123130.
[10] Kaur, Arshnoor, Tushar Khanna, Rajat Dubey, and Ishu Sharma. "Investigating Artificial Intelligence-based Solution for Protecting Online Gaming Servers Against Anomalies." (2023) GCITC 1-5.
[11] Ibid.

- A big problem in the gaming world is known as credential theft, which occurs when malicious actors steal user credentials in order to obtain unauthorized access. This may result in the exposure of sensitive financial data such as credit card information. Identity theft, financial fraud, and transactions on the black market are all possible outcomes of this situation.
- A common aspect of online games is the accumulation of virtual cash and valuable objects by players, which can then be traded in for actual physical currency. These assets are stolen by cybercriminals, who then monetize them on platforms, resulting in financial losses and weakening the integrity of the gaming economy.
- Pirated video games, cracked video games, and console hacking are all examples of illegal distribution and usage of copyrighted video games. These activities result in considerable financial losses for game developers and publishers, which in turn restricts their capacity to invest in new content and developments.
- The gaming sector is exposed to reputational risks as a consequence of security breaches, which may lead to unfavorable publicity, a loss of confidence, reduced user engagement, decreased revenues, and difficulties in keeping a loyal customer base.
- When distributed denial of service assaults (DDoS) are launched, gaming platforms and servers are flooded with an excessive amount of traffic, which results in substantial downtime and irritation. Hackers, rivals, or gamers might launch them for ransom or other reasons. Hackers can also launch them.

3. CURRENT POLICY FRAMEWORK AROUND ONLINE GAMING

In April 2023, the Ministry of Electronics and Information Technology (MeitY) introduced new regulations for online gaming, classifying games into two distinct categories: the game of skills with actual money, including a registered person who is affiliated with one of the SROs and secondly the game of skills with no actual money involved at all. New regulations disallow any game offering that entails betting and wagering on the Internet. These rules also contain obligations for online gaming intermediaries, such as KYC principles, parental permission requirements, and a complaint-handling mechanism. Also peculiar to them is the requirement that three SROs be

formed, including representatives of the industries, pedagogy, and experts, to define the admissibility of online games.

Real money and betting games are the primary areas of concentration for the rules that govern online gaming, which are useful but not complete. Through the use of microtransactions, current games are able to circumvent these limitations and give rewards in the form of virtual cash. Loot boxes, which include the purchase of FIFA points in India, are not subject to the definition of gambling. The article does not provide a conclusive answer to the question of whether or not loot boxes represent gambling and the consequences that they have on players, especially minors. There is still a huge problem with money laundering, despite the fact that online gaming is among the most quickly expanding segments of the entertainment and media industries. For the purpose of drafting legislation to address this issue, MeitY has to work together with the Ministry of Law and Justice, the Ministry of Finance, industry professionals, and stakeholder organizations. It is important to make an effort to monitor and differentiate the records of transactions involving virtual money from those of traditional currencies. In addition, India may coordinate its efforts with those of other countries across the world in order to tackle this new and dangerous kind of money laundering.[12]

The core legal provisions applied to gaming in India are the Public Gambling Act of 1867, a law against public gambling except for lotteries. However, several state laws have followed the central legislation since independence. The Indian constitution allows the state governments to make laws relating to betting, gambling, and lotteries because the Centre does not directly legislate over these activities. Legal decisions thus made a distinction between ‘games of skill’ and ‘games of chance,' but this distinction is still very ambiguous. Generally, any game considered a game of luck is outlawed, though a game involving skill is allowed. [13]

Sikkim is one of the earliest states that sought to regulate online gaming by enacting the Sikkim Online Gaming (Regulation) Act in 2008, which was later amended in 2009. They have made it easy for the state to control games conducted online by issuing licenses to make some revenue for the government and to have full authority over the administration of the licensed games. Likewise, Nagaland passed the Nagaland Prohibition of Gambling and Promotion and Regulation of Online

[12] Kilmer, Elizabeth, Zeynep Aslan, and Rachel Kowert. "From avoidance to action: A call for open dialogue on hate, harassment, and extremism in the gaming industry." no. 2 (2024) ACMGRP 1-17.
[13] Tiwari, Saurabh, and Rajeev Srivastava. "Cyber security trend analysis: an Indian perspective.", (2022) IGI Global.

Games of Skill Act, 2016, where a license is required for wagering and betting online games. This act stresses facilitating the "Games of Skill" throughout India, where such games are allowed. The exact mode of regulation applies to Meghalaya as well.[14]

On the other hand, the Telangana government enacted the Telangana Gaming Act 2017 to ban online gaming to reduce gambling addiction and its associated risks. Nonetheless, this amendment was also sought and is, at the moment, still in the court of law: sub judice. A similar challenge also lies in the High Court regarding the Andhra Pradesh Gaming (Amendment) Ordinance of 2020. The Tamil Nadu government started 2021 intending to ban all types of online gaming; however, the High Court quashed the amendment. The state later passed the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Ordinance of 2022, which is still not notified. Despite this, Karnataka prohibited online gaming by enacting the Karnataka Police (Amendment) Act, 2021. Despite the controversy surrounding the provisions, the High Court paid attention to all the online gaming-related activities.[15]

Online gaming in India is subject to various governance measures, including the Indian Contract Act 1872, IT Act 2000, and the Information Technology (Intermediary Guidelines) Rules of 2021. These laws address intermediary liability and due diligence, making them compulsory for digital media. The Digital Personal Data Protection Act of 2022 aims to regulate personal data processing legally. The Indian government has also implemented measures to ensure a safe and accountable internet, suspending insecure games like PUBG, BGMI, and Chess Rush. Scheme 14C safeguards information in cyberspace and is persistent in circulating warnings through the National Cyber Crime Reporting Portal. In 2022, an inter-ministerial committee was formed to frame the gaming industry. This led to a draft amendment to the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, impacting online gaming.[16]

4. PREVENTION OF CYBERBULLYING IN ONLINE GAMES

Cyberbullying is another issue that players face in the gaming industry today. Whether or not video games breed violence is contentious; however, the bullying issue in the gaming industry does not revolve around an 'if and when' mentality but with 'when' the bullying will take place. Bullying

[14] Vashishta, Tanmay. "Cybersecurity and Legal Ramifications: An Important Concern in India." (2022) Part 2 IJIRL 1.
[15] Ibid.
[16] Dasgupta, Dr D., and Soumyadeep Sarkar. "Privacy: A myth in online gaming." (2022) 3, no. 2 IJAMCJ 38-47.

in the video game world exists, and all the people who play video games have, at one time or another, been bullied. A large number of empirical works have been devoted to analyzing the risk factors and consequences of cyberbullying, having established a connection between online harassment and video game usage severally. A poll that was conducted not too long ago revealed that eighty percent of gamers who participated in multiplayer games, such as those who played DOTA 2, Valorant, Grand Theft Auto, Call of Duty, and CS: Some first-person shooter games, such as those found in the GO, have faced toxicity in the form of cyber harassment. Bullying was at its peak during this period when games such as Massively Multiplayer Online Role-Playing Games (MMORPGs) and Massively Multiplayer Online Games (MMOs) were becoming prevalent. Player-against-player games, as well as cooperation games, which demand gamers to complete the tasks with each other were in high demand among gamers.[17]

For a number of players, gaming creates an atmosphere of competition, which causes their adrenaline levels to reach their highest point. Despite the fact that a sizeable section of the gaming community maintains its composure, the majority of its members engage in bullying behavior. Verbal abuse is often directed against victims of bullying in multiplayer lobbies and within the context of in-game discussions. As reported by ResearchGate and ScienceDaily, those who have been subjected to cyberbullying have a 1.9 times greater likelihood of attempting suicide.

There is a culture of bullying in gaming that is prevalent in multiplayer lobbies, which are infamous virtual battlefields. The poor talents of novice players, in addition to a number of other issues, often manifest themselves in the form of abuse. Although the precise genesis of this toxic culture cannot be pinpointed, a number of studies suggest that the reinforcement of discriminatory behavior or the acceptance of players who

participate in such conduct inside groups is a substantial contributor to the toxic culture that is prominent among gamers who play multiplayer games.[18]

One of the domains that bullies might operate in is cyberbullying. Concealed inside the realm of the internet, there are fewer repercussions. The quest for instant delight, in conjunction with a lack of knowledge of the implications of bullying on the victim, makes this scenario very dangerous.

[17] Tripathi, Prateek. "Cybersecurity Threats in Online Gaming: Learnings for India." (2024).
[18] Abu-Amara, Fadi, Reem Al Hosani, Hamda Al Tamimi, and Baraka Al Hamdi. "Spreading cybersecurity awareness via gamification: Zero-day game." (2024) IJIT 16, no. 5 2945-2953.

Bullies are able to operate under the cover of anonymity that is granted to them by digital privacy, which contributes to the toxic culture and harassment that they perpetuate. With equal percentages of forty and thirty-seven percent, the most common victims of bullying in the gaming industry are members of the LGBTQ community and their female counterparts.

For example, the lobbies of Fortnite, Overwatch, and Grand Theft Auto Online all contribute to the issue of cyber harassment that is carried out by "griefers." The fact that these are only a few of the most famous bullying lobbies suggests that there are a number of other lobbies where bullying is very widespread. The element of this problem that is most concerning is the fact that only 38 percent of people who have been bullied online tell their parents about their experiences. Individuals who engage in bullying behavior may even go so far as to directly pursue their victims in both the digital and physical domains. Unlawful swatting practices are something that all of us are acquainted with. The act of swatting is a fraudulent call to emergency services that falsely reports dangerous activity at the residence of the victim. This false report often results in the deployment of a SWAT squad to the geographically stated location. The death of the victim was the successful culmination of one reported incident.[19]

In the United States of America, a recent study found that bullying has grown by seven percent in the year 2020. The 'mute and report' function may be the one that is used the most by a substantial number of online gamers. From the victim's point of view, it is the only thing they are able to do about receiving cyberbullying.

With the establishment of the Fair Play Alliance in 2017, notable gaming businesses such as Microsoft, Intel, Epic, and Blizzard, along with two hundred other firms, came together to form the association. They came up with a novel approach to combat bullying by offering incentives to equally distributed individuals and areas in which bullying was not a common occurrence. 18,000 Overwatch players were officially recognized and sanctioned by Blizzard, and they were not allowed to participate in the game. Some measures have been used by developers, such as Rockstar, to prevent bullying from occurring inside in-game chat systems. Suppression and

[19] Gwenhure, Anderson Kevin, and Flourensia Sapty Rahayu. "Gamification of Cybersecurity Awareness for Non-IT Professionals: A Systematic Literature Review." (2024) IJSC 11, no. 1 83-99.

regulation of profane language are carried out methodically. This strategy has been used in the online versions of Grand Theft Auto and Red Dead Redemption, among other variants.[20]

Rainbow Six Siege, a multiplayer cooperative game developed by Ubisoft, was a huge success for the company. Partially, as a result of the competitive nature of the game, bullying via voice chat included threats that were racist and sexist. They reply to punishments of thirty minutes for players who violate the rules, which is not even the bare minimum required. However, none of them are adequate in their own right. In the event that they so choose, game developers and publishers can address the ubiquitous toxic culture that is seen among their players. Rockstar's Grand Theft Auto video game, which has been around for eight years, brings in a significant amount of revenue. As a result of the feedback received from fans, an enhanced version of the PlayStation 5 is now being launched.[21]

Bullies and griefers use the lobbies of Grand Theft Auto Online as a platform to harass even non-confrontational players who are engrossed in their hobbies. Players are often subject to suspension, and there is also the option of reporting. However, bullies usually utilize many accounts, and as a consequence, they are not much affected by the situation.

Rockstar can find a solution to this problem if they so want, but they choose not to do so since doing so would not affect their financial interests. Activision has always had a choice between two challenges when it comes to the Call of Duty franchise. It has continuously been a focus point for toxic gamer culture despite the fact that it made a large amount of wealth.[22]

The accusations that Activision has engaged in sexual harassment and discriminatory hiring practices have brought the company to the attention of the media. An investigation by the government will be conducted into Activision. A subpoena has been issued to a large number of top executives by the United States Securities and Exchange Commission in order to investigate allegations of a culture of "frat boy" that encouraged poisonous conduct.

[20] Hebgen, Benjamin, and Hanno Hildmann. *"Social-, Mobile-, and Multi-Player-Games and Their Impact on Today's Online Entertainment Industry."* (Springer International Publishing, 2024) 1691-1697.
[21] Slanbekova, G., et al. "The Phenomenon of Cyberbullying: a Comprehensive Literature Review." (2024) 89.2 JPS 25.
[22] Louis, F., and Saleh Mohamed. "Cyberbullying and Online Harassment: A Multifaceted Examination of Digital Platform Violence." (2024).

Regulations imposed by the government could be of benefit in this situation. The implementation of stringent restrictions and fines on producers has the potential to boost the efforts that are being made to address bullying in video games. To achieve the highest possible level of productivity, however, regulations need to be thought of, carried out, and monitored with great care. When it comes to addressing the problem of toxicity, organizations that are expecting future issues need to make their reputation a top priority. Despite the fact that income is of the utmost importance, it is the responsibility of every company to build an atmosphere that is free from toxicity for both its employees and its gamers.

Discord is used by a large number of people instead of in-game chat since it provides a higher level of privacy. When it comes to preventing abusive and non-consensual encounters with people you do not know, one effective method is to restrict your relationships to people you are already acquainted with. This, however, comes with its own set of challenges. The community is quite large, and the moderating process works differently on each server. By posing as friends and participating in grooming practices, predators take advantage of young gamers without their knowledge. In order to avoid being discovered, these predators are able to deftly avoid the filters and continue to conform to the standards of society.[23]

Real-time speech analysis for the purpose of preventing and resolving instances of cyberbullying involves a number of fundamental obstacles. Bleep is an artificial intelligence-driven voice recognition tool that Intel showed at this year's Game Developers Showcase. It gives users the ability to activate filters that cover a variety of categories, such as sexism, xenophobia, and hate speech.

Despite the fact that selective filtering is a controversial aspect of this technology, the most important question is whether or not it will be able to operate with languages other than English. Recently, gaming has seen substantial expansion, garnering a user base from all over the world across a variety of platforms. This rise may be partially attributed to the pandemic. Linguistic barriers are another factor that makes it difficult to handle cyberbullying practices inside in-game and chat rooms.

[23] Vergel, Pablo, Daniel La parra-Casado, and Carmen Vives-Cases. "Examining cybersexism in online gaming communities: A scoping review." (2024) Trauma, Violence, & Abuse 25, no. 2 1201-1218.

It is also possible for people living in countries and places where English is not the primary language to engage in bullying behavior; nevertheless, even the most modern technology may not be able to prevent digital bullying successfully. The development of technologies such as Bleep represents progress, and developers may work together with groups like these to devise preventive initiatives against bullying.

It is not possible to solve the problem of cyberbullying clearly; it is not like turning on a switch. An individual's online conduct can be influenced by a variety of factors, including the environment, the educational institution, the dynamics of the family, and the connections with their parents and siblings. A big component of the problem is the practice of stereotyping. In spite of the fact that adolescents are often connected with bullying, the average age of a gamer is 34 years old. On various sites, such as Discord, there have been several instances in which adults have attempted to take advantage of minors, pretending to be friends in order to gain their benefit.[24]

5. CHALLENGES

The global gaming industry has evolved significantly since 2010, with new technologies, competitive products, and service offerings. This has increased the risk of cybercrime attacks, posing challenges for developers, designers, publishers, and gamers. Due to jurisdictional issues, governments face challenges in enforcing national laws and fighting against cybercrime. International forums and organizations like the Council of Europe have worked to establish legal procedures and promote best practices within the gaming industry. The Council of Europe has prepared guidelines to protect human rights in virtual games, focusing on responsible information sharing but not online casino betting sites. The International Masters of Gaming Law (IMGL) and the International Association of Gaming Regulators (IAGR) are global non-profit organizations focusing on education and professional recommendations. However, these bodies have not yet agreed on defining means to combat cybercrimes in the gaming industry. International standards governing and preventing cybercrime in the gaming industry are essential to counter these issues.[25]

First and foremost, understanding one type of legislation for the gaming sector's development and growth could help establish similar authorities across different countries. This body could establish

[24] Shafik, Wasswa. "Cyber Attacker Profiling and Cyberbullying Overview." (River Publishers, 2024) 125-149.
[25] Malik, Anjali, Ambika Prasad Nanda, and Rajeev Kumra. "Children in the digital world: Exploring the role of parental–child attachment features in excessive online gaming." (2020) no. 3 Young Consumers 21, 335-350.

rules that recognize and conform to the unique nature of cyber games while fitting their irregularities into the definition of cybercrime.

Secondly, the gaming industry can benefit from blockchain technology by pointing out its advantages based on its own needs, such as increasing security and transparency. In handling all the records of the transactions, blockchain plays a significant role in getting rid of all the problems since it is more difficult for other people to manipulate or hack the information generated through the block chain. Also, the integration of intelligent contracts could assist in reinventing the legal frameworks because it unearths complexities in the legal undertakings and helps all partners understand and adhere to the provisions of the contracts.

Thirdly, the establishment of an international database that records cyber threats and incidents in the video game industry could potentially enhance the awareness level of key stakeholders in the event of emerging threats or potential incidents. The proposed international regulatory body could maintain this database, and all members of the global market could employ it. It can also enhance the exchange of material concerning threats and incidents, which in turn can raise group awareness necessary for countering cybercrime.

Lastly, there is a call to foster partnerships between key stakeholders, such as governments, various industries, and cybersecurity professionals. It is possible to schedule the conferences, workshops, and training sessions on a regular basis; this will allow us to report the outcomes and apply the best practices. This collaboration may also lead to the development of new strategies for fighting computer crimes, and these strategies could range from developing complex and improved techniques for identifying and preventing risks to employing artificial intelligence in formulating and implementing measures against cybercrime. Fifth, gamers should embrace digital literacy and cyber security education programs. By educating users about the threats and risks posed by the internet and how to protect themselves from these "cyber perils," we can reduce the rate at which cybercriminals gain the upper hand. Campaigns urging individuals to learn about cybersecurity or the inclusion of resources in games or gameplay that provide cybersecurity knowledge could serve this purpose.[26]

[26] Ibid.

6. CONCLUSION

The rapid growth of the gaming business, particularly driven by the COVID-19 period, has created several chances for cyber threats. These risks include stealing login information and virtual assets, illegally copying games, and launching distributed denial-of-service attacks. Nevertheless, the inadequacies in the existing legislation have some notable implications: The Ministry of Electronics and Information Technology has formulated new regulations that establish the concept of online real-money games and the responsibilities of online gaming intermediaries. These loopholes facilitate the circumvention of these restrictions by fragmenting them into a sequence of micro-transactions and omitting the crucial issue of loot boxes. The existence of this fragmented legal framework poses a challenge since each state within the nation individually regulates gambling and internet gaming. Certain states in India have distinct restrictions, referred to as the betting and gaming laws of each respective state. Litigation is currently underway due to disputes over these laws.

Additionally, the Information Technology Act and the planned Digital Personal Data Protection Bill are additional regulations that are relevant to this topic. However, these laws only provide some safeguards and do not fully include or address the constantly changing and pervasive cyber dangers that the gaming industry faces. As a result, it is critical to prioritize international collaboration while adhering to international norms and optimal methodologies. The International Association of Gaming Regulators and the International Masters of Gaming Law serve as platforms for the exchange of ideas and best practices among gaming industry organizations. However, there is still a lack of strong international agreement in combating cybercrime and other associated offenses within the realm of online gaming. India must prioritize the implementation of a comprehensive strategy that combines strict security standards with strong legislative frameworks, international collaboration, and proactive community engagement. This should aim to protect players' data, maintain a stable economy in the gaming sector, and provide a secure environment for online gaming businesses to function effectively in order to achieve the goal of establishing a safe and secure online gaming environment.

TRADEMARK EXHAUSTION IN INDIA - NATIONAL OR INTERNATIONAL?

Dr. Ramneek Kaur*

"He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me."[1]

Thomas Jefferson

1.1 Introduction

Discernibly, with the opening of global markets, the concept of parallel importation has assumed much more importance. The wrangle is between the disposition of monopoly rights of the intellectual property right owner over his goods on one hand and the economic benefits that accrue as a result of parallel imports to the ultimate consumers on the other. Parallel imports, a term in trade, pertain to the importation of legitimately acquired goods under intellectual property protection from one country to another without the proper authorization of the intellectual property rights holder. This practice essentially involves importing genuine, non-pirated, and non-counterfeit products that were lawfully obtained from the intellectual property rights holder in one market and subsequently selling them in the same or a different market through unauthorized trade channels at a lower price. In essence, parallel imports involve the introduction of authentic goods produced under the umbrella of intellectual property rights but through unauthorized means. It is also often referred to as grey-market trade because, although the goods themselves are genuine, the trade channels through which they are imported differ from the original intentions of the intellectual property rights holder.

Intellectual property, as its name implies, pertains to creations of the human intellect, such as trademarks including images, symbols, and trade names. Despite intellectual property originating from the realm of the mind, the associated rights are akin to those of any other form of property, granting owners the privilege to benefit from it. The establishment of intellectual property rights was driven by the desire to stimulate innovation and grant creators exclusive rights to their work. As knowledge and practices regarding intellectual property rights have expanded, so have the issues related to them. One such emerging concern is the matter of Parallel Imports.

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[1] Thomas Jefferson, *Selected Writings*, 270 (Library of America, New York, 2011).

It is in this context that a study of opportunities available to the intellectual property right owner for protection of his rights and exceptions thereto, if any, under various intellectual property regimes becomes important.

In this paper, it is intended to study how parallel imports operate under the trademark law in India. To understand the context and nature of parallel importation vis-à-vis trademarks, the basic concept of trade mark and the fundamental intent of protection to the owner of the trademark under the law must be analysed. Therefore, this paper would outline the concept of trademark, its territorial application and whether the practice of parallel importation exploits the principle of exhaustion under trademark territoriality.

1.2 Trademark: Meaning

Trademark is a 'mark' that represents a company or a product, it could be a word, phrase, symbol, expression, image or outline, or blend of words, expressions, images or plans.[2] As per the Trade Marks Act, 1999, a mark capable of being represented graphically and capable of distinguishing the goods or services of one person from those of others can be termed as a trade mark. It may include shape of goods, their packaging and combination of colour.[3] And a 'mark' could be a label, brand, heading, name, device, signature, ticket, letter, word, numeral, shape of goods, packaging or combination of colours or any combination thereof.[4] In usage, there can be different types of trademarks; different marks can be combined in various ways to suit the personality or appearance of a brand. Some of the examples of various types of trademarks include:

- Brand names like Blackberry, KFC and Gucci
- Product names like iPhone and MacBook
- Slogans like "Just Do it" of Nike and "Because you're worth it" of L'Oreal'
- Words in a stylized font like "Disney" and "Google"
- Company logos like the Walt Disney's logo comprising of the iconic castle from Cinderella or Shell's pecten symbol in yellow and red color
- Colors like Red and Yellow used for Master Card and Blue used for Twitter
- Product shapes like the Toblerone Candy-bar and the Coca-Cola bottle
- Sounds like the Lion's Roar of MGM and The Tarzan Yell
- Fictitious characters like Noddy and Geico's talking gecko

[2] T. Ramappa, *Intellectual Property Rights Law in India* (Asia Law House, Hyderabad, 2010).
[3] Section 2(1)(zb), the Trade Marks Act, 1999.
[4] Section 2(1) (m), the Trade Marks Act, 1999.

- Symbols (also referred to as devices) like the McDonalds golden arch and ellipses design of Toyota
- Acronyms like DKNY (Donna Karan New York) and BMW (Bayerische Motoren Werke)
- Stylized fonts like the "M" of McDonalds
- Combination (also referred to as composite) marks include more than one feature like the emblem of Starbucks coffee (a name and a symbol) and the peculiar Tiffany & Co. gift box (a name and a shape)

Due to the technological revolution in the communication, media and other related areas as well as due to the increased knowledge and awareness among people, there is an inclination towards registration of non-conventional marks like smell marks, sound marks, colour marks, shape marks, advertisement slogans, trade dress etc. to capture the market.

1.3 Trademark: Purpose and functions

A trademark indicates source of origin of goods[5] which means it primarily is used to reach out to the consumers while portraying and identifying specific set of goods and services with represented and guaranteed quality originating from specific sources. As per David Haigh, a brand valuation expert, "the single largest source of intangible value in a company is its trademark."[6] Trademark acts as a quick and reliable guide to quality by differentiating a company of its products and services from their competitors. It helps a company to build a reputation in the market and keep hold of a loyal clientele by instilling consumer confidence and trust for their goods and services. In the case of *Andrew* v. *Keuhnrich*[7], it was observed that the basic purpose of a trademark is to describe the brand and its origin, to ensure unaltered quality, to promote the goods, and to function as a symbol of business goodwill.[8] It could be said that a trademark is a tool for product representation and advertising. It lets customers recognize the products of a particular company and ensure the quality of the product. It can be said that trademarks build confidence, trust and loyalty to their product to eyes of the customer and improve the sale of the product by looking at the trademark.

Essentially, it is the basic purpose of a trademark to ensure (a) minimal confusion among the consumers by identifying the particular company/person from which a particular good has originated and (b) maximum satisfaction of the consumers through quality control measures

5 Clarisa Long, "Dilution" 106 (5) *Columbia Law Review* (2006) 1029.
6 *Available at* https://www.upcounsel.com/trademark-examples (Visited on July 20, 2024).
7 (1913) 30 RPC 677.
8 *Ibid.*

which are expected by the consumers out of the goods of a particular company[9]. Thus, for example, the presence of the mark Dairy Milk on chocolate bars is indicative of such chocolate bars being products manufactured by Cadbury and so the quality which can be expected from such bars by the customers is the one that the public generally associates with products of Cadbury. Similarly Adidas's three stripes or Nike's swoosh symbol make merchandise like shoes, jackets and t-shirts make more valuable because they ensure the quality of their product. Today, at $44 billion dollars, Google is taken to be the most valuable trademark on the planet.[10] Companies like Apple, Microsoft and IBM offer quality products and services that are not available anywhere else. It is their trademark that allows consumers to differentiate them from other companies with similar offerings. Therefore, while on one hand, trademarks allow customers to recognize brands in a crowded market and keep the next person from copying, or infringing on, someone else's work; on the other hand trademarks also encourage companies to adhere to standards- to have consistent sales, they must deliver on their brand promise. Consumers then identify with the values of a particular brand and thereafter expect consistency and quality with their trusted brands.[11] That is the strategy companies adopt to build their long-term relationships with the public.

1.4 Scope of Protection of trademarks

The basic purpose of a trademark is to distinguish the products or services of one company or person from those its competitors. People therefore register their trademarks to get a legal protection of the rights attached to their creations. Apparently, trademarks have an existence or rather importance only when associated with a product. Thus, infringement of a trademark occurs when someone uses the trademark in relation to a product without being authorized by the owner of the trademark. Like any other intellectual property, the trademark law grants a monopoly right to the trademark owner in a way that the trademark can either be put to use exclusively by himself or with his consent.[12] If the trademark is used by any other person, the same can be prohibited by the owner of the trademark and he can claim damages of such unauthorized use.

Principle of territoriality governs this monopolistic right granted by the trademark meaning, it is only within a particular territory that the owner of the trademark can exercise his monopolistic exclusive rights for protection of his trademark and the goods thereunder. Each

9 Sneha Jain, "Parallel Imports and Trademark Law", 14 *Journal of Intellectual Property Rights* 14 (2009).
10 Supra note 6
11 *Ibid.*
12 Jeremy Phillips, *Trade Mark Law: A Practical Anatomy* 273 (Oxford University Press, London, 2003).

country grants trademark rights solely as per the statutory scheme followed by it[13] and so accordingly the law prevalent at the place where a dispute in relation to a particular trademark arises would be applicable for adjudging the said dispute.[14] The territorial character of trademark is so imbedded also for the reason that it was around the principle of national treatment that late nineteenth century conventions[15] laying foundation for intellectual property were built.[16] It is often argued that there are different reasons due to which different rules under trademark law possess a territorial character[17]: (a) Trademark rights are territorial as the fundamental purpose of trademark i.e. identification of the source or origin, is served correctly by recognizing rights in favor of the local manufacturer.[18] (b) Regardless of having been promulgated by legislature or judiciary, trademark laws are primarily promulgated by national law making institutions, hence considered territorial.[19] (c) It is through national mechanisms that a trademark is acquired. Thus, the rightful owner has to obtain separate registrations country-wise. (d) Trademark rights can be enforced on a national basis, meaning thereby that notwithstanding rights being held by the trademark owner in different countries, an action for infringement in any particular country will lie only to the extent of vindication of the rights available in that country.[20]

Territoriality of a trademark, therefore, means that a trademark owner needs to get two separate registrations for two different countries, say country X and Y, for the same mark. By virtue of the said registrations within the respective territories of country X and Y, goods produced under the trademark in both the countries would be deemed to be genuine. But because of the reason of territoriality, the trademark owner himself can prevent import of genuine goods from X to Y or vice-versa as they have been manufactured legally by separate undertakings. Say for example, Cadbury (in Sri Lanka) would have the right to prevent use of its trade mark on import of goods that have been manufactured by Cadbury (in India) since it would amount to use of identical signs/identical goods which can be regarded as infringement under Section 29 Trade

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13 *Person's Co.* v. *Christman* 900 F.2d. 1565 (Fed. Cir. 1990).
14 Graeme B. Dinwoodie, "Trademark and Territory: Detaching Trademark Law from the Nation State", 41(3) *Houston Law Review* 886 (2004).
15 Article 2, The Paris Convention for the Protection of Industrial Property, 14 July 1967 (hereinafter Paris Convention) and Article 5, Berne Convention for the Protection of Literary and Artistic Property, 24 July 1971 (hereinafter Berne Convention).
16 *Supra* note 14.
17 *Ibid.*
18 *United Drug Co.* v. *Theodore Rectanus* 248 U.S. 90.
19 *Supra* note 14.
20 *Ibid.*

Marks Act, 1999. Territoriality of trademark, hence, in a way imposes a restriction of trade and to counter the same, the principle of exhaustion is applied.[21]

1.5 Impact of misuse/unauthorized use of trademarks

The main purpose of a trademark is to facilitate people in recognizing the source of a particular good or service. The source, further in turn, facilitates people determine the quality and it is the quality that people (consumers) usually base their purchasing decisions on. This makes a trademark important for an economy as a whole and for a customer, it reflects the source and quality of the goods or services. Since a trademark represents the brand value of the trademark owner, it becomes imperative to ensure that a trademark is not being used by anyone else. If a person uses a registered trademark of another person without his permission, the former not only commits a crime but also causes damage to the business of the latter thereby damaging the brand name (or reputation) of the latter. People tend to use trademarks of the others to use their market reputation and market stake to enhance their own business without any extra efforts. However, this cannot be permitted. This would in effect cause loss of finances and goodwill to the owner of the impugned trademark. Considering the impact of misuse of trademarks in the case of *Laxmikant Patel* v. *Chetanbhai*[22], it was observed by the Court that law does not allow anyone to conduct their business in such a way as to deceive and mislead consumers or cause damage to another person. No one could be permitted to misrepresent or match the rivals in their company or advertisements by contrast to harm the competitors' company. The one who uses in an unauthorised manner, a trademark of another, could be held liable for infringement and passing off.[23] Therefore, if a person wrongfully uses a registered trademark of another person, he would be liable for infringement and/or passing off.

1.6 Infringement of Trademark

Infringement per se means 'encroachment' of rights under a trademark. A registered trademark is said to be encroached when it is used by a person who is neither the registered owner nor the licensee of the said trademark in relation to the goods or services for which it is so registered. Violation of the exclusive rights, attached to a trademark, without the authorization of the owner of the trademark or anyone so authorised by him is 'infringement'. Section 29 of the Trade Marks Act, 1999 discusses various aspects related to infringement. As per section

[21] *Supra* note 9.
[22] 24 PTC 1 SC 2002.
[23] *Ibid*.

29(1) if any person, other than the registered owner of a trademark or any person allowed by him thereof, in course of trade, uses any mark that is identical with or deceptively similar to a registered trademark in relation to goods or services for which the said trademark is registered and there is likelihood of confusion due to the use of the said mark, then that person would be liable for infringement.

Section 29(2) states that there would be an infringement of a registered trademark if any person, other than the registered owner of a trademark or any person so allowed by him, uses in course of trade, any mark and (a) the two marks are identical and the goods or services in respect of which they are used are similar to each other or (b) the two marks are similar and the goods or services in respect of which they are used are identical or similar to each other or (c) the two marks as well as the good and services in respect of which they are used are both identical; and due to the use of the impugned mark, there is likelihood of confusion on the part of the public or likelihood of association of the impugned mark with the registered trade mark. As per section 29(3), the court is empowered to presume likelihood of confusion on the part of the public if the case falls under 29(2)(c).

Section 29(4) caters to infringement of well-known trademarks. as per the provision if any person, other than the registered owner of a trademark or any person allowed by him thereof, uses in course of trade, any mark which is either identical with or similar to the registered trade mark and is used in relation to goods or services which are not similar as under the registered trademark and the registered trademark is well known trademark in India. It would be required to be proved that the use of the impugned mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark. Section 29(5) it would an infringement if a registered trademark is used by any other person as his trade name or name of his business concern or part thereof, and deals with goods or services for which the trade mark is registered.

Section 29 (6) states that for the purpose of infringement , the word “use” would mean use of the registered trademark for packaging, offering for sale, putting the goods in market or stocking them for selling, importing or exporting the goods and advertising the impugned goods. As per Section 29 (7), if a person had knowledge or reason to believe that application of the mark is not duly authorised by the owner or anyone allowed by him for such purpose, then such person would be liable for infringement if he applies the registered trade mark to any material intended to be used for labelling or packaging goods, or for advertising goods or services or as a business paper. As per Section 29 (8) an advertisement could infringe a registered trade mark if such advertisement (a) took unfair advantage of and is contrary to

honest practices in industrial or commercial matters; or (b) is detrimental to its distinctive character; or (c) was against the reputation of the registered trade mark. As per section 29(9) if a registered trade mark consisted of or included words, as distinctive elements, then the trade mark could be infringed by the spoken use of these words or by their visual representation.

Infringement would occur when a person would use a trademark identical or confusingly similar to a registered trademark owned by someone else, in relation to goods or services which are identical or similar to the goods or services covered under the said registration.[24] So, infringement is an act whereby an unauthorized person uses a trademark that is 'identical' or 'deceptively similar' to a registered trademark and such use causes a likelihood of confusion among the public. To understand this better, it is important to discuss the following constituent elements of infringement of trademark:

- *Unauthorized person* – meaning a person who is not the owner or the licensee of a registered trademark.
- *'Identical' or 'Deceptively similar'*– to determine whether two marks are identical or not, it is to be ascertained whether there is a chance for a likelihood of confusion among the public i.e. whether by the use of the two marks, customers are likely to get confused between the two or not. If the answer is affirmative, then then there is an infringement of the registered trademark.
- *Registered Trademark* – Infringement can happen only of a trademark that has been lawfully registered with the appropriate authority. For an unauthorized use of an unregistered trademark, the common law concept of passing off will apply.
- *Goods/ Services* – In order to establish infringement even the goods/services used under the two marks i.e. the impugned mark and the registered trademark, must be identical or similar.

The touchstone to determine deceptive similarity is "likelihood of confusion". A number of factors have be set forth by the courts in various cases for determining the likelihood of confusion, such as the familiarity of the appearance of the two marks, meaning of the said conflicting marks; similarity in the goods on which the marks are used; the channels of commerce through which the marks are sold; and the class of relevant purchasers of the goods. In ascertaining whether there is trademark infringement, all of these factors as well as other

[24] *Available at* https://www.justice-bridge.org/guide/5550d74277777743744a0000/Intellectual-Property-Infringement-Misappropriation-and-Enforcement (Visited on June 21, 2024).

relevant factors must be considered. Furthermore, the infringement can also be done by the spoken use of those words as well as by their visual representation.

To understand as to why exactly infringement, happen, why would a person unfairly adopt a trademark that is confusingly similar to another person, and why such act is prohibited by law, is perhaps not that difficult. One can easily judge as to why such practice is prohibited by the law. If such act was permitted, consumers would be confused as to the origin of a certain product and rely its quality which he might not receive. Also, the person who, so infringes would benefit from the trademark owner's time, money, and effort went in building goodwill for the trademark. Apparently, no one can use a trademark which is deceptively similar to the trademark of other. However, for deceptive similarity, it is not essential that the two marks have to 'look' alike.

Even phonetic similarity between the two would qualify the latter for infringement of the registered trademark. As discussed in the case of *Glaxo Smith Kline Pharmaceuticals Ltd.* v. *Unitech Pharmaceuticals Pvt. Ltd.*[25] wherein it was claimed by the plaintiff that defendants were selling products under the trademark FEXIM which was deceptively similar to the PHEXIN a registered trademark of the plaintiff, used for pharmaceutical preparations; the defendants were allegedly selling anti-biotic tablets with the trademark FEXIM and a packing material deceptively similarly to that of the plaintiff; it was alleged that they intended not only to infringe the trademark but also to pass off the goods as that of the plaintiff as the two marks were also phonetically similar. The Court deciding in favour of the plaintiff restrained the defendant from using the trademark 'FEXIM' as being deceptively similar to the trademark of the plaintiff 'PHEXIN' and for its packaging material being deceptively similar to that of the plaintiff.

Similarly, if a person uses a mark which though deceptively similar to a registered trademark, is actually a family 'name' and is not intended to spread its business by use of that particular name then also that party could be restrained from using the tradename of other company. For instance, in the case of *M/s Bikanervala* v. *M/s Aggarwal Bikanerwala*[26] the plaintiff, using the name BIKANERVALA from 1981 and registered since the year 1992, filed a suit against the defendant, an owner of a sweet shop under the name AGGARWAL, the same being his family name. The Court deciding in favour of the plaintiff and granting a permanent injunction against

[25] MANU/DE/2840/2005.
[26] 117 (2005) DLT 255.

the defendant observed that the two marks being deceptively similar caused confusion amongst the public and hence could not be permitted to be used.

The question a person could be allowed to get a trademark registered in his name elsewhere after he has sold the said trademark in another territory came up before the court in the case of *Coca Cola Co.* v. *Bisleri International Pvt. Ltd.*[27] In this case, Bisleri, originally owned the trademark of mango drink MAAZA, however later sold it to Coca Cola in India. Later, Bisleri applied for registration of the trademark MAAZA in Turkey and thereunder started exporting the drink under the trademark MAAZA to India. Observing that such an act amounted to infringement, the Court issued an injuction against Bisleri for infringement of trademark MAAZA and restrained it from divulging in the formulation of the drink. *Yahoo!, Inc.* v. *Akash Arora*[28] was a case of identical domain names. Here the domain names of the Plaintiff and the Defendant, 'Yahoo!' and 'Yahoo India!' that of plaintiff and defendant respectively, were in question. It was alleged that the two were not only identical but also phonetically similar. It was alleged by the plaintiff that because of the similarity in the two marks, there would be likelihood of confusion among the users and clearly it is an attempt to deceive users and lead them to believe that the two domain names were connected. Deciding in favour of the plaintiff, the court observed that the name 'Yahoo!' had become distinct and unique and could be associated with the plaintiff by public at large and use of the same by the defendant in the impugned manner resulted in infringement. The Court observed that even a domain name served a similar purpose as that of a trademark and therefore must be granted similar protection. In the case of *Christian Louboutin* v. *Pawan Kumar*[29], the Red Sole shoes was registered as a trademark by the plaintiff in various countries and are a distinctive character of plaintiffs good for which the trademark has been so obtained. It was alleged that the defendant were selling women's footwear with plaintiff's 'RED SOLE' trademark. It was observed by the Court that customers all over the world associated RED SOLES with the plaintiff and hence it was a well-known trademark. The defendant were therefore held liable for infringement. *M/S Castrol Limited* v. *Iqbal Singh Chawla*[30] is a case of identical sub-brands & trade-dresses. The plaintiff who was the owner of the trademark 'CASTROL' and 'ACTIV', found out that the defendant had been selling 4T oil under the trademark 'LUMAX ACTIVE'. The trade dress of products, including the layout and the font, were an imitation of plaintiff's products. An injunction to the

[27] Manu/DE/2698/2009.
[28] 78 (1999) DLT 285.
[29] 2018 (73) PTC 403 (Del).
[30] CS (OS) 4/2011 decided on January 3, 2018.

extent of use of trademark 'ACTIVE' in a manner resembling the packaging and font of the plaintiff's products, was granted by the Court. However, Court clarified that the injunction would not restrain the Defendant from using the mark 'ACTIVE' in different packaging, font, and trade dress than that of the Plaintiff.

In the case of *Milmet Oftho Industries* v. *Allergan Inc.*[31], upholding the doctrine of trans-border reputation, the Court protected the respondents even though not registered for their mark in India. In this case, the Appellant was an Indian pharmaceutical company which used the mark OCUFLOX that was deceptively similar to that of the respondent. The Court observed that even though the mark had been neither registered nor used by the Respondent in the Indian market, it ought to be protected because Respondent was the first to enter the world market with the mark OCUFLOX and to register the same. The Court observed that it was in the interest of public that probability of confusion and deception ought to be prevented in the field of medicine. *Cadbury India Limited* v. *Neeraj Food Products*[32] is an illustration of phonetic similarity. In this case, the plaintiff had a trademark 'GEMS' registered in its name. It was alleged by the Plaintiff that the Defendant was allegedly selling a product under the mark 'JAMES BOND' which was phonetically similar to 'GEMS' of the Plaintiff and product of the two resembled in packaging and size, and hence deceptively similar. Finding the two products to be deceptively similar, the court ruled in favor of the Plaintiff.

In the case of *Pidilite Industries Limited* v. *Poma-Ex Products & Ors.*[33] the question was whether parts of a trademark could be a subject of protection. In this case, Plaintiff who owned the mark "FEVIKWIK" had sued the defendants for use of the mark "KWIKHEAL" alleging that the defendant not only dishonestly picked up 'KWIK' a part of Plaintiff's trademark but was also using a similar packaging of the product as that of the Plaintiff. Deciding in favor of the plaintiff, the court observed that the mark 'KWIK' was a dominant part of the trademark of the Plaintiff and so could not be adopted by the Defendant. The court observed that the phonetic similarity between the marks could easily mislead and deceive the consumers. And so an injunction was granted restricting the Defendant from using the same. In the case of *DM Entertainment* v. *Baby Gift House*[34], plaintiff company, the owner of rights assigned by the pop-star Pop-star Daler Mehndi under the trademark 'DALER MEHNDI' along with personality rights sued the Defendant who started making Daler Mehndi dolls thereby

31 2004 (28) PTC 585 (SC).
32 142 (2007) DLT 724.
33 2017 (72) PTC 1.
34 MANU/DE/2043/2010.

encashing the artist's popularity. Recognizing the artist's publicity rights as well as the celebrity merchandising rights in favor of the plaintiff, an injunction was issued against the Defendant.

In the case of *H&M Hennes & Mauritz AB* v. *HM Megabrands Pvt. Ltd.*[35], the Plaintiff contended that they were well-known fashion brand under the trademark 'H&M' which was adopted in the year 1970. While the plaintiff operated thousands of outlets worldwide under the said trademark, they registered the same in India in the year 2005. It was alleged that the defendant who represented 'HM' mark using the same colour combination of red and white as used by the Plaintiff, had infringed their trademark. On the other side, the defendant contended since mark so adopted by the stood for the names of their directors, the said usage and adoption of the mark by them was innocent. The defendant contended that when they adopted their mark 'HM' in year 2011, the plaintiff had not acquired any reputation in Indian market till then. Ruling in favour of the plaintiff and restraining the defendant from using the impugned 'HM' mark, the Court observed that in case of a brand with trans-border reputation it need not be even necessary for it to set up shop in India for its trademark to be protected in India.

In the case of *Starbucks Corporation* v. *Sardarbuksh Coffee & Co. & Ors.*[36] a well-known chain of coffee outlets spread over the world including India of the plaintiff who had registered its trademark 'STARBUCKS' and logo representing a "long-haired crowned maiden" in India in 2011 sued the defendant who apparently in 2015 started their venture with a logo comprising of the words "SARDARBUKSH COFFEE & CO." written in a black circular band and an image of a turbaned man and wavy lines behind him. The color scheme used in this logo was the same as the logo of the Plaintiff. Finding that the trade-name as well as the logo of the two were deceptively similar, Defendants were asked to change their name to 'SARDARJI-BAKHSH COFFEE & CO.' for running their business. Hence any unauthorized use of the exclusive statutory rights under a registered trademark would constitute infringement.

Section 30 of the Trade Mark Act, 1999 mentions certain limits on effect of registered trade mark i.e. certain conditions where a trademark cannot be said to have been infringed. These conditions can be used by the alleged infringer as defences in a suit for infringement of trademark to escape his liability. As per Section 30(1) it would not be an infringement if the use of the impugned mark is in accordance with honest practices of the industry concerned and the use does not take any unfair advantage of or is not detrimental to the distinctive character or repute of the trade mark in question. As per section 30(2), it would not be an infringement

[35] IA No. 7259/2016 in CS (COMM) No. 707/2016, decided on May 31, 2018.
[36] CS (COMM) 1007/2018 decided on August 1, 2018.

infringed where (a) the mark is used for indicating the kind, quality, quantity, value, intended purpose, geographical origin, the time of production or any other characteristics of the goods or services; (b) a trade mark is registered with certain conditions or limitations, and use of the impugned mark is the under the ambit of the said limitations where the registration of the registered trademark does not extend; (c) the use of the impugned trade mark is in the continuance of the permitted use by the original owner who subsequently did not remove or obliterate it, so the use is with an express or implied consent of the owner of the registered trademark; (d) only a part the trademark is adapted to form part of or to be accessory to other goods or services in relation to which the trade mark has been used without infringing rights of the registered trademark and such use does not indicate any connection in the course of trade between the two marks; (e) both the trademarks though identical or nearly resembling each other are duly registered under the Act.

As per Section 30 (3) it would not be an infringement where a person lawfully acquires goods under a registered trademark and (a) subsequently the registered owner of the said trademark assigns it to some other person or (b) the owner or anyone with his consent put up the goods under the registered trade mark in the market. Section 30 (4) puts a limit on the operation of sub-section (3) i.e. if the owner has legitimate reasons for opposing further dealings in the goods or where there has been a change or impairment in the condition of the goods after they had been put up in the market, then the right against infringement can be exercised.

1.7 Principle of Exhaustion vis- a- vis trademark

Exhaustion means if the goods protected under a trademark are put up in the market by the owner of the said trademark or with his consent, and thereafter legitimately purchased, then even the trademark owner or anyone who derives his title therefrom cannot exercise their rights of further disposal of such goods, because after its first sale, the exclusive right to sell or deal with trademarked goods is 'exhausted'. It is because of this concept that the principle of exhaustion is also referred to as the First Sale Doctrine. As the term implies, on the first sale of a good, the intellectual property right owner has no more control over the means of disposal of that particular good which has already been sold with his consent. So the exclusive right to sell goods under a registered trademark cannot be exercised in respect of the same goods more than once.[37] The manner in which two or more countries co-exists with each other has a profound effect on the way the doctrine of exhaustion operates in these countries.

[37] Ashwani Bansal, *Law of Trade Marks in India with introduction to Intellectual Property Laws* 142 (Institute of Constitutional and Parliamentary Studies and Centre for Law, Intellectual Property and Trade, New Delhi, 2009).

An old saying that we all have heard in our lives somewhere or the other, "the world is not just 'black and white'; there are many 'grey' shades in between, that tend to raise difficult questions" is even applicable to Intellectual Property Rights. Parallel imports i.e. lawful import of a genuine goods under a registered trademark without the permission of the owner thereof, thereby creating a trade channel running parallel to the authorized trade channel of the owner, can also be referred to as a 'grey market' import. These imports cannot be referred as 'black' because the goods are not only genuine but also lawfully purchased and they can neither be referred as 'white' because as per the owners of the intellectual property, they have not authorized these imports.

To illustrate with an example, let us assume that Apple Inc. owner of the trademark "iPhone" besides US, EU, India has a registered trademark in several other jurisdictions including Bangladesh. It comes to the knowledge of one retailer in India that the price of iPhone is cheaper in Bangladesh than in India. To make considerable profit, he imports these phones from Bangladesh into India and starts selling them in India. Apple Inc. files a suit against this retailer on the ground that such sales within India would amount to an infringement of its trademark (despite the fact that iPhones that are being sold in India by him are without alteration of any sort). However, to ensure complete control of its markets and to preserve its exclusive licensing relationship with partners in countries like India, Bangladesh etc., Apple Inc. filed the said suit. Now, if the law recognizes the doctrine of international exhaustion, Apple Inc. despite being the owner of the trademark 'iPhone' will not be able to prevent the imports and sales in India, since it had already sold the iPhones (in Bangladesh) that are now in circulation. However, if the law disregards the concept of international exhaustion (and recognizes only national exhaustion), then Apple will successfully be able to prevent the said imports.[38]

1.8 Treatment of Parallel imports under the Indian Trademarks law

The concept of parallel import has not been expressly mentioned under the Trade Marks Act, 1999. However, it would not be correct to say that the concept is not covered under the act or is alien to the trademark law. A few provisions, interpretations thereof (by authors) and a few cases law under the trademark law do mention and discuss the concept of parallel imports and the principle of exhaustion. Section 30(3)(b)[39] of the Trade Marks Act provides that after the

[38] *Available at* https://spicyip.com/2013/01/samsung-at-supreme-court-nationalising.html (Visited on June 26, 2024).

[39] Section 30(3) provides Where the goods bearing a registered trade mark are lawfully acquired by a person, the sale of the goods in the market or otherwise dealing in those goods by that person or by a person claiming under or through him is not infringement of a trade mark by reason only of-

goods under a registered trademark have been acquired lawfully, a further sale of such goods by purchaser or anyone who claims under him would not be considered as an infringement by reason only that the goods under the trademark were put on the market by the trademark owner himself or with his consent. However, there should not have been any material alteration or impairment in the goods after having been put in the market[40].

In his book[41], P Narayanan seems to indicate that Section 30[42] of the Trademarks Act allows unhindered and all-restrictions-barred parallel imports. Referring to the case of *Winthrop* v.

(b) the goods having been put on the market under the registered trade mark by the proprietor or with his consent.

40 Section 30 (4) Trade Marks Act, 1999.

41 P Narayanan, *Law of Trademark and Passing Off*, 570 (Eastern Law House, New Delhi, 2004).

42 Section 30. Limits on effect of registered trade mark
(1) Nothing in section 29 shall be construed as preventing the use of a registered trade mark by any person for the purposes of identifying goods or services as those of the proprietor provided the use-
(a) is in accordance with honest practices in industrial or commercial matters, and
(b) is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark.
(2) A registered trade mark is not infringed where--
(a) the use in relation to goods or services indicates the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services or other characteristics of goods or services;
(b) a trade mark is registered subject to any conditions or limitations, the use of the trade mark in any manner in relation to goods to be sold or otherwise traded in, in any place, or in relation to goods to be exported to any market or in relation to services for use or available for acceptance in any place or country outside India or in any other circumstances, to which, having regard to those conditions or limitations, the registration does not extend;
(c) the use by a person of a trade mark--
(i) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk of which they form part, the registered proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark; or
(ii) in relation to services to which the proprietor of such mark or of a registered user conforming to the permitted use has applied the mark, where the purpose and effect of the use of the mark is to indicate, in accordance with the fact, that those services have been performed by the proprietor or a registered user of the mark;
(d) the use of a trade mark by a person in relation to goods adapted to form part of, or to be accessory to, other goods or services in relation to which the trade mark has been used without infringement of the right given by registration under this Act or might for the time being be so used, if the use of the trade mark is reasonably necessary in order to indicate that the goods or services are so adapted, and neither the purpose nor the effect of the use of the trade mark is to indicate, otherwise than in accordance with the fact, a connection in the course of trade between any person and the goods or services, as the case may be;
(e) the use of a registered trade mark, being one of two or more trade marks registered under this Act which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration under this Act.
(3) Where the goods bearing a registered trade mark are lawfully acquired by a person, the sale of the goods in the market or otherwise dealing in those goods by that person or by a person claiming under or through him is not infringement of a trade mark by reason only of--
(a) the registered trade mark having been assigned by the registered proprietor to some other person, after the acquisition of those goods; or
(b) the goods having been put on the market under the registered trade mark by the proprietor or with his consent.

Sun Ocean[43], an analysis has been drawn explaining that in a situation where goods under a registered trademark are manufactured by the parent company and subsequently sold wholly or in part through subsidiary companies in different parts of the world, then no complaint by the parent company or any subsidiary company can lie in any country if such trademarked goods are resold.

As far the Indian position is concerned, the Court in the case of *Kapil Wadhwa v. Samsung Electronics*[44], the Court ruled that India follows the principle of international exhaustion and the practice of parallel imports is permitted in respect of trademarked goods. However, parallel imports of goods under trademarks have not always been permitted. Even though Section 30(3)(b) provides for the concept, the trademark owners were able to restrict parallel imports because the Courts did not recognize such imports as legal. In *Hindustan Lever Ltd.* v. *Briju Chhabra*[45], a case where LUX trademark and LUX label for toilet soaps were registered in name of the plaintiff in India; it was contended that the defendant without any authorization, permission or license from the plaintiff, imported LUX soaps manufactured in Indonesia into India. There was an express indication that the said products were for sale only in Indonesia. It was argued on behalf of the plaintiff that the act of the defendant of parallelly importing the LUX soaps from Indonesia amounted to infringement of not only the common law rights but also the statutory rights of the plaintiff in India. It was irrelevant that the said goods were genuine because any shortcomings in the said goods would be attributed to the plaintiff. Agreeing with the contention of the plaintiff, the defendant was restrained by the court from carrying on such parallel imports.

In *CISACO Technologies* v. *Shrikanth*[46] where the plaintiff, owner of the trademark CISCO, since the year 1984, was selling its products used in computer hardware, under the said trademark along with a 'Bridge Device', while the defendant had not only copied the product of the plaintiff but also its trade name in identical terms, the defendant used 'CISCO SYSTEMS' on its goods along with the 'Bridge Device'. As a result, Section 29(6)(c) read with section 140 of the Trade Marks Act was invoked by the plaintiff. The defendants were restrained from using the impugned trademark as well as any other mark deceptively similar thereto. The Customs authorities were directed to send notification to all ports not to permit

(4) Sub-section (3) shall not apply where there exists legitimate reasons for the proprietor to oppose further dealings in the goods in particular, where the condition of the goods, has been changed or impaired after they have been put on the market.

43 [1988] FSR 430.

44 *2013 (53) PTC 112 (Del.).*

45 CS(OS) 2345 of 2000.

46 2005 (31) PTC 538 (Del).

import of any consignment, other than that of the plaintiff, in respect of routers, switches and cards under the mark CISCO and/or the 'Bridge Device'.

In *Samsung Electronics Company Ltd.* v. *G. Choudhary*[47] plaintiff filed a suit for injunction for infringement of trademark against the defendant, an unauthorized distributor from importing and distributing Samsung's products in a district court. The injunction was denied so the matter went in appeal where the plaintiff sought an injunction for combatting and eradicating parallel imports into India of plaintiff's products manufactured in China, by third parties. The main contention of the plaintiff was that although the goods in questions were genuine, they were not manufactured for the Indian markets. Though the Court granted an injunction in favor of the plaintiff, it observed that if products are not materially altered after having been put up in the market, in such cases the Indian law is relatively liberal in allowing parallel imports of genuine products under registered trademarks. As per the court, as a general rule, if the trademarked products are sold anywhere in the world, by the trademark owner or with his consent, then he cannot be allowed to contend that he has a right to prevent imports of such products anywhere else, say India, however under a condition that such goods remain materially unaltered. In view of the Court, the rationale underlying liberal exhaustion is that trademarks do not deem to control but only connote trade origin. Only in case the genuine goods are materially altered without the consent of the owner after they were put up in the market that a cause of action for infringement of trademark would arise against the importer. Additionally, a cause of action for passing off would also be available to the owner of the trademark in case he shows that the goods have been passed off by the importer which mislead or cause confusion in the minds of the public. An injunction was granted based on the facts of the case despite the opinion of the court being pro-parallel imports.

Despite the above decisions where parallel imports were restricted, in *Xerox Corporation* v. *Puneet Suri*[48] the Court recognised that principle of international exhaustion is followed under the Indian law. In this case it was contended by the plaintiff being the owner of 'Xerox' trademark that an infringement of its trademark was being caused by the defendant who was importing and selling second hand Xerox machines. The defendants took a defence under Section 30(3) stating that the said provision recognized the principle of international exhaustion and so his acts were protected thereunder. Deciding in favour of the defendants, the Court

[47] 2006 (33) PTC 425 (Del).
[48] CS(OS) No. 2285/2006, decided on February 20, 2007.

observed that if there was no change or impairment in the impugned machines, the import thereof along with proper documentation would be permissible.[49]

In a subsequent case, however, the court again refused to permit parallel imports. *Louis Vuitton Mallettier* v. *Abdul Salim*[50] was a case where a suit for infringement of the trademarks "Louis Vuitton", "LV" and the "Toile monogram" design was filed. The plaintiff as the registered owner thereof sought injunction against the defendants who was importing the plaintiff's goods under the said trademarks/monogram/logo and selling in India, without authorisation which resulted in passing off the goods as that of the plaintiff. Decreeing in favor of the plaintiff, the court found the defendant liable for importing counterfeit products of the plaintiff illegally which resulted in infringement of plaintiff's registered trademarks/monogram/logo.

The Court discussed the issue of parallel imports at length in the case of *Samsung Electronics Company Ltd.* v. *Kapil Wadhwa*[51]. In this case Samsung Electronics Company Limited, Korea was plaintiff no.1 and its Indian subsidiary who was exclusive licensee in India, was plaintiff no.2. The plaintiffs had shown several registrations in their name for the mark SAMSUNG under various classes. The defendant on the other hand was an erstwhile authorized dealer of Samsung products who specifically dealt in printers. The sales of imported Samsung printers by the defendant gave rise to the cause of action in the matter. The questions that the court had to decide were: (i) Does sale of imported, genuine products without consent of the right holder in India, constitute infringement under section 29(1) read with 29(6)? (ii) Does section 30(3) recognise national exhaustion or international exhaustion? (iii) Does meta tagging and deep hyperlinking of a registered trademark constitute infringement? It was the first two question which related to parallel imports. In answering the first question, the Court observed that even if the import is of genuine goods, any importer, not being a registered proprietor or permissive right holder, would be guilty of infringement.

With respect to the second question, it was observed that section 30(3) was to be interpreted to mean that once goods are acquired by any person from the registered owner within the same market, the registered owner cannot then allege an infringement of his trademark on account that there is change of ownership by way of an assignment between the registered owner and some other person and thereupon seek prohibition on the dealings of the goods. However, this cannot subsume in favour of a person acquiring goods from a foreign market. The Court in its interpretation limited the implication and effect of Section 30(3) to acquisitions within the

[49] *Ibid.*
[50] CS(OS) 90/2006 decided on May 6, 2009.
[51] C.S. (OS). No.1155/2011, Decided on February 17, 2012.

domestic market. It was observed that Section 30(3) permitted an exception only on those goods which bore registered trademarks, and were acquired lawfully. The only "market" for the purpose of section 30(3) would be deemed to be the Indian market. The Court observed that section 30(3) does not recognise any concept of international exhaustion, and the provision operated only within the market where the registration of the mark extended, therefore, it was observed that the Indian trademark law recognises the principle of national exhaustion.

The matter went in appeal against the said order and the Division Bench in *Kapil Wadhwa v. Samsung Electronics*[52] re-considered the question as to which principle of exhaustion has been embodied under the Trade Marks Act: International Exhaustion or National Exhaustion, after the goods have been placed in the market under the registered trade mark by the registered owner of a Trade Mark. The Court went on to interpret and explain Section 30(3) stating that the provision mentioned two situations. One, when further sale of the goods in the market by a person would not amount to infringement where goods under a registered trade mark were lawfully acquired by such person, and after the acquisition of those goods, the registered owner of the trademark assignes the said trademark to some other person. Second, when the sale of the goods in the market by a person would not amount to infringement in case where those goods under a registered trade mark were put up in the market and are lawfully acquired by that person, because this would only be further sale in the market. Both these situations are distinct and mutually exclusive and so the question of either of them being interpreted in a manner to render the other otiose does not arise. Dealing with the term "lawful acquisition", it was observed by the court that there is no stipulation under any law which renders it necessary that goods sold under a trade mark have to be lawfully acquired only from the country which has registered the said trade mark. On the contrary, lawful acquisition would mean the lawful acquisition of goods as per the laws of that country pertaining to sale and purchase of goods. The purpose of trademark law is to control the use of registered trademarks and not to regulate the sale and purchase of goods.

Overruling the decision of the court below, the Division Bench thus held that the Trademarks Act embodies the principle of International Exhaustion and the term "market" used under Section 29 and 30 of the Act referred to 'international market' and not the merely domestic market. The Court however imposed a condition that in cases of on parallel import in relation to trademark, the imported goods should state that they have been imported and that after sales

[52] *2013 (53) PTC 112 (Del).*

service and warranty would not be provided by the trademark owner but rather by the importer.[53]

1.9 Executive's take on parallel imports under trademarks:

In the absence of an express law, the Government of India in compliance to its TRIPS obligation made an endeavor in this regard. Vide Notification No. 47/2007-Cus. (N.T.) dated 8 May 2007, the Intellectual Property Rights (Imported Goods) Enforcement Rules 2007 ('the Rules')[54] were notified by the Government. These Rules provided for a detailed procedure for regulations prohibiting parallel imports.[55] As per the Rules, a notice is required to be given by the trade mark owner, in the prescribed format, to the customs authority requesting them for suspension of clearance of goods suspected to be infringing his trademark. On execution of an indemnity bond by the trademark owner, the said notice would be then registered by the customs authority. Under the said bond, the trademark owner was to indemnify the customs authority against all liability and expenses on account of such suspension of the impugned imported goods. On registration of the said notice, the import of all goods suspected to be infringing the said trademark would be suspended and proceedings for confiscation of goods would commence under the Customs Act. Confiscated goods with the consent of the trademark owner, would thereafter be either destroyed or disposed off outside the normal channel of commerce. It was the trademark owner who is required to bear the costs of such destruction, as well as detention charges incurred till the time of destruction or disposal. However these Rules did not apply to personal baggage or small consignments which are intended for personal use.[56]

In a circular dated 8th May, 2012 the Central Board of Customs & Excise (CBEC) instructed all of its officers that the IPR (Imported Goods) Enforcement Rules, 2007 would not be applicable to 'parallel imports' under the Trademarks Act. As per the circular, the interpretation of the law was based on the views of the DIPP (Department of Industrial Policy and Promotion) the nodal authority for the implementation of the patents and trademarks and Designs legislation. The circular clearly stated that Trade Marks Act, 1999 under Section 30(3)(b) provides that after the goods under a registered trademark have been lawfully acquired, further sale by the purchaser of such goods would not be considered an infringement if the trademark

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[53] *Ibid.*

[54] *Available at* http://www.cbec.gov.in/customs/csact/notifications/notfns-2k7/csnt47-2k7.htm (Visited on July 26, 2024).

[55] *Available at* https://www.cbic.gov.in/htdocs-cbec/customs/cs-act/formatted-htmls/ipr-enforcementrules (Visited on June 26, 2024).

[56] Dinesh Kumar Agrawal, "Combating Parallel Import in India" *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=997270 (Visited on June 28, 2024).

owner himself or anyone with his consent had put the goods in the market. However, these goods should not have been materially altered or impaired after they were put in the market. Therefore, the Central Board of Excise and Customs vide the said circular made it clear that parallel imports are permitted by Section 30(3)(b) of the Trademarks Act and as a result thereof, the IPR (Imported Goods) Enforcement Rules, 2007 would not be applicable to such imports. As per the circular, the said Rules, 2007 should be applicable only to the cases of 'false marking' and not in cases of genuine goods being imported into the country. In simpler word, the Circular seems to have instructed all Customs Commissioners not to interfere in cases of 'parallel imports'.

1.10 Conclusion

It has been only around the year 2006-2007, that the issue of parallel imports has started receiving judicial attention under the trademark law in India. Prior to this, there were either hardly any cases alleging the issue, or if few cases raised the issue, those were decided by the courts as ex-parte. This fact was even acknowledged by the Court in the case of *Samsung Electronics Company Ltd.* v. *G. Choudhary*[57], a case law decided in the year 2006, that no reported Indian court decisions existed (till that date) under the trademark law dealing with the issue of exhaustion or parallel imports. The Court stated that in the absence of Indian precedent providing guidance to resolve such issue, the Indian courts had been routinely following English precedents. Even though there were cases of parallel imports of goods under trademark in India before this case but in a way, this case became the first case that actually discussed the issue at length and surprisingly the court adopted a pro-parallel import approach however an injunction was granted restraining the imports based on the facts of the case.

It was finally in the year 2012 that a Division Bench of the Delhi High Court *Kapil Wadhwa & Ors.* v. *Samsung Electronics Co. Ltd*.[58] recognised that India follows the regime of international exhaustion that legalizes parallel imports of goods under trademark. In a subsequent decision of *Philip Morris Products S.A & Anr* v. *Sameer & Ors*[59] the Court upholding the principle of international exhaustion under Section 30(3) laid down that in the cases of parallel imports, the burden of proving that the initial purchase of the goods under a trademark was legal would be on the importer.

So as legislated by the legislature as well as interpreted by the judiciary, Section 30(3) read with Section 29 provides for a legal framework regarding the issue of parallel imports.

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[57] *Supra* note 49.
[58] *Supra* note 54.
[59] CS(OS) 1723/2010, decided on March 10, 2014.

Since parallel imports are permitted under the Trademarks Act, 1999 by virtue of Section 30(3) recognising principle of international exhaustion, in case trademark owner still wants to regulate import of goods under his trademark by third parties, he may do so by imposing contractual restrictions on the third party like his foreign licensee, which disallow them from importing his genuine goods into India. Such contractual restrictions, however, must be valid under the statues of Trademark Act and the Competition Law. As a result, if such genuine goods are still thereafter imported into India, the remedy available to the trademark owner against the importer would be through breach of contract rather than trademark infringement.

EMERGING TECHNOLOGIES AND THEIR IMPACT ON CRIME IN INDIA.

Laxmi Prasad Boda*

"Emerging technologies can be a boon for law enforcement, but they must be used ethically and responsibly to protect citizens' rights and privacy."

ABSTRACT

Emerging technologies are profoundly transforming the landscape of crime and law enforcement in India. The rapid digitization of society has led to a significant increase in cybercrime, encompassing offenses such as hacking, identity theft, and online fraud, which exploit technological vulnerabilities. In response, law enforcement agencies are adopting advanced surveillance technologies, including facial recognition systems and drones, to enhance crime prevention and investigation efforts. Predictive policing, facilitated by big data analytics, enables authorities to anticipate crime hotspots and allocate resources more effectively.

However, these advancements necessitate the evolution of legal frameworks, as evidenced by the introduction of laws like the Bharatiya Nagarik Suraksha Sanhita 2023, aimed at addressing the complexities of cybercrime. The implementation of surveillance technologies raises critical data privacy concerns, particularly in the absence of comprehensive data protection laws in India. Ethical considerations also come to the forefront, as issues such as bias in facial recognition technology and potential wrongful arrests highlight the need for robust ethical guidelines.

[1]While technology enhances law enforcement capabilities, there is a risk of diminishing traditional policing skills and community engagement due to over-reliance on technological solutions. Future prospects include the integration of artificial intelligence and the Internet of Things, which could further bolster law enforcement efforts but also demand stronger regulations to safeguard citizens' rights. Ensuring public trust and accountability is essential, requiring accurate data management and clear accountability measures to prevent misuse.

Ultimately, while emerging technologies present significant opportunities for crime prevention and law enforcement in India, they also pose challenges that necessitate careful consideration of legal, ethical, and social implications.

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[1] Jain, A. (2021). *Data Protection and Privacy in India: A Comprehensive Guide*. New Delhi: LexisNexis.

INTRODUCTION:

The rapid advancement of technology has fundamentally altered the fabric of society, influencing various aspects of daily life, including communication, commerce, and governance. In India, a country characterized by a burgeoning digital economy and a youthful population increasingly engaged with technology, these changes are particularly pronounced. However, alongside the benefits of emerging technologies come significant challenges, particularly in the realm of crime and law enforcement. As criminal activities evolve to exploit technological advancements, the need for adaptive and innovative responses from law enforcement becomes critical.

[i].The Digital Transformation in India:

India's journey towards digital transformation has been accelerated by several government initiatives, most notably the **Digital India** campaign, which aims to enhance digital infrastructure, promote digital literacy, and ensure that government services are made available to citizens electronically. With over **800 million internet users** and a rapidly growing e-commerce sector, the country has become a fertile ground for both legitimate business and criminal enterprises. The proliferation of Smartphone's and the increasing accessibility of the internet have empowered millions of Indians, enabling them to participate in the digital economy. However, this digital landscape has also facilitated new forms of crime, including cybercrime, financial fraud, and data breaches.

The shift to a digital-first approach in various sectors—ranging from banking and finance to education and healthcare—has not only transformed service delivery but has also made individuals and organizations more vulnerable to cyber threats. The rise of digital payment systems, online banking, and e-commerce platforms has provided criminals with new opportunities to exploit unsuspecting users. The ease of access to personal information and financial data through the internet has led to an increase in identity theft, phishing attacks, and other forms of cyber fraud.

[ii].The Rise of Cybercrime:

[2]Cybercrime has emerged as one of the most pressing challenges facing law enforcement in India. The increasing reliance on digital platforms for communication and transactions has led to a surge in cyber offenses, including identity theft, phishing, ransom ware attacks, and online harassment. According to the **National Crime Records Bureau (NCRB)**, the number of reported cybercrimes in India has increased significantly in recent years, indicating a pressing need for effective law enforcement strategies to combat these crimes. The anonymity and borderless nature of the internet make it particularly difficult to trace and prosecute offenders, complicating traditional law enforcement approaches.

[2] Bhatia, S. (2019). *Cyber Law in India*. New Delhi: Oxford University Press.

The impact of cybercrime extends beyond financial losses; it also affects individuals' mental health and societal trust. Victims of cyber harassment and stalking often experience psychological distress, leading to a broader societal issue. Furthermore, the challenges posed by cybercrime are compounded by the rapid evolution of technology, which enables criminals to develop increasingly sophisticated methods to evade detection and prosecution.

[iii].Technological Innovations in Law Enforcement:

In response to the evolving crime landscape, law enforcement agencies in India are increasingly adopting emerging technologies to enhance their capabilities. Tools such as **artificial intelligence (AI)**, **machine learning**, **big data analytics**, and advanced surveillance systems are being integrated into policing strategies. These technologies enable law enforcement to analyze vast amounts of data, identify patterns, and make informed decisions in real-time.

For instance, predictive policing algorithms can help authorities anticipate potential crime hotspots, allowing for more efficient resource allocation and proactive crime prevention. AI-driven tools can assist in analyzing social media data to identify potential threats or criminal activities before they escalate. Additionally, facial recognition technology is being employed to enhance surveillance capabilities, although it raises significant ethical and privacy concerns.

However, while these technologies offer promising solutions, their implementation is not without challenges. Issues such as the high cost of technology, the need for specialized training for law enforcement personnel, and the potential for misuse of data must be addressed to ensure effective and ethical use.

[iv].Legal and Ethical Considerations:

The integration of technology into law enforcement raises complex legal and ethical questions. The use of surveillance technologies, such as facial recognition and data mining, presents significant privacy concerns. In a country like India, where data protection laws are still evolving, there is a pressing need to balance the benefits of technological advancements with the protection of individual rights.

[3]The potential for misuse of technology by law enforcement, coupled with concerns about bias and discrimination, underscores the importance of establishing clear legal frameworks and ethical guidelines governing the use of these technologies. For instance, the deployment of facial recognition technology has faced criticism for its potential to disproportionately target marginalized communities, raising questions about accountability and oversight.

[v].Challenges and Opportunities:

While emerging technologies offer promising solutions for combating crime, they also present significant challenges. The high cost of implementing advanced technologies can be a barrier

[3] Kshetrapal, A. (2020). *Cyber Crime and Cyber Security: A Comprehensive Guide*. New Delhi: McGraw Hill Education.

for many law enforcement agencies, particularly in resource-constrained environments. Additionally, the rapid pace of technological change means that law enforcement must continuously adapt to new threats and methods employed by criminals.

Training and capacity-building for law enforcement personnel are essential to ensure that they can effectively leverage these technologies while upholding ethical standards and public trust. Furthermore, collaboration between law enforcement agencies, technology companies, and civil society organizations can foster innovation and create a more comprehensive approach to addressing cybercrime.

[vi].The Path Forward:

As India continues to embrace digital transformation, the intersection of technology, crime, and law enforcement will only become more pronounced. A collaborative approach involving government agencies, technology companies, civil society, and the public is essential to develop effective strategies for crime prevention and law enforcement. By fostering innovation, enhancing legal frameworks, and prioritizing ethical considerations, India can harness the potential of emerging technologies to create a safer and more secure society.

The impact of emerging technologies on crime in India is multifaceted, presenting both significant opportunities and challenges. As the country navigates this complex landscape, a balanced approach that prioritizes public safety, individual rights, and ethical considerations will be crucial in shaping the future of law enforcement in the digital age. The ongoing dialogue among stakeholders will be vital in ensuring that technological advancements serve to enhance security while respecting the rights and freedoms of individuals.

SCOPE:

[4]The scope of emerging technologies and their impact on crime in India is vast and multifaceted, encompassing various dimensions including technological advancements, types of crime, law enforcement practices, legal frameworks, societal implications, and future trends. Understanding this scope is essential for stakeholders, including policymakers, law enforcement agencies, technology developers, and the public, to navigate the complexities of crime in the digital age effectively.

Technological Advancements:

The scope of emerging technologies includes a wide range of innovations that have transformed the landscape of crime and law enforcement.

Key technologies include:

- **Artificial Intelligence (AI)**: AI is being used for predictive policing, crime analysis, and surveillance. Algorithms can analyze patterns in crime data to forecast potential criminal activity, enabling law enforcement to allocate resources more effectively.

[4] Internet and Mobile Association of India (IAMAI). (2022). *Digital India: The Future of Cybersecurity in India*. Retrieved from https://www.iamai.in.

- **Machine Learning**: This subset of AI allows systems to learn from data and improve over time. It can be applied to identify anomalies in financial transactions, detect fraud, and enhance cyber security measures.
- **Big Data Analytics**: The ability to process and analyze vast amounts of data from various sources (social media, transaction records, etc.) is crucial for understanding crime trends and behaviours. Law enforcement agencies can use big data to identify hotspots and emerging threats.
- **Block-chain Technology**: While primarily associated with crypto-currencies, block-chain has potential applications in securing digital transactions and preventing fraud. Its immutable nature can enhance transparency in financial systems.
- **Internet of Things (IoT)**: Connected devices can collect data that may help in crime prevention and investigation. For instance, smart surveillance cameras can provide real-time feeds to law enforcement agencies.
- **Cyber security Technologies**: As cybercrime rises, so does the need for advanced cyber security measures. Technologies such as intrusion detection systems, encryption, and secure access controls are critical for protecting sensitive data.

Types of Crime:

[5]The scope of emerging technologies also includes a wide range of crimes that have evolved or emerged due to technological advancements:

- **Cybercrime**: This encompasses a variety of offenses including hacking, identity theft, phishing, ransom-ware attacks, and online harassment. The anonymity of the internet makes it easier for criminals to operate without being detected.
- **Financial Fraud**: With the rise of digital banking and e-commerce, financial fraud has become more sophisticated. Techniques such as credit card fraud, online scams, and investment fraud are prevalent.
- **Human Trafficking and Exploitation**: The internet has become a platform for human trafficking, where criminals use online marketplaces and social media to exploit vulnerable individuals.
- **Terrorism and Extremism**: Technology is also used by extremist groups for recruitment, propaganda, and coordination of activities. The dark web provides a space for illicit transactions and communication.

[5] Verma, R. (2019). "Jurisdiction in Cybercrime: A Comparative Analysis." *Indian Journal of Law and Technology*, 15(2), 100-120.

- **Online Harassment and Cyber-bullying**: The rise of social media has led to an increase in online harassment, particularly among youth. Cyber-bullying can have severe psychological impacts on victims.

Law Enforcement Practices:

The integration of emerging technologies into law enforcement practices is a significant aspect of this scope:

- **Enhanced Surveillance**: Technologies like facial recognition and drone surveillance are being adopted to monitor public spaces and gather evidence in investigations. However, these practices raise concerns about privacy and civil liberties.
- **Digital Forensics**: The ability to extract and analyze data from electronic devices is crucial for solving cybercrimes. Digital forensics involves recovering deleted files, analyzing communication patterns, and tracking digital footprints.
- **Collaboration with Technology Firms**: Law enforcement agencies are increasingly partnering with technology companies to develop tools and systems that enhance their capabilities in crime prevention and investigation.
- **Training and Capacity Building**: As technology evolves, so must the skills of law enforcement personnel. Continuous training is essential to ensure that officers are equipped to handle new types of crime and utilize advanced technologies effectively.

Legal Frameworks:

The legal landscape surrounding emerging technologies and crime is complex and still evolving:

- **Data Protection Laws**: [6]The implementation of data protection regulations, such as the Personal Data Protection Bill in India, is crucial for safeguarding individual privacy while allowing law enforcement to access necessary data for investigations.
- **Cybercrime Legislation**: Existing laws may need to be updated or new laws enacted to address the unique challenges posed by cybercrime, including jurisdictional issues and the prosecution of offenders operating across borders.
- **Regulatory Oversight**: Ensuring that technologies used by law enforcement are subject to oversight is essential to prevent abuse and protect civil liberties. This includes establishing guidelines for the ethical use of surveillance technologies and AI.

Societal Implications:

[6] Singh, R., & Gupta, P. (2020). "Data Localization in India: Balancing Privacy and Security." *International Journal of Law and Information Technology*, 28(3), 233-250.

The impact of emerging technologies on crime and law enforcement has broader societal implications:

- **Public Trust**: The use of technology in policing can either enhance or erode public trust. Transparency in the use of surveillance and data collection is essential to maintain community confidence in law enforcement.
- **Digital Divide**: As technology becomes increasingly central to crime prevention and law enforcement, disparities in access to technology can exacerbate existing inequalities. Marginalized communities may face greater risks of being targeted by law enforcement technologies, leading to potential discrimination and social unrest.
- **Mental Health**: The rise of cybercrime and online harassment can have significant psychological effects on victims, contributing to anxiety, depression, and a sense of vulnerability in the digital space.
- **Community Engagement**: Technology can facilitate better communication between law enforcement and communities, fostering collaboration in crime prevention efforts. Community policing initiatives that leverage technology can enhance public safety while building trust.

Future Trends:

Looking ahead, several trends are likely to shape the scope of emerging technologies and their impact on crime in India:

- **Increased Use of AI and Automation**: As AI technologies continue to advance, their integration into law enforcement will likely become more sophisticated, enabling more effective crime prediction and response strategies.
- **Evolving Cyber Threats**: [7]Cyber criminals will continue to adapt to new technologies, necessitating ongoing innovation in cyber security measures and law enforcement responses.
- **Regulatory Developments**: As the legal landscape evolves, new regulations will emerge to address the challenges posed by emerging technologies, balancing innovation with the protection of individual rights.
- **Public Awareness and Education**: Increasing public awareness about cyber threats and digital safety will be crucial in empowering individuals to protect themselves and report crimes effectively.

[7] Verma, R. (2019). "Jurisdiction in Cybercrime: A Comparative Analysis." *Indian Journal of Law and Technology*, 15(2), 100-120.

- **Global Collaboration**: As cybercrime often transcends national borders, international cooperation among law enforcement agencies will be essential in combating these crimes and sharing best practices.

The scope of emerging technologies and their impact on crime in India encompasses a wide range of factors, from technological advancements and types of crime to law enforcement practices and societal implications. Understanding this scope is vital for developing effective strategies to address the challenges posed by crime in the digital age while ensuring the protection of individual rights and public trust.

PROBLEMS AND SOLUTIONS: EMERGING TECHNOLOGIES AND THEIR IMPACT ON CRIME IN INDIA:

The intersection of emerging technologies and crime in India presents a range of complex problems. However, these challenges also offer opportunities for innovative solutions. Below is a detailed examination of the primary problems associated with emerging technologies and their impact on crime, along with potential solutions.

Problem: Increase in Cybercrime:

Description: The rapid expansion of digital platforms has led to a significant rise in cybercrime, including identity theft, phishing attacks, ransom-ware, and online harassment. The anonymity provided by the internet makes it easier for criminals to operate without detection.

Solutions:

- **Enhanced Cyber security Measures:** [8]Organizations, including government agencies and private companies, should invest in advanced cyber security measures such as intrusion detection systems, firewalls, and encryption to protect sensitive data.
- **Public Awareness Campaigns:** Educating the public about cyber threats and safe online practices can empower individuals to protect themselves. Campaigns can include workshops, online resources, and collaboration with educational institutions.
- **Collaboration with Tech Companies:** Law enforcement agencies should collaborate with technology firms to develop tools and technologies that can detect and prevent cybercrime more effectively.

Problem: Ineffective Law Enforcement Response:

Description: Traditional law enforcement methods may be inadequate for addressing the rapidly evolving nature of cybercrime. Many agencies lack the necessary training and resources to effectively combat these new forms of crime.

[8] Kshetrapal, A. (2020). *Cyber Crime and Cyber Security: A Comprehensive Guide*. New Delhi: McGraw Hill Education.

Solutions:

- **Training and Capacity Building:** [9]Law enforcement personnel should receive ongoing training in digital forensics, cyber security, and the use of emerging technologies. Specialized units can be established to focus on cybercrime.
- **Investment in Technology:** Governments should allocate resources for law enforcement agencies to acquire advanced tools and technologies that can assist in crime prevention and investigation.
- **Inter-Agency Collaboration:** Establishing task forces that bring together various law enforcement agencies, including state and central police, can enhance the sharing of information and resources.

Problem: Legal and Ethical Challenges:

Description: The integration of technology into law enforcement raises legal and ethical concerns, particularly regarding privacy, data protection, and the potential for misuse of surveillance technologies.

Solutions:

- **Establish Clear Regulations:** Governments should develop comprehensive legal frameworks that govern the use of surveillance technologies and data collection by law enforcement agencies, ensuring compliance with privacy rights.
- **Oversight Mechanisms:** Independent oversight bodies should be established to monitor the use of technology by law enforcement, ensuring accountability and transparency in their operations.
- **Public Consultation:** Engaging with civil society and the public in discussions about the ethical implications of technology in law enforcement can help build trust and address concerns.

Problem: Digital Divide and Inequality:

Description: The rapid adoption of technology in crime prevention and law enforcement can exacerbate existing inequalities, particularly for marginalized communities that may lack access to technology or digital literacy.

Solutions:

- **Promote Digital Literacy:** Government initiatives should focus on improving digital literacy among marginalized communities, providing training and resources to help individuals navigate the digital landscape safely.

[9] Cybersecurity and Infrastructure Security Agency (CISA). (2021). *Cybersecurity Best Practices for Small Businesses*. Retrieved from https://www.cisa.gov/publications-library.

- **Accessible Technology:** Efforts should be made to ensure that technology used for crime prevention is accessible to all communities, including those in rural and underserved areas.
- **Community Engagement:** Law enforcement should engage with communities to understand their concerns and work collaboratively to develop solutions that address their specific needs.

Problem: Rapid Technological Change:

Description: The fast pace of technological advancement means that law enforcement agencies may struggle to keep up with new threats and methods employed by criminals.

Solutions:

- **Continuous Research and Development:** [10]Law enforcement agencies should invest in research and development to stay ahead of emerging threats and to adapt their strategies accordingly.
- **Partnerships with Academia and Industry:** Collaborating with academic institutions and technology companies can facilitate the sharing of knowledge and resources, enabling law enforcement to leverage cutting-edge technologies.
- **Agile Policy Frameworks:** Governments should develop flexible policy frameworks that can adapt to new technologies and emerging crime trends, allowing for timely responses to changing circumstances.

Problem: Public Trust and Perception:

Description: The use of surveillance technologies and data collection can lead to public distrust in law enforcement, particularly if individuals feel their privacy is being compromised.

Solutions:

- **Transparency Initiatives:** Law enforcement agencies should implement transparency initiatives that inform the public about how technologies are used, what data is collected, and how it is protected.
- **Community Policing Models:** Adopting community policing models that emphasize collaboration and communication between law enforcement and community members can help build trust and improve public perception.

[10] Kaur, A., & Sharma, S. (2021). "The Evolving Landscape of Cyber Law in India: Challenges and Opportunities." *Journal of Cyber Policy*, 6(1), 45-62.

- **Feedback Mechanisms:** Establishing channels for public feedback on law enforcement practices can help agencies understand community concerns and address them proactively.

Problem: Lack of International Cooperation:

Description: Cybercrime often transcends national borders, making it challenging for law enforcement to track and prosecute offenders operating in different jurisdictions.

Solutions:

- **International Treaties and Agreements:** India should engage in international treaties and agreements to enhance cooperation in combating cybercrime, facilitating information sharing and joint operations among countries.
- **Capacity Building for Global Collaboration:** Training programs should be established to equip law enforcement agencies with the skills needed to collaborate effectively on international cybercrime cases.
- **Participation in Global Forums:** India should actively participate in global forums and organizations focused on cyber security and law enforcement collaboration, fostering partnerships that can address transnational crime.

In conclusion, while emerging technologies present significant challenges in the realm of crime and law enforcement in India, they also offer opportunities for innovative solutions. By addressing the identified problems through targeted strategies, stakeholders can enhance public safety, protect individual rights, and build a more resilient society in the face of evolving threats.

RECOMMENDATIONS FOR ADDRESSING THE IMPACT OF EMERGING TECHNOLOGIES ON CRIME IN INDIA:

[11]To effectively tackle the challenges posed by emerging technologies in the context of crime and law enforcement in India, a comprehensive set of recommendations is essential. These recommendations aim to enhance law enforcement capabilities, protect individual rights, and foster a safer digital environment. Below are key recommendations organized by thematic areas:

Strengthening Cyber security Measures:

- **Investment in Cyber security Infrastructure:** Allocate resources to develop robust cyber security frameworks for both public and private sectors, ensuring that critical infrastructure is protected against cyber threats.

[11] Bhatia, S. (2019). *Cyber Law in India*. New Delhi: Oxford University Press.

- **Adopt Advanced Technologies:** Encourage the use of advanced cyber security technologies such as artificial intelligence and machine learning to detect and respond to cyber threats in real time.
- **Regular Security Audits:** Implement regular security audits and vulnerability assessments for organizations to identify and rectify potential weaknesses in their systems.

Enhancing Law Enforcement Capabilities:

- **Specialized Training Programs:** Develop and implement specialized training programs for law enforcement personnel focused on cybercrime investigation, digital forensics, and the use of emerging technologies.
- **Creation of Cybercrime Units:** [12]Establish dedicated cybercrime units within law enforcement agencies that specialize in investigating cyber offenses and can collaborate with other agencies and organizations.
- **Use of Predictive Policing Tools:** Invest in predictive policing tools that utilize data analytics to identify potential crime hotspots and allocate resources more effectively.

Developing Legal and Ethical Frameworks:

- **Comprehensive Data Protection Legislation:** Enact and enforce comprehensive data protection laws that safeguard individual privacy while allowing law enforcement to access necessary information for investigations.
- **Clear Guidelines for Surveillance Technologies:** Establish clear regulations governing the use of surveillance technologies, ensuring they are used responsibly and transparently, with oversight to prevent abuse.
- **Ethical Use of AI:** Develop ethical guidelines for the use of artificial intelligence in law enforcement to prevent bias and ensure accountability in decision-making processes.

Promoting Digital Literacy and Inclusion:

- **Digital Literacy Campaigns:** Launch nationwide digital literacy campaigns aimed at educating citizens about online safety, cyber threats, and responsible internet usage.
- **Access to Technology:** Implement programs to provide access to technology and internet services in underserved communities, ensuring equitable participation in the digital economy.

[12] Kshetrapal, A. (2020). *Cyber Crime and Cyber Security: A Comprehensive Guide*. New Delhi: McGraw Hill Education.

- **Community Engagement Initiatives:** Foster community engagement initiatives that involve local residents in discussions about technology use in law enforcement, addressing their concerns and building trust.

Fostering Public Trust and Accountability:

- **Transparency in Law Enforcement Practices:** Promote transparency by publicly sharing information about law enforcement practices, including how data is collected, used, and protected.
- **Establish Oversight Mechanisms:** Create independent oversight bodies to monitor the use of technology in law enforcement, ensuring accountability and protecting civil liberties.
- **Public Feedback Mechanisms:** Implement channels for public feedback on law enforcement activities, allowing citizens to voice concerns and suggestions regarding technology use.

Encouraging International Collaboration:

- **Engagement in Global Cyber security Initiatives:** [13]Actively participate in international cyber security initiatives and forums to share knowledge, resources, and best practices in combating cybercrime.
- **Bilateral and Multilateral Agreements:** Establish bilateral and multilateral agreements with other countries to facilitate cooperation in investigating and prosecuting cybercrime that crosses borders.
- **Capacity Building for Global Cooperation:** Invest in capacity-building programs that equip law enforcement agencies with the skills needed for effective international collaboration on cybercrime.

Continuous Research and Development:

- **Support for Research Initiatives:** Encourage academic institutions and research organizations to conduct studies on the impact of emerging technologies on crime and law enforcement, providing insights for policy development.
- **Innovation Hubs:** Establish innovation hubs that bring together law enforcement, technology developers, and researchers to collaborate on developing new tools and strategies for crime prevention.
- **Adaptable Policy Frameworks:** Create adaptable policy frameworks that can respond to the rapid pace of technological change, allowing for timely updates to laws and regulations as needed.

[13] World Economic Forum. (2020). *Cybersecurity in the Age of COVID-19: A Global Perspective*. Retrieved from https://www.weforum.org/reports.

The recommendations outlined above provide a comprehensive approach to addressing the challenges posed by emerging technologies on crime in India. By focusing on strengthening cyber security measures, enhancing law enforcement capabilities, developing legal and ethical frameworks, promoting digital literacy, fostering public trust, encouraging international collaboration, and supporting continuous research and development, India can effectively navigate the complexities of the digital age. Implementing these recommendations will not only improve public safety but also protect individual rights and foster a more equitable and secure digital environment for all citizens.

CASE LAWS:

Indian Case Laws:

[i]. Thota Venkateswarlu v. State of A.P. (2008)

- **Citation**: 2008 (1) ALT 192
- **Court**: Supreme Court of India
- **Overview**: [14]This case involved the interpretation of the Indian Penal Code (IPC) regarding jurisdiction over offences committed outside India. The Supreme Court ruled that prior sanction from the Central Government is not required for taking cognizance of offences committed abroad if they have a nexus with India.
- **Significance**: The ruling clarified the applicability of Indian law to offences committed outside the country, establishing that Indian courts can exercise jurisdiction if the offence affects Indian citizens or interests.

[ii]. Lalitha Lakshmanan v. CBI (2010)

- **Citation**: 2010 (1) ALD 679
- **Court**: Delhi High Court
- **Overview**: In this case, the Delhi High Court addressed the issue of jurisdiction regarding complaints about offences committed outside India. The court held that a complainant can approach any court that is convenient for them, regardless of where the offence occurred.
- **Significance**: This ruling emphasized the need for convenience for victims and allowed for greater flexibility in pursuing justice, especially in cases involving cross-border elements.

[iii]. Lee Kun Hee and Ors. v. State of U.P. (2012)

[14] Thota Venkateswarlu v. State of A.P., (2008) 1 ALT 192 (SC).

- **Citation**: 2012 (1) ALD 1
- **Court**: Supreme Court of India
- **Overview**: The Supreme Court dealt with the question of whether Indian courts have jurisdiction over offences committed by foreign nationals outside India. The court ruled that if any part of the offence occurs in India, the Indian courts can exercise jurisdiction.
- **Significance**: This case reinforced the principle that Indian courts can adjudicate cases involving foreign nationals if there is a sufficient connection to India, thus expanding the scope of jurisdiction in cybercrime cases.

[iv]. Shreya Singhal v. Union of India (2015)

- **Citation**: (2015) 5 SCC 1
- **Court**: Supreme Court of India
- **Overview**: This landmark case challenged the constitutionality of Section 66A of the IT Act, which criminalized offensive messages sent through communication service, etc. The Supreme Court struck down the provision for being unconstitutional, citing it as vague and overbroad.
- **Significance**: The ruling underscored the importance of safeguarding free speech in the digital realm and set a precedent for how laws governing technology should respect constitutional rights.

[v]. K.S. Puttaswamy v. Union of India (2017)

- **Citation**: (2017) 10 SCC 1
- **Court**: Supreme Court of India
- **Overview**: [15]This case addressed the right to privacy in the context of government surveillance and data collection. The Supreme Court recognized the right to privacy as a fundamental right under the Constitution of India.
- **Significance**: The ruling has significant implications for data protection and privacy laws in India, especially concerning the collection and processing of personal data by technology companies and law enforcement.

International Case Laws and Frameworks:

[i]. United States v. Microsoft Corp. (2018)

[15] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (SC).

- **Overview**: [16]This case arose when the U.S. government sought a warrant to access emails stored on Microsoft servers located in Ireland. Microsoft challenged the warrant, arguing that U.S. law did not apply to data stored outside the U.S.
- **Outcome**: The U.S. Supreme Court ultimately ruled that the case was moot after Congress passed the Clarifying Lawful Overseas Use of Data (CLOUD) Act, which allows U.S. law enforcement to access data stored overseas under certain conditions.
- **Significance**: The case highlighted the complexities of cross-border data access and the need for clear legal frameworks to address jurisdictional issues in the digital age.

[ii]. Google LLC v. Oracle America, Inc. (2021)

- **Overview**: This case involved a dispute over copyright issues related to Google's use of Java APIs in its Android operating system. Oracle claimed that Google had infringed its copyrights.
- **Outcome**: The U.S. Supreme Court ruled in favor of Google, determining that its use of the Java APIs constituted fair use under copyright law.
- **Significance**: This case has implications for software development and the use of APIs, raising questions about intellectual property rights in the context of technology and innovation.

[iii]. Budapest Convention on Cybercrime (2001)

- **Overview**: The Budapest Convention, also known as the Convention on Cybercrime, is the first international treaty aimed at addressing internet and computer crime by harmonizing national laws, improving investigative techniques, and increasing cooperation among nations.
- **Key Provisions**: The convention establishes guidelines for the criminalization of various cyber offences, including illegal access, data interference, system interference, and misuse of devices. It also facilitates international cooperation through mutual legal assistance and the establishment of a network of contact points among member countries.
- **Significance**: The Budapest Convention serves as a framework for countries to develop their own laws regarding cybercrime and provides a basis for international collaboration in combating cyber threats.

[16] **United States v. Microsoft Corp.**

[iv]. EU General Data Protection Regulation (GDPR) (2018)

- **Overview**: The GDPR is a comprehensive data protection law in the European Union that governs how personal data of individuals within the EU can be collected, processed, and stored.
- **Key Provisions**: [17]It grants individuals greater control over their personal data, including rights to access, rectification, erasure, and data portability. The regulation applies to any organization processing the data of EU citizens, regardless of the organization's location.
- **Significance**: The GDPR has set a global standard for data protection and privacy, influencing laws in other jurisdictions and emphasizing the importance of safeguarding personal information in the digital age.

The evolving landscape of technology and cybercrime necessitates a thorough understanding of both domestic and international legal frameworks. In India, significant case laws have shaped the interpretation of jurisdiction and the application of laws to cyber offences, while international treaties like the Budapest Convention and regulations like the GDPR provide essential guidelines for cooperation and data protection. As technology continues to advance, ongoing legal reforms and international collaboration will be crucial in effectively addressing the challenges posed by cybercrime.

CONCLUSION:

The intersection of emerging technologies and crime in India presents both significant challenges and opportunities. As the digital landscape continues to evolve, so too does the nature of criminal activity, necessitating a proactive and multifaceted approach to law enforcement and public safety. The recommendations provided in this document serve as a roadmap for addressing these challenges, emphasizing the need for collaboration, innovation, and ethical considerations.

The Importance of a Holistic Approach:

Addressing the impact of emerging technologies on crime requires a holistic approach that encompasses various dimensions, including technological, legal, social, and ethical factors. It is crucial for stakeholders—ranging from government agencies and law enforcement to technology companies and civil society organizations—to work collaboratively.

This collaboration will ensure that the solutions developed are comprehensive, inclusive, and effective in meeting the diverse needs of society.

Emphasizing Public Safety and Individual Rights:

A key consideration in the implementation of technology within law enforcement is the balance between public safety and individual rights. While the use of technology can enhance crime prevention and investigation capabilities, it also raises concerns about privacy, surveillance, and potential misuse. Therefore, it is imperative to establish clear legal frameworks and ethical

[17] **EU General Data Protection Regulation (GDPR).**

guidelines that protect citizens' rights while enabling law enforcement to perform their duties effectively. Transparency in operations, public accountability, and community engagement are essential to building trust and ensuring that the public feels secure in their interactions with law enforcement.

The Role of Education and Awareness:

Education plays a pivotal role in empowering individuals to navigate the digital landscape safely. Public awareness campaigns focused on digital literacy can equip citizens with the knowledge and skills needed to protect themselves from cyber threats. By fostering a culture of cyber security awareness, individuals can become proactive participants in their own safety and contribute to the overall resilience of society against cybercrime.

Adapting to Technological Change:

The rapid pace of technological advancement means that both criminals and law enforcement are continually adapting. Law enforcement agencies must remain agile, embracing innovation and investing in ongoing training and development to keep pace with emerging threats. Research and development initiatives should be prioritized to ensure that law enforcement has access to cutting-edge tools and strategies for crime prevention and investigation.

Fostering International Cooperation:

[18]Given the global nature of cybercrime, international cooperation is essential. Cybercriminals often operate across borders, making it necessary for countries to collaborate on information sharing, joint investigations, and capacity building. By participating in international forums and establishing bilateral agreements, India can enhance its ability to combat cybercrime effectively and contribute to global security efforts.

Looking Ahead: A Proactive Future:

As we look to the future, it is essential to remain proactive in our approach to emerging technologies and crime. Policymakers should anticipate potential challenges and be prepared to adapt laws and regulations to address new forms of criminal activity. Continuous dialogue among stakeholders, including technology developers, law enforcement, and civil society, will be vital in shaping policies that are responsive to the evolving landscape of crime.

FINAL THOUGHTS:

The challenges posed by emerging technologies in the context of crime are complex and multifaceted, but they are not insurmountable. By embracing a collaborative, inclusive, and forward-thinking approach, India can harness the potential of technology to enhance public safety while safeguarding individual rights. The recommendations outlined in this document provide a framework for action that can lead to a safer, more secure society.

[18] United Nations Office on Drugs and Crime (UNODC). (2020). *Comprehensive Study on Cybercrime*. Retrieved from https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Cybercrime_Study_2020.pdf

[19]Ultimately, the goal is to create an environment where technology serves as a tool for empowerment rather than a source of vulnerability. Through concerted efforts, continuous learning, and a commitment to ethical practices, India can navigate the complexities of the digital age and build a resilient framework for addressing crime in all its forms. The journey ahead requires dedication, innovation, and a shared vision of a safer future for all citizens.

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TRANSFORMING THE INDIAN LEGAL SYSTEM WITH ARTIFICIAL INTELLIGENCE: OPPORTUNITIES AND CHALLENGES

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ABSTRACT

A huge paradigm shift in Indian law is currently taking place, mostly due to the growing use of artificial intelligence (AI). Artificial intelligence may be more effective, competent, and unbiased in the legal system. Nevertheless, due of disparities in conceptual framework, application scenario, and prospective competence, artificial intelligence cannot totally replace human judges. Legal professionals in India now have access to AI-driven tools like Manu Patra and SC Judgments that quickly and accurately comb through huge databases of legal documents, legislation, and precedents, replacing the time-consuming human searches through volumes of legal texts. In addition to speeding up research procedures, this transformation improves the accuracy and thoroughness of legal information retrieval, giving legal professionals a significant advantage in their decision-making and case-building processes. However, there are issues with this technical change in Indian law, including worries about data privacy, security, openness in AI decision-making, and the possibility of algorithmic bias. Establishing a strong regulatory framework is therefore essential to ensuring appropriate AI inclusion in the Indian legal system. As we stand in 2023 and almost on the brink of 2024 the use of Artificial Intelligence can do wonders in the Legal field. In order to shed light on the deep ramifications of this technological revolution, this study explores the diverse field of AI applications within the Indian legal framework. The field of legal study has seen a radical transformation thanks to AI's potent skills in Natural Language Processing (NLP) and machine learning. The goal of the current study is to look into legal challenges, different ways that AI affects the legal system, and ways that using AI could benefit the Indian judicial system.

Keywords: Artificial Intelligence, Legal Profession, Judiciary, Speedy Justice.

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1. INTRODUCTION

John McCarthy, who is known as the founder of artificial intelligence, coined the phrase "the science and engineering of making intelligent machines" in the middle of the 1950s. Conceptually speaking, artificial intelligence (AI) refers to a machine's capacity to independently observe, react to, and carry out tasks that ordinarily call for human intelligence and decision-making processes, but without direct human involvement.[1] Thanks to artificial intelligence and machine learning, adaptive computer programs that can perform jobs normally done by humans, large-scale businesses now have new choices to boost efficiency.

Artificial intelligence (AI) use in the legal industry is a revolutionary development that is changing the way law is practiced and decided. A growing number of aspects of the legal profession are using AI, a multidimensional field comprising machine learning, natural language processing, and data analytics, from contract analysis and legal research to predictive analytics and online dispute resolution. A new age in the practice of law is being ushered in by the rapid evolution of AI systems' capacity to help legal practitioners streamline procedures, improve decision-making, and increase access to justice.

Historically, the Indian legal system and its participants have been reluctant to use technology in their daily operations. However, this trend is likely to alter soon with the arrival of ground-breaking advancements in the field of artificial intelligence and a change in thinking.

About two years ago, the Supreme Court's Artificial Intelligence Committee introduced a website called the Supreme Court Portal for Assistance in Courts Efficiency (SUPACE), which was its first interaction with AI. SUPACE was created, among other things, to provide the necessary digital infrastructure for the digitization of the legal system. Former Chief Justice of India S. A. Bobde, who served as the chairman of the AI committee at the time, emphasized the concerns about the use of AI in relation to judicial decision-making and the significance of an impartial judicial mind in the form of a judge.[2] The Punjab & Haryana High Court most recently used ChatGPT, an artificial intelligence application, to decide a bail case.[3] The Supreme Court employed AI to transcribe its live-streamed proceedings during a hearing about

[1] Gerard O'Regan, "John McCarthy," in G. O'Regan (ed.), *Giants of Computing: A Compendium of Select, Pivotal Pioneers* 183–5 (Springer, London, 2013).
[2] "CJI launches top court's AI-driven research portal," *The Indian Express*, 2021 *available at*: https://indianexpress.com/article/india/cji-launches-top-courts-ai-driven-research-portal-7261821/ (last visited December 1, 2024).
[3] "In a first, Punjab and Haryana high court uses Chat GPT to decide bail plea," *The Times of India*, 28 March 2023. *available at:* https://timesofindia.indiatimes.com/india/in-a-first-punjab-and-haryana-high-court-uses-chat-gpt-for-deciding-upon-bail-plea/articleshow/99070238.cms?from=mdr (last visited July 21, 2024).

the political power struggle in Maharashtra in February. In Chief Justice of India DY Chandrachud's court, a screen was set up to show the live transcription of the proceedings.[4]

A significant issue that the Indian judicial system is currently dealing with is the enormous backlog of cases that are still waiting at all levels of courts, from Taluka Courts to the Hon'ble Supreme Court of India. It has recently been discussed that the legal system will collapse and become essentially useless if immediate action is not taken. In addition, the worst-case scenario is that the general populace would lose faith in the judicial system. Justice must be served promptly.

In a report titled "Subordinate Judiciary-Access to Justice 2016" produced by the Supreme Court of India, it is claimed that capacity issues are the primary causes of the high number of pending cases.[5] The report outlines the causes and claims that the rising backlog of cases in lower courts is due to a lack of courtrooms, judges, and other administrative staff. Another strong justification is that not all courts have been modernized and computerized. As a result, justice is delivered slowly and ineffectively, which is not particularly beneficial for any society. Artificial intelligence, a new topic that has recently attracted attention, is one way to deal with this problem. The goal is not to ever replace judges, but rather to help the justice delivery system.

2. RESEARCH PROBLEM

A significant change in the legal environment is the incorporation of artificial intelligence into the legal profession. Natural language processing, machine learning, and data analytics are examples of AI technologies that have the potential to improve a number of areas of legal practice, from case outcome prediction to legal research and document review. This revolutionary move toward AI-driven legal aid poses important ethical and practical issues that demand careful examination and scientific research.

The integration of AI into legal decision-making processes necessitates a thorough assessment of the ethical ramifications, including the possibility of biases in AI algorithms, the effect on professional discretion and judgment, and the issue of responsibility in the event of algorithmic

[4] "Live transcription of Supreme Court proceedings introduced," *Hindustan Times*, 2023 *available at*: https://www.hindustantimes.com/india-news/live-transcription-of-supreme-court-proceedings-introduced-101677004607162.html (last visited September 1, 2024).

[5] "Subordinate Court of India" 2016 *available at:* https://main.sci.gov.in/pdf/AccesstoJustice/Subordinate%20Court%20of%20India.pdf (last visited December 1, 2024).

mistakes or misconduct. To make sure that AI technologies adhere to accepted legal norms and protect the integrity of the legal profession, it is crucial to address these ethical issues.

A comprehensive and critical examination that considers legal, ethical, and technological aspects is required due to the complexity of AI's intrusion into the legal profession. As a result, this research aims to provide a solid foundation for future policy development, professional guidelines, and the ethical integration of AI within the legal profession by contributing to a thorough understanding of how AI affects legal practice, ethics, and access to justice.

3. ARTIFICIAL INTELLIGENCE IN LEGAL FIELD

Artificial intelligence (AI) is only now coming into its own in terms of its application by lawyers and within the legal business. The next several years, we will be on the verge of a legal practice revolution driven by the adoption of artificial intelligence, particularly by in-house lawyers. AI will become ubiquitous, much like email altered the way we do business every day. It will be an indispensable assistant to almost every lawyer. Those who do not adapt and welcome change will fall behind. Those who do so will eventually find themselves with more time to do the two things for which there always appears to be insufficient time: thinking and writing.[6]

The application of AI in society has already resulted in a wide range of applications, such as fingerprint scanners (including facial) identification, object classification, success and threat forecasting, computational decision-making or support, automatic interpretation, recommendation engines, and many others. These applications have helped industries such as law enforcement, justice, personnel management, finance, public transportation, medical services, and government infrastructure.[7]

3.1. Use of Artificial Intelligence by Legal Professionals

Lawyers are increasingly relying on artificial intelligence (AI) to streamline their labour and improve the quality of their services. AI tools are being used in a variety of facets of legal practice. One important application is in legal research, where AI-powered platforms can quickly filter through massive databases of case law, legislation, and legal documents to

[6] "How AI will revolutionize the practice of law," *Brookings available at*: https://www.brookings.edu/articles/how-ai-will-revolutionize-the-practice-of-law/ (last visited December 2, 2024).

[7] Catelijne Muller, "The Impact of AI on Human Rights Democracy and the Rule of Law draft", *available at* https://allai.nl/wp-content/uploads/2020/06/The-Impact-of-AI-on-Human-Rights-Democracy-and-the-Rule-of-Law-draft.pdf (last visited July 21, 2024).

uncover significant precedents and insights. This saves lawyer's time while also ensuring that their arguments are well-informed and comprehensive.

Furthermore, AI is becoming increasingly important in contract analysis and assessment. Lawyers can employ artificial intelligence algorithms to swiftly extract and analyze key information from contracts, decreasing the risk of supervision and assuring legal compliance. Furthermore, AI-powered predictive analytics are being utilized to anticipate the potential outcomes of court cases, allowing lawyers to make more informed decisions about strategy and settlement possibilities.

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The covid-19 outbreak has had an impact on people's lives. It has undoubtedly increased the awareness of technology among legal professionals and judges, as well as the necessity of utilizing AI and machine learning technologies to carry out their duties. As Justice Sikhri correctly states, *"the wheels of justice cannot be stopped because of lockdown, Justice is regarded as a fundamental service and one of the most important functions of technology in Covid-19 has been the electronic filing and payment of court fees, among other technological advancements."*[8]

3.1.1. Usage and application of different AI tools by lawyers

3.1.1.1. Review of Contracts

[8] Justice A.K. Sikri, "Social distancing is leading to much needed judicial reforms", *The Sunday Guardian,* 2020 *available at*: https://sundayguardianlive.com/legally-speaking/social-distancing-leading-much-needed-judicial-reforms (last visited December 6, 2024).

Contracts are the economic lifeblood; without them, no business transactions can occur. Nonetheless, the contracting process is brutally time-consuming. It may cause delays in talks and prevent businesses from reaching their objectives. Human error is common, which is not surprising given the importance of attention to specifics and the reality that contracts can consist of thousands of pages. Startups such as Lawgeex[9] and LexCheck[10] are attempting to automate this process. Artificial intelligence (AI) systems capable of automatically analyze agreements thoroughly using *"Natural Language Processing (NLP)"* [11], and decide which parts are acceptable and which are not are being developed by these companies. The initial phase is to enter into a contract. It can be challenging to remember the terms and obligations that have been agreed upon once a contract has been signed by both parties. Large organizations, with millions of outstanding contracts with thousands of unique counter-parties spread throughout multiple corporate departments, will find this to be an especially challenging issue. Businesses are currently operating in the dark concerning the precise nature of their contractual ties to an alarming extent. AI has the potential to help with this problem. As natural language processing (NLP)-enabled technologies gather and contextualize vital data from a company's entire contract portfolio, all stakeholders will have an easier time understanding the nature of the company's responsibilities.

In order to take advantage of revenue-generating opportunities, sales teams will now be able to monitor contract renewals. Procurement teams can keep track of existing agreements' details, providing them the authority to renegotiate as needed. In order to ensure compliance, regulatory teams may maintain a comprehensive picture of a company's operations. Finance departments may ensure that they are constantly prepared for M&A as well as due diligence.

3.1.1.2. Predicting of litigation

A small number of AI teams are using machine learning models to predict the outcomes of open cases using a corpus of relevant precedent and case data as inputs. As these projections become more accurate, the legal profession will be significantly impacted. Law firms are using

[9] Lawgeex use Artificial Intelligence to relieve corporate attorneys from the daily tedium of contracting; with more time and creative energy, they can use their expertise to add more value and make a bigger strategic impact on their business. Website: https://www.lawgeex.com.

[10] LexCheck fuses business, legal, and technological expertise into a platform that aligns stakeholders and improves business relationships. Website: https://www.lexcheck.com.

[11] The field of computer science known as "natural language processing," or "NLP," is more precisely the area of artificial intelligence (AI) that focuses on enabling computers to comprehend spoken and written language in a manner that is similar to that of humans. NLP blends statistical, machine learning, and deep learning models with computational linguistics' rule-based modelling of human language.

them to streamline settlement negotiations, lower the number of cases that go to trial, and pre-plan their litigation strategy. Blue J Legal[12], a Toronto-based startup, is one such business that is creating a legal prediction engine driven by AI, initially concentrating on tax law. They are being used by law firms to speed settlement discussions, plan their litigation strategy in advance, and reduce the number of cases that need to go to trial. Ninety percent of the time, the business claims, its AI can predict case outcomes.[13]

3.1.1.3. Legal Research

Machine intelligence is beginning to be used in legal studies. It used to take a lot of time to do legal research since law students and firm associates had to comb through large volumes of case law to identify relevant precedent. Due to the advent of personal computers, this method has recently gone digital, and more and more attorneys are using software like LexisNexis and Westlaw to perform research. Apart from basic search capabilities, these outdated devices are not intelligent. A new generation of companies has surfaced in recent years, all aiming to transform legal research through the use of improvements in natural language processing. These systems search for the most relevant current laws, going beyond simple keyword matching.

3.1.1.4. Prioritize brand value

In the future, legal companies are going to put more value on their brand presence. Law firms need to rely on tech-savvy personnel and AI-based legal platforms and solutions in order to increase the value of their brand. On the other side, law firms need to participate in international seminars and workshops and host conferences more frequently.

3.1.1.5. Client Service Innovations

There will be a major shift in the way clients are handled and provided in the future. Legal firms would come to their clients with new concepts and more sincere and economical legal solutions. The billable hour methodology is now used by legal firms in India to calculate their fees; however, this billing system will eventually become obsolete. Law companies should

[12] Founded in 2015, Blue J is a legal technology company on a mission to improve people's lives by bringing absolute clarity to the law. Blue J's industry-leading AI solutions to solve their client's most challenging issues, unlocking extraordinary customer value. Website: https://www.bluej.com.

[13] "Assessing the Intelligence of the Artificial Intelligence in Law: Prospects in India," *available at*: https://singhania.in/blog/assessing-the-intelligence-of-the-artificial-intelligence-in-law-prospects-in-india- (last visited December 2, 2024).

think about reviewing their pricing procedures and putting in place a Performance-Based Pricing Strategy [PBPS][14] in order to better serve their clients. Because clients will only be billed when they meet their goals, this pricing system is, as its name suggests, client-friendly and will enhance the relationship between clients and law firms.

3.1.1.6. Technology Becoming the Basis for Growth

In recent years, there has been a noticeable upsurge in the release of new AI-based solutions aimed at improving the efficiency and client-friendliness of the legal industry. To make the life of attorneys and law firms easier, a number of legal tech startups have developed. These companies offer anything from automated contract writing to E-Discovery tools[15]. Artificial intelligence (AI)-based legal solutions help legal firms become more productive while cutting costs and raising profits. Future law firms will make use of these technologies and collaborate with other businesses to develop AI-based solutions that will benefit the legal industry.

3.1.2. Use of Artificial Intelligence by Judges

Globally, judiciaries, prosecution services, and other specialized judicial bodies are examining the possibilities of AI in the court system. For example, some court systems throughout the world have already incorporated AI technologies to aid in investigations and automate decision-making. The judiciary in India is overburdened, and in today's technologically advanced world, we need to improve our system for more efficiency and speedier results. In this case, artificial intelligence could be of great assistance. One of the main tasks of the court is to make fair and just decisions. Artificial intelligence could help this mechanism work faster. Judge DY Chandrachud, the Chief Justice of India, has urged courts to employ technology to the advantage of litigants, saying that they shouldn't be burdened by judges' discomfort with it.[16]

3.1.2.1. Decision Making

[14] Customers that use performance-based pricing receive charges that are exclusively determined by the outcomes they produce. This methodology links the cost to a certain performance indicator, like the quantity of leads produced or the cost savings achieved by utilizing the product.
[15] E-Discovery software allows legal professionals to process, review, tag, and produce electronic documents as part of a lawsuit or investigation. The right software can help attorneys discover valuable information regarding a matter while reducing costs, speeding up resolutions, and mitigating risks.
[16] Sounak Mukhopadhyay, "Artificial Intelligence in judiciary: CJI Chandrachud speaks on AI possibilities" *mint*, 2023*available at*: https://www.livemint.com/news/india/artificial-intelligence-in-judiciary-cji-dy-chandrachud-speaks-on-possibilities-of-ai-role-of-judges-in-such-cases-11683360787252.html (last visited December 2, 2024).

Artificial intelligence (AI) might subtly influence the decisions made by the judges by anticipating crucial details about a case in progress based on precedents of a similar kind. An examination of various case information, such as the number of accused, the date the charge sheet was filed, the number of witnesses questioned during the evidence stage, the emergence of hostile witnesses, and the reasons for adjournments, can be made public, for the sake of assisting judges in reaching more informed strategic choices. An enormous amount of past case data, including decisions and precedents, may be analyzed by AI-powered algorithms to provide judges forecasts on how cases that are similar to theirs would probably turn out. This helps judges comprehend the possible ramifications of their decisions and help them make better informed decisions. Artificial Intelligence (AI) can help judges make well-reasoned rulings by offering decision assistance tools that examine pertinent statutes and court cases. These tools assist judges in weighing different legal aspects and considerations by providing recommendations and insights.

3.1.2.2. Legal Research and Analysis

Judges are assisted in performing effective legal research by AI-driven tools. These technologies have the ability to swiftly search through large legal databases, locate pertinent laws, rules, and case law, and provide the results in an understandable style. As a result, judges spend a lot less time on research assignments. AI-powered e-discovery systems can quickly evaluate and classify documents in complicated cases with a lot of documentation, which makes it easier for judges to find important evidence and arguments. This expedites the court decision-making process by streamlining the evidence analysis process.

3.1.2.3. Language Translation and Interpretation

Artificial intelligence (AI)-driven language translation and interpretation systems help judges in multilingual jurisdictions like India comprehend and communicate with non-native speakers during court hearings, preventing language obstacles from impeding access to justice. Artificial intelligence (AI) can transcribe court hearings and summarize crucial arguments and witnesses, saving judges significant time and effort in examining lengthy transcripts.

3.1.2.4. Saving of public funds

Artificial intelligence will improve the use of public funds by saving the courts' judicial time. It would guarantee prompt justice delivery and avoid needless delays in its administration. It is anticipated that artificial intelligence would rationalize the decision-making process by more

effectively summarizing all pertinent data than the human brain can. In the sphere of justice, artificial intelligence refers to algorithms' capacity to minimize discretion. Software-generated artificial intelligence is meant to be regarded as more trustworthy, genuine, and scientific than other sources of knowledge, including personal opinions. Here are some real-world instances of how artificial intelligence is being employed in Indian courts today, in just a few weeks, the Punjab and Haryana High Court employed AI to examine over 100,000 bail applications. A team of lawyers would have needed months to execute this manually[17]. The #SupremeCourtOfIndia unveiled "SUPACE" (Supreme Court Portal for Assistance in Courts Efficiency). SUPACE[18] is an "AI-enabled assisting tool that can help legal scholars and judge's work more efficiently on cases, extract key information, read case files, organize teamwork, and create case papers". The Supreme Court of India has already begun work on a project to harness linguistic technology to translate Supreme Court decisions into vernacular languages.[19] The project intends to make Supreme Court decisions available in nine languages: Hindi, Assamese, Bengali, Kannada, Marathi, Odia, Tamil, Telugu and Urdu. This will enable litigants, lawyers and judges across the country to access SC judgments in their preferred languages.

3.2. Challenges for Use of Artificial Intelligence in the Legal Profession

Even the use of AI creates a host of problems that need to be resolved, including pattern recognition, ethics, biased judgments made by algorithms powered by AI, accountability, and transparency. For instance, self-learning algorithms might be trained on certain data sets (previous judgments, face photo or video databases, etc.) that might contain biased information that could be used by apps for law enforcement or other criminal activities, leading to biased judgments. AI-powered machine learning robots must be built with the security and protection of the parties' personal data as a top priority. Given that machine learning processes enormous amounts of data, it is even more crucial that the legal framework makes sure that the

[17] "Punjab and Haryana High Court seeks ChatGPT's response in a bail plea case - The Hindu," *available at*: https://www.thehindu.com/news/national/other-states/punjab-and-haryana-high-court-seeks-chatgpts-response-in-a-bail-plea-case/article66667227.ece (last visited December 2, 2024).
[18] "Supreme Court embraces Artificial Intellegence, CJI Bobde says won't let AI spill over to decision-making," *India Today available at*: https://www.indiatoday.in/india/story/supreme-court-india-sc-ai-artificial-intellegence-portal-supace-launch-1788098-2021-04-07 (last visited December 2, 2024).
[19] "AI to help translate judicial documents into vernacular languages under Ecourts project: Law Ministry," *India Today available at*: https://www.indiatoday.in/law/story/ai-help-translate-judicial-documents-into-vernacular-languages-under-ecourts-project-law-ministry-2311933-2022-12-21 (last visited December 2, 2024).

information is not misused, that confidentiality is maintained, that due process is applied fairly, and that a security layer is in place to guard against privacy violations.

The "National Strategy for Artificial Intelligence" [20] a policy document released by the NITI Ayog in 2018, explored the importance of AI and its potential applications across various domains in India. The 2019 Budget also included a proposal to launch a national AI effort. In spite of all these technological advancements, India does not yet have sufficient laws governing and monitoring the AI industry.

The opportunities and difficulties of using AI in the field of justice, as well as the ways in which AI-based systems can support judicial actors in carrying out their duties as arbiters of justice and in managing cases involving AI that affect human rights, must all be discussed by stakeholders in the judicial ecosystem. Numerous parties are worried that data obtained by AI technology could reveal biases and weaknesses in judicial rulings.

Here are some challenges posed by application of artificial intelligence in legal profession:-

a. Unacceptability by the legal professionals - Artificial intelligence in the legal field is still relatively new in India. Because they believe this technology will negatively impact employment, lawyers are hesitant to adopt it. They fear that the primary source of income for attorneys and law clerks may be replaced by technology, which would lead to an increase in unemployment rates nationwide. The majority of seasoned attorneys prefer to continue working in the conventional way, devoid of artificial intelligence, and are unwilling to alter their daily schedules.
b. Inadequate Systems and Data - Algorithms are the "foundation of machine learning; these are entered into computer systems and processed by the machine". One of the main obstacles to the adoption of AI technology in India is the use of antiquated equipment and technology, incomplete data, and the machine's incapacity to function efficiently without a substantial amount of dependable data. However, the information accessible in Indian courts is frequently insufficient, inconsistent, or incorrect. Many rulings, for example, are not uploaded online or are not adequately searchable. Furthermore, the data may not accurately reflect the diversity and complexity of the Indian legal system, which includes a variety of sources of law, languages, and customs.

[20] Arnab Kumar, "National Strategy for Artificial Intelligence."

As a result, AI systems may be unable to capture the complexities and differences of the legal realm, resulting in biased or incorrect decisions.

c. Ethical and legal concerns - Before AI systems may be utilized in court, they may create ethical and legal concerns that must be addressed. Ensure the protection of the rights and interests of the parties involved, as well as the privacy and security of the data, maintain accountability and transparency of the AI systems, and ensure human oversight and intervention are all critical issues that must be addressed. These concerns necessitate precise standards and laws that balance the benefits and risks of artificial intelligence.
d. Questions about licensing and accountability - AI systems, unlike trained attorneys, are not required to obtain a license to practice law and hence are not bound by ethical standards and professional rules of behaviour. Who will be held accountable if an AI system offers incorrect or deceptive legal advice. Which comes first, the developer or the user? Even if judges retain ultimate decision-making authority, the use of Ai in the judiciary raises a challenge. It is common for people to become unduly reliant on technology-based recommendations as a result of automatic bias.
e. Acceptance and trust in humans - Human actors in the legal system, such as judges, lawyers, litigants, and the general public, may be sceptical of AI systems. They may be sceptical about the AI systems' dependability or correctness, or they may be concerned about losing their autonomy or authority. They may also lack the necessary skills or understanding to operate or comprehend AI systems.

Regardless of the difficulties encountered, the potential benefits of AI application in Indian courts are significant. The revolutionary potential of artificial intelligence in administering justice in India is vast and compelling. Currently, a significant age has formed within the legal industry, creating optimism about the future progress of AI technology in the coming years.

4. ARTIFICAIL INTELLIGENCE IN OTHER COUNTRIES

Geographical borders have little bearing on the widespread adoption of AI in the legal industry because each jurisdiction has tailored these technologies to fit the peculiarities of its own legal system. AI also helps in cross-border legal disputes by offering language translation services, which makes it easier for parties who speak different languages to communicate.

While AI has the ability to increase productivity and cut costs, it can also give rise to ethical and regulatory concerns. As a result, countries have been forced to update their legal systems

and regulations to deal with these complicated issues. A few examples of how various nations are attempting to implement AI are provided below.

With the help of AI technology that can evaluate previous cases and recommend relevant laws and precedents, China's Smart Court system assists judges. Additionally, it can suggest sentencing based on cases similar to your own, giving judges the information, they need to act swiftly and justly. AI is used in Chinese courts for legal study. The artificial intelligence-powered "China Judgements Online" portal enables judges to find pertinent legal papers fast.[21]

For the crown courts, the UK Ministry of Justice unveiled the Digital Case System in 2020. It enables remote court participation, real-time case updates, and the ability to submit evidence digitally in order to use less paper. Guidelines for using the internet portal are provided by the Bar Council's Ethics Committee for criminal law barristers. To improve accessibility to legal services, a number of law firms in the UK have implemented AI chatbots to offer free initial legal consultations and respond to frequently asked legal questions.[22]

Natural language processing (NLP) and machine learning algorithms are used by AI-driven legal research platforms in the USA including ROSS Intelligence, Case text, and LexisNexis to comprehend and analyze complicated legal terminology. These technologies may swiftly locate pertinent legal sources, examine patterns and trends in case law, and even forecast how legal issues will turn out based on past experience. As a result, attorneys may make better decisions and give their clients better counsel while also saving time and resources.[23]

5. RESEARCH FINDINGS

Through the use of sophisticated natural language processing (NLP) algorithms, AI has achieved significant advancements in the field of legal research. The effectiveness of legal research processes has been greatly improved by these AI-driven technologies, which has resulted in a large decrease in the amount of time needed for document examination, case law interpretation, and legal citation. Utilizing AI-powered legal research tools has resulted in a

[21] Rachel E. Stern et al., "Automating Fairness? Artificial Intelligence in the Chinese Courts" (Rochester, NY, 2021).
[22] "Crown Court Digital Case System Guidance," *GOV.UK*, 2023*available at*: https://www.gov.uk/guidance/crown-court-digital-case-system-guidance (last visited September 22, 2023).
[23] Marcin Frąckiewicz, "AI and the Future of AI-Powered Legal Technology: Investing in Tools for Legal Research and Case Management" *TS2 SPACE*, 2023 *available at*: https://ts2.space/en/ai-and-the-future-of-ai-powered-legal-technology-investing-in-tools-for-legal-research-and-case-management/ (last visited September 2, 2024).

noticeable decrease in research time, which has increased productivity and reduced costs for legal professionals.[24]

A paradigm shift brought about by increased efficiency, financial savings, and increased accessibility to legal services is the integration of AI in the legal profession. To enable responsible AI deployment in the legal field, ethical issues, particularly those relating to prejudice and transparency, must be actively addressed. The study's findings highlight the potential for AI to revolutionize the legal industry while also highlighting the need for careful application and ongoing research.

It's crucial to keep in mind that artificial intelligence should support legal work rather than replace it. While AI can speed up and automate laborious processes, it cannot provide legal advice, complex legal analysis, or strategic decision-making. Lawyers are accountable for their work and have a duty to protect the interests of their clients. Although AI can help law companies become more efficient, it cannot replace a lawyer's or judge's knowledge and experience.

6. CONCLUSION & SUGGESTIONS

AI can be a helpful tool for learning new abilities and producing effective results. It has made it possible for advancements in a variety of disciplines and has the potential to make a significant contribution to the legal sector's role in the administration of justice. Without a doubt, ensuring a quick and efficient justice delivery system will be a blessing. Therefore, using artificial intelligence in court decision-making is a practical way to reduce the number of cases that are pending in India. The potential use of artificial intelligence in the legal system would benefit judges and attorneys, who are regarded as the main pillars in the delivery of justice, by reducing the time required for various tasks at various stages of a trial as well as the judges' decision-making process, which can ultimately help in reducing the amount of time typically required for a trial. Saving time would obviously result in more effectively handling cases, which would ultimately help to lower the number of cases that are pending in the courts of law. The lofty goal of guaranteeing effective and lasting justice for the majority will be accomplished once this is done. However, it is concluded that while AI will undoubtedly be

[24] Steve Juumta, "AI in Law and Legal Practice - A Comprehensive View of 35 Current Applications" *Emerj Artificial Intelligence Research*, 2021*available at*: https://emerj.com/ai-sector-overviews/ai-in-law-legal-practice-current-applications/ (last visited September 2, 2024).

utilized as a method to ensure the achievement of a quick and efficient justice delivery system, it should also be used with prudence and responsibility should not be given to a machine.

As AI technology develops, worries about data security, privacy, human rights, and ethics will become more important, creating new issues and calling for strong self-regulation on the part of technology providers. The main issue in this research is whether to institutionally segregate the AI and the human judge or enable them to collaborate. The ability to communicate between humans and AI is one of the primary issues in this area. Many technologists believe that Al won't be able to entirely replace humans, as was already indicated. The likelihood of technological development enhancing human intelligence is higher.

There are currently no particular regulations in India that govern artificial intelligence. The executive agency for AI-related strategies is the Ministry of Electronics and Information Technology (MEITY), which has established committees to develop an AI policy framework.[25] Seven responsible Ai principles have been defined by the Niti Ayog, and they are safety and dependability, equality, inclusion and non-discrimination, privacy and security, transparency, accountability, and the preservation and upholding of wholesome human values.[26]

The Information Technology Act and its governing regulations serve as India's primary data protection laws. In addition, MEITY has introduced the Digital Personal Data Protection Bill, which is yet to be officially enacted.[27] If this measure is passed into law, people will be able to find out what information about them has been gathered by both private and public organizations, as well as how that information has been processed and stored.

[25] "Artificial Intelligence Committees Reports | Ministry of Electronics and Information Technology, Government of India," *available at*: https://www.meity.gov.in/artificial-intelligence-committees-reports (last visited September 2, 2024).
[26] "Responsible-AI-AIForAll-Approach-Document-for-India-Part-Principles-for-Responsible-AI.pdf,."*available at:* https://www.niti.gov.in/sites/default/files/2023-03/Responsible-AI-AIForAll-Approach-Document-for-India-Part-Principles-for-Responsible-AI.pdf(last visited December 2, 2024).
[27] "The Digital Personal Data Protection Bill, 2022 | Ministry of Electronics and Information Technology, Government of India," *available at*: https://www.meity.gov.in/content/digital-personal-data-protection-bill-2022 (last visited September 2, 2024).

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NAVIGATING LEGAL CHALLENGES IN CROSS-BORDER MERGERS AND ACQUISITIONS: A COMPARATIVE ANALYSIS OF CORPORATE GOVERNANCE PRACTICES

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ABSTRACT

Cross-border mergers and acquisitions (M&A) have become crucial for companies seeking growth in an era of global business. To explore the legal complexities surrounding these transactions across multiple jurisdictions, this research delves into the intricate realm of corporate governance. The study acknowledges the intricate nature of these challenges, which encompass diverse legal frameworks, cultural nuances, and governance practices. By conducting a comparative analysis of several jurisdictions, the research examines the interplay between corporate governance and legal frameworks in cross-border M&A transactions. Through the examination of case studies and real-world examples, the research illuminates how different governance approaches impact the success and sustainability of such transactions. It also underscores how legal frameworks can either facilitate or impede effective governance in mergers and acquisitions, identifying patterns and trends in corporate governance across borders. The findings of this analysis deepen our understanding of best practices for multinational corporations operating globally and offer guidance to policymakers seeking to cultivate an environment conducive to such transactions. Results that are anticipated will provide insight into tactics that improve governance frameworks, guaranteeing cross-border M&A execution success and long-term value development for stakeholders. In an increasingly interconnected global economy, this research seeks to add to the growing conversation on international business practices by offering a distinctive viewpoint on the relationship between legal issues, corporate governance, and cross-border M&A.

Keywords: Cross border Mergers and Acquisitions, Corporate Governance, Corporate law, Microsoft, Mergers and acquisitions

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INTRODUCTION

Mergers and acquisitions (M&A) represent strategic maneuvers undertaken by companies to achieve various business objectives, such as expanding market share, diversifying product portfolios, or gaining competitive advantages. These transactions involve the consolidation of two entities through various means, including mergers, acquisitions, and joint ventures, which play a crucial role in shaping industries, influencing market dynamics, and driving economic growth globally.

According to K R Sampath, an expert in International Cross-Border Mergers and Acquisitions (CBMAs), mergers are strategic arrangements where the assets of two companies are consolidated under the control of a single entity. This process involves the shareholders of the merging companies exchanging their shares, either voluntarily or through legal procedures, with the new entity..[1] In Indian corporate law, "amalgamation" and "merger" are often used interchangeably but represent distinct processes. Amalgamation, as per accounting standards and tax laws, can occur through two primary methods: merger and purchase.

Mergers focus on the organic integration of two entities, ensuring a seamless blending of assets and operations. In contrast, purchases involve one company acquiring another without a direct merger of assets, emphasizing a non-organic unification of entities. This distinction is crucial for understanding the legal and operational implications of corporate restructuring, takeovers, and joint ventures. The Income Tax Act clarifies the transfer of assets and liabilities in mergers, highlighting the transition of ownership and responsibilities from the amalgamating companies to the newly formed entity, aligning with the provisions of the Company Act, 2013 [2] , emphasizing a holistic approach to amalgamations, ensuring a smooth transition and consolidation of business interests..[3]

[1] Rajoria K, 'CROSS BORDER MERGERS AND ACQUISITIONS UNDER THE NEW REGIME: A REVIEW OF THE CURRENT POSITION' (*RGNUL Corporate law book series* , September 2020) <https://www.researchgate.net/publication/344300064_CROSS_BORDER_MERGERS_AND_ACQUISITIONS_UNDER_THE_NEW_REGIME_A_REVIEW_OF_THE_CURRENT_POSITION> accessed 1 March 2024
[2] The Income Tax Act, 1961
[3] The Companies Act, 2013

The P V Narsimha Rao government in the 1990s marked a pivotal period in India's economic history, characterized by significant liberalization reforms that had a profound impact on mergers and acquisitions (M&A) within the country.[4] Under Rao's leadership, India embraced liberalization policies that opened up the economy to foreign investments and trade, aligning with global trends of economic openness. This shift created a conducive environment for companies to engage in cross-border mergers and acquisitions as a strategic response to increased competition and the removal of protectionist barriers. The liberalization regime not only facilitated outward investments but also encouraged cross-border acquisitions of Indian companies, leading to a substantial rise in foreign direct investment inflows. The period saw a remarkable increase in cross-border acquisitions, with the value of such transactions soaring from a modest 23 million to a substantial 29 billion between 1990 and 2007. This surge in M&A activity reflected the growing importance of strategic alliances, consolidation, and global expansion strategies adopted by Indian companies to enhance their competitiveness and capitalize on emerging opportunities in the global market landscape.

Cross-border mergers and acquisitions (hereinafter referred to as CBMAs) refer to the consolidation or acquisition of companies from different countries to create a unified entity. This process involves agreements between domestic and foreign entities that operate within the target company. The trend of cross-border M&A has experienced a notable increase in the global economy.

The Section 394 of the Companies Act, 1956, addresses Cross-Border Mergers and Acquisitions (CBMAs) but does not specify how the consideration should be fulfilled.[5] The 2013 Companies Act introduces practical reforms to streamline M&A processes, making them smoother, faster, and more transparent. Key changes include the establishment of the National Company Law Tribunal (NCLT) to handle and decide on M&A proposals, reducing the likelihood and extent of objections to M&As, and facilitating broader shareholder participation through postal ballot approval. Technological advancements, affordable financing, and robust market conditions have bolstered

[4] Kar R, 'MERGERS AND ACQUISITIONS IN INDIA: A STRATEGIC IMPACT ANALYSIS FOR THE CORPORATE ENTERPRISES IN THE POST LIBERALIZATION PERIOD' (*Indira Gandhi Institute of development and research*) http://www.igidr.ac.in/conf/oldmoney/MERGERS%20AND%20ACQUISITIONS%20IN%20INDIA.pdf accessed 1 March 2024

[5] The Companies Act, 1956

confidence among deal-makers, prompting more creative growth strategies. Compared to domestic M&A, CBMAs are more complex, requiring thorough due diligence. However, they are attractive as they allow firms to enter new international markets, enhancing their global competitiveness. Acquiring an existing firm is often more cost-effective than developing new facilities, offering synergies in combined sales offices, staff facilities, and plant management. These synergies can manifest in various forms such as manufacturing, operational, financial, managerial, and marketing, enabling companies to compete globally. For instance, Mahindra & Mahindra Ltd's acquisition of Jiangling Motor Company Group facilitated their entry into tractor manufacturing. In a competitive, globalized world, companies must position themselves to compete effectively internationally, often achieved through strategic CBMAs.

Cross-border mergers and acquisitions (CBMAs) present a range of advantages and disadvantages. On the positive side, CBMAs enable companies to expand into new markets, accessing a broader customer base. By combining resources and expertise, companies can create synergies that enhance efficiency and competitiveness.[6] CBMAs also support diversification, reducing risks associated with reliance on a single market. Additionally, acquiring companies in different regions can provide access to new talent pools and specialized skills, while consolidating operations can lead to cost savings and improved economies of scale.[7]

However, CBMAs also pose challenges. Cultural differences between merging companies can lead to communication barriers and clashes in management styles. Navigating complex regulatory environments in different countries can result in delays and increased costs.[8] Integrating operations, systems, and corporate cultures of merged entities can be complex and time-consuming. Fluctuations in exchange rates pose currency risks that can impact the financial

[6] Goksoy A, 'ARE CROSS-BORDER MERGERS & ACQUISITIONS A THREAT OR OPPORTUNITY TO RIVAL FIRMS IN THE HOST COUNTRY?' (*Global business and economics anthology, July 2019*) https://www.researchgate.net/publication/334573413_ARE_CROSS-BORDER_MERGERS_ACQUISITIONS_A_THREAT_OR_OPPORTUNITY_TO_RIVAL_FIRMS_IN_THE_HOST_COUNTRY accessed 1 March 2024

[7] Chapman K, 'Cross-border Mergers/Acquisitions: A Review and Research Agenda?' (*Journal of Economic Geography, July 2003*) https://www.researchgate.net/publication/5213263_Cross-border_MergersAcquisitions_A_Review_and_Research_Agenda accessed 1 March 2024

[8] Sayad M, 'Cultural Differences Impact on Cross-Border Mergers and Acquisitions Outcomes' (*IU International university of Applied Sciences, April 2019*) https://www.researchgate.net/publication/336994906_Cultural_Differences_Impact_on_Cross-Border_Mergers_and_Acquisitions_Outcomes accessed 1 March 2024

performance of the merged entity. Moreover, CBMAs may be impacted by political instability, changes in government policies, and geopolitical risks in different regions. [9]

One of the most determining factors of CBMA is the corporate governance. In the context of CBMAs, "Corporate Governance refers to the system of rules, practices, and processes by which a company is directed and controlled. It encompasses the relationships between various stakeholders, including shareholders, management, employees, customers, suppliers, and the community at large[10]." Effective corporate governance is crucial in Cross-Border Mergers and Acquisitions (CBMAs) for several reasons. It ensures transparency and accountability throughout the M&A process. Clear communication and disclosure of information to stakeholders, including shareholders and regulatory authorities, are vital for building trust and mitigating risks associated with cross-border transactions. Proper governance mechanisms can address potential conflicts of interest and ensure that the interests of all stakeholders are considered. Additionally, it can enhance the decision-making process in CBMAs. Corporate governance frameworks play a crucial role in facilitating the smooth integration of companies from different countries and cultures by establishing clear roles, responsibilities, and decision-making processes.[11] This is especially important in cross-border transactions, where differences in corporate cultures, management styles, and regulatory environments can present challenges. Effective corporate governance helps protect the interests of minority shareholders and other stakeholders involved in Cross-Border Mergers and Acquisitions (CBMAs). Strong governance mechanisms, such as independent board oversight and shareholder rights, can provide safeguards against potential abuses of power or conflicts of interest that may arise in the context of cross-border transactions.[12]

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[9] Cao C, 'POLITICAL UNCERTAINTY AND CROSS-BORDER MERGERS ACQUISITIONS' (*European Finance Review, March 2019*) https://www.researchgate.net/publication/332140937_Political_Uncertainty_and_Cross-Border_Acquisitions accessed 1 March 2024

[10] 'Corporate governance and why it matters?' (*University of Pittsburgh, July 2023*) https://online.law.pitt.edu/blog/corporate-governance-what-it-is-and-why-it-matters#:~:text=At%20its%20core%2C%20corporate%20governance,and%20the%20community%20at%20large. accessed 1 March 2024

[11] Ibid 10

[12] Kumar P, 'Institutional Environment and Corporate Governance'' (*Corporate Governance and International Review, March 2016*) https://www.researchgate.net/publication/296693536_Institutional_Environment_and_Corporate_Governance accessed 1 March 2024

LEGAL HURDLES

1. Indian laws:

To encourage cross-border mergers and acquisitions, India has established specific rules and regulations. These transactions are primarily governed by Corporate Laws, Tax Laws, Foreign Exchange laws, and any other applicable laws related to merger structures.

a) Companies Act, 2013[13]:

Sections 230 to 232 of the Companies Act, 2013 detail requirements for domestic mergers, while Section 234, along with Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules of 2016, covers cross-border mergers and acquisitions.

Section 234 of the Companies Act specifies that the rules governing domestic mergers also apply, with necessary modifications, to cross-border mergers and acquisitions involving Indian and foreign companies, as notified by the Central Government. Rule 25A of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016, allows an Indian company to merge with a foreign company, subject to compliance with Sections 230 to 232 and obtaining prior approval from the RBI. The foreign company must be incorporated in jurisdictions specified in Annexure B.

b) SEBI (SAST) Regulations, 2011[14]:

The SEBI (SAST) Regulations governing cross-border mergers and acquisitions aim to ensure equity for Indian companies and safeguard the interests of Indian shareholders. They also enhance clarity and transparency in the cross-border M&A process in India.

These regulations apply to all instances of share acquisitions, control acquisitions, or voting rights acquisitions in a listed Indian company by a foreign entity, including mergers or amalgamations with foreign companies. They establish different thresholds for open offers based on the category of companies involved. An acquirer must make an open offer for at least 26% of the share capital

[13] The Companies Act, 2013
[14] SEBI (SAST) Regulations, 2011

but can increase its shareholding up to 75% without further open offers. Additionally, any acquisition of more than 5% by the acquirer requires mandatory disclosure of the total ownership.

Moreover, the regulations necessitate prior approval from SEBI for any acquisition of shares or control in a listed Indian company by a foreign entity. The acquirer is also required to make specific disclosures, including details of the acquisition, the acquirer's shareholding, and the purpose of the acquisition, among others.

c) Competition Act, 2002[15]:

The Competition Commission of India (CCI) plays a vital role in preventing anti-competitive agreements, curbing the abuse of dominant positions, and fostering market competition. The CCI also oversees combinations and has the authority to propose necessary changes in their proposed combinations.

As per Section 2(a) of the Act, "acquisition" is defined as an agreement to purchase shares, voting rights, or other assets of the target company. Section 5 empowers the CCI to investigate whether the combination will have any appreciable adverse effect on competition, while Section 20 outlines the mode of inquiry. Section 6(1) restricts combinations that have or are expected to have an appreciable adverse effect on competition. Companies are required to provide prior notice and relevant information to the CCI regarding the combination within 30 days, as stipulated in Section 6(2). Section 31 grants the CCI the authority to issue necessary orders on combinations, including approval, rejection, or suggesting modifications to prevent adverse effects on competition in the market.

Foreign Exchange Laws:

a) Foreign Exchange Management Act (FEMA), 1999[16]:

Under the authority granted by Section 234(1) of the Companies Act, 2013, the Central Government has issued the FEMA Cross-border Merger Regulation, 2018, to govern the procedures involved in cross-border mergers. The regulations involved are FEM (Transfer or Issue

[15] The Competition Act, 2002
[16] The Foreign Exchange Management Act, 1999

of Security by a Person Resident outside India) Regulations, 2017, FEM (Transfer or Issue of any foreign security) Regulations, 2004, FEMA (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016, etc.

b) RBI Act:

RBI has proposed cross-border merger transactions under Companies (Compromises, Arrangements, and Amalgamation) Amendment Rules, 2017, to address issues arising from the merger or acquisition between Indian and Foreign Companies.

Tax Laws:

The Income Tax Act, 1961, addresses the concepts of amalgamation and demerger. According to Section 2(1B), amalgamation refers to the joining of two or more companies to form a single company. Mergers and acquisitions are exempt from Income Tax under the head of Income from Capital Gains, as specified in section 47 of the Act, particularly in cases of indirect transfer of shares resulting from the merger or demerger of foreign companies. However, this exemption applies exclusively to inbound mergers.

In the context of cross-border transactions, a demerger occurs when one or more undertakings of a company are transferred to an overseas entity as a going concern, either to establish a new business or merge with an existing entity. Such transactions are subject to the provisions of Section 72A(4) of the Income Tax Act.[17]

2. USA Laws:

Cross-border mergers and acquisitions (M&A) in the United States are governed by a set of laws and regulations that oversee the entire process. These regulations are crucial to ensuring that the M&A process is conducted in a fair and transparent manner. Key rules and regulations that apply to cross-border M&A in the United States include:

a) Clayton Act[18]:

[17] The Income Tax Act, 1961
[18] The Clayton Antitrust Act, 1914

The Sherman Act's foundational restrictions are further delineated in the Clayton Act, specifically in 15 U.S.C. 12 et seq., which also addresses nascent anti-competitive concerns.[19] Section 7 of the Clayton Act prohibits mergers and asset acquisitions that could potentially diminish competition or contribute to the establishment of a monopoly, whether in a particular industry or in any aspect impacting it across the nation.

b) Hart–Scott–Rodino Antitrust Improvements Act (premerger notification)[20]:

These amendments to the state's antitrust laws mandate that corporations notify both the Federal Trade Commission and the Justice Department's Antitrust Division before specific mergers and acquisitions take place. The Bureau of Competition is tasked with the responsibility of preventing mergers or acquisitions that could impact market competition.

c) Foreign Investment and National Security Act (FINSA)[21]:

Under the federal statute known as FINSA, the Committee on Foreign Investment in the United States (CFIUS) has the authority to evaluate and approve or reject foreign investments in US companies that could jeopardize national security. CFIUS is also tasked with reviewing cross-border M&A transactions involving foreign investors. Additionally, the US government has enacted specific legislation that empowers federal agencies to address foreign investments that pose a risk to national security.

d) Securities Exchange Act of 1934[22]:

The Securities and Exchange Commission (SEC) has issued regulations governing securities transactions, requiring companies to disclose various details related to M&A activities, including tender offers, proxy solicitations, and material information disclosures. These regulations apply to both domestic and international mergers and acquisitions. The "Cross-border Release" facilitates participation in cross-border transactions, while the "Regulation M-A Release" governs tender offers.

[19] The Sherman Antitrust Act, 1890
[20] Hart–Scott–Rodino Antitrust Improvements Act, 1976
[21] Foreign Investment and National Security Act (FINSA), 2007
[22] Securities Exchange Act, 1934

Additionally, the SEC has issued exemptive rules for cross-border tender and exchange offers, business combinations, and rights issues involving foreign corporations' stocks. These rules exempt these transactions from the Securities Act's registration requirements, aiming to simplify American investors' participation in such transactions.

e) Tax laws:

Cross-border mergers and acquisitions (M&A) can have significant tax implications, including issues related to the tax treatment of assets, income, and gains, as well as transfer pricing and other international tax considerations. Companies engaged in cross-border M&A transactions in the United States need to comply with federal and state tax laws, including the Internal Revenue Code and relevant tax treaties.

f) Foreign Corrupt Practices Act (FCPA)[23]:

The Foreign Corrupt Practices Act (FCPA) is a federal law that prohibits US companies from participating in bribery and other corrupt activities when conducting business internationally, including in cross-border M&A transactions. US companies involved in such transactions must adhere to the FCPA, which contains anti-bribery and accounting provisions, to ensure compliance.

g) State laws:

Apart from federal laws, cross-border mergers and acquisitions (M&A) transactions in the United States may also fall under the purview of state laws. Each state has its own set of laws and regulations pertaining to corporations, limited liability companies, and other business entities, which can affect the procedures and prerequisites for M&A transactions.

3. Comparative analysis:

[23] The Foreign Corrupt Practices Act, 1977

Aspect	India	USA
Antitrust Regulation	India's Competition Act, 2002, focuses on preventing anti-competitive agreements, abuse of dominant position, and regulating mergers and acquisitions. The Competition Commission of India (CCI) assesses the impact on competition.	In the USA, the Clayton Act and the Hart-Scott-Rodino Act are key. The Clayton Act prohibits mergers that may substantially lessen competition or create a monopoly. The Hart-Scott-Rodino Act requires companies to notify antitrust authorities before certain transactions.
National Security Review	India's Foreign Exchange Management Act (FEMA) regulates cross-border mergers. FEMA requires RBI approval for inbound and outbound investments, including mergers.	In the USA, the Foreign Investment and National Security Act (FINSA) authorizes the Committee on Foreign Investment in the United States (CFIUS) to review transactions that could affect national security.
Securities Regulation	India's Companies Act, 2013, and SEBI regulations govern securities offerings and disclosures in mergers. SEBI regulates public companies and market intermediaries.	In the USA, the Securities Exchange Act of 1934 regulates securities transactions, disclosures, and tender offers. The SEC oversees compliance with securities laws.

Tax Implications	India's Income Tax Act, 1961, provides tax incentives for mergers. It exempts certain transfers of assets and liabilities from taxation. Transfer pricing rules apply to international transactions.	In the USA, the Internal Revenue Code governs tax treatment of mergers. It provides for tax-free reorganizations under certain conditions. Gains on transfers of stock are subject to taxation.
Corporate Governance	India's Companies Act, 2013, outlines corporate governance requirements for companies. It includes provisions for board composition, disclosure, and shareholder rights.	In the USA, corporate governance is regulated by state laws, federal securities laws, and stock exchange rules. The focus is on board independence, audit committees, and shareholder rights.
Foreign Corrupt Practices Regulation	India's laws do not specifically address foreign corrupt practices in the context of mergers. Companies must comply with anti-corruption laws.	In the USA, the Foreign Corrupt Practices Act (FCPA) prohibits bribery of foreign officials. Companies must maintain accurate books and records and have internal controls to prevent bribery.
Regulatory Approval Process	In India, RBI approval is required for cross-border mergers. CCI approval is needed for mergers that may have an adverse impact on competition.	In the USA, SEC approval is required for securities transactions. CFIUS approval is needed for mergers that raise national security concerns.

EXAMINING LEGAL DILEMMAS: A CASE STUDY APPROACH

1. **Microsoft-Nokia (2014)**

As global mobile communication flourishes in the modern era, Nokia is renowned for its pioneering functional phone, which revolutionized distant communication. However, the advent of smartphones and Wi-Fi has rendered mere calling insufficient to satisfy people's needs. As smartphones evolved to offer more than just calling features, companies like Apple and Microsoft emerged as dominant players, gradually capturing the market share that Nokia once held. To salvage Nokia's reputation and market position, Microsoft made a surprising announcement to acquire Nokia for $7.2 billion, aiming to strengthen its mobile and smartphone offerings[24]. On September 2, 2013, Microsoft announced the acquisition of most of Nokia's mobile phone business for approximately 5 billion US dollars, along with an additional 2.18 billion US dollars for patents.[25] This brought the total price of Nokia's patent license to about 7.17 billion US dollars. As part of the deal, Nokia granted Microsoft a 10-year non-exclusive patent license. The acquisition also raised concerns about the management of Nokia's employees, with reports indicating net layoffs of 11,044 employees. This resulted in a 11% decrease in Nokia's total number of employees, bringing the average number of employees in 2020 to 92,039.[26]

Before the acquisition, Nokia's former CEO, Stephen Elop denied speculation about Nokia being purchased by Microsoft, asserting that Nokia would remain an independent company.[27] Despite interoperability with other Windows smartphones, Nokia's hardware advantage and unique features provided a competitive edge. Nokia had set a high aspiration price of about 29.5 billion euros for themselves, which was considered their dream price if they were to be sold to another company.[28]

Downfall of Nokia:

1. Operating System & Apps: Both BlackBerry and Nokia were praised for their strengths in hardware and services, with BlackBerry known for its keyboards and services like BlackBerry Enterprise Server, and Nokia lauded for its supply chain, distribution network, and hardware

[24] Cao T, 'Deal making analysis, Microsoft acquiredNokia' (*BCP Business and Management, 2021*) https://pdfs.semanticscholar.org/b52e/0045b61e016568136acd9ed1b6a7fc49daf5.pdf accessed 1 March 2024
[25] Ibid 24
[26] Sucher S, 'Nokia's Bridge Program, Redesigning Layoffs' (*Harvard Business School, 2015*) https://www.hbs.edu/faculty/Pages/item.aspx?num=48537 accessed 1 March 2024
[27] 'Elop S: I wasn't a trojan horse for Microsoft at Nokia' (*The Guardian, April, 2014*) https://www.theguardian.com/technology/2014/apr/29/stephen-elop-microsoft-nokia accessed 1 March 2024
[28] Ibid 24

quality. However, they lacked competitive operating systems and apps. Android and iOS dominated the market, leaving Windows with a minimal role.

2. Domination Blindness: BlackBerry's success was highlighted with its integration of Microsoft Exchange and BlackBerry Messenger, but noted that this success blinded the management to the threat posed by the iPhone. Similarly, Nokia, once the largest mobile phone maker, failed to see the shortcomings of its Symbian OS and the potential of iOS and Android. Both companies were slow to adapt, leading to a decline in market share and value.

3. Leadership: The CEOs of both BlackBerry and Nokia were criticized for their handling of the companies' strategies. Nokia's CEO failed to reverse the decline in revenue, profits, and market share, allowing Samsung to surpass Nokia in the handset market. BlackBerry's leadership also failed to recognize the threat posed by iOS and Android, leading to a decline in market share and value.

4. Delay in Transitioning from Symbian: Nokia was slow to respond to the outdated features of Symbian that did not align with consumer demands. While Android and Apple had advanced to their 10th and 7th versions of operating systems respectively, Nokia was still shipping the 2nd version of its Windows Phone OS.

5. Internal Politics in Middle Management: Nokia's middle management was characterized by internal competition and self-interest, lacking cooperation and a focus on collective goals. This hindered innovation and collaboration within the organization.

6. Rigidity in Project Management: Nokia's project management model was overly rigid, focused on manufacturing process efficiency rather than fostering innovation. This rigidity made it challenging for the workforce to innovate within the constraints of the manufacturing process.

7. Failure to Differentiate from Competitors: Nokia struggled to position itself as an innovator in the market, while competitors like Samsung were able to launch new models frequently. Nokia's higher prices compared to Samsung and its limited capacity to introduce new models affected its competitiveness.

8. Lack of Adaptation in Lower-end Markets: Nokia underestimated competition in the lower end of the market, facing challenges from local vendors in emerging markets like China and India. Competitors like HTC, Huawei, and local Indian brands outperformed Nokia, especially in markets where dual SIM card phones were popular.

Reasons why microsoft acquired nokia:

1. Strategic Vision: The Microsoft-Nokia deal aimed to strengthen Microsoft's position in the smartphone market, aligning with CEO Steve Ballmer's new devices and services strategy.

2. Competitive Edge: Acquiring Nokia's mobile phone business was seen as a strategic move to compete more effectively with Android and iOS, giving Microsoft control over its smartphone destiny.

3. Global Expansion: With the acquisition, Microsoft added 32,000 Nokia employees, transforming into a true multinational company with enhanced tax flexibility.[29]

4. Brand Acquisition: The deal secured a global brand for Microsoft and prevented Nokia from adopting the Android platform, ensuring Microsoft's presence in the smartphone market.

5. Innovation and Competition: The acquisition aimed to protect the future of the Windows Phone platform, make it more competitive, and stimulate innovation in the mobile space.

6. Financial Gain: Microsoft anticipated an increase in revenue per Windows Phone unit sold, making the acquisition potentially profitable and enhancing its financial position.

7. Strategic Leadership: The deal positioned Microsoft as a major player in the Windows Phone smartphone business, underlining the potential return of Stephen Elop as CEO.

Aftermath

[29] Zeesan E, 'Acquisition of Nokia by Microsoft' (*Bangladesh University of Professionals, April, 2019*) https://www.academia.edu/43442802/Acquisition_of_Nokia_by_Microsoft accessed 1 March 2024

In response to these challenges, Microsoft wrote off $7.6 billion related to the Nokia acquisition in 2015, indicating that the deal was not yielding the expected results. Subsequently, in 2016, Microsoft sold its feature phone business to FIH Mobile, a subsidiary of Foxconn, and HMD Global[30]. There are several reasons for the failure of the deal. These are:

1. Cultural Differences: The merger struggled to integrate Nokia's employees into Microsoft's culture due to significant differences between the American and Finnish work cultures. These differences include:

a. Individualism vs. Collectivism: Both cultures prioritize individual interests over the company's, making collaboration challenging.

b. Masculinity vs. Femininity: Americans emphasize competition and accomplishment, whereas Finns prioritize health and adaptability.

c. Strong Uncertainty Avoidance vs. Weak Uncertainty Avoidance: Americans exhibit greater risk tolerance compared to Finns.

d. Task-Oriented vs. Relationship-Oriented: While both are focused on tasks, the absence of relationship-building has led to distrust and a lack of cooperation.

e. Confrontational vs. Avoids Confrontation: Americans are comfortable with confrontation, while Finns tend to avoid it.

f. Linear Time vs. Flexible Time: Americans have more adaptable schedules than Finns

2. Leadership Challenges:

a. Leadership Change: The merger aligned with a shift in Microsoft's CEO, resulting in varied management approaches within Microsoft Mobile.

b. Employee Transition: Nokia employees were not given ample time to acclimatize to the corporate ethos of Microsoft.

[30] Warren T, 'Microsoft wasted at least $8 Billion on its failed Nokia experiment' (*The Verge, 2016*) https://www.theverge.com/2016/5/25/11766540/microsoft-nokia-acquisition-costs accessed 1 March 2024

c. High Power Distance vs. Low Power Distance: Both organizations promote a culture of low power distance, but Finland demonstrates even lower power distance, contributing to decentralization.

d. Consensual vs. Authoritative: Finnish culture favors collective decision-making, contrasting with American preferences for top-down approaches.

3. Public Perception:

a. People in Finland reacted critically to the acquisition, as Nokia holds high esteem despite its market decline.

4. Valuation:

a. Microsoft overestimated the benefits it would gain from the merger, leading to an improper valuation of Nokia's assets.

5. Developer Support:

a. Microsoft struggled to convince developers to create software for its Windows OS smartphones, as many developers preferred Google's Android platform[31]. Switching OS would require costly app overhauls.

6. Market Saturation:

a. The smartphone market was already saturated, with many companies opting for Android OS.

7. Failure to Utilize Nokia's Patents:

a. Microsoft did not effectively leverage Nokia's patents, missing an opportunity for innovation and differentiation.

Mergers and acquisitions (M&A) are often pursued for the synergistic benefits they offer. When Microsoft acquired Nokia's phone business, Nokia was transitioning into Windows phone

[31] Warren T, 'Did Microsoft just give up on his windows phone?t' (*The Verge, July, 2015*) https://www.theverge.com/2015/7/8/8913365/microsoft-lumia-windows-phones-strategy-2015 accessed 1 March 2024

manufacturing, a sector showing promise in the mobile market. Nokia brought strengths in product engineering, design, sales, marketing, and manufacturing to the deal, seen as valuable synergies.[32] Microsoft, on the other hand, saw an opportunity to bolster its Windows operating system in the mobile sector, a strategic move considering Nokia's global presence. However, the success of M&A deals hinges on the realization of synergies. Acquiring a profitable upstream supplier or downstream customer doesn't guarantee increased profits without such synergies. Despite Nokia's profitability and Microsoft's strategic goals, the acquisition hasn't yielded the desired results. Windows phone, post-acquisition, only commands a small market share compared to Android, the market leader.[33] The $7.2 billion purchase price, initially seen as a good deal, now appears questionable, especially with the subsequent closure of Nokia's phone business. Microsoft's strategic intent to promote Windows in mobile seems unfulfilled, with Windows phone's market share remaining low. In hindsight, it has been argued that Microsoft may have made a misstep with the Nokia acquisition, suggesting that the deal might not have been the right move.[34]

2. Microsoft-blizzard (2022)

The COVID-19 pandemic has accelerated the growth of both cloud services and the gaming market. With restrictions and isolation measures driving up demand for online software and games, the gaming industry is experiencing significant expansion. Microsoft CEO Satya Nadella envisions a significant role for video games in the emerging metaverse. At the 2021 Microsoft BUILD conference, he discussed the concept of an "enterprise metaverse," which includes digital twins, simulated environments, and mixed reality, indicating a deepening connection between gaming and virtual environments.

Activision Blizzard, Inc. (ATVI), a prominent figure in the gaming sector, is a worldwide conglomerate that creates and disseminates interactive video game content and services across diverse platforms such as mobile devices, PCs, and gaming consoles. Established in 2008 following the merger of Activision and Vivendi Games, Activision Blizzard operates through three

[32] Jha A, 'Microsoft Nokia Deal: A SWOT analysis' (*International journal of business management and leadership, 2014*) https://www.academia.edu/7329998/Microsoft_Nokia_Deal_A_SWOT_Analysis accessed 1 March 2024
[33] Savov V, 'Windows phone was a glorious failure' (*The Verge, 2017*) https://www.theverge.com/2017/10/10/16452162/windows-phone-history-glorious-failure accessed 1 March 2024
[34] Warren T, 'Microsoft wasted at least $8 Billion on its failed Nokia experiment' (*The Verge, 2016*) https://www.theverge.com/2016/5/25/11766540/microsoft-nokia-acquisition-costs accessed 1 March 2024

primary segments: Activision, Blizzard, and King.[35] Activision, responsible for over half of the company's revenue, is recognized for franchises like Call of Duty. Blizzard, on the other hand, is renowned for its games such as World of Warcraft, Hearthstone, Diablo, and Overwatch.

On January 18, 2022, Microsoft disclosed its plan to acquire Activision Blizzard in an all-cash transaction valued at roughly $69 billion, indicating a 45% premium over Activision Blizzard's value.[36] This acquisition, subject to regulatory scrutiny and anticipated to conclude in 2023, would position Microsoft as the third-largest gaming company globally, behind Sony and Tencent.

Cross-team collaboration involves multiple teams from diverse backgrounds or departments working together towards a common goal, combining their knowledge and insights. Microsoft and Activision Blizzard, despite operating in different sectors—cloud services and video games—both rely on the internet. Activision Blizzard's games require cloud support, while Microsoft's Xbox platform depends on the games provided by Activision Blizzard.[37] This merger showcases their complementary strengths, enhancing their ability to collaborate effectively. While there are challenges in merging two distinct companies, such as initial struggles in working together, these obstacles can be overcome with strong leadership and management attention. Over time, the benefits of their collaboration are expected to outweigh these challenges, enabling both companies to achieve greater success together.

Microsoft's acquisition of Activision Blizzard, making it a subsidiary, has significantly bolstered the gaming market. A key advantage of video games is their portability, allowing players to enjoy gaming experiences on mobile phones. The global number of active smartphones reached 4.6 billion in 2021, marking a 5.7% increase from the previous year.[38] This growth trend bodes well

[35] Hu J, 'Microsoft's acquisition of activision blizzard: A case study' (*Highlights in business economics and management, April 2023*) https://www.researchgate.net/publication/369870711_Microsoft%27s_Acquisition_of_Activision_Blizzard_A_Case_Study accessed 1 March 2024

[36] 'Microsoft to acquire Activision blizzard to bring the joy and community of gaming to everyone, across every device' (*Microsoft news center, january 2022*) https://news.microsoft.com/2022/01/18/microsoft-to-acquire-activision-blizzard-to-bring-the-joy-and-community-of-gaming-to-everyone-across-every-device/ accessed 1 March 2024

[37] Warren T, 'Ubisoft and Activision's blizzard deal for cloud gaming rights, explained" (*The Verge, October 2023*) https://www.theverge.com/2023/10/13/23915780/ubisoft-activision-blizzard-microsoft-cloud-gaming-rights-deal-explained accessed 1 March 2024

[38] 'Global innovation tracker', (*World intellectual property organization, 2022) https://www.wipo.int/edocs/pubdocs/en/wipo-pub-2000-2022-section2-en-global-innovation-tracker-global-innovation-index-2022-15th-edition.pdf accessed 1 march 2024*

for the future of video games, as it indicates a larger audience and increased revenue potential for gaming companies. Technological advancements, such as 5G, are further enhancing the gaming experience, contributing to the overall growth of the industry. It is projected that the global gaming market will generate $218.8 billion in revenue by 2024.[39] Nintendo Co. Ltd. and Sony Corporation are among the major players in this market, highlighting the competitive landscape. To thrive in this competitive environment, companies like Activision Blizzard must focus on innovation in game development, building strong intellectual property portfolios, and attracting a diverse player base. These strategies are essential for companies to stay relevant and successful in the dynamic gaming industry.

Potential benefits:

Microsoft's core business revolves around cloud services for PCs, while Activision Blizzard's games are accessible on mobile devices, providing Microsoft with an opportunity to establish an integrated PC and mobile ecosystem. With over 300 million players according to Activision Blizzard's 2021 report, Microsoft stands to significantly expand its audience through this acquisition.[40] Additionally, Microsoft's previous relationship with Activision Blizzard as a customer means that the acquisition brings an increase in intellectual property for Microsoft's gaming portfolio.

This acquisition enhances Microsoft's competitiveness in the gaming industry. Despite already being ranked among the top 10 gaming companies globally, Microsoft's acquisitions of Mojang and Bethesda for $2.5 billion and $7.5 billion respectively, along with the recent purchase of Activision Blizzard, catapulted it into the top three. This move aligns with Microsoft's strategy to broaden its presence in the gaming market, as evidenced by its investments in gaming companies over the past few years. Satya Nadella, Microsoft's CEO, emphasized the acquisition's role in democratizing game development and supporting the metaverse concept.[41] The metaverse has garnered significant attention, with Facebook, now Meta, also investing heavily in this area.

[39] Read S, 'Gaming is booming and is expected to keep growing: This chart tells you all you need to know'' (*The world economic forum, July 2022*) https://www.weforum.org/agenda/2022/07/gaming-pandemic-lockdowns-pwc-growth/ accessed 1 March 2024
[40] Ibid 36
[41] 'Microsoft's Satya Nadella on Flexible Work, the Metaverse, and the Power of Empathy' (*Harvard Business Review, October 2021*) https://hbr.org/2021/10/microsofts-satya-nadella-on-flexible-work-the-metaverse-and-the-power-of-empathy accessed 1 March 2024

Microsoft's acquisition of Activision Blizzard is seen as a strategic move to strengthen its position in the metaverse. Contrary to concerns about monopolization, Microsoft has expressed its commitment to maintaining a multi-platform approach. The company intends to keep Activision Blizzard's games available on rival platforms like Sony's PlayStation and Nintendo's Switch. Microsoft's president even reassured Sony's CEO that Activision Blizzard's games would remain on their platform for the foreseeable future, highlighting a commitment to cross-platform gaming accessibility.

Risks associated:

This acquisition holds potential benefits for both companies, but there are significant obstacles to navigate. Firstly, the merger between Microsoft and Activision Blizzard, two industry leaders in technology and gaming respectively, is likely to face intense regulatory scrutiny due to concerns of potential antitrust behavior. The Federal Trade Commission (FTC) has already indicated its intention to review the merger closely, reflecting broader tensions between the tech industry and regulators.[42]

Secondly, the premium Microsoft is willing to pay for the acquisition, up to 45%, raises concerns about whether the anticipated synergies and revenue growth will materialize as expected.[43] Such a high price tag increases the risk for Microsoft.

Another challenge lies in the workplace culture at Activision Blizzard, particularly within its Blizzard division. The company has faced internal issues, including inter-departmental conflicts, power struggles, and a toxic work environment marred by reports of sexual harassment and gender discrimination. These cultural challenges could pose significant hurdles for Microsoft in integrating Activision Blizzard's operations smoothly.

In summary, while the acquisition offers strategic advantages, including expanded market reach and access to new intellectual property, Microsoft must address regulatory concerns, manage the

[42] 'Merger review' (*Federal trade commission)* *https://www.ftc.gov/news-events/topics/competition-enforcement/merger-review accessed 1 march 2024*
[43] Bennedsen C, 'Valuing M&A Synergies as real options: A case study' (*CBS Research portal, 2021*) https://research-api.cbs.dk/ws/portalfiles/portal/68331634/1098489_MSc_Thesis_2021_CB_MC.pdf accessed 1 March 2024

financial risks, and navigate the complex cultural issues within Activision Blizzard to ensure the success of the merger.

Challenges for Microsoft

Microsoft's acquisition of Activision Blizzard has encountered regulatory challenges, particularly from the UK's Competition and Markets Authority (CMA), which has expressed concerns about potential antitrust issues in the rapidly evolving cloud gaming sector.[44] Despite Microsoft's disagreement with the CMA's position, the company is exploring modifications to address the regulator's concerns. Currently, Microsoft, Activision, and the CMA are seeking a legal pause in their litigation to facilitate negotiations. In parallel, the Federal Trade Commission (FTC) has filed a lawsuit against Microsoft to block the acquisition, citing similar concerns about monopolistic practices.[45] However, this suit is seen as a reiteration of objections raised in earlier hearings in San Francisco, which were dismissed. It is speculated that the FTC may opt to abandon the case rather than pursue a re-litigation of a losing argument in a lower court. To navigate regulatory hurdles, Microsoft has made significant concessions. For instance, the European Union has mandated that Activision Blizzard's games be automatically licensed to competing cloud gaming services.[46] This move effectively positions Microsoft as a cross-platform publisher, diverging from its traditional role as a platform owner. This strategic shift, while aligning with Microsoft's stated intentions, may have contributed to the underperformance of the Xbox One compared to Sony's PlayStation 4 in the marketplace. Additionally, Microsoft has disclosed plans, revealed during an investigation by the CMA, to enter the mobile marketplace with its standalone app store. This initiative aims to leverage well-known and popular content, such as Candy Crush, to attract consumers.[47] Given that the mobile market represents just over half of the modern games industry, Microsoft's entry is

[44] Competition and Markets authority, 'Microsoft / Activision deal prevented to protect innovation and choice in cloud gaming' (Government of UK, April 2023) https://www.gov.uk/government/news/microsoft-activision-deal-prevented-to-protect-innovation-and-choice-in-cloud-gaming accessed 1 March 2024

[45]'FTC Seeks to Block Microsoft Corp.'s Acquisition of Activision Blizzard, Inc.' (Federal Trade Commission, October 2022) https://www.ftc.gov/news-events/news/press-releases/2022/12/ftc-seeks-block-microsoft-corps-acquisition-activision-blizzard-inc accessed 1 March 2024

[46] Warren T, 'The EU might need to reassess Microsoft's Activision Blizzard deal after restructuring' (*The Verge, August 2023*) https://www.theverge.com/2023/8/22/23841244/eu-microsoft-activision-blizzard-restructure-investigation-comment#:~:text=The%20European%20Commission%20has%20required,on%20any%20device%20they%20choose. accessed 1 March 2024

[47] Case M.10646: Microsoft/Activision Blizzard, (May 2023) https://ec.europa.eu/competition/mergers/cases1/202330/M_10646_9311516_7443_3.pdf accessed 1 march 2024

strategic but could intensify competition, especially if the company addresses issues like the mobile market's inconsistent curation.

Overall, Microsoft's acquisition of Activision Blizzard signifies its strategic evolution in the gaming industry, positioning itself as a cross-platform publisher and making inroads into the lucrative mobile gaming market. However, regulatory challenges and the need to address concerns about monopolistic practices and market competition pose significant hurdles that Microsoft must navigate effectively to realize the full potential of this acquisition.

3. Oracle-Cerner (2021)

On December 20, 2021, Oracle Corporation finalized its acquisition of Cerner Corporation for about $30 billion[48]. This acquisition marks Oracle's largest deal to date, surpassing its 2016 acquisition of cloud computing company NetSuite for $9.3 billion. Many industry experts consider this acquisition to be one of the most significant of 2021.

On December 20th, 2021, Oracle Corporation completed its acquisition of Cerner Corporation for approximately $30 billion, making it Oracle's largest deal since acquiring cloud computing company NetSuite for $9.3 billion in 2016.[49] This acquisition is considered one of the most significant of 2021. The deal, valued at around $28.3 billion in equity value, was structured as an all-cash tender offer for $95.00 per share, representing a 20% premium to Cerner's closing share price on December 16th. This offer includes a typical takeover premium and values Cerner, with a market value of around $23 billion, at a significant premium. Oracle's interest in larger deals was evident a year ago when it reached a preliminary agreement to acquire TikTok's U.S. operations, although this deal was put on hold indefinitely due to concerns from both the Trump and Biden administrations. This led Oracle to focus on acquiring companies more aligned with its strategic business units.

Oracle already has a strong presence in healthcare, providing technology for health insurers, clinicians, and public health systems to optimize efficiency and improve patient outcomes.

[48] Lizder B, 'Oracle-Cerner: the acquisition of the year" (*BSC Capital Markets*) https://www.bscapitalmarkets.com/oracle---cerner-the-acquisition-of-the-year.html accessed 1 March 2024
[49] 'Oracle buys Cerner' (*Oracle, December 2021*) https://www.oracle.com/in/news/announcement/oracle-buys-cerner-2021-12-20/ accessed 1 March 2024

Acquiring Cerner, known for its electronic medical records, aligns with Oracle's strategy to capitalize on the growing demand for digital healthcare tools and strengthen its position in the healthcare industry.

Cerner's business focuses on conventional software sales and support, as well as services, but it has been expanding into newer cloud services, a market worth $214 billion, in which Oracle is also seeking to expand.[50] Through this acquisition, Oracle aims to catch up with competitors like Amazon, Microsoft, and Google, and respond to investors and partners' expectations. The acquisition is expected to boost Oracle's cloud, data analytics, and AI-related offerings, positioning it as a leader in the healthcare cloud market.

Financial institutions have varying opinions on the deal's benefits and risks. KeyBank believes the deal provides potential cost improvements and acquisition synergies, while Barclays sees it as positive for Cerner, allowing the company to move into data analytics and other growth opportunities under Oracle's ownership. Despite potential benefits, Barclays is not fully convinced about the merits of the deal from Oracle's perspective. They argue that spending $30 billion on a secondary asset when money is needed for increasing cloud CAPEX may not be optimal for Oracle. The merger could also raise questions about Oracle's management credibility regarding its cloud expansion strategy.

In the joint official announcement, both Oracle and Cerner are optimistic about the deal's potential to transform healthcare. Cerner CEO David Feinberg believes that together, the two companies will accelerate the modernization of electronic health records and improve patient care worldwide.[51]

Further steps for Oracle:

First and foremost, Oracle must ensure the timely and flawless execution of the Department of Defense (DoD)/Veterans Affairs (VA) project, which is a massive and highly visible endeavor that

[50] Ibid 48
[51] 'A retrospective on Cerner's transition to Oracle' (*Oracle, December 2022*) https://blogs.oracle.com/healthcare/post/a-retrospective-on-cerners-transition-to-oracle accessed 1 March 2024

could challenge any Electronic Health Record (EHR) vendor. Despite the challenges, Oracle, now in control of Cerner, has significant experience working with the federal government, which should provide a degree of leeway in meeting project deadlines.

Secondly, Oracle must reshape the perception of Cerner and its market offerings. To prevent further client defections to competitors like Epic, Oracle must deliver a compelling offering supported by robust services. The imminent launch of Cerner's new Revenue Cycle Management (RCM) solution, RevElate, and feedback from clients will be crucial in this regard.

Thirdly, Cerner has experienced a significant loss of institutional knowledge, and employee morale needs a substantial boost. Oracle's aggressive product development roadmap and a strong leadership team could help address this issue. Oracle recognizes the importance of retaining healthcare expertise within Cerner to achieve its ambitious goals.

While Oracle has been known for its sometimes ruthless pursuit of financial gains, The company and its executives appear genuinely committed to making a positive impact on the healthcare sector, recognizing their limitations in this domain and showing a willingness to learn from experts. This attitude is a positive indicator of their intentions. Oracle possesses the necessary resources to revitalize Cerner. Leveraging technologies such as Apex and Redwood, Oracle can reimagine data management, EHR systems, and the provider-patient interface in a Software-as-a-Service (SaaS) environment. Few other companies have the capabilities to undertake such a comprehensive transformation in the healthcare market.

Johnson's strategy for Oracle-Cerner is straightforward yet significant, especially for a company that has lacked clear direction for several years.

- In the short term, the focus is on addressing fundamental operational issues within Cerner's suite of solutions. This includes enhancing resilience and usability. Additionally, executives plan to utilize Oracle's existing assets to enhance back-office functionality, such as labor management and Revenue Cycle Management (RCM).

- Over the next 18 to 24 months, the goal is to migrate Cerner's entire solution suite to Oracle Cloud Infrastructure (OCI) and transition it into a Software-as-a-Service (SaaS) operating model. This transition is expected to result in closer integration between Cerner's suite and other Oracle

enterprise solutions, including Human Capital Management (HCM), Enterprise Resource Planning (ERP), and Supply Chain Management (SCM).

- Looking further ahead, the long-term vision is to have the Cerner suite operate within a browser-like environment, enhancing usability and search capabilities. Ultimately, Oracle aims to develop a healthcare Platform-as-a-Service (PaaS) and SaaS solution, utilizing Application Programming Interfaces (APIs) and third-party solutions to create a dynamic healthcare IT platform.

GUARDIANS OF INTEGRITY: ROLE OF CORPORATE GOVERNANCE

Corporate governance has been defined as the mechanisms through which providers of finance to corporations ensure their returns on investment. A broader definition by the OECD (1999) describes it as the relationships between a company's board, its shareholders, and other stakeholders. It has been explained that corporate governance is the institution that shapes how business corporations distribute resources and returns[52]. An active merger market often results from a corporate governance (CG) environment that strongly emphasizes shareholder protection. Countries with better CG practices often motivate companies to engage in cross-border mergers and acquisitions (M&As). Organizations tend to acquire targets from countries with lower CG standards than their own, which can help improve the target firms' level of investor protection. This trend of acquiring targets from countries with lower CG standards is known as the positive spillover by law hypothesis. In cross-border mergers and acquisitions (M&As), synergies often stem from differences in corporate governance (CG) practices between the involved firms. Enhanced shareholder protection in the acquiring company's jurisdiction allows for better management of the target's assets, leading to increased returns from the transaction. Conversely, merging with a firm that has low accounting standards and weak shareholder protection may have little effect on the acquiring firm's value. In such cases, the negative spillover by law hypothesis suggests that poor CG practices from the target firm may be imposed on the merged entity, resulting in lower gains. However, when a target firm with poor CG practices is acquired by a firm with better CG practices, synergistic gains and returns at the time of acquisition are improved.

[52] 'G20/OECD Principles of Corporate Governance, (OECD) https://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf accessed 1 march 2024

For example, in cross-border deals involving the Chinese government as a major stakeholder of the acquiring firm, investors may have a skeptical view due to concerns that the government may disregard the interests of minority shareholders to proceed with the deal.

In the case of cross-border M&As, CG standards of the acquiring and target countries tend to converge. This convergence can occur through a contractual transfer of CG systems, avoiding the need for legislative action, which can be time-consuming. However, political barriers can complicate this process. A hybrid system of convergence may be adopted, incorporating the most protected CG systems of both countries to govern the merged entity.

One tactic used by management to prevent hostile takeovers is the implementation of anti-takeover provisions. Firms with a higher number of these provisions are more protected from disciplinary actions imposed by shareholders for corporate control and are more likely to serve their self-interest. These provisions may include limits to shareholder amendments, supermajority requirements for mergers, and restrictions on charter amendments.

Developed economies with better accounting standards and stronger shareholder protection laws tend to experience a higher volume of M&A activity. This is because increased shareholder protection reduces the likelihood of all-cash bids and increases the degree of takeover premiums. These laws enable the acquirer to restructure and leverage the target's assets and resources. However, the protection of employee rights in the target country can restrict the acquirer's ability to restructure the target's assets and redeploy resources.

Corporate board characteristics also influence firm performance. Factors such as board size, the presence of independent directors, the dual role of CEO and chairman, and the dominance of outside parties on the board can impact the short-term and long-term performance of the firm. Larger board sizes tend to have a negative impact on cross-border M&As, as the increased decision-making time can make the board less effective. Overall, firms with better CG practices can fetch more synergies from merging entities.

PATHWAYS TO PROGRESS: KEY RECOMMENDATIONS

a. Companies Act 2013[53]

1. Section 234 of the Companies Act states that it applies to schemes of mergers and amalgamations registered under the Act. However, the 2017 regulations define a cross-border merger to include mergers, de-mergers, amalgamations, and arrangements. This creates a discrepancy between the Act and the draft regulations. While a plain reading of Section 234 suggests that a de-merger would not be included under the merger scheme, considering the scope and objective of the provision, it would be impractical to exclude de-mergers. De-mergers offer several advantages, such as increased management focus, efficient debt restructuring, increased value for shareholders, and a flexible fund-raising mechanism. Given these benefits, it would be inappropriate to exclude them from the definition of cross-border mergers.

2. Section 234 stipulates that prior approval from the RBI is required for cross-border mergers. Rule 25A of the 2016 rules specifies that this approval is mandatory for both inbound and outbound mergers. Since a cross-border merger involves changes in the asset or liability positions of companies across different jurisdictions, it may be necessary for the RBI to monitor these transactions. Additionally, the RBI must be consulted before amending the rules related to such mergers, further enhancing its supervisory power.

3. Section 234 specifies that the entire chapter related to mergers applies to cross-border mergers, implying the use of the fast-track route outlined in the 2013 Act. However, Rule 25A of the 2016 rules requires compliance only with Sections 230-232 and mandates the compulsory filing of an application before the NCLT. This means that a wholly-owned subsidiary of a foreign company cannot merge with its Indian parent holding company, or vice versa, using the fast-track process. This discrepancy in the provisions could deprive companies of the benefits of the fast-track merger procedure.

4. The consideration for cross-border mergers can be paid in cash or depository receipts, or partly in cash and partly in depository receipts. The issuance of depository receipts is governed by the Companies (Issue of Indian Depository Receipts) Rules, 2004, and the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. Indian Depository Receipts (IDRs) are issued by

[53] The Companies Act, 2013

foreign companies to raise capital in India by investing in the underlying equity shares of an Indian company. However, the regulations governing IDRs are complex and burdensome to comply with, involving multiple approvals and compliances from SEBI. Therefore, the viability of using depository receipts as a payment option for cross-border mergers will need to be assessed over time.

5. Section 234 permits mergers only in jurisdictions notified by the Central Government. Rule 25A of the 2016 rules extends these restrictions to outbound mergers. However, Annexure B of the rules provides certain guidelines to identify the approved jurisdictions, which include major economic powers such as the United Kingdom, the United States of America, and Singapore, among others. Despite this, such a restriction, especially on outbound mergers, seems unnecessary and fails to satisfy the object and purpose of the statute.

B. Foreign direct investment law[54]

1. According to the 2017 regulations, in the case of inbound mergers, any borrowing of a foreign company that becomes a borrowing of the resulting Indian company must adhere to either the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, or the Foreign Exchange Management (Guarantee) Regulations, 2000, as applicable. However, the ECB norms impose rigorous checks, allowing only an authorized dealer to borrow in foreign currency. These norms also place constraints on the utilization of funds and require RBI approval for loan repayment. Given these stringent regulations, it might be challenging for companies involved in cross-border mergers to fully comply.

2. In the case of outbound mergers, if the resulting foreign company intends to hold any assets or immovable property in India, it must do so through an established branch office. However, opening a branch office entails a tax burden, with a tax rate of 40% (plus additional surcharge) on profits as income tax, along with indirect taxes such as Centre or State Goods and Services tax (GST). Moreover, there are restrictions on the activities a branch office can engage in, prohibiting retail trading and manufacturing or processing activities. Annual compliances are also required for a branch office. The RBI's master circular dated January 1, 2016, on the Acquisition and Transfer of

[54] Foreign Exchange Management Act

Immovable Property under FEMA regulations stipulates that only a branch office in India established by a person resident outside India, other than a liaison office, may acquire immovable property in India necessary for or incidental to the activity carried on in India by such office. This means that the resulting foreign company must set up a branch office to manage assets in India, thereby needing to comply with the FEMA Master Direction issued on January 1, 2016, on the Establishment of Branch Office/ Liaison Office/ Project Office, or any other place of business in India by foreign entities. This requirement can be challenging and discouraging for any foreign company.

C. Taxation law[55]

1. Section 2(1B) of the Income Tax Act, 1961 defines an amalgamation as the merger of one or more companies with another company or the merger of two or more companies to form one company, where all the property and liabilities of the amalgamating company or companies become the property and liabilities of the amalgamated company. Additionally, shareholders holding a minimum of 75% of the value of shares in the amalgamating company (other than shares already held by the amalgamated company or its subsidiary) become shareholders of the amalgamated company. Section 47(vi) of the Act exempts gains arising from the transfer of a capital asset pursuant to a scheme of amalgamation or demerger, provided the resultant company is an Indian company. However, the Act is silent on the treatment of outbound mergers. If outbound mergers are also exempted, as most assets and immovable properties of the Indian company may be held by a foreign company, it could lead to a dilution of legal safeguards. Therefore, appropriate amendments are necessary in the Income Tax Act, 1961 to address the challenges posed by outbound mergers.

2. The General Anti-avoidance Rules (GAAR) are regulations aimed at preventing tax avoidance and reducing tax burdens, effective from April 1, 2017. Tax avoidance includes intentional methods to reduce tax liability. These rules empower tax authorities to classify any arrangement as an "impermissible avoidance agreement" if it lacks commercial substance, involves parties not dealing at arm's length, results in the abuse or misuse of tax provisions, or lacks a bona fide purpose. Consequently, tax benefits under the Income Tax Act, 1961 or any Double Taxation

[55] The Income tax Act, 1961

Avoidance Agreement (DTAA) can be denied to the parties involved. GAAR applies to residents, non-residents, companies, and non-corporate entities. Its application is subject to the condition that the tax benefit arising from the arrangement exceeds Rs 30 million in the relevant financial year. The implementation of these rules carries significant implications for outbound mergers involving parties from multiple jurisdictions.

3. States levy stamp duty on asset transfers to authenticate the transfer of title. The stamp duty rate varies by state, typically ranging from 3% to 10%, depending on whether the property is movable or immovable. Court-approved mergers often receive favorable treatment regarding stamp duty. However, stamp duty can still be a significant added expense and may deter foreign corporations from forming connections with Indian entities.

D. Competition law[56]

1. Section 5 of the Competition Act, 2002 regulates combinations, including acquisitions, mergers, or amalgamations, based on asset value or turnover thresholds. Transactions exceeding these thresholds fall under the Act. Section 6 prohibits combinations that adversely affect competition. It requires parties to a combination to notify the Competition Commission within 7 days of approval or execution of relevant documents. Section 29 outlines the investigation procedure, and Section 30 specifies the Commission's potential orders. However, the 2013 Act redundantly mandates a notice to sectoral regulators, including the Competition Commission, despite the precondition of Section 6(2). Eliminating this requirement could streamline the process and enhance efficiency.

2. Section 32 of the Competition Act, 2002 grants the Competition Commission extra-territorial jurisdiction. It allows the Commission to inquire into combinations that occur outside India or involve parties outside India, provided they have an appreciable adverse effect on competition in the relevant Indian market. Section 18 enables the Commission to collaborate with foreign agencies under memoranda or arrangements, reinforcing the effects doctrine. This provision aligns with the principles outlined in Section 234 of the 2013 Act.

[56] The Competition Act, 2002

Other recommendations:

1. Globalization and privatization have led to a more interconnected and dynamic legal framework. This has facilitated companies in introducing products and brands to a global market by leveraging similar infrastructure, distribution channels, and marketing strategies. However, market conditions vary between countries, leading to unique challenges in the Indian economy. Enforcing competition law in a cross-border context poses numerous obstacles, often boiling down to questions of territoriality and where the relevant acts occurred. While the effects doctrine offers a viable approach, its implementation raises complex enforcement issues.

2. A new law is required to be enacted by the Parliament of India, which acknowledges the contributions of senior management as ambassadors of clarity and exceptional communicators, aimed at advancing decisions to position the country as a leading emerging nation on its path to becoming a developed country. Currently, there is no law addressing the needs of white-collar workers.

3. The Information Technology Act is a potent instrument that, if tailored and adapted to the evolving cross-border mergers landscape, can yield significant benefits. Therefore, there is a necessity to establish a committee consisting of experts from banking, finance, software, real estate, medicine, pharmaceuticals, chemicals, tourism, hospitality, and other emerging fields in cross-border positions. This committee would propose modifications to the Information Technology Act.

4. Change management plays a pivotal role in cross-border mergers and acquisitions (CBMAs), encompassing vital aspects like comprehending the psychology of both employees and employers and managing their perception of change. Effective change management requires robust communication, including a clear delineation of responsibility and accountability. This involves identifying key players, key audience segments, and key messengers to ensure that messaging is clear and impactful.

5. The Right to Information Act (RTI) of 2005 has significantly empowered individuals across various economic strata in India, enabling them to enforce their fundamental rights. It serves as a crucial tool for employees, ensuring they receive timely and accurate information instead of being

left in a state of uncertainty. There is a pressing need to amend the RTI Act to extend its applicability to the private sector. This modification would transform the RTI Act into a tool of justice and information, ensuring that workers are not merely seen as pawns in the profit-driven motives of those involved in cross-border mergers and acquisitions (CBMAs). CBMAs do not require warriors; they demand individuals committed to truth and transparency. The RTI Act emphasizes the importance of information, but it should also emphasize the importance of truth. This study seeks to redefine the concept of "right" by ensuring that stakeholders in any region affected by CBMAs are not marginalized or forced to leave their homes due to threats from individuals masquerading as agents of development.

6. Human rights and human resources, often referred to as HR, share common ground. A close examination of the term "human resources" reveals a dual nature: humans are both viewed as assets and as individuals with rights. In the era of scientific management pioneered by Frederick Winslow Taylor (FW Taylor), humans are often seen as resources akin to machines. Taylor, a contemporary of Max Weber, laid the foundation for scientific management, which emphasizes efficiency and productivity. This approach often treats humans as resources to be utilized for profit. Cross-border mergers and acquisitions, by their nature, transcend borders in pursuit of opportunity and profit. This emphasis on profit often prioritizes the resource aspect of human resources over the rights of individuals.

7. Interactions on social media platforms such as Facebook, WhatsApp, and Instagram can yield both positive and negative outcomes. With India boasting one of the highest teledensity rates worldwide, it underscores the significance of regulating and tailoring these social media platforms for responsible communication. Rather than being conduits for spreading hatred and chaos, these platforms should ideally serve as vehicles for expressing rights and fostering constructive dialogue.

CONCLUSION

This study advocates for a significant reevaluation of corporate governance's role in cross-border mergers and acquisitions (CBMA). It emphasizes the necessity of recognizing and addressing the challenges faced by workers and managers post-acquisition, rather than leaving them vulnerable to exploitation or marginalization. The study proposes amendments to existing corporate

governance frameworks to ensure the protection of stakeholders' rights and interests. Specifically, the research recommends empowering regulatory bodies such as TRAI (Telecom Regulatory Authority of India) to oversee corporate governance practices in CBMA deals, ensuring the rights of workers and the interests of the Indian state are upheld. It also suggests modifying domestic corporate governance laws to provide better protection for women and girls in the workforce, particularly those vulnerable to human trafficking. Furthermore, the research shows the importance of addressing psychological challenges faced by employees during mergers, advocating for collective leadership engagement to prevent demoralization and disengagement. It suggests modifications to youth services-related laws to foster trust and motivation among stakeholders. Additionally, the study recommends enhancing corporate governance frameworks to protect whistleblowers and provide adequate protection to those who raise pertinent questions. It calls for modifications in service and conducts rules to allow organizations the freedom to address internal issues effectively. Moreover, it suggests modifying HR practices to identify and nurture leadership qualities. Finally, the study underscores the need for security agencies to be involved in decision-making regarding CBMA due diligence and emphasizes the importance of coordinated efforts among enforcement agencies. Future research should focus on these critical issues to enhance the effectiveness of corporate governance in CBMA processes and ensure the protection of stakeholders' rights and interests.

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BROKEN SHIELDS: ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS IN UN PEACEKEEPING MISSIONS

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Abstract

This paper examines the intricate issue of human rights violations committed by United Nations (UN) peacekeepers, focusing on the legal and institutional hurdles related to accountability. Although the UN's core mission is to foster peace, security, and the safeguarding of human rights, peacekeepers have been implicated in serious offenses, such as sexual abuse, exploitation, and negligence. The paper contends that the existing framework governing peacekeepers enables considerable impunity, which in turn undermines the UN's credibility and objectives. The research critically evaluates the current accountability mechanisms within the UN, including the Office of Internal Oversight Services (OIOS), the General Assembly, and the UN Security Council. Additionally, it investigates how the UN's immunity from national legal systems worsens the situation by leaving victims without a path to justice.

The study also emphasizes the responsibility of troop-contributing countries (TCCs) and the limitations of international judicial bodies like the International Criminal Court (ICC) and the International Court of Justice (ICJ) in holding peacekeepers accountable. The research asserts that implementing substantial reforms to both the legal and institutional frameworks governing peacekeeping operations is crucial for the UN to uphold its role as a credible advocate for global peace and security.

Keywords: UN Peacekeeping Accountability, Human Rights Violations, Sexual Exploitation and Abuse, Troop-Contributing Countries (TCCs), International Legal Reforms.

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INTRODUCTION:

From its inception to the present day, this has been believed that the primary aim behind the establishment of the United Nations (UN) is to guarantee global peace under an institutional umbrella composed of partner organizations[1]. An international intergovernmental organization, the United Nations acts as a framework for states to collaborate and address challenges such as interstate conflicts or in post-war peace keeping[2].

The UN has made consistent efforts to avert conflicts from intensifying to a war, to pressurize adversaries to resolve conflicts peacefully not through arms but through Negotiation and Dialogue and to help in the peace-making process where conflicts do not necessarily translate into warfare as cooperation is one of the Organization's main tools to guarantee a peaceful resolution of disputes in post-conflict scenarios and is titled peacekeeping[3].

However, to combat severe situation which could not be solved through peaceful negotiations, the UN created peace keeping which is crucial in maintaining of the UN's peace and security agenda. It has nevertheless also elicited criticism with several parties perceiving peace keeping as a bridge for other invading forces. Both the events in Rwanda and Srebrenica that happened in mid 1990s could not be prevented despite having UN soldiers stationed in the region[4].

While on missions, UN peacekeepers are actually responsible for gross violation of human rights despite the fact that they are under the duty of protecting human rights. As much as the preservation of peace and adherence to human rights are a part of the agenda of such missions, it has serious implications when the protectors, who are supposed to defend civilians especially women and children, among them, violate human rights. The peacekeepers get to become active players in the country they operate and live in during the course of these

[1] Athambawa Sarjoon and Mohammed Agus Yusoff, "The United Nations Peacekeeping Operations and Challenges," 8 *Academic Journal of Interdisciplinary Studies* 202 (2019).
[2] Stephen Mathias, "UN Peacekeeping Today: Legal Challenges and Uncertainties," 18 *Melbourne Journal of International Law* 1 (2017).
[3] Id.
[4] Teresa Haller, *The Role of the United Nations in the Prevention of Genocide* (2020), available at https://digitalcommons.assumption.edu/cgi/viewcontent.cgi?article=1075&context=honorstheses (last visited on December 24.

operations. Thus, the peacekeepers can appropriately fight for and promote the rights of individuals. Simultaneously, they also bear a great responsibility for human rights abuses[5].

UN peacekeeping forces have also at times been a direct threat to the very people to whom they offer protection. The involvement of UN staff members in sexual exploitation and human rights violations and acts of abuse in relation to the delivery of assistance has also dented its image in recent years and no measures have succeeded in fully addressing the issue to this date[6]. One blatant example of how peacekeeping missions may act to the detriment of the most vulnerable populations of a nation is the cholera outbreak that occurred in Haiti. It is believed that the Haiti cholera breakout in 2010 was due to UN peacekeepers. The implicated peacekeepers are said to be those from Nepal, serving with the United Nations Stabilization Mission in Haiti (MINUSTAH). These troops are said to have been camped near the Artibonite River, whose water supply the region depends on. Poor camping sanitation polluted this river due to such practices. Tests revealed the strain of cholera that was seen in Haiti was almost identical to a strain already circulating in Nepal[7]. That could explain where it came from. Cholera spread rapidly in Haiti because of its unsanitary infrastructure and inefficient structures, infecting more than 600,000 people and killing over 10,000. The UN was criticized initially for not assuming responsibility, but later took responsibility, however, the organization was able to avoid liability in court due to the fact that international law grants immunity protections[8]. Therefore, arguments that UN peacekeeping operations should be done more responsibly; by offering compensation to victims, and setting up robust measures to protect individuals against harm by peacekeepers[9].

The Peacekeeping Operations has a noteworthy impact in the preservation and restoration of the global peace and security and since it is the most influential actor in the system of systems, it is also the most geared towards and tasked with promoting and implementing human rights in peacekeeping. This is because, unfortunately, very often, peacekeepers themselves are involved in gross violations of human rights that negatively impact the entire United Nations

[5] Id.
[6] A.R. Yacoub and B. Briggs, "Accountable: Who Shall Hold the United Nations Accountable for Its Human Rights Breaches? International Arbitration and Insurance Coverage as Two Viable Solutions to the UN Accountability Dilemma", 28 *UC Davis Journal of International Law and Policy* 139 (2021).
[7]Jonathan M. Katz, The Big Truck That Went By: How the World Came to Save Haiti and Left Behind a Disaster (Palgrave Macmillan, 2013).
[8]"UN Admits Role in Haiti Cholera Outbreak That Has Killed Thousands", *The Guardian*, December 1, 2016, available at https://www.theguardian.com/world/2016/dec/01/united-nations-admits-role-haiti-cholera-outbreak (last visited on December 28, 2024)
[9] Id.

system. Hence, it is imperative that IHL be adopted and practiced in the UN peacekeeping mission so that civilians are shielded against acts of violence, torture, or any other violation of their human rights and that the culprit peacekeeping personnel are brought to book and let those that have been wronged to get justice.

Furthermore, it has been often found that UN missions are accompanied by severe allegations of sexual misconduct, especially sexual abuse, and exploitation. While the UN and the Secretary General have time and again assured the world that the organization has zero tolerance for any form of sexual misconduct during peacekeeping missions, incidents like these appear to be on the rise[10].

A recent example of the same is the allegations raised against the deployed UN peacekeepers in Democratic Republic Congo (DRC), where 8 South African peacekeepers were levied with allegations of being involved with brothels set up in vicinity of the South African camp[11] and countries such as the Congo, Haiti, and Central African Republic[12].

Presently in the legal context the U. N. can probe the criminal activities; demote or repatriate the accused peacekeepers; or detain them till the investigation is over but the U. N. does not have the authority to prosecute. However, it cannot be denied that in order to preserve the essence and honour of the institution of peacekeeping, the issues regarding the accountability remain rather problematic. However, there are various challenges faced while trying to realise accountability of individual peacekeepers, UN and even the TCCs.

This research will examine the measures to be taken in order to ensure accountability of UN peacekeepers in relation to the human rights violations including sexual abuse they perpetrate on the civilians in countries where peacekeeping operations are conducted such as DR Congo, Mali, and South Sudan among others.

In addition, considering the control of the contributing nations over the troops contributed by them shall also be examined. It shall also investigate on the laws concerning the liability of

[10] "Guterres Vows to Improve UN's Handling of Sexual Exploitation and Abuse", *UN News* (March 15, 2022), available at https://news.un.org/en/story/2022/03/1114012 (last visited Dember 28, 2024).
[11]"South Africa Recalls UN Peacekeepers Accused of Sexual Misconduct in DR Congo," *BBC News*, available at https://www.bbc.com/news/world-africa-67115883 (December 28, 2024).
[12] Skye Wheeler, "UN Peacekeeping Has a Sexual Abuse Problem", available at https://www.hrw.org/news/2020/01/11/un-peacekeeping-has-sexual-abuse-problem (last visited December 28, 2024).

the peacekeepers and the challenges within the same and give recommendation on this in order to ensure that proper prosecutions are done in so far as the state responsibility is concerned.

Also, it is stated that, The UN can often avoid responsibility for its misconduct because of the identified accountability framework, even though it is increasingly turning into the quasi-state actor which shapes individuals' lives. To a sound of reason, higher privileges must be associated with higher responsibilities; however, in the case of the UN, it seems to be the only organization that seems to be an exception to this rule.

BACKGROUND:

UN peacekeeping missions are of different kinds. These have functions such as handling conflict resolution, supervising emergencies, and non- military functions such as offering humanitarian assistance, including political resurrection like assisting in reconstructing the representative democracy, the protection and promotion of human rights, and the enforcement of rule of law. The peacekeeping organs of the UN have played a vital role to restore the order after the world wars by preventing number of conflicts from escalating to state and civil wars[13].

However, it has also been observed that there exist numerous challenges due to problems concerning diverse aspects of peacekeeping, especially in the domain of civilian protection[14]. The commitment to human rights contained in the UN Charter is not in doubt. Namely, the UN must promote and protect human rights based on the provisions of Article 1 (3), as well as chapters VI and VIII of the Charter of the United Nations. Moreover, as the UN is a legal person, it is bound by CIL but this allows only protection of human rights[15]. Moreover, despite the fact that UNSC resolutions are highly political, peacekeeping operations often help to foster progress of peace in their host countries[16].

There, however, situations in which some of the peacekeepers who have been dispatched in many of the UN peacekeeping missions have been proved to have committed heinous acts

[13] See note 1 at 203.
[14]Victoria Holt & Glyn Taylor with Max Kelly, *Protecting Civilians in the Context of UN Peacekeeping Operations*, available at https://www.globalprotectioncluster.org/sites/default/files/2022-12/un_poc_peackeeping_operations_2009_en.pdf (last visited December 28, 2024)..
[15] See note 6 at 146.
[16] Id.

which are violations of human rights of the civilians including cases of sexual abuse and exploitation[17].

Examples of complaints of sexual abuse and exploitation by peace keeping forces include the Democratic Republic of Congo, Mozambique, Cambodia and among others. One of the constant problems in this regard is impunity, which has been a problem in the UN for a long time. But instead of improving the situation with the prevention and the pursuit of sexual criminals and offenders, the situation worsened in recent years.

Such instances of human rights violations and instances of sexual misconduct, if go unpunished, subsequently are not punishable to the responsible stakeholders for their misdeeds. They consequently leave the local populace demoralized when it comes to such international interferences and without which the mandate issued in promotion of the mission is unlikely to be effectively implemented, hence, a shift on the existing legal and policy regime currently in place in this respect is called for. It is thus critical that the stakeholders who perpetrate such heinous incidences are prosecuted for misconduct and take actions that are beyond sending them back or reassigning them[18].

Further, there are two types of actions in peacekeeping missions, first, those which can be attributed to definite personnel, some of the offenders being members of the United Nations peacekeeping forces, and, second, the collective acts which though committed by the United Nations peacekeeping forces cannot be attributed to definite individuals[19].

Further, because the events in question occurred as a result of collective misconduct, the UN should be held collectively responsible for acts of MINUSTAH, including the cholera outbreaks. Whereas the composite wrongful act, which is a combined violation of the international law, is under article 13 of the DARIO. Thus, the UN cannot escape civil liability for the unlawful conduct of the entire operation of peacekeeping in Haiti under the international law. Where restitution cannot be affected, Article 36 of DARIO provides compensation as the remedy for the aforementioned breaches. It also states that the aforesaid International Organisation is bound by "an obligation" to comply with these remedies[20]. Now,

[17]Kelly Askin, "Global: Ending Impunity for Crimes Committed by UN Peacekeepers", available at https://www.ibanet.org/article/CEBC5F69-A238-49BB-B85A-5E8D878FE485 (last visited December 28, 2024)..
[18] Id.
[19] See note 6 at 143.
[20] See note 6 at 144.

on the matter of the UN's accountability for its operations on the ground, an attribution issue arises. The issue in question is whether misbehaviour in international peace keeping operations can be associated with the UN or the soldier's home state. Similarly, soldiers in peace support operations are not deemed state actors where they conduct operations as organs of the UN but the parties in question come within the ILC articles on state responsibility particularly articles 4, 5, 7, and 8.

The following analysis is in a contention that the UN or contributing member states are accorded different roles depending on which of them is had the effective control or the operational mandate over the UN peacekeeping forces. If decisions regarding operations were left to the commanders of the UN force with the consent of the higher authority, the UN will be blamed for all the wrong in this regard[21]. On the other hand, if national force commander had more say in the force management under their command, then state member would be held responsible for any misconduct instead of the UN[22].

ANALYSIS OF EXISTING MECHANISMS FOR ACCOUNTABILITY UNDER THE UN SYSTEM:

Some of the potential mechanisms under the UN system which might come to the forefront to ensure accountability with respect to any act of misconduct during a peacekeeping mission shall be studied below:

1. The UN Office of Internal Oversight Services:

It is crucial to take note of the fact that UN's current attitude to the wrongdoing and crimes perpetrated by the peacekeeping forces is woefully inadequate. The national government of the staff member is primarily delegated by the UN in investigating and seeking appropriate legal proceedings against the UN peacekeeper's misconduct. The UN Office of Internal Oversight Services ("OIOS") only gets to investigate again if the accused staff member's respective government refuses to. Apprehended perpetrators of misconduct in a mission may be subject to demotion, dismissal or be repatriated besides facing a bar on future missions. Still, the staff

[21]Kjetil Mujezinović Larsen, "Attribution of Conduct in Peace Operations: The 'Ultimate Authority and Control' Test," 19 European Journal of International Law 514 (2008).
[22] Id.

member's national jurisdiction is the only avenue to obtain information on criminal and civil penalties for his /her actions[23].

The only framework for charging soldiers or staff members for offences they commit, while performing a peacekeeping mission, are their domestic laws. Furthermore, this OIOS is a self-auditing mechanism and therefore is not empowered to take discipline measures whatsoever, instead, it points to strengthen UN supply chain such as the peacekeeping missions of the organization rather than punishing the accused peacekeepers[24]. From the point of view of criminal justice, many soldiers escape responsibility when accused staff members or soldiers are sent to their state to investigate and punish. These actions have left the national court of the offender without evidence, witnesses and means of reaching the victims in the host states where the mission was deployed even if the states wanted justice[25].

Since the formation of the OIOS, it has investigated alleged cases of corruption, financial misconduct and unbecoming conduct by UN employees and personnel. In some of these cases, investigations have led to the removal of the UN staff members in question. In fact, some of investigations of the OIOS have resulted in changes in the UN such as the formation of the International Criminal Tribunal for Rwanda. Therefore, in terms both of sanctions and of the behaviour of the organisation in the future, the OIOS is effective as an accountability mechanism. But one ought to tread carefully regarding the OIOS's performance because it often fails in offering the victims recourse. In other words, the extent to which it is accountability oriented is far more about seeking to address UN misconduct than it is about offering victims' rights-based compensation[26].

2. **The UN General Assembly (UNGA):**

The UNGA is one of the other internal accountability systems The other internal accountability systems include the General Assembly ("GA")[27]. However, due to the

[23] "Investigations, United Nations: Conduct in UN Field Missions", available at https://conduct.unmissions.org/enforcement-investigations (last visited December 28, 2024).
[24] Id.
[25] See note 6 at 153.
[26] See note 6 at 154.
[27] "United Nations, Functions and Powers of the General Assembly," available at https://www.un.org/en/ga/about/background.shtml (last visited December 24, 2024).
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influence of powerful countries, most secretary generals, if not all, have never had this kind of supervision. Also, within the GA, the UN has power over the budget, whereby it can freeze funds, if peacekeeping missions violate international law or agreements on human rights. However, GA's control in this regard is taken to be rather weak and most of the reports offered are seen to be bureaucratic in nature[28].

3. **The UN Security Council (UNSC):**

The UNSC has the responsibility to monitor UN activities from within. It can assign a delegation to conduct fact-finding missions. These missions are sometimes carried out by senior UN officials, civil society members, and local NGOs[29]. Historically, the focus of these missions has been on ensuring accountability for UN peacekeeping forces. For example, the Security Council Mission to Central Africa examined the measures taken regarding sexual abuse cases involving personnel from the UN Mission in the Democratic Republic of the Congo. These missions are capable of investigating both individual and institutional accountability. While the UNSC mechanism has yielded results in the past, it is often perceived as being highly political and more focused on investigation rather than on corrective actions[30].

4. **The International Court of Justice (ICJ):**

Article 34 of the current International Court of Justice (ICJ) statute specifies that only disputes between states are under the Court's jurisdiction[31]. Additionally, international organizations can seek guidance from the ICJ, especially when drafting the foundational documents of a public international organization[32]. The historic reparations case at the ICJ illustrates that, although advisory opinions are non-binding, they can significantly contribute to the development of international law regarding the responsibilities of international organizations[33]. Another option would be to revise Articles 69 and 70 of the ICJ statute to include conflict resolution between victim groups and international organizations within the Court's scope. However, any change in the ICJ statute is made

[28] See note 6 at 154.
[29] See note 6 at 155.
[30] See note 6 at 156.
[31] "Statute of the International Court of Justice", available at https://www.icj-cij.org/statute (last visited December 24, 2024).
[32] Id.
[33] See note 6 at 156.

possible if not less than two-third of member states of the UN come up with a vote cast, as described by Article 108 of the UN Charter. Although the required two-thirds majority is attainable, it may not be easy to attain because of the selfish ledge of member states and under the current climate of mistrust globally[34].

5. **The International Criminal Court (ICC)**:

The ICC has jurisdiction over four main types of crimes: and the more general international crimes that are war crimes, crimes against humanity, crimes of aggression, and indeed genocide. In 2002, 60 states Parties ratified the Rome Statute, whereas around 140 states signed it.[35]. Additionally, if the United Nations Security Council (UNSC) refers such crimes to the ICC, the court may also have jurisdiction based on the ICC prosecutor's actions in accordance with Chapter VII of the UN Charter[36].

It is important to note, however, that most crimes committed by UN peacekeepers do not fall under the categories of crimes against humanity, war crimes, genocide, or aggression. Many of these offenses are actually torts or acts of negligence. Moreover, the ICC does not have the power to hold the UN accountable for the actions of blue-helmet officers, who operate under its command. The ICC cannot mandate the UN to compensate victims, which means it does not serve as an effective accountability mechanism for the UN. Therefore, it can be argued that there is no adequate accountability mechanism within the UN system that is subject to thorough scrutiny, whether proposed or existing which can provide justice to the victims.

6. **Analysis**:

In furtherance of the above discussed mechanisms, the analysis of the current accountability mechanisms within the UN system for peacekeepers highlights several notable weaknesses in addressing human rights violations, particularly regarding sexual misconduct. While there are various mechanisms in place, such as internal oversight bodies and international

[34]Id.
[35] Id.
[36]E. de Wet, "Referrals to the International Criminal Court Under Chapter VII of the United Nations Charter and the Immunity of Foreign State Officials", 112 *American Journal of International Law* 33 (2018).

courts, they often lack the necessary enforcement power to ensure that peacekeepers are held fully accountable for their actions during missions.

Further, the UN Office of Internal Oversight Services (OIOS) is tasked with investigating allegations within the system, but it faces significant limitations. Typically, the responsibility for investigations falls to the national government of the accused peacekeeper, and the OIOS only steps in if the national government does not act, resulting in few prosecutions. The OIOS does not have the authority to impose disciplinary measures on peacekeepers beyond administrative actions, and matters of criminal justice, including punishment or victim compensation, are outside its jurisdiction. Although the OIOS has been successful in uncovering misconduct and corruption, its emphasis on maintaining institutional integrity rather than prioritizing victim justice hampers its effectiveness in dealing with peacekeeper misconduct[37].

Further, the UN General Assembly (GA) theoretically oversees UN activities, including peacekeeping, and has the power to freeze funds or demand accountability when peacekeeping missions breach international law. However, the political dynamics within the GA, especially the influence of powerful member states, undermine its ability to provide meaningful oversight. The bureaucratic processes of the GA further limit its control over accountability, often resulting in minimal changes in how peacekeeper misconduct is handled[38]. The UN Security Council (UNSC), which is responsible for overseeing peacekeeping missions, plays a vital role in accountability through fact-finding missions, such as those conducted in the Democratic Republic of Congo. Nevertheless, political considerations frequently restrict its ability to hold peacekeepers accountable, and the UNSC tends to prioritize investigations over enforcing actual consequences[39].

Additionally, the International Court of Justice (ICJ) has a limited scope, as it primarily resolves disputes between states. Although the ICJ can provide non-binding advisory opinions, it does not have the power to hold individual peacekeepers or UN actions accountable. To broaden the ICJ's role would necessitate substantial changes to its statute, which is challenging given the current global political landscape. Likewise, the International Criminal Court (ICC), created to prosecute serious international crimes, is

[37] Id.
[38] Id.
[39] Id.

unable to hold the UN accountable for most peacekeeper misconduct, as these actions typically fall outside the ICC's jurisdiction, which is often perceived to be the best possible solution in the quest to ensure accountability in regard to peacekeepers' misconduct[40].

Thus, it can be observed that several gaps and weaknesses obstruct accountability. Jurisdictional issues arise from the dependence on troop-contributing countries (TCCs) to prosecute peacekeepers, many of which do not investigate or penalize misconduct. Political pressures undermine the effectiveness of the General Assembly (GA) and the United Nations Security Council (UNSC), while the limited reach of international courts leaves a void in addressing offenses such as sexual exploitation. Victims frequently find it difficult to seek redress due to the emphasis on institutional reform rather than justice.

To bridge these gaps, reforms are essential. The Office of Internal Oversight Services (OIOS) should be granted enhanced authority to investigate and discipline peacekeepers, with a shift towards victim-centered justice. Creating a specialized international tribunal for peacekeeper misconduct, especially regarding human rights violations, would ensure unbiased investigations. Expanding the jurisdiction of the ICJ or ICC to encompass peacekeeper offenses could enhance accountability, and increasing transparency and oversight within the UN system would further bolster these mechanisms. Without significant reforms, peacekeepers will continue to act with impunity, jeopardizing the credibility of UN peacekeeping operations. Tackling these issues is vital for justice and for upholding the legitimacy of the UN's peacekeeping mission worldwide.

- **EFFECT OF UN'S IMMUNITY ON HOLDING UN AND ITS PEACEKEEPERS ACCOUNTABLE:**

The immense difficulty victims encounter in seeking accountability from the UN has resulted in very few historical cases against UN peacekeepers regarding human rights violations. This highlights the importance of this research. The UN possesses legal personality, allowing it to both assume and fulfil obligations as an international organization. However, it often seems to prioritize its rights over its obligations and liabilities. Although a few domestic courts have started distinguishing between absolute

[40] "Criminal Accountability of United Nations Peacekeepers", 31 *American University International Law Review* 103 (2016), available at https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1946&context=auilr (last visited December 22, 2024).

immunity for states and international organizations and limited immunity in recent years, most of the national courts are still very shy to surrender the immunity of the UN in totality[41].

Consequently, numerous cases involving human rights violations by UN peacekeepers have not resulted in compensation for victims or their ability to pursue justice in domestic courts[42]. The UN's framework in this regard, as mandated by the Security Council, is poorly defined and largely relies on the discretion of individual states. Prosecution falls under the jurisdiction of the troop-contributing country, which is often uncooperative, allowing violators to evade accountability. If immunity from prosecution is maintained for these offenses and states are hesitant to take legal action, the cases of human rights abuses by peacekeepers continue to occur. It is crucial to investigate the issue of impunity in UN operations, and to enhance accountability for peacekeepers, a standardized field investigation is essential[43].

A major challenge to establishing legal accountability is that the United Nations invokes this immunity whenever a claim is brought against it in a domestic court, as it seeks to prevent domestic courts from interfering with its operations[44]. This is especially concerning regarding claims related to peacekeeping missions, as the UN often does not provide an alternative legal remedy at the UN level for such claims[45]. UN immunity was designed to allow the organization to fulfil its international obligations and to prevent state interference, but this should be its only purpose. It is possible to hold sovereign states accountable for the actions of private individuals by enforcing restrictive immunity. However, this immunity is typically limited to actions taken in a sovereign capacity[46].

Unfortunately, it appears that the UN and other international organizations overlook this limited immunity, asserting total immunity in national courts regardless of the circumstances that originally justified the immunity. The UN often stubbornly wields the shield of absolute immunity to evade accountability instead of relinquishing it to uphold

[41] Rosa Freedman, "UN Immunity, or Impunity? A Human Rights Based Challenge," 25 *European Journal of International Law* 241 (2014).
[42] Id.
[43] Id.
[44] Id.
[45] Id.
[46] Id.

its principles[47]. In the past, UN peacekeepers have also claimed immunity from private law claims while engaging in intentional and negligent acts around the globe, including in Haiti and Kosovo[48]. The UN, which is responsible for safeguarding human rights, criticizes developing nations for violating these rights, even as it refrains from applying international law to itself[49]. It can be argued that the UN's absolute immunity from liability in national courts should not be a barrier to accountability in international courts, as it does not fulfil that function, even though it still prevents victims of UN peacekeepers from pursuing private law claims in national courts.

It can be argued that the UN's absolute immunity from liability in national courts does not protect the organization from accountability in international courts, as this immunity does not fulfil that role. While it does prevent victims of UN peacekeepers from pursuing private law claims in national courts[50], the immunity was not designed to shield the UN from international legal bodies. Instead, its primary purpose is to prevent political interference from member states. Additionally, this immunity is granted to the UN for operational reasons, so it should not apply when the UN acts beyond its intended purposes, such as in cases of human rights violations.

- **PROPOSED SOLUTIONS AND RECOMMENDATIONS TO ENFORCE ACCOUNTABILITY IN UN PEACEKEEPING MISSIONS:**

The increasingly broad scope of U.N. peacekeeping missions has given rise to a number of grave issues, worries, and challenges that need to be resolved. One of the major concerns raised in this regard is the lack of measures put in force to ensure that the stakeholders concerned with acts of misconduct against civilians are duly held accountable. Some of the measures which can be put in place to solve the legal and policy dilemma in this regard are as follows:

1. Countries that do not hold their troops accountable to the agreed-upon standards should be asked to either forfeit their right to provide troops for peace operations or face a

[47] "Ending Impunity for Crimes Committed by UN Peacekeepers", available at https://www.ibanet.org/article/cebc5f69-a238-49bb-b85a-5e8d878fe485 (last visited on Dember 28, 2024).
[48] See note 6 at 142.
[49] Id.
[50] Id.

significant cut in peacekeeper reimbursements; the monthly pay of peacekeepers directly involved in misconduct should be substantially withheld.

2. Additionally, if it is determined that compensation is warranted for crimes committed by peacekeepers or for losses due to governmental negligence, penalties should be deducted from the peacekeeping funds allocated to the troop-contributing nation.
3. Under SOFA agreements, the U.N. currently seems to provide ways to address damages caused by its actions or lack thereof through claims in a standing claims commission. However, the U.N.'s failure to establish these commissions indicates that there are issues within the system. This is likely due to the fact that governments in countries where the United Nations has a peacekeeping presence are often heavily dependent on the organization for political, material, and security assistance. As a result, these administrations may be reluctant to challenge the U.N. by suggesting the formation of a standing claims commission. Ideally, a standing claims commission should be automatically established when a mission is launched to avoid this problem; however, it would be prudent to clearly outline the types of claims that can be considered to prevent frivolous requests. If compensation is found to be warranted in situations where damages do not result from lawful peacekeeping operations or are due to negligence, then the responsibility for that compensation should fall on the individual or the nation supplying the troops.
4. Establishing an independent body, similar to the now-disbanded Procurement Task Force (PTF), could enhance oversight, or alternatively, we could work towards making the OIOS genuinely neutral. Additionally, the disdain shown towards U.N. whistleblowers worsens the already insufficient internal oversight within the organization. Given that U.N. agencies and their staff benefit from significant protections and immunities, whistleblowers serve a crucial function in the system.

- **CONCLUSION:**

The challenges surrounding accountability in United Nations (UN) peacekeeping operations, especially in relation to human rights violations and sexual misconduct, significantly threaten the integrity of these missions. Although UN peacekeeping efforts have been crucial in promoting global peace and security, the involvement of peacekeepers in serious human rights abuses, including sexual exploitation and abuse, directly contradicts the principles these missions are designed to uphold. Current mechanisms within the UN framework, such as the

OIOS, the UNGA, and the UNSC provide limited options for addressing misconduct by peacekeepers.

Though, these mechanisms are set up with much thought and the best of intents at heart they are hampered by political interferences jurisdictional prejudices and the unique position of the UN that it does not fall under the national legal systems. Consequently, this has led to a significant lack of accountability for peacekeepers and troop-contributing countries (TCCs), allowing many offenders to escape justice. Moreover, the UN's complete immunity from local courts, coupled with the insufficient enforcement of international legal remedies, has left victims with inadequate avenues for perusal of justice. Although the International Criminal Court (ICC) and the International Court of Justice (ICJ) can tackle certain crimes, they do not have jurisdiction over the types of misconduct most frequently associated with peacekeeping forces, such as sexual exploitation and negligence. To tackle these issues, several reforms are essential. First, the UN should reassess its extensive claims of immunity and facilitate more transparent legal processes that enable victims to access justice. Second, TCCs need to be held responsible for their troops' actions, with enhanced monitoring and stricter penalties for non-compliance. Lastly, the creation of independent oversight bodies, like a revived Procurement Task Force or a more autonomous OIOS, could enhance accountability and oversight within the system.

Establishing standing claims commissions could create a structured way to handle claims of harm caused by peacekeepers, making sure that victims are compensated when warranted. In the end, holding UN peacekeeping operations accountable is not only a legal duty but also a moral responsibility. This accountability is important for preserving the integrity of UN peacekeeping operations and for upholding the core human rights principles outlined in international law. If significant reforms are not implemented, the UN risks further harm to its reputation and a loss of trust from the very communities it aims to safeguard.

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