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Legal Wisdom is a blind-peer reviewed academic publication of Siddhartha Law College (SLC), Dehradun (Uttarakhand). This publication is an endeavour to serve as a forum for the promotion and circulation of views on contemporary legal issues among members of the legal profession, academicians and students. The Legal Wisdom aims at legal research centres, policy makers and government organizations. The views expressed in this publication are those of the authors and not necessarily those of the Editorial Board of the Legal Wisdom.

Patron's Message

Dear Esteemed Readers,

It brings me great pride and joy to address you as the Chairman of our esteemed institution and to share my thoughts on the invaluable resource that is Legal Wisdom Journal.

Legal Wisdom Journal stands as a beacon of knowledge, illuminating the intricate corridors of law, guiding us through its complexities, and nurturing a profound understanding of legal principles. As the Chairman of this esteemed college, I am delighted to witness the impact and significance that Legal Wisdom Journal holds within our academic community and beyond.

This publication serves as a testament to the dedication, intellect, and relentless pursuit of excellence displayed by our students, faculty, and contributors. It encapsulates the depth of research, the breadth of understanding, and the fervor for legal scholarship that defines our institution. Legal Wisdom Journal isn't merely a compendium of legal articles; it represents a reservoir of wisdom, a platform for critical discourse, and a catalyst for intellectual growth. It serves as a testament to our commitment to fostering a culture of inquiry, analysis, and innovation within the legal realm.

I extend my heartfelt appreciation to the editorial team, contributors, and all those involved in shaping Legal Wisdom Journal into the formidable resource it has become. Your dedication and tireless efforts in upholding the standards of excellence are truly commendable.To our readers, I encourage you to delve into the wealth of knowledge encapsulated within the pages of Legal Wisdom Journal. Engage, question, and be inspired by the diverse perspectives and ground breaking insights that it offers.

Thank you for being an integral part of our journey toward academic excellence and the pursuit of legal wisdom.

Warm regards,

Shri Durga Prasad Verma
Chairman, SGI

Editor-In-Chief's Message

Dear Esteemed Readers,
It is with great pleasure that I extend my warmest greetings to each of you as the editor-in chief of Legal Journal. Our publication stands as a testament to the pursuit of legal wisdom and the exploration of the ever-evolving landscape of law.

Legal Journal is not merely a compilation of articles; it is a repository of legal insight, analysis, and scholarly discourse contributed by the brightest minds in the legal fraternity. Our aim is to foster a platform that not only educates but also inspires, challenges, and provokes thoughtful discussion among legal practitioners, scholars, and enthusiasts alike.
The human mind and intellect havea panacheto explore 'the unknown' and bring it within the realm of 'the known'. This is done to achieve the twin objectives of a better understanding of the present and providing a new baseline for the future. Writings in the field of law, therefore, are not an exception to the general rule of building up the body of knowledge. Developments in Jurisprudence and Corpus Juris bear testimony to the stated fact.

It would therefore not be wrong to hold the notion that legal development to a large extent depends on the humble contributions made by the likes of individual academicians, lawyers, students, etc. Principles of Gestalt Philosophy dictate that the 'Whole is always greater than the sum total of its parts'. The need of the hour, therefore, is to provide them with a rostrum, through which they can voice their views more effectively and add up to the body of legal reconnaissance.

'Name' provides a platform for one and all to come up with original ideas and innovative efforts to this end, with the added advantage of finding a place in the annals of the publications brought out by one of the finest institutions in the arena of legal education. The papers and articles published in the 'name' would represent true intellect, pure genius, and the gold standard of research in the field of legal literature.

Benjamin Franklin once said, "Either write something worth reading or does something worth writing." In other words, it would be the collective duty of all those associated with "name' to live up to the expectations of the readers in this regard.

"And tho'
We are not now that strength which in old days
Moved earth and heaven; that which we are, we are;
One equal temper of heroic hearts,
Made weak by time and fate, but strong in will
To strive, to seek, to find, and not to yield."
Alfred Tennyson, in Ulysses

The aforementioned, prophetic words of Lord Tennyson would be our guiding light for all those who would be devoting their intellect and energies in contributing and in the making up of 'name'. For without, unfettered determination and iron will, no endeavor seems to see the light of day. I am very thankful for all the eminent professors who have consented to be a member of the advisory board and we have benefited from their advice. With this, I rest my case and thank each and every contributor for their efforts in the coming out of 'Legal Wisdom'.

Shri V.K Maheswari
Editor-in-Chief

Editorial Note

It is with a sense of pride and great pleasure that I introduce to you to the second and third edition of Siddhartha Law College's journal on the law. The journal is the culmination of the efforts of various contributors who have vast and rich experience in observing the events of the world and society at large through the prism of law. As the legal domain continues to undergo profound transformations, our commitment to delivering pertinent, well-researched, and thought-provoking content remains unwavering. We strive to present diverse perspectives, innovative ideas, and groundbreaking developments that shape the legal sphere.

I encourage you, our esteemed readers, to immerse yourselves in the rich tapestry of articles, case analyses, and commentary that Legal Journal proudly offers. Your engagement, feedback, and contributions are invaluable in enriching the discourse and propelling us toward greater heights.

The sentiment echoed here is a simple fact, that ambulation of legal advancements is motivated by the events in society. Societal underpinnings form the reason for legal evolution, which are responded to by various institutions – be it the Legislature or the Judiciary, or the Academia. In other words, there exists a symbiotic relationship, where one supports another, in the grand scheme of things called the process of legal development.

'Name', is a humble academic offering towards the churnings of *jurisprogressus,* brought to the reader by the hallowed chambers of Siddhartha Law College. All efforts have been made to ensure that *crème de la crème* of legal writings is included in it. Intellectually provoking and providing food for thought, are the benchmarks on which any research

publication should be judged. On these counts, I am elated to say that, 'Name' would be standing on a high pedestal.

"The great thing in this world is not so much where we are, but in what direction we are going."

Justice Oliver Wendall Holmes Jr.

The learned and erudite Judge must be credited for his sage advice to all peoples, especially to those who associate themselves with law, legal teaching, and legal research, for they bear the responsibility of providing the creative impetus, essentially required for legal development and analysis. Idea, is the most powerful thing, and no army can stop an idea whose time has come. 'Legal Wisdom' would provide space for original ideas in this regard as well.

In the ultimate analysis, the quality of any journal is to be adjudged by the kind of impact it makes on the subject matter, it is dealing with. And the best arbitrator in this regard would be the prospective reader. I hope that the efforts of all the contributors to the 'Legal Wisdom', come at par with the expectations of the reader.

I would like to thank each contributor and everyone who provided their creative insight into the making of the 'Legal Wisdom'.I extend my whole heartedly thanks to the reviewers who have accepted our request to review the Articles and reviewed the articles sincerely. Thank you for your unwavering support and here's to the continued pursuit of legal wisdom within the pages of Legal Journal.

Prof. (Dr.) Sharafat Ali
Editor

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APPOINTMENT OF JUDGES: COLLEGIUM SYSTEM V. NJAC UNDER BASIC STRUCTURE DOCTRINE OF THE CONSTITUTION

-Rajesh Dubey*[1]

ABSTRACT:

The functioning of the collegium system has not been a satisfactory experience during last three decades as the same was constantly fraught with controversies. The position of Judges of the constitutional Courts in such a vast democratic nation like BHARAT should be independent, competent and fearless. Through Constitutional 99th Amendment Act by the Parliament, there had been serious attempt to remove the shortcomings of the collegium system by establishing NJAC (National Judicial Appointment Commission) but the same was declared as unconstitutional by the Supreme Court on the basis that there would be violation of basic structure doctrine viz., independence of judiciary and separation of powers. In this paper the researcher's endeavour is to carry on jurisprudential analysis regarding the appointment of the judges in the constitutional courts under the existing basic structure doctrine.

Keywords: *Independent Judiciary, the Constitutional 99th Amendment Act. Constitutionalism, Separation of power, NJAC and Collegium System.*

[1]Dr. Rajesh Kumar Dubey, Associate Professor, Department of Law, D. A. V. (P. G.) College, Dehradun.

INTRODUCTION

Basic structure doctrine was propounded on 24th day of April 1973 by the Supreme Court and since then the jurisprudence under constitutional law attained a paradigm shift in the sense that amending power of the Parliament should be subject to the limitations of the basic features of the Constitution. Such limitation envisages constitutionalism which implies checks and balances and restrains the power of legislature and executive. The governance of the state shall be carried out in accordance with the provisions of the Constitutions which guarantees that rule of law must be established by the independent and competent judiciary. The powers of the various organs of the State are subject to the provisions of the Constitution by recognising the principle of separation of power. Independence of judiciary has been established as one of the facets of the rule of law which is also one of the important basic features of the constitution. After, judicial verdict in second and third judges' cases, the appointment of the judges of the constitutional courts envisage that the President shall accomplish the same as per recommendations of the collegium headed by Chief Justice of India. After, about three decades of working under the collegium system of appointment of judges, some serious questions have been raised, whether such working of collegium system was successful in order to establish an independent and efficient judiciary.

The sovereignty lies within people of *BHARAT* who had conferred plenary power on the Constituent Assembly to constitute an organic Constitution in accordance with the wishes and aspirations of the people of India. Organic Constitution implies that the Constitutional jurisprudence should be evolved by natural growth by applying the expansive meaning of the words incorporated under the Constitution so as to accommodate the solutions desirable for coping with the any kind of future challenges which would arise at any time. We the people of *BHARAT* having solemnly resolved to constitute a sovereign and Democratic republic for achieving certain constitutional goals viz., Justice, Liberty, Equality and Fraternity. All organs of the State are subordinate to the Constitution as they owe and derive its authority through the Constitution. The Constitution has conferred on the Legislatures with legislative power, the Executive with executive power and the Judiciary with judicial power, and it is supposed that the governance shall be in accordance with the provisions of the Constitution. Constitutionalism which implies checks and balances and restrains the power of various organs of the State. Under the original Constitution which was enforced on 26th day of January, 1950,the judges of the Supreme Court and High Courts (hereinafter will be referred as Constitutional Courts) were appointed by the President after consultation with the Chief Justice of India (hereinafter will be referred as CJI),the judges of the Supreme Court and High Courts of the States as provided under the provisions of the Constitution.[2] There are certain provisions under

[2]The Constitution of India. Arts.124(2) and 217 (1).

the Constitution[3] which provides that the President may transfer a judge from one High Court to any other High Court, after consultation with CJI. The appointment or transfer of judges shall be done by the President after making consultation with the constitutional functionaries as mentioned above. Such appointment or transfers of judges in Constitutional Courts were done without any controversy till the year 1977.

In 1976, when emergency was imposed under article 352 of the Constitution, there was bulk transfer of 16 judges of the High Courts and the same was challenged before the Supreme Court on the basis that such transfers undermined the independence of the judiciary but the Court was not satisfied by such contentions of the petitioner in Sankalcand's case[4] and held that the term 'consultation' under article 222 (1) of the Constitution of India implies effective consultation subject to limitation that the President may differ and the opinions of other constitutional functionaries were not binding on him. In in S. P. Gupta v. union of India[5] (hereinafter will be referred as 1st Judges' case), the seven Judge bench of the Supreme Court took substantially same view of the term 'consultation' under articles 217 (1) and 222 (1) as it was held in the Sankalchand's case. In Subash Sharma v. Union of India[6] the three judges bench recommended that the decision held under first judges' case should be considered by larger bench. After such recommendation, the matter regarding appointment and

[3]Ibid. Art. 222 (1).
[4] Union of India v. Sankalchand Himatlal Sheth (1977) 4 SCC 193.
[5]AIR 1982 SC 149.
[6](1991) Supp. 1 SCC 574.

transfer of judges of the Constitutional courts was referred to the bench of nine Judges by the Supreme for broader consideration in S.C. Advocates on Record Association v. Union of India[7] (hereinafter will be referred as 2nd Judges' case). In this case the Supreme Court by majority held that initiatives for the appointment of the judges in Supreme Court shall be taken by the CJI; in case of any High Court by the Chief Justice of the High Court and for transfer of Judges from one High Court to another by CJI. The appointment of the CJI shall be done by considering the seniority criteria. The President of India sought advisory jurisdiction[8] before the Supreme Court in re Presidential Reference[9] (hereinafter will be referred as 3rd Judges' case), the bench of nine judges held that the recommendation for appointment of Judges of the Supreme Court shall be done by CJI after making consultation of collegium consisting of four puisne judges of the Supreme Court next to CJI. Regarding the appointment of Judges of the High Court, it shall be done by collegium consisting of the CJI and two senior-most Judges of the Supreme Court. Regarding the transfer of judges from one High Court to another, it shall be done by CJI after consulting with the Chief Justices of the both transferee and transferred High Courts and the same shall be considered by the collegium consisting of CJI and four seniormost Judges of the Supreme Court. After third Judges case the appointment and transfer of the Judges were done under collegium system as described above. By the Constitution (99th Amendment) Act, 2014

[7](1993) 4 SCC 441.
[8]The Constitution of India. Art. 143.
[9]AIR 1999 SC 1.

(hereinafter will be referred as 99th Amendment) the appointment or transfer of the Judges of the Constitutional Courts should be done by the President after recommendation made by National Judicial Appointment Commission (hereinafter will be referred as NJAC). The Constitutional validity of the 99thAmendment was challenged before the Supreme Court on the basis that such amendment was violative of the Basic Structure doctrine as propounded in *Kesavananda Bharati Sripadagalvaru v. State of Kerala & Another*[10] (hereinafter referred as Kesavananda case). The amending power of the Constitution exclusively lies with the Parliament subject to limitation that basic structure of the Constitution cannot be amended.[11] The petitioner's contention while challenging the validity of the 99th Amendment, was that the independence of the Judiciary and separation of power were basic structure and such amendment was violative of the basic structure doctrine as propounded in Kesavananda case.

Very recently on 7th August 2023, while speaking on National Capital Territory of Delhi (Amendment) Bill, 2023(hereinafter referred as GNCTD amendment bill) in RajyaSabha, the former CJI and current member of the RajyaSabha, Sri RanjanGagoi, by referring to a book by T. R. Andhyarjina, a former Solicitor General of India, on the Kesavananda casestated that the basic structure doctrine was a very debatable jurisprudential issue. Earlier, the Hon'ble Chairperson of RajyaSabha while presiding over the house stated that the

[10](1973) 4 SCC 225.
[11] Ibid.

Parliament had enacted the Constitution 99th Amendment Act (regarding appointment of judges of the Supreme Court and High Courts through NJAC), which was done in exercise of sovereign power but the Supreme Court had struck down on the basis of Basic structure doctrine and there was no parallel to such a development in democratic history, where amendment done by the legitimately elected representative of the people was undone by the judiciary.[12] In this paper we shall make jurisprudential analysis of the Constitutional Law regarding the appointment of Judges in the light of independence of Judiciary as a basic structure of the Constitution.

CONSTITUTIONAL LAW REGARDING APPOINTMENT OF JUDGES

The established rule of the interpretation is that in order to make correct interpretation of any law, the intent of the makers of such law should be inferred. The Constitutional law regarding appointment of the Judges of the Constitutional Courts were made by the Constituent Assembly representing the will of the people of *BHARAT*. Dr. Ambedkar as a chairman of the drafting committee reflected the intent of the Constituent Assembly, regarding the appointment of judges in the Constitutional Courts, which may be summarized as follows:[13]According to Dr. Ambedkar the constituent assembly had never intended those appointments of the Judges of the Constitutional Courts should be done by the

[12]https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1881361 Posted On 07 DEC 2022 2:35PM by PIB Delhi (Visited on October 15, 2023)
[13] Constituent Assembly Debates, 24th May 1949 (Vo. VIII)

executive and legislature. The constituent assembly was categorical that such appointments should be done by the President after consultation by the CJI and other judges of the Supreme Court and High Courts. The Constituent Assembly was of the view that the President should not be absolute authority in the appointment of the Judges of the Constitutional Courts and of the view that the legislators should also ousted in order to eliminate political biases. Therefore, there should be primacy of the opinion expressed by the Judiciary while making such appointments. In the Second Judges' and Third Judges' cases the Supreme Court has rightly interpreted, the meaning of the term 'Consultation' under articles 124 and 217 of the Constitution of India. The independent and competent Judiciary with the inclusion of the doctrine of separation of powers was the intent of the Constituent Assembly, which has been regarded as basic structure of the Constitution.

BASIC SRUCTURE DOCTRINE: ITS GENESIS AND CREATION

In Kasavananda case the scope of amending power of the Constitution by the Parliament was considered by the bench of 13 judges of the Supreme Court. It was held by majority of 7:6 that Parliament has power to amend any part of the Constitution subject to limitation that basic structure of the Constitution cannot be amended. According to the majority judges, the following features may be said to be called as basic structure: Supremacy of the Constitution; Republican and Democratic form of Government; Secular character of the Constitution; Separation of powers

between the Legislature, the Executive and the Judiciary; Federal character of the Constitution; Dignity of the individual secured by various freedoms and basic rights in part III and the mandate to build a welfare State under part IV of the Constitution; the unity and integrity of the Nation; Sovereignty and democratic polity. In *Indira Nehru Gandhi v. Raj Narain*[14] where the constitutional validity of the Constitution (39th Amendment) Act was under adjudication of the Supreme Court and it was held that separate and special provisions regarding election to the Parliament for the Prime Minister and speakers were destructive to the basic structure doctrine and was violative of the Rule of law. The Court also held that the Rule of law, Power of Judicial review and Democracy assimilating the expediency of free and fair election was basic features of the Constitution. In *Minerva Mills Ltd. v. Union of India*[15] where the constitutional validity of Sub Clause (4) & (5) of the article 368 which was inserted by the Constitution (42nd Amendment) Act was under adjudication of the Supreme Court held that such amendment was unconstitutional as it was violative of the basic structure of the Constitution and also held that the limitation in amending power of the Constitution by the Parliament, harmonious relations between Fundamental Rights and Directive Principles of States Policy, specific fundamental rights under certain cases and power of Judicial review in some matters were Basic features of the Constitution. In *S. C. Advocates Record*

[14]AIR 1975 SC 2299.
[15]AIR1980 SC1789.

Association v. Union of India[16] where the petition regarding the manner of appointment of the Judges of the Constitutional Courts were under the adjudication of the Supreme Court the Court held that the independence of the judiciary was part of the basic structure of the Constitution.

THE CONSTITUTION OF THE NJAC UNDER 99th AMENDMENT

The Parliament in exercise of its amending power under article 368 amended Articles 124, 217 and 222 of the Constitution under 99th Amendment. Under the amended version the appointment and transfer of the judges of the constitutional courts shall be done by the President as per recommendation made by NJAC. The NJAC shall consist of six members. The CJI shall be ex-officio chairperson, two senior-most puisne judges next to CJI, the Union Law Minister and two eminent persons nominated by a committee consisting of CJI, Prime Minister and Leader of opposition. The challenge to the Constitution (99th Amendment) Act was done on the basis that such amendments were violative of the basic structure i.e., independence of judiciary. The contention of the petitioner was that the amending power of the Parliament under article 368 of the Constitution has limitation subject to the basic structure of the constitution cannot be amended. The Supreme Court struck down the 99th Amendment and declares the same as unconstitutional by majority opinion as it was violative of basic

[16](1993) 4 SCC 441.

structure doctrine viz., the independence of judiciary and separation of powers.[17]

THE INDEPENDENCE OF JUDICIARY, NJAC AND COLLEGIUM SYSTEM

The independence of judiciary is most important feature in any democratic state. There are certain safeguards provided under the Constitution regarding salary, tenure, protection against arbitrary removal and certain privileges and immunities from interference by the other organs of the State. There cannot be any difference of the opinion that our judiciary should be not only independent but also be competent one. It is also well-established principle that independence of judiciary and separation of powers are basic structure of the Constitution. The moot question, which has to be considered that the scheme of the Constituent assembly regarding appointment and transfer of the Judges of the Constitutional Courts may be substituted by alternative mechanism without making any compromise with the basic structure of the Constitution. As the working of the existing collegium system is not satisfactory. It is high time for the people of the India to think over it seriously. There have been controversies regarding the functioning of the collegium system. There have been alleged irregularities like nepotism and prejudices in functioning of the collegium system for selection of the judges of the Constitutional Courts and the transfer of judges and also there is lack of

[17] Supreme Court Advocates on Record Association v. Union of India (Writ Petition (Civil) No. 13 of 2015 as decided on 16th October, 2015 by the Supreme Court of India.

transparent mechanism for this process. There is need to reform the selection process of the judges of the Constitutional Courts by making a transparent mechanism so that broad based considerations should be made for such process.

Let us explore the possibility by making analysis of the exiting provision of the Constitution. The Judges of the Constitutional Courts shall not be removed from the office except impeachment under articles 124 (4) and 217 (1) (b). The salaries, privileges and allowances of the Judges of the Constitutional Courts cannot be varied to the disadvantageous position under articles 125(2) and 221(2). It may be observed after analysing the existing provision of the Constitution that, once the appointment of the Judges of the Constitutional Courts is done in accordance with the provisions of the Constitution, the Judges are independent and perform their judicial functions without any interference of any extraneous elements. They may exercise their powers without any shackles and inhibitions. They may perform their constitutional duties without any hunch and hesitancy. They have to exercise their constitutional powers regarding adjudications without any fear and favour. Therefore, there is absolutely least possibilities that the independence of the judiciary may be compromised under existing provisions of the Constitution as there are sufficient safeguards provided under our Constitution. Now, the next problem is required to be resolved, whether any alternative arrangement may be done regarding appointment of judges than existing collegium system without compromising the basic structure doctrine.

The appointment and transfer of the Judges of the Constitutional Courts may be done by constituting a Judicial Commission by amending the Constitution without violating the basic structure of the Constitution. The structure of the NJAC may be expanded by adopting transparent system of working without undermining the authority of primacy as well majority of the judicial opinion in selection process of the judges. We should not have any sort of hunch and hesitancy in our mind that the intention of the Constituent assembly should be given paramount consideration but at the same time, we should also take into consideration that after passage of time and in changed socio-economic conditions of our country, appropriate and suitable amendments are also become *sine qua non*. The Parliament should take new initiatives to amend the Constitution by seeking broad based consensus of the stakeholders and keeping in mind that the judicial organ of the State shall not only be independent but also competent one.

CONCLUSION

The independence of the judiciary and separation of power doctrine would not be compromised by constituting a Judicial Commission by amending the Constitution in accordance with the true letter and spirit of the basic structure doctrine of the Constitution so as to enabling the judiciary to work without any fear and favour. The existing collegium system is required to be replaced by NJAC for reformation as well as transformation of the judiciary. The pendency of cases before Supreme Court and before

various High Courts of India have crossed the unprecedented high marks. In order to clearing these huge number of pending cases, independent and competent judges are urgently needed in our Constitutional Courts. New initiatives should be taken by both judicial and executive organs of the State in harmonious manner to do needful for making our judiciary a competent, independent and efficient judiciary.

NAVIGATING LEGAL BOUNDARIES IN THE DIGITAL WORLD: CHALLENGES IN CYBERSPACE JURISDICTION

Dr. Munish Swaroop*
Dr. Gurudev Sahil**[1]

ABSTRACT

Cyberspace, a concept popularized by the American-Canadian author William Gibson in 1982, has evolved into a globally interconnected realm of computer networks. Initially introduced in Gibson's science fiction works, cyberspace represented a virtual network inhabited by artificially intelligent entities. Over the years, this notion transformed to encompass the internet, a virtual space where individuals worldwide engage in various online activities.

In the 1990s, the internet emerged as a platform for interactions, such as gaming and chat rooms, leading to the widespread use of the term "cyberspace" to describe this virtual domain. The internet, a global electronic network, became a cornerstone of global connectivity, facilitating communication, education, e-commerce, entertainment, real-time information access, online banking, and more. However, its rapid growth and worldwide influence also presented challenges to national security, prompting governments to establish regulations and security measures for cyberspace at both national and international levels.

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This abstract provides an overview of the evolution and significance of cyberspace and the internet, highlighting their transformative impact on global connectivity and the emerging need for regulatory frameworks to address associated challenges.

Keywords: *Cyberspace, Internet, Global connectivity, Virtual space & online activities*

INTRODUCTION

Cyberspace can be described as the globally interconnected network of computer systems where diverse activities occur. This term was initially coined by the author William Gibson in 1982, when he introduced it in a story published in Omni magazine before incorporating it into his novel "Neuromancer." Within Gibson's "Neuromancer," cyberspace is depicted as a computer network existing in a world inhabited by artificially intelligent entities.

During the 1990s, the concept of cyberspace evolved, and it came to be understood as a virtual "space" where individuals could engage with one another while using the internet. This virtual space has served as a platform for various online activities, including gaming and chat rooms. With its growing usage, cyberspace gained popularity, and by the early 2000s, it had also become a hub for web-based discussion forums and blogs.[2]

In our contemporary, high-speed world, the internet plays an indispensable role in linking individuals worldwide. It stands as

[2]Jennifer Bussell, *Cyberspace*, BRITANNICA, Aug 8, 2023, Cyberspace |Digital Communications & Security | Britannica

a pivotal element enabling this global connectivity. The internet can be described as an electronic network that facilitates communication by interconnecting computer networks on a global scale. Beyond serving as a conduit for human connection, the internet serves a myriad of other functions, including education, e-commerce, entertainment, real-time information retrieval on a wide range of topics, online banking, and more.

Although the internet has significantly reduced geographical distances, it has also given rise to a host of challenges. The swift growth and global reach of the internet pose ongoing threats to national security. Consequently, numerous governments worldwide have perceived this upheaval as a necessity to establish regulations for cyberspace, both at the national and international levels.

JURISDICTION

The concept of jurisdiction is rooted in the fusion of two Latin words, "Juris" and "dicere." "Juris" refers to law, while "dicere" signifies the act of speaking or declaring. When these terms are combined, jurisdiction signifies the authority of courts to hear and resolve disputes or issues in compliance with the prevailing laws of a particular jurisdiction. Jurisdiction can be defined as the boundaries within which a legal authority is granted the power to enforce its decisions. In essence, it delineates the geographic area over which a court or legal entity is empowered to exercise its authority.

One of the most significant challenges in cyberspace involves determining the jurisdiction in cases where disputes arise between parties located in different parts of the world, as these situations may be subject to the laws of two distinct nations.

The following are the different types of jurisdictions which may help in determining the jurisdiction of a dispute in the cyberspace:

1. **TERRITORIAL JURISDICTION:** This form of jurisdiction empowers a court to make legal judgments involving specific individuals or entities, whether they are natural persons or legal entities. It is crucial to determine the extent to which an individual falls under the jurisdiction of the court where a lawsuit is initiated. Personal jurisdiction hinges on the concept of 'physical presence,' determining whether the individual involved in the dispute is a resident of the country where the case is filed or not. If the individual is a resident, they are unquestionably subject to the domestic laws of that nation. However, complications arise when the individual is a non-resident, leading to questions about whether international or domestic laws should apply.

   In the case of *Libman v. The Queen*, the court emphasized that one could presume jurisdiction lies within the country where the crime was planned or initiated. Other factors influencing jurisdiction include where the impact of the offense is felt, where it was initiated, where it was completed, or where the

essential elements of the offense materialized. It is also possible to argue that any country where a substantial part of the events constituting an offense occurred can assert jurisdiction."[3]

In the case of Pennoyer v. Neff[4], the United States Supreme Court made a significant observation regarding the limitations imposed on personal jurisdiction by the due process clause of the Constitution, particularly when it pertains to non-residents. The court held that there is no automatic or direct jurisdiction over non-residents of a state. This decision highlighted the importance of ensuring that legal proceedings do not infringe upon the due process rights of individuals, especially those from outside the state in question.

However, it's important to note that the concept of the "minimum contacts" theory introduced a more flexible approach to personal jurisdiction. This theory, articulated in later cases such as International Shoe Co. v. Washington, allowed for the assertion of jurisdiction over non-residents when they had sufficient connections or minimum contacts with the state in question. These contacts could include activities such as conducting business, maintaining a physical presence, or having other substantial connections within the state. The minimum contacts theory, therefore, reduced some of the restrictions on personal jurisdiction over non-residents and

[3]Libman v. The Queen (1985) 21 CCC 3D 206 270
[4]Pennoyer v. Neff [Pennoyer v. Neff, 95 U.S. 714, 24 L. Ed. 565, 1877 U.S.]

provided a more balanced framework for determining when it is appropriate to exercise jurisdiction over individuals or entities from outside a particular state.

2. **SUBJECT MATTER JURISDICTION:** This form of jurisdiction pertains to a court's authority to hear and decide cases that involve specific subject matters or legal issues. For instance, cases related to environmental issues should be filed in a specialized court like the National Green Tribunal, as this tribunal is specifically designated to address environmental matters. This ensures that cases are heard by a court with the relevant expertise and focus. Another aspect of subject matter jurisdiction involves determining whether an act committed within the state where the case is filed constitutes a crime or not. This can be a complex issue, as an act may be considered a crime in one state's jurisdiction while being regarded as a mere civil wrong in another state's jurisdiction. This variance in the classification of the act changes the subject matter of the case and dictates which set of laws should be applied to the situation. This emphasizes the importance of selecting the appropriate court with subject matter jurisdiction to handle cases involving specific legal issues.
3. **PECUNIARY JURISDICTION:** This type of jurisdiction is centered on matters related to monetary values. Under pecuniary jurisdiction, a court or legal forum has the authority to hear a case only if the monetary value of the lawsuit falls within the limit established by the state through its legislative

regulations. This limit can vary significantly from court to court, depending on the subject matter and the specific state's laws.

For instance, in India, under Consumer Protection laws, a district consumer forum is empowered to hear cases with a suit value not exceeding twenty lakh rupees. In a similar vein, the State Consumer Forum can only adjudicate cases involving suit values exceeding twenty lakh rupees but not exceeding one crore rupees. On the other hand, the National Consumer Dispute Redressal Commission can exercise its jurisdiction over cases with suit values exceeding one crore rupees. The exercise of pecuniary jurisdiction is organized in a hierarchical manner and is contingent on the monetary claims made by the parties involved in the proceedings. This ensures that cases are heard by an appropriate court based on the financial scope of the dispute.

4. P**ERSPECTIVE JURISDICTION:** This form of jurisdiction empowers a state to create laws that apply to an individual's actions and specific situations. It is essentially boundless, allowing any state to enact laws and regulations, and even impose restrictions on its authority, particularly in cases where parties from different countries are involved in a dispute. Under perspective jurisdiction, a country can establish laws in situations involving a conflict of interest with another state, regardless of the parties' nationalities or where the dispute originally arose.

In essence, this type of jurisdiction grants states significant flexibility in crafting laws and regulations that can extend beyond their own borders, making it a powerful tool for addressing transnational or cross-border legal issues.

5. **JURISDICTION TO ADJUDICATE:** This type of jurisdiction, known as "in personam jurisdiction," empowers a state to make decisions in cases involving an individual's participation in both civil and criminal matters, even if the state is not directly involved as a party to the case. The critical factor that governs this jurisdiction is the connection between the state and the individual in question. It's important to clarify that a state doesn't necessarily require both adjudicative jurisdiction and statutory jurisdiction to reach a decision in a case. Adjudicative jurisdiction, rooted in the state's authority to adjudicate legal issues, is adequate for the state to render a determination.

6. **JURISDICTION TO ENFORCE:** This type of jurisdiction pertains to the authority of state, law enforcement agencies, or judicial authorities to take action or impose penalties on individuals who have violated laws and regulations. To exercise jurisdiction to enforce, prescriptive jurisdiction is a fundamental prerequisite. Without prescriptive jurisdiction, the authorities cannot take action or impose punishments on individuals for non-compliance with rules and legislations. In

essence, it is the legal basis that allows the state and its agencies to enforce and uphold the law**.**

7. **TERRITORIAL JURISDICTION:** As the term "Territorial" implies, territorial jurisdiction pertains to the geographic boundaries within which a court has the authority to handle cases and disputes. The court's jurisdiction extends to all matters and individuals within its physical boundaries, regardless of the nature of the dispute. In essence, this type of jurisdiction is determined by the court's location and its capacity to adjudicate legal matters within a specific geographic region.

8. **CONCURRENT JURISDICTION:** Concurrent jurisdiction is a concept frequently employed in the realm of International Law. It involves the allocation of legal authority to two or more courts from entirely different jurisdictions, permitting them to concurrently hear and adjudicate cases that are brought before them. In such situations, multiple courts from various legal systems have the simultaneous ability to handle the same case or legal matters. This is particularly relevant in complex international legal scenarios where issues may involve multiple countries or legal frameworks.

9. **Appellate Jurisdiction:** Appellate jurisdiction, as the name suggests, pertains to the authority of courts to hear and decide appeals of cases that have previously been adjudicated by lower courts. In this type of jurisdiction, higher courts review the decisions made by lower courts to ensure they were correctly

applied in accordance with the law. Appellate jurisdiction is a critical aspect of the legal system, providing a mechanism for parties to seek review of lower court decisions and ensure that legal proceedings are conducted fairly and in accordance with the law.

10. **ORIGINAL JURISDICTION:** Original jurisdiction involves the authority granted to courts to hear and decide legal disputes in the first instance, meaning that these courts are the initial venues where cases are brought for resolution. In cases where original jurisdiction applies, the court has the primary responsibility for handling and making decisions on the legal matters presented to it, without the need for an appeal or prior consideration by a lower court. This contrasts with appellate jurisdiction, where courts review decisions made by lower courts on the same matter.

11. **SPECIAL JURISDICTION:** Special jurisdiction, as the name suggests, pertains to the authority of courts to hear and decide cases or suits of a unique or special nature. In these instances, the court possesses the specific legal competence to address matters that may not fall within the usual purview of the general court system. Special jurisdiction allows for the handling of specific types of cases or legal issues by courts with specialized expertise or authority in those particular areas.

12. **LEGAL JURISDICTION:** Legal jurisdiction is the authority granted to courts through statutes and legislations. This type of

jurisdiction is established and defined by laws and regulations, which outline the scope of a court's authority to hear and decide cases. Legal jurisdiction is a fundamental aspect of the legal system, ensuring that courts have the lawful power to adjudicate specific types of cases and disputes as prescribed by legislation.

13. **EXTENDING JURISDICTION:** As the name implies, extending jurisdiction involves the act of broadening or expanding a court's actual jurisdiction. This is typically accomplished through legal interpretation or specific provisions that describe the scope of the court's authority to hear certain cases. Extending jurisdiction may entail redefining the boundaries of the court's authority to encompass a particular type of case or dispute that may not have fallen within its original jurisdiction. It is a legal process by which the court's authority is enlarged to cover specific situations or issues.[5]

CONCEPTS OF CYBERSPACE JURISDICTION

A. LONG ARM STATUTE THEORY

The "Long Arm Statute Theory" is a legal concept used to determine whether a court has personal jurisdiction over a case involving a defendant who is not a resident of the state where the court is located. This principle is rooted in a statute that enables a court to assert personal jurisdiction over a non-resident defendant if that defendant has sufficient connections or minimum contacts with

[5]Amit Kumar Das, *Types of Jurisdictions*, writinglaw.com, Aug 8, 2023 10 Types or Kinds of Jurisdiction of Indian Courts (writinglaw.com)

the state in question. The concept of "minimum contacts" plays a pivotal role in the application of the Long Arm Statute.

In the landmark case of International Shoe Company v. Washington, the U.S. Supreme Court established that establishing minimum contacts by the non-resident defendant with the state is a fundamental requirement for a state to invoke the Long Arm Statute and initiate legal proceedings against that non-resident defendant. The court outlined a three-tier test to evaluate the minimum contacts:

i) The non-resident defendant must commit an act that invokes the jurisdiction of the state where legal action is brought against them and must derive benefits and protection from that state.
ii) The claim must have a direct connection to or "arise out of" the defendant's activities within the state where legal action is initiated. This means that the lawsuit must be related to the defendant's actions or conduct that occurred within the state.
iii) The court's exercise of jurisdiction must be fair and reasonable. This implies that the court's assertion of jurisdiction over the non-resident defendant must align with principles of due process and fairness. It shouldn't unduly burden the defendant or violate their rights.

This landmark case established that a court can exercise its personal jurisdiction even when the defendant is not physically present in the state. Moreover, with the rise of e-commerce, the principles and decisions set forth in the International Shoe

Company case have been adopted by courts in various countries to determine personal jurisdiction, especially regarding non-residents.

The concept of minimum contacts is not confined to physical presence but also extends to issues arising from contracts related to cyberspace, as noted by the court in CompuServe Inc. v. Patterson. This recognition is significant in the context of the digital age, where legal jurisdiction can be influenced by online activities and contracts.[6]

India also follows the USA in determining the personal jurisdiction of court in cyberspace related issues.

the fulfilment of minimum contact by the state was held to be essential for establishing the right of a state to apply long arm statute and bring an action against the defendant.

The following is the three tires test given by the court in evaluating the minimum contact test to establish the minimum contact:

i. The Non-Resident defendant must commit an act which invokes the jurisdiction the state in which an action is bought against him and its benefits and protection.
ii. The claim must arise out of the state in which an action is bought against the defendant due to his activities.
iii. The exercise of the jurisdiction by the court should be fair and reasonable.

[6]CompuServe Inc v. Patterson 89F 3d 1257(6th Cir1996)

This case established that a court can exercise its personal jurisdiction irrespective of the physical presence of the defendant in the state or not. Further, with the advent of e-commerce, the decision and the principle laid down in the International Shoe Company case was adopted by all courts across the various countries in establishing "minimum contact" in determining the personal jurisdiction of court over a non-resident.

The minimum contacts are not limited but also covers the issues arises out of contracts related to cyberspace as observed by court in CompuServe Inc v. Patterson.[7]

India also follows the USA in determining the personal jurisdiction of court in cyberspace related issues.

B. SLIDING SCALE THEORY

The Sliding Scale Theory, also known as the Zippo Test, is a widely recognized approach used in various states to determine personal jurisdiction in cases related to cyberspace. This theory hinges on the level of "interactivity" of a website to establish jurisdiction.

In the landmark case of Zippo Mfg. Co. v. Zippo.Com[8], the sliding scale test was established. In this case, the plaintiff, a manufacturer of lighters under the name 'Zippo,' was incorporated

[7]CompuServe Inc v. Patterson 89F 3d 1257(6th Cir1996)
[8]Zippo Mfg. Co. v. Zippo.Com 952 F Supp 1119 (DCWD Pa 1997)

in the state of Pennsylvania. The defendant, a California-based company, operated an internet news website under the domain name 'Zippo' and registered several domain names related to 'Zippo' as well, such as "zippo.com," "zipponews.com," and "zippo.net." The plaintiff filed a lawsuit against the defendant for trademark infringement.

The main issue before the court revolved around whether a non-resident corporation could be subject to personal jurisdiction in a state solely based on its online presence through the internet. In this case, the court determined that the plaintiff had established personal jurisdiction over the non-resident defendant by applying a three-prong test. This landmark judgment is notable for introducing the sliding scale test.

In this case, the plaintiff, a manufacturer of lighters using the name 'Zippo,' was incorporated in the state of Pennsylvania. The defendant, on the other hand, was a California-based company operating a news-based internet website under the domain name 'Zippo.' The defendant had also registered various domain names related to 'Zippo,' such as "zippo.com," "zipponews.com," and "zippo.net." The plaintiff filed a lawsuit against the defendant for trademark infringement.

The court's decision in this case established the sliding scale test, which considers the level of interactivity and commercial activity of a website to determine if personal jurisdiction can be

asserted. This test helps in evaluating whether a defendant's online presence is sufficient to subject them to jurisdiction in a particular state.

The main issue before the court was whether a non-resident incorporation can have personal jurisdiction in state where its only contact with the state is through internet. The court held the plaintiff have personal jurisdiction over the defendant who is non-resident by applying three prong tests:

These are the key categories used to classify websites in the context of determining personal jurisdiction:

a. **ACTIVE WEBSITE:** An active website is one where the defendant extensively and continuously uses it over the internet to interact with users. The defendant may also enter into contracts with non-resident users through the website. In such cases, a court can assert jurisdiction over the defendant in places where they have purposefully engaged. For example, websites that facilitate online purchases of goods and services, like Myntra and Amazon, fall into this category.
b. **PASSIVE WEBSITE:** In contrast, a passive website is primarily informational and is made available to users or viewers without providing a means for direct interaction or response. Courts typically cannot be expected to exercise personal jurisdiction based solely on a passive website. Educational websites like Coursera, for example, often fall into this category.

c. **INTERACTIVE WEBSITE:** Interactive websites allow users to communicate and exchange files with the host computer. The level of interactivity and the nature of information shared on the website play a role in regulating jurisdiction. Social media platforms like TikTok and Instagram, which enable users to interact and share content, fall into the category of interactive websites.

These distinctions help courts determine whether they have personal jurisdiction over a defendant in cases involving the internet and cyberspace, taking into account the nature and purpose of the website in question.

C. EFFECT TEST

In the case of Calder v. Jones[9], the United States Supreme Court emphasized the ability of the court to assert personal jurisdiction over individuals who are not residents of the state. In this particular instance, a nationwide publication's editor and author published a false article about the people living in a specific area. Shirley Jones, the plaintiff, took legal action against the distributor, writer, and editor named Calder, all of whom were associated with a nationally circulated magazine. The basis of her lawsuit was defamation, as the article wrongly portrayed her as someone dealing with alcoholism. It's worth noting that Jones lived in California, while the article in question was written and edited in Florida. Jones filed a lawsuit against the defendants in a California

[9]Calder v. Jones [465 US 783 (1984)]

court due to the magazine's substantial readership within the state. Ultimately, the court determined that it had the authority to assert personal jurisdiction over the defendants in California.

In the legal matter of Panavision International v. Toeppen[10], the defendant, Toeppen, committed cybercrimes by exploiting the plaintiff's trademark for financial gain. Subsequently, he offered to sell it back to the plaintiff at a high price. In this situation, the California court concluded that, by applying the effects test, it had the authority to exercise personal jurisdiction over the defendant, even though he was not a resident of the state.

CYBERSPACE – ISSUE RELATING TO JURISDICTION

Given that cyberspace and the internet have been described as "locations" where various transactions occur, it is evident that people involved in such transactions can encounter disputes, and in some cases, they may seek legal resolution through the courts. In these situations, it is crucial to determine the jurisdiction in which such a dispute or issue can be heard. This highlights the need for the existence of jurisdiction in the cyber world.

However, while the need for proper jurisdiction is recognized in the online realm, it often proves exceedingly challenging to pinpoint and decide the appropriate jurisdiction for disputes arising in cyberspace and on the internet. The internet lacks a physical boundary, making it difficult to establish

[10]Panavision International v. Toeppen, [141 F 3d 1316 (9th Cir1998)]

jurisdiction within this space. Furthermore, the internet is not owned by a specific state or country; it belongs to all, which adds to the complexity when determining which laws should apply to disputes that arise online.

These challenges have turned the concept of jurisdiction into a significant issue in the cyber world. The primary issue in dealing with jurisdiction in the cyber world is that nations worldwide have established their own domestic laws, tailored to their respective societal norms and conditions. This leads to variations in laws governing disputes across different parts of the world.

With the challenges of jurisdiction in the cyber world in mind, specific international treaties and regulations have been established to facilitate and, to some extent, simplify the determination of jurisdiction and the handling of issues in the online realm. These agreements include:

1. United Nations Convention Against Transnational Organized Crime, 2000, also known as the Palermo Convention.
2. Convention on Cybercrime, 2001, also referred to as the Budapest Convention.

These international agreements aim to provide a framework for addressing issues related to cybercrime and disputes in the digital space, helping to bridge the jurisdictional gaps and establish common guidelines for tackling cyber-related challenges across borders.

In India, cyberspace issues are addressed by the following statutes:

1. The Information Technology Act of 2000 serves as the principal legal framework regulating a range of cyberspace aspects, encompassing electronic commerce, digital signatures, the management of cybercrimes, and the oversight of online engagements.

2. Specific sections of the Indian Penal Code, originally enacted in 1860, pertain to cyberspace concerns, particularly addressing offenses and criminal activities committed in the digital domain, although the code itself is a comprehensive criminal law.

These statutes provide the legal foundation for addressing cyberspace-related matters, including cybercrimes, electronic transactions, and other digital activities in India.

LEGISLATIONS AND CYBERSPACE JURISDICTION

INDIAN STATUTES

It's safe to assert that in today's world, nearly every individual on Earth has access to the internet and uses it for various purposes. The internet has undeniably brought about numerous positive changes in our society. However, it's important to acknowledge that there are also certain dangers and negative consequences associated with the extensive use of the internet. Recognizing these negative

impacts, nations have implemented regulations to mitigate the harmful effects of the internet.

In India, the legal framework addressing cyberspace-related activities includes the Information Technology Act, 2000, and certain provisions related to cybercrimes found in the Indian Penal Code, 1860, as well as in other legislations. The Information Technology Act, 2000, encompasses a wide range of digital activities, including e-signatures, electronic governance, the establishment of certifying authorities for securing electronic records, regulations regarding cybercrimes and their penalties, and guidelines for jurisdiction in digital matters, among other provisions

Before a court takes up any case or dispute, it is crucial to establish and understand the court's jurisdictional powers. The Information Technology Act, 2000, provides guidance on jurisdiction through Sections 46, 75, and 81, which are as follows:

1. Section 46, situated within Chapter IX of the Information Technology Act, 2000, pertains to the authority for adjudication.

2. Within Chapter XI of the Information Technology Act, 2000, Section 75 delineates the criteria and conditions for the application of the Information Technology Act, 2000, to offenses or violations committed beyond the borders of India.

3. In Chapter XIII of the Information Technology Act, 2000, Section 81 delineates the situations in which the Information

Technology Act, 2000, takes precedence, asserting its authority over other laws and regulations.

While the Information Technology Act, 2000 addresses jurisdictional issues in cyberspace, certain provisions of the Indian Penal Code, 1860, deal with cybercrimes and their corresponding punishments. These relevant sections are as follows:

1. Section 292: This section of the Indian Penal Code provides for the punishment for the sale of obscene material. Originally, it was not primarily concerned with cybercrimes, but due to the increasing misuse of the internet, this provision is now applicable to the sale of obscene material online as well.
2. Section 354C: This section of the code stipulates the punishment for capturing and/or publishing private pictures of a woman without her consent.
3. Section 354D: This section of the code provides for the punishment for stalking. It covers both physical and cyberstalking within its scope.
4. Section 379: This section of the code specifies the punishment for the theft of mobile phones or the data stored in such devices.
5. Section 420: This section of the code deals with the offense of fraud.

These provisions in the Indian Penal Code help address various cybercrimes and their legal consequences, reflecting the evolving nature of criminal activities in the digital age.[11]

INTERNATIONAL CONVENTIONS

In the international context, several conventions address jurisdictional issues in cyberspace. One of these conventions is:

The 2000 United Nations Convention against Transnational Organized Crime, commonly referred to as the Palermo Convention, imposes an obligation on national governments to establish domestic legislation aimed at addressing organized criminal entities, alongside laws pertaining to extradition and mutual cooperation in law enforcement. In compliance with this treaty, India enacted the Information Technology Act of 2000.

These international agreements play a crucial role in establishing a framework for addressing cyber-related issues and promoting cooperation among countries in dealing with transnational cybercrimes and related matters.

CONVENTION ON CYBERCRIME, 2001.

The convention you mentioned is indeed known as the Budapest Convention. It is the first international treaty specifically addressing issues related to the internet and crimes committed with the aid of computers, which are commonly referred to as

[11] Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India)

cybercrimes. Article 22 of the convention specifically focuses on jurisdiction.

Under Article 22 of the Budapest Convention, all signatory countries have the power to assert jurisdiction when a cybercrime occurs "within their territory, on a vessel bearing their flag, or on an aircraft registered under their laws." It's important to highlight that India has not ratified this convention.

The Budapest Convention plays a crucial role in facilitating international cooperation and addressing cybercrime issues by providing a framework for dealing with crimes committed in the digital domain.

Despite the existence of various national and international legislations governing the issue of jurisdiction in cyberspace there still exists issues in determining the jurisdiction because internet does not have any limited or defined territories and it is difficult to determine the territory of the internet. For example, a video which was made and posted from Russia can be accessed from any corner in the world unless it is prohibited by any nation through the way of its legislation.

There is a need for expressed and mutually agreed laws by the world nations to tackle the issues arises out of the cyberspace jurisdiction. Unless until there are express laws barring or granting the jurisdiction of a court over a cyberspace issue it is difficult to

determine the jurisdiction of a court. Having defined legislations also removes the confusion among the parties in approaching a court and the saves the time of the parties.

The need for proper legislations or international conventions also arises from the rapid growth of internet across the world. Internet has become an integral part of an individual's life. Right to access the internet is the basic right of every individual in many nations across the world. With increased users and increased access to the internet, the crime rate in cyberspace has also increased.

It is high time for the nations and international organisations to formulate the laws determining the jurisdiction in case of dispute in cyberspace. The laws thus made should be adapted to the existing legal systems rather than altering them completely. For instance, a person sitting in Egypt can hack the bank server of a UK Bank's branch located in India and transfer the same amount to a bank is Cayman Islands and further transfer to a bank in Israel. In this instant scenario, in the absence of express and proper laws it will be difficult for the effected party to determine the jurisdiction to file the complaint and this cybercrime involves multiple countries. And each country has their national laws governing the cyberspace jurisdiction making it difficult for the effected party to initiate the legal proceedings against the hacker.

But in the presence of laws agreed by the nations across the world it would be easier for the affected party to file a complaint or initiate proceedings without any confusion and get the relief for the same without any waste of time or money.

There are various international treaties and conventions which are governing issues in cyberspace. But they specifically deal with a particular cyberspace issue or cyberspace issues. The concept of jurisdiction forms the ancillary part of that convention or treaty. There is need for specific international legal framework like a treaty or convention specifically dealing or based on determining jurisdiction issues arising in cyberspace. And the same has to be adapted and accepted by the world wide nations.

CONCLUSION

The constantly evolving nature of the digital realm and the borderless characteristics of the internet make it imperative to establish a defined legal mechanism for determining jurisdiction in order to regulate and address cybercrimes and other issues effectively.

While there have been attempts by various courts and legislations worldwide to tackle jurisdictional issues in cyberspace, the lack of a uniform and comprehensive international legal framework remains a significant hurdle. The growth of the cyber world is indeed remarkable, but it has also given rise to increasingly complex issues.

In the Indian context, the Information Technology Act, 2000, includes certain sections aimed at addressing jurisdictional issues in cyberspace. However, as you noted, there are still grey areas that need further exploration. To effectively govern cyberspace and promote international cooperation in dealing with cyber-related challenges, there's a clear need for universally accepted and comprehensive laws and regulations governing jurisdiction in the digital domain.

The establishment of such a regulatory framework would not only help address jurisdictional issues but also contribute to a safer and more organized cyberspace, benefiting individuals, organizations, and nations across the globe. Achieving this goal will require collaboration and commitment from international stakeholders to adapt to the ever-changing digital landscape and its associated challenges.

CASTE-BASED DISCRIMINATION, A TRUTH OR MYTH: SOCIO- LEGAL STUDY OF SCHEDULED CASTES IN VILLAGE TIKRIGARH OF DISTRICT CHAMBA AND VILLAGE RARANG OF DISTRICT KINNAUR

Anil Negi*[1]
Prof. (Dr.) D.P. Verma**[2]

ABSTRACT

When one talks about the small hill state of Himachal Pradesh, the image that comes to mind is that of a progressive place. Politicians and bureaucrats have often promoted it as 'Dev Bhoomi' or an abode of Gods where there is complete social harmony. In this process, the issue of caste discrimination has gone unacknowledged and efforts have often been made to sweep the dark reality under the carpet.[3]

In Himachal Pradesh people divide themselves into castes. There are mainly two castes namely upper caste and lower caste. The upper caste considered them as superior having pure blood. Lower caste consists untouchable groups. Educated people also follow this anti-social element. There are many reasons for

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[3]Rajeev Khanna, It's Time Himachal Owned Up to Its Caste Problem, available at https://thewire.in/caste/himachal-pradesh-caste-discrimination (Visited on 15-09-2023)

untouchability. The deity's institution in Himachal Pradesh is also the place of caste-based discrimination and untouchability. [4]

Keywords: *Caste, Tikrigarh, Rarang, Chamba, Kinnaur, Himachal Pradesh.*

INTRODUCTION

All human beings are born equal in rights and dignity and are free from any clutches of manmade society. They are enclosed with reason and conscience and they should live with brotherhood and fraternity. Everyone has rights and freedom without discrimination such as race, breed, sex, language, color, religion, birth, etc. No one has the right to torture or inhuman treatment in any form. The 1/6th population of the India have been deprived from all rights due to caste-based prejudices since ancient Vedic period. [5]

Caste was firmed base of the Hindu society from Vedic times about 1500 B.C. After independence, the Constitution was made which tried to establish an equal society by providing special rights and privileges to the weaker sections including Scheduled Castes, Scheduled Tribes, and marginalized people. Laws were enacted to improve the Condition of the depressed class including the Protection of Civil Rights Act, of 1955 and The Scheduled Castes

[4]S.D. Wad, *Caste and law in India* 3 (Documentation Centre for Corporate and Business Policy Research, New Delhi, 1984)

[5] Dr. B.R. Ambedkar, Castes in India: Their mechanism Genesis and Development, 1-5 (Bheem Patrika Publications, Jalandhar, 1977)

and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for taking specific measures to prevent atrocities.[6]

In Himachal Pradesh, there are 58 sub-castes of the Scheduled Castes category. Each caste feels superior to the other sub-caste. They also observe untouchability from each other**.**

RESEARCH GAP

There are lots of works done by scholars and academicians on caste-based discrimination but no one has done a comparative analysis of caste-based discrimination of village TikriGarh of District Chamba and village Rarang of District Kinnaur.

OBJECTIVES

- To study caste-based inequalities in Himachal Pradesh.
- To analyze the comparison of the caste system in District Chamba and Kinnaur.
- To study the differences between caste discrimination in the study area.
- To find out the reason for caste differences.
- To study different types of discrimination on the basis of caste in the study area.

IMPORTANCE OF THE STUDY

The present work has its importance. In this work researcher has confined his focus to only two villages i.e. Tikrigarh of District Chamba and Rarang of District Kinnaur. The researcher

[6] N.D. Kamble, *The Scheduled Caste* 8 (Ashish Publishing, New Delhi, 1982).

has focused on collecting data from the basics of society to attain the primary cause of caste-based discrimination.

RESEARCH METHODOLOGY

DATA COLLECTION: In the present research work the researcher used primary as well as secondary data to collect the information regarding the topic. The primary data were collected from village TikriGarh of Chamba and Rarang of Kinnaur. Secondary data were collected from books, research articles, the census of India, 2011, Govt. official reports, newspapers, and through internet sources.

SAMPLE: The researcher collected the data from Scheduled Caste peoples of the study area. For this purpose, the researcher targeted 100-100 samples from both villages.

TOOL: A common questionnaire was drafted by the researcher to collect the data.

DATA ANALYSIS: In the present study researcher focused on frequencies. The researcher used the SPSS technique for data analysis.

	Male	**Female**	**Total**
Children	97	86	183
Literacy	80.15%	56.25%	68.16%

Rate			
SC	272	261	533
ST	36	40	76
Illiterate	201	317	518
Population	621	614	1235

Table 1.1 DEMOGRAPHIC PROFILE OF TIKRIGARH VILLAGE

Source: Census of India 2011.

Table 1.1 shows that there are 1235 people in the Tikrigarh village of District Chamba in which 621 are male and 614 are females. Literacy rate of the village is 68.16%. There are 518 people are illiterate.

Table 1.2 DEMOGRAPHIC PROFILE OF RARANG VILLAGE

	Male	Female	Total
Literacy Rate	84.33%	74.44%	79.13%
Illiterate	63	114	177
Population	402	446	848

Source: Census of India 2011.

Table 1.2 shows that there are 848 people in Rarang village of District Kinnaur of which 402 are males and 446 are female.

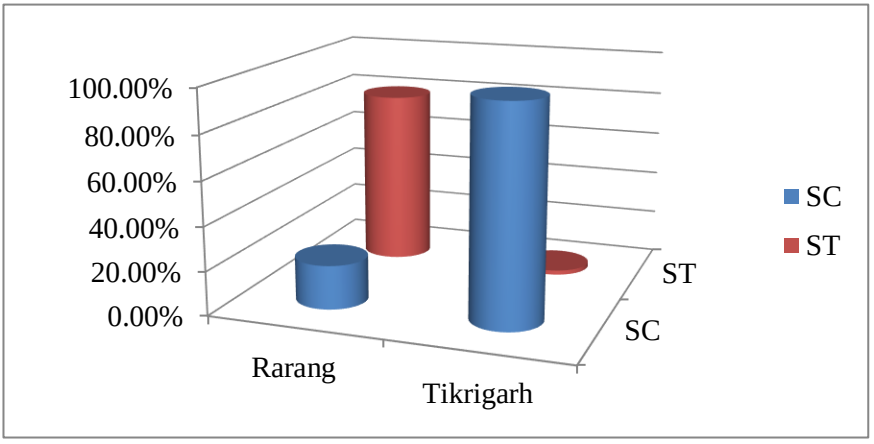
(I) GENERAL CLASSIFICATION OF THE RESPONDENTS

Table 1.3 Category of the Respondents

		Category		
		SC	ST	Total
Name of the village	Rarang	20	80	100
	TikriGarh	98	2	100
Total		118	82	200

Source: Primary Data.

CHART 1.1 CATEGORY OF THE RESPONDENTS



Source: Primary Data.

Table 1.3 and Chart 1.1 show the categories of the respondents, Out of the 200 samples surveyed by the researcher, 118 respondents belonged to SC and 82 were ST.

Table 1.3 and Chart 1.1 shows that there are 118 people mentioned their caste as Scheduled Caste of which 20 from Rarang and 98 from Tikrigarh village. 82 people have Scheduled Tribes of which 80 are from Rarang and 2 are from Tikrigarh.

TABLE 1.4 GENDER OF THE RESPONDENTS.

		Gender		
		Male	Female	Total
Name of the village	Rarang	66	34	100
	TikriGarh	46	44	100
Total		112	78	200

Source: Primary Data.

CHART 1.2 GENDER OF THE RESPONDENTS.

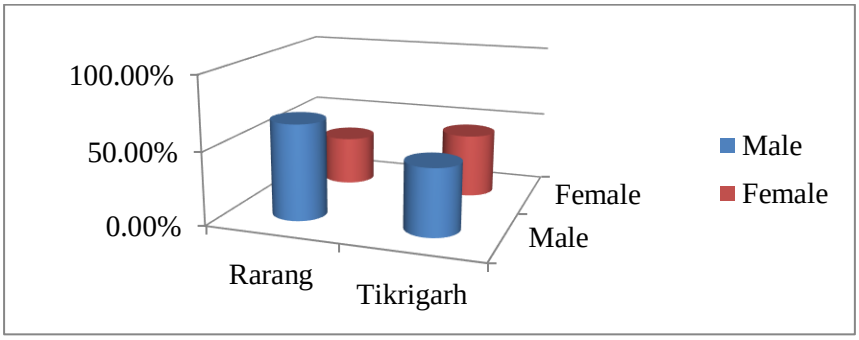


Table 1.4 and Chart 1.2 shows that there were 112 male and 78 female respondents of which 66 were male from the Rarang village and 46 were male from the TikriGarh village. There were 34 females from Rarang and 44 were from Tikrigarh village.

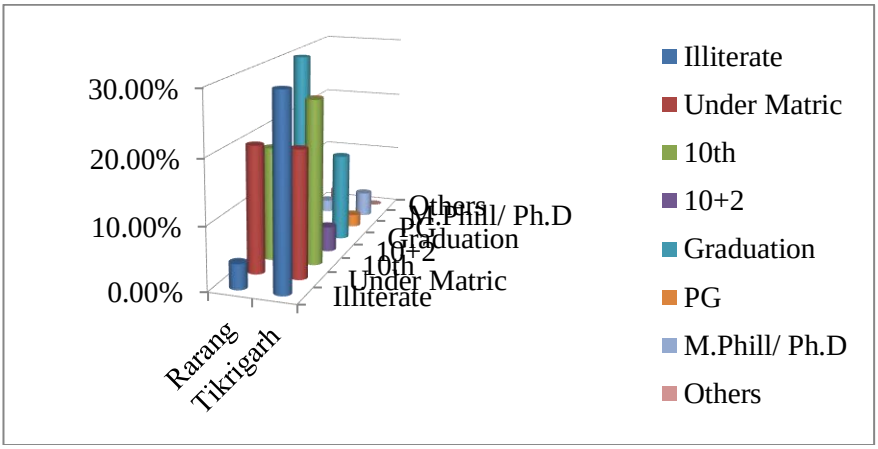
TABLE 1.5 EDUCATIONAL QUALIFICATION OF RESPONDENTS

	Illiterate	Under 10th	10th	10+2	Graduation	PG	M.phill/ P.h.D	Others
Rarang	4	20	18	2	30	22	2	2
Tikrigarh	30	20	26	4	14	2	4	0

Total	34	40	44	6	44	24	6	2

Source: Primary Data.

CHART 1.3 EDUCATIONAL QUALIFICATION OF RESPONDENTS



Source: Primary Data.

Table 1.5 and Chart 1.3 depict that there were 34 illiterate, 40 were under matric, 44 were passed matriculation, 6 respondents passed 10+2, 44 were graduate, 24 passed post-graduation, 6 respondents were either M.Pill or Ph.D. and 2 respondents were belongs to other educational qualification. The table and chart show that there were 4 illiterates from Rarang and 30 from TikriGarh, 20 respondents each from Rarang and TikriGarh were under matric, 18 respondents from Rarang and 26 from TikriGarh passed matriculation, 2 respondents from Rarang and 4 from TikriGarh were passed 10+2. The table and Chart further show that 30 respondents from Rarang and 14 from TikriGarh village passed graduation, 22 respondents from Rarang village of District Kinnaur, and 2 from TikriGarh passed post-graduation. There were

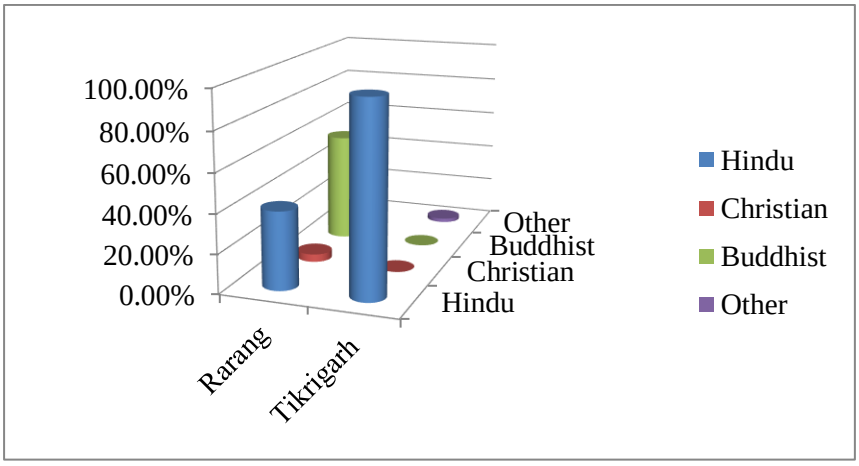
6 respondents who were either M. Phill or Ph. D from which 2 were from Rarang and 4 were from TikriGarh village. There were 2 respondents from Rarang village who passed other degrees i.e. Diploma.

TABLE 1.6 RELIGION OF THE RESPONDENTS

Name of the village	Religion of the respondents				Total
	Hindu	Christian	Buddhist	other	
Rarang	40	4	56	0	100
TikriGarh	98	0	0	2	100
Total	138	4	56	2	200

Source: Primary Data.

CHART 1.4 RELIGION OF THE RESPONDENTS



Source: Primary Data.

Table 1.6 and Chart 1.4 describe the religion of the respondents. There were 138 Hindu, 4 Christian, 56 Buddhist, and 2 respondents belonging to other religions. The table and Chart show that there

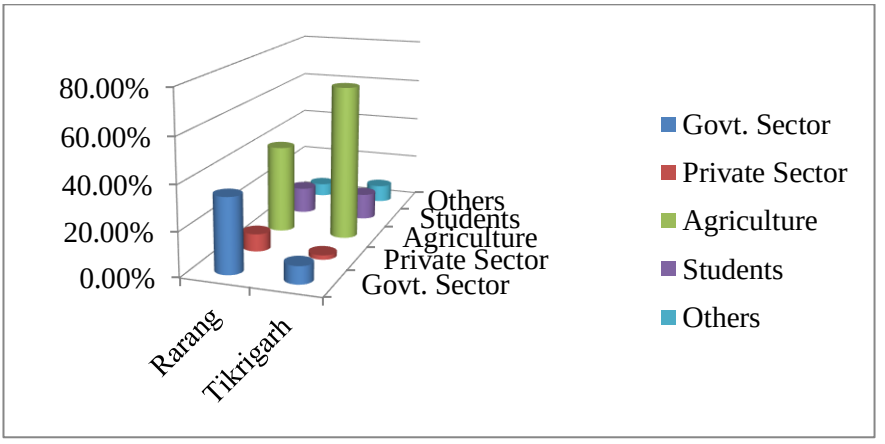
were 40 respondents from Rarang and 98 respondents from TikriGarh village belonging to the Hindu religion. There were 4 respondents from Rarang village professing the Christian and 56 respondents were Buddhist. There were 2 respondents from TikriGarh who belonged to other religions.

TABLE 1.7 OCCUPATION OF THE RESPONDENTS

Name of the village	Occupation of the respondents					Total
	Govt Sector	Private Sector	Agriculture	Students	Others	
Rarang	34	8	40	12	6	100
TikriGarh	8	2	70	12	8	100
Total	42	10	110	24	14	200

Source: Primary Data.

Chart 1.5 Occupation of the Respondents



Source: Primary Data.

Table 1.7 and Chart 1.5 shows the occupation of the respondents. There were 42 respondents who worked in Govt. sector of which

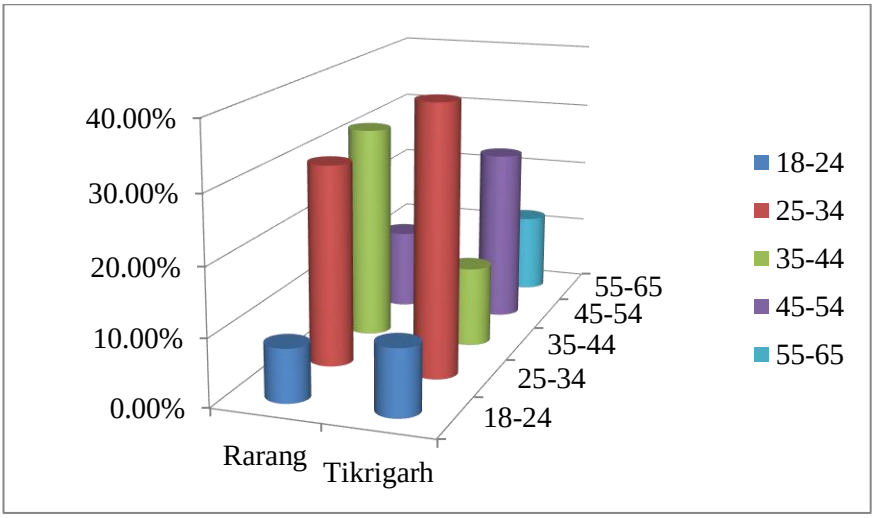
34 were from Rarang and 8 were from TikriGarh. 10 respondents work in the private sector which 8 from Rarang and 2 from TikriGarh. 110 respondents were agriculturists of which 40 were from Rarang village and 70 were from TikriGarh village. 24 respondents were students and 12 respondents each from Rarang and TikriGarh villages. There were 14 respondents who worked in other professions like Shopkeeper, Driver, Labour, etc from which 6 were from Rarng and 8 were from TikriGarh village.

TABLE 1.8 AGE OF THE RESPONDENTS

	Age of the Respondent					
Name of the village	18-24	25-34	35-44	45-54	55-65	Total
Rarang	8	30	32	12	18	100
TikriGarh	10	40	12	26	12	100
Total	18	70	44	38	30	200

Source: Primary Data.

CHART 1.6 AGE OF THE RESPONDENTS



Source: Primary Data.

Table 1.8 and Chart 1,6 depicts the age of the respondents. There were 18 respondents belonging to the age group of 18-24 of which 8 were from Rarang and 10 were from TikriGarh village. 70 respondents belong to the age group of 25-34 from which 30 are from Rarand and 40 are from TikriGarh. 44 respondents belonged to the age group of 35-44 from which 32 were from Rarang and 12 from TikriGarh. There were 38 respondents belonging to the age group of 25-54 of which 12 were from Rarang and 26 from TikriGarh. 30 respondents belong to the age group of 55-65 of which 18 are from Rarang and 12 are from TikriGarh.

(II) QUESTIONS RELATED TO UNTOUCHABILITY AND RESPONSES OF THE RESPONDENTS

1. Identity of the person depends on their caste?

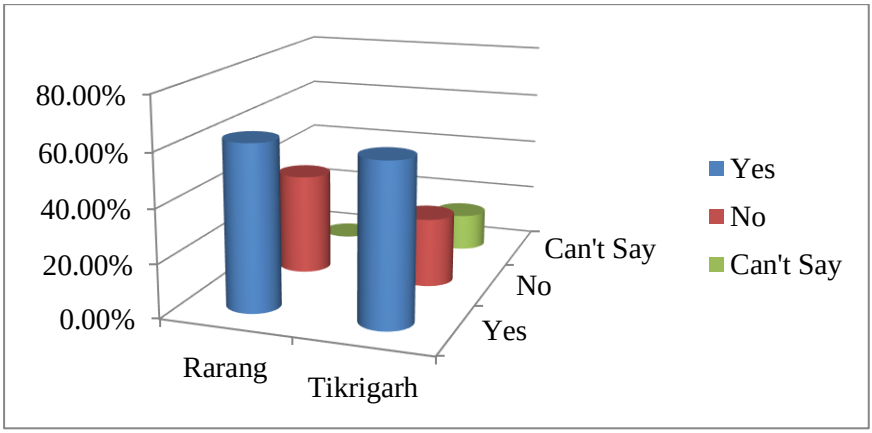
Table1.9 Identity of the person depends on their caste.

Name of the village	Identity of the person depends on their caste.	Total

	Yes	No	Can't say	
Rarang	62	38	0	100
TikriGarh	60	26	14	100
Total	122	64	14	200

Source: Primary Data.

CHART1.7 THE IDENTITY OF THE PERSON DEPENDS ON THEIR CASTE.



Source: Primary Data.

Table 1.9 and Chart 1.7 show the data of the responses of the respondents on the identity of the person depending on their caste. It was discovered that 122 respondents were agreed that the identity of the person depends on their caste among which 62 from Rarang and 60 from TikriGarh village. It was also observed that 64 respondents denied that the identity of the person depends on their caste among which 38 were from Rarang and 26 from TikriGarh. 14 respondents were neutral on this question and all of them belonged to the TikriGarh village.

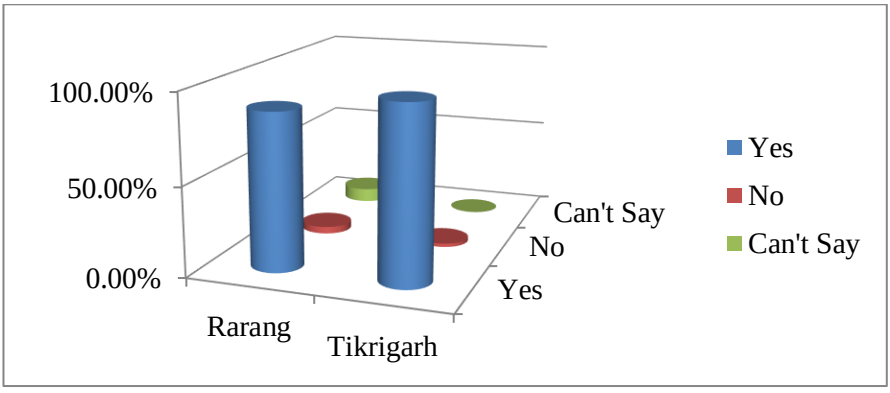
3. ARE DALIT PEOPLE CONSIDERED UNTOUCHABLES AND IMPURE IN HAMLET?

Table 1.10 Dalit people are considered untouchables and impure in hamlet.

Name of the village	Are Dalit people considered untouchables and impure in hamlet?			Total
	Yes	No	Can't say	
Rarang	88	4	8	100
TikriGarh	98	2	0	100
Total	186	6	8	200

Source: Primary Data.

Chart 1.8 Dalit people are considered untouchables and impure in Hamlet.



Source: Primary Data.

Table 1.10 and Chart 1.8 show the responses on Dalit people considered as untouchables in Hamlet. It was discovered that 186 people agreed that Dalit people are considered as untouchables in the hamlet among which 88 respondents were from Rarang village

and 98 from TikriGarh village. It was also discovered that 6 people were denied as they were treated as untouchables among which 4 respondents from Rarang and 2 from TikriGarh village. Apart from these 8 respondents from Rarang village are neutral that they are treated as untouchables in the hamlet.

3. ARE UNTOUCHABILITY IN PRACTICE IN SCHOOLS?

Table 1.11 Untouchability in Schools.

Name of the village	Are untouchable in practice in schools?			Total
	Yes	No	Can't say	
Rarang	34	40	26	100
TikriGarh	8	74	18	100
Total	42	114	44	200

Source: Primary Data.

Chart 1.9 Untouchability in Schools.

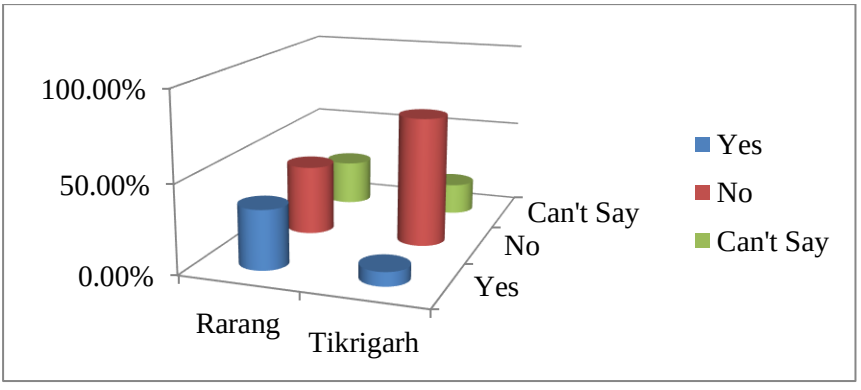


Table 1.11 and chart 1.9 show the responses on Untouchability and caste-based discrimination in schools. It was found that 42 respondents agreed that there is caste-based discrimination in schools in their village among which 34 from Rarang and 8 respondents from village TikriGarh. It was also discovered that 114 respondents denied that there are caste-based discriminations in schools among which 40 respondents from Rarang and 74 respondents from TikriGarh village. Apart from these 44 respondents were neutral and silent on caste-based discrimination in schools among which 26 respondents from Rarang and 18 respondents were from TikriGarh village.

4. ARE SEPARATE CREMATORIUMS FOR HIGHER CASTE AND DALITS IN HAMLET?

Table 1.12 Separate crematoriums for higher caste and Dalits.

Name of the village	Are separate crematoriums for higher caste and Dalits in hamlet?			Total
	Yes	No	Can't say	
Rarang	74	18	8	100
TikriGarh	94	2	4	100
Total	168	20	12	200

Source: Primary Data.

Chart 1.10 Separate crematoriums for higher caste and Dalits.

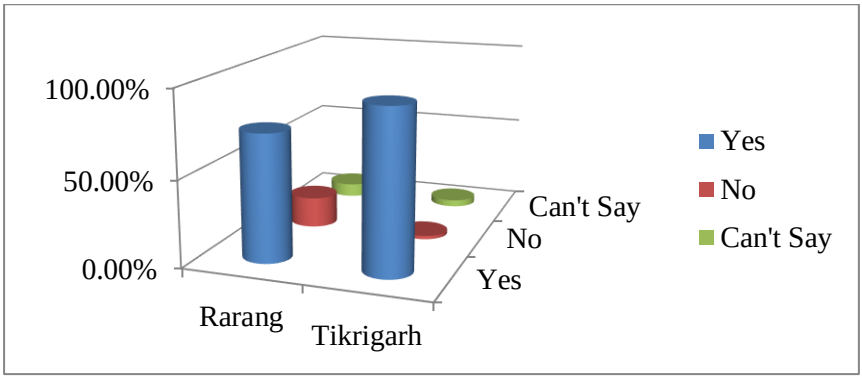


Table 1.12 and Chart 1.10 described the responses of the respondents on separate crematories for higher castes and Dalits in the hamlet. It is observed that 168 respondents agreed that there are separate crematories for higher caste and Dalits in hamlets among which 74 respondents from village Rarang and 94 from TikriGarh village. It is also discovered that 20 respondents did not agree with such kind of discrimination in the hamlet among which 18 respondents belong to Rarang and 2 respondents from TikriGarh village. Apart from these 12 respondents were neutral that there are separate crematoriums for higher caste and Dalits among which 8 respondents from Rarang and 4 respondents from TikriGarh village.

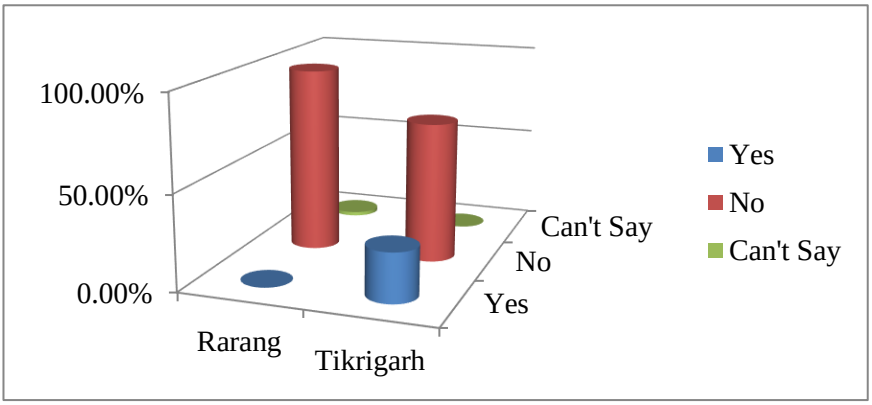
4. DOES INTER CASTE MARRIAGE TAKE PLACE IN HAMLET?

Table 1.13 Inter caste marriage takes place in Hamlet.

Name of the village	Does inter caste marriage take place in hamlet?			Total
	Yes	No	Can't say	
Rarang	0	98	2	100
TikriGarh	26	74	0	100
Total	26	172	2	200

Source: Primary Data.

Chart 1.11 Inter caste marriage takes place in Hamlet.



Source: Primary Data.

Table 1.13 and Chart 1.11 show the responses on intercaste marriage in Hamlet. It is observed that 26 respondents agreed that intercaste marriages take place in hamlet among which all 26 respondents belong to TikriGarh village. It is also observed that 172 respondents denied that intercaste marriage does not take place in the hamlet among which 98 respondents were from Rarang and 74 were from TikriGarh village. Apart from these 2 respondents

from Rarang village of District Kinnaur were neutral on the question of intercaste marriage.

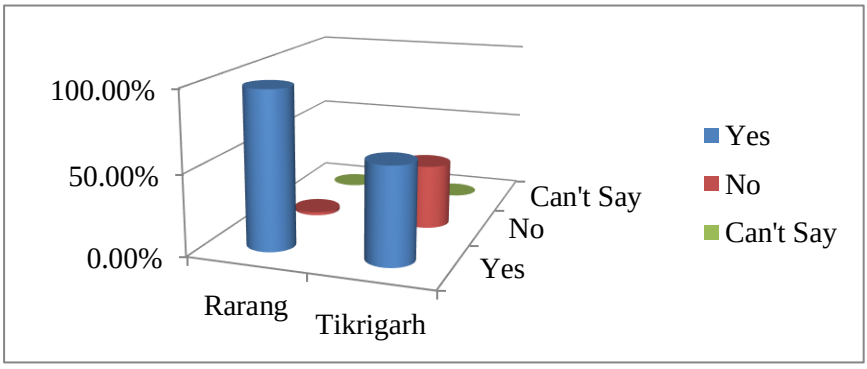
6. IS DEITIES' INSTITUTIONS IN THE VILLAGE ARE THE CAUSE OF UNTOUCHABILITY?

Table 1.14 Deities institutions in the village are the cause of untouchability.

Name of the village	Is Deities institutions in the village are the cause of untouchability?			Total
	Yes	No	Can't say	
Rarang	98	2	0	100
TikriGarh	60	40	0	100
Total	158	42	0	200

Source: Primary Data.

Chart1.12 Deities institutions in the village are the cause of untouchability.



Source: Primary Data.

Table 1.14 and Chart 1.12 describe the responses of the respondents on Deities institutions cause untouchability in the village. It is observed that 158 respondents agreed that Deities institutions in the village cause untouchability among which 98

respondents belong to Rararng and 60 respondents belong to TikriGarh village. It was also found that 42 respondents denied that deities' institutions in the village cause untouchability among which 2 respondents from Rarang and 40 respondents from TikriGarh village.

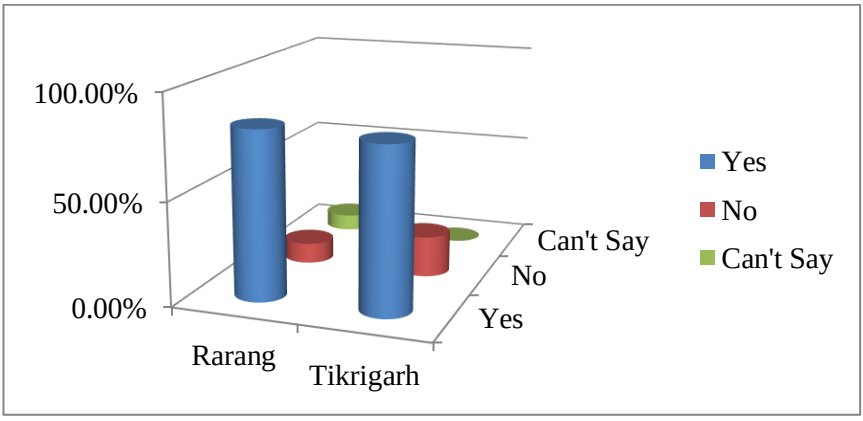
7. DO SUBCATEGORIES OF SC OBSERVE DISCRIMINATION THEMSELVES?

Table 1.15 Subcategories of SC observe discrimination themselves.

Name of the village	Do subcategories of SC observe discrimination themselves?			Total
	Yes	No	Can't say	
Rarang	82	10	8	100
TikriGarh	80	20	0	100
Total	162	30	8	200

Source: Primary Data.

Chart 1.13 Subcategories of SC observe discrimination themselves.



Source: Primary Data.

Table 1.15 and Chart 1.13 show the responses on Subcategories of Scheduled Caste observe discrimination. It is observed that 162 respondents agreed that subcategories of SC observe discrimination among themselves. 82 respondents from Rarang and 80 respondents from TikriGarh accepted that Subcategories of SC observe discrimination among themselves. It was also found that 30 respondents denied that SC observed discrimination among themselves among which 10 respondents were from Rarang and 20 respondents were from TikriGarh village. Apart from these 8 respondents from Rarang were neutral on this question.

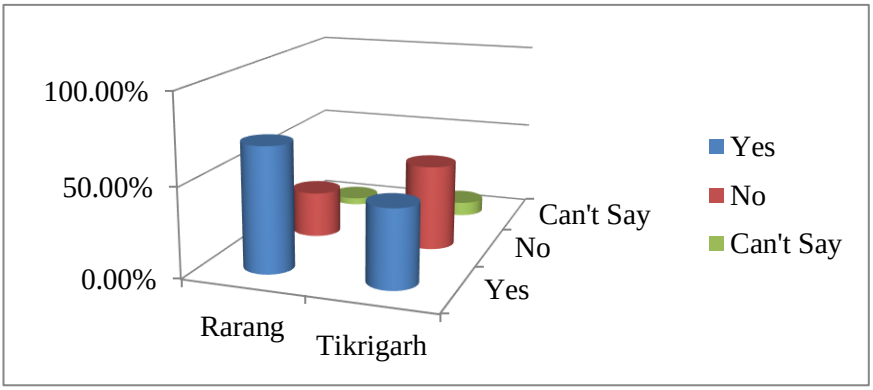
8. DO YOU KNOW ABOUT FUNDAMENTAL RIGHTS PROVIDED BY THE CONSTITUTION OF INDIA?

Table 1.16 Knowledge about fundamental Rights provided by the Constitution of India.

		Do you know about fundamental right provided by the Constitution of India?			
		Yes	No	Can't say	Total
Name of the village	Rarang	70	26	4	100
	TikriGarh	44	48	8	100
Total		114	74	12	200

Source: Primary Data.

Chart 1.14 Knowledge about fundamental Rights provided by Constitution of India.



Source: Primary Data.

Table 1.16 and chart 1.14 depict the responses on knowledge of Fundamental Rights of the respondents, it is discovered that 114 respondents had knowledge about FRs provided by the Constitution of India among which 70 respondents from Rarang and 44 respondents from TikriGarh village. It was also discovered that 74 respondents had no knowledge of FRs provided by the Constitution among which 26 respondents from Rarang and 48 from TikriGarh village. Apart from this, it is also discovered that 12 respondents are neutral on this question among which 4 from Rarang and 8 from TikriGarh village.

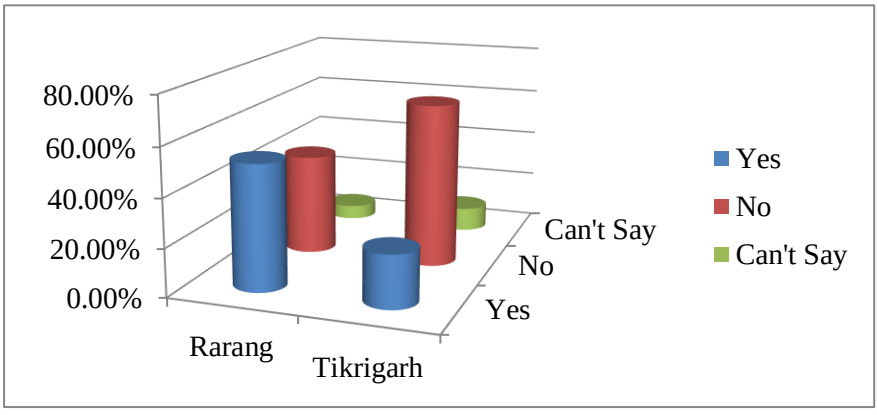
9. DO YOU KNOW ABOUT THE SCHEDULED CASTES AND SCHEDULED TRIBES' PREVENTION OF ATROCITIES) ACT?

Table 1.17 Knowledge about The Scheduled Castes and Scheduled Tribes Prevention of Atrocities) Act.

Name of the village	Do you know about the Scheduled Castes and Scheduled Tribes Prevention of Atrocities) Act?			Total
	Yes	No	Can't say	
Rarang	52	42	6	100
TikriGarh	22	68	10	100
Total	74	110	16	200

Source: Primary Data.

Chart 1.15 Knowledge about The Scheduled Castes and Scheduled Tribes Prevention of Atrocities) Act.



Source: Primary Data.

Table 1.17 and Chart 1,15 depicts the knowledge of the SC/ST Act 1989 of the respondents. It is observed that 74 respondents had knowledge about SC/ST Act 1989 among which 52 respondents

from Rarang and 22 respondents from TikriGarh village. It was also discovered that 110 respondents had no knowledge about the SC/ST Act 1989 among which 42 respondents were from Rarang and 68 respondents were from TikriGarh village. Apart from these 16 respondents were neutral and silent on this question among which 6 respondents were from Rarang and 16 were from TikriGarh village.

FINDINGS

- **Categories:** The researcher focused on the SC group from Rarang village of the Kinnaur district and ThikriGarh village of Chamba district. Meanwhile, out of 100 samples, 20 respondents mentioned their caste as SC and 80 mentioned ST in Rarang village. Apart from this, there are 98 SC and 2 ST in TikriGarh village.
- **Religion:** It was found that there are 40 Hindus, 4 Christians, 56 Buddhists in Rarang village 98 Hindus, and 2 other religious faith respondents from TikriGarh village.
- **Identity of the people depends on their caste:** Most of the respondents agreed that the identity of the person depends on their caste. 62.00 % from Rarang and 60.00% of respondents from TikriGarh agreed that the identity of the people depends on their caste.
- **Dalit people considered as untouchables:**88.00 % of respondents from Rarang and 98.00% of respondents agreed that Scheduled Caste people were treated as untouchables.

- **Untouchability in Schools:** It was found that there is untouchability in schools at the micro level.
- **Separate Crematoriums for higher caste and Scheduled Caste:** It was observed that there are separate crematoriums for upper caste and lower caste. The caste system divided people in death also. It is observed that for upper caste people there are well-furnished crematoriums but SC people have no such kind of facilities. 74.00% of respondents from Rarang and 94.00 % of respondents from TikriGarh accepted that there are separate crematoriums for higher caste and Scheduled Castes in the village.
- **There is no intercaste marriage in village:** It was observed that there is a total ban on intercaste marriages in the village. 98.00% of respondents from Rarang village and 74.00 % of respondents from TikriGarh village accepted that there is no practice of intercaste marriages in the village.
- **Deities institutions lead caste-based discrimination:**98.00% of respondents from Rarang village and 60.00% of respondents from TikriGarh village accepted that deities institutions in the village are the cause of untouchability and caste-based discrimination.
- **Subcategories of SC observe discrimination among themselves:** It was observed that Subcategories of the SC observe discrimination and untouchability among themselves. 82.00% of respondents from Rarang and 80.00% of respondents from TikriGarh village accepted that Subcategories of the SC

community observe untouchability and discrimination among themselves.

- **Knowledge about FR and SC/ST Act 1989:** It was observed that 70.00% of respondents from Rarang village and 44.00% of respondents from TikriGarh village had knowledge about Fundamental Rights provided by the Constitution of India,1950. Apart from this 52.00% of respondents from Rarang and 22.00% of respondents from TikriGarh village had knowledge about the SC/ST Act 1989.

CONCLUSION AND SUGGESTIONS

CONCLUSION

a) Many people practise untouchability; they do not allow SC/ST people to use their tanks or public handpumps etc. Oppose popular practises such as entering temples, etc. People of Kinnaur and Chamba observe untouchability in schools, crematoriums and other public places. This demonstrates that society as a whole is still of a traditional mindset and has not fully accepted new laws.

b) Scheduled Caste people work hard for equal rights and position in politics, service, education, and other fields. They are increasingly going to the police and courts to preserve their rights. This demonstrates that the demand for social equality is growing, and that the instability produced by dominating groups is increasingly accountable for conflicts and atrocities.

c) In Himachal Pradesh, the "*Pahari Devta"* system is a key source of inequality and untouchability, which leads to atrocities against Scheduled Castes people.

SUGGESTIONS

- Sensitise the administration, police, and courts in order to reduce and eventually eliminate bias and apathy towards the Scheduled Castes.
- In terms of atrocity prevention, some independent bodies should be established and strengthened to supervise the functioning of the administration, police, and courts.
- Adequate publicity should be provided to the problem, solutions, and current events concerning atrocities and atrocity prevention.
- The proportion of SC people in administration, police, and courts at higher and decision-making levels should be increased.
- Atrocity-prone regions should be identified and checked on a regular
- Inter Castes marriages should be promoted.
- Financial status of peoples belongs to Scheduled Tribes and Scheduled Castes should be improved by way of beneficial schemes of the Govt.
- Reservation policy in the field of Education and Job section must be strictly implemented.
- Last but not least the provisions of the Constitution, POA Act, PCR Act should be strictly implemented.

ACKNOWLEDGEMENT

I am highly thankful to the scholars whose scholarly works helped me during this research work. I would like to thank Dr. Vijay Singh, Guest faculty, Department of Life Long Learning, Himachal Pradesh University, Shimla. Iam also thankful to all the respondents from Rarang(Kinnaur) and TikriGarh(Chamba) for providing me valuable information regarding this research work.

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RIGHTS OF HIV+ PEOPLE: A STUDY OF EVOLVING JURISPRUDENCE UNDER THE INDIAN CONSTITUTION

-Dr. Silky Mukherjee*[1]

ABSTRACT

Human immuno deficiency virus infection and acquired immune deficiency syndrome (HIV/AIDS) is a spectrum of conditions caused by infection with the human immunodeficiency virus (HIV). Following initial infection, a person may experience a brief period of influenz a-like illness. This is typically followed by a prolonged period without symptoms. As the infection progresses, it interferes more and more with the immune system, making the person much more susceptible to common infections like tuberculosis, as well as opportunistic infections and tumors that do not usually affect people who have working immune systems. The late symptoms of the infection are referred to as AIDS.

Article 21 of the Constitution of India speaks of Protection of Life and Personal Liberty, more specifically gives right to any person to live a dignified life, except according to due procedure established by law. That right invariably extends to people diagnosed with the disease HIV AIDS. Unfortunately, our social construct is such that we discriminate within our own people, and our criterion are varied. But that doesn't change the fact that we discriminate, and hence violate a basic fundamental right of a person to live his or her life with dignity, at least with what is left of the dignity and self-

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respect of the person. Our society stands to accept that profound stigma and discrimination is already a fact of life for those suffering from this fatal disease, not just socially, but within our legal system too.

This paper argues that the legal system should be well equipped to deal with situations like these and the legislature should come up with some special provisions for HIV+ people. The amount of discrimination meted out to HIV+ people in workplaces, restaurants, and many other such places can be considered a serious human rights violation and it is present not only in the less educated section of the society, but also in the highly educated section of the society where ironically, societal status is apparently more important than a person's dignity.

Keywords: *virus infection, HIV+, National Human Rights Commission, Art. 32, Art. 226*

1. INTRODUCTION

The discussion on the rights of HIV+ people has been a much-evaded topic for a long time. As a society, we talk about various human rights, duties, and responsibilities of the people residing in that civil society. But what we fail to understand is that talking about rights and duties of people is in itself a very subjective issue, and the same rights and duties do not apply to all the people. The social stigma surrounding HIV+ people is so vast and so overwhelming, that the civil society fails to go beyond the narrow-

minded conception that AIDS is a dirty disease, and the people suffering from it must be socially excluded.[2]

Fundamentally speaking, the human rights aspect of HIV+ people has been thought about and written about by National Human Rights Commission (NHRC), New Delhi, India. As per the report published by the NHRC there are several human rights associated with HIV+ people.[3]These human rights which have been mentioned by the NHRC report are more or less already guaranteed by the Constitution of India and the various provisions.[4] The various provisions present in Part III and Part IV of the Constitution of India dealing with Fundamental Rights and the Directive Principles of State Policy are most fundamental to the plethora of rights associated with HIV+ people.[5]

Also, the role of the State Governments and the Central Government has been highlighted by the Constitution of India.[6]Public health, sanitation, hospitals and dispensaries fall in the State List.[7] Population control and family planning, medical education, adulteration of food stuffs and other goods, drugs and poisons, medical profession vital statistics including registration of births and deaths, mental deficiency are in the concurrent list.[8]The Union Ministry of Health and Family Welfare is responsible for

[2] Thomas Gracious et al, AIDS, Social Reality and Law, p. 110 (Rawat Publications, 1997).
[3] Know Your Rights, Human Rights and HIV/AIDS, 2011, National Human Rights Commission, New Delhi, India.
[4] *Supra* Note 1, p 157.
[5] *Id*, P. 157.
[6] Indian Constitution, Art. 246.
[7] *Id*, Seventh Schedule.
[8] *Id*.

implementing programmes of national importance like family welfare: primary health care services, prevention and control of diseases, and many more.

2. ASPECT OF ARTICLE 14, ARTICLE 15(1) AND ARTICLE 21

The Right to Equality under Art. 14 of the Constitution of India states that "*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."*[9]Also, the Right to Equality in general and the Right to Equality in particular extends from Art. 14 to Art. 18. All these articles speak of equality of every person before the law, and the equal protection of the law for every person.[10] The interesting thing to note here is that this article includes all the people, not just Indian citizens, hence giving this article a wider scope in terms of applicability and jurisdiction. Even though this right is not absolute and comes with a wide range of reasonable restrictions, it is needless to say that the discrimination being meted out towards the HIV+ people is undoubtedly unconstitutional and violative of Art. 14.

If there is a law in a country which discriminates or isolates the HIV+ patients or denies them equal treatment, the law can be challenged under Art. 32 or Art. 226[11] of the Constitution of India. The same treatment can be meted out to certain government or

[9]*Supra* Note 5, Art. 14.
[10]*Id*, Art. 14.
[11]*Id*, Art. 32 and 226.

private hospitals which prohibit the entry of HIV+ patients in general wards, or singles them out without giving any specific scientific reason.[12]However, if an organisation or the government opens up certain separate treatment centres and AIDS cells for the benefit of the HIV+ patients, it will not be violative of Art. 14. The object sought to be achieved through the separate dispensaries and clinics is time bound treatment and specialised treatment of the HIV+ patients. The classification is based on intelligible differentia and there is a reasonable nexus with the object sought to be achieved. But the main objective of Art. 14 is to stop arbitrary exercise of power by the State.

If the government were to pass a draconian act regarding the HIV+ patients, it would inherently discriminatory and hence unconstitutional.[13]The act with its inequalities is not only assailable under Art. 14 of the Constitution of India, but also under Art. 15(1). The Art. 15(1) is conferred on a citizen as an individual and is available against his being subjected to discrimination in the matter of rights, privileges, and immunities pertaining to him as a citizen generally. The discrimination against HIV+ patients has been struck down by the Hon'ble Supreme Court on two occasions, in the judgements of *State of Andhra Pradesh* v. *U.S.V. Balram*[14] and *Jagdish Saran* v. *Union of India*,[15] both medical admission matters.

[12] *Supra* Note 1, p. 159.
[13] *Supra* Note 1, p. 159.
[14] State of Andhra Pradesh v. U.S.V. Balram, (1972) SCC 660.
[15] Jagdish Saran v. Union of India, (1980) 2 SCC 768.

The Hon'ble Supreme Court, in these cases, struck down the discrimination by the medical education directorate.

The Art. 21 of the Constitution of India speaks about the Right to Life and personal liberty and the Constitution makers have enumerated this provision not just for the citizens of India, but for any person whose Right to Life and personal liberty has been infringed. This article also provides this right to even persons under imprisonment. Because this right is available to all the people as a whole, this article has the widest scope in the Constitution of India. The Hon'ble Supreme Court in the case of *Parmanand* v. *Union of India*,[16] defined life. Life, as used in the article thus includes *inter alia*"an obligation upon the State to preserve the life of every person by offering immediate medical aid to every patient, regardless of the question, whether he/she is an innocent or a guilty person. The criminal law shall operate after the life of the injured is saved." Hence the ambit and the scope of Art. 21 is very wide.

The ambit of Art. 21 is so wide that you name any act endangering human life, they all fall under the sweep of Art. 21.[17] The unlicensed blood banks run by various organisations, the care free shaving parlours, and tattooing centres can all be considered to be violative of Art. 21, and can be given fair warning of dire consequences as far as health concerns are thought about. The Court can order the concerned departments to issue circulars and warnings through the media to this class of people, including those

[16] Parmanand v. Union of India, AIR 1989 SC 2039.
[17] *Supra* Note 1, p. 162.

who relentlessly recycle blades, needles and syringes. The rebelling doctors and nurses, who refuse to treat HIV+ patients, who make a mockery of their condition and make public the confidential information, can be made to treat the HIV+ patients. The blood banks can be made to introduce pre-test facilities, and they can be stopped from giving HIV infected blood.

3. AVAILABLE CONSTITUTIONAL REMEDIES

According to one report, the "United Nations estimates that if the disease is not checked, a mind-boggling 37 million people in India could be infected over the next 10 to 15 years."[18]Even with this staggering projection, observers take solace in the belief that, at the very least, the political and legal rights of the HIV+ patients to some extent are safeguarded by a special device incorporated within the Indian judicial system.[19] In India, any claimant may file what is called a public interest litigation petition (PIL) directly in the Hon'ble Supreme Court when the state is charged with infringing upon a constitutionally protected fundamental right falling under Part III of the Constitution of India. Filing of a PIL is in itself a fundamental right under Art. 32 of the Constitution of India.

[18] Gates Bill & Sarah Palmer, The Coming AIDS Crisis in China, New York Times, 16 July 2001, at A15, available at http://www.brook.edu/views/op-ed/gill/20010716.htm (comparing the rates of HIV in China with that of India), (last visited September 2, 2023)

[19] Krishnan Jayanth K., The Rights of the New Untouchables: A Constitutional Analysis of HIV Jurisprudence in India, Human Rights Quarterly, p. 793 (2003).

Public interest litigation (PIL) refers to the process of allowing, for example, an individual with HIV to file a claim in the Supreme Court where there is an allegation of state-based discrimination. Not surprisingly, many legal and political scholars see public interest litigation as the touchstone of the Indian democratic experience. Only the fiercest of democracies would provide every individual direct access to the highest court in the land. Although the citizens of India have a weapon called the public interest litigation, its usefulness has always been in question. Although the HIV+ patients are treated as the newest class of untouchables in Indian society,[20] the Courts are unwilling to extend to them full protection under the Constitution of India.

In addition, the Constitution of India includes Art. 226.[21] Courts have interpreted this article as giving any claimant the opportunity to file suit on behalf of the public in the High Court of the state, when there is a state violation of a fundamental right or a right guaranteed by statute.[22] These provisions enumerated in the Constitution of India can be used to great benefit by the aggrieved HIV+ people who have been subjected to any kind of discrimination or their fundamental rights have been violated.

[20] R. Devraj, India-AIDS: HIV Creates New Untouchables in India, Inter-Press News Serv., 8 July 1997, available at http://www.aegis.com/news/ips/1997/IP970704.html (last visited 20-09-2015); *See also* Amin Ahmed, The New Untouchables, REDIFF NEWS, 14 Mar. 2002, available at http://www.rediff.com/news/2002/mar/16spec.htm (last visited on September 4, 2023)

[21] *Supra* Note 5, Art. 226.

[22] *Id*.

4. JUDICIAL TRENDS

A. The Dominic D'Souza Case[23]

Among the first HIV cases heard by the Indian Courts occurred over ten years ago. The case involved the famous HIV/AIDS activist, Dominic D'Souza. D'Souza was an employee at the World Wildlife Federation when, in 1986, he learned that he had HIV.[24] Fired from his job and refused treatment by medical doctors, D'Souza was soon incarcerated in a sanatorium in his home state of Goa. State officials justified their action as serving the public interest and cited section 53 of the 1987 Goa Public Health (Amendment) Act, which mandated that individuals who tested positive for HIV/AIDS be placed in isolation. After sixty-four days in detention, a Court released D'Souza, not on the basis of any illegality of the statute, but rather because the blood test given to D'Souza was deemed unreliable.

The Court first noted that the State could isolate someone with HIV/ AIDS. In fact, as the Court stated "it may also be in the interest of an AIDS patient, because he may become desperate and lose all hopes of survival and therefore, has to be saved against himself." Unfortunately, the Court failed to offer data supporting its conclusion. It provided two reports, one from Brown University and the other from the Government of India, to justify its view. But upon a closer reading, neither of these studies endorsed the position the court adopted. Furthermore, the Court in a very deprecating

[23]D'Souza v. State of Goa, AIR 1990 BOM 356.
[24]*Id.*

manner claimed that it was "too ill-equipped to doubt the correctness of the Legislative wisdom." Again, nowhere does the Court's decision cite evidence that the Legislature conducted investigations, held hearings, or gathered testimony from experts in the field before passing this law. The Court then addressed whether section 53 was arbitrary. Instead of dealing with this contention, the Court disregarded the arguments made by the petitioning attorneys. Reciting the various provisions of the statute, the Court without explanation found no "ground for invalidating the source of the (state's) power" to detain. The conclusion of the Court's opinion dealt with whether a hearing was required before incarcerating an HIV/AIDS patient. The Court said section 53 was "not procedurally unjust despite absence of pre-decisional right of hearings."[25] So long as a hearing is offered at some point-whether it is before or after a decision on detention has been made section 53 will be constitutional. The Court also added in its conclusion that because it accepted the case under its Art. 226 authority, it could not issue damages for wrongful isolation. But this line of reasoning runs contrary to a 1983 Supreme Court of India case which stated that the judiciary's ability to protect the fundamental rights of a person would "be denuded of its significant content if the power were limited to passing orders of release from illegal detention."[26]

Some observers contend that the D'Souza case, while far from acomplete victory, nevertheless provided partial gains to people

[25] *Id*.
[26] Rudal Sah v. State of Bihar, AIR 1983 SC 1086, 1089.

with HIV.[27]After all, the mandatory detention principle of section 53 was changed to a more discretionary system following Dominic D'Souza's court-ordered release from confinement. Moreover, the Court did require that people with HIV who were detained be given a hearing at some point in the process. Regarding the first point, it is true that the language of section 53 was changed after D'Souza's release, but recall that the judge there issued no objection to the mandatory provision within the law and instead let D'Souza free on an unrelated issue and it was the Legislature, not any Court, that changed section 53 in 1989.

In terms of the second point, what is missing from the Bombay High Court opinion is a timeframe in which a detainee is to be provided with a hearing. How long can a person with HIV be held before being heard? Given the nature of this illness, time is of the essence. Also, just three years prior to the D'Souza case, the Hon'ble Supreme Court of India ruled that every individual who is ill and who seeks assistance from a government physician has a constitutional right to receive medical treatment.[28]Yet no mention of this principle is cited by the Bombay High Court. Perhaps most troubling about the decision is that a true parsing of the Court's language indicates that much of its ruling was based on conjecture, speculation, and very little evidence or data. This reluctance to provide equal protection to people with HIV, as we shall see, has

[27] Varma Mitu, India Health: Legal Luminaries Seek AIDS Legislation, Inter-Press News Serv., 21 Oct. 1997, available at http://www.aegis.com /news/ips/1997/IP971005.html (last visited August 29, 2023)
[28] Vincent Parikulangara v. Union of India, AIR 1987 SC 990.

had serious implications for others seeking toexercise their fundamental rights under the Constitution of India.[29]

B. Following the D'Souza case-

Following the D'Souza case, a number of legal developments occurred that resulted in great public confusion. For example, some years after handing down its decision in D'Souza, the Bombay High Court ordered the mass arrest of hundreds of female sex workers."[30] In an unpublished ruling the Court cited public health reasons, particularly the fear of the mass spread of AIDS, as justification for its decision to "rescue" these women and girls. However, various human rights accounts note that many of the arrested were incarcerated, forced to undergo testing for sexually transmitted diseases, including HIV/AIDS, and brutalized by the authorities that housed them.[31] Those who tested positively for HIV/AIDS were either deported back to their villages (where they endured the hostility of shaming by their community), or were left to die in detention centres.[32] Most shocking was a report from one observer who obtained this unpublished order, in which the Court

[29] *Supra* Note 5, Art. 12-35.

[30] Yoshie Furuhashi, "Rescuing" Sex Workers, in Compendium on Child Prostitution (compiled by Socio-Legal Information Centre, 2000), available at http://csf.colorado.edu/ soc/m-fem/2000/msg01408.html (last visited September 3, 2023)

[31] Usha Rai, Sex Workers Narrate Harrowing Tales of Atrocities Inflicted by Guardians of Law, in Compendium on Child Prostitution (compiled by Socio-Legal Information Centre, 2000), available at http://csf.colorado.edu/soc/m-fem/2000/msgOl 408.html (last visited on August 30, 2023)

[32] Rescued Minor Sex Workers Demand Release, Times of India, 14 Feb. 1996; *See also* 23 Prostitutes Escape Through a Hole in Wall, Indian Express, 3 July 1996; Meena Menon, Rehabilitation for Child Sex Workers: In the Red, 4 Human scape, Jan. 1997, available at http://www.indiawatch.org.in /ezines/humanscape/cont-j97.htm (last visited on September 1, 2023)

directed "that the raids be a regular feature" of public policy until the spread of HIV/AIDS in the state decreased.

By contrast, around the same time that the Bombay Court declared this order, the Supreme Court of India issued an important public policy ruling affecting the storage of blood in the country. The case arose as a result of the public interest organization, Common Cause, filing a petition under Art. 32 in the Supreme Court.[33] Outraged at the inadequate maintenance of blood, Common Cause asked the Court to require an overhaul in the country's blood system. To support its claim, the group cited the existence of unhygienic storage facilities, the lack of trained professionals at these blood centres, and the fact that "85 per cent of blood collected in the country is not screened for AIDS."

Recognizing the immediate crisis occurring within the Indian blood banks, the Court ordered governments at the central and state level, as well as the National AIDS Control Organization, the main public institution handling HIV/AIDS policy, to implement a series of changes. These included establishing councils at the national and state levels devoted to monitoring and ensuring sanitary blood transfusion services. The Court also held that all blood banks must be licensed, and that there must be intensive screening of blood donations. As the Court noted: "The blood trade flourishes with poor people ... The blood banks presently thrive on bleeding 4000-5000 professional donors in 18-20 cities. The professional blood

[33] Common Cause v. Union of India, AIR 1996 SC 929.

donors, which include many, are reported to be victims of ill health, low haemoglobin, and many infections."

To end this professionalization, the Court directed the councils only to accept voluntary donations. (According to a recent report, this ruling is now being followed throughout the country).[34] The Court also made reference to the fact that the medical welfare of all citizens (those with good health, HIV, or otherwise) depends upon a system that is legitimate and refrains from exploiting those weakest in society. A year after the Supreme Court's judgment in Common Cause, the Bombay High Court made a historic ruling in a labour law case that gave important protection to people with HIV, *MX of Bombay* v. *M/s ZY*.[35] But then the case of *Mr. X* v. *Hospital Z*[36] came as a significant step backward.

C. The Mr. X v. Hospital Z Case-[37]

This landmark case arose as a part of chain of events which started in 1995. Physicians in the Nagaland suggested to a patient that he should go to Madras for a surgical operation. He was accompanied by a local doctor named Mr. X for his visit to Madras. Ahead of the operation, doctors in Madras requested Mr. X to donate blood in case they needed it during the operation. Mr. X obeyed the request, however his blood was not used by them. The patient was subsequently discharged and returned to Nagaland along with Mr.

[34] Combating HIV/AIDS in India 2000-2001, NACO, available at http://www. naco.nicin (last visited on September 5, 2023)
[35] MX of Bombay v. M/s ZY, AIR 1997 BOM 406.
[36] Mr. X v. Hospital Z, AIR 1999 SC 495.
[37] *Id*.

X. After few months of this incident, Mr. X proposed to a Ms. Y and their wedding was planned in the month of December 1995. However, just few days prior to the marriage, said hospital in Madras telephoned the relative of the patient (who happens to be a state minister) informing him that Mr. X was HIV positive. Due to this, all in Mr. X's family and neighbourhood became aware of this fact due to which his marriage was cancelled and he was subjected to hate in his community. Thereafter, Mr. X left Nagaland and took a job in Madras.

Later on, he filed a complaint in the NCDRC, on the ground that the hospital broke its responsibility of privacy when it released the data of his blood to a third party. The Commission dismissed the petition and directed Mr. X to file the case in civil court for appropriate remedies. Aggrieved by this order of the Consumer Commission, he filed appeal before the Supreme Court. The main issue confronting the Court was whether the Commission correctly dismissed the complaint.

Supreme Court while understanding the vitality of the case, took up this matter to address wide arena of issues that Mr. X did not even raise in his appeal. First, rather than construing whether the Commission justifiably dismissed the original complaint, the Court began its analysis by discussing the issue of confidentiality. The Court acknowledged the sanctity that confidentiality is given in both the Hippocratic Oath and in the Indian Code of Medical Ethics. But the Court noted that the doctor-patient privilege

allowed for exceptions when the "public interest would override the duty of confidentiality, particularly where there is an immediate or future health risk to others." Using this rationale, the Court reasoned that:

The proposed marriage carried with it the health risk to an identifiable person who had to be protected from being infected with the communicable disease from which the appellant suffered. The right to confidentiality, if any, vested in the appellant was not enforceable in the present situation.[38]

Second, the Court disregarded the notion that Mr. X's privacy rights were violated by the disclosure of his HIV+ status. Citing several Indian, as well as American, cases, the Court stated that while the right of privacy is guaranteed in the constitution of India and that the fundamental rights of the constitution have "penumbral zones," limits may be placed on these rights so long as there is a compelling state interest.[39] Making direct reference to Roe v. Wade and Article 8 of the European Convention on Human Rights, the Court held that exceptions to the right of privacy were allowed when the "health or morals or... rights and freedom of others" were at stake. On this basis the Court found that no fault lay with the hospital for divulging Mr. X's status. The fiancée had a greater

[38] *Id*.

[39] Govind v. State of Madhya Pradesh, AIR 1975 SC 1378; *See also* Kharak Singh v. State of UP, AIR 1963 SC 1295; Malak Singh v. State of Punjab, AIR 1981 SC 760; R. Rajagopal v. State of Tamil Nadu, AIR 1994 SCW 4420. The American cases that the Court cites include Wolf v. Colorado 338 U.S. 25 (1949).

interest in knowing about her potential husband's medical condition than any individual claim of privacy he may make. Third, the Court then curiously decided to discuss how the presence of a venereal disease by either the husband or wife can serve as the basis for divorce in India.

The Court also trampled over the nuances inherent in the question of who has the right to marry. International law recognizes that the right to marry is a natural right guaranteed to every individual of full age. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights both have provisions adopting this principle.[40] Yet the Court in this case, with one fell swoop, held that people with HIV do not have a right to marry. The Court's stated worry was that a healthy spouse may acquire the disease from her infected husband who has failed to disclose his illness; thus, there was a public policy interest in protecting the innocent party. But this argument presumed wrongdoing by the petitioner and ignored the fact that there were already criminal statutes existing punishing such behaviour. As the attorney for Mr. X wrote after the case, upon "confirming his HIV positive status he himself withdrew from the marriage."

D. K.S. Puttuswamy v UOI[41]

In the landmark judgment of K.S. Puttuswamy v UOI, Supreme Court read right to privacy within the ambit of Article 21.Right to

[40] Universal Declaration of Human Rights, adopted on 10 Dec. 1948.
[41] (2017) 10 SCC 1

privacy is held to be a central element of Part III of the Constitution. It was also held in this judgment that the state must cautiously balance the individual privacy and the legitimate aim at any cost as fundamental rights cannot be taken away by law and all laws must abide by the constitution. It was also held by the Supreme Court in this case that the right to privacy is not an absolute right and any attack on privacy of an individual by the state or non-state player must satisfy a test called as Triple test which must comprises of the following three components namely, legitimacy, proportionality and legality. This judgement is important as it guarantees for protection of individual privacy inspite of the fact that India doesn't have any privacy law at the moment.

5. THE WAY FORWARD

The society as a whole is responsible for the apparently deplorable conditions that HIV+ people live in, and unless and until we all start treating them as our own, we are not going to find a way out of this. The legal system too should be well equipped to deal with situations like these, and the legislature should come up with some special provisions for HIV+ people. The amount of discrimination meted out to HIV+ people in workplaces, restaurants, and many other such places can be considered a serious human rights violation, and it is present not only in the less educated section of the society, but also in the highly educated section of the society where ironically, societal status is apparently more important than a person's dignity.

The law courts also follow the principle of precedent in an *ad hoc* manner, which adds angst to an already desperate community. Having to choose between a political process that is flawed and a judicial system that is inconsistent, time-consuming, and haltingly helpful, amounts to little choice at all. Until serious political reform is undertaken or there is a re-evaluation of the benefits courts provide, people such as those with HIV will continue to serve as the newest class of untouchables within Indian society.

UNRAVELLING THE INTRICATE DANCE: EXPLORING THE DYNAMIC INTERPLAY BETWEEN LAW AND POLITICS

-Alen Thomas Pallattu*[1]

ABSTRACT

The interrelationship between law and politics has long been a subject of intense scholarly inquiry, reflecting their inherent connection and influence on one another. Because of their innate link and influence on one another, law and politics have long been the focus of significant scholarly investigation. With an emphasis on the Indian context, this research paper, titled "Unravelling the Intricate Dance: Exploring the Dynamic Interplay between Law and Politics," investigates many facets of this convoluted interaction. The paper analyses how honouring the law promotes accountability, justice, and fairness in the political sphere. The study also examines the interaction between political and legal institutions in India throughout the tumultuous period of the Emergency (1975–1977). The interaction between law and politics was significantly strained during this time period as individual liberties were restricted and juridical instruments were used for the suppression of political criticism. Finally, the study explores whether the interaction between politics and law is beneficial or harmful. It critically explores situations in which the entwinement

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of politics and the law has produced advantageous results, such as constitutional amendments and the affirmation of basic liberties.

Keywords: *Law and Politics, Interplay, Rule of law, Indian political system, Legal and political institutions, Emergency (1975-77)*

INTRODUCTION

The term **"LAW"** refers to rules drafted and enacted by the government that are used to regulate how a society behaves. It is the comprehensive set of laws that every member of a nation or community is obligated to adhere to.

POLITICS is defined as the processes involved in acquiring and wielding power in public life and having the capability to shape policies that have an impact on a nation or a community. It can also be referred to as governmental policies, activities by lawmakers, or initiatives by individuals to reform how a nation is governed.

The nexus between law and politics is indeed a tangled one. Nevertheless, the researcher has made a conscious effort to critically and rationally analyse several underlying issues of theoretical and practical relevance in reference to the same, underscoring the reciprocal link between legislative and political issues. On the course of the research, the researcher has analysed different viewpoints from different schools of thought, on the given relationship.

As social phenomena, law and politics are two manifestations of the same phenomena, and the only reason for their existence separately is attributable to a dualistic or pluralistic perception of the universe, as maintained by humans. It can be said that, in general, politics and law both possess a normative orientation that attempts to regulate societal relations. Based on this paradigm, their attempts to arrive at a fair or acceptable distribution of social statuses and resources are influenced by the opinions of the pertinent ruling class when it comes to making political and legal decisions.[2] Politics and law are analogous in that both rely on certain ideological conceptions of their value-related goals, which, at the most abstract level, are typically almost identical.

By analysing different sources collected as a part of this study the researcher has noted that the relationship between law and politics had constructive elements mostly, but it also had some destructive dimensions. The overall image that is presented here is opaque and convoluted. Law and politics interact, both advantageously and adversely. That becomes apparent when we examine the genesis and ratification of laws as well as their implementation. There are two sides to this story: politics has an influence on the drafting and application of laws, and laws have a political impact.[3] They can't be dealt with separately since they are intertwined so deeply.

[2]Jane Smith, "The Role of Politics in Shaping Legal Policy," 45 Harv. J. L. & Pol. 123 (2018).

[3] John Johnson, "The Impact of Political Movements on Legal Reform," Legal Times (March 1, 2022), available at https://www.legaltimes.com/article/political-movements-legal-reform.

RESEARCH OBJECTIVE

Through this research paper, the researcher has attempted to give a basic definition of law and politics in generic terms. On the course of the research, the researcher has analysed different viewpoints from different schools of thought, on the relationship between law and politics. The Researcher has attempted to trace the evolution of the concept of rule of law and its impact, emphasizing on Indian political system. The researcher has also put effort to identify the nature of relationship between legal and political institutions in India during the Era of the emergency in 1970s. An effort was also put to identify if the nature of interaction between law and politics was advantageous or destructive.

RESEARCH QUESTIONS

What are the different dimensions of the relationship between legal and political issues?

1) How did the concept of rule of law evolved, and impacted the Indian political system?
2) Was there a conflict between legal and political institutions in India during the period of the Emergency (1975 – 1977)?
3) Is the interplay between law and politics constructive or destructive in nature?

RESEARCH METHODOLGY

There are two major sources of collection of data. The data gathered through inquiry and investigation are referred to as primary data, since they are founded on first-hand information. Secondary data are those that are acquired and processed by another organisation.

The researcher used and examined a variety of secondary sources, such as research reports, publications, books, journals, and other materials, for the purpose of this research.

The Doctrinal Method of Research was applied throughout the duration of the research. There is no first-hand data offered that is static. In this study, descriptive research is predominantly used.

HYPOTHESIS

There is a deeply intertwined relationship between Law and politics, the result of which may be constructive or destructive in Nature.

DIFFERENT DIMENSIONS OF THE RELATIONSHIP BETWEEN LAW AND POLITICS

When it comes to social phenomenon, law and politics are two outgrowths of the same substance, and the only difference that distinguishes them is how individuals perceive the world—whether in a dualistic or pluralistic way. Furthermore, from a thorough objective standpoint, the distinction between law and politics is merely an illusion. For this reason, statements based on the partial or entire overlap of law and politics, and occasionally even the conflating of the two, have been made in the disciplines of legal and political theories and philosophy.

One of the main by-products of politics is law, which has also been the object of several political battles. It may be claimed that it is adjacent to the core of the examination of politics because it is the main tool used by the government in imposing its agenda on society. But law also serves as a framework for how the government is structured. Law, also referred to as public law, has gained recognition on its own. In this case, politics is both a product and a component of law. The research of law and politics spans several academic disciplines. It expanded its scope from its original focus in political science, which was the analysis of administrative and constitutional law, to include courts, attorneys, and other relevant legal entities. The early American jurist James Wilson observed that law is the "great sinew of government" [4]

While the transdisciplinary relationships between the analysis of law and politics have transformed over time, the domain of law and courts, like political science, has often taken ideas and techniques from some of the other fields.[5] This is a notably ideal opportunity for interdisciplinary discussions between researchers from political science, the arts, the other social sciences, and the professional schools because there are active scholarly networks interested with different aspects of law and governance in numerous disciplines. The core topics of legal studies, as they are taught in academic institutions, are the content of the law and the conduct of lawyers.

[4] Upendra Baxi, "Judicial Discourse: Dialectics of the Face and the Mask," *Journal of the Indian Law Institute* 35, no. 1 (January–June 1993)

[5] Sarah S. Stroup & Wendy H. Wong, Legal Mobilization and Political Advocacy: Exploring the Interplay of Law and Politics (2019)

The politics of law can frequently be separated from the practice of law as a profession and a vocation.[6]

Politics and the law both function as independent, fundamental parts of their respective subsystems. Because the descriptions of personal characteristics must unavoidably change when individual elements are removed from their fundamental constituents, they look from this perspective to be just partially accurate or just as descriptive. It also needs to be taken into account that these distinctions or separating factors may not always seem persuasive because, in some instances or within its own domains, politics may resemble the law and vice versa. In summary, it is possible to argue that politics and law have a common prescriptive tendency towards establishing social stability.

According to this paradigm, their efforts to find a fair or acceptable equitable distribution of social standings as well as resources are influenced by the opinions of the relevant ruling class when it comes to formulating political and constitutional decisions. Politics and law are comparable in that they both rely on certain philosophical conceptions of their respective value-related goals, which are frequently indistinguishable at the most abstract levels. For instance, in a democracy, the state is built on the rule of law, constitutionality and legitimacy, civil rights, and equity.

[6] Terence C. Halliday, Law and Politics: Mapping the Field (2016)

THE CONCEPT OF RULE OF LAW AND IT'S IMPACT ON THE INDIAN POLITICAL SYSTEM

"The bedrock of our democracy is the rule of law and that means we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing."- **Caroline Kennedy.**[7]

Understanding the notion of the rule of law requires understanding that the state is ruled by the law, not by the ruler or the elected officials chosen by the populace. Although the phrase "Rule of Law" is frequently utilized by the Indian judiciary in its rulings, it is not codified anywhere in the Indian Constitution. One of the fundamental elements of the Constitution, according to the Supreme Court, is the rule of law. Rule of law is regarded as a crucial component of effective government.[8]

Rule of law essentially means that no individual is above the law and that everyone is governed by the jurisdiction of regular courts of law, regardless of their position or standing. Rule of law is the absence of arbitrary decision-making or broad discretionary authority. It should be ruled by legislation for every individual, to put it simply. The most crucial requirement of the Rule of Law is that those in positions of responsibility execute their powers within a limiting framework of widely accepted social standards as opposed to arbitrarily, haphazardly, or solely at their discretion.

[7] Michael W. Dowdle, David L. Sloss & Hans Petter Graver, Law, Politics, and Society: An Introduction (2d ed. 2006)
[8]Cerar, Miro, "The Relationship Between Law and Politics," *Annual Survey of International and Comparative Law* (2009)

Rule of law has been crucial in the development of Indian democracy. The United States and England were the two options available to the Constitution's architects at the epoch.[9] A few of the rules were taken directly from the United States of America, while others came from Britain. Our framers of the constitution took the concept of rule of law from England and adapted many of its principles into the Indian Constitution. No other document is thought to be superior than the Indian Constitution, which is regarded as being paramount and the sovereign. The preamble also makes reference to the rule of law, and Part III of the Indian Constitution explicitly states this idea.

Under Articles 32 and 226 of the constitution, one may file a claim with the Supreme Court or High Court in the event that these rights have been violated. Justice, equity, and freedom are three legal ideals that are infused into the Indian Constitution. Any law passed by either the Central or State governments must be upheld in accordance with Indian Constitution. Any legislatively enacted law that conflicts with the Constitution's tenets would be deemed invalid.

"The idea of the rule of law has been addressed and revealed in multiple cases. Here are a few examples of the cases:

1) *ADM Jabalpur v. Shivkant Shukla*[10]
2) *Som Raj v. State of Haryana*[11]

[9] Prince, Colin. "Moral Foundation Theory and the Law." *Seattle University Law Review* 40, no. 3 (2017): 123-145
[10] [1976] 2 S.C.R. 793

3) *Union of India v. Raghubir Singh*[12]
4) *S.P. Sampath Kumar v. Union of India* [13]
5) *Keshvananda Bharti v. State of Kerala*[14]
6) *Maneka Gandhi v. Union of India .*[15]
7) *Gadakh Yashwantrao Kankarrao v. Babasaheb Vikhe Patil*[16]"

It is clear that the Rule of Law is indeed the essential method of accomplishing the objective of legal sovereignty. The court, which links the enforcement of the law with peoples' civil liberties, also makes some attempts. The court is working on a strategy that will enable it to compel the state to improve the ability of its citizens to utilize their liberties in a proper and thoughtful manner, as well as to adhere to the law.[17] The rule of law has not produced the desired consequences in Indian society. A few instances when our judicial system protected the rule of law and ensured justice include the development of new channels for pursuing redress for human rights breaches through the filing of PIL petitions.

RELATIONSHIP BETWEEN THE LEGAL AND POLITICAL INSTITUTIONS IN INDIA DURING THE ERA OF THE EMERGENCY (1975 – 77)

Actions like those the Indian Government has taken since declaring an emergency in June 1975 may spark political debate in many

[11] 1990 SCR (1) 535.
[12] CWP No. 20612 of 2013
[13] 1987 SCR (3) 233.
[14]AIR 1973 SC 1461
[15] AIR 1978 SC 597.
[16] AIR 1994 SC 678
[17]U. Baxi, The Supreme Court in Indian Politics (Delhi: Eastern Book Company, 1983)

countries, but they are unlikely to make law seem like a matter that is particularly relevant. India's distinction in this regard is attributable to its long and rich history and explicit dedication to processes and institutions that are thought to be distinct from politics. According to one perspective, every legal proceeding in a common law jurisdiction like India's results in a breach with established legal custom. The act of "interpreting the law" is so close to the act of "creating new legislation," especially in the more complex areas of constitutional discussion and decision-making, that many academics dismiss the distinction as meaningless.

If one were to infer from the common viewpoints of legal experts, "looking to the courts" as a central focus for defiance would appear a sensible response. So, similar to the pre-emergency era, litigation appears to be acting more as a buffer against the rougher features of the use of political authority than as a solid impediment to reform. It does so as a result of its inherent ability to create compromise. The outcome will, however, depend more on the respective merits of the negotiators in a negotiated partnership than it will on the purportedly unchangeable "rules of the game" that legal scholars conform to. At least momentarily, the emergency has skewed the bargaining power tables heavily in favour of government schemes.

During this time, the judiciary and the government were at odds in a number of ways. There had been three constitutional problems. These were:

1. Could the fundamental rights be restricted by the parliament? The Supreme Court's response was unfavourable.

2. Could the Parliament modify the Constitution to restrict the right to property? The Supreme Court ruled once more that the Parliament cannot change the Constitution in a way that restricts rights.
3. The Constitution was revised by the Parliament, which stated that it could limit fundamental rights in order to implement directive principles. The Supreme Court, however, also struck down this clause.[18]

As far as the relationship between the administration and the judiciary is concerned, this resulted in a crisis. Two other events further increased the conflict between the executive and judicial branches. In 1973, a vacancy for the position of Chief Justice of India occurred right after the Supreme Court's ruling in the Kesavananda Bharati case[19]. It had been customary to choose the Supreme Court judge with the most seniority as Chief Justice, but in 1973, the government decided to disregard the seniority of three judges and chose Justice A. N. Ray instead. Because each of the three judges who were replaced had issued decisions that were contrary to the government's position, this selection came under political scrutiny.

As a result, political ideologies and constitutional interpretations were quickly getting confused. The necessity for a court and a bureaucracy that is "dedicated" to the goals of the administration and the legislative began to be discussed by those close to the

[18] The Interplay of Law and Politics in India – Prof. James Manor (University of Cambridge)
[19] AIR 1973 SC 1461

prime minister. Of course, the High Court's decision invalidating Indira Gandhi's election was the confrontation's culmination.

IS THE INTERPLAY BETWEEN LAW AND POLITICS CONSTRUCTIVE OR DESTRUCTIVE IN NATURE?

Beyond the Supreme Court, the researcher has made an effort to examine political relations among actors from civil society, interest groups, and the government—typically at the local or state level. However, the court merits attention because, since the late 1970s, it has frequently increased the possibilities and space for stakeholders in such sustainable power centres—such as government entities beyond the executive agencies of the centralized administration and at intermediate and still lower levels—to influence the policy-making and political processes. Supreme Court has accomplished this through its judicial review activities and other actions. Along with the president, the election commission, parliament and its committees, and other national-level organisations, the Supreme Court also gained more authority and autonomy after 1989. One well-known instance is its decision in *S. R. Bommai v. Union of India*[20] in 1994. In order to impose President's Rule (straightforward control from New Delhi) on states between 1971 and 1994, central governments frequently abused the authority granted to them under article 356 of the Constitution. [21]By mandating that ministers at the national level first convene to

[20][1994] 2 SCR 644: AIR 1994 SC 1918: (1994)3 SCC1)

[21]Kidder, Robert L., "Law and Political Crisis: An Assessment of the Indian Legal System's Potential Role," Temple Law Review 75, no. 3 (2002): 123-145

discuss whether the circumstances in the state warrant such action before proceeding to officially justify that decision, the 1994 verdict set significant limits on this practise.

Because of that ruling, organisations and individuals acting outside of state institutions now have more options to have an impact on politics, such as through campaigning and filing lawsuits to stop the misuse of article 356. It increased the ability of government organisations outside the PMO to perform a comparable function. It is less well known that the Supreme Court has inserted itself admirably and subtly into governmental and policy processes as it has been drawn into or propelled therein. Most of its decisions have been thoughtfully prepared to comply with current government policies or, at the very least, to advance governments' declared objectives.In order to avoid unnecessary conflict with the government, the court has worked to encourage discussion between itself, government officials, and civil society organisations. It goes without saying that by including those organisations, the political process has become more inclusive. Politics can occasionally be used effectively in the creation and subsequent application of a law. The National Rural Employment Guarantee Act of 2005 fit this description (NREGA)[22]. Thanks to key actors' extensive knowledge and comprehension of grassroots political processes, it was deftly developed. Then, political manoeuvres by lawmakers stopped a bid to weaken the bill's initial form.

[22]The National Rural Employment Guarantee Act, 2005. No. 42 Of 2005 [5th September, 200].

A "punitive" statute known as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989[23], labels a wide range of behaviours—many of which stop short of actual assault "atrocities" against Dalits and "tribes." On the basis of a claim that an atrocity has occurred, it gives the authorities the power to imprison suspected perpetrators without delay and without posting bail. It shifts the onus of proof from the complainant to the defendant. The effect of this Act is influenced by politics in a variety of ways, both at the state and local levels, which provides insights into the intricacies of the interaction between law and politics. There are still additional challenges and political implications.[24] Conviction rates for alleged violators are typically quite low, even when a state government works to enforce the Act—again, as a function of politics (relationships of status and wealth)—at relatively low levels. Dalits and Adivasis may face bias in lower courts. The accused can hire superior legal assistance since they are nearly always wealthy than the accusers. Assertive witnesses may be intimidated by the accused's powerful colleagues and fellow caste members, etc.

The overall image that is presented here is opaque and confusing. Law and politics interact, both favourably and unfavourably. That

[23] The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 No. 33 Of 1989 [11th September, 1989.]

[24] Whittington, Keith E., R. Daniel Kelemen, and Gregory A. Caldaria, "Overview of Law and Politics - the Study of Law and Politics," in The Oxford Handbook of Political Science (Robert E. Goodin and Hans-Dieter Klingemann eds., 2009)

becomes clear when we examine the creation and adoption of laws as well as their implementation.[25] There are two sides to this story: politics has an impact on the creation and application of laws, and laws have an impact on politics. They can't be handled separately since they are intertwined so deeply.

CONCLUSION

As social phenomena, law and politics are two manifestations of the same phenomena, and the only reason for their existence separately is attributable to a dualistic or pluralistic perception of the universe, as maintained by humans. By analysing different sources collected as a part of this study the researcher has noted that the relationship between law and politics had constructive elements mostly, but it also had some destructive dimensions. The overall image that is presented here is opaque and convoluted. Law and politics interact, both advantageously and adversely.

One of the main by-products of politics is law, which has also been the object of several political battles. It may be claimed that it is adjacent to the core of the examination of politics because it is the main tool used by the government in imposing its agenda on society. But law also serves as a framework for how the government is structured. Legislation, governmental reports, as well as other legal composites has become the basic building blocks of political science as a whole while other factual law-related areas were either incorporated into relatively broad

[25]Shapiro, Martin. Courts: A Comparative and Political Analysis. Chicago: University of Chicago Press (1981)

disciplines within the profession or left entirely to the legal and academic institutions. Constitutional law and jurisprudence eventually became the focal point of the research of politics and governance in political science. Contemporary law and politics typically engage in intense conflict under democratic regimes throughout legislative and other parliamentary processes. One of the fundamental elements of the Constitution, according to the Supreme Court, is the rule of law. Rule of law is regarded as a crucial component of effective government. According to the rule of law, it is necessary for the populace to be ruled by established laws rather than by the rulers' arbitrary judgments. For this reason, it is crucial to keep in mind that any rules created ought to be universally applicable, general and abstract, recognized as well as certain, and have no deviations.

The interaction between law and politics can have both constructive as well as destructive dimensions. That becomes clear when we examine the creation and adoption of laws as well as their implementation. There are two sides to this story: politics has an impact on the creation and application of laws, and laws have an impact on politics. They can't be handled separately since they are intertwined so deeply.

DOMAIN NAME DISPUTES IN CYBERSPACE

Gowri R Nair*[1]

ABSTRACT

With the advent of the internet, the world today is witnessing a revolutionary change in the field of communications. Out of nowhere, the internet seems to have exploded on the forefront of several commercial establishments, organizations, governments and institutions. It goes without saying that as the awareness of the internet grows, the number of websites grow correspondingly. Such growth of websites has also given rise to a new area of disputes viz., domain name disputes. Domain names are unique identifiers wherein it comes, as no surprise that every entity on the internet has a strong desire to acquire a domain name that identifies and defines it best. This desire is more so stronger in the case of commercial entities on the web who wish to acquire domain names that are firstly, easy to remember and secondly but most importantly, relate to their products, trade names or trademarks. Domain name as unique identifies in the cyber world serve the same purpose and bear similar potential as trademarks as unique identifiers in the physical world. Domain names have more so come to be extensions of trade marks in an intangible world.

Keywords: *Trademark, Cyber-squatting, Passing off, Domain Name Dispute, Cyber Parasites*

INTRODUCTION

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Internet has shrieked the globe to a computer table with this has also changed the concept of "Market Place". The increase in the number of globally active interest users together with an abundance of multimedia, application options and the interactivity has made the internet an ideal market place and advertising location. In contrast to marketing directed at a passive audience via classic mass communication technology, the internet user has to call up the information available on the internet himself. Therefore, a trader or company intending to use the internet as a global market place must inform its potential customers, where it can be reached in cyber space. In order to make it easier for an internet user to find one's address in the internet, it is essential to choose a short address, which is easy to memorize. The most suitable address in this context is one containing the trademark or firm name of other designation of the trader of the company.[2]

In the current age, the internet has become a part and parcel of the life of almost every individual in the developed nations and is on the way of assuming a similar position in respect of developing nations. The modern communication techniques that is available through the internet and the large number of people who access it throughout the world, has led business entities to view the whole world as a market. In this scenario, an entity's trademark assumes immense importance. It helps an entity build up its identity over the World Wide Web (WWW). What needs to be noted here is that the

[2] Mohammad Hussain, Trademarks & Domain Names: Conflict And Conciliation, Vol. VIII, KULR, 95, (2001)

trademark system as it applies to the physical world is territorial in nature, whereas the internet is global in nature. This gives rise to a friction between the existing trademark system on one hand and the internet on the other. With the advent of the internet, the world today is witnessing a revolutionary change in the field of communications. Out of nowhere, the internet seems to have exploded on the forefront of several commercial establishments, organizations, governments and institutions. Everybody, who is somebody, seems to have something to do with the internet. Flashing an internet address has become a sine qua non for almost every organization. It goes without saying that as the awareness of the internet grows, the number of websites grow correspondingly. Such growth of websites has also given rise to a new area of disputes viz., domain name disputes.[3]

Domain names are mere addresses which enable users to locate websites on the net in an easy manner.[4] They are unique identifiers, which aid human navigation of the WWW. By virtue of domain names being unique identifiers, it comes, as no surprise that every entity on the internet has a strong desire to acquire a domain name that identifies and defines it best. This desire is more so stronger in the case of commercial entities on the web who wish to acquire domain names that are firstly, easy to remember and secondly but most importantly, relate to their products, trade names or

[3]Dr. Amita Verma, *Cyber Crimes and Law 265* (Central Law Publications, Allahabad, 2nd ed., 2009)

[4] Sanu Rani Paul, An Appraisal Of The Indian Domain Name Policies And Rule Of The Indian Judiciary In Domain Name Dispute Resolutions, Kar. L. J, Vol.6, 40 (2010)

trademarks. Domain name as unique identifies in the cyber world serve the same purpose and bear similar potential as trademarks as unique identifiers in the physical world. Domain names have more so come to be extensions of trade marks in an intangible world.[5]

NOTION OF DOMAIN NAME

Essentially a domain name is internet equivalent of a telephone number or a geographical address. The communication format used on the internet called Internet Protocol (IP). As a part of the IP, internet addresses are comprised of a string of digits delimited by periods (commonly called as "dots"). The delimited field indicates the network, sub-network and the local address read from left to right. A typical internet address might appear as "11.23.55" where "11" denotes the network "23" denotes the sub network and "55" denotes the computer itself. This all-numeric form is known as the IP address.[6]

Domain names are nothing but proxies for the IP address although there is no logical correspondence between the IP address and the domain name. When computers communicate on the internet, they do not talk in terms of domain names, but interpret the same domain names the same way. That is the reason why when one types "indianinfo.com", one is taken to the website hosted by India info irrespective of where the person accessing the data is located

[5] Vidwath B. Kashyap, Domain Names: India Chapter- The Indian Prospective on Protecting Trademarks in the Internet Age, Kar. L. J., Vol.4, 1, (2010)
[6] Sunando Mukherjee, Passing off in Internet Domain Names - A Legal Analysis, Journal of Intellectual Property Rights, Vol.9, 136,137 (2004)

or which server he is connected to. It is essentially for this reason that domain names are unique and therefore; identical domain names cannot be offered to two separate entities. As with IP addresses domain names are also delimited with periods (dots), which are read from right to left. Thus, the domain name "indianinfo.com" indicates "com" as the network and "indianinfo" as the sub network.[7]

IMPORTANCE OF DOMAIN NAME

Since it is not possible to remember each and every numerical value of an IP address, the system of domain names evolved. Internet domain names in a common man's language are used as an easy to renumber substitute for the specific IP address. The dominant purpose of the domain name is simply to provide an easy method for remembering another's electronic address. It's a unique name used to identify among other things, a specific website.[8]

The unique feature of domain names is that the said domain names are given on 'first come, first serve' basis. This feature of domain names gives rise to numerous legal issues and disputes. While designed to enable users to reach internet resources easily, domain names have acquired a further significance as business identifiers and as such have come into conflict with the system of trademarks that exists in the offline world. Domain names are an important commodity especially since users interested in communicating with

[7] *Supra N.* 2, P. 268 Dr. Amita Verma
[8] Ibid

a product must do so without recourse to any centralized complete directory. This makes short easy to remember names of paramount value in choosing an address.[9]

Moreover, domain names are valuable corporate assets as they facilitate communication with a customer base[10] and once a company has registered a domain name, it amounts to reserving a significant part of cyberspace for that company. Domain names are now highly visible in "real space" as well showing upon television commercials, billboards, magazine ads and even the sides of bases. In these new guises, they sometimes conflict with trademarks and other traditional business identifiers. Two factors exacerbate this conflict. First, domain names are global and must be unique - a particular string of letters can link to only one site, while trademarks may overlap in different industries or different geographical locations. Second, it is common practice for many internet users to guess at domain names. In addition to acting as an address, a domain name may also indicate to users some information as to the content of the site and in instances of well-known trade names or trademarks, may provide information as to the origin of the contents of the site.[11]

CLASSIFICATION OF DOMAIN NAMES

[9] Supra n. 269 Dr. Amita Verma
[10] MTV Networks, Inc v. Curry; Rediff Communication Ltd v. Cyber booth and Another AIR 2000 Bom 27.
[11] Supra n. 2, p.269 Dr. Amita Verma

Domain names are divided into hierarchies. A specific domain name can be divided into a top-Level Domain, a Second Level Domain and a Sub-Domain. The domain name at the extreme right is called the "Top Level Domain" (TLD) and any domain to the left of the TLD and separated by a "." (dot) is the Second Level Domain (SLD). A domain to the left of the SLD is known as the Sub-domain (SD). The SD, SLD and the TLD put together comprise a "domain name". Thus, in the domain name "law indianinfo.com", "com", is the TLD, "indiainfo" is the SLD and "law" is the SD.[12]

Again, TLDs can be classified into Generic and Geographic or Country TLDs. Generic TLDs are, .com (for commercial use), .edu (for educational institutions), .org (for miscellaneous & non- profit organizations), .net (for networking providers), .gov (for Government Organizations), .int (for international treaty organizations), .mil (for military (defence).[13] Geographical (Country Code) TLDs end with a two-letter code which is assigned to each country. For example, 'in' (India), 'fr' (France), 'aus' (Australia), 'uk' (United Kingdom) and so on.[14]

REGISTRATION OF DOMAIN NAMES

Unlike country code, top-level domain names, which are issued by authorities in each country, generic top level domains are issued by

[12] Sourabh Gosh, Domain Name Disputes and Evaluation of the ICANN'S Uniform Domain Name Dispute Resolution Policy 9 JIPR 425 (2004)
[13] Supra n. 2, p.267 Dr. Amita Verma
[14] Ibid

Registrars, which are accredited by Internet Corporation for Assigned Names and Numbers (ICANN), a non-profit organization, which administers and is responsible for IP address space allocation, protocol parameter assignment, domain name system management and the root server system management.[15]

On 28 October, 2004 the Government of India, Ministry of Communications and Information Technology announced a liberalization of the requirements of domain name registration. Under the new registration rules registration will be carried out by the registrars appointed by the IN Registry. In India, National Centre for Software Technology (NCST) is the domain name registration authority for in country code top level domain name since 1995. Requests are entertained by NCST only if the organization has valid IP address or has applied for one. The domain may be registered electronically through accredited registers. The application form on receipt is circulated within a review group and the applicant will be allocated the desired domain name and intimated. Upon the registration, the registrar is required to run a domain name server. The Domain Name System (DNS) entries are made into the primary name server by NCST. A negligible fee is charged to cover the registration costs and the cost of providing the secondary name server service and the registration information service.[16] The Internet Management Group (IMG), a

[15] Supra n. 4, p. 2 Vidwath B. Kashyap
[16] *Supra n.* 3, p. 42 Sanu Rani Paul

committee[17] formed by the Government of India oversees the internet domain name registration related activities for the. incc TLD. The .in country code is separated into sub categories, called Second Level Domains (SLD's). Organizations are required to register the domain name within the appropriate SLD that corresponds to the type of the organization/entity outlined in the below table.

Domain Category	**Who can apply**
Co.in	For Registered Companies / Trademarks
Ind. In	For Individuals
org.in	For Non-Profit Organization
In	For Internet Service Providers
net.in	For Internet Service Providers
mil.in	For Military Establishments
gov.in	For Government Organizations
res.in	For Research Institutes
ac.in	For Academic Community
gen.in	For General /Miscellaneous purpose
firm.in	For Proprietary concerns/ Partnership firms /shops.[18]

CONDITIONS AND REQUIREMENTS

[17] The committee consists of members representing; Bharat Sanchar Nigam, Ministry of Information Technology, Videsh Sanchar Nigam Limited, National Centre for Software Technology, Domain Name System.

[18] *Supra* 4, pp. 2- 3 Vidwath B. Kashyap

General Terms and Conditions are as follows:

1) Generic names are not allowed.[19]
2) For domains under all categories, except ind.in and gen.in, the domain must be derived from the name of the organization name /entity.[20]
3) Organizations should register the domain name within the appropriate SLDs that corresponds to the type of the Organization / entity as outlined in the above table.[21]
4) The Administrative contact of the domain must be from the organization / entity requesting the domain name.
5) For domains under all categories, except ind.in and gen.in the organization / entity applying for the domain name must have its office in India.[22]

DOMAIN NAME DISPUTES

Domain name disputes tend to fall into four categories viz.,

CYBER SQUATTERS: The term cyber squatter refers to someone who has speculatively registered or has acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant for valuable consideration in excess of the documented out of pocket costs directly related to the

[19] Eg., news.co.in, shipping. gov.in are not allowed.
[20] Eg., A registered company Bharat Heavy Electricals Limited can opt for a domain bhel. co.in but not xyz: co.in. or bharat.co.in.
[21] an academic institute Indian Institute of Technology, Bombay can opt for a domain iitb.ac.in but not iitb.firm.in or iitb.mil.in
[22] *Supra* 4, p.3 Vidwath B. Kashyap

domain name. Sometimes parties register names expecting to auction them off to the highest bidder. This practice has led to the emergence of domain name brokers. Yet other squatters indulge in insatiable activities, eating up all names that are even remotely related to their business to prompt other squatters.[23]

In the case of British Telecommunications v. one in Million[24], the defendants registered as domain names, a number of well-known trade names associated with large corporations, including sainsburys.com, marksandspencer.com and britishtelecom.com with which they had no connection. They then offered them to the companies associated with each name for an amount, much more than they had paid for them. The Court of Appeal findings for the plaintiff traced the origins of the passing off back to the 16th century and quoted A.G. Spalding & Bros v. A.W. Gamage Ltd.[25]: "*Nobody has any right to represent his goods as the goods of somebody else. It is also sometimes stated in the proposition that nobody has the right to pass off his goods as the goods of somebody else".*[26]

The cyber squatting involves intentional bad faith trafficking in domain names that are the same as or a dilution of, existing trademarks. Such domain names registrants are considered 'modern' day extortion. John D. Merur offers a fitting definition,"

[23] *Supra N.* 12 P. 426 Sourabh Gosh
[24] (1999) F.S.R.1
[25] (1915) 32 RPC 273 at 283.
[26] *Supra n.* 12, p.427 Sourabh Gosh

an illegal cyber squatter should be one who acquires a domain name for the sole purpose of obtaining money or other advantage from the trademark owner, with no intent or desire to use the domain name, except as or instrument towards this purpose.[27]

Cyber squatters have been also referred to as cyber pirates and domain name grabbers. There is no legislation or any provision in India dealing specifically with the cyber squatters. In America, Federal Trademark Direction Act, 1995 was passed to provide protection to the owners of the famous trademarks and it was anticipated that it will help to stem the use of deceptive internet addresses taken by those who are choosing marks that are associated with the products and reputation of others. The cyber-squatting issues are now directly dealt under consolidated Appropriation Act of 2000 which has been enacted to prevent any person from making profit or creating mischief by registering a mark used in co numeric as his domain name**.** A person will be liable to the owner of the protected mark including personal name, in a civil action, if he with a bad faith intend to profit from that mark registers, traffics in or uses a domain name that is (a) identical with or confusingly similar to a distinctive mark or (b) dilative of the mark that was famous when the domain name was

[27] C.J. Ravandale & Abhijeet Sinha, Domain Name Disputes: Problems & Prospects, edt Ranbir Singh & Ghanshayam Singh, "Cyberspace and the law Issues and challenges" 40,41 (NALSAR University, Hyderabad: 2004)

registered or (c) identical or confusing similar to the famous mark.[28]

CYBER PARASITES: Like cyber squatters, cyber parasites also expect to gain financially; however, unlike squatters such gain is expected through the use of the domain name. In some cases, a famous name will be registered by another: in other cases, a mark that is similar to, or a commonly mistyped version of a famous name will be used. The dispute might arise between direct competitors, between those in similar lines of business or between those who simply wish to indulge in 'passing off' of the names fame.[29]

In the Indian case Yahoo! Inc. v Akash Arora,[30] the former, the global internet media research and information network filed an action against the latter on the internet as those of the plaintiff's by adopting the domain name. The plaintiffs submitted that their domain name "yahoo.com" was registered with Net work solutions Inc (NSI) since 1995, which it had become well known and they had obtained registrations on the trademark "Yahoo" or variations thereof in approximately 69 countries, although not in India. The defendants registered the domain name "yahooindia.com" with NSI in November 1997 as well as 16 variations containing the word "Yahoo". The plaintiff objected to the defendant's use of the

[28] Farooq Ahmad, Interplay of Internet Domain Names & Trademark Law 254,255 IBR (2001)
[29] *Supra n.* 12, p. 427. Sourabh Gosh
[30] 1999 IPL 196

domain name and the defendants responded modifying the announcement of their forthcoming website and by including the disclaimer that www.yahooindia.com had no connection with yahoo Inc. of California, USA. The defendants thereof activated their website and adopted substantial part of plaintiff's Singapore website named "yahoo.com" which contained a section in India.

The defendants submitted that website, unlike a trademark is a specific address and their disclaimer would eliminate any confusion. They further pointed out that firstly, there could be no passing off plaintiff's service because the services rendered by them could not be said to be goods within the meaning of the Trade and Merchandise Marks Act, 1958, which only dealt with goods and not services and secondly, Yahoo was a dictionary word which was not distinctive and since the defendants have been using a disclaimer, there could be no chance of deception and therefore no passing off.

The Delhi High Court treated the matter as one of "passing off" and granted an injunction against the defendants. The Court gave the following reasoning: firstly, there were several cases where services had been included with the scope of passing off. Accordingly, services rendered had come to be recognized for an action in passing off. Secondly, a domain name served the same function as a trademark and was entitled to equal protection as a trademark. Thirdly, the two marks were identical save for the word, INDIA and there was every possibility of an internet user being

confused that both domain names came from a common source. This was particularly so since Yahoo! Inc itself had used regional names after the word Yahoo!, fourthly, the disclaimer used by Akash Arora was of no relevance because, due to the nature of internet use, the defendant's appropriation of the plaintiffs' mark, as a domain name and home page address could not be adequately communicated by a disclaimer and lastly, dictionary words could attract distinctiveness. The Court observed that, *"In an internet service, a particular internet site could be reached by anyone anywhere in the world who proposes to visit the said internet site with the advancement and progress in technology, services rendered on the internet has come to be recognized and accepted and are being given protection so as to protect such provider of service from passing off the sources rendered by other as that of the plaintiff. As a matter of facts in a matter where services rendered through the domain name in the internet, a very alert vigil is necessary and a strict view is to be taken for its easy access and reach by anyone from any corner of the globe."*

This was the first case in India in which the court has applied trademark law to support a judgment in a domain name dispute. This decision is particularly significant as the Indian Trade and Merchandise Marks Act, 1958 does not provide for registration of service marks and the court in effect extended the principles common law to cover services offered through the internet.[31]

[31] *Supra n.* 5, p. 142 Sunando Mukherjee

Similarly Bombay High Court in Rediff Communications Ltd. v. Cyberbooth[32] was faced with a case where the defendant has adopted the domain name www.rediff.com despite the existence of a well-known website of the plaintiffs www.rediff.com, the Court found such as adoption by defendant was completely dishonest and held that once the intention to deceive is established the Court would not make any further enquiry whether there is any likelihood of confusion or not.[33] The Court further held that there is very possibility of the internet user getting conferred and deceived in believing that both domain names belong to one common source and connection although the two belong to two different persons. The court was satisfied that the defendants have adopted the domain name "Radiff" with the intention to trade on the plaintiff's reputation and accordingly the defendant was prohibited from using the said domain name.[34]

In Titan Industries v. Prashant Koorapti and others[35] this is the first case in India which accorded Trade Mark protection to domain names. The defendant registered the domain name "tanishq.com". The plaintiff company, which has been using the trade mark "tanishq" with respect to watches manufactured by it, sued for

[32] AIR 2000 Bom. 2

[33] The Court relied upon the decision in Parker Knou Knoll International, (1962) RPC 265 (HL), where the House of Lords had held that where the object is to deceive, the court will be very much more ready to infer that its object has been achieved. Moreover, in the rediff's case the Court relied on the fact that both the plaintiff and the defendant had a common field of activity, both operated on the net and provided information of a similar nature, both offered the facility of sale of books, etc, both offered a chat line and a cricket opinion poll.

[34] *Supra n.* 5 p.143 Sunando Mukherjee

[35] *Wipo* Case No. D2000-1793

passing off and alleged that the use of the domain name by the defendants would lead to confusion and deception and damage the goodwill and reputation of the plaintiffs. The Delhi High Court granted an ex-parte ad interim injunction restraining the defendants from using the name "TANISHQ" on the internet or otherwise and from committing any other act as is likely to lead to passing off of the business and goods of the defendants as the business and goods of the plaintiff.[36]

CYBER TWINS: When both the domain name holder and the challenger have a legitimate claim to a domain name then they are known as cyber twins. The cases involving cyber twins are the most difficult ones, because, but for the domain name dispute the law of trademark and unfair competition might otherwise allow each party to enjoy concurrent use of the name.[37]

In the case of Indian Farmers Fertilizers Co-operation Ltd. v. International Foodstuffs CD[38] before the WIPO Arbitration and Mediation Center, the dispute was relating to the domain name iffco.com and has been using it with good faith. The complainant had domain names related to iffico.com and had a legitimate interest in the domain name. The complainant had alleged the defendant of diverting the net suffers to its own website. However, the Arbitration Center dismissed the case, as both the parties had

[36] *Supra N.5*, P.143 Sunando Mukherjee
[37] *Supra N.* 7, P. 428 Sourabh Gosh
[38] (2001) WIPO Case No. D2001-1110. Also see *India Capital Co. Pvt. Ltd. and Ant v. Dimensions Corporate*, 2000 PTC 396

legitimate interest in the domain name and the complainant had failed to prove "bad faith" on the part of defendant.[39]

REVERSE DOMAIN NAME HIJACKING

Reverse domain Name Hijacking (RDNH) is an attempt to deprive a registered domain name holder of his domain name. In certain cases, the complainant may try to over extend the scope of their famous name and thereby might indulge RDNH. The Rules for the Uniform Domain Name Dispute Resolution Policy (UDNDRP) make explicit reference to RDNH. Rule 15(e) of the UDNDRP provides that where a complaint was brought in bad faith, such is an attempt at RDNH or primarily to harass the domain name registrant (which many would consider RDNH), then the panel is required to "declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. In some of the cases before the panel, bad faith is clear such as where the complainant's behaviour is plainly malicious and the claim brought without any basis. However, this will not be the norm and while the UDNDRP list factors illustrative of bad faith on the part of the complainant in the RDNH context. However, this slight lacuna has been overcome by panels, which have stated that bad faith in this context is bringing a claim despite actual knowledge of a legitimate right or lack of bad faith on the part of the registrant, or where it should have been obvious that the complaint had no real prospect of success.[40]

[39] *Supra n.*428 Sourabh Gosh

[40] Dr. R.K. Chaubey, An Introduction to Cyber Crime and Cyber Law, 176-177 (Kamal Law House, Kolkata 2009)

In Giacalone v. Network Solutions, In.c & Ty. Inc.[41] Giacalone, a computer consultant named his domain name < ty.com> after his son Ty. Ty Inc, a toy company having federally registered trademark "Ty" first attempted to purchase the domain name from the registrant. Having failed to do so, he then threatened the registrant that he would bring an action for trademark infringement and registrant in turn brought a permanent injunction from the court restraining the respondent from interfering with the domain name of the registrant.

In Tata Sons Limited v. Manu Kosuri and ors,[42] is the first case decided by Indian courts on cybersquatting. The court however did not decide this case on the established legal position on cybersquatting in other jurisdictions. This case has recognized for the first time, "trade dilution" as a ground to object domain name registration. In this case defendant had registered a good number of domain names incorporating the word TATA which was objected by the plaintiff. The court in its Ex parte order held that the domain names or internet sites are entitled to protection as a trademark because they are more than a mere address. The rendering of internet services is also entitled to protection in the same way as goods and services are and trademark law applies to activities on internet. It was also held that defendant shall not use the word TATA or any other name mark which is identical with or deceptively similar to the plaintiff's trademark TATA or

[41] 1996 U.S. Dist. Lexis 20807
[42] 2001 PTC 432

containing the word mark TATA on the internet or otherwise causing direction of the Trade mark TATA.

In Acqua Minerals Ltd. v Pramod Bose & anr,[43] marks a new era for domain name protection. The decision in this case is trend setter in many respects. The plaintiff claims to be registered proprietor of the trademark BISLERI which is extremely well known in India. It is one of the first marks introduced for bottled mineral water in India. It was contended that the word BISLERI has no dictionary meaning and is an Italian surname which is entitled to the highest degree of protection. The defendant has unlawfully registered bisleri.com as its domain name in 1999 which is bound to cause confusion to consumers. The plaintiff also argued that the defendants have already their own domain name viz., info@cyber world.com and are merely using the domain name of the plaintiff in order to trade in it and to pressure the plaintiff to part with huge sums of money for the same. The defendant did not respond inspite of several summons. The Delhi High Court took the help of dictionary meaning of the word "Domain" which means territory or property and held that if an owner of possessor of a trademark has prior and exclusive use and lone claim over the trade mark, he attains not only superior title but absolute ownership thereof. This is what is the generic of the word domain and when the property or the territory (which is another meaning of the word domain) or the activity relates to a trade or commerce and has been given the name of mark under which the commercial activities are

[43] AIR 2001 Del 463

identified with and carried out under the said name the user or owner thereof has a domain over it and therefore such a domain has the same protection as any trade name has been provided under the Trade Merchandise Marks Act, 1958. Any person who traverses into other territory that is, tries to usurp his domain name or in other words trade name which is used in the course of a trade is guilty of infringement of the said name if it is registered and if not is liable for passing off action. The court made it clear that the same principles and criteria are applicable for providing protection to the domain name either for infringement or for a passing off as are applicable in respect of the trademarks or name.

This is the first case in India, which has invoked Uniform Name Dispute Resolution (UNDR). This policy prohibits registration of domain names in bad faith. There is presumption that bad faith element is present if it is proved that (a) the registration of domain name is primarily for the purpose of selling or renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark of the competition of that complaint (b) the domain name is registered to prevent the owner of the trade mark or service mark from reflecting the mark in the corresponding domain name.

On the basis of this policy the court reached to the conclusion that registration of the domain name by the defendant is clearly in bad faith. The act of the defendant not only constitutes the infringement of the plaintiff's right but also constitutes passing off act as it is likely to result in dilution of the trade mark "Bisleri". This case is

landmark in this case also the cybersquatting has been recognized as a ground for objecting registration of domain names.

In Zee Telefilms Ltd. and Ors v. Zee Kathmandu & Ors.[44], the defendant registered domain name identical to the trade mark "Zee" of the plaintiff. The plaintiffs claimed that the word "Zee" is arbitrary and fanciful word which has been adopted by the plaintiffs in the year 1992 for all its business activities in India and abroad and thus it is not open for the defendants to have got the same name registered as their domain name. The court not only accepted this contention but suggested that a mechanism should be globally put in place wherein the registered Trademark holders should be asked to register the mark with the ICANN accredited registers with a stipulation that in case any person seeks to register a domain name consisting of the registered mark no objection would be required to be obtained from the owner of the registered mark.

In Info Edge (India) Pvt. Ltd. v. Shailesh Gupta,[45] the plaintiff had registered its domain name naukri.com in 1997 and defendant registered naukari.com & jobSourceindia in 1999 which was objected by the plaintiff on the ground that it is identical to or deceptively similar to his (plaintiff's)domain name/trademark. The dishonesty on the part of the defendant is writ large as confusion is sought to be created by the defendant by diverting the internet

[44] 2006(32) PTC 470
[45] 2002(24) PTC 355

traffic from the website of the plaintiff to the website of the defendant. The defendant contended that the word "naukri" is a generic word which cannot be protected by trademark law. It was further contended that adjectives are normally descriptive words and nouns are generic words. The contention of the defendant was rejected by the court and held that even generic word is entitled to protection where it has attained distinctiveness and is associated with the plaintiff for considerable time.

The Supreme Court in Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd,[46] approved the application of same principles of trade mark protection for protecting domain name. The appellants were the registered owner of domain names sifynet, sifysmall etc. and doing business from 1999 onwards on software, internet etc. The domain was registered with the ICANN. The respondent started a company using similar name and registered the same as domain name for doing business as internet marketing. Though, the lower court issued an injunction based on the principles of passing off, the High Court reversed the decision on the ground that the business of the plaintiff was different from that of the defendant. On appeal the respondent argued that the trade mark and domain name were different and the remedy of passing off was not available for protection of domain name since domain name could not be treated as a "mark". The Supreme Court rejected this argument. After examining the role of domain name in the present-day context the court observed, "*The original role of a domain*

[46] (2004) 28 PTC 566 (SC)

name was no doubt to provide an address for computers on the internet. But the internet has developed from a mere means of communication to a mode of carrying on commercial activity. With the increase of commercial activity on the intent, a domain name is also used as a business identifier. Therefore, the domain name not only serves as an address for internet communication but also identifies the specific internet site. In the commercial field, each domain owner provides information services which are associated with such domain name. Thus, domain name may pertain to provision of services within the meaning of Sec. 2(z) of Trademarks Act, 1999".

POSITION IN UNITED STATES

Prior to November 1999, courts under three primary theories of trademark law decided domain names disputes in the US. The first claim is traditional trademark infringement, which requires that the allegedly infringing use cause a likelihood of consumer confusion.[47] The second cause of action and one that is often the most successful in the context of domain names is the assertion that a domain name "dilutes" the value of trademark.[48] Finally unfair competition[49], a claim similar to trademark infringement may be used in cases where the trademark is not federally registered.[50]

[47] Lanham Act Sec. 32(1) 15 USC Sec. 1114(1)
[48] Lanham Act Sec. 43(c)-15 USC Sec 1125(c)
[49] Lanham Act Sec 43(a)-15 USC Sec. 1125(a)
[50] *Supra n.* 2, pp.277-278 Dr. Amita Verma

The Federal Anti-Dilution Act which is incorporated in the form of Sec. 43(c) in the Lanham Act defines the term "dilution" to mean the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of (1) competition between the owner of the famous mark and other parties or (2) likelihood of confusion mistake or deception.[51] In order to prove a violation of the Federal Trademark Dilution Act, a plaintiff must show that (1) the mark is famous (2) the defendant is making a commercial use of the mark in commerce (3) the defendant's use began after the mark became famous and (4) the defendant's use of the mark dilutes the quality of the mark by diminishing the capacity of the mark to identify and distinguish goods and services.[52]

In Intermatic Incorporated v. Dennis Toeppen,[53] the court held that, "Toeppen's desire to resell the domain name is sufficient to meet the "commercial use" requirement of the Lanham Act. In regard to dilution the court held that "Dilution of Intermatic's mark is likely to occur because the domain name appears on the web page. Attaching Intermatic's name to a myriad of possible messages even something as innocuous as a map of Urbana Illinois is something that the Act does not permit.

The US seems to be a forerunner as far as domain name litigation is concerned. Domain name disputes have multiplied many fold in

[51] 15 USC Sec 1127
[52] 15 USC Sec 1125 (1)
[53] 947 Supp. 1227 (ND III 1996)

the US over the past few years. The US has now passed the United States Anti-Cybersquatting Consumer Protection Act (ACPA), which came into effect from 29 November 1999. The ACPA also called the Trademark cyber–Piracy Prevention Act calls for a broad protection of business trademarks. Guilty parties can be found liable for statutory damages if the registration of the Uniform Resource Location (URL) is considered "wilful". The statute contains a long list of factors that suggest "bad faith" on the part of a domain name owner and a trademark owner's ability to bring an action directly against offending domain names. In fact, the list of factors that suggest bad faith goes well beyond the typical cybersquatting scenario. The ACPA does not centre on the fact that a cyber squatter offered to sell or transfer the domain name to the trademark owner. It also includes factors such as whether a cyber squatter has any intellectual property rights in a domain name; whether a cyber squatter has been engaging in a bona fide use of a domain name to offer his own goods or services; or whether a cyber squatter intended to divert customers away from a trademark owner's site either for commercial gain or with the intent to disparage a trademark in a way that creates the likelihood of confusion among consumers.

One of the first cases in which a U.S. court was called upon to implement the ACPA, was in Sporty's Farm LLC v. Sportsman's Market Inc[54]. Sportman's Market, a mail order catalogue company was engaged in the business of selling products to aviation

[54] 2000 U.S. App. lexis 1246

clientele and had registered the trademark "Sporty's". A company called Omega entered the aviation catalogue business, formed a subsidiary called "Pilot's Depot", and registered the domain name "Sportys.com". After Sportman's Market filed its lawsuit. Omega launched another subsidiary called Sporty's Form to sell Christmas trees and then sold the "Sportys.com" domain to Sporty's Form.

The court found that the defendant acted with a "bad faith intent to profit from the domain name "sportys.com" not because Sporty's Farm attempted to sell the domain name to Sportsman's Market Inc, the other owner of the trademark "sporty's", but because of other bad faith factors contained in the Act. One fact noted by the Court was that neither Sporty's Farm nor Omega had any intellectual property rights in "sporty.com" at the time that omega registered the domain name. It was also pointed out by the court that the list of "bad faith" factors was only indicators that may be considered along with other facts. The court found that the purchase and use of the domain name by sporty's Form generally suspicious in that omega created a company in a unrelated business that received the name sporty's Farm only after the lawsuit was filed.

In the US, the courts have brought cyber squatters within the purview of the Anti-Dilution Law-Interestingly not a single court has upheld the right of a cyber squatter to profit from the prior registration of the domain name. In fact, although the Federal Dilution Act does not provide for the transfer of a domain name as

a remedy, the American courts have not merely enjoined the use or sale of domain names by cyber squatters, but have also transferred ownership to the challengers. This is one of the clearest examples of the way in which trademark rights in cyber space are being expanded beyond their normal meaning in law.

POSITION IN ENGLAND

Recent intellectual property disputes have led to a reconsideration of the applicable rules of jurisdiction and justifiability. These actions are needed to apply the Brussels Luguano Convention. The scope of application of this Convention may be wider in the UK courts than of those in Europe.

In the UK one is subject to the Civil Jurisdiction and Judgments Act, 1982 and the Private International Law Amendment Act, 1995, the common law on conflicts of law and the Supreme Court rules of practice. The statues cited incorporate into UK law the Brussels Luguano Convention of 1968, which affects the whole of Europe (Convention countries). Non-convention countries are also affected.

In relation to the Civil Jurisdiction and Judgments Act, 1982 particular attention should be taken of the 1995 amendments, specifically Sections 10 and 11. Sec.10 abolished the double actionability rule, which allowed claims only where the tort would be actionable in England under UK law and actionable as writ in the foreign jurisdiction. Sec.11 was enacted to clarify the required

tests for jurisdictions for contract, tort and other claims. The rules are as follows: for actions in tort, the jurisdiction is the place of tort; for actions in contract, the jurisdiction is the place where there is the substantial performance of the contract; for all other actions the jurisdiction in the country with the most significant relationship with the occurrence.[55]

The courts have held that cybersquatting is violative of the rights protected under the trademark law. In Marks and Spencer PLC v. One in a Million[56], the High Court of Justice, Chancery Division, enjoined the activities of two cyber dealers and their related companies, who had obtained and were offering for sale or 'hire" numerous domain names containing well-known marks. In this group of cases, the court enjoined "the threat of passing off" (a threat which would become a reality if an offending domain name was sold to and used by a stranger to the trademark owner), issuing warning to cyber squatters: *"Any person who deliberately registers a domain" name on account of its similarity to the name, brand name or trademark of an unconnected commercial organization must expect to find himself on the receiving end of an injunction to restrain the threat of passing off, and the injunction will be in terms which will make the domain name commercially useless to the other*".

POSITION IN INDIA

[55] *Ibid,* p.276
[56] (1998) FSR 265

Sec.29 of the Trade Marks Act 1999 lays down the various cases in which a person will be said to have infringed another person's trademark. The ingredient that is common to all the cases is the use of the trademark in the course of trade and in relation to goods or services. It is commonly observed in cases of cyber-squatting that the registrant of the domain name, is not the website posted at that domain name for any purpose, leave alone for the purpose of commerce. In such a situation, the registrant can under no circumstances be said to have committed trademark infringement, as there is no use in the course of trade and in relation to goods or services.

The law relating to passing off is fairly well settled. The basic ingredients of passing off are that the defendant misrepresents his goods or services in the course of trade in a manner liable to make the customers believe that the goods or services offered by the defendant are in fact those of the plaintiffs. Thus under the trademark law as it prevails in India today, taking any action against a person who merely registers a domain name made up of another person's trademark, without actually using the domain name to host a website engaged in commerce may not be possible.[57]

Domain names were originally intended to perform only the function of facilitating connectivity to remember and use. Businesses have started to realize the significant potential of

[57] *Ibid*, pp. 279-230

websites as a primary means of facilitating E-Commerce. By using trade and service marks as their domain names, businesses hope to attract their potential customers to their websites and increase their market visibility ultimately their sales and profits.

As there is tremendous increase in the use of the internet, domain names have increasingly come into collusion with trademarks. The prime reason is that there is absolutely no connection between the system for registering trademarks and the system for registering domain names. The trademarks were administered by a governmental authority on a national or regional basis which gives rise to rights on the part of the trade mark holder that may be exercised within the territory. But the domain names system is usually administered by a non-governmental organization without any functional limitation. Domain names are registered on a first-come, first served basis and offer a unique, global presence on the internet. The basic premise of the legal protection of trademark rests on the fact that the trademark being source identifier of goods or services, any one, other than its true owner, using it will create consumer confusion as to its source. Another logical basis of this protection is that no one should be allowed to reap benefits of the goodwill created by the hard labour and investment of the other. The trademark law gives right to prohibit the use of the word or words so for as to protect the owner's goodwill against the sale of another product as his. "The real protection of trademarks does not go beyond the prevention of the consumer confusion or protection of goodwill. Thus, the use of the same mark on two different

goods, or services in one place or use of the same mark in similar goods or services in two different places, where market overlap is not possible have been generally allowed because of the lack of consumer confusion. Thus, the trademark laws, across the globe recognize "one mark possibility. These well-known principles of trademark Jurisprudence do not fit in cyberspace. Cyberspace knows no boundaries. It is a global market place that can serve millions of customers across the world and websites acts as a "shipwindow". Every website has a unique address called domain name that enables to distinguish and create the various computers users' files and resources accessible over internet and without a domain name a company would be practically invisible on the internet as customers would not be able to find it.

There is more than one reason of the conflict between the domain names and trademark. First is that the trademark law allows concurrent use of the same mark on different goods or services or on the same goods or services provided the users of trademark are separated by distance and there is no possibility of consumer confusion. This is not possible under the current domain name registration system. The domain name being unique, its concurrent use is not possible and secondly, the domain name registration is based on "first come first served" principle. Any person who may not be associated in any way with a well known name can register it as his domain name with the result legitimate owner having goodwill in that name will be prevented from registering it as his domain name. The domain name disputes started where a company

desirous to register its trademark as domain name found that someone else, not in any way associated with the trademark, registered is as his own domain name.[58]

DOMAIN NAME DISPUTE RESOLUTION POLICY

The increase in the number of businesses in the virtual world has increased the number of participants in the online transactions that have in turn augmented the disputes. Similar to the real-world disputes, even in the virtual world, various classifications of disputes arise. Few common disputes that are widespread are breach of contract, frauds, defamation, invasion of privacy, personal injury, financial loss, emotional distress etc. Most of these disputes are cross border disputes. Other than the above disputes, the intellectual property rights are also one of the most affected claims. The intellectual property rights like trademarks, copyrights and patent disputes are common in the virtual world though the international principles and the territorial laws for protection of these rights either extended or further amended to meet the requirements of the virtual world. Amongst all the intellectual property rights, the highly disputed in the www are the domain name disputes.[59]

The ICANN on Oct 29th 1999 approved a Uniform Domain Name Dispute Resolution Policy (UDNDRP) and Rules for Uniform Domain Name Dispute Resolution Policy, providing for an

[58] *Supra* n. 40, pp.748-750 Dr. R.K. Chaubey

[59] C.P. Nandini and G.B. Reddy, Resolution of Domain Name Disputes through ADR-Impact of WIPO's initiative towards UDRP, 52 JILI, 80 (2010)

administrative procedure for the resolution of disputes involving allegations that a domain name has been registered and used in bad faith to the detriment of a trademark or service mark held by the complaining party. The first proceeding under the policy commenced on Dec 9th 1999.

To date, more than 2,000 UDRP proceedings have been initiated. Over 1,300 cases have been decided, more than 75 percent of which have resulted in a transfer of the name to the trademark owner. In order to submit the domain dispute under the UDNDRP three things are required. First, the registrant's domain name must be identified or confusingly similar to a trademark or service mark in which the complainant has rights. Second, the domain name registrant must have no rights or legitimate interests in respect of the domain name. Third, the domain name registrant'd domain name has been registered and is being used in bad faith.

Once the provider verifies that the complaint complies with basic UDRP requirements, it sends the complaint to the domain name registrant, who must respond within 20 days. The respondent has the discretion of opting for a three-person panel if the complainant has required a one-person panel, but the respondent will be requested a one-person panel, but the respondent will be required to pay one0half of the applicable fee for the three-person panel. Otherwise, the complainant is fully responsible for the fee. Upon receiving the registrant's response, the provider has five days to appoint an arbitration panel of one or three members which must

issue a decision within two weeks. The domain holder has 10 days to appeal an adverse decision to a court of mutual jurisdiction. The remedies available to a complainant are limited to the transfer or cancellation of the domain name, no monetary damages are awarded. The complainant has the burden of establishing each of these three jurisdictional elements.

The ICANN delegates' responsibility for the resolution of domain name disputes to independent, presumably impartial service providers, yet questions have been raised as to whether the system adequately prevents bias. To date, ICANN has accredited four service providers-CPR Institute for Dispute Resolution, eResolution, the National Arbitration Forum and the World Intellectual Property Organization. ICANN particularly considers three attributes when evaluating an applicant; the applicant's record of competently handling the administrative aspects of alternative dispute resolution proceedings, the applicant's submission of a list of at least twenty highly qualified and neutral individuals to serve as panelists, and the consistency of the applicant's supplemental rules and procedures with the UDRP rules and procedures.

The WIPO was approved as a dispute resolution service provider under ICANN's policy on Dec 1999. It is estimated that from Dec 1999, when

WIPO was so approved, till the current date there are over 5000 cases that have been filed before WIPO. The policy is extremely simple unlike normal statutes. It will apply to a very select set of

circumstances known generally as "abusive registrations" and not to all instances of traditional trademark infringement. The apparent advantage of ICANN's dispute resolution system is its speed and relatively low costs. Respondents must apply to a complaint within 20 days and once the submissions are complete the panel has 45 days to issue its decision.[60]

CONCLUSION

Thus, it can be concluded that, in India inspite of increasing problem of cybersquatting we still do not have any specific or strongly effective law to tackle the problem of cybersquatting. There were great hopes on Information Technology Act, 2000 that it would provide against the growing menace of cybersquatting but unfortunately the Act is absolutely silent on this growing issue. There is an urgent need to address the issues relating to domain names disputes by the Government of India. The Intellectual Property Rights laws of our country have to be suitably amended and that too quickly, to be in conformity with the emerging trends over internet. All said and done, your internet domain is your valuable asset, which requires attention and care in registration and handling. The internet domain names are the foundations for the future of the web. The operation of the Trade Mark Act, 1999 does not provide adequate protection of domain name, this does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing off. Also, it is evident from the above discussion that, the courts over the world

[60] *Supra n.* 33, pp.754-758

have generally frowned over cyber squatters and have protected the plaintiffs under the trademark Law.

BRIEF ANALYSIS OF RIGHTS OF MUSLIM WOMEN IN INDIA: LAW AND PRACTICE

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ABSTRACT

The claim that Islam has provided women in India enough rights is a very complicated and multifaceted subject. There is a general presumption in the society that the Muslim women are at disadvantage when it comes to providing their lawful rights in accordance with Islamic law. A confluence of religious, cultural, social, and legal elements affects very woman's rights in any country, including India. The teachings of Islam, like those of other major religions, effectively address women's rights and roles, and these concepts are understood and used differently depending on the situation. Muslim women have benefited from the rights bestowed upon them by Islamic law in India, where Islam is one of the dominant religions. Islam affirms the dignity and equal worth of every person, regardless of gender and hence provides various rights to women.

The Constitution of India and various statues enacted by the Indian Parliament have also recognized various rights of Muslim women. This research article argues that Muslim women in India have sufficient rights in accordance with Islamic law and secular laws enforced in India. The role of judiciary in recognizing the rights of

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Muslim women has also been discussed.

Keywords: *Muslim Women, Teachings of Islam, The Constitution of India, The Judiciary*

INTRODUCTION

Before India gained its independence, the state acknowledged that different communities should be subject to different sets of religious laws in their personal, religious and family matters, and the courts have traditionally decided family disputes on this basis.[3] The Quran is the main source of Islamic law when it comes to women's rights. It acknowledges the value of treating women with respect and kindness and ensuring that they have the freedom to own and inherit property, and pursue an education. In terms of their rights and prospects, Muslim women in India have made progress in a number of ways. Muslim women who are well-educated and powerful take an active role in a variety of professions, including as politics, education, and entrepreneurship. Additionally, there have been initiatives to update personal laws to give Muslim women better legal safeguards in relation to inheritance, marriage, and divorce.

1. RIGHT OF MUSLIM WOMEN IN ISLAMIC LAW

Quran is the primary source of Muslim Law. Islam is a religion that accords women a place of honour and respect, with definite

[3]Justin Jones, Towards a Muslim Family Law Act? Debating Muslim Women's Rights and the Codification of Personal Laws in India, Contemporary South Asia, (2020) 28:1,1-14, DOI:10.1080/09584935.2019.1684444

rights and obligations, according to Muslims. The legal safe guards and protections provided by the Holy Quran are thought to represent a significant advance over the pre-Islamic society's treatment of women in the fields of marriage, divorce, and inheritance, among others. The protection of women by men is mentioned in the Quran, with women's righteousness being defined in terms of submission to men. Recurring subject in modern Muslim writing, articulated by both sexes, is the naturalness of the situation in which women, due to their innate attributes and characteristics have clearly defined positions and are unable to perform tasks that are exclusively the domain of men. The unique but complementary duties assigned to each of the mare determined by their psychological and physiological distinctions.[4]

Most of the Islamic religious scholars concur that the Prophet Muhammad expanded women's rights to include inheritance, property, and marital rights during the beginning of Islam in the early 600s CE. At a time when women had few, if any, rights, it was a revolutionary action.[5]

Rights of Muslim Women in Hereditary Property

In Islamic law, men and women have equivalent rights, including but not limited to working, acquiring wealth, possession of

[4] Jane I. Smith, Women in Islam: Equity, Equality, and the Search for the Natural Order, *Journal of the American Academy of Religion,* Volume XLVII, Issue4, December 1979, Pages517–537,https://doi.org/10.1093/jaarel/XLVII.4.517

property, and the concept of inheritance. The Quran mentions in Surah Nisa'4:7, about the share of women in the property as:

"For men there is a share from what their parents and close relatives leave, and for women there is a share from what their parents and close relatives leave, be it little or considerable; a definite share." [6]

In the verse given above, it is stated that women inherit and have a certain part in property, just like males. In actuality, this scripture was sent to the Prophet Muhammad (S) during aperiod when women everywhere, but especially among the benighted Arabs, lacked any value or dignity. When males learned that their new born child was a female in the Age of Ignorance, they felt humiliated, and many helpless infant girls were even buried alive.

Again, the Holy Quran, in Surah Nisa' 4:11, deal with more specific rights and share of women in inherent property.

"Allah charges you in regard with your children: a son's share is equal to the share of two daughters; if the [children] are [only] daughters and two or more, their share is two thirds of the legacy, and if there is only one daughter, her share is half [of the legacy]; and each of the parents inherit one-sixth of the legacy if the deceased had children, and if the deceased had no children and the parents are the only heirs, the mother inherits one-third; if the deceased had brothers, the mother in her it sone-sixth; [allthisis]

[5] Availableathttps://www.dw.com/en/womens-rights-in-islam-fighting-for-equality-before-the-law/a-53539222(Lastvisited on 15th April, 2023)
[6] The Holy Quran, Surah Nisa'4:7.

after executing the will and settling the debts of the deceased. You do not know which of your parents and children benefit you the most. This is Allah's injunction; surely Allah is All-knowing, All-wise."[7]

As a result, according to Islamic inheritance law, sons inherit twice as much as daughters, brothers inherit two times as much as sisters, and husbands inherit two times as much as wives, with the exception of the father and mother of the deceased, who, if they are still a live at the time of their child's death, each receive an equal share of the deceased's legacy. Although a girl's inherent rights are less than a boy's and a husband's rights are more than a wife's, Islam has acknowledged women's rights to a very large extent. Reason as to why the women have been given less right in relation to inherent property, as has been given clergy, is that after marriage women acquires right in the property of husband and, at the same time, it is incumbent up on the husband to maintain his wife.

RIGHTS OF MUSLIM WOMEN ON MARRIAGE

While dealing with the right of woman on marriage, the Holy Quran in Al Nisa 4:4 states as:

"And give to the women (whom you marry) their Maher (obligatory bridal-money given by the husband to his wife at the time of marriage) with a good heart."

[7]The Holy Quran, Surah Nisa'4:11.

Undoubtedly, the mahr prescription serves as a sign of respect and honour for the woman while also illustrating the gravity and significance of the marriage contract. Muslim husbands are required to offer mahr to their wives out of good will and the goodness of their hearts.

Most of the scholars in Islam believe that husbands must spend money on their wives as long as the wives are willing to be of service to their husbands. She does not have the right to such spending if she rejects or doses not obey his command. The woman is only available to her husband due to the terms of their marriage contract, and, at the same time, she is not permitted to leave the marital house without his consent, which makes spending money on her mandatory. In exchange for her making herself available to him for his enjoyment, he must spend money on her and provide for her.[8]

Additionally, husbands have been admonished to treat women with due respect, to have a positive outlook on their wives, to be polite to them, and to give their wives anything that could soften their hearts toward him.[9]

As regards equality, women have similar rights over husband. The Quran in Surah Baqara reads as: "And they (women) have rights (over their husbands as regards living expenses) similar (to those of

[8]Available at https://islamqa.info/en/answers/10680/rights-of-husband-and-rights-of-wife-in-Islam (Last visited on 12th July, 2023)
[9]The Holy Quran. Surah Al Nisa 4:19.

their husbands) over them (as regards obedience and respect) to what is reasonable."[10]

In Islam, it has been stated repeatedly that males should treat women with respect and that the rights should be equal to and reasonable in compare is on to their husbands. It is indisputable that women have been granted a number of rights and have received appropriate treatment in Islam.

RIGHT TO EDUCATION

The importance of education for a Muslim can be gauged from the fact that the very first verse to be revealed to the Prophet Muhammad talks about education. It reads as: "Recite: In the name of thy Lord who created man from a clot. Recite: And thy Lord is the Most Generous Who taught by the pen, taught man that which he knew not."[11]

According to the Prophet Muhammad, it is incumbent upon every Muslim, both man and woman, to pursue education. Muhammad made a number of statements in this regard, one of which is outlined below.

"The seeking of knowledge is obligatory for every Muslim."[12]

Hence, it is undisputable fact that Prophet Mohammad(S) has also given so much importance to education and instructed every Muslim to seek knowledge an obligation.

[10] Then Holy Quran. Surah Al Baqarah 2:228
[11] The Holy Quran. 96: 1-5.
[12] The Muslim Personal Law (Shariat) Application Act, 1937.

2. THE RIGHTS OF MUSLIM WOMEN IN INDIA

The Parliament of India has passed a few legislations dealing with personal laws of Muslim Community. The Parliament has enacted the Muslim Personal Law (Shariat) ApplicationAct[12] (hereinafter referred to as the Act) in 1937 to declare that Indian Muslims will be governed, in personal matters, by Shariat or Islamic Law. Section 2[13] of the Act talks of Application of Personal law to Muslims, and it reads as: *"Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property in her it edor obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, in cludingtalaq, ila, zihar, lian, khulaand mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)."*[14]

Hence, this Act has declared that various personal matters, including marriage, talaq, gift, trust, and guardian ship etc. Of Muslim Community, will be governed by Muslim Law only. But, it is most unfortunate that agricultural property has been kept out of the realm of Muslim Law and the women have been denied their rights in agricultural property.

[13] Ibid. section 2.
[14] Ibid.

After a couple of years, the Indian Parliaments has enacted the Dissolution of Muslim Marriages Act[15] (here in after referred to as the Act) in1939. This Act is aimed at con soli dating and clarifying the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law. It gives rights to Muslim women to file a suit for dissolution of Marriage under certain conditions. Section 2[16] of the Act provides for various grounds of dissolution of Marriage wherein Muslim Women are entitled to dissolve marriage. This Act has recognized certain rights to Muslim women after marriage.

After the judgement of *Mohd. Ahmed Khan* v. *Shah Bano Begum*[17], wherein the Supreme Court upheld the judgement delivered by Madhya Pradesh High Court granting maintenance to Shah Bano Begum by her husband under section 125[18]of the Code of Criminal Procedure,197 However, under Muslim personal law, a husband is bound to maintain his divorced wife during the period of *iddat* only. The judgement was seen by the Muslim community as an attack on their personal and religious laws. To pacify Muslim community and addressing this issue effectively, the Government of India has passed the Muslim Women (Protection of Rights on Divorce) Act[19] 1986 (hereinafter referred to as the Act). By giving

[15] The Dissolution of Muslim Marriage sAct,1939. (Act No 8of1939)
[16] Ibid. section 2.
[17] Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.
[18] The Code ofCriminalProcedure,1973. (Act No. 2of1974). S.125.
[19]The Muslim Women (Protection of Rights on Divorce) Act,1986. (Act No. 25 of 1986)

the parties the choice under section 5[20]of the Act to decide whether they want to be regulated by section125[21]of the Code of Criminal Procedure, 1973, the Act has significantly overturned the *Shah Bano Case*[22]and reached a compromise. Following *Shayara Bano*v. *Union of India*[23], wherein the practice of instant talaq was declared as Un-Islamic and against the basic tenets of Quran, the Parliament of India has enacted the Muslim Women (Protection of Rights on Marriage) Act[24] in 2019. Section3[25] of the Act declares the practice of instant talaq as void and illegal. Section 4[26] of the Act provides for punishment up to three years in case a husband pronounces instant talaq upon his wife.

Moreover, this Act further talks of certain rights of Muslim Women. Section 5[27] states that a woman upon whom triple talaq has been pronounced is entitled to receive from her husband such amount of subsistence allowance for herself and her dependent children. Section 6[28] says that a married Muslim woman is entitled to custody of her minor children in accordance with the Magistrate's discretion in the event that her husband pronounces instant talaq up on her.

[20] The Muslim Women (Protection of Rights on Divorce) Act, 1986. (Act No. 25 of 1986). s. 5.
[21] The Code of Criminal Procedure, 1973. (Act No. 2 of 1974). S. 125.
[22] Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.
[23] The Code of Criminal Procedure, 1973. (Act No. 2 of 1974). s. 125.
[24] The Muslim Women (Protection of Rights on Marriage) Act ,2019. (Act No. 20of2019)
[25] The Muslim Women (Protection of Rights on Marriage) Act, 2019. (Act No. 20 of 2019)
[26] Ibid.Section4.
[27] Ibid.Section5.
[28] Ibid.Section6.

3. ROLE OF JUDICIARY

The role of the judiciary is not only to decide the disputes between the parties but it also works as a guardian of constitutional and the fundamental rights, including religious and personal rights. As regards Muslim, the Muslim Personal Law (Shariat) Application Act[29]enacted in 1937 directs the courts in India to apply Muslim religious law to Muslims in all matters relating to family relations, property, and succession. The courts have accordingly applied Muslim Personal Law (Shariat) in adjudicating various personal matters of Muslim community.

The Supreme Court ruled in *Shamim Ara* v. *State of U. P.*[30] that a husband filing for divorce without his wife's knowledge cannot be regarded a valid declaration of talaq. For the first time, the state formally decided what constitutes proper talaq process. This case is widely regarded as a watershed moment for Muslim women's rights in India.

[29] The Muslim Personal Law (Shariat) Application Act,1937
[30] AIR 2002 SC 3551

n Dr. Noorjehan Safia Niaz v. State of Maharashtra[31], (also known as haji Ali dargah Case) the High Court of Bombay has lifted the ban on entry of women inside the restricted area of Haji Ali Darga in Mumbai. The judgement has been welcomed by a group of women as a defining moment in the history of women, particularly Muslim women.

Mohd. Ahmad Khan v. *Shah Bano Begum* (commonly known as *Shah Bano Case*) was a controversial case, in which the Supreme Court delivered a judgment favouring maintenance given to an aggrieved divorced Muslim woman. The top court opined that Muslim woman must be maintained by their ex-husband in accordance with the Code of Criminal Procedure, 1973. Nullifying the judgement, the Parliament of India has enacted The Muslim Women (Protection of Rights on Divorce) Act[32], 1986. Section 5[33] of the Act declares that the parties have an option whether they wish to be governed by the provisions of sections 125 to 128 of Code of Criminal Procedure, 1973. Hence a Muslim couple at the time of marriage is at the liberty to be governed by their personal laws or provisions of the Code of Criminal Procedure, 1973.

In *Danial Latifi* v. *Union of India*[34] the top court passed a landmark judgement on right of Muslim women to receive maintenance. The Supreme Court of India clearly held that Muslim women, like

[31] Dr. Noorjehan Safia Niaz v. State of Maharashtra, Public Interest Litigation No. 106 of 2014
[32] The Muslim Women (Protection of Rights on Divorce) Act,1986 (Act No. 25of1986)
[33] Ibid. section 5.
[34] Ibid. section 5.

women from other communities, are entitled to maintenance from their former husbands under the Code of Criminal Procedure, 1973.

The apex court in *Shayara Bano* v. *Union of India*[35] (also known as Triple Talaq Case*)* has struck down the practice of instant talaq and declared the same as unconstitutional and un-Islamic. The majority of the judges were of the view that instant talaq triple (triple talaq) is not part of basic tenets of Islam as the same is also not sanctioned by the *Holy Quran*.

4. WHAT LIES AHEAD

Although Muslim women have sufficient rights, such as the right to property, the right to an education, and the right to marry, it is important to note that there have been on-going discussions and debates about changing personal laws to better address issues like gender equality and protect Muslim women's rights. However, as was said above, Muslim women have received a variety of rights according to Islam and hadith. Periodically, the Indian Parliament has acknowledged women's rights. Muslim women's rights have been protected by a number of court decisions and efforts, and the legal environment may continue to change in the future. It's critical to remember that, cultural norms, socioeconomic considerations, and the degree of legal understanding among the community all have an impact on how Muslim women's rights are actually implemented in India.

The issue of Muslim women can be resolved more successfully through the correct execution and application of the rights than through there formation of legislation. However, it is imperative that Muslim women's rights in agricultural land be acknowledged as well as they are a part of the Muslim community. Education can play a key role in addressing the rights of Muslim women. It is

[35]Shayara Bano v. Union of India, (2017) 9 SCC 1

important that the standard of education among Muslim women should be raised so as to make them more aware about the irrigates.

5. CONCLUDING REMARK

There have been beneficial changes in the area of extending rights to women in India, thanks to both Islamic law and the secular laws passed by the Indian Parliament. The judiciary has played a commendable role. It is incorrect to assume that Muslim women face discrimination under Islamic law. However, women in India continue to be denied a variety of rights, including the right to property, due to a lack of community awareness of Muslim law and a lack of understanding about Islam. Therefore, it is crucial to encourage communication, instruction, and knowledge in order to further improve Muslim women's rights in India and make sure they have equal access to opportunities and protections.

Furthermore, empowering women in all facets of life benefits not only individuals but also the entire society. For women to fully enjoy their rights in all aspects of life, on-going efforts must be made to overcome the remaining issues. The advancement of Muslim women's rights and gender equality can be greatly helped by promoting a progressive and inclusive understanding of Islamic teachings.

In conclusion, Muslim women's rights in India involve a complex interplay of religious, legal, and social factors. While legal reforms have been undertaken to protect these rights and address discriminatory practices, the challenge lies in their effective implementation and in fostering a broader societal shift towards gender equality.

GROWING INFLUENCE OF ARTIFICIAL INTELLIGENCE ON THE LEGAL PROFESSION

-Neelanksha Bhatia*[1]

ABSTRACT

In this digital era, every individual is reliant on technology. By the beginning of the dawn to the edge of the night, each routine of their standard life is dependent on technology. When it comes to Artificial Intelligence, this interesting proposition cannot be left unheard. Human beings are ardent to such inventions. Conversing about inventions we have are living in a world which is gradually taking a turning point as the world is going beyond human imaginations. The visions which were set in the earlier years it is becoming veraciously believable. Contemporaneously we all are living in a world where there are flying cars as well humanoids robots. The robots are not a new innovation to us as we have seen a lot of movies but the presence of robots have become a reality. This statement is not just a question now but has transformed itself into realism. Sophia the social humanoid robot, it was manufactured by Hanson company situated in Hong Kong. This robot was activated on February 14, 2016. Sophia can walk properly, has communication skills and also performs various other acts. Artificial Intelligence is taking over the world and also several other line of works. Legal field is no such different as the world first ever robot lawyer came into execution. This research paper will have a focal point on the influence as well as the

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problems that are arising in the legal field due to artificial intelligence. Hence, this is a fair idea of what will the research paper further contain.

Keywords: *Technology, Inventions, Veraciously, Humanoid, Robot Lawyer*

INTRODUCTION

A. Objective of the study

1. To identify the current status of Artificial Intelligence
2. To recommend policy intervention
3. To identify major constraints that is existing currently
4. To identify issues that will be arising in the future

B. Statement of Problem

Artificial intelligence is purely a computer science-based technology which means neither emotions nor morals are incorporated in machines so there can be a clear indication of biasness and discrimination. Right to privacy which is guaranteed to us in the Article 21 of the constitution of India, it will be no longer have the same implementation as machines are vulnerable to cyber threats. Furthermore, Professionals with legal qualification will be poignant towards unemployment which will have a great impact on the Indian economy. Therefore, the current study will analyse certain problems which will arise in the upcoming future.

C. Limitations of the Study

1. The research paper comprises of both primary sources and secondary sources.

2. The study consists of limited components of interdisciplinary nature

D. Research methodology - The research methodology is a systematic way of analysing the research paper topic. Under this method several steps are adopted by the researcher.

E. Sources of data - The study consists of primary and secondary data. Primary hand information is basically a first-hand information that is collected through a survey or questionnaire. As leading to the less availability of primary data, the research is dependent on the secondary data as the data was observed from various books and journals.

F. Area of Study - Ethical implications and regulatory challenges in the Growing influence of artificial intelligence on the legal profession.

G. Sample Size - The research paper will carry a sample size of up to 4 legal professionals from specific fields.

H. Sampling Tools

1. Stratified Sampling: This tool of sampling will assure representation from different specialities.
2. Convenience Sampling: The professionals were elected on the base of their availability and accessibility using this tool.
3. Expert Sampling: The participants who are recognized as experts in the field of technology and IT sector were taken into consideration.

4. Purposive Sampling: Participants were deliberately selected based on specific characteristics and attributes which are pertinent to the research paper.

I. BACKGROUND

Artificial Intelligence is a global phenomenon, it is one of the booming mechanisms of computer science. Artificial Intelligence is consistently bringing revolution collectively. Homo sapiens are becoming day by day charmed to technologies and moreover they are on a path to get addicted to such innovations. Tesla is not an illustration, it is inevitable in the present moment, the Tesla cars are no less than artificial intelligence. Individuals are getting influenced as the Tesla car does not need an operator nor does it need any reinforcement from the person sitting on the driver seat. The above said car moves automatically itself while individuals can take a break. The impression that artificial intelligence is leaving on us, it will slowly be the reason for mishap as the robots which way more just a humanoid robot. The robots are taking on various kinds of grounds from general to specific, from typing, playing chess to fighting a case. Eliminating robots is not a solution now as they are becoming a tool for boosting the country's economy. The only option which we have left us is to limit and impose conditions the growing influence of artificial technology.

II. LITERATURE REVIEW

A. Overview of Artificial Intelligence - As we all are aware of the changes that are going on the current atmosphere of our

country. Government as well as corporate sectors are adopting new technology tools to simplify their burden. The constant usage of such machines will not only have a beneficial impact but also very disastrous impact on our growing economy as many individuals will on a verge of losing their jobs such as data entry and processing, customer call centres, legal research and documentation analysis, transportation and many more. Almost each work was traditionally handled by human beings but since the ascending of Artificial intelligence every kind of such jobs are getting out of hand of human beings. Mainly the reason is less burden and hardly any chances of mistakes being committed.

B. Applications of Artificial Intelligence in Legal Profession - Artificial Intelligence has a diverse administration in the field of legal profession as it is taking up many copious duties. We all know assessment of any document or report takes its own time as it has to be checked thoroughly so that no anomalies are present in the document. This is definitely not an easy task for human as it is time consuming but for machines it is just a matter of few minutes and that too almost with no errors. Work like content creation, drafting all these are done by the computers without any hurdles. Most important part of legal field is consultation with clients, mostly physical appearance is a mandate or a requisite for this act but now a days it can also be conducted virtually through machines as chatbots provides for basic legal information, this is a vantage to those who

cannot afford traditional legal representation. Furthermore, Case outcome prediction which the Artificial intelligence will be able to execute as it will have the historical data, it can acknowledge the settlement probabilities and also furnish legal strategies.

C. **Impacts of Artificial Intelligence on Legal Practice -** As the technologies are cultivating day by day its impact is becoming transparent. Taking Legal profession into consideration as Artificial Intelligence is clasping many roles under this. Traditionally for every piece of work a person was indispensably required but the plot have been totally different in this fangled world as now for every small piece of work computer is enough whether formatting, analysing or consultation, earlier these jobs used to take hours but now only a few moments are required and the work is set. For the time being looking at this as a picture which is going very smoothly as the transformation is taking place and when we look at the behind scenes it is intimidating. As the people who were dependent on these works, they are on an edge towards unemployment. Even now some of the corporate sectors have put an end towards looking for human beings with such qualification. Besides, Privacy of data cannot be trusted with Artificial Intelligence as they are vulnerable to cyber threats. In addition to this, all the technicalities ethical and legal responsibility are also taken into consideration which the machines will be lacking because lawyers cannot solely rely on

Artificial intelligence. Furthermore, every one of us is aware of the discrimination as in the reality people of upper class discriminate the people that belongs to the lower class, the reason for such mishap is the old trends that are going, that human beings have cultured themselves so far, the history of our ancestors. Similarly, Artificial Intelligence is trained on historical facts and data, therefore there are high possibilities of biasness and discrimination in the cases which will lead to unfair outcomes.

D. Ethical and Legal Consideration - When we say the term 'ethical' we are burdened with a simple question that whether this is moral or immoral. According to law, discrimination is prohibited under Article 14 of Constitution of India and also discrimination is immoral as per our ethics. The recent AI is drastically showcasing its several talents, AI is purely a computer-based programme it does not consist of ethics and morality as the law should contain that's the reason lawyers are also taught Jurisprudence. AI works on information that is inserted in it, for example a case outcome prediction is based on past historical facts and judgements. Sometimes this same AI will reflect societal biases and will discriminate on such facts. AI itself reaches to such conclusion and no one knows what are the grounds of their conclusion so it works in black boxes in which no transparency is present to us. Moreover, lawyers must understand these outcomes as in this profession to defend themselves from AI they need professional competence. While

on the other hand, Legal consideration is concerned with laws that are made to protect the citizens of India, Privacy and data comes under Article 21 of Constitution of India which ensures us the Right to life and dignity. But Ai is not capable enough to understand such philosophical aspects or Natural law as they rely on large amount of personal data of a person and it raises concerns about the privacy of a citizen. When the AI commits such an offence the liability will be own whom, it turns into a complex question as the user and the AI is involved. Intellectual property is on a rise in the current scenario and the AI has also left an impact in the field as AI can properly work on content creation, legal writing, so day by day it is becoming a threat to our authenticity.

III. RESEARCH DESIGN

An exploratory research structure will be conducted to attain the objectives of the research paper. This research design will allow for the reconnaissance and insights of new incipient phenomenon such as the growing influence of artificial Intelligence in legal field. The research design for the study titled "Growing Influence of Artificial Intelligence on the Legal Profession" includes a methodical approach that addresses the research objectives, as well as collecting data methods, analysis approach, and possible areas for future research. The design incorporates both qualitative and secondary data collection techniques.

A. Data Collection Method

a. **Qualitative Data Collection -** Under this method participants will be selected on the basis of their expertise and experience with AI integration. The use of semi-structured interviews will take place with legal professionals. The desideratum of these interviews will expound the insights and perspective of lawyers.
b. **Secondary Data -** This method will focus on statistical data, journals and academic literature. The secondary data will help us to get a clear view from official sources as to the emerging trends of AI in legal profession.
c. **Data Analysis -** A thematic approach will be used to examine the qualitative data obtained through interviews. Identifying recurring themes, patterns, and ideas in the respondents' comments. In order to get inferences and insights from the qualitative data, themes will be categorized and analyzed. This analysis will aid in comprehending the impact of AI, its difficulties, and potential integration techniques from the viewpoint of legal practitioners.

IV. RESULT AND FINDINGS

A. Challenges and Limitations of AI implementation - Our world gives freedom to each citizen and government authorities as well but with great power comes great responsibility, hence freedom comes with great restriction. Taking into consideration Article 19 of the constitution of India, under this article 19 (a) to article 19 (g) it gives various kinds of freedom to the people of India like freedom of press, freedom assembly, etc. but in

further provisions like article 19 (1)(a), article 19 (2)(b), it imposes restriction on the above said freedoms. Alike to this, the success of AI is magnificent but it is not always true that AI is always right about everything, it does provide wrongs answers also. Many industries have been its prey, following are some illustrations;

"Undoubtedly, AI has advanced, and it has the capacity to revolutionise the world as well. However, this revolution will not be without obstacles and constraints. Similarly, AI is facing several challenges to implement itself fully. The media reports regularly on the possibilities and risks of AI, illustrating the polarizing opinions; Bloomberg recently reported that Samsung had banned the use of Chat GPT on its systems due to concerns about the potential disclosure of confidential corporate information, as employees accidentally leaked sensitive data via Chat GPT. Acknowledging these challenges need researchers, legal professionals to make interdisciplinary efforts."[2]

Not only from industries people are writing their interactions with AI tools, and on top of that false answers are provided but also disturbing ones which can strongly play with people beliefs as most of the people around globally invest their faith in technologies.

"There is also significant threat to the society more generally from these tools. After interacting extensively with Bing chat, it became

[2]Daniel Korogodski, "Overinflated Expectations From AI Adoption Vs. Reality," Forbes Technology Council, Forbes Councils Member, (Jun. 16, 2023, 08:15 AM EDT).

clear to me and others that artificial intelligence can produce disturbing answers and give the false impression of sentience. But haps the biggest threat of these tools is how well they can manipulate people's beliefs and emotions. The psychological effects of interacting with generative artificial intelligence are strong and real, even for those of us who knew that it is merely an advanced piece of technology. In the wrong hands, discount, and will be used to shape how people think, feel, and behave." [3]

B. Advantages of AI in Legal profession - Besides all the conflicting reviews AI is paving a way for many businesses which can implement a user-friendly AI eco system. Human beings are not so efficient each and every time but a machine produces effective and efficient outcomes all the time likely to be with less chance of errors. So, an enhanced efficient with improved accuracy will be guaranteed. From the economic point of view, there will be a lot of reduction in cost. As AI can contribute to many legal tasks, many routine works can be handled by it, such as contributing to legal research and it will allow lawyers to optimize their valuable resources and time. This will result in cost effective legal services. Access to legal knowledge will be the main benefit for people who cannot afford such legal services. Several apps are developing which contain legal expertise like 'Bar and Bench' so AI can be used in such a way that it will monitor changes in laws, provide

[3]Harvard Law School, "The Implications of ChatGPT for Legal Services and Society" (March/April 2023), Harvard Law School Center on the Legal Profession

timely notifications to lawyers. This will also help them to stay in touch with the fast-changing landscape. Most importantly, rather than replacing the lawyers AI technologies shall focus on the augmentation of the capabilities of legal professionals so that everyone can achieve maximum output.

C. **Recommendation for legal professionals** - Lawyers must adapt the increasing advancements of technologies as it is growing rapidly. The reason behind this is AI is much more than a human brain, traditional lawyers should not be left behind as compared to them. Some of the recommendation for legal professionals are;

- Embrace AI literacy: Lawyers shall develop themselves in such a way that they have a solid understanding of AI literacy.
- Leverage AI tools for efficiency: Explore and conduct strategic research so that lawyers can utilize AI powered tools that can streamline routine tasks.
- Acknowledge Ethical Considerations: As per the AI capabilities. Legal professionals must be aware of the AI adoption of ethical implications. They shall ensure transparency, fairness and impartiality.
- Collaboration with AI systems: Understand the strengths and limitations of AI tools. Basically, acquiring necessary skills to collaborate with AI systems effectively.
- Engaging in Policy discussions: Lawyers can engage in various discussions that consist of AI as a part of it. Discussing

perspective so that a innovation can be shaped with ethical considerations.

- Emphasizing on Client-Centric Approach: Lawyer can make a use of AI tools to enhance legal services and improve client experience.

With these recommendations it can be possible for traditional legal professionals to keep pace with the growing influence of AI and very efficiently harness the benefits of AI while upholding ethical standards.

D. Future Trends and possibilities

The research paper identifies multiple potential features trends and developments brought on by the expanding impact of AI on legal industry.

- Advancements in Natural Language Processing (NLP) and Machine Learning: NLP and machine learning algorithms will probably see major advancements as AI technologies evolve. These developments will make it easier for AI systems to comprehend and evaluate complicated legal writings, such statutes, case law, and contracts. AI tools will advance in their capacity to collect pertinent data, recognise linguistic complexity, and deliver more precise and contextually appropriate solutions.
- Expansion of AI Applications in document review and due diligence: Automation of document review and due diligence processes has shown to be a highly effective use of AI. We may anticipate the rise of AI applications in these fields in the future. The ability of AI systems to examine massive amounts

of documents, find important details, spot patterns, and highlight potential threats will only become better. Due diligence duties will take much less time and effort as a result, producing quicker and more precise outcomes.

- Integration of AI in dispute resolution processes: AI technologies have the potential to significantly contribute to these procedures of alternative conflict resolution. AI-driven analytics can be used to help discover common ground, evaluate the arguments of each party, and suggest alternative solutions during mediation and arbitration hearings. Platforms for remote and effective conflict resolution powered by AI may also develop, allowing for AI-guided negotiations and decision-making.
- Enhance predictive analysis for case outcome: As AI-powered predictive analytics tools advance, lawyers will be able to forecast case outcomes with more accuracy. These tools will make use of prior court decisions, legal precedents, and other pertinent information to provide insights about the chances of victory in various legal situations.
- Increased adoption of AI driven legal research platform: These platforms have already significantly increased the effectiveness of legal research. Future developments suggest that legal practitioners will use these platforms more frequently. These platforms will offer advanced search features, automated case law analysis, and customised suggestions based on the tastes of specific users, in addition to access to extensive legal databases.

- Cross Jurisdictional Analysis: Comparing regulatory frameworks across different jurisdictions to understand how AI-related legal issues are managed globally In order to gain insight into how AI-related legal concerns are addressed globally, cross-jurisdictional analysis entails the comparative analysis of legislative frameworks and legal practices in various geographical regions. Assessing how various nations tackle the legal difficulties posed by artificial intelligence (AI) is essential as AI technology are rapidly incorporated into a variety of organisations.

"A new study released by the University of Pennsylvania, revealed the eighty % of jobs in the US will be impacted by AI. The study, which uses data from the the US Department of Labor, found that 'at least ten % of tasks will be affected by GPT language models', and nineteen % of workers may see at least fifty % of their tasks impacted". Roles affected may include, "occupations with the highest exposure" include mathematicians, financial analysts, tax preparers, accountants and engineers, as well as public relations specialists, interpreters and translators, poets, lyricists and creative writers."[4]

V. CONCLUSION

A. Areas for future Research - The growth of AI is opening numerous areas for research.

- Human AI collaboration: Research can explore the various ways of how human can collaborate with AI. This will include

[4]Tech.co., "80% of US Jobs at Risk of Being Impacted by AI, Study Reveals" (2023) Tech.co, 23 March

optimal balance between human expertise and AI, identifying skills and capabilities required for successful collaboration.

- Client Approach: Understanding client perceptions and attitudes regarding AI use in the legal profession can be the subject of future research. Investigating client acceptability, worries, and expectations with relation to AI use in legal services is part of this.
- Cross Jurisdictional Analysis: A deeper understanding of the legal and regulatory environments relating to AI in the legal profession can be gained through comparative research across multiple jurisdictions. Research can compare standards of practise, examine how various legal systems manage AI-related issues, and find areas where collaboration in AI regulation may be possible.
- Regulatory Frameworks: Research may delve into the development of regulatory frameworks to solve AI-related issues given the dynamic nature of AI in the legal profession. The prospective effects of AI on legal systems and procedures shall be investigated.
- Ethical Implications: The ethical ramifications of AI adoption in the legal profession require more research. Research may focus on establishing moral standards and best practices for attorneys using AI tools
- Legal Education: The incorporation of AI technology into the legal sector necessitates an examination of the modifications that must be made to legal education. Potential research can

look into how legal training programmes and law schools might incorporate AI literacy and training into their curricula.

- By focusing on these study issues, academics and practitioners could boost our comprehension of how AI is having a growing effect on the legal industry and develop strategies for navigating the opportunities and difficulties that are associated with AI adoption in legal practice.

B. Implications of the study - One of the significant implications of study is the effective usage of AI tools in legal practice so that labour intensive task can be streamlined and valuable time and resources of individuals can be saved. Furthermore, AI have more potential than anyone as it is a scientific based programme so there will be less chance of any inconsistencies. Accuracy will be improved in many legal processes. Human error can be a persistent challenge.

The accessibility of legal services is another implication of AI. Historically, people had to pay a large amount of money to get the basic legal advice but now a days AI has the power to democratize legal access by reducing the cost as requires for legal processes.

While the benefits of AI are substantial, ethical considerations must be carefully examined. One of the major key concerns is the biasness in AI algorithms. Precedents are used to be inserted in AI, it will work accordingly with and may perpetuate those biases in legal decision making. Ensuring fairness and impartiality in AI algorithms is crucial.

Right to Privacy is guaranteed under Article 21 of Constitution of India, Data privacy and confidentiality concerns can be on a rise

with the AI usage as it requires a large amount of data to perform a task. Hence, sensitive information must be safeguarded.

In addition, research paper highlights the changing dynamics of legal workforces. AI has taken up routine, lawyers will have enough time to focus on complex issues but this may lead to job displacements. This study suggests rather than augmenting with lawyers, AI will replace lawyers.

Therefore, the adoption for AI in legal profession also calls for the development of regulatory frameworks. The research paper emphasizes on the requirement of legal regulation and policies to address AI related challenges.

C. Summary of findings - The research paper titled 'Growing influence of artificial intelligence on the legal profession' explores the emerging roles of Artificial Intelligence and its impact on various aspects of legal field. The paper contains suggestions and ethical issues for legal experts as well as a thorough analysis of AI's present situation and potential future effects.

Findings from the paper can be summarized as follows:

- Advantages of AI in the Legal Profession: AI boosts the speed, precision, and affordability of legal procedures. Due diligence tasks like document evaluation and legal research can be automated to save time and reduce human mistake. AI-driven solutions improve the calibre of legal services by assisting in content generation, legal writing, and case outcome analysis.

- Challenges and Limitations of AI Implementation: Implementing AI raises issues such as the potential for biased results, discriminatory practices, and cybersecurity risks, in spite of the fact that it has many advantages. AI-generated comments, especially those coming from language models like ChatGPT, have the potential to be upsetting and subvert perceptions.
- Recommendations for Legal Professionals: Legal professionals are encouraged to adopt AI literacy, take advantage of AI solutions to increase productivity, and respect ethical principles. In order to offer better legal services, a client-centric strategy should be prioritized along with collaboration between legal experts and AI technologies.
- Future Trends and Possibilities: New developments in Natural Language Processing (NLP) and Machine Learning, deeper AI integration in document review and dispute resolution, and the emergence of platforms for legal research powered by AI are all anticipated trends.

The study highlights the potential for AI to improve legal procedures and accessibility, but it also underscores questions about prejudice, privacy, and job displacement. In order to resolve AI-related issues and assure ethical AI use in the legal profession, regulatory frameworks must be developed.

NAVIGATING THE COMPLEXITIES OF ATTRIBUTION IN AI-GENERATED WORKS

-K. Prakasha Nikhil*[1]

ABSTRACT

The rise of Artificial Intelligence (AI) in producing literary, artistic, and musical works raises important questions regarding copyright, authorship, and ownership under Copyright Law. A key issue that arises is whether AI can be recognized as the legitimate creator and proprietor of such content. Furthermore, in accordance with the Copyright Act of 1957, the term "author" is defined as the entity responsible for initiating the creation of a work, which includes works generated by computers Hence, in cases where AI is the creator of the content, the question arises: Who should be credited as the entity responsible for its creation? Alternatively, can it be argued that no human agent has contributed causally to its generation? This paper endeavours to examine these inquiries within the framework of Indian Copyright Law and the underlying principles of copyright law. Additionally, it briefly delves into the perspectives of other jurisdictions, such as the US and UK.

Moreover, this paper puts forth potential solutions to the conundrum of authorship and ownership in AI-generated content. These options include the content entering the public domain, the pursuit of compulsory licenses for its use, recognizing limited personhood for AI, contemplating joint authorship involving human

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collaborators, or establishing sui generis right for content brought into being by AI.

Keywords: *Artificial Intelligence, Copyright Law, Ownership, Computer-generated work, Copyright Act, 1957.*

INTRODUCTION

Historically, copyright law held the view that technology merely served as a tool used by humans in the creation of artistic works. Within this conventional framework, individuals were acknowledged as the genuine authors of these works. For instance, when a photographer employed a camera to capture an image, authorship was attributed to the photographer, not the camera itself. However, AI represents a departure from conventional technology like cameras as it operates autonomously. This challenges the established assumption that technology is solely a tool under human control, given AI's capacity for independent operation and creative output[2].

AI's autonomous creation of works that would traditionally be eligible for copyright protection if produced solely by humans presents intricate challenges in the domain of copyright law. This complexity stems from the fact that AI-generated content frequently bears a striking resemblance to content created by humans, blurring the lines of differentiation. Instances of AI-generated content include literary works like books and news

[2]Avishek Chakraborty, Authorship of AI Generated Works under the Copyright Act, 1957: An Analytical Study, 8 NIRMA U. L.J. 37 (2019).

articles, artistic creations such as paintings and portraits, and musical compositions.

He emergence of AI-generated content poses several crucial questions within the framework of copyright law. Is AI-generated art genuinely original? Can AI be legitimately considered the author of these creations? Traditionally, copyright law associates the original creator of a work with its author. If AI is recognized as the author, does it also become the rightful owner of the work? Conversely, if AI is not granted authorship or ownership, who should hold these rights? Additionally, when attributing the source of data for AI, should it be ascribed to the user, the programmer, or both?

This research contributes to the ongoing discourse by conducting a comprehensive examination of these issues, encompassing various types of AI. Alongside a critical analysis of Section 2(d)(vi) of the Copyright Act of 1957, this study offers potential solutions within the realm of Indian Copyright Law. Furthermore, it explores the intricacies of copyright ownership with regard to both the AI programmer and the user, considering the various perspectives and arguments presented within the realm of copyright law.

ARTIFICIAL INTELLIGENCE

Artificial Intelligence, often abbreviated as AI, pertains to the field of technology and computing where machines and devices are equipped to perform tasks that demonstrate human-like

intelligence. Intelligence, in this context, encompasses a range of abilities, and when machines exhibit human-like functions such as perception, communication, and decision-making, they are regarded as possessing artificial intelligence.

AI is categorized as "strong" when it goes beyond these functions by demonstrating independent thought, while it is labelled as "weak" when it imitates these functions without genuine autonomy. In the realm of artificial intelligence, several distinctions exist, including:

1. Artificial Narrow Intelligence (ANI): This type of AI excels in specific fields or tasks but lacks the capacity to perform a wide range of activities.
2. Artificial General Intelligence (AGI): AGI is a hypothetical form of AI with the ability to handle a diverse array of tasks across different domains, resembling human versatility. The concept of super intelligent AI, which would surpass human intelligence across all areas, remains theoretical.

In contemporary applications, AI plays a prominent role in various industries. It is now involved in the creation of music, art, and literature. AI contributes to the production of journalistic content, generates poetry and books, and even aids in crafting music compositions and visual art, including paintings and portraits.[3]

[3] Rex Martinez, Artificial Intelligence: Distinguishing between Types & Definitions, 19 NEV. L.J. 1015 (2019)

COPYRIGHT-ABILITY OF WORK CREATED BY AI - Undoubtedly, originality is a fundamental prerequisite for copyright protection in numerous jurisdictions, including India. Section 13 of the Indian Copyright Act grants copyright protection to "original" dramatic, musical, literary, and artistic works. Nevertheless, it is important to note that the Act does not explicitly provide a definition for the term "originality."

For a more comprehensive understanding of the concept of originality in copyright law, one can delve into the diverse originality theories and tests applied in different jurisdictions, such as the UK, US, and Canada. Each of these regions may have its own unique interpretations and criteria for establishing originality. This exploration can offer valuable insights into how AI-generated content might be assessed for copyright protection, as the standards and approaches may vary, and some may be more adaptable to the distinctive characteristics of AI-generated works.[4]

In India, originality is determined by the demonstration of skill and judgment, along with a minimum degree of creativity. This standard place an emphasis on the idea that a work must involve more than just manual labour or financial resources; it must also showcase a level of creative input and decision-making by the author.

This nuanced approach implies that when assessing AI-generated content in India, the evaluation would consider whether it

[4]Ibid.

demonstrates both skill and judgment, along with a minimum level of creative input. It acknowledges that originality can exist even if the work does not necessarily introduce entirely novel or unique elements. This approach highlights the importance of human involvement in the creative process, emphasizing that AI can assist but should not entirely replace human creativity.

By taking into account the particular requirements of "skill and judgment" and a "minimum degree of creativity" as defined by Indian copyright law, one can more effectively evaluate the potential copyright protection of AI-generated content within the legal framework of India. This assessment underscores the significance of human authorship and creative input in the process, as these elements are central to the determination of originality and copyright ability under Indian law.[5]

ORIGINALITY OF WORK CREATED BY AI - Copying from other work: The idea that AI generates its own content without directly replicating existing material is indeed a pertinent topic of discussion within the context of copyright and originality. It is a fact that AI, much like humans, relies on existing knowledge and data as a foundation when producing new content. This aligns with the adage that "There is nothing new under the sun," which suggests that all creative works are built upon prior foundations and

[5] Stephan De Spiegeleire, Matthijs Maas and Tim Sweijs, Artificial Intelligence and the Future of Défense: Strategic Implications For Small- and Medium-Sized Force Providers, Hague Centre for Strategic Studies (2017).

that innovation often involves recombining existing elements in novel ways.

- **MINIMUM DEGREE OF CREATIVITY**

The question of whether the "minimum degree of creativity" requirement can be met by AI-generated work is a subject of ongoing debate in the realm of copyright law. It depends on the specific context and jurisdiction.

1. **FOCUSING ON THE FINISHED PRODUCT:** Some argue that if the final output of AI demonstrates unique and original qualities that distinguish it from existing content, it can be considered creative, and therefore meet the "minimum degree of creativity" requirement. In this view, the result itself is the primary indicator of creativity, and if AI produces novel and distinctive works, it may fulfil this requirement.

2. **EXAMINING THE PROCESS OF PRODUCTION:** On the other hand, there's an argument that the creativity should also be evaluated by examining the process of production. This approach looks at whether AI involves creative elements in its decision-making, such as unique algorithms, data selection, or innovative methods during content generation. Even if the final output appears similar to existing works, the creative process involved in its creation may satisfy the "minimum degree of creativity" requirement.

The assessment of AI-generated content's creativity is complex, and its interpretation varies by jurisdiction and context. It's

important to recognize that AI can produce content that is both original and creative, but the legal standards for determining this can differ, and they are still evolving as AI technology advances. Courts, legal scholars, and lawmakers are actively addressing these challenges and working to establish clearer guidelines.[6]

Indeed, a distinction should be made between different forms of artificial intelligence (AI) when assessing creativity. Machine learning, which can develop the capacity for independent judgment through its ability to learn and adapt, has the potential to produce creative works, whereas other forms of AI that rely on static algorithms or templates may not exhibit the same level of creativity.[7]

In essence, the level of creativity in AI-generated works may depend on the type of AI involved and the approach taken to evaluate creativity. When objective standards are employed to assess creativity, they can be applied consistently across various types of AI. For instance, if an AI system demonstrates the ability to generate content that is statistically distinct from existing works or employs novel techniques, it might be considered creative according to objective criteria.[8]

[6]Anna Stefan, Creativity and artificial intelligence: a view from the perspective of copyright, 16 Journal of Intellectual Property Law & Practice 7 (2021)

[7] Alston Asquith, Artificial Intelligence and Copyright Law: Who (or What) Owns What? (Last visited April 30, 2023), https://www. alstonasquith.com/ artificial-intelligence-copyright-law/.

[8] Dom Galeon & Kristin Houser, Google's AI Built Its Own AI That Outperforms Any Made by Humans. I

- **ORIGINALITY IN OTHER JURISDICTIONS -** The variations in the definitions of originality in different legal systems. In the United States, a work is deemed original if it is "independently created" and displays a "minimum degree of creativity." Meanwhile, in the UK, originality is established when a work demonstrates "authorial intellectual creation" or "skill, labour, and judgment."

When it comes to evaluating AI-generated works in these jurisdictions, the considerations of whether these works are derivative and whether they exhibit a "minimum degree of creativity" remain valid. In both the US and the UK, the central issue is whether AI-generated content meets the requisite threshold of creativity and originality for copyright protection.

These evaluations often hinge on specific cases, the characteristics of the AI system, and the nature of the generated content. As AI continues to advance, it's likely that legal interpretations and precedents will evolve to address these complex questions in more detail.

AI AS THE AUTHOR OF WORK

- **INADEQUACY OF SECTION 2(D)(VI) -** Section 2(d)(vi) of the Indian Copyright Act of 1957 defines an author in the context of computer-generated works as "the person who causes the work to be created." Similarly, the Copyright, Designs, and Patents Act (CDPA) in the UK has a similar

> provision to determine authorship for computer-generated works. These clauses are meant to address situations where the creative work is generated by a computer or an AI system. The person or entity responsible for initiating the AI or computer program that produces the work is considered the author under these legal definitions. It acknowledges the human involvement in the creation process, even when the work itself is generated by non-human entities.[9]

computer-generated works, both the Indian Copyright Act and the UK's Copyright, Designs, and Patents Act (CDPA) emphasize the role of the person who undertakes the necessary arrangements for the creation of the work as the author. Furthermore, the CDPA explicitly defines computer-generated work as a work generated by a computer in circumstances where there is no human author of the work. These legal provisions aim to address situations where creative works are entirely the product of automated processes, with no direct human input into the content's generation.[10]

The CDPA, UK, provides a clear definition of computer-generated work where there is no human author, which accurately applies to work produced by AI. In contrast, the Indian Copyright Act of 1957 does not explicitly specify the category of computer-generated work, unlike the CDPA in the UK.

[9] Copyright, Designs and Patents Act, UK, s 9(1)

[10] Third Edition of the Compendium of U.S. Copyright Office Practices, 2017.

It's also worth noting that the wording used in these statutes differs. In the Indian Copyright Act (Section 2(d)(vi)), the term "person who causes the work to be created" is employed, while the CDPA, UK, uses the phrase "person by whom the arrangements necessary for the creation of the work are undertaken." These variations in wording may have specific legal implications and distinctions in how authorship is determined for computer-generated works under these respective laws.[11]

Section 2(d)(vi) of the Copyright Act of 1957 attempts to address the issue of authorship in works produced by AI, but it has limitations for two primary reasons. Firstly, since AI operates autonomously, it's challenging to attribute authorship to any individual or entity as no one directly causes the work to be created under the Indian law. The work is generated by AI itself, and there's no human intervention in its production. Secondly, the standard of "causing the creation of the work" in India is more stringent compared to the requirement under UK law, which necessitates making arrangements necessary for creating the work. Merely providing the programming and data to the AI, whether by the data provider, programmer, or user, does not meet the threshold of "causing the creation of the work" as per Indian law.[12]

Secondly, there are cases where no human entity can be reasonably attributed to the creation of the work, as AI has the capability to

[11] Ibid

[12] Victor M. Palace, What If Artificial Intelligence Wrote This: Artificial Intelligence and Copyright Law, 71 FLA. L. REV. 217 (2019).

generate its own AI systems, which, in turn, produce the final work. In such scenarios, it becomes challenging to identify any individual or entity that has directly caused the work to be created or has undertaken the arrangements necessary for its production. An illustrative case is Google Brain's AI, AutoML, which exemplifies how AI can generate its own AI systems, leading to the creation of works without direct human intervention in the creative process.[13]

- **AI AS AUTHOR UNDER SECTION 2(D)(I)** - Reliance can be placed on Section 2(d)(i) of the Copyright Act, 1957, which says that the "author means in relation to literary or dramatic work, the author of the work." As "author" is defined as the author, the term "author" cannot be said to be limited in application to humans alone and AI may be covered under this definition.

- **AI AS AUTHOR IN OTHER JURISDICTIONS** - In the UK, the term "author" is understood to refer to the "person who produces the work."[14] Similar to this, an "author" in the US is defined as "someone who actually creates the work" in the case of *Community for Creative Non-Violence v. Reid*.[15]Under this understanding of the term "author," AI could potentially be deemed an "author" since it independently generates the work. Nevertheless, U.S. law explicitly excludes AI from being

[13]Ibid.
[14]Copyright, Designs and Patents Act, UK, s 9(1)
[15]Community for Creative Non-Violence v. Reid 490 U.S. 730 (1989

recognized as an "author"[16] U.S. law imposes a "human authorship requirement," which means that it does not grant copyright protection to "works created by a machine or by a purely mechanical process that operates in a random or fully automatic manner without any creative input or intervention from a human author."[17]

Further, the US cases of Burrow-Giles Lithographic Co. v. Sarony[18] and Trade-Mark Cases[19] define “author” using terms that indicate that only humans can be the “author”. Moreover, there is the *famous Monkey Selfie Case*[20]*In the U.S., a notable case involving a monkey raised the question of whether the monkey could be considered the "author" of a photograph. However, the court dismissed the monkey's copyright claim due to its lack of legal standing. Similarly, AI lacks the legal standing required to be recognized as an "author" in the U.S. Apart from the well-established "human authorship requirement" and concerns regarding AI's legal standing, there are additional issues related to the effective enforcement of copyright and the available remedies under copyright law that raise doubts about the notion of AI being considered the author. Another factor contributing to this uncertainty is the absence of legal personality for AI. To acknowledge AI authorship in the U.S., it would necessitate the*

[16] Patrick Zurth, Artificial Creativity? A Case against Copyright Protection for AI-Generated Works, 25 UCLA J.L. & Tech. I (2020).
[17] Ibid.
[18] Burrow-Giles Lithographic Co. v. Sarony 111 U.S. 53, 58 (1884)
[19] Trade-Mark Cases 100 U.S. 82, 94 (1879).
[20] Naruto, et al v. David John Slater Case No 3:15-cv-04324-WHO

elimination of the "human authorship" requirement.[21] However, unlike in the US, Indian law does not specifically call for human authorship.

ENTITIES OTHER THAN AI AS THE AUTHOR AND OWNER OF WORK

If the AI is neither the creator nor owner of a work, the question arises as to who should be considered the author and owner. According to Section 2(d)(vi) of the Copyright Act of 1957, "author means... in relation to any literary, dramatic, musical, or artistic work which is computer-generated, the person who causes the work to be created." As per this definition, the author is the individual who triggers the process of generating a work.[22]

As previously mentioned, AI operates independently and without direct creative input from humans. Human involvement primarily consists of providing code and data to the AI, which then autonomously generates output. In this narrow context, it becomes challenging to attribute the initiation of the work's creation to any individual, as AI serves as the agent of creation. Consequently, it cannot be asserted that a human is the author of the work.

On the other hand, one could argue that the programmer's creative input is essential for AI to exhibit creativity, as without it, AI may not have the capacity to do so. Similarly, it is plausible to advocate

[21] Wenqing Zhao, AI Art, Machine Authorship, and Copyright Laws, 12 AM. U. Intell. Prop. Brief 1 (2020).

[22] Russ Pearlman, Recognizing Artificial Intelligence (AI) as Authors and Investors under U.S. Intellectual Property Law, 24 RICH. J.L. & TECH. i (2018

for the human creators of AI by highlighting that, despite being a highly effective and sophisticated tool, it remains a creation of human ingenuity.[23]

- **PROGRAMMER AS AUTHOR -** As previously noted, AI operates autonomously and without direct creative input from humans. Humans provide AI with only code and data, and the AI then independently generates output. In this specific context, it becomes difficult to assign the initiation of the work's creation to any individual because the AI acts as the primary agent of creation. Consequently, it becomes challenging to assert that a human should be considered the author of the work.[24] Conversely, one could argue that the programmer's creative input is indispensable for enabling the AI to exhibit creativity because without it, the AI may not have the capability to do so. Similarly, it is plausible to advocate for the human creators of AI by emphasizing that, despite AI's role as an exceptionally effective tool, it is the humans who "cause the work to be created" under Section 2(d)(vi).

USER AS AUTHOR - From the vantage point of causing the generation of the work, it can be argued that the user has only done so in a limited sense, primarily by interacting with the AI. Moreover, when employing AI, the user doesn't make the same creative decisions that directly influence the AI's output, such as

[23] Ibid.

[24] Samantha Fink Hedrick, I Think, Therefore I Create: Claiming Copyright in the Outputs of Algorithms, 8 Nyuj. Intell. Prop. & Ent. L. 324 (2019)

choosing lighting and other elements in photography. Consequently, designating the user as the author may not be appropriate.

Additionally, a practical challenge arises when considering the user of AI as the author of the work, as it becomes difficult to distinguish the author when multiple users employ the same AI to produce identical outputs.[25]

- **PROGRAMMER AND USER AS THE AUTHOR IN OTHER JURISDICTIONS -** In the UK, the "person by whom the arrangements necessary for the creation of the work are undertaken" is defined as the author of the work under Section 9(3) CDPA read with Section 178 CDPA. In the UK case of *Nova Productions Ltd. v. Mazooma Games Ltd. & Ors*,[26] The court ruled that players of video games are not considered to be the authors of the frames of video games since they did not provide the necessary "skill or labor" only that they played the game. This case lends support to the view that the user would not have a claim to authorship as he does not increase the "skill and labour" input into the AI[27]. Instead, the UK's Whitford Committee report, which states that the programmer is the author of the output, can be used to support this claim. It states that the author of the output can be none other than the person, or persons, who devised the instructions and originated the data used to control and condition a computer to produce a particular

[25]Ibid.

[26] Nova Productions Ltd v Mazola Games Ltd & Ors [2007] EWCA Civ 219.

[27]Third Edition of the Compendium of U.S. Copyright Office Practices, 2017.

result.[28] It is also possible to argue in support of the programmer as the author based on the Chinese case of *Shenzhen Tencent v. Ying Xun*[29]

The case acknowledged a connection between the AI's output and the humans controlling it. The decision acknowledged a direct relationship between the mental activity of the people using the AI and the output that was generated by it.[30]

OWNERSHIP FROM THE POINT OF VIEW OF COPYRIGHT LAW JUSTIFICATIONS

- **INCENTIVE THEORY:** The incentive theory, which advocates granting copyright to encourage the creation of works, does not demand that copyright be given to AI. Copyright incentives have no impact on AI's operation because it is not sentient and cannot function independently because it is externally programmed. Copyright protection may encourage AI programmers to create AI that creates art. In fact, failing to recognise copyright in favour of the AI programmer in its

[28]Report of the Whitford Committee to Consider the Law on Copyright and Designs

[29]Guangdong Shenzhen Nanshan District People's Court Civil Judgment (2019) Yue 0305 MinChu No. 14010 translation, see Xiaoshuai Ren, Tencent Dreamwriter: Decision of the People's Court of Nanshan (District of Shenzhen) 24 December 2019-Case No. (2019))

[30] Zack Naqvi, Artificial Intelligence, Copyright, and Copyright Infringement, 24 Marq. Intell. Prop. L. Rev. 15 (2020).

output may serve as a deterrent to the development of AI that produces work.[31]

- **PERSONALITY THEORY:** Giving AI copyright exemptions is not required by the personality hypothesis, which defends the way a person's personality is reflected in a work. This is due to the fact that AI cannot be claimed to possess a personality that is comparable to a human personality, which was intended to be protected by the personality theory.[32] The personality of the programmer cannot be claimed to be represented in the output of AI to the extent that the programmer cannot be said to have contributed creatively to it and to the degree that AI operates like a black box and generates unpredictable results. Thus, in accordance with the personality idea, the programmer does not require copyright. The user would need to be granted copyright in accordance with the personality theory since the user's restricted ability to contribute creatively to the AI prevents the output from being considered to reflect the user's personality.[33]

- **MORAL RIGHTS:** Moral Principles AI shouldn't acknowledge moral rights. It would be absurd to establish the moral rights in AI since it cannot exercise rights like the "right

[31] Narayani Anand, Artificial Intelligence as the New Creator- Changing Dimensions in Copyright Law, 6 CMET 103 (2019).
[32] Robert Yu, The Machine Author: What Level of Copyright Protection is Appropriate for Fully Independent Computer Generated Works, 165 U. PA. L. REV. 1245 (2017).
[33] Ibid.

to integrity" or the "right to paternity"[34]because AI is not sentient and is not aware of how its output is utilised once it is made. Furthermore, it would not be appropriate to acknowledge the AI output through the "right to attribution" because it cannot be argued that the AI output is the product of the programmer or user.

- **UTILITARIAN THEORY:** More artistic work should be produced and made available to the public in light of utilitarianism. As a result, when more work is made available to the public thanks to copyright recognition in AI output, everyone wins. So, it is made that copyright should be issued in accordance with this theory.[35]

POSSIBLE SOLUTIONS

- **WORK ENTERS THE PUBLIC DOMAIN:** According to copyright justifications like the labour theory and personality theory, it would be a tenable solution to have the work enter the public domain if the programmer and user cannot be considered to have contributed their personality or labour to the AI's output and if AI is not anthropomorphized to consider it to be the author[36]. The existence of incentives other than copyright for the development of AI that produces works weighs in

[34] Margot E. Kaminski, Authorship, Disrupted: AI Authors in Copyright and First Amendment Law, 51 U.C.D. L. REV. 589 (2017).
[35] Report of the Whitford Committee to Consider the Law on Copyright and Designs.
[36] Ayush Pokhriyal & Vasu Gupta, Artificial Intelligence Generated works under Copyright Law, 6(2) NLUJ Law Review 93 (2020).

favour of letting the work go into the public domain straight away. [37] The AI can produce an endless number of works for no additional cost and does not require any motivation to do so. However, refusing to acknowledge authorship in AI output would mean treating AI-produced content differently from human-produced content, even when AI-produced content cannot be distinguished from human-produced content on its own. This calls into question whether the work produced by AI deserves special treatment. When a claim is made that a piece of work was only produced by a human and not by AI, it is not necessary to handle the two types of works differently. This saves resources and prevents the need to verify the claim.[38]

COMPULSORY LICENSE FOR THE WORK UNDER SECTION 31A

One option is to read Section 31A of the Copyright Act, which deals with mandatory licensing of published or unpublished work, broadly. If no one is recognised as the author or owner of the work produced by AI, Section 31A may apply to it. This might be the case where neither the programmer nor the user, nor even the AI, is thought to be the originator of the work. "Compulsory licence in unpublished or published works - (1) Where, in the case of any unpublished work or any work published or communicated to the public and... the author is dead or unknown or cannot be traced, or

[37]Ibid.

[38]Dilan Thampapillai, The Gatekeeper Doctrines: Originality and Authorship in Australia in the Age of Artificial Intelligence, WIPO-WTO Colloquium Papers (2019).

the owner of the copyright in such work, any person may apply for a licence to publish or communicate to the public such work, states Section 31A. A liberal interpretation of Section 31A can be used to classify AI-generated content as "work where the author is unknown and the owner cannot be found, enabling the user or programmer to submit a request for using the content[39].

RECOGNISING LIMITED PERSONHOOD FOR AI

Another alternative may be to acknowledge AI's limited personality and treat it as the creator and owner of the work, with a person acting as the AI's agent to exercise copyright. Hindu idols, for instance, have historically been regarded as legal beings in India.According to the case *Pramatha Nath Mullick v. Pradyumna Kumar Mullick*,[40] the manager of a Hindu idol would be able to exercise rights exactly as the manager of an infant heir's estate. Similar to this, AI can also be viewed as a legal person, and the programmer or user may be permitted to exercise the AI's copyright in its output[41].

PROGRAMMER, USER, OR DATA SUPPLIER AS "AUTHOR" UNDER SECTION 2(D)(VI)

[39] Martin Miernicki and Irene Ng (Huang Ying), Artificial intelligence and moral rights, 36 AI & SOCIETY 319 (2021)

[40] Pramatha Nath Mullick v. Pradyumna Kumar Mullick (1925) 27 497 BOMLR 1064.

[41] Nina I. Brown, Artificial Authors: A Case for Copyright in Computer-Generated Works, 20 Colum. Sci. & Tech. L.
Rev. 1 (2018).

According to Section 2(d)(vi) of the Copyright Act of 1957, "author means.[42] in relation to any literary, dramatic, musical, or artistic work which is computer-generated, the person who causes the work to be created" If Section 2(d) (vi) were to be interpreted to include output created by AI as computer-generated work and humans, rather than AI alone, could be claimed to have "caused the creation of the work," then the person who is thought to have "caused the creation of the work" would be regarded as the author.

The programmer who develops and trains the AI can be thought of, albeit in a limited sense, as having "caused the work to be created" and would have a better claim than the user under Section 2(d)(vi), as opposed to the user who does not provide a creative input that directly influences the output of the AI. Due to the copyright law principle that states that ideas are not protected by copyright, but rather the people who give them expression, this data provider to AI would have a weak claim to authorship. Because he does not contribute to the expression of AI's output, the data provider to the AI would have a weak claim. Additionally, as stated in Section 2(d)(vi), the data supplier for the AI does not actually "cause the work to be created"; rather, they only provide the data to the AI.[43]

JOINT AUTHORSHIP

Another option would be to give the programmer, user, data provider, and AI itself co-authorship of the work. The output produced by AI is a result of the AI processing the data, but it is

[42] Ibid

[43]Fenna Hornman, A robot's right to copyright, (last visited May 20, 2023). http://arno.uvt.nl/show.cgi?fid=145318

also the result of the programmer's work in creating and honing the AI, the data provider's work in providing the data that powers the AI, and the user's work in interacting with the AI through his inputs. Giving shared authorship to the AI itself, the programmer, the user, and the data provider would be a method to acknowledge the contributions of each of them in the production process as a whole, from programming the AI to the output that AI produces.[44]

CONCLUSION

The Indian Copyright Law and its rationale were used to evaluate the question of authorship and ownership in works produced by AI. First off, because AI generates work autonomously, it differs from other technological tools like a camera. So long as the work is original and not a copy of something else, it would pass the originality test. When evaluated objectively, it would also qualify as having a "minimum degree of creativity."[45]

The subjective standard of "minimum degree of creativity" would be met by AGI, Super-intelligent AI, and Strong AI, but not by ANI or Weak AI. The Indian Copyright Act's Section 2(d)(vi) is insufficient to cover works produced by AI. Instead, AI may be regarded as an author in accordance with Copyright Act Section

[44] V.K. Ahuja., Artificial Intelligence and Copyright: Issues and Challenges, ILI Law Review Winter Issue (2020)
[45] Ibid.

2(d) (i). If AI is given legal personality, it would be regarded as both the creator and the owner of the work.[46]

The creator of AI may be regarded as the author of the work under Section 2(d)(vi), and would have a stronger claim to authorship than an AI user or data provider. The labour theory, personality theory, or motivation theory do not call for giving AI copyright. But the copyright must be awarded in accordance with utilitarian theory. Thus, the issue of authorship and ownership in works created by AI could be resolved by allowing the work to become public domain, requiring license for its use, recognising AI's limited personhood, granting joint authorship to the parties involved, or recognising sui generis right for such works.[47]

[46] Andres Guadamuz, 'Do androids dream of electric copyright? Comparative analysis of originality in artificial intelligence generated works', 2 Intellectual Property Quarterly 169 (2017).

[47] Kalin Hristov, Artificial Intelligence and the Copyright Dilemma, 57 IDEA 431 (2017).

UNIFORM CIVIL CODE IN INDIA: BALANCING UNIFORMITY IN RELIGIOUS PLURALISM AND INDIVIDUAL LIBERTIES

-Ashhad Sajid Khan*[1]

ABSTRACT

This research delves into the discourse surrounding India's Uniform Civil Code (UCC) since the inception of its Constitution. The UCC aims to establish a consistent framework governing private matters like inheritance, divorce, and marriage, applicable universally regardless of religious affiliation. While India possesses standardized public laws, the diversity of religious communities has resulted in distinct personal laws. Historically, personal laws find their roots in Shastra and Sharia law for Hindu and Muslim communities, respectively, with attempts at codification during British colonial administration. However, these regulations did not comprehensively address all aspects of personal concerns. Article 44 of the Indian Constitution, a Directive Principle, envisions a UCC, with the Drafting Committee of the Constituent Assembly recognizing societal readiness concerns. The imperative for uniformity in personal laws concerning marriage, divorce, inheritance, and maintenance is underscored. The 21st Law Commission's position and pivotal case laws highlight the intricate challenges associated with the UCC. The Commission suggests augmenting existing personal laws to rectify gender disparities while preserving significant variations.

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Implementing a Uniform Civil Code in India involves navigating legal, religious, and historical complexities. Balancing uniformity with religious pluralism and safeguarding human liberties presents formidable challenges. Recognizing India's foundation in diversity, this research contends that uniformity cannot be the sole paradigm. This study provides valuable insights into the complexities and considerations surrounding the Uniform Civil Code discourse in India. It sheds light on the intricate interplay of legal, religious, and historical factors that shape this important debate.

KEYWORDS *- Uniform Civil Code (UCC), Gender Parity, Personal Laws, Secularism, Legal Uniformity*

INTRODUCTION

In India, we have two types of laws: Public Law and Private Law. The laws that apply to all equally without any distinction of any type mean they are uniform in nature and have equal consequences for all those who violate them, e.g., the Indian Penal Code, the Indian Evidence Act, the Income Tax, etc. For example, if someone commits murder, he will be punished under IPC regardless of his/her caste, religion, or class, whether upper, middle, or lower class, he/she will be punished under IPC[2]. So, these are known as Public Laws. The second one is those laws that are not equally applicable to everyone, which means they are not uniform in nature. These laws are not uniformly applicable to all but specifically apply to certain communities. These laws are guided by

[2]Indian Penal Code 1860, Section 302

customs and traditions, e.g., Muslim Personal Law, Hindu Personal Law, etc. These types of laws are known as Personal laws. Personal Laws deal with matters related to marriage, divorce, adoption, maintenance, etc. within a community. For instance, the way of marrying, adopting, and divorcing in every community is different, and they are all backed by personal laws. In case one does not want to be governed by the personal laws related to a particular community, he or she always has the option to go for a special act like the Special Marriage Act of 1954. This governs the marriage of an Indian, irrespective of their religion. For instance, if a Hindu male wants to marry a person of another religion, he will be entitled to get help from the Special Marriage Act, 1954, for the completion of his marriage.

At the time when our constituent assembly was formed in 1946 for the formation of our Indian Constitution, our constitution makers wanted Uniform Civil Code in place of these different personal laws for different communities. The Uniform Civil Code means secular personal laws of citizens that apply to all citizens equally, regardless of their religion. Our constitution makers were of the view that the way public laws have uniformity and it applies to citizens equally, the same way personal laws should have this uniformity regardless of one's religion, e.g., common marriage, common divorce, common adoption, common maintenance, etc. The idea was to bring formal equality among all the citizens of the country, as having different personal laws goes against the right to equality enshrined in Article 14 of the Indian Constitution, which

talks about Equality before law and Equal protection of law[3]. The Drafting Committee put the concept of Uniform Civil Code in Part IV of Indian Constitution which is Directive Principle of State Policy under Article 44 which says "*The state shall endeavour to secure the citizen a Uniform Civil Code throughout the territory of India"*[4]. The reason for keeping this in Directive Principles of State Policy instead of Fundamental Rights is because, at that time, the constitution maker was of the view that this was not the right time to implement it because of the paucity of time and resources, and they also had a view that society was not ready to accept these things at that moment. As evident from Constitutional Assembly debates, "all the communities, especially minorities, were not comfortable with losing personal laws". So, they decided to bring this Uniform Civil Code into the future when all of society will be mentally prepared for it. Now, there is a need for this code. So, they kept this in Article 44 with the view that, in the future, "the state shall endeavour to secure the citizen a Uniform Civil Code throughout the territory of India"[5].Hence, the responsibilities were transferred to the future generations to implement the UCC when the time is right.

RESEARCH METHODOLOGY - The Research Methodology in the research will be doctrinal. The nature of research shall be descriptive. Research tools for collection of data will involve

[3] Constitution of India, Article 14
[4] Constitution of India, Article 44
[5] ibid

archival documents and government sources, surveys and case studies. This list is not exhaustive.

HISTORY OF PERSONAL LAWS IN INDIA - In ancient India, the personal laws of Hinduism were the Shastra, whose interpretations were done by Brahmins, and the execution was done by the Rajas. No matter what type of law was required, everything was mentioned in the Shastras, and Brahmins were the ones who interpreted the laws from the Shastras. Similarly, the personal laws of the Muslim community were Sharia law, whose interpretations were done by Qazi and executed by Nawabs. Now, when the East India Company came to India and made India their colony, they enforced the English Common Law on their English subjects, for which courts were also established. But when it came to solving the dispute between the Indian subjects, the question arose as to which law would be followed. Both the Brahmins and the Qazis were called to interpret the Shastra and the Sharia Law. The establishment of high courts in various regions of India as well as the creation of numerous distinct religious legislations, such as the Hindu Widow Remarriage Act of 1856, the Hindu Women's Right to Property Act of 1937, and the Hindu Inheritance Act of 1929, amongst others, continued until 1862. Similar to this, legislation was also legislated for Muslims, such as the Dissolution of Muslim Marriage Act of 1939 and the Muslim Personal Law (Shariat) Application Act of 1937.

These personal law topics were also the hotly debated topics in the drafting committee of the Constituent Assembly of India, which

was elected to frame the Constitution of India on December 9, 1946. These were the developments in personal laws in India up until the establishment of the committee responsible for framing the Constitution of India in 1946.

ARTICLE 44 AND THE DRAFTING COMMITTEE - In the Indian Constitution, how did Article 44 come? When the drafting committee was setup, a plan to introduce the UCC was proposed, and a lot of debate was also done on it. Initially, the draft had UCC in Article 35. During the discussion, a member of the 1948 Constituent Assembly, Mohammad Ismail, asked to add a proviso to Article 35, which says that "*any group section or community of people shall not be obliged to give up its own personal law in case it has such a law"*[6]. Mahboob Ali Beg emphasized that "*the civil code spoken of in Article 35did not include family law and inheritance but since some people have doubts about it, it should be made clear by a proviso to assure that the civil code would cover the transfer of property, contract, etc., but not matters regulated by personal laws"*[7]. K.M. Munshi expressed his views stating "*that even in the absence of Article 35 it would be lawful for the parliament to enact a UCC, since the article guaranteeing religious freedom gave to state power to regulate secular activities associated with religion"*[8]. A.K. Ayer supported K.M. Munshi. Dr. B.R. Ambedkar, although stated that *"he did not accept the*

[6] Lok Sabha Secretariat New Delhi, 'Constituent Assembly Debates Official Report' [1948] 7 PDL <https://eparlib.nic.in/bitstream/ 123456789/763009/ 1/cad_23-11-1948.pdf> accessed 30 September, 2023
[7] Ibid 543.
[8] Ibid 547.

amendments and defended the right of the state to interfere in the personal laws of different communities"[9].

Some member said that UCC should be a part of Fundamental Rights and some opposed it and then finally with majority of 5:4 it was decided that the Uniform Civil Code will be kept under Directive Principles of State Policies and when the constitution was enacted then UCC was covered under Article 44.

IN WHAT AREAS DO WE NEED UNIFORMITY?

The Indian personal laws are very different in nature. Let's consider the IPC's Section 494, which states that "while having a living spouse, if someone does a second marriage, then it is a crime"[10], but there is only one exception to this uniform law: if a person belongs to a Muslim community, he can have four marriages. That's an exception to our penal laws. The progressive world is monogamous, so uniformity will also come in that line. After this, in Hindu law, irretrievable breakdown of marriage is not a valid ground for divorce. Next, Hindu women inherit an equal share of a property, whereas Muslim women, compared to male relatives, can inherit less than half of the share. Similarly, Muslim women cannot claim maintenance for a long time like other Indian women.

IMPORTANT CASE LAWS - To find out who is supreme in Personal law and Constitutional law and whether the Supreme

[9] ibid550.
[10] Indian Penal Code 1860 s 494

Court can interfere in Personal Laws, we have to look into some important cases of Personal law.

- **STATE OF BOMBAY V. NARASUAPPA 1952**[11]

  In this case, the court convicted a Hindu man and punished him for bigamy. The Bombay Prevention of Bigamous Hindu Marriages Act, which made bigamy among Hindus a crime, was challenged by the petitioner. The court upheld Muslim polygamy and stressed that there is legislative, not judicial, control over personal laws by concluding that personal laws are beyond the purview of Article 13 of the Indian Constitution.

- **MOHD AHMED KHAN V. SHAH BANO BEGUM1985**[12]

  The Supreme Court's five judges' bench clearly stated that "even Muslim women are entitled to protection under Section 125 of the CRPC". Along with this, it was also stated by commenting on Article 44 that "if a uniform civil code comes, then it will work for national integration and will provide better solutions in times of conflicting ideologies". This was known as a landmark judgement. However, this judgement was overturned by the acting government of that time by introducing the "Muslim Women (Protection of Rights on Divorce) Act 1986".

- **SARLAMUDGAL V. UNION OF INDIA 1995**[13]

  In his ruling, Justice R. M. Sahai argued in favour of the adoption of a uniform civil code, stating that "religious freedom lies at the very heart of our society. The social fabric is shaken

[11] State of Bombay v. Narasu Appa Mali [1952] AIR BOM 84
[12] Mohd. Ahmed Khan v. Shah Bano Begum and Ors [1985] AIR SC 945
[13] Sarla Mudgal v. Union of India [1995] AIR SC 1531

by even the smallest departure. However, religious practices that violate human rights and dignity and stifle fundamental civil and material freedoms are not acts of autonomy but rather oppression. Therefore, the protection of the oppressed as well as the encouragement of national solidarity and unity require a single law".

- **SHAYARABANO V. UOI 2017**[14]

  This case is also known as the Triple Talaq Judgement, in which the apex court, with a majority of 3:2, declared "Talaq e biddat" unconstitutional because it is not an essential religious practice.

  There were numerous PILs filed in the apex court to intervene and give certain directions to the concerned body to implement the UCC. However, the Hon'ble Supreme Court in March 2023 dismissed all the petitions that were demanding a Uniform Civil Code (UCC), stating that this court is the wrong forum to enact the UCC and that only parliament can make a law on this.

LAW COMMISSION STAND'S ON UCC - India's 22nd Law Commission, which is headed by Justice Ritu Raj Awasthi, had asked for views and ideas from public and religious organizations on the UCC. The previous 21st Law Commission, headed by Justice Balbir Singh Chauhan, did detailed research on UCC and also asked for views from stakeholders, and in 2018, he presented the recommendations. Then, in that report, the Law Commission

[14]Shayara Bano v. Union of India [2017] AIR 9 SSC 1

suggested that, at this stage of time, UCC is neither necessary nor desirable. This previous commission highlighted many practical difficulties, like "in Hindu law, marriage is considered a holy sacrament, and in Christian law, divorce is still stigmatized. In Muslim law, marriage is a civil contract, and in Parsi's law, registration of a marriage is a very important ritual.

"LEGAL AMENDMENTS PROPOSED FOR FAMILY LAWS, REGARDLESS OF RELIGION BY LAW COMMISSION"[15]

Some of the important legal amendments which was proposed by Law Commission.

- **COMPULSORY REGISTRATION OF MARRIAGES**
  A modification to the "Registration of Births and Deaths Act" may be used to implement this. This is consistent with both the "Compulsory Registration of Marriages' Bill (2017)" and the Commission's earlier proposal in its 270th Report.
- **A UNIFORM AGE OF CONSENT FOR MARRIAGE**
  According to the "Indian Majority Act, 1875", the legal age for marriage should be 18, which applies to both males and women. Currently, the legislation states that a woman can get married when she turns 18, but a male must be 21. A law like this would not only violate the Indian Majority Act but also

[15] Government of India, 'Law Commission of India Consultation Paper on Reform of Family Laws' [2018] PIB Archive <https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf> accessed 30 September 2023

reinforce the idea that wives should always be younger than their husbands, according to the Commission.

- **IRRETRIEVABLE BREAKDOWN OF MARRIAGE AS A GROUND FOR DIVORCE**

  When there is no chance for the couple to reconcile, it has been suggested that the irretrievable breakup of a marriage be accepted as a legal basis for divorce. This would also help stop bogus accusations of cruelty and other wrongdoing levelled at a spouse in an effort to speed up the divorce procedure.

- **COMMUNITY OF PROPERTY UPON MARRIAGE AND DIVORCE**

  Property obtained after marriage should be equally available to both spouses. This does not imply that the division of assets at the end of the relationship is exactly equal, and the court's discretion in these matters should be preserved. However, the Commission has advised that such a community of self-acquired property must also be compatible with the option of a no-fault divorce.

POTENTIAL'S AND PITFALL'S OF UNIFORM CIVIL CODE(UCC)

POTENTIAL'S

- **Gender Parity and Women's Rights:** Gender differences in personal law may be addressed by the uniform civil code, which would also guarantee women's equal rights and opportunities. It may contribute to the eradication of

discriminatory practices that are present in some religious laws and provide women with broader legal rights.

- **Equality and Secularism:** The promotion of equality and secularism within a varied community is UCC's main asset. It guarantees that all citizens, regardless of their religious affiliations, are treated equally under the law. This promotes a feeling of national togetherness and oneness.
- **Streamlined Legal System:** A UCC would result in a streamlined and simplified legal system. One set of civil laws would make the legal system simpler and more effective for citizens by removing uncertainty and inconsistencies brought on by several personal laws.
- **National Integration:** By bridging religious and cultural divides, UCC can play a significant part in promoting national integration. It supports the notion of "One Nation, One Law," encouraging a sense of identification and affiliation among many communities.
- **Social Reforms:** A UCC can pave the way for social reforms in a number of sectors, including marriage, divorce, inheritance, and property rights, by swapping out antiquated and regressive practices with contemporary and progressive rules.

PITFALL'S

- **Cultural and Religious Sensitivities:** The implementation of a UCC, according to critics, might violate minority communities' rights to freedom of religion and culture. It might be interpreted as imposing the cultural standards of the majority on minority groups, resulting in social discontent and tensions.

- **Political Opposition:** Political parties may use the UCC debate for their own purposes, polarizing the public and impeding the process of reaching a consensus necessary to pass such a big legal reform.
- **Complex Implementation:** It can be difficult to create a uniform civil code in India because of the country's extreme variety. To take into account different viewpoints, extensive thought and interaction with numerous stakeholders will be required.
- **Resistance to Change:** The adoption of a UCC may be hampered by opposition from some quarters due to religious conservatism in societies that are frequently averse to change.

SUGGESTIONS AND OPINIONS - All of these problems can be solved without bringing UCC or passing any law. We need to understand that the state has the power of the whole universe to remove any social injustice. For instance, The Hindu Code Bill decriminalized polygamy, divorce, inheritance, and guardianship while allowing mixed marriages. The Bill intended to provide all women more freedom to negotiate, conduct business, confront, and oppose Brahminical patriarchal norms. Lower caste males had the capacity to challenge both the gendered caste boundaries and the practice of polygamy among the privileged caste men. When this Hindu code bill was brought, the state, using all of its powers, removed all the problematic parts. Then, to modify the Muslim law, why is UCC so especially needed? For anyone, national interest should come at the very top. The basic human rights of citizens are very important. The dignity of an individual is very

important. If we even think of bringing UCC, then the desired result can also be achieved. The state should filter all personal laws according to today's day and age, and all those practices that are derogatory, discriminatory, and against social justice should be declared unconstitutional.

We have to understand that uniformity does not mean that everyone will have to take seven rounds of *phera* to get married. Uniformity in the sense of marriage can mean that, from now on, everyone will have to register their marriage. And we already have a lot of uniform laws, like the Constitution and the contract.

When the implementation of Article 14 of the Indian Constitution, which talks about equality, did not let the people feel that their diversity was in danger, the concept of equal pay for equal work did not let the people feel that their diversity was in danger. So, why does it seem to be for UCC? Every individual should admit that the constitution is supreme and personal laws must be modified in accordance with it. No constitution will remain if we decide to amend it in accordance with every personal law. Understanding how a law is being presented is also crucial. How legislation is introduced is just as significant as how vital it is to make a law.

CONCLUSION - In India's legal system, the Uniform Civil Code (UCC) is still a challenging and delicate subject. The UCC promotes gender equality, equality before the law, and secularism by establishing consistent personal laws across all religious communities. However, it confronts several difficulties, including

the necessity for substantial stakeholder participation, political opposition, and cultural and religious sensitivities. Although the concept of a UCC has been discussed since the Indian Constitution was created, its application is still a hotly debated topic. Some contend that the removal of discriminatory practices while maintaining cultural and religious diversity calls for the modification of current personal laws. While addressing these concerns, it is critical to give human rights and dignity top priority. In the end, the controversy surrounding the UCC reflects India's continual search for a legal system that strikes a balance between equality and diversity.

FAIR DEALING AND FAIR USE OF COPYRIGHT WORKS: A CRITICAL ANALYSIS

-Amrutha Bawgi*[1]

ABSTRACT

During exams, we share notes with our fellow students through WhatsApp or scan pages from law textbooks at the library. Do you think we are infringing on the copyright of that work?

In India, fair dealing is a more rigid concept compared to fair use. Fair dealing encompasses specific purposes such as research, private study, criticism, review, and news reporting. However, the scope of fair dealing in India is narrower compared to fair use in other jurisdictions. Fair use, as employed in countries like the United States, allows for more flexibility in using copyrighted material for purposes such as education, commentary, and parody.

This article attempts to understand how the concept of fair dealing and fair use, how is it protected under the current copyright law in India and what are the limitations and loopholes of this doctrine. This article also looks into countries which have shifted from fair dealing to fair use and in the last part of this article I have listed on few suggestions.

To address the challenges and loopholes in current copyright laws, policymakers need to consider revising and updating these regulations. Clearer definitions of fair dealing, along with a more comprehensive fair use doctrine, could better accommodate the

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changing landscape of information sharing in the digital age. Additionally, educational institutions and students should be made aware of these legal nuances to ensure responsible and legal use of copyrighted material during exam preparations.

Keywords: *Fair dealing, Fair use, Copyright, Infringement.*

INTRODUCTION

Copyright is a type of safeguard for intellectual property that is bestowed upon those who have created original works of authorship, such as literary works, computer programs, compilations, and databases, in any form, including those that are machine-readable. Copyright does not protect ideas but rather provides a collection of exclusive privileges, as defined by Section 14[2] of the Copyright Act 1957[3], to the copyright owner. These rights may only be exercised by the owner or by others who have been appropriately authorised. The rights conferred by copyright include the right to adapt, reproduce, publish, translate, and communicate with the public, among others.

The purpose of this article is to offer a critical perspective on the doctrine of fair dealing and shed light on its inherent limitations and deficiencies. By thoroughly exploring the existing loopholes in fair dealing and engaging in a discussion about the necessity for reform, the article seeks to make a valuable contribution to the ongoing dialogue surrounding ways to enhance the doctrine.

[2] Section 14 of the Copyright Act,1957
[3] The Copyright Act,1957

Ultimately, the goal is to ensure that fair dealing adequately balances the rights of copyright holders with the broader interests of society.

The significance of the fair dealing doctrine lies in its objective to strike a balance between the rights of copyright owners and the broader interests of society. Through permitting certain uses of copyrighted works without infringing on the rights of the copyright owner, fair dealing plays a pivotal role in fostering creativity, knowledge, and technological advancements within society. It establishes a legal framework that enables individuals to utilise copyrighted works in specific ways without violating copyright infringement laws while simultaneously safeguarding the rights of copyright owners. This equilibrium is essential for encouraging the generation and dissemination of new works, while ensuring that creators receive fair compensation for their contributions.

WHAT ARE THE TERMS 'FAIR USE' AND 'FAIR DEALING' - It is important to understand the concept of copyright before engaging in fair use and dealing. In simple terms, copyright is given to works mentioned under the Copyright Act in order to protect the rights of copyright holders; in cases of violation, it can lead to civil and criminal punishments as specified in the act.

Fair use is a U.S. legal doctrine, while fair dealing is a common law doctrine that is recognised in many countries around the world, including India and other Commonwealth countries. The term fair dealing is neither defined nor mentioned anywhere in the act, but

Section 52[4] of the act lists out exemptions from infringement under certain circumstances. It is important to recognise that copyright law is not absolute and does have certain limitations.

Fair dealing is considered an exception to copyright infringement only if it meets the specific categories outlined in the law. This means that copying a work for any other purpose, even if unintentional, cannot be considered fair dealing. On the other hand, in the US, fair use serves as a restriction on the exclusive rights granted to authors under copyright law.

PURPOSE OF FAIR DEALING - Fair dealing serves multiple purposes that collectively contribute to a balanced copyright ecosystem. Firstly, it strives to strike a harmonious equilibrium between the rights of copyright owners and the broader interests of society. By allowing limited uses of copyrighted works, fair dealing facilitates creativity, knowledge dissemination, and technological advancements. It recognises the importance of promoting creativity by enabling uses such as criticism, review, and parody. Additionally, fair dealing ensures access to knowledge by permitting educational and research uses of copyrighted materials. It upholds freedom of expression by safeguarding the rights of individuals to quote and report on copyrighted works. The doctrine also plays a significant role in cultural preservation, allowing for archival and historical uses of copyrighted content. Furthermore, fair dealing fosters technological innovation by enabling research, development, and transformative uses. It

[4] Section 52 of the Copyright Act,1957

supports educational activities by permitting the use of copyrighted works for teaching, study, and examination purposes. Moreover, fair dealing serves the public interest as it allows for news reporting, public commentary, and discussions on public policy. It emphasises accessibility by enabling the creation of formats accessible to individuals with disabilities. Ultimately, fair dealing contributes to social and economic progress by finding a balance between the rights of copyright holders and the benefits that arise from the widespread dissemination and utilisation of copyrighted works in society.

In the case[5] of *Hubbard v. Vosper*, Lord Denning specifically pointed out that

"*It is impossible to define what is "fair dealing". It must be a question of degree. You must consider the number and extent of the quotations and extracts. Are they altogether too many and too long to be fair? Then you must consider the use made of them…. Other considerations may come to mind also. But, after all is said and done, it must be a matter of impression.*"

In the case of *Wiley Eastern Ltd. v. Indian Institute Of Management (1995*),[6] the Delhi High Court said that the fundamental objective of Section 52 is to safeguard the right to freedom of expression under Article 19(1)[7] of the Constitution of India by ensuring the

[5]https://uniset.ca/other/cs3/vosper.html
[6]*Wiley Eastern Ltd. v. Indian Institute of Management (1995*),
[7]Article 19 of the Constitution of India

protection of research, private study, criticism or review, and reporting of current events.

It has been laid down, particularly in the case of ***Blackwood and Sons Ltd. and Others v AN Parasuraman and Ors. (1958)***[8], that the Indian law regarding fair dealing is considered inflexible and traditional since it includes a comprehensive list of exceptions under Section 52. Any use of copyrighted material outside of the boundaries of this list could result in a violation of copyright law.

In the case ***Civic Chandran v. Ammini Amma*** *(1997)*[9], the Kerala High Court held that it could be considered appropriate to prohibit the reproduction of the entire or a significant portion of a work as it is, and only the use of excerpts or quotes from the work would be allowed under fair dealing. The Court also gave a few factors to determine if the reproduction constituted infringement. These are

1. "*The quantum and value of the matter taken in relation to the comments or criticism;*
2. *The purpose for which it is taken;*
3. *And the likelihood of competition between the two works*"

EXISTING LOOPHOLES

LIMITATIONS AND UNCERTAINTY - Fair dealing faces significant limitations and ambiguities due to the absence of well-defined boundaries and specific guidelines that outline what qualifies as fair use. The criteria used to determine fair dealing are

[8] *Blackwood and Sons Ltd. and Others v AN Parasuraman and Ors. (1958)*
[9] *Civic Chandran v. Ammini Amma*

frequently subject to interpretation, resulting in a lack of clarity and inconsistency in how they are applied. This ambiguity can lead to confusion and potential legal conflicts, as different parties may have contrasting perspectives on what constitutes fair use in specific situations. The lack of precise parameters and clear-cut rules within fair dealing leaves room for differing interpretations, making it challenging for individuals and organisations to determine the legality of their actions in relation to the doctrine. As a consequence, there is a need for greater clarity and more comprehensive guidelines to minimise uncertainties and promote the consistent and equitable application of fair dealing principles.

LACK OF STATUTORY FRAMEWORK - The lack of a statutory framework for fair dealing in certain jurisdictions poses a significant challenge. Instead of being clearly defined in legislative law, fair dealing is often established through judicial interpretation. This absence of a comprehensive legislative framework can lead to divergent interpretations and inconsistent applications of fair dealing principles among different cases and jurisdictions. Because fair dealing is subject to varying judicial decisions, its scope and application can vary, making it difficult for individuals and organisations to navigate and understand their rights and obligations when using copyrighted materials. This lack of statutory clarity can create uncertainty and confusion, hindering the development of consistent standards for fair dealing. To address this issue, there is a need for legislative reforms that establish clear guidelines and criteria for fair dealing, providing a more

predictable and harmonised framework for copyright users and holders alike.

SUBJECTIVITY - The subjective nature of fair dealing assessments presents a significant limitation in the doctrine. Determining whether a specific use qualifies as fair dealing involves subjective judgements, which can vary depending on individual perspectives and interpretations. This subjectivity introduces a level of uncertainty and inconsistency in the application of fair-dealing principles. Different individuals or organisations may have differing opinions on what constitutes fair use, making it challenging for copyright users to assess the legality of their actions. The lack of objective criteria or clear guidelines further compounds the problem, leaving room for conflicting interpretations and potential legal disputes. The subjective nature of fair dealing creates a barrier to consistent and predictable application, undermining the goal of providing a balanced framework that respects both the rights of copyright holders and the interests of users. To address this limitation, there is a need for clearer standards and guidelines to minimise subjectivity and promote greater certainty in determining the boundaries of fair dealing.

LEGISLATIVE INTENT - Indian copyright law is characterised by a more rigid and less flexible approach compared to the open-ended concept of fair use. Fair dealing in India provides protection for only a limited number of specific uses, including news reporting, criticism, and private study, with the requirement that

these uses are non-commercial in nature. It is important to note that if a purpose is not explicitly mentioned in the Copyright, Designs, and Patents Act of 1988, it is not afforded protection under fair dealing.

However, when we examine the legislative intent behind the enforcement of this provision, we find that it aims to strike a balance between the rights of copyright holders and the public while also fostering scientific growth and the spread of information for research, knowledge advancement, and creativity. In this context, fair dealing, as a conventional, rigid, and limiting concept, may fail to fully align with the intended purpose.

AMBIGUITIES IN THE SCOPE OF QUOTATIONS - The limitations and ambiguities of fair dealing, as observed in Section 52 of the Act, contribute to the challenges faced in its application. The provision lacks clarity, narrows the criteria, and provides a vague and ambiguous list of exceptions. One area of ambiguity is the use of quotes from copyrighted works. While quotations are essential for encouraging critical analysis, technological advancements, and scientific improvements, the extent to which they are permissible under fair dealing remains unclear. The concept fails to clearly define what constitutes a "reasonable" or "proportionate" use of a quotation. As a result, individuals and enterprises may find it challenging to determine whether their use of a quotation falls within the exception or exceeds its limits.

Moreover, fair dealing's protection is limited to the purposes of criticism or review, further restricting its scope. This narrow focus overlooks other potential situations where fair use could be applicable. In the case of *Hubbard v. Vosper*, Lord Denning offered some guidance by considering factors such as the length of quotations, the purpose of their use, and the proportionality between extracts and comments. However, such considerations are not explicitly defined in the legislation, leading to uncertainty for copyright users.

EXTENT OF PERSONAL OR EDUCATIONAL PURPOSE - The Indian Copyright Act provides an exception for the use of works for personal or educational purposes. However, it does not specify the extent, quantity, or quantum of such usage. In contrast, the United States follows the fair use doctrine, which permits the reproduction of up to 10 percent of a copyrighted work, making it legally acceptable. Similarly, in other countries that are members of the Berne Convention, such as Canada, the specific percentage is not explicitly defined but rather depends on the situation. However, in the absence of clear guidelines in Indian copyright law, it becomes challenging to determine the permissible limits of reproduction for personal or educational use.

LIMITATION IN PROTECTING PARODY - Fair dealing restrictions allow for specific uses of copyrighted material, such as study, criticism, reviews, and news reporting. However, these provisions may not cover all types of parody. Political satire or pop

culture parodies, which are often created for amusement, may not receive sufficient protection under fair dealing.

The lack of specific guidelines for the fair use of copyrighted material in the context of parody poses challenges. Fair dealing falls short in fully safeguarding parodies due to the absence of clear rules. This can lead to uncertainty and confusion for creators who may be hesitant to use copyrighted content in their parodies due to the fear of potential legal consequences.

CONSIDERATIONS REGARDING INTERNET - The internet's capacity to facilitate creativity and the dissemination of information aligns with the goals of copyright laws. However, determining fair use in the online realm becomes complicated due to the ease of sharing and accessing content. Additionally, the global nature of the internet presents challenges in achieving a consistent approach to fair dealing, as different countries may have varying interpretations of what constitutes infringement. Addressing these challenges requires international cooperation and the development of adaptable frameworks. Balancing access to information and the rights of copyright holders necessitates ongoing dialogue among stakeholders.

TREATMENT OF ORPHAN WORKS - Orphan works are copyrighted works for which no owner can be located. Fair dealing provisions may not protect orphan works as they are not covered under Section 52 of the Act. This creates difficulties in determining fair uses of orphan works and balancing the interests of creators and users. Without a clear mechanism to compensate copyright

holders of orphan works, achieving fairness becomes challenging. Efforts to address this issue through legislation and initiatives are necessary to establish a framework that allows for the use of orphan works while ensuring proper acknowledgment and compensation for creators.

DISCRETIONARY POWER - Since statutory definitions or regulations defining how fairness is to be assessed are typically absent from fair dealing provisions, the proper method for determining the fairness of using the protected works remains with the courts.

BALANCING RIGHTS: COPYRIGHT HOLDERS VS. USERS - One of the challenges of fair dealing is balancing the rights of copyright owners and users. Fair dealing aims to allow certain uses of copyrighted works without infringing on the rights of the copyright owner, but it can be difficult to strike a balance that effectively protects the rights of both parties. This challenge highlights the need for ongoing discussion and debate on how to improve the fair dealing doctrine to ensure that it effectively balances the interests of copyright owners and society.

HOW CANADA SHIFTED FROM FAIR DEALING TO FAIR USE - With Bill C-11,[10] Canada added education, parody, and satire to the current list of research, private study, news reporting, criticism, and review. If the purposes on the list were interpreted narrowly, they would have been less useful. But because the court

[10]Bill C-11,

(copyright pentalogy) has taken a broad approach to interpreting them, they are more likely to apply to a wider range of activities. This means that the existing purposes can now cover more things than before. This list has many purposes and can cover a wide range of activities. The Court's approach to interpreting these purposes is broad, which means that more activities are likely to fall under them. For example, even informal or exploratory research can count as fair use. This includes consumer research and personal interests, so even commercial activities can fall under fair use for research. This makes it easier for businesses to rely on fair use for research purposes.

The Court has allowed for the copying purposes of not only the person who actually copies the material but also the person who intends to receive it.

Canada still follows a fair dealing model according to the law, but its approach has similarities to a fair use system. The two-step analysis used in fair dealing, which involves examining the purpose of the use and then analysing its fairness, closely resembles the open-ended fair use system. This is because most uses can meet the purpose standard and move on to the second step, which involves looking at six different factors to determine if the use is fair.

RECOMMENDATIONS

Clarity: The Act lacks clarity and hence must provide clear understanding as to what constitutes fair dealing. It must be updated periodically, as this society is constantly changing.

1. Scope of fair dealing: The current scope of fair dealing in India is limited to certain purposes such as research, criticism, and news reporting. The scope should be expanded to include transformative uses and other purposes that promote creativity and innovation.

2. Additional legal and policy measures, such as extended collective licensing or orphan works registries, may be needed to provide greater certainty and protection for orphan works.

3. The provisions in the Copyright Act are very clear in granting authors and owners absolute rights over their protected works, but they fail to consider the public's interest in accessing information contained in those works. Despite having lengthy provisions in the Copyright Act, the exceptions provided are insufficient and limited when compared to international copyright standards.

4. India, like Canada, can follow a hybrid approach to make sure it strikes a balance between the protection of the rights of copyright holders and the users of copyrighted content.

CONCLUSION

Undoubtedly, the doctrine of fair dealing is an integral part of the copyright act, and it is especially helpful to society in various ways, be it for students to study for examinations, for teachers to create curriculum, or for anyone engaged in research for the purpose of advancement in science, technology, etc.

But it is unfortunate that India follows fair dealing instead of fair use, which is less restrictive, more flexible, and more beneficial. It is understandable that India has followed in the footsteps of the U.K. due to the history between the countries, but in the 21st century, still following the same provisions blindly is pure ignorance.

India has evolved as a country in various ways, be it in science, technology, medicine, trade, etc., but it still follows a law that was adopted way back in the past. With the changing times, it is high time to consider the loopholes in this particular provision and put efforts into updating it. It must take inspiration from countries like Canada, which has effectively transitioned into a fair use provision over time, and also from countries like Singapore and Thailand, which follow both doctrines.

India must act as soon as possible to make this provision more flexible and strike a balance between the copyright holders and the users.

CONCEPTS OF GLOBALIZATION

-Akarsha Bajpai[1]

ABSTRACT

The expansion of transnational legal discourses and institutions on a global scale along the parameters of extent, intensity, rapidity, and influence is known as "globalization of law[2]." We suggest that a theory of the spread of law throughout the world needs to include a minimum of four elements: actors, power, mechanisms, and structures and are-nas, contrasting four views of law and globalization: law and economic growth, postcolonial globalism, world systems, and world polity—shows that there is some variation in how these issues are seen as having been resolved and that there are explanation gaps, but there may also be complementary developments in both the resolution of these issues and the explanatory factors. Several areas of legal research, including (a)the expansion of political liberalism and constitutionalism, (b) the application of the rule of law, (c) crimes against humanity and genocide, and (d) the growth and regulation of international markets, show that globalization is controversial in different ways. We contend that the likelihood of explicit contestation and conflict over global customs and norms are from the main organizations and ideologies of the community, the less significant they are. Where, how, and when international agreements and regulations are communicated and implemented,

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[2] "Globalization of Law and Practices," n.d.

as well as how local and international accords are established, will all be useful areas of research in the future.

Keywords: *Globalization, law, political, liberalism, international markets, crimes, genocide, polity.*

INTRODUCTION

The formation of law is significantly influenced by globalization, although being sometimes unnoticed and taken for granted. Economic globalization[3] cannot be understood in isolation from international business law and the market structures on which it increasingly depends. Without taking into consideration the intellectual property rights ingrained in international governance structures and laws, cultural globalization cannot be understood. Without examining the effects of international criminal[4] and human rights legislation[5] or international tribunals[6], it is impossible to understand how protections for vulnerable groups have become more universal. Without taking constitutionalism into account, global disputes over the establishment of democratic institutions and states are meaningless. Despite the fact that law is pervasive it has an unclear position in the sociology of globalization, just as

[3] Shangquan, G. (2000). Economic Globalization: Trends, Risks and Risk Prevention. In United Nations. Retrieved from https://www.un.org/en/development/desa/policy/cdp/cdp_background_papers/bp2000_1.pdf

[4] Freeland S, "International Criminal Justice in the Asia-Pacific Region: The Role of the International Criminal Court Treaty Regime" (2013) 11 Journal of International Criminal Justice 1029 <http://dx.doi.org/10.1093/jicj/mqt068>

[5] Sari AR and Alaslan A., "Protecting Civil and Political Rights: Comparative Analysis of International Human Rights Mechanisms" (2023) 1 The Easta Journal Law and Human Rights 176 <http://dx.doi.org/10.58812/eslhr.v1i03.94>

[6] Goodrich LM, "The UN Security Council" (1958) 12 International Organization 273 <http://dx.doi.org/10.1017/s0020818300031088>

globalization has not in the actual reality of the phenomenon been without controversy. The sociology of law has given it the proper attention. Except for world polity theory, most academic writings on the subject of globalization steer clear of the subject of law. Interdisciplinary socio-legal studies contain sporadic pockets of research on the law, but most sociology of law still has a nation-state as its primary dividing line.

The law of our time might alternatively be the title of the chapter on globalization and law if globalization is the dominant paradigm of our day. Few, if any, legal disciplines are unaffected by globalization, at least in theory. Of fact, in practice, the effects of globalization on legal theory have been less significant. That is true for several reasons:

- One reason is that, despite (or maybe precisely because of) its widespread acceptance as the new social paradigm, globalization has remained a relatively nebulous word in popular discourse. The fundamental discussions around globalization in the 1990s more or less died down, and thus far, there hasn't been a significant paradigm change in how people have responded to it. Instead, there has been more disagreement without a clear consensus.
- A second reason is that, up until now, legal philosophy has not responded to globalization by adopting a new paradigm, but rather by making increasingly ineffective attempts to modify the methodological nationalism that has served as its paradigm for the past 200 years or so. A large portion of social theory

still fits inside this state paradigm, and the same is still true of it. True paradigm shifts are still not a result of globalization.

- Unexpectedly little interdisciplinary exists in the fields of law and globalization, which is a third reason why globalization presents interdisciplinary issues. One the one hand, many conceptual and theoretical explanations of globalization minimize or disregards the role of law as a significant influence (apart from the odd mention of international law). Politics, culture, and economy are the three main facets of globalization that are generally recognized. There is no law in the words. On the other hand, in legal thought, globalization is frequently either completely absent (where discussions are solely doctrinal) or occurs as a straightforward notion of internationalization that somehow affects the law. Conversely, up until recently, legal theory and doctrine frequently used oversimplified ideas of globalization. This implies the purpose of this chapter. I introduce three distinct concepts—globalization as actuality, as theory, and as ideology—in the second portion of this essay in an effort to define the idea. Like the rest of the chapter, this debate is unavoidably abstract in two respects.
- First, it avoids being too specific about the specific areas where globalization and the law intersect, such family law, international commercial law, or human rights. These regions are merely used as illustrations. This is due to the fact that globalization is not restricted to particular legal disciplines; rather, it affects all legal systems globally.

- The chapter doesn't explicitly reference any theories, which is a second flaw. One theory—or even a collection of theories—does not adequately describe globalization. Instead, it is the new paradigm that underlies every theory of the state and of law that is currently being debated. I discuss the aspects of globalization that all theories share rather than providing distinct perspectives.
- I go into more detail on the state's transformation in the third section, which is what I believe to be globalization's central subject. Our thought processes in social theory and legal theory have long been implicitly framed by the state. If globalization succeeds in displacing this focus, as I contend, then the state must be the focal point of any discussion of the changes it brings. The three basic components of the state—territorial, civic, and governmental—are thus the focus of my analysis, which demonstrates how each is changing.
- The final section introduces transnational law, a philosophy of globalization and the law. Some methodological points need to be emphasized since this may appear to be a legal, not a social theory. In this chapter, social and legal theory are not rigidly maintained apart, even though I start by describing globalization and subsequently concentrate more on the law. One of the chapter's primary theses is accomplished through this combination. I contend that globalization is not a trend that enters the legal system from outside. Instead, globalization and law both change one another; modern globalization is as much a result of a law as it is a law that it impacts. Law must be a

part of any legitimate theory of globalization, and the same is true for any legitimate theory of the law. Additionally, just as globalization challenges the line separating the state from society, so too does it do so for the line separating social theory from legal theory. Social theory must inevitably affect legal theories, but it must also transform legal theories into social theories.

GLOBALIZATION OF CONTRACT AND COMMERCIAL LAW

The phrase "Globalization of law" has several different meanings. One may see it as a natural consequence of the globalization of markets and the business tactics employed by multinational corporations to conduct business in such markets. There has been some development toward an international contract and commercial law that is generally consistent. One way that contracts are known to operate is as a type of private legal system. By such, we mean that a contract might be viewed as a set of rules that apply to the parties involved. A set of rules is established by the two or more contractual parties to guide their interactions in compliance with the terms of their agreement. Even in international trade, agreements are made between parties, and they invariably indicate that any disagreements arising from or related to the agreement would be exclusively heard by the courts of one or more of those country states. They can choose whose law will apply to resolve any disputes they may have in their agreement as well as which law will regulate it. Expanding body of international business law in the

interconnected and international economy of today, harmonization is becoming more and more crucial. Most governments today recognize the need for a uniform, predictable, and transparent legal framework to encourage foreign investment and trade with other countries. As a consequence, the majority of nations' courts and legal systems recognize and respect the rulings of the other nations. Consequently, there's a slight movement in the direction of using contracts to create international corporate law.

Because of their economic status, the United States and a number of European countries have a major impact on the global legal globalization process. That seems to be the obvious justification since they have a major influence on global trade and considerably contribute to foreign investments in other parts of the world. Aside with American economic strength, another element contributing to this is the openness of common law to contract and other commercial law. There is a widely held opinion in Europe that London is the primary destination for European Community legal business due to the fact that English attorneys are more adept than civil law practitioners at leveraging legal innovation to promote emerging and new international commercial links. For whatever reason, it is now possible to assert that American business. The law has developed into a type of global jus commune that is beginning to be adopted into case law and even the laws of many other nations, and is either explicitly or implicitly integrated into international contracts.

PUBLIC LAW GLOBALIZATION

Some parallels in international law can be attributed to a widespread and seemingly growing public mistrust of the authority. The government has engaged in a number of welfare initiatives and increased its involvement in the business sphere. There is a greater need than ever to hold the government accountable. This opened the door for administrative law, which is today widely acknowledged and utilized by many countries to monitor the government. There are currently a few core ideas that are universally acknowledged as essential for avoiding the government from abusing its authority. The necessity for proper checks on the government has been universally acknowledged by all peoples.

The international community has come to recognize the need for increased public participation and transparency in bureaucratic decision-making. It would seem that the legislation is a useful tool for promoting more involvement and openness. Here, the term "globalization" generally refers to developed nations. The United States saw a virtual administrative law revolution from around 1960 to 1990. Australia and Canada had significant expansion and innovation as well. It is claimed that English administrative law also flourished concurrently. Significant advancements in this subject have even been made in India. The European Community has recently started to feel a strong impulse to enact legislation that would help keep the government in check.

In the global setting, there appear worldwide initiatives to set up checks and balances on governments in order to prevent the population's fundamental rights from being infringed. With congressional backing, American federal courts created a new administrative legal framework in the 1960s, 1970s, and 1980s with the goal of granting interest groups more influence over bureaucracies' decision-making processes and enforcing the requirement that bureaucracies make public all of the information they gather, analyze, and decide upon. Moreover, there was a sharp rise in the judicial oversight of bureaucracies, which came along with the large volumes of new administrative legislation that was produced. The justices now asked that the officials provide a detailed, thorough, and public explanation of what they were doing and do it in a manner that in a way that the judge, who is completely untrained in and ignorant of technology, could comprehend. It is also evident that using the law to accomplish such aims is a topic of interest on a global scale. This idea has quickly caught on all around the world and is now gaining popularity in the UK and India as well. In India, we have precedent-setting instances where the courts have controlled and overseen administrative discretions[7] and quasi-judicial duties[8]. The two maxims of natural justice, *Nemo Debet Esse Judex in Propria Causa and Audi Alterem Partem*, are currently being implemented by courts all over the world as a result of the universal acceptance

[7] "Structuring Administrative Discretion: The Pursuit of Rationality and Responsiveness on JSTOR" <https://www.jstor.org/stable/2110876>

[8] "Quasi-Judicial Functions – Administrative Laws" <https://administrativelaw.uslegal.com/administrative-agencies/quasi-judicial-functions/>

of natural justice's principles. These two have come to be widely recognized as the foundational elements of public law by all nations. It is indicated by these two maxims that no one is the judge of his or her own case and that everyone has the opportunity to be heard before a judgment is made that prejudices them.

PROTECTIVE LAW GLOBALIZATION

A global movement founded on a mistrust of power blocs includes the constitutional rights movement as one of its facets. The person is considered as needing protection from all of the more powerful forces that pose a threat to him, not only from governmental ones. One tool for providing such protection is law. As a result, while discussing globalization, we leave the area of constitutional law and go into the areas of torts, product standards, consumer protection, and workplace health and safety. Of course, human damage, fraud, and subpar goods have always been addressed by the majority of legal systems worldwide. But as time went on, the "caveat emptor" principle was supplanted, and rules for protecting investors and consumers got stricter e.g., there has been active innovation in securities and corporate governance legislation in the areas of company organization and finance. In this context, "globalization" refers to an expansion of legal safeguards against the negative impacts of scientific, technological, and social innovations that are too advanced, remote, or potent for individuals to effectively defend themselves. The most recent example of this movement is the huge upsurge in environmental protection legislation. While this movement is largely motivated by concerns

about nature, it tends to gain the most momentum when these concerns are joined with allegations of alleged harm to people from pollution. There are many other global patterns present here, though. With the major cases involving CNG buses and the relocation of the Taj Mahal, India has seen a surge in tort litigation. Now that environmental awareness is widespread, several other countries have also begun enacting active laws in this area. Rapid legal advancements for enhanced investor protection have occurred in the securities industry, including the prohibition on insider trading and committee reports on corporate governance. Product standards and other consumer protection laws have flooded the world at an astonishing rate, yet not only do advances occur in some countries considerably more quickly than in others, but there is also a huge range in the actual standards and laws that have been implemented.

In environmental law, perhaps, globalization is most obvious and dramatic. Parallel developments in national environmental law as well as initiatives for multi-national and/or international environmental protection law accelerated as it became more evident that the externalities of environmental degradation crossed national boundaries and that some of them, like ozone depletion, were truly global. Due to the uniformity of industrial technologies that damage the environment on a worldwide scale, national environmental regulations also exhibit a significant amount of substantive consistency.

INDIA'S TERROR OF FUNDAMENTAL RIGHTS AND GLOBALIZATION

The Supreme Court's approach to the interpretation of basic rights and the application of rights-based scrutiny profoundly evolved throughout India's significant economic upheaval in the 1990s and early 2000s. The Court redefined and decided the scope and meaning of the core fundamental rights contained in Articles 14 (equality before the law)[9], 19 (speech, assembly, and other freedoms)[10], and 21 (life and liberty)[11] of the Indian Constitution in cases involving significant rights-based challenges to economic liberalization, privatization, and development policies in the post-1991 era. In the post-Emergency era, the Court significantly broadened the scope of these rights in order to establish a new arsenal of rights-based frameworks of scrutiny and a new system of public interest litigation intended to address human rights and governance failings. The Court has, however, altered the nature of rights-based examination in the context of globalization policies during the 1990s, and this Part demonstrates how the Court has revised and maybe narrowed the scope of these rights.

Fundamental Rights' Inception in the Post-Emergency Era

The Supreme Court of India began a new phase of activity and broadened the scope of the basic rights outlined in Articles 14, 19

[9] https://www.mea.gov.in/Images/pdf1/Part3.pdf
[10] https://www.mcrhrdi.gov.in/91fc/coursematerial/pcci/Part3.pdf
[11] https://www.mea.gov.in/Images/pdf1/Part3.pdf

and 21 after **Indira Gandhi's Emergency administration**[12] ended in 1977 and the Janata party government was elected in the same year. The Court ruled in **Maneka Gandhi v. Union of India (1978)**[13] that the rights outlined in each of these Articles were interconnected; in following rulings, the Court contended that these rights were fundamental, inalienable elements of the Constitution. When read in conjunction with the rights in Articles 19 and 21, the Indian Supreme Court's interpretation of the equality guarantee in Article 14 reflects the judges' unique normative worldviews with regard to both their institutional role in judicial review of government economic policy as well as their personal normative worldviews, likewise with their wider comprehensions of the appropriate function of government in economic policy. The Court created new, more stringent criteria of rights-based scrutiny as part of its reinterpretation of the reach of these rights provisions. In the historic ruling Maneka Gandhi v. Union of India (1978), the Court overturned its earlier decision in Gopalan by effectively interpreting the phrase "procedure established by law" in Article 21 to include substantive due process. The Court also acknowledged a new standard of non-arbitrariness review based on Articles 14 and 21. The Court started to recognize a variety of basic rights based on both the right to life and liberty and the rights outlined in Article 19 under this new interpretative strategy. In addition, the Court ruled that Articles 19 and 21's rights did not conflict with one another and that denying them was unlawful.

[12] "The Emergency (India)" (encyclopedia.pub, November 15, 2022) <https:// encyclopedia.pub/entry/34578>

[13] https://main.sci.gov.in/judgment/judis/5154.pdf

The Court's decision in Maneka Gandhi fundamentally changed the reach of Article 14's right to equality, which was previously believed to merely guarantee equality and equal treatment under the law. The Court did this by establishing a new notion of non-arbitrariness. In interpreting Article 21's protection of life and liberty in conjunction with Article 14, the Court determined that the processes must be "right and just and fair and not arbitrary, fanciful or oppressive." The Court might now hold government policies and acts that violate basic rights to a greater threshold of scrutiny under this new "non-arbitrariness"[14] review criterion based on Articles 14 and 21. In later cases, such as Ajay Hasia v. Khalid M. Sehravadi,[15] R.D. Shetty v. International Airports Authority[16],and D.S. Nakara v. Union of India,_the Court reaffirmed and applied this non arbitrariness standard and applied a strict rights-based analysis to its review of government policies subject to arbitrariness review.

Justice Review and Fundamental Rights in the Post-Liberalization Era and Beyond the P.V. Narasimha Rao[17] led Congress administration introduced new liberalization initiatives as part of the New Economic Policy at the start of the 1990s.This includes the adoption of deregulation-focused policies, the relaxation of

[14] Sharma R, "The Doctrine of Non-Arbitrariness: - Indian Law Portal" (Indian Law Portal, August 26, 2020) <https://indianlawportal.co.in/the-doctrine-of-non-arbitrariness/>
[15] https://indiankanoon.org/doc/1186368/
[16] https://indiankanoon.org/doc/1281050/
[17] "P.V. Narasimha Rao | India's 9th Prime Minister & Reformist" (Encyclopedia Britannica, October 7, 2023) <https://www.britannica.com/biography/P-V-Narasimha-Rao>

governmental licensing procedures, and a move toward the privatization of state-run businesses. In a series of decisions involving challenges to the privatization of the telecom sector, the privatization and disinvestment of the industrial and mining sector, among other cases, the Supreme Court gave greater clarity in articulating the scope of judicial review under Article 14 and Article 21 after the adoption of the New Economic Policy. The Court affirmed and supported the administrations' economic liberalization measures in the majority of these decisions.

In a series of cases involving challenges to governmental liberalization and privatization, as well as development initiatives, the Supreme Court of India has successfully redefined the extent and territory of the basic rights from the 1990s and far into the twenty-first century. This essay examines three key aspects of the Court's decision-making and duty in order to calibrate this new "globalization rights infrastructure" and associated forms of scrutiny for globalization policies.

- First, based on the justices' own ideas of the right function of the Court and their understanding of the standards and values that should be promoted in deciding cases involving globalization, the Court has redefined and carefully circumscribed its own role in the field of policies relating to globalization. By elevating particular norms and values in its decision-making, such as norms of transparency, competitiveness, regulatory independence, and high growth

models of development, the Court has successfully redefined the normative structure and discourse of globalization by embracing these specific role conceptions. This article contends that while though the court evaluated globalization policies using a lower and more constrained standard of scrutiny; it still successfully used rights as "structuring principles"[18] to determine the policies' fairness, legality, and propriety, rather than enabling these rights to function as powerful checks on government policies and actions, particularly those involving privatization and disinvestment. This article contends that rights have been applied in the context of development as "substantive-normative principles"[19] that are used to evaluate and validate the legality and effectiveness of development programs and policies under a very deferential method of evaluation. The procedures and regulatory frameworks that control these sectors have been reinterpreted and changed by the Court in order to implement rights in this manner.

- Second, the Court's new paradigm for addressing the rights implications of globalization has inadvertently led to the emergence of new "asymmetrical rights terrains,[20]" in which the rights of certain interests and stakeholders—including private business interests—are prioritized above those of others (workers, farmers, and villages). In order to limit the promise of

[18]https://constitutionnet.org/sites/default/files/what_is_a_constitution_0.pdf
[19]Boella G and Van Der Torre L, "Substantive and Procedural Norms in Normative Multiagent Systems" (Journal of Applied Logic, June 1, 2008) <https://doi.org/10.1016/j.jal.2007.06.006>
[20] Bhatia G, "Power Dispersed: Asymmetric Federalism and Constitutional Pluralism under the Indian Constitution" (Social Science Research Network, January 1, 2022) <https://doi.org/10.2139/ssrn.4169659>

fundamental rights to workers, farmers, and others whose rights have been violated or diminished by globalization policies, the Court has narrowed their application, while enhancing the rights of some entities, such as private corporate interests opposing unfair privatization and disinvestment policies[21]. The rights of farmers and villages to oppose large-scale development projects are also less recognized in this larger trend, as are the rights of workers to contest privatization and disinvestment policies.

- Third, in the area of privatization and development programs, the Court has substantially reinterpreted its own function as a decision-making body and institution of government. The author of this piece contends that these important changes in the Court's perspective on rights-based adjudication and its institutional position in globalization policy offer a window into further significant changes in the Court's mission and jurisprudence[22] in the twenty-first century.

CONCLUSION

Along a variety of axes, we have been examining the globalization of law. The general suspicion of hierarchical authority and the concentration of public and corporate power have led to an increase in administrative law, constitutional law, and other rights litigation. The increasing need to protect people is leading to growth in the legal fields of family law, personal injury, consumer protection, and environmental law. Markets and corporate activities are becoming more global, leading to the development of a global law

[21] "Bsepsu. Com" <http://www.bsepsu.com/importance-disinvestment.asp>
[22] "Definition of Jurisprudence"(Merriam-Webster Dictionary, October14, 2023) <https://www.merriam-webster.com/dictionary/jurisprudence>

of commercial transactions. As external business links proliferate globally and arms-length regulatory techniques expand, there is a growing demand for attorneys and for them to engage in more social, economic, and political interactions. From the above, it may be concluded that there is an increasing need for a global system of law enforcement, legal education, and harmonization of the majority of international laws. After emphasizing the importance of globalization, we now need to modify our domestic legal system to keep up with the rapid advancement of legal practice and education. By seeking to systematize the knowledge of the globalization process and its legal ramifications, this essay aims to fill a specific gap in the literature on the legal aspects of globalization. This paper makes the case that globalization should be viewed as a social transformation process that is both geographical and political. Geographic in the sense that its technical and regulatory origins have changed the physical space in which social activities take place and given them a de-territorial quality. That kind of nature makes localization believable and non-arbitrary impossible. However, the process is political in that it transfers power from the state to various non-state players at both the global and local levels of society. Thus, it is maintained that the term “global” is employed equally for its geographic meaning and for the state’s absence.

RISING MENACE OF JUVENILE DELINQUENCY IN INDIA – ISSUES AND CHALLENGES

-Aditi Gupta*[1]

ABSTRACT

"Children are like buds in a garden and should be carefully and lovingly nurtured, as they are the future of the nation and the citizens of tomorrow. Only through right education can a better order of society be built up".[2]

~Jawaharlal Nehru[3]

Keywords: *juvenile delinquency, Young, Teenage, Adolescent, Underage*

INTRODUCTION

Children are considered a gift from God and the most valuable asse t of people and nations. They are the foundation of the country. The destiny of our nation is greatly influenced by the youth as they are the one who will run the country politically. Childhood is a very naive period and children need to be treated well. Children need to be taught the difference between right and wrong; otherwise, they will not be abl e to survive in the environment when they grow up. Children begin to explore events when they are young, but as they begin to grapple with their crimes, the cards change. We must have all heard this st ory in our childhood: A boy stole a book from his classmate and to

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[2] https://timesofindia.indiatimes.com/
[3]https://m.timesofindia.com/life-style/events/childrens-day-quotes-top-10-inspiring-quotes-by-jawaharlal-nehru-aboutchildren/amp_articleshow/66616261.cms

ok it to his mother. Not that he beat her, but encouraged her. As soo n as he steals a cloak for her, she praises him again. As young peop le get older, they start stealing more valuable things. He was eventu ally arrested at the scene with his hands tied behind his back and ta ken to the public execution site. The mother followed the crowd an d sadly beat her chest, and the young man said, "I want to say some thing to my mother." He came up to her and quickly pulled her ear with her teeth, killing him. When his mother said he was a naughty boy, he replied, "Oh! If you had beaten me when I stole that school book the first time, I wouldn't have gotten into this, I shouldn't have come that way. The embarrassing ending." "Death."[4]

Problems arise when young people commit crimes and face legal a nd other problems. Juvenile crimes are a harsh reality in India. You ng people have been found to be involved in the worst acts of murd er and gang violence in recent years. Crimes committed by children , this is a disturbing phenomenon and all people are disturbed by cri mes committed by children. Many experts believe that existing law s are insufficient to ensure that young people who commit serious c rimes are tried and punished like adults. But there are also those wh o defend the opposition and do not agree with this view. Juvelins ca nnot think rationally, so they do not know whether their actions are right or wrong. They cannot evaluate their own actions.

Juvenile-Juvenile are very young, teenage, adolescent or underage. In other words, juveline are those who have not yet reached the age

[4] https://www.indiaparenting.com/the-thief-and-his-mother.html

of majority, that is, children or immature children. Sometimes the word "child" is used interchangeably with the word "young".

Difference between a Juvenile and a Minor Although we use these two words interchangeably in the same language, "child" and "min or" are used in different contexts in legal jargon. The term juvenile denotes the juvenile offender, and minor denotes a person's legal c apacity or majority.

JUVENILE DELINQUENCY –

It has been a social problem in India for decades. This issue has significant ramifications, impacting communities, families, and individuals alike. It has the potential for adverse consequences on both humans and humans at the same time. Recognizing the underlying causes of juvenile delinquency is crucial for prevention and early intervention, ensuring that those at risk receive the necessary support and resources. The criminal justice system, along with social and service agencies, plays a pivotal role in addressing juvenile delinquency and rehabilitating young offenders. According to the
National Crime RecordBureau, the number of minors arrested for v arious crimes has increased in India. The crimes committed by the youth include theft, robbery, assault and murder.

LEGAL DEVELOPMENT OF JUVENILE LAWS IN INDIA

In precolonial times, there was no specific law regulating juvenile d elinquency, but these laws were incorporated into Hindu and Musli

m laws where families took responsibility for controlling the child's behavior. When the British came to power, people felt the need to pass laws.

The origin of juvenile law in India can dates back tothe introductio n of the Juvenile Act in 1960. The law extends care, protection, and treatment to individuals under the age of 18 who require it. In 1986, the Juvenile Justice Act (JJA) replaced the Children Act, aiming to establish a child's best interests. The 1986 JJA underwent amendments in 2000 and 2006, reinforcing children's rights and addressing issues related to juvenile offenders. These changes aligned with the Convention on the Rights of the child, raising the juvenile age from 16 to18.

This change aims to guarantee that children are not treated as adults in criminal cases and to establish a separate and distinct justice system tailored to their needs. Other changes were made in 2011 and a new Juvenile Justice (Care and Protection of Children) Act came into effect in 2015. The primary law in India that deals with juvenile delinquency Juvenile Justice (Care and Protection of Children) Act, 2015. The act aims to provide for the care, protection, and rehabilitation of children in conflict with the law. It prioritizes the rehabilitation and successful reintegration of juvenile offenders into society, shifting the focus away from punitive measures. The Indian government has also established juvenile justice boards and observation homes to deal with juvenile delinquency. The boards are responsible for conducting inquiries into the offenses committed by juveniles and determining appropriate measures for their rehabilitation. Observation homes

provide care and protection to juveniles who are either under trial or have been convicted of an offense.

'NO ONE IS BORN CRIMINAL. CIRCUMSTANCES COMP ELLED HIM TO DO SO'

At home and outside, Socioculture plays an important role in the de velopment of people's lives and general character. Juvenile-crime is on the rise in India and although it represents a small fraction of the total crime, it is still a major concern. Some of the main crimes committed by juveniles in India are:

1. Theft and burglary - Juveniles often engage in theft and burglary, especially in urban areas. They often target homes, shops, and vehicles for their criminal activities.
2. Assault and violence - Physical violence and assault on others, including peers, family members, and strangers, are also common among juveniles. This could be due to factors such as anger, frustration, and peer pressure.
3. Substance abuse - Juveniles are often involved in drug and alcohol abuse, which can lead to other crimes such as theft, violence, and even murder.
4. Cybercrime - With the increasing use of technology and social media, juveniles are also involved in cybercrime such as hacking, identity theft, and harassment.
5. Sexual offenses - Sexual offenses like rape and molestation are also committed by juveniles in India.

Children cannot be legally punished by adult justice because they a re considered "Doli Incapax", which means *"child who is legally deemed unable to constitute criminal intent"*. Even in the IPC "No crime committed by a child under the age of 7isconsidered a crime, but when a child between the ages of 7and12 commits a crime, if the child does not know about it, he is not guilty." The consequences of this law."

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

The JJ Act 2015 governs the supervision, safeguarding and therapeutic approach for children in legal conflicts. Juvenile Justice Board was established to deal with juvenile delinquency. The priority is not punishment, but the rehabilitation and reintegration of young offenders. Also important in the JJ Act 2015 is physical and mental evaluation. The legal definition designates a juvenile as an individual below the age of 18. It is also envisaged to special homes, observation homes and safe to ensure the welfare and safeguarding of children. The law also envisions the establishment of Juvenile Justice Board in every district. The board bears the responsibility for rehabilitating, reforming and facilitating the social integration of young offenders. The Board decided that the children should be released on probation, undergo public service, or placed in a special home for no more than three years.

- From the outset, the Juvenile Acts have consistently aligned with international standards established in various Conventions and upheld the fundamental principle of 'Continuous Juvenile

Status.' This enduring principle is enshrined within Section 5 and 6 of the 2015 Act.

- The Act specified the principles of Care and Protection of child. Until the age of 18, it is presumed that a child lacks malevolent intent and should be afforded complete safety and protection.
- The Act lay down the definition of child[5]as an individual who has not yet reached the age of 18 years.
- The Act divides the term 'Child' into two distinct categories– '**child in conflict with law**'[6] and **'child in need of care and protection'[7].**

According to the Juvenile Justice Act, the State Government is obligated to establish, for each district, a **Juvenile Justice Board[8]** to discharge duties. The Board will comprise a Metropolitan Magistrate or Judicial Magistrate First Class with a minimum of 3 years of experience, along with two social activists, one of whom must be a woman. These individuals should possess a solid grasp of child psychology and be well-versed in child welfare matters.

- A five-member **Child Welfare Committee[9]**for the children in need of care. One of them should be a female, while the other should be a child welfare expert, and together they will serve as a Magistrate Bench.
- The Act introduces the concept of Children's Court, which was not present in the 2000 statute. Under this Act, a dedicated

[5] Section 2(12) of the Juvenile Justice Act, 2015
[6] Section 2(13) 0f the Juvenile Justice Act, 2015
[7] Section 2(14) of the Juvenile Justice Act, 2015
[8] Section 4
[9] Section 27

court is established in accordance with the Commissions for Protection of Child Rights Act, 2005, or a specialized court under the Protection of Children from Sexual Offences Act, 2012, if available. In cases where such designated courts are not in place, the jurisdiction to adjudicate offenses under this Act falls under the purview of the Sessions Court.

- Under this Act, an **Observation Homes**[10] and a **Special Homes**[11] has been established. The Observation Homes shall take care of children so that no child can be kept in police custody. If children in conflict with the law are directed to undergo institutional treatment while their legal proceedings are ongoing, they will be placed in Special Homes[12].
- The Act also encompasses distinct provisions and protocols concerning adoption, which encompass inter-country adoption as well.
- This Act includes specific provisions regarding age determination. When the Committee or Board can readily ascertain a person's age, it shall document its observations and initiate an inquiry accordingly.
- The act also mentions three types of offences committed by a child, namely, petty, serious and heinous.

In the event of a heinous offense allegedly committed by a child who has attained the age of sixteen or older, a preliminary assessment of their mental and physical capacity to commit such a

[10] Section 47
[11] Section 48
[12] https://www.legalbites. in

crime will be carried out, and the child may be subject to trial as an adult[13].

The most recent amendment to the Juvenile Justice Act in 2021 is designed to fortify the juvenile justice system in India. This amendment introduces new provisions concerning foster care and the adoption of children in need of care and protection. Additionally, it bolsters the rehabilitation and reintegration efforts for delinquent children, while also expanding the roles of the Juvenile Justice Boards and the Child Welfare Committees in decision-making processes.

WHAT ARE THE CHANGES MADE IN OFFENCES BY JUVENILES?

According to the 2015 Act, offence by juveniles is classified as heinous crime, serious crime and minor crime.

1. Heinous offenses typically carry sentences ranging from a minimum to a maximum of 7 years, and individuals between the ages of 16 and 18 are subject to prosecution in a manner similar to adults.• Serious crimes usually include offenses punishable by 3 to 7 years imprisonment.
2. The 2021 Bill adds that serious crimes will also include offense s punishable by more than 7 years in prison and a minimum sen tence of 7 years or less.
3. There is currently no minimum penalty specified in the JJ Law.

[13]https://lexlife.in/

4. Consequently, adolescents aged 16-18 also face prosecution as adults for offenses like the possession and sale of illicit substances.
5. Such crimes will now be classified as "serious crimes".
6. Therefore, these laws ensure that children are as protected as po ssible from adult justice.
7. The law also stipulates those crimes against children are punishable by more than 7 years in prison and will be tried in juvenile court. Crimes requiring less than 7 years' imprisonment will be decided by the judicial magistrate.

WHAT IS THE NEED FOR THE REFORM NOW?

1. The NCPCR (National Commission for the Protection of Child Rights) presented a report for 2018-
   19 that surveyed 7,000 childcare centres (CCI or small homes).
2. Most organizations found to be violating provisions of the JJ A ct and involving children
3. Child Care Institutions (CCIs) are linked to the Child Welfare Committee (CWC) and State Child Protection Units, but there is limited supervision and surveillance in place.
4. The purpose of this amendment is to tackle these issues and ensure that the establishment of new children's homes requires the approval of the District Magistrate (DM).
5. The way forward – To meet the requirements, the DM must meet regularly every two weeks with all five departments (CWC, JJ Committee, CCI, Child Protection District)

6. Specialized training in child protection regulations should be provided since District Magistrates (DMs) typically lack the training or readiness to handle specific legal matters concerning children.

WHAT ARE THE ELEMENTS THAT SUPPORT DM?

1. With expanded authority, District Magistrates (DMs), including Additional District Magistrates (ADMs), are now empowered to issue adoption orders in accordance with Section 61of the JJ Act
2. The DM and ADM will also monitor the activities of all organ izations in all regions under the JJ Act
3. These include the Child Welfare Committee (CWC), the Juve nile Justiceboard, the District Child Protection Unit
4. These changes will ensure fast and reliable child protection pr oceedings in the distt. and also ensure answerability.
5. Now the judicial decision is within the jurisdiction of the court. Each adoption case can take years to complete due to a lot of paperwork. DMs will also check the backgrounds of CWC members to check their criminal background.
6. This is to ensure that there are no cases where a member is fou nd to be abusive or sexual abusive before being elected.
7. [CWC members are mostly social welfare with educational Qualifications]
8. The CWC should regularly inform the DM about its activities in this area.

9. Focus - The District Magistrate (DM) holds the responsibility for overseeing all procedures within a particular jurisdiction, including coordination of teamwork and review. meetings.
10. That's why we think it might not be a problem if the change p uts too much responsibility on the DM. Care

Prevention is equally important in the fight against juvenile delinqu ency in India. The government should focus on providing education and vocational training to help children, especially poor children, b ecome members of society. Families, schools and communities sho uld also play an important role in preventing youth violence throug h positive role models, advocacy and support for children at risk. Pr eventing and addressing child abuse in India requires the cooperati on of all stakeholders including governmentfamilies, schools and c ommunities. Some possible suggestions are as follows -

1. **Education and skill-building** The purpose of education is to stimulate the minds of young people to reach their potential. Education is the key to preventing juvenile delinquency. Providing access to quality education and vocational training can help children develop skills to become productive members of society. This can include training in areas such as carpentry, plumbing, and electrical work.
2. **Counselling and support** – Families, schools, and communities can provide counselling and support to children who are at risk of delinquent behaviour. This can include mentoring programs, family counselling, and support groups.

3. **Community-based programs –** Community-based programs, such as sports clubs, youth clubs, and art programs, can provide a positive environment for children and help them develop positive relationships with peers and role models.
4. Early Intervention and Prevention - Initiatives focused on early intervention and prevention can identify children who are at the highest risk of engaging in delinquent behaviour and offer them essential support and resources to deter their involvement in criminal activities.
5. Strengthening the juvenile justice system –The juvenile justice system must be enhanced to offer timely and efficient interventions for children in conflict with the law. This involves delivering suitable counselling, rehabilitation, and reintegration services to assist them in transitioning into constructive members of society.
6. Addressing underlying social issues – Addressing underlying social issues such as poverty, domestic violence, and substance abuse can also help prevent juvenile delinquency by providing a stable and supportive environment for children to grow up in.

In a broader perspective, mitigating juvenile delinquency in India necessitates a comprehensive approach that tackles the root causes of delinquent behaviour and offers children the essential support and resources needed to foster their development as productive members of society. Juvenile delinquency is a multifaceted problem influenced by a myriad of factors.

FACTORS RESPONSIBLE FOR JUVENILE DELINQUENCY: Young people need to be inspired; told they can achieve anything they set their minds to.
- *Jim Stynes*[14]

A. SOCIAL FACTORS -

1. Poverty –Poverty significantly contributes to juvenile delinquency, as children from economically disadvantaged backgrounds often face barriers to accessing education, healthcare, and essential resources, potentially driving them toward criminal involvement.
2. Broken families - Children hailing from fractured families or experiencing strained relationships with their parents or caregivers are at an increased risk of engaging in delinquent behaviour.
3. Peer pressure - Peer pressure plays a substantial role in shaping juvenile delinquency. Children who associate with delinquent peer groups are at a heightened risk of participating in criminal activities.
4. Substance abuse –Substance abuse is a prevalent factor that contributes to juvenile delinquency. Children who misuse drugs or alcohol are at a greater risk of becoming involved in criminal activities.
5. Lack of education - Children who lack access to quality education are more likely to engage in criminal activities. Education is an essential tool for preventing juvenile delinquency.

[14] https://quotlr.com/quotes-about-young-minds

6. Domestic violence - Children raised in households characterized by domestic violence have a higher likelihood of participating in delinquent behavior.
7. Media influence - The media can also influence juvenile delinquency. Children who are exposed to violent media content may have an increased propensity to exhibit violent behaviour.
8. Mental health issues - Children who suffer from mental health issues such as depression or anxiety are more likely to engage in delinquent behaviour.

Addressing these underlying factors is essential for preventing juvenile delinquency. Providing education, counseling, and support to children who are at risk of delinquent behavior can help them overcome these challenges and become productive members of society.

"Judicial Perspective on Current Penalties for Juvenile Offenders"

"I believe the purpose of Juvenile Law is to provide a structure where troubled kids can reform themselves and mature into better citizens."

–

JUDGE SIMEUNSEOK[15]

[15] https://korean-binge.com/2022/02/28/70-quotes-juvenile-justice-2022/

In the case of Mukesh and Anr vs. State of NCT of Delhi & Ors (2017), commonly referred to as the Nirbhaya Rape case, it was contended that the accused's age should not serve as a shield for his wrongful actions. He had been apprehended for physically assaulting the woman with an iron rod, uttering obscenities, and inflicting internal injuries on her body. Ultimately, the juvenile offender was released after serving the prison term as determined by the court.

In the matter of State of Maharashtra vs. Vijay Mohan Jadhav & Ors (2021), commonly referred to as the Shakti Mills rape case, it involved the participation of minors in a grievous rape incident. Among the perpetrators, there was a young individual. In this case, one of the principal accused was a juvenile, receiving a three-year prison sentence, while the adult offender was sentenced to death. This prompts consideration of whether the existing punishments are adequate for the rehabilitation of the young individual.

Another aspect to contemplate is the definition of "heinous." Individuals between the ages of 16 and 18 must face serious charges to be tried as adults. According to Section 2 (33) of the 2015 Act, an offense that is punishable by a prison term of seven years or more under the IPC, 1860, or any other law is categorized as a heinous offense. While permitting the trial of 16–18-year-olds as adults in specific scenarios represents a triumph for the Indian justice system, the implications of this categorization are equally distressing.

In the case of Saurabh Jalinder Nangre vs. Maharashtra (2018), this was evident. The Bombay High Court was addressing a writ petition wherein the question arose whether a juvenile court should handle the case, given that the boy had been convicted of attempted murder under Article 307 of the Indian Penal Code of 1860. The Court determined that "none of the plaintiffs, including those aged 16 and 18, had committed a heinous crime, and as such, their case did not fall under Section 15 of the 2015 Act. Therefore, it could not be heard under this section. Consequently, the Sangli Juvenile Justice Board was tasked with handling the situation. In this instance, the court opted to consider 17-year-olds as minors and refrained from imposing the full extent of punishment even though they were involved in attempting to lead others, resulting in significant harm to their lives. It should be noted that the application of these terms depends on the age-related nature of the offense. Indeed, criminal behavior is a form of conduct influenced by one's age, and at 16 years old, individuals possess the capacity to discern right from wrong."

"IMPORTANCE OF HANDLING JUVENILE OFFENSES WITH SENSITIVITY"

These days, young people between the ages of 16to18inthe society rape, gang rape, murder, adulterous father, etc. There are many demands for adult treatment in dangerous situations. The rationale behind the aforementioned decision is rooted in numerous recent incidents wherein individuals aged 16 to 18 have been implicated in grave criminal activities, demonstrating a level of awareness and

maturity. Thanks to the internet and social media, children are not at the level of development they were 10to20 years ago. In today's social and cultural environment, children's minds develop first. The utmost priority for a parent in safeguarding their child's development is to provide protection and care at home. Some researchers have emphasized the importance of protecting the family and its positive effects on the development and health of children. To stop the rapid escalation of violence against children in India, policy makers and state actors need to be vigilant, caring and gentle with juvenile offenders. To benefit people, their approach needs to be realigned rather than passive.

CONCLUSION

Juvenile crime does happen and we have to deal with it. Our goal is not to investigate 9 years old, but we cannot turn a blind eye towards it – Keith Kameg.[16]

In summary, juvenile delinquency is a grave issue that impacts many young individuals and society as a whole. It encompasses unlawful behaviour by children, typically under 18 years of age, who violate the law or engage in activities deemed harmful to themselves or others. The Indian government is making concerted efforts to address the problem of juvenile crime in the country. Despite a decline in violence against children in recent years, challenges persist. The government is taking measures to offer children positive entertainment options such as games and contests, combat the spread of pornography and explicit films, establish

[16] http://www. legalserviceindia.com

child-cantered facilities in all regions, and provide appropriate education for those affected.

Punishment is compelled to protect itself from the real benefits it b rings to people, to maintain order without resorting to violence, but also to bring real benefits to criminals by advocating or promoting t heir reforms. The justification for punishment is grounded in its outcomes, its role in deterring crime, and its role in facilitating the reintegration of offenders into society. It is designed with forward thinking. It measures the results we can achieve for the future of youth. Preventing violence against children requires collaboration between government, schools, polic e, courts, social workers and nonprofits. This entails fostering transformation, providing options to confinement, and ensuring that young individuals are handled with transparency and dignity throughout the procedure.

Youth are considered one of the country's most valuable assets. The future of a country should be well taught to them. But because of c onflicts, work, family problems, and peer relationships, some childr en start off with

minor offenses and can lead to some serious problems and major pr oblems. We all have a responsibility as individuals, parents, caregiv ers and society to help children grow up in a healthy cultural enviro nment and to give them opportunities to have good physical, menta l, moral and social responsibility. States have a responsibility to pro vide equal development opportunities for all children throughout th eir developmental years, reducing inequality and ensuring social ju

stice. Children should be obedient, respectful, virtuous and of good character. However, a certain percentage of children do not comply with laws and established laws for various reasons. These children are often involved in crimes called juvenile delinquency or juvenile delinquency. Through dedicating resources to prevention and recovery efforts, we can empower young individuals to surmount their difficulties and emerge as engaged contributors to society.

RIGHT TO HEALTH: EMERGING TREND DURING COVID-19

Hamzah Md. Yasir Imteyaz*[1]

ABSTRACT

The right to life is respected by the Indian constitution. It is the most important right of any individual under any legal system of the world, and India is no exception to it. Article 21 echoes the sentiment that "no person shall be deprived of his life or personal liberty except according to procedure established by law".

The Indian judiciary has given a wider interpretation to Article 21, to make people's life easy and good. Due to this liberal approach, many implied rights have sprung up, for instance, the Right to Privacy, Right to Health, Right to Clean Water, Right to Education, etc. However, during the second wave of COVID-19,India witnessed a loss of life due to a lack of oxygen cylinders, a shortage of beds in the hospital, and overall dilapidated health infrastructure. And the state couldn't provide better medical aid, where the Right to Health is construed to be an implied fundamental Right. Because of the once-in-a-lifetime nature of the problem, much chaos was witnessed by the people of India. The central and state government had their disputes regarding this, but at the end of the day, it was the general public that had to face the heat, which directly violated their Right to Health under Article 21.

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India faced a critical situation during the pandemic &during those turbulent times, a need was felt in some quarters that the Constitution should incorporate provisions regarding medical emergencies, in addition to state, national, and financial emergencies. While there was some merit in this argument the current status is that as of now no step has been taken in this direction. In light of the above points raised, this paper attempts to critically analyze the wider scope of Article 21 and the need for provision regarding medical emergencies in the Indian constitution.

KEYWORDS: *Constitution, Right to health, Medical emergency, Oxygen, Pandemic, Financial Emergency.*

INTRODUCTION

'According to Article 21 of our Indian Constitution'[2], which states that "no person shall be deprived of his right to life or personal liberty except according to procedure established by law," the 'right to life and personal liberty'[3] is a fundamental, inherent, and human right. In the historic case of the Right to Life with Dignity, the SC granted Article 21 a new depth 'in the case of ***Maneka Gandhi v. Union of India***[4], the Supreme Court of India ruled that'[5] "the right to life includes not only the physical right to exist but

[2] https://www.webology.org/data-cms/articles/20220225080001pmwebology%2018%20%284%29%20-%2094%20pdf.pdf
[3] Ibid.
[4] AIR 1978 SC 597; (1978) 1 SCC 248
[5] https://legalserviceindia.com/legal/article-13672-article-21-the-bedrock-of-liberty-and-justice.html

also the right to exist with human dignity."As stated in the *Unni Krishnan case*[6]**,** Article 21 is the basis of Fundamental Rights and has expanded its application by stating that the 'right to life also encompasses the right to education and that the right to education follows from the right to life.'[7]From these, we can clarify that the right to life is the most important right for every person, citizen, and foreigner alike. It is provided against the state; the state includes the government, the legislature of each state, departments, local bodies, the university *Madras v. Santa Bai*[8],the court *A.R. Anthuley v. R.S. Nayak*[9], airport authority, etc. The Chamleswar *in Puttaswami* case[10] which is the most famous case known as the privacy case observed that the silences of the constitution must be read out. The major goal of Article 21 is to ensure that the state only violates a person's right to life and personal dignity by the legal process. The Universal Declaration of Human Rights also provides the Right to Life under Article 3. However, In the second wave of COVID-19, the state failed to do its job effectively and efficiently. As a result, many people have lost their lives and are affected due to covid 19. The Supreme Court reiterated in the case of '*State of Punjab v. Mohinder Singh Chawla*[11]that the right to health is essential to the right to life and that the government has a constitutional duty to care for that right. Since the right to health is protected by Article 21 of the constitution, the state is therefore

[6] 1993 AIR 217, 1993 SCR (1)
[7] Supra Note 1
[8] AIR 1954 Mad.67
[9] [1984] 2 S.C.R. 495
[10] (2017) 10 SCC 1; 2017 SCC online SC 996
[11] AIR1997SC 1225

required to provide health services.'[12] According to a case of *Consumer Education and Research Centre v. Union of India*[13]," found that Article 21's right to health and medical help to safeguard a worker's health and vitality is a basic right*".*

As we can understand, the right to health is absolute, but also during the pandemic, people have to suffer a lot. There should be a provision regarding the medical administration, for instance, the State (art 352), National (art 356), and financial emergency (art 360). It is the requirement of a provision for medical emergencies in our constitution. There should be no administrative authority regarding the medical sector to solve and take over the problems related to life, amount to death, or hazardous to life. As it was felt the requirement of the medical emergency could be instituted in our constitution.

MEANING AND SCOPE

'Rights to life is the heart of the fundamental right of the Indian constitution enshrined under Article 21 and Article 3 of the UDHR article 3 says that, "Everyone has the right to life, liberty and security of person."[14] Without these rights all other fundamental rights are meaningless. However, life includes all the essential requirements, making life meaningful and complete.

"The extended dimension given to article 21 by the Supreme Court in the post-Maneka era case is a very fascinating development in

[12]Supra Note 1
[13]1995 AIR 922, 1995 SCC (3) 42
[14]United Nations, Universal Declaration of Human Rights

Indian constitution jurisprudence. "To treat a right as a basic right, according to the apex courts. New rights are recognized as a result of the country's political, social, and economic developments. The law is always evolving to satisfy societal needs. Another tactic used by the SC is to broaden the scope of Article 2 in conjunction with the International Charter on Human Rights. In successive cases, the courts have given the 'right to life' a broad interpretation. The different facets of the rights are discussed below-

- **Right to livelihood:** The SC first believed "that Article 21's right to life did not encompass the right to a living."[15] The SC held in the case of *Re: Sant Ram vs Unknown*[16], that the right to subsistence does not encompass the meaning of "life" in Article 21. Even after Maneka Gandhi, the Supreme Court stated this tenet in several judgments. As a result, the Court just restated the identical claim in Nachane. Without any more explanation, the Court in Bapi Raj again embraced the Sant Ram position. But afterward, the Court's perspective changed. According to the court's ruling the term "life" in Article 21 should be defined widely and broadly.

- **Right to a good quality of life:** The SC has creatively used Article 21 of the Constitution to enhance the quality of life and to suggest several rights for the populace. The SC stated in the instance of *Maneka Gandhi v. Union of India*[17] that "the right to

[15] Supra Note 4
[16]AIR1960 SC 932
[17]AIR 1978 SC 597; (1978) 1 SCC 248

life not only includes physical rights but it also includes the right to live with human dignity." The apex court took a significant step towards extending the purview ‘of article 21 when it was contended that "life" in article 21’[18] refers to more than just "animal existence" but also to living without "human dignity."

- **Right to Medical care:** In the case of *Parman and Katara v. Union of India*[19], the Supreme Court took into account a very serious problem that exists today: in a medico-legal case (such as an accident), doctors typically refuse to provide the victim with immediate medical aid until legal formalities are finished. Some injuries result in death for lack of medical attention while legal procedures are still ongoing. The protection of life is now very explicitly stated by the Supreme Court to be of the utmost significance. The status quo ante cannot be restored afterlife has been lost. Whether the patient is a criminal or an innocent bystander, doctors must save a life. The State must protect life under Article 21.
- **The right to health:** In *Vincent v. Union of India*[20], the SC emphasized the importance of a healthy body as the cornerstone of all human endeavours. The development of public health and the outlawing of medicines that are harmful to health are emphasized in Art. 47, a DPSP, of the Indian Constitution as one of the State's main responsibilities.

[18] Supra Note 4
[19] 1989 AIR 2039 1989 SCR (3)
[20] [1984] 3 SCC 161

- **Right to an Environment Free from Pollution-**Similarly to this, the SC ruled in *Consumer Education and Research Centre v. Union of India*[21] *that* Article 21 of the Constitution declares the right to health and medical care to be a basic right. since it is crucial for giving a worker's life meaning, purpose, and dignity. The preservation of the worker's health and endurance is part of the right to life as stated in Art. 21. It is said that "life" does not imply only animal existence in Art 21. Its scope is far broader and includes the right to a liveable wage, a higher standard of living, and hygienic working and leisure conditions.

According to Art 21, "right to life" states the ability to lead a dignified existence in a setting free from infection and illness risks. A clean environment promotes both physical and mental wellness. Health, sanitation, & ecological preservation have all been deemed to be under the ambit of Article 21 since they negatively impact citizens' quality of life and, if left unchecked, amount to gradual poisoning that shortens lifespans. The court ruled in *Subhas Kumar v. State of Bihar*[22] *that* PIL can be maintained to ensure that people can enjoy clean water and air as a "right to live under art.21 of the Constitution said that the right to live a healthy and clean life is an individual right.

[21]1995 AIR 922, 1995 SCC (3) 42
[22]1991 AIR 420 1991 SCR (1)

The privilege includes the right to clean air and enough pollutant-free water to enjoy life to the fullest. Municipal Corporations are believed to have a legal obligation to make provisions for cleaning and scavenging the cities. In the *F. K. Hussain v Union of India*[23] *case*, the Ker. HC ruled that the widespread use of electric pumps to extract water from wells had altered the balance of fresh water in the area of the Lakshadweep Islands violating Art 21.

- **Labour's Right to Health:** Occupational accidents and infections continue to be the most heinous human tragedies of modern industry. The Supreme Court was alerted to the health risks posed by workers in asbestos factory manufacturers in *CERC v. Union of India*[24]**.**The Court then decided that the "right to health": medical assistance to preserve a worker's health and vitality while in service or after retirement is a basic right under Article 21 after recalling decisions in which it was held that the "right to human dignity" is included in the "right to life" under Article 21.

RIGHT TO OXYGEN

The UDHR and the International Covenant on Economic, Social, and Cultural Rights both include the right to oxygen as one of the most important fundamental, human rights. These treaties affirm the rights to life and to the best possible health, which includes

[23]A.I.R. 1990 Ker.321
[24]1995 AIR 922

having access to basic healthcare and medical supplies like oxygen. Oxygen is essential for the functioning of the human body. It is required for the metabolism of cells and is necessary for the production of energy. Oxygen is also crucial for maintaining brain function and for the proper functioning of the immune system. Oxygen deprivation can have severe consequences, including organ failure, brain damage, and even death.

During the COVID-19 pandemic, the oxygen demand has increased exponentially, particularly in countries with weak health systems. This has led to shortages of oxygen, resulting in preventable deaths. The right to oxygen is particularly important during a pandemic, as it is essential for treating COVID-19 patients who require oxygen therapy. The right to oxygen is a fundamental human right that ensures access to a basic necessity for life. This right is recognized by various international human rights conventions, including the Universal DHRIC, Social, and Cultural Rights. The right to oxygen is particularly important during a pandemic, as it is essential for treating COVID-19 patients who require oxygen therapy.

India has been severely affected by the COVID-19 pandemic, with the second wave of the pandemic resulting in a significant shortage of medical oxygen. This shortage has led to preventable deaths, highlighting the urgent need for improving the country's healthcare infrastructure. India is faced, its worst surge of COVID-19 infections since the beginning of the pandemic. As of

April 3, 2023, the country has recorded over 53 million confirmed cases and over 682,000 deaths. The surge in cases has put an enormous strain on the healthcare system, particularly in terms of medical oxygen supply. As referring to the case of *Sudhanshu Shekhar v. Union of India*[25] *in* this case, the Delhi High Court directed the government to ensure the continuous supply of medical oxygen to hospitals in the NCR. The court held that the right to life, which includes the right to health, is paramount and directed the government to take all necessary measures to ensure that the supply of oxygen is not disrupted.

Referring to the case of Brazil in *The Federal District Public Defender's Office v. The Federal District*[26], the petitioner filed a lawsuit seeking to compel the government to ensure the continuous supply of oxygen to hospitals in the Federal District. The court observed that the right to health is a fundamental right guaranteed by the Brazilian Constitution and ordered the government to take all necessary measures to ensure that the supply of oxygen is not disrupted. From these cases, we can understand that providing an oxygen cylinder is the prior duty of the government to the people of the nation.

Indian government's budget allocations for the medical sector since 2014:

[25]2021 SCC Online Del 676
[26]2021 STJMS 10-11-1321

- *"In the Financial year of 2014-15, the total allocation for healthcare was Rs. 33,152 crores ($4.4 billion). The National Health Mission (NHM) was allocated Rs. 19,134 crores ($2.5 billion), while the DOHR (Department of Health Research) was allocated Rs. 1,034 crores ($137 million).*
- *In the Financial year of 2015-16, the total allocation for healthcare was Rs. 37,061 crores ($4.9 billion). The NHM was allocated Rs. 19,437 crores ($2.6 billion), while the DOHR was allocated Rs. 1,249 crores ($166 million)."*[27]
- *"In the Financial year of 2016-17, the total allocation for healthcare was Rs. 38,832 crores ($5.2 billion). The NHM was allocated Rs. 22,008 crores ($2.9 billion), while the DOHR was allocated Rs. 1,267 crores ($168 million).*
- *In the Financial year of 2017-18, the total allocation for healthcare was Rs. 48,878 crores ($6.5 billion). The NHM was allocated Rs. 26,691 crores ($3.5 billion), while the DOHR was allocated Rs. 1,704 crores ($226 million).*
- *In the Financial year of 2018-19, the total allocation for healthcare was Rs. 52,800 crores ($7 billion). The NHM was allocated Rs. 30,129 crores ($4 billion), while the DOHR was allocated Rs. 2,225 crores ($296 million).*
- *In the Financial year of 2019-20, the total allocation for healthcare was Rs. 61,398 crores ($8.1 billion). The NHM was allocated Rs. 34,800 crores ($4.6 billion), while the DOHR was allocated Rs. 2,460 crores ($327 million)*

[27] National health account by national health mission: https://main.mohfw.gov.in/sites/default/files/NHA_Estimates_Report_2015-16_0.pdf

- *In the Financial year of 2020-21, the total allocation for healthcare was Rs. 69,000 crores ($9.2 billion). The NHM was allocated Rs. 33,700 crores ($4.5 billion), while the DOHR was allocated Rs. 2,040 crores ($272 million).*
- *In the Financial year of 2021-22, the total allocation for healthcare was Rs. 93,224 crores ($12.4 billion). The NHM was allocated Rs. 71,269 crores ($9.5 billion), while the DOHR was allocated Rs. 2,663 crores ($356 million).”*[28]

“For the Financial year of 2022-23, the total allocation for healthcare is Rs. 2.24 lakh crores ($30 billion), which is an increase of 137% from the previous year's budget. The Pradhan Mantri Atma Nirbhar Swasth Bharat Yojana has been allocated Rs. 64,180 crores ($8.6 billion), while the National Health Mission has been allocated Rs. 35,000 crores ($4.7 billion). This allocation represents around 2.5% of India's GDP, which is still lower than the recommended 5% by the WHO, and Rs. 1,000 crores ($133 million) to the National Health Systems Resource Centre. These allocations will help promote medical research and innovation in the country, which is crucial in addressing emerging health challenges such as the COVID-19 pandemic.[29]”

MEDICAL EMERGENCY

[28] National Health Account by National Health Mission: https://main.mohfw.gov.in/sites/default/files/5NHA_1920_dt%2019%20April%202023_web_version_1.pdf

[29] https://prsindia.org/budgets/parliament/demand-for-grants-2023-24-analysis-health-and-family-welfare

As India is known as the land of the constitution due to its well-crafted and comprehensive constitution that outlines the rights and duties of citizens, the structure of the govt, and the principles of democracy. The Indian Constitution has been a model for other countries and has helped to establish India as the world's largest democracy. However, India failed to provide better facilities to the people as there was no legal provision regarding the medical sector. Medical emergency provisions in India aim to provide timely and effective medical care to people in need. These provisions are essential in improving healthcare infrastructure, increasing access to healthcare, and providing better medical facilities. However, during the COVID-19 pandemic, the Indian government invoked the provisions of the Disaster Management Act, of 2005, to declare a national lockdown and take other measures to control the spread of the virus.

Under this Act, the central government has the power to issue directions to the state governments and take necessary measures to prevent or mitigate a disaster, including a pandemic. In addition, several states in India have invoked the Epidemic Diseases Act, of 1897, to control the spread of the virus and take measures to ensure the availability of medical facilities and supplies. This Act empowers the state govt to take special measures and prescribe regulations to contain and prevent the outbreak of epidemic diseases. It is worth noting that while the Indian Constitution does not specifically provide for a medical emergency, the government has the power to take necessary measures to address public health emergencies under various laws and regulations.

The *Sudhanshu Shekhar v. Union of India*[30], case involved a petition filed in the *Del. H C* giving direction to the govt to ensure the continuous supply of medical oxygen to hospitals in the National Capital Region to prevent the loss of lives due to the shortage of oxygen cylinders during the COVID-19 pandemic. The court directed the govt to ensure the availability of oxygen and other medical facilities in the hospitals. *In Re-distribution of Essential Supplies and Services During Pandemic*: In this case, the SC took suo-motu cognizance of the COVID-19 pandemic and issued various directions to ensure the availability of medical facilities, including oxygen cylinders, hospital beds, and medicines, in the country. In re: Contagion of COVID-19 Virus in Prisons: This case involved a petition filed in the SC seeking direction to the government to take necessary measures to prevent the spread of COVID-19 in prisons. The court directed the govt to take necessary measures, including decongestion of prisons, to prevent the spread of the virus among the inmates. The Court on Its *Own Motion v. State of Uttar Pradesh*[31], In this case, the All HC took Suo motu cognizance of the COVID-19 pandemic and issued various directions to the government to ensure the availability of medical facilities, including oxygen cylinders, in the state of Uttar Pradesh. So, from these, we can understand the role of the judicial bodies and the activism of the judiciary in India.

[31]2021 SCC Online Del 676

The need for medical emergencies like national (art-352); state (art-356); and financial emergencies (art-360) is very much today as the nation faced the covid-19 which is a dangerous virus that many people died it. The provision of a medical emergency in the Indian Constitution is essential to ensure that the government has the necessary powers to deal with medical emergencies and take necessary measures to safeguard public health and safety. It is also important to ensure that the fundamental rights of the citizens are not violated during the emergency period. The Constitution ensures that even during an emergency, certain fundamental rights, such as the right to life and personal liberty, cannot be suspended.

LEGAL PROVISIONS REGARDING MEDICAL EMERGENCIES:

In the USA, the **EMTALA**[32] is a centralized law that needs all hospitals that contribute to Medicare to ensure that anybody who arrives at the emergency room receives emergency medical treatment, regardless of their capacity to pay or their insurance status. This law also prohibits hospitals from transferring unstable patients to other facilities unless the patient is stabilized or the transfer is medically necessary. In addition to EMTALA, many states have enacted Good Samaritan laws that protect the person's right to provide extra care in good faith from being sued for negligence. These laws vary by state but generally provide

[32]In 1986, Congress enacted the Emergency Medical Treatment & Labor Act (EMTALA) to ensure public access to emergency services regardless of ability to pay.

immunity to individuals who provide emergency care outside of a hospital or medical facility.

In Europe, the ECHR[33] protects the right to life, as well as prohibition of torture and brutal or humiliating treatment. The ECHR requires member states to ensure that individuals receive prompt and appropriate medical care in emergencies. In addition, the European Union (EU) has established the European Emergency Number 112,[34] which is a universal emergency number that can be called from any member state. This number connects callers to the appropriate emergency services, including medical services.

In Australia, the Health Practitioner Regulation National Law (National Law) regulates the registration and accreditation of health practitioners.'[35] This law also includes provisions for emergency treatment, which require health practitioners to provide emergency treatment to any person who requires it, regardless of their ability to pay or their insurance status. In addition, each state and territory in Australia has its own Good Samaritan laws that protect individuals who provide emergency care in good faith from being sued for negligence. In Canada, the CHA[36] is a federal

[33] European Convention on Human Rights

[34] Shaping Europe's digital future:https:// digital-strategy.ec.europa.eu/en/ policies/112

[35] We champion fairness: National Health Practitioner Ombudsman and Privacy Commissioner (nhpo.gov.au)

[36] The Canada Health Act (CHA or the Act) is Canada's federal legislation for publicly funded health care insurance. The purpose of the Act is to protect, promote and restore the physical and mental well-being of Canadians and to provide reasonable access to health services by removing financial or other barriers.

law that sets out the criteria and conditions that provinces and territories must meet to receive funding for their healthcare systems. The CHA requires that all insured people have uniform access to medically essential hospital and doctor services, regardless of their ability to pay or their insurance status. In addition, many provinces and territories have established Good Samaritan laws that safeguard those who offer emergency medical treatment in good faith from being sued for negligence. These laws vary by province and territory but generally provide immunity to individuals who provide emergency care outside of a hospital or medical facility. Several medical emergency provisions in India aim to provide timely and effective medical care to people in need:

- National Ambulance Service
- JananiShishuSurakshaKaryakram
- RashtriyaSwasthyaBimaYojana
- Emergency Medical Services
- National Health Mission

The step was taken by the government in India during covid-19

- Lockdowns:
- Testing and contact tracing:
- Healthcare Infrastructure
- Vaccination drive:
- Economic relief measures
- International cooperation

In March 2021, the Lok Sabha discussed the COVID-19 pandemic and the vaccination drive. During the discussion, MPs from various political parties raised concerns about the shortage of medical supplies and facilities in the country and urged the government to take necessary measures to address the situation. In May 2021, the Rajya Sabha, the upper house of the Indian Parliament, discussed the COVID-19 pandemic and the management of the crisis by the government.[37] MPs from various political parties criticized the government for its handling of the pandemic and raised concerns about the shortage of medical supplies and facilities in the country.[38]

In addition to these debates, several parliamentary committees have also held discussions on the issue of medical emergencies in the country. The Parliamentary Standing Committee on Health and Family Welfare, for example, has held several meetings to review the preparedness of the government to deal with medical emergencies, including the COVID-19 pandemic. Overall, the debates in the Indian Parliament on medical emergencies highlight the importance of the government's preparedness to deal with such situations and the need for adequate medical facilities and supplies to ensure the health and safety of the citizens.

The government of India took several measures to address the medical emergency. The central government announced a slew of measures to ramp up the production of medical oxygen and ensure

[37] Parliament functioning in Monsoon Session 2021: https://prsindia.org/ session track/ monsoon-session-2021/vital-stats

[38] National Council of Applied Economic Research: https://www.ncaer.org/ news/budget-2023-24-even-post-covid-india-needed-health-budget-hike

its equitable distribution across the country. The government also launched the "Oxygen Express" initiative, under which trains carrying oxygen cylinders were sent to various states to meet the growing demand. In addition to oxygen, there was also a shortage of essential drugs like Remdesivir and Tocilizumab, which are used in the treatment of severe COVID-19 patients. The government had to intervene to ensure the availability of these drugs, by ramping up their production and importing them from other countries. The government should make a provision for medical emergencies in the constitution like national, state, and financial emergencies.

CONCLUSION

According to Article 21 of the Constitution, which protects the right to life and personal freedom, the right to health is acknowledged as a basic right. However, despite this legal framework, the healthcare system in India faces several challenges, including a dearth of healthcare staff, poor healthcare infrastructure, and restricted access to healthcare for underserved groups. Data from the National Health Profile 2020 show that there is a severe lack of medical professionals in India, with just one doctor for every 1,457 people and one nurse for every 670. In addition, there is a lack of access to healthcare services in rural regions, where the bulk of the population resides, with just one

government hospital bed available for every 2,046 residents as opposed to one for every 725 in metropolitan areas.[39]

The COVID-19 pandemic has further highlighted the challenges faced by the Indian healthcare system, with the surge in cases overwhelming hospitals and exposing gaps in emergency medical services. According to data from the Ministry of Health and Family Welfare, as of April 10, 2023, India has reported over 55 million COVID-19 cases and over 880,000 deaths. The relevance of the right to health as a basic human right has been brought to light by the COVID-19 epidemic. [40]

Governments all over the world have been compelled to take measures to protect one's health of their population, including initiating public health initiatives, providing access to healthcare, and making investments in the development of vaccines. Under the National Disaster Management Act or the Epidemic Diseases Act, medical emergencies in India may be declared at the national or state level. To make sure that emergency medical services are rapidly and efficiently mobilized to respond to such events, it is necessary to reinforce and expand the provisions for medical emergencies in our constitution.

One recommendation is to create a specialized medical emergency management system with defined roles and duties for all parties

[39] http://www.indiaenvironmentportal.org.in/files/file/National%20Health%20Profile%202020.pdf

[40] https://www.ncaer.org/news/budget-2023-24-even-post-covid-india-needed-health-budget-hike

involved in emergency response at the national and state levels. Creating emergency response teams, creating emergency medical protocols, and ensuring that all required materials, such as medical tools, medications, and supplies, are accessible are a few examples of what this might include. The provision for a medical emergency in the Indian Constitution is necessary to ensure that the government can take necessary measures to deal with medical emergencies that pose a threat to public health and safety. Such as a national, state, or financial emergency, the government should include a provision for a medical emergency in the constitution.

SEDITION: A POLITICAL WEAPON!

-Swati Singh*[1]

ABSTRACT

Laws are often regarded as a weapon for social control. To maintain peace and stability in the society, there is need of efficient law that would work for the benefit of society. In India, legislature of the country comprised of the representatives of people who make laws as per the requirements of the society and the individuals. Any law that provides arbitrary power to the State could not be said as efficient since such law takes our country towards the autocratic rule. Talking about the provision of sedition, it is a criminal offence that was placed in the IPC in the year 1870 through an amendment. The main purpose of enacting the law of sedition by the colonial government of Britain was to suppress the Indian freedom fighters whose aim was to attain independence. Historically, it is evident that this law of sedition has been used as a political weapon by the government in suppressing the voice of people. The law that was prevalent prior to the independence exists in the present scenario too. It has a long history of misuse by various governments even after the independence. A country in which the Constitution as well as the fundamental rights is regarded as supreme, such law that infringes the fundamental rights could not be allowed to exist. Freedom of free speech is the very essence of a democratic nation. Sedition law not only infringes Article 19 but it also infringes Article 14 as well as 21. It is seen that most of the democratic nations of the world don't have this

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provision under their law. The best evidence that could prove the misuse of sedition are the latest reports of various agencies that states that conviction rate under this provision is too low than the number of arrests that is increasing with a very fast rate. Such a provision could not be accepted in a democratic nation like India. There is an urgent need to repeal this colonial provision as it is futile in present scenario. If not done, it will prove to be a threat for our nation.

Keywords: *Sedition, Constitution, IPC, offence, provision*

INTRODUCTION

The laws are known as the instrument of social control that is made for the welfare and betterment of the society. The main purpose of law is to bring social order as well as for protecting the rights of the individuals. Law is enacted through the legislature of the nation that comprised of the representatives of the people. Therefore, it could be said that law is made by the people itself. In other words, it is the general will of the people as stated by Rousseau in his work "The Social Contract". As per Bentham's jurisprudence, the law must be as promoting larger amount of pleasure to the individuals than the pain. If it gives more pain than the pleasure, then it would not be efficient for the society. In other words, the utility of such law will be less or even zero.

"The purpose of law is to bring pleasure and avoid pain. Pleasure and pain are ultimate standards on which a law should be judged."[2]

Even the sociological school of jurisprudence focuses on the minimum friction and maximum harmony in the society. There are certain laws in our statute that proves as weapon in the hands of government. These laws give arbitrary power to the State which is used against the individuals. It leads to violation of certain fundamental rights of the individuals. One such law is the provision of sedition which give illimitable power and authority to the legislature. This provision is the best instance of analytical school where the sovereign possesses the endless authority of framing law as per own wish or desire. But it is highly criticized because vesting such a power in sovereign will prove to be tyrannical; therefore, it could not be welcomed in democracy. Talking about the law of sedition, it is enacted during the British colonial rule in India. It was inserted in the IPC through an amendment in the year 1870 as Section 124A[3]. As per this provision of IPC, it establishes criminal liability upon the persons who express their dissatisfaction, hatred or contempt against the government of that nation by words or conduct.

HISTORICAL BACKGROUND OF SEDITION

The history of Sedition is closely linked with the Indian National Movement. There were number of publications and the anti-British

[2] V.D. Mahajan, *"Jurisprudence & Legal Theory",* 5th Edition(2015), Eastern Book Company, p. 445

[3] Indian Penal Code, 1860, Chapter VI: offences against state

movements by Indians in order to attain independence or the Poorna Swaraj. Most of the leaders' tried to arouse anti- British feeling among the people through various speeches. The Britishers have no option to control the growing agitation among Indians. Therefore, this provision was added to suppress the voice and the activities by the national activists or the leaders of Indian National Movement. Since the Wahabi Movement and mutiny activities were the most infuriating movement against the British Company that resulted in the birth of this provision. Freedom fighters like Mahatma Gandhi, Annie Besant, Bal Gangadhar Tilak, Bhagat Singh etc., have been charged and sentenced to imprisonment under this provision.

The initiative of codifying the criminal laws was taken after the first war of independence i.e., the revolt of 1857. Therefore, after the recommendation of First Law Commission, the Indian Penal Code was drafted by Lord Macaulay. There was no mention of sedition under its original draft. The Sedition law was introduced under Indian Penal Code, 1860 during the British colonial rule in India. It was added through an amendment in the year 1870 by Sir James Stephen under Chapter IV that deals with the 'offences against State'. Initially, this provision was used against the editors of various newspapers that aimed at promoting feeling of nationalism among the Indians. The first trial of Sedition was the ***Queen Empress v. Jogendra Chunder Bose***[4], popularly known as the Bangabasi Case in 1891 i.e., after 21 years of the introduction of this provision. This case was filed against an editor of Bangabasi

[4](1892) ILR 19 Cal 35

newspaper published an article in newspaper for criticizing the Age of Consent Bill. Although, the editor was released on bail and allegations were set aside since the jury could not decide unanimously.

Bal Gangadhar Tilak had faced three trials of Sedition and was imprisoned twice in the year 1897 and 1908 respectively. In 1908, he had tried to defend two revolutionaries namely, Khudiram Bose and Prafulla Chaki in his newspaper Kesari because of which he was sentenced to imprisonment. Gandhiji was also charged for Sedition for exciting disaffection towards the government because he criticized Jallianwala Bagh Massacre and Rowlatt Act by the Britishers. He was sentenced to 6 years but was released after 2 years because of medical reasons. History is evident that this provision was used mostly for suppressing the voice of people rather than for their benefit or upliftment.

Although this law was introduced by British but it could be seen that Britain had not used the law against any individual in their country between the years 1972- 2009. Finally in year 2009, Britain abolished this law in their country. It is seen that most of the democratic nations of the world like, USA, UK, Australia, New Zealand, Canada and many more, don't have the provision of sedition under their laws. Recently, in 2023, law of sedition has been abolished by single judge bench in Pakistan. The first prime minister of our country Pandit Jawaharlal Nehru has called the provision of sedition as objectionable therefore it was not recognized during framing of Constitution. The provision of

Sedition has remained force even after the independence and till the present times. *"Sedition is a cognizable, non-bailable, non-compoundable offence that could be tried by a court of sessions."*[5]

SEDITION: VIOLATION OF ARTICLE 19(1)(A)

In the initial years after introducing this provision, two essentials were taken into consideration before charging an individual for offence of sedition i.e., public disorder and violence. But with the span of time, courts began to interpret it even more precisely as if any act or conduct threatens the security of state, then it could be termed as sedition. When the cases of sedition increased then its constitutional validity began to be challenged in the Court. It is often argued by the critics of Sedition that it infringes one of fundamental rights which is secured under *Article 19(1) (a)*[6]. Freedom of speech is part of democracy. *"Law of Sedition in India has assumed controversial importance largely because of change in body politic and especially because of constitutional provision of freedom of speech and expression guaranteed as a fundamental right under Art. 19(1)(a) of the Constitution."*[7]

Restricting this right will prove to be threat for democracy and it would take us to autocratic rule. In the landmark case of ***Kedarnath v. State of Bihar***[8], the validity of Section 124A was challenged in the Hon'ble SC on the ground that it contravenes Article 19(1)(a)

[5] The Code of Criminal Procedure, 1973, Schedule 1
[6] Constitution of India, Part III, Fundamental Rights
[7] K.D. Gaur, *"Commentary on the Indian Penal Code",* 2nd Edition (2013), Universal Law Publishing Co. Pvt. Ltd, New Delhi, p. 399
[8] AIR 1962 SC 955

of the Constitution. The petitioner was arrested under Sedition because of a speech that was given by him criticizing the government. But the Court has upheld its validity. It was also said by the Hon'ble Court that mere criticism of the government by people could not amount to sedition as the people have complete right to express their views against the government.

"What is punishable under Section 124A IPC is, therefore, not the criticism of government in power, however strong it may be, but utterances which either intend or have a tendency to subvert the existing government by means of violence."[9]

In ***Balwant Singh v. State of Punjab***[10], few people were arrested under this provision since they were raising slogans like "Khalistan zindabad". But there was no any reaction or response from the public. The Court released these people on the ground that such slogans don't provoke the general public therefore it cannot be qualified for sedition. But a petition was filed in the Hon'ble SC by Journalist Union of Assam for reviewing the judgment of Kedarnath Singh that has upheld the constitutional validity of Sedition. The three-judge bench has referred this matter to a higher bench of five judges on 12th September 2023. It was because the Court observed that the above-mentioned judgment has examined this provision from the perspective of Article 19 and not from the perspective of Article 14 and 21. Therefore, it can be said that this provision of IPC doesn't satisfy the golden triangle of the

[9] Durga Das Basu, *"Shorter Constitution of India",* Volume 1(14th Edition, 2009), Lexis Nexis Butterworths Wadhwa Nagpur, p. 287
[10] 1995 (1) SCR 411

Constitution. Hence, this provision cannot be said as constitutionally valid.

SUPREME COURT ON SEDITION

It is often argued by the critics of this law that such provision is anti- democratic in nature; therefore, it is not feasible in a country like India which is often referred as the world's largest democracy. Freedom of speech is a very crucial right guaranteed to citizens in a democratic country. It could be said that this right is the quintessence of democracy. People's opinion is a salient feature of democracy which plays a very major role in the governance of nation. Curtailing this right, through a provision like sedition, takes our nation towards autocratic rule. Therefore, it can be said that a law introduced during the colonial rule cannot be suitable in the present times. *"Sedition i.e., merely exciting "disaffection or bad feelings towards the government is therefore no ground for restricting freedom of speech and expression under Article 19(2)"*[11]

In ***S.G. Vombatkere v. Union of India***[12], three judge bench of the Hon'ble SC of India has kept the Sedition Law in abeyance for the cases in which the trial is pending. It also includes the cases that are still at the initial stage i.e., investigation stage. Also, the Hon'ble SC has urged the Central as well as State governments to restrain them from registering any complaint under this provision. The intention of the Court is very clear that it is against the colonial

[11]Romesh Thappar v. State of Madras AIR 1950 SC 124
[12] 2022 SCC Online SC 609

provision of Sedition as it is more misused than used. *"In a historic development, the Supreme Court on Wednesday ordered that the 152-year-old sedition law under Section 124A of the Indian Penal Code should be effectively kept in abeyance till the Union Government reconsiders the provision. In an interim order, the Court urged the Centre and the State governments to refrain from registering any FIRs under the said provision.*[13]*"*

The Supreme Court has stated in its decisions that sedition laws are no more required in our country. Therefore, it has ordered to keep this provision in abeyance since it is restriction upon the fundamental rights of the citizens. Whereas, the Law Commission was of the view that such law is necessary for safeguarding the security and integrity of the country. It has disagreed with the Supreme Court's view that such law imposes restriction upon the fundamental rights since these rights are not absolute in nature; these are subject to reasonable restrictions. The 279th report of the Law Commission has advised the government to propose changes under this law rather than repealing it. It also stated that the punishment under 124A must be increased to 7 years, fine, or with both since it is a very serious offence. In order to prevent its misuse, proper guidelines could be made by the Central Government and suggested that FIR could be registered only after the preliminary enquiry by police officer of inspector rank. Therefore, a proviso is required to be added under Section 154 of

[13]https://www.livelaw.in/top-stories/breaking-supreme-court-urges-centre-states-to-refrain-from-registering-firs-invoking-section-124a-ipc198810?Infinite scroll =1

the CrPC. *"The Law Commission of India released its 279th Report on 'Usage of the Law of Sedition". The Report not only recommends for the retention of the colonial era provision, but also seeks to enhance the prescribed punishment from three years to seven years.*[14]*"*

INSTANCES OF MISUSE OF SEDITION

The colonial law of Sedition that was introduced during the British colonial era for the purpose of suppressing the Indian National Movement has been criticized by most of the people because of its wide misuse by the government. It has been against freedom fighters such as Mahatma Gandhi, Tilak, Annie Besant, Bhagat Singh, Nehru and many more prior to the independence. *"Chief Justice of India N.V. Ramana in July 2021, while hearing pleas filed by the Editors Guild of India, had criticized the law, asking: "Sedition is a colonial law. It suppresses freedoms. It was used against Mahatma Gandhi, Tilak… Is this law necessary after 75 years of Independence?"*[15]

Sedition charges were imposed against Vinod Dua who was a senior journalist as well as Padma Shree awardee by BJP leader Ajay Sharma because of a video uploaded on YouTube by Mr. Dua where he gave remark against PM Modi for mismanaging Covid crisis. The Hon'ble SC has quashed the complaint by stating that every journalist is entitled to protection and held that

[14] https://www.livelaw.in/articles/sedition-law-india-enhanced-punishment-law-commission-report-124a-ipc-public-disorder-freedom-of-speech-expression-230432

[15] https://thewire.in/law/explainer-how-the-sedition-law-has-been-used-in-the-modi-era

criticizing the policies of government could not be termed as seditious. *"Journalists entitled to protection against sedition, says Supreme Court"*[16] In Muzaffarpur district, FIR was filed against 49 people including film makers and celebrities for writing open letter to PM on the increasing issue over mob lynching upon the Muslims, Dalits and other minorities. *"He said nearly 50 signatories of the letter were named as accused in his petition in which they allegedly "tarnished the image of the country and undermined the impressive performance of the prime minister" besides "supporting secessionist tendencies"."*[17]

Sedition charges were filed against parents of students who performed an anti- CAA school play. In Bidar district of Karnataka, sedition charges have been imposed upon the head mistress as well as the parents of the students because of a play that was performed by the students of Shaheen School which aims to clear the concept of citizenship act between the students. But the Karnataka HC has quashed the charges of sedition against the accused. Around ten thousand farmers were charged with sedition in a district of Jharkhand who was demanding their legal land rights and raising their voice against the oppression of government. Pathalgari Movement were started by the tribals of Khunti village as reaction against the government idea of amending provisions of the Chhotanagpur Tenancy Act 1908 and SanthalParegana Tenancy Act 1949 related to the acquisition of land by government.

[16] https://www.thehindu.com/news/national/supreme-court-quashes-sedition-case-against-journalist-vinod-dua/article34713763.ece

[17] https://www.hindustantimes.com/bollywood/fir-lodged-against-49-celebrities-who-wrote-open-letter-to-pm-modi-on-mob-lynching/story-CNtoaHMDf3oqbTHwvujbzH.html

In 2016, former JNU student union leader Kanhaiya Kumar was charged under provision of Sedition and conspiracy for raising seditious slogans in an event. In 2012, sedition was allegedly used against the7,000-villagepeople who were the protestors in Kudankulam Nuclear Power Plant in Tamil Nadu. Apart from this, it could be seen that students, authors, environmentalist, journalist, etc., have been booked under Section 124A IPC, 1860. There are number of instances of sedition where the government has used the power arbitrarily against people. Use of arbitrariness by State is the violation of Article 14.

RELEVANT REPORTS

The biggest evidence that could prove the misuse of sedition law is the reports that states that the arrests under sedition has risen whereas the conviction rate has reduced to 3 per cent. *"The conviction rate in cases filed under the sedition law (IPC Section 124A), now the subject of an ongoing case in the Supreme Court, has fluctuated between 3% and 33% over the years, and the pendency of such cases in court reached a high of 95% in 2020.*[18] *"*

Also, as per the latest data of NCRB, only 12 persons in 7 cases out of 548 people were convicted between 2015- 2020. *"A total 356 cases of sedition — as defined under Section 124A of IPC — were registered and 548 persons arrested between 2015 and 2020, according to statistics compiled by the National Crime Records*

[18] https://indianexpress.com/article/explained/sedition-cases-pendency-explained-7912311/#:~:text=The%20conviction%20rate%20in%20cases,high% 20of% 2095%25%20in%202020.

Bureau (NCRB). However, just 12 persons arrested in seven sedition cases were convicted in this six-year period.[19]*"*

In year 2021 itself, the home ministry has cleared that amendment in the criminal laws is in progress. It was stated by a leader of ruling party in Lok Sabha on the question regarding the misuse of sedition law in our country. The above-mentioned reports make it clear that how the law of Sedition has been misused by the government.

SEDITION: IN RESPECTOF NEW CRIMINALLAWS

Recently in 2023, three bills have been introduced in the lower house of Parliament with the aim to replace the present criminal laws i.e., Indian Penal Code, Indian Evidence Act and the Code of Criminal Procedure. It is because the government feels that some transformation and changes are required in the criminal system as the criminal laws which are prevalent in the present times are the colonial laws made by the British Government. The intention of the government is very clear that they are against the colonial laws and discerns that there is the need for changing the present criminal laws. *"An important provision underlined by the Home Minister in the BNS Bill concerns "repealing" sedition. "We are repealing sedition," said the Home Minister."*[20]

[19]https://timesofindia.indiatimes.com/india/of-548-held-just-12-in-7-cases-convicted/articleshow/ 91451710.cms

[20]https://www.thehindubusinessline.com/news/national/government-introduces-laws-to-replace-ipc-crpc-and-evidence-act/article67184420.ece

This is the statement given by Home Minister Amit Shah while moving the bills in the Parliament. By this statement, it could be inferred that the present government is against the law of Sedition. But it could be seen that the provision of sedition has been indirectly present in the BhartiyaNyayaSanhita Bill, 2023 under *Section 150*[21]. It would not be incorrect to say that this provision has been used under new law in strengthened form. Nowhere in the Bill, the term sedition has been used but it is form of some other provision that resembles with sedition. It could also be seen that this provision resembles with the recommendation given by the Law Commission. Also, the punishment under has been increased to seven years from three years. Therefore, it can be said that the claim of government is completely false.

CONCLUSION

Freedom of speech and the importance of public opinion is the essence or key feature of democracy. Any law that abridges these fundamental rights could not be welcomed by the individuals. Following the law that was introduced by the British to suppress the Indians is of no use after attaining the independence. It is so unfortunate that this provision is being used even in the present era by the government. A colonial provision of Sedition could not be ever rescinded or repealed by the government. It is a weapon in their hands for using against the individuals who criticizes either the government or their policies. This is instance of arbitrary use of

[21] Bhartiya Nyaya Sanhita Bill, "acts endangering sovereignty and integrity of India"

power by the government which violates the fundamental rights of individuals. A law which empowers the State with some despotic powers is against the democratic feature of our country. Even the Hon'ble SC is against this provision because of is widely being misused. Generally, the main purpose of law is upholding and protecting the fundamental rights of individuals. It protects these rights from State action which is arbitrary or against the provisions of supreme law of our country. Any provision of the law which is against supreme law must not be in force. One of the features of democratic nation is the freedom to express one's views without any fear of being prevented by anyone. Every individual must have the right to criticize the government and preventing someone is violation of fundamental rights. Even a law that has more instances of being misused than being used cannot be allowed to subsist in any statute.

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