Golden Jubilee
1974-2024

SHRI DHARMASTHALA MANJUNATHESHWARA LAW COLLEGE

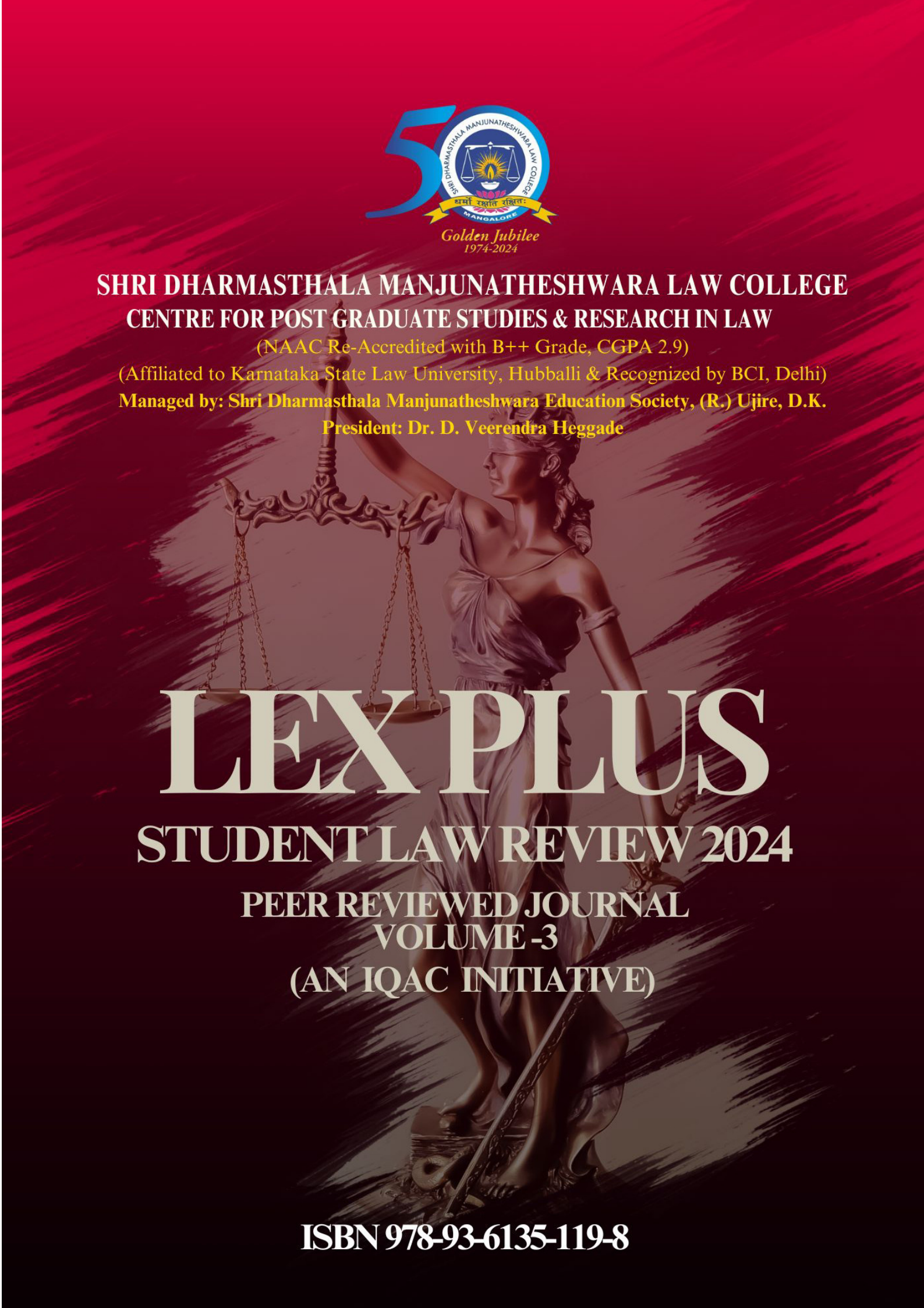
CENTRE FOR POST GRADUATE STUDIES & RESEARCH IN LAW

(NAAC Re-Accredited with B++ Grade, CGPA 2.9)

(Affiliated to Karnataka State Law University, Hubballi & Recognized by BCI, Delhi)

Managed by: Shri Dharmasthala Manjunatheshwara Education Society, (R.) Ujire, D.K.

President: Dr. D. Veerendra Heggade



LEX PLUS

STUDENT LAW REVIEW 2024

PEER REVIEWED JOURNAL
VOLUME -3
(AN IQAC INITIATIVE)

ISBN 978-93-6135-119-8

EDITORIAL BOARD

Disclaimer

ABOUT US

Shri Dharmasthala Manjunatheshwara Law College, Centre for Post Graduate Studies and Research in Law, Mangalore, is a professional college, established in 1974 and is functioning under the aegis of the SDM Educational Society(R) Ujire. The college aims at imparting holistic knowledge of law and mould students to be competent legal professionals, committed to the cause of community development through sustained economic activities and research thereby, promoting empowerment through legal education for building ethical society.

Presently, the college has been affiliated to Karnataka State Law University, Hubballi and is recognized by the Bar Council of India. The college offers Five Years integrated BA LLB, BBA LLB, Three Years LLB Course and Two Years LLM Programme. The college is the only Research Centre recognized by Karnataka State Law University, Hubballi.

The National Assessment and Accreditation Council (NAAC) in the year 2019 has re-accredited the college with "B++" grade and CGPA of '2.90'. In the year 2024 the survey conducted for Top Law Colleges in India by IIRF (Indian Institutional Ranking Framework), SDM Law College obtained 11th Rank in India and 2nd Rank in Karnataka. The college has an outstanding alumni in the judicial, administrative & host of other careers. The distinctiveness of the college is reflected in unique mooting events, law lab and functional arbitration centre. The year 2024 is observed as the golden jubilee year of the establishment of the college.

Editorial

I am delighted to introduce this edition of our Student Law Review. This publication is a testament to the intellectual curiosity, critical thinking and passion for law that the students embody. The Student Law Review is more than just a publication - it's a platform for the students to engage with the legal community, share their perspectives and contribute to the ongoing conversation about the role of law in society.

In this edition, the students have tackled complex legal issues, demonstrating their ability to analyze, critique, and propose innovative solutions. Their work showcases the depth of knowledge and understanding they have gained through their rigorous academic programs.

I am proud of the dedication, creativity and expertise that the students have brought to this publication. Together, let us empower the next generation of legal minds to shape the future of justice.

I would like to extend my sincerest gratitude to the dedicated members of the editorial board headed by Dr. Annapoorna shet with the help of Student Editorial team comprising of – Mr. Anantha Padmanabha Pai, Ms. Apeksha Poojary K. K. and Ms. Niriksha who have worked tirelessly to bring this edition of the Student Law Review to fruition. Their commitment to excellence, meticulous attention to detail and passion for legal scholarship have been instrumental in shaping this publication into a valuable resource for the legal community. The Editorial Board's efforts have not only showcased the best of the students' academic abilities but have also demonstrated their potential as future leaders in the legal academics. A special mention to our own student Mr. Suneeth Bhat who has designed the journal and certificate of appreciation.

I place on record the benevolent patronage extended by Poojya Dr. D. Veerendra Heggade, the president of SDME Society for all our endeavors. I also acknowledge with humility the support extended by Dr. Sateeschandra S., the secretary SDME society. To conclude to create legally vigilant society, we can bring dynamism, optimism and realism only through the instrument of law.

Congratulations for the whole Editorial team for the successful compilation of both the volumes of the academic year 2023-2024.

Dr. Tharanatha
Principal

About Lex Plus

Lex Plus peer reviewed student law journal, plays a crucial role in addressing contemporary legal issues by providing a platform for in-depth, scholarly analysis from a student perspective. This publication is instrumental in exploring a broad spectrum of modern legal challenges, from emerging technologies and evolving constitutional interpretations to shifting regulatory landscapes and societal impacts on law.

Contributors to Lex Plus typically law students, bring innovative viewpoints and rigorous research that often highlight underexplored areas or new dimensions of current legal debates. Their articles frequently address how contemporary issues like digital privacy, environmental law, or human rights are being shaped by recent legal developments and societal changes.

By offering a forum for these analyses, Lex Plus not only enriches the legal discourse but also helps to bridge the gap between theoretical legal education, practical and real-world issues. It reflects the evolving concerns of the legal community and provides valuable insights into how the law is adapting to the complexities of the modern world.

Editorial Team

PREFACE

It's with a great pleasure SDM Law College Mangalore presents LexPlus Student Law Review 2024. SDM Law College Mangalore, established in 1974 has set a benchmark in quality legal education in South India. Over the years, the college has tried its best efforts to inculcate within the students aiming to improvise learning process through research and innovation. The stress lies on commitment towards the values of individual concern and growth, reliance and encourage students' desire to learn, flexibility in the learning process and a rigorous academic progress to meet the demands of a global society. The college has laurels in securing 11th position at the National level and 2nd position in the state level in IIRF rankings 2023-24.

This year it's a proud moment for us to celebrate 50 years of the institution marking a significant milestone in our remarkable journey of achievements and contributions. A myriad of activities enrich the academic experience for students, encompassing both competitive and non-competitive events. Among these, the LexPlus Student Law Review stands out as a beacon for fostering research acumen and honing writing skills. Through the platform provided by the LexPlus Student Law Review, students are provided with the opportunity to delve into pressing legal issues, engage in rigorous research and contribute meaningfully to the discourse surrounding the legal field. We are thrilled in successfully bringing out ***Two volumes*** *of the journal due to the overwhelming responses, Vol- 3 and Vol-4 comprising of articles of different spheres signifying the legal aspects filled with information .The aim is to enhance writing skills , boost creativity and present fresh perspectives, enrich the legal profession's intellectual landscape, fostering dialogue and facilitating positive change.*

Table of Contents

Table of Contents

Table of Contents

* * * *

CAN THE ABOLITION OF TITLES ENSURE EQUALITY?

Shivshankar S. Bhat *

Abstract

The title is an honor given by an authority to recognize the exceptional contribution by them.

In Art 18 of the Indian constitution, the title which is passed through hereditary succession is prohibited and recognized only honors earned from the military or educational field. By explaining the core concept, the researcher delves deep into whether such a title conferred by the government will be unconstitutional or not. The researcher here delves deep into some intricacy of intelligible differentia and Art 14. The intention behind an exception clause in Art 18, will defeat the intention behind constitutional framers. In this research paper, the researcher intended to explore how the abolition of title ensures equality among the citizens.

Keyword : ***Titles, intelligible differentia, inequality, Veda Murthi, pandit***

Introduction:

The title 'Father of Our Nation' is often attributed to Mahatma Gandhi, nonetheless, this is not the whole truth. It may have been conferred by Netaji Subhash Chandra Bose, as revealed in response to an RTI filed by a young girl in 2010. The Ministry of Home Affairs of the Government of India responded that the "RASTRA PITA" title to 'Mahatma Gandhi' is not an official title[1], as it would violate Article 18 of the Indian Constitution. Our Constitution only confers military and educational achievements as valid titles. Titles like 'Maharaj,' 'Patel,' 'Shanbaug,' 'Kulkarni,' 'Raisab,' 'Jaghirdar,' and 'Zamindar' are hereditary and are violative of Article 14, as well as Article 18.

The right to equality is not as universally equal as commonly presumed; it is equality among equals. The concept of the Doctrine of Intelligible Differentia applies in every case. Is this violative of Article 18? What is the status of honorary Doctorates conferred by Universities? Will awards conferred by the President fall within the scope? Is there any special treatment given to such titleholders? Is this violative of equality?

By analyzing these questions, the authors aim to answer whether the abolition of titles ensures equality, providing an alternative perspective on the matter.

Understanding Title Abolition: Exploring Article 18 of the Indian Constitution

Article 18 of the Indian Constitution[2] States the abolition of titles. No one should attach any sort of title as a suffix or prefix unless it is military-conferred or attained due to educational excellence. It also stipulates that "no citizen of this can receive an award or any title of any foreign government". Any non-citizen holding an office of profit or trust shall receive any title of a foreign government unless the President consents. The last clause of this article articulates that persons holding office of profit or trust in India can accept foreign emoluments, presents, or office of any kind from or under a foreign government.

What is a title? The Constitution of India has not defined the above word. By referring to various landmark cases, it is found that "title" means a title of honor, rank, function, or office to which there is a distinctive appellation attached. It is a title bestowed upon an individual as an award in recognition of merit.[3]

Constitutional Assembly Debate on Titles and Honors: Exploring Article 18 in India

The constitutional debate behind articulating this article unfolded on November 31, 1948, and December 1, 1948, during the discussion and adaptation of the erstwhile Article 12, now Article 18. T. Krishnamachari, H. V. Kamath, and Naziruddin Ahmad put forth their amendments to this article. Krishnamachari opined that military and academic-related titles must be excluded from the purview of this article. He was vocal about

* **4th Year, BA. LLB., Shree Dharmasthala Manjunatheshwara Law College, Mangaluru, Karnataka.**

1 Gaurav Vivek Bhatnagar, "10-years olds RTI posers' stump PMO,Government", The Hindu, <https://www.thehindu.com/news/national/10yearolds-rti-posers-stump-pmo-govern > accessed on 12 2024.

2 V N Sukla, "The constitution of India", (first edt 1950; 2023 14 edt) EBC, p 210-214

3 Collins Dictionary (17th 2012) vol 20, para 6

retaining and being recognized by the government the erstwhile titles of colonial masters. The contention relating to academic and military titles was adopted, while other contentions were negated.

H. V. Kamath raised the question of whether such rights are justifiable. He queried what punishment one would receive for accepting a title. Rephrasing the question posed by Naziruddin, he asked whether the word recognition by the state is included in Article 18(1), and if the states cannot confer titles upon their citizens but foreign states can.

In response to the queries, Dr. B. R. Ambedkar stated that as it is not a justiciable right, it is a duty imposed upon continued citizenship. If a person accepts any title from a foreign state, it is not recognized by the state. He must deny the title, or else he may lose his citizenship, as it is a condition attached to citizenship. He further stated that parliament must enact relevant laws to ensure that no one commits wrong and to penalize wrongdoers.[4]

The intention behind adapting this as a fundamental right was to ensure equal treatment of all citizens and not to provide any special status or privileges to any citizen.

Nowadays, the intention has lost its essence, as titles and honors are sometimes misused for personal gain rather than serving the original purpose of promoting equality and meritocracy.

Is senior advocate designation violative of fundamental rights?

In the landmark case of *Mathews J. Nedumpara v. Union of India*,[5] the petitioner argued that designating an advocate with relevant expertise and merits violates fundamental rights. This designation is only granted to kin and kin of judges, abruptly excluding other worthy advocates. He further argued that such designations provide special privileges to these grouped advocates. Dismissing the petition, Hon'ble Justice S. K. Kaul stated that the designation is provided to advocates who successfully fulfillthe essential requirements outlined in the guidelines. These requirements include active practice of the profession for more than 10 years, optimum citation of landmark cases and legal knowledge, contribution to legal acumen through research on various nuances of law, delivering law lectures, and active participation in legal teaching. This qualifies a person to be designated as a senior advocate. The designation of advocates by the relevant authority falls well within Article 14 of the Constitution. The doctrine of intelligible differentia is precisely applied here. The intention for which it was made and the purpose it fulfills are similar. The petitioner's argument, stating that the title only revolves around the kith and kin of distinguished judges, is untenable, as a first-gen advocate who fulfills the guidelines as laid down in the Indira Jaising case.[6] Is granted the title. Such titles can be conferred as they are exempted from Article 18(1) as they come under academic distinction.

My question is to discover whether national award holders can add such titles in front of their names as prefixes, for example, "Padmabhushana Dr. Dulvir Singh." What is the punishment laid to correct the same?

The question will be answered by citing the Balaji Raghavan case,[7] which states that such titles are conferred by the President with recommendations from the national-level committee. These awards are given to those who have rendered exceptional or distinguished service in any field. However, the usage of such titles as prefixes and suffixes is not correct. In our country, no punishment is laid out for this, but in other countries, such titles are revoked, or in some cases, the individual is warned not to use them.

Examining the Role of Title Abolition in Achieving Equality: A Critical Analysis

Does the abolition of titles ensure equality among citizens? What are titles all about? They are recognitions given by some authority or person to well-qualified citizens, acknowledging their achievements or the office or post they hold. Will this certification of inequality concern other common citizens? It is better to define equality as treating every person on the same footing without any discrimination. But can't we find inequality among us? Ensuring equality among equals is true equality, rather than equality among unequal.

The article only abolishes titles bestowed by colonial masters to recognize hereditary nobility, such as jaghirdar, khan, raisahab, rai bahadur, princes, Deshpande, Sardesai, Shanbaug, etc., which give an edge to every holder of such titles over others who do not have them. These titles provide certain special treatment or privileges to them, which is discriminatory.

---

4 Const Deb, 30 November 1948, vol 4, pg. 25

5 Mathew J. Nedumpara V. Union of India, Air 2019 Delhi 184

6 Indira Jaising V. Supreme Court of India Through Secretary General & Others (2017) 9 Scc 766

7 Balaji Raghavan/S. P. Anand Vs Union of India (1996) 1 Scc 361

But analyzing the present scenario, Article 18 holds good. Some titles like honorary doctorates, which are provided by universities, allow the holder, without any academic background, to utilize the abbreviation "Dr." along with their name. That violates Article 18.

Exploring Titles and Awards: Balancing Recognition and Equality in the Vedic Realm and Contemporary India

The Vidyarthi who completes the study of the 4 Vedas is rightly conferred with the title Veda Murty. A person who specializes in Vedas and Upanishads is conferred with the title Bhramashree. Titles like Matysa-Veda-Praveena, Vidyavachaspathi, Vidwan, and Pandit in Nritya& Sangeetha, as well as Sakalavidyaparangatha and Kalavisarada, are prefixed with the name to acknowledge accomplishment in scholarly literature or music. These titles are not violative of Article 18 as they are included in the academic realm, though not formal, they represent a form of education. These titles recognize that the person has undergone rigorous training and obtained such education. So, these are valid titles.

As per the judgment in the Balaji Raghavan case, national awards can be conferred upon citizens who have done exceptional or distinguished service in their field, as recommended by the national committee constituted for that purpose. There is rationale in providing special status to Bharat Ratna awardees as they are the real stars of our nation, and the government should take care of them. Such awards create special categories of people with special privileges. The privileges that awardees are entitled to include not being required to pay taxes, traveling in AIR INDIA free of cost, first-class train travel being free, provision of Z+ security if requested, facilities equal to those of a cabinet minister, visit to particular states, and the concerned government ensuring VVIP treatment[8].

Padma awardees are not provided with such facilities but are allowed to use the medal in state and other ceremonies. According to the home ministry, awardees cannot utilize the title as a prefix along with their name. There is rationale in providing special status to Bharat Ratna awardees as they are the real stars of our nation, and the government should take care of them.

Understanding the Doctrine of Intelligible Differentia in the Context of Title Abolition

Intelligible differentia is a maxim that means if a proposed action has a rational nexus with the matter under consideration, then it is reasonable. It is also called reasonable classification.

In the present case, the abolition of titles has a rational nexus with ensuring equality. Hereditary titles create a special status in society compared to normal citizens.

Conclusion

Article 18 provides for the abolition of titles except in education and military distinctions. It has been 75 years now, and it is time for us to evaluate whether the abolition of titles truly ensured equality. Undoubtedly, the government regards and recognizes the meritorious service of a citizen to set a model for others. Due to reasonable classification and the 'equal treatment for equals' rule, society has created different categories of citizens. Some are conferred with reasonable titles, while some are not. There have been many cases when Padma awardees, despite clear guidelines, have utilized their titles in front of their names. Due to the lack of proper parliament-enacted laws in furtherance of this and proper punishment mechanisms, the article's essence is diluted. Parliament must look into the matter for the effective implementation of Article 18. The abolition of titles, being a non-justiciable right, remains a toothless tiger.

* * * *

[8] Rakesh Dubbudu, "What are the Benefits & Facilities extended to a Bharat Ratna Awardee", (the faculty), < https://factly.in/benefits-given-to-bharat-ratna-awardees > accessed 12 April 2024.

NAVIGATING CHALLENGES IN INDIA'S CREDITOR - CENTRIC INSOLVENCY LANDSCAPE: AN ANALYSIS OF THE INSOLVENCY AND BANKRUPTCY CODE OF 2016

Swantika Banerjee *
Aastha Verma **

Abstract

The Insolvency and Bankruptcy Code of 2016 brought about a transformative shift in India's approach to debt recovery and corporate restructuring, transitioning from a debtor-in-possession to a creditor-in-control model. This transition aimed to safeguard the interests of creditors and maximize the value of the assets of the corporate debtor. However, in its implementation, several critical issues have emerged, posing challenges to the IBC's effectiveness. This paper critically examines three key challenges. Firstly, it addresses the unequal treatment of financial creditors across industries under the IBC, questioning its suitability for all sectors. Secondly, it underscores the absence of a robust framework for cross-border insolvency, posing concerns in an era of global business operations. Lastly, it explores the interpretation of Section 238, which interacts with the recovery-related provisions of other laws, leading to conflicting judgments. To enhance the IBC's effectiveness, the paper calls for flexiblemoratoriums, a comprehensive cross-border insolvency strategy, and clearer guidance on Section 238, ensuring asset preservation, protection of stakeholder rights, and alignment with the IBC's core objectives.

Keywords: ***Insolvency and Bankruptcy Code (IBC), creditor-centric model, debt recovery, insolvency resolution, financial creditors, cross-border insolvency, asset preservation, creditor rights***

Introduction

The parliamentarian vision for bringing in the Insolvency and Bankruptcy Code, 2016 (IBC) was to overhaul the existing debt-recovery and insolvency laws that had been in place since the colonial era.[1]. The IBC led a shift away from a debtor-in-possession model to a creditor-in-control model. It was necessary to implement a creditor-in-control model to maximize the value of the asset pool and protect the rights of all creditors.

To understand the core of any insolvency regime, one must first understand the purpose of insolvency. An insolvency event is triggered when the corporate debtor (CD) is unable to make good on its debt and defaults. A regular flow of funds is essential for the functioning of every business entity, and corporate entities get this money from financial and operational creditors. Therefore, when a business entity defaults, the right of the financial and operational creditors to pay and to remedy on breach of contractual obligations is triggered. In such circumstances, the only mode of recovery that is left to the creditors is to recover their dues from the asset pool of the CD; that is why it is imperative to protect this pool of assets from being divided or depreciating.

Disproportionate rights of financial creditors

To prevent such division and depreciation, the Code incorporates two provisions. Under Section 14 of the Code, a moratorium is imposed. The moratorium places a bar on the initiation or continuation of all legal actions against the CD till a resolution plan is approved by the adjudicating authority (AA) or a liquidation order is passed. It prohibits the transfer of the CD's assets or any legal right or beneficial interest. Moreover, Section 14 interdicts the initiation of any action under SARFAESI by banks to secure their security interest. Sections 16 and 22 of the Code mandate the appointment of an interim resolution professional and resolution professional, respectively, who is given the responsibility of managing the asset pool. On reading Section 14 with Section 238 of the Code, it can be interpreted that the non-obstante clause applies to the bar on the application of recovery under any law in force like the SEBI Act, PMLA, etc.

* **5th year, BA. LL.B (Hons.), School of Law, CHRIST (Deemed to be University),Bangalore, Karnataka.**

** **5th year, BA. LL.B (Hons.), School of Law, CHRIST (Deemed to be University),Bangalore, Karnataka.**

1 The Provincial Insolvency Act 1920 &The Presidency Town Insolvency Act 1908.

Despite the implementation of a moratorium to prevent the dilution of the value of the asset pool, the IBC code fails to provide comprehensive protection in three avenues–

1. The legislative reasoning behind providing disproportionate rights to financial creditors doesn't hold well in insolvency in all sectors of the industry.
2. The absence of a comprehensive roadmap for cross-border insolvency
3. The non-obstante clause may hinder the rights of certain stakeholders

All the above-mentioned lacuna diminishes the value of the asset pool, leading to the rights of the creditors being withered away, which at the end of the day, defeats the very purpose of the Code. To delve into the first lacuna, different industries have different modes of financing. For example, the aviation industry in India finances its fleet of aircraft, mostly through operation leasing arrangements. Such a contract entails the airline company renting aircraft from the lessor for a specific period, like 6-12 years. The airline company or operator is contractually obligated to pay a periodical lease rental fee for the entire duration of the lease and then return the aircraft after the contract comes to an end. This arrangement is common as it allows the financing of several aircraft at a relatively lower cost as compared to buying it outright. So, an airline company can expand with a large capital outlay, mitigate the risk of asset ownership, and preserve liquidity.

According to Sections 5(21) and 5(20), of the Code, a lessor would be treated as an operational debtor as they provide a good, being aircraft. Sections 7 and 9 of the IBC, respectively, treat financial creditors and operational creditors differently. The financial creditors are only required to furnish evidence of default on debt to apply the corporate insolvency resolution process (CIRP), whereas operational creditors are first required to give a demand notice for repayment of dues to the CD. The operational creditors cannot proceed if a prior arbitration or judicial proceeding has already been initiated by the CD. On non-payment of dues, the OC can further submit a copy of the notice along with an affidavit of a bonafide non-reply by the CD along with evidence of the existence of the debt. Moreover, in Swiss Ribbons Pvt. Ltd. and Ors. vs. Union of India, the Supreme Court stated that the differential treatment of financial creditors and operational creditors passes the constitutional litmus test as operational creditors are typically unable to assess a company's profitability and viability; instead, they are simply concerned with collecting the money they are owed for their goods and services. Whereas financial creditors can assess a plan's effectiveness and viability, they will do so and base their choice to approve or reject a plan primarily on those considerations.

The triggering of an insolvency event in the aviation sector would mean that the operator or CD would fail to meet its obligations on payment of rental dues for a large number of aircraft. The operational creditor would neither be able to repossess the aircraft of enforce its security during the moratorium period when an application for CIRP is filed. This creates a two-fold issue; firstly, most operational leasing arrangements require a massive sum to be repaid to the lessor on a periodical basis, and secondly, aircraft not only have a large depreciationvalue but also involve a huge expenditure to keep them grounded. The IBC would consider a lessor to be an operational creditor who barely has any decision-making or negotiating power in the entire CIRP process. After taking over the management of the CD and collating all claims, the interim resolution professional constitutes a committee of creditors.[2] (COC). The COC consists of all financial creditors, with each financial creditor's voting right being proportionate to their respective claims. Only operational creditors who have transferred their debt to a financial creditor and operational creditors whose cumulative debts amount to at least 10% of the total debt due, form a part of the COC and attend its meetings, but they do not have the right to vote as per Section 24(4) of the Code.

Therefore, the Code needs to allow flexibility in terms of the moratorium as well as the rights of operational creditors, as insolvency in different sectors of the industry comes with its own unique set of requirements.

Challenges in Cross-Border Insolvency

Apart from this, since 1991, with the LPG movement and the opening up of the economy, companies have started gaining a transnational and multinational character. Companies today have foreign creditors, foreign subsidiaries or associate companies, joint ventures (JVs), and assets parked in foreign jurisdictions along with the parent entity acting as guarantors to foreign subsidiaries or associate companies on incurring debt from foreign creditors.

[2] Insolvency and Bankruptcy Code 2016, s 21

Such structures are likely to trigger concurrent domestic and foreign proceedings to liquidate the assets or be used as a bargaining tool. This creates a risk of the assets being dissipated, fraudulently concealed, or liquidated without exploring more viable options[3]. When one of the subsidiaries or associate company or the parent company itself or the entire group fails, then it creates a series of contingent liabilities which gives rise to complex legal issues like whether a default by a foreign subsidiary would serve as legal grounds for initiating insolvency proceedings against the holding company or the approach the legislators should adopt while framing cross-border insolvency regulations or whether the administrator appointed in one jurisdiction has the legal right to seize the assets of the subsidiary/holding company located in another jurisdiction.

The Constitution of India is sovereign.[4] Therefore, the courts of India have complete control and authority to pass judgments relating to the law of the land.[5]. So, the courts in India can interpret four debt-recovery and insolvency laws– The Insolvency and Bankruptcy Code (IBC), the Recovery of Debts and Bankruptcy Act, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act and the Companies Act but its authority does not extend to foreign jurisdictions. So, the courts and Tribunals of India cannot make a judgment based on the law of a foreign country which is binding on a foreign jurisdiction but the principle of comity allows for the judicial recognition and enforcement of judicial decrees and decisions rendered in other jurisdictions' unless to do so would offend its public policy.[6].

The IBC extensively covers the issue of corporate restructuring with instruments of CIRP, Liquidation, Pre-Packaged Insolvency Resolution Process and Fast-Track Corporate Insolvency Resolution Process. However, the Code only provides two provisions regarding cross-border insolvency which shifts the onus directly onto the Ministry of Home Affairs, Government of India. Certain provisions of the Civil and Criminal Procedure Code as well as injunctions may aid such proceedings, but the plague of bureaucratic delays along with protracted litigation, rising costs, and dilution of assets and (Non-performing assets) NPAs remain prevalent.

Sections 234 and 235 of the IBC, empower the Government of India to make treaties with foreign jurisdictions, and if such a bilateral/multilateral treaty exists, the Adjudicating Authority (AA) can send a letter of request to a court in that specified State, for access to information regarding foreign proceedings.[7]. Section 234 is based on the concept of reciprocal agreements, which is an exercise of State sovereignty.[8], which leaves the future of cross-border insolvency proceedings solely dependent on Memorandum of Understanding (MOUs), treaties, or conventions signed and ratified by the government. The delays attributed to bureaucratic red-tapism can lead to the dilution of assets or their conversion to NPAs, which defeats the purpose of debtrestructuring and insolvency proceedings.

Concurrent municipal and foreign proceedings give rise to the problem of conflict of laws (especially when most foreign jurisdictions have adopted the UNCITRAL Model Law on Cross-Border Insolvency and India has not) and apprehension regarding reciprocity of recognition of decrees. Section 44A read with Section 13 of the Code of Civil Procedure of 1908, states that foreign decrees are executable and considered conclusive proof in India if they are passed by any "Superior Court" (based on notification by the Government of India) of any "reciprocating territory" (Trinidad and Tobago, UAE, Malaysia, United Kingdom, Hong Kong, Bangladesh, Fiji, Papua and New Guinea, Singapore and New Zealand) only if the judgment is made in tune with the principles of natural justice and the Indian laws, is not obtained by fraud (or ex-parte) or is not pronounced by a court of competent jurisdiction[9]. However, Section 44A does not apply to arbitral orders which are dealt with by the Arbitration and Conciliation Act, of 1996. Section 166A of the Code of Criminal Procedure, 1973 provides for Letters Rogatory for criminal investigation that is issued under Mutual Legal Assistance Treaty (MLAT) and MOU/Agreements existing between India and the requesting country (with

3 Batra S, *Corporate Insolvency: Law and Practice* (1st ed, EBC, 2017)

4 Under Article 245 of the Indian Constitution, the Parliament can make territorial and extra-territorial laws.

5 In accordance with Art. 245 of the Constitution of India.

6 John Kuhn Bleimaier, '*The Doctrine of Comity in Private International Law*' (1979) 24 St John's University 4 <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi? article=2041&context=tcl> accessed 29 March 2023

7 ZulfiqarMemon, Abhishek Gupta and AakanshaLuhach, '*India: Cross Border Insolvency Regime In India*' (2021) *Mondaq*<https://www.mondaq.com/india/insolvency bankruptcy/1123982f/cross-border-insolvency-regime-in-india> accessed 29 March 2023

8 The principle of sovereign equality as embodied in the UN Charter is the cornerstone of the international relations between the States as per Articles 2(1) and 2(2) of the Charter.

9 K B Agarwal and Vandana Singh, *Private International Law in India*, (1st ed, Kluwer Law International, 2010)

the prior permission of the MHA) if the directors, partners and Key Managerial Personnel (KMP) of the corporate debtor is suspected of any kind of fraud, financial irregularity or any other criminal offense under any debt-recovery or insolvency law[10].

Both Section 44A of CPC and Sections 234 and 235 of the Code are subject to the declaration of reciprocating territory and bilateral/multilateral agreements made by the government, respectively, which can lead to a lot of procedural delays and confusion. This just adds to the time and cost of insolvency proceedings, which may give rise to more NPAs. Where there does not exist a bilateral/multilateral agreement, it is entirely the discretion of the courts to recognize foreign proceedings, like the non-recognition of Dutch liquidation proceedings by the Indian Court in the Jet Airways liquidation[11] case. However, it's a sharp deviation from the automatic and direct access and recognition of foreign representatives directly to the foreign insolvency ecosystem which is meant to promote predictable proceedings under the model law[12].

Anti-suit injunctions are another instrument used by Indian courts, where orders are made against a party, in personam, restraining them from instituting legal action or continuing with proceedings already instituted in a foreign jurisdiction.[13] As against moratoriums under Section 14 of the Code, that bar concurrent proceedings instituted under different debt-recovery laws in municipal courts of India. The Supreme Court in its guidelines, however, bars the grant of such injunctions if it will defeat the end of justice, principle of comity, jurisdiction clause of a contractual agreement, or is not convenient for the parties involved.[14]. For criminal offenses committed by KMP, directors, promoters or partners are also subject to Sections 3 and 4 of the IPC if the offense was committed on foreign soil, beyond the territorial limits of India, along with the Extradition Act 1962 for securing a fugitive offender, this gives India extra-territorial jurisdiction.[15].

To summarise, the issue with the triggering of cross-border insolvency is that multiple parallel litigations would be initiated in different jurisdictions, wherever the CD has its assets parked and wherever its creditors are located. Additionally, if a jurisdiction has fragmented provisions on debtrecovery and insolvency, then suits would be initiated under multiple municipal laws. Such parallel proceedings and conflicting judgments would, again, only lead to the reduction of the asset pool. Therefore, the Code must insert provisions that lay down the procedure for cooperation and coordination between courts, insolvency professionals, and the committee of creditors regarding the determination of the COMI (centre of main interest), the realization of assets, and the protection of different classes of creditors through a universal unity of proceedings.[16].

Interpretation of Section 238 and its Implications

The last issue, as outlined earlier, is regarding the interpretation of Section 238 in line with the recovery provision of other laws like Section 5 of the Prevention of Money Laundering Act, 2002; Section 13 of the Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002; Section 28A of the Securities and Exchange Board of India Act, 1992; Section 23JB of the Securities Contracts (Regulation) Act, 1956 and Section 19-IB of the Depositories Act, 1996. The purpose of IBC differs drastically from the other mentioned Acts. SARFAESI ACT, 2002 seeks to reduce the burden of NPAs on the balance sheets of banks by allowing them to recover their dues outside the purview of the court. Section 28A of the SEBI Act provides a mode of recovery thatincludes the attachment and sale of the defaulter's movable and immovable property for recovering disgorged monies, and illegal gains as well as seeking refunds in investor interest. Lastly, the objective of the PMLA Act is to prevent profiting out of funds that are of criminal origin.

Where IBC seeks to restructure a defaulted business entity, SEBI Act and PMLA seek to bring criminal action through its recovery provision and SARFAESI seeks to aid banks in preventing NPAs. Therefore,

---

10 Comprehensive guidelines regarding service of summons/notices/ Judicial process on the persons residing abroad,Notice 25016/17/2007, 2009

11 *State Bank of India v. Jet Airways (India) Ltd.* [2019] CP (IB) 2205 (MB)

12 Cross Border Insolvency Rules/Regulations Committee, R*eport on the rules and regulations for cross-border insolvency resolution* (Report, 2020)

13 Tulip De and PriyaAdlakha, '*The Law of anti-suit injunctions in India*' (2020) International Bar Association<https://www.ibanet.org/article/40B35B14-9403-412F-9A6C-6E03080BF696>accessed 29 March 2023

14 *Modi Entertainment Network and Anr. V. WSG Cricked PTE Ltd* (2003) AIR SC 1177

15 '*Extra-territorial Jurisdiction*', (The Indian Law)1 October 2020

16 Devi Shah and Jeremy Snead, '*The UNCITRAL Practice Guide on Cross-border Insolvency Cooperation: A Good Practice Guide to Cross-border Insolvency Agreements*', (2010) 7 International Corporate Rescue 5 <https://www.mayerbrown.com/-/media/files/news/2010/09/the-uncitral-practice-guide-on-crossborder-insolve/files/artshahsneadsept10uncitralpdf/fileattachment/art_shah_snead_sept10_uncitral.pdf> accessed 29 March 2023

when a moratorium is imposed under Section 14 and its 'strict adherence by regulatory bodies, including SEBI and Stock exchanges, reflects the overriding power of IBC, especially as IBC came into force later.[17] (The Supreme Court of India has interpreted that the IBC prevails over the SEBI Act.[18]). Bringing regulatory bodies and banks under the purview of Section 14 also signifies the loss of primary rights of recovery by banks and inhibiting regulatory bodies from pursuing criminal actions.

However, there have been conflicting judgments that have challenged the overriding effect of Section 238 of the Code. In the Ashok Sarawagi case[19], the Hon'ble Court held that the order of attachment issued under the PMLA is lawful if it meets the necessary statutory requirements, similar to actions taken by banks, financial institutions, or secured creditors for debt recovery or secured interest enforcement under the RDBA or SARFAESI Act. The Supreme Court of India in Indian Overseas Bank v M/s RCM Infrastructure Ltd. &Anr. held that a sale under section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"), would be regarded as complete only upon receipt of full consideration towards the sale properties.[20]. Further, it was held that an application for the CIRPof RCM Infrastructure Ltd would prevail even after the process for the sale of the properties of the Corporate Debtor had been initiated under section 13 of the SARFAESI Act.

Conclusion and the way Forward

In conclusion, the evolution of India's Insolvency and Bankruptcy Code, 2016 represents a significant step in modernizing the country's approach to debt recovery and insolvency. However, as outlined in the preceding discussions, several critical challenges and gaps persist. These include the issue of disproportionate creditor rights, the need for a comprehensive cross-border insolvency framework, and the interpretation of Section 238 in conjunction with other recovery laws. To ensure the IBC's effectiveness and adaptability in the evolving economic landscape, it is imperative to consider the following:

- **Flexibility and Adaptation:** While the IBC provides a moratorium to prevent asset dilution during insolvency proceedings, it may not adequately protect the rights of operational creditors in all industries. Different sectors have distinct financing models and requirements, and a one-size-fits-all approach may not be suitable. The IBC should be amended to introduce flexibility within its provisions, particularly in terms of the moratorium and the rights of operational creditors. This flexibility will allow for a more tailored approach to insolvency in various sectors, ensuring that the rights of creditors are adequately protected.

- **Cross-Border Insolvency Framework**: With the globalization of businesses, cross-border insolvency cases have become more common. India lacks a comprehensive framework for handling such cases, which often involve concurrent proceedings in multiple jurisdictions. Existing provisions, such as Sections 234 and 235, depend on bilateral/multilateral agreements and MOUs, leading to bureaucratic delays and potential asset devaluation. To address this, India must work towards establishing a comprehensive framework that aligns with international standards. Bilateral/multilateral agreements and MOUs can provide interim solutions, but a more unified approach is necessary to facilitate efficient asset realization and protect creditor rights.

- **Harmonization of Recovery Laws**: Section 238 of the IBC has been a subject of debate, particularly in its relationship with other recovery laws like the Prevention of Money Laundering Act, SEBI Act, and SARFAESI Act. These laws serve different purposes, and conflicts arise when insolvency proceedings under the IBC override other recovery actions. The interpretation of Section 238 and its relationship with other recovery laws should be clarified to strike a balance between the objectives of the IBC and the distinct purposes of other acts like the SARFAESI Act, SEBI Act, and PMLA. This will prevent conflicts and ensure that the rights of all stakeholders are respected.

By addressing these challenges and implementing necessary reforms, India can enhance its insolvency regime, safeguard creditor interests, and promote economic recovery and stability in an ever-changing global landscape. The continued evolution of the IBC is essential to fulfil its original vision of optimizing asset value and protecting the rights of all creditors.

* * * *

[17] *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. &Ors* (2001) 3 SCC 71
[18] *Bhanu Ram and Others v. HBN Diaries & Allied Ltd.* 2023 SCC OnLine NCLT 336 and *Rajendra K. Bhutta v. MHADA* (2020) 13 SCC 208
[19] *Ashok Kumar Sarawagi v. Enforcement of Directorate and Another* 2022SCC OnLine NCLAT 3453
[20] *Indian Overseas Bank v. RCM Infrastructure Ltd.* (2022) 8 SCC 516

ONLINE DISPUTE RESOLUTION: A PANACEA FOR JUDICIAL DELAYS AND BACKLOGS IN THE LEGAL SYSTEM

Daksh Sharma *
Ritwik Rudra **

Abstract

The rapid development of technology and the proliferation of Internet-based transactions have given rise to another innovation in the traditional way of resolving disputes, which is now known as online dispute resolution (ODR). This research paper shall discuss the process, mechanism, and potential that ODR can serve as a panacea to most contemporary challenges arising from judicial delays and backlogs inflicting the traditional system of justice. ODR marries ADR practices such as mediation, arbitration, and negotiation to digital platforms; offering a solution that is inexpensive, fast, and easily accessible by disputants. The next part of the paper is a discussion about ODR from the late 20th century, characterized by significant contributions from the likes of E-Bay, and the United Nations Commission on International Trade Law (UNCITRAL). The crux of the analysis lies in the transformative effect that the COVID-19 pandemic has had on the global adoption of ODR platforms, thereby mandating a shift toward using online platforms for legal procedures. From an Indian perspective, the paper delves into the inadequacy of the present legal regime to harbor ODR and indicates that it could largely be rectified with statutory intervention laying down the minimum requirements of an effective ODR framework. It goes on to discuss the related challenges, such as the security of data, issues with enforcement, and the digital divide, comparing international practices in countries like the United States and the European Union. In this regard, it argues that ODR, with its promise of timely, transparent, and equitable dispute resolution, will act as a cornerstone for modernizing the judiciary and enhancing better access to justice for underprivileged and marginalized communities.

Strengthening Digital Dispute Resolution: An Introduction of ODR

Online dispute resolution is more commonly referred to as ODR. It has emerged as a result of the drastic shift in technology and growing reliance on online transactions.[1] Digital dispute resolution is a creative concept. To resolve their differences, the disputing parties gather together on an identical online platform. Through the use of alternative dispute resolution procedures including mediation, arbitration, and negotiation, ODR allows parties to resolve conflicts. It encompasses alternative dispute resolution (ADR) and technology. It has started an emerging pattern in which parties are no longer required to physically be in court as they were from the commencement of the legal system. Comparing it with conventional litigation, it saves money for the judiciary and the parties and delivers effective, efficient, and transparent advantages. The parties can share an electronic document instead of printing one.[2] In addition, ODR enables clients to present online from any place in the world, which helps parties save money as well as time by eliminating the need for travel.[3]

An exploration through time

ODR's history commenced with the emergence of digital transactions and technology in the late 20th century. ODR originated with the concept of using technology, specifically the Internet, to settle disputes. Being one of the biggest and oldest online retail platforms, E-BAY was crucial to ODR.[4] It recognizes the necessity of efficient dispute resolution procedures to resolve conflicts between buyers and sellers and enables buyers to

* 5th Year BA.LL.B (Hons.) IMS Unison University, Dehradun, Uttarakhand
** 3rd Year BA.LL.B, National Law University, Cuttack, Odisha

1 Deepak Verma, AnshuBanwari&NeerjaPande, Online Dispute Resolution, *Digital Communication Management* (2018)
2 Ethan Katsh & Janet Rifkin, Online Dispute Resolution: Resolving Conflicts in Cyberspace 45-50 (Jossey-Bass 2001).
3 Colin Rule, Online Dispute Resolution for Business 32-38 (Jossey-Bass 2012).
4 Melissa Conley Tyler & Di Bretherton, Online Dispute Resolution and Family Dispute Resolution: Considering Similarities and Differences, 7 ADR Bulletin 77, 80-82 (2003).

purchase more. For that, eBay established its online platform in 1996 to assist buyers and sellers in accepting mutually accepted judgments and settling disputes between them without the need for courtroom proceedings.[5]E-Bay offers several channels for handling client complaints, including calling, messaging, and so forth. The ODR practice that eBay pioneered had a big influence on how the ODR system was shaped globally.The United Nations Commission on International Trade Law (UNCITRAL), which established the arbitration principles for online dispute resolution and facilitated cross-border disputes that arise from e-commerce, has additionally made a substantial contribution to the field of ODR.[6] Furthermore, UNCITRAL supports its member states by backing them in setting up the ODR infrastructure and system in their nation. Globally, UNCITRAL strives to improve ODR's efficacy, methodology, and quality.[7]Governments throughout the world are striving to enhance ODR in their nations as a result of their growing awareness of the practice's benefits.

Worldwide ODR expansion was greatly aided by COVID-19. People at the time relied entirely on digital platforms for business and meetings, and in-person interactions were restricted.[8] To stop the spread of illness, the courts have also remained closed. Since crimes continued to occur in society regardless of whether we were working offline or online due to the lockdown that allowed people to engage in more electronic transactions, which eventually increased cybercrimes and other crimes, courts were also compelled to work online.[9]

Alternative Dispute Resolution

An Alternative Dispute Resolution (ADR) Its name gives away the essence of the thing; what does it mean? Because it differs from court procedures, it follows that the process of resolving disputes outside of court requires fewer procedural stages. Alternative Dispute Resolution (ADR) processes are less formal and enable early resolution for the parties. Because they are flexible and can choose to accept the judgment or modify it as necessary, the parties have more control over it.[10] Since the judiciary is already overworked, ADR expedites the resolution of cases and helps the court assign priorities to those that need judicial involvement. Considering all of these factors, it can be concluded that alternative dispute resolution (ADR) is transparent, flexible, efficient, and effective in comparison to traditional litigation.

Mediation

Using digital platforms and technology, online dispute resolution (ODR) mediates a settlement between contending parties. In out-of-court settlement (ODR) mediation, a trained mediator is hired to assist the parties in choosing a point of agreement to resolve their dispute.

A mediator is a third party who is impartial and who provides suggestions to the parties. During the initial stage, the mediator thoroughly examines each side and tries to understand the root cause of the disagreement. The parties are subsequently assisted in virtual mediation, where they can share information through various means, including document sharing, video conferencing, and texting.[11]

The mediator then works to find a resolution that fulfills the requirements of both parties. While staying neutral and unable to impose a judgment on the parties, the mediator assists them in exploring their needs. If the parties reach a consensus, the mediator will next draft a settlement agreement, which the parties must electronically sign. Then after that, the mediator requests that the parties follow up to make concessions on the agreement that was made by consensus. Through ODR mediation, a person can efficiently and swiftly come to a mutually agreeable agreement.

Arbitration

In ODR, arbitration is a procedure where disagreeing parties present their facts and supporting documentation to an impartial arbitrator, who then considers all of that information to render a legally enforceable conclusion.

5 J. Brett et al., Sticks and Stones: Language, Face, and Online Dispute Resolution, 50 *Acad. Mgmt. J.* 85, 85-99 (2007)

6 S. Boehme, Sceptics of the Screen: Irish Perceptions of Online Dispute Resolution, 2 *Int'l J. Online Disp. Resol.* 156, 156-181 (2015)

7 Gabrielle Kaufmann-Kohler & Thomas Schultz, Online Dispute Resolution: Challenges for Contemporary Justice 78-84 (Kluwer Law International 2004).

8 Ariel Sela, The Impact of COVID-19 on Online Dispute Resolution, 12 J. Online Disp. Resol. 112, 114-116 (2020).

9 Deepak Verma, Anshu Banwari & Neerja Pande, Online Dispute Resolution, *Digital Communication Management* (2018)

10 J. Rosenberg & H. J. Folberg, Alternative Dispute Resolution: An Empirical Analysis, 46 *Stan. L. Rev.* 1487, 1487 (1994)

11 John Goodman, Online Mediation: Impacts and Effectiveness, 9 Harv. Negot. L. Rev. 41, 45-48 (2003).

In this, the parties electronically submit their evidence, which is reviewed by the arbitrator, who then has a hearing and renders a decision based on the assessment of the evidence and hearings that the parties have provided. ODR arbitration takes place online on a variety of platforms; as the procedures are private and not accessible to the general population, the information is kept secret. Several advantages come with ODR arbitration, including less expensive legal costs when compared to conventional litigation. Presenting in an ODR arbitration allows for remote participation and reduces associated logistical expenses. Because it offers a flexible, effective, and efficient way to settle disputes, this idea is perfectly suited for the current digital era where individuals are time-constrained.[12]

Negotiation

Negotiationto resolve their differences amicably and without the assistance of a third party;these parties talk to each other through texting, video conferencing, and other online communication technologies.[13] As long as both sides are in agreement, they are in control of the choice. Compared with arbitration and mediation, negotiation in alternative dispute resolution is less formal. You can observe the role of a third party in arbitration and mediation since there is no involvement of a third party.

Conciliation

The conciliator is a person designated to resolve disputes through the process of conciliation. It serves as an impartial intermediary and assists them by providing suggestions, direction, and specific terms to settle their disagreement.[14] We are comparable to mediation in some ways, but their approaches are a little different. In contrast to mediation, conciliators may be more involved in the process. Ultimately, it may be said that mediation and consultation are equally effective in settling conflicts, with the main distinction being the extent of third-party engagement.

Positive aspects of Online Dispute Settlement

Managing Time and Costs : The ODR model has shown to be incredibly effective and efficient because it offers a speedier remedy than outdated legal systems, eliminates the need to commute or high legal fees, and ultimately results in financial savings.[15]

Flexible Nature: it is far more informal than judicial procedures, which offers flexibility because each party has an opportunity to participate in the outcome because they mutually agreed upon it. Unlike courts, it is less stringent.

Simple Accessibility : All you need is a dependable internet connection to access it. The most significant benefit of this method is that it does not impose any geographical limitations on the ODR procedure.

Confidentiality : ODR encourages confidentiality since it limits information sharing to two parties. In addition, parties are encouraged to interact or share information without fear of it being detected when they employ data encryption techniques and secure communication channels.

Sustainability in the Environment : Online dispute resolution (ODR) mitigates the environmental impact of traditional dispute resolution, which necessitates the daily use of countless pages. By removing the need for travel, ODR also lowers emissions related to transportation.[16]

Problems associated with ODR:

Structural Issue : Because of this need, those who do not have access to a computer, smartphone, or other dependable internet connection are at a disadvantage while utilizing ODR.[17]

Absence of Interpersonal Interaction: Online dispute resolution (ODR) eliminates the need for in-person meetings, which can generate problems between parties and impede the growth of third-party confidence.[18]

---

12 Mohamed S. Abdel Wahab, Ethan Katsh & Daniel Rainey, Online Dispute Resolution: Theory and Practice 110-115 (Eleven International Publishing 2012).

13 John Clark & Christopher Hodges, Resolving Disputes in the Digital Age 95-100 (Hart Publishing 2016).

14 Samuel Estreicher, Alternative Dispute Resolution in the Digital Age, 23 Yale J. on Reg. 435, 440-442 (2006).

15 Emilia Bellucci, S. Venkatraman & A. Stranieri, Online Dispute Resolution in Mediating EHR Disputes: A Case Study on the Impact of Emotional Intelligence, 39 *Behav. & Info. Tech.* 1124, 1124-1139 (2019)

16 Ethan Katsh, Digital Justice: Technology and the Internet of Disputes 180-185 (Oxford University Press 2012).

17 Hazel Genn, Online Dispute Resolution: What Are the Challenges?, 6 J. Int'l. Arb. 128, 130-133 (2013).

18 R. Friedman et al., The Positive and Negative Effects of Anger on Dispute Resolution: Evidence from Electronically Mediated Disputes,89 *J.Applied Psychol.* 369, 369-376 (2004)

Limited Remedies: Since arbitrators and mediators cannot award punitive damages, their remedies are only available up to a particular amount, undermining the ODR process's sufficiency.

Enforcement Issues: Because the legal systems of the two nations differ, it is challenging to apply the remedy in other nations. This is especially pertinent for worldwide procedures.

Comparative Analysis:

United States : The extent to which the Internet has been ingrained in American society is demonstrated by the extensive usage of Online Dispute Resolution (ODR). ODR has gradually but steadily grown in social contacts and legal proceedings, culminating in a significant expansion.

Three major Online Dispute Resolution (ODR) platforms that have gained international recognition were created primarily by the United States. The emergence of Modria, Cyber settle, and Square Trade as prominent worldwide players highlights the nation's capacity to initiate innovative approaches to conflict resolution in the digital age.[19]

Modria is a San Francisco-based startup that uses its ODR technology to handle internal corporate challenges and help resolve civil disputes in the business sector. Public groups like the American Arbitration Association (AAA) are among its outreach partners, which considerably reduces the challenges New York has in handling its caseload.

Setting the standard for the global ODR industry, Modria handles over 300,000 cases annually for the AAA alone. Its constituent parts are interconnected with many web-based platforms.

Cybersettle is an online platform created in response to the need for quick and economical claim resolution. Its goals are to meet parties' expectations and enable prompt settlements.

It functions as there is an immediate settlement when two offers are the same or superior to one another, CyberSettler has attracted a lot of interest since its launch in 1996 and has helped settle close to 200,000 claims totaling $1,457,299,751 to date.

SquareTrade no longer functions as a separate organization; it is now a part of the eBay Online Dispute Resolution (ODR) system. The eBay ODR system's evolution was greatly affected by its operational framework. Unlike other platforms, SquareTrade allowed parties in dispute to submit settlement proposals. SquareTrade provided e-mediation services for situations including impasse. After coming to a consensus, the parties signed an electronic contract to formally confirm their agreement and commit to its conditions. At the moment, SquareTrade serves as the eBay ODR platform's dispute resolution supplier.

Online conflict Resolution (ODR) is a conflict resolution method that is so widely used in the US that it crosses all boundaries and applies to both public and private sectors.

It has gained recognition as a reputable name in the dispute-resolution industry despite its gradual integration. Given the remarkable technological progress made by the country, it is justifiable that these developments would permeate the legal reform space and alter established practices. The adoption of digital procedures marks a significant change that will have a significant effect on the domestic legal system and emphasizes the significance of their role, which should not be undervalued.

Europe : Due to the close ties among its member nations and their propensity for digitization, the European Union (EU) is a singular entity. The degree of industrial interconnectedness has facilitated the application of common rules and guidelines, especially those about online and e-commerce transactions. As a result, Online Dispute Resolution (ODR) has become more and more popular within the European Union (EU), and debates about its adoption have received strong support. The European Union has received praise for enacting a comprehensive legislative framework for online dispute resolution in the broader context of Internet business.[20] This demonstrates the EU's active support for standardized online dispute resolution procedures.

To address Online Dispute Resolution (ODR) for consumer issues, particularly about e-commerce, the European Parliament approved the Regulation. By creating a European Online dispute resolution (ODR)

[19] S. Boehme, Sceptics of the Screen: Irish Perceptions of Online Dispute Resolution, 2 *Int'l J. Online Disp. Resol.* 156, 156-181 (2015)

[20] R. Alexander & R. O'Leary, The Past as Prologue: How the Early Years of the US Institute for Environmental Conflict Resolution Helped Shape the Program at Age Fifteen, 31 *Conflict Resol. Q.* 111, 111-131 (2013)

platform and expediting the settlement of disputes occurring in the realm of digital commerce, the primary objective of this Act is to enhance consumer protection.[21]With an emphasis on conflicts that emerge between Internet companies and their clients, the primary goal is to provide fair, impartial, transparent, expedient, and equitable dispute resolution outside of existing legal systems. Contract disputes arising from Business-to-Consumer (B2C) electronic commerce transactions between parties located in different EU member states are to be resolved through the Online Dispute Resolution (ODR) platform. The Regulation's primary focus is on this.

By standardizing the integration of Online Dispute Resolution (ODR) procedures across all member states, the Regulation aims to validate efforts to establish globally accepted rules for the application of ODR.[22] Additionally mandated by the Regulation is the yearly report's submission to the European Parliament and Council. A synopsis of the developments in ODR, a usability evaluation, a list of any flaws, and suggestions for remedies will all be included.

The inherent organizational structure of the EU has contributed to the restructuring of traditional conflict resolution mechanisms at both the national and supranational levels. Thus, this evolution has enabled the increasing incorporation of electronic processes into resolution operations. The interconnection of EU member states and the presence of pre-existing legislative frameworks that have encouraged a unified approach across numerous industries have made online dispute resolution (ODR) integration successful.

The European Union (EU) exemplifies the immense possibilities of online dispute resolution (ODR) and the possibility of standardization in resolving cross-border issues, therefore establishing a worldwide norm. Furthermore, the EU has been instrumental in guaranteeing that small businesses and consumers are treated fairly in the dispute resolution process by adopting a proactive stance towards addressing e-commerce complaints and emphasizing the need to protect their interests.

Laws in India:

India is presently passing through a rapid shift in its economic landscape which looks quite radical.Especially the fact is effective for FDI inflow on which country is becoming more attractive.Worldwide basis. On the positive side, the relationship of e-commerce countries towards economic development is an advantage. The most important problems of online dispute settlement practice are instead rooted in fundamental difficulties in a huge number of areas.[23]Albeit there is the 1996 Arbitration and Conciliation Act in place, it does not have any clearly defined provisions.Legal norms or mechanisms that a jurisdiction sets up for dispute resolution in the field of the Internet and social media. India'sphysical and tangible evidence is just one part of suppressing evidence during legal proceedings and there is no digital law that can satisfy this purpose of evidence destruction.Settlement apart from the regulation not happening in e-commerce due to no laws regulations or legislative authorities conducting online.Adjudication of disputes. Amidst the piled-up and unsolved case inventory equilibrium of the court, this produces a long line of backlogged and unsolved cases.The Indian judiciary suffers from this defect that not only do the disputes last longer but a lot of money also gets exhausted.Even suing is not a cheap business.

Since the current Act's effectiveness has not lived up to expectations, there is a general agreement that it needs to be amended to better reflect the changing business paradigms that are driven by information and communication technology. In response, a beta version of an online dispute resolution (ODR) platform designed to meet the interests of both domestic and foreign parties was presented by the Techno Legal Centre of Excellence for Online Dispute Resolution in India (TLCEODRI). Furthermore, an Online Arbitration or Cyber Arbitration specialist service has been established to enable parties to submit issues to TLCEODRI's platforms, providing a simplified means of resolving conflicts in the digital sphere.[24]

An appropriate tribunal will be designated upon the registration of a dispute to initiate the settlement process. These future additions to the platform are still being developed and polished. However since India lacks

---

21 Pablo Cortés, The Law of Consumer Redress in an Evolving Digital Market 55-60 (Cambridge University Press 2011).

22 Pablo Cortés, The Law of Consumer Redress in an Evolving Digital Market 55-60 (Cambridge University Press 2011).

23 Chia-Kuang Lee, T. Yiu & S. Cheung, Predicting Intention to Use Alternative Dispute Resolution (ADR): An Empirical Test of Theory of Planned Behaviour (TPB) Model, 21 *Int'l J. Constr. Mgmt*. 27, 27-40 (2018)

24 Mahesh Bhushan, Developing ODR Framework in India: Legislative Reforms Needed, 35 Nat'l L. Sch. Ind. Rev. 320, 322-325 (2020).

clear legal rules, e-commerce companies frequently function beyond the boundaries of Indian law, which puts customers at risk. That being said, India is lacking in the development of an essential Online Dispute settlement (ODR) infrastructure to enable online dispute settlement. Considering that there are currently no laws in India's legal system that address ODR, it is necessary to alter present laws immediately.

India's current legal system is frequently seen through the prism of its colonial past. Article 39-A of Part IV of the Indian Constitution has a directive principle that states the State must coordinate the operation of the judicial system to provide fair access to justice for all citizens. It even emphasizes how crucial it is to protect people from being denied justice because of economic inequality or any other kind of disadvantage.

But these fundamental objectives are dramatically contrasted with the harsh reality on the ground, where the law frequently fails to properly reach the most disadvantaged parts of society. Mostly made up of rural, rustic, and uneducated communities, these people still don't know much about their legal rights and what options they have. Even for those who are informed, the complex legal processes involved in litigation make it difficult to translate these rights into concrete results. For underprivileged populations, this means that there is still a gap between their legal entitlements and their actual reality, which feeds a cycle of injustice.

Although a serious problem inside India's borders, the problem of delayed administration is not exclusive to the country. The Malimath Committee, which was established to reduce court arrears, carried out an extensive evaluation of the functioning of the judiciary. It specifically concentrated on the complex problems of backlog and the lengthy duration of judicial proceedings. It then made an assortment of important suggestions intended to shorten the length of time and costs associated with court cases, as well as to reduce litigation and improve people's timely access to justice.

The committee emphasized that to successfully replace traditional judicial procedures, alternative conflict resolution techniques including conciliation, arbitration, mediation, and Lok Adalats must be implemented. In addition to providing for people's urgent needs, these alternative adjudicatory routes are intended to be a vital instrument for regaining public trust and supporting the core principles of the Rule of Law as entrenched in the Indian Constitution. They recognize their ability to deliver fast, affordably priced justice, particularly to underprivileged populations.

Conclusion

As a result of globalization and technological advancements, online dispute resolution (ODR) has grown in popularity over traditional conflict resolution procedures because it provides prompt resolution, which is nearly impossible to achieve through offline remedies where a large number of cases are filed.[25]

As e-commerce expanded, ODR developed and was later discovered to be a perfect platform for resolving conflicts. Having a strong internet connection is all that is required, regardless of where they live on the globe. Although it is efficient and effective, as the parties can exchange documents electronically rather than printing them, the ODR process still faces numerous challenges because there is no appropriate ODR framework in place. Since information is handled online, there is a significant chance that it will be leaked. Compared to offline, there is a greater likelihood of data leakage, as has previously been shown. It is necessary to take certain actions to ensure ODR's security.

* * * *

[25] S. Latour et al., Some Determinants of Preference for Modes of Conflict Resolution, 20 *J. Conflict Resol.* 319, 319-356 (1976)

LAW GOVERNING SERVICES IN PUBLIC ENTERPRISES

Swesthiga K. *

Abstract

A public enterprise is a business organization that is partially or wholly managed and owned by the union or state government and is involved in some activities like legal, commercial, industrial, etc. Each public enterprise has its own service rules, laws, and regulations. The article will focus on the law (important rules and service conditions) governing services in the Oil and Natural Gas Corporation (ONGC) and the Life Insurance Corporation (LIC). LIC was established through the Indian Parliament on 19th June 1956 and was formed on 1st September 1956. The Oil and Natural Gas Commission was established through the Indian Parliament on 18th September 1959 and was converted into a corporation in the year 1994.

Introduction

A public enterprise is a business organization that is partially or wholly managed and owned by the union or state government. They are involved in some activities like legal, commercial, industrial, etc. They also become a separate legal organization. In India, there are different types of public enterprises: Bharat Heavy Electricals Limited (BHEL), Indian Oil Corporation Limited (IOCL), Oil and Natural Gas Corporation (ONGC), Life Insurance Corporation of India (LIC), etc.

Each public enterprise has its own service rules, laws, and regulations. Understanding the rules and service conditions of public enterprises is one of the important parts of the law relating to public employment. The researcher will focus on the law governing services in the Oil and Natural Gas Corporation (ONGC) and the Life Insurance Corporation (LIC), and only the important provisions about the services of the mentioned public enterprises will be analyzed here because of the paucity of time. The research methodology applied in this paper will be a doctrinal research method to analyze the rules of service conditions like statutes/regulations and articles.

Rules of Service Conditions

Life Insurance Corporation (LIC)

The Union Government established the Life Insurance Corporation Act through the Indian Parliament on 19th June 1956, and the Life Insurance Corporation was formed on 1st September 1956[1].

The Life Insurance Corporation Act, 1956 [2]:

As per the Act, the number of staff members should not be more than 16 members, and it should consist of a chairperson who will be appointed by the union government. The preamble of the Act states that the Act aims to nationalize life insurance corporations in India. Section 5 of the Act talks about capital, and the capital of the corporation shall be Rs. 20,000 Crore, which shall be divided into 2500 crores of Rs. 10 each.

Section 6A of the Act gives power to impose conditions about any concern or protection of the interest of the Corporation. Sections 11 and 12 talk about the transfer of services of existing employees of insurers and existing employees of a chief agent of insurers (in some cases) to the Corporation. Sections 48 and 49 of the Act give power to make rules and regulations.

---

* **LL.M. (OYC), National University of Advanced Legal Studies (NUALS), Kochi, Kerala.**

1 History of LIC - https://licindia.in/

2 Act no. 61 of 1986.

Life Insurance Corporation of India (Staff) Rules, 1960:

The LIC Staff Rules provide some terms and conditions of the service. The preamble states "*to frame rules defining the terms and conditions of service of the staff of LIC*". The Rule defines service as the period spent on duty and leave plus extraordinary leave. Rule 5 of the LIC Staff Rules talks about classifications of the staff. There are four classes of staff, and they are classified into Class I, which are officers; Class II, which are development officers; Class III, which are supervisory and clerical staff; and finally, Class IV, which are subordinate staff.

The LIC staff are appointed and promoted by the authorities like the Executive Committee, Chief Executive, Managing Director, etc. The age of the individual while appointing should be between 18 and 30 years of age, and there are also some relaxations in age limit provided to special individuals like physically handicapped persons, SC/ST persons, etc. Rule 7 explains the conditions for direct recruitment and promotions of the individuals.

Rule 12 mentioned the reappointment of an individual. According to this rule, when his/her service is terminated, that person shall be re-employed after an order, but this condition will not apply to dismissed services. Rule 13 talks about the commencement of his/her service and states that their service will commence from the working day, that is, from the day of the appointment of reporting for duty.

Section 3 of Chapter II contains the rules regarding the termination of the service. In one of the rules, it is mentioned that a notice should be given in a written way to the competent authority before the discontinuation of service/when an individual wants to discontinue the service. There is a different period as per the rule for giving notice to different classes. For instance, Class I employees should give notice within three months, and other employees should give notice within one month.

The rule also talks about the retirement of the employees. The retirement age is 60 years of age, and if a person is interested, he/she may retire at 55 years of age with prior notice. Chapter III of the Staff Rules talks about conduct, discipline, and appeals. For example, employees should not participate in politics, and major and minor penalties are given to employees who commit unlawful acts like withholding promotions, reducing salaries, etc.

Chapter IV talks about pay and allowance. Schedule II of the Rules mentions the pay scale, dearness allowance, and other allowances, and Class II employees are mentioned under Schedule III. For example, for Zonal Managers, the ordinary pay scale is between Rs. 1,46,095 and 1,81,415, and the selection scale is between Rs. 1,63,755 and 1,72,585. Re-fixation of salary will happen when an employee is appointed to a higher post. As per the financial condition, the profit-sharing bonus will not be given and will only be based on terms and conditions; a non-profit sharing bonus will be provided by the union government.

Chapter V contains terms and conditions on holidays and leave. For example, maternity leave for a female employee is provided for three months as per Rule 66. Chapter VI contains terms and conditions on Foreign Service. One of the rules states that an employee's will and the Chief Executive's approval are necessary before transferring him/her to a foreign service.

Life Insurance Corporation of India (Employees) Pension Rules, 1995:

The Rules define service rules as the rules mentioned under the following rules. They are the Life Insurance Corporation of India Class I Officers (Revision of Terms and Conditions of Service) Rules, 1985; the Life Insurance Corporation of India Class III and Class IV Employees (Revision of Terms and Conditions of Service) Rules, 1985; and the Life Insurance Corporation of India Development Officers (Revision of Terms and Conditions of Service) Rules, 1986 made under Section 48 of the Act.

Rule 14 states that an employee who has contributed a minimum of ten years of service in the Corporation on his/her retirement date shall be allowed a pension. Rule 23 explains that an employee's previous service becomes forfeited upon resignation, dismissal, removal, termination, or forced retirement from the Corporation, and as a result, they are ineligible for pension benefits. Chapter V of the Rules contains different classes of pension. Family pension is also mentioned in the Rules, and the ordinary rates of family pension are given under Appendix - V.

Oil and Natural Gas Corporation (ONGC)

The Union Government established ONGC through the Indian Parliament on 18th September 1959. The Oil and Natural Gas Commission was converted into a corporation in the year 1994[3].

The Oil and Natural Gas Commission Act, 1959 [4]:

Section 4 of the Act mentions that the Commission includes members of the Commission and includes the chairman. They are a chairman and vice-chairman, and there are not less than two or more than eight other members appointed by the Central Government. The members may be required to render whole-time or part-time service as the Central Government may direct. Proviso: one of the members shall be a whole-time Finance Member in charge of the financial matters relating to the Commission.

Section 5 talks about the term of office and conditions of service of the chairman and other members and states that the Central Government may terminate the whole-time/part-time/any member who is not a servant of the Government. Section 32 gives power to male rules. Section 6 states that if a person has a direct or indirect interest in an ongoing contract with the Commission or in any work being done for the Commission, they will not be eligible for appointment or continue as a member.

Oil and Natural Gas Commission (Recruitment & Promotion) Regulations, 1980 [5]:

The Regulation explains different methods of filling posts, which are direct recruitment, promotion, borrowing services from the central/state governments/PSU/local/other authorities, and any other method at the discretion of the corporation. Details about scale pay and categories of posts are mentioned under Schedule I of the Regulation. An example of scale pay for the Executive level is Rs. 17500-22300.

There are also many levels of employees, including E0 - E9, SI - SIV, AI - AV, and WI - WVII. Some meanings are E0 is known as assistant engineer, E9 is known as executive director, SI is known as assistant superintendent, S-IV is known as Chief Superintendent, and the Lowest level that is WI is known as Junior attendant. The Regulation also talks about the age limit for Promotion/Recruitment. For example, for an Executive Level, the limit is 44 years of age; for Class III - 32 years of age; and Class IV - 27 years of age.

ONGC Conduct, Discipline and Appeal Rules, 1994 [6]:

The Rules defined the term Service as the service under the company. There are some important rules that the employees should follow they are like Employees shouldn't take part in politics, strikes, demonstrations, no connection with the Press, TV, etc, and they should also not accept any gifts/dowry. Another rule is that no retired employee who has resigned shall accept any appointment or post. About suspension, employees will be suspended if their disciplinary proceeding is pending, they are engaged in prejudicial activities, commit a criminal offence, etc.

An order of suspension can be changed or revoked by the Authority who made this order. Leave shall not be granted to an Employee who is under suspension (period). The Rules also talk about Minor and Major penalties, including censure, withholding of promotion, reduction in salaries, compulsory retirement, dismissal from services, etc. The Disciplinary Authority, as per Schedule I or any other higher authority, may impose any penalties as per the rule to the employees.

Case Laws

Case laws regarding LIC service conditions:

In the case of *Life Insurance Corporation of India and Anr. etc. v. S.S. Srivastava and Ors.*[7], 16 members were working in the Department of Insurance, which is a separate department, and LIC required those 16 members. The President of that department agreed, and they became the employees of the Corporation. The Corporation passed an order and fixed the age of retirement as 60 years of age. These members challenged

---

3 ONGC, Our Growth Story - https://ongcindia.com/

4 Act no. 43 of 1959.

5 Oil and Natural Gas Corporation Ltd. - Modified Recruitment and Promotion Regulations, 1980 (modified vide O.O. No. 25(1)97-RP-1 dated 14.3.1997).

6 As amended in 2011.

7 Life Insurance Corporation of India and Anr. etc. v. S.S. Srivastava and Ors., AIR 1987 SC 1527.

this order as they had different conditions. The Supreme Court held that they belong to different categories as they were transferred and not directly recruited. It also held that the age fixation cannot be challenged to those who were directly recruited by the Corporation after 01.09.1956, and those people and 16 members are different.

In the same case[8], under the classification of employees, the retirement age of transferred employees and the employees appointed after 1.9.1956 was treated differently from the date the Corporation was established. Therefore, this treatment was challenged. The Apex Court held that the decision by the Corporation and the Central Government regarding the age of retirement of the different classes of employees was bona fide, and they cannot be taken as unreasonable.

In the case of *Life Insurance Corporation of India v. Lalitha Devi*[9], the Respondent was an absorbed agent[10] In LIC. Her husband was in the service of LIC, which is the appellant company. Because of this, the Respondent's agency was terminated as per the Agents' Regulations, 1972. Before the termination, the respondent's agency served notice to her, and they took care of it. The Court held that the order of termination of the respondent's agency did not suffer from any legal imperfection or error.

In the case of *Mrs. Neera Mathur v. Life Insurance Corporation of India*[11], upon

applying for a job at LIC, Mrs Neera Mathur passed both the written exam as well as the interview. She was then required to fill out a declaration form with personal information about her menstrual cycle and pregnancy. She also had to go through a medical examination as directed by LIC. After submitting her declaration and undergoing a medical examination, she received certification that she was fit for the position.

Her training program then started, and after it was over, she was given an appointment letter with the condition that she would be on probation for the first six months and that her acceptance would depend on how well she performed. She demanded and was given maternity leave during her probationary period. Upon her return to work, she was dismissed because her performance was unsatisfactory, and she had neglected to provide personal information about her menstruation and pregnancy on her declaration form.

The Supreme Court held that it was an arbitrary order of discharge under Article 14 of the Indian Constitution. Therefore, the Apex Court ordered LIC to reestablish the order of discharge because there was no evidence to prove that her performance was inadequate and the reason for the termination was only that she failed to disclose personal details which are not necessary to be disclosed to an employer in the declaration form. The SC also recommended the LIC remove such criteria from its declaration form.

In the case of *Asger Ibrahim Amin v. Life Insurance Corp. of India*[12], the respondent did not allow the appellant to hold a pension because he had resigned from the corporation because of some personal problems. The issue was whether the Appellant was entitled to claim a pension even though he resigned from service of his own volition. The Supreme Court held that employees who have worked for 20 years are eligible for a pension, even though he/she resigned from employment.

Case laws regarding ONGC service conditions:

In the case of *the Committee for the Protection of Rights of ONGC employees and Ors. v. Oil and Natural Gas Commission through its Chairman, Tel Bhav*[13], the petitioners were temporary employees of the Oil and Natural Gas Commission during its tenure as a Department of the Indian government. They were later incorporated into the Commission upon its establishment as a statutory body by the enactment of the Oil and Natural Gas Commission Act of 1959. The Commission came under the purview of the Employees' Provident Funds and Miscellaneous Provisions Act of 1952. The petitioners chose to use and benefit from the Contributory Provident Fund.

---

8 *Ibid.*

9 Life Insurance Corporation of India v. Lalitha Devi, 1991 Supp (2) SCC 154.

10 An absorbed agent is an agent who is considered to have been appointed under sub-regulation (4) ofthe Agents' Regulations, 1972.

11 Mrs. Neera Mathur v. Life Insurance Corporation of India, 1992 AIR 392.

12 Asger Ibrahim Amin v. Life Insurance Corporationof India on 12 October 2015.

13 Committee for the protection of rights of ONGC employees and Ors. v. Oil and Natural Gas Commission through its Chairman, Tel Bhav, 1990 AIR 1167.

The petitioners filed a writ petition in this court seeking the pension benefit in addition to the Provident Fund, arguing that they were entitled to pension under the applicable Rules governing their service upon being made permanent and that the right to pension, which was a requirement of their employment, was safeguarded by Section 13(1) of the Oil and Natural Gas Commission Act read together with Regulation 3(2) of the Oil and Natural Gas Commission (Terms and Conditions of Appointment and Service) Regulations 1975 and even though with the introduction of the Contributory Provident Fund Scheme their right to pension was preserved by Section 12 of the Provident Fund Act.

The ONGC Act's Sub-Section (1) of Section 13 states that the terms and conditions of service of any employee can't be modified to their disadvantage without the Central Government's prior approval. The Court held that in addition to the Provident Fund benefit to which they are already entitled under the terms of the Provident Fund Act, workers who were recruited in a temporary capacity and then absorbed into the Commission, as formed by the aforementioned Act, are not eligible for pensions.

In the case of *the Committee for Protection of Rights of ONGC Employees v. Oil & Natural Gas Commission*[14], the issue was about the petitioners claiming that they were entitled to a pension under their service conditions when they were employed by the Commission before the ONGC Act was passed. The Supreme Court held that the temporary employees under the Commission are not entitled to pension in addition to the Provident Fund benefits as per the Provident Fund Act because they are not permanent employees, and it is illogical to provide a pension for the employees who work temporarily.

In the case of *Committee for Protection of Rights of ONGC Employees and Ors v. Oil & Natural Gas Commission, Dehradun and Ors.*[15] About the gratuity scheme, the Supreme Court stated that the main defect of a gratuity scheme is that the amount paid to a worker or his dependents would be small, as the worker would not make any contribution to the fund himself.

In the case of *O.N.G.C. Ltd. v. G.S. Chugani*[16], there was a draft scheme for employees who are the appellant, which is known as the Draft Superannuation Scheme. That scheme was not official, and pensionary benefits will be given only as per an official scheme. The Ministry of Petroleum and Natural Gas finally approved the scheme on 18th September 1991. In that scheme, a condition was made stating that no benefits would be given to the employees who retired between 1.4.1990 - 1.4.1991. After following the condition, the Respondent retired on 30.6.1991, and he was entitled to the benefit of the scheme.

In the case of *K.S.V.R. Rao v. Oil and Natural Gas Commission* [17], the Petitioners were promoted to E.2, E.3, and E.4 (employment) levels. Regarding this, some employees filed a petition in the High Court under Article 32 of the Indian Constitution stating that the post of E1 in promotion was done partially based on promotion and partially by direct recruitment. This petition was dismissed. The Petitioners stated that they do not seek quashing of the seniority and the promotions as the other employees are concerned. The Court has stated that the rights of parties have already been settled and attained finality. These officers are not parties to this petition, and therefore, no relief can be granted in their absence.

In the case of *Oil and Natural Gas Corporation Ltd. v. Afcons Gunanusa JV*[18], Afcons and ONGChave had a joint venture agreement for the development of an offshore process platform. A dispute arose between the companies, and Afcons invoked arbitration against ONGC. This resulted in the formation of an arbitral tribunal consisting of three members. Afcons claimed an amount over 600 crores plus interest, to which ONGC replied with a counterclaim of over 400 crores plus interest. Regarding the arguments, the Supreme Court held that the maximum fee that an arbitrator can charge on a claim is Rs. 30 Lakhs according to the Arbitration Act.

---

[14] Committee for Protection of Rights of ONGC Employees v. Oil & Natural Gas Commission, 1990 (2) SLR 718.
[15] Committee for Protection of Rights of ONGC Employees and Ors v. Oil & Natural Gas Commission, Dehradun and Ors., 1990 (2) SCC 472.
[16] O.N.G.C. Ltd. v. G.S. Chugani, 1993 (3) SCT 823.
[17] K.S.V.R. Rao v. Oil and Natural Gas Commission, 2000 (10) SCC 562.
[18] Oil and Natural Gas Corporation Ltd. v. Afcons Gunanusa JV, 2022 LiveLaw (SC) 723.

Findings and Conclusion

The different legislation talks about different terms and conditions and rules for the employees under LIC and ONGC. Even they have rights under the Constitution, for example, Article 16, which talks about Equality of Opportunity in Matters of Public Employment. There are some inequalities under the above-mentioned legislation. For example, in the Life Insurance Corporation of India (Staff) Rules, 1960, the periods of maternity and paternity leave are less and different.

The Maternity Benefit Act of 1961 provides 26 weeks of maternity leave for their first and second child and 12 weeks for subsequent children. Therefore, the provision regarding maternity leave under LIC Staff Rules needs to be modified. Also, the period of paternity leave under the Rules is less, that is, only 15 days. We are not living in the history and in this educationally advanced world where men and women go to work, and men should also deserve more paternity leave. Additionally, the privacy of the employees is very important, and it should be maintained by the employers/companies. In one of the cases mentioned above (Neera Mathur case), we can see that privacy was not supported by the Company.

The rules regarding retirement, pension, and other important service rules/conditions should be known to the employees before the recruitment/appointment. In some of the above-mentioned case laws, we can notice that some employees were treated unequally about service conditions like different retirement ages, pension availability, etc. It does not matter whether an employee has been transferred from one corporation to another; every employee deserves equal benefits for the service they have provided at the corporation. Also, intimating precise rules and conditions will let the employees know, and they can make a proper decision before joining a service.

In a nutshell, both public enterprises are well-known corporations, and there are enough laws/legislation regarding the rules and service conditions of the employees of public enterprises like LIC and ONGC. To promote equality, which is important in public employment, certain provisions need to be modified for better service conditions by the employees, and this will also improve employer-employee relationships.

* * * *

ARTIFICIAL INTELLIGENCE AND MACHINE LEARNING IN LAW : TRANSFORMATIONS, CHALLENGES AND FUTURE DIRECTIONS

Swathi Alagappan *

Abstract

Artificial Intelligence (AI) and Machine Learning (ML) are the new disruptors in the legal game bringing in a new era of increased efficiency, accuracy, and insights. In this paper, I will dive into the radical effect of Altered Reality and Machine Learning on legal research, predictive analytics, document review, contract management, and normal client interaction. Although these technologies offer great potential benefits, they also raise ethical and regulatory concerns that should be met with proper safeguards to ensure that such legal solutions are fair and transparent—bringing algorithmic bias, data privacy, and explainability into the mainstream. The paper discusses these challenges using case studies and real-life examples of how AI can be (and is being) used in various legal contexts. It bundles this up by talking about the future of AI in law — the need for an ethical compass around these technologies, a transparent regulatory environment, and how to ensure perpetually learning legal professionals in the gig economy. This paper ultimately seeks to provide a thorough summary of AI and ML in law, providing an understanding of the promises and pitfalls of these technologies and actionable guidance for deploying them reasonably and effectively.

Keywords: ***Artificial Intelligence, Machine Learning, Legal Research, Predictive Analytics, Document Review, Contract Analysis, Ethical Challenges, Regulatory Frameworks, Future Directions***

Introduction

The level at which Artificial Intelligence (AI) and Machine Learning (ML) have pervaded various industries, is remarkable and there is no looking back. The legal profession, known for its measured and resource-heavy human effort, is no different. Different algorithms and AI & ML are providing lawyers and professionals with alternative mechanisms for legal research as predictive analytics, document review, contract management, and client interaction which are quicker and with higher accuracy.

Definition of AI and ML

Artificial Intelligence (AI) is a machine that is programmed to do things a human can do. Smart machines (computers with AI) can mimic tasks that require human intelligence including speech recognition, planning, decision-making, and visual perception. The field of AI can be divided into several techniques or appeals, such as Natural Language, Robotics, and Expert Systems.[1].

Machine Learning (ML) is a subset of AI that uses statistical models and algorithms to help computers learn how to perform better over time at a given task without having to be specifically programmed for it. The creation of systems that can acquire data, process it, and draw conclusions or forecasts from it is the main goal of machine learning (ML). Supervised learning, unsupervised learning, and reinforcement learning are three ML techniques that use various approaches to evaluate data and identify meaningful patterns.[2].

Aim of the Paper

This paper aims to explore the transformations brought about by AI and ML in the legal field, examine the associated challenges, and discuss future directions for their integration. By providing a comprehensive overview of these technologies' impact on law, this paper seeks to offer valuable insights into their potential and the measures needed to address the accompanying challenges.

---

* **2nd Year, LL.M, Dr. Ambedkar Government Law College, Chennai, Tamil Nadu**

1 Russell, Stuart J., and Peter Norvig. "Artificial Intelligence: A Modern Approach." Prentice Hall, 2009.

2 Mitchell, Tom M. "Machine Learning." McGraw-Hill, 1997.

Transformations in the Legal Profession

The legal profession is undergoing a substantial transformation thanks to artificial intelligence (AI) and machine learning (ML), which are improving productivity, accuracy, and creativity. This section explores the main domains where these changes are being driven by AI and ML.

Legal Research

Legal research has been transformed by AI-powered technologies that make it possible to analyze large legal texts and precedents more quickly and accurately. While traditional legal research takes a long time and requires a lot of labor, artificial intelligence (AI) technologies like LexisNexis and Westlaw Edge use natural language processing (NLP) to quickly search and retrieve pertinent statutes, legal articles, and case law[3]. With this shift, attorneys may now concentrate more on making strategic decisions as opposed to only obtaining information on a regular basis.

Predictive Analysis

Jury decisions, judge behavior, and case outcomes are being predicted more and more through the use of predictive analytics powered by machine learning algorithms. These algorithms use previous data analysis to spot trends and forecast new ones. For instance, Premonition and ROSS Intelligence are programs that offer insights into the possible ruling strategies of judges based on their prior rulings.[4]. This predictive ability helps attorneys create more successful legal strategies and provide clients with more assurance.

Document Review and E-Discovery

Artificial Intelligence has greatly improved document review and e-discovery. These procedures entail searching through a lot of records to locate pertinent data for legal proceedings. Artificial intelligence (AI) systems, like those utilized by Relativity and Everlaw, use machine learning (ML) to classify and rank documents, locate important pieces of evidence, and highlight pertinent information far more quickly and precisely than human review.[5]. This lowers expenses while also expediting the legal procedure.

Contract Analysis and Management

By automating contract management and review, artificial intelligence is simplifying contract analysis and administration. Contract provisions are extracted, analyzed, and reviewed by tools such as Kira Systems and LawGeex using machine learning (ML) to ensure compliance and spot possible issues.[6]. Due to this automation, managing contracts takes less time and effort, freeing up lawyers' time for more difficult assignments.

Client Interaction and Virtual Assistants

Chatbots and virtual assistants driven by AI are revolutionizing administrative work and client interactions. These resources, which include LISA (Legal Intelligence Support Assistant) and DoNotPay, may handle standard questions, offer legal advice, and even prepare legal papers.[7]. Giving prompt and precise responses, not only enhances customer service but also frees up attorneys to concentrate on more important legal work.

Significant changes are being driven by the integration of AI and ML in the legal profession in a number of areas, including document review, contract administration, legal research, and predictive analytics. These technological advancements are improving the legal industry's productivity, accuracy, and service provision, which will ultimately change how attorneys practice law and communicate with their clients. To guarantee their appropriate and efficient use, it is crucial to address the ethical and legal issues they raise in addition to these advantages.

---

[3] "LexisNexis AI-Powered Legal Research Tool." LexisNexis, https://www.lexisnexis.com/en-us/professional/ai.page. Accessed 6 June 2024.

[4] Katz, Daniel Martin, Michael James Bommarito, and Josh Blackman. "A General Approach for Predicting the Behavior of the Supreme Court of the United States." PloS one, vol. 12, no. 4, 2017, e0174698.

[5] "How AI Is Transforming E-Discovery." Everlaw, https://www.everlaw.com/ai-in-e-discovery/. Accessed 6 June 2024.

[6] "LawGeex AI Contract Review Automation." LawGeex, https://www.lawgeex.com/. Accessed 6 June 2024.

[7] "DoNotPay - The World's First Robot Lawyer." DoNotPay, https://www.donotpay.com/. Accessed 6 June 2024.

Ethical and Regulatory Challenges

Although revolutionary, the use of artificial intelligence (AI) and machine learning (ML) in the legal industry presents a number of ethical and legal issues. In order to guarantee that AI and ML technologies are used responsibly and efficiently, it is imperative that these concerns be addressed.

Algorithmic Bias

Algorithmic bias is among the biggest ethical problems. AI systems can incorporate preexisting biases into their algorithms by learning from prior data. This can have unjust and discriminatory effects, especially in delicate fields like employment law and criminal justice.[8]. For example, risk assessment instruments used in sentencing have come under fire for disproportionately suggesting that members of minority groups receive harsher sentences.[9]. It takes thorough testing and validation of algorithms to identify and reduce bias in order to ensure justice in AI.

Transparency and Explainability

The explainability and openness of AI systems is another important concern. Deep learning models in particular, which function as "black boxes" with difficult-to-understand decision-making processes, are prevalent in AI and machine learning[10]. This lack of openness can make it more difficult to keep AI systems accountable and erode public confidence in them. The goal of explainable AI (XAI) is to increase the transparency of AI systems by offering comprehensible justifications for their choices.[11].

Data Privacy and Security

AI applications in the legal field frequently handle private and sensitive data. Maintaining customer confidentiality and adhering to data protection laws like the General Data Protection Regulation (GDPR) requires ensuring data privacy and security.[12]. Strong cybersecurity measures are required in light of the growing use of AI to guard against data breaches and illegal access.[13]. Legal practitioners also have to deal with the complexity of differing international data protection rules and cross-border data transfers.

Regulatory and Legal Frameworks

Artificial intelligence (AI) technology is developing faster than laws and regulations. Regulations that address the special difficulties that AI and ML provide to the legal sector desperately need to be revised.[14]. These rules ought to guarantee the ethical, open, and accountable development and application of AI systems. The preservation of fundamental freedoms and rights must be balanced with the need for innovation, according to policymakers.

EthicalGuidelines and Professional Responsibility

The legal community must also create moral standards for the application of AI and ML. These rules ought to cover things like who is responsible for overseeing AI tools, who bears accountability for mistakes AI systems make, and how AI-related education should be ongoing.[15]. Legal practitioners need to make sure that their use of AI upholds the highest moral standards and looks out for their client's best interests.

---

[8] Barocas, Solon, and Andrew D. Selbst. "Big Data's Disparate Impact." California Law Review, vol. 104, no. 3, 2016, pp. 671-732.

[9] Angwin, Julia, et al. "Machine Bias." ProPublica, 23 May 2016, www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing.

[10] Doshi-Velez, Finale, and Been Kim. "Towards a Rigorous Science of Interpretable Machine Learning." arXiv preprint arXiv:1702.08608, 2017.

[11] Ribeiro, Marco Tulio, Sameer Singh, and Carlos Guestrin. "Why Should I Trust You?": Explaining the Predictions of Any Classifier." Proceedings of the 22nd ACM SIGKDD International Conference on Knowledge Discovery and Data Mining, 2016, pp. 1135-1144.

[12] Wachter, Sandra, Brent Mittelstadt, and Luciano Floridi. "Why a Right to Explanation of Automated Decision-Making Does Not Exist in the General Data Protection Regulation." International Data Privacy Law, vol. 7, no. 2, 2017, pp. 76-99.

[13] "The Importance of Cybersecurity for Law Firms. "American Bar Association, www.americanbar.org/groups/business_law/publications/blt/2017/01/cybersecurity/.

[14] Cath, Corinne, et al. "Artificial Intelligence and the 'Good Society': The US, EU, and UK Approach." Science and Engineering Ethics, vol. 24, no. 2, 2018, pp. 505-528.

[15] "Ethics and AI in Law." International Bar Association, www.ibanet.org/Article/NewDetail.aspx?ArticleUid=5D4C2DA4-37D9-4F54-B1A1-EA8D5C61F3AA.

To maximize the benefits of AI and ML while reducing hazards, it is imperative that legal consideration be given to the ethical and regulatory issues they raise. The legal profession can guarantee that AI is utilized responsibly, transparently, and ethically by creating strong rules and guidelines. By doing this, you can ensure that AI systems are trusted and that their advantages are achieved in a way that respects justice and fairness.

Case Studies on AI and ML in Law

Ross Intelligence: Transforming Legal Research[16]

Description: ROSS Intelligence is an AI-powered legal research platform that utilizes natural language processing (NLP) to assist legal professionals in conducting legal research.

Impact: Law firms using ROSS Intelligence have reported significant improvements in research efficiency and accuracy, with some firms noting a reduction in research time by up to 30%[17].

LexMachina: Predictive Analytics for Case Outcomes[18]

Description: Lex Machina is a legal analytics platform that employs ML algorithms to analyze case data and predict case outcomes.

Impact: By analyzing historical case data, Lex Machina provides valuable insights into case strategies and likely outcomes, empowering lawyers to make informed decisions and optimize litigation strategies.

Kira Systems: Contract Analysis and Management[19]

Description: Kira Systems is an AI-powered contract analysis tool that automates the extraction and analysis of key contract clauses and provisions.

Impact: Legal teams using Kira Systems have experienced significant time savings in contract review and analysis, enabling them to focus on higher-value legal tasks and reducing the risk of oversight or errors in contract management.

DONOTPAY: AI-Powered Legal Assistance[20]

Description: DoNotPay is an AI-driven virtual legal assistant that provides users with automated assistance for various legal tasks, such as disputing parking tickets, filing small claims lawsuits, and navigating consumer rights.

Impact: By leveraging AI and ML technologies, DoNotPay democratizes access to legal assistance, particularly for individuals with limited resources or legal knowledge, thereby promoting greater access to justice.

These case studies demonstrate how AI and ML have the potential to revolutionize the legal industry in a number of ways, from automating contract analysis and facilitating easily accessible legal aid to enhancing research efficiency and forecasting case outcomes. Although there are many advantages to these technologies, there are also moral and legal issues that need to be resolved to guarantee their ethical and fair usage.

Future Directions and Implications

The future of law will be shaped by the advancement of Artificial Intelligence (AI) and Machine Learning (ML) and their integration with the legal profession. It is imperative that legal experts, legislators, and the general public comprehend the possible future paths and ramifications of these technologies.

Ethical and Regulatory Frameworks

Future Direction: Develop comprehensive ethical guidelines and regulatory frameworks tailored to AI and ML applications in law.

---

16 ROSS Intelligence. “Case Studies.” https://www.rossintelligence.com/case-studies/.

17 Ibid.

18 Lex Machina. “Case Studies.”https://lexmachina.com/resources/case-studies/.

19 Kira Systems. “Case Studies.”https://www.kirasystems.com/resources/case-studies/.

20 DoNotPay. “About Us.”https://www.donotpay.com/about.

Implications: Establishing clear ethical standards and legal regulations will ensure responsible and transparent use of AI technologies, fostering trust and accountability in the legal profession[21].

Enhanced Decision-Making

Future Direction: AI and ML will continue to improve decision-making processes by providing deeper insights, predictive analytics, and data-driven recommendations.

Implications: Legal professionals will be empowered to make more informed decisions, optimize case strategies, and enhance client representation, leading to better outcomes and increased efficiency[22].

Augmented Legal Practice

Future Direction: AI-powered tools will augment legal practice by automating routine tasks, assisting with legal research, and streamlining document review and contract analysis.

Implications: Legal professionals will be able to focus on higher-value tasks, such as strategic planning, client counseling, and advocacy, while AI handles repetitive and time-consuming activities[23].

Access to Justice

Future Direction: AI-driven legal assistance platforms will democratize access to justice by providing affordable and accessible legal services to underserved populations.

Implications: Individuals with limited resources or legal knowledge will have greater access to legal assistance, enabling them to navigate legal processes more effectively and assert their Rights[24].

Continuous Learning and Adaptation

Future Direction: Legal professionals will need to engage in continuous learning and professional development to keep pace with technological advancements in AI and ML.

Implications: Embracing lifelong learning initiatives and staying updated on AI-related developments will be essential for legal professionals to effectively integrate AI technologies into their practice and remain competitive in the evolving legal landscape[25].

Global Collaboration and Standards

Future Direction: Foster international collaboration and establish global standards for AI and ML applications in law.

Implications:Harmonizing regulations and best practices across jurisdictions will facilitate cross-border cooperation, promote innovation, and ensure consistent ethical and legal standards in the global legal community[26].

Artificial intelligence and machine learning have a lot of potential to change the legal profession, improve decision-making, and increase access to justice. To fully realize this promise, nevertheless, aggressive measures to resolve moral, legal, and educational issues must be taken, in addition to encouraging international cooperation and standardization.

Conclusion

The legal profession is changing as a result of artificial intelligence (AI) and machine learning (ML), which both provide transformative possibilities and pose serious obstacles. We have examined the many facets of AI and ML in law in this paper, as well as their changes, difficulties, and potential applications.

---

21 Wachter, Sandra, et al. "Transparent, Explainable, and Accountable AI for Robotics." Science Robotics, vol. 4, no. 37, 2019, eaat6380.

22 Katz, Daniel Martin, et al. "The Predictive Power of Law: An Empirical Study of Supreme Court Forecasting." Columbia Law Review, vol. 114, no. 7, 2014, pp. 2107-2137.

23 Susskind, Richard. "The End of Lawyers?: Rethinking the Nature of Legal Services." Oxford University Press, 2008.

24 Martin, Alicia, and Cristina Pérez-Solà. "DoNotPay: Towards a Worldwide Automated Legal Assistant." Revista General de Información y Documentación, vol. 31, no. 1, 2021, pp. 25-41.

25 Blix, Goran, and Rikard Lindgren. "Legal Tech and Continuous Learning: Embracing AI as a Catalyst for Lifelong Learning in the Legal Profession." International Journal of Human-Computer Interaction, vol. 37, no. 10, 2021, pp. 977-987.

26 Kerschischnig, Georg, et al. "Legal Tech: Enabling Cross-Border Access to Justice through Technology." Information & Communications Technology Law, vol. 30, no. 3, 2021, pp. 269-285.

Transformations

In many different fields, legal practice has been transformed by AI and ML technology. Legal research has been more efficient, accurate, and accessible because of these technologies, which have also improved case results, automated document review, and contract analysis.

Challenges

The application of AI and ML in law is not without its difficulties, though. Algorithmic bias and transparency are two ethical issues that put accountability and fairness in danger. In order to guarantee the appropriate and moral application of AI technology, regulatory frameworks must adapt to meet their particular problems.

Future Directions

Going forward, there is a great deal of potential for AI and ML to significantly change the legal environment. Lawmakers will be guided in the responsible development and application of AI technologies by evolving ethical and regulatory frameworks. Embracing ongoing learning and adaptation is essential for legal practitioners who want to fully utilize AI while managing the complex ethical and regulatory landscape.

In conclusion, it should be noted that AI and ML have the potential to significantly influence how legislation is shaped in the future. The legal profession can achieve unprecedented levels of efficiency, creativity, and justice accessibility by embracing the opportunities and addressing the obstacles posed by modern technologies. This will ultimately lead to the advancement of the legal system's core values of fairness, transparency, and accountability.

* * * *

MUNICIPAL CORPORATION OF BOMBAY V. ANKITA SINHA: A STEP IN THE RIGHT DIRECTION

Raj Krishna *

Abstract

The Indian Constitution imposes a duty both upon the state and the citizen to preserve and protect the environment. As a result, in the year 2010, the Parliament enacted the National Green Tribunal Act which provided for the creation of specialized tribunals which would look into cases about the environment. However, the Act was silent on the issue of whether the National Green Tribunal has Suo-moto powers or not. Eventually in 2021 a three-judge bench of the Apex Court ruled that the National Green Tribunals do have Suo moto powers under the NGT Act.

In light of the above facts, the author in this case comment has discussed about the background of the case. Post this the author has discussed about the contentions raised in the case and the judgment delivered by the court. Lastly, the author has critically analyzed the judgment and has also discussed the impact this judgment will have on the environmental law jurisprudence in our country.

Introduction

On 7th October 2021, a three-judge bench of the Supreme Court in the case of Municipal Corporation of Bombay vs. Ankita Sinharuled that "*the National Green Tribunals have Suo moto powers under the National Green Tribunals Act, 2010.*"[1]

In the past few years, there have been incidences wherein the National Green Tribunal took Suo moto cognizance of environmental issues based on media reports. However, it is pertinent to note that the NGT Act is silent upon the Suo moto powers of the tribunal. As a result, the appellants filed a case before the Apex Court contending that NGT is not empowered to take the case on a Suo moto basis.

However, a three-judge bench of the Apex Court comprising Justices Khanwilkar, Hrishikesh Roy, and Ravikumar ruled that NGT has Suo moto powers under the NGT Act of 2010. Justice Hrishikesh Roy who has authored the verdict applied the principle of purposive interpretation to arrive at this conclusion.

Background

History of National Green Tribunal

At the United Nations Conference on the Human Environment, popularly referred to as the Stockholm Conference, which was held in Stockholm in June 1972, the idea of sustainable development was first put forth. The discussions during the conference resulted in the 1972 Stockholm Declaration, which set forth the core principles that have served as the foundation for the concept of sustainable development. The World Commission on Environment and Development furthered this idea in its report, Our Common Future, also referred to as the Brundtland Report. This study defines sustainable development as growth that satisfies current requirements without endangering the ability of future generations to satisfy their own.It highlights that in addition to these needs, people have the right to desire a higher standard of living and calls attention to the reality that a significant portion of the population in developing countries lacks access to essentials including food, clothing, housing, and employment. The research indicates that development should aim to meet these human wants and aspirations while also maintaining the environment to maintain humanity's sustainability. Since the publishing of the Brundtland Report, the idea of sustainable development has been researched, accepted, and reiterated in several international conferences, UN General Assembly Resolutions, and publications.[2]

* **LL.M. NLIU Bhopal, Madhya Pradesh**

1 *Municipal Corporation of Greater Mumbai v. Ankita Singh & Ors*. C.A. 12122 of 2018 (Paragraph 41).

2 T.N. Subramaniam & Rubin Vakil, '*The Mechanisms of the National Green Tribunal'*, National Law School of India Review, Volume 30, Issue 1 (2018).

The Stockholm Declaration, which outlines the decisions and principles reached at the Stockholm Conference, was reflected in and implemented by the Indian Parliament through the enactment of the Environment (Protection) Act of 1986. The Environment (Protection) Act of 1986 explicitly acknowledges the notion of sustainable development, which means that all national courts and tribunals are required to uphold it. Therefore, development and the environment are now in harmony and balance thanks to the historic legislation.[3]

There was an increase in environmental litigation before the Supreme Court and other High Courts due to the growing awareness of the negative consequences of environmental degradation and the emergence of the idea of public interest litigation. These courts were beset not only by a backlog of cases and judicial time but also by a lack of experience in evaluating the intricate scientific and technical evidence required to handle cases of this nature. As a result, the Supreme Court stressed in several rulings the necessity of creating "Environment Courts" around the country that would only hear cases about the environment and be staffed by judges and technical/scientific specialists.[4]

In the year 2003, the Law Commission of India in its 186th report recommended the creation of specialized tribunals which would deal with cases about environmental issues. The Commission opined that it is not appropriate for the Constitutional Courts of our country to receive evidence about environmental issues and make local inquiries regarding the same. Furthermore, the Law Commission also suggested that the tribunal should be empowered to lay down its procedure of working. However, the same should not violate the principles of natural justice.[5] Eventually, in the year 2010, the National Green Tribunal came into existence by an Act of Parliament.[6]

If we closely read the statement and object of the NGT Act, 2010 we will find that the NGT was created by the Parliament to deal with a wide variety of cases about the environment. Unlike its predecessor, the National Environment Appellate Authority which had limited jurisdiction under the NationalEnvironmental Tribunal Act, 1995 the National Green Tribunal under the NGT Act had the power to deal with cases that involved substantial questions about the environment.[7] [8]

Material Facts of the Case

In the year 2018, the National Green Tribunal based on a newspaper report imposed a fine of 5 crores rupees on the Greater Mumbai Municipal Corporation because they did not install a sewage treatment plant for solid waste management. After a couple of years in March 2020, the National Green Tribunal passed an order "*in which the minimum distance of quarries from residential areas was increased from 50 to 200 meters."* This was done based on a letter written to the chairman of the National Green Tribunal. [9]

In May 2020 the National Green Tribunal based on a newspaper report took Suo moto cognizance of the gas leak in Vishakhapatna and passed necessary orders. Eventually, in June 2020, the National Green Tribunal passed an order stating that it has Suo moto powers under the National Green Tribunal Act, 2010. Against this order of the National Green Tribunal, the appellants moved to the Supreme Court because the National Green Tribunal Act nowhere explicitly mentions that National Green Tribunals have Suo moto powers to take up cases.[10]

Arguments of the Parties

The appellants argued before the Apex Court that the National Green Tribunal is a statutory body. As a result, the powers of the body are to be decided by the provisions of the statute. Since no provision of the National Green Tribunal Act explicitly empowers the National Green Tribunal with Suo moto powers, the body cannot exercise the same. Lastly, it was argued by the appellants that even though Section 14 of the

---

3 Environment (Protection) Act of 1986.

4 T.N. Subramaniam & Rubin Vakil, '*The Mechanisms of the National Green Tribunal'*, National Law School of India Review, Volume 30, Issue 1 (2018).

5 Law Commission Report No. 186, Chapter II.

6 National Green Tribunal Act, 2010 (No. 19 of 2010).

7 *Municipal Corporation of Greater Mumbai v. Ankita Singh & Ors*. C.A. 12122 of 2018 (Paragraph 14).

8 National Green Tribunal Act, 2010, s. 14.

9 Suo Moto Powers of the National Green Tribunal, Supreme Court Observer (June 2, 2024, 6:00 p.m.)https://www.scobserver.in/reports/municipal-corporation-of-bombay-v-ankita-sinha-suo-moto-powers-of-the-national-green-tribunal/

10 Id.

National Green Tribunal Act, 2010 empowers the National Green Tribunal to decide cases involving substantial questions related to the environment,[11] It doesn't imply that the National Green Tribunal has Suo moto powers.[12]

The respondents contended before the Apex Court that we need to look into the objectives behind the establishment of the National Green Tribunal in our country. The National Green Tribunal was created to secure a healthy, green, and clean environment for the citizens of India. It is pertinent to note that the right to a clean and healthy environment is also recognized under the right to life.[13] Since the National Green Tribunal has decided to adjudicate upon such important matters, the procedural requirement of the formal petition should not hinder its functioning.[14]

Lastly the amicus curiae in this case, Mr Anand Grover submitted before the Apex Court that National Green Tribunal has a very wide jurisdiction under the National Green Tribunal Act. But this does not mean that the National Green Tribunal has Suo moto powers. However, an informal petition would suffice and the Tribunal doesn't need to act only when a formal petition is filed before the same.[15]

Judgment

The three-judge bench of the Supreme Court in a unanimous verdict ruled that the NGT Act of 2010 empowers the National Green Tribunal with Suo moto powers. The Court opined that the objective behind the creation of a National Green Tribunal was to ensure the protection of the environment. Furthermore, this cannot happen if the Tribunals are not empowered to act on their own. The procedural requirement of a formal petition should not act as a hindrance in the working of the tribunal.[16]

It is pertinent to note that to reach this conclusion the Court adopted the route of purposive interpretation. The main purpose of the National Green Tribunal is to protect the environment. As a result, the statutory provisions need to be interpreted in a manner that would help in fulfilling this purpose. Thus, the National Green Tribunals can act Suo moto to preserve the environment.[17]

In Section 14 of the NGT Act, 2010 the Court ruled that the section lays down the criteria under which the case can be filed and heard before the National Green Tribunal. The section states that "*the case must be a civil case which substantially concerns the environment; and involves the implementation of environmental legislations."*[18] However, the Section nowhere states that a formal application needs to be filed before the tribunal. Hence in case the criteria of Section 14 are fulfilled, the National Green Tribunal can Suo moto take cognizance of the matter.[19] Lastly, the Court ruled that the functions and duties of NGT require a wide interpretation then only the purpose of the National Green Tribunal will be served.

Critical Analysis

The judgment of the Supreme Court is welcome. It is because it is pertinent to note that there is an economic disparity as well as a power disparity between the polluters of the environment and the victims of pollution. The polluters come mostly from the industrial and political class and the victims are usually the members of the marginalized community. In such a case there is no equal footing between both the parties. As a result, it can become difficult to ensure justice for the victims of environmental pollution.[20]

The traditional courts developed the concept of public interest litigation to ensure that justice is served to the poorest and the marginalized. The National Green Tribunal was created by the Parliament to ensure the preservation of the environment. Since National Green Tribunals has been entrusted with such an important function. As a result, the powers of the NGT must be interpreted widely. This would also include empowering National Green Tribunals with Suo Moto powers.

---

11 National Green Tribunal Act, 2010, s. 14.
12 *Municipal Corporation of Greater Mumbai v. Ankita Singh & Ors*. C.A. 12122 of 2018 (Paragraph 6).
13 Indian Constitution, 1950, art. 21.
14 *Municipal Corporation of Greater Mumbai v. Ankita Singh & Ors*. C.A. 12122 of 2018 (Paragraph 7).
15 *Municipal Corporation of Greater Mumbai v. Ankita Singh & Ors*. C.A. 12122 of 2018 (Paragraph 8).
16 *Municipal Corporation of Greater Mumbai v. Ankita Singh &Ors*. C.A. 12122 of 2018 (Paragraph 35).
17 *Municipal Corporation of Greater Mumbai v. Ankita Singh & Ors*. C.A. 12122 of 2018 (Paragraph 24).
18 National Green Tribunal Act, 2010, s. 14.
19 *Municipal Corporation of Greater Mumbai v. Ankita Singh & Ors*. C.A. 12122 of 2018 (Paragraph 25).
20 *Municipal Corporation of Greater Mumbai v. Ankita Singh & Ors*. C.A. 12122 of 2018 (Paragraph 27).

The critics of this judgment argue that the Apex Court has wrongly applied the principle of purposive interpretation to empower NGT with Suo Moto powers. The critics further argue that the Apex Court vide this ruling has given tribunals a power that mostly the constitutional courts of our country exercises. However, it is pertinent to note that Justice Roy in his judgment has specifically ruled that the Constitutional courts of our country can exercise Suo moto on any issue, but in the case of NGT, the same can be done only in environmental issues.[21]As a result, the authors believe that the judgment is a reasoned and balanced judgment that would usher in a new era in the environment law jurisprudence of our country.

* * * *

[21] Suo Moto Powers of the National Green Tribunal, Supreme Court Observer (June 2, 2024, 6:00 p.m.) https://www.scobserver.in/reports/municipal-corporation-of-bombay-v-ankita-sinha-suo-moto-powers-of-the-national-green-tribunal/

CORPORATE FRAUD AND CRIMINAL LIABILITY OF DIRECTORS

Rakshitha G. K. *

Abstract

Company intentionally alters its information to increase its market position. It can happen even when an employee of an organization, with his or her knowledge, commits fraud through embezzlement, corruption, or making false expense claims for financial benefit. According to the Report of the Nation's 2016 Global Fraud Survey, fraud costs an average organization 5% of its revenue in a given year. Scams are a part of business history in India. It has the potential to be disastrous for the organization, its stakeholders, and the broader public. Certain sections about corporate fraud have been incorporated into the revised edition of the Companies Act, 2013, which encapsulates the idea of fraud and includes provisions for severe punishment.

Introduction:

Fraud is described as "deliberate deception, trickery, or cheating to gain an advantage."[1]Three conditions are generally present when fraud occurs. "First, the management or other employees have an incentive or are under pressure, which provides them with a reason to commit Corporate Fraud. Second, circumstances might exist like the absence of controls, ineffective controls, or the ability of management to override controls, that provide an opportunity for fraud to be committed. Third, the persons who are involved can rationalize committing a fraudulent act. Some individuals possess an attitude, character, or set of ethical values that allow them to knowingly and intentionally commit a dishonest act"[2]

The lack of fraud prevention and investigation measures gives huge losses to the companies. Indian companies are ill-prepared to the fight fraud menace. Just 50% of companies have background screening, third-party due diligence, and other fraud prevention measures in place. In my view, India does not have adequately trained fraud investigators as part of the risk management teams.

Corporate fraud:

Corporate fraud consists of illegal unethical and deceptive actions committed either by a company or an individual acting in their capacity as an employee of the company. Corporate fraud schemes are often extremely complicated and, therefore, difficult to identify.[3]

According to the Association of Certified Fraud Examiners (ACFE), fraud is "a deception or misrepresentation that an individual or entity makes knowing that misrepresentation could result in some unauthorized benefit to the individual or the entity or some other party"

Fraud generally can be defined as obtaining financial or another benefit through misrepresentation, forgery, or false declarations that prejudice or cause loss to another. A company may commit fraud by manipulating accounting records, hiding debt, or Failing to inform shareholders of loans and bonuses given to its executives[4]

Financial frauds may identify theft that leads to loan fraud, credit fraud, and bank scams. One director can sue another director on behalf of the company. Any directors convicted of an offense under the Companies Act, Insolvency Act, Fraud Act, or Theft Act will likely be subject to a fine and in more serious cases imprisonment.

Earlier Fraud was not defined anywhere in the Companies Act, but in the 2013 Act, Fraud is specifically defined u/s 447 (explanation). "fraud" about affairs of a company or anybody corporate, includes any act,

* **5th year, B.Com. LLB, Kristu Jayanti College of Law, Bengaluru, Karnataka.**

1 Collins Concise Dictionary of The English Language 445 (2d Ed. 1988)

2 Jeffrey Cohen, Yuan Ding et. al, Corporate Fraud And Managers' Behaviour: Evidence From The Press, available at www.ceibs.edu/facultyCV/dyuan 20110614Ding_ JBE2011%20final.pdf, p. 5

3 https://corporatefinanceinstitute.com/resources/esg/corporate-fraud/

4 http://ssrn.com/abstract=1539013, p. 4

omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

Criminal liability and personal legal responsibilities of the director:

The word Director is defined as u/s. 2(34) of the Companies Act, 2013 means a director appointed to the Board of a Company. As we know from the Hohfeld analysis of Jural Relatives, if you have power, you will have corresponding Liability. Like this Directors have powers, rights, and duties as provided by the company, along with these, they have liability intact with their power. In cases of fraud, there can be 3 types of liability contractual, tortuous, and criminal liability. However, in this paper, I will only discuss the director's criminal liability in detail.

Criminal Liability can be defined as an illegal act of omission or commission, punishable by criminal sanction committed by an individual or group of individuals in the course of their occupation.

Directors are liable for violation of the provisions of the Companies Act and other acts which may expose them to punishment with fine imprisonment or both. The Hon'ble Supreme Court of India held in the case Maksud Saiyed vs. State of Gujarat and others [5]that if there is any provision in the legislation for vicarious liability, the managing director and director would be held liable. If directors are guilty of carelessness or discovered to be misusing their position, they will be responsible for civil as well as criminal penalties.

Sec 217(2AA) of the Companies Act, 1956 requires directors to give directors responsibility statements confirming that: accounting policies adopted reflect the true nature of financial statements and that accounting records are maintained and safeguarding assets and preventing frauds. Directors have to confirm that proper and sufficient care has been taken for the maintenance of adequate accounting records for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities [6]

Criminal liability in misstatement of prospectus:

Section 63 of the Act incorporates the provision relating to the criminal liability for misstatement in the prospectus. It provides that where a prospectus includes any untrue statement, every person who authorized the issue of the prospectus shall be punishable with imprisonment for a term which may extend to 2 years or with a fine which may extend to Rs 50,000 or with both.[7]The offense is compoundable under Section 621A. It has to be noted that under such cases, once the prosecution establishes the falsity of a statement in a prospectus signed by a director, etc., the onus is shifted to the defendant of proving either that the statement was immaterial or that he believed it to be true. An expert who has given the consent will not be deemed to be ipso facto a person who authorized the issue of the prospectus.A director may still incur liability for a criminal offense, for example, under section 397 of FSMA for misleading statements and practices.[8]

The words "untrue statement" a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included.

In Hafez Rustom Dalal v. ROC[9]though there were misstatements in the prospectus of the company, the company was not included in the list of vanishing companies. Penal action initiated against the directors and promoters on that basis was held to be not justified; the complaint was also barred by limitation.

In G. Ramesh v. ROC [10]the purpose of the notice is to enable the person accused to answer the charges. This would, therefore, require that the material forming the basis of opinion should be disclosed so that the opportunity granted is realistic in its content and form. The court may not interfere in the matter of a notice proposing an action. But where the notice does not disclose the basis of the opinion, or where there is no intelligible nexus between the reasons and materials, High Court interference certainly becomes necessary to assure fair play.

---

5 (2008) 5 SCC 668

6 https://www.caclubindia.com/articles/the-companies-act-2013-provisions-relating-to-directors19471.asp#.UuLceNK6at8

7 Section 63 of the Companies Act.

8 Section 463 (6) UK Companies Act 2006

9 (2005)128 Com Cases 883(gj)

10 (2007)77CLA271(mad)

Provisions of Old Companies Act, 1956 and comparison with the provisions of New Companies Act, 2013

a) Section 63 of the old act states that every person who authorized an issue of prospectus which included any untrue statement is criminally liable. Section 34 of the new acts states the same but section 63(2) which provides exemption to the officer in default is omitted & the person responsible will be liable for fraud u/S. 447 of the new act. Penalties under this act are more stiff.

b) Section. 84(3) states that if a company renews /issues a share certificate, then the officer in default will be liable for 6 months & fine of 1 lakh. However, S. 46 of the new act states that officers in default will be liable u/s. 447.

c) Section. 105 of the old act states the penalty for concealing the name of creditors, it remains the same in S. 66(10) of the new act, just added that officers doing the same will be liable u/S. 447.

d) Section. 234(7) of the old act provides the power of the registrar to call for information and in S. 206 (4)- of the new act Proviso added that where the business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.

e) Section. 237 of the old act provides investigation of company affairs in other cases and S. 213 of the new act Provides that if after investigation it is proved that— (i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or (ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.

f) Section. 542 of the old act provides for the liability of fraudulent conduct of business and it is the same in S.339 of the new act with added clause that where any fraudulent business going on, every person party to it shall be liable u/S. 447.

New Sections added in the Companies Act, 2013

Section. 75-Damages for fraud.

Section. 229- Penalty for furnishing false statements, mutilation, and destruction of documents.

Section. 251- Fraudulent application for removal of name.

Section. 447 states Punishment for Fraud- it provides that any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. In the explanation, the meaning of "Fraud" is also defined.

Conclusion:

Fraud occurs when any statement is made without belief in the truth or carelessly. Corporate fraud occurs when the corporate personnel is involved in a fraudulent business. As we know the company is a legal entity and it cannot act on its own. For the smooth running of the business, the managers or the officers i.e. directors are responsible. If any fraud is committed during business then the finger will be pointed toward the director. Directors are liable for fraud involving the company's property or assets if they have knowledge of the fraud or have personally participated in any misrepresentation. The Directors are mainly responsible for criminal liability in the cases of corporate fraud. The directors owe a duty of care towards the third party i.e. the investors and the creditors, so if the directors are involved in any type of fraud during business in the company, they can be held personally liable.

* * * *

LESSONS NO CHILD SHOULD LEARN: SAFEGUARDING CHILDREN IN WAR-TORN REGIONS

Avika Shree *

Abstract

Children's silent tears are heard amidst the sounds of gunfire, their joyful laughter drowned out by the noise of war. Conflict has universal effects, causing damage to both families and individuals' spirits teaching painful lessons to young minds that often shatters them to core.Despite all odds, there remains a spark of hope and strength in the gaze of the oppressed. This paper delves into the lives of children of war-torn areas to reveal stories of both tragedy and triumph. We navigate the complexities of legislative protections, policy suggestions, and the continual quest for peace with a strong dedication and heavy emotions. We strive towards a brighter future amidst challenges and disorder, where dreams from childhood can be realized and purity is kept intact.

Introduction

"Fire, its hell everywhere
Gray Clouds and Corpses' diseases
We cried, we run and tried to cease it "

The very first casualty of War is *innocence.* Innocence lost, shattered and crippled by blood and violence, the violence may not necessarily be physical. The above quoted lines are excerpts from a poem 'Children of War' by Genesis Bernaldez , as we progress through this research paper , side by side we will try to understand the raging issue this poem talks about i.e. the plight of children in war where the war mongers, who want wars to continue forever in some parts of the world or the other, to sell their war ammunitions and machinery, are the ones behind the inspiration but this 'all-business' conduct has an impeccable impact on children and their lives ,gives them a scar for a lifetime , that is , in case , they manage to survive !

Overview of the Plight of Children in War

Children participating in warfare encounter unimaginable levels of cruelty, displacement, and grief, along with incomprehensible levels of suffering. They are not just innocent observers but often the deliberate victims of crimes, losing their childhoods and futures in the process. The brutal acts they witness and endure result in permanent wounds that may never fully recover. Their determination can be seen shining brightly in the darkness, serving as a reminder of the urgent necessity to rescue and elevate them from their state of hopelessness.

Why the legal protection for children?

As silly as the question may sound, it becomes crucial to know the answer of this 'Why', especially in times where countries in war spare no mercy to any being on their 'enemy' land, the definition of enemy may vary. The law mandates that children in war must be protected due to moral obligations and our common human connection. This goes beyond simply being a matter of policy or morality. Laws and customs have been established to safeguard the most vulnerable individuals and preserve innocence amidst disorder.

Unravelling The Unseen: The Impact Beyond Understanding

"Guns, bullets, tanks and soldiers
Homes became cemeteries, joys turned into fears
We just don't get the world so clear"

---

* **1st Year, Jamia Milia Islamia, Delhi**

[1] Home Box Office (HBO), "Homeless: The Motel Kids of Orange County" (HBO Documentary Films, uploaded June 2, 2011), YouTube video, 54:21, posted by HBO, June 2, 2011, https://youtu.be/2iz2tNiRpeY (accessed June 8, 2024)

Psychological Trauma and Long-term Effects

"I always dream of monsters and the black abyss" says Jafar, a nine year old Syrian refugee from Damascus even after eight years of the horrendous incident whereas Ibrahim, another 12 year old Syrian refugee was forced to become the sole bread-earner for his family.[1]Kids growing up in violent neighbourhoods may experience psychological trauma that can result in long-lasting emotional wounds such as sadness, anxiety, and recurring nightmares. Experiencing loss and witnessing violence can have lasting negative effects on individuals, making it harder for them to form connections and thrive in their community.[2]

Displacement and Refugee Crisis

Millions of people are compelled to flee their residences because of conflict, seeking safety in packed refugee camps or unfamiliar settings. Losing their sense of self, belonging, security and sometimes even separation of families. This heightens their vulnerability to being taken advantage of, mistreated, and ignored in unstable living conditions.

Loss of Education and Future Prospects

When schools are disturbed in conflict zones, it puts children's basic right to education at risk, jeopardizing their future prospects and perpetuating poverty and inequality. Kids who lack access to top-notch education opportunities are deprived of opportunities to enhance their socioeconomic status, personal growth, and empowerment.

Gender Dimensions: Differential Impact of War on Young Girls and Boys

The suffering of children during war is made worse by gender differences; girls are at higher risk of sexual assault, early marriage, and exploitation, while boys are more likely to become child soldiers or be forced into labor. In order to ensure equitable support and aid for all war-affected children, it is essential to acknowledge and tackle these gender disparities.

Case Studies: Examining Specific Conflict Zones

"Rockets rain, shower of flame
Life is the bet for this kind of game
We don't know who is to blame "

Syria: Impact of Prolonged Conflict on Children

The children in Syria have experienced unimaginable suffering due to the civil war ongoing since 2011. As a result of over a decade of warfare, over fifty percent of the children in Syria have been forced to leave their homes, experiencing the trauma of losing their families, homes, and the chance to have a normal childhood. Enduring daily violence, bombings, and shelling, they were facing a shortage of basic necessities such as food, clean water, healthcare, and education.[3]

Yemen: Humanitarian Crisis and Children's Rights Violations

Yemen's ongoing conflict has caused one of the largest humanitarian disasters in history, with children being significantly impacted. More than 12 million children require humanitarian assistance as a result of conflict, disease, and food shortage. An outbreak of malnutrition is causing many children to succumb to starvation or avoidable infections. The constant danger of airstrikes and fighting on the ground has made it more and more challenging to survive day by day. The healthcare and educational systems have been demolished by war, leaving children lacking essential resources for a prosperous future. The great level of pain in Yemen is a stark reminder of the devastating impacts of conflict on the most vulnerable individuals in society.[4]

Democratic Republic of Congo: Addressing Child Soldiering

In the Congo, child soldiers experience abuse and violence, making it essential to implement comprehensive rehabilitation programs that focus on addressing trauma, providing education, and offering support.[5]

---

2 UNICEF, "Psychosocial Support," available at https://www.unicef.org/child-protection/psychosocial-support
3 UNICEF, "Syria Crisis," available at https://www.unicef.org/emergencies/syria-crisis.
4 United Nations Office for the Coordination of Humanitarian Affairs (OCHA), "Yemen
5 Human Rights Watch, "DR Congo: Child Soldiers Recruited by Armed Groups," available at https://www.hrw.org/news/2017/05/18/dr-congo-child-soldiers-recruited-armed-groups

All Eyes on Rafah: Israel-Palestine Conflict

The recent Israel-Palestine conflict has bared the face of humanity with shame. Children have undergone significant hardships due to frequent military operations, airstrikes, and blockades, leading to severe limitations on their access to crucial services such as healthcare and education. A notable psychological effect is evident, with numerous young people displaying symptoms of post-traumatic stress disorder (PTSD).[6]

Legal Framework and Policies

"Fathers are those who fight
Awake and crawl every night
But we children are who suffer in fright"

Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child (CRC) was adopted by the United Nations General Assembly in 1989, granting children worldwide a wide range of rights. Especially in regions of unrest, the CRC stresses the importance of ensuring children have access to development, protection, and education. It outlines the civil, political, economic, social, and cultural rights of children, emphasizing the importance of offering additional protection and care to children affected by conflict. Enforcement remains very challenging despite being widely ratified, especially in conflict-affected areas with weak state structures. In order to safeguard the rights of children in conflict-ridden areas, it is crucial for governments and international organizations to prioritize the implementation of the CRC.[7]

Geneva Conventions and Protocols

The Geneva Conventions and their Additional Protocols form the basis of international humanitarian law (IHL), governing behaviour in times of armed conflict and safeguarding individuals not involved in or no longer partaking in hostilities. The Fourth Geneva Convention and its Additional Protocols I and II specifically safeguard children from harm in times of armed conflict. These agreements require all individuals, including children, to be treated with respect, and they establish particular protections for children, such as ensuring they receive healthcare and education and prohibiting the recruitment of children under 15 into the military. Nevertheless, due to the intricacy of modern warfare and the lack of accountability measures, the implementation of these safeguards often falters.

Psychological Support and Trauma Healing

Children in conflict areas often suffer serious mental distress when they witness violence, are displaced, or lose loved ones. In order for them to recover mentally and successfully rejoin society, trauma healing is necessary. Effective programs often include peer support groups, counselling, and recreational activities meant to restore a feeling of security and normality. Providing these services is an essential duty of international organizations like UNICEF and NGOs, often encountering challenging situations to reach affected children. To ensure lasting stability and development in post-conflict societies, successful implementation of these initiatives is essential to break the cycle of violence.[8]

Reintegration Programs for Former Child Soldiers

Reintegration programs are crucial for ex-child soldiers as they provide the necessary tools and support for their transition back into society as grown-ups. To aid ex-child soldiers in rebuilding their lives and avoiding rejoining, such initiatives typically offer educational opportunities, mental health assistance, and vocational training. Effective reintegration programs should consider both the immediate necessities of children and the broader socioeconomic factors that contribute to child soldiering for success. Community support and participation are crucial as they can significantly enhance the reintegration process by promoting acceptance and inclusion in the community.[9]

---

6 Save the Children, "Palestine: Children under Attack," available at https://www.savethechildren.org/us/what-we-do/where-we-work/greater-middle-east-eurasia/occupied-palestinian-territories

7 Convention on the Rights of the Child, opened for signature Nov 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990)

8 UNICEF, "Psychosocial Support," available at https://www.unicef.org/child-protection/psychosocial-support.

9 Coalition to Stop the Use of Child Soldiers, "Child Soldiers: Global Report 2008," available at https://www.child-soldiers.org/shop/global-report-2008.

Ensuring Access to Education and Healthcare Services

In conflict zones, children often face serious violations of their basic rights to health care and education. In times of conflict, schools and hospitals are frequently attacked (the recent attacks on these public facilities during Israel-Palestine conflict gives a vivid look in this context) or repurposed, leading to the denial of essential services for children. Safe zones, moving clinics, and temporary learning spaces are being implemented to protect and reinstate these services. International aid organizations and NGOs [10]play a crucial role in ensuring children receive healthcare and education even during times of conflict. The primary objective of long-term plans is to ensure continuous access to essential services by reconstructing local systems and infrastructure.[11]

Advocacy and Policy Initiatives for Protecting Children's Rights

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC)

Enacted in the year 2000, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC) aims to prevent minors from being recruited and used in warfare. It requires the disarming and reintegration of child soldiers and increases the minimum age for participating in combat to 18. OPAC has had a major impact on affecting changes in laws and policies in many countries to stop children from joining armed forces or other groups. [12]

Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (2007)

Declared in 2007, the Paris Principles provide detailed instructions to help prevent the recruitment of young people by armed forces or groups and support their transition back to civilian life. These guidelines strongly emphasize the importance of preventing recruitment, securing children's release from armed groups, and providing them with psychosocial support, vocational training, and education to aid in their long-term reintegration.[13]

Safe Schools Declaration (2015)

In 2015, the Safe Schools Declaration was implemented as a global political promise to protect teachers, students, and schools from the severe impacts of warfare. Nations that sign the declaration will adhere to the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict. The aim of this initiative is to safeguard children's access to education by ensuring that schools remain secure environments for learning, even during periods of conflict. [14]

Challenges in Enforcing Child Protection laws during War

"War has no heart nor face

We're seeing troops falling from each race

Tired of hiding, having nightmares for days"

Implementing child protection rules during times of war is very difficult due to various obstacles. Conflict often leads to a weakening of legal systems, causing a failure in upholding laws. Armed groups may intentionally target children or exploit them for their own agenda, further obstructing efforts to safeguard children's rights. Poor governance, lack of resources, and limited entry to conflict zones exacerbate the challenges. Effective enforcement requires strong monitoring systems, international collaboration, and

---

[10] Save the Children, "Education in Emergencies," available at https://www.savethechildren.org/us/what-we-do/emergency-response/education-in-emergencies

[11] World Health Organization, "Healthcare in Conflict Settings," available at https://www.who.int/activities/protecting-health-services-in-conflict-settings.

[12] Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, opened for signature May 25, 2000, 2173 U.N.T.S. 222 (entered into force Feb. 12, 2002).

[13] UNICEF, "The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups," available at https://www.unicef.org/protection/files/Paris_Principles_EN.pdf

[14] Global Coalition to Protect Education from Attack, "Safe Schools Declaration," available at http://protectingeducation.org/safeschoolsdeclaration

specialized training for everyone involved. To reduce the harmful impact of war on children's health, it is crucial to hold accountable those who commit violations and provide support to the affected youth.[15]

Policy Recommendations towards a Better Future

Precautionary Measures : Put in place measures to protect children from being recruited by armed groups and to prevent the use of child soldiers.

Strengthen Legal Frameworks : Improve both domestic and global legal structures to ensure that individuals who breach children's rights in times of armed conflict face consequences.

Invest in Education : Allocate resources to guarantee that children affected by conflict receive a top-notch education by investing in education. This involves supporting schools in conflict zones and providing extracurricular programs for children who have not been schooled.

Offer psychosocial support : Develop and finance programs that offer psychosocial assistance and mental health services to help young people overcome trauma and begin anew in life.

Address Root Causes *:* To promote long-term stability and peace, it is crucial to tackle the underlying reasons for conflict, such as poverty, inequality, and limited resource availability.

International Cooperation : Enhance effectiveness and organize actions to protect children impacted by violence by promoting partnerships among governments, global organizations, and civil society.

Conclusion

"If God really loves those things we see

Will we children see what we're meant to be?

War without meaning, will there be peace and harmony"[16]

For whom is this war fought wherein a child loses their parents and parents lose their children? Land? Money? Political power? The only way I see it, the war is against humanity. The urgent need for attention and action arises from the disturbing fact of children enduring suffering in war. Their shattered purity calls for fairness and empathy amidst the devastation of war. Despite the immense obstacles and complications, there remains hope. By collaborating and staying devoted to the mission, we can ensure a brighter future for these children. By upholding legal safeguards, supporting mental health and education initiatives, and addressing root causes of conflict, we can create a world where all children feel safe, cherished, and empowered to reach their full potential. Even though it is a challenging task, it is vital for the well-being of future generations and the moral compass of humanity because the lessons a child should learn should not be in battleground but in classrooms and a safe outside environment, their experiences shaped by learning and playing, not by the horrors of conflict and asylum.

* * * *

---

[15] Human Rights Watch, "Protecting Children in Conflict," available at https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.savethechildren.org.uk/how-you-can-help/show-your-support/protecting-children-in-conflict&ved=2ahUKEwiu-6GV6dOGAxXZR2wGHS-HDyQQFnoECBAQAQ&usg=AOvVaw1Z ScwYrxJy6tiM JdPaLqJr(accessed June 10, 2024)

[16] Genesis Bernaldez,Children of War (PoemHunter.com, 2017), https://www.poemhunter.com/poem/children-of-war-7/ (accessed June 10, 2024)

THE STATUS OF EMERGENCY ARBITRATION IN INDIA

Rishit *

Abstract

Emergency Arbitration (EA), although not a novel term for those interested in arbitration, has been turning heads recently after the Supreme Court of India's judgment in the case of Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. which, for the first time upheld the interim award of an emergency arbitrator appointed under the Singapore International Arbitration Centre (SIAC) rules.[1]It held that the interim order is valid under Section 17(1)[2] and thus enforceable under Section 17(2)[3] Of the Arbitration and Conciliation Act (A&C), 1996. The Court has equated the order of an Emergency Arbitrator to that of a Tribunal under Section 17. Oftentimes the arbitration procedure becomes long-drawn and taxing, a perfect situation to opt for EA. When urgent interim relief is required and the option to opt for EA is absent, the parties would have to approach theCourt which mostly has not proven ideal for such situations. EA has the potential to accelerate India's push towards becoming a global seat of arbitration and a lucrative investment destination by improving the efficiency of contract enforcement and ease of doing business.

The author has written this article to discuss the prospect of EA in India. He stands in favor of an informed, pro-EA approach.

The Global Scenario

In such situations where parties require urgent interim relief before the process of constituting an Arbitral Tribunal is completed, EA comes into the picture to prevent loss to the parties and also to prevent the objective of arbitration from getting defeated. A similar concept of ad interim injunction is commonly used by courts in India in intellectual property disputes.[4]and civil matters[5] But the same took as long as 2021[6] To get recognition from the Supreme Court which has resulted inrenewed fascination in this area.TheInternational Centre for Dispute Resolution (ICDR) brought about the concept of EA in 2006[7] (last amended in 2021) and was incorporated by the International Chamber of Commerce (ICC) in 2012.[8] According to the ICC Rules, the emergency arbitrator is appointed where there is a need for urgent interim relief which started a trend of the same provision being adopted by several arbitration centers like theNetherlands Arbitration Institute (NAI),[9] the Singapore International Arbitration Centre (SIAC),[10] Swiss Arbitration,[11] Institute of the Stockholm Chamber of Commerce (SCC),[12] the Australian Centre for International Commercial Arbitration (ACICA)[13] Etc. They all recognize that time is of the essence in the procedure. For instance, SIAC rules allow for an emergency arbitrator's appointment procedure to be completed within a month even before the arbitration process begins.

* **3rd Year,BA. LL.B., National Law University, Jodhpur, Rajasthan.**

1 Amazon.com NV Investment Holdings LLC v. Future Retail Ltd., (2021) SCC OnLine SC 557 (India).

2 The Arbitration & Conciliation Act, 1996, § 17(1), No. 26, Acts of Parliament, 1996 (India)

3 The Arbitration & Conciliation Act, 1996, § 17(2), No. 26, Acts of Parliament, 1996 (India)

4 Khurana and Khurana, *India: Interim Injunction In IPR: An Indian Experience*, Mondaq (July 26, 2023, 12:50 PM), https://www.mondaq.com/.

5 Shreya Gupta, *Injunction Under CPC: An Overview*, IIPRD Blog – Intellectual Property Discussions (July 26, 2023, 01:13 AM), https://iiprd.wordpress.com/.

6 Amazon.com NV Investment Holdings LLC v. Future Retail Ltd., (2021) SCC OnLine SC 557 (India).

7 International Dispute Resolution Procedures (Including Mediation and Arbitration Rules), 2006, Art. 37, Pg 31.

8 Rules of Arbitration of the International Chamber of Commerce, 2012, Art. 29, Pg 27.

9 Nauta Dutilh, *The new Dutch Arbitration Act and the new NAI Arbitration Rules*, Lexology (July 26, 2023, 01:46 AM), https://www.lexology.com.

10 Arbitration Rules of the Singapore International Arbitration Centre, 2016, Rule 30,Pg 29.

11 Swiss Rules of International Arbitration, 2021, Art. 43, Pg 27.

12 SCC Arbitration Rules, 2023, Appx. II, Pg 30-33.

13 Arbitration Rules of the Australian Centre for International Commercial Arbitration, 2021, Sched. 1, Pg 49-52.

Illustratively, amongst the major arbitration seats, the ICC,[14][15] the ICDR,[16][17] the Hong Kong International Arbitration Centre (HKIAC),[18][19] the London Court of International Arbitration (LCIA),[20][21] the NAI,[22] the Mexico City National Chamber of Commerce (CANACO),[23][24] the Swiss Arbitration,[25] the SCC,[26] and the SIAC[27]Provide for both the expedited formation of the Arbitral Tribunaland the appointment of EA.

Some Asian countries like Singapore, Hong Kong, etc have always been torchbearers in the field of arbitration. In this context also, they took the lead in amending their laws to recognize EA.[28][29]. They were followed by the United Kingdom,[30] United States of America,[31] And the ICC. Thus, internationally, there is an eagerness among the major international arbitration centers to incorporate the concept of EA as it saves time and money.

Article 5 of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, 1985 envisages a uniform international standard of minimum judicial intervention when arbitration is opted for as the choice of dispute resolution by parties.[32] The same has been incorporated into Section 5 of the A&C Act, 1996.[33] The Supreme Court's judgment is another step towards the same.

While most major arbitration institutions around the world have not only recognized but are also actively promoting EA, a similar level of enthusiasm seems absent in India for now. Thus, an active discourse over this topic is essential. The author has written this article with the same in mind.

The author has deliberated on the legal status of EA in India and the legal standing of the orders passed by an emergency arbitrator. As it goes without saying, no discussion on EA in India can be complete without discussing the Amazon-Future Group case so it has been discussed in greater detail. Further, the legal and business-related benefits and disadvantages of incorporating EA in India have been highlighted.

Attempts towards Emergency Arbitration in India

Although theA&C, 1996[34]Does not recognize EA, the arbitral institutes in India have attempted to keep their rules in sync with the standard international arbitration rules including the provisions of EA. This is nowhere comparable to it having statutory recognition but is a starting point nonetheless.

The Delhi International Arbitration Centre(DIAC) (Arbitration Proceedings) Rules 2023 Rule 14 provides for the process of appointment, the period within which the process is to be completed and powers vested in an Emergency Arbitrator.[35]Rule 15 provides for the grounds under which interim relief can be sought while arbitral proceedings are going on.[36]

---

14 Rules of Arbitration of the International Chamber of Commerce, 2021, Art. 29.
15 Rules of Arbitration of the International Chamber of Commerce, 2021, Art. 30.
16 International Dispute Resolution Procedures (Including Mediation and Arbitration Rules), 2021, Art. 7, Pg 19.
17 International Dispute Resolution Procedures (Including Mediation and Arbitration Rules), 2021, Art. E-1 – E-10, Pg 38-40.
18 Administered Arbitration Rules, 2018, Art. 23, Pg 28.
19 Administered Arbitration Rules, 2018, Art. 42, Pg 47.
20 The London Court of International Arbitration (LCIA) Arbitration Rules, 2020, Art. 9A, Pg 14.
21 The London Court of International Arbitration (LCIA) Arbitration Rules, 2020, Art. 9B, Pg 14.
22 Netherlands Arbitration Institute Arbitration Rules Art. 40, Pg 26-27.
23 Mexico City National Chamber Of Commerce Arbitration Rules, 2023, A. 50, Pg. 20.
24 Mexico City National Chamber Of Commerce Arbitration Rules, 2023, A. 36, Pg. 15.
25 Swiss Rules of International Arbitration, 2021, Art. 42, Pg 26.
26 SCC Expedited Arbitration Rules, 2023.
27 Arbitration Rules of the Singapore International Arbitration Centre, 2016, Rule 05, Pg 05.
28 Singapore International Arbitration Centre, https://siac.org.sg/emergency-arbitration (last visited July 27, 2023).
29 Herbert Smith Freehills, https://hsfnotes.com/arbitration/2013/07/25/hong-kong-passes-amendments-to-arbitration-ordinance/ (last visited July 27, 2023).
30 Macfarlanes LLP, *In brief: enforcing and challenging arbitral awards in United Kingdom*, Lexology(July 27, 2023, 03:30 AM),https://www.lexology.com/.
31 William G. Bassler, *Are Emergency Awards Enforceable in the United States? A Guide for the Perplexed*, Brill (July 27, 2023, 03:40 AM), https://brill.com/.
32 United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, 1985, Art. 5, No. 4739, Treaty of United Nations, 1985 (India).
33 The Arbitration and Conciliation Act, 1996, § 5, No. 26, Acts of Parliament, 1996 (India).
34 The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).
35 The Delhi International Arbitration Centre (DIAC) (Arbitration Proceedings) Rules, 2023, Rule14, Pg 13-14.
36 The Delhi International Arbitration Centre (DIAC) (Arbitration Proceedings) Rules, 2023, Rule 15, Pg 15.

The ICC India's Arbitration Rules 2021 Article 29[37] Under the section of Arbitral Proceedings read with Appendix V (Emergency Arbitrator Rules)[38] Cover the provisions regarding EA.
The Indian Council of Arbitration (ICA)'s Rules of International Commercial Arbitration 2016Article 33provides for EA.[39]Article 36(3) covers an emergency arbitrator's fee.[40]
The Arbitration Rules of the Mumbai Centre for International Arbitration (MCIA) 2017 provide for EA under Article 14[41] and for interim relief under Article 15[42].
Over and above these individual institutional recognitions, a statutory recognition made via amendment would act as a shot in the arm for EA in India. It would also lead to a basic uniformity in the institutional framework rules.
The Law Commission of India's 246th report (2014) proposed amendments to the A&C Act, of 1996.[43] One of them was including EA within the definition of arbitral tribunal given in Section 2(1)(d).[44] Singapore's approach to EA was the inspiration for this recommendation.
But both the amendment bill tabled in the Parliament and the amended act of 2015 that resulted, did not incorporate the recommendations on EA.

The Judiciary's Take

The trajectory involved in incorporating a new legal concept by the judiciary usually starts with an initial reluctance to incorporate the concept. EA is no exception.

The Delhi High Court in the 2016 case of *Raffles Design International India Pvt. Ltd. &Anr. v. Educomp Professional Education Ltd & Ors* held that an emergency arbitrator's order is unenforceable under Section 17 of the A&C Act, 1996[45].[46] Section 17 allows parties to an arbitration to request the arbitral tribunal for certain interim measures while the enforcement of its arbitral award is pending. The effect of this judgment was to leave parties with the only option to approach the appropriate court of law for the enforcement of interim measures under Section 9 of the Act.[47].

A contrary judgement followed in 2020 in the case of *Mr. Ashwani Minda & Anr vs U-Shin Ltd & Anr* where the Delhi High Court extended the provision of Section 9(3)[48]To emergency arbitrators.[49] Section 9(3) provides for the non-interference of Courts once the Arbitral Tribunal has been constituted. Earlier, in 2019, the Bombay High Court reached the same conclusion in the case of *Plus Holdings Limited vs Zeitgeist Entertainment Group.*[50]Till this point, the stand regarding EA was still not clear until the case of *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd*came along.[51]

In this case, Amazon initiated an arbitration proceeding against Future Retail under a SIAC administered India-seated tribunal seeking the prohibition on the sale of the defendant business, the retail arm of the conglomerate company Future Group, from being sold to a third party. The Emergency Arbitrator passed an interim award in favor of Amazon. Amazon filed a petition under Section 17(2) of the Act[52] in the Delhi High Court[53] Seeking to get this interim award enforced. Section 17(2) provides that an arbitral tribunal order be deemed to be equivalent to a Court order and thus enforceable under the Code of Civil Procedure, 1908[54]By the same procedure as a Court order. A Delhi High Court single-judge bench recognizing the emergency

37 International Court of Arbitration (ICC) India's Arbitration Rules, 2021, Art. 29, Pg 37.
38 International Court of Arbitration (ICC) India's Arbitration Rules, 2021, Appx. V, Pg 71-77.
39 The Indian Council of Arbitration (ICA)'s Rules of International Commercial Arbitration 2016, Art. 33, Pg 18.
40 The Indian Council of Arbitration (ICA)'s Rules of International Commercial Arbitration 2016, Art. 36(3), Pg 20.
41 Arbitration Rules of the Mumbai Centre for International Arbitration (MCIA) 2017, Art. 14, Pg 20-22.
42 Arbitration Rules of the Mumbai Centre for International Arbitration (MCIA) 2017, Art. 15, Pg 23.
43 Law Commission Of India Report, 2014, No. 246, Acts of Parliament, 1996 (India).
44 The Arbitration and Conciliation Act, 1996, § 2(1)(d), No. 26, Acts of Parliament, 1996 (India).
45 The Arbitration and Conciliation Act, 1996, § 17, No. 26, Acts of Parliament, 1996 (India).
46 Raffles Design International India Pvt. Ltd. & Anr. v. Educomp Professional Education Ltd. & Ors, (2016) 234 DLT 349 (India).
47 The Arbitration and Conciliation Act, 1996, § 9, No. 26, Acts of Parliament, 1996 (India).
48 The Arbitration and Conciliation Act, 1996, § 9(3), No. 26, Acts of Parliament, 1996 (India).
49 Ashwani Minda v. U-Shin Ltd., AIR 2020 (NOC 953) 314 (India).
50 Plus Holdings Limited v. Xeitgeist Entertainment Group, (2019) SCC OnLine Bom 13069 (India).
51 Amazon.com NV Investment Holdings LLC v. Future Retail Ltd., (2021) SCC OnLine SC 557 (India).
52 The Arbitration and Conciliation Act, 1996, § 17(2), No. 26, Acts of Parliament, 1996 (India).
53 Amazon.com NV Investment Holdings LLC v. Future Retail Limited and Ors., (2021) 280 DLT 618 (India).
54 The Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908 (India).

arbitrator as a valid arbitrator upheld the award under the said section but Future filed an appeal before a division bench of the same Court and was able to obtain a stay order.[55]

Amazon appealed against the stay order in the Supreme Court.[56] The Supreme Court held that the Arbitration Act does not prevent parties from seeking an interim order from an Emergency Arbitrator if the arbitration rules they have agreed to be subjected to allow for the same and such interim order would be enforceable under Section 17(2)[57]. The Court gave a broad interpretation of Section 2(1)(d)[58] Stating that it includes the definition of 'Arbitral Tribunal' within it. The Court based its decision on the autonomy provided to parties to choose the arbitration rules they want to be governed by.

The Court clarified that under Section 37 of the Act,[59] only interim orders of the arbitral tribunal passed under Section 17(1)[60] are appealable in Courts and not the order passed by a competent court under Section 17(2)[61]Enforcing the interim order.

However, the following year, the Supreme Court overturned the Delhi High Court's order which ordered for the enforcement of the interim order on the ground of violation of principles of natural justice.[62] But this subsequent development has no impact on the earlier take of the Supreme Court regarding the enforceability of an emergency arbitrator's orders in India as those were mostly general guidelines to be followed in all such cases moving forward. This has paved the way for EA to be legally availed and enforced in India.

Some Flaws in Emergency Arbitration

Just by upholding EA over the usual court procedure, one cannot assume that EA is devoid of faults. Along with its advantages and popularity as an option for interim relief, it also brings with it its share of faults. Furthermore, due to being a novel concept with a lack of enough precedence, questions of interpretation are a constant in this process.

First, EA does not allow ex-parte applications which raises due process concerns. This shuts the door for some forms of interim relief, doing away with the option to preserve confidentiality.[63]

Second, the Emergency Arbitrator's order is an interim one so it is essential to get it approved by the tribunal making it difficult to enforce it in many jurisdictions. On the greener side, the Emergency Arbitrator's orders have maintained a compliance rate only a little short of 90 percent making enforcement less of an issue in most cases.[64]

Third, EA has a very low rate of granting relief around 29 percent[65]But the major reason is that interim relief is justified only in such exceptional cases where no other option remains. There is a lack of uniformity regarding standards according to which it has to be decided whether interim relief is to be granted or not. This includes the lack of consensus on the law which will govern the tribunal's decision on interim relief. Still, when compared to approaching the court for relief, interim measures are quicker and more effective ways to get a resolution for parties to an arbitration.

The ICC Rules have incorporated a fee of USD 40,000 on each application and filing the Request for Arbitration on the merits of the case within 10 days of filing the Application although this sum may be recoverable by the successful party.[66] Such rules can be included to prevent the abuse of the EA process.

---

55 Future Coupons Private Limited and Ors. v. Amazon.com NV Investment Holdings LLC, (2021) SCC OnLine Del 4101 (India).

56 Amazon.com NV Investment Holdings LLC v. Future Retail Ltd., (2021) SCC OnLine SC 557 (India).

57 The Arbitration and Conciliation Act, 1996, § 17(2), No. 26, Acts of Parliament, 1996 (India).

58 The Arbitration and Conciliation Act, 1996, § 2(1)(d), No. 26, Acts of Parliament, 1996 (India).

59 The Arbitration and Conciliation Act, 1996, § 37, No. 26, Acts of Parliament, 1996 (India).

60 The Arbitration and Conciliation Act, 1996, § 17(1), No. 26, Acts of Parliament, 1996 (India).

61 The Arbitration and Conciliation Act, 1996, § 17(2), No. 26, Acts of Parliament, 1996 (India).

62 Amazon.com NV Investment Holdings LLC v. Future Retail Ltd., (2022) 1 SCC 209 (India).

63 Sharmeen Hakim, *Arbitral Tribunal Can't Pass Ex-Parte Ad-Interim Order; Arbitration Act Mandates Advance Notice: Bombay High Court*, Live Law (July 29, 2023, 11:22 PM), https://www.livelaw.in.

64 Amy E. Allen, *Emergency Arbitration: The Unsung Hero of International Arbitration*, Arbitration Brief Washington College of Law (July 29, 2023, 11:15 PM), https://thearbitrationbrief.com/.

65 Amy E. Allen, *Emergency Arbitration: The Unsung Hero of International Arbitration*, Arbitration Brief Washington College of Law (July 29, 2023, 11:15 PM), https://thearbitrationbrief.com/.

66 Patrick Zheng, Jason Fry, *Introduction to ICC Arbitration*, Clifford Chance (July 29, 2023, 11:40 PM), https://www.cliffordchance.com/.

The lack of domestic legislation covering EA which effectively means a lack of legally enforceable rules governing the EA process is one such issue that when acknowledged and resolved, will considerably solve the above-stated issues.

The minor issues notwithstanding, EA is largely a positive addition to international

arbitration. It enables parties to resolve their issues without involving in litigation which allows for secure and speedy resolution. It allows parties to avail of an emergency arbitrator who may be much more specialized on the subject matter compared to a judge. The multi-accountability provision ensures a fair relief.

Conclusion

The Supreme Court has displayed the essential impetus required to set off the concept of EA in the Indian Arbitration scenario.This impetus matters because when the interim award is not complied with, the baton passes from the arbitral tribunal to the concerned nation's national laws and national courts regarding whether they recognize EA or not, and if they do, how effectively and efficiently they can enforce the same. This would give the necessary boost to the arbitration procedure followed in India and bring India closer to becoming an international arbitration hub. The decision takes an effective, ambitious, contextual, and practical approach to EA. It would ensure minimal judicial intervention which is the ideal scenario when parties have consciously chosen arbitration as the method of dispute resolution.

The fact that the Supreme Court has exclusively recognized emergency awards of India-seated tribunals would lead to international parties seriously considering India as their choice of arbitration seat leading to a rise in the number of India-seated arbitration proceedings. It would promote India as an arbitration seat promoting party autonomy and efficiency. A statutory recognition would give the finishing touch to it.

The incorporation of EAwould also contribute towards decongesting the burden of the Indian courts which are extremely clogged with an overflowing number of pending cases. The COVID-19 pandemic resulting in very limited functioning of courts and forcing them to conduct online hearings has made the requirement for effective alternate dispute resolution mechanisms and reducing judicial intervention where possible evenmore blatantly clear.

At the same time, the usual option to challenge the arbitral awards in Indian courts should always be open as an option for parties who wish to go that route. Arbitration is meant to supplement the law and not supplant the law.

Regardless of the same, formal statutory recognition is still required to give full effect and legitimacy to EA in India, and to provide a stable enforcement regime as a pro-arbitration stance of the judiciary is far from enough. It would also bring clarity and streamline the enforcement procedure. The future of EA would be shrouded in a certain grey area until legislative intention becomes clear.

* * * *

CHALLENGING NORMS: LEGAL PERSPECTIVES ON LGBTQ+ RIGHTS

Shreyas S. Kulkarni *

Abstract

Sexual orientation and gender are important in understanding a person's identity.Historically women and men were expected to behave and act in certain ways, the traditional societies determined their respective behaviors and sexual patterns. The understanding and acceptance of these aspects have evolved significantly. Today, the fight for equality and acceptance continues, particularly for the LGBTQ+ community. This research distinctly explores the term 'LGBTQ+', which includes individuals who are lesbian, gay, bisexual, transgender, queer, or of different gender identities. It examines the difficulties these individuals face in accepting their identities. The study also reviews the treatment of people who didn't conform to traditional gender norms, particularly during colonial times and earlier periods. It carefully inspects the rules and laws that protect the rights of LGBTQ+ individuals and the significant court cases that have influenced these laws. The study's broader aim is to highlight governments' responsibility to ensure that LGBTQ+ individuals are treated fairly and that their rights are protected. Analysis shows that although progress has been made, improvement is still required to ensure that LGBTQ+ individuals are treated equally. The study suggests strategies to encourage societal acceptance and recommends strengthening laws to ensure that LGBTQ+ individuals are treated fairly and with respect. The conclusion addresses issues such as surrogacy, marriage, and adoption, supported by available sources.

Concept of LGBTQ+

In the contemporary world, there is a huge surge in the count of people who identify as members of the LGBTQ+ community. This umbrella term includes a wide spectrum of gender identities, sexual orientations, cultural backgrounds, and socioeconomic statuses. The members of this community do not conform to one traditional gender as such, and hence they can be regarded as the third gender category. A lesbian is a term used to describe a woman who experiences romantic or sexual attraction to other women; on the other hand, a gay is a man who experiences romantic or sexual attraction to other men. Bisexual is the term used for people who are attracted to the persons of opposite gender as well as their gender. Transgender are those whose gender differs from their biological sex. Transsexual is the term used when a transgender person has had various medical treatments, like hormone therapy or surgery to change their physical features so that they can correspond to their gender identities. The term Queer is used to include all the subsets of the LGBTQ+ community. In addition to the core LGBTQ identities, the community continues to evolve, with the inclusion of identities such as Questioning, Intersex, Pansexual, Asexual, Cisgender, and more.

Challenging Aspect of Acceptance

Not taking into consideration other countries, there is an argument in the trend, thatin India, the literacy rate is around seventy to seventy-five percent, and still, acceptance of gender LGBTQ+ and granting them their rights in society is not achievable. I have an objection to such an argument as it is not only literacy that can bring acceptance of such genders in society, but it is also the upbringing of the majority of the Indian population who are conservative by nature. The people who are hesitant to openlydiscuss relationship status, who aren't willing to accept live-in relationships, and who protect women's rights in the name of patriarchywould never accept such a thing as LGBTQ+ persons' rights. To understand the reason behind the same, it is important to dwell on their community's history. A study of some basic rights they have and are striving to achieve in India is necessarybefore examining the history of the LGBTQ+ community. They are facing issues in the subject matter of marriage, adoption, surrogacy,employment, etc. Whereas they have

* 2nd Year, BA. LLB (Hons.), Symbiosis Law School, Nagpur, Maharashtra.

successfully achieved the right to expression, recognition, privacy, and self-perceived gender identity (The Transgender Persons (Protection of Rights) Act, 2019). Legal perspectives are essential in addressing LGBTQ+ rights by providing a foundation for protection, recognition, and advocacy.

Colonial and Pre-Colonial Attitudes Towards Non-Normative Genders

The historical background of LGBTQ+ rights is that the religious texts of ancient India bear witness to the acceptance and festivity of various forms of love, as they impartially portray homosexual themes and characters. The ancient Indian text Rigveda contains a passage that reads, "Vikriti Evam Prakriti," which means to accept anything that appears to be unnatural as also natural. According to the Kama Sutra, there were lesbians, called "Swarinis," who got married and had kids together. In addition, gay relationships and other forms of sexual fluidity have been displayed in explicit and sensual sculptures at the 12th-century Khajuraho temple in Madhya Pradesh. While there was significant societal denial of homosexuality during the Middle Ages, people with diverse sexual orientations were tolerated. Social views remained mostly open and supportive, and those who identified as LGBT did not face exclusion. Notably, historical records mention cases of homosexuality among the Mughal monarchs' elite ranks. For instance, it was well known that Mubarak, the son of Alauddin Khalji, the ruler of the Delhi Sultanate, had an affair with one of the aristocrats in his court. In a similar vein, Babur, the Mughal Dynasty's creator, wrote of his love for a boy he called Baburi, and during and after his life, such declarations of affection met with little opposition. However, section 377 of the Indian Penal Code made all sexual acts considered "against the order of nature," including homosexuality, illegal in 1861 with the establishment of British colonial control. The Catholic Church's view was that sexual actions unrelated to procreation were immoral and had a big impact on this shift.[2]

Constitutional Measures and Case Laws

Naz Foundation v. Govt of NCT Delhi, 2009 *:*

This judgment challenged the constitutionality of Section 377 of the Indian Penal Code, arguing that it violates fundamental rights guaranteed under the Constitution of India, including the right to privacy and dignity. The right to privacy and dignity are recognized as subsets of Article 21 of the Indian Constitution, and Section 377 IPC denies a person's dignity only on account of their sexuality.[3] The expression of sexuality requires freedom from interference by the State, allowing individuals to develop human relations without external interference. Hence Section 377 IPC was held unconstitutional in this case.

Suresh Kumar Koushal v. Naz Foundation, 2013 **:**

This case reversed the judgment of Naz Foundation v. Govt of NCT Delhi, The Supreme Court of India declared that Section 377 of the Indian Penal Code, 1860 (IPC) is not violative of Articles 21, 14, and 15 of the Constitution as it criminalizes consensual sexual acts of adults in private.[4]Advocate Shri Amrendra Sharan, along with other senior advocates, argued against the Delhi High Court's ruling to declare Section 377 of the IPC as violative of Articles 21, 14, and 15 of the Constitution. They stated that the writ petition filed by respondent no.1 lacked foundational facts necessary for touching upon the constitutionality of a statutory provision. The advocates referred to the allegations in the writ petition to show the absence of material to support the claim that Section 377 was used for the prosecution of homosexuals as a class. They also questioned the validity of the statistics presented by NACO, claiming them to be not relevant. The advocates in this case stated that anal intercourse between two homosexuals is a high-risk activity, exposing individuals to the risk of HIV/AIDS. This is the crux of the supporting arguments in this case in the Supreme Court.

National Legal Services Authority v. Union of India, 2014 **:**

In this case, various international laws, court judgments, legislations, and orders were taken into consideration that protect the rights of Transgender persons. Transgenders in India had no laws to save them from injustice and discrimination. The judgment of Christine Goodwin v. United Kingdom was reiterated when the European Court of Human Rights asserted that the Convention protects the right of transsexuals to personal development

[2] Yadav, A. (2021) A brief history of LGBTQ+ in India, The CBS Post. Available at: https://newsletter.sscbs.du.ac.in/a-brief-history-of-lgbtq-in-india/. (Accessed: 09 June 2024).

[3] Naz Foundation v. Govt of NCT Delhi,(2009) 111 DRJ 1.

[4] Suresh Kumar Koushal v. Naz Foundation, (2013) 4 SCC 1.

and security. The presence of transgenders in Hindu mythology and Islamic history is discussed in this judgment. The judgment also discusses that during colonial rule the British treated transgenders inhumanly by implementing Section 377 IPC and the Criminal Tribes Act, of 1871. The main issue of this case was whether the non-recognition of the transgender community would lead to a violation of constitutional provisions.[5]After arguments and examination of constitutional validity in recognition of such gender, the Supreme Court decided to recognize 'transgender people' particularly and their rights as well. The court also ordered that the State and Central Government must grant transgender individuals full legal recognition to ensure access to education and healthcare without discrimination. The court issued directions to establish separate HIV Sero-Surveillance centers, provide appropriate medical care for transgenders in hospitals, and provision for separate public toilets. The judgment signified the need for legislation for the protection of transgender rights.

Justice K. S. Puttaswamy v. Union of India, 2017 –

The nine-judge bench of the Supreme Court held that the right to privacy comes within the purview of Fundamental Rights (Article 21). The court's decision was subject to constitutional challenges in various legislations criminalizing same-sex couple marriage rights and, a ban on beef and alcohol consumption in many states. The court revisited its earlier decision in the Suresh Kumar Koushal vs Naz Foundation case and found fault with the judgment. It criticized the earlier judgment, stating that the court had overlooked Section 377 on the dignity of individuals based on their sexuality. The court also rejected the argument that the prosecution of only a few individuals under Section 377 is not a violation of constitutional rights. The protection of sexual orientation as a part of ensuring equality for all members of society is an essential development towards achieving respect for individual autonomy.[6]Hence, K. S. Puttaswamy's case has played an important role in delivering justice to the LGBTQ+ community by creating a strong legal impact for the legalization of their rights.

Navjot Singh Johar v. Union of India, 2018–

The Supreme Court of India reversed the Koushal decision and decriminalized consensual same-sex relations between adults by reading Section 377. The Court held that Section 377 IPC violated the right to equality, freedom of expression, and personal liberty guaranteed under Articles 14, 19, and 21 of the Constitution. According to the Court, the categorization of "unnatural sex" as "against the order of nature" is legally void, as it is impossible to inflict penalties without a valid reason. The Court recognized the Yogyakarta Principles, prohibiting discrimination based on sexual orientation and gender identity, and held that Section 377 did not conform with India's international obligations. This judgment has value for other nations that continue to criminalize homosexuality, as it upholds the right to equal citizenship for all members of the LGBTQ+ community. Hence, Section 377 excludes consensual sexual intercourse between two same-sex adults.[7]

Suprio v. Union of India, 2023 –

A five-judge bench decided this judgment, and the main ratio of this case was decided in favor of a 3:2 variation. The majority bench was against the legalization of same-sex marriage. The key holding of the judgment is that transgender persons can marry acting as a heterosexual couple, the right to adopt for same-sex couples is not available, the same-sex couple cannot marry, the fundamental right to marry is not granted to everyone and the union government must frame laws by forming a committee to address the issues that are being faced by LGBTQ+ community. All these holdings have caused distress to the LGBTQ+ community. The court unanimously found no constitutional right to marry and could not interpret the Special Marriage Act to include LGBTQ+ marriage rights. The majority opinion refused to recognize civil unions and adoption rights for unmarried couples, while the minority opinion sought broader recognition of their rights. Justice Bhat's judicial philosophy in different cases raises questions of inconsistency in applying legal doctrine, especially in the context of this case.[8]The minority opinions by Chief Justice Chandrachud and Justice Kaul advocate for the basic rights and protections of LGBTQ+ citizens, suggesting the possibility of future legal evolution in this area. The unreasonableness of declining same-sex marriage is because it is against the "natural order" given that procreation and having a child are not the utmost and primary goals of marriage.

5 National Legal Services Authority v. Union of India,2014 INSC 275.
6 Justice K. S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
7 Navjot Singh Johar v. Union of India, (2018) 10 SCC 1.
8 Supriyo v. Union of India, W.P.(C) No. 1011/2022

Transgender Persons (Protection of Rights) Act, 2019 –

It is enacted to protect Transgender persons but it is facing a lot of criticism from the members of its community, the reason for this may be none of its provisions address the inheritance of property by a transgender person.[9]There are numerous personal laws in India but most of these have a binary description for inheritance. The Hindu Succession Act, of 1956 does not make any mention of transgender. Textually, by only referring to son and daughter, it makes any succession under the Act impossible for them.

Conclusion and Recommendation

Protecting citizens is the responsibility of a state. The citizen may be of any sexual orientation but it is the basic duty of the state to protect its citizens from all forms of hardships. When it comes to the protection of LGBTQ+ persons then there is an international human rights commission that orders every state to protect such persons. It is argued that a government may define marriage but it cannot tell people whom to love, neither can it exert exclusive control over marriage or people's understanding of marriage. If members of the LBGTQ+ community cannot get married it creates discrimination against people who are straight in nature. By not implementing laws for the marriage of same-sex couples, the government denies them of right to adoption, maintenance in case of divorce, compensation in case of death of the partner at work, etc. In the PIL filed by Abhijit Iyer Mitra, Gopi Shankar, Gita Thadani, and G. Oorvasi, it is argued that there is no difference between heterosexual and homosexual marriage under the Hindu Marriage Act, of 1955. For this statement, the Solicitor General of India, Tushar Mehta, stated that homosexual marriages were not historically promoted by Hindu culture. He further argued that the legal systemas well as the cultural history of India do not encourage such union between two same-sex persons. Concerns were raised about the roles and responsibilities traditionally associated with 'husband' and 'wife' in the context of same-sex unions. It was argued that allowing such unions could create instability within the existing legal framework, and thus, it was suggested that such unions should not be permitted. There is a vacuum in law to govern the rights of LGBTQ+ persons. It is indeed challenging for the legislature to frame laws on marriage, adoption, inheritance, and recognition of such persons. It is questionable how the legislature would govern genders like gays and lesbians as they directly intend to marry persons of the same sex and would choose roles of being husband and wife. However, some lesbian and gay couples argue that it is unnecessary to designate roles as 'husband' and 'wife' to effectively care for a child. But setting aside this argument, it is necessary to look from the point of view of the child. Can the child be nurtured by two same-sex persons? Or is it necessary for a mother (female) and father (male) to nurture and bring a child? To avoid all this confusion, it is a suggestion to take into consideration all laws governing the marriage of same-sex couples globally and examine them. If in case it is suitable to Indian conditions then such a law must be implemented by the legislature.

There is mere demand by gay and lesbian couples to allow them to have surrogate children, this shouldn't be allowed because the gay couple would require an egg donor and the lesbian couple would require a sperm donor, and if such surrogacy takes place, then the biological mother (the one who donated the egg) and biological father (one who donated the sperm) will have a direct relationship of blood with the child. Currently, in India, there are distinct personal laws for different religions. Focusing specifically on Hinduism, the direct blood relationship between biological children and biological parents forms a natural bond, that allows the biological parents to name a child (Naamkarna) and allows the biological child to perform the death rights of parents (Pitrupaksha). For such rituals to take place, it is necessary for the child and the parents to be biological to each other. Why is it that only a heterosexual couple can naturally procreate? And why is it that gays and lesbians aren't able to naturally procreate? It is a general understanding that only when sperm hits the egg or when persons of two opposite sex procreate offspring can be born. So, the demand for children by surrogacy by gay and lesbian couples goes against nature. Any act deemed to be against nature falls within the purview of the violation of the regulations prescribed under the natural school of jurisprudence. In the case of surrogacy between gay or lesbian couples, it is evident that one of the parents of the child will not have a biological bond with it. Hence, all of this should be determined by the legislature before implementing surrogacy laws for LGBTQ+ couples.

* * * *

[9] Transgender Persons (Protection of Rights), Act No. 40 of 2019 (India).

FROM FLOW TO RIGHTS: EXPLORING THE RECOGNITION AND PROTECTION OF RIVER RIGHTS

Fardeen Bin Abdullah *

Abstract

This article explores the concept of River Rights for protecting and preserving rivers globally. It examines the historical development of River Rights, international conventions, treaties, and domestic laws related to river management. Case studies from countries like New Zealand, India, Ecuador, Australia, Bangladesh, Canada, and the United States showcase diverse approaches to recognizing and enforcing River Rights.

The article discusses the scope of river rights, including different interpretations and perspectives, and the rights and responsibilities of stakeholders in river management. It highlights the ecological importance of rivers and the impact of human activities on river ecosystems, addressing challenges in enforcing river rights. It also briefly points out the river protection mechanism and guidelines.

Different legal remedies are available for individuals and communities seeking to enforce their river rights and the protection of rivers is explored. The conclusion emphasizes the significance of recognizing and safeguarding river rights and providing recommendations for policymakers, legal professionals, and stakeholders.

This article advocates for a harmonious relationship with nature, where rivers are recognized as living entities with inherent rights, and efforts are made to manage and preserve these vital water resources sustainably.

Introduction

"Rivers are the veins of the Earth, through which the blood of life courses." These poignant words, spoken by renowned American author and environmentalist Jay Johnston[1], capture the profound importance of rivers in sustaining life on Earth.

As humanity grapples with the challenges posed by a rapidly changing world, the recognition and protection of river rights have emerged as a compelling approach to ensure the preservation of these vital ecosystems. Rivers have been at the heart of human civilization since time immemorial, providing water for drinking, agriculture, and industry, serving as transportation routes, and nurturing diverse ecosystems.

However, the unrelenting pressures of industrialization, population growth, and climate change have profoundly impacted the health and well-being of rivers worldwide. Pollution, habitat destruction, water scarcity, and the construction of dams and diversions have led to the degradation of river ecosystems and the loss of biodiversity.[2]

In response to these threats, a paradigm shift has taken place, emphasizing the need to recognize the rights of rivers themselves. This concept, known as River rights, acknowledges that rivers possess intrinsic value and deserve legal protection, much like human beings and corporations.

This article embarks on a journey of exploration, tracing the trajectory from the natural flow of rivers to their legal recognition. It delves into the evolving landscape of river rights, examining international frameworks, domestic legislation, and notable studies that highlight the challenges and successes in recognizing and safeguarding the rights of rivers as well as the protection of rivers.

Through a multidisciplinary lens encompassing environmental law, ecology, and social justice, this article

* **LL.B (Honors), LLM in International Law, Department of Law, University of Rajshahi, Bangladesh.**

1 Jay Johnston, *River of Lakes (*New York, Pantheon Books, 1978) 12.

2 Michel Meybeck, 'Global Analysis of River Systems: From Earth System Controls to Anthropocene Syndromes' (2003) 358 *Philosophical Transactions of the Royal Society of London. Series B: Biological Sciences* 1935

aims to shed light on the significance of river rights and their potential to foster sustainable river management and environmental stewardship.

Historical Background and Legal Framework

The historical background and legal framework of river rights trace the development of water governance and the establishment of legal protections, shaping the foundation for addressing contemporary challenges and ensuring equitable water management.

Historical Development of River Rights

Rivers have played a pivotal role in shaping human civilizations throughout history. From providing sustenance to enabling trade and transportation, rivers have been essential to the development and progress of societies worldwide. River rights have evolved in response to the growing recognition of rivers' ecological, cultural, and intrinsic value.

The historical development of river rights can be traced back to ancient civilizations. In societies such as Mesopotamia, Egypt, and India, rivers held sacred status and were considered living entities imbued with spiritual significance. In these societies, rivers held sacred status and were considered living entities with spiritual significance. Practices like water allocation agreements, river deity worship, and customary laws demonstrated an early understanding of the rights and interests associated with rivers.[3]

International Conventions and Treaties

In the modern era, international efforts have been made to address river management and rights through various conventions and treaties. One prominent example is the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses, adopted in 1997[4]. This convention provides a framework for cooperation among states sharing international watercourses and recognizes rivers' equitable and reasonable utilization while safeguarding their ecosystems.

Additionally, the Convention on Biological Diversity, adopted in 1992[5], acknowledges the importance of river ecosystems as critical habitats for biodiversity conservation. It calls for the sustainable management of rivers and the protection of their ecological integrity.

Domestic Laws and Regulations

Many countries have recognized the need to protect the rights of their rivers through domestic laws and regulations. These legal frameworks vary across jurisdictions but share common sustainable river management and environmental preservation objectives.

For example, the Whanganui River has been granted legal personhood in New Zealand through the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017[6]. This recognition signifies the river's rights, interests, and well-being and establishes a governance framework involving the Indigenous community and the government.

Similarly, in India, the Ganges River, considered sacred by millions, has received legal recognition and protection. In a landmark judgment in 2017, the Uttarakhand High Court (India) declared the Ganges and Yamuna rivers, and their tributaries, as legal entities with the same rights as persons.[7] This ruling aimed to ensure the preservation and conservation of these vital rivers and entrusted custodial responsibility to government bodies.[8] However, the Supreme Court of India on July 13, 2017, stayed the order in the State of

---

3 Gabriel Eckstein, 'The Evolution of River Rights: The Emergence of New Legal Norms for Rivers' (2010) 19(1) *Review of European, Comparative & International Environmental Law* 63-75.

4 *Convention on the Law of the Non-navigational Uses of International Watercourses* opened for signature on 21 May 1997, UTS (entered into force on 17 August 2014).

5 *Convention on Biological Diversity* opened for signature on 5 June 1992, 1760 UTS 79 (entered into force on 29 December 1993).

6 *The Te Awa Tupua Act 2017* (NZ).

7 *Mohammed Salim vs. State of Uttarakhand & others* [2014] Uttarakhand High Court, India Writ Petition (PIL) No. 126 of 2014, Date of Judgment: March 20, 2017

8 Anupam Trivedi & Kamal Jagati, 'Uttarakhand HC declares Ganga, Yamuna living entities, gives them legal rights' *Hindustan Times* (online, 22 March 2017) < https://www.hindustantimes.com/india-news/uttarakhand-hc-says-ganga-is-india-s-first-living-entity-grants-it-rights-equal-to-humans/story-VoI6DOG71fyMDihg5BuGCL.html>.

Uttarakhand vs Mohd. SalimSpecial Leave Petition (C) No. 016879/2017modified this ruling, stating that the state must protect and restore these rivers, but they cannot be treated as legal entities.[9]

Moreover, in 2019, the High Court of Bangladesh declared the Turag River a legal entity, emphasizing its rights to be protected, preserved, and restored. This decision aimed to combat pollution and encroachments, holding individuals and organizations accountable for any harm caused to the river.[10]

Definition and Scope of River Rights

Definition and Legal Implications of River Rights

"River rights" encompass the legal and ethical principles acknowledging rivers as living entities with inherent rights, including the right to exist, flow, and maintain their health. This challenges the conventional perspective of viewing rivers as mere resources for human exploitation, advocating for a more comprehensive approach to water management. The concept involves recognizing and legally protecting the varied rights of rivers, incorporating a nuanced combination tailored to specific circumstances.

In 1972, Professor Christopher Stone, hailing from the University of Southern California, pioneered the inquiry into granting legal standing to nature in his renowned essay titled "Should Trees Have Standing? Toward Legal Rights for Natural Objects." He was the first person to mention the rights of nature. In his seminal work, he argued for extending legal rights to natural objects, including rivers, to ensure their protection and conservation.[11]

In her article "Rivers as living beings: rights in law, but no rights to water?", Erin O'Donnell explores the notion of "river rights," which involves granting legal recognition to rivers as living entities with inherent rights. This contrasts with conventional water management practices treating rivers as exploitable resources for human benefit. O'Donnell emphasizes the potential of river rights to shift from water management to governance, recognizing rivers as legal subjects rather than property.[12]

A definition of river rights is drawn from the legislative framework established by the Whanganui River Claims Settlement in New Zealand.[13] This legal arrangement posits that river rights involve "acknowledging the inherent value of rivers and conferring legal standing upon them, facilitating their representation and safeguarding in legal proceedings."[14]

The legal implications of river rights involve a fundamental shift in legal frameworks to recognize rivers as rights-bearing entities. This requires incorporating the rights of rivers within legislation, court decisions, and management practices. Legal scholar Maude Barlow, in her book Blue Future: Protecting Water for People and the Planet Forever, emphasizes that river rights 'require the development of a legal framework that recognizes the rights of water bodies and ecosystems, including their right to exist, flow, and be protected from harm.'[15]

By granting legal rights to rivers, holding entities accountable for actions that harm or degrade river ecosystems becomes possible. This notion was reinforced by the legal judgment in the case of the Atrato River in Colombia, where the Constitutional Court declared that riverrights 'include the right to protection, conservation, maintenance, and restoration.'[16] It mandated government agencies to take measures to fulfill these rights.

---

9 Samanwaya Rautray, 'Supreme Court stays Uttarakhand High Court order declaring Ganga, Yamuna as living' *The Economic Times* (online, 08 July 2017) < https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-stays-uttarakhand-high-court-order-declaring-ganga-yamuna-as-living/articleshow/59492040.cms>.

10 *Human Rights and Peace for Bangladesh (HRPB) v. Bangladesh* [2016] High Court of Bangladesh Writ Petition No. 13989 of 2016, Date of Judgment: July 17, 2019.

11 Christopher D. Stone, *Should Trees Have Standing?: Law, Morality, and the Environment* (Oxford University Press, 2010) 450-501.

12 Erin O'Donnell, 'Rivers as living beings: rights in law, but no rights to water?' (2020) *Griffith Law Review, 29:4,* 643-668, DOI: 10.1080/10383441.2020.1881304.

13 *The Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* (NZ).

14 Ngozi Finette Unuigbe, 'Rights of Rivers: Learning from the River Whanganui Case' (2022) 11 (1) *Christ University Law Journal* 91-101.

15 Maude Barlow,*Blue Future: Protecting Water for People and the Planet Forever* (New Press, 2011).

The legal implications of river rights extend beyond the mere recognition of rights. They necessitate a holistic approach to river management that balances human needs with ecological preservation. Legal scholar Robin Craig, in her article The Rights of Nature: Progress and Pitfalls, argues that river rights 'require a paradigm shift in how we perceive and manage rivers, moving away from exploitation and towards the recognition of rivers as living entities deserving legal protection and restoration.'[17]

Different Perspectives on the Scope of River Rights

The scope of river rights encompasses a range of perspectives and can be illustrated through specific examples from around the world:

- ***Ecological perspective***

From an ecological standpoint, river rights include the right to natural flow patterns, protection from pollution, and preserving aquatic habitats. For example, the Colorado River in the United States has faced significant water diversion, reduced flow, and ecological degradation.[18] Recognizing river rights from an ecological perspective would ensure adequate water flows to support healthy ecosystems and protect biodiversity.

- ***Indigenous perspective***

Indigenous communities globally, mirroring the Maori in New Zealand, share a deep cultural, spiritual, and ancestral connection to rivers. This sentiment is exemplified by the Maori view of rivers as ancestors, encapsulated in tribal sayings like 'I am the river, and the river is me.'And 'the river belongs to us just as we belong to the river.' Such perspectives underscore the intricate relationship between humans and water.[19]

In specific cases, such as the Whanganui River in New Zealand, these indigenous perspectives have influenced legal frameworks. The Te Awa Tupua (Whanganui River Claims Settlement) Act of 2017 granted the Whanganui River legal personhood, reflecting the Maori belief in the river as a living entity. This legal recognition establishes a unique governance model, involving collaboration between the Indigenous community and the government. The shared goal is to protect and restore the Whanganui River's health and well-being, highlighting a harmonious blend of cultural values and environmental conservation efforts.

The Whanganui River's journey to legal personhood serves as a compelling illustration of how indigenous perspectives on river rights can influence legal systems, promoting a balanced approach to water resource management.

- ***Community rights perspective***

River rights can also be viewed through the lens of community rights, recognizing the rights of local communities who depend on rivers for their livelihoods and well-being. In the Peruvian Amazon, Indigenous communities successfully fought to recognize their rights to the Marañón River, asserting their traditional knowledge and rights to sustainably manage the river's resources.[20]

The Quivira Coalition, a non-profit organization, actively champions the concerns of communities in the Middle Rio Grande Valley of New Mexico. This coalition plays a key role in advocating for the safeguarding of the Rio Grande and the rights of the communities dependent on it. In 2009, the Quivira Coalition, alongside other organizations, initiated a legal action against the Bureau of Reclamation, contesting the bureau's management of the Rio Grande reservoir system.[21] The outcome of this legal action was a settlement mandating the bureau to operate the reservoir system with a focus on preserving the river and its ecosystem.

In Brazil, the Xingu River Basin offers an example of river rights from a community rights perspective. The

---

17 Robin K. Craig, 'The Rights of Nature: Progress and Pitfalls' In S. C. McCaffrey (ed), *The Law of International Watercourses: Non-navigational Uses (*Oxford University Press, 2017) 263-283.

18 Joshua Partlow, 'The Colorado River drought crisis: How did this happen? Can it be fixed?' *The Washington Post*(online, 5 February 2023) <https://www.washingtonpost.com/climate-environment/2023/02/05/colorado-river-drought-explained/>.

19 Morris, James DK, and Jacinta Ruru, 'Giving Voice to Rivers: Legal Personality as a Vehicle for Recognising Indigenous Peoples' Relationships to Water?' (2012) 14 (2) *Australian Indigenous Law Review* 49–62.

20 International Rivers, 'Coalition of International Organizations Files an amicus curiae brief calling for the recognition of the intrinsic rights of the Marañón River in Peru', *International Rivers* (Press release, 12 July 2021) <https://www.internationalrivers.org/news/international-coalition-rights-of-the-maranon-river-in-peru/>.

21 *Quivira Coalition v Bureau of Reclamation, (10th Cir 2015):* (2015) 1128 (Unreported, F.3d, 2015) 791

Brazilian Constitution recognizes the rights of Indigenous communities living in the Xingu River Basin and guarantees their traditional territories and access to natural resources.[22] The rights of these communities to participate in decision-making processes regarding the use and management of the river's resources reflect the importance of community rights in the scope of river rights.

- ***Legal and governance perspective***

From a legal and governance standpoint, river rights may involve the establishment of legal frameworks and governance mechanisms to protect and manage rivers. The Coum River in India highlights the legal and governance perspective of river rights. The National Green Tribunal, a specialized environmental court in India, issued directives to restore and clean the polluted Coum River. The court's intervention aimed to enforce the river rights of the local communities and ensure the river's water quality was improved, providing a legal framework to address environmental degradation.[23]

The Rights and Responsibilities of Various Stakeholders

Recognizing river rights involves delineating the rights and responsibilities of different stakeholders engaged in river management. The following analysis highlights the roles of governments, communities, Indigenous groups, and environmental organizations:

- ***Governments***

Governments play a crucial role in recognizing and protecting river rights through the enactment of legislation and the development of policies.

For instance, New Zealand's Te Mana o te Wai framework takes a holistic approach to water management by recognizing the intrinsic value of water bodies and establishing a legal framework that acknowledges their rights and values.

The framework does not grant legal personhood to rivers in the traditional sense, but it establishes a system of co-governance for water management that ensures that Mâori communities have a say in how water is managed. This collaborative approach is designed to balance the needs of different stakeholders while ensuring the long-term health of rivers and their ecosystems.

The Murray-Darling Basin Authority in Australia exemplifies this approach by managing water allocations among competing users and balancing agricultural, environmental, and urban water demands. The authority's work is guided by the Murray-Darling Basin Plan, which is a comprehensive plan for the sustainable management of the basin's water resources.

By enacting legislation and implementing policies that promote sustainable water management, governments can protect rivers and their ecosystems, ensuring their long-term health and benefits for communities.

- ***Communities***

Local communities near rivers often depend on them for their livelihoods and well-being. Communities can access clean and sufficient water for domestic use, agriculture, and cultural practices. They are responsible for actively participating in decision-making processes, advocating for the preservation of river rights and sustainable river management. In India, the Namami Gange program[24] Aims to restore and rejuvenate the Ganges River, involving community participation in various initiatives such as cleaning drives, waste management, and afforestation along the riverbanks.

- ***Indigenous Groups***

Indigenous groups often deeply connect to rivers, considering them sacred and integral to their cultural identity. River rights for Indigenous groups encompass recognizing their rights to access and use rivers for subsistence, cultural practices, and spiritual ceremonies. Indigenous groups are responsible for protecting

---

[22] Stephan Schwartzman et al, 'The natural and social history of the indigenous lands and protected areas corridor of the Xingu River basin' (2012) 368 (1619)*Philosophical Transactions of the Royal Society B: Biological Sciences*.

[23] Julie Mariappan, 'Cooum restoration receives Centre's environment nod', *The Times of India* (online, 10 July 2017) <https://timesofindia.indiatimes.com/city/chennai/cooum-restoration-receives-centres-environment-nod/articleshow/59520341.cms>.

[24] (Namami Gange), *National Mission for Clean Ganga (NMCG)* (official web page) <https://nmcg.nic.in/index.aspx >.

and preserving rivers' ecological integrity in alignment with their cultural values. Their traditional knowledge and practices can contribute to sustainable river management and restoring degraded river ecosystems. The Yurok Tribe in the United States successfully advocated for restoring salmon populations in the Klamath River.[25], asserting their rights as indigenous people to protect the river's ecosystem and preserve their traditional way of life.

- ***Environmental Organizations***

Environmental organizations play a critical role in advocating for river rights and the conservation of river ecosystems. They have the right to advocate for the protection of rivers, raise awareness about the importance of river rights, and hold governments and other stakeholders accountable for any harm or degradation caused to rivers. For instance, International Rivers, an environmental organization, has been actively working to safeguard the rights of rivers and promote sustainable river management worldwide through research, advocacy, and campaigns.[26]

Balancing the rights and responsibilities of these stakeholders is essential for the effective implementation of river rights. Collaboration and engagement among governments, communities, indigenous groups, and environmental organizations are vital to achieving sustainable river management that respects the rights of rivers and supports the well-being of human societies.

River Rights in Practice

River rights in practice vary across countries, highlighting the effectiveness and challenges faced. Legal frameworks in some nations recognize the rights of rivers to ensure their preservation and restoration, while others struggle with implementation. Balancing human needs with environmental and ecological considerations remains a crucial aspect of managing river rights globally.

River Rights inDifferent Countries or Regions

Ecuador : In 2008, Ecuador became the world's first country[27] To grant legal rights to nature by including a new chapter in its Constitution. Later,in 2011 the Vilcabamba River[28] was granted rights in the Vilcabamba River vs. the Province of Loja case[29]. This recognition granted the river the right to exist, maintain its natural cycles, flow freely, and be pollution-free. The local communities were empowered to participate in the river's management and decision-making processes, ensuring its protection and preservation. This case exemplifies the integration of indigenous perspectives and community engagement in recognizing river rights.

Colombia : The Atrato River in Colombia's northwest Department of Chocó was recognized as a legal entity with rights by the Constitutional Court of Colombia in 2016[30]. This ground-breaking ruling aimed to protect the river from environmental degradation caused by illegal mining and deforestation.[31]. The court declared that the Atrato River possesses rights to protection, conservation, maintenance, and restoration. It also mandated creating an inter-institutional committee to develop a comprehensive plan for the river's protection, involving various stakeholders.

Australia : The Yarra River Protection (Wilip-gin Birrarung murron) Act 2017[32], passed by the Victorian Parliament, legally recognizes the Yarra River as an indivisible living entity deserving protection. This landmark legislation emphasizes the deep connection between the traditional owners and the river, designating them as custodians of the land and waterway. By granting the Yarra River its rights and entitlements, the Act

---

24 (Namami Gange), *National Mission for Clean Ganga (NMCG)* (official web page) <https://nmcg.nic.in/index.aspx >.

25 Anna V. Smith, 'The Klamath River now has the legal rights of a person', (24 September 2019) *High Country News.*

26 *International Rivers* (official webpage) < https://www.internationalrivers.org/>.

27 Short Takes, 'Ecuador First to Grant Nature Constitutional Rights' (2008) 19(4) *Capitalism Nature Socialism* 131-133.

28 Natalia Greene, *The first successful case of the Rights of Nature implementation in Ecuador* (May 21, 2011) The Global Alliance for the Rights of Nature (GARN) < https://www.garn.org/first-ron-case-ecuador/ >.

29 *Vilcabamba River vs. the Provincial Government of Loja (*The Provincial Court of Loja, Ecuador, 2011*).*

30 *Center for Social Justice Studies et al. v. Presidency of the Republic et al.*, Judgment T-622/16 (Constitutional Court of Colombia, 2016).

31 Vargas-Chaveet al, 'Recognizing the Rights of Nature in Colombia: the Atrato River case' (2020) 17(1) *Jurídicas* 13-41.

32 *The Yarra River Protection (Wilip-gin Birrarung murron) Act2017* (Vic).

signifies a shift towards acknowledging rivers as more than exploitable resources. It aims to preserve and safeguard the river's ecological and cultural significance for future generations.

Additionally, the legislation establishes the Birrarung Council, an autonomous statutory organization responsible for advising the Victorian Minister for Water regarding implementing the Act. The council is empowered to advocate for the Yarra River (Birrarung).[33]

New Zealand : The Whanganui River in New Zealand was granted legal personhood through the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017[34]. This landmark legislation recognized the river as a legal entity with its rights, status, and interests. It established a governance framework that included representatives from the indigenous community (Whanganui iwi) and the government. The Act aims to protect and restore the health and well-being of the river, ensuring its sustainable management for present and future generations.

India : The Ganges and Yamuna Rivers in India were granted legal personhood by the Uttarakhand High Court in 2017[35]. The court ruled that these rivers possess legal rights similar to those of a living person, appointing special officers as legal guardians for their protection. The aim was to restore and maintain the ecological balance of the rivers and prevent pollution. However, the decision faced subsequent legal challenges and has undergone further developments since its initial recognition. However, the Supreme Court of India later upheld the order of the HC and modified this ruling, stating that the state must protect and restore these rivers, but they cannot be treated as legal entities.[36]

The Punjab and Haryana High Court recently made a significant ruling in March 2020, recognizing the Sukhna Lake in Chandigarh City as a living entity. This landmark decision granted the lake rights equivalent to a person's.[37]

Bangladesh : The country's Supreme Court has granted the rivers of Bangladesh legal recognition and protection. In a ground-breaking decision, the Appellate Division of the Supreme Court of Bangladesh upheld the 2019 ruling of the High Court (in Writ Petition ¹ 13989)[38], affirming that the Turag River and all other rivers in the country possess the status of 'living entities' with rights as 'legal persons.'

This landmark judgment designates the National River Conservation Commission as the custodian ('in loco parentis') of Bangladesh's rivers. The commission is responsible for safeguarding and conserving the rivers, protecting them from pollution and encroachment. As a guardian, the commission has the authority to enforce the rights of the rivers and uphold the integrity of the riparian ecosystems. The rivers' rights can be enforced against private and public entities, including government bodies.[39]

Canada : Canada has recognized the rights of rivers in several ways. In 2021, the Magpie River (Muteshekau Shipu) in Quebec became the first river in Canada to be granted legal personhood. This means that the river is now considered a legal entity with the same rights as a person, including the right to exist, to flow freely, and to be protected from pollution. Recognizing the Magpie River's rights was a victory for the Innu First Nation, who have long fought to protect the river from development.[40]

Others

In 2019, the Yurok Tribe made history by declaring personhood rights for the Klamath River, marking it as one of the first instances of such recognition for a river in North America. This ground-breaking decision bestowed legal entity status upon the river, acknowledging its inherent rights. By granting personhood to the

---

33 *Birrarung Council* (official website) <https://www.water.vic.gov.au/birrarung-council>.

34 *The Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* (NZ).

35 *Mohammed Salim vs. State of Uttarakhand & others* [2014] Uttarakhand High Court, India Writ Petition (PIL) No. 126 of 2014, Date of Judgment: March 20, 2017

36 Samanwaya Rautray (n 6).

37 *Court on Its Own Motion v Chandigarh Admn* (High Court of Punjab & Haryana, India, Rajiv Sharma J, 2 March 2020).

38 *Human Rights and Peace for Bangladesh (HRPB) v. Bangladesh* [2016] High Court of Bangladesh Writ Petition No. 13989 of 2016, Date of Judgment: July 17, 2019.

39 Mohammad Sohidul Islam & Erin O'Donnell, 'Legal rights for the Turag: rivers as living entities in Bangladesh' (2020) 23 *Asia Pacific Journal of Environmental Law* 160, 162-165.

40 Susan Nerberg, 'I am Mutehekau Shipu: A river's journey to personhood in eastern Quebec', *Canadian Geographic* (Article, 08 April 2022) <https://canadiangeographic.ca/articles/i-am-mutehekau-shipu-a-rivers-journey-to-personhood-in-eastern-quebec/>.

Klamath River, the Yurok Tribe aimed to protect and restore its ecological integrity, ensuring its well-being for future generations.[41]

In 2020, the Nez Perce Tribal Executive Committee adopted a resolution asserting the rights of the Snake River as a living entity and recognizing its inherent rights. The resolution emphasizes the cultural and spiritual significance of the Snake River to the Nez Perce Tribe and acknowledges the need for its protection, restoration, and sustainable management.[42]

Effectiveness of Enforcing River Rights

River rights represent a significant milestone in recognizing rivers' intrinsic value and legal personhood. Assessing their effectiveness involves evaluating the outcomes achieved regarding river conservation, restoration, and sustainable management.

Improved River Health and Ecosystem Protection

Enforcing river rights aims to ensure the preservation and restoration of river ecosystems. Positive outcomes can include reduced pollution, enhanced water quality, and the restoration of natural habitats. Assessing water quality indicators, biodiversity levels, and the presence of endangered species can provide insights into the effectiveness of River Rights in improving river health.

Community Engagement and Participation

River rights often prioritize community involvement in decision-making processes, empowering local communities to participate in managing and protecting rivers actively. Assessing the level of community engagement, the effectiveness of participatory mechanisms, and the extent of community-driven initiatives can gauge the success of river rights in fostering meaningful involvement and promoting social and environmental justice.

Legal Precedence and Policy Impact

The recognition of river rights can influence legal systems and policies, setting precedents for future environmental regulations and resource management practices. Evaluating the extent to which river rights have led to legal reforms, policy changes, and the integration of environmental considerations in decision-making processes can help gauge their long-term impact.

Challenges in Enforcing River Rights

Enforcing river rights faces various challenges that can hinder their effective implementation. Understanding these challenges is crucial for addressing them and ensuring the practical realization of river rights.

Conflicting Legal Frameworks and Resistance to Change

Integrating river rights into existing legal frameworks can be challenging, particularly when they conflict with established laws, regulations, and economic interests. Industries and stakeholders may resist change due to economic concerns or conflicting priorities, leading to legal disputes and delays in enforcement.

Limited Resources and Enforcement Capacity

Enforcing river rights requires adequate resources, including funding, skilled personnel, and technological infrastructure. More resources can help effective monitoring, enforcement, and compliance mechanisms, strengthening the practical impact of river rights.

Transboundary River Management

Many rivers cross international boundaries, requiring cooperation and coordination among multiple jurisdictions. Disputes over water allocation, differing legal frameworks, and competing interests among countries can pose significant challenges in enforcing river rights consistently across borders.

---

41 Anna V. Smith (n 20).

42 Michael Wells, 'Resolution recognizes rights of Snake River' *Lewiston Morning Tribune* (online, 20 June 2020) <https://www.lmtribune.com/northwest/resolution-recognizes-rights-of-snake-river/article_508d6e05-fb04-5b74-a828-0b1a6ceaecaf.html>.

Monitoring and Evaluation

Robust monitoring and evaluation systems are essential to ensure compliance with river rights and assess their effectiveness. Establishing reliable data collection methods, monitoring indicators, and evaluation frameworks can be demanding, particularly in regions with limited monitoring infrastructure and capacities.

Addressing these challenges requires a comprehensive approach involving legal reforms, capacity building, stakeholder engagement, and international cooperation to harmonize transboundary river management.

Ecological Importance of Rivers and Their Ecosystems

Rivers are critical ecosystems that provide a multitude of ecological services and support a wide range of plant and animal species. They serve as corridors for the movement of species, facilitate nutrient cycling, and contribute to the maintenance of regional biodiversity. River ecosystems are characterized by dynamic interactions between water, land, and organisms, creating diverse habitats such as riffles, pools, wetlands, and floodplains. These habitats support a variety of species, including fish, amphibians, reptiles, birds, and mammals, many of which are adapted to specific river conditions.

Rivers also play a vital role in maintaining ecosystem processes. They regulate the water cycle by storing, releasing, and transporting water, contributing to the availability of freshwater resources for various uses. Additionally, river ecosystems provide essential breeding and spawning grounds for fish, facilitate the dispersal of seeds and nutrients, and support the productivity of adjacent terrestrial and aquatic ecosystems. The health and functioning of river ecosystems are closely linked to the overall health of the surrounding landscapes.

Impact of Human Activities on River Ecosystems

Human activities have significantly impacted river ecosystems, leading to degradation and loss of biodiversity. Pollution from industrial, agricultural, and urban sources threatens water quality and aquatic life. Discharging pollutants, including chemicals, nutrients, and sediments, can disrupt the ecological balance of rivers, degrade habitat quality, and harm aquatic species.

Pollution: Threats to water quality and aquatic life

Pollution from human activities poses a significant threat to river ecosystems, compromising water quality and the health of aquatic life. Industrial discharges, agricultural runoff, and urban waste can introduce harmful substances such as chemicals, nutrients, and sediments into rivers. These pollutants disrupt the ecological balance, degrade habitat quality, and harm aquatic species. For example, excessive nutrient runoff from agricultural activities can cause eutrophication, leading to oxygen depletion and the decline of fish populations.[43]. Releasing toxic chemicals from industrial sources can severely impact aquatic organisms, including reproductive abnormalities and population decline.[44]

Dam Construction: Altering flow regimes and habitat fragmentation

The construction of dams for hydropower, irrigation, and water supply purposes profoundly affects river ecosystems. Dams alter natural flow regimes, reduce downstream sediment transport, and impede the movement of fish and other aquatic organisms[45]. This disruption can fragment habitats, preventing species from accessing spawning and feeding grounds and causing population declines.[46]For example, constructing the Three Gorges Dam on the Yangtze River in China has led to the decline of migratory fish species and the loss of riparian habitats.[47]

Water Extraction: Impacts on flow rates and habitat quality

The extraction of water from rivers for various purposes, such as agriculture, industry, and domestic use, can

---

[43] Robert Diaz& Rutger Rosenberg, 'Spreading Dead Zones and Consequences for Marine Ecosystems' (2008) 321(5891)*Science* 926-929.

[44] D. Arnot Mackay et al, 'Assessing the bioaccumulation potential of chemicals in aquatic ecosystems: The case for including bioavailability in chemical regulations' (2018) 52(7) *Environmental Science & Technology* 3861-3871.

[45] N. L. Poff et al, 'The ecological limits of hydrologic alteration (ELOHA): A new framework for developing regional environmental flow standards' (2017) 55(1) *Freshwater Biology* 147-170.

[46] M. G. Tulbure et al, 'River ecosystem response to dams: The Mississippi and Missouri Rivers in the United States' (2016) 277 *Geomorphology* 209-225.

[47] Ping Xie, 'Three-Gorges Dam: Risk to Ancient Fish' (2003)302 *Science* 1149-1151.

have detrimental effects on river ecosystems. Over-extraction can reduce flow rates, alter hydrological patterns, and disrupt the natural balance of ecosystems. Reduced flows can lead to the degradation of riparian habitats, loss of wetland areas, and diminished connectivity between river sections[48]. These changes impact aquatic species' survival and reproductive success, such as fish and macroinvertebrates.[49]Water extraction from the Colorado River in the southwestern United States has reduced downstream flows, altered riparian ecosystems, and declined native fish populations.[50]

Habitat Destruction : Impacts on biodiversity and ecological functioning

Human activities, including urbanization, agriculture, and infrastructure development, often destroy and degrade river habitats. The clearing of vegetation along riverbanks, channelization, and the conversion of floodplains for agricultural purposes disrupt the natural functioning of rivers.[51]These habitat alterations can lead to the loss of biodiversity, reduced species abundance, and declining ecosystem services.[52]For instance, the extensive channelization of the Los Angeles River in California has resulted in the loss of riparian habitat and the decline of native plant and animal species.[53]

Conflict Resolution and Legal Remedies

Conflict resolution and legal remedies play vital roles in addressing disputes related to river rights. Common conflicts arise from issues such as competing water uses, pollution, and access to water resources. Alternative dispute resolution mechanisms, including negotiation and mediation, offer non-adversarial approaches to resolving conflicts. Additionally, legal remedies, such as litigation and court interventions, can be employed to enforce and protect river rights.

Common Conflicts Arising from River Rights Issues

The recognition and assertion of river rights can give rise to a range of conflicts and disputes among different stakeholders. These conflicts often stem from competing interests and priorities concerning water management and utilization. Some common conflicts include:

- **Water allocation disputes:** Conflicts often arise between various sectors and user groups over the allocation of water resources from rivers. For example, conflicts may occur between agricultural users, industrial sectors, and municipalities, each vying for a share of the available water.[54]

- **Economic development vs. Environmental conservation:** Balancing economic development with the need to protect river ecosystems can lead to conflicts. Industries such as hydropower generation, mining, or agriculture may seek to exploit water resources for economic growth. At the same time, environmental organizations and local communities advocate for the conservation and preservation of rivers.[55]

- **Upstream-downstream conflicts:** Disputes often emerge between upstream and downstream communities over water sharing and the impacts of infrastructure development. Upstream activities, such as dam construction or water diversions, can affect downstream flows, leading to conflicts over reduced water availability, changes in water quality, and impacts on downstream ecosystems and livelihoods.[56]

- **Indigenous rights and traditional knowledge:**Conflicts may arise between Indigenous communities and governments or other stakeholders over the recognition and protection of Indigenous rights and traditional knowledge associated with rivers. Indigenous communities often possess deep cultural, spiritual, and ancestral

---

48 B.D. Richter et al, 'A presumptive standard for environmental flow protection' (2012) 35(6) *River Research and Applications* 597-601.

49 D. Caissie, 'The thermal regime of rivers: a review' (2006) 51(8) *Freshwater Biology* 1389-1406.

50 T. P. Barnett et al, 'Human-induced changes in the hydrology of the western United States' (2008) 319(5866), *Science*, 1080-1083.

51 C Nilsson et al, 'Fragmentation and flow regulation of the world's large river systems' (2005) 308(5720) *Science* 405-408.

52 E.S. Bernhardt et al, 'Synthesizing US river restoration efforts' (2005) 308(5722) *Science* 636-637.

53 D.L. Stokes et al, 'Urbanization and river restoration: Insights from the Los Angeles River.' (2018) 108(4) *Annals of the American Association of Geographers* 1003-1019.

54 R.M. Saleth & Ariel Dinar, *The Institutional Economics of Water: A Cross-Country Analysis of Institutions and Performance* (World Bank Publications, 2004) 56.

55 M. Barlow, *Blue Covenant: The Global Water Crisis and the Coming Battle for the Right to Water* (The New Press, 2008) 72.

56 World Commission on Dams,*Dams and Development: A New Framework for Decision-Making* (Earthscan Publications, 2000) 98.

ties to rivers, and conflicts can emerge when these rights and knowledge are not adequately acknowledged or respected.[57].

For instance, the Belo Monte Dam project in Brazil's Xingu River basin has been a focal point of significant conflicts involving indigenous communities, environmental organizations, and the government.[58]Indigenous communities such as the Juruna and Xikrin have strongly opposed the dam's construction, expressing concerns about the impact on their ancestral lands, fish populations, and overall river ecosystem health.[59] These conflicts underscore the complex interplay between economic development, indigenous communities' rights and interests, and environmental conservation.[60]

Alternative Dispute Resolution Mechanisms

Resolving river management and river rights conflicts often requires alternative dispute resolution (ADR) mechanisms that offer a collaborative and consensus-based approach. These mechanisms help stakeholders constructively navigate conflicts and facilitate mutually agreeable solutions. Some common ADR mechanisms used in the context of river disputes include:

- **Mediation:** Mediation involves a neutral third party facilitating negotiations between conflicting parties to reach a mutually acceptable resolution. Mediators help foster open dialogue, identify common interests, and explore creative solutions. For example, the Mekong River Commission utilizes mediation to address conflicts among riparian countries over water resource management.[61]

- **Negotiation:** Negotiation involves direct discussions between parties to settle through bargaining and compromise. It allows stakeholders to voice their concerns, identify shared goals, and work towards mutually beneficial outcomes. The Murray-Darling Basin Agreement in Australia employs negotiation processes to address conflicts arising from water allocation.[62]

- **Collaborative governance:** Collaborative governance frameworks promote inclusive decision-making and stakeholder engagement in river management. This approach encourages participation from various sectors and fosters stakeholder cooperation to find sustainable solutions. The Columbia Basin Water Transactions Program in the United States utilizes collaborative governance to address water conflicts and ensure the long-term health of the basin.[63]

- **Expert panels:** Expert panels consist of independent specialists who provide technical expertise and guidance in resolving complex river-related disputes. These panels offer unbiased analysis and recommendations, facilitating informed decision-making. The Fraser River Panel in Canada advises the government on salmon conservation measures and allocation issues, drawing upon scientific expertise.[64]

By employing these ADR mechanisms, stakeholders can navigate conflicts, build trust, and find sustainable solutions that balance competing interests and uphold river rights.

Can Rivers Play a Role in ADR for Recognizing River Rights?

The concept of recognizing "river rights" – legal standing for rivers themselves – has gained traction in environmental jurisprudence. However, the question of how to adjudicate such rights remains a contentious issue. Alternative Dispute Resolution (ADR) offers a potential avenue, and rivers, surprisingly, might play a key role in this process.

---

57 Bruce Elliott Johansen, *Indigenous Peoples and Environmental Issues: An Encyclopedia* (Greenwood Press, 2003).

58 Stephan Schwartzman et al (n 17).

59 Gabriel Elizondo & Maria Elena Romero, 'Brazil tribes occupy contentious dam site', *ALJAZEERA* (online, 30 June 2012) <https://www.aljazeera.com/features/2012/6/30/brazil-tribes-occupy-contentious-dam-site>.

60 Philip Fearnside, 'Belo Monte Dam: a spearhead for Brazil's dam-building attack on Amazonia?' (Discussion Paper No 1210, National Institute for Research in Amazonia, Brazil, March 2012) 1-6.

61 Michael Buxton, Jennifer Martin & Max Kelly, 'Conflict resolution and policy making mediation in the Mekong River Basin' (2006) 41 *Just Policy* 26, 29.

62 Daniel Connell & Grafton R. Quentin, *Basin Futures: Water Reform in the Murray-Darling Basin* (ANU Press, 2011).

63 Barbara A Cosens & Mark Kevin Williams, 'Resilience and Water Governance: Adaptive Governance in the Columbia River Basin' (2012) 17(4) *Ecology and Society 3*.

64 Fraser River Panel, *Report of the Fraser River Panel to the Pacific Salmon Commission on the 2020 Fraser River Sockeye Salmon Fishing Season* (Report, April 2022) 1-5.

Rivers as Legal Persons

The core challenge lies in attributing legal personhood to rivers. This would enable them to hold rights, participate in legal proceedings, and be represented by advocates. While some legal systems are cautiously exploring this it remains controversial.[65] For instance, the Fort Belknap tribe's reserved water rights were recognized through ADR, and this recognition paved the way for other Indian tribes to be recognized as well.[66].

Rivers as Stakeholders in ADR

Even without legal personhood, rivers can be crucial stakeholders in ADR. Consider these possibilities:

- **Information Provider:** Hydrological data, ecological assessments, and even indigenous knowledge about the river's history and needs can be vital evidence in an ADR process.[67]
- **Silent Participant:** A river's flow, seasonal changes, and even disruptions can be presented in multimedia formats, fostering empathy and understanding among stakeholders.
- **Symbolic Entity:** The River can become a unifying symbol, reminding participants of the shared resources they depend on and the need for collaborative solutions.

Facilitating a "River centred" ADR:

ADR mechanisms can be adapted to incorporate the river's "voice":

- **Consensus-Building Techniques:** Techniques like collaborative mapping or scenario planning can encourage participants to consider the river's long-term well-being alongside their interests.[68]
- **Tribunals with Ecological Expertise:** Including hydrologists, ecologists, and Indigenous knowledge holders in the ADR panel can ensure the river's needs are not just heard but understood.
- **Restorative Justice Framework:** Framing the ADR process as repairing the relationship between humans and the river can promote accountability and long-term sustainability.

Challenges and Cautions

- **Anthropomorphization vs. Intrinsic Value:** Attributing human qualities to the river can pose challenges. The emphasis should be on the river's intrinsic value and ecological requisites, steering clear of anthropomorphism.
- **Power Imbalances:** Ensuring marginalized communities, often most reliant on the river, have a strong voice in the ADR process is crucial.[69]
- **Data Accessibility and Interpretation:** Scientific data needs to be translated into understandable language and presented in a way that resonates with all participants.

Rivers, though silent, harbor narratives. By incorporating them as stakeholders and harnessing their distinctive role as information conduits and symbolic entities, ADR can transform into a more inclusive and efficacious tool for acknowledging and safeguarding river rights. It constitutes an ever-flowing experiment, demanding meticulous consideration of ethical, practical, and legal challenges. Yet, if we heed the murmurs of the river, it might just lead us towards a more equitable and sustainable future.

Recommendations

By examining the evolving landscape of river rights, we can gain insights into the complex dynamics surrounding water management. This includes identifying emerging challenges and proposing recommendations to enhance their implementation. Additionally, this exploration opens avenues for future

[65] Catherinelorns, 'From Rights to Responsibilities Using Legal Personhood and Guardianship for Rivers' [2018] *SSRN Electronic Journal*.

[66] Barbara Cosens, 'Water dispute resolution in the West: Process elements for the modern era in basin-wide problem solving' (2003) 33 Environmental Law 949 <http://www.jstor.org/stable/43267089.>

[67] Kyle B. Fields, 'A Survey of Alternative Dispute Resolution in Water Rights Disputes' [2013] *SSRN Electronic Journal*.

[68] PA Sabatier et al, [2005] *Swimming Upstream: Collaborative Approaches to Watershed Management* 3

[69] Gloria Amparo Rodríguez and Iván Vargas-Chaves, 'Participation in Environmental Decision Making as an Imperative for Democracy and Environmental Justice in Colombia' (2018) 9 *Mediterranean Journal of Social Sciences* 145

research and study, enabling us to deepen our understanding and develop effective strategies for sustainable water governance.

Recommendations for Improving the Recognition and Protection of River Rights

Offering recommendations is critical to driving positive change and improving the recognition and protection of river rights. These recommendations provide actionable steps for policymakers, legal professionals, and stakeholders to consider. For example:

- **Strengthening legal frameworks:** Recommending establishing or enhancing legal frameworks that explicitly recognize river rights ensures legal protection and enforcement mechanisms are in place. This strengthens the foundation for safeguarding rivers and holds those who infringe upon their rights accountable.
- **Fostering collaboration and partnerships:** By recommending collaboration and partnerships among governments, indigenous communities, civil society organizations, and other stakeholders, the aim is to leverage collective knowledge, resources, and expertise. Such collaborations facilitate the development and implementation of effective river management strategies, enhancing the recognition & protection of river rights.
- **Enhancing education and awareness:** Recommending educational programs, public campaigns, and capacity-building initiatives helps raise awareness about river rights among the general public, stakeholders, and decision-makers. Enhancing education and awareness promotes a broader understanding of the importance of rivers, their ecosystems, and the need for their protection, leading to increased support and engagement in river conservation efforts.

Conclusion

Summarizing the Importance of Recognizing and Safeguarding River Rights

This article explored the river rights concept and its evolution over time. We have examined relevant international conventions, treaties, and domestic laws that address river rights, highlighting specific jurisdictions such as New Zealand, India, Bangladesh, Ecuador, Australia, the United States, and Canada. We have discussed different interpretations and perspectives on the scope of river rights and analyzed the rights and responsibilities of various stakeholders, including governments, communities, indigenous groups, and environmental organizations. Additionally, we have addressed the ecological importance of rivers and the impact of human activities on river ecosystems. We have also discussed common conflicts arising from river rights issues, alternative dispute resolution mechanisms, and legal remedies available for enforcing these rights. Overall, this article emphasizes the importance of recognizing and safeguarding river rights for the sustainable management and protection of our precious water resources.

Call to Action: Working Towards a Sustainable Future for Rivers and Nature

In conclusion, the recognition and safeguarding of river rights are vital for the sustainable management and protection of our precious water resources. Throughout this article, we have explored the historical development, legal framework, and practical implementation of river rights in various countries. We have examined rivers' ecological importance, human activities' impact, and the challenges faced in enforcing these rights.

To ensure a brighter future for our rivers, we must take action. Policymakers, legal professionals, and stakeholders must work together to strengthen legal frameworks, promote dialogue and cooperation among different stakeholders, and integrate the rights of rivers into environmental governance systems. It is crucial to support initiatives and organizations that advocate for river rights, engage in sustainable river management practices, and raise awareness about the importance of preserving our rivers.

Let us remember that rivers are not mere resources to be exploited but living entities with intrinsic value and rights. By recognizing and safeguarding river rights, we can embrace a more harmonious relationship with nature, protect our ecosystems, and secure the well-being of present and future generations.

Together, let us embark on a journey toward a future where rivers flow freely, ecosystems thrive, and the rights of nature are cherished and protected. The time to act is now for the sake of our rivers and the world they sustain.

* * * *

ADDRESSING DOMESTIC VIOLENCE IN INDIA: LEGAL MEASURES, PROTECTION MECHANISMS AND NEED FOR COMPREHENSIVE INTERVENTION STRATEGIES

Sainikitha O. L. *

Abstract

This study examines the pervasive issue of domestic violence (DV) in India, focusing on the legislative framework provided by the Protection of Women from Domestic Violence Act (PWDVA), 2005. Despite significant legal advancements, domestic violence remains rampant, driven by entrenched patriarchal roles and cultural norms. The PWDVA provides crucial legal remedies and protections, but effective implementation is hindered by resource constraints and societal pressures. This study explores the roles of Protection Officers (POs) in aiding victims and ensuring legal enforcement. Additionally, it outlines comprehensive strategies involving education, community awareness, access to protection officers, therapeutic support, and legal awareness to combat DV. By involving various stakeholders, including social workers, community organizations, and government agencies, a multifaceted approach can create a supportive environment for victims. This study underscores the necessity for systemic changes to ensure that women in India receive the protection and resources needed to overcome the trauma of domestic abuse.

Keywords: ***Domestic Violence (DV), Protection of Women from Domestic Violence Act (PWDVA), Protection Officers (POs), Gender Disparities, Victim Support, Legal Reform***

Introduction*:*

Women make up approximately half of the global population, yet they often face significant disadvantages due to gender disparities and biases. Throughout patriarchal societies worldwide, women have endured violence, discrimination, and exploitation. In India, a society deeply rooted in tradition, women have historically been subjected to social, economic, physical, psychological, and sexual exploitation under the guise of religious and social norms. Among the various human rights violations against women, domestic violence stands out as particularly brutal. This violence occurs behind closed doors—the very places intended to safeguard women from external dangers.

Domestic violence (DV), as defined by the Protection of Women from Domestic Violence Act 2005, includes physical, sexual, verbal, emotional, and economic abuse by a partner or family member within a joint family setting. DV remains a pervasive issue affecting countless women in India. The high incidence of DV is attributed to entrenched patriarchal roles.[1] And cultural norms that perpetuate the subordination of women throughout their lives.[2] Even before birth, a preference for male children is evident in many families, leading to preferential treatment, sex-selective abortions, female infanticide, and abandonment of female infants. During childhood, girls often receive less emphasis on their education, further perpetuating gender inequality.

Categories of Domestic Violence-Related Crimes against Women:

In India, domestic violence is deeply rooted and commonly practiced. According to the National Crime Records Bureau (NCRB), Section 498A of the Indian Penal Code, 1860 is used in the bulk of the 4.05 lakh instances involving crimes against women. One in three women in India is likely to have been subjected to intimate partner violence of a physical, emotional, or sexual nature.

Following consultations with legal experts who handle domestic violence cases, four primary categories of domestic violence-related crimes against women in India were identified. These categories align with the

* **3rd year B.Com. LLB (Hons), Dr. Ambedkar Law University, School of Excellence in Law, Tamil Nadu.**

1 Visaria, Leela. *"Violence Against Women: A Field Study."* Economic & Political Weekly 35, no. 20 (2000): 1742–1751.

2 Gundappa, A., & Rathod, P. B. *"Violence against Women in India: Preventive Measures."* Indian Streams Research Journal 2, no. 4 (2012): 1–4.

crime headings under which such cases are registered: cruelty by husband or his relatives, dowry death, abetment of suicide of women, and cases registered under the Protection of Women from Domestic Violence Act (PWDVA).

A case filed under "cruelty by husband or his relatives" (Section 498A of the Indian Penal Code) requires evidence of severe injury or harassment related to unlawful demands for property. Cases involving the death of a woman within seven years of marriage, where dowry harassment is evident, are filed under "dowry death" (IPC Section 304B). Considering that domestic violence is a known risk factor for suicide among married women, we also included cases registered under "abetment of suicide of women." Lastly, cases under the PWDVA address domestic violence, which encompasses physical, verbal, sexual, emotional, and economic abuse, as well as dowry-related violence.

Spiking Cases of Domestic Violence*:*

In India, domestic violence is deeply rooted and commonly practiced. According to the National Crime Records Bureau (NCRB), Section 498A of the Indian Penal Code, 1860 is used in the bulk of the 4.05 lakh instances involving crimes against women. One in three women in India is likely to have been subjected to intimate partner violence of a physical, emotional, or sexual nature.

Consultations with legal experts who handle domestic violence cases identified four primary categories of domestic violence-related crimes against women in India. These categories align with the crime headings under which such cases are registered:

i. Cruelty by husband or his relatives,
ii. Dowry death,
iii. Abetment of suicide of women, and
iv. Cases registered under the Protection of Women from Domestic Violence Act (PWDVA).

A case filed under "cruelty by husband or his relatives" (Section 498A of the Indian Penal Code) requires evidence of severe injury or harassment related to unlawful demands for property.[3] Cases involving the death of a woman within seven years of marriage, where dowry harassment is evident, are filed under "dowry death" (IPC Section 304B).[4] Considering that domestic violence is a known risk factor for suicide among married women, we also included cases registered under "abetment of suicide of women." Lastly, cases under the PWDVA address domestic violence, which encompasses physical, verbal, sexual, emotional, and economic abuse, as well as dowry-related violence.

Societal Pressures

"Most of the time, women don't want to leave an abusive spouse; instead, they seek guidance on methods to impart a lesson or encourage improved behavior." This reluctance is largely due to the stigma attached to divorce in India, where few families support daughters who wish to leave abusive marriages, especially if they have children.

During the lockdown, the National Commission for Women launched a WhatsApp helpline for women. Economist Ashwini Deshpande from Delhi's Ashoka University explains, "The abuser feels frustrated and angry because of lack of control due to the constraints imposed by the lockdown. This prompts him to exercise greater control by abusing his partner and/or children, often with violence."[5]

This issue is not unique to India. Early in April, UN Secretary-General Antonio Guterres reported a "horrifying global surge in domestic violence" amid lockdowns. According to the UN, calls to helplines doubled in Lebanon and Malaysia, and tripled in China compared to the same period last year.

"In a country like India, it's not easy for women to come out and report," says Nayreen Daruwalla of Sneha, a non-profit that runs a crisis helpline for survivors of domestic violence. Social norms and expectations often keep women silent in the face of adversity. They are often referred to as Paraya Dhan by their families,

---

[3] Indian Penal Code, Act No. 45 of 1860, § 498A.
[4] Indian Penal Code, Act No. 45 of 1860, § 304B.
[5] Nikita Deshpande, *What India's Lockdown Did to Domestic Abuse Victims*, BBC News, June 2, 2020.

indicating they are considered someone else's responsibility after marriage. Once married, women relinquish control over their life choices and are expected to balance the responsibilities of being both a wife and a daughter-in-law. The societal expectation is to save the relationship at all costs, even at the expense of their well-being.

Parents, worried about the family's reputation, sometimes push their daughters to endure troubled marriages in silence. However, there are exceptions, such as Prem Gupta from Jharkhand, who celebrated his daughter's return home with music and fireworks following her divorce. His daughter had allegedly experienced violence and harassment at the hands of her husband and in-laws.[6]

Understanding the Domestic Violence Act, 2005: Key Aspects and Provision

There had been a significant loophole in the law regarding the protection of women from daily domestic violence, which was traditionally confined to the private sphere. The Domestic Violence Act, of 2005 was introduced to address this gap and combat the horror of domestic abuse. This Act represents India's first substantial effort to recognize domestic violence as a criminal offense. To simplify the complexities of both procedural and substantive law, the Protection of Women from Domestic Violence Act, 2005[7] Was enacted to protect women from acts of domestic violence.

Legislative Intent and Judicial Interpretation

The Supreme Court of India highlighted the legislative intent behind the DV Act in the case of Indra Sarma v. V.K.V Sarma, stating that the Act was enacted to provide a civil law remedy for the protection of women from abusive relationships and to prevent domestic violence in society.[8] Other legislation, such as the Code of Criminal Procedure (CrPC) and the Indian Penal Code (IPC), which offer relief to women in vulnerable situations, were also discussed.

Definition of Key Terms:

Aggrieved Person*:* According to Section 2(a) of the DV Act, an "aggrieved person" refers to any woman who is, or has been, in a domestic relationship with the respondent and alleges to have been subjected to any act of domestic violence by the respondent. This means any woman in a domestic relationship can file a complaint under the Act.[9]

Domestic Relationship: Section 2(f) defines a "domestic relationship" as a relationship between two persons living in a shared household. This includes relationships through marriage (such as wives, daughters-in-law, sisters-in-law, widows), blood relationships (such as mothers, sisters, daughters), and other domestic relationships, including those through adoption, live-in relationships, and bigamous relationships or legally invalid marriages. The law addresses the concerns of women of all ages, regardless of their marital status.[10]

Scope of Domestic Violence

"Domestic violence" under the DV Act is a broad term that includes not only physical beating but also emotional, mental, sexual, and financial violence, and other forms of cruelty that may occur within a household. Section 3 of the DV Act provides a comprehensive definition, encompassing various acts of domestic violence.

Legal Remedies and Protections

Under the DV Act, any aggrieved woman in a domestic relationship with the respondent who alleges domestic violence can seek help. A woman can file a complaint against any adult male perpetrator who commits an act of violence, as well as against any male or female relatives of the husband or male partner (including in a live-in relationship) who have perpetrated violence.

---

6 Deepa Sinha, *Jharkhand Father Welcomes Daughter's Decision to Divorce, Arranges 'Baraat' for Her 'Ghar Wapsi'*, New Indian Express, Oct. 19, 2023.

7 Protection of Women from Domestic Violence Act,2005, No. 43, (Ind.).

8 Indra Sarma v. V.K.V Sarma,(2013)15 SCC 755.

9 Protection of Women from Domestic Violence Act, 2005, No. 43, § 2(a) (Ind.).

10 Protection of Women from Domestic Violence Act, 2005, No. 43, § 2(f) (Ind.).

Protection Officers under the PWDVA

Role of PO : The Protection of Women from Domestic Violence Act (PWDVA) permits complaints of domestic abuse to be brought by the aggrieved victims themselves, protection officers, or service providers. The act aims to provide adequate protection to women suffering from domestic violence of any kind. This aim would be nullified if the act is not adequately and efficiently enforced due to a lack of protection officers or protection officers lacking the resources and climate needed to fulfill their role under the act.

For the successful implementation and execution of the 2005 Act, it is necessary that the contact details of concerned 'Protection Officers' or the 'Service Providers' as well as 'Shelter Homes' are made easily available and accessible to the aggrieved women, for necessary and timely assistance. A PO is generally the first point of contact for a victim of domestic violence. Anyone, including someone known to the victim, can visit, call, or write to a PO in their district or the nearest such officer to complain about the violence and seek protection.

The PO will help in filing a Domestic Incident Report (DIR), which is a special report in cases of domestic violence containing all the details of the harasser(s) and the victims. They will also help in filing direct complaints with the court and assist in getting legal support. Every time a complaint is registered, the PO must forward a copy of the DIR as well as a copy of the medical report, if the victim was medically examined, to the police station located in the area where the violence occurred. The police are then expected to investigate the issue and take action against the harasser(s).

Duties of Protection Officers : The PO has multiple other duties, including:

Reporting Violence*:* Based on the information received, the PO is required to prepare a Domestic Incident Report for the Magistrate, seek relief from the Magistrate on behalf of the victim, and forward copies of the report to the police station within the victim's jurisdiction.

Providing Guidance*:* Protection Officers guide victims on the process of availing legal aid, and accessing service providers, counselors, shelter homes, and medical facilities in the local area.

Accessing Shelter Homes*:* Protection Officers must arrange for safe shelter homes after receiving an order from the Magistrate. Depending on the wishes of the victim, the PO is also required to forward a copy of the report lodged in the shelter home to the police station and the Magistrate with jurisdiction over the area where the shelter home is situated.

Supporting Claims of Maintenance and Submitting Medical Records*:* Protection Officers assist victims in making claims for interim monetary relief from their husbands. They are required to forward a copy of the medical report to the police station and the Magistrate with jurisdiction over the area where the violence is purported to have taken place.

Preparing a Safety Plan: This plan will specify the measures required for the victim's safety and the orders the victim wants to seek from the court, like change of residence, protection, etc.

Medical Aid: Getting the victim or their child medical aid in case of injuries.

Connecting with Service Providers: Putting the victim in touch with service providers who will assist her with legal support, counseling, shelter homes, etc.

Access to Legal Aid: Helping the victim gain access to free legal aid through the District Legal Aid Services Authority which is enshrined under Article 39A of the Indian Constitution.

Ensuring Protection during Proceedings*:* Ensuring that the victim and her children are not victimized or pressured during the court proceedings.

Comprehensive Strategies for Addressing Domestic Violence

Domestic violence remains a pervasive issue that affects countless women worldwide, often leaving them isolated and without adequate support. To effectively combat this issue, a multifaceted approach is essential. This approach should involve various stakeholders, including social workers, community organizations, and government agencies, all working together to create a supportive environment for victims. By implementing comprehensive strategies, we can ensure that victims receive the necessary protection and resources to overcome the trauma of abuse and rebuild their lives.

Education and Sensitization:

a) Social workers must educate and train both formal systems (healthcare, police, and courts) and informal networks (friends, families) to respond effectively to domestic violence.

b) Community organizations, like the Center for Enquiry into Health and Allied Themes, should conduct state- and national-level training sessions for healthcare providers, community volunteers, government officials, and NGOs.

Community Awareness:

a. Raise awareness about domestic violence within communities to ensure that members support victims in accessing services rather than stigmatizing them.

b. Social workers should engage in policy-level advocacy to help women abandoned by their husbands and partners obtain victim compensation.

Access to Protection Officers: Conduct district-wise research to ensure that women in remote areas can access protection officers and that these officers are not overwhelmed with cases, ensuring timely assistance.

Therapeutic Support:

a. Encourage survivors to seek therapy to sort out emotions and begin healing.

b. Offer online therapy as a flexible and convenient option, especially for those with limited resources or packed schedules.

Legal Awareness: Promote awareness of the Protection of Women from Domestic Violence Act (DV Act) to ensure victims know their rights and the legal protections available to them.

Disseminate information about various helplines and support services, such as:

Women Helpline (All India) – Women in Distress: 1091

Women Helpline Domestic Abuse: 181

Police: 100

National Commission for Women (NCW) Domestic Violence 24×7 Helpline for Sexual Violence and Harassment: 7827170170

National Commission for Women (NCW): 011-26942369, 26944754

Conclusion:

Domestic violence in India is a deeply entrenched issue exacerbated by cultural norms and patriarchal structures. The Protection of Women from Domestic Violence Act, of 2005, marks a significant legal milestone in addressing this issue by recognizing various forms of abuse and providing remedies. However, the effectiveness of this Act is often compromised by a lack of resources, societal pressures, and inadequate implementation. To combat DV effectively, a multipronged approach is essential. This includes educating and sensitizing both formal systems and informal networks, raising community awareness, ensuring access to protection officers, providing therapeutic support, and promoting legal awareness. By adopting these strategies, involving various stakeholders, and ensuring systemic changes, we can create a supportive environment for victims and significantly reduce the incidence of domestic violence in India.

* * * *

AUDITORY TRADEMARK: AN ANALYSIS OF THE ADVENT OF SOUND MARKS IN INDIA

Pavan S. *

Abstract

A sound mark is an unconventional trademark that is associated with a particular brand and is often recognized by people, just by listening to the sound such as "Ting Ting Ti Ting" of Britania's jingle or "Boeingg" of Bingo Mad Angles' jingle or Old Spice's whistle jingle. These sounds of certain brands become the trademark as their products or services are identified just by sound, even a visually impaired consumer would recognize by their tagline jingles. The sound mark is so pivotal that, an illiterate person too, will instantly recognize the brand apart from its graphical representation of it. Any mark of the brand is said to be a trademark only when it is inherently distinctive or unique and is capable of being distinguished by the consumer among the others. Thus, the tagline sounds which are associated with the brands become a crucial part of securing recognition among the public, thereby transversing beyond the general conception of a trademark like 'word mark', 'device mark', 'service mark', etc. As a consequence, the sound mark qualifies to be registered as a trademark due to its distinctive and apparent nature relating to the respective brand. This paper discusses the inception of sound as a trademark, its development in the USA and European Union, the advent and development of the 'sound mark' in India, and the limitations if any.

Keywords: ***Sound, distinctive, recognition, brand, unconventional trademark, graphical representation.***

Introduction

The origin of trademarks can be traced back to the times when humans acquired enough intelligence to conduct business transactions, which paved the way for the identification or recognition of certain commodities for their quality and durability, to the person or their business. "Human beings are capable of identifying many different kinds of signs or symbols, including words, other alphanumeric combinations, designs, colors, sounds, scent, shapes, and even textures.[1]" Thus, to stand out in the market, manufacturers or business individuals started to sell their commodities using a sign or expression or words that are inherently distinct or unique, and distinguishable from others, which gained traction after the industrial revolution and therefore, the trademark law came into existence to protect the goodwill of the entrepreneurs from infringements. A trademark is anything that is used to recognize and distinguish goods in a marketplace.[2]According to WIPO, a trademark is a sign capable of distinguishing the goods or services of one enterprise from those of the other enterprises. Trademarks are protected by the intellectual property rights.[3]

Under the Indian statute, a trademark is defined as a "trade mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include the shape of goods, their packaging, and combination of colors.[4]"A trademark is also economically feasible to the consumer as it allows them to choose, recognize and avail the goods or service which is intended by them and exclude unwanted things.[5] As a result, even the producer of such goods or services is encouraged or urged to render quality of goods.[6]Since the goodwill, quality, and reputation are attached to the trademark, it is protected from infringement from other individuals who intend to piggyback on the earned trademark among people and also consumers' interest.[7]Although the subject matter of business

* **3rd year LL.B., CMR School of Legal Studies, Bangalore, Karnataka**

1 Abbott, Cottier, Gurry, International Intellectual Property in an Integrated World Economy, 317, Wolters Kluwer, USA, 2011.

2 Trademark Law by Michael Grynberg, 2023 edition, Professor of Law, DePaul University College of Law at p.6

3 WIPO,https://www.wipo.int/trademarks/en/#:~:text=What%20is%20a%20trademark%3F,can%20I%20protect%20my%20trademark%3F(last visited: 11th June 2024).

4 The Trademarks Act, 1999, section 2 (zb), No. 47, Acts of Parliament, 1999 (India).

5 I J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, 2-3, West Group, 1996.

6 *Zippo Mfg. Co. v. Rogers Imports, Inc.*, 216 F. Supp. 670, 137 U.S.P.Q. 413 (S.D.N.Y. 1963).

falls under the general industrial property, it's the goodwill and quality of which has taken the form of an intangible expression, and enters the realm of intellectual property, hence protection is sought to safeguard and penalize the infringers.

In the international jurisprudence, trademark was first included along with other industrial properties in the Paris Convention for the Protection of Industrial Property, 1883,[8] Which was the first intellectual property treaty. Subsequently the Madrid Agreement, of 1891,[9]Made it possible for international registration of marks, to protect it in a large number of designating contracting countries. Then WIPO[10] Came into existence in 1967, which laid down provisions for promotion, protection, cooperation among member states, and effective administration of intellectual property and became a governing body for intellectual property rights. Further in 1995, the TRIPS[11] The Agreement was entered into by member states of WTO, which brought balance between trade and IP systems.Under the Indian jurisprudence, the first trademark law was passed in 1940[12], which was replaced by the Trade & Merchandise Act, of 1958, however, due to the growing trade practices after the international conventions especially after the TRIPS agreement, there was a need for comprehensive legislation, hence in 1999, the Parliament of India enacted the Trademark Act and the rules in 2017, which covered the deficiency and was in conformity with the international conventions.

Traditionally, registration of marks as mentioned in section 2(m) of the Trademark Act, 1999, is done as trademarks, where logos or designs are certain words are usually registered. Lately, the shape of the goods, like the shape of a Coke bottle or sound or smell, and different combinations have been used as trademarks.[13] These trends in the registration of marks that are not visually perceptible as opposed to the traditional trademarks[14] Which are visually perceived by the trademark authorities, competitors, or consumers, are called non-conventional trademarks.However, after the enactment of the Trademark Act[15], 1999, it recognized non-conventional trademarks by widening the scope that, if it were able to be graphically represented, for example, in the case of a sound mark, it can be graphically represented in the form of a musical note or spectrogram of waveform diagram, hence becomes eligible to register as a trademark.

Development of non-conventional Trademarks

After the period of world wars and the formation of many international bodies, laws, and conventions, there was an increase in invention, innovation, and trade in many countries especially the rise of cross-border trade, the traditional protection of trademarks became insufficient as a certain facet of the brand like sound, taste, smell, color, formed part of the goodwill and quality, could not be registered. Contrary to the traditional trademarks, the non-conventional ones are more accurate and easily identified by consumers.[16]As per the TRIPS agreement, it is not obligatory to be visually perceptible or graphically representable as long it is inherently distinctive or has acquired distinctiveness by continuous usage.[17] As a consequence, the registration and protection of non-conventional trademarks has been globally acknowledged. Although these non-conventional trademarks have existed for centuries ago, it is only accepted and protected from the TRIPS agreement (Art 15) onwards, as they manifested in becoming the face of the product and perceived as trademarks.[18] The WIPO recognized a commitment called the Standing Committee for the Law of Trademark

---

7 *B.V.D. Co. v. Kaufmann & Baer Co.*, 272 Pa. 240, 116 A. 508 (1922); *Palmer v. Harris*, 60 Pa. 156 (1869).

8 WIPO, https://www.wipo.int/treaties/en/ip/paris/summary_paris.html, (last visited: 11th June 2024).

9 WIPO, https://www.wipo.int/treaties/en/registration/madrid/summary_madrid_marks.html,(last visited: 11th June 2024).

10 WIPO, https://www.wipo.int/wipolex/en/text/283854,(last visited: 11th June 2024).

11 WIPO, https://wto.org/english/tratop_e/trips_e/trips_e.htm, (last visited: 11th June 2024).

12 Trademark Act, 1940, No. V, Acts of Indian Legislature, 1940, (India).

13 David Vaver, Intellectual Property: The State of the Art, 116 L.Q. REV. 621, 625 (2000).

14 For instance, in the Indian context, the Trade and Merchandise Marks Act, of 1958 did not contain any references to non-conventional trademarks.

15 For example, § 2(1)(zb) of the Indian Trade Marks Act, 1999 deviates from the 1958 Act by putting a wide criterion for registration – it should be capable of being represented graphically and it should be distinctive. A combination of colors has been expressly introduced.

16 Faye M. Hammersley, The Smell of Success: Trade Dress Protection for Scent Marks, 2, Intellectual Property Law Review 105,105-156 (1998).

17 Dr. Mwirigi K. Charles & T. Sowmya Krishnan, Registrability of Non-Conventional Trademarks: A Critical Analysis, 6 International Journal of Research and Analytical Reviews 914, 914-923, (2019).

18 Kenneth L. Port, On Nontraditional Trademarks, William Mitchell Legal Stud. Rsch. Paper No. 2010-05 (Mar. 3, 2010), available at https://ssrn.com/abstract=1564230or http://dx.doi.org/10.2139/ssrn.1564230.

for examination and investigation, which demarcated non-conventional marks into visual – color, shape, 3D marks, and non-visual – sound, taste, smell, and texture. A discussion related to the TRIPS agreement in Bolivia felt that non-visual trademarks should be given protection as they are capable of being distinctive and graphically representable.[19]

In the case of Ralf Sieckmann v. Deutsches Patent und Markenamt[20]The ECJ concerning an olfactory mark, held that "a trademark may consist of a sign which is not in itself capable of being perceived visually, provided that it can be represented graphically, particularly using images, lines or characters and that the representation is clear, precise, self-contained, easily accessible, intelligible, durable and objective" (Sieckmann criteria). Further in the case of Shield Mark BV v. Kist[21], the European Court of Justice (ECJ), decided whether sound could be trademarked and are capable of being graphically represented as per Art 2 of the First Council Directive of 21st December 1988[22], it held that a sign should possess two parameters, first, the capability of graphical representation, and second, it should have a distinctive character that enables consumers to distinguish goods and services between two or more firms. Further, it held that the stave divided into bars and showing a clef, musical notes and the rest showing the relative value helped determine the pitch and duration. This representation was durable, intelligible, and easily accessible, thus easily recognized by the public, especially the traders. It further held that written descriptions of sound, onomatopoeia, and musical notes were not enough.This judgment greatly restricted the scope of registration of sound marks.[23]In the United States of America, the Lanham Act[24] , section 1052 that deals with trademarks as to what cannot be trademarked. Even Congress included words like symbols and devices to make way for the registration of sound, smell, and other non-visual trademarks.[25]In the case of Kawasaki Motors Corp USA v. Harley-Davidson Michigan Inc[26] It was held that the sound of the motorbike is common to all bikes and is deprived of the doctrine of functionality, but the plaintiff abandoned the application before the judgment. Hence, we can see that the American Trademark Board and Courts have recognized sound marks as a trademark, provided they fulfill all the requisites that are laid down for traditional trademarks that are to be distinctive and distinguished from other competitors.

Advent and development of sound marks in India

As non-conventional trademarks like sound marks were gaining traction, being recognized, registered, and protected around the world, people started to adopt innovative marks like sound marks to stand out among others in the market and be easily identified by consumers. However, a breakthrough came after Trademark Rues, 2017, as the 2002 rules precluded non-conventional trademarks.[27]Draft Manual for Trademark Practice & Procedure (The Draft Manual has relevant parts that deal with non-conventional marks followed by a detailed analysis on the same matter.[28]Section 2 (m) and (zb) of the Trademarks Act, 1999, has an inclusive definition any mark that is capable of graphical representation and has distinctiveness compared to others, is eligible for registration, however, when it comes to sound marks, India has adopted the Shield Mark doctrine.[29]The trademark registry did not explain whether such representation is understood and all-encompassing to everyone including traders. However, the manual only mentioned that unless there is

---

19 Carapeto, R. "A Reflection About the Introduction of Non-Traditional Trademarks", Vol. 34, Waseda Bulletin of Comparative Law, p. 29, (2016).

20 *Ralf Sieckmann v. Deutsches Patent und Markenamt*, Case C-273/00, 12 Dec 2002, European Court of Justice [hereinafter Sieckmann].

21 *Shield Mark BV v. Kist, Case C-283/01*, The European Court of Justice [hereinafter Shield Mark].

22 It states that the "[s]igns of which a trademark may consist: A trademark may consist of any sign capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, theshape of goods or their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings."

23 See David Vaver, Recent Trends in European Trademark Law: Of Shapes, Senses and Sensation, 95 THE TRADEMARK REPORTER, 895, 900 (2005); Jerome Gilson et al., Cinnamon Buns, Marching Ducks and CherryScented Racecar Exhaust: Protecting Nontraditional Trademarks, 95 The Trademark Reporter 773, 777 (2005).

24 See Lanham Act, § 1051 – 1127, No. 15, Acts of Congress, 1946 (USA).

25 S. Rep. No. 515, 100th Cong 2nd Session 44 (1988) USA.

26 *Kawasaki Motors Corp USA v. Harley-Davidson Michigan Inc*, 1997 TTAB LEXIS 11 (TTAB 1997). In this case, the plaintiff had opposed Harley-Davidson's registration of the exhaust sound of their motorcycles, produced by V-Twin, common crankpin motorcycle engines when the goods are in use. Aficionados of the motorbike refer to the sound as 'potato-potato'.

27 See Taj Kunwar Paul et al., Reincarnation of Trade Mark Law in India, 86 J. Patent and Trade Mark Office. Society 237, 240 (2004).

28 See Dev Gangjee, Non-Conventional Trade Marks in India, 22(1) NAT'L L. SCHOOL INDIA REV. 67 (2010) forAnother view on The Draft Manual's approach to non-conventional trademarks.

29 See Draft Manual of Trademark Practice & Procedure,2015, 3.2.4, Office of Controller General of Patent Design & Trademark, 2015(India).

distinctiveness, it cannot be registered.[30]The first sound mark that was registered in India was Yahoo's yodel which was represented via musical notes in 2008.[31] Then another sound mark was granted registration by a German company Allianz Aktiengesellschaft.[32] Once the Trademark Rule 2017, was enacted adopting the EUIPO, rule 26 (5) laid down a mandate that anyone who seeks to register a sound mark shall be represented in an MP3 format of a maximum of 30 seconds which should be a simple and clear perceptible replay, along with graphical representation of the notations and distinctiveness.

Certain sounds that cannot be registered like very simple pieces of music consisting only of one or two notes, songs commonly used as chimes, well-known popular music in respect of entertainment services, park services, children's nursery rhymes (especially, of marks on goods/services aimed at children) and music strongly associated with particular regions or countries (especially for the type of goods/services originating from or provided in that area) as these are not distinctive and if any word is present that appears to be distinctive, then the registry may see the mark as a whole and provide opportunity to the applicant to explain the distinctiveness.[33]In India, so far more than 25 sound marks have been registered, considering the graphical representation (remains similar to the Sieckmann criterion) of non-musical sound marks. However, it is important to observe that registration of sound marks before 2015 was contrary to the Trademarks manual and those that came after were contrary to the rules, in 2017, because the Trademark Registry considered sonogram, spectrogram, and onomatopoeia which was not part of the manual (also held to be insufficient in Shield Mark test) and 2017, the rule only recognized the Sieckmann test. In the case of Eicher Motors Limited, who applied for registration of the 'bullet thumping sound' and Britannia's 'Tin Tin Ti Ting' sound were also applied for registration, although both were non-musical notes, which is supposed to be graphically represented using staff notations, but still succeeding in registering their marks which had questionable rhythm, high octave, treble cleft, vague and ambiguous.[34]If it were to tap fingers at the rhythm of a thumping bullet or play at the rhythm of Britannia's jingle, which did not specify the frequency of it, there is no distinction seen, yet the Registry allowed as they accept sonogram and spectrogram similar to EUIPO in practice.[35]

Conclusion

Sound marks have been recognized and are being registered in India after the Trademark manual in 2015 and the Trademark rules, in 2017. Indeed, the registration of non-conventional trademarks has not been shied away from by the Registry or the Courts, rather have welcomed the innovative method of distinguishing brands by non-visual and only perceptible marks. However, the important criticism is that the direct importation of Sieckmann criteria or the Shield Mark test is restricting the registration of sound marks especially the non-musical jingles, due to its inability of not wholly comply with the standards set by the manual or the trademark rules, which reflects the ECJ's decision, although they are distinctive in perception among the public. The practice of allowing sonograms and spectrograms contrary to the rules is something the Registry should take care of by making suitable amendments to rules or to the Act, 1999 and allowing the public to listen to the sound marks via the Registry's portal, which helps in better understanding to the third parties as well. Further, to accept musical or non-musical notations through digital platforms rather than the graphical representation of the notation or the staff notation on a medium of paper, as the present method is too restrictive and ambiguous. This particular change will also help the examiners better understand the sound marks at hand and evaluate their merits. As per section 28 of the Trademark Act, 1999, the exclusive right is granted for the sound applied for, not perceived to be. Therefore, the above suggestion would aid in understanding the sound and their notations (especially for non-musical sounds) by the examiners of the Trademark Registry.

* * * *

30 These include inter alia, nursery rhymes, and simple pieces of music of only 1 or 2 notes. See Section 3.2.4, Draft Manual.

31 Peter Ollier, Yahoo Yodels into India's TM Registry, 183 MANAGING INTELLECTUAL PROPERTY 14 (2008); Shamnad Basheer, India's first "Sound Mark" Registered, SPICYIP, 19 August 2008, (last visited on 13 June 2024, 1:03 pm) available at http:// spicyipindia.blogspot.com/2008/08/breaking-news-indias-first-sound-mark.html.

32 Santosh Singh, Yet Another Sound Mark Granted, SPICYIP, 30 July 2009, (Last visited on 13 June 2024, 1:03 pm) available at http:// spicyipindia.blogspot.com/2009/07/yet-another-sound-mark-granted.html.

33 Lisa P. Lukose, Unconventional Trademarks: Novel Trends in The Modern Trademark Law, (1), CNLUJ 22, page 28 (2012).

34 Akshay Ajayakumar and Srinjoy Das, Sound Marks: How Sound is the Requirement for Graphical Representation? Indian Journal of Law and Technology, (14th June 2024; 3:20 pm) https://www.ijlt.in/post/sound-marks-how-sound-is-the-requirements-for-graphical-representation.

35 *Id*

REVISITING A LANDMARK IN THE CONCEPT OF DELEGATED LEGISLATION AND ANALYSING ITS CONTEMPORARY RELEVANCE – IN RE: DELHI LAWS ACT, 1912

Medha Raj *

Abstract

Delegated legislation is the mechanism by which legislative authority is devolved to subordinate authority. It is acrucial mechanism to expedite the process of enacting a law and ensuring its efficient administration. This case centred around the Delhi Laws Act of 1912 and other important legislations, raised pertinent questions regarding the permissible extent of the delegation of legislative powers to the executive branch. The Supreme Court's decision in this regard highlighted the delicate balance between legislative authority and executive discretion, ultimately allowing for delegated legislation while also clearly delineating its permissible limits. Through the judgment, various principles functioning in this regard were identified, which have since remained relevant and crucial for regulating the contemporary legal framework. This paper aims to revisit this landmark case instead of recent Supreme Court judgments and policies enacted by the Legislature.

Introduction

Delegated legislation refers to a mechanism where legislative authority is devolved from the primary legislative body to its subordinate authorities. These typically refer to executive entities, administrative agencies, or state governments. It is a concept that becomes crucial in expediting the enactment of rules, regulations, and guidelines, thereby accommodating the intricate nuances of governance. In the context of the Delhi Laws Act case,[1] Delegated legislation emerged as a focal point of judicial scrutiny and constitutional interpretation. The ripple effects of this case extended far beyond its immediate sphere, and have since influenced the very fabric of administrative practices and constitutional governance in India. This is especially evident whenseen through the lens of recent Supreme Court judgments,demonstrating that delegated legislation remains an important and relevant conversation, and continues to evolve within the bounds of the constitutional framework even in the modern legal landscape of administrative law.

Before the enactment of the Constitution, numerous casesraised questions on the constitutionality of delegated legislation. A noteworthy example of the same is Queen v. Burah,[2] wherein the act[3] In dispute gave certain powers to the executive authority to extend the area (region) of applicability of the act. The court's ruling emphasized that the legislature was not acting merely as an agent or delegate of the Calcutta High Court, and rather, that it exercised independent judgment regarding theapplicability, powers, and other legal provisions of the act. Here, the executive's role was merely to enact these provisions. The court therefore upheld the delegation of certain powers, as long as the implementation of these took place on certain conditions or prerequisites. Accordingly, this was termed as 'conditional legislation'.

Similarly, independent India saw the application of this principle of 'conditional legislation' in Jatindra Nath.[4]Here, the Federal Court dealt with the nature of the power that had been delegated, debating if it was ancillary or excessive. While the judgment ultimately held the delegation to be excessive, it is important to note the dissenting opinion given by Justice Fazl Ali.He opined, that since an essential function had not been delegated, thedelegation or extension of powers was only ancillary. He further added that since the executive government's entire role was to ensure proper application and implementation, any delegation of power

* **3rd Year, BA.LLB (Hons). (Energy Laws) at UPES, Dehradun.**

1 In Re: Delhi Laws Act 1912, 1951 SCR 747.

2 Queen v. Burah, (1878) 3 AC 889.

3 Garo Hills Regulation, 1882, §9.

4 Jatindra Nath v. Province of Bihar, (1949) 2 FCR 595.

made to them in furtherance of the same would be valid.Moreover, the extension of powersdid not abdicate legislative functions, that is, the delegation did not become a parallel legislation in itself. The judgment along with its dissenting opinion only led to more confusion regarding the application of the principle ofdelegated legislation,[5]Which was further facilitated by the Indian Constitution's silence on the matter.

Two opposing ideologies brought the courts to a crossroads – were they to follow the American model of delegated legislation where unlimited power was not to be delegated, or the English model, which functioned vice versa?[6]

Overview of the Delhi Laws Act case

President's Reference to Supreme Court – Advisory Jurisdiction Exercised on Delegated Legislation

This saga of uncertainty and indecision culminated soon after Jatindra Nath. The enactment of certain legislations at the timecaused more ambiguity in this regard, and eventually led to the President exercising his constitutional power[7] to ask for the Court's opinion. His reference revolved around three major questions:

A. The Delhi Laws Act of 1912,[8]Which empowered the provincial government to extendany existing enactment from British India to the province of Delhi, with appropriate modifications as deemed necessary;

B. The Ajmer-Marwar (Extension of Laws) Act of 1947,[9]Which grantedthe Central Government the authority to extendenactments from other provinces to Ajmer-Marwar, subject to suitable modifications and restrictions; and

C. Part C States (Laws) Act of 1951,[10] Which conferred authority upon the Central Government for two key purposes: firstly, to extend and apply recruitment regulations from Part A states to Part C states, and secondly, to delegate powers to the Central Government for the repeal or amendment of corresponding laws.

In a nutshell, the Court was to consider whether the Indian Parliament and the state legislature had the power to transfer these functions to their executive authorities, and if so, then what was to be the extent of the same. Here, it is interesting to note the views given by the counsels on each side. While one side argued that the power of delegation was an implied power within the power to legislate, the other put forth the argument that India followed a strict separation of powers, inherent in which, is the principle of delegates nonpotest delegare. This thereby implied a prohibition on the delegation of power.

The Judgement

The Supreme Court in its decision, conformed with the dissenting view given in Jatindra Nath, holding that such delegation of powerswasmerely ancillary in nature. On the first issue, the Courtheld that the Delhi Laws Act granted authority to the provincial government over the Delhi area, thereby upholding the constitutional validity of the extension given by Section 7 of the Act. Regarding the second issue, it was the Court's opinion that the Ajmer-Marwar Act empowered the Central Government with authority over provinces, allowing modifications and restrictions within the Act's framework. Here too, Section 2 of the Act was upheld as valid. Therefore, with respect to the first two issues, it is evident that the idea of identifying 'ancillary' versus 'essential' functions remained central to the Court's ruling. The Court endorsed the idea that these extensions or delegations, as granted by legislative bodies, were intended to serve as adjuncts to or ancillary to the primary legislative framework, rather than as standalone exercises of legislative authority.

However, this view saw a departure on the third issue. The court opined that the States under Part C automatically fell under Central Government jurisdiction without their own legislature, thereby mandating that the Parliament legislate for them. This was held to be within the constitutional framework. However, the

---

5 SP Sathe, Administrative Law42 (3rd Edn, Lexis Nexis).

6 Chavvi Agarwal, *In Re Delhi Laws Act Case: Landmark in Concept of Delegated Legislation In India*, Manupatra (2019).

7 Constitution of India, art. 143.

8 The Delhi Laws Act, 1912, §7, No. 13, Acts of Parliament, 1912.

9 The Ajmer-Marwar (Extension of Laws) Act, 1947, §2, No. 52, Acts of Parliament, 1947.

10 The Part C States (Miscellaneous Laws) Repealing Act, 1951, §2, No. 66, Acts of Parliament, 1951.

Act had also given powers pertaining to extension, repealing, amending, and modification to these states. The delegation of these functions was held to be excessive in nature, as they were considered to be essential functions. The sectionsregulating these were thereby declared void. Through this, the Court sent a clear message about the limits of delegated legislation and the imperative of preserving the integrity of the legislative process.

Analysis of the judgment

Diverging Opinions Amongst the Bench

Upon a bare reading of the judgment, one can note that all seven judges have put forth seven different views. Still, there remained unity on two points. The first of these was that it was important for the legislature to bear in mind the exigencies of the 'modern government', that is, it would be impossible to expect the State and Central Legislatures to make complete and comprehensive legislation without relying on their executive authorities. The second is that since the legislature derived its powers from the Constitution of India, excessive freedoms like those existing in England, could not be granted – limitations were therefore necessarily required. However, what is also evident, is the all-overlack of unanimity on what the permissible limits of such delegation were to be. One view in this context, particularly in the issue surrounding the States Laws Act, was that as long as the legislature retained the ultimate control of withdrawing the piece of rules, orders, or regulations, it would be permissible to delegate such power. Another view along similar lines outlined what 'essential functions'[11] Were to be – those if delegated could compromise the very essence, being, or the fundamental nature of the policy. This meant, that the legislature should lay down certain standards or policies in the parent act itself, making it easier to execute the delegated power.

Both these views were reinforced by Courts at a later stage, such as in Gwalior Rayon Silk,[12] Where two tests were given by Justice Khanna and Justice Matthew. With regard to the present case, it is pertinent to consider Justice Khanna's 'standard test', which mandated that the parent act must contain the minimum factors which must be fulfilled by the delegated legislation. That is, the legislation must be made in consonance with the parent act. If it is found to be otherwise, the legislation would be heldinvalid. The other testwas the 'abdication test' given by Justice Matthew, wherein it was stated that as long as the legislature can repeal the parent act conferring powers on the delegate, the legislature does not abdicate its powers. Soon after, N.K. Papiah[13] saw the successful application of these tests, ultimately holding the legislation[14] In dispute as valid. Further, in Brij Sunder[15] The court went as far as to permit the application of future laws from another state, which the adopting state legislature had not previously considered. This is why the significance of the present case cannot be overstated –it allowed not only for delegated legislation but also clearly delineated the permissible extent of such delegation of power.[16]

Delegated Legislation – A Right Within the Power to Legislate?

Another important question that came forth through the judgment was whether the power to legislate included the power to delegate. In this regard, the view put forth by the Attorney General on behalf of the President was that the Parliament could delegate because it carried an implied power to do so. This notion was rooted in the theory of Parliamentary Sovereignty – the power to make laws comes along with the power to delegate. This has since been upheld at later stages as well.[17]However, C.J. Kania, Mahajan, and Mukherjee JJ opined the opposite and held that the constitution never per se warranted the powers of such delegation and agreed on the view that it only allowed for conditional delegation to take place. They advocated for a more cautious approach, arguing that delegation should only occur under specific conditions and with clear criteria established by the legislature. At its core, this debate embodies the struggle between the desire for adaptability in governing our society and the essential need to safeguard the integrity of our constitutional framework. It acts as a clash between practicality and principle, highlighting the intricate dance between governance and the law.

---

11 Municipal Corpn. Of Delhi v. Biral Cotton Spg. And Wvg. Mills, (1968) SCC OnLine SC 13.

12 Gwalior Rayon Silk v. The Asstt. Commissioner Of Sales Tax & Ors. 1974 AIR 1660.

13 N.K. Papiah v. Excise Commissioner, (1975) 1 SCC 492.

14 Karnataka Excise Act, 1965, §122, No. 21, Acts of Karnataka State Legislature, 1966.

15 Brij Sunder v. First Additional District Judge, (1989) 1 SCC 561.

16 Takwani, Lectures of Administrative Law 70 (3rd Edn. EBC).

17 DS Garewal v. State of Punjab, 1959 SC 512.

Modern Legal Landscape

Recently, the May 2024Supreme Court ruling in All India Bank Officers' Confederation[18] Has reignited the discourse around delegated legislation. In this case, Section 17(2)(viii) of the IT Act,[19] and Rule 3(7) of the IT Rules[20] Were disputed to be ultra vires Article 14 of the Indian Constitution, and violative of the rule of delegated legislation as established by precedents discussed above. Here too, the Court upheld the rule that the legislature must retain with itself the essential legislative functions. It reaffirmed the established principles of delegated legislation, allowed the extension under the disputed section as it was not excessive in nature, delineated legislative policy, and provided guidance to the subordinate rule-making agency. Similar stances have also been taken by the court in the recent cases of Naresh Chandra Agrawal.[21] and Vivek Narayan Sharma.[22]For example, in the former case, the court summarised and reiterated the principles relevant in adjudicating cases where subordinate legislation is challenged on the ground of being ultra vires to the parent act.It specifically elaborated on the 'generality versus enumeration' principle, once more reaffirming Justice Fazl Ali's views. It clarified that when a statute grants specific powers alongside a general power, the specific powers listed are merely examples of what falls under the general power. In other words, the specific powers do not limit the scope of the general power, especially since such power was to make rules for "carrying out the purposes of the Parent Act".[23]

Similar discourse is alsoprevalent around the newly enacted Telecommunications Act,[24] Whereincertain sections pertaining to internet shutdown areargued to be excessive in nature and said to provide a fertile ground for excessive delegation.[25] Likewise, issues have also been raised with the Digital Data Protection Act,[26] Where sections grant excessive discretion to the executive without clear legislative guidance.[27]In this regard, it also becomes pertinent to talk about how today, a significant portion of corporate law is derived from rules and regulations made by designated regulators like the Ministry of Corporate Affairs (MCA), the Securities and Exchange Board of India (SEBI), and the Reserve Bank of India (RBI), rather than directly from legislation passed by the Parliament. This trend has led to frequent changes and amendments, raising concerns about the stability and predictability of the legal system.[28] The argument in this case essentially states that delegated legislation should not supplant, but instead supplement the parliamentary statute from which it draws power.[29] The prominent concern therefore remains that arobust mechanism for parliamentary supervision needs to be implemented in addition to what is currently present, including periodic reviews of delegated legislation to ensure that they conform to constitutional limits and the parent statute.

These instances collectively illustrate how delegated legislation remains a vital, yet, complex aspect of modern administrative law. Moreover, it establishes the enduring importance and vitality of judicial precedents in guiding the principles of delegated legislation, especially in their role in delineating its scope.

Conclusion

The Delhi Laws Act case marks a significant milestone in the evolution of delegated legislation within the Indian constitutional framework. It has not only contributed to shaping the contours of delegated legislation but has also left a lasting impact on the principles of constitutional governance and the separation of powers.

---

18 All India Bank Officers' Confederation v. Central Bank of India, (2024) SCC OnLine SC 803.

19 The Income Tax Act, 1961, No. 43, Acts of Parliament, 1961.

20 The Income Tax Rules, 1962.

21 Naresh Chandra Agrawal v. ICAI, (2024) SCC OnLine SC 114.

22 Vivek Narayan Sharma v. Union of India, (2023) SCC OnLine SC 1.

23 King Emperor v. Sibnath Banerji, AIR 1945 PC 156; Afzal Ullah v. State of U.P., AIR 1964 SC 264; Rohtak Hissar District Electric Supply Co. Ltd. v. State of U.P., AIR 1966 SC 1471; K. Ramanathan v. State of T.N., (1985) 2 SCC 116; D.K. Trivedi v. State of Gujarat, 1986 Supp SCC 20, BSNL v. TRAI, (2014) 3 SCC 222.

24 The Telecommunications Act, 2023, No. 44, Acts of Parliament, 2023.

25 Ishika Garg, *The Telecom Bill's internet shutdown switch: A road to excessive delegation?*, Bar and Bench (April 22, 2023) at https://www.barandbench.com/columns/the-telecom-bills-internet-shutdown-switch-a-road-to-excessive-delegation.

26 The Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023.

27 Shreyas Sinha, *Throwing the Delegation Doctrine to the Winds*, Verfassungsblog (December 6, 2022) at https://verfassungsblog.de/throwing-the-delegation-doctrine-to-the-winds/.

28 Bharat Vasani, Varun Kannan, *The Rise & Rise of Delegated Legislation - Do we need more Safeguards?*, Cyril Amarchand Mangaldas (January 6, 2022) at https://corporate.cyrilamarchandblogs.com/2022/01/the-rise-rise-of-delegated-legislation-do-we-need-more-safeguards/.

29 Kerala State Electricity Board vs Thomas Joseph Alias Thomas M J, 2022 LiveLaw (SC) 1034.

At its core, the case underscores the delicate balance between legislative authority, executive discretion, and judicial oversight. The case highlights the need for clear limits and safeguards to prevent the abuse of delegated powers and ensure accountability, even today.

In a nutshell, its significance cannot be overstated. It represents a landmark moment in the development of delegated legislation jurisprudence in India and serves as a guiding precedent for future cases in this area. This is one of the key takeaways from the case – the recognition of the importance of delegated legislation in modern governance, especially as seen through recent judgments. By striking a delicate balance between enabling efficient governance and preserving constitutional values, the case exemplifies the nuanced approach required to navigate complex legal issues in a democratic society, especially today. As India continues to evolve as a nation governed by the rule of law, the principles established in this case will remain relevant and influential in shaping the course of constitutional governance for years to come.

* * * *

ENVIRONMENTAL JUSTICE : A STUDY OF SYSTEMIC RACISM

Ankita *

Vagish Aashri **

Abstract

Environmental justice is a pressing issue that intersects with broader social inequities, particularly systemic racism. This study, "Environmental Justice: A Study of Systemic Racism," explores the disproportionate environmental burdens borne by marginalized communities, primarily racial minorities. These communities often face heightened exposure to pollutants, limited access to clean water and air, and inadequate infrastructure to combat environmental hazards. The research aims to examine the historical and contemporary factors contributing to these disparities, highlighting the role of discriminatory policies and practices.

Through a multidisciplinary approach, this study attempts to uncover patterns of environmental injustice. It delves into the legal and regulatory frameworks that have perpetuated these inequities and assesses the effectiveness of current policies aimed at mitigating them. The research also considers grassroots movements and community-led initiatives advocating for environmental justice, evaluating their impact and potential for broader systemic change.

Key findings indicate that systemic racism is deeply embedded in the allocation of environmental resources and the siting of hazardous facilities, resulting in significant health and social disparities. The study underscores the need for comprehensive policy reforms that address both environmental protection and social justice, advocating for an inclusive approach that empowers affected communities. By shedding light on the intersection of environmental and racial justice, this research contributes to the broader discourse on equity and sustainability, emphasizing the urgent need for a just and equitable environmental future for all.

Introduction

Environmental racism refers to the disproportionate exposure of communities of color to environmental hazards, pollutants, and risks due to discriminatory policies, practices, and decision-making processes. This form of environmental injustice intersects with systemic racism, perpetuating inequalities and exacerbating health disparities among marginalized populations.

At its core, environmental racism reflects the systemic marginalization and exploitation of communities of color, particularly Black, Indigenous, and Latino communities, by siting polluting industries, hazardous waste facilities, and toxic land uses in their neighborhoods. These communities often lack the political power and economic resources to resist or challenge the placement of environmental hazards, leading to pollution as well as environmental degradation in their environments.

The roots of environmental racism can be traced back to historical processes of colonization, slavery, and segregation, which have shaped patterns of land use, urban development, and environmental policymaking in ways that perpetuate racial inequalities. For example, discriminatory housing policies such as redlining systematically excluded communities of color from accessing housing in desirable areas and relegated them to neighborhoods with higher levels of pollution and environmental hazards.

One of the key manifestations of environmental racism is the concept of "environmental injustice," which refers to the unequal distribution of environmental benefits and burdens along racial and socioeconomic lines. Research has repeatedly demonstrated that communities of color bear a disproportionate burden of environmental pollution and toxic exposure, leading to higher rates of respiratory illnesses, cancer, and other adverse health outcomes compared to predominantly white communities.

* **LL.M. (OYC) Rajiv Gandhi National University of Law, Punjab**

** **LL.M. (OYC) Rajiv Gandhi National University of Law, Punjab**

Addressing environmental racism requires a multi-faceted approach that addresses its systemic roots and empowers affected communities to advocate for their environmental rights and protections. This includes promoting environmental justice policies and regulations that prioritize the health and well-being of marginalized populations, investing in sustainable and equitable development initiatives, and fostering community-led solutions to environmental challenges.

Historical Background of Environmental Racism:

The historical context of environmental racism is deeply rooted in centuries of systemic oppression, colonization, slavery, segregation, and discriminatory policies that have shaped patterns of land use, urban development, and environmental decision-making in ways that perpetuate racial inequalities. Understanding this historical backdrop is essential for comprehending the complex dynamics of environmental injustice and its ongoing impacts on marginalized communities today.

One of the earliest manifestations of environmental racism can be traced back to the colonial era, when European colonizers exploited Indigenous lands and resources for economic gain, often disregarding the ecological integrity and cultural significance of these territories. Indigenous peoples were forcibly displaced from their ancestral lands, leading to the loss of traditional livelihoods, cultural practices, and spiritual connections to the natural world. The legacy of colonialism continues to reverberate in the present, as Indigenous communities continue to fight for land rights, sovereignty, and environmental justice in the face of ongoing environmental degradation and resource extraction on their territories.[1].

The institution of slavery in the United States also played a pivotal role in shaping patterns of environmental racism. Enslaved Africans were often subjected to harsh and exploitative labor conditions on plantations and in extractive industries such as mining and logging, where they faced disproportionate exposure to environmental hazards and pollutants. After emancipation, many formerly enslaved individuals were relegated to low-lying, flood-prone areas with poor sanitation and infrastructure, further exacerbating their vulnerability to environmental risks.

The civil rights movement of the 1960s and 1970s brought national attention to issues of racial justice and environmental pollution. Communities of color, led by grassroots activists and environmental justice organizations, mobilized against environmental racism and demanded equitable access to clean air, clean water, and healthy environments. The landmark case of Warren County, North Carolina, where predominantly Black residents protested the siting of a hazardous waste landfill in their community, galvanized the environmental justice movement and highlighted the intersecting dynamics of race, class, and environmental injustice.[2].

Despite progress in raising awareness about environmental racism, challenges persist in addressing its root causes and mitigating its impacts on marginalized communities. Structural inequalities in access to resources, political power, and economic opportunity continue to shape patterns of environmental injustice, reinforcing the need for intersectional approaches that address the underlying drivers of racial inequality and environmental degradation.

In conclusion, the historical context of environmental racism underscores the interconnectedness of social, economic, and environmental systems and the ways in which systemic oppression and discrimination have shaped patterns of environmental injustice over time. By understanding this historical backdrop, we can better comprehend the complex dynamics of environmental racism and work towards building more just, equitable, and sustainable communities for all.

Patterns of Environmental Injustice:

Patterns of environmental injustice are evident in the disproportionate exposure of marginalized communities, particularly communities of color and low-income populations, to environmental hazards, pollutants, and

---

1 Jedediah Purdy, *Environmentalism's Racist History*, THE NEW YORKER (June 2, 2024, 3:18 PM), https://www.newyorker.com/news/news-desk/environmentalisms-racist-history.

2 Victor Hugo Ramos,*Intersectional Environmentalism: Embracing Varied Cultures and Ideas for a More Sustainable and Just Future*, B THE CHANGE (June 3, 2024, 9:17 PM), https://bthechange.com/intersectional-environmentalism-embracing-varied-cultures-and-ideas-for-a-more-sustainable-and-just-96d2ce69f463?gi=a496355a5f3a.

risks. This phenomenon reflects systemic inequalities in decision-making processes, resource allocation, and access to environmental resources and protections. Understanding these patterns is crucial for addressing the root causes of environmental injustice and advancing equity and social justice in environmental governance.

An example of a pattern of environmental injustice is the unequal distribution of environmental benefits and amenities. While affluent communities often enjoy access to parks, green spaces, and clean air, marginalized communities may lack access to these resources or face barriers to their enjoyment. This disparity in environmental quality reflects broader patterns of socioeconomic inequality and racial segregation that shape access to resources and opportunities in society.[3]

Moreover, patterns of environmental injustice intersect with other forms of social inequality, such as housing discrimination, economic marginalization, and lack of political representation. For example, discriminatory housing policies such as redlining have historically excluded communities of color from accessing housing in desirable areas and relegated them to neighborhoods with higher levels of pollution and environmental hazards. Similarly, economic disinvestment and lack of access to resources and infrastructure in marginalized communities exacerbate their vulnerability to environmental risks.

The pandemic has further highlighted patterns of environmental injustice, with communities of color disproportionately bearing the brunt of the pandemic's health and economic impacts. These communities often face higher rates of exposure to air pollution, inadequate access to healthcare, and socioeconomic factors such as poverty and unemployment that increase their vulnerability to the virus.

Addressing patterns of environmental injustice requires a multi-faceted approach that addresses the root causes of systemic inequality and empowers marginalized communities to advocate for their environmental rights and protections. This includes promoting policies and initiatives that prioritize the health and well-being of communities most affected by environmental racism, investing in sustainable and equitable development initiatives, and fostering community-led solutions to environmental challenges.

In the end, combating patterns of environmental injustice necessitates an all-encompassing and intersectional strategy that takes into account how power, gender, class, and race intersect to shape these patterns. We can all live in safer, healthier, and more sustainable communities if we address environmental racism head-on and strive towards a more fair and equitable future.

Health impacts of Environmental Racism:

The health impacts of environmental racism represent a profound and deeply entrenched form of injustice, disproportionately affecting marginalized communities, particularly communities of color and low-income populations. Environmental racism refers to the systemic discrimination and exploitation that result in the disproportionate siting of environmental hazards, pollutants, and risks in these communities, leading to a variety of adverse health outcomes and disparities.

The higher risk of exposure to environmental risks and contaminants is one of the main health effects of environmental racism. Communities of color are more likely to reside close to sources of pollution, such as industrial sites, hazardous waste disposal sites, and transportation corridors. This puts locals at risk for higher levels of air and water pollution, hazardous chemicals, and other environmental hazards, as studies have repeatedly demonstrated. Numerous health issues, including cancer, heart disease, neurological disorders, and respiratory ailments, might result from this exposure.

The health impacts of environmental racism are not limited to physical health but also extend to mental health and well-being. Living in environments characterized by pollution, environmental degradation, and social disinvestment can contribute to stress, anxiety, depression, and other mental health disorders among residents. The cumulative effects of chronic exposure to environmental stressors, coupled with social and economic disparities, can erode community cohesion, social support networks, and overall quality of life.

Addressing the health impacts of environmental racism requires a comprehensive and intersectional approach that addresses the underlying drivers of inequality and promotes health equity and environmental justice.

[3] Natural England Commissioned Report NECR273 https://publications.naturalengland.org.uk/file/5425667586129920 (last visited June 4, 2024).

This includes implementing policies and initiatives that prioritize the health and well-being of communities most affected by environmental racism, investing in sustainable and equitable development initiatives, and fostering community-led solutions to environmental challenges.

According to research, there is a larger correlation between environmental risks and race than there is between them and money, indicating that environmental inequality is predominantly a racial issue[4]. The burden of environmental pollution is 28% higher for persons of color and 35% higher for those living in poverty overall, with Black people bearing a load that is 54% more than that of the general population[5].One well-known instance of environmental racism in the United States is the Flint water issue. To save money, the city of Flint, Michigan, switched to the Flint River as its water source in 2014. However, the water supply was not properly treated[6]. As a result, lead and other pollutants as well as pathogens like Legionella and Escherichia coli were exposed to the city's 100,000 citizens, most of whom were Black[7]. The citizens' health suffered as a result of the water's bad quality, which made it smell bad and get discolored.Globally, environmental racism is a problem as well. For example, improper disposal of end-of-life electronic trash, or "e-waste," might represent a risk. Nonetheless, a lot of nations send 75–80% of their e-waste to Asia and Africa in order to dispose of it. Health issues arise as a result of this practice's exposure of communities of color in these nations to hazardous compounds. Another instance of environmental racism on a worldwide scale is the 1984 tragedy in Bhopal, India, where a Union Carbide pesticide facility discharged 27 tonnes of methyl isocyanate gas. Over 120,000 individuals developed health issues and 25,000 people died as a result of the leak's deadly vapour.[8]. Union Carbide failed to maintain the facility, which led to the catastrophe[9]. The company also declined to appear in court and never cleaned up the site[10].The type of racial inequity that exists both in the United States and internationally is environmental racism. Communities of color are particularly vulnerable to the negative health consequences of ecologically toxic plants and chemicals, which frequently result in cancer, respiratory ailments, and other diseases. In order to combat environmental racism and advance racial equality, both national and international action is needed. In conclusion, communities of color are disproportionately impacted by environmental racism, which is a serious public health concern.[11]. These settlements' closeness to dangerous surroundings raises the concentration of contaminants in the air, water, and soil, which can result in health issues including cancer and respiratory ailments. Environmental racism is a worldwide problem as many nations dispose of their e-waste by sending it to Asia and Africa, where it exposes populations of color to hazardous toxins. In order to advance racial equality and safeguard the health of communities of color, combating environmental racism necessitates international and national action.

Intersectionality and Environmental Justice:

Intersectionality and environmental injustice are deeply intertwined concepts that illuminate the complex and multifaceted nature of social inequality and discrimination. Intersectionality, a concept developed by legal scholar Kimberlé Crenshaw, acknowledges that people are subject to a variety of overlapping types of privilege and oppression depending on their social identities, such as race, gender, class, sexuality, disability, and immigration status. When applied to the context of environmental injustice, intersectionality reveals how various dimensions of identity intersect to shape experiences of environmental harm, vulnerability, and resilience among marginalized communities.[12]

One of the key insights of intersectionality is that environmental injustice cannot be understood solely through the lens of race or class but must take into account the intersecting dynamics of power and privilege

---

4 Helen Millar, *What is environmental racism?* MEDICAL NEWS TODAY (June 5, 2024), https://www.medicalnewstoday.com/articles/environmental-racism

5 Ibid.

6 Ibid.

7 Ibid.

8 Ibid.

9 Ibid.

10 Ibid.

11 Ibid.

12 Ye Zhang, *An Intersectional Analysis of Social and Environmental Injustice Experienced by Migrant Women Workers in China: The Case of Guiyu*, 29 (2020),https://acuresearchbank.acu.edu.au/download/50d3d8a7a0c24b1b1a28b9a7adfbe282764d3639e41d134429ad9735da5af2b8/5216936/Zhang_2020_An_intersectional_analysis_of_social_and.pdf.

that shape experiences of oppression and marginalization. For example, Indigenous women may experience environmental racism differently from Indigenous men due to their unique roles as caregivers, knowledge holders, and land defenders within their communities. Similarly, LGBTQ+ communities may face unique environmental health risks related to discrimination, stigma, and social marginalization.[13]

Intersectionality also underscores the interconnectedness of social, economic, and environmental systems and the ways in which they intersect to shape patterns of inequality and injustice. For example, gentrification and urban redevelopment projects may displace low-income communities of color from their neighborhoods, leading to the loss of affordable housing, cultural displacement, and increased exposure to environmental risks. Similarly, immigration policies and border enforcement practices may exacerbate environmental vulnerabilities among immigrant communities, leading to barriers to accessing healthcare, education, and social services.

Addressing intersectionality and environmental injustice requires a holistic and intersectional approach that takes into account the intersecting dynamics of race, class, gender, sexuality, and other social identities. This includes implementing policies and initiatives that prioritize the needs of marginalized communities, investing in community-led solutions to environmental challenges, and fostering partnerships and collaborations across sectors and disciplines. Moreover, centering the principles of equity, justice, and solidarity is essential for dismantling the systems of oppression and inequality that underlie environmental injustice and building more just and sustainable futures for all.[14]

Conclusion

Environmental racism is a pervasive and systemic form of injustice that disproportionately exposes marginalized communities, particularly communities of color and low-income populations, to environmental hazards, pollutants, and risks. This phenomenon reflects deep-rooted inequalities in decision-making processes, resource allocation, and access to environmental resources and protections, perpetuating cycles of environmental degradation and social injustice. Understanding the dynamics of environmental racism and implementing strategies to address its root causes are essential steps toward building more equitable and sustainable societies.

At its core, environmental racism is characterized by the unequal distribution of environmental benefits and burdens along racial and socioeconomic lines. Historically, communities of color have been subjected to discriminatory land-use policies, zoning practices, and industrial siting decisions that have relegated them to areas with higher levels of pollution and environmental hazards. For example, toxic waste sites, hazardous facilities, and polluting industries are often located in or near predominantly Black, Indigenous, and Latino neighborhoods, exposing residents to higher levels of air and water pollution, toxic chemicals, and other environmental risks.

The health impacts of environmental racism are profound and far-reaching, contributing to higher rates of respiratory illnesses, cancer, cardiovascular diseases, and other adverse health outcomes among residents of affected communities. Moreover, environmental racism intersects with other forms of social inequality and discrimination, exacerbating disparities in relation to healthcare, housing, education, and economic opportunity. These intersecting dynamics compound vulnerabilities and reinforce cycles of poverty, inequality, and environmental degradation.

Addressing environmental racism requires a multifaceted and intersectional approach that tackles its root causes at the systemic level while empowering affected communities to advocate for their rights and protections. Here are some recommendations to curb environmental racism:

***Community Empowerment and Participation*:** Empower affected communities to participate in decision-making processes, advocate for their environmental rights, and mobilize for change. Support community-led initiatives and grassroots organizations working in order to combat environmental racism and advance environmental justice.

---

[13] London Environmental Network, https://www.londonenvironment.net/environmentalism_in_action_environmental_justice_and_intersectionality (last visited June 6, 2024).

[14] Victor, *supra* note 2.

***Equitable Planning and Development*:** Implement land-use policies, zoning regulations, and urban planning practices that prioritize equity, justice, and sustainability. Ensure that development projects are guided by principles of community benefit, social inclusion, and environmental protection, rather than perpetuating patterns of environmental injustice and displacement.

***Environmental Health Monitoring and Assessment*:** Invest in comprehensive environmental health monitoring and assessment programs to identify and address environmental hazards and risks in marginalized communities. Provide resources and support for community-based research initiatives that document the impacts of environmental racism on health and well-being.

***Policy Reform and Advocacy*:** Advocate for policy reforms at the local, state, and federal levels to address the root causes of environmental racism and promote environmental justice. Support initiatives to strengthen environmental regulations, improve enforcement mechanisms, and hold polluters accountable for their actions.

***Environmental Education and Awareness*:** Raise awareness about the intersecting dynamics of race, class, gender, and environmental injustice through education, outreach, and public awareness campaigns. Foster dialogue and collaboration among diverse stakeholders, including policymakers, community members, academics, and environmental advocates.

***Investment in Sustainable Infrastructure*:** Invest in sustainable infrastructure projects that prioritize the needs of marginalized communities and promote equitable access to clean air, clean water, green spaces, and healthy environments. Support initiatives to improve access to public transportation, affordable housing, renewable energy, and green jobs in underserved areas.

By implementing these recommendations and adopting a holistic approach to addressing environmental racism, we can work towards building more just, equitable, and sustainable communities for all. It is essential to recognize that environmental justice is inherently linked to broader struggles for social justice and human rights and that combating environmental racism requires collective action and solidarity across diverse movements and communities. Together, we can build a world in which every individual is entitled to a healthy, safe, and sustainable environment, regardless of race, class, gender, or other social identities. Top of Form

* * * *

BLANKET BAN ON INSIDER TRADING, WHAT ARE WE LOOSING?

Sarthak Sharma *
Devanshi Srivastava **

Abstract

Insider Trading is not a new term in the contemporary world. The United States is the pioneer when it comes to establishing acts relating to Insider trading. The Securities Act, of 1933, which was further amended in 1934 to become the Securities Exchange Act, of 1934 was the first measure taken by any country for prohibition of Insider trading. This was about the Great Depression that was prevailing in the U.S. back then. In India, Insider trading became an imperative issue by the late 1940's. This paper discusses the evolution of India's position from being an ingenuous nation in terms of implementation of Acts and legislations to a state with stringent and concise Laws about Insider trading with bare minimum loopholes present. Such a comparison also requires the readers to go in-depth about the prevailing Regulations with various case laws that have evolved in India. Though all the above-mentioned aspects are covered, the main aim of this paper is to change the negative connotation attached to the word "Insider trading" that gets encapsulated in a person's mind as soon as they hear the word. There has been ample research that provides evidence of the fact that there are advantages of having some form of regularized insider trading and a blanket ban on "Insider trading" is not the best way to go about it. This paper tries to prove the same with the help of some logical arguments that will apply to the Indian markets.

Rules & Regulations Present in India

India first became aware of insider trading in the 1940s. The 1948 Thomas Committee Report included examples of directors, agents, officers, and auditors holding strategic knowledge about the company's financial situation, including the amount of dividends to be declared, the issuance of bonus shares, and the status of a favorable contract that was pending public disclosure.

Thus, the Companies Act of 1956 was amended to include Sections 307 and 308. Section 307 required the firms to keep a register detailing the directors' ownership stakes in the business. The obligation of directors and those presumed to be directors under Section 308 is to disclose their ownership interests in the company. Subsequently, the Companies Amendment Act of 1960 expanded this mandate to include a company's managers' shareholdings. These clauses, however, were unable to stop insider trading, which allowed directors or managing agents who unfairly used inside information to get away with it. A significant obstacle was the lack of precise legislation in this area despite the Thomas Committee's recommendations.[1]

Then the 1979 report by the Sachar Committee paid attention to the fact that the auditors, corporate secretaries, and other personnel may possess price-sensitive information that could be used to manipulate stock prices, resulting in financial hardship for investors. The committee suggested that the Companies Act of 1956 be amended to limit or outlaw employee transactions and felt that Insider trading was not sufficiently addressed by Sections 307 and 308 of the Companies Act.

Various committees tried to explain Insider Trading via various definitions. For example, the Patel Committee in 1986defined it as "Trading in the shares of a company by the person who is in the management of the company or is close to them based on undisclosed price sensitive information regarding the working of the company, which they possess but which is not available to others". The Abid Hussain Committee then suggested in 1989 that SEBI create Regulations and governing rules to stop unfair deals, as well as that

* 3rd Year LLB, OP Jindal Global University, Sonipat, Haryana
** 5th Year BA. LLB., Delhi Metropolitan Education, Noida, Uttar Pradesh

1 Insider Trading in India, Legal Service India - Law, Lawyers and Legal Resources, https://www.legalserviceindia.com/article/l199-Insider-Trading.html (last visited Apr. 14, 2024).

insider trading be punished under both civil and criminal laws. After this only, SEBI (Insider Trading) Regulations, 1992 were enacted. On various occasions due to the various inadequacies presented in the Regulations, the 1992 SEBI Regulations have been amended multiple times. In 2002, 2003, 2008 and 2011. Finally in 2015, the Regulations[2] were completely overhauled. Currently, under the same Regulation, twelve Regulationsare present that comprehensively cover various definitions like UPSI, INSIDER TRADING, CONNECTED PERSONS, inter alia others. The latest amendment that took place to the 2015 Regulations was in 2022. The highlights of the amendment are the inclusion of Mutual funds under the ambit of Insider trading and non-allowance to communicate, provide, or allow access to any unpublished price-sensitive information to any person, including other insiders. These Regulations along with section 11 (defines 'prohibiting insider trading in securities' as an important function), section 12A (prohibits any person from engaging in insider trading), and section 15-G (defines the penalty for insider trading and says the involved person defined under this section) of the SEBI Act, 1992[3] Encompasses the current Rules and Regulations present in India about Insider Trading.

Problems with a Blanket Ban

Though on the face of morality, it seems correct to have a complete ban on insider trading in the Indian markets, it can be observed that the government on the pretext of maintaining a "level playing field" and "Investor faith" has long been accustomed to interfering in markets. However, after a deep analysis, two broadproblems can be carved out from such a practice.***The first problem is the absence of the aspect of Intention in the Legislature in the first place. Secondly, the problem is with the implementation of the ban that has been made***.

Starting with the first problem let's just start by asking ourselves a very simple question. Has it never been the case that any of us has been told a share name and has been given Information/Tip stating that the following share will have an increment? The reason for such an increment may/may not be essential for us, but somehow it has been assuredthat the price will increase. There are high chances, that by any means, we wouldn't be even familiar with a single employee in that company, butsomehow nowwe possessqualified information, that will surely affect the stock price.[4] Now, it is said that this is Unpublished price sensitive information (Hereinafter referred to as UPSI) and according to the (Prohibition of Insider Trading) Regulations, 2015 the concerned person will be called an "Insider" Now, how did you as an common individual receive such information? The answer is the high prevalence of the practice of Insider Trading, especially in our markets. But the main issue is not the practice per se, but the problem is that there is no source as such, from where we can say that the information is disseminated. In such circumstances, the idea of penalizing the mere communication of UPSI under Regulation 3 of SEBI (Prohibition of Insider Trading) Regulations, 2015 is something abstract. The problem in this example is that there is no end to this chain and how does an authority catch such a communication when it is a well-known law that the power to tap phones is something that is outside the powers of SEBI. Though the same has been recommended by the T.K. Vishwanathan committee under the Indian Telegraph Act 1885, [section 5(2)] only the central government has the power to wiretap in certain conditions like national security inter alia.[5]

The unintentional disclosure of UPSI by an individual with privileged access to such information can spread severe legal information not only for the unwitting disclosure but also for any third party who subsequently acts upon this information. For instance, consider a senior executive at a publicly traded company who, during a casual conversation at home, unintentionally reveals confidential details about an "impending merger" to a visiting relative. Should the relative, now be privy to this UPSI, engage in securities trading based on the disclosed information, and subsequently attract regulatory scrutiny, both the relative and the executive may face substantial legal consequences, including imprisonment. This scenario underscores the stringent enforcement mechanisms under securities Regulations such as the SEBI (Prohibition of Insider Trading)

---

2 SEBI | Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, Acts of Parliament, 1992 (India)

3 Securities and Exchange Board of India Act, 1992, section 11, 12-A and 15-G, Acts of Parliament, 1992 (India).

4 https://www.undervalued-shares.com/weekly-dispatches/should-insider-trading-be-legalised/ (last visited Apr. 14, 2024).

5 Centre declines SEBI's request to tap phones in insider trading cases: Report, Moneycontrol, https://www.moneycontrol.com/news/business/markets/centre-declines-sebis-request-to-tap-phones-in-insider-trading-cases-report-5737031.html (last visited Apr. 14, 2024).

Regulations, 2015. The legal doctrine of "tipper-tippee liability" states that both the tipper (the individual who discloses the info) and the tippee (the recipient of the information) can be held culpable if the tippee trades based on UPSI andthe tipper expected personal benefit, even if inadvertently derived. The problem in such a scenario is the absence of an intention and this scenarioprecedes logic as well,what the regulations have not taken care of is the absence of Intention in such a scenario. The problem is that the courts are adamant about not giving punishments in the absence of "Mens Rea". The same can be accepted as a general principle by looking at the plethora of precedents that the courts have established. In the case of Rakesh Aggarwal v. SEBI,[6] the Appellant had transferred shares via his brother, which was a pre-requisite for closing the merger deal with ABS Industries, held that the motive of the Appellant was not to earn profit but to close the merger & acquisition deal with ABS Industries, which was any day beneficial to the company itself. Similarly in the case of SEBI V. Abhijit Rajan[7], the punishment for selling shares of GIPL, as soon as a contract was allotted by NHAI was foregone because the CEO of the company i.e. Mr. Rajan had the sole intention to save the company from insolvency. The court looked at the aspect that Mr. Abhijeet had sold his shares at loss. This was enough to prove that the intention was not to earn profit but to save the company.

Now coming to the second problem, which deals with the more fundamental aspect, which the writer feels is the practical viability of such Regulations. As mentioned above, if a common person can receive such undisclosed information related to companies, one can any day understand the pervasiveness of the problem. One of the problems of implementation is the low conviction rate, the empirical data for the number of convictions in cases where there has been suspicion of insider trading is way too low. Not only this but the fact that under section 26 of the SEBI Act, the onus of filing a case is at the discretion of SEBI. So, an investor who is suffering doesn't have a remedy to court as a common law right. So, on a preliminary basis only, i.e. the number of cases that SEBI files are way too less than there should ideally have been. The annual report for 2020-21 shows that SEBI has been able to complete the investigation process in only 40 cases, a drop of 17 cases from the previous year.[8] The major factor on which SEBI can rely is circumstantial evidence, and the nature of such evidence is something that the court disregards because the onus is on the prosecution to prove beyond a reasonable doubt. Using the same example related to communication of UPSI, in such cases, it gets tough to find concrete evidence.The problem in this example is that there is no end to this chain and how does an authority catch such a communication when it is a well-known law that the power to tap phones is something that is outside the powers of SEBI. Though the same has been recommended by the T.K. Vishwanathan committee under the Indian Telegraph Act 1885, [section 5(2)] only the central government has the power to wiretap in certain conditions like national security inter alia.[9] Adding fuel to the fire is the manpower that SEBI has, it is ineffective in tackling the current situation. As of 31st March 2022, SEBI had 987 officers and the total number of companies registered in the stock market at that time was 7500+, this means that each officer has almost 8 companies, to keep vigilance upon.[10] Also, the current rewards that are present to the whistle-blowers are way too less i.e. 10% if we compare it to other countries like the USA which have capped the award to 30%.

Another point to address is the increasing costs of the company for complying with the Regulations that are present in the 2015 Regulations. This adds to the shoulders of the investors of the company. Regulation 8&9 of the 2015 Act specifically talks about the Code of Conduct and Code of Fair Disclosure. Now compiling this data of "connected persons" and employees of the company w.r.t to their shareholding patterns and sending it to the Central government adds up to the costs related to the corporate governance. Also, this will lead to an increase in share prices because it is only the investor who will bear the brunt of such costs. It could be argued that some companies may opt for an internal mechanism of compliance rather than the

---

6 Rakesh Aggarwal v. SEBI, 2020 SCC OnLine SAT 249

7 SEBI V. Abhijit Rajan2022 SCC OnLine SC 1241

8 A Flawed Exchange Board: The Need For Reforms In SEBI Part-II - THE CONTEMPORARY LAW FORUM, THE CONTEMPORARY LAW FORUM, https://tclf.in/2022/11/12/a-flawed-exchange-board-the-need-for-reforms-in-sebi-part-ii/ (last visited Apr. 14, 2024).

9 Centre declines SEBI's request to tap phones in insider trading cases: Report, Moneycontrol, https://www.moneycontrol.com/news/business/markets/centre-declines-sebis-request-to-tap-phones-in-insider-trading-cases-report-5737031.html (last visited Apr. 14, 2024).

10 Why SEBI is Failing at Regulating Insider Trading in India - IndiaCorpLaw, IndiaCorpLaw, https://indiacorplaw.in/2018/02/sebi-failing-regulating-insider-trading-india.html (last visited Apr. 14, 2024).

involvement of the government as such. What insider trading Regulation has led to instead is a cumbersome set of governance norms that burdens companies and their owners with additional costs and misleads the public by making them believe in fairness that doesn't exist in the way the protagonists claim.

Current Situation

Despite the stringent laws and Regulations that are present in our country, the influential and the powerful are still earning handsomely by exploiting the related provisions. We have hardly heard of Influential leaders, being in the news because of Insider trading, but how hard is it to be believed they never get Price sensitive information? Bringing the above example to light again, if you and I as common people can get information about companies, these leaders are in a way too advantageous position. So, the ones who have the requisite power are still reaping the benefits of this practice of insider trading and they are booking profits at an earlier stage. This contradicts the "Level playing field" concept that the government uses. The ones who are not privy to such Information, will either sell these shares at low prices or will get to know about the required information at a later stage when the prices would be too high. In both cases, the common individual is suffering anyway. The courts in the U.S. have had various cases in which convictions have been possible. A notable example is the case involving Rajat Gupta, (former board member of The Goldman Sachs Group, Inc). Mr. Gupta was convicted in 2012 for leaking confidential information regarding Goldman Sachs' earnings and an impending investment by Berkshire Hathaway to Raj Rajaratnam (fund manager at Galleon Group). Rajaratnam traded on this information, resulting in significant illegal profits. Gupta, despite not directly trading on the UPSI himself, faced imprisonment for his role in the dissemination of the information. This example elucidates that the legal framework imposes stringent duties of confidentiality and imposes severe penalties for breaches, whether intentional or unintentional. Butthe difference between the U.S Security and Exchange Commission and SEBI is the amount of power that the former has with regardsto phonetapping unlike SEBI, the U.S Security Commission has the support of various investigating agencies, like the Federal Bureau of America, which is certainly not the case in India. Also, as mentioned in section 26 of the SEBI Act 1992, the power to go to courts is not with the citizens. Whereas, in the U.S. individuals under Rules 10b-5 and Rule 14e-3 of Securities Exchange Rules, 1942 and Section 16-b and Section 20-a of the Securities Exchange Act can file a civil appeal, if they feel that their right has been infringed.

Conclusion

The judiciary and the legislature have taken active steps towards narrowing the ambit of Insider trading. The legislature through a 2017 amendment has repealed sections 194 & 195 of the Companies Act 2013, which means that that now private companies are outside the realms of insider trading. Also, section 458 of the same act, now stands repealed. This implies thatthere will be no criminal liability in the case of Insider trading, instead of this, as mentioned above, section 15G read with section 151 of the SEBI ACT, 1992 will be applicable and now defaulters will need to pay only monetary penalties prescribed. Similarly in the case of Shruti Vora v. SEBI[11], sharing of non-price sensitive information that was any-day available on internet through WhatsApp was not included in the ambit of Insider Trading.

If an analysis is done, it can be said that the courts and legislature are opting for a more liberal approach and penalties in the case of Insider trading are now very rare. When the legislature introduced the SEBI Act and other Regulations, the markets were volatile, liberalization had been newly instituted in our domain, and people were naïve and innocuous. It is high time that the markets should be opened, and the government should not interfere unnecessarily in the markets. Companies should be allowed to have Governance according to some standards but that should not be a fixed rule, which applies to every company. More emphasis should be given to the practice of people reaching SEBI to complain more and more, rather than SEBI intruding more in companies' day-to-day affairs. Such interventions will lead to unnecessary compliance costs and inefficient working, instead, a more liberal approach of opening insider trading laws is welcomed.

* * * *

[11] Shruti Vora v. SEBI, 2020 SCC OnLine SAT 470

EVOLVING CONTEMPORARY DYNAMICS IN INDIAN ARBITRATION LAW "ENFORCEABILITY OF EMERGENCY ARBITRATOR PROCEEDINGS"

Shiva Artatran Pawar *
Aakash Dubey **

Introduction to Emergency Arbitration

Background and Evolution of Emergency Arbitration

Emergency Arbitration (EA) has emerged as a crucial tool in international arbitration, especially for providing urgent interim measures before the establishment of the primary arbitral tribunal. The origins of EA date back to the early 2000s, as numerous international arbitration bodies began to include EA clauses in their regulations. For example, the ICC introduced EA provisions in 2012 through its amended arbitration rules[1].

In the Indian context, the significance of EA became prominent post the 2015 amendment of the Arbitration and Conciliation Act, aimed at enhancing the efficiency of arbitration.[2]. The act's alignment with the UNCITRAL Model Law provided a conducive framework for incorporating international practices like EA. However, the explicit recognition of EA in India came with the Supreme Court's decision in the Amazon.com case.[3], where the enforceability of an EA order under the Singapore International Arbitration Centre (SIAC) rules was upheld.

Definition and Scope of Emergency Arbitration

Emergency Arbitration refers to a process allowing parties to seek interim relief before the constitution of the regular arbitral tribunal. The EA's role is typically confined to granting provisional measures necessary to preserve assets, and evidence, or maintain the status quo until the main tribunal is formed.

In India, the Arbitration and Conciliation Act does not explicitly mention EAs, but courts have begun acknowledging their importance. A notable instance is the Bombay High Court's decision in HSBC v Avitel.[4], which recognized and enforced an interim award by an EA under SIAC rules, reflecting a growing acceptance of EAs in Indian arbitration law.

Legal Framework and Jurisdiction

International Legal Framework

The realm of emergency arbitration is sculpted by the rules and regulations of various prominent international arbitration institutions. This framework is integral to understanding how emergency arbitration operates across different legal landscapes. Key players in shaping this framework include the ICC, the LCIA, and the SIAC, each of which has developed specific provisions for emergency arbitration.

Role of Major Arbitration Institutions

International Chamber of Commerce (ICC):[5] The ICC Arbitration Rules, particularly the amendments introduced in 2012, have been pivotal in institutionalizing emergency arbitration. These rules set out the procedures for the swift appointment of emergency arbitrators and delineate their powers and duties. The ICC's approach has been influential, emphasizing the importance of rapid response to urgent disputes while maintaining procedural fairness.

* 4th Year, BA LL.B (Hons.), Amity University Chhattisgarh, Raipur, Chhattisgarh
** 4th Year, BBA LL.B (Hons.), Amity University Chhattisgarh, Raipur, Chhattisgarh

1 2021 Arbitration Rules, ICC - INTERNATIONAL CHAMBER OF COMMERCE, https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/.

2 The Arbitration & Conciliation(Amendment) Act,2015, No.3, Acts of Parliament, 2016 (India)

3 Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd., (2022) 1 SCC 209.

4 HSBC PI Holdings (Mauritius) Ltd. v. Avitel Post Studioz Ltd & Ors.,(2023) 1 HCC (Bom) 79. [Please check this case once].

5 *Supra* note 1.

London Court of International Arbitration (LCIA): [6] The LCIA Arbitration Rules have also integrated emergency arbitration procedures, focusing on the efficacy and timeliness of interim relief. The LCIA's framework stands out for its emphasis on the arbitrator's ability to act swiftly and make decisions that can provide immediate relief, yet are cohesive with the overall arbitration process.

Singapore International Arbitration Centre (SIAC):[7]The SIAC Rules are particularly noteworthy for their detailed provisions on emergency arbitration, often cited in disputes involving Asian parties. These rules elaborate on the process for the appointment of emergency arbitrators and the scope of their decision-making powers, reflecting SIAC's commitment to providing effective interim measures in arbitration.

Influence of the New York Convention, 1958

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, is a cornerstone in the international arbitration landscape. It plays a crucial role in the enforcement of arbitral awards globally. However, its applicability to awards made by emergency arbitrators is a subject of ongoing legal discourse. The Convention, primarily designed for final arbitral awards, doesn't explicitly address interim decisions like those made in emergency arbitration. This gap has led to varied interpretations by courts worldwide, with some jurisdictions more readily enforcing these awards under the Convention's umbrella, while others express reservations due to their interim nature.

National Legislation Impacting Emergency Arbitration

The Arbitration and Conciliation Act, 1996: A Foundation with Gaps

The Arbitration and Conciliation Act, of 1996, is the cornerstone of arbitration law in India. Significantly amended in 2015 and 2019, this Act aligns India's arbitration framework more closely with the UNCITRAL Model Law, an international standard for arbitration laws. However, a notable gap in this Act is its silence on the concept of emergency arbitration. This omission has led to interpretative challenges and uncertainties, particularly concerning the jurisdiction and enforceability of decisions made by emergency arbitrators.

Jurisdictional Challenges

Indian courts have encountered several challenges due to the lack of explicit recognition of emergency arbitration in the Act. A seminal case highlighting these jurisdictional challenges is the Raffles Design International case.[8], adjudicated by the Delhi High Court. In this case, the court grappled with the question of whether an emergency arbitrator's award, being an interim measure, falls within the purview of enforceable arbitral awards under the Act. This case illustrated the initial hesitancy of Indian courts to fully embrace the concept of emergency arbitration, largely due to the absence of explicit legislative provisions.

Solutions and Adaptations

Despite these challenges, the Indian judiciary has shown a remarkable capacity to adapt to the evolving landscape of international arbitration. A turning point in this adaptation was the Supreme Court's decision on Amazon.com.[9]Case. In this landmark ruling, the Court upheld the enforceability of an emergency arbitrator's order passed under the rules of the SIAC. This judgment was significant for several reasons:

- It demonstrated the Indian judiciary's willingness to align with international arbitration standards, recognizing the practical realities and exigencies of international commerce.
- The decision paved the way for increased acceptance of emergency arbitration in India, bridging the gap between international practices and national legislation.
- It signaled a shift towards a more arbitration-friendly judicial approach, acknowledging the importance of interim measures in preventing irreparable harm in business disputes.

From the abovementioned, we can infer that the international legal framework for emergency arbitration, shaped by institutions like the ICC, LCIA, and SIAC, provides a robust yet evolving global standard, which intersects with national laws such as India's Arbitration and Conciliation Act. While international rules offer

---

6 LCIA Arbitration Rules (2020), The London Court of International Arbitration, https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx.

7 SIAC Rules 2016, Singapore International Arbitration Centre, https://siac.org.sg/siac-rules-2016.

8 Raffles Design International India Pvt. Ltd. & Anr. v. Educomp Professional Education Ltd. & Ors., (2016) 234 DLT 349.

9 Id.

detailed procedural guidance, the Indian legal system, through judicial interpretation and adaptability, bridges the gap left by its national legislation, reflecting a harmonious blend of global norms and local legal imperatives. This synergy underscores the dynamic nature of arbitration law, highlighting the balance between international best practices and the unique contours of national legal landscapes.

Procedure of Emergency Arbitration

Initiation AndAppointment of Emergency Arbitrator

The process of emergency arbitration typically commences with a party applying for emergency relief, which can be submitted alongside or shortly after the main arbitration request. The application is made according to the rules of the arbitration institution involved. Each institution, such as theICC, LCIA, orSIAC, has specific criteria for appointing emergency arbitrators, focusing on availability, expertise, and impartiality.

In India, while the Arbitration and Conciliation Act, of 1996, does not explicitly provide for emergency arbitration, the process is still accessible through international arbitration institutions that are commonly used in disputes involving Indian entities. In SIAC, for example, the appointment of an emergency arbitrator is typically completed within one day of receiving the application for emergency relief.

Conduct of Proceedings

Timelines and Efficiency

Emergency arbitration is characterized by expedited proceedings. Decision timelines vary by institution but are generally quick, such as the 14 days in ICC or 15 days in SIAC. This rapid process ensures timely relief to prevent to sustain the current state of affairs or avoid irreversible damage until the main tribunal is established.

The procedure includes a condensed version of standard arbitration processes, involving the submission of written statements and documents, and sometimes a brief oral hearing. The emergency arbitrator must ensure a fair and efficient process, balancing the urgency of the matter with the parties' rights to be heard.

In India, the Bombay High Court's recognition and enforcement of an emergency arbitrator's decision in HSBC PI Holdings[10]case showcased the acceptance of these expedited procedures, aligning with international practices despite the absence of explicit provisions in domestic legislation.

Enforceability of Decisions by Emergency Arbitrators

The discourse on the enforceability of decisions rendered by emergency arbitrators strikes at the heart of the evolving arbitration landscape in India. This chapter delves into the intricate legal and practical aspects that shape this crucial element of arbitration law.

Legal Basis for Enforceability

Globally, the enforceability of decisions by emergency arbitrators hinges on the recognition granted by international legal instruments and domestic legal frameworks. The New York Convention, 1958, stands as a cornerstone for the enforcement of arbitral awards. However, the Convention's application to emergency arbitration awards, given their interim nature, sparks nuanced legal debates and interpretations across different jurisdictions.

In the Indian context, the Arbitration and Conciliation Act, of 1996, governs arbitration proceedings but does not explicitly mention emergency arbitrators, creating a unique interpretative challenge. The Act's alignment with the UNCITRAL Model Law provides a foundational framework, yet the specifics of incorporating emergency arbitrator decisions necessitate judicial interpretation and guidance.

Comparative analysis of Enforceability in different Jurisdictions

The approach to the enforceability of emergency arbitrator awards varies across jurisdictions, reflecting diverse legal traditions and arbitration practices.

Challenges in Enforcement

One of the primary challenges in enforcing these awards is their interim nature. Unlike final awards, emergency arbitrator decisions are intended as temporary measures until the constitution of the main arbitral tribunal.

[10] *Supra* note 4.

This interim status raises questions about their binding effect and enforceability under traditional arbitration law paradigms.

In India, before key judicial interpretations, there was uncertainty regarding the status of emergency arbitrator awards. This uncertainty stemmed from the lack of explicit recognition in the Arbitration and Conciliation Act and differing interpretations of how such awards fit within the broader framework of enforceable arbitration decisions.

Case Studies and Precedents

The Indian judiciary's approach to this challenge has been marked by a series of landmark decisions. The Supreme Court's judgment in Amazon.com[11] the case is particularly illustrative. In this case, the Court upheld the enforceability of an emergency arbitrator's order passed under the SIAC rules, despite the absence of explicit statutory provision for such arbitrators in Indian law.

Similarly, the Bombay High Court's decision in HSBC PI Holdings[12]case further solidified the position of emergency arbitrators within the Indian legal framework. The court enforced an emergency arbitrator's award rendered under SIAC rules, reinforcing the trend toward greater acceptance of these mechanisms.

Reflecting on the Indian context

The Indian legal system's evolving approach to the enforceability of emergency arbitrator decisions is a testament to its adaptability and responsiveness to the needs of modern arbitration practice. This evolution reflects a balance between adhering to international arbitration standards and addressing the unique characteristics of the Indian legal landscape.

From the abovementioned, we can infer that the journey towards the full recognition and enforcement of emergency arbitrator awards in India is characterized by a blend of challenges and progressive judicial interpretations. This journey not only mirrors the global arbitration narrative but also highlights the distinct path India is carving in its arbitration jurisprudence.

Critical Analysis and Future Perspectives

Unpacking The Effectiveness Of Emergency Arbitration

Emergency arbitration, a relatively recent addition to the toolbox of international arbitration, offers a rapid interim solution to parties in critical need. Its primary strength lies in its swift responsiveness, a crucial factor when immediate action is required to avert significant harm or maintain the status quo. This agility of emergency arbitration is particularly significant in a dynamic commercial world where delays can be costly.

A landmark moment in the Indian context was the Supreme Court's decision in the case of Amazon.com Case.[13]. This ruling was a turning point, showcasing the Indian judiciary's willingness to enforce orders by emergency arbitrators under international arbitration rules, such as those of the SIAC. This case underlines the growing acceptance and integration of global arbitration norms within the Indian legal system.

Navigating the Limitations: The Indian Scenario

Despite its advantages, emergency arbitration isn't a one-size-fits-all solution. Its biggest challenge stems from its very nature - being an interim measure. The decisions of emergency arbitrators often raise questions about their finality and enforceability, especially in jurisdictions where the legal framework, like India's Arbitration and Conciliation Act, 1996, doesn't explicitly recognize emergency arbitration.

The New York Convention of 1958, a pivotal global treaty for arbitral award enforcement, treads a fine line when it comes to emergency arbitration. The Convention doesn't specifically address the interim nature of these awards, leading to varied interpretations and applications across different legal systems.

The Indian Judicial Response and Future Pathways

In India, the initial hesitancy and uncertainty surrounding emergency arbitration awards have given way to a more embracing approach, as evidenced by the Supreme Court's judgment in the Amazon.comcase.[14]. This

[11] *Supra* note 4.
[12] *Supra* note 4.
[13] *Supra* note 4.
[14] *Supra* note 4.

judgment marked a critical shift, aligning India's arbitration practices with international standards. It signaled a judicial recognition of the practical realities of international business disputes and the necessity for rapid, interim relief mechanisms.

However, for emergency arbitration to reach its full potential in India, specific reforms are imperative. Primarily, the explicit acknowledgment of emergency arbitration in the Arbitration and Conciliation Act would provide a more robust legal foundation. Uniform guidelines and best practices across arbitration forums would enhance consistency and fairness, addressing one of the key concerns regarding the predictability of emergency arbitrator decisions.

Furthermore, educating legal practitioners and arbitrators in India about the nuances of emergency arbitration is crucial. Such initiatives would ensure informed application and interpretation, fostering a more arbitration-friendly environment in the country.

From the abovementioned, we can infer that India's journey in integrating emergency arbitration into its legal fabric is both complex and progressive. It's a narrative of adapting global standards while addressing the unique aspects of the Indian legal environment. The forward path involves a delicate balance of judicial interpretation, potential legislative amendments, and an overall alignment with international arbitration practices. This journey not only mirrors the global arbitration narrative but also underscores India's evolving role in the international legal arena.

Conclusion

The exploration of the evolving dynamics in Indian arbitration law, particularly concerning the enforceability of emergency arbitrator proceedings, unveils a nuanced landscape that is both evolving and adapting. This journey, marked by a transition from ambiguity to clarity, is reflective of a larger narrative where traditional legal frameworks intersect with the demands of a rapidly globalizing world.

The Indian legal system, historically rooted in its common law heritage, has shown a commendable capacity for adaptation, embracing global arbitration trends while retaining its unique legal ethos. The landmark judgments in Amazon.com[15]Case and HSBC PI Holdings[16]Cases are not just legal milestones; they represent a paradigm shift in the Indian judiciary's approach toward arbitration. These rulings underscore a growing recognition of the practicalities and exigencies of modern commerce, signifying a shift towards a more arbitration-friendly environment.

Looking forward, the trajectory of emergency arbitration in India seems poised for further growth and refinement. The intersection of judicial interpretation and potential legislative action promises to forge a more robust and sophisticated framework for arbitration. This evolution, however, is not without its challenges. It requires a delicate balance between adapting to global practices and addressing the unique contours of the Indian legal landscape.

In sum, we can infer that the integration of emergency arbitration into the Indian legal system is a testament to the system's dynamism and resilience. It reflects a broader commitment to upholding the principles of fairness and efficiency in dispute resolution while aligning with international arbitration standards. As India continues to emerge as a key player on the global stage, its journey in refining its arbitration law remains a critical element in its legal evolution, bearing implications far beyond its borders.

* * * *

[15] *Supra* note 4.
[16] *Supra* note 4.

RIGHT TO CLAIM COMPENSATION ON A CLAIM OF CIVIL CONTRACT IN INDIA : LEGAL DISCOURSE

Vaibhav Kartikeya Agrawal *

Abstract

The Specific Relief Act 1963 (hereinafter 'Act of 1963') provides provisions on the procedure for the lawful discharge of the terms of the contract. These provisions are ancillary to the provisions of the Indian Contract Act 1872 about the termsof the contract. This paper endeavors to contemplate the provisions of the grant of compensation if the defendant commits a breach of an obligation of the contract and the constitutionality of section 40 of the Specific Relief Act 1963 which creates a bar to such compensation. The paper is doctrinal and aims to affirm the general rules of the law of contract to protect the rights of the litigants in consonance with the principles of natural justice.

Keywords : ***Injunction; Compensation; writ jurisdiction; remedy in contracts; claim for civil damages.***

Introduction

The Specific Relief Act 1963 (hereinafter 'Act of 1963') provides provisions on the procedure for the lawful discharge of the terms of the contract. These provisions are ancillary to the provisions of the Indian Contract Act 1872 (hereinafter 'Contract Act 1872') about the terms of the contract. This paper endeavors to contemplate the provisions of the grant of compensation if the defendant commits a breach of an obligation of the contract and the constitutionality of section 40 of the Act of 1963 which creates a bar to such compensation.

Mandatory Injunction and the Rights to Claim Compensation under the Specific Relief Act

Chapter VII of the Act of 1963 provides provisions for injunctions. There are mainly four types of injunctions, i.e. temporary injunction, perpetual injunction, prohibitory or declaratory injunctions, and mandatory injunction. Section 39 of the Act of 1963 provides provisions for mandatory injunctions and states that the Courts are empowered to grant mandatory injunctions to prevent the breach of an obligation by the defendant. The Court is also empowered to simultaneously compel the performance of certain acts to prevent the breach. The text of section 39 of the Act of 1963 thus treads on the possibility of commission of a breach of contract by the defendant in the future course of the discharge of the contract. So, it confers a precautionary measure to prevent the commission of any breach.

Section 40 of the Act of 1963 empowers the Court to grant damages in addition to or in substitution for the grant of perpetual or mandatory injunction. However, sub-section (3) of section 40 of the Act of 1963 states that "The dismissal of a suit to prevent the breach of an obligation existing in favor of the plaintiff shall bar his right to sue for damages for such breach." This provision intends to affirm the order of the Court to grant or restrain a mandatory injunction to prevent the breach of an obligation existing in favor of the plaintiff. However, any such breach of an obligation is perfunctory, so the provisions of Section 40(3) of the Act of 1963 must be contemplated on the following grounds:

- The Courts are empowered to adjudicate within the bounds of the petition or civil suit filed beforethem and cannot traverse their jurisdiction beyond the circumstances envisaged therein.
- The plaintiff in a civil suit merely shows cases his stand on the circumstances of the case but cannot affirm or deny the probability of breach of contract by the defendant in the future.
- The Code of Civil Procedure 1908 provides the following remedies to the parties to the suitduring and after the judgment, i.e. the right to file a first appeal, Second Appeal, Reference, Review, Revision, or a Writ petition. "It is based on the principle that all men are fallible and judges are human beings who may

* **Student, (Course on The International Law in Action: The Arbitratrility of International Disputes),Leiden University, United Kingdom**

commit a mistake.[1] This dictum applies to all Judges from lowest to highest Courts."[2]

- Even if the remedies like appeal or revision are not tenable, the aggrieved party could require the Courts to exercise their powers of superintendence under Article 227 of the Constitution of India to remedy the defect.Further, section 151 of the Code of Civil Procedure 1908[3] Provides inherent powers of a civil Court.
- Section 20 of the Act of 1963 states that ifthe defendant commits a breach of the contract then the plaintiff could obtain substituted performance of the contract after giving a thirty days' notice and could recover the compensation for such breach and the expenses involved in substituted performance of the contract from the first defendant. Sub-section (2) of section 20 of the Act of 1963 provides that the only restraint to obtain compensation is that the plaintiff must not have rescinded and have obtained substituted performance of the same contract by the third contractor.
- Further, it is an established canon of civil law that a Courtcannot make a litigant suffer for its breaches. This is based on the maxim 'actus curiae neminemgravabit' which means that the act of Court should suffer no one'.
- The jurisdiction of a Court of law to obtain compensation for the alleged breach of contract by the opponent can always be availed because where there is a right, there is a remedy, i.e. 'ubi jus ibiremedium'.
- When the Court refuses to grant an injunction for breach of contract and later on there is a loss due to such breach, though the order of the Court of law is not reprimanded the party who suffers such breach, always retains the right to remedy or to require the Court to review its decision rejecting the grant of injunction. This proposition is affirmed by the general rules of the law of contract, particularly section 73 of the Contract Act 1872 which states that:

Compensation for loss or damage caused by breach of contract.—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained because of the breach.

Compensation for failure to discharge obligations resembling those created by contract.—When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation—in estimating the loss or damage arising from a breach of contract, the means that existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

- In *Rupa Ashok Hurra*v. *Ashok Hurra*[4] , Hon'ble Supreme Courtinnovated the remedy of curative petition which is not a statutory remedy but is available to the litigants on certain oblique circumstances for which the regular statutory remedies of appeal, review, or revision are not weighty enough. Some of the observations in the Hurra case are:

'The law existing in other countries is aptly summarised by Aharon Barak in his treatise thus:

"The authority to overrule exists in most countries, whether of civil law or common law tradition. Even the House of Lords in the United Kingdom is not bound any more by its precedents. The Supreme Court of the United States was never bound by its own decisions, and neither are those of Canada, Australia, and Israel."

To what extent the principle of stare decisis binds this Court, was considered in the case of Keshav Mills Co. Ltd. (supra). The question before a Constitution Bench of Seven learned Judges of this Court was: to what

---

1 C. K. Takwani, *Civil Procedure and Limitation Act, 1963*478 *(*15th ed. 2015, Eastern Book Company, Lucknow).

2 ibid.

3 Section 151 of the Code of Civil Procedure 1908 states that: "Saving of inherent powers of the Court: Nothing in this Code shall be deemed to limit or affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

4 WP(C)/ 509/1997 filed before the Hon'ble Supreme Court.

extent the principle of stare decisis could be pressed into service where the power of this Court to overrule its earlier decisions was invoked. The Court expressed its view thus:

"When this Court decides questions of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be the constant endeavor and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be erroneous, the Court must be satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case, it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions."

Justice Banerjee observed: "In my view, it is now time that procedural justice system should give way to the conceptual justice system and efforts of the law Court ought to be so directed. Gone are the days when the implementation of draconian systems of law or interpretation thereof were insisted upon - Flexibility of the law Courts presently is its greatest virtue and as such justice-oriented approach is the need of the day to strive and forge ahead in the 21st century."[5]

These observations elucidate that even the Hon'ble Supreme Court favours reviewing its decision according to the needs and circumstances of a particular case.

Thus, on the touchstone of these rationales, it can be inferred that if a Court refuses to grant a mandatory injunction to prevent the defendant from committing a breach of an obligation and the defendant subsequently commits any such breach, the plaintiff can file a petition to restrain from any latter breaches. However, for the breach already committed by the defendant, the plaintiff must be legally entitled to claim adequate compensation with or without interest according to the terms of the contract. Such an interpretation of section 40 of the Act of 1963 would firstly, save the essence and terms of the contract and secondly, would be in consonance with the principles of natural justice.

Conclusion

The right to judicial remedy against breach of a statutory or fundamental right is a recognized right in the civil law jurisdiction. Section 40 of the Act of 1963 states that if the Court refuses to grant a mandatory injunction to prevent the breach of an obligation which the plaintiff asserts, then the plaintiff is further restrained from claiming any compensation for the breach of such obligation in the future from the defendant. Such imposition of restraint on the right to claim compensation by section 40 of the Act of 1963 is arbitrary because it is based on the principle of foreseeability of breach rather than any commission of breach by the defendant. Further, the provision intends to restrain the plaintiff from claiming compensation against the commission of breach if the Court of law refuses to grant an injunction to restrain any such breach. Such a provision is therefore against the terms of general law of contracts and violates section 73 and section 26 of the Contract Act 1872. Therefore, the text of section 40 of the Act of 1963 must be reviewed and is liable to be expunged to protect the rights of the litigant and in the interests of justice.

* * * *

[5] Ibid.

CLIMATE LAWS MUST VALUE HUMAN RIGHTS

Cibi Chakkaravarthy J. *

Abstract

Climate change is one of the greatest challenges facing our planet today, and addressing it requires urgent action. Many governments have implemented new laws and regulations to reduce carbon emissions, promote renewable energy sources, and protect vulnerable ecosystems. While these measures are crucial for combating climate change, it is important to ensure that they do not come at the expense of basic human rights.

One of the key concerns with climate laws[1] is their potential impact on marginalized communities and vulnerable populations. For example, policies that restrict access to certain resources or industries may disproportionately harm low-income individuals and communities of color. Additionally, initiatives that aim to protect forests or water sources may infringe upon the land rights of indigenous peoples who have relied on these resources for generations.

Climate laws must be designed and implemented in a way that respects and upholds human rights. This means considering the potential social and economic impacts of these policies and ensuring that those most affected have a say in the decision-making process. It also means prioritizing the rights of individuals and communities who may be disproportionately impacted by climate change, such as those living in developing countries or on the frontlines of environmental degradation.

Origin of Human Rights

The concept of human rights[2] has deep historical roots, dating back to ancient civilizations such as Ancient Greece and Rome. However, the modern idea of human rights as universal, inherent rights that all individuals possess simply by being human has its origins in the 18th-century Enlightenment movement. The Enlightenment thinkers, such as John Locke, Jean-Jacques Rousseau, and Thomas Paine, emphasized the importance of individual freedoms and rights, laying the groundwork for the development of the modern human rights framework.

The Universal Declaration of Human Rights, adopted by the United Nations in 1948, is often considered a milestone in the history of human rights. It outlined a set of fundamental human rights that all people are entitled to, regardless of their nationality, ethnicity, religion, or any other status. Since then, various international treaties and conventions have further expanded and solidified the protection of human rights on a global scale.

While the concept of human rights has evolved, its origins can be traced back to ancient civilizations and have developed and expanded significantly in more recent history.

The Holocaust played a significant role in bringing out human rights by serving as a stark reminder of the consequences of unchecked discrimination, racism, and hatred. The horrors of the Holocaust highlighted the importance of protecting the fundamental rights of all individuals, regardless of their race, religion, or ethnicity.

The Holocaust led to the creation of international human rights laws and conventions, such as the Universal Declaration of Human Rights, which was adopted by the United Nations in 1948. These legal frameworks were designed to prevent future atrocities and ensure that all individuals are entitled to certain basic rights and freedoms.

* **1st Year, LLB, Rajiv Gandhi College of Law, Karnataka, Bangalore, India**

1 Grantham Institute, What is Climate Change Legislation, Explainers,4.Oct.2022, https://www.lse.ac.uk/granthaminstitute/explainers/what-is-climate-change-legislation

2 Marco Sutto, Human Rights Evolution, a brief history, Center of Excellence for Stability Police Units Magazine, pg.18,2019, https://www.coespu.org/articles/human-rights-evolution-brief-history#:~:text=Human%20Rights%20have%20continued%20to,Convention%20Relating%20to%20the%20Status

The memory of the Holocaust has served as a powerful symbol of the need to combat intolerance and promote understanding and acceptance among different groups. By remembering the atrocities of the Holocaust, people are reminded of the importance of upholding human rights and standing up against discrimination and hatred in all its forms.

The Holocaust played a critical role in increasing awareness of human rights issues and inspiring efforts to protect and promote the rights of all individuals, regardless of their background. It serves as a reminder of the consequences of allowing human rights abuses to occur and the importance of actively working to prevent such atrocities from happening again.

International Bill of Human Rights

The International Bill of Human Rights is a set of international documents and treaties that outline the fundamental rights and freedoms that all individuals are entitled to. It consists of three main instruments:

Universal Declaration of Human Rights (UDHR) - adopted by the United Nations General Assembly in 1948, the UDHR proclaims the basic rights that all human beings are entitled to, regardless of their race, sex, nationality, religion, or any other status.

International Covenant on Civil and Political Rights (ICCPR) - adopted in 1966 and entered into force in 1976, the ICCPR enshrines the rights to freedom of expression, religion, and assembly, as well as other civil and political rights.

International Covenant on Economic, Social, and Cultural Rights (ICESCR) - also adopted in 1966 and entered into force in 1976, the ICESCR recognizes the rights to education, health, work, and an adequate standard of living.

Together, these documents form the basis of international human rights law and are considered essential in protecting the dignity and worth of every individual.

India is a signatory.[3] to the UDHR and is therefore obligated to uphold the human rights principles and values outlined in the declaration. Additionally, India is also a party to various international human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which further outline the human rights obligations that India must adhere to.

Environmental Rights and Human Rights are interconnected

Environmental rights[4] and human rights are interconnected because a healthy and sustainable environment is essential for the realization of human rights. The right to a clean and safe environment is necessary for the protection of human health, livelihoods, and overall well-being. Environmental degradation can have a detrimental impact on human rights, such as the right to life, health, food, water, and livelihood.

Furthermore, marginalized and vulnerable communities often bear the brunt of environmental degradation and climate change, leading to violations of their human rights. For example, indigenous communities are often disproportionately affected by deforestation, pollution, and land grabbing.

Conversely, respecting and protecting human rights can also contribute to environmental protection. Ensuring the rights of communities to participate in decision-making processes, access to information, and access to justice can help hold governments and corporations accountable for their environmental impact.

In conclusion, environmental rights and human rights are interconnected and must be upheld and protected together to ensure a just and sustainable future for all.

***In the case of Ranjitsinh vs Union of India(2024)*[5]**, the Supreme Court of India held that a clean environment is a fundamental human right guaranteed under Article 21 of the Constitution, which protects the right to life and personal liberty.

---

3 Drishti, Human Rights,22.Dec.2022, https://www.drishtiias.com/to-the-points/Paper2/human-rights-22

4 UN Environment Programme, Explore Topics, What are Environmental Rights,https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what

5 M.K.Ranjitsinh vs Union of India,(21.Mar.2024)India Kanoon.

The court recognized that environmental pollution and degradation can have a serious impact on the health and well-being of individuals, as well as on the overall quality of life. Therefore, ensuring a clean and healthy environment is essential for the protection of human rights.

The court also emphasized the importance of sustainable development and the need to strike a balance between economic development and environmental conservation. It held that the government must protect and preserve the environment for the benefit of present and future generations.

The judgment in*Ranjitsinhvs Union of India* reaffirms the importance of environmental protection as a fundamental right and sets a precedent for holding the government accountable for ensuring a clean and healthy environment for all citizens.

Stability of Country Falls, when Human Rights are ignored

When governments ignore or violate the rights of their citizens, it can lead to widespread dissatisfaction, anger, and protests. If these grievances are not addressed, they can escalate into more serious forms of resistance, including civil war.

Civil war is often the result of deep-seated grievances and injustices that have been ignored or repressed for a long time. When people feel that their basic rights and dignity are being trampled upon, they may feel that they have no other choice but to resort to violence to defend themselves and fight for their rights.

Historically, many civil wars have been sparked by government repression, discrimination, and human rights abuses. When people are denied their rights and freedoms, they may feel that they have no other option but to take up arms and fight for justice.

To prevent civil war and promote peace and stability, governments need to respect and protect the human rights of all their citizens. Treating all individuals with dignity and respect, upholding the rule of law, and addressing grievances peacefully and inclusively can help to build a more just and peaceful society.

Rwandan Civil War[6] took place because of ignoring the human right of freedom from discrimination[7] of a particular community.

The government's actions or policies that prioritized protecting the environment over human rights have played a role in fueling discontent and conflict.

Implementing strict environmental regulations that harmed local communities or marginalized certain groups in the name of conservation, has led to grievances and tensions. People felt that their rights were being violated or that they were being unfairly disadvantaged in the pursuit of environmental goals.

Most times Government without addressing concerns has used excessive force to suppress dissent, which eventually escalates tensions and ultimately sparks a civil war.

Governments need to strike a balance between protecting the environment and respecting human rights to avoid fueling conflict and instability. Sustainable development should consider the needs and interests of all people, and prioritize the well-being of both communities and the environment.

The 2022 Aragalaya protests[8] in Sri Lanka were primarily a response to the government's push for the use of environment-friendly natural fertilizers, specifically organic fertilizers, in agriculture. While the goal of promoting sustainable farming practices and reducing reliance on chemical fertilizers is commendable, the implementation of the policy faced backlash from farmers and others in the agricultural sector.

One of the main reasons for the protests was the lack of proper consultation with farmers and other stakeholders in the decision-making process. Many farmers felt that the government was imposing its agenda without considering their input or the practical implications for their livelihoods.[9]. Additionally, there were concerns about the availability and affordability of organic fertilizer, which could potentially increase the cost of farming and impact agricultural productivity.

---

6 University of Minnesota, College of Liberal Arts, Holocaust and Genocide Studies, Rwanda, https://cla.umn.edu/chgs/holocaust-genocide-education/resource-guides/rwanda#:~:text=When%20Rwanda%20gained%20independence%20in,context%20of%20a%20civil%20war.

Despite the environmental benefits of using natural fertilizer, the government's focus on this issue seemed to overshadow more pressing human rights concerns in the country. Sri Lanka has a history of human rights violations, including issues related to freedom of speech, press freedom, and the treatment of ethnic minorities. The Aragalaya protests highlighted the disconnect between the government's environmental policies and its responsibilities to protect the rights of its citizens.

The protests in Sri Lanka were a complex and multifaceted issue, driven by a combination of environmental concerns, economic considerations, and human rights issues. Moving forward, the government needs to engage in meaningful dialogue with stakeholders, address the concerns of farmers, and prioritize both environmental sustainability and human rights in its policies and decision-making processes.

Government of Sri Lanka's imposed ban on the importation of chemical fertilizers, pesticides, and herbicides by the Imports and Exports (Control) Regulation No 07 of 2021 on May 06, 2021[10].

This decision by the Sri Lankan government to ban the importation of chemical fertilizers, pesticides, and herbicides has had a significant impact on the agricultural sector in the country. Farmers who rely on these agrochemicals to boost their crop yields and protect their crops from pests and diseases struggled to find alternative methods to maintain their yields.

The ban has also led to a surge in the prices of food items in the country, as the reduced agricultural output is unable to meet the demand. This has had a ripple effect on the economy as a whole, with consumers feeling the brunt of the higher prices.

Furthermore, the decision to impose the ban without proper consultation with stakeholders in the agriculture sector has been criticized as hasty and ill-advised. Many farmers felt that the government had not provided adequate support or guidance on how to transition to more sustainable farming practices without the use of chemical inputs.

The ban on chemical fertilizers, pesticides, and herbicides sparked widespread protests and discontent in Sri Lanka, leading to calls for the government to reverse its decision. President GotabayaRajapaksa was forced to resign from his position due to widespread protests. The country on the whole came to a standstill, due to protests all over the country.

Human Rights, which Sri Lanka ignored [11] **while implementing the ban as per the International Bill of Human Rights are**

- ***Right to Health, Freedom from Hunger:*** By banning chemical fertilizers without suitable alternatives in place, the government of Sri Lanka has jeopardized the right to health and freedom from hunger of its citizens. Without proper fertilizers, crop yields decrease, leading to food insecurity and malnutrition.
- ***Right to Adequate Standard of Living:*** The ban on chemical fertilizers impacted the livelihoods of farmers who rely on these inputs to maintain their production levels. This led to a decrease in their standard of living and economic well-being. The Sri Lankan Government didn't weigh in on the impact it will lay upon the right to livelihood of its farmers. The right to livelihood comes under the right to an adequate standard of living.
- ***Right to Work:*** By implementing a ban on chemical fertilizers without adequate support for farmers to transition to organic methods, the government of Sri Lanka jeopardized the right to work of those in the agricultural sector.

---

7 United Nations Human Rights Office of The High Commissioner, What are Human Rights, International Bill of Human Rights,https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights

8 Nirupama Subramanian, The Indian Express, Explained, This word means Aragalaya,20.Jul.2022 https://indianexpress.com/article/explained/aragalaya-this-word-means-struggle-sri-lanka-gotabaya-rajapaksa-8039897/

9 Rohan Samarajiva, Colombo Telegraph, Government Has Not Done Its Homework On The Fertilizer, Pesticide & Weedicide Ban,5.May 2021, https://www.colombotelegraph.com/index.php/government-has-not-done-its-homework-on-the-fertilizer-pesticide-weedicide-ban/

10 Mariano J.Beillard,FAS.United States Department of Agriculture, Voluntary Report, Sri Lanka: Restricting Import of Fertilizers and Agrochemicals,3.Jun.2021

11 Australian Human Rights Commission, The International Bill of Human Rights, https://humanrights.gov.au/international-bill-rights

- ***Right to Information***[12] : The government's decision to ban chemical fertilizers without transparently communicating the reasons behind the move and without consulting relevant stakeholders violated the right to information of its citizens.

Addressing Climate Change

This requires a holistic approachthat takes into account the interconnectedness of environmental sustainability and human rights. By ensuring that climate laws are not above human rights, we can create a more just and equitable world for all.

This means prioritizing the voices and needs of those most impacted by climate change, such as marginalized communities, indigenous peoples, and low-income individuals. It means recognizing that environmental degradation disproportionately affects vulnerable populations and worsens existing inequalities.

Incorporating human rights principles into climate policy ensures that the transition to a low-carbon economy is done in a just and equitable manner. This includes ensuring access to clean air and water, protecting the rights of indigenous peoples to their lands and resources, and safeguarding the rights of workers in transitioning industries.

Addressing climate change through a human rights lens means holding corporations and governments accountable for their contributions to climate change and ensuring that those responsible for environmental harm are held accountable.

A holistic approach to addressing climate change that prioritizes human rights is essential for creating a more sustainable and equitable world for current and future generations. Only by recognizing the interconnectedness of environmental sustainability and human rights can we truly address the root causes of climate change and create a more just and resilient future for all.

* * * *

12 Janendra De Costa, Heinrich Boll Stiftung, Overnight conversion to 'exclusively organic agriculture' in Sri Lanka: How not to promote green technology, https://hk.boell.org/en/2022/05/30/overnight-conversion-exclusively-organic-agriculture-sri-lanka-how-not-promote-green

CONSTITUTIONAL SCRUTINY OF THE SURROGACY ACT : A GOLDEN TRIANGLE ANALYSIS

Niranjan Rao *

Abstract

The Surrogacy Act in India has been subject to legal scrutiny due to its failure to uphold fundamental rights and its discriminatory provisions. This paper employs the Golden Triangle Test, a framework rooted in constitutional principles of equality, liberty, and dignity, to analyze the Act. The argument posits that the Act's provisions are not in alignment with these constitutional principles and perpetuate discrimination.

This paper dissects the definitions of the act, particularly in terms of their inclusivity and adherence to constitutional mandates. We delve into how the Act's narrow definition of marriage violates Article 14 of the Constitution by excluding certain groups from accessing surrogacy services. Further, the paper examines how the Act's requirements to act as surrogates violate women's reproductive rights under Article 19 and Article 21.

Introduction

The Surrogacy (Regulation) Act, 2021 (Hereon, The Act), was introduced to regulate Surrogacy. The Act was intended to prevent and protect the socioeconomically challenged women from 'exploitation'. However, the constitutionality of the Act stands on shaky grounds. The Act, when scrutinized through the lens of the Golden Triangle Test, shows incongruence across the limbs of the test, rendering it unconstitutional.

Part I of this paper discusses the origins and importance of the Golden Triangle Test. Part II discusses the problem of under inclusion in the definition section of the Act. In Part III we discuss the asymmetrical application of the Act across diverse sections of the society. In Part IV Parochial Attitudes towards Evolving Social Relations in the society within the act are highlighted. Part V discusses the social and legal challenges that women are posed due to the Act, especially about requirements of blood tie in the act and the challenge to women's reproductive autonomy. Finally, we revisit the golden triangle test and discuss the act in light of its constitutional credentials.

Scope of Inquiry: Defining the Golden Triangle Test Vis-A-Vis the Surrogacy

The Golden Triangle Test (henceforth known as 'Test') deals with Articles 14, 19, and 21 of the Constitution. Article 14 of the Constitution ensures equality before the law and equal protection of the law. Article 19 encompasses various freedoms, including the protection of freedom of speech and expression, as well as the right to practice any profession or occupation. Article 21 guarantees the protection of life and personal liberty, the court through its judgments has held that it is a part of the Basic Structure of the Constitution.[1] . Together, these constitutional provisions form the foundation of fundamental rights, safeguarding individual liberties and ensuring equal opportunities for all citizens.

It has been reproduced in multiple judgments highlighting the determinative role they play in the construction of rights and obligations between the state and the citizen. Recognizing this, Maneka Gandhi,[2] The court stated:

"They weave a pattern of guarantees on the basic structure of human rights and impose negative obligations on the State not to encroach on individual liberty in its various dimensions'."

* **2nd Year LLB(Hons.), National Law School of India University, Bengaluru, Karnataka.**

1 Kamala Sankaran, "From Brooding Omnipresence to Concrete Textual Provisions: IR Coelho Judgment and Basic Structure Doctrine." Journal of the Indian Law Institute, 2007, pp. 245. <JSTOR, http://www.jstor.org/stable/43952108>. Accessed 14 May 2024.

2 Maneka Gandhi v. Union of India, (1978) 1 SCC 248

In the case of Minerva Mills Ltd. v. Union of India[3]the court identified the test for the first time. The case said Articles 14, 19, and 21 of the Constitution protect India's freedom, standing as pillars against the unchecked power of the state. Fundamental rights will be upheld while ushering in an egalitarian era without sacrificing liberty and equality, essential for preserving individual dignity.

These rights collectively form the golden triangle, serving as a benchmark for assessing the constitutionality of laws. Any law that does not align with this test, whether in its entirety or one aspect, is deemed unconstitutional. The court has consistently upheld Articles 14, 19(1)(g), and 21 as essential for individual liberty and freedom. Article 14 ensures the equal application of laws, Article 19(1)(g) guarantees the freedom to practice any profession within the limits of Article 19(2), and Article 21 protects the right to life, including the right to procreate and bodily autonomy.

Section 2 of the Act: Problem of Under inclusion.

Section 2 of the Act defines a Surrogate, an intending couple, as well as an intending 'woman'.[4] However, the scope of these definitions is narrow. The Act only accommodates couples who are medically certified to be infertile, and women who are widows or Divorcees of certain age groups.

The legislature's orthodox inclinations are visible in the Act. The construction of the Act holds within itself the assumptions of a homogenous and conservative society, leaving little space for the diverse social locations the actors of the statute hail from. The Legislature, by narrowing its scope of definition, excludes LGBTQ couples, Single parents, live-in partners, divorced, widowed women who are in the age groups not specified, and couples who suffer from medical conditions, where oocyte (immatureovum) production is unattainable. The Act mandated the necessity of using gametes from both intending couples. This would render a couple where one of them suffers from biological nonproduction of reproductive cells, ineligible for surrogacy. The legislature, through an amendment in 2023, fixed this problem, by removing the mandate that both the partner's gametes have to be necessarily used.[5].

The Court in its previous landmark decisions, had taken cognizance of the presence of the LGBTQ community by decriminalizing Section 377 of IPC.[6]. Likewise, another Judgment asserted the Bodily autonomy of women.[7] However, this liberal view which the court aims to produce, was sidestepped by the legislature using a technical ground. The technical ground of under inclusion, by limiting the definition of 'Intending couple'.

The state has no legal grounds for this asymmetric applicability of law. The exclusion has been addressed once in past years in the case of *ArunMuthuvel v. Union of India*[8]. The state submitted that all rules set out in the Act are done to *'nip the exploitation of women through the practice of surrogacy'*. This is an unqualified substantiation. The Act protects surrogates by placing *consent* at the core of the process. This can be observed, through the consent forms[9], which the state-mandated through a notification[10], to be submitted before the initiation of the procedure of surrogacy. The State, by offering no substantive grounds for the incursion of the rights of citizens, has violated Article 14 and Article 21. It has prevented citizens from enjoying life and exercising their liberty of the Right to reproduce. The court held in the case of SuchitaSrivastava v. Chandigarh Admn that a woman's right to make reproductive choices is a dimension of "personal liberty" under Article 21 of the Constitution. It is important to recognize that reproductive choices can be exercised to procreate as well as to abstain from procreating.[11]

---

3 Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625

4 The Surrogacy (Regulation) Act, 2021

5 The Hindu Bureau,(Karnataka High Court says surrogacy using donor gametes can't be prohibited as a condition in consent form),<https://www.thehindu.com/news/national/surrogacy-using-donor-gametes-cannot-be-prohibited-as-a-condition-in-consent-form-when-it-is-permit-by-rules-says-karnataka-high-court/article67557252.ece> Accessed-14 May, 2024

6 Navtej Singh Johar v. Union of India, (2018) 1 SCC 791

7 K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1

8 ArunMuthuvel v. Union of India, 2023 SCC OnLine SC 1903

9 Department of Health Research, Ministry of Health and Family Welfare,' Notification, New Delhi,21st June 2022, The gazette of India,<Dept of Health Research, Ministry of Health and Family Welfare,' Notification, New Delhi>, Accessed 14 May 2024.

10 Department of Health Research, Ministry of Health and Family Welfare,' Notification, New Delhi,14th March 2023', The Gazette ofIndia,<https://upload.indiacode.nic.inshowfile?actid=AC_CEN_12_72_00002_202147_1643711958603&type=rule& filename =the_surrogacy_amendment_rule,_2023.pdf> Accessed on 14 May 2024

11 SuchitaSrivastava v. Chandigarh Admn., (2009) 9 SCC 1

Asymmetrical Application : Narrow Definition of 'Marriage' and Violation of Article 14

The legislature in Act inadvertently creates a heteronormative Society, through its homogenizing force. The Act in Section 2(1)(r) has defined an Intending couple as, a *'couple who have a medical indication necessitating gestational surrogacy'*. Further, the Act has defined a couple, in Section 2(1)(h) of the Act as *'legally married Indian man and woman above the age of 21 years and 18 years respectively'*.

This definition of a couple excludes a large section of society. This includes the LGBTQ community, Live-In couples, and Single parents. These communities have been recognized by the courts in the past through their judgments, however their rights are not.

Marriage is a social institution. Through this, a union between two partners is granted legal recognition by the state.

The LGBTQ community has been circumscribed from access to such legal recognition. Live-In Couples, an institution that the court recognized through its decision, declared that such an institution, when registered, is valid. The scope of rights was expanded to include the rights of the children born out of such institutions, by granting them succession and property rights.

This circumscribing leads to the inability to fulfill the requirement of marriage, which is a non-negotiable prerequisite for availing the services of surrogacy. Therefore the provision operates in circular logic, where a certain group is disqualified from the conditionality demanded by the statute itself.

The Legislature iterated, through the Act, that divorced and widowed women shall be granted the right to avail surrogacy. However, it has curbed such a right inconspicuously. The legislature has placed an arbitrary age bar on these women, which ranges from 35 to 45. The age requirement has not been substantiated by the legislature, which leads to the conclusion that it is arbitrary. Mandating an age limit on society leads to the inference that anyone not fulfilling that condition has been expressly barred from availing of such services. This leads to a violation of Article 14 of the Constitution. The asymmetrical application of laws is in contravention of the spirit of the Constitution.

Parochial Attitudes toward Evolving Social Relations

The legislature by its narrow definition of 'Intending couple' is compelling the society to exist homogeneously. However, that stance is achieved at the cost of complete disregard towards heteronormative elements of society. The judiciary in its previous judgments has decriminalized Homosexual relationships and took cognisance of LGBTQ Group rights. However, the judiciary in the case Supriyo v. Union of India[12] recused from deciding on the matter of same-sex marriages, leaving it open to the legislature's decision. Disregarding this, the legislature has placed marriage as a core requirement, to avail surrogacy.

The conditions need to be analyzed for a better understanding of the current discussion. Marriage as a Right is not guaranteed, and the Right to reproduce[13] is guaranteed under Article 21. When these rights are juxtaposed next to each other and analyzed, the 'BUT FOR' Test demonstrates that, despite being guaranteed the right to reproduce, the condition of marriage has to be fulfilled. To break it down further, reproductive rights are guaranteed 'BUT FOR' reproductive rights to be exercised, Marriage is compulsory. However, marriage as a right is not guaranteed to all groups, leading this equation to a void. The result of such a failing equation would be depriving a marginalized group further, leading to hampered development.

The legislature has reiterated its notion of a homogenous society by restricting even, heterogeneous partners from availing surrogacy. Heterogenous couples, as defined by the act, under Section 4(iii)(c)(I), are intending couples, are the ones who are married and between the ages of 23 to 50 years in case of females, and between 26 to 55 years in case of a male, on the day of certification. The legislature has offered no substantial explanation for the arbitrary age bar on couples. Despite the couple fulfilling all other conditions, a heterogenous couple would be restricted from accessing Surrogacy services. This arbitrary bar would be a direct state interference with their Fundamental right guaranteed By Article 21. Furthermore, it would be a Violative Article 14, since the act applies to different sections of society in different ways.

---

[12] Supriyo v. Union of India, 2023 SCC OnLine SC 1348

[13] KGP v. PKP, 2019 SCC OnLineBom 5305

Forged in Blood: The Act and Its Challenge to Women's Reproductive Rights.

The Act, in Section 2(zg) defines a Surrogate mother. It specifies the condition that such a surrogate has to be genetically related to the Intending couple or the Intending woman. The legislature intends to curb commercial surrogacy and prevent the exploitation of socio-economically challenged women. Altruistic surrogacy is viewed as an alternative to Commercial surrogacy.

The legislature has viewed altruistic surrogacy as a solution to the problem. However, the legislature has been blatantly ignorant of such compulsion leading to problems. The availability of an altruistic surrogate in India is rare.[14] Additional conditions are defined in section 4 (III)(b)(1), a surrogate shall be a woman, who is married and has a child of her own, between the ages of 25 to 35. These conditions when applied to Indian society lead to a result of total unavailability of surrogate mothers. The Act, in pursuit of curbing commercial surrogacy, has rendered a solution, which appears to be created in a vacuum.

In pursuit of absolute restraint of commercial surrogacy, the act has total disregard for women.

The Constitution Under Article 19(1)(g), guarantees the Right to to practice any profession or to carry on any occupation, trade, or business. This right, though subject to reasonable restriction, is a fundamental right. In the case of *ChintamanRao v. State of M.P*[15], the Court held:

"Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality".

The legislature has the power to regulate fundamental rights, but such regulation should be reasonable. The regulation of fundamental rights could take a unique line of argument. Since the state has the power to regulate, it should also have a duty to develop the areas it has regulated. When applied to the current case, women are guaranteed their right under Article 19(1) (g) to practice the occupation they wish to. Rights are also guaranteed under Article 21 to bodily autonomy. The state has no power to regulate this right instead it must fasten the policy framework. The state must ensure surrogates have a level playing field to perform their occupation. A major problem is in contracts that bind and mediate the intending couple and surrogate, which the state fears would be 'exploitation' since surrogates, in most cases, are socioeconomically challenged women.[16]

The state is allegedly protecting them, by taking away their only mode of survival. This as a solution, seems to have been arrived at, with total disregard to the problem that it was aimed to solve. The state ought to take into consideration that women who choose to act as surrogates do so because of economic constraints. The state, by prohibiting commercial surrogacy, is propelling these economically challenged women deeper into the problem. The state has also regulated surrogacy only to the extent that underlying monetary exchange is eradicated. However, the very act of surrogacy is not prohibited, which means that the profession is not considered *Immoral*. Morality, as inscribed in the Constitution under Article 19(2), can be a ground for restricting rights guaranteed by Article 19(1). Further, leading to the reasoning, the state has no ground to curb the rights of surrogates, on the grounds of morality.

As inscribed in the Constitution under Article 19(2), Morality can be a ground for the state to curb the rights of a citizen. However, the subjectivity of the idea is never accounted for. Even, with subjective morality, the state has refused to recognize surrogacy as immoral. Since, the Act, still permits the procedure. Leading to the conclusion that it is a moral act and the State has no ground to curb it.

The state, through this act, aims to promote Altruistic surrogacy. However, the state seems to be oblivious to the problem of postpartum attachment issues. As explained by Amrita Pandey's work '*It May Be Her Eggs but It's My Blood*' the author discusses, using multiple real-life accounts of surrogates, how kinship ties are formed through shared bodily substances.[17] The surrogate nourishes the child through her blood before birth

---

[14] AMRITA MUKHERJEE, Why altruistic surrogacy is impossible in India <https://asiatimes.com/2016/11/altruistic-surrogacy-impossible-india/> Accessed 13 May 2024

[15] ChintamanRao v. State of M.P., 1950 SCC 695

[16] ArijeetGhosh, NitikaKhaitan, 'A Womb of One's Own: Privacy and Reproductive Rights',(2017), <https://www.epw.in/engage/article/womb-ones-own-privacy-and-reproductive-rights> Accessed 14 May 2024

[17] Amrita Pande, "It May Be Her Eggs But It's My Blood": Surrogates and Everyday Forms of Kinship in India." (Qualitative Sociology,2009),<https://link.springer.com/article/10.1007/s11133-009-9138-0> Accessed 14 May 2024

and through breast milk throughout the postpartum period. This according, to the authors, creates kinship ties between the child and the mother. If such an idea is used conflated with altruistic surrogacy, it creates complexities beyond resolution. Since, altruistic surrogates are the ones who are genetically related to the intending couple and the child so born, would be surrounded by family. The surrogate might suffer from attachment issues with the child. This can cause emotional burdens and stress in familial ties.

Conclusion

In conclusion, the analysis of the Surrogacy Act through the lens of the Golden Triangle Test reveals significant deficiencies in its alignment with constitutional principles of equality, liberty, and dignity. The Act's narrow definitions and discriminatory provisions undermine the fundamental rights of individuals involved in surrogacy arrangements.

The Act's failure to accommodate diverse family structures, its imposition of arbitrary restrictions, and its disregard for reproductive rights violate the constitutional guarantees enshrined in Articles 14, 19, and 21. By excluding LGBTQ couples, single parents, and others, the Act perpetuates discrimination and fails to provide equal access to surrogacy services.[18]

Furthermore, the Act's requirements for surrogates, as well, as other requirements, violate women's reproductive rights and infringe upon their bodily autonomy. To address these shortcomings, the legislature must undertake comprehensive reform of the Surrogacy Act. This includes broadening definitions to encompass diverse family structures, eliminating arbitrary restrictions, and safeguarding reproductive rights. Additionally, the legislature should consider the ethical and social implications of surrogacy regulations to ensure that any amendments promote the well-being and dignity of all parties involved.

* * * *

[18] Swati, Gola,' One step forward or one step back? Autonomy, agency, and surrogates in the Indian Surrogacy (Regulation) Bill 2019'. (International Journal of Law in Context 2021), 17(1), 58–74. <doi:10.1017/S174455232100001X> Accessed 14 May 2024

THE ROLE OF IPR IN PROMOTING INNOVATION IN RENEWABLE ENERGY TECHNOLOGIES

R. V. V. Siddartha *

K. Shanmukha Harshitha **

Abstract

This paper will consider the crucial part played by intellectual property rights (IPR) in the development and diffusion of renewable energy technologies. Solar, wind, and bioenergy, are made possible through renewable energy technology and are fundamental to sustainable development in the face of climate change. There is a sphere of IPR, which essentially includes patents, trademarks, and copyrights - a legal premise that allows its owners, whether IPR, inventor, or company, to have an incentive to invest in R&D.

The chapter begins with an analysis of the state advances in renewable energy technologies, which constitutes the groundwork of IPR significance. The chapter will examine how IPR can stimulate innovation through the granting of exclusive rights, incentivizing investment, and fostering the creation of technology transfer and licensing agreements. It also deals with the question of how to strike the right balance between protecting IPR and ensuring inexpensive and easy access to green technologies, especially in developing countries.

This work critically questions the role of rigid IPR in disseminating advertisements of renewable technologies in the paper. A thoughtful balance that encourages innovation. It also highlights the need to promote accessibility to these technologies. The article ends with recommendations to maximize the use of IPR for achieving technological advancements in renewable energy to help create 'renewable energy for all,' and contribute technology to global sustainability goals. This article aims to emphasize the need for an IPR system to address these ever-increasing intellectual property rights and to steer the transition towards a more sustainable future.

Introduction

Background

With the increasing demand for clean, renewable energy resources in India, many are willing to invest in the sector. They have been compounded by the supply chain distortions, the impacts of climate change, and a breakdown in global governance due to geopolitical conflicts such as the Russia-Ukraine war which reminds India of her fossil dependency on coal and oil. This issue highlights just how critical technological advancement in sustainable energy production is now. To foster the growth of this industry, the development of a robust intellectual property (IP) framework is necessary. The RDT case is not unique in that innovators often rely on intellectual property rights to protect and incentivize innovation in renewable energy technology. They ensure that companies and creators can keep their creations secure from unauthorized use, which helps foster more research and development.

With the increasing demand for clean, renewable energy resources in India, many are willing to invest in the sector. They have been compounded by the supply chain distortions, the impacts of climate change, and a breakdown in global governance due to geopolitical conflicts such as the Russia-Ukraine war which reminds India of her fossil dependency on coal and oil. This issue highlights just how critical technological advancement in sustainable energy production is now[1]. To foster the growth of this industry, the development of a robust intellectual property (IP) framework is necessary. The RDT case is not unique in that innovators often rely on intellectual property rights to protect and incentivize innovation in renewable energy technology. They ensure that companies and creators can keep their creations secure from unauthorized use, which helps

* **4th Year B.A. LLB., Damodaram Sanjivayya National Law University, Vishakapatnam, Andhra Pradesh**

** **2nd Year B.A.LLB., Damodaram Sanjivayya National Law University, Vishakapatnam, Andhra Pradesh**

[1] www.etenergyworld.com (2023) significance of ipr in safeguarding business goals of the renewable energy industry - ET energy world, ETEnergyworld.com. Available at: https://energy.economictimes.indiatimes.com/news/renewable/significance-of-ipr-in-safeguarding-business-goals-of-the-renewable-energy-industry/99737973 (Accessed: 11 June 2024).

foster more research and development. To ensure successful commercialization and alignment with the company's objectives, collaboration between business, technical, and IP legal professionals is essential for an effective IP strategy.

The protection of intellectual property rights, or IPR, is essential for encouraging innovation in renewable energy technology. Innovation Protection Rights (IPR) propel progress in solar, wind, and bioenergy by offering legal protection and financial incentives to corporations and inventors to invest in R&D. This study looks at how IPR promotes innovation, the difficulties it presents, and the requirement for a fair system that guarantees the availability of green technologies.

The realization of the enormous potential of clean, sustainable energy sources to fight climate change and supply the world's expanding energy needs is where the tale of IPR in renewable energy starts. Passionate about preserving the environment, innovators set out to create innovative technologies that combine the power of biomass, wind, and sun.[2]. The intellectual property rights (IPR) legal framework provides protection and encourages innovation. Companies and inventors are encouraged to invest in R&D by the exclusive rights that patents, trademarks, and copyrights grant to their creations. In addition to encouraging innovation, this protection guarantees that creators may recover their costs and make money off their innovations. IPR also encourages cooperation and technology transfer, which makes it possible for breakthrough technologies to spread quickly across national boundaries.

Types of Energy Sources

Solar Energy

Photovoltaic energy is another term for solar energy. Almost all energy sources on Earth come from the Sun, either directly or indirectly. The world's annual fossil fuel consumption is remarkably less than the amount of solar energy that the planet receives every minute. For a variety of applications, solar systems can produce fuels, electricity, heat, cooling, and natural lighting.

Every country may use direct solar energy to contribute significantly to its energy mix, even if each has a different amount of solar energy available to it. In the 1870s, a concentrated solar power system was created to power steam engines that pushed water using mirror lenses, marking the beginning of direct solar energy harvesting.

Wind Energy

Wind energy is the energy that is present in the motion of airwaves. It has historically been used in conjunction with specially designed tools and materials, such as mechanical propeller-like blades. Even though humans have been harnessing wind energy for thousands of years, technical advancements have led to a significant surge in wind power production in recent times. Of all the energy sources, wind energy has always expanded at the fastest rate. By 200 BCE, boats on the Nile were already being driven by the wind. The majority of the earth has adequate wind capacity to support sizable wind energy facilities, even though average wind speeds vary significantly between areas.[3]. Technically speaking, wind energy can produce more electricity than the entire world's electricity output.

Hydropower

Water energy is captured and used in hydroelectric energy generation, also known as large-scale hydroelectric dams. Systems that use run-of-the-river hydroelectricity harvest the kinetic energy of rivers and oceans without requiring a dam. Utilizing the energy of the tides, tidal power is a type of hydropower that produces electricity and other valuable energy. Tidal lagoons, barrages, and streams are the three different ways that tidal power can be produced.

The link between the kinetic and potential energies in tidal flows would be utilized by a hypothetical device akin to wind turbines. Utilizing the kinetic energy of moving water, tidal stream generators power turbines.

---

[2] Chattopadhyay, A., and Name (2022) *Role of IPR in the generation of renewable energy*, *IJPIEL*. Available at: https://ijpiel.com/index.php/2022/12/01/role-of-ipr-in-the-generation-of-renewable-energy/ (Accessed: 11 June 2024).

[3] *Intellectual property (IP) and the Renewable Energy Transition: Five critical IP issues* (no date) *Global law firm | Norton Rose Fulbright*. Available at:https://www.nortonrosefulbright.com/en/knowledge/publications/ab53b49a/intellectual-property-ip-and-the-renewable-energy-transition (Accessed: 11 June 2024).

As of right now, the most significant renewable energy source for electricity production is hydropower. It is, however, dependent on comparatively constant patterns of precipitation, and it may suffer from droughts brought on by climate change or from modifications to ecosystems that influence patterns of precipitation. There is a worry that ecosystems may be harmed by the infrastructure required to produce hydropower. As a result, many think that small-scale hydro is a better option for the environment and is especially appropriate for rural locations.

Biomass Energy

All organic resources other than those found on the earth that can be used to create energy are referred to as biomass. This comprises crop wastes grown especially for energy generation, animal manure, and wood and plant leftovers from commercial, industrial, and agricultural sources. There are three different kinds of biomass: liquid (biofuels), gaseous (biogases), and solid (straw, wood, etc.). Applications for biomass energy increased dramatically between 1860 and 2000.

By 1860, bioenergy was providing about 70% of the world's energy needs. But since 2000, this portion has decreased to around 10% of the whole. The production of products, energy, and organic molecules has increased despite this drop.

Geothermal Energy [4]

Geothermal energy is among the most cost-effective kinds of renewable energy. Geothermal power facilities, such as binary cycle, flash, and dry steam plants, use this heat to power turbines that produce energy. Apart from its use in power generation, geothermal energy finds application in direct heating of buildings, greenhouses, and industrial processes.

This energy source offers numerous benefits, including reduced greenhouse gas emissions, sustainability, long-term economic effectiveness, and a steady supply of electricity. However, several obstacles stand in the way of the widespread use of geothermal energy, including limited geographic application, high initial costs, and the need for sustainable resource management. But as technology advances, geothermal energy might end up playing a bigger and more widespread role in the global energy mix.

Intellectual property rights (IPR) in renewable energy

Intellectual property rights (IPRs) are rights to intangible assets that belong to an individual or business and are shielded against unlawful use. As a result, ownership and protection of intellectual works are covered by the rights associated with intellectual property. These rights protect intellectual property, which includes creations made by human intelligence, and allow owners to profit from their works. Copyright protection for different works, trademarks, and patents are a few examples of these rights.

Protecting discoveries—such as creative works and technical breakthroughs—is the main goal of intellectual property rights since they can spur economic expansion. Encouragement and assistance for research and development depend on the protection of intellectual property rights. A company or individual could not benefit from their work if it were not possible to protect their ideas and creations. This would slow down civilization's progress by creating discontent and a decrease in efforts in the vital area of research and development.

Types of IPR Relevant to Renewable Energy

Copyrights

By safeguarding software, technical drawings, engineering blueprints, and other creative works connected to renewable energy systems, copyright can tangentially aid in the advancement of renewable energy technologies. Copyright[5] promotes creativity and investment in the study and development of renewable energy sources by offering legal protection for these works.

---

[4] The Green Side of Intellectual Property and its Role in Energy Transition Innovation (no date) Dentons. Available at: https://www.dentons.com/en/insights/articles/2022/june/15/the-green-side-of-intellectual-property-and-its-role-in-energy-transition-innovation (Accessed: 11 June 2024).

[5] www.ETEnergyworld.com (2023) *Significance of IPR in safeguarding business goals of the renewable energy industry - ET energyworld*, *ETEnergyworld.com*. Available at: https://energy.economictimes.indiatimes.com/news/renewable/significance-of-ipr-in-safeguarding-business-goals-of-the-renewable-energy-industry/99737973 (Accessed: 11 June 2024).

Moreover, copyright promotes the distribution of knowledge and information about renewable energy technologies by permitting the publication of books, articles, and instructional materials. This could therefore encourage the growth and improvement of these technologies.

Open-source software and open-access scientific publications—many of which are published under copyright licenses—can help promote cooperation and knowledge sharing in the field of renewable energy. This could hasten the development and uptake of new technology, propelling the industry forward.

Patents:

Patents are essential for research and development because they provide businesses and inventors with a brief legal monopoly on their renewable energy ideas. They not only support progress but also mandate the exchange of technological data to make information more widely available. Furthermore, in the renewable energy sector, patents promote cooperation, cross-licensing arrangements, commercialization, and intellectual transfer. The continuous innovation and technological advancement enabled by patents greatly encourage the use of renewable energy sources.[6].

International Agreements and Treaties

The International Renewable Energy Agency (IRENA)

An intergovernmental body, IRENA assists nations in transitioning to sustainable energy sources for the future. Although IRENA is not a treaty, its initiatives support the adoption and sustainable application of renewable energy sources, such as geothermal, hydroelectric, solar, wind, and bioenergy.

United Nations Framework Convention on Climate Change (UNFCCC)

The UNFCCC aims to stabilize greenhouse gas concentrations in the atmosphere. While it does not focus exclusively on intellectual property rights (IPR), it indirectly influences the development and deployment of renewable energy technologies by addressing climate change.

Kyoto Protocol

The Kyoto Protocol, an expansion of the UNFCCC, sets mandatory emission reduction targets for developed countries. It encourages the adoption of renewable energy technology (RET) to accomplish these aims.

It is significant to remember that, despite the wide framework these agreements offer, country IPR protection and enforcement legislation may vary. Researchers, decision-makers, and creators need to understand these global frameworks as they negotiate the tricky world of intellectual property rights in the renewable energy industry.

The Role of IPR in the renewable sector [7]

IPR and Renewable Energy Technology

IPR promotes investment, innovation, and a just equilibrium between the rights of the individual and the good of the community. IPR will remain essential for the advancement of renewable energy technology as we move closer to a sustainable energy future.

International Patenting Trends in RET

The importance of patents in the development of renewable energy technologies (RETs) is demonstrated by research conducted by the International Renewable Energy Agency (IRENA). Data from patents can offer insightful information about the renewable energy industry, especially when new markets and technology are developed.

Research and Development (R&D) Incentives

Robust protection of intellectual property rights (IPRs) stimulates private research and development investment. When businesses are guaranteed exclusive rights as payment for their research efforts, they are

---

[6] Hawes, C.E. *et al.* (2024) *Intellectual property rights help accelerate innovation and creativity towards a sustainable future*, - *News*. Available at: https://www.morganlewis.com/news/2024/04/intellectual-property-rights-help-accelerate-innovation-and-creativity-towards-a-sustainable-future (Accessed: 11 June 2024).

[7] *Intellectual property (IP) and the Renewable Energy Transition: Five critical IP issues* (no date) *Global law firm | Norton Rose Fulbright*. Available at: https://www.nortonrosefulbright.com/en/knowledge/publications/ab53b49a/intellectual-property-ip-and-the-renewable-energy-transition (Accessed: 11 June 2024).

more likely to invest in clean energy. To encourage research and development of renewable energy technologies (RETs), governments may also provide grants or tax breaks.

Encouraging Competition

IPR ensures that innovators have an equitable chance to recover their investments, which promotes healthy competition. Then, rivals can expand on previously developed concepts, creating a dynamic market and steady, incremental progress.

IPR in solar technology

Encouraging Innovation in Solar Technology

Technological innovation and investment in R&D are critical to the advancement of solar technology, and intellectual property rights (IPR) promote these activities. Businesses and inventors are guaranteed to be compensated for their investments in novel discoveries because of patent protection. Improved photovoltaic cells and creative storage options are two examples of how this legal protection is propelling advancements in solar technology. Moreover, IPR encourages cooperation and knowledge sharing by facilitating the worldwide dissemination of cutting-edge solar technologies. IPR fosters the growth and adoption of solar energy, assisting in the transition to a sustainable energy future by finding a balance between protecting innovators' rights and guaranteeing inclusive access[8].

Role of IPR in Wind Turbines

In the wind energy sector, intellectual property rights, or IPRs, are essential because they safeguard ideas and provide capital for ongoing research and development. Patents protect inventors' financial gains by securing intellectual property about advanced materials, energy storage technologies, and turbine designs. By fostering a culture of continuous innovation, this protection raises output while cutting expenses. Furthermore, IPR facilitates knowledge sharing and international collaboration, which helps innovative wind energy technologies be adopted and distributed globally. Intellectual property rights (IPRs) are crucial for the advancement of wind energy and the global support of sustainable energy alternatives.

Challenges in balancing IPR and accessibility

Rapid technical progress, a variety of international markets, and the need for cooperation create serious obstacles for intellectual property rights (IPR) in the renewable energy industry. It is challenging to stay up to date with and safeguard discoveries due to the rapid speed of invention. Additionally, the intricacy of technologies like bioenergy, solar, and wind adds to the difficulty of the patenting procedure.

These difficulties are made worse by the diversity of global marketplaces since managing multinational corporations is made more difficult by the disparities in IPR laws and conventions between countries. Additional challenges faced by startups and smaller companies include the high expenses and resource requirements associated with obtaining and defending patents in many jurisdictions.

Complexity is increased further by acts and policies[9] of the government. Initiatives that support local manufacturing and intellectual transfer may conflict with patent holders' objectives. Moreover, patent value and enforceability may be impacted by policy uncertainty and modifications.

Achieving a balance between innovation and access is crucial for safeguarding the rights of inventors and guaranteeing the availability of key technology, especially in developing countries. To ensure that intellectual property rights (IPRs) do not impede the adoption of environmentally friendly technologies and to efficiently manage the obsolescence and lifecycle of continuously evolving ideas, the industry must also take sustainability and the environment into account.

International cooperation, uniform legislation, and policies that encourage both innovation and broad access to sustainable energy solutions are necessary to address these complicated concerns.

---

[8] *Intellectual property (IP) and the Renewable Energy Transition: Five critical IP issues* (no date) *Global law firm | Norton Rose Fulbright*. Available at: https://www.nortonrosefulbright.com/en/knowledge/publications/ab53b49a/intellectual-property-ip-and-the-renewable-energy-transition (Accessed: 11 June 2024).

[9] www.ETEnergyworld.com (2023) *Significance of IPR in safeguarding business goals of the renewable energy industry - ET energyworld*, *ETEnergyworld.com*. Available at: https://energy.economictimes.indiatimes.com/news/renewable/significance-of-ipr-in-safeguarding-business-goals-of-the-renewable-energy-industry/99737973 (Accessed: 11 June 2024).

Policy recommendations and suggestions

A diversified approach that strikes a balance between the requirement for broad adoption and sustainability and the protection of innovation is necessary to overcome the challenges presented by intellectual property rights (IPR) in the renewable energy sector. By harmonizing international laws governing intellectual property rights, cooperation between nations can expedite the patenting process and guarantee uniform standards. Ensuring that public-private partnerships and flexible licensing structures facilitate technological transfer and access—especially in developing nations—can guarantee that vital renewable technologies are broadly available. Incentives for R&D and cooperative platforms for information sharing can efficiently regulate intellectual property rights and promote innovation.

Regions with inadequate intellectual property rights (IPR) must fortify their legal frameworks and enforcement mechanisms to counteract counterfeiting and infringement. Improving local court systems' and patent offices' capabilities can help them handle more complex patents related to renewable energy. Open Innovation Models and IPR[10] Laws that put sustainability first can highlight the advantages for the environment and promote the sharing of important technologies, which will increase the acceptance and accessibility of green technologies. Patent bundling and financial support can alleviate the burden of patent application and maintenance, thereby addressing the cost and resource difficulties faced by small and medium-sized firms.

I propose, among other things, that the combined effects of intellectual property rights (IPR) and innovation in renewable energy be taken into account. Examine how patents encourage research and development (R&D) by providing a brief period of exclusivity. Additionally, consider the difficulties that may arise in poor nations due to limited access to patented technologies. Consider how IPR can promote cooperation and technology transfer as well, keeping in mind that strategic patenting carries a risk of stifling competition. Encourage the creation of a fair and equitable intellectual property rights (IPR) framework that safeguards innovators and guarantees the cost-effectiveness and availability of sustainable energy alternatives. Examine how IPR differs for various renewable energy technologies (such as solar vs. wind) and support your points with examples from real-world situations and professional viewpoints.

Conclusion

The promotion of innovation in the renewable energy sector is greatly aided by intellectual property rights (IPR). Intellectual property rights provide the framework within which R&D investment is encouraged by protecting the fruits of discovery and ensuring that firms and inventors can profit from their investments. This kind of protection fosters competition, which develops new and improved renewable energy solutions and lets technology grow. Effective IPR regimes also foster collaboration and technology transfer, making it easier for knowledge and ideas to be shared across national borders and industrial sectors. To promote global efforts to combat climate change and advance the green economy, IPR policies that strike a balance between the rights of innovators and the public interest can accelerate the adoption of sustainable technologies. Therefore, promoting an inventive, sustainable, and inclusive renewable energy sector requires a well-organized and internationally harmonized IPR framework.

* * * *

[10] *Intellectual property (IP) and the Renewable Energy Transition: Five critical IP issues* (no date) *Global law firm | Norton Rose Fulbright*. Available at: https://www.nortonrosefulbright.com/en/knowledge/publications/ab53b49a/intellectual-property-ip-and-the-renewable-energy-transition (Accessed: 11 June 2024).

NAVIGATING THE ARBITRABILITY OF INSOLVENCY DISPUTES

Thomas Paul Kanatt *
Farooq Al Rafeeq **

Abstract

The intersection of insolvency law and arbitration has emerged as a focal point in contemporary legal discourse, especially when derivative rights are entangled in the complexity of financial distress. As businesses increasingly operate across borders, the recognition and treatment of insolvency disputes within the realm of arbitration pose intricate challenges that demand scholarly scrutiny.

This research undertakes a comprehensive examination of the arbitrability of insolvency disputes, with a keen focus on cases involving derivative rights. Incorporating derivative instruments in financial transactions has added a layer of complexity to insolvency proceedings, raising questions about jurisdiction, enforceability, and the interplay between core and non-core issues.

The authors seek to explore how international and national legal frameworks grapple with these issues, seeking to uncover trends, gaps, and potential areas for improvement.

Additionally, the study will delve into the dynamics of enforcing derivative rights within insolvency disputes, considering the subtle distinctions between core and non-core issues. The role of derivative rights in insolvency proceedings, along with the delicate balance required for equitable resolution, will be a central theme.

Indian Framework in Arbitrability of Insolvency Disputes

Section 7 of the Arbitration and Conciliation Act, 1996 (*from now on "***ACA***"*) permits parties to submit disputes to arbitration that may arise between the parties.[1] The Act does not specifically delineate any disputes that can be considered non-arbitrable. However, a cursory understanding of insolvency and arbitration would leave us in a quandary as both the subject matters appear to be opposites. While arbitration law prioritizes a party-centered and decentralized approach, insolvency law is a self-contained and centralized legislation.

Further, as per Section 238 of the Insolvency and Bankruptcy Code, 2016 (*hereinafter "***Code***"*) the provisions of the Code would override all other laws. Therefore, in case any application under Section 8 of ACA is filed, the provisions of IBC would override all other provisions.

The Hon'ble Supreme Court has adjudicated whether certain disputes fall outside the scope of arbitration law in the case of *Booz Allen Hamiltonv.SBI Home Finance Ltd*. The Apex Court differentiated between 'right in rem' and 'right in personam' in arbitration where the former relates to rights against all persons at any time claiming an interest in the property while the latter relates to the right and interest of the parties involved in the subject matter itself.[2] All rights relating to rights in rem can only be adjudicated by courts and cannot be the subject matter of arbitration.[3] Under this, the Apex Court listed insolvency and winding up matters as topics that are non-arbitrable.[4]

In,*Indus Biotechv. Kotak India Venture,* the Court took up the specific question of whether insolvency proceedings can be arbitrated.[5]In its decision, theSupreme Court divided the proceeding in Section 7 of the Code into stages. UnderSection 7 of the Code, the corporate insolvency resolution process (*hereinafter "***CIRP***"*) can be initiated by submission of an application by the financial creditor.[6]In this phase, the

* 4th Year BA.LLB., National Law University, Jodhpur, Rajasthan
** 4th Year BA.LLB., National Law University, Jodhpur, Rajasthan

1 The Arbitration and Conciliation Act, 1996,§7, No. 26, Acts of Parliament, 1996 (India)
2 Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532.
3 Id.
4 Id.
5 Indus Biotech (P) Ltd. v.Kotak India Venture (Offshore) Fund, (2021) 6 SCC 436
6 The Insolvency and Bankruptcy Code, 2016,§7, No. 31, Acts of Parliament, 2016 (India).

adjudicating body ascertains if a debt is due and whether a default has occurred. If a default is primarily found, then under Section 7(5)(a), the Tribunal may admit the application or otherwise if no default is found, then the application may be rejected as per Section 7(5)(b).

In *VidyaDrolia v. Durga Trading Corpn*, the Court held that when a matter relates to or affects third-party rights and requires a centralized adjudication, such subject matters would not be arbitrable.[7] Since insolvency matters require a centralized adjudication and involve rights in rem, they would be non-arbitrable. It was also observed that third-party rights are established in all creditors upon the admission of a petition under Section 7 of the Code, and the procedures will be *ergaomnes*. Thus, the matter would only cease to be arbitrable upon admission. The NCLT's only duty at the pre-admission phase, when a financial creditor files the petition, is to confirm that a default has occurred. The Corporate Debtor cannot claim that there is a disagreement over the debt amount or that the petition is being utilized as a means of evading arbitration proceedings. This draws attention to a weakness in the existing structure that prevents Corporate Debtors from bringing up legitimate disagreements.

Even the provisions of the Code, whereby the legislature established an automatic moratorium that results in a halt of judicial procedures (including arbitration proceedings) in favor of insolvency proceedings, support the aforementioned position. The reasoning behind this is that, as opposed to a consensual arbitration between one creditor and the bankrupt debtor, the interests of all creditors can be fairly and correctly represented in the insolvency process.

Even in the *Power Grid Corpn. of India Ltd. v. Jyoti Structures Ltd*. case, the Court ruled that any arbitration initiated after the moratorium was declaredillegal and observed that it was surprising that arbitration proceedings had begun.[8]In *K.S. Oils Ltd. v. State Trade Corpn.of India Ltd*., the NCLAT applied the 'Alchemist ratio' and noted that arbitral proceedings that open on the date CIRP begins cannot continue during the moratorium.[9] Arbitration proceedings are, therefore, non-existent in law when they are started after a moratorium has been imposed.

In *Swiss Ribbons v Union of India*, the Apex Court had held that once the insolvency process gets triggered it becomes a proceeding in rem which is necessary to be settled by the approval of the committee of creditors (*hereinafter "***CoC***"*).[10] Therefore, the proceeding continues to remain a right in personam till the creditor's claim is satisfied through the constitution of a CoC.

The Apex Court in *Indus Biotech* observed that only an admission of the petition under Section 7 of the Code would trigger a proceeding to be a right in rem.[11]Only when the Tribunal applies its mind, records a finding of default, and admits the application under Section 7 of the Code will it become a right in rem.

Therefore, when a petition under Section 7 of the Code is filed and a default is found then the application under Section 8 of the ACA would not be held maintainable. Even when both petitions under the Code and the ACA are filed simultaneously, the adjudicating authority will have to give first preference to decide the Section 7 application of the Code.

Therefore, since an application reaches the stage of in rem only upon a finding of default, once the adjudicating authority decides in the negative as to the existence of a debt, the matter can at that stage be taken to be an arbitrable matter.

Arbitrability of Core and Non-Core Issues in Insolvency

The rules governing arbitration are generally uniform across jurisdictions. However, that being said, the majority of jurisdictions do not have any regulations on the combination of arbitration and insolvency and, therefore, have extremely vague jurisprudence to have codified uniform laws regulating this aspect of arbitration. Relevant guidelines in this respect are typically found in the bankruptcy laws of their respective nations, which impose various restrictions on the arbitrability of bankruptcy issues. As a result, different jurisdictions continue to use disparate standards for the arbitrability of bankruptcy disputes.

7 VidyaDrolia v. Durga Trading Corpn., (2019) 20 SCC 406.

8 Power Grid Corpn.of India Ltd. v. Jyoti Structures Ltd., 2017 SCC OnLine Del 12189.

9 K.S. Oils Ltd. v. State Trade Corporation of India Ltd., 2018 SCC OnLine NCLAT 352.

10 Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17.

11 Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund,(2021) 6 SCC 436.

Diverse case studies and academic sources demonstrate attempts to standardize arbitrable insolvency-related concerns. Both have made an effort to distinguish between situations relating to insolvency that are and are not arbitrable. The test developed by U.S. Courts for distinguishing between "core" and "non-core" problems in a bankruptcy proceeding is the most widely used test for distinction.

One of the first few cases to introduce and lay down any jurisprudence on this concept of core and non-core issues in arbitrability of insolvency disputes was the case of *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc.,*[12]Whichemphasized the policy that favored commercial arbitration rather than the domestic notions of arbitrability. The arbitrability of a dispute in the US is contingent upon whether it pertains to 'core' or 'non-core' insolvency issues. Matters pertaining to 'core' bankruptcy proceedings are deemed non-arbitrable. These procedures entail determining rights established by federal bankruptcy law that are exclusive to bankruptcy proceedings or that could not have been possible in any other situation. However, the US Courts were compelled to order arbitration in 'non-core' issues of the dispute.

In the case of *In re Electric Machinery Enterprises, Inc*.[13] even though arbitration was ordered for, it was determined that a disagreement about a contractual claim for money owed was not a "core" action. Moreover, in the event that it constituted a "core" action, there was no proof that the arbitration process would have gone against the intent of the Bankruptcy Code.

It can be understood from the foundation laid by the Mitsubishi Motors case that'core' and 'non-core' issues are not an exhaustive list of issues that can be categorized in a definitive manner. The issues under these categories are understood and categorized from judicial decisions on a case-to-case basis where many apparent issues of insolvency disputes have now been classified into definite categories of core and non-core issues of arbitrability.

Core issues are often understood to be those issues that concern rights that only become apparent during the insolvency process or that surface after the insolvency statute has been applied. These concerns are essential to the insolvency process and would not persist in a non-insolvency context.

Examples of core matters or issues include issues pertaining to:

i. the initiation of insolvency proceedings,
ii. winding up of companies,
iii. fraudulent conveyance claims
iv. appointment of receivers,
v. repayment of preferential transactions,
vi. identification or repudiation of debt,
vii. credit committee determination, and
viii. other matters on substantial/central aspects of the winding-up process.

Non-core issues, on the other hand, are relevant to an insolvency case but do not directly relate to the Bankruptcy Act itself. If these disputes arose outside of a bankruptcy case, they would be adjudicated in a civil court. These claims are procedural or incidental to the winding up.Examples of non-core issues include claims for breach of contract, unjust enrichment, business torts, breach of contract disputes, lien disputes between creditors, and civil fraud actions.

In the UK jurisdiction, the approach has more or less been in line with the US Court's rationale behind the matter. Following the UK perspective put forward in *Fulham Football Club Ltd. v Richards*, these rulings align their respective jurisdictions.[14] In that approach, certain incidental non-core proceedings remained arbitrable despite the Tribunal's inability to give statutory relief in core proceedings. Rather, a fact-sensitive investigation is needed to ascertain the appropriate nature of the relevant dispute and whether any resolution is likely to have an impact on the interests of other parties.

Currently, in most jurisdictions, for a bankruptcy court to decide whether to order arbitration and to halt proceedings while arbitration takes place, it must follow a series of steps:

i. it must ascertain whether the parties have consented to arbitration;

[12] Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc, 473 U.S. 614 (1985).

[13] In re Electric Machinery Enterprises, Inc, 416 B.R. 801.

[14] Fulham Football Club (1987) Ltd v Richards [2012] Ch 333.

ii. it must ascertain the parameters of that consent; third, if federal statutory claims are made;

iii. it must determine whether Congress intended for those claims to be non-arbitrable; and

iv. If the court finds that some, but not all, of the claims in the case are arbitrable, it must decide whether to stay the remaining proceedings.[15]

Once it is established that an enforceable arbitration agreement covers the pertinent claims, the focus turns to evaluating whether the claim is arbitrable. Many bankruptcy courts base their decision on two factors: (i) whether the claim is raised in a core or non-core proceeding, and (ii) if the claim is core, whether enforcing the arbitration clause would adversely affect any underlying purpose of the Bankruptcy Code.

Whether the underlying dispute concerns rights created under the Bankruptcy Code or non-bankruptcy Code issues derivative of the debtor's "pre-petition business activities" is the second aspect that needs to be considered. The bankruptcy court can choose to reject arbitration in the first scenario, but not in the second.[16]

An enforceable arbitration agreement may not always exclude core issues from its scope. The bankruptcy court must still determine whether applying the arbitration provision will negatively impact any underlying aim of the Bankruptcy Code. The arbitration provision should be enforced unless doing so would gravely jeopardize the goals of the Code.[17]

In cases where an arbitration clause is broad and covers the entirety of the dispute, proving that a claim is basic is insufficient justification for excluding arbitration. In such cases, courts are required to conduct additional investigations in order to ascertain whether arbitrating the dispute will seriously violate the Bankruptcy Code. The bankruptcy court is not required to decide a disagreement just because a claim might be essential. Courts that have considered the matter have distinguished between procedurally core and substantively core claims. These courts conclude that only substantively core claims need to be addressed by the bankruptcy courts, and procedurally core disputes can be arbitrated.[18]

Despite being divided into 'core' and 'non-core' categories for arbitrability purposes, there still exists disagreement regarding the efficacy of this division. The usefulness of these categories is particularly called into question by later U.S. court decisions such as *US Lines Inc. v. ASOMPIA* and *In re Gurga*, which held that a matter need not always be deemed 'core' for it to be arbitrable. Similarly, a 'non-core' issue can be heard by the bankruptcy court with the consent of both parties.[19] In addition, the decisions seem to indicate that the distinction was made to establish the cause of action rather than arbitrability.[20]

Other pertinent variables that affect arbitrability such as the exclusive functions of designated authorities or the financial or non-financial nature of the dispute's subject matter,are wholly disregarded by this classification. Important factors to take into account include whether the arbitration is started before the debtor becomes bankrupt and whether third-party rights are unaffected.

Scope of Derivative Claims in Insolvency Disputes

Derivative rights in insolvency law refer to the rights that certain stakeholders, such as creditors or shareholders, may assert on behalf of the insolvent entity. These rights are derived from the entity's rights and are pursued by the stakeholders in their capacity as representatives or beneficiaries of the entity's interests. Derivative actions aim to address the company's lack of enforcement against the board of directors for their failure to carry out their mandate.[21]

The Indian jurisprudence has largely determined the arbitrability of derivative rights about shareholders' rights in the company. In the case of *Rajiv Vyas* and *Welspun Enterprises*, the courts had allowed derivative rights through Section 9 of the ACA since the respondent's actions had affected the shareholders as well as the company's rights.[22]

---

15 In re Bethlehem Steel Corp., 390 B.R. 784.
16 In re Try The World, Inc, 2021 WL 3502607.
17 In re Hagerstown Fiber Ltd. Partnership, 277 B.R. 181.
18 In re Paragon Offshore PLC, 598 B.R. 761.
19 US Lines Inc. v. ASOMPIA, 197 F.3d 631 (2d Cir. 1999).
20 In re Gurga, 176 B.R. 196 (B.A.P. 9th Cir. 1994).
21 Lane v Abel-Bey, 4182 N.Y.S. 25 (1979).
22 Rajiv Vyas v. JohnwinManavalanGrogeMandavalan, 2009 SCC OnLineBom 922; Welspun Enterprises Ltd. v. ARSS Infrastructure Projects Ltd., 2015 SCC OnLineBom 4378.

The company, the directors, and the shareholders - majority and minority, are all parties to a derivative action. As a result, a derivative action is classified as a collection of multi-party cases. The arbitration agreement must have been given by each party. A derivative action filed by one minority shareholder against another may not be binding on the non-consenting shareholder if the non-consenting shareholder declines to arbitrate the dispute.[23] In that instance, Section 9 of the Arbitration Act of 1996, which stays court actions involving non-consenting shareholders, may not be used. The arbitral award will not have a res judicata effect because it will not be binding on the non-consenting shareholders. Parties should include a particular arbitration clause in the company's constitution that addresses derivative actions brought by shareholders against the board of directors to reduce the possibility of parallel proceedings and to boost the likelihood that the arbitration would have a res judicata effect. Furthermore, a legally enforceable procedure outlining the process for bringing a derivative action among minority shareholders should be in place.

In the case of *In re: Salmon Inc Shareholders Derivative Litigation*, the U.S. Court permitted derivative claims to be arbitrated because a pre-dispute arbitration agreement between the company and a third party would unavoidably commit the shareholders to arbitration as well since the corporation is the true plaintiff in a derivative action.[24] Further, derivative action claims cannot be stopped from arbitrating mainly because in the case of private companies it does not relate to public policy matters as it consists of private and closed shareholders.[25]

The Way Forward: Can the IBC and the Arbitration Act Find Common Ground?

The ACA was enacted with the intention of creating a national environment that is favourable to arbitration. While the Code balances the interests of all parties involved to rescue corporate debtors within a given limit. The question at hand is whether the Code's superseding impact over an arbitration clause based on the parties' consent breaches the idea of party autonomy and harms the advancement of arbitration in the nation. Furthermore, is there any method to balance the objectives of the two acts?

In *RakeshMalhotra v. Rajinder Kumar Malhotra*, the Supreme Court addressed the potential alternative and decided that the claims of oppression and mismanagement were subject to arbitration if the petition was determined to be vexatious, mala fide, and 'dressed up.'[26] The term 'dressed up petition' refers to a petition that has been deliberately filed to remove the arbitration clause. Subsequently, *SONATRACH v. DistrigasCorp*, established that arbitration procedures would not be stopped in cases where insolvency procedures had been started to obstruct the arbitration.[27]

Additionally, the Code intends to revitalize corporate debtors; it is not meant to serve as a replacement for a recovery case. According to the UN Legislative Guide on Insolvency Law, a creditor may attempt to force a viable business out of business, substitute bankruptcy proceedings for other debt recovery procedures, or coerce the debtor into paying preferential payments to have an application for insolvency rejected. Therefore, the first thing that needs to be determined is whether the petition is 'dressed up' or meant to replace the Code as a recovery code; second, is the corporate debtor otherwise solvent; third, is the dispute's subject matter involving 'non-core' matters of insolvency; and, finally, is the arbitration proceedings going to conflict with the Codes' goal.

The arbitrability of bankruptcy laws is a subject in Indian courts that is more stringent than that of the U.S. and the United Kingdom. According to the author, financial creditors might utilize the Code as a tool to avoid arbitration procedures by choosing to forum shop whenever it is most convenient for them if arbitration applications are prohibited under the previously mentioned circumstances. Arbitration is one technique to resolve disputes arising from a solvent corporation regarding the amount of financial debt. This will give the adjudicating body clarification on the amount rather than postpone the insolvency procedure. To reconcile the goals of the ACA and the Code, this error needs to be fixed through either legislative action or judicial action.

* * * *

[23] Franklin R. Edwards & Edward R. Morrison, Derivatives and the Bankruptcy Code: Why the Special Treatment?, Yale Journal on Regulation, Vol. 22:ppp, 2005.

[24] In re: Salmon Inc. Shareholders' Derivative Litigation 91 CIV. 5500 (RRP).

[25] Lane v Abel-Bey, 4182 N.Y.S. 25 (1979).

[26] RakeshMalhotra v. Rajinder Kumar Malhotra,(2015) 192 CompCas 516 (Bom).

[27] SONATRACH v. Distrigas Corp.,80 B.R. 606 (D. Mass. 1987).

RIGHTS IN PROPERTY LAW AND ITS LIMITATIONS WITH SPECIAL REFERENCE TO ANDREW BURROWS, "WE DO THIS AT COMMON LAW BUT THAT IN EQUITY"

Tamanna Sharaf *

Abstract

This paper critically examines Andrew Burrows' treatise, "We Do This at Common Law but That in Equity," with a particular focus on the interplay and distinctions between common law and equity within the context of property law. It answers the million-dollar question – "What is a not-wrong?"

The paper explores Burrows' categorization of English private laws, identifying areas of logical coexistence, coherence despite misleading labels, and those requiring further integration. Through a detailed analysis, the paper highlights the shortcomings of damage theories prevalent in Indian law and the identification of "not-wrongs" as equitable remedies. It discusses the Transfer of Property Act (TPA) in India, underscoring the act's blending of common law and equitable principles, and critiques the substantive inconsistencies that create legal loopholes. The paper supports Burrows' views on the need for a principled approach to punitive damages and the potential for further development of equitable rights. By referencing case law and legal commentaries, the paper advocates for the judicial flexibility offered by equitable principles, calling for a significant change in the law to achieve a true fusion of common law and equity.

Aequitas iniuriam sine remedio non patietur

Introduction

The intricate relationship between common law and equity has long been a subject of legal scholarship and judicial contemplation. This paper delves into Andrew Burrows' influential work, "We Do This at Common Law but That in Equity,"[1] To explore the nuanced coexistence and potential conflicts between these two streams of law, particularly within the realm of property law.

Through an examination of Burrows' insightful categorization of English private laws into areas of logical coexistence, misleading coherence, and necessary integration, this paper seeks to uncover the underlying principles that guide judicial decision-making in property disputes. It also critically assesses the Transfer of Property Act (TPA) of 1882 in India, a legislative embodiment of the fusion of common law and equity, highlighting its strengths and exposing its weaknesses. Through this exploration, we aim to contribute to the ongoing discourse on how best to harmonize common law and equity to achieve substantive justice in property law.

Equity vs Common law

Common law and Equity are described as "two streams of jurisdiction [which], though they run in the same channel, run side by side and do not mingle their waters"[2].

Common law is derived from previously set judicial precedents rather than statutes. It can be rigid as it is based on outdated decisions and the rule does not consider context in newer cases. Common law courts originated in the practice of the courts of English Kings since1066.[3] However, they failed to provide adequate remedies for certain cases. There was anemergence of a "fairer" court amidst the English. The Court of Chancery dealt with cases thatwere not adjudicated by the common law principles, their rules were less harsh.[4] These lawsfocused on justness and fairness rather than strict legal rules.

* **3rd Year, BBA LLB (HONS.) O.P. Jindal Global University, Sonipat, Haryana**

1 Andrew Burrows, "We Do This at Common Law but That in Equity", Vol.22, no.1, Oxford Journal of Legal Studies. 1–16 (2002)

2 2nd Ed, Walter Ashburner & Denis Browne, Ashburner's Principles of Equity, Pg 18, Butterworth & Co., 1933.

3 Volume I, Donald Fleming, "Perspectives in American History",Pg 21, HARVARD UNIVERSITY, 1967.

4 P. Tucker, "The Early History of the Court of Chancery: A Comparative Study." Vol. 115 no. 463, The English Historical Review, 791, Pg 1, 2000.

Equity gives relief on the ground of undue influence where an agreement has been obtainedby certain kinds of improper pressure which were thought not to amount to duress at common law.[5] Equity provided more flexible responses to changing social conditions than was possible in precedent-based common law.

Before 1852, these two bodies of law were separated, and their distinction becamepronounced.

The 19th century brought about the fusion of these courts seeking legal and equitable remedies in one court.

The Transfer of Property Act, of 1882 is a physical representation of the blending of the two laws in practice.

Equitable rights provide justice to those who act in good faith. Section 41 refers to transfers made by ostensible owners, where if one acts as the real owner and makes a transfer to someone who acts in good faith, the transfer cannot be voidable on the grounds that the transferor was not authorized to make it.[6] This rule aids the transferee who has acted in a bona-fide manner and binds the transferor to their promise of sale. This gives equity "Wherever one of two innocent persons must suffer by the acts of a third, he who has enabled such person to occasion the loss must sustain it."[7]

Identification of wrong and not

Damage theory seeks to put the claimant in the position they were in before the contractsubsisted through restitution. This theory provides us with the remedies that an injured partyseeks as they suffer loss.[8]

In common law, there are two main types of wrongs or unlawful conduct, that is, breach of

Contract and Torts.[9] Equitable civil wrongs comprise breach of fiduciary duty; breach of confidence; dishonest assistance; and forms of estoppel that constitute causes of action, in particular proprietary estoppel.[10] These equitable wrongs, or not-wrongs, are not unlawful butare moral injustices that create loss for the claimant, and this creates an imbalance in equitybetween the two parties. Their reference as not-wrongs is agreeable as they are legal mistakesfor which provisions for remedy are insignificant in Indian law. They do not trigger restitution as it does not amount to unjust enrichment. The court discussed the topic of particular performance as a remedy for breach of contract pertaining to the sale of immovable property in *Motilal v. Nanhelal.*[11]Case. The plaintiff and defendant entered a contract for the sale of land, however, the defendant broke their part of the bargain. In cases where damages were deemed insufficient, the court decided that specific performance might be awarded to adequately compensate the plaintiff. This ruling emphasizes the value of performance under the TPA as an equitable remedy in cases where damages are insufficient.

The difference between wrongs and not wrongs is the difference between section 10 and section 35 of the TPA. Section 10 talks about conditions that restrain the right of alienation of atransferee. The remedy for this is not compensatory nor a specific relief but just to dispose of such direction as if there was none.

Section 35 of the TPA is regarding equity. It includes the right of election that is held by the real owner and upon dissenting, the transferee can claim compensation from the transferor in the value of the property. This equitable remedy protects the disappointedtransferee from a "not wrong".

The hierarchy that persists between specific relief and damages is compelling. Equitable relief was awarded upon the inadequacy of damages to succumb to the loss incurred or even encapsulate the breach committed; equitable relief operates as a second-tier remedy. This displays the preference of damages to equitable damages.[12]

The court in the case of *Ganga Dutt v. Kartik Chandra*[13] Deliberated over whether the right or discretion to provide a particular performance should be used. Although the defendant claimed it may be optional, the plaintiff demanded explicit fulfillment of a property sale contract. Specific performance is not optional;

---

5 10th Ed, 1999 at 375

6 Transfer of Property Act, 1882, No. 04, Acts of Parliament, 1882(India).

7 Lickbarrow v. Mason, (1787) 2 T.R. 63 (KB)

8 Jessica Freiheit, "Breakdown of Hierarchy: Damages at Law Versus Damages in Equity", 185-208, 27 Man LJ, 1999.

9 Burrows, Pg 8.

10 Ibid.

11 Motilal v Nanhelal, (1965) 1 SCR 677.

12 Freiheit, P186.

13 Ganga Dutt v Kartik Chandra, (1962) SC 3 SCR 673.

rather, it must be given if all requirements of thecontract are satisfied, the court explained. The significance of implementing TPA contracts when requirements are met is shown by this instance, which also highlights the remedy of particular performance.[14].

In the *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana*[15] Case, the Indian Supreme Courtconsidered how to interpret Section 53A of the Transfer of Property Act.[16], which deals with contracts involving the partial fulfillment of immovable property transfers. An oral agreement's possession and partial fulfillment constituted the primary legal question: could a buyer acquire property on the basis of this alone, especially in cases where the agreement wasnot legally registered? In its decision, the court held that oral agreements for the transfer of immovable property are not enforceable under Section 53A unless they are converted topaper and registered. Section 53A mandates that written agreements be registered. This case clarifies the requirements for part performance of contracts under the Transfer of Property Act.

When a wrong is committed, a remedy is due, in common law in the form of monetary compensation or damages. Equitable remedies are provided for not wrongs that are not legal breaches or misconducts but moral injustices that should provide remedy through restoration of the position of the transferee. The equitable remedy does not aid the wrongdoer but gives them an option of performing in good faith. The two main equitable remedies are injunctions and specific performance. These are discretionary and it is considered that the appropriate remedyfor a claim involving mistake, misrepresentation, or undue influence is rescinding of the contract subject to equitable terms.[17]Specific relief is granted where there has been no loss to the plaintiff. Relief is sought where no remedy exists at law. This provides for the need for equitable remedies in law.

In *Woollerton and Wilson v. Richard Costain*[18], the crane that swung over the plaintiff's factory caused no damage, no fear of damage, no nuisance, and no inconvenience. Yet, the plaintiffs sought an injunction to protect against the invasion of their air space. The Court found that the absence of any damage was no reason to deny equitable relief.

In the case of Shelfer v. City of London[19], the judgment outlines when damages should be awarded in lieu of specific performance. Under this rule, damages may be substituted for an award of specific relief, where:

(i) the injury to the plaintiff's legal rights is small,

(ii) and is one which is capable of being estimated in money,

(iii) and is one which can be adequately compensated by a small money payment,

(iv) and the case is one in which it would be oppressive to the defendant to grant an injunction.

Damages in equity necessarily extend beyond damages at law since they are "in substitution"for an equitable relief that is not available at law.[20].

These not-wrongs provide justice to those who have suffered a loss that hasn't been addressed in the law. Section 43 of the TPA[21] Covers the doctrine of estoppel. This provides a remedy to the claimant who has suffered the loss of not receiving the property as the contract persisted because the transferor hadn't acquired the ownership of the property yet. Specific performance can be granted to the claimant in such situations. They can wait until the transferor has gained title to the property and transfers it to them. This relief is, however,conditional to the fact that the transferee or claimant must have contracted in good faith, without any knowledge of the lack of title of the transferor.

Equitable principles can still be used to remedy inequalities in property transactions and provide relief, even though the TPA primarily deals with legal transfers of property rights. To promote justice in property situations,

14 Transfer of Property Act, 1882, No. 04, Acts of Parliament, 1882 (India).

15 Suraj Lamp & Industries Pvt. Ltd. v State of Haryana,(2011) 1 SCC 141.

16 Transfer of Property Act, 1882, § 53A, No. 04, Acts of Parliament, 1882 (India).

17 Volume 6, Issue 9,PAWLOWSKI, MARK. "Equitable Wrongs: Common Law Damages or Equitable Compensation?", 20–25, Trusts & Trustees, 2000.

18 Woollerton and Wilson v Richard Costain, (1970) 1 WLR 411.

19 Shelfer v City of London Electric Lighting Co., (1895) 1 Ch 287, CA.

20 J.A. Jolowicz, "Damages in Equity. A Study of Lord Cairns' Act", Vol. 34 no. 2, The Cambridge Law, 224–52, (1975).

21 Transfer of Property Act, 1882, No. 04, Acts of Parliament, 1882 (India).

equitable considerations can enhance the Act'sprovisions, even though it may not specifically address civil wrongs or not-wrongs.

Equitable relief: for monetary or moral inadequacy?

"Monetary compensation tolerates the wrong and allows the perpetrator to buy injustice."[22] We have discussed at length the purpose for specific relief and what it is, but a question seems to irk us, what inadequacy of the common law has led to specific relief? And, does specific relief remedy this inadequacy?[23]

We are not claiming that monetary damages awarded are inadequate, we are saying that monetary awards offered by common law rules are inadequate.[24] They fail to take future loss into account and economic inadequacy.

The common law does not consider actual loss because the calculation of loss by the courts is lapse. The real value of loss incurred can't be assessed as the award given to measure the marketvalue of the property in current times.

Along with this, intangible losses cannot be compensated by these courts and are not considered. A lot of the times, there is no loss to the plaintiff except invasion of a property right[25]. In *Hooper v. Rogers*[26], the plaintiff's house was in danger of collapse after thedefendant's bulldozing removed the soil support. No award at law could be made for future physical damage and specific relief was sought in such case.

In *Wrotham Park Estate v. Parkside Homes*[27], the defendant had built homes more than the number permitted by a restrictive covenant. Since the breach of the restrictive covenant did not give rise to a cause of action in common law, the plaintiff could not seek an award of common law damages. However, equity could enter to grant equitable relief through section 40 of the TPA.

The moral inadequacy of common law remedies comes into question as they are not able to protect the plaintiff's substantive interests. In these situations, specific relief compensates for the deficiency by prohibiting the defendant from harming an interest in return for payment of a sum determined by the court. Substantive rights are beyond monetary valuation, and these rights are sacred inequitable protection.[28] The purpose of any remedy is to protect the expected interests of the injured while not being unduly burdensome to the defendant.[29]

Fusion

The question of whether specific relief is filling the inadequacy of damages awarded is based on how it is being awarded in courts. As Burrows suggests, and as we gather, there is considerable scope for the future development of an equitable right to damages (along common law lines) to meet a variety of occasions where the claimant is unable to seek legal redress due to the purely equitable nature of his cause of action.[30]

However, this can be bridged by the fusion of the common law and courts of equity together, but not just existing coherently, a change in law is required with it, and we agree. The losses aredecided by the court's common sense[31]and reasonable comprehension. There are restrictions in compensatory damages such as restrictions on remoteness, intervening cause, etc. that will apply the same to equitable compensation.[32] [33].

"Lawyers should abandon their nervous reluctance to describe money awards for equitable wrongs as 'damages'[34]. Lawyers are not doing enough to eradicate the needless differences in terminology used, and the substantive inconsistencies, between common law and equity. And for this to change there needs to be a significant change in law through the fusion.

---

22 Rendleman, Pg 352.
23 Freiheit, Pg 189.
24 Ibid.
25 Goodson v. Richardson, (1874) 9 L.R. 221 (Ch. App.).
26 Hooper v. Rogers, (1975) Ch. 43 (C.A.).
27 Wrotham Park Estate v Parkside Homes, (1974) 1 WLR 798.
28 Freiheit, Pg 176.
29 R. J. SHARPE, "INJUNCTIONS AND SPECIFIC PERFORMANCE", CANADA LAW BOOKS, 1983.
30 Transfer of Property Act, 1882, No. 04, Acts of Parliament, 1882 (India).
31 Galoo Ltd v Bright Grahame Murray, (1994) 1 WLR 1360, 1374-13.
32 Burrows, Pg 11.
33 P. J. Millett, (1998) 114 LQR 224-227
34 J. Edelman, "Equitable Damages", 147-165.

Critique on TPA

There are certain significant flaws in the TPAin India that reduce its efficacy. One such gap isthe uncertainty and inconsistent interpretations in courts caused by some clauses' lack of precision and clarity. The transfer of property rights may be hampered by this ambiguity, which can cause uncertainty and delays in real estate transactions. For instance, because of itsunclear wording, Section 53A of the TPA has generated discussion and legal action.Althoughthe clause stipulates that the transfer agreement must be in writing and signed by thetransferor, it makes no mention of the precise format or contents of the document. Thisambiguity has led to varying interpretations by courts, leading to uncertainty for parties involved in property transactions.

The inclusion of equitable and common law remedies in this Act, notwithstanding its ambiguity, still establishes a thorough framework for property transfers. The TPA gives parties a way to seek remedies other than monetary compensation by incorporating equitable remedies like specified performance. This is especially crucial when buying or selling real estate since the special qualities of the asset or the particulars of the deal may make financial compensation insufficient[35].

Furthermore, the TPA guarantees that parties have a line of action for contract violations or wrongdoing by including common law remedies like damages. This dual strategy offers adaptability and flexibility, enabling parties to select the cure that best fits their needs. A stable real estate market depends on the openness and certainty of transactions, which are ensured by the TPA's rules for the registration and formalization of real estate transactions. The Act also guarantees property rights, which is necessary to preserve investor trust in the real estate market and promote investment[36].

Conclusion

To sum up, Andrew Burrows' examination of the interaction between equity and common lawoffers a thorough understanding of the cohabitation of these legal frameworks. The article demonstrates how common law and equity both seek to handle situations in which a breach of duty results in compensation.

Not-wrongs handle moral injustices that cause inequality between parties. The TPA illustratesthe practical convergence of common law and equity, making this approach especially pertinent.In situations where monetary compensation is insufficient, specific relief is an equitable remedy that fills the gaps left by common law remedies and offers a more substantial resolution.

Even while the TPA in India offers a comprehensive framework for property transfers, its effectiveness is diminished by inconsistent interpretations making it hard to read and less flexible.

I argue with Burrows' comments and point out the inadequacies prevalent in commonlaw remedies.

* * * *

[35] 9th Ed, Mulla, D.F., & Sir Dinshah Fardunji Mulla. "Mulla on the Transfer of Property Act", LexisNexis Butterworths, 2015.

[36] 10th Ed, R.C. Kapoor, "Textbook on Land Laws", Central Law Agency, 2016.

COMPARISON OF THE DISCLOSURE OBLIGATIONS FOR A FIXED PRICE ISSUE & A BOOK BUILDING ISSUE IN AN INITIAL PUBLIC OFFERING

Mehul Saravanan *

Abstract

The initiation for the acquisition of funds via Initial Public Offerings or IPOs, is a landmark stage in a Company's lifecycle. The success and meticulous execution of the IPO process is a crucial aspect from the Company's vantage point. A successful venture is one in which all parties acquire their desired objectives. A conductive process included for this success is to ensure free-flow of data and information. Transparency in IPOs is essential as it enables investors to make informed decisions by providing them with accurate and timely information about the company's financial health, business prospects, and risk factors. When companies disclose detailed information, investors can assess the company's value and potential for growth, and make informed investment decisions.

It is for this purpose that the apex regulatory body of the Indian Stock Markets, the Securities Exchange Board of India has prescribed a series of disclosure requirements as a form of diligence and compliance that the issuer Companies are expected to conform to in order to ensure complete transparency and show accountability. Disclosure requirements for IPOs in India are crucial as they ensure transparency and fairness in the capital market. They enable investors to make informed decisions by providing them with accurate and timely information about the company's financial health, business prospects, and risk factors. This helps investors to assess the company's value and potential for growth, and to make informed investment decisions.

This research paper examines the disclosure obligations related to the two modes of price determination mechanisms in an Initial Public Offering (IPO) in the primary market, namely Fixed Price Issue and Book Building Issue. The paper provides an overview of the two modes, with the fixed price issue being a simpler and more arbitrary form of price determination, whereas the book building process is a more authentic and natural mode of price determination based on market forces.

Keywords ; ***Initial Public Offering, Red Herring Prospectus, Book Building, Fixed Price Issue, Discovery Price, Floor Price, Price Cap, Disclosure Obligations and Price Band.***

Introduction

The Initial Public Offering (IPO) market provides an important infrastructure for the growth of emerging companies. It provides an opportunity to the emerging companies to raise necessary capital to facilitate future growth. Initial public offerings have been an important source of corporate financing for a long time[1]. An Initial Public Offering by a Company, signifies the "very first listing" of securities by the Company. The issue of securities *via* an IPO manifests the Company's choice to open its ownership and management to public investors. It is to be noted, that an IPO shall only be carried out by a Public Listed Company. The common idea of the success or failure of an IPO from both the Company and investor's point of view is based upon the individual gains with regard to the "Discovery Price" or issue price of the IPO[2]. In the primary capital market, the issue price of an IPO of a Company's equity shares is given at face value. The issue price is to be in consonance with the relevant business and industrial factors.

This circumstanced issue price is therefore, to be arrived at using a precise, comprehensive and market suitable methodology of price determination. In the primary market, there are two modes of issue price

* **4th Year, B.Com. LLB., Tamil Nadu National Law University, Tiruchirappalli, Tamil Nadu.**

1 Rajesh Chakrabarti, IPOs in a Major Emerging Market Economy- India, Oxford Handbook of IPOs, 2018, Oxford University Press, pp.31

2 Vineet Kohli, Do Stock Markets Allocate Resources Efficiently? An Examination of Initial Public Offerings, 2009, Economic and Political Weekly, Vol. 44, No. 33, pp. 63-72

determination – Fixed Price Issue & Book Building Issue. Essentially, this research paper aims to analyze the disclosure obligations related to the 2 modes of price determining mechanisms of an IPO in the primary market in the relevant Draft Offer Document. It challenges the efficacy, veracity and legitimacy of the price determining methodologies in context to whether they are fair and just from the investor's point of view.

Comparing the Disclosure Requirements of Book Building Process with Fixed Price Issue in an Initial Public Offering of Equity

The fixed price issue mode of price determination is a methodology of computing the "discovery price" for a public offering that is completely within the discretion of the Issuer Company. The issuer must give the reasons and the appropriate rationale for the fixed price in the offer document[3]. Generally, Companies only deal with a fixed price issue if management believes that a fair price between them can be decided without having been tested on the market, like in book buildings[4]. A book built issue on the other hand is a methodology of computing the discovery price that accounts for the market conditions and demand for the securities of the Company.

An Issuer Company may determinethe issue price either*via* a book built construction or undertake a fixed price issue. Whichever mode the Issue Company chooses, it shall be clearly communicated in the relevant draft offer document. While for a fixed price issue the relevant draft offer document is a "prospects"[5], for a book built issue the relevant draft offer document is the "red herring prospectus"[6&7]. The relevant draft offer document is to be issued 3 days prior to the opening of the subscription list[8]. Within the relevant draft offer document, the Issuer Company should communicate as to what is the size of the IPO issue[9] and what is the mode of price discovery mechanismthe Company is to utilize. In the red herring prospectus, particulars relating to the (i) fixed price rate or, (ii) the price band (in case of book building process) shall clearly be communicated[10].Being that both modes of price determination are intrinsically contrasting, the landscape of the relevant prospectus would be presented accordingly[11].

Price Insertion &Justification of Fixed Price Issue

The Fixed Price issue of computing discovery price for an IPO is a simpler and arbitrary form of price determination as compared to the book building process[12]. In the fixed price issue mechanism, the Issuer Company with the recommendation of the merchant bankercommunicates the exact price rate at which the equity shares of the Company are to be issued at[13&14].The advice of the merchant banker is to be evidenced with reasonable grounds by which the set fixed price issue was to be arrived at[15]. This construes the per share face value of the Issuer Company. This mode of price determination is fully within the control of the Company. The Issuer Company*albeit* the aid and advice of the merchant banker, possesses full discretion over choosing the price at which the equity shares of the Company is to be offered to the public, granted that the Issuer Company can justify the price rate that it had set. In pursuance to regulation 127 (5) of the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018 the price set by the Company has to be substantiated in the Draft Prospectus as per Schedule VI of the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018[16].

Price Determination Methodology of Book Building Process

In contrast to the fixed price issue of price determination, the book building process entails a more authentic, naturaland veritable mode of price determination that is based upon the market force of supply and demand.

3 Regulation 127 (5), Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018
4 Shagun Mehta & Rachil Jain, Psychiatry of Book Building & Fixed Price Issue Process, [2008] 83 SCL 36
5 Regulation 28 (1), Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018
6 Section 32 (1), Companies Act, 2013
7 Regulation 28 (2), Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018
8 Section 32 (2), Companies Act, 2013
9 Regulation 3 (2) (b), Companies (Prospectus & Allotment of Securities) Rules, 2014
10 Regulation 29 (1), Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018
11 Regulation 5 (10), Companies (Prospectus & Allotment of Securities) Rules, 2014
12 Lawrence M. Benveniste & Walid Y. Busaba, Book Building vs. Fixed Price. An Analysis of Competing Strategies for Marketing IPOs, 1997, Journal of Financial and Quantitative Analysis, Vol. 32, No. 4, pp. 383-403
13 Regulation 24 (3), Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018
14 Regulation 21, Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018
15 Regulation 17, Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018
16 Schedule VI, Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018

While the fixed price issue ascertains one particular price rate for issue, the book building process sets 2 prices – a floor price[17] and a ceiling price[18]thus, creating a "price range" or price band.

The prescribed maximum gap between the floor price and the ceiling price cannot be excessive of 20%[5]. The draft red herring documentof the IPO shall have a price band printed on it[19]along with details of the Company, industry and the stock market per se. The information provided by the Draft Red Herring Prospectus has to substantiate the basis for setting the particular floor price and ceiling price of the price band. Investors who wish to subscribe to thesecurities of the Company, may bid for their preferred quantity within the price band before the issuer company sets a final price.

The final price is determined by a weighted average method. The information relating to this method is also to be disclosed[20]. The format by which the floor price and the ceiling price times the Weighted Average Cost of Acquisition (WACA) is to be as per (4) (K) (9) of Part-A of Schedule VI of the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018.The book building period is to run for 3-4 business days. At the end of this period, the Issuer Company in consultation with the Merchant Banker,will finalize on the exact price rate of the book building weighted average method that which, is to be published for the IPO of the securities of the Company[2121]Article (13), Part-A, Schedule XIII, Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018. The fixed price rate or the price band has to be substantiated as per Schedule VI of the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018.

Disclosure and Substantiation Requirements related to Fixed Price Rate & Price Band in IPO

In both types of price determination mechanisms, there is a requirement for additional information necessary for justifying a price rate or price band. In fixed price issue, the basis for despotically arriving at particular price rate is to be substantiated with certain key vital information in the Prospectus as per the SEBI mandate[22]. Similarly, even for a book built issue, the basis for despotically arriving at particular price band is to be substantiated with such information as per the same regulations. This information is to be provided in the Draft Red Herring Prospectus that which is to be published by the lead merchant banker to the public investors. The relevant information on this regard is inclusive of 4 essential financial rations which are presented in the (f) (1) (K) (9) of Part-A of Schedule VI of the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018 as follows[23]:

- Earnings Per Share & Diluted Earnings Per Share
- Price to Earnings Ratio
- Average Return on Net Worth
- Net Asset Value as per latest Balance Sheet

The data relating to these 4 essential factors for determining the fixed issue price, the floor price and the ceiling price is to be in context to the last 3 Financial Years of the Company. These 4 essential factors are to be computed in consultation with the Merchant Banker of the IPO.

In pursuance to these 4 essential financial ratios, an additional portion of disclosure that is to be in the red draft herring prospectus is with regard to the accounting formula by which these 4 essential financial ratios were arrived at. In furtherance to this data, the Red Herring Prospectus is to also contain information[4] disclosing the objective of the Company and the purpose of this IPO[24].

Additionally, the other risk factors involved includes the Key Performance Indicators (KPI), the capital structure of the Company[25], corporate history of the Company, industrial overview and other General

17 Regulation 127 (1), Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018
18 Regulation 127 (2), Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018
19 Article (9), Part-A, Schedule XIII, Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018
20 Article (4), Part-A, Schedule XIII, Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018
21 Article (13), Part-A, Schedule XIII, Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018
22 (1) (K) (9), Part-A, Schedule VI, Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018
23 (f) (1) (K) (9), Part-A, Schedule VI, Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018
24 (9) Part-A, Schedule VI, Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018
25 Regulation 3 (2), Companies (Prospectus & Allotment of Securities) Rules, 2014

Information also forms part of essential disclosures of the Red Herring Prospectus prior to an IPO book building.

Issue Advertisements and Disclosure Obligations in case of Oversubscription in the Book Building Process

The pre-IPO advertisement activities by the Issuer Company are an essential part of the IPO process. It is necessary for both the investor as well as the Issuer Company for the sake of transparency of securities dealings as well as garnering interest and demand for the Company's securities. The Issuer Company shall, within 2 days of filing the draft offer document with the Board, make a public announcement in one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated, disclosing the fact of the filing of the draft offer document with the SEBI and inviting public to participate in the book building process.

It has been explained in the *Explanation* clause of section 32 of the Companies Act, 2013[26] that a "red herring prospectus" is not a draft offer document that is inclusive of the complete particulars of the quantum or price of the securities included therein. This is a facet of the non-essentiality of the red herring prospectus to include within it the data relating to the total amassed capital. It has been prescribed by the Companies Act, 2013[27] that upon closing of the offer of securities, the shelf prospectus[28] stating the total capital raised, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar of Companies and the Securities Exchange Board of India a year after the IPO[18 29&30].

The memorandum information that is submitted to the registrar and the SEBI has to be in the Form PAS-2. This memorandum information would regarding the changed financial circumstances of the Company[31]. The necessity of this memorandum information arises from the need to inform the investors about the status of their investment. The significance of the memorandum information increases when there was an oversubscription of the issued capital.

Disclosure Obligations in case of Oversubscription of Issued Capital

An oversubscription of issued capital is when the subscribed capital is in excess of the issued capital. This is a facet of massive demand for the securities of that Company. While welcome, oversubscription cannot always be fully accepted. There are 3 means by which a Company deals with oversubscription is inclusive of *firstly,* the reimbursement of the excess capital *secondly,* the pro-rata allotment and *lastly*, the compensation *via* future Further Public Offerings. An Issuer Company cannot accept the entirety of the oversubscribed capital[32] as per the SEBI Exemption Order in the matter of Canara Bank, 2021. In pursuance of this Exemption Order, the Companies Act, 2013[33] provides a platform for Companies to appropriately dispose off the excess oversubscribed capital that has been received by the issuer Company.

It is necessary that as per clause (9) of Part-A Schedule VI of Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018 *w.r.t.* regulation 3 (2) of the Companies (Prospectus & Allotment of Securities) Rules, 2014 that the Issuer Company has to *visa ve* in the shelf prospectus disclose the detailed Capital Structure of the Company pertaining to the (1) authorized capital, the (2) issued capital, the (3) oversubscribed capital.

These details of information has to be disclosed in context to the latest Balance Sheet of the Company and its respective Notes to Account under the heading "money received in excess of allotment". The Company's policy with regard to how the excess application money was disposed of must be made known to the public investors who are now shareholders of the Company.

---

26 Explanation, Section 32, Companies Act, 2013

27 Section 32 (4), Companies Act, 2013

28 Section 31 (1), Companies Act, 2013

29 Regulation 35, Securities Exchange Board of India (Listing Obligations & Disclosure Requirements), Regulations, 2015

30 Regulation 30 (1), Securities Exchange Board of India (Listing Obligations & Disclosure Requirements), Regulations, 2015

31 Regulation 33, Securities Exchange Board of India (Listing Obligations & Disclosure Requirements), Regulations, 2015

32 Securities & Exchange Board of India, Exemption Order in the matter of Canara Bank [WTM/SK.M/CFD/23/20], dated May 24, 2021

33 Section 13A, Securities Contracts (Regulations) Act, 1956

Research Findings

From the presented research, we find that the modern book built issue of an IPO has proved to be a more suitable form of a price determination mechanism as compared to the fixed price issue of an IPO. This is decisively because of the sub-concept of the Weighted Average Cost of Acquisition within the book building process as provided by Part-A Schedule XIII of the Securities Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations, 2018 which accounts for the essential and indicators of what is a sale price rate of Company's security based upon the circumstantial worth of the Company based on a business and industrial overview. The success or failure of an Initial Public Offering is not on the foundation of how much of the issued capital has been subscribed to but rather, whether all the relevant details of the particular public offering issue, the Company, the industry and the economy as a whole has been duly disclosed to the public investors of India of all scales.

* * * *

AN ANALYSIS OF HOW GENDER ROLES HAVE SHAPED FAMILY LAW JURISPRUDENCE IN INDIA

Susmit Mukherjee *

Abstract

This paper will discuss how gender stereotyping in India has, in many cases, resulted in an unconscious bias against women while interpreting the law, particularly in legal disputes formally categorized under 'Family Law'. This includes a discussion on how the legal system in practice places women in a position inferior to that of men. The primary focus of this paper will be on how gender-sensitive rulings in family law cases have remained a mirage for a staggering majority of Indian women. The relevance of gender roles in shaping the way family law in India is interpreted and practiced will also be analyzed. Last but not least, the paper will also discuss the steps taken by the Indian Judiciary to combat the challenge of gender stereotyping by judges and lawmakers.

Introduction

The primary argument that 'introduces' and forms the basis of all the arguments made henceforth in this paper is the argument that the Indian legal system is both the victim that has fallen prey to and the perpetrator thatserves to promote the harmful practice of Gender Stereotyping in India. As a student of law, I have always been quick to notice that the so-called 'societal variables' like customs, traditions, morals, etc. always inevitably end up affecting the law and the way it is put into practice. A human mind, after all, is not a computer and is bound to be influenced by a certain set of moralist beliefs, assumptions, and stereotypes popularly held by the wider society (referred to earlier as 'societal variables').[1]The Judicial mind delivering a particular judgment is no exception to this rule.

One small example of such 'societal variables' that have been discussed at length in this paper is the existence of a variety of gender stereotypes within the Indian society that has led to the inception of strictly defined 'gender roles'.The evidence of gender stereotypes can be found in the way society distinguishes between 'masculine' and 'feminine' characteristics and how we are socially conditioned to strictly adhere to a prescribed set of behaviors considered 'appropriate' for our respective gender. Deviance from the same results in actions taken by society with the purpose of 'disciplining' the deviant.[2] Simone de Beauvoir, a French feminist and philosopher had once remarked that women are not born but arerather shaped by culture.[3]

The deeply ingrained gender stereotypes within a particular society often lead to the creation of certain 'ideals' that members of a certain gender are expected to live up to. For example, the ideal woman characterized by infidelity, chastity, etc. is often personified through Sita who, in the Ramayana was portrayed as the epitome of a Pativrata (an ideal wife) who chooses to be loyal to her husband and endures pain and suffering in silence. This has led to the conceptualization of an 'ideal womanhood' which is used to trap women of a particular community within a model of oppression and patriarchy. Thus, gender stereotypes with the aid of literature (and sometimes, Science) often lead to the birth of gendered 'ideals' likean ideal woman, ideal mother, ideal father, etc. (simply referred to in this paper as 'gender roles').

For example, in certain patriarchal communities within India, women are still labeled as the 'nurturers', 'caregivers', and'reproducers'. Even in the modern twenty-first-century workplace, women are mostly employed in roles like customer service andflight attendants (IndiGo, India's largest passenger airline company

* 2nd YEAR, BA. LL.B. (HONS.) NALSAR University of Law - Hyderabad, Telangana

1 Debiprasad Chattopadhyaya, Lokayata (People's Publishing House 1959).

2 Nivedita Menon, Recovering Subversion: Feminist Politics Beyond The Law (Permanent Black 2004).

3 Céline Leboeuf, 'One is Not Born, But Rather Becomes A Woman': The Sex-gender Distinction and Simone De Beauvoir's Account of Woman: The Second Sex." Feminist Moments: Reading Feminist Texts. Ed. Katherine Smits and Susan Bruce 139 (Bloomsbury Academic 2016).

for example only hires female candidates for their Cabin Crew positions) where their primary job is to take care of the needs of their employer's customers and mediate disputes in the workplace.

It is important to note that gender roles originate from gender stereotypes even though these two terms are often used interchangeably. In the above example, gender stereotypes have over time led to the creation of a gender role for women which makes them favorable candidates for certain 'caregiving' jobs that involve looking after the needs of others.

Discontinuing the idea of Gender Neutrality while deciding on Family Law matters

Gender Equality, both in law and in practice continues to be one of the most fundamental goals of Feminist and Women's Rights Movements in India and around the world. Ever since women in the Western world started claiming their rights as 'citizens', their primary demand was the right to equality before the law. Inspired by such women's rights movements, the Constitution of India guarantees women the right to equality and strictly prohibits sex-based discrimination under Articles14 and 15. This right to equality gives women the right to vote, the right to education, the freedom to pursue a profession of their choice, the right to receive a salary equal to that of their male counterparts, etc.

However, this very notion of gender equality is challenged when the debate reaches the private domain of family and matrimonial laws in India. The reasoning behind the same relies on the argument that in a country like India, men and women are not equal partners in a marriage.[4]If the courts continue to give their verdicts on such sensitive matters behind the veil of 'gender neutrality', 'equality', and 'impartiality', it will only result in greater injustice to women litigants as the principle of equality can ensure justice only when both parties, the husband and the wife are on an equal footing.

The issue regarding whether to discard the gender-neutral approach while deciding on family law matters remains a hotly debated topic. However, while researching this issue, it became increasingly difficult for me to agree with the gender-neutral approach to decision making especially in Indian matrimonial cases. The primary assumption behind gender-neutral laws and a gender-neutral approach towards implementing such laws is that the social status and position of married women within the Indian family as the same as that of their husbands. The reality, however, cannot be more different.

From the beginning of her marriage, an Indian woman is given a position subordinate to that of her husband. In rural and semi-urban areas, women are mostly homemakers who are confined within the four walls of their homes while men are the breadwinners who contribute financially to the household. The situation in urban areas where a majority of women go to work is not too different. The position of the husband within the Indian family continues to be placed at a much higher pedestal even when the wife is contributing financially to the family. The burden of taking care of the family, finishing all household chores, and representing the cultural values of the family and the community as a whole rests entirely on the wife's shouldersirrespective of the fact that she is pursuing her career and working just as hard as her husband in contributing financially for the well-being of her entire family.

Divorce in Indiafor both men and women is granted only under three grounds – Cruelty, Desertion, and Adultery. The disparity between the social status of men and women in a marriage can be seen by contrasting the incidents of cruelty cited by men with the incidents of cruelty cited by women while filing a plea for Divorce.[5]

A few of the most common instances of 'cruelty' that are used by men for filing a plea for Divorce include but are not restricted to the wife – earning more than her husband, refusing to have sex, refusing to wear*Sindoor*, not preparing food or making tea for her husband after he comes home from the office, not covering her head with the free end of her saree in the presence of her in-laws, etc.

The instances of cruelty that are often used by women while filing a petition for Divorce are vastly different. Such instances of cruelty include the husband – throwinghis wife out of her matrimonial home, making constant demandsfor dowry, subjecting his wife to regular physical, sexual, and emotional abuse, depriving his wife of her salary or valuables she received as *Stridhan*, denying his wife access to her children, etc.

---

4 Flavia Agnes, "India's Family Laws Are Discriminatory. That's Why Judges Shouldn't Be 'Neutral' on Gender.",THE WIRE (25th November 2022), India's Family Laws Are Discriminatory. That's Why Judges Shouldn't Be 'Neutral' on Gender. (thewire. In).

5 Id.

Given above is a very small example to illustrate that the claim of Indian marriages being a marriage between two 'unequal' partners appears well founded.[6]However, this is only the tip of the iceberg. Throughout this paper, other countless instances where women in a marriage find themselves in a disadvantageous position will also be discussed.

Taking all this into consideration, it indeed appears thatthe practice of Indian judges trying to be 'gender neutral' while adjudicating matrimonial disputes has resulted in the setting of a very dangerous legal trend. Perhaps, discontinuing the idea of gender neutrality while deciding such cases would not be such a bad idea after all.

The Law as a representative of the dominant patriarchal ideology

In a rigidly patriarchal and patrilineal society like India, misogyny and sexism are written in the law itself. Family laws in India continue to mirror age-old stereotypical perceptions about women and their bodies. Legal scholars who glorifythe law often find themselves at a loss for words when confronted with the feminist argument that the law, instead of being a tool for transforming society, works as a device whose function is limited to enforcing the dominant age-oldpatriarchal ideas of the society whichnot only fail to take into account women's subjective experiences of the world but are also inherently 'masculine' in their outlook.[7]

There is no doubt that family laws in India are discriminatory, both in letter and in practice. The patriarchal nature of such laws places strict restrictions on women who wish to exercise their choices on matters related to Divorce, Maintenance, Child Custody, etc.[8] The courts blindly enforce such laws because the conduct and autonomy of women are strictly regulated through a variety of socio-economic, socio-political, cultural, and religious factors. The law,instead of liberating Indian women, forces them to share the oppressive social burden of maintaining the "purity of her caste, class, and clan" by exercising strict sexual control over their lives.[9]

To validate the arguments made above, this paper puts forth for the reader's consideration, a few instances where the law has placed women in a position inferior to that of their husbands:

Restitution of Conjugal Rights

In India, a woman has to leave her family after marriage and settle with her husband in her matrimonial home. In many cases, she has to either move in with her husband's family or settle in a new home in a location of her husband's choosing.Under Section 9 of the Hindu Marriage Act, when either the husband or the wife leaves the other spouse without any "reasonable excuse", the other spouse can approach the court and seek the matrimonial remedy of restitution of conjugal rights which translates to 'the right to live together can continue the marital union'.If the petition succeeds, the court will direct the deserting party to come back to the matrimonial home.

Although this legal provision is gender-neutral and can be used by both the husband and the wife, the 'ground reality' is completely different. When the husband has to leave the matrimonial home for work in faraway cities, the wife is often forced to stay behind and take care of her in-laws. A majority of litigants who approach the court for restitution of conjugal rights are men. When the wife takes a job in a distant city and leaves the matrimonial home, in nine out of ten cases, the husband files a suit for restitution of conjugal rights.

While working in the Calcutta High Court, I have witnessed firsthand, both male and female judges who not only blindly approved restitution of conjugal rights petitions filed by men but also went to the extent of saying that it is the sacred duty of a married woman to live with her husband in her matrimonial home and look after his needs.Thus, this is another example where the blindfold of gender equality worn by lawmakers while framing a law has resulted in the creation of a 'biased neutrality' when the law is put into practice.[10]

---

6 Supra note 4.

7 Robin West, "Jurisprudence and Gender", 55 University of Chicago Law Review 2, 60 (1988).

8 Flavia Agnes, "Law And Gender Inequality: The Politics Of Women's Rights In India" 203 (Oxford University Press 2001).

9 Id.

10 Supra note 4.

Maintenance

Under Section 25 (3) of the Hindu Marriage Act,if the court is satisfied that the husband or wife to whom maintenance is being paid has not remained 'chaste', the court can modify or revoke the previous order which directed that maintenance be paid to him/her. This is, by far, the most disturbing legal provision of the Hindu Marriage Act which displays complete ignorance of the lives of the people this law would ultimately affect.

The progressive façade of gender neutrality shatters when confronted with the reality that this law of permanent alimony and maintenance is essentially in favor of men who want to harass their spouses after separation. In India, a majority of women who claim maintenance from their husbands do so because their basic right to survival is at stake. A similar viewpoint of 'absolute necessity' is also adopted by judges while directing the husband to pay maintenance to his wife.

The Victorian-era concept of sexual morality where only the husband can have sexual access to the body of his wife thus lives on even in this day and age. A woman who has no other means of survival would not dare to risk her maintenance by becoming sexually active after separation from her husband. At the same time, the husband can freely marry again with no problems.

Although more and more Indian women are entering the workforce, it cannot be denied that even now, most women continue to be financially dependent on their husbands. In such cases, even after separation, the husband's financial power would be used to sexually oppress the wife.Hence, this law promotes gender injustice by legitimizing the age-old(but dominant) patriarchalbelief that after marriage, a woman's body is the property of her husband and even after separation, the wife should be deprived of her right to satisfy her sexual desire and make choices regarding her own body.

The illusion of an 'ideal mother' in child custody cases

While studying law, we often come across the concept of a fictional 'reasonable man' which the court uses to ascertain how any common person (characterized by a rational person having a sound mind) would act in a particular given scenario. The court does not take into account the fact that men and women vary greatly in terms of their perception of the world around them. So, would it be 'reasonable' to ignore the gender question and assume that both men and women would respond similarly while applying the 'reasonable man' test?

When it comes to child custody cases, however, the tables are turned. Gender stereotyping is often institutionalized when family courts construct fictional models of what an 'ideal mother' should be like (not very unlike the idea of how a 'reasonable man' should behave) and use it to decide if the mother should be given custody over the child. While observing child custody cases in the Calcutta High Court, I have often seen single mothers being labeled as 'unfit' and preference being given to the father who has married again after separation. In one case, the judge openly commented that a single mother is by her very nature, 'overtly emotional and irrational'andwould be unable to look after the well-being of both herself and her child.A woman who seeks custody over her child is routinely subjected to humiliation and character assassination in open court by the opposing counsel and the judge. However, men, in my experience are rarely subjected to such treatment.

The stereotypical Indian perception of a 'competent mother' that is idolized by society is that of a married woman who – isalways on time to pick up her child from school, can look after the emotional well-being of the child, is educated but not too busy with her career and most importantly, can ensure for her child a 'stable' childhood free from distress or conflict.The idea of a single mother having sole custody of her child is quite unthinkable for Indian judges.

For instance, the mother of a young childwho vehemently refused to meet her father was accused by the judge of poisoning her child's mind against her father. In this case, the mother had sole custody over the child while the father resided abroad in the USA and came to meet his family in India only during the Christmas holidays. A few years later, the father permanently settled in Kolkata and filed a petition in the Calcutta High Court demanding the right of custody over his daughter and permission to take his daughter to the USA once every year during the Durga Puja holidays to meet his family who lived and had roots there. The judge tried very hard to convince the mother to withdraw the case and apply for joint (in other words,

'shared') custody but when she refused, the judge not only cast doubt on her moral character by accusing her of pitting the child against her father (even when there was no evidence of this) but also gave joint custody to the father along with visitation rights and directed that the child's passport besurrendered to the father with immediate effect.

During the proceedings of this case (which I was able to witness firsthand), the judge, not even for once,raised the issue of the father's long absence (for over twelve years) from his child's life and the fact that the mother had a well-paying job as a software engineer at Google meant that the father's negligence in paying child support for the education and upbringing of the child was not even questioned. The court was also strongly against the idea of the child accompanying her mother to Bengaluru where she was due to start her new job in another multinational company and recommended that the child reside with her father during the mother's absence.

The legal counsel representing the husband argued that a working mother cannot take adequate care of her child without the support of her husband.The fact that the child's school had reported several incidents of "outbursts and unruly behavior"was used as evidence to support this argument.The judge also joined the lawyer in berating the mother by commenting that the motherwas an 'unfit parent' who'spent more time in her office than she did with her daughter' and neglected the emotional needs of the child by not taking her to a psychologist despite the same being strongly recommended by her daughter's school.

The strong reliance of the court on the fictional model of what an 'ideal mother' should be like is quite clear in this case. The single mother who worked hard to support herself and her daughter was easily declared 'unfit' to have sole custody over her child. The archaic understanding of an ideal mother who 'is always there for her child' played a major role in contributing to the unconscious bias against the mother that led to the judge taking away the mother's right of sole custody.

Conclusion

Through this paper, I have attempted to demonstrate how sometimes the law itself fails to protect women and even when the letter of the law guarantees protection to women, existing beliefs and stereotypical assumptions while interpreting the law are used to change the context of that legal provision and render it useless in practice.

The first step to solving any problem is realizing that there is one. Until recently, the problem of gender stereotyping in Indian courts was not even recognized as a 'problem'. However, it seems that the Indian Judiciary has finally woken up from its long sleep and is slowly realizing that applying feminist principles while interpreting the law is necessary for fulfilling the promise of gender equality made by the Constitution to all Indians.

The Supreme Court has recently, in a move to eliminate gender stereotypes and false assumptions based on women, released a book called "Handbook on Combating Gender Stereotypes".[11] The handbook aims to discourage the blind usage of gender-stereotypical language while drafting Judgements, Orders, and Pleadings as the usage of such language prevents judges from impartially deciding the case. The importance of language in the law cannot be ignored. The language used by the judge in court not only reflects his interpretation of the law but also reveals his understanding of society. It is through words that the values enshrined in codified law are expressed and amending the language used by the court is certainly a step in the right direction towards eradicating the practice of gender stereotyping in the legal world.

* * * *

\[11] The Hindu Bureau, "To remove gender stereotypes from the law, a new SC handbook",THE HINDU (16th August 2023), To remove gender stereotypes from the law, a new SC handbook - The Hindu.

HOT UNDER THE COLLAR:
A SOCIO-LEGAL STUDY OF ROAD RAGE IN INDIA

Shaurya Mishra *

Abstract

Road rage, characterized by aggressive driving behaviors and hostile exchanges between motorists, has emerged as a significant social issue in India, reflecting broader societal stresses and infrastructural challenges. This socio-legal study delves into the multifaceted phenomenon of road rage in India, exploring its causes, manifestations, and consequences. Drawing on an array of data sources, including traffic police reports, judicial records, and interviews with affected individuals, this research highlights the interplay between psychological, cultural, and legal factors.

The study identifies key triggers of road rage, such as overcrowded roads, inadequate traffic management, and high levels of daily stress among drivers. Cultural factors, including the value placed on personal honor and the widespread acceptance of aggressive behavior as a means of conflict resolution, exacerbate the problem. Legal responses to road rage, ranging from traffic fines to criminal prosecution, are examined to assess their effectiveness and limitations.

Furthermore, the study addresses the impact of road rage on public safety and mental health, revealing a troubling rise in incidents leading to physical altercations, injuries, and even fatalities. The role of social media in both exacerbating and alleviating road rage incidents is also considered, as platforms often amplify aggressive encounters but can also serve as tools for awareness and education.

This research concludes by advocating for comprehensive strategies to mitigate road rage, emphasizing the need for better traffic management, public awareness campaigns, and robust legal frameworks. By addressing the root causes and reinforcing legal deterrents, it is possible to foster safer and more respectful driving environments in India.

Keywords : ***Road Rage, Aggressive Driving, Traffic Management, Public Safety, Psychological Stress***

Introduction

A disturbing tendency that shows up as road rage has become visible in the dynamic fabric of India's roads. India, which has one of the worst rates of traffic accidents in the world, suffers from the consequences of a bad driving culture that is made worse by sensation-seeking, driving rage, revenge, boredom, and stress. Previously serving as a pathway for advancement and communication, the road has evolved into a site of potentially hazardous conflicts resulting from heightened emotions and psychological strains.

Road rage, defined as violent outbursts caused by stress and other psychological variables while traveling, has been ingrained in Indian culture. Frustration and distress on India's busy roads frequently translate into road rage, creating a situation in which motorists feel obligated to express their fury. This phenomenon can range from heated debates to violent altercations and, at times, intentional injury or threats to other commuters, pedestrians, or passengers.[1]

Road rage is no longer only an expression of irritation on Indian highways; it has turned into criminal behavior in which anger converts into premeditated and violent conduct. Weather conditions, traffic congestion, bad driving practices, time constraints, and heightened noise levels all contribute to these accidents. Peak traveling hours and congested areas become hotbeds for road rage, transforming routine commutes into potential flashpoints.[2]

* **3rd Year, BA.LLB (Hons), Maharashtra National Law University, Aurangabad, Maharashtra**

1 Brewer, A. (2013). *Road rage: What, who, when, where and how?* Transport Reviews; https://www.semanticscholar.org/paper/Road-rage%3A-What%2C-who%2C-when%2C-where-and-how-Brewer/75ab99ca89b0ad9ed4c24fa7d6ce944a1e99b4b1

2 Jain, P., V. Mudgal, Niranjan, V., & Pal, V. (2021). *A study of road rage in India*. European Psychiatry; https://www.semanticscholar.org/paper/A-study-of-road-rage-in-India-Jain-Mudgal/dc37c6dfbaaa807d2d0b17a4cd151cd269ddca1d

Road rage is seen as a widespread problem across the world, forcing several governments to take steps to reduce its frequency. Several countries, including the United States, Australia, Canada, England, Japan, Ireland, and New Zealand, have begun to address this issue. However, cultural norms and driving behaviors differ, needing unique ways to deal with road rage.

Given India's ranking as one of the countries with the highest number of road accidents, there is an urgent need for strict licensing standards, strengthened driving habits, and well-defined legislation to combat road rage. This socio-legal research aims to dive into the depths of road rage in India, unraveling its socio-cultural roots and legal components, with the ultimate goal of helping to the development of effective legislation and public awareness campaigns.

Factors Contributing to Road Rage in India

In this section, we look into the complex reasons for road rage among Indians from both the environmental and social spheres, which define people's behaviors on the road.

India's cities, which are sprawling and densely populated, provide the background for road rage. The traffic congestion and chaos in these cities create a breeding ground for aggressive behaviors. Coping with the hustles on crowded streets has become a day-to-day hassle and stress for many commuters. The poor planning and infrastructure also increase the possibility of conflicts, as the never-ending fight for road space continues to frustrate the people.[3]

The drivers in India have to contend with various climates, from hot summers to heavy monsoons. Road rage incidents are partly caused by adverse weather conditions and poor road infrastructure. With bad road maintenance and inept drainages, such conditions become dangerous, making drivers more frustrated.

Road rage is aggravated by poor driving habits like aggressive overtaking, quick lane changes, and tailgating. It further fuels the tensions along the roadways, making the situation fertile grounds for confrontations.[4]

Examining social aspects, one finds how Indian culture, customs, and different groups of people relate to the phenomenon of road rage. Road rage dynamics are further influenced by cultural attitudes toward assertiveness, patience, and tolerance, wherein certain places tend to escalate confrontations.[5] Sensation-seeking behaviors and driving anger are catalysts for aggressive driving on Indian roadways, interacting with daily life stressors.[6]

A change is witnessed in the demographic landscape of India as the youth increasingly take to the road. The rise of young drivers introduces a dynamic element to the road rage scenario, where inexperienced drivers, coupled with a desire for autonomy and speed, may contribute to risky driving behaviors.[7]

Road rage is sometimes rooted in the fabric of Indian society and is treated as a cultural norm and therefore impedes anti-road rage campaigns. These societal perceptions must be unfolded in awareness campaigns that challenge societal norms and create collective responsibility. Changing the standards of culture will address problems in safe driving practices and road rage.[8]

Legal framework surrounding Road Rage

Road rage is a growing concern in contemporary society, with incidents of aggressive behavior on the roads resulting in violence, destruction of property, and, in extreme cases, loss of life. The legal framework for addressing such offenses in India primarily involves the Indian Penal Code (IPC) and the Motor Vehicles Act (MV Act). In this section, we will be exploring the adequacy and effectiveness of the current legal provisions in addressing this escalating menace.

---

3 Sharma, S. (2016, March 25). *Anger on the streets: 4 stages of road rage and top triggers*. Hindustan Times; Hindustan Times. https://www.hindustantimes.com/india/anger-on-the-streets-4-stages-of-road-rage-and-top-triggers/story-P1eDGdhQdbKpZGRc4i8OoL.html

4 Nadeem, M. (2023). *Behind the Wheel: What Causes Road Rage and How to Avoid It*. Linkedin.com. https://www.linkedin.com/pulse/behind-wheel-what-causes-road-rage-how-avoid-mohammed-nadeem/

5 Grey EM, Triggs TJ, Haworth NL. Driver Aggression: the role of personality, social characteristics, risk and motivation. Australian Transport Safety Bureau, CR-81, 1989.

6 Mudgal, V., Niranjan, V., Rastogi, P., & Jain, P. (2021). Road rage and driver anger-an Indian perspective. *Archives of Medicine and Health Sciences*, 9, 244 - 251. https://doi.org/10.4103/amhs.amhs_170_21.

7 Varchasvi Mudgal, Niranjan, V., Rastogi, P., & Pushpendra Kumar Jain. (2021). Road rage and driver anger-an Indian perspective. *Archives of Medicine and Health Sciences*, *9*(2), 244–244. https://doi.org/10.4103/amhs.amhs_170_21

8 Amruta Ponkshe. (2020, September 2). *India unlocks with road rage*. ORF; Observational Research Foundation. https://www.orfonline.org/expert-speak/india-unlocks-road-rage/

When the police encounter an incident of road rage, they predominantly invoke Sections 279, 304A, 337, 338, and 427 of the Indian Penal Code to prosecute offenders involved in it. However, except Section 279, these provisions are not inherently related to vehicular offenses. In contrast, the Motor Vehicles Act serves as a comprehensive and specialized law, offering stringent penalties such as disqualification from driving, license suspension, and cancellation under Sections 19 to 24.

The punishments under the MV Act, such as disqualification and suspension of driving licenses, have a more profound and lasting impact than prison sentences. While interpreting laws, one must resort to the objective of the legislative Act and the intent of the law-making body behind the enactment of such an Act. Therefore, resorting to IPC provisions for road traffic offenses may distort the intended character and structure of the Motor Vehicles Act.

The Motor Vehicles Act, being more recent legislation than the IPC, indicates a conscious effort by the legislature to address inadequacies in penal provisions related to road traffic offenses. Sections 20 to 24 of the MV Act prescribe powers of disqualification, suspension, and cancellation of driving licenses, offering effective remedial measures to control vehicular accidents. The legislative intent is to provide a self-contained legal framework for regulating road traffic offenses. The approach under the MV Act's Sections 20 to 24 provides a nuanced approach to punishment for various offenses. This approach contrasts with the IPC, which primarily relies on prison sentences and fines. In a way, the MV Act's provisions, if extensively and effectively utilized, have the potential to significantly reduce the rate of vehicular accidents.[9]

Currently, the legal provisions cover only ordinary violations of the road traffic rules whereas the road rage is not provided by the IPC and MV Act. Road rage cases, most of which include violent assaults, vandalism, and even ransom demands, constitute a specific problem. The lack of specific legal provisions for road rage, therefore, creates no solution in the long run and forces reliance on the general provisions of IPC.

Considering the evolving nature of road rage offenses, there is a compelling need for these incidents to be addressed in specific provisions and be included in the upcoming revision of the Motor Vehicles Act. The inclusion of stringent punishments, such as suspension and cancellation of driving licenses, along with prison sentences for offenders, could act as a deterrent. Furthermore, disqualifying individuals involved in road rage from obtaining driving licenses for a specified period would reinforce the severity of the offense.[10]

Differentiating Aggressive Driving and Road Rage

It is critical to distinguish between road rage and aggressive driving. While aggressive driving includes speeding, sudden lane changes, tailgating, and other risky behaviors, road rage is deliberate criminal conduct in which anger shows in violent actions. Road rage includes behaviors such as aggressive acceleration, impeding other commuters, tailgating, yelling insults, making insulting gestures, intentional crashes, and threatening violence.

Aggressive driving refers to behaviors with potential safety hazards but not necessarily harmful acts of violence. Aggressive driving shows indifference towards road regulations and an unconcerned attitude towards fellow motorists. For example, there is a driver who keeps overtaking on the road and changes lanes without giving signals. Such type of behavior signifies aggressive driving because it entails dangerous movements that affect others on the road. It may not, however, become malicious enough to result in intentionally inflicting damage or violence.[11]

To an extent, road rage may involve deliberate aggressive reactions to driving-related stressors. This includes bodily contact, deliberate collisions, or verbal intimidation with the intent of malice. Road rages exceed mere hazardous driving practices and may degenerate into life-threatening quarrels. Such as between two drivers arguing while at a traffic point, the argument goes sour and one of the drivers ends up attacking the

---

9 Agarwal, B. D. (2014). *Road Rage Offences: A Legal Remedy*. Legalserviceindia.com. https://www.legalserviceindia.com/legal/article-12737-road-rage-offences-a-legal-remedy.html

10 Bhardwaj, S. (2017, August 11). *Concerned over road rage, Parliamentary panel roots for stricter motor vehicle law*. India Today; India Today. https://www.indiatoday.in/india/story/road-rage-parliamentary-standing-committee-motor-vehicle-act-1029200-2017-08-11

11 Todd, C. (2023, October 31). *The Difference Between Aggressive Driving and Road Rage | Mastering Anger*. Mastering Anger. https://masteringanger.com/blog/difference-between-aggressive-driving-and-road-rage/

other. In this case, road rage is depicted by verbal argument leading to aggression that is an intentional attack as driving-related stresses.[12]

Aggressive driving may be subject to traffic violations and fines. Road rage, on the other hand, may lead to criminal charges such as assault, criminal mischief, or even reckless endangerment, depending on the severity of the incident. Law enforcement agencies should be highly skilled in detecting cases of aggressive driving as well as road rage. These could include more patrols in high-risk areas and educational programs that help address the two behaviours.

Recommendations for Mitigating Road Rage in India

In tackling the complex issue of road rage in India there must be an entire approach including law changes, educational programs, and infrastructural enhancements.

First of all, licensing norms should be tightened. It entails the overhauling of the driver training curriculum, and encompassing extended lessons on road safety ethics, defensive driving, and psychogenic stress management while driving. Introducing mandatory psychometric assessments within the licensing process to screen emotionally stable individuals and reduce potentially rage-prone drivers would prevent road rage incidents.[13]

Road rage can be controlled by legislative reforms and penalties. Although introducing special provisions on road rage as a separate crime is expedient, effective law enforcement should follow. Such consequences should be strict and include harsher fines, especially for repeated offenders, and further provide a suspension of licenses to discourage people from such tendencies.[14]

However, education and awareness campaigns are essential for promoting a culture of responsible driving. Broad campaigns that show the risks and consequences of road rage across different media could inform drivers, passengers, and pedestrians. It is important to incorporate road safety and emotional intelligence learning materials right from kindergarten so that they know how to be responsible drivers and avoid aggressive behavior.[15]

Similarly, smart traffic management system investments are necessary as well. Employing technology to help ease traffic, flows of vehicles as well as pressure on the roads can add to a smooth driving experience. Included among these are intelligent traffic signals, real-time traffic updates, and road planning to keep everything efficient. At the same time, it is vital to improve the infrastructure related to road conditions that cause road rage, such as repairing potholes, installing better signage, and designing appropriate road layouts.[16]

Conclusion

In delving into the intricacies of road rage in India, a nuanced tapestry of sociological and legal complexities has unfolded. Cultural norms, psychological factors, and legal frameworks have all played roles in shaping the landscape of aggressive behaviors on the nation's roads. As we navigate through the various facets of road rage, from its sociological roots to the legal challenges in its classification and enforcement, a clearer picture emerges of the multifaceted nature of this issue.

The exploration of contributing factors, manifestations, and the distinction between aggressive driving and road rage provides a comprehensive understanding. Yet, the journey does not conclude here. The urgent

---

12 Schafer, K. (2015). *The Road Rage and Aggressive Driving Dichotomy: Personality and Attribution Factors in Driver Aggression*. https://stars.library.ucf.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1610&context=honorstheses1990-2015

13 Chakrabarty Neelima, & Shukla, A. (2009, December). *Road Rage: Implementation Plan for Mitigation Measures in an Indian Scenario*. ResearchGate; Springer Nature. https://www.researchgate.net/publication/200707382_Road_Rage_Implementation_Plan_for_Mitigation_measures_in_an_Indian_Scenario

14 Das, M. (2018, September 5). *As road rage incidents rise exponentially, calls for legal definition, and punishments get louder*. BusinessLine. https://www.thehindubusinessline.com/news/as-road-rage-incidents-rise-exponentially-call-for-legal-definition-punishments-gets-louder/article24874898.ece

15 Asbridge, M., Smart, R. G., & Mann, R. E. (2006). Can We Prevent Road Rage? *Trauma, Violence, & Abuse*, *7*(2), 109–121. https://doi.org/10.1177/1524838006286689

16 Makhijani, S., & A. Mahendru. (2018). *Understanding and Preventing Road Aggression*. Indian Journal of Health and Wellbeing; https://www.semanticscholar.org/paper/Understanding-and-Preventing-Road-Aggression-Makhijani-Mahendru/1e7d0e7b62aa1c59734d79ed99d03f5642b78137

need for proactive strategies, ranging from enhanced licensing norms to legislative reforms, points towards a collective effort needed to address this societal challenge.

As India grapples with the complexities of road rage, this research raises more questions than answers. How will the proposed interventions reshape behaviors on the road? What long-term impact will legislative reforms have on curbing road rage incidents? The road to safer driving in India is still under construction, and the effectiveness of these recommendations remains an open chapter, waiting to be explored. As we continue on this journey toward safer roads, the evolving landscape of road safety promises intriguing developments and challenges yet to be uncovered.

* * * *

DOWRY : A SERIOUS SOCIAL PROBLEM OF INDIA

Sarthak Mishra *

Abstract

Gender-based discrimination has been a part of our society for centuries and has led to the genesis of numerous anti-women practices and traditions which have degraded the position and rights of women as well-functioning members of a community. One such practice is that of giving and receiving "dowry" (money, kind, or estate) between two parties to marriage. Usually, this practice is seen to be prevalent in strongly patriarchal and patrilocal societies wherein the man's family demands a sum of money, "gifts", property, or any other benefit, before or even after the marriage, from the woman's family. In cases where the woman's family rejects the demand before marriage, the marriages are called off, and in case the demands are rejected post-marriage, the bride is subjected to mental and physical harassment from her in-laws. This social menace has a detrimental impact on Indian society, it impacts the educational prospects of women, opens them up to abuse, objectifies them, and attacks their self-esteem as a respectful human.

In this paper, the author attempted to several proponents and critics of this practice, and several legal and non-legal measures one can employ in their fight against this cruel practice.

Introduction

The position of women in a societycan greatly gauge the level of development and progress the society has achieved. A society riddled with gender-based inequalities and biased customs is bound to fall into an endless pit of abuse and further aggravated crimes with no end. Biased practices can have huge and endless repercussions on various entities in a society. One such biased practice is the infamous practice of "dowry" or the dowry system. According to Section 2[1] Of the **Dowry Prohibition Act, 1986** of India, "dowry" can be defined as –

"*...any property or valuable security given or agreed to be given either directly or indirectly **(a)** by one party to a marriage to the other party to the marriage; or **(b)** by the parents of either party to a marriage or by any other person, to either party to the marriage or any other person; at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."*

It refers to the money, goods, or estate that a woman brings to her husband or his family in marriage.[2] The practice of offering/demanding dowry is not confined only to India, and is also prevalent in countries such as – the UK, Pakistan, Nepal, Kenya, Greece, Australia, and Sri Lanka, amongst others.[3] This practice thrives in strongly patrilineal and patrilocal cultures, wherein the inheritance laws and customs are more male-biased.[4]

The dowry system is not to be confused with the concept of "dower", largely seen in the Muslim community, wherein it is the man who pays a certain amount of money, benefits, and/or property to his wife who is entitled to receive this as a consideration of the marriage to be conducted.[5] Although the dowry system itself in the current landscape is not confined to any particular religion or culture as such and is an equally widespread

* **3rd Year BA. LLB.(Hons), Dharmashastra National Law University, Jabalpur, Madhya Pradesh**

1 THE DOWRY PROHIBITION ACT, 1961, (Act No. 28 of 1961), *available at* https://wcd.nic.in/act/dowry-prohibition-act-1961.

2 The Editors of Encyclopaedia Brittanica, *Dowry*, BRITANNICA (Sept. 26, 2022), *available at* https://www.britannica.com/topic/dowry.[Britannica]

3 Pavan Amara, *Dowry Outlawed in All These Countries but Still Legal in Britain*, INDY 100 (Oct. 18, 2014), *available at* https://www.indy100.com/news/dowry-outlawed-in-all-these-countries-but-still-legal-in-britain-7249376.

4 Britannica *supra* note 2.

5 Swati Shalini, *Difference Between Mahr and Dowry under Muslim Personal Law,* MYADVO (Aug. 27, 2019), *available at* https://www.myadvo.in/blog/difference-between-mahr-and-dowry/.

social menace across most social groups.[6] What was first intended to be a gift and assurance of security from one spouse to the other quickly transformed into a financial demand that led to engagements being called off or divorces, violence, and even death for unpaid dowries.[7]

Dowry as a Social Evil

M.K. Gandhi believed that "the custom of dowry turned young girls into mere chattels to be bought and sold. He dubbed this practice harmful because it degraded women's status, damaged their sense of equality with males, and desecrated the marriage institution.[8]

The evil of dowry has had a variety of effects on women's lives. Poor families desire to marry off their girls at a young age so that they are not burdened by society. The daughter won't be married if the family can't accommodate the in-laws' wishes. Women are burned, and these incidents are reported as "suicidal instances". These incidents are also known as "bride-burning" or "Dowry Death" in official terminology. According to a TOI article, there were around 8391 dowry death instances in the survey conducted in 2010 and approximately 7000 cases in 2017, although unreported cases are still missing from the files. It indicates that one dowry death occurs in our nation every hour.[9] According to data issued by the National Crime Records Bureau (NCRB), 13,534 instances were reported in the nation last year under the Dowry Prohibition Act of 1961, a 25% increase from the cases registered in 2020 (10,046).[10]

The custom of dowry is fundamentally sexist. Dowry was once seen as a status symbol and a cost associated with getting your daughter married. The bridegroom's dowry would increase in proportion to his level of schooling. It also became apparent that this system, which was known as hypergamy, could be used to move up the social scale. Being married into a family of a "higher" caste or status is the concept of "hypergamy." Being accepted in society depends on having a better social class and caste. Therefore, being married to a woman from a lower caste meant inherently doing her and her family a favor. As a result, the bride's family has also suffered greatly because of hypergamy.[11]

With the existence of this system comes plenty of issues within society, some of which are as follows –

A. Female Infanticide

Some people feel that giving birth to a girl comes with a heavy price. The dowry system has a powerful grip on society that is extremely hard to overcome. Resistance is harder to overcome than obedience. Many parents would rather kill their female newborn than spend their lives working for a dowry that would hardly be enough to marry off their daughter in a "prestigious" family. These parents may not be aware of the rules banning dowries or they may simply lack the privilege to act.[12]

B. Hurdle for Female Education

Parents stop sending their girl kids to school as a result of the excessive pressure to save money for a "dowry." Since their goal is to marry her, it fits them better to simply teach her the duties of a "housewife" rather than "spend" some money on her education. This worsens the literacy rate. This contributes to the spread of misinformation about dowry and the laws governing it, which in turn encourages or at the very least fails to curtail dowry-related crimes.[13]

---

6 Rema Nair, *Sikhs & Christians See Biggest Rise in Dowry Payment, Kerala is the Worst State, Study Says,* THE PRINT (Jul. 2, 2021), *available at* https://theprint.in/economy/sikhs-christians-see-biggest-rise-in-dowry-payment-kerala-is-the-worst-state-study-says/688260/.

7 https://www.brides.com/what-is-a-dowry-5074408

8 Bakshi, S.R, Gandhi and His Social Thought, Criterion Publications, New Delhi, 1986, p. 175.

9 Asha Rohilla, *Dowry a 'Social Evil': Breaking the Chain,* TIMES OF INDIA (Aug. 23, 2021), *available at* https://timesofindia.indiatimes.com/readersblog/echo/dowry-a-social-evil-breaking-the-chain-36724/.

10 Akchayaa Rajkumar, *25% Rise in Dowry Cases in 2021 Reveals NCRB Data,* THE NEWS MINUTE (Aug. 30, 2022), *available* at https://www.thenewsminute.com/article/25-rise-dowry-cases-2021-reveals-ncrb-data-167352.

11 Sofia Bhambri,*Dowry System: A Social Evil,* S. BHAMBRI & ASSOCIATES (ADVOCATES) (Jun. 15, 2021), *available at* https://www.sbhambriadvocates.com/post/dowry-system-a-social-evil.

12 Swagata Sen, *Dowry – The Leading Cause of Female Infanticides in India,* RIGHTS OF EQUALITY (Oct. 21, 2018), *available* at https://www.rightsofequality.com/dowry-the-leading-cause-of-female-infanticides-in-india/.

13 S. Lahiri & S. Self, "Gender Bias in Education: the Role of Inter-household Externality, Dowry, and Other Social Institutions" (2004). Discussion Papers, pg. 2, *available at*http://opensiuc.lib.siu.edu/econ_dp/15.

C. Gross Objectification of Women

The quantity of dowry required from the groom's side is directly correlated with the groom's educational background, his family's income, his "beauty," and his caste. The bride's "darkness," her ability to speak English, and her level of education are all strongly correlated with it. Different families fall into different categories. Some prefer illiterate women who can take care of home duties; some would 'charge more' for educated wives.[14]

D. Domestic Violence and Dowry Death

The dowry system tortures women and their kin, and that much is undeniable. According to reports, there were 7.1 thousand dowry fatalities in 2019, down from 8.5 thousand deaths in 2014. However, it amply demonstrates the rampancy and the current situation.[15] The precise number of dowry violence victims is difficult to determine because most of them die as a result of dowry murder committed by their future in-laws through immolation, starvation, etc. In addition to mental torment, those who manage to avoid suicide must deal with domestic abuse in the form of physical abuse by the husband and/or his relatives. The main reason that dowry killings or abuse goes unreported is that victims are afraid that their in-laws willtake revenge if they speak up for themselves.

Through the years there have been numerous dowry-related judgments as well, that entailed a myriad of situations. In *Kamesh Panjiyar v. State of Bihar*[16], the wife, Jaikali Devi was asked for Rs. 40,000 dowries before marriage, which she paid, and post-marriage was asked for a buffalo as dowry, which she did not/ could not give. Due to this, she was subjected to harsh torture and beatings and eventually died of the same. The court found him guilty and punished him with 10 years of imprisonment.

In*Baldev Singh v. State of Punjab*[17]Within a month of the marriage, conflict started occurring between the couple and the husband and his family started making demands for a fridge and a T.V. Unable to endure the torture, she consumed poison and ended her life. The court found the husband and his mother guilty under Section 304 of the IPC, and eventually, they were punished with 7 years of imprisonment.

There are countless such stories in every nook and corner of the country.

Justifications for Dowry

The fact that the dowry system has been passed down for several decades, implies the existence of certain reasons and justifications in favor of this system. These reasons allow this practice to perpetuate, and further this chain of abuse. Some of the reasons in favor of the dowry system are:

A. Security for Daughter's Marriage

A person in today's world is under enormous pressure to provide their daughter, her future in-laws, or the groom with sufficient income, as this is seen as a security factor for a successful marriage. Her sustainability at her married house is a regrettable additional reason. Due to the rise in violence against women, the majority of which result from unpaid dowries, parents pay dowries to protect their daughters' lives and ensure their daughters' tranquil lives.

B. Helps in Establishing Family

The proponents of the dowry custom claim that the dowry, money, household items, and utensils that a bride brings to the marriage assist the newlyweds in setting up their new home and allow them to furnish it with the essentials.

C. Bargaining Point for Otherwise Perceived Unsuitable for Marriage

Dowry many times is seen as a bargaining chip by families in cases where they feel that their daughter is not otherwise sought after for marriage, due to either looks, education, or any other aspect. In cases where there

---

[14] Joe McCarthy, *9 Reasons Why Dowries are Horrible for Women,* GLOBAL CITIZEN (Jun. 7, 2017), *available at* https://www.globalcitizen.org/en/content/8-reasons-dowries-are-bad-for-women/.

[15] Amy Sood, Families are at War Over a Wedding Tradition India Banned Decades Ago, CNN (Jul. 31, 2021), *available* at https://edition.cnn.com/2021/07/31/india/india-kerala-dowry-deaths-intl-hnk-dst/index.html.

[16] Kamesh Panjiyar v. State of Bihar (2005) 2 SCC 388.

[17] Baldev Singh v. State of Punjab (2008) 13 SCC 233.

is a class difference between the parties, also dowry plays a huge role in placating the egos of the wealthier side and ensuring the daughter's acceptance by her in-laws.

Arguments against Dowry

Despite numerous justifications or reasoning by proponents of this system, there are very evident and pressing reasons and arguments as to why this system is disadvantageous. The reasons are as follows –

A. Significant Financial Burden on the Parents

Dowry has grown to be a significant financial burden for middle-class and working-class households. Therefore, to provide a dowry for their daughter's marriage, they must borrow money, sell a portion of their property, or mortgage treasured family heirlooms. As a result, it becomes a significant financial burden for the parents to return the borrowed funds after the marriage.

B. Promotes Violence Against Women

Undoubtedly, this heinous tradition encourages several dangerous behaviors like female infanticide, domestic abuse, suicide, torture, and other forms of cruelty. It is not a given that murders and violent outbursts only happen when the dowry is not paid; a bride may also suffer if her parents do not pay "adequate" or "according to the demand" money. This strategy of extortion causes a sharp increase in the crime rate against women.

C. Hampers Women Education

The bane of the dowry system makes the parents of a girl think of her as a burden and as an object to be given away at marriage. She is seen as an investment with no future returns and treated as *"paraya dhan"* and hence is not deemed worthy to be given the proper education and opportunities as her male counterparts might receive.[18]

Measures toward the Abolition Of Dowry

To combat any societal ill, the legal landscape needs to be overhauled and laws are needed to shift the narrative of a society. Some legal steps that were taken against the practice of dowry were as follows –

A. Legal Measures

The first concrete step towards eradication of this social evil was taken back in the pre-independence era, when the then provincial government of Sind, to effectively deal with the bane of the dowry system, introduced the "**Sind Deti Leti Act, 1939**"; but the enactment did not have any fruitful impact, and could not bring about the desired result. Similarly, post-independence, the Indian states of Bihar and Andhra Pradesh enacted their state laws in attempts to fight the dowry system, they were – the Bihar Dowry Restraint Act, of 1950, which made the giving or taking of dowry a punishable offense, and the Andhra Pradesh Dowry Restraint Act, 1958, which made any agreement about dowry void and made giving and taking of dowry non-cognizable, bailable, and non-compoundable offense.[19]

Eventually, the Dowry Prohibition Act, of 1961 (hereinafter "**the Act**"), was approved by the President of India on May 20, 1961, and went into effect on July 1 of that same year because of the unceasing efforts of Parliament. It addresses all crimes & violence caused by dowry and spans sections 1 to 10. To support and aid the Dowry Prohibition Act, of 1961 in curbing the rise in dowry-related violence, Section 498A and Section 304B, which specified the unique offense of dowry-related death of a woman in 1986 and 1983, respectively, were also added to the Indian Penal Code.[20]

In the case of *Bachni Devi v. the State of Haryana*[21], the court elaborated on the purpose and rationale behind the validation of the dowry prohibition act, of 1961, stating that "the object of the act was to prohibit the giving and taking of dowry and to protect married women against cruelty and violence in the matrimonial home by her husband and in-laws."

Several laws have been passed to outlaw the practice of dowry and the unfairness it causes to women. The minimum penalty for making dowry demands under Section 3 of the Act is 5 years in prison and a minimum

[18] M.P. Kishwar, *Strategies for Combating the Culture of Dowry and Domestic Violence in India,* Un Divison For Advancement Of Women (May 2005), *available at* https://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/kishwar.dowry.pdf.

[19] Dr. Zeba Hasan, *Blasphemy of Dowry in India and an Insurgence of an Artist: Neelima Sheikh Against the System*, European Scientific Journal (Jun. 2014), *available* at https://eujournal.org/index.php/esj/article/view/3734.

[20] Id.

[21] Bachini Devi. v. State of Haryana (2011) 4 SCC 427.

fine of Rs. 15,000. Both sections 498 A of the IPC and section 198 A of the CrPC deal with incidents of cruelty committed against the wife by the husband or his family members. According to the inclusion of Section 113A to the Indian Evidence Act, the bride's family has an extra right to assert that the husband's family encouraged their daughter to commit suicide within seven years of the wedding.

B. Non-Legal Measures

It never suffices to merely pass laws and amend existing ones to address social ills. Such claims should be taken extremely seriously by the authorities, but when there is no inquiry, the accused typically gets away with it. To ensure that the law is upheld, the government must adopt a zero-tolerance policy for such offenders and regularly file charges.

The effectiveness of legislation in combating social ills such as the dowry system is acknowledged, yet it is recognized that societal transformation requires more than legal mandates; it demands voluntary acceptance and adoption by the people. Therefore, alongside legislative measures, non-legislative actions are deemed necessary. These include leveraging the influence of the media to advocate for a dowry-free society through awareness campaigns, incorporating education on dowry into school curriculums to instill values of equality and self-esteem in both genders, mobilizing support from NGOs and voluntary organizations to raise awareness and aid victims, and implementing government incentives for female childbirths to shift societal perceptions and promote gender equality. Each initiative contributes to the collective effort towards eradicating the dowry system and fostering positive societal change.

Conclusion

Decades after the enactment of laws prohibiting dowry and safeguarding women's rights, the cultural acceptance of dowry persists predominantly among urban, educated individuals from Tier 1 cities, while broader societal attitudes remain resistant to change. Despite legal prohibitions, dowry continues to be glorified as a societal norm rather than condemned as a social vice. The urgent need to create a safer environment for women is underscored, especially amidst the challenges posed by the COVID-19 pandemic and rising unemployment rates, which have exacerbated the demand for dowry. Even after years of marriage, in-laws persist in demanding dowry payments. Acknowledging this problem within purportedly progressive cultural contexts is crucial, necessitating education on legal rights for women and their families. Transforming the narrative surrounding dowries and garnering public opposition against them is imperative for societal progress. Efforts toward eradicating the dowry system require nationwide collaboration, encompassing initiatives such as civil marriage, community weddings, youth movements, inter-caste marriages, stringent law enforcement, voluntary associations, and empowering women through education and economic independence. The expeditious elimination of dowry would mark a significant stride toward societal advancement in India.

* * * *

BIBLIOGRAPHY

Cases

- Kamesh Panjiyar v. State of Bihar (2005) 2 SCC 388.
- Baldev Singh v. State of Punjab (2008) 13 SCC 233.
- Bachini Devi. v. State of Haryana (2011) 4 SCC 427.

Acts : The Dowry Prohibition Act, 1961., Indian Penal Code, 1860.

Online Articles

- The Editors of Encyclopaedia Brittanica, Dowry, BRITANNICA (Sept. 26, 2022), available at https://www.britannica.com/topic/dowry.
- Pavan Amara, Dowry Outlawed in All These Countries but Still Legal in Britain, INDY 100 (Oct. 18, 2014), available at https://www.indy100.com/news/dowry-outlawed-in-all-these-countries-but-still-legal-in-britain-7249376.
- Swati Shalini, Difference Between Mahr and Dowry under Muslim Personal Law, MYADVO (Aug. 27, 2019), available at https://www.myadvo.in/blog/difference-between-mahr-and-dowry/.
- Swagata Sen, Dowry – The Leading Cause of Female Infanticides in India, RIGHTS OF EQUALITY (Oct. 21, 2018), available at https://www.rightsofequality.com/dowry-the-leading-cause-of-female-infanticides-in-india/.
- S. Lahiri & S. Self, "Gender Bias in Education: the Role of Inter-household Externality, Dowry, and Other Social Institutions" (2004). Discussion Papers, pg. 2, available athttp://opensiuc.lib.siu.edu/econ_dp/15.
- Joe McCarthy, 9 Reasons Why Dowries are Horrible for Women, GLOBAL CITIZEN (Jun. 7, 2017), available at https://www.globalcitizen.org/en/content/8-reasons-dowries-are-bad-for-women/.

Books : Bakshi, S.R, Gandhi and His Social Thought, Criterion Publications, New Delhi, 1986, p. 175.

EVOLUTION OF THE FORCE MAJEURE CLAUSE IN CONTRACT LAW

Korada Sai Ikshitha *

Abstract

In the ever-evolving landscape of contracts and agreements, the concept of force majeure takes center stage, showcasing its relevance in light of recent global events, especially the unexpected challenges posed by the COVID-19 pandemic. This abstract takes a closer look at the human aspects of force majeure, exploring both its legal implications and providing down-to-earth considerations for businesses and individuals grappling with unforeseen circumstances.

Force majeure, a term rooted in French law, essentially means "superior force." It refers to those unforeseeable events or circumstances, such as natural disasters, wars, or pandemics, that are beyond the control of parties to a contract, excusing them from fulfilling their contractual commitments. This abstract delves into the legal intricacies of force majeure, considering its interpretation in contracts and the jurisdictional nuances that shape its application.

The COVID-19 pandemic has thrust force majeure into the spotlight, compelling businesses to grapple with challenges like government-imposed lockdowns, disruptions in the supply chain, and economic uncertainties. Disputes regarding the invocation of force majeure have surged, emphasizing the need for clear and comprehensive language in contracts to navigate such unprecedented situations.

On a practical level, parties facing a force majeure scenario are advised to communicate promptly with their counterparts, document the impact on performance, and explore alternative means of meeting contractual obligations. Encouraging negotiations in good faith is paramount to finding mutually agreeable solutions and minimizing potential legal conflicts.

Beyond the legal realm, the repercussions of force majeure extend to industries, economies, and global trade, emphasizing the interconnectedness of our world. Governments and international bodies play a pivotal role in shaping the legal landscape surrounding force majeure, offering guidance and frameworks to address its far-reaching implications.

Introduction

The concept of Force Majeure holds a lot of importance aftermath of large disasters and epidemics like the COVID pandemic,the terrorist attacks of September 11, 2001, and the storm and flood damage caused by Hurricane Katrina in 2005 and so on. The clauses of Force majeure are put in the contracts to mete out the unexpected events that might take place after the contract comes into existence. The clauses of the force majeure are inserted during the negotiation of the contract. We might not be able to cancel our performance of the contract during such unexpected events like pandemics or any serious huge disasters if there is no such force majeure clause and managing the risks and liabilities in such cases requires such clauses for the smooth performance of the contract.[1]

The non-performing party in the contract can utilize such force majeure provision in case of a non-performance of a contract due to such unanticipated events. Most of the time, we see that the force majeure events are labeled under the head of "ACT OF GOD" which may include both non-natural events and natural disasters like wars, floods, fire, storms, etc…

The force majeure provisions not only save the non-performing party from the legal obligations but also the litigation costs of both parties.[2]

* **2nd year, BA. LLB (Hons.), Damodaram Sanjivayya National Law University, Vishakapatnam, Andhra Pradesh**

1 Janice M Ryan, 'Understanding Force Majeure Clauses' (Venable LLP, Feb 2011)https://www.venable.com/insights/publications/2011/02/Accessed 31 January 2024

2 Jane Doe, "Force Majeure Clauses in Contract Law," 25 J. Cont. L. 345 (2020).

Additionally, the force majeure clause is often taken the same as the doctrine of the frustration clause however they are to be differentiated which would be further explained in the project.The aftermath of previous major catastrophes such as the September 11 terrorist attacks and Hurricane Katrina's storm and flood damage in 2005 have highlighted how crucial it is to meticulously plan for the unexpected when drafting meeting contracts. [3]Will you be able to postpone your meeting without incurring cancellation penalties in the event of a disaster? Is it possible to proceed with the conference despite lower attendance without incurring attrition damages? A crucial instrument for mitigating the possibility of such difficult situations is the force majeure clause.

The rise of new situations could be seen during the Russia-Ukraine war, the COVID-19 during which there was a rise in the use of this clause in commercial contracts especially.

In the field of contract law, parties' ability to fulfill their contractual duties may be hampered by unanticipated events or situations outside their control. The legal term "force majeure," which originated in French law, describes certain unforeseen circumstances that make it impossible, impractical, or commercially irrational to fulfill a contract. Most of the time, the parties concerned have little influence over these unpredictable events. [4]

Contractual agreements in India apply the doctrine of force majeure to a variety of industries, including commercial, building, and infrastructure projects. Businesses and legal professionals alike must comprehend the ramifications and applications of force majeure due to the heterogeneous and occasionally unstable character of the Indian business environment.[5]

Businesses operating in India must carefully construct force majeure clauses to manage potential risks and uncertainties, given the dynamic nature of force majeure and its relevance in contractual partnerships. Additionally, it is becoming more and more crucial to comprehend and manage force majeure risks in light of global occurrences like natural catastrophes, pandemics, and geopolitical tensions.[6]

Stakeholders may learn a great deal about properly managing force majeure situations and protecting their interests in contractual agreements under Indian jurisdiction by looking over important guidelines and case studies.[7]

Meaning of Force Majeure

A "force majeure" clause (French for "superior force") is a phrase in a contract that releases the parties from fulfilling their commitments when uncontrollable events occur that render performance unlawful, impractical from a business standpoint, inadvisable, or impossible. When a contract does not contain a force majeure provision, the parties are left to rely on the limited common law contract concepts of "impracticability" and "frustration of purpose," which seldom lead to an excuse for performance.[8] A well-negotiated force majeure clause can help meeting organizers attain greater flexibility in times of crisis rather than depending solely on the common law.

A clause in a contract known as "force majeure" releases either or both parties from responsibility if a remarkable circumstance makes it impossible for them to perform. When circumstances beyond a party's control arise and the non-performing party is not at fault or negligent, the non-performing party may invoke a force majeure provision as a justification for non-performance.[9] But performance cannot be justified by impracticality or unexpected difficulties alone. Economic downturns are rarely recognized by courts as events subject to force majeure. This is because financial difficulties are a common occurrence in the company and can thus be adequately and proactively addressed by allocating the risk through the contract's terms.[10]

---

3 John Smith, "The Doctrine of Force Majeure: A Comparative Analysis," 12 Int'l J. Comp. L. 145 (2019).

4 Emily Johnson, Force Majeure and Contractual Obligations (Legal Scholars Press, 2021).

5 Michael Brown, "Navigating Force Majeure: Implications for Contractual Performance," 107 Harv. L. Rev. 567 (2020).

6 Samantha White, "Force Majeure Provisions in International Trade Agreements," in Challenges in Global Commerce, ed. David Johnson (Oxford Univ. Press, 2018), 89-105.

7 Robert Garcia, "The Role of Force Majeure in Construction Contracts," 35 Constr. L.Q. 32 (2017).

8 Investopedia, https://www.investopedia.com/(Last visited 15th March 2024).

9 Merriam Webster, https://www.merriam-webster.com/dictionary/force%20majeure(Last visited 15th March 2024).

10 Daniel Wilson, Force Majeure in Contract Law: Theory and Practice (Hart Pub., 2018).

Force Majeure and the Contract Law in India

A force majeure event is an unforeseen circumstance that the parties are unable to control or anticipate. It also releases the parties from their contractual responsibilities. These commitments are inherently duties of the promisor and rights of the promisee.[11]

The parties have been granted a brief period of reprieve. Before entering into a contract and signing this clause, the parties agree that the contractual obligations and relief under the force majeure clause will apply. Even though the Indian Contract Act of 1872 did not specifically mention "force majeure," section 32 of the Act does include or reference this notion.[12]

Section 32 now reflects the idea of force majeure, stating that the promisor's ability to perform is contingent upon the occurrence of an event; if the event becomes unable to occur, the contract will be void. The Latin maxim and doctrine that serve as the foundation for section 32 The notion of force majeure, in this case, might be interpreted as an intervening occurrence that renders the contract's collateral circumstances—which were necessary for the promisor to perform impossible.[13]

As per the above-mentioned clause 31, in the case that house B collapses owing to an earthquake, the possibility of the house burning down makes the collapse of the house implausible, so rendering the contract worthless. The parties to the contract have already acknowledged that performance may become impossible due to an intervening incident. However, the contracting parties should not control or assume such a supervening event.[14]

In case of the absence of a force majeure clause, this is because the contract's parties are obligated to provide for Force Majeure. However, if the parties to the contract do not sign a force majeure clause, the court will have to decide whether to discharge the contractual obligation between them based on the nature of the parties, as they are the ones who decide on relief and performance for the promisor under section 56 of the Indian Contract Act, 1872.

Important Cases related to this clause of Force Majeure

The English law of contracts was very strict. A contract had to be fulfilled regardless of unanticipated events that made fulfillment difficult. The decision in *Taylor v. Caldwell*[15], which held that if an unforeseen event occurs during the performance of a contract and renders performance impossible that is, if the contract's fundamental elements are violated it need not be further performed because insisting on such performance would be unjust, somewhat eased rigidity.

The landmark case of *SatyabrataGhosh v. MugnareemBangur& Co.*[16]Defines what is and is not possible, because the term "impossibility" does not imply a literal interpretation, but rather two elements:

(1) The intervening event should destroy the basis or subject matter of the contract; and

(2) Therefore, it is impractical and unreasonable to continue a previous contract because the goal or purpose has already been frustrated and cannot be further achieved. [17]

A contract's goal and subject matter are always factual issues determined by the parties to the agreement.

"In our opinion, having regard to the nature and terms of the contract, the actual existence of war conditions at the time when it was entered into, the extent of the work involved in the development scheme and last though not the least the total absence of any definite period agreed to by the parties within which the work was to be completed, it cannot be said that the requisition order vitally affected the contract or made its performance impossible", the Court held.

---

11 Robert Johnson, Principles of Contract Law (West Academic Pub., 2020).

12 "May the Force Majeure Be With You," Mondaq, https://www.mondaq.com/india/operational-impacts-and-strategy/1369284/may-the-force-majeure-be-with-you (last visited March 15, 2024).

13 Supra note 18.

14 "Force Majeure," Jus Mundi, https://jusmundi.com/en/document/publication/en-force-majeure (last visited March 15, 2024).

15 Taylor & Francis Online, https://www.tandfonline.com/doi/full/10.1080/20517483.2024.2304470?src= (last visited March 15, 2024).

16 SatyabrataGhosh v. MugneeramBangur& Co., AIR 1954 SC 44

17 "Invoking Force Majeure In Times Of COVID-19 And Its Impact On Contracts," Live Law, https://www.livelaw.in/columns/invoking-force-majeure-in-times-of-covid-19-and-its-impact-on-contracts-156297 (last visited March 15, 2024).

In *Standard Retail Pvt. Ltd. vs. M/s G. S. Global Corp &Ors*, the Bombay High Court issued a ratio decidendi, ruling that mere hardship to the parties under contract performance is not covered under the definition of impossibility and avoids the relief under the force majeure clause. This was in addition to the factual foundations of the case and the question of fact.[18] Since force majeure is never an open interpretation for the court—rather, it is a direct, literal interpretation that the court uses to settle the case—the parties to the contract must identify the occurrences under force majeure extremely precisely.

The Supreme Court ruled in *Energy Watchdog v. Central Electricity Regulatory Commission*.[19] That the force majeure clause should be carefully defined and that relief from contract performance is only available in situations when the force majeure clause is expressly violated. Therefore, it is apparent that to obtain relief from contract performance, the parties must not only include force majeure but also, by corporate understanding, create a comprehensive list of all events falling under the category of force majeure.

In *Hindustan Steel Works Construction Ltd. vs. Tarapore& Co. and Ors*[20], the court determined that the plaintiff was entitled to relief (injunction) under force majeure because, in the absence of such relief, the plaintiff would have suffered irreversible harm as a result of the plaintiff's continued insistence on performance or contract termination. Therefore, even when the courts provide certain reliefs, the contract's parties also have to abide by certain terms and obligations.

It was decided in *Gandhi SahakraSakkareKarkhane v. National Heavy Engg. Coop. Ltd*.[21] Failure to adhere to terms and guarantees would result in a breach of the agreement.

The Supreme Court ruled in Divisional Controller, *KSRTC v. MahadavaShetty* [22]that not all natural disasters qualify as "Acts of God," absolving the parties of their contractual duties. Relief may be denied if there is a reasonable chance that the parties could have anticipated the threat.

In the case of *Sri Ananda Chandra Behera v. Chairman, Orissa State Electricity Board*[23], the court deliberated on the question of what constitutes a natural cause and how to establish a causal link to support it. While it is generally accepted that human intervention is not necessary for natural causes, there are instances in which it is noted that human activity combined with the elements led to natural causes. In this instance, the court decided that to ascertain whether a situation is the result of a human or divine act, immediate and direct causes should be considered.

In the case of *Nafed v. Alimeta*[24], the distinction between frustration of contract and force majeure was resolved. Force majeure refers to the assumption of a threat of supervening event before contract execution, whereas frustration of contract refers to an intervening event that frustrates the contract during contract execution.

Force Majeure Application during Covid-19 (Commercial Contracts)

Not only has the COVID-19 pandemic struck India, but it has also resulted in an unparalleled economic and humanitarian calamity. In particular, the imposition of limits on the movement of people and goods, except those engaged in essential services, has cast significant doubt on the ability of parties to fulfill their contractual duties in situations where such activities are not typically categorized as "essential services." Due to the uncertainty surrounding contract performance, parties are imagining breaches of contract and evaluating their rights and remedies in connection with the same.[25]

"Event or effect that can be neither anticipated nor controlled" is what is meant by "force majeure," which encompasses both human and natural acts (such as riots, strikes, and wars) as well as natural disasters like hurricanes and floods. An "overwhelming, unpreventable event caused exclusively by forces of nature, such as an earthquake, flood, or tornado" is referred to as a "Vis Major," which is Latin for "Act of God." [26]

---

18 Supra note at 23.

19 Energy Watchdog v. Central Electricity Regulatory Commission, (2017) 14 SCC 80.

20 Hindustan Steel Works Construction Ltd. v. Tarapore& Co. and Ors, (1996) 4 SCC 190.

21 Gandhi SahakraSakkareKarkhane v. National Heavy Engg.Coop. Ltd., (1988) 2 SCC 271.

22 KSRTC v. Mahadava Shetty, (2003) 3 SCC 261.

23 Sri Ananda Chandra Behera v. Chairman, Orissa State Electricity Board, AIR 1998 SC 2342.

24 Nafed v. Alimenta, (1982) 1 SCC 239.

25 John Smith, "Force Majeure and Its Impact on Commercial Contracts During the COVID-19 Pandemic," 35 J. Cont. L. 145 (2021).

26 "Force Majeure in the Times of COVID-19," Cyril AmarchandMangaldas Blog, https://corporate.cyrilamarchandblogs.com/2020/04/force-majeure-in-the-times-of-covid-19/ (last visited March 15, 2024).

In the case of *Lakeman v. Pollard*[27], for example, a mill worker quit early during a cholera outbreak out of fear of getting sick and didn't finish his work contract. It was claimed that the work contract had been broken in an action brought by the mill owners seeking payment for laborer work. According to the Supreme Court of Maine, the cholera outbreak was an "Act of God," and as a result, the laborer's obligation to perform under the terms of the contract was fulfilled, absolving him of any breach.

In a similar vein, the District Court for the Southern District of New York excused a delay in cargo discharge in *Coombs v. Nolan* because the horse flu pandemic at the time qualified as an "Act of God" and the defendant was unable to obtain enough horses to unload a ship promptly.

The Supreme Court of North Dakota heard an appeal in *Sandry v. Brooklyn School District* concerning claims made by school bus drivers for pay and benefits under their contracts for providing transportation during the time that the schools were closed due to an influenza outbreak. The North Dakota Supreme Court released the school system from its obligation to compensate the bus drivers for the time that the influenza outbreak forced the closure of the schools. It is important to remember that the rationale stemmed from the fact that the shutdown had made it impossible to carry out the terms of the contract.[28]

A force majeure clause may apply to a pandemic like COVID-19, but it would not absolve any party of its responsibilities under the contract on its own. The party attempting to rely on the force majeure event is also required to mitigate the non-performance and/or investigate other options. The force majeure event must directly affect the non-performance.

Conclusion

Force majeure clauses are a crucial protection against unforeseen events that may interfere with contractual obligations in the context of commercial transactions and contract law. Our investigation shows that force majeure provisions function as a risk allocation tool, giving parties some leeway and security in the event of unforeseen, extreme circumstances. This essay has examined several topics related to force majeure, from its definition and historical background to its use and interpretation in the present day in light of international developments and legal frameworks.

Force majeure has developed over time from its roots in civil law states to become a common clause in contracts across a wide range of legal systems globally. Originally intended to provide an excuse for non-performance resulting from divine or sovereign acts, its application has broadened to include a wider range of unforeseen catastrophes, such as pandemics, natural disasters, and political upheavals.

The understanding and implementation of force majeure presents a significant issue. Courts frequently scrutinize the wording used in force majeure agreements, trying to understand the parties' intentions and the range of circumstances encompassed by the provision. It is crucial to create contracts with clarity and precision since vague language, such as the inclusion or exclusion of particular events, might result in disagreements and legal action.

The COVID-19 epidemic has brought force majeure to the forefront and caused a global upsurge in legal disputes and contract renegotiations. The COVID-19 epidemic has put the strength of current contractual arrangements to the test, underscoring the necessity for parties to thoroughly evaluate the inclusion and consequences of force majeure clauses in their agreements. While some contracts specifically list pandemics as occurrences subject to force majeure, others have found it difficult to invoke the clause because they don't have one or can't provide evidence of a connection between the event and non-performance.

In the future, force majeure will probably continue to change as a result of new issues and changing economic conditions. Organizations must have strong force majeure clauses in their risk mitigation strategies since the world is becoming a more complicated and interconnected place to do business. Finding a balance between advancing contractual certainty and safeguarding parties' interests, however, is an ongoing difficulty.

* * * *

---

[27] Supra note at 32.

[28] "An Update on Force Majeure and Frustration in the Context of COVID-19," Dentons, https://www.dentons.com/en/insights/articles/2022/march/7/an-update-on-force-majeure-and-frustration-in-the-context-of-covid19 (last visited March 15, 2024).

EVALUATING MINORITY SHAREHOLDER GAINS: ANALYZING THE IMPACT OF ITC HOTEL DEMERGER

Rituparna Panda *

Abstract

This research paper tries to investigate the demerger of ITC Limited's hotel as a fully owned subsidiary, and the potential benefits that will be gained by the minority shareholders out of this smart corporate move. This paper also highlights the outcomes expected from this demerger that will ultimately increase transparency and accountability. This sweeping changewill benefit minority shareholders through a more concentrated approach to wealth generation in the hospitality sector. Furthermore, it also privileges the minority shareholder more freedom in investment strategies, allowing them to match their portfolios along with their risk and return targets. This demerger also unlocks the possibility of attracting investors having an interest in this hospitality segment being a distinct corporation. This significantly increases the total market capitalization in the hotel segment culminating in multiple valuations and more avenues for independent hotel firms, that will eventually act more profitably for the minority shareholder in greater stock performance and potential dividends. Lastly, this paper discusses the compelling opportunity for the minority shareholder to gain more value from the stake out of ITC's hotel demerger. This split has the prospective to maximize shareholder profit while also generating a more focused and transparent investment opportunity within a limited ecosystem.

Introduction

ITC Limited is a well-known Indian corporation with an extensive assortment of businesses covering many crucial sectors.The company was established in 1910 and previously was popular by the name of Imperial Tabacco Co. Ltd., later rebranded as Indian Tabacco Co. Ltd. in 1970. Then in 1978, the original abbreviation was formulated as ITC Limited. Later, developed 25 main brands, several of which were top players in their respective market sectors. It has business divisions such as Fast-Moving Consumer Goods (FMCG), Hotels, Agri Business, Paperboards and specialty papers, Information Technology and Packaging. The organization's FMCG sector plays a vital role in producing branded packaged food, personal care goods, and other consumer offerings that are quite appealing to a diverse variety of consumers. Secondly, the ITC hotels which was founded in 1975, has become an emblem of premium Indian hospitality, serving as the nation's finest luxury hotel brands. ITC additionally serves as a prominent participant in the agricultural sector having an extensive footprint in the agri business starting from production and procurement to processing and export. It also has an enormous segment in producing India's biggest and best with highly advanced technology and environment-friendly facilities that produce high-quality paper and paper products. ITC Infotech, the company's IT section, delivers expert global technology services with the best advisory solutions to clients worldwide. ITC's printing and packaging business adds significant value in SouthAsia. ITC Limited has accomplished its position as one of India's leading private sector through its multiple business operations.[1]

A demerger additionally referred to as a de-merger is a business re-configuration method in which a company or an organization is broken down into different components that may be operated independently,sold, or liquidated. The procedure includes analyzing and evaluating the business structure and recognizing the mismatched divisions with an integral corporate objective before choosing whether to demerge based on criteria such as profitability and market dynamics. Particular business units, brands, or sectors are identified as candidates for separation. The next step is to draft the legal documents to establish different entities and financial accounts are amended accordingly. The demerged component of a company may be spun off i.e.

* **4th Year, BBA. LL.B, Birla Global University, Bhubaneswar, Odisha**

[1] ITC Businesses, https://www.itcportal.com/businesses/index.aspx

with current shareholders receiving shares in a new independent firm or else by selling that part of the company to a third party. Right afterward the demerger, each component of the business operates separately with management teams in charge of operations, finances, and business decisions.[2]

The ITC hotel demerger comprises of the advantageous separation of ITC Limited's hotel segment into a separate corporation. Its primary goal was to increase the concentration andflexibility which is necessary to fully achieve the hospitality business prospects. This change was announced by the NCLT (National Company Law Tribunal) allows ITC hotels to handle industrial issues and dynamics more effectively.ITC Ltd. a diverse conglomerateintends to provide ITC Hotels Limited withgreater strategic and operational freedom, allowing a stronger emphasis on developmental prospects.[3]

The Demerger Process

ITC's commercial activities have many diversions, with the FMCG segment which also includes cigarettes and other FMCG items, comprising the company's largest revenue generator.

In the year 2023, the FMCG had a combined share of 66.4%. Cigarettes solely accounted for almost half of the company sales i.e., 41.2% having a profit of 75.4% demonstrating their importance to ITC's financial success.

The Agribusiness and paper board, paper, and packaging industries also played significant roles in ITC's activities, generating 16.3% and 9.3% of sales, respectively. Their contribution towards the asset allocation demonstrates the role they play in the entire business portfolio.

On the alternative, ITC's hotel business has climbed a rate of 12% CAGR FY 19 to FY 23, whereas EBITDA grew about eightfold in FY23 tothe previous year.

Furthermore, the quarterly revenue of ITC Hotel has constantly increased from 555 crore in Q1 FY23 to 782 crore in FY23, which shows a strong development in the hospitality industry.

In addition, it is represented as an important portion of ITC's asset allocation, accounting for 17.6% of total assets. This demonstrates the company's dedication to its hotel projects, irrespective of the fact that those are not the key income of the engine.

To increase the value of the shareholders, ITC has opted to split its hotel division from the rest of its activities, this phenomenon is referred to as demerger, in which the parent firm separates a business unit and creates it as an independent corporation. In a traditional spin-off, all the shares of the new entity would be transferred to the current owner by the parent business. But in this situation, ITC has taken an alternative strategy.

Despite a traditional demerger, whereby the shareholder of the parent business gets a share of the new firm based on their current holdings, ITC has chosen to keep 40% of the hotel company's entire market capitalization. The remainder 60% will be distributed to ITC's shareholders. This refers to the hotel company's capitalwill expand when it issues shares to ITC in exchange forconsiderations for the hotel's operations. In addition, the remaining 60% of the share will be distributed to the ITC's stockholders.[4]

The demerger of ITC's hotel sector entails several legal and regulatory stagescommencing with the board's approval to split the hotel operations into a separate firm. Also followed by approval from the shareholders with 99.6% voting in favor, which indicates widespread support for the restructure.This method must follow the standards established by the Securities and Exchange Board of India (SEBI) and other authorities to promote openness and safeguard the shareholder's interest. The new corporation i.e., ITC Hotels Ltd.will be formed as a fully-owned subsidiary that mandates formal processes for its formation and the passing of the assets and liabilities from ITC, such as contracts and licenses. Furthermore, these Tax ramifications are going to affect bothITC and its shareholders resulting in this demerger.

---

[2] Demerger: Meaning, Benefits, Process, Examples | Ansarada, https://www.ansarada.com/mergers-acquisitions/divestiture/demerger.

[3] ITC Hotels demerger: Minority shareholders benefit from Proxy advisory firms - The Hindu BusinessLine, https://www.thehindubusinessline.com/companies/itc-hotels-demerger-minority-shareholders-benefit-from-proxy-advisory-firms/article68224535.ece.

[4] ITC demerger with a twist: Deep dive, https://www.linkedin.com/pulse/itc-demerger-twist-deep-dive-noman-merchant.

Impact on the Shareholder

In numerous ways, this demerger impacts the shareholders of the company.The shareholders adopted this demerger with a 99.6% majority, demonstrating strong support and restructuring proposals to bring forth value by demerging the hotel company from the conglomerate. ITC will continue to hold up to 40% of interest in its hotel sector, ensuring ongoing exposure to the hotel industry whilst empowering the new firm to operate independently and focus on development. Minority shareholders are projected to reap the rewards from better return ratios and potential wealth development resulting from the concentrated business strategy of the hotel. In summary, shareholder perception is supportive, since the split is expected to increase the value of the shareholder while streamlining the ITC corporate processes.[5]

Glaxo Smith Kline Demerger Case

GSK Plc split its Consumer Healthcare division in July 2022, forming Heleon Plc, an independent publicly traded company. Previously a Joint Venture between GSK and Pfizer had taken place resulting in GSK owing a 68% majority and Pfizer owing 32%, the demerger comprised returning around 80% of GSK's holdings to its stakeholders,this decision benefited GSK in focusing on biopharma while Heleon, with product such as Sensodyne, Panadol, Voltaren, and centrum grew resulting in worldwide consumer health leader. Despite managing the legal, financial, and operational elements, the demerger was intended to improve the focus, streamline operations, and create value by allowing Heleon to accelerate product innovation and market strategy.[6]

PayPal and eBay Demerger

In 2014, eBay made a strategic decision to spin off PayPal as a distinct publicly listed corporation, which was completed in July 2015. This decision is motivated by an absolute need for both businesses to focus on their capabilities.This enabled PayPal to focus on its vision of strategy, alliances, and innovations independently. Dan Schulman, CEO of PayPal led the company through substantial strategic obstacles, which included a multiyear technical rebuild. The separation was intended to make both the organization more nimble and adaptive in this fast-changing commerce and payment industry. While PayPal remained a popular payment network, while eBay expanded its payment alternatives for the seller, altering the financial services environment and creating new market possibilities for both businesses.[7]

Benefits and Challenges

ITC Hotels' demerger from ITC Ltd., tends to provide considerable benefits principally by releasing wealth for the shareholders through the formation of the new organization which is committed to the hotel sector. This strategic management empowers the ITC's hospitality sector to focus on its vital skills without being associated with the bigger or more diverse company. Furthermore, this demerger accelerates for more accurate allocation of funds, which suggests that the hotel industry may successfully attract more and more investments and help in forming strategic alliances that perfectly matchits development and requirements. On top of that, this split also stands profitable for the minority shareholders, as it offers more direct and focused management of hotel operations, perhaps leading to higher profits on their investments by focusing on the unique dynamics of the hospitality industry.[8]

Despite the strategic aim of this demerger, numerous obstacles have arisen. Investors' worries have caused volatility in ITC's stock prices, suggesting uncertainty aboutthe long-term implications of demerger. The operational shift in an independent corporation has considerable challenges which include,the creation of distinct corporate governance and administrative processes, which can be complicated and time-consuming. Furthermore, ITC Ltd.'s choice to maintain a major share in the demerged hotel firm may limit the new entity's autonomy, thereby impacting strategic decisions and flexibility in operation. As a result, while the

---

5 ITC Hotel's demerger gets shareholders nod - Rediff.com Business, https://www.rediff.com/business/report/itc-hotels-demerger-gets-shareholders-nod/20240606.htm.

6 Consumer Healthcare Demerger | GSK, https://www.gsk.com/en-gb/investors/corporate-actions/consumer-healthcare-demerger/.

7 Today's Tip: Learn From eBay-PayPal Split - TermsFeed, https://www.termsfeed.com/blog/today-tip-learn-ebay-paypal-split.

8 The Rationale Behind Strategic Divestment In Conglomerates - FasterCapital, https://fastercapital.com/topics/the-rationale-behind-strategic-divestment-in-conglomerates.html.

demerger intends to simplify the tasks while generating value, these difficulties will require thoughtful oversight for a seamless transition and long-term success.[9]

Conclusion

The separation of ITC Hotel and ITC Ltd. is a strategic move intended to increase shareholders' value by allowing ITC Hotels to operate independently. This initiative intends to improve marginal focus enabling more effective capital allocation, with a particular emphasis on the hotel sector objective. The new investments are anticipated to attract fresh investments and innovative collaborations, promoting growth in the hotel industry. Nonetheless, this transformation also bears a lot of obstacles which include stock price volatility as a result of investor worries, as well as the necessity to build governance and administrative structure. Furthermore, ITC Ltd.'s considerable retained share may limit the new entity's autonomy and affect its strategic decisions. Finally, while demerger holds potential for specialization and expansion, it also needs strong management to overcome early barriers and ensure the long-term success of ITC Hotel as an independent company.

* * * *

[9] Strategic Intent, https://hbr.org/2005/07/strategic-intent.

ARTIFICIAL INTELLIGENCE: A BOON OR A BANE?

Achala Hebbar K. V. *

Abstract

(AI) to this technological world, the debate over its pros-cons had been started. Some groups of people believe that it is useful and makes human life easier whereas some say that makes humans lazy, lose their jobs, and also will become a reason for our extinction. Artificial intelligence is one of the fastest-growing fields in this modern era. From playing music to solving lawsuits it has occupied a great position in the life of mankind. It has made the lives of humans easier by providing solutions. So is it a Boon or a Bane? Artificial Intelligence is one such branch of computer science where machines mimic human behavior. This has been applied in various fields such as healthcare, the legal profession, tourism, etc. It solves the major tasks that humans are not able to perform like the depth of the sea, space expeditions, etc. Even the companies can rely on it to protect data. But as a tool for crime ***AI*** *has been used by criminals to misuse personal data, deepfakes, audio/video impersonation, etc. To protect the people from these crimes acts have been implemented, one such act is the****Digital Personal Data Protection Act (DPDPA) 2023*** *which aims to safeguard the privacy of individuals in this digital era.*

Introduction

Life has become too easy nowadays introducing smart cars, voice biometrics, E-commerce, digital assistants, and whatnot. All these are the gifts of Artificial Intelligence. We are living in a world where we can have everything at our fingertips. In this advancing technology era the most rapidly evolving field is the integration of *Artificial Intelligence* in various aspects of human society. Is it a **boon**or a **bane**? Yes, there areinnumerable uses of it but somewhere it also affects the life of mankind. So, the field of law stands out as both profoundly influenced by its capabilities and uniquely positioned to shape its development.

Definition

Artificial Intelligence is a created technology that allows machines or computers to work or function more intelligently by which human labor would be replaced for more effective and speedier results.

Artificial intelligence (*AI*) is a set of technologies that enable computers to perform a variety of advanced functions, including the ability to see, understand, and translate spoken and written language, analyze data, make recommendations, and more.[2] Thus, *AI* is the ability of the machines to do what the humans can do. This has become a part of our daily life. Digital assistants which are in offices and homes such as ***Alexa, Apple's Siri, Cortana, Bixby,and GoogleAssistant*** are some of the examples. There are plenty of digital assistants that help to perform some functions like calling a friend, keeping a check on health, translating content into different languages, sending commands to other apps, etc.

In this way,*AI* has been rapidly developing which has posed a significant number of legal challenges leaving the policymakers grappling with how to effectively govern its use in the legal domain.

History

Artificial intelligence is not a new concept to us. It has been there since the 1950s. By the 1950s, we had a generation of scientists, mathematicians, and philosophers with the concept of artificial intelligence (or *AI*) culturally assimilated in their minds. One such person was Alan Turing, a young British polymath who explored the mathematical possibility of artificial intelligence.Turing suggested that humans use available information as well as reason to solve problems and make decisions, so why can't machines do the same

* **3rd Year BA.LLB., Vaikunta Baliga College of Law, Udupi, Karnataka.**

[2] Google Cloud, https://cloud.google.com/learn/what-is-artificial-intelligence(last visited Jun. 1, 2024).

thing?[3]From 1957 to1974 AI flourished. The computer started to store more information and became faster and more accessible to people. The machine algorithms improved and people also became aware of this algorithm and which algorithm to apply to their problem. In 1997, reigning world chess champion and grand master Gary Kasparov was defeated by IBM's Deep Blue, a chess-playing computer program.[4]

Thus, from 1950 to now AI has developed into a much advanced process. Now we are living in the age of "big data", an age where we can store a large amount of information too cumbersome for a person to process. Hence, in the future, we can also expect much more advanced appliances where the needs of man will not be in question.

Positives of AI

Artificial intelligence has become a mammoth structure that helps machines to act and perform human-like tasks. Thus, it can be referred to as a magnificent creation of next-generation developments and progressions which leads to end-to-end automation and orchestration of various complex operations and thus reduces human error.[5] Hence there are several advantages of artificialintelligence to mankind in many ways.

One of the greatest advantages is it reduces human error. We can see that computers that are enabled with artificial intelligence commit zero errors only if it is programmed correctly. This also helps in time management and helps in achieving accurate and efficient results.

Also, this *AI* plays a major role in predicting and protecting the crisis of our planet's health. Whether it may be devastating floods,uncompromising heat waves or it may be unseasonal rainfalls,*AI* tech has immense use for the planet's fight to survive.

We can see an example of this where in the newspaper of The Statesmen it was stated by Rahul Mahajan that in one of the recent forest fires plaguing several countries, a next-generation fire prediction technology was used by the *AI* for predicting, protecting, and managing the forest fires. Also, the Americans have developed and started using a platform called ***Fire Map*** which analyzes the data quickly, accurately, and effectively to prevent forest fires.

Also, innovations like ***Ola/Uber,Amazon,*** and ***Flipkart*** continue to make life easier for humans. One of the recent inventions made by Tesla which is self-driving cars has reduced traffic in bustling cities. The AI also helped in the field of tourism where people can plan their holidays. Through the help of apps concerned about tourism, one can know about the client's travel history, and also it helps to manage the revenue. AI also conducts surveys regarding the customer's satisfaction regarding the trip at the end of every interaction. One can also know about the facilities that are available in the concerned tourist spot through AI.

We can also observe a great role in the field of healthcare. Among the organs of our body, the brain is also one of the main important organs to control our thoughts, emotions, breathing, touch, etc. The AI-based micro-chipimplants in the human mind have helped people to regain control over their bodies. We can see an example of the use of such a device in the Netherlands where a person who was suffering from paralysis was able to walk and climb due to the use of such a device implants. In the same way, AI also has played a role in the field of the legal profession. Whether there are one or more lawyers, the AI can complete its legal research in seconds.

Negatives of AI

Nothing is perfect in this world, everything has its pros and cons... In the same perspective, Artificial Intelligence also hasan evil nature where abundant individuals have been affected. The *AI* has also been exploited for criminal purposes in multiple ways. As a tool for crime AI has been used to undertake traditional crimes such as theft, intimidation, deepfakes, etc.

In recent days the recurrently heard news is about deep fakes that have emerged in modern society which has become one of the most negative impacts of AI on mankind. From politics to films everyone is becoming a victimof this. Deep fakes are AI-generated manipulations that a person has never done, which are used to damage the reputation of the concerned person.

---

[3] Rockwell Anyoha, The History of Artificial Intelligence,https://sitn.hms.harvard.edu/flash/2017/history-artificial-intelligence/ (last visited on Jun 1, 2024).

[4] *Ibid.*

[5] Rashi Maheshwari,https://www.forbes.com/advisor/in/business/software/advantages-of-ai/(last visited on Jun 1, 2024).

Recently a case was registered in the CEN police station against a student for creating the deep fakes of his friends. We also came across how a popular South Indian actress became a victim of this. Even cybercriminals can use this technology to create deep fakes for blackmail, extortion, or harassment.

In the last three years, the Bengaluru City Police have reported 769cases related to loan apps, resulting in a staggering loss of Rs. 100 crore. When a user downloads their app, the app gains access to the user's contact list and personal photos. They use this information to target these individuals, knowing that people are more likely to respond to extortion threats when their loved ones are involved.[6] C K Baba, Tough laws are as crucial as social media literacy to combat deepfakes.

The cases are rising day by day. Recently, one of the most popular American singers Taylor Swift deep fake images were posted in X, formerly known as Twitter. This became burning news on the internet and the ElonMusk-run micro-blogging platform had to ban all those searches related to *Taylor* Swift, to stop the circulation of those images. These deep fakes are created by using technologies namely GANs (Generative Adversarial Networks) or ML (Machine Learning.)

The AI has become a nightmare for most of the individuals. The AI which is useful for collecting data is also harming individuals by leaking their privacy to commit crimes. Most people have tried face filters online by which their data has been collected without their knowledge. The most popular social media platforms such as Instagram and Facebook have become indirect partnersin these crimes.

There are also job losses due to AI automation. As AI robots become smarter, skilled, the requirement of humans for work will systematically come down. Studies showed that by 2025 AI will be creating 97 million new jobs and many people will not have the skills to cope with the technology and eventually will be left behind. Hence in this way, lot many negativities of AI are creating inconsistency to mankind.

Following these negativities, some *lawsuits*paved the way against the deepfakes: Closer to home, Bollywood actor, Anil Kapoor filed a lawsuit after finding AI-generated deepfake content using an actor's likeness and voice to create GIFs, emojis, ringtones, and even sexual explicit content. In this lawsuit, Anil Kapoor v. Simply Life India and Ors.[2] the Delhi High Court granted protection to actors, individual persona, and personal attributes against misuse, specifically through AI tools for creating deepfakes. The Court granted an ex-parte injunction that effectively restrained sixteen (16) entities from utilizing the actor's name, likeness, andimage and employing technological tools such as AI for financial gain or commercial purposes. On the same line, the legendary actor Mr. Amitabh Bachchan in the case Amitabh Bachchan v. Rajat Negi and Ors.[3] was granted an interim in rem injunction against the unauthorized use of his personality rights and personal attributes such as voice, name, image, and likeness for commercial use.[7]

Thus, to tackle all these problems there are certain legal provisions however, these provisions do not directly govern *AI*, deepfakes, and *AI*-related crimes as India lacks specific laws relating to it. But the government has said relevant legislation is in the works. Currently, various provisions within the existing legislation provide both civil and criminal remedies for the evil act of AI.

Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third-party information, data, or communication link made available or hosted by him.[8] Wherein this section elaborates on the exemption of liabilities of the intermediaries in certain cases.

Similarly, if any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to five lakh rupees or with both.[9]

In the same manner, even *Section67* of the act also provides punishment for publishing or transmitting obscene material through an electronic form for a period which may extend to three years of imprisonment

---

6 C K Baba, Tough laws are as crucial as social media literacy to combat deepfakes.

7 Vikrant Rana, Anuradha Gandhi, And Rachita Thakur, https://www.livelaw.in/law-firms/law-firm-articles-/deepfakes-personal-data-artificial-intelligence-machine-learning-ministry-of-electronics-and-information-technology-information-technology-act-242916(last visited at Jun. 2, 2024). Deepfakes And Breach Of Personal Data – A Bigger Picture

8 Information Technology Act, S. 79(1),2000 (India).

9 Information Technology Act, S.69,2000 (India).

and with a fine which may extend to five lakh rupees. Also,*Section67A* punishes those who publish or transmit any material that contains sexually explicit acts, etc. for a period which may extend to seven years and also a fine which may extend to ten lakh rupees. Also, the *InformationTechnologyRules, 2021,* mandate the removal of the contents and artificially morphed pictures within 36 hours. Along with this section 67B of the act punishes whoever publishes or transmits the material depicting children in sexually explicit acts, etc., in electronic form. In case of impersonation in an electronic form, including artificially morphed images of an individual, social media companies have been advised to take action within 24 hours from the receipt of a complaint about any content. Given the same, Section 66D of the IT Act provides a punishment of three years with a fine of up to one lakh rupees for anyone who uses any communication device or computer resource cheats by impersonation.

Advisory for the Aggrieved

The Union Ministry further encouraged the aggrieved persons to file First Information Reports (FIRs) at their nearest police station and avail of remedies provided under the IT Rules.[10]

Also, the government has taken few steps to combat the effects of The Ministry of Electronics and Information Technology has directed the social media intermediaries in its latest advisory saying that.

Exercise due diligence and reasonable efforts are to be made to identify the deepfakes and the information that violates the provisions of the rules and regulations.Users also do not host such information/content.Remove any such information when reported within 36 hours of such.

Hence, measures have been taken indirectly by the Indian government through rules and regulations to combat the evil effects of AI.

Conclusion

As of now, many countries have witnessed lakhs of AI cases, especially deepfake cases. They have also taken protective steps to curb the menace of deepfakes.

The Digital Services Act has been enabled by the European Union to adhere to labeling obligations, enhance transparency, etc. The USA, the most developed country also does not have laws that regulate deepfake. Recently in 2024, representatives proposed the No Artificial Intelligence FakeReplicas and Unauthorized Duplications (No AI FRAUD) Act. South Korea also passed a law that makes it illegal to distribute deepfakes that could cause harm to the public at large.In January 2023, China, the Cyberspace Administration of China the Ministry of Industry and Information Technology, and the Ministry of Public Security stressed that the deepfakes must be clearly labeled to prevent public confusion.[11]

Thus, the future of **AI** is vague. It would help society to develop into a more modern world, but it also has the potential to be misused. To tackle the effects of **AI**, more and more **stringent laws** have to be implemented by the government. It is both a boon and a bane. Ultimately, it is in our hands how we balance the potential benefits as well as risks of **AI**.

* * * *

[10] *Vikrant, Anuradha, and Rachita, supra note 7.*

[11] *Vikrant, Anuradha, and Rachita, supra note7.*

INTERNATIONAL LAW IS BEING CONTROLLED BY SOME OF THE POWERFUL NATIONS

Rachit Tanwani *

Varun Aadarsh **

Abstract

This project examines how powerful nations control international law through veto power, military force, and influence over international organizations and trade laws. It explores the United Nations Security Council's (UNSC) veto power, illustrating how it enables selective enforcement of international laws, often resulting in deadlock and unfair treatment. The role of military power in shaping international law, through interventions and the global war on terror, is analyzed. The influence of strong states on international legal bodies like the International Criminal Court (ICC) and their impact on global trade and intellectual property rights are also discussed. The project highlights the paradox of international law, which it aims to promote global peace but can facilitate conflicts due to selective enforcement and power imbalances. It concludes by questioning the efficacy and fairness of international law, suggesting the need for reforms to ensure genuine global compliance.

Veto Power

One of the most important tools used by powerful countries to enforce and manage international law is the veto power in the United Nations Security Council (UNSC). Five countries make up the UN Security Council (P5), which has fifteen members total: the US, the UK, China, Russia, and France. The rare power to veto any significant resolution belongs to these P5 members. Here's a thorough examination of how this authority affects the application and interpretation of international law:

Veto Power Affecting International Law

Veto Power Blocking Resolutions:

Any P5 member may veto any resolution that they believe to be at odds with their interests as a country. This implies that a single veto can block the passage of a resolution, even if it receives overwhelming support from throughout the world.

Enforcing International Law Selectively:

P5 members can selectively implement international law thanks to their veto power. They may decide to back or oppose initiatives depending on their geopolitical objectives, which might give rise to claims of unfair treatment. For instance, interventions could be prohibited in some circumstances but approved in others, leading to inconsistent implementation of international law.

Influence on Sanctions and Peacekeeping:

The UNSC is in charge of enforcing sanctions and approving peacekeeping operations. The capacity of any P5 member to veto the creation of a peacekeeping force or the application of sanctions affects the ability of the international community to respond to threats to peace and security.

Bargaining and Negotiations in Diplomacy:

In diplomatic discussions, the threat of a veto can also be employed as a negotiating tactic. Before resolutions are put to a vote, P5 members have the option to utilize their veto power to demand concessions or change their text. This may result in agreements that serve the P5's interests abovethoseof the larger international community.

Examples of Veto Use

Syrian Civil War- Resolutions that would have placed sanctions on the Syrian government or referred the matter to the International Criminal Court (ICC) have been repeatedly blocked by Russia using its veto power.

* 2nd year BA. LLB, National Law University, Odisha

** 2nd year BA. LLB, National Law University, Odisha

Palestinian-Israeli Conflict-Resolutions criticizing Israel, particularly those requesting an end to settlement activity in the occupied territories, have been repeatedly rejected by the United States. African conflicts:

In conclusion, the P5 has considerable influence over international law and how it is applied because of the UNSC veto power, which is an effective instrument. Though its initial goal was to ensure the major countries' collaboration to maintain international peace and security, in reality, it has frequently resulted in deadlock and selective enforcement, raising severe concerns about the fairness and efficacy of the international legal system.

Military Power:

Strong states have a significant influence on international law through the use of military might. The practices and standards surrounding the use of force, sovereignty, and international law can be influenced by military operations and the threat of using force. To further explain how the military might affect international law, consider the following:

Arguments in Support of Military and Humanitarian Interventions:

Strong governments frequently use humanitarian justifications for military operations, arguing that they are necessary to stop crimes against humanity, war crimes, ethnic cleansing, and genocide. For example, the 1999 NATO involvement in Kosovo was justified as being required to put an end to violations of human rights committed by Serbian and Yugoslav troops.

Fighting Terrorism:

International law has been greatly impacted by the worldwide war on terror, which was mainly started by the United States following the September 11, 2001 attacks. Self-defense and the need to stop terrorism are used as justifications for military operations in Afghanistan and Iraq. Article 51 of the UN Charter's definition of self-defense has been altered by these operations, particularly about non-state actors and preemptive strikes.

Putting UN Mandates Into Practice:

Strong states occasionally use military action to execute resolutions passed by the UN Security Council. For instance, during the Gulf War in 1991, the United States led a coalition that was given UNSC approval to drive Iraqi forces out of Kuwait. With support from the UNSC, these interventions serve to both represent the interests of powerful states and uphold the authority of international law.

Establishment of Novel Legal Frameworks:

On the other hand, new legal standards may result from military actions. The notion of Responsibility to Protect (R2P) was partially inspired by the 1990s atrocities that were not stopped in Rwanda and the Balkans. Even while its implementation is still debatable, subsequent interventions—like the one in Libya—have contributed to the development and solidification of this standard in international law.

Enforcement that is Chosen:

Selective implementation of international law is a common consequence of powerful governments employing armed forces. Depending on the strategic objectives of the major countries concerned, interventions in certain regions may be strong while identical crises in other regions receive little to no assistance. The impartiality and universality of international law are threatened by this selective approach.

In summary, military might is a formidable instrument that strong states use to shape international law. These countries influence international legal norms, practices, and interpretations by military operations and the threat of force, frequently striking a balance between furthering humanitarian objectives and advancing their strategic interests. The evolution, use, and perception of international legal norms are all significantly impacted by this dynamic.

Control Over International Law Making Organisations

Strong states have a substantial amount of influence on international courts and tribunals, such as the International Criminal Court (ICC), through political pressure, appointments, and finance. Through their financial reliance, major donors may influence policies and practices and occasionally impose restrictions on their giving. The lobbying activities of strong nations are typically reflected in the appointments of judges and other important officials, ensuring that the leadership supports their interests.

Diplomatic pressure is an important instrument; countries such as the United States have used their power to stop indictments against their citizens or friends. The efficacy of the legal system is further weakened by non-cooperation, such as failing to make an arrest or hiding evidence.

The ICC has come under fire for emphasizing selective justice by focusing disproportionately on African countries while neglecting strong states. Similar to this, the International Court of Justice's (ICJ) decision-making and case selection are impacted by political and financial power.

These circumstances cast doubt on the impartiality of international justice and point to the necessity of changes to guarantee genuine compliance with the law, irrespective of a country's level of power.

IP Rights and Trade Laws:

The global economy is greatly impacted by trade agreements and intellectual property (IP) rules, which frequently represent the interests of strong countries. The objectives of trade agreements like the Regional Comprehensive Economic Partnership (RCEP) and the Trans-Pacific Partnership (TPP) are to improve economic cooperation and lower trade barriers. IP laws use trademarks, copyrights, and patents to safeguard inventions and creative works.

Strong nations use their clout in trade talks to enforce rules that are advantageous to their economies. These nations have sophisticated industries and sizable marketplaces. For instance, the Trans-Pacific Partnership (TPP) reflected the interests of powerful nations like the United States by incorporating extensive intellectual property (IP) clauses such as prolonged patent periods and strict enforcement measures. The other nations created the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), keeping membership in the TPP even after the United States withdrew from it in 2017.

The less strict intellectual property rights (IP) clauses of the Regional Comprehensive Economic Partnership (RCEP), which includes nations like China, Japan, and ASEAN, reflect a compromise among its different member economies. Developed countries gain from these agreements because they safeguard their high-value sectors and guarantee IP revenue. While signing such agreements can increase foreign investment and market access for developing countries, there are drawbacks as well.

Strict IP regulations, according to critics, might hinder local innovation and delay developing nations' access to reasonably priced medications. One of the biggest challenges in negotiating fair trade agreements is striking a balance between safeguarding intellectual property and providing equal access to breakthroughs and medications. Ultimately, the power dynamics between wealthy and developing countries are highlighted by trade agreements and intellectual property rules, even as they promote economic progress and collaboration.

The sword and the shield: International law as a facilitator or an obstructor of conflict

The double-edged nature ofinternational law, International law has the power to reduce conflicts byclearing differences between different statesand hence can advance the global goal of peace among nations but on the other hand it can act as a tool in the hands of the powerful nations hence help them to shift the global hegemony of states.International law is supported by the theory of cooperation thesis which entails that conflict is something undesirable in International law, simple speaking conflict impedes International law and it is a problem that International lawseeks to curtail, But it is not wrong toeven say that International law facilitates the one thing it is trying to eradicate that is conflict itself. In the next parts of this essay, we will try to explain why International law could be thefacilitator of conflict.

International law is very crucial in maintaining global peace as it can advance the goal of global peace and security as it provides mechanisms for resolving disputes peacefully through institutions like the International Court of Justice (ICJ) and arbitration bodies. This reduces the likelihood of wars and conflicts. But there lies the problem also, as the decisions that are given by the ICJ can be effective only if the states or the governments freely abide by its rules, the jurisdiction of the ICJ is only limited to the states that are party to or agree to resolve their disputes by this method. Hence, it is unableor ineffective in cases where the persecutions are followed against non-party states.

There are various other examples where internationallaw can be beneficial for the global order like on matters like protection of human rights where Treaties like the Universal Declaration of Human Rights set

global standards for human rights, protecting individuals from abuses. Again similar issues persist concerning the protection of human rights this can be seen with the example of the genocidethat took place in Rwanda in the year 1994 where around 800000 people belonging to the Tutsis were allegedly killed by The Reigning Hutu Regime, to curtail this genocide and to put an end to this the united nations peacekeeping forces were deployed but were not given the necessary authority to intervene and put an end to the genocide, some of the main reasons for this were that some states in the United nations security council opted not to intervene in Rwanda (USA was reluctant to take any action) as a result the Genocide persisted for severalmonths before it was finally ended by the Rwandan Patriotic front which was led by the Tutsis.This genocide in Rwanda Highlighted the inadequacy of the international legal framework in dealing with atrocities like this.Here are several such examples in the form of the war in Iraq,The civil war in Syria, etc.

International law is also considered a weak law because of its various flaws like the lack of enforcement tools lack of a worldwide regulatory system or a common legal framework that is followed and accepted by all the nation states, unlike the domestic law of states. Thereare various reasons why international law is considered a weak law, as it is not as strong as domestic laws, there is no unified international court system, there is the presence of ineffective enforcement measures and there are no International law-making bodies, hence a weak law.

Coming back to the topic of thecooperation thesis, themain criticism of this thesis is that it promotesgoals that are contested, rather than shared if no norm isuniversal then insisting upon any one norm would then offend some groups, hence the metric which has been used upon to define or support International lawthat is the cooperation thesis is itself a wrong metricto Judge International law, this is due to various features of the legal order that inhibit cooperation thesis to be used to justify International law, these features are namely Customary International law, Indeterminate legal texts and lastly a Fragmentednormative structure.

Intermediate Legal Texts:

It refers to those texts that are up for the application and allow multiple state actors to accept an instrument without fairly resolving outstanding differences or deciding how to address concrete issues they simply lack shared meaning. The existence of these texts is a serious threat to the cooperation thesis as they can be applied opportunistically, to advance one group's goal or contentious interests to the detriment of another.

Customary International Law:

Customs refers to those practices that have been practiced for a long time and are accepted as the normal course of behavior. In domestic law, a few customs are treated as laws, but they find greater importance as a source of law in Internationallaw since it is decentralized and an uncodified form of law, Its sources are varied hence customs are an important source of international law. Customs that have acquired the force of law are known as customary international laws.They continue to be a dynamic source of international law, as they are shaped by therelations between nations and the evolutionary nature of customs.However, not all customs attain the force of law, owing to the subjective nature of customs. Some customs are locally recognized but don't have widespread usage. It is only when a large number of states continue to practice and recognize it in their usual international relations, that customs become customary international laws.

Two constituents are used to define whether a custom is law, They are:

State Practice: This is often regarded as the Objective factor.

Opinio Juris- 'a belief in legal obligation', i.e. states must perform or refrain from performing because they believe they have a legal duty to do so. Refers to the psychological intent of whether or not the state has a mindset about thevalidity of custom. The state's understanding of custom. Subjective factorbut CIL presents some of the same issues as indeterminate texts because it is an amorphous source of law ends. States can too easily manipulate the raw data to advance dubious CIL claims that justify their contentious conduct. Since CIL is malleable that means it can be easily bent to advance the objectives of their respective nation-states and just like indeterminate texts they can be applied opportunistically, to advance one group's goal or contentious interests to the detriment of another.

So in the end cooperation thesis that works to resolve conflict, is due to many factors unable to do so, and in my opinion, it is fine, and maybe it is even better to facilitate conflict, and Internationallaw does so as it provides states with common ground rules upon which they can disagree upon if international law was absent then the states would have conflicted nonetheless but based on their shared culture, maybe due to their shared religion or national history, or relationship where other binds are weak or absent, International law becomes essential to conflict for example,

The current conflict surrounding Iran's nuclear program serves as an example. The agreement that the United States and Iran finally worked out was flimsy just days before it was signed, having been unworkable years earlier. 162 The two governments used international law to test one another and vie for dominance for years before they were ready to agree. To exert pressure on Iran, the United States made a significant effort in the UN Security Council and International Atomic Energy Association ("IAEA"). This labor was fruitful. The Council passed several resolutions between 2006 and 2010 imposing new requirements on Iran's non-proliferation and authorizing or mandating punishment for violation. Long-lasting and occasionally intense fighting wasn't a spectacle.It was essential to make clear the positions of each side and the terms that each would accept.International law was utilized by Iran and the US to settle their issues, but only after they had challenged and outcompeted one another with it.

Furthermore, international law contributed to the defusing of the conflict by enabling it. International law directed states toward the IAEA and Security Council rather than the declared, more harmful alternative—the use of military force—even as it allowed them to have and intensifytheirdispute.

Conclusion

This project reveals the profound influence of powerful nations on international law, demonstrating how mechanisms like UNSC veto power, military interventions, and control over international organizations and trade laws enable selective enforcement and perpetuate global power imbalances. While international law aspires to maintain global peace and security, its implementation often reflects the strategic interests of dominant states, leading to inconsistent and sometimes unjust outcomes. The ability of powerful nations to manipulate international legal norms and institutions undermines the impartiality and universality of international law. To address these challenges, reforms are essential to enhance the fairness and effectiveness of the international legal system. These reforms should aim to limit the disproportionate influence of powerful states, ensuring that international law serves the collective interests of the global community rather than the strategic goals of a few dominant nations. Only through such measures can international law genuinely contribute to global peace and justice.

* * * *

ANALYSING WHETHER AI IS A BOON OR A BANE IN THE CRIMINAL JUSTICE SYSTEM

Mimansa Joshi *

Abstract

A new era of technical innovation has been brought about by the integration of Artificial Intelligence (AI) into the criminal justice system, specifically in the areas of rehabilitation with an emphasis on recidivism reduction and predictive policing. This abstract explores the uses, difficulties, and possible effects of artificial intelligence (AI) in predictive policing and rehabilitation initiatives. It does this by delving deeply into these two fields.

AI-powered predictive policing involves analyzing large datasets to anticipate and stop criminal conduct. Predictive policing raises ethical, legal, and social issues even while it offers bright opportunities to improve crime prevention and law enforcement effectiveness. A notable area of unmet research need is the analysis of algorithmic biases present in predictive policing models, which have the potential to sustain systemic injustices and heighten hostilities between law enforcement and marginalized populations.

AI-driven rehabilitation programs, on the other hand, try to lower recidivism rates by customizing interventions to each patient's requirements and risk profile. These programs offer tailored services including counseling, job training, and education by utilizing machine learning algorithms. However, more study is required to fill in knowledge gaps about how good AI-based rehabilitation programs are, especially when it comes to determining how they affect recidivism rates and encourage successful reintegration into society. Moreover, the use of AI-driven rehabilitation projects is severely hampered by ethical concerns about data privacy, algorithmic transparency, and resource distribution equity.

Introduction

'Artificial intelligence, or AI, refers to the simulation of human intelligence by software-coded heuristics. Nowadays this code is prevalent in everything from cloud-based, enterprise applications to consumer apps and even embedded firmware.'[1]As a field of computer science, artificial intelligence encompasses (and is often mentioned together with) machine learning and deep learning. These disciplines involve the development of AI algorithms, modeled after the decision-making processes of the human brain, that can 'learn' from available data and make increasingly more accurate classifications or predictions over time.[2]

AI in the Criminal Justice System

AI refers to the simulation of human intelligence in machines that are programmed to think and learn like humans. It encompasses technologies such as machine learning, natural language processing, and computer vision. These technologies allow computers to analyze and interpret information, making them valuable tools in crime prevention, investigation, and decision-making processes and that is why Artificial intelligence (AI) is increasingly being used in the criminal justice system, with applications in law enforcement, courts, and corrections.

Some examples areCOMPAS (Correctional Offender Management Profiling for Alternative Sanctions), which (mainly) predicts whether or not an individual will re-offend.PredPol, which predicts where crimes may occur (place of crime) and on that basis calculates how best to allocate police resources, and HART (Harm Assessment Risk Tool), which also predicts the risk of reoffending when deciding whether or not to prosecute[3].

* **1st Year, Rajiv Gandhi National University of Law, Patiala,Punjab**

1 Team, T.I. (no date) What is Artificial Intelligence (AI)?,Investopedia. Available at: https://www.investopedia.com/terms/a/artificial-intelligence-ai.asp (Accessed: 01 June 2024).

2 What is Artificial Intelligence (AI)? (2023) IBM. Available at: https://www.ibm.com/topics/artificial-intelligence (Accessed: 01 June 2024).

3 Artificial Intelligence in the criminal justice system (no date) Legal Service India - Law, Lawyers, and Legal Resources. Available at: https://www.legalserviceindia.com/legal/article-13251-artificial-intelligence-in-criminal-justice-system.html#:~: text=These%20technologies%20allow%20computers%20to,in%20law%20enforcement%2C%20courts%2C%20and (Accessed: 01 June 2024).

AI used in Predictive Policing.

Predictive policing is a proactive strategy that uses data analysis, statistical modeling, and AI algorithms to forecast when and where crimes are likely to occur. It relies on historical crime data, geographical information, weather patterns, and other relevant factors to identify crime hotspots and patterns. AI-driven predictive models process this information to generate actionable insights for law enforcement agencies.

The goal is to deploy resources effectively, deter criminal activities, and prevent crimes before they happen.The success of predictive policing hinges on the ability of AI algorithms to analyze large datasets swiftly and accurately. AI's pattern recognition and data processing capabilities allow it to identify crime trends, correlations, and anomalies that may be difficult for human analysts to detect[4]. Law enforcement and criminal justice authorities are increasingly using artificial intelligence (AI) and automated decision-making (ADM) systems in their work.[5]

Artificial Intelligence (AI) in the Criminal Procedure Code (CrPC) plays a transformative role in various aspects of the legal process, offering both opportunities and challenges. AI technologies are being increasingly utilized to enhance the efficiency, accuracy, and accessibility of legal procedures outlined in the CrPC. Artificial Intelligence (AI) has emerged as a transformative force across various domains, and its integration into legalframeworks is reshaping the landscape of the criminal justice system.P

redictive analytics, another frontier of AI, has profound implications for the CrPC. By leveraging historical case data, AI algorithms can predict case outcomes and identify patterns that may elude human analysis. This capability holds the potential to revolutionize decision-making processes for legal practitioners and judges, enabling them to anticipate trends in legal proceedings and make more informed decisions in line with CrPC provisions.[6] Companies and police departments are just starting to test out predictive policing systems.

These systems could eventually provide significant strides forward in predicting and ideally preventing crimes. When it comes to predicting crime locations, algorithms can analyze crime rates across various areas and develop a map of crime hot spots. This tells police to target these areas for extra patrolling and surveillance. AI is also able to paint a better picture of who is at risk for committing a crime, and who will likely re-offend once released from prison based on data collected and analysis of historical patterns.[7]

Implementing the latest technology will have its implications, where public and private entities are suggested to make AI more inclusive addressing issues of bias and making it more open and accessible to a large number of masses. Here, enforcement agencies are aiming to remove human interventions to reduce the number of errors that will always be a part of making laws and supporting the enforcement system. Rather than looking for the criminals in the historical data, predictive analysis is done to find out people who were more police, there is a legitimized discrimination behind this mathematical analysis, as lower caste and religious minorities have faced more violence and discrimination despite constitutional remedies.[8]

It is crucial to carefully consider the ethical implications of implementing these AI systems. Since the accuracy and fairness of these models heavily depend on the quality and diversity of the data they are trained on, there is a risk of perpetuating existing biases and prejudices within the criminal justice system. Racial Profiling and Bias-Predictive policing rely on data analytics, but the historical crime data it uses often has biases that can result in racial profiling. This happens when the data reflects past law enforcement practices that may have unfairly targeted certain racial or ethnic groups.

As a result, AI algorithms can unknowingly continue these patterns by identifying these communities as high-risk areas, leading to more surveillance and police presence.When AI systems are trained on historical

---

4 *Undefined* (no date) *INDIAai*. Available at: https://indiaai.gov.in/article/predictive-policing-and-crime-prevention-the-role-of-ai (Accessed: 01 June 2024).

5 *AI, Data Analysis and Algorithms: Campaign* (2023) *Fair Trials*. Available at: https://www.fairtrials.org/campaigns/ai-algorithms-data/ (Accessed: 01 June 2024).

6 Shokeen, M. and Sharma, V. (2023) 'Artificial intelligence and criminal justice system in India: A critical study', *International Journal of Law, Policy and Social Review*, Volume 5(Issue 4), pp. 156–162.

7 Singh, K.K. (no date) *Ai in police work law enforcement is in charge of the public*. Available at: https://scrb.bihar.gov.in/assets/AI in Police Work.pdf (Accessed: 01 June 2024).

8 Meena, M. and Joshi, A. (2023) 'AI Policing in Criminal Justice ', *JLAI*, 2(1).

crime data, they inherit the biases present in that data. Because of these biases, predictive policing tools may unfairly focus on minority communities. This unequal enforcement makes existing social inequalities worse and goes against the idea of equal treatment under the law.[9]

While our past may give us a clue into future behavior, it does not take into consideration the concept of and potential for rehabilitation and has the effect of reinforcing negative views and continuing to punish those who have already paid their debt.Automated systems remove human oversight. As law enforcement agencies increasingly rely on these deep learning tools, the tools themselves take on authority, and their predictions are often unquestioned. This has resulted in an Accountability GapWhen automated systems are given free rein, and human oversight becomes obsolete, should tech companies assume responsibility for how their products are used? The law is still unclear on this issue.[10]

AI systems can be biased, which can lead to unfair treatment of certain groups of people. If not carefully monitored and designed, then it can perpetuate discrimination in criminal justice outcomes. It is crucial to ensure that AI systems are trained on unbiased data and regularly audited for fairness to prevent the amplification of existing inequalities.[11]In essence, predictive technology becomes another witness against the defendant without a concomitant opportunity to test the data, assumptions, and even prejudices that underlie the conclusion.[12]

In what ways can these challenges be addressed?

Implement Rigorous Oversight: Establish independent oversight bodies to review and monitor the use of AI in policing, ensuring algorithms are fair, accurate, and non-discriminatory.

Mandate Transparency and Accountability: Require law enforcement agencies to disclose the use of predictive policing tools, including the data sources, methodologies, and impact assessments.

Promote Community Engagement: Involve community members in the decision-making process regarding the use of AI in law enforcement to build trust and accountability.

Ban the Use of Biased Data: Prohibit the use of historical crime data and other sources known to contain racial biases in predictive policing algorithms.

Establish Legal Frameworks: Enact legislation to regulate the development, deployment, and evaluation of AI in policing, with strict penalties for violations of civil liberties.[13]

AI Prison Predictive Analytics can help businesses develop tailored rehabilitation programs for inmates based on their risk factors and needs. By identifying areas for improvement, businesses can provide targeted interventions, such as job training, education, substance abuse treatment, and cognitive behavioral therapy, to enhance rehabilitation outcomes and reduce the likelihood of reoffending.[14]AI can be used to develop personalized rehabilitation plans for offenders. This can help offenders address the underlying issues that led to their criminal behavior.[15]The integration of Artificial Intelligence (AI) into correctional facilities represents a transformative shift in the approach to prisoner rehabilitation and reintegration.

---

9 Gondola, J. (2024) *Ethical challenges in the use of AI for predictive policing, Medium*. Available at: https://medium.com/@jamesgondola/ethical-challenges-in-the-use-of-ai-for-predictive-policing-27b2a69c39c8 (Accessed: 01 June 2024).

10 (No date) *What happens when police use AI to predict and prevent crime? - JSTOR DAILY*. Available at: https://daily.jstor.org/what-happens-when-police-use-ai-to-predict-and-prevent-crime/ (Accessed: 01 June 2024).

11 *Artificial Intelligence in the criminal justice system* (no date) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: https://www.legalserviceindia.com/legal/article-13251-artificial-intelligence-in-criminal-justice-system.html#:~:text=Rehabilitation%3A%20AI%20can%20be%20used,violence%20or%20escape%20for%20offenders. (Accessed: 01 June 2024).

12 *The use of artificial intelligence in gauging the risk of recidivism* (no date) *American Bar Association*. Available at: https://www.americanbar.org/groups/judicial/publications/judges_journal/2019/winter/the-use-artificial-intelligence-gauging-risk-recidivism/ (Accessed: 01 June 2024).

13 *Artificial Intelligence in predictive policing issue brief* (2024) *NAACP*. Available at: https://naacp.org/resources/artificial-intelligence-predictive-policing-issue-brief (Accessed: 01 June 2024).

14 *Ai Prison Predictive Analytics for recidivism: AI/ML Development Solutions* (no date) *AI Prison Predictive Analytics for Recidivism | AI/ML Development Solutions*. Available at: https://aimlprogramming.com/services/ai-prison-predictive-analytics-for-recidivism/ (Accessed: 01 June 2024).

15 *Artificial Intelligence in the criminal justice system* (no date) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: https://www.legalserviceindia.com/legal/article-13251-artificial-intelligence-in-criminal-justice-system.html#:~:text=Rehabilitation%3A%20AI%20can%20be%20used,violence%20or%20escape%20for%20offenders. (Accessed: 01 June 2024).

AI technologies are designed to support educational programs, provide mental health care, facilitate behavioral therapy, and enhance skill development among inmates. AI's potential to personalize rehabilitation efforts, ensure consistent support, and extend care into the post-release phase offers a comprehensive framework for addressing the complex challenges faced by incarcerated individuals. By automating routine tasks, providing real-time monitoring, and delivering tailored interventions, AI can significantly improve outcomes for inmates.[16].AI offers a powerful tool to enhance rehabilitation efforts within prisons.

AI can revolutionize rehabilitation by personalizing educational and training programs.AI-powered platforms analyze individual inmate needs, customizing educational content and vocational training. By tailoring education and training, AI helps inmates acquire the skills necessary for successful reintegration and can significantly improve mental health care for inmates, addressing a critical need within the prison system. AI-driven mental health assessments identify symptoms of depression, anxiety, and other conditions, providing valuable insights to psychologists. AI-powered chatbots and virtual counseling offer inmates access to mental health resources and support. These tools provide inmates with readily available mental health assistance, fostering their well-being.AI assists in categorizing and allocating inmates based on diverse criteria, including their criminal history, conduct, and medical records. This approach optimizes the allocation of inmates to appropriate security levels and housing units, maximizing prison resource utilization and promoting safety.[17]

AI Prison Predictive Analytics for Recidivism is a powerful technology that enables businesses to identify and predict the likelihood of an individual reoffending after release from prison.[18]AI is used in the criminal justice system for predicting recidivism risk.Recidivism is the rearrest, re-conviction, and cycling back of an offender into the criminal justice system after being released on parole or probation. AI's positive effects outweigh its negative implications, such as its ability to bring efficiency in predicting convicted individuals' likelihood of recommitting an offense.Fairness is the most studied trustworthy AI requirement when applying AI models to predict the risk of recidivism.[19] Over the last two decades, predictive risk assessment tools have been used to determine the fates of millions of individuals in the criminal justice system, deciding whether a defendant will be detained pretrial or released on parole based on an algorithmic calculation of risk.[20]These experiments may presage the growth of such use in critical decision-making at sentencing and reflect an increasing comfort level with such AI use among judges.[21]AI Prison Predictive Analytics can assist businesses in assessing the risk of recidivism for inmates, enabling them to make informed decisions about sentencing, parole eligibility, and rehabilitation programs. By identifying high-risk individuals, businesses can allocate resources effectively and prioritize interventions to reduce recidivism rates.[22]

Ethical Concerns with AI-driven Programmes

Given the fundamental rights and interests at stake in the criminal justice system, this is also the field where the unthinking application of artificial intelligence ("AI") is most troubling, and where there is the greatest threat to individual rights and the likelihood of unanticipated damage to the rule of law.These problems will occur (and are occurring) throughout the criminal justice system: from data-driven predictive policing systems

---

16 (No date) (PDF) the Rehabilitation and reintegration of offenders current landscape and some future directions for correctional psychology. Available at: https://www.researchgate.net/publication/224882799_The_Rehabilitation_and_Reintegration_of_OffendersThe_Current_Landscape_and_Some_Future_Directions_for_Correctional_Psychology (Accessed: 01 June 2024).

17 Wahab, Md.I. (no date) Use Of Artificial Intelligence In Prison, Lawyers in India - Advocates, Law Firms, Attorney Directory, Indian Lawyer, vakil. Available at: https://www.legalserviceindia.com/legal/article-16417-use-of-artificial-intelligence-in-prisons.html (Accessed: 01 June 2024).

18 Ai Prison Predictive Analytics for recidivism: AI/ML Development Solutions (no date a) Aimlprogramming.com. Available at: https://aimlprogramming.com/services/ai-prison-predictive-analytics-for-recidivism/ (Accessed: 01 June 2024).

19 Fairness of AI in predicting the risk of recidivism (no date) dl.acm.org. Available at: https://dl.acm.org/doi/fullHtml/10.1145/3600160.3605033 (Accessed: 01 June 2024).

20 Zhu, M. (2020) An algorithmic jury: Using Artificial Intelligence to predict recidivism rates, cropped-YSM-Wordmark-Only-Black-High-Res.png. Available at: https://www.yalescientific.org/2020/05/an-algorithmic-jury-using-artificial-intelligence-to-predict-recidivism-rates/ (Accessed: 01 June 2024).

21 (No date) The use of artificial intelligence in gauging the risk of recidivism. Available at: https://www.americanbar.org/groups/judicial/publications/judges_journal/2019/winter/the-use-artificial-intelligence-gauging-risk-recidivism/ (Accessed: 01 June 2024).

22 Ai Prison Predictive Analytics for recidivism: AI/ML Development Solutions (no date) AI Prison Predictive Analytics for Recidivism | AI/ML Development Solutions. Available at: https://aimlprogramming.com/services/ai-prison-predictive-analytics-for-recidivism/ (Accessed: 01 June 2024).

in the criminal investigation process to recidivism prediction for parole applications and sentencing recommendation systems post-trial.[23]

The genesis of the biases is not isolated to a single phase but permeates through the entire lifecycle of data processing and collection. Moreover, human involvement in the development and coding of AI systems introduces an additional layer of complexity The subjective decisions made during data modeling and the structuring process can inadvertently perpetuate existing prejudices, thereby undermining the integrity and objectivity of AI-facilitated legal decision-making.Flaws in the dataset, such as inadequate or biased training data, programming errors, and algorithmic design issues, can lead to inconsistencies and inaccuracies in AI outputs.A particularly troubling aspect of these deficiencies is their propensity to create feedback loops within algorithms. Such loops can exacerbate and entrench existing biases, potentially leading to unintentional discriminatory outcomes.[24]

AI poses significant challenges that need to be addressed to ensure transparency, and interpretability, and uphold the right to a fair trial in criminal justice systems. Transparency is a fundamental principle of justice. AI algorithms used in legal decision-making processes must be transparent to ensure accountability. Without transparency, individuals may be subjected to biased or discriminatory outcomes without any means of recourse.

The decisions made by AI algorithms must be understandable by both lawyers and citizens alike. If these decisions are not interpretable, it becomes challenging for individuals involved in legal proceedings to understand why certain outcomes were reached.This lack of interpretability can undermine trust in the justice system.

The use of AI should complement human judgment rather than replace it entirely. Human judges should have ultimate control over decision-making processes while utilizing AI as an aid or tool for analysis.[25]

Conclusion

AI technology has the potential to revolutionize the criminal justice system, enhancing crime prevention, investigation, and decision-making processes. From crime prediction and prevention to forensic analysis, facial recognition, and sentencing recommendations, AI can significantly improve the efficiency and fairness of the legal landscape. However, the responsible implementation of AI in the criminal justice system requires addressing challenges such as bias, and privacy concerns, and maintaining accountability. By striking a balance between the benefits and potential risks, we can leverage AI's power to create a more just and efficient criminal justice system.[26]In conclusion, humanity is called on to evolve by integrating new methods resulting from technical progress and creative destruction. Today's ultra-connected world implies a technological overexposure but also an evolution of criminal practices.

In this context, an equivalent response seems to be crucial to face these new technological challenges. AI could be the answer to curb certain crimes that date back to the dawn of time, such as domestic violence.In the current context of minorities (religion, race, sexual orientation), the use of AI seems to increase the discrimination they already face. However, like any immature technology, it needs time and mistakes to progress. Until then, an international consensus is needed to guarantee fundamental rights and principles, especially those of fair trial, and to ensure the privacy of citizens around the world, through a code of ethics, based on transparency and accountability.[27]

* * * *

[23] Hunter, D., Bagaric, M. and Stobbs, N. (no date) 'A Framework for the Efficient and Ethical use of Artificial Intelligence in the Criminal Justice System ', Florida State University Law Review, 47:749.

[24] Zafar, A. (2024) *Balancing the scale: Navigating ethical and practical challenges of Artificial Intelligence (AI) integration in legal practices - discover artificial intelligence*, *SpringerLink*. Available at: https://link.springer.com/article/10.1007/s44163-024-00121-8#Sec22 (Accessed: 01 June 2024).

[25] *AI in the legal system, transparency, interpretability, and the right to a fair trial:* (no date) *Research Gate*. Available at: https://www.researchgate.net/publication/375640346_AI_in_the_Legal_System_Transparency_Interpretability_and_the_ Right _to_a_Fair_Trial_The_Challenges_and_Implications_for_the_Ghanaian_Civil_and_Criminal_Justice_Systems (Accessed: 01 June 2024).

[26] *Artificial Intelligence in the criminal justice system* (no date a) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: https://www.legalserviceindia.com/legal/article-13251-artificial-intelligence-in-criminal-justice-system.html#:~:text=Rehabilitation%3A%20AI%20can%20be%20used,violence%20or%20escape%20for%20offenders (Accessed: 01 June 2024).

[27] *Artificial Intelligence in criminal justice: Invasion or revolution?* (no date) *International Bar Association*. Available at: https://www.ibanet.org/dec-21-ai-criminal-justice (Accessed: 01 June 2024).

DIGITALIZING TRANSFER OF PROPERTY; ASSESING THE IMPACTS AND CHALLENGES

Kashish Khanna *

Abstract

In the urbanized modern day 21st century a country is said to achieve its sanctity from its land. Out of land, arises property, out of which arises transfer of such a property for various purposes. In 2020, there were 154,434 home transactions nationwide. This equates to 423 residential properties on average per day. That's just the estimate of the residential transactions. It is hard to even imagine the number of properties transferred on daily basis for various purposes across the globe. But what about the joy of buying or selling of property if the process is exhausting? Can digitalization make the process easier? In order to modernize the land records system in the nation and establish a definitive land-titling system with title assurance, the Government of India initiated the National Land Record Modernization Programme (NLRMP), a centrally supported initiative, in 2008. Later, in 2016, the NLRMP underwent a redesign and was called the Digital India Land Records Modernization Programme (DILRMP). It was a central sector programme that received all of its financing from the Centre. In India, a significant fraction of outstanding court cases is connected to land disputes, and their resolution is expensive and time-consuming. By guaranteeing definite and safe property rights that are supported by the state, an all-encompassing and open land record management system might lessen the extent and frequency of these types of conflicts. It is important to raise certain questions here. [1]What were the implementation statistics of the scheme? Does digitalization come with its own challenges? What ae the possible impacts? All the questions mentioned above shall be answered in the research paper. The methodology shall be doctrinal and any limitation in the scope shall be due to geographical or time constraints.

Keywords: ***Modern day, sanctity, land, property, transfer, exhausting, digitalization etc.***

Introduction

There are specific taxes that apply when you sell any property you own to someone else. This is mostly because the sellers benefit financially from this property transfer. The Transfer of Property Act, or ToPA, governs the tax regulations that govern the application of these taxes.

On July 1st, 1882, the Transfer of Property Act (ToPA) was first enacted. This legislation addresses the many factors that must be taken into account when transferring property between the buyer and the seller.One of the most significant laws in the Indian legal system is the Transfer of Property Act (ToPA), which is crucial for anybody wishing to move their immovable property. A piece of land, a house, a land, or anything else that is fixed in place and cannot be moved can all be considered immovable property. The transfer of any sort of immovable property between persons, businesses, or organizations is covered by this statute. On the other hand, this statute does not apply to possessions that are inherited or disposed of by a will.This legislation permits the transfer of property under the Transfer of Property legislation (ToPA) to any mentally sound individual over the age of eighteen who is entitled to or allowed to dispose of property. The statute also suggests that in order to transfer property, there must be a written agreement because oral agreements are not legally enforceable. As a result, even properties worth less than one hundred rupees must be transferred via a formal written agreement.[2]

The transfer of ownership is an important phase in real estate transactions that should not be missed. It is the procedure by which one party transfers to another the legal ownership of a piece of property. There are

* **2nd year, BA. LLB., IILM University, Gurugram, Haryana**

1 Digitalization of Land Records, Drishti IAS, https://www.drishtiias.com/daily-updates/daily-news-editorials/digitisation-of-land-records, Last Visited on 12th February, 2024.

2 Transfer of Property Act, Clear Tax, https://cleartax.in/glossary/transfer-of-property-act/, Last Visited on 14th February 2024

several instances in which ownership can change, such as when the property is sold, given as a gift, or inherited. Anyone participating in a real estate transaction has to understand the significance of ownership transfer. It guarantees appropriate tax preparation, offers legal protection, and necessitates carefully weighing all of the possibilities. Both parties may guarantee a successful and seamless transaction by taking the time to comprehend the ramifications of transferring ownership.[3]

No matter how the transfer is executed, it is critical to comprehend its importance and the effects it will have on each party.

1. Legal Defence : The fact that ownership transfers give both parties involved legal protection is one of the main justifications for their importance. Legal title is transferred together with ownership, certifying that the property has been passed to the new owner.

Legal protection guarantees the new owner the freedom to inhabit and utilize the property without external intervention.

2. Tax Repercussions : The tax ramifications of ownership transfers are another important factor to consider. The new owner could be responsible for paying inheritance taxes, capital gains taxes, or property taxes, depending on the mode of transfer. Prior to transferring ownership, it is crucial to comprehend the tax ramifications in order to prevent any possible legal or financial problems.

3. Title Lookup : It is crucial to carry out a title check before to transferring ownership in order to make sure the property is clear of any liens, encumbrances, or legal challenges. Both parties will be able to make educated judgements regarding the transfer of ownership thanks to the title search's ability to identify any unpaid debts or unresolved legal concerns related to the property.

4.Documentation and Records : Both parties must create and sign legal papers, such as a bill of sale or deed, in order to transfer title. These legal documents guarantee that all parties are aware of the terms and conditions of the transfer and offer written proof of the transfer.

5. Transfer Options : There are several ways to transfer ownership, such as selling the property completely, giving it to a relative, or passing it down by inheritance. Every alternative has pros and downsides of its own, so before choosing one, make sure you weigh them all carefully.[4]

The nation's antiquated land management system is about to change as a result of the government's initiative to digitize land records. The 'Digital India' strategy includes an endeavor to convert paper-based documents into electronic versions. Under the 'Digital India Land Records Modernization Programme', almost 94% of state-specific registration offices and rights records have already been digitally converted. The digitization of land records is very important because it may improve transparency. The digitization of land records is of great importance because it may decrease property ownership disputes, increase transparency in land-related transactions, and improve the effectiveness of land management. The advantages include enhanced access to land-related data, decreased corruption, faster information retrieval, and better governance. Consequently, this helps to build a strong and trustworthy land tenure system. The government has encouraged the digitization of land records in an aggressive manner.

This process has been largely driven by initiatives like the Digital India Land Records Modernization Programme and the National Land Records Modernization Programme. These programmes encourage the adoption and use of digital land management systems by giving the governments technological and financial help. Even with the advancements, a number of obstacles still exist. Obstacles to a smooth digital transformation include legacy data problems, stakeholders' aversion to change, infrastructural deficiencies in some areas, and complicated legal and procedural requirements.

A concentrated effort is needed to address these issues in order to guarantee a seamless switch to digital land records. In India, the digitization of land records is a revolutionary endeavor with far-reaching consequences. In addition to modernizing the land management system, it makes a substantial contribution to transparent governance, enables effective real estate investment possibilities, and promotes well-informed policymaking

---

[3] Understanding the Importance of TPA, Faster Capital, https://fastercapital.com/topics/understanding-the-importance-of-transfer-of-ownership.html, Last Visited on 15th February, 2024.

[4] Supra Note 3.

at the national level. The benefits of digitization for land management and associated industries should become more apparent as time goes on.

Importance of Land Records and Registry Deeds

The distinctive qualities of land as an asset include its immovability, location-based value, and restricted availability in relation to population growth. The influence of land access, or land rights, on industrial, economic, and social development is profound. Due to their greater access to markets and other economic possibilities, those with substantial property rights have been shown to be in a better financial situation than those without it. Having access to a land title defines one's ownership of land in general.

A land title is a legal document that establishes who owns real estate or other immovable assets. The rights of the holder of a clear land title are safeguarded against any claims to the property made by third parties. Land ownership in India is ascertained by use of a variety of records, including government survey records, registered sale deeds, and property tax records. However, there are a number of reasons why land titles in India remain ambiguous, including the lingering effects of the zamindari system, legal framework inadequacies, and inadequate land record management. This has impacted the real estate and agricultural industries and resulted in many land ownership court cases. These problems have brought even more attention to how crucial it is to maintain structured land records and unambiguous land titles. We go over a couple of these concerns in the section that follows.[5]

- **High litigation**: According to a 2007 World Bank report, estimates place the number of outstanding court cases in the nation at two-thirds, with the majority being tied to property conflicts. Among these property issues are those pertaining to the authenticity of land titles and documentation, as well as legitimate possession. According to research by NITI Aayog, resolving land disputes takes 20 years on average. Land disputes strain the legal system, encumber land in legal proceedings, and negatively affect industries and enterprises that depend on the contested property titles.

- **Agricultural credit**: Farmers frequently use their land as collateral to get loans. It has been noted that the availability of finance and financing for agriculture is hampered by contested or ambiguous land titles. Access to institutionalized finance is restricted for small and marginal farmers, who make up more than half of all land holdings and may not own official land titles.

- **Construction of new infrastructure**: The nation's economy has shifted over the last several decades from being based mostly on agriculture to being based primarily on industry and services. This has made it necessary to build infrastructure and convert agricultural land into commercial, industrial, and residential areas. Previously utilized for farming, the land is currently being developed for industry, manufacturing, power plants, highways, housing, and shopping centers. However, a number of the new infrastructure projects are running behind schedule, with land-related concerns frequently playing a major role.[6]

Advantages of Digitization

At a two-day BhumiSamvaad VIII: National Conference of State Revenue/Registration Secretaries and Inspector General of Registration (IGR) on Sharing of Best Practices in Land Management Modernization, Singh stated that completing the digitization of land records will not only reduce the large backlog of land dispute cases in courts but also significantly improve the nation's ease of doing business ranking.

The minister emphasized the vital role those contemporary technologies—such as Blockchain—have in revolutionizing land management and advancing the goals of the government's Gati shakti agenda. Singh also emphasized the significance of recent government efforts, such as the NGDRS for one nation, one registration, the Transliteration of Land Records to provide land records in many languages to promote ease of doing business, and the Unique Land Parcel Identification Number (Bhu-Aadhaar). The influence of digitization on lowering litigation, expenses, and processing times was also discussed during the conference, as was the promotion of credit access through digital records. Nidhi Khare, the secretary of land resources,

---

5 Land Records, Analytical Reports India, PSR India, https://prsindia.org/policy/analytical-reports/land-records-and-titles-india#:~:text=These%20land%20records%20furnished%20information,a%20combination%20of%20these Last Visited on 18th Feb. 2024.

6 Land Records, PSR India, https://prsindia.org/policy/analytical-reports/land-records-and-titles-india#_edn8, Last Visited on 18th February 2023.

emphasized the value of these kind of conferences in exchanging best practices and investigating scalable solutions in land governance.

The prime minister's vision for transparent government in the last mile benefits delivery for residents is something that Faggan Singh Kulaste, minister of state for steel and rural development, emphasized. "Digitalization process of land records and registration will help mitigate the huge pendency of court cases involving land disputes and will also help in ensuring the transparency in identifying the correct beneficiaries for providing right compensation for land acquisition by the government."

Objectives

Digitization of Land Records: Focuses on the digital sphere by transforming manually kept land records into digital formats that are more advanced than manual ones.

Map Digitization: Carries out the digital conversion of cadastral maps, providing a picture of individual land parcels, ownership information, and other important data.

Examining and Revising Documents: Intends to carry out routine surveys and updates on land records in order to guarantee continued correctness and to accurately represent the ownership and useof land at the time.

Connectivity with the Registration Procedure: It simplifies land transactions and reduces potential for fraud by seamlessly integrating land data with property registration procedures.

Record Standardization: It establishes consistent land record formats and coding to provide compatibility and consistency across various locations and promote a common data management methodology.[7]

Innovative Initiatives

- **Novel Projects :** Bhu-Aadhar, also known as the Unique Land Parcel Identification Number (ULPIN):Adoption and Implementation: 29 States and UTs have adopted ULPIN, a 14-digit alpha-numeric unique ID for each land parcel, and four more are doing pilot testing.Benefits include streamlining real estate transactions, settling disputes over property borders, boosting knowledge on land generally, and improving disaster preparedness.
- **E-Registration**, also known as the National Generic Document Registration System (NGDRS):Adoption and Implementation: Twelve states share registration information on the national site, while eighteen states and territories have embraced the NGDRS.
- **Acknowledgment:** NGDRS won the Central category of Innovation for the 2021 Prime Minister Award for Excellence in Public Administration.
- Connecting the Land Records/Registration Database to the e-Court:
- **Pilot Examining:** The goal of the successful pilot testing in Uttar Pradesh, Maharashtra, and Haryana was to give courts accurate information and speed up case settlement.
- **Development:** 26 States and UTs have obtained the required approvals for integration, which has helped to lower the number of land conflicts.

Transliteration of Land Records in Languages Included in Schedule VIII:

- **Initiative:** In an effort to overcome language obstacles, the government is translating local language land records into any of the 22 Schedule VIII languages specified in the Constitution.
- **Progress:** Transliteration tools have been included into land records in 17 States and UTs.

The Platinum Grading Certificate Scheme, or BHOOMI SAMMAN:

Accomplishment: 168 districts across 16 states have been acknowledged with the 'Bhoomi Samman' ceremony for having completed 99% or more of the required critical components, earning Platinum Grading.

The DILRMP's unique ideas and all-encompassing strategy represent a revolutionary step towards the digitization and modernization of land records in India.[8]

---

[7] Digital India Records, Times Property, https://timesproperty.com/news/post/digital-india-land-records-modernisation-programme-blid6705. Last Visited on 18th February 2024.

[8] Supra Note 7.

Does digitalization make the process of transfer of property easier?

Digitization of property in India will help make the process smoother and will aid in organized records of transfer of property as compared to the non-transparent traditional method of paper-based documentation method which allows a corrupt system grow its roots deep, thus making the process very transparent and allowing easy access to older documents as well.

Challenges inTransfer of Property

Land titles are not used in the Indian system; instead, registered sale documents are.

The right to immovable property, or land, can only be sold or transferred through a registered instrument, according to the Transfer of Property Act of 1882. In accordance with the Registration Act of 1908, these records are registered. Consequently, the transaction—rather than the property title—is registered. It follows from this that ownership may not always be guaranteed by even legal property transfers, as previous transactions may be contested. It is difficult to get the several papers that are kept up to date by various authorities in order to verify land ownership.

For instance, the survey department keeps maps, the registration department keeps sale documents, and the revenue department keeps property tax receipts.

Discrepancies arise because these departments operate in silos and do not promptly update the data. Delays arise because it takes several years of documentation to uncover any claims to ownership of a piece of land. People avoid registering transactions because of the high expense of registering property. In addition to the registration fee, the buyer must pay stamp duty when registering a sale deed.[9]Some typical legal obstacles in the transfer of property are also essential to take in account. Navigating typical obstacles such as ambiguities, encumbrances, and title disputes in property due diligence and legal knowledge, guaranteeing a seamless transaction.

These may include:

1. **Precedents and Court Interpretations**: The Transfer of Property Act is often interpreted by courts in a variety of situations, setting legal precedents for real estate transactions and directing legal interpretations.

2. **Getting Legal Counsel for Difficult Real Estate Transactions**: It is important to have legal counsel in intricate real estate deals. Legal experts assist with compliance, resolving issues, and enabling a transfer that is compliant with the law.[10]

Conclusion

There could be two sides of the coin in terms of maintaining land records. If the records are accurately recorded it will lead to an organized system in the sphere of property. Whereas if they are displaced it could lead to missing documents and irrelevant records.Inaccuracies in land records have sometimes been caused by poor upkeep. States have not kept up with updating the data through surveys in the past. Boundaries have not been established on the ground using maps. The textual and geographical records do not match as a result of this. The division and transfer ofland through inheritance or sale are not recorded by surveys, which contributes to the disparity between textual and geographical records. For instance, when land is transferred to an heir after the death of a property owner, records could not be updated.

Some suggestions in my opinion, could be training of state officers in a way that they are well acquainted with the technology, step by step implementation of the process (since it is a huge shift it should be introduced gradually) ,proper implementation by providing resources even in the remotest areas in India(state governments should look into for all the areas to have access to the varied digital platforms), spreading awareness on why people should switch to digitalization of property . Thus, digitizing land records will be a step that should be taken with utmost care.[11]

* * * *

[9] Digitization of Land Records, Insights India, Dhttps://www.insightsonindia.com/social-justice/issues-related-to-rural-development/digitization-of-land-records/challenges-in-digitization-of-land-records/, Last Visited on 19th February 2024.

[10] Transfer of Property Act, SMFG India Credit, https://www.smfgindiacredit.com/knowledge-center/transfer-of-property-act.aspx, Last Visited on 20th February 2024.

[11] What is digitization, Magic Bricks, https://www.magicbricks.com/blog/what-is-digitisation-of-land-records-and-its-challenges/118270.html, Last Visited on 22nd February, 2024.

SPACE DIPLOMACY AND SOCIAL DYNAMICS: CHARTING INDIA'S TRAJECTORY IN GLOBAL COLLABORATIONS

Huma Parveen *

Abstract

Space diplomacy involves utilizing space science and technology to achieve foreign policy goals and enhance national space capabilities. The objectives of space programs in the Global South include applications in agriculture, water resource management, weather forecasting, telecommunications, telemedicine, and education. With over seventy countries having space agencies, particularly in the Global South, cooperation in space endeavors relies on diplomacy, international treaties, and agreements to ensure peaceful uses of space technology. While many countries control satellites, only a few possess launch capabilities, with regional and multilateral bodies playing key roles in technology development and regulatory frameworks. Countries in the Global South are striving to enhance their space capabilities through agencies, bilateral agreements, and participation in regional space bodies like the African Space Agency and the Latin American and Caribbean Space Agency.

Through this paper, an attempt is made to analyze India's space diplomacy and social dynamics and its trajectory in global collaborations. The research focuses on Major space diplomacy initiatives in the Global South; Space diplomacy challenges in the Global South; and the politics of India's space program and its growth trajectory.

Introduction

The Paris Convention of 1919 marked the inception of international air law, establishing principles for civil aviation regulation. It led to the creation of the International Commission for Air Navigation (ICAN), later becoming the International Civil Aviation Organization (ICAO) in 1947. ICAO has been pivotal in shaping international air law, producing conventions and protocols governing diverse aspects of civil aviation. In 1967, the Outer Space Treaty became the first legal framework for outer space activities, setting fundamental principles for space exploration. Subsequent agreements addressed various aspects, such as astronaut rescue, liability for space object damage, and the registration of space objects.[1]

International Context of Air and Space Law

Air and space law constitutes a highly specialized field, shaped by a complex network of international treaties, conventions, and regulations. This legal framework addresses diverse issues such as air traffic control, aviation safety, airport security, space exploration, and the utilization of space resources.

The International Civil Aviation Organization (ICAO) serves as the primary global entity overseeing the regulation of civil aviation. It plays a central role in formulating international conventions and protocols that establish rules and standards for various aspects of civil aviation, encompassing airworthiness, airspace management, and air navigation safety. The ICAO collaborates closely with national governments and regional organizations to advance the worldwide safe and efficient operation of civil aviation.

The United Nations Office for Outer Space Affairs (UNOOSA)[2] holds a pivotal role in fostering global cooperation and coordination regarding outer space activities. This agency actively supports member states by offering technical assistance in the formulation of national space policies and legal frameworks. The Committee on the Peaceful Uses of Outer Space (COPUOS)[3] stands out as the principal United Nations body tasked with the development of international space law.

* **Ph.D Research Scholar, School of Legal Studies, Babu Banarasi Das University, Uttar Pradesh.**

1 The International Civil Aviation Organization, *available at*:https://applications.icao.int/postalhistory/1919_the_paris_convention.htm (Visited on 25 January 2024)

2 The United Nations Office for Outer Space Affairs (UNOOSA), *available at*:https://www.unoosa.org/oosa/en/aboutus/roles-responsibilities.html (Visited on 25 January 2024)

3 The Committee on the Peaceful Uses of Outer Space (COPUOS), *available at*:https://www.unoosa.org/oosa/en/ourwork/copuos/index.html (Visited on 25 January 2024)

Indian Context of Air and Space Law

In India, the regulation of civil aviation falls under the purview of the Directorate General of Civil Aviation (DGCA), which has aligned itself with various international conventions and protocols. These agreements outline rules and standards for diverse aspects of civil aviation, covering areas like airworthiness, airspace management, and air navigation safety.[4]

India has also made substantial strides in shaping its national space policy and legal framework. The enactment of the Indian National Space Promotion and Authorization Center (IN-SPACe) Bill in 2017 represents a significant development. This legislation establishes a regulatory structure for the authorization and oversight of space activities within India. IN-SPACe isentrusted with the responsibility of granting licenses, monitoring space endeavors, and fostering the commercialization of space activities in the country.[5]

Indian space program

The Indian space program, initially launched for socioeconomic purposes, quickly incorporated space-based applications. Over the years, the program has developed significant expertise, allowing for the independent execution of diverse space missions. The Indian Space Research Organization (ISRO) has not only enhanced existing programs in remote sensing, meteorology, and telecommunications but has also introduced new space missions, marking substantial growth over the past decade.[6]

India's growth trajectory

India is prioritizing space as a significant aspect of its global engagement strategy. The country is focused on establishing lasting international partnerships, reflecting its commitment to non-aligned multilateralism.

India's space diplomacy has developed by engaging with various international partners and facilitating a commercial avenue for the private space sector. While policy reforms are still needed to enhance private sector participation, India's recent endeavors in space have positioned it as a resilient and influential player on the global stage.

India has taken a leadership role in fostering South Asian cooperation by actively promoting innovation among its neighboring countries. An illustrative instance is the launch of the GSAT-9 satellite in 2017, specifically designed for the member states of the South Asian Association for Regional Cooperation (SAARC).[7]

The collaboration between India and its neighboring nations in the space sector is thriving, aligning with the country's growth. The ongoing privatization policies in the space industry are expected to create additional opportunities for international relations. To comprehend India's influence in the space sector and its implications for future diplomatic relations, let's analyze the following points step by step.

India's advancements in space assets and in-house production capabilities have the potential to initiate a wave of partnerships and enhance cooperation in the global space supply chain.

Grassroots Approach

The space technology domain demands significant risk-taking capabilities and substantial financial investments. The emergence of the NewSpace wave has lowered overall costs and created opportunities for the private sector. However, the uncertainty persists regarding the ratio of investments to the return on investment across various verticals in the space industry.

In the 1960s and 1970s, India began prioritizing its economy, civil development projects, and education, distinguishing itself from some neighbors who were allocating significant funds to the military domain. This marked a distinct path for India during that period.

---

3 The Committee on the Peaceful Uses of Outer Space (COPUOS), *available at*:https://www.unoosa.org/oosa/en/ourwork/copuos/index.html (Visited on 25 January 2024)

4 Directorate General of Civil Aviation (DGCA), available at: https://www.dgca.gov.in/digigov-portal/?page=jsp/dgca/topHeader/aboutDGCA/aboutUsDetail.html (Visited on 9 May 2024)

5 The Indian National Space Promotion and Authorization Center (IN-SPACe), available at: https://www.isro.gov.in/Authorization.html (Visited on 9 May 2024)

6 Indian Space Research Organization (ISRO), *available at*: https://www.isro.gov.in/profile.html (Visited on 25 January 2024)

7 GSAT-9, available at https://www.isro.gov.in/GSAT_9.html; (Last modified May 05, 2017).

Returning to 2023, India currently boasts one of the most influential and dynamic young forces propelling the economy on both national and international fronts.

A grassroots approach is deemed essential in establishing a sustainable framework for space assets. While the ongoing privatization of the space sector is progressively benefiting the downstream market, there's a need for greater flexibility in the upstream market to foster innovation in the supply chain.

Enhancing policies in the upstream space market diminishes outsourcing, fostering the acceleration of financial and technological innovation. Additionally, it positions the nation to either invite or supply upstream space products to international partners. India's supply chain necessitates greater flexibility, encompassing both government support and financial considerations. This flexibility is anticipated to play a pivotal role in shaping future international relations through the lens of space technology.[8]

Exploring a Broad Spectrum

India, being one of the world's leading consumer markets, has attracted numerous satellite communication operators and service providers over the past two decades. Direct-to-Home (DTH) services, particularly popular across the country, have been offered by prominent players such as Airtel, Dish TV, and Tata Sky, catering to both urban and rural areas.

In a similar vein, it is crucial to comprehensively engage with private space companies to unlock their potential and foster the robust development of the space sector. Notably, companies like SatSure are addressing critical challenges in agriculture and other industrial sectors, leading to significant impacts on both the space industry and enhanced productivity at the grassroots level.

Unlocking the high potential of companies in various space verticals is feasible but necessitates robust government support to initiate market momentum. India has recently established multiple agencies, such as the Defence Space Agency (DSA), dedicated to crafting space assets for military applications. While this signifies progress, enhancing resilience in the upstream supply chain demands a more substantial push to streamline the overall development and manufacturing processes in space technology.

Diplomatic Spotlight Position

Developed nations, in particular, closely monitor India, not just due to its vast consumer market but also because of its substantial resources that enable active participation and amplification of international relations on a global scale.[9]

In the year 2022, India announced its intention to create military satellites for its Air Force, Army, and Navy, showcasing its ambitious aim to incorporate space technology into the military domain. While defense collaboration has primarily involved military exercises, strengthening the upstream space market could potentially pave the way for India to initiate military satellite cooperation with allied nations.[10]

In the realm of international relations, the evolving geopolitical landscape is placing India on an unstable tectonic plate. The country is increasingly pressured to form alliances, a practice it has largely ignored for decades, a stance that has been a crucial factor in its emergence as an independent nation.

The Quadrilateral Security Dialogue (QUAD), comprising Australia, India, Japan, and the United States (US), recently signed a Memorandum of Understanding (MoU) for Space Situational Awareness (SSA). While this move may be perceived as a step towards alliance building, it's crucial to recognize that the geopolitical interests of each QUAD member do not completely align.[11]

At present, China and India are recognized as key nations in the Asian region. The United States views India as a potential partner to address challenges in its presence in Asia. However, India tends to maintain an independent stance in international affairs, preferring not to align too closely with any single geopolitical power.

---

8 SPACEIndia, available at https://www.isro.gov.in/media_isro/pdf/ResourcesPdf/SpaceIndia/publication(38).pdf:, (Last modified July, 1994)

9 Integrated Defence Staff, available at: https://ids.nic.in/content/vision–history:, (Visited on May 9, 2024).

10 "Military satellites, Space fighters: How IAF plans to transform into a superpower in space" *The Economic Times*, Dec. 15, 2023.

11 Capt Prashant Agnihotri, "Shared Situational and Domain Awareness as an Initial Framework for Strengthening the Quadrilateral Security Dialogue" *Official UnitedStates Air Force Website*, Aug. 1, 2022.

Joint-military space asset development may not be a top priority, but the United States and India are actively enhancing bilateral cooperation in the space domain. The collaboration spans areas such as earth and space science, human space exploration, global navigation satellite systems, spaceflight safety, space situational awareness, and policies related to commercial space.

Given recent developments, India finds itself in a situation presenting both challenges and opportunities. Amidst the complexities of international relations, space cooperation, whether from civil or commercial perspectives, emerges as a strategic avenue for India to maintain an independent and influential global position.

Prospective Horizons

India's future in the space sector, intertwined with its international relations, holds substantial potential to explore uncharted territories globally. The crucial element supporting this prospect is India's autonomy in decision-making and its emphasis on supporting partner nations rather than being solely dependent on allies. This approach has positioned India in a diplomatic hot seat, enabling the country to navigate and cultivate healthy relationships with multiple nations.

India's progress in developing space assets and in-house production capabilities has the potential to catalyze partnerships and enhance cooperation in the global space supply chain. Moreover, gradual changes in private policy reforms, coupled with increased government support in the upstream market, are expected to propel India's private space sector to new heights.

Space Diplomacy Hurdles in the Global South

Despite the growing interest in the Global South to develop space capabilities and technology, numerous obstacles highlight the necessity for a more concentrated and strategic approach to space diplomacy.

Difference in priorities and limited understanding complementaries:

The Global South faces challenges in space diplomacy due to differences in priorities, challenges, strengths, and requirements among nations. These disparities can lead to competition for space resources, and the limited understanding of complementaries hinders the development of mutually beneficial partnerships. The lack of political will or the pursuit of space diplomacy as part of a larger geopolitical strategy may contribute to this restricted understanding.

Over-dependence on top space agencies:

The development of space technology is resource-intensive and involves significant risks, leading to a reliance on top space agencies primarily situated in the Global North. Countries in the Global South often lack the necessary human and financial resources for substantial investment in space endeavors. Consequently, in situations of budget constraints and various crises, other sectors take precedence over space diplomacy. Even countries with relatively mature space programs, such as Mexico and Pakistan, continue to depend on developed nations for services based on space technology. This over-dependence on advanced countries poses a risk to the technological sovereignty of developing nations and limits their influence in negotiations regarding space-based treaties, norms, standards, and regulations.

Increasing competition from private industry:

The space activities landscape is undergoing rapid changes due to the entry of the private industry. Private companies often provide satellite-related services and launch vehicles at a lower cost compared to state-owned space agencies, potentially diverting investment from national space programs. The space industry generates substantial revenues, and commercial spaceflight has become a lucrative niche for private players, including SpaceX, Blue Origin, and Virgin Galactic, who are investing significant amounts in this sector.

Lack of strategic approach for space diplomacy:

Many countries in the Global South lack a comprehensive, long-term strategy or policy framework to effectively utilize space diplomacy for achieving their strategic and socio-economic objectives. Instead, space cooperation tends to be ad hoc and may not align consistently with a country's long-term strategic interests.

Steps to further space diplomacy in the Global South

Several instances of science diplomacy in the Global South are highlighted, including Brazil using India's launch capabilities for its Amazonia-1 satellite in 2021 and the collaborative development of the South Asian Satellite. The content suggests that to initiate space diplomacy among space agencies, joint committees, and working groups should identify complementaries and shared interests. Additionally, expanding exchange programs for space professionals and encouraging the loaning of space facilities can strengthen collaboration. The next steps involve developing resource-sharing agreements for satellite data, research, training, and launch facilities, along with the bilateral or multilateral sharing of training modules for satellite development and data management.

There is a need for a platform to systematically catalog requirements, challenges, resources, and facilities across the Global South. The suggestion is that space agencies in the Global South can collectively establish such a platform through global forums like the UNOOSA or UN Office for South-South Cooperation. Increased outreach efforts are crucial to inform all stakeholders, including government officials, space administrators, technologists, and diplomats, about the opportunities and challenges associated with space diplomacy.

International forums such as the G-20 and BRICS which is an intergovernmental organization comprising Brazil, Russia, India, China, South Africa,[12] Are identified as potential facilitators for North-South space cooperation, helping to establish regulations for the peaceful sharing of space resources. BRICS, in particular, is seen as a suitable forum for addressing the demands and needs of several emerging economies in the space technology realm. The Association of Southeast Asian Nations, commonly as ASEAN,[13] A political and economic union of 10 states in Southeast Asia is cited as another example of North-South and South-South space cooperation, supported by initiatives through joint committees and working groups. Additionally, the network of UN-affiliated regional centers for space science and technology education should be expanded and better integrated.

The emergence of new state and non-state actors in space activities can bring about cost reductions and increased cooperation opportunities. However, it also underscores the need for new regulations in space, particularly addressing issues such as competition, commercialization, debris management, and militarization. Several countries have signed initiatives like the Artemis Accords,[14] Which focused on regulating the commercialization of space. The increasing number of developing countries entering the space race may be seen as neocolonialism and discriminatory in the Global South. The space gap is defined as a capabilities disparity between developed and developing states, where the latter either lacks access to space technologies or must pay high amounts to foreign governments for basic access.

Furthermore, there is a growing trend of militarization in space, leading to competition not only between major players like the United States and China but also among other nations such as Russia, India, Japan, and South Korea. Managing space strategies in the Global South amid the evolving dynamics of militarization in this new space age, alongside the integration of novel space technologies, presents a significant challenge.

Conclusion

Air and space law, a specialized legal field, governs activities in both airspace and outer space. Its historical evolution and international context demonstrate that technological advancements and the globalization of the world economy have been influential in shaping this legal domain. India has actively pursued the development of its national space policy and legal framework, indicating a growing role in the global regulation of air and space activities in the foreseeable future.

Considering the growing space-related interests and capabilities of the Global South, there is a call for these nations to actively contribute to the establishment of new rules, regulations, and norms in space activities. Space diplomacy is identified as a crucial instrument for countries in the Global South looking to peacefully enhance their capabilities in space technologies.

India's space program, ISRO, is a key economic driver, contributing to economic growth, job creation, and technological innovation. With the right strategies, India's space economy could achieve unprecedented growth, unlocking a brighter future for the nation.

* * * *

12 Evolution of BRICS, available at https://brics2021.gov.in/about-brics:,(Visited on May 9, 2024).

13 The Founding of ASEAN, available at https://asean.org/the-founding-of-asean/:, (Visited on May 9, 2024).

14 The Artemis Accords, available at https://www.nasa.gov/artemis-accords/:,(Visited on May 9, 2024).

UNMARRIED AND UNPROTECTED? LEGAL SAFETY NETS FOR LIVE-IN PARTNERS

Aryan Agarwal *

Abstract

This article, "Unmarried and Unprotected? Legal Safety Nets for Live-In Partners," explores how live-in partnerships are changing in India and looks at the legal safeguards that apply to the parties involved. As social conventions have changed, live-in relationships have become more common; nevertheless, the legal system has not kept up, leaving partners vulnerable. A few of the significant topics discussed in this article are the "Protection of Women from Domestic Violence Act" (PWDVA), which forbids domestic abuse, property rights, and financial entitlements, and the intricate legal difficulties surrounding child support and custody. It highlights significant judicial cases that have accepted cohabitation while also highlighting inadequacies in enforcement and policy.The article also touches on social security and benefits, emphasizing the need for comprehensive legislation that offers the same protections to spouses who live together. The study compares the Indian legal system with international standards to offer insights into potential reforms and best practices for the future. Sociocultural barriers and advocacy groups' support for live-in partners are also discussed. Ultimately, this comprehensive examination highlights the necessity of both societal transformation and legal measures to ensure that individuals in cohabiting partnerships receive equitable protection and recognition of their rights. The study concludes with recommendations for lawmakers, lawyers, and the general public to address these new concerns.

Introduction

For many centuries there was no recognized concept of a live-in relationship. If any man and woman lived together without marriage then it was considered a sin and those were punished by Indian culture previously. Even the Hindu Dharma says "One Man, One Wife" is the most sacred form of matrimony. But slowly and gradually society developed its mindset and became modern so they started accepting many new concepts like LGBTQ, live-in relationships, same-sex marriage, and many more. Statistics say, that more than 80 percent population of India accepts the concept of living in a relationship. Earlier there were no laws regarding these but slowly and gradually laws were developed to regulate and bring justice to these marginalized communities.

What is the meaning of living in a relationship?

When two people mutually decide to live together without tying the knot of marriage then it is known as a live-in relationship or another term that can be used is cohabitation. Hence there is no legal definition yet to define live-in relationships.[1]

First, time by "The Protection of Women from Domestic Violence Act, of 2005" legislators accepted the term live-in relationship to give the rights to unmarried women living with a male person in a relationship which is the nature of marriage also like a wife though not equivalent to a wife.

The first case which recognized live-in relationshipsas valid marriage was brought up in 1978 known as "Badri Prasad vs. Dy. Director of Consolidation"[2] In which the Court gave legal validity to a 50-year live-in relationship of a couple. This was then again followed by Allahabad High Court which also recognized the concept of live-in relationship in the case of "PayalKatara vs. Superintendent, NariNiketan and others" where it held that live-in relationship is not illegal. It also stated that a man and woman can live together as long as they are doing it fully, it may be immoral for society but it's not illegal.

* 1st Year BBA. LLB., National Law University, Odisha

1 'Live in Relationship Laws in India: Legal Protections' <https://vakilsearch.com/blog/live-in-relationship-law/>.

2 'Badri Prasad vs Dy. Director Of Consolidation AndOrs on 1 August 1978' <https://indiankanoon.org/doc/215649/>.

Legal Provisions of live-in relationship:

Couples nowadays want to try and explore many new thingsand these many new things are being taken into consideration and tried by them. Though the mindset of Indian society was developing still there were some reflections of a patriarchal society. No rights and remedies were given to women sufferers they were taken for granted by males. They make fake promises of marriage and then leave them for someone else or the male partner abandons the female after having a baby without marriage. This deeply impacts the mental, physical, and emotional health of women.

Due to an increase in cases of harassment and violence, the Supreme Court started to provide relief to the victims under the Domestic Violence Act. Later they widened the scope of support under section 125 example: maintenance (which was only for women) to grant more rights to women.

Due to its vast repercussions, many provisions are made to secure life in relationships but still, there is no proper law to govern them. Some provisions are:

Legal Provisions Regarding Domestic Violence

"Protection of Women from Domestic Violence Act," 2005(PWDVA)was the first to recognize the concept of live-in relationships by providing rights to women. PWDVA defines a live-in relationship as "two persons who live or have lived together in the same household and are related by consanguinity, marriage, or through a relationship like marriage, adoption, or are family members living together as a joint family"[3].

This act contains any kind of physical, emotional, sexual, economic, and verbal abuse offering a broad spectrum of protections. Women in relationships can seek protection orders, residence orders, monetary relief, custody orders, and compensation orders. Despite this PWDA provides immediate relief which does not even require to initiation of separate criminal proceedings. This law appoints a protection officer and a separate magistrate to prevent further abuse.

In "D. Velusamy vs. D. Patchaiammal (2010)"[4] Supreme Court held the criteria that established which live-in relationships will be qualified as a nature of marriage such as duration, shared household, and acceptance. It also signified that not all live-in relationships will be qualified under the nature of marriage.

If we talk about current issues, many women don't even know about their rights underPWDVA or don't have access to legal aid. Society and its norms compress the women to report their abuse they make it feel like if she goes for legal action her image will be ruined. Implementation by legal entities is also a major problem which leads to delays in decisions, and coordination between different agencies which overall affect the women. Due to differences in the application of different women, it became hard to deliver justice and it also may vary from woman to woman which erupts faith in the judicial system.

A few suggestions that can help address the issues can be made by changing the policy and bringing reforms into it which helps in maintaining a uniform application throughout the PWDVA office. Be aware to the public about the PWDVA act and the rights and actions they can take against their partner. One action can be taken by educating judges or PWDVA officials about the changing reforms and judgments they should give for particular types of cases.

Legal Provisions regarding Property Rights

As evolution in live-in relationships there started a dispute regarding property rights, with no proper laws regarding property rights the issue was whether a woman living with someone would inherit the parental property at birth and whether the property acquired by couples would be divided or not. So it was concluded that a woman will inherit the parental property at birth, she also has a right of 50% of her partner's property and she can also keep her acquired property with herself which will be divided as per the will of her.

Disputes may arise over the division of property which is jointly acquired by partners as there is no specific provision that clearly outlines the division of assets of live-in relationships partners, in case of payment of rents it is difficult to maintain records and track their share, and repayment to other partner, if a person dies

---

[3] PrajwalDwivedi and Vallari Kapoor, 'Domestic Violence and Live-in Relationship' (2022) 02 1.

[4] 'D.VelusamyvsD.Patchaiammal on 21 October, 2010' <https://indiankanoon.org/doc/1521881/> accessed 29 May 2024.

without any will laws under Hindu succession law Act 1956, do not automate rights to inherit deceased man property, absence of formal documentation makes it difficult to prove the right over the property.[5]

Partners can come to a legal agreement before moving in as a couple which specifies the terms of property ownership, contributions, and division in case of separation, the government can promote the making of a will which ensures that the distribution is done will-fully, courts can award financial support to the financially weaker partner, making of laws should be promoted which specifically address these problems which will help to ensure fair treatment and provide security to surviving partners.

Legal Provisions Regarding Children's Rights and Custodial Rights

Unwanted pregnancy or child born is one of the major concerns in live-in relationships, couples maintain sexual relationships that lead to child born sometimes they opt for abortion due to many reasons (societal concerns, early age pregnancy, etc) and sometimes they deliver the baby. If after the delivery of the baby, the couples get separated then who will have custody of the baby, and who will pay for the expenses of the baby? All these questions were addressed before the court.

The Court declared that the rights of a baby in live-in relationships will be the same as in marriage. The baby will have the right to parental properties and their ancestral properties too. "Section 114 of the Evidence Act says that they live as husband and wife and the child born will not be illegitimate"[6]. This was supported by the case of "SPS Balasubramanyam v. Sruttayan"[7] in which the court held if they spend a few years together then it will be considered marriage and the child will have all rights as in marriage.

Despite these rights still some issues are faced by couples such as if any of the partners denies accepting the child then the child may be deprived of financial benefits from that partner, there are inconsistent rulings regarding the custody of the child which makes outcomes varied and inconsistent, due to absence of formal guidelines it's difficult to address what is best for a child, paternity is another problem which is established to give legal rights to child and fathers name is required in the birth certificate.[8]

To address these problems few suggestions or steps can be taken by the government as DNA tests can be promoted for biological recognition of the parents, campaigning should be done to aware couples of their rights and duties towards each other this can be done through posters, social media, etc. Courts should look for many circumstances such as better future, emotional sentiments, child preference, etc while giving child custody, creating specific guidelines for custody so that it may not differ from judge to judge, mediation, and counseling should be promoted to resolve any dispute between couples**.**

Legal provisions regarding Social Security and Benefits

Live-in partners in India often find themselves excluded from the social security benefits since their relationship is also considered as same as married couples by courts. Social securities include pensions, health insurance, life insurance, and many more welfare benefits. This leaves partners without any financial support or access to benefits of the plan which is needed and when a medical emergency arises or any partner dies then this assistance is required to fill up basic needs.

Currently, they are not entitled to receive their partner pension benefit which is only reserved for legally recognized spouses. Many health insurance policies do not cover live-in partners in their schemes leading to significant out-of-pocket expenses for medical crises which is not a cup of tea for every couple. Social welfare programs that offer financial aid, housing benefits, and other support typically exclude live-in partners from their scope of coverage.

The government can go for an amendment in existing social security laws and policies which do look to include benefits for live-in partners as beneficiaries. Awareness campaigns can be promoted to educate the public and policymakers about the needs and rights of live-in partners. International policies can be taken into consideration for forming policies in India by taking into consideration their perspective related to any

---

5 PrakharSushant, 'Property Rights Of A Female In A Live-In Relationship In India' (*The NoBroker Times*, 21 December 2022) <https://www.nobroker.in/blog/rights-of-a-female-in-a-live-in-relationship/>.

6 Rebecca Furtado, 'Rights Of Child Born Out Of A Live-in Relationship' (13 July 2016) <https://blog.ipleaders.in/rights-child-born-live-relationship/>.

7 'S.P.S. BalasubramanyamvsSuruttayan on 13 October, 1993' <https://indiankanoon.org/doc/279063/>.

8 Dwivedi and Kapoor (n 3).

particular matter. Encourage courts to interpret existing laws in a manner which benefits the live-in couples or includes live in. partners under social security provisions.

Comparative Analysis with Other Jurisdictions

Analyzing how different countries have recognized the needs of couples in a live-in relationship and addressed them with their current law system. This comparative analysis helps India to identify the best practices by examining how other countries are handling these relationships.

United States: In the US, a cohabitation agreement is legally enforceable which allows partners to legally outline the terms of their relationships, Courts of the US prioritize the rights of children during custody generally paternity test is used to establish paternal responsibilities. Some states in the US grant common law marriage, where couples living together for a certain period and representing themselves as a married couple then they can obtain the status of a legally married couple without any formal marriage ceremony.

United Kingdom: In the UK, the cohabitation rights bill is not passed as a law bill grants basic financial and property rights but there is a pre-existing law Trusts Of Land and Appointment Of Trustees Act 1996 (TOLATA) that allows partners to claim a beneficial interest in the property if they can demonstrate their financial contributions in the relationship. The UK also prioritizes the welfare of children first establishing a safe environment and dividing the parental roles and duties. Fathers can acquire parental responsibility either by agreement with the mother or by court order.

Australia: In Australia, de facto relationships are recognized which grants partners similar rights to those of married couples which includes property, maintenance, child custody, and parental responsibility. Family Law Act contains special provisions for the division of property and financial support ensuring equitable treatment upon separation. Child custody remains in the hands of both parents and decide what is best for the child.

Canada: In Canada, the common law of relationships is promoted granting partners rights and obligations similar to those of married couples. Each province of Canada has its regulations related to common law relationships for example British Columbia's Family Law Act treats living in partners married couples only after two years of cohabitation. Prioritizes the best interests of the child by looking at emotional ties, a safe environment, and the ability to take care of the child. The rule for establishing paternity in Canada is clear which includes voluntary acknowledgment and DNA testing.[9]

By looking at other countries, India should legally recognize cohabitation agreements which will help them to define rights and responsibilities and reduce legal conflicts which is almost implemented by all four countries. It also should give live-in couples the same rights as those of married couples. India should prioritize the interest of the child in any custodial dispute which will help to ensure consistent and fair outcomes. Introduction of laws that will help to address property and financial disputes such as the Australian Family Law Act to provide clarity and protection. These laws are also necessary to put a stop to the volatility of decisions by courts.

Conclusion

By taking into consideration the evolving nature of partnerships in modern India, a comprehensive legal framework is necessary to protect the rights and interests of cohabiting partners and their children. Existing legal loopholes jeopardize these spouses' access to property, income, and child custody. To solve these problems, India should take a universal approach to the provisions against domestic abuse, establish clear guidelines for custody and property division, and amend its laws to recognize live-in relationships. Initiatives to raise public awareness also play a crucial role in reducing stigma and teaching people about their rights.

With an effective legal framework, cohabiting partners' rights must be protected and their children could be given equal protection and assistance. Inspired by international best practices, policymakers can tailor remedies to India's unique situation while still establishing a just and equitable legal framework. Without the assistance of lawmakers, the legal community, and the general public, these advancements cannot be realized. Because of this, a legal system that evolves with society will guarantee justice and equity for all types of partnerships.

* * * *

[9] 'Live in Relationship: Indian and International Perspective' <https://legalserviceindia.com/legal/article-5173-live-in-relationship-indian-and-international-perspective.html>.

CRITICAL ANALYSIS OF THE RIGHTS AND LIABILITIES OF THE MORTGAGOR AND MORTGAGEE

Thamizhselvi Karunanidhi *

Before the colonial rule in India, personal laws of all the diverse communities existing in India governed matters concerning the transfer of property. The lack of uniformity in laws leads to uncertainty and ambiguity. Having this in mind, commissions were appointed to homogenize and consolidate the laws, which resulted in the enactment of the Transfer of Property Act, of 1882. Some of the provisions were borrowed from English Law (The Law of Conveyancing and Property Act,1881). Every other legal development takes place, as the scope of interpretation of law widens as years surpass.

A mortgage is a very crucial kind of transfer or conveyance of property briefed in and governed by the Transfer of Property Act, of 1882. Mortgage in general terms means, a lien against property that is granted to secure an obligation (such as debt) and that is extinguished upon payment or performance according to stipulated terms. The concept of Mortgage is traced back to the hypothec of "Roman Law". More interestingly, it is also recognized under Hindu and Muslim Laws that the property is pledged to the creditor, the debtor is debarred from the possession until he repays the debt that was made, and the profits instead of interest are taken by the creditor.

This paper deals with the key provisions relating to mortgage & rights and liabilities of mortgagor and mortgagee in the Transfer of Property Act, 1882. Along with it, the paper exclusively covers the provisions related to mortgages in the Civil Procedure Code, of 1908 and Indian Contract Act, of 1872. The paper will highlight how equally both mortgagor and mortgagee have their rights, aswell as bound to fulfill their liabilities. The paper is divided into four parts where the first part deals with the general introduction to mortgage and basic provisions dealing with it, the second part deals with provisions related to mortgage in the Civil Procedure Code,1908, and the Indian Contract Act,1872, the third part deals with the rights and liabilities of mortgagor and the fourth part deals with rights and liabilities of the mortgagee.

Key Words : ***The Transfer of Property Act,1882; The Indian Contract Act,1872; Civil Procedure Code, 1908; Mortgage; Mortgagor, Mortgagee, Rights and liabilities.***

Review of Literature

The researcher relied on the following textbooks and articles to get an overall understanding of the provisions relating to the mortgage of immovable property as provided under the Transfer of Property Act, of 1882 concerning rights and liabilities of the mortgagor and mortgagee.–

Text book on *The Transfer of Property Act (21st Edition)*, written by Dr. R. K. Sinha and thoroughly revised by Dr. Shreedutta Arvind Pandey helped the researcher to understand the basic concepts of mortgage, as provided under the Transfer of Property Act,1882. The twenty-first edition of this book has given weightage to the judgments of he Supreme Court of India as well as by various High Courts of the country and the same were examined and relevant cases are incorporated at appropriate places. The relevant case laws through which the Courts have tried to clarify the doubtful issues, not only about the researcher's research area but also in general to the overall provisions of the afore mentioned Acts were highlighted in the text book.

A book called "*The Law of Property (Transfer of Property, Easements and Wills), 2nd Edition"*, written by Dr. S. R. Myneni, has helped the author to gain enormous knowledge on the core concepts of mortgage of immovable property as well as provisions relating to it specified and briefed under the Transfer of Property Act, 1882. This book deals with the Transfer of Property Act, of 1882, the Indian Easements Act, of 1882, and Testamentary Succession. An attempt has been made by the author (Dr. S. R.Myneni), to bring this

* 4th Year BA.LLB., Chettinad School of Law, Kelambakkam, Tamil Nadu

subject within the reach of the law students and researchers by presenting the subject in simple language and lucid style. This textbook has been presented based on the syllabi of the Bar Council of India, National Law Institutes, and of different Universities.

"*Mortgage under the Transfer of Property Act, 1882- A Study*" by Avesh Harshan Published in Manu Patra Articles on (April 1, 2021) which has helped the researcher to understand the empathized research area "understanding clog on redemption". It gave immense knowledge in depth of the abrogating right on redemption u/s. 60 of the Act.

"*An Analysis of the Term Mortgage under the Transfer of Property Act, 1882*" by Jitin Kumar Gambhir, (Jetir February 2019, Volume 6, Issue2) has provided a deeper understanding of the research on various dimensions of legal mortgage and different ways of incorporating mortgage deed.

Research Methodology *(Analytical legal research)*

Research Objectives:

To study the basic concepts of Mortgage, as provided by the Transfer of Property Act, of 1882.

To study and analyze the rights and liabilities provided to the mortgagor and mortgagee by the Transfer of Property Act, of 1882.

To study the relevant provisions of CPC,1908 (relating to the procedural part of mortgage) and the Indian Contract Act, 1872 (relating to the contractual part of mortgage), that align with the Transfer of Property Act,1882.

Research question:

Whether the rights of the mortgagor and mortgagee as provided under the Transfer of Property Act,1882 absolute?

Hypothesis:

It is hypothesized that not all rights of mortgagor and mortgagee are absolute. There are few exceptions to certain rights and those exceptions briefs on which, which all cases such rights can be extinguished. About those exceptions as provided by the (Transfer of Property Act, of 1882), claims cannot be made to seek relief, in case of infringement of such rights, if the exception is applicable in that particular case.

Research and Discussions:

General Introduction to the Concept of Mortgage

Introduction to the Concept of Mortgage:

The origin of the mortgage notion can be found in the "Roman Law" hypothec. More interestingly, it is also recognized under Hindu and Muslim Laws that the property is pledged to the creditor, the debtor is debarred from the possession until he repays the debt that was made, and the profits instead of interest are taken by the creditor. In general, a mortgage is a lien against the property that is given to secure an obligation (such as a debt) and that is terminated upon payment or performance according to specified terms. As per Mulla, the mortgage "was a promise in ancient times where the transfer of ownership was influenced either by property conveyance or conditional conveyance"[1].

Essential features of Constitute Mortgage:

As per the definition of mortgage as provided by the Transfer of Property Act, 1882 under Section58(a) - "*A mortgage is the transfer of an interest in specific immoveable property to secure the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability."*[1]

"*The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed*."

1 Mulla,The transfer of Property Act,551(Lexis Nexis Butterworths Wadhwa,Nagpur10th ed 2006).

The essential features to constitute a mortgage include–(1) There must be a transfer of interests There must be specific immovable property existing intended to be mortgaged, (3) The transfer must be made to secure an obligation (loan) or to secure the performance of a contract and (4) There must be two parties.

There must be a transfer of interest- there is merely a transfer of interest in such transaction. However, the mortgage does not invoke the transfer of ownership.

There must be specific immovable property existing in tended to be mortgaged-the immovable property which is intended to be mortgaged must be specified. The rendition of the property in the mortgage deed must be sufficient to identify the property.

The transfer must be made to secure an obligation (loan) or to secure the performance of a contract – the consideration for a mortgage may be either (money advanced or to be advanced to by loan / an existing or future debts/performance of an engagement giving rise to pecuniary liability).

There must be two parties- there must be two parties in the course of conveyance of interest of such immovable property by a mortgage, in which the transfer or is called the "mortgagor" and the transferee is called the "mortgagee".

Types of Mortgages:

There are 6 kinds of mortgages as defined under the Transfer of Property Act, of 1882 and they are:

1.	Simple Mortgage	Section58(b)
2.	Mortgage by conditional sale	Section58(c)
3.	Usufructuary mortgage	Section58(d)
4.	English mortgage	Section58(e)
5.	Mortgage by deposit of title deeds	Section58(f)
6.	Anomalous mortgage	Section58(g)

Simple mortgage – In this type of mortgage, there won't be an actual transfer of immovable property instead, the mortgagee agrees on a condition that in case of non-performance of the mortgage obligation, the mortgagee has every right to sell the property and can use the proceeds of the sale to recover the mortgage money and such a transaction is called a simple mortgage.

Mortgage by conditional sale- In this type of mortgage three conditions are made by the mortgagee to the mortgagor, upon non-fulfillment of such laid conditions the mortgagee has the sole right to sell the immovable property mortgaged. Those conditions are that mortgage money has to be paid within the stipulated time (i.e., on a particular date), the effect of the sale is nullified as soon as the payment is made by the mortgagor, and the payment of money by the mortgagor, the property is transferred and such a transaction is called a mortgage by conditional sale.

Usufructuary mortgage –In this mortgage, the actual delivery of possessory rights over the property is transferred by the mortgagor to the mortgagee and there by gives the mortgagee the right to retain such property until the payment is made by the mortgagor and further authorizes him to receive the rent or profit arising from such mortgaged property and to appropriate the same instead of receiving payment of interest from the mortgagee. This transaction is called a usufructuary transaction.

English mortgage- In this type, there is an absolute transfer of property and the mortgagor is bound to repay the mortgage money on the specified date. If the mortgagor makes the payment within the stipulated time, then the mortgagee, as per the condition made in the mortgage deed is bound to transfer back the property to the mortgagor himself. This is called an English mortgage.

Mortgage by deposit of title deeds- In this mortgage where a person is in Calcutta, Madras, Bombay, and in any other towns(as specified by the state government) and the mortgagor delivers to a creditor or his agent the documents of title of immovable property with an intent to create security and then such a transaction is called Deposits of title-deeds.

Anomalous mortgage- A mortgage that does not pertain to the description of any of the mortgages above is called an anomalous mortgage.

Dealing With Procedural and Contractual Parts of Mortgage

Provisions of Civil Procedure Code, 1908 - Dealing With the Procedural Part of Mortgage

The procedural part of the mortgage is dealt with the provisions under Order XXXIV of CPC, 1908. The provisions afore mentioned brief on the procedure of how the available remedies to redeem the mortgage money can be claimed and how to obtain a decree of sale in case of non-performance by the mortgagee.

T***he available remedies to redeem the mortgage money specified under Order XXXIV of CPC,1908 are:***

Foreclosure suit– Filing for a foreclosure suit is the fore most remedy that can be claimed by the mortgagee. According to the code, the plaintiff or any persons having interest in the mortgaged property or the right of redemption of such property can be the parties to such suit, (as per Rule1 Order XXXIV of CPC,1908). In case of constant failure of payment by the mortgagor even after filing this suit, the plaintiff can file suit for sale to recover the mortgage money (as specified under Rule 4 of Order XXXIV of CPC, 1908).

Suit or sale–When the mortgagor fails to pay back the mortgage money, then the mortgagor is authorized to sell such mortgaged immovable property and recover the mortgage money through such sale.

Recovery of balance due in the suit for sale-This suit seeks to claim the sum of the mortgage money that is not sufficient even after selling the mortgaged property of the defendant. The balance is held to be recoverable after selling the other properties of the defendant.

Provisions of the Indian Contract Act, 1872 – Dealing With the Contractual Part of Mortgage

The basic provisions that a contract must comply with to have its effect, are what is dealt with under this part. Firstly, the contract between the mortgagor and mortgagee, to be recognized as a valid contract must comply with Section 10 of the Indian Contract Act, of 1872. The essentials of a valid contract must be satisfied, or otherwise, the effect of such a contract will be nullified. Novation, alteration, or recision of the mortgage deed can be done only incompliance with Section 62 of the Act. Stating the same, various judgments have been pronounced in this context and one among those is the case of *Goluknath Misser v. Lalla Prem & Ors.*[2]. Similarly, various provisions of the Contract Act are in resonance with the provisions of property law generally, as well as mortgages. Therefore, it is necessary to comply with the provisions of the Contract Act to constitute a valid mortgage deed. If not, the effect of such a deed itself will be nullified.

Rights and Liabilities of the Mortgagor

Rights of the Mortgagor

Right of Redemption [Section 60]

Once the debt is paid off, the mortgagor has the right to redeem the mortgaged property as stipulated under Section 60 of the Transfer of Property Act, of 1882. Once after the mortgagor pays back the debt within the said time, the mortgagee is required to:

Convey the mortgage deed and all documents relating to the mortgaged property back to the mortgagor, which are in the mortgagee's possession or custody.

Provide the mortgagor the transferred interest of the mortgaged property, if the mortgagee is still holding possession of it.

At the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may be direct or to execute and (where the mortgage has been affected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished.

Any clause included in the mortgage deed that has the effect of severing or obstructing the right of redemption is void as a clog on redemption, as per the ruling in the case of *Stanley v. Wildey.*[3].

---

2 Goluknath Misser vs. Lalla Prem & Ors.(1878) ILR3Cal308

3 Stanley vs. Wildey(1899)2 Ch474.

There are three exceptions to this right:

1 By the act of parties

2 By operation of law

3 By decree passed by the Court

Right to ask for a transfer to a third party instead of re-transference to the mortgagor [Section 60A]

This right was invoked in the Transfer of Property Act, 1882 by the Transfer of Property Amendment Act, 1929. This right allows the mortgagor to ask the mortgagee to assign the mortgage debt and transfer the mortgaged property to a third person as directed by him. This right can be exercised only after paying back the mortgage money to the mortgagee. This right's objective is to assist the mortgagor in paying off the mortgagee by obtaining a loan from a third party secured by the same property.

Right to inspection and production of documents (Section 60B)

This section is also inserted by the Amendment Act, of 1929. This right stipulates that the mortgagor is entitled to ask the mortgagee for the production of appropriate copies of documents of the mortgaged property in his possession for inspection on notice of reasonable time. However the mortgagor must bear the expenses incurred on the production of copies of documents or travel expenses of the mortgagee. This right is available to the mortgagor only till his right to redeem exists.

Right to Accession (Section 63)

Accession in the context of property law means addition or growth to property. The mortgaged property which is in the custody of the mortgagee can also be entitled to such accession, as per the right conferred under this section. There are two types of accession namely,

Artificial accession – it is when the increase in value of the land is the result of the efforts made by the mortgagor.

Natural Accession - the increase in value of land naturally occurs without involving any man-made efforts.

If in case, such accession is the result of the efforts made by the mortgagee and the same is inseparable, then the expenses incurred in such accession must be borne by the mortgagor to be entitled to such succession. It is also important to note that, it is the responsibility of the mortgagor to pay the appropriate cost of the acquisition as an addition to the principal amount, with interest at the same rate as is payable on the principal amount, or in instances where such rate is not fixed, at the rate of nine percent per annum, in the case of an acquisition that is necessary to preserve the property from destruction, forfeiture, or sale, or made with his consent.

Right to improvements (Section 63A)

According to this right conferred under this section, the mortgagor is entitled to any improvement made to the mortgaged property while it is in the possession of the mortgagee. During redemption, the same can be claimed and in the absence of any contract to the contrary mortgagor is entitled to such improvement. The mortgagor is not liable to pay the mortgagee unless:

The mortgagee has made improvements only with the mortgagor's prior consent or to protect the mortgaged property.

Improvements were made by the mortgagee with prior permission of the public authority.

Right to renewed lease (Section 64)

If the mortgaged property is a leasehold property and the lease is renewed during the term of the mortgage, the mortgagor is entitled to the benefit of the renewed lease upon redemption. Unless the mortgagee and the mortgagor have a different agreement, the mortgagor may exercise this privilege conferred upon this section.

Right to grant lease (Section 65A)

This right was inserted by the Amendment Act of 1929. Before this amendment, the Transfer of Property Act, of 1882 did not allow a mortgagor to lease out the mortgaged property on his own but only with the permission of the mortgagee. After this Amendment Act, a mortgagor has the right to lease out the mortgaged property while he is lawfully possessing the mortgaged property, which shall be binding on the mortgagee. The same is subject to the following conditions:

All conditions in the lease should pertain to the local laws and customs to prevent from happening of any fraudulent transactions.

No rent or premium shall be paid in advance or promised by the mortgagee.

Every such lease shall come into effect within six months from the date of its execution.

Where the mortgaged property is a building, the term of the lease should not exceed three years in total.

Duties/Liabilities of the Mortgagor

Duty to avoid waste (Section 66)

According to this provision, the mortgagor has a responsibility to refrain from any actions that result in waste of property or that lower the value of the collateral for the mortgage. Waste is of two types:

Permissive waste - A mortgagor in whose possession the mortgaged property lies, is not liable to the mortgagee for any relatively minor waste.

Active waste - The mortgagor will be liable to the mortgagee if they commit an act that significantly devalues the collateral or causes severe waste of the property.

Duty to indemnify for defective title

The mortgagor is obligated to compensate the mortgagee for any damages incurred when the mortgagor's title over the property is proven to be defective. The injuries are for the charges incurred by the mortgagee in claiming the right to the title.

Duty to Compensate

When the mortgagee holds possession of the mortgaged property, who bears the costs of taxes and other public charges during such possession, then the mortgagor must compensate with the incurred charges on the same.

Duty to direct rent to the mortgagee

When the mortgaged property is leased by the mortgagor, then he must direct the lessee to pay the rent or any other appropriate costs, etc. to the mortgagee.

Rights and Liabilities of the Mortgagee

Rights of the Mortgagee

Right to foreclosure or sale (Section 67)

The right to foreclosure is the foremost remedy that can be claimed by the mortgagee to recover the debt amount from the mortgagor. Also, even after filing for such a claim, if there is a failure of payment by the mortgagor, the mortgagee can file a suit for sale through which the mortgaged property can be sold to recover the mortgage money and the appropriate costs incurred for such suit. It is important to note that an order of foreclosure is passed only after determining the kind and nature of the mortgage and the parties who are operating within the mortgage.[4].

Right to sue for mortgage money (Section 68)

Adhering to this section the mortgagee has the right to sue the mortgagor to recover the mortgage money, under the following conditions:

4 K.Vilasini vs. Edwin Periera AIR 2009 SC104.

Where the mortgagor commits to pay back the same.

When the mortgaged property is destroyed wholly or substantially without the mortgagee's fault.

When the mortgagor commits a default that results in the mortgagee losing all or part of his security.

In a specific mortgage, where the mortgagee is entitled to possession of the security (mortgaged property) but the mortgagor fails to do so.

Right to sell (Section 69)

About this provision, the mortgagee has the sole right to sell the property even without the Court's intervention, under the following conditions:

Where the mortgage is an English Mortgage and the mortgagor and mortgagee do not belong to Hindus, Muhammadans, Buddhists, or a member of any particular race, sect, tribe or as notified by the official gazette of the State government.

Where this power of the mortgagee is explicitly stated by the mortgagee in the mortgage deed the mortgagee is itself the government and the property is located in specified towns i.e., Calcutta, Madras, or Bombay originally.

Right to Accession (Section 70)

Based on this Section, after the date of execution of the mortgage deed, if any accession is made to the mortgaged property, then the mortgagee is entitled to the right over such accession made.

Renewal of lease (Section 71)

This provision stipulates that, if the mortgaged property is a lease and the mortgagor receives the renewal of the lease, then the mortgagee should have the right over the renewed lease for collateral purposes unless any contract to the contrary has been made between the mortgagor and the mortgagee.

Right of mortgagee in possession (Section 72)

the mortgagee in possession has a right to spend money on the preservation of the mortgaged property from destruction, forfeiture, or sale; for supporting the mortgagor's title to the property; for making his title thereto good against the mortgagor; and when the mortgaged property is a renewable leasehold, for the renewal of the lease.

Liabilities / Duties of the Mortgagee

Mortgagee when bound to bring one suit on several mortgages [Section 67A]

About this section, if a mortgagee has two or more mortgages, whether they are of the same type or a different kind, against the same mortgagor, he has the right to obtain a Court order under Section 67 against that mortgagor. If the mortgagee wishes to sue the mortgagor on any of the mortgages, he is obliged to sue the mortgagor on all of the mortgages where the mortgage money remains due by the mortgagee.

Liabilities of mortgagee in possession [Section 76]

If, during the continuance of a mortgage, the mortgagee takes over the possessory rights of the mortgaged property, then he has the duty to

Take good care of the property and act prudently.

Do his best to collect the property's rents and profits arising out of the property.

Pay all required taxes to the government while the property is in his possession.

Unless it is against the terms of the contract, he owes to make necessary repairs to the property.

Avoid doing anything that could permanently diminish or harm the property's value.

Submit an insurance claim for money to restore the property or in case he receives a mortgage payment reduction from the mortgaged property.

Maintain accurate records of all the money he receives and spends concerning the mortgaged property.

Make specified deductions and apply for rent and earnings to pay off the principal amount's interest.

Conclusion

Mortgage is such a crucial type of conveyance of property which is being defined under Section 58 of the Transfer of Property Act, 1882. It helps in securing the debt to the mortgagor and also helps in redeeming the property back as soon as the mortgagor fulfil his obligation in terms of the mortgage. The Transfer of Property Act, of 1882 has briefed out about the mortgage transactions and rights and liabilities of the mortgagor and mortgagee. There were already existing rights during the enactment of the said Act itself. But there are few rights and liabilities that have been altered or inserted newly by the Transfer of Property (Amendment Act) of 1929. It is interesting and important to note that, all rights conferred under this Act for the mortgagor as well as mortgagee are not absolute. About the exceptions, the rights can be extinguished as well.

* * * *

LETTER FOR LIBERATION : BANDHUA MUKTI MORCHA AND THE FIGHT AGAINST EXPLOITATION

Shikhar Nidhi *

Amrit Raj Dubey **

Abstract

The Bandhua Mukti Morcha case stands as a pivotal moment in Indian legal history, etching its mark on both constitutional law and labor reforms. It not only brought the abhorrent practice of bonded labor under the harsh light of judicial scrutiny but also led to its effective eradication through the potent interpretation of fundamental rights. The present case involved a Public Interest Litigation (PIL) filed by Bandhua Mukti Morcha (BMM), seeking to liberate bonded laborers in stone quarries. The judgment substantially deliberates its viewpoint upon two major objections raised by the respondents.

Despite no violation of the personal fundamental rights of the petitioner, the Supreme Court of India deemed the letter as a writ petition and relaxed the principle of locus standi. The court re-imagined the scope of Article 32[1] departing from traditional Anglo-Saxon jurisprudence of adversarial procedure and thus upheld the validity of the appointment of the commission and its report. Relying upon the rules of interpretation the court to combat exploitation effectively expanded the definition of bonded laborers under the Bonded Labour System (Abolition) Act 1976[2]. Further, the Court sets a precedent for protecting vulnerable groups and ensuring wider access to justice through innovative interpretations and relaxed procedural formalities.

Keywords : ***Bonded Labour, Forced Labour, Adversarial Procedure, Public Interest Litigation, and Commission.***

Introduction

Public Interest Litigation (PIL) is an innovative approach to deliver justice to all individuals, particularly the underprivileged and impoverished segments of society. The Locus Standi rule, which does not allow a social worker or jurist to file a complaint on behalf of the public or society whose constitutional or legal rights are violated, has recently been significantly liberalized by the Supreme Court. Long before political freedom was achieved, the bonded labour system was common in many sections of the nation which is based on the exploitation of many men by a small number of powerful individuals in society. The Bonded Labour System (Abolition) Act, 1976[3] Was enacted in 1976 by Parliament to eliminate the bonded labor system and prevent the exploitation of the weaker segments of society, both physically and economically.

Background

An organization committed to the nation's bonded laborers' freedom called the Bandhua Mukti Morcha (BMM) was founded in 1981 to combat bonded labor in India. A non-governmental organization 'BMM', primarily focuses on bonded labor with two goals in mind: first, to end bonded labor, with a particular focus on minors; and second, to guarantee that rescued laborers receive the full advantages of the rehabilitation package as stipulated by law. This is the only way to make sure that the impacted families don't fall victim to the exploitative cycle of bonded labor once again. In this case, the BMM brought a public interest lawsuit (PIL) against the Union of India and the State Governments before the Supreme Court of India in 1983. Contesting the legitimacy of bonded labor and calling for its prohibition, Justice P.N. Bhagwati, Justice R.S. Pathak, and Justice Amarendra Nath Sen made up the three-judge bench that heard the case Bandhua Mukti Morcha v. Union of India.[4] The decision was made on December 16, 1983.

* **5th Year BBA. LLB., Law College Dehradun, Uttaranchal University, Dehradun, Uttarakhand.**

** **5th Year BA. LLB., Law College Dehradun, Uttaranchal University, Dehradun, Uttarakhand.**

1 India Const. Art. 32.

2 Bonded Labour System (Abolition) Act, 1976, No. 19, Acts of Parliament, 1976(India).

3 *Id.*

4 Bandhua Mukti Morcha v. Union of India, AIR 1984 SCC 802.

Facts and Issues

Bandhua Mukti Morcha, an organization fighting for the cause of the release of bonded laborers, wrote a letter to Hon'ble Justice P.N. Bhagwati alleging that "(1) there were a large number of laborers from different parts of the country who were working in some of the stone quarries situate in district Faridabad, State of Haryana under inhuman and intolerable conditions; (2) that a large number of them were bonded laborers, (3) that the provisions of the Constitution and various social welfare laws passed for the benefit of the said workmen were not being implemented regarding these laborers."

The petitioner further provided details of specific stone quarries and individual laborers forced into bonded labor. They urged the court to issue a writ, a legal order demanding proper enforcement of various worker protection laws. Their ultimate goal was to alleviate the helplessness of these victims of "inhuman exploitation." The court, recognizing the gravity of the situation, treated the letter as a formal petition and the commission was appointed to investigate. This investigation confirmed the organization's claims, paving the way for action to address the injustices faced by these vulnerable workers.

A. Whether the Present Petition Maintainable or Not?

B. Whether the Appointment of the Commission and its Report are Valid?

C. Whether the Forced Labour in the Present Petition Constitute Bonded Labour within the Meaning of the Bonded Labour System (Abolition) Act, 1976?

Arguments on behalf of Petitioner

It is clear from the factual matrix of the case that the Supreme Court treated the letter of the petitioner as a writ petition under Article 32. They started the inhuman treatment of the workers in two stone quarries in the Faridabad district, among which many of them were bonded laborers. In addition, the petitioner attached authentic statements with the thumbprints or signatures, as applicable, of the bonded laborers mentioned in the letter as evidence of its complaint. The petitioner had not raised any legal argument concerning the issues laid down by the court.

Arguments on behalf of Respondent

Various objections and arguments were raised by the Additional Solicitor-General and Mr. Phadke who represented the State of Haryana and the mine lessees respectively which are as follows:

A. Even though for the sake of the argument, the allegations of the petitioner are assumed correct, and the letter is considered as a writ petition, then also allegations would not come under the scope of Article 32 as there is no violation of fundamental rights of the petitioner.

B. The Petitioners objected as to the jurisdiction of the Supreme Court to appoint commissions and the report of the commission had no evidentiary value as the report is based on ex-parte statements and there was no cross-examination to test its validity.

C. That the appointment of commission is invalid, as it is not by the Order XLVI of the Supreme Court Rules, 1996,[5] And the Order XXVI of the Code of Civil Procedure.[6] The commission can only be issued to examine witnesses and to make legal investigations and examinations of accounts. Thus, the Court under Article 32 lacks the competency to issue a commission to investigate facts concerning encroachment of fundamental rights.

D. That coerced workers in the stone crushers and stone quarries would not be considered bonded laborers under the Bonded Labour System (Abolition) Act, 1976[7] as an essential requisite of having incurred or presumed to have incurred a bonded debt is lacking in this instant case.

E. The owners of stone crushers and mine lessees were not given the chance to cross-examine the affidavits submitted by the laborers stating that they had received advances from the cedar, jamadar, mine lessees, and/or owners of stone crushers and were prohibited from leaving the establishment's premises until the advances were paid.

---

[5] Supreme Court Rules, 1996, Order XLVI, Published in the Gazette of India, Extra., dated 15th January, 1966.

Judgment

Issue 1: The Hon'ble Court observed that the primary objection raised by the State and the mine lessees i.e. the present petition is not maintainable under Article 32 as there is no violation of fundamental right. The Court found it strange for the State to take such frivolous and hyper-technical objections and challenge the power of the court to conduct an inquiry as it is in the interest of the state to protect the weaker section of society. Further, the court observed that there is no doubt that whenever a person is deprived of personal liberty by wrongful and illegal detention, he can approach the court under Article 32 of the Constitution for his release from unlawful and unfair incarceration to gain his freedom.

The Court held that the principle of locus standi was established by the judgment in the case of S.P. Gupta v. Union of India.[6] However there is no violation of the fundamental rights of the petitioner, the organization yet they can approach the court under Article 32 for the protection of the rights of workmen who have been wrongfully detained. The bonded laborers are poor, unaware of their rights, and belong to a weaker section of society thus cannot directly approach the court. Article 23 forbids the practice of forced labor. In the present case, the workmen are wrongfully detained and forced to work under inhuman conditions. The Hon'ble Court therefore dismissed the primary objection to the writ petition's maintainability and declared that Article 32 of the Constitution shall apply.

Issue 2: The Hon'ble Court rejects the contention challenging the validity of the issue of commission and its report. The Court held that the arguments were frivolous and misconceived as Article 32 does not restrict the court from following specific procedures to ensure enforcement of the fundamental rights. The Court refused the Anglo-Saxon jurisprudence of first, Adversarial procedure and second, Rigid and definitive procedure for legal proceedings. The Court referred to the Judges' appointment and transfer case.[7] Which for the first time allowed any member of the public to move to court for a person or group of persons who is unable to approach court for enforcement of fundamental rights due to poverty, or other social or economic disability.

Interpreting Article 32 Clause (1), the Court recognized the right to petition the Supreme Court to enforce fundamental rights. It further emphasized that the Court has the flexibility to adopt "appropriate" proceedings to achieve this goal. Article 32 Clause (2) needs to be interpreted in the widest possible sense and not in a strict sense as in the words of Lord Arkins in United Australia Limited v. Barclays Bank Ltd.[8] "stand in the path of justice clanking their medieval chains". Appropriate proceedings will be adopted by the facts and circumstances of the particular case.

In addition, the Court held that Order XXVI of CPC is not exhaustive and does not act as fetters to the inherent power of the Supreme Court. The Order XLVI of the Supreme Court Rules cannot be used to restrict the powers of Article 32 and Rule 6 of Order XLVII clarifies that these rules cannot restrict the Court's inherent power to issue any order deemed necessary for achieving justice. Consequently, the appointment of the commission and its report were deemed valid.

Issue 3: The evil practice of bonded labour was prevalent in several States which was abolished by Article 23[9] of the Indian Constitution, but more serious and forceful restrictions could be found in the Bonded Labour Practice (Abolition) Act, 1976,[10] which ended the practice of bonded labor and prevented the weakest segments of society from being exploited both physically and economically.

The Hon'ble Court rejecting the contentions of the learned Additional Solicitor-General suggested that the State Government should take responsibility for the release and rehabilitation of the workmen even if they were only compelled to work and were not technically bonded laborers in the strict sense of the definition given under the Bonded Labour System (Abolition) Act, 1976[11].

---

6 Code of Civil Procedure, 1908, Order XXVI, No. 05, Acts of Parliament, 1908(India).

7 Bonded, *supra* note 2.

6 S.P. Gupta v. Union of India AIR 1982 SC 149.

7 S.P. Gupta v. Union of India, (1982) 2 SCR 365: 1981 Supp SCC 87.

8 United Australia Limited v. Barclays Bank Ltd. (1939) 2 KB 53.

9 India Const. Art. 23.

10 Bonded, *supra* note 2.

11 Bonded, *supra* note 2.

This is especially important in light of the Directive Principles of State Policy. The Court further stated that bonded labor is another form of forced labor and as per Section 12 of the Bonded Labour System (Abolition) Act, 1976[12] Every District Magistrate and any officer designated by them must take necessary action to end such forms of forced labor including bonded laborers. The Hon'ble Court emphasized the main objective of the Act which is to prevent forced labor existing in any form and said that it would be impossible to enforce the Bonded Labour.

System (Abolition) Act, 1976[13] if the learned Additional Solicitor-General's arguments were to be accepted. In each instance where bonded laborers are sought out to be released and rehabilitated under the Act, both the employer and the State Authorities would be able to insist that the bonded laborers first demonstrate that they are performing forced labor in exchange for an advance or other financial benefit and only they would be qualified for the benefits offered under the Act. As a result, it would be very difficult for the workers to prove that they are bonded workers because they would have no proof whatsoever that the employer gave them any advance or financial consideration. Additionally, because it is illegal for an employer to employ bonded workers, the employer would immediately and without hesitation deny ever providing the bonded workers with any financial or advance consideration.

As per the judgment, the Hon'ble Court opined that the State Government instead of protecting human dignity, improving the lives of the impoverished and oppressed, and guaranteeing them social justice adopted a formal, strict, and technical approach to a statute which is one of the most crucial pieces of legislation. The Court held that if it is demonstrated that a worker is coerced into performing forced labor, the court will presume that this is because the worker received an advance or other form of payment and in this case, he would be therefore considered a bonded laborer. Unless and until adequate evidence is presented to refute this presumption, the Court will have to proceed under the assumption that the worker is a bonded laborer entitled to the benefits of the Act.

Analysis

a In the Adversarial Procedure of Anglo-Saxon jurisprudence, evidence is produced by either of the parties and its validity is tested by the other party by cross-examination and judges play a passive role. This Adversarial Procedure of Anglo-Saxon jurisprudence has been refused by the Court as it is not applicable in the new jurisdiction created in

the Supreme Court for the enforcement of fundamental rights. The Constitutional makers deliberately left the door open under Article 32 for the Supreme Court to decide procedure as it thinks fit. There are instances where following adversarial procedures leads to injustice and to ensure enforcement of the fundamental right courts need to depart or evolve traditional adversarial procedures.

b For a writ petition to be maintainable under Article 32 it is sine quo non that there must be a violation of the fundamental right of the petitioner. In the present case, there was no violation of the fundamental right of the petitioner but of the third party i.e., the workers in the stone quarries. Giving Article 32 the widest possible interpretation, the Court not only treated the letter as a Writ petition but also relaxed the principle of locus standi.

c The court applied the golden rule of interpretation creating a presumption that if a worker is coerced into performing forced labor, the court will presume that this is because the worker received economic consideration as an advance and therefore, he will be considered as bonded labor. The court applied the above presumption in the present case and held the forced workers as bonded laborers. Thus, enlarged the ambit of the definition of bonded labor given under the Act of 1976.

Conclusion

In conclusion, the Bandhua Mukti Morcha case serves as a beacon of hope, demonstrating the transformative power of the law. It stands as a testament to the courage of activists, the wisdom of the judiciary, and the enduring fight for human dignity. Its legacy continues to inspire and guide the ongoing struggle for social

[12] Bonded Labour System (Abolition) Act, 1976, § 12, No. 19, Acts of Parliament, 1976(India).

[13] Bonded, *supra* note 2.

justice and the eradication of all forms of exploitation. This landmark judgment transcended individual grievances, recognizing the collective plight of marginalized workers. By relaxing the locus standi principle, the Supreme Court empowered public interest litigation to act as a shield for the voiceless, ensuring their fundamental rights weren't merely words on paper.

Furthermore, the case expanded the definition of "bonded labor," creating a wider net to capture even subtle forms of exploitation. This broadened interpretation served as a powerful weapon against unscrupulous employers, making it easier to identify and liberate victims. This judgment wasn't simply a legal victory; it was a testament to the unwavering pursuit of justice. The court's directives to government bodies served as a roadmap for dismantling the oppressive structures of bonded labor. Educational campaigns, stricter enforcement measures, and rehabilitation programs emerged as potent tools to dismantle these systems and prevent their resurgence.

* * * *

MERGER AND ACQUISITION IN THE BANKING SECTOR: A CASE STUDY OF ICICI BANK LTD.

Pranchal Rathi *

Abstract

By looking at several elements of bank mergers, this paper seeks to understand the reasoning for the ICICI Bank and Bank of Rajasthan merger. A wide range of subjects are covered in this comprehensive analysis, including the financial implications, operational synergies, and strategic motivations. To assess the impact of the merger, the research compares the financial performance before and after the merger using key financial indicators including Return on Assets (ROA), Net Profit Margin, Net Worth Ratio, and other relevant measures. By comparing these measures before and after the merger, the research aims to ascertain how effectively the merger enhanced financial performance and operational efficiency.

The study's findings demonstrate that both merging institutions have profited from the merger. This is demonstrated by the better profitability, stronger asset utilization, and increased net value of the improved financial metrics following the merger. These enhancements imply that the merger has accomplished its goals, creating a stronger and more competitive financial organization. Overall, the analysis highlights the value produced by strategic consolidation and synergistic integration, underscoring the advantages of the merger for ICICI Bank and Bank of Rajasthan alike. Through an examination of the financial performance during the various stages of the merger, the research offers a significant understanding of the revolutionary impacts of these strategic endeavors within the banking industry.

Keywords : ***Operational efficiency, strategic consolidation, synergistic integration***

Statement of Problem

The banking business faces several obstacles during mergers and acquisitions (M&A), which must be successfully overcome for positive results. The intricacy of integration is a major obstacle. A smooth system and process harmonization are necessary when banks combine or acquire one another since they frequently have different systems and cultures. An M&A deal's overall performance may be impacted by improper integration management, which can result in operational inefficiencies and unhappy customers.

Bank workers worldwide face numerous challenges, including the deregulation of the financial system, the introduction of new firms and technologically advanced products, the globalization of the financial markets, shifting consumer preferences for more options and more affordable services, demands for shareholder wealth, and declining profit margins.

M&A's are seen to be a reasonably quick and effective approach to introduce new technology and enter new markets. However, there are several indications that their success is far from certain. Conversely, most M&As don't achieve the goals and objectives they claim to. Numerous studies attest to the necessity for businesses to approach a range of human resource-related concerns, tasks, and obstacles methodically while engaging in merger and acquisition activity. The news announcement dated May 20, 2010, which said that Bank of Rajasthan staff had started an agitation to protest the then-proposed merger with ICICI Bank Ltd., sparked the idea for the present article. From the perspective of the bank and the workers, this is a very serious situation. The inability of a disgruntled employee to provide services with efficiency and effectiveness is a common occurrence.

Literature Review

Many factors go into managing mergers and acquisitions (M&A) in the banking sector, but one that keeps coming up time and time again is communication. In resolving employee concerns about layoffs, modifications

* 4th year, B.Com. LLB, Institute of Law, Nirma University, Ahmedabad, Gujrath, India

to work regulations, pay, and pensions after a merger, scholars emphasized the need for efficient communication.[1]. To successfully manage stress connected to mergers, they highlighted the necessity for preventative measures, a reevaluation of employee views, and professional assistance.

Cartwright and Cooper (1990)

In their exploration of the psychological elements of mergers and acquisitions, the study placed particular emphasis on the synergy between individuals and the merging of corporate cultures. However, they also pointed out that, as demonstrated by their research of middle managers participating in a merger involving the UK Building Societies, mergers may still be unpleasant for workers, even when there is cultural compatibility.[2].

Appelbaum Et Al. (2000)

The study looked at how corporate culture, strategy, stress management, change management, and communication function in companies to affect mergers and acquisitions. They emphasized the difficulties that arise in M&A procedures due to employee opposition, organizational change, cultural differences, and communication barriers.[3].

Schuler and Jackson (2001)

In their three-stage mergers and acquisitions model, this article placed special emphasis on human resources concerns and actions at every step of the procedure. They emphasized the function HR departments and leaders play in making sure M&A deals work out well and complement the company's strategic objectives.

Paul (2003)

Researchers have shown that human resource management (HRM) is essential to the success of mergers and acquisitions (M&A), highlighting elements like workforce stability and organizational culture. They evaluated the impact of the Bank of Madura and ICICI Bank merger on share prices, value, and strategic fit.

Salama Et Al. (2003)

This article explored integration challenges and strategies for cross-border acquisitions, emphasizing corporate strategies, synergy maximization, and organizational learning. Researchers focused on knowledge-based acquisitions in the banking industry, noting the importance of knowledge codification, integration decisions, and capability-building mechanisms.[4].

Zollo and Singh (2004)

It evaluated the consequences of the acquisition on the performance of integration decisions and techniques for boosting capabilities. It also researched the knowledge-based viewpoint of corporate acquisitions. Using a sample of 228 acquisitions in the US banking industry, they found that knowledge codification had a substantial and positive influence on acquisition success, in contrast to experience accumulation.

Saraswathi (2007) and Murthy (2007)

In their studies of bank mergers in India, this studyemphasized the advantages of consolidation as well as the difficulties in managing clientele, human resources, and cultural differences. Procedural and informational fairness in value creation post-M&A were examined by scholars, with a focus on their influence on market position and financial returns.[5].

In his discussion on HR takeaways from the health insurer merger, ***Cascio (2010)***emphasized the significance of stress management and staff morale. Insights from a multinational post-merger integration effort were

---

1 Ivancevich, J. M., Schweiger, D. M. and Power F. R. (1987). Strategies for managing human resources during mergers and acquisitions. Human Resource Planning, 10(1), 19-35.

2 Cartwright, S. and Cooper, C. L. (1993). The Psychological Impact of Merger and Acquisition on the Individual: A Study of Building Society Managers. Human Relations, 46(3), 327-347.

3 Appelbaum, S. H., Gandell, J., Yortis, H., Proper, S. and Jobin, F. (2000). Anatomy of a merger: behavior of organizational factors and processes throughout the pre- during post-stages (part 1). Management Decision, 38(9), 649-662

4 Zollo, M., & Singh, H. (2004). Deliberate learning in corporate acquisitions: post-acquisition strategies and integration capability in U.S. Bank mergers. Strategic Management Journal, 25(13), 1233-1256

5 Ellis, K. M., Reus, T. H., & Lamont, B. T. (2009). The effects of procedural and informational justice in the integration of related acquisitions. Strategic Management Journal, 30(2), 137-161.

presented by ***Maire and Collerette(2011)***, who emphasized the need for organization, change management, and communication for success.

Overall, these studies underscore the multifaceted nature of managing M&A in the banking industry, with communication, HR practices, cultural integration, and organizational strategies playing pivotal roles in achieving successful outcomes and mitigating risks.

Objectives of the Study

(1) To assess how the transaction may affect ICICI Bank's financial results.

(2) To calculate the ICICI Bank's short-term anomalous returns to shareholders following the news of the bank's merger with the Bank of Rajasthan.

(3) To examine how the Bank of Rajasthan and ICICI Bank differ and overlap strategically.

(4) To draw attention to the theoretical underpinnings and implications of ICICI Bank Ltd.'s financial performance before and after the merger.

(5) To present conclusions and recommendations in light of the research.

Hypothesis

a. " ICICI Bank Ltd.'s merger and acquisition strategy is motivated by the goal of diversifying its product and service offerings, resulting in enhanced customer value proposition and revenue generation opportunities."

   This hypothesis posits that ICICI Bank's M&A activities are driven by the desire to offer a broader range of financial products and services to its customers, aiming to strengthen customer relationships, increase customer loyalty, and capture new revenue streams.

b. "Regulations affect ICICI Bank Ltd.'s merger and acquisition strategy, which aims to achieve compliance and regulatory clearance, guarantee a seamless integration process, and reduce legal risks."

   According to this hypothesis, regulatory factors include adhering to banking laws, getting required permissions from authorities, and handling the legal difficulties involved in mergers and acquisitions in the banking industry influence ICICI Bank's M&A choices.

c. "The need for cost synergies and operational efficiency, which result in better financial performance, cost savings, and resource optimization, is what motivates ICICI Bank Ltd.'s merger and acquisition activities."

   According to this hypothesis, ICICI Bank looks for M&A possibilities to maximize resources, cut costs, simplify processes, and minimize overhead. These factors all work together to promote profitability, financial sustainability, and shareholder value generation.

Research Questions

Q1. What strategic goals are guiding ICICI Bank Ltd.'s banking industry merger and acquisition activities?

Q2. In the banking industry, how does ICICI Bank Ltd. evaluate and choose possible targets for mergers and acquisitions?

Q3. What influence does regulatory compliance-specifically, banking rules and approvals-have on ICICI Bank Ltd.'s merger and acquisition strategy?

Q4. What are the potential financial benefits of mergers and acquisitions for ICICI Bank Ltd. in terms of increased revenue, cost efficiencies, and shareholder value?

Q.5 What are the critical success criteria in this process, and how does ICICI Bank Ltd. handle organizational alignment and cultural integration during mergers and acquisitions?

Q.6 What opportunities and difficulties does ICICI Bank Ltd. have when it comes to integrating newly acquired banks or combining them with other financial institutions?

Research Methodology

Research is viewed as a voyage from the unknowable to the understood. The methodological approach is a systematic strategy to tackle the research challenge. For this study, the primary source of information is the

necessary secondary data. I have chosen to analyze data from ICICI Bank in this study. The ICICI Bank's annual reports served as the primary source of secondary data. Data for this research was collected during 2007–2008 and 2016–17. The financial performance of the Indian banking industry before and after is also covered in a range of national and international journals, magazines, working papers, books, articles, theses, and dissertations. Group or descriptive statistics are utilized to evaluate the data's reliability, and an independent sample T-test is employed to ascertain if two variables significantly correlate and to bolster the study's hypotheses.

Introduction

Companies use mergers and acquisitions (M&A) as a strategic tool to accomplish a range of goals, including cost reduction, market growth, and competitive advantage. M&A is essential to the Indian banking industry's ability to adjust to new technology and heightened competition. The classification of M&A into conglomerate, vertical, and horizontal mergers reflects the diverse strategic goals companies pursue through such activities.Vertical mergers in banking integrate supplier or customer ties, enhancing operational efficiency and customer service. Horizontal mergers consolidate market position within the same industry, fostering economies of scale and market dominance. Conglomerate mergers, on the other hand, facilitate diversification into unrelated industries, reducing risk and expanding revenue streams.

In the dynamic Indian banking industry, M&A activities contribute significantly to growth and competitiveness. They drive economic prosperity by facilitating capital flows and resource allocation. The strategic rationale behind M&A lies in synergies that create additional value beyond the sum of individual entities, ultimately benefiting shareholders and stakeholders.The classification of M&A patterns in the Indian banking sector highlights the complexity and diversity of transactions, reflecting strategic motivations and market dynamics. Understanding these motivations is crucial for stakeholders to navigate the evolving landscape effectively.This classification highlights the significance of comprehending the underlying motivations behind such activity and represents the heterogeneous landscape of M&A transactions within the banking sector. In the rapidly changing Indian banking industry, mergers and acquisitions (M&A) play a crucial strategic role in attaining scale, growth, and value creation. This has prompted additional studies to examine the reasons behind these transactions.

Legal Framework

The legal framework surrounding mergers and acquisitions (M&A) in the Indian banking sector is governed by several key acts and regulations, each with its specific provisions and implications.

The Banking Regulation Act of 1949[6] Is foundational in enabling voluntary mergers among Indian banking entities. Section 44A of this act empowers the Reserve Bank of India (RBI) to approve such mergers, providing a structured process for combining banking businesses. Notably, this act distinguishes between nationalized banks, State Bank of India (SBI), and other banking entities, applying different rules to each category.

The Industries (Development & Regulation) Act of 1951[7] Intersects with M&A in limited ways, primarily concerning approvals and control mechanisms for industrial undertakings. While not directly focused on mergers, it outlines procedures for the Central Government to intervene in industrial operations, impacting merger activities that involve industrial entities.

The Companies Act 2013[8] Provides a legal framework for compromises, arrangements, and reconstructions, enabling High Court approval for merger schemes. This act complements the Banking Regulation Act by addressing broader corporate mergers and arrangements, including those involving banking institutions.

Income Tax Act, 1961[9]**-** Tax implications are crucial in M&A, as reflected in the Income Tax Act of 1961. Section 72(1) addresses the treatment of losses and depreciation in amalgamations, providing tax benefits for banking mergers under specified conditions. This incentivizes consolidation and facilitates financial integration post-merger.

---

6 Banking Regulation Act 1949, No.10, Acts of Parliament, 1949 (India)

7 The Industries (Development and Regulation) 1951, No. 65, Acts of Parliament, 1951 (India)

8 Companies Act, 2013, No. 18, Act of Parliament, 2013 (India)

9 The Income-tax Act, 1961, No. 43, Acts of Parliament, 1961 (India)

The Competition Act of 2002[10] Plays a vital role in regulating commercial combinations, including mergers and acquisitions, to prevent anti-competitive practices and promote market efficiency. By overseeing company combinations, this act ensures fair competition, protects consumer interests, and prevents the formation of monopolies or abuse of dominant market positions.

Section 45(4) of the Banking Regulation Act has a special provision known as the Compulsory Amalgamation, which gives the RBI the power to force amalgamations under certain conditions, most notably when a bank's financial situation seriously deteriorates. With a focus on depositor protection and systemic resilience, this regulatory authority highlights the RBI's responsibility for maintaining the integrity and stability of the banking industry.

Bank mergers in India

The historical narrative around mergers and acquisitions (M&As) within the Indian banking sector demonstrates how strategic attempts at consolidation have changed throughout time to foster development and resilience. It begins with earlier mergers, such as Punjab National Bank's 1993 acquisition of New Bank of India and ICICI Bank Ltd.'s 2001 integration of Bank of Madura Ltd. Going on to more recent developments, the Indian government unveiled an ambitious proposal in August 2019 to merge 10 Public Sector Banks (PSBs) into 4 bigger businesses in an attempt to boost the nation's economy and offer them a greater competitive edge.

These mergers served a crucial purpose in developing next-generation banks that can successfully navigate the complexity of the contemporary financial environment; hence there was a strategic need behind them. The objective of the project was to strengthen the sector against global economic risks, improve efficiency, and streamline operations by lowering the number of PSBs from 27 to 12. In addition, the mergers were expected to serve as accelerators for market share consolidation, with industry heavyweights such as SBI and PNB emerging as major entities with considerable sway over the direction of the sector[11].

Certain mergers like the one that created the nation's second-largest nationalized bank by combining Punjab National Bank, United Bank of India, and Oriental Bank of Commerce, had a significant revolutionary impact. Through this strategic partnership, the combined company was positioned as a strong rival on the international scene in addition to increasing revenue and branch network. The Indian banking industry is known for its dynamic nature, which is exemplified by its strategic mergers and acquisitions that facilitate sustainable growth, resilience, and global competitiveness that are in line with the country's economic goals.[12].

History of ICICI Bank

From its founding as a development financial institution in 1955 to its evolution into a provider of varied financial services and its incorporation as ICICI Bank in 1994, ICICI Bank has a very long history. The original purpose of ICICI, which was founded with backing from the World Bank, the Indian government, and industry representatives, was to offer medium- and long-term project finance to Indian enterprises. ICICI contributed to the development of numerous industrial ventures by concentrating mostly on project finance up till the late 1980s[13].

An important turning point was the liberalization of India's banking industry in the 1990s. In response to this economic turmoil, ICICI evolved from being a development financial institution to a diversified financial services provider that provides a greater range of products and services. This change was in line with India's growing integration into the global economy and its shift toward a market-oriented economy. India's market-oriented economy and connection with the global economy present new chances for ICICI. By taking advantage of these chances, ICICI broadened the range of services it provided and increased its clientele, so profiting from the market's rising demand for financial goods and services. ICICI's NYSE listing marked a significant milestone for the company, as it became the first bank or financial institution from outside of

---

10 Competition Act, 2002, No. 12, Acts of Parliament, 2002 (India)

11 Jayadev, M., & Sensarma, R. (2007). Mergers in Indian Banking: An Analysis. *South Asian Journal of Management*, *14*(4), 20-49.

12 Munshi, Sahin & Das, D~ Abhijit & Barman, Bikram. (2022). Bank Merger: Boon or Bane for Indian Economy? 3.

13 https://www.icicibank.com/about-us/history

Japan Asia and the first Indian corporation to do so. In reaction to shifting economic conditions, ICICI underwent a strategic evolution that resulted in its successful transformation from a development financial institution to a provider of diversified financial services and, through strategic initiatives like its listing on the NYSE, a globally recognized organization[14].

Merger Between ICICI and Bank of Rajasthan

The merger between ICICI Bank Ltd. and Bank of Rajasthan was driven by strategic imperatives and regulatory pressures. Initially, the Bank of Rajasthan faced challenges due to governance and compliance issues, leading the RBI to intervene and mandate a reduction in the Tayal Group's shareholding. These regulatory actions highlighted governance shortcomings and necessitated reorganization within the bank.

ICICI Bank's strategic interest in acquiring the Bank of Rajasthan stemmed from its goals to expand its market presence and leverage synergies between the two entities. The merger presented an opportunity for ICICI Bank to strengthen its position in the banking industry while providing the Bank of Rajasthan a pathway to address operational and regulatory challenges.

The approval of the merger and the established swap ratio signaled a significant milestone in the consolidation process, indicating regulatory endorsement and paving the way for integration efforts[15]. The no-cash agreement and estimated transaction value underscored the strategic nature of the merger, focusing on value creation and operational synergies rather than financial considerations alone.By acquiring the Bank of Rajasthan, ICICI Bank strategically extended its footprint in northern Rajasthan, utilizing the acquired client base and branch network to enhance market reach and competitiveness. This strategic move exemplifies growth initiatives aimed at solidifying market position and leveraging collaborative advantages for mutual benefit and value creation.[16].

Purpose of the Merger

Between 2002 and 2010, the Bank of Rajasthan had several difficulties and regulatory demands that had a big influence on its governance and operations. The bank purchased properties in Mumbai in the early 2000s through Mr. P K Tayal, the promoter's close cousin. Concerns regarding possible conflicts of interest and transparency were brought up by this transaction. The bank thereafter came under increased regulatory scrutiny starting in 2009, especially from the Reserve Bank of India (RBI). The Tayal Group, which owned Bank of Rajasthan, was forced to cut its stake from 28% to 10% by the RBI, raising concerns about concentrated ownership and the requirement for better corporate governance.

When the RBI fined Bank of Rajasthan 25 lakhs in 2010 for several infractions, the situation got worse. Among these infractions were unethical property transactions, disregard for anti-money laundering regulations, erasure of company documents, anomalies in corporate group accounts, and exceeding overdraft limits. Inadequate corporate governance procedures and shortcomings in credit committees were also mentioned. The bank's governance structures and operations were found to have systemic problems as a result of these sanctions and breaches.

Amid these difficulties, ICICI Bank expressed interest and stated that it would be ready to pay more than the Bank of Rajasthan's market assessment. This interest may have been motivated by strategic goals like reaching new markets or gaining access to a particular clientele. Overall, the Bank of Rajasthan had a turbulent ride between 2002 and 2010, defined by demands for financial restructuring, oversight errors, regulatory constraints, and possible interest from other financial institutions in acquisition or investment prospects.[17].

The goal of ICICI Bank and Bank of Rajasthan's merger, known as C'merge, was to improve customer-centric services and market presence by utilizing BoR's strong brand and wide branch network, particularly in Rajasthan. With 294 branches and a 9.3% market share in deposits, the combination put ICICI Bank in a strategic position to strengthen bonds, boost revenue, and enhance offerings in certain regional micro markets.

---

[14] https://www.icicicareers.com/website/know-us/history-and-facts/2015/Dec/history.html

[15] https://www.icicibank.com/about-us/article/news-icici-bank-board-gives-inprinciple-approval-for-merger-of-bank-of-rajasthan-20131912165144456

[16] Kuriakose, Sony & Raju, M. & Kumar, G.. (2012). ICICI Bank-Bank of Rajasthan Merger: An Analysis of Strategic Features and Valuation.

[17] George, B.P. & Hegde, P. G. (2004). Employee Attitude towards Customers & Customer Care Challenges in Banks. International Journal of Bank Marketing, 22(6), 390-406

Analysis of the Merger

In the Indian banking industry, the 2010 merger of ICICI Bank and Bank of Rajasthan was a momentous occasion with several ramifications.

- **Deal Value and Swap Ratio**: To ease the merger, a swap ratio of 25:118 was established, meaning that for every 118 shares of Bank of Rajasthan, shareholders would receive 25 shares of ICICI Bank. The magnitude and financial consequences of the combination were demonstrated by the deal's total value of 30.41 billion.[18].
- **Regulatory Clearance and Integration:** The Reserve Bank of India's (RBI) August 13,2010 clearance was a significant milestone that indicated regulatory confidence in the merger process[19]. This clearance would allow the integration process to move forward without hiccups. A swift integration and transition strategy was suggested to have all Bank of Rajasthan branches function under the ICICI Bank name starting on August 13[20].
- **Strategic Implications**: The deal gives ICICI Bank a substantial footing in northern Rajasthan in addition to increasing its asset base. This calculated action was probably taken to increase ICICI Bank's market share and client base in a crucial area.
- **No Cash Deal**: This merger's no-cash nature points to a calculated choice to maximize the capabilities and resources of both institutions while avoiding substantial financial outflows. In terms of capital management and post-merger financial stability, this strategy could be advantageous.[21].

Pre and Post Merger Performance measurement through Profitability ratios

Improved profitability was indicated by the overall net profit margin (546.77 billion) following the merger, which was higher than the pre-merger performance (110.30 billion). The return on assets rose to 10.71 times after the merger, a substantial rise from the pre-merger level of 3.2 times, demonstrating enhanced asset utilization and efficiency. Furthermore, the return on equity following the merger was significantly larger than the return before the merger, indicating increased shareholder profitability. Higher than their pre-merger peaks, the highest post-merger ratios—net profit margin in 2015–16 (111.75 billion), ROA in 2015–16 (1.86 times), and ROE in 2014–15 —show that the merger improved ICICI Bank's financial performance in all important profitability metrics.[22].

Pre and Post Merger Performance Measurement through Liquidity Ratios

In the context of ICICI Bank Ltd.'s before and post-merger financial performance, the examination of liquidity measures, such as the current ratio, acid test ratio, and cash ratio, shows a noticeable improvement in liquidity after the merger. The total current ratio after the merger was 2.71 times higher than it was 1.14 times before, indicating improved short-term liquidity and a more efficient capacity to pay current commitments. Better liquidity management was seen in the greatest post-merger current ratio (1.33 times) in 2016–17, which was considerably higher than the pre-merger top (0.90 times) in 2007–08[23].

In a similar vein, the acid test ratio significantly increased after the merger (84.28 times) as opposed to the pre-merger level (18.4 times), suggesting a better capacity to satisfy short-term obligations without significantly relying on inventories.The pre-merger peak (6.42 times) in 2008–09 was much surpassed by the greatest post-merger acid test ratio (15.86 times) in 2011-12, indicating increased financial strength and liquidity reserves.

Additionally, better cash reserves and liquidity management were highlighted by the fact that the cash ratio after the merger (0.557 times) was greater than the performance before the merger (0.281 times). The pre-merger peak (0.107 times) in 2007–08 was surpassed by the highest post-merger cash ratio (0.106 times) in

---

18 Sony Kuriakose, M S Senam Raju and G S Gireesh Kumar(2000 and 2009), ICICI BankBank of Rajasthan Merger: An analysis of strategic Features and Valuation, (http:/ / ssrn.com)

19 The Economics Times ET Bureau May 18, 2010, "Bank of Rajasthan to merge withICICI Bank".

20 Dr. Abhinn Baxi Bhatnagar; Ms. Nitu Sinha, 5, May (2012), Strategic Move Of ICICI Bank: A Case Study Of Merger Of ICICI Bank And Bank Of Rajasthan, International Journal of Multidisciplinary Research,(www.zenithresearch.org.in).

21 Goyal, K.A. (2012). Merger and Acquisition in the banking industry: A case study of ICICI Bank Ltd, International Journal of Research in Management, ISSN 2249-5908, 2(2)

22 Fakarudin, (2014). Effects of Mergers and Acquisitions on Revenue Efficiency and the Potential Determinants: Evidence from Malaysian Banks, Journal of Social Science and Humanities, ISSN: 0128- 7702, 22 (S): pp. 55 – 76.

23 Dr. N. Shani, Anand Kumar, P.Divya Priya, A Study On Role of Internal Work Motivation and Outcomes of Among ICICI Bank Employees. International Journal of Management, 2(2), 2011, pp. 66-74.

2010–11, indicating effective cash flow management after the merger.[24].

Pre and Post Merger measurement through Leverage Ratios

In light of ICICI Bank Ltd.'s pre- and post-merger financial performance, an examination of leverage measures, such as the debt ratio, debt-equity ratio, and interest coverage ratio, reveals a notable improvement in leverage management following the merger. The total debt ratio after the merger was 48.09 times greater than it was before the merger (9.14 times), suggesting a larger share of debt in the capital structure but also maybe more chances for investment and expansion.

The debt-to-equity ratio was much higher after the merger (45.47:1) than it was before the merger (23.76:1), indicating a greater reliance on debt financing after the merger. This could point to the use of strategic leverage to effectively finance corporate projects and expansion. It's crucial to remember, too, that greater debt levels also entail higher interest costs and financial risk. This implies more stability in the financial system and a lower chance of default because of interest payments.[25].

Findings of the study

The recommendations made for the research center on several crucial areas to enhance the efficiency and results of mergers and acquisitions (M&A) in the banking industry:

- **Policy Liberalization**: Pressuring the Reserve Bank of India (RBI) and the Indian government to liberalize its M&A rules will enable more bank transactions. Using economies of scale and synergy may increase profitability.
- **Training and Awareness**: Banks should place a high priority on educating their employees about mergers and acquisitions. Programs for increased training and retraining, particularly for management personnel, can improve management effectiveness and guarantee a more seamless merger transfer.
- **Legal Insurances**: In the Indian environment, protecting banks from post-merger litigation is essential. Legal complications can occasionally result from mergers, therefore obtaining the right insurance helps reduce risks and safeguard the combined company's interests.
- **Liquidity Management:** Following a merger, banks should concentrate on improving their skills in this area. For financial stability and operational continuity, appropriate methods for maintaining a strong liquidity position must be developed and put into action.
- **Risk analysis:**Analyzing the financial results before and after the merger is crucial, particularly in terms of how problematic loans are handled.Banks are seriously threatened by bad loans, and a careful examination may help identify possible hazards and create effective mitigation plans.

Conclusion

The Reserve Bank of India approved the merger of ICICI Bank and Bank of Rajasthan on August 13, 2010, marking a significant milestone in the banking sector. It has been determined that the post-merger earnings are acceptable, indicating that ICICI Bank would gain. ICICI Bank's improved profitability and liquidity situations are among the major post-merger benefits. This can be linked to several synergies and efficiencies—like more market reach, simplified processes, and optimal resource utilization—acquiredthroughout the merger process.

However, problems with human resources (HR) are prevalent complications of banking industry mergers. One of the main concerns is how the merging companies' employees—in this example, Bank of Rajasthan (BOR) employees—will be affected.Conflicts between organizational cultures to possible layoffs and reorganizations are examples of HR problems. It is imperative that merging companies properly address these issues by providing equitable transition plans, being upfront about communication, and providing support for employees during the integration period.

Notwithstanding difficulties in HR, the merger has resulted in several improvements. The expansion of branches and ATMs, which suggests a greater regional presence and better consumer accessibility, is one important advantage. Both banks stand to gain from this development as it improves their clientele, range of services, and competitive standing in the industry.

---

[24] Dr. KA Goyal and Vijay Joshi, "Mergers and Acquisition in Banking Industry: A Case Study of ICICI Bank Ltd.", International Journal of Research in Management, Vol. 2, March 2012, Pg. No. 30-40.

[25] Nidhi Natwaya and Rahul Vyas, "Post Merger Financial Performance Analysis of ICICI Bank and Erstwhile Bank of Rajasthan Ltd., Pacific Business Review International, Vol. 5 Issue 6, Dec 2012, Pg. No. 64-72

GOVERNANCE, MANAGEMENT AND OWNERSHIP RIGHTS OF TEMPLES IN INDIA

Arpit Namdev *

Abstract

This research paper provides an overview of the government's role and ownership rights concerning temples in India. Temples hold immense cultural, religious, and historical significance in Indian society, and they have traditionally been managed and governed by religious institutions or local community bodies. However, the ownership and governance of temples have been subject to various legal frameworks and administrative practices throughout India's history. This research paper explores the evolution of the government's involvement in temple ownership and management, starting from ancient times to the present day. In ancient India, temples were often constructed and maintained by rulers or wealthy patrons, who granted them land and resources. The enactment of legislation such as the Madras Hindu Religious Endowments Act of 1925 resulted in the formation of government bodies to oversee temple management. These acts aimed to prevent mismanagement and corruption in religious institutions, but they also granted the state significant authority over temple properties and finances. Following India's independence in 1947, the Constitution of India recognized religious freedom and the rights of religious institutions to manage their affairs. However, it also granted the state the power to intervene in temple matters to ensure secularism, public order, and the prevention of maladministration. In recent years, debates and legal battles have arisen regarding the government's control and ownership of temples. Critics argue that government interference encroaches upon the autonomy and religious rights of temple management, while proponents assert that state involvement is necessary to prevent the misappropriation of temple funds and ensure the welfare of devotees. The paper concludes by highlighting the need for a balanced approach that respects both religious freedoms and the public interest. It emphasizes the significance of transparent and accountable governance in temple administration, ensuring that the rights of religious institutions are upheld while preventing any misuse of temple resources.

Keywords – *Temples, Hindu Religious Endowments Act, Temple Management, Mutth, Tamil Nadu*

Introduction

The Indian subcontinent's predominant religion is Hinduism. It is frequently referred to as the world's oldest living religion, dating back to the Iron Age. Hinduism has no single pioneer and is a mixture of different customs and methods of reasoning as opposed to an inflexible arrangement of convictions. The majority of Hindus hold the belief that there is only one supreme God who exists in many different forms as *devas* (celestial beings or deities), and they may worship particular devas as distinct aspects of the same God. This diversity of beliefs is reflected in Hindu art, and various deities are typically honoured in Hindu temples, where architecture and sculpture are inextricably linked. Shiva the Destroyer is one of the deities that is frequently venerated. Vishnu in his manifestations as Lord *Rama* and Lord *Krishna*. The elephant god of prosperity, Ganesha, and various manifestations of the goddess *Shakti,* also known as the primordial feminine creative principle and meaning "power." The extent of the god's power and ability is often shown by depicting these deities with multiple heads and limbs. Hindu art also has a lot of recurring holy symbols, like the om, which is an invocation of God's divine consciousness; the swastika, an auspicious symbol; and the lotus flower, a flower that represents transcendence, beauty, and purity. In Hindu temples, where a variety of deities are typically honored, sculpture and architecture are inextricably linked.Hindu deities are the primary focus of a temple, which serves as a place of worship. It goes about as a representative portrayal of the house or the seat of a heavenly being and consequently brings people and divine creatures together.

* 3rd Year BA. LLB., Dr. Ambedkar College of Law (Main Branch), Nagpur, Maharashtra

As far as its strict and otherworldly capabilities, sanctuaries play host to different strict customs, functions, and works while filling in as a space for devotees to supplicate or speak with the divinity. While sanctuaries are committed to supplication and love towards the Supreme Power, *mutts* play the job of giving otherworldly learning and strict guidance Both play an important religious role, but they each have a very distinct impact on the Hindu community and its members. Temples under their control are also managed by mutts.[1] The history of the temples can be traced back to the *Puranic* literature but the first large wave of temple construction started during the Mauryan period. Temples built in the southern region were quite old and supported by a variety of kings. The relative safety from external damage and destruction can partially explain why the Southern temples are better preserved, found in greater numbers, and more valuable. On the other hand, mutts are primarily Hindu monastic institutions that date back to the 8th century. These establishments served as centers for spiritual education and education, providing students and*Sannyasis* with lodging and food. These *Mutts* also carry out a variety of other social duties. Even in the modern era, numerous trusts manage hospitals, educational facilities, orphanages, and other social institutions. *Mutts* were frequently involved in politics as a result of these roles, and this pattern persists in states.[2]

Social Functions of Temples

Not only did temples teach spirituality and religion, but they also taught science, medicine, grammar, astrology, and other subjects. In a similar vein, temples frequently managed community hostels and hospitals. Temples frequently also had the responsibility for overseeing educational establishments funded by grants or endowments. Additionally, numerous temples and temple trusts have contributed to community healthcare. Traditional healing methods are still promoted by temples, and a lot of people look to them for spiritual and physical healing. For instance, the*Muthusamy* Temple in Dindigul, Tamil Nadu, draws people with mental illnesses. The person with the illness has the right to stay and participate in the activities of the temple while the temple takes care of their day-to-day needs.

Economic Functions of Temples

Liberal blessings from the rulers before and society have put sanctuaries in ownership of huge tracks of land, adornments, and financial assets, making temples strong financial establishments. Temples served as a platform for channeling the generous endowments of the well-to-do for the benefit of society. The complex and arranged sanctuary economy has given and keeps on giving work open doors and vocation to a large group of individuals, like ministers, specialists, entertainers, bloom and puja materials merchants, cooks, and so on. Numerous major and minor cities, such as Tirupati, Madurai, Chidambaram, Kanchipuram, Udupi, and Guruvayur, among others created around these sanctuaries. This is without including the huge numbers of laborers engaged in the development and upkeep of the actual foundation of the sanctuaries. Through their allied and social activities, such as educational institutions, temples, and temple trusts also provide employment. In medieval times, temples may have been the only source of community employment after the state. In addition, temples are significant consumers of goods and services, which contribute financially to the community.

The National Sample Survey Office (NSSO) has released data showing that 55% of Hindus who travel to religious pilgrimages stay in mid-sized and small hotels. Strict travel costs Rs 2,717 every day/per individual, social travel costs Rs 1,068 every day/per individual, and instructive travel costs Rs 2,286 every day/per individual. This compares to a day-to-day consumption of Rs 1,316 crores and a yearly expenditure of Rs 4.74 lakh crores on strict travel. As per the NSSO overview, the sanctuary economy is worth Rs 3.02 lakh crore, or about $40 billion and 2.32 percent of Gross domestic product. It might be much larger. Included are puja dresses, oil, flowers, lamps, perfumes, bangles, images, and oil. It is largely driven by informal, unregulated labor. India's travel and tourism sector alone is estimated to employ more than 80 million people, with revenue of more than $234 billion in the most recent year and a year-over-year growth rate of more than 19%.[3]

---

1 Aiyar. C.P Ramswami, Report of the Hindu Religious Endowments Commission, p. 7, (1960-62).

2 Aiyar. C.P Ramswami, Report of the Hindu Religious Endowments Commission, p. 8, (1960-62).

3 Shivaji Sarkar, "The Religious Economy: $40 Billion and growing", THE PIONEER, 23 May, 2022.

Historical Background

Administration of temples in ancient India

For convenience, the term "medieval" has been used, but it refers to the time before colonialism and before the construction of temples. Temple patronage by rulers was common, and royal grants or endowments to the temples were a major source of revenue for temples, despite the absence of a unified system across various regions and regions. Religious gifting was regarded as a fundamental component of the *Hindu Dharmic* (ethical) tradition, particularly about the "*Raja dharma*," or Royal Ethical obligation. As a result, royal endowments possessed a tremendous amount of political and social value. The "*Mahadanas,"* or great gifts given by kings, are mentioned in several Hindu texts. The practice of giving gifts to kings dates back to 300 BC and was carried on by subsequent empires. As previously mentioned, these endowments were used by temples to carry out temple services and promote community well-being. There can be little doubt that royal endowments were applied for development activities, whether patently intended or not, given the diverse roles that temples played as centers for the urban, economic, and community. The political leaders were able to maintain a complex set of relationships and balance various networks of power thanks to state endowments, which in turn increased the king's legitimacy and social acceptance. This relationship with the sanctuary and *maharanis* helped increment their political steadiness. In a few instances, the political ruler exercised some form of authority over the temple due to this relationship and interdependence. To prevent instances of mismanagement, rulers frequently participated in endowment supervision and management. There is evidence to suggest that the rulers assigned themselves the responsibility of overseeing the temples' endowed funds so that they could be used appropriately.[4]

Administration of temples in the Colonial Period

During the colonial era, the state began to exercise a more interventionist approach with increased oversight of temple administration and temple affairs, resulting in a significant shift in the powers and functions it exercised over temples. During this time, several laws regulating the management and administration of temples were enacted. This period systematized the act of state impedance in sanctuary issues through the legitimate system. Between 1810 and 1817, the British government issued three regulations, one for each of the Presidency regions of Bengal, Madras, and Bombay. These were the first instances of this kind of state involvement. These rules made it possible for the British government to use the East India Company's Board of Revenue to exercise sovereign authority. The British government made the case that the people in charge were misusing and spending money from endowments, so active supervision needed to be enforced by law.[5] As a result, the British community voiced a lot of opposition, and the Indian government decided not to get involved in religious matters Instead, the Religious Endowments Act of 1863 was passed, transferring control from the government to Committees established by the Act. This decision was based on the idea that qualified and responsible members of the faith to which the institution belonged should be in charge of managing the institution's finances and affairs and that they should be subject to the jurisdiction of courts and civil action for any breaches of their responsibilities. In subsequent years, the Act was accompanied by amendments to other laws like the Official Trustees Act and the Civil Procedure Code to make it possible to file suits against public religious and charitable trusts to prevent misuse. Most notably, the Charitable and Religious Trusts Act of 1920 made it possible for anyone interested in a public religious or charitable trust to apply to a court with jurisdiction to ask the trustees for information or to order an audit of the trust's accounts. The Public Authority of India Demonstration of 1919 made another worldview by empowering the common state-run administrations to administer on issues of blessings, and in this way, the Madras governing body established the Madras Hindu Strict Enrichments Demonstration of 1925 which was the primary authorization that related absolutely to Hindu strict enrichments. This legislation and the numerous amendments that followed it established a board of commissioners with enormous authority to oversee temple management. In some instances, the board could completely assume management of a temple.[6]

---

4 Aiyar. C.P Ram swami, "Report of the Hindu Religious Endowments Commission", (1960-62)

5 Aiyar. C.P Ram swami, "Report of the Hindu Religious Endowments Commission", (1960-62), p. 23.

6 G Ramesh, "Governance and Management of Temples: A framework", Indian Institute of Management Banglore, p.25, (2020).

Administration of Temples from Post Independence till now

Post-independence, the Indian government assumed control over the management and administration of temples in various ways. The approach varied across states and was influenced by local laws, regional customs, and political considerations. Several states enacted legislation known as State Endowments Acts, which gave the government authority over temple management. These acts provided for the establishment of government-controlled bodies, such as endowment boards or committees, responsible for overseeing temple affairs. The boards consist of government-appointed members who manage temple funds, properties, and rituals. Government control over temples often involves the collection of revenue generated through offerings, donations, and other sources. Temples are required to submit their income details to the government, and a percentage of the revenue is often appropriated for public welfare purposes. The government exercises regulatory oversight by implementing guidelines and rules for temple management. This includes conducting audits to ensure transparency and accountability in financial matters. Regular inspections, supervision of temple rituals, and monitoring of the use of resources are common practices under government control. The government created trusts or boards to administer specific temples or groups of temples. These trusts typically consist of government-appointed officials or trustees who manage the temples' finances, assets, and day-to-day operations. The trustees are responsible for ensuring the proper utilization of temple funds and resources. In some cases, the government interferes in matters related to religious practices and customs within temples. This may include setting guidelines for rituals, regulating the entry of devotees, and managing the distribution of *prasad* (sacred offerings). It is important to note that the extent of government control varies from state to state in India. Some states have a more hands-on approach, while others exercise a lighter touch, allowing greater autonomy to temple management committees and religious organizations.

A few states the nation over have instituted official and administrative structures to direct these foundations through the powers concurred by the Constitution. The first law governing Hindu Religious and Charitable Endowments in post-independence India was the Madras Hindu Religious and Charitable Endowments Act of 1951, which was passed by the State of Madras to replace the 1925, Madras Hindu Religious Endowments Act. Bihar also enacted a similar law around the same time. The Hindu Religious and Charitable Endowments (HR&CE), a public executive Commissionerate led by a commissioner, was established by these Acts to oversee Temples and *Mutts*. Additionally, the Madras Act stipulated the circumstances under which an Executive Officer for such an establishment could be appointed. A new Act was enacted in 1959 after this legislation was challenged in court and underwent several modifications (which are discussed in subsequent sections). Notably, in 1960, the Union Government established a Hindu Religious Endowments Committee to investigate specific issues about Hindu public religious endowments.

A need to free temples from Government control.

The Commission Report (1962) refers to, the states legitimizing takeover of the sanctuary the board in the bigger interest of the general population and the sanctuaries, and to forestall maladministration and bungle. The states justify their control by arguing that it is necessary to ensure that temple funds and properties are managed fairly. In the 1960s, these observations made by the Commission probably made sense. However, after 60 years of state control, the time has come to hand over temple management to trusts with a good governance system. Although some systems have been streamlined, there are still gaps in many areas, such as mobilizing resources, maintaining temples and protecting their assets, and promoting research, publications, and tourism, among other things.

The disintegration of Financial autonomy

The legislative enactments were criticized for reducing the institutional heads' administrative autonomy and authority. This affects their capacity to apply and use assets also. Financial autonomy and administrative autonomy are intertwined. In the Shirur Mutt case[7], the Supreme Court overturned Sections 30(2), 36, and 31, which mandated that surplus funds be spent by the Act's stated goals. These sections said that spending these surplus funds could only be used for specific things, and even then, it could only be done with permission. The courts noted that seeking an additional sanction is an unreasonable restriction given that the stated goals

[7] Commissioner, Hindu Religious Endowments, Madras v. Sri LaskhmindraThirthaSwamiar of Sri Shirur Mutt, AIR 1954 SC 282.

were only for the institution and religious denomination's benefit. However, certain states' current laws still require applicants to submit applications and obtain permissions before making such expenditures. This is one of the aspects that severely restricts one's ability to manage one's finances independently. It is to be noticed that the spending plans of these establishments are additionally expected to be supported by the government, and any shifts in that through the direction of the monetary year are to be endorsed before alteration. This features the restricted monetary control that the legal administrators appreciate which is constrained by the public authority however their officials. This control has an indirect effect on temple autonomy in other activities like duty rosters and temple hours. Which is not ideal for temples, which are an essential component of society. These point to the micromanagement of temples across the state's length and breadth, which has resulted in an excessive concentration of power.

Reduction in Revenue collection

Because of the absence of dynamic control over property, and attributable to the political idea of arrangements and portions, strict establishments end up possibly underleveraging the worth of the assets. In Tamil Nadu, endowed temples own nearly 5 lakh acres of agricultural land, 2.6 million square feet of buildings, and 29 million square feet of temple urban sites. These could be preferably gathering livelihoods in a huge number of crores of rupees, yet the interest of lease from these properties is a simple Rs. 304 crores, but only 36 crores (or a small portion) are collected.[8]. Although legacy reasons may account for some of the lower valuations, the revenue collection indicates significant revenue leakage. Temples become increasingly dependent on the government as a result of inadequate fund generation. As a result, the temples are unable to carry out many of their religious and related activities. It can likewise be seen that *Mutts* and secretly oversaw sanctuaries can assemble higher assets. Simply put, religious organizations are better able to carry out their numerous religion-social-cultural and developmental responsibilities when they have greater financial autonomy.

Deterioration of Cultural Heritage and Misutilisation of Tourist Potential

State control practiced through an incorporated power structure has been counterproductive to sustaining social capital which requires profound responsibility and nearby administration. A large number of these strict organizations are memorable landmarks that have colossal importance in society and have archaeological and social importance. In 2017, a UNESCO fact-finding mission that looked at the nature and quality of temple renovations in Tamil Nadu reported to the Madras High Court that poor conservation work had caused some historic and iconic temple structures to be damaged or destroyed. The UNESCO group found situations where walls have been cleaned by sandblasting and water washing, coming about in exacting disintegration of engravings, paintings, and ancient rarities while rebuilding works were directed without speaking with the conventional remedies for sanctuary reclamation. In other instances, entire structures have vanished, as in the case of a temple near Salem.[9]. In the Tiruvotiryur temple, for instance, the entire inscribed floor made of ancient granite has been replaced by marble, a material that is not typically utilized in temples.[10]. There have been grievances of icon burglary which are not standard robberies but rather robbery of important legacy pieces. A few pieces have been recovered thanks to the resolute endeavors of requirement organizations. Due to poor management of such monuments by a department that is not equipped for the task, these actions are resulting in the loss of invaluable and priceless archaeological and cultural heritage. The UNESCO report itself expressed that there was no empanelment of specialists or qualified project workers for such particular work. An expert hired in 1964 to make recommendations for the renovation and conservation of temples in South India noted in a 1964 report that there were significant gaps in the effectiveness of archaeological control over work on active-use temples due to a lack of proper application of the technical knowledge and skills that were available. Therefore, the establishment of an advisory committee to address this issue was suggested in the report. These illustrations show that these issues have existed for decades and will continue to do so. At the same time, irreparable harm is being done, so there must be an immediate and

[8] Amit Bagaria, "72@72: 72 Unfinished things India @ 72 needs to do", Notion Press.

[9] Govindrajan, V, "Why temples are falling into decay, despite no shortage of donations", SCROLL.IN, 06 September 2017, https://scroll.in/magazine/847188/why-tamil-nadus-temples-are-falling-into-decay-despite-no-shortage-of-donations

[10] Swamy, S, "Freeing temples from State control", THE HINDU, 10 January 2020. https://www.thehindu.com/opinion/lead/freeing-temples-from-state-control/article5594132.ece

appropriate response to stop this entropy. Domestic tourism typically focuses on temples. In terms of travel, hospitality, gifts, donations, and other general purchases, domestic tourism generates a substantial amount of revenue. These temples are growth engines for the surrounding areas, bringing in investments and jobs. These, in turn, generate tax revenue for the state and local governments. The homegrown travel industry in terms of the journey happens however the towns experience the ill effects of insufficient foundation. One seldom knows about sanctuary towns being taken for upgradation like it is being finished under shrewd urban areas projects. The city of Varanasi in Uttar Pradesh has now embraced a gigantic improvement program under the brilliant city and dovetailing it with the principal *KashiVishwanath* sanctuary. Tremendous potential for the travel industry, local turn of events, and work is being lost because of dull consideration given to sanctuary towns.

Inadequate Accountability in Property Management

It has come to light that there have been instances in which political functionaries have been favored in the allocation of temple lands or stalls, typically at prices below the market and occasionally at prices that are out of the question. Numerous instances of nepotism have been reported in numerous newspaper reports. In some instances, mismanagement led to misappropriation as well. One example is a party official in Thanjavur who turned 20 acres of agricultural temple land into housing sites under political pressure, preventing the execution of even court orders granting injunctions.[11]. Idol theft is a prominent example of such corrupt practices in the case of movable property. In several instances, executive officers and commissioners of the HR&CE system have themselves been implicated and investigated. These examples show that state intervention has brought its brand of weak accountability, even though it is justified for the prevention of mismanagement and maladministration.[12]

Conclusion

India must, without a doubt, be free of government control or, at the very least, allow believers to run religious institutions and carry out activities they want and that benefit the public; This endeavour should also receive support from the government because it will reveal who is best qualified to oversee religious institutions. Because it is common in India to make money off the names of holy places, and many well-known people visit India to participate in this corruption, it is also likely that followers abuse their power. However, the devotees must at least receive something from the government. Hinduism is quite possibly India's most established religion, having existed for incalculable years. These customs, rites, and beliefs ought to be preserved because they have been around for thousands of years—unless they directly contradict the Indian Constitution. Therefore, for the sake of maintaining temple discipline, even though Article 25 safeguards the right to practice one's religion, financial irregularities and poor management of religious institutions must be dealt with severely. The state should work out some kind of harmony between maintaining sanctuary admirers and sanctuary organizations as per the Indian Constitution. In this instance, the discriminatory nature of the statute necessitates that it be declared unconstitutional in its entirety rather than being severed in part. The Supreme Court's decision in the case of *The Commissioner, Hindu v. Sri LakshmindraThirthaSwamiar*[13], the government ought to establish a commission for temple affairs comprised of all non-Hindu religious leaders, matadipathis, religious experts, social reformers, and other experts, and then pass a uniform law on that decision. The government may also take various regulatory approaches for temples, math, Jain communities, and other institutions, depending on their religious beliefs and the fundamental principles of our constitution. The establishment of a consistent legal framework for Hindu sects is the responsibility of the legislature, which ultimately decides whether or not to adopt religious reformative legislation. As per the Constitution, we would concede to the council's choice. Even though it's vital to note, we accept it's appropriate for the public authority to ban any improper or degenerate practices in Hindu associations, assuming any are there whatsoever. Hindu temple reform would see a significant improvement as a result of this. The Hindu Religious & Charitable Endowment Act had to be enacted to better manage, protect, and preserve India's temples and their endowed properties, as well as to carry out its

[11] G Ramesh, "Governance and Management of Temples: A framework", Indian Institute of Management Banglore, p.37, (2020).

[12] G Ramesh, "Governance and Management of Temples: A framework", Indian Institute of Management Banglore, p.37, (2020).

[13] The Commissioner, Hindu v. Sri LakshmindraThirthaSwamiar1954 AIR 282, 1954 SCR 1005

stated purposes within constraints that do not compromise the right to practice one's religion that is guaranteed by the Indian Constitution.[14]

Suggestion

The circumstance can be portrayed as the Organization's disappointment in the Central Office system. There is extreme disappointment in Objective Arrangement among travelers and lovers, and the Government; between the temple administrators and the government. For the reasons that have been discussed thus far, the institutional design for temple management is severely flawed.

In operations about the spiritual (religious) domain and the administrative (secular) domain, there ought to be a distinct division of power. From the state Board to the local temple level, this separation must be maintained. Instead of administrative personnel, spiritual activities should be overseen by independent members of society, religious-minded individuals, and professionals from relevant fields. A glass wall must be kept up with among otherworldly and managerial spaces. Instead of acting as a regulator or supervisor, the administration will be more involved in assisting and facilitating. The overseeing standard ought to be one of the most extreme controls by the Government and build cultural foundations to oversee otherworldly and regulatory capabilities inside. The solution for blunders by non-government area legal administrators lies in building and reinforcing organizations inside and not in assuming control over the control. External administrative control should be the default rather than the norm, and its scope should be limited to ensuring that temple assets are properly retained and managed. Having a Hindu apex board of committed individuals with a spiritual bent will be the key to state-level governance. They ought to be well-known men. According to the principles of good governance, a board must have members who are independent, knowledgeable, and diverse to be autonomous. The Sanctuary Board which we are proposing beneath ought to have individuals addressing different environments of sanctuaries, similar to mutts, legal administrators, agama subject matter experts, analysts and academicians, and experts like CAs and legal advisors. Women, Dalits, and even non-resident Indians ought to be represented there as well. The Public authority can consider having an Inquiry Board to recognize and propose individuals for Sheets and different legal administrators.[15] Repositioning the HR & CE Department is necessary. The office will assume a formative and empowering part rather than doing distant miniature administration of sanctuaries. It will serve as a supervisor and provide support to the proposed Board. The temple trusts will take over all operational responsibilities. Instead of being bloated like it is now, the structure will be skeletal, functional, and lean. A special purpose vehicle (SPV) based on corporate principles is being proposed for the developmental role.

In the end, the temple's assets and properties will be public property under the government's control. In Kerala, the idea of *Devaswom* is interesting. It means God's property and the assets belong to the State or Board on God's behalf. The guiding principle must be adhered to. It is important to note that the temple owns the properties and revenues, which must be used for temple-related and religious-related activities. It is important to note that administrative autonomy in public management cannot exist without financial autonomy. To maintain their independence, the middle-tier and top-tier temples ought to try to gather sufficient resources. The finances of the temple ecosystem as a whole ought to be sufficient for the sector to be self-sustaining and to be able to support temples that depend on food. The stronger, less well-off temples will be supported by temples with greater endowments and surplus funds. Only expenses that are related to religion and the temple will be supported by the temples. Temples with more money can help schools and colleges, but temples should still focus on promoting spiritually related research and studies, documentation and publicity, training and capacity building, and other activities. The government is obligated to construct infrastructure and tourism-related projects, which should be funded by taxes. Temples are a state's pride, and governments should prioritize their development and encourage tourism and hospitality.

* * * *

[14] Bhagya Shri Neware, "Government control over religious and Charitable endowment", LEXPEEPS, 10 September 2020.

[15] G Ramesh, "Governance and Management of Temples: A framework", Indian Institute of Management Banglore, p. 47, (2020).

UNLOCKING THE DATA VAULT : NAVIGATING THE OPPORTUNITIES AND CHALLENGES OF BIG DATA IN COMPETITION, DATA PRIVACY, AND M & A

Shivani B *

Abstract

This paper delves into the dynamic world of Big Data, exploring its potential for unlocking hidden opportunities and tackling emerging challenges. It begins by highlighting the crucial role Big Data plays in enhancing business intelligence and driving informed decision-making. Subsequently, it delves into the intricate ecosystem of Big Data, dissecting the stages of data acquisition, storage, processing, and analysis.Illustrative case studies showcase how companies like Starbucks and Netflix have harnessed the power of Big Data to gain a competitive edge, personalize customer experiences, and boost profitability. The paper then turns its focus to the intersection of Big Data, competition, and data privacy, analyzing the intricate challenges posed by mergers and acquisitions in the digital era. It emphasizes the need for robust regulatory frameworks to address concerns regarding data monopolies and market dominance.Moving forward, the paper explores the significance of data protection laws and the impact of the Digital Personal Data Protection Act, of 2023, on M&A transactions.

It further analyses the implications of the Competition (Amendment) Act, 2023, which introduces a 'deal value threshold' to address the limitations of the existing 'asset and turnover' threshold.The paper concludes by examining the intricate process of post-merger integration and highlighting how Big Data analytics can streamline operations, optimize efficiencies, and enhance overall organizational performance. Finally, it analyses the impact of big data-driven mergers on consumers, emphasizing the potential for improved personalization while acknowledging concerns regarding data privacy and the need for strong regulatory oversight.This paper serves as a comprehensive exploration of Big Data's transformative potential and its intricate interplay with competition, data privacy, and consumer welfare. It emphasizes the need for a balanced approach that leverages the power of Big Data for economic growth and innovation while safeguarding individual privacy and fostering a fair and competitive digital marketplace.

Keywords : ***Big Data, Mergers, Data Privacy, Digital age, Consumers and Competition.***

Introduction

The digital age has ushered in a new era of data, where information reigns supreme. Among this vast trove of data lies "Big Data," a potent resource with the power to revolutionize industries and reshape the competitive landscape. For businesses, acquiring and leveraging Big Data isn't just about amassing information; it's about unlocking unprecedented insights that drive strategic decision-making, optimize operations, and ultimately, gain a competitive edge.However, this data-driven journey isn't without its challenges. Mergers and acquisitions, often fueled by the desire to access and integrate Big Data, present both incredible opportunities and complex legal hurdles.

The authors of this research paper have explored facets related to comprehending big data and its ecosystem, encompassing future trends and how different companies leverage it for their benefit. As indicated by previous research work, it is evident that while big data offers numerous opportunities, it also brings forth inherent risks and challenges, particularly concerning regulatory issues and the competitive landscape. The authors have delved into existing research, providing insights and commentary on the subject. The authors have addressed the research gap by investigating the effects of the *Digital Personal Data Protection Act*, of 2023, and the *Competition (Amendment) Act*, of 2023. Additionally, the authors have explored the post-merger integration of big data and the consequences of data-driven mergers on the consumer market and small enterprises.

* **4th year BBA LLB, Symbiosis Law School, Hyderabad, Telangana**

From Data Quandary to Legal Clarity

The purpose of both data harvesting and data mining is singular and unwavering: to augment the available resources of data. However, merely having a large amount of data is not enough to give businesses a competitive advantage. What online platforms aim to derive from this vast pool of data is the personal information of their users. This information, gathered from users, is commonly referred to as 'Big Data' and serves as a crucial factor that allows companies and online platforms to maintain a competitive edge.

As held in cases like ***Matrimony LLC v. Google Inc[1] and Samir Agarwal v. ANI Technologies***[2], Big Data pertains to the accumulation of extensive and intricate datasets that prove challenging to handle through conventional database management tools or data processing applications. These datasets exist in structured, semi-structured, and unstructured formats, reaching petabytes and beyond[3]. By transforming copious raw data into meaningful and enlightening insights, individuals such as managers, policymakers, and executive officers leverage substantial volumes of stored or electronic transaction data to enhance decision-making. The primary objective of analyzing big data is to extract valuable insights, patterns, and trends from these extensive and diverse datasets.[4]. The significance lies not just in the type or quantity of data but in how organizations leverage it. Big data analytics involves applying advanced techniques such as data mining and predictive modeling to extract insights, aiding in strategic decision-making.[5].

The primary goal of big data analysis is to handle data with high volume, velocity, variety, and veracity using a range of traditional and computationally intelligent techniques.[6].

Volume: Big data encompasses an immense volume of information, potentially reaching terabytes, petabytes, or even larger scales, contingent upon the context. The sheer quantity of data is a fundamental characteristic of big data.

Velocity: This pertains to the pace at which data is generated, gathered, and processed. In many instances of big data scenarios, data is produced swiftly and necessitates rapid processing to extract meaningful insights.

Variety: Big data manifests in diverse formats, encompassing structured, semi-structured, and unstructured data. Structured data adheres to a specific organizational format, akin to a traditional database, while unstructured data lacks a predetermined data model (e.g., text, images, or videos). Veracity: This concerns the quality and reliability of the data. Big data sources may encompass information from unconventional sources like social media and sensors, and ensuring the precision and trustworthiness of such data poses a challenge.

Significance of big data

Big data isn't just about having a mountain of information; it's about building a smarter shovel. Organizations that truly unlock their potential can streamline operations, fuel product improvements, boost revenue, and make decisions with laser focus. Think of it as the secret sauce that takes raw data and cooks up valuable insights for success. This utilization opens doors for innovation, improves operational efficiency, and enhances overall customer experiences.[7]. Big data holds a transformative value on businesses as big data is transforming the way organizations use business information, requiring a data-driven approach.[8]. Transforming big data into a gold mine isn't a one-step treasure hunt. Businesses need a five-step map: First, chart a course with a clear big data strategy. Then, locate the buried treasure – identify the right data sources. Next, build a secure vault – access, manage, and store the data wisely. Finally, unleash the power within – analyze the data using

1 "(2018) SCC OnLine CCI 1."

2 "(2018) SCC OnLine CCI 86. Reaffirmed by Supreme Court in Samir Agrawal v. CCI (CAB Aggregators) (2021) 3 SCC 136."

3 "D. P. Acharjya, Kauser Ahmed P, A survey on big data analytics: challenges, open research issues, and tools, (IJACSA) International Journal of Advanced Computer Science and Applications, Vol. 7, No. 2, 2016."

4 "Singh, B., & Kaur, M. (2016). A Survey on Big Data: Challenges, Tools and Technique. International Journal of Advanced Research in Computer Science (Vol. 7, Issue 6). www.ijarcs.info."

5 "Naeem, Muhammad & Jamal, Tauseef & Diaz, Jorge & Butt, Shariq & Montesano, Nicolo & Tariq, Muhammad & De la Hoz, Emiro & De la Hoz, Ethel. (2022). Trends and Future Perspective Challenges in Big Data. 10.1007/978-981-16-5036-9_30."

6 "M. K.Kakhani, S. Kakhani and S. R.Biradar, Research issues in big data analytics, International Journal of Application or Innovation in Engineering & Management, 2(8) (2015), pp.228-232."

7 "Ajah, I. A., & Nweke, H. F. (2019). Big data and business analytics: Trends, platforms, success factors and applications. In Big Data and Cognitive Computing (Vol. 3, Issue 2, pp. 1–30). MDPI. https://doi.org/10.3390/bdcc3020032."

8 "Kojo T, Daramola O, Adebiyi A. Big data stream analysis: a systematic literature review. J Big Data. 2019;6(1):1–30."

advanced techniques like data mining and predictive modeling. This "Big Data Analytics" (BDA) is like a crystal ball for business, revealing hidden patterns and insights to guide intelligent, data-driven decisions.[9]. As organizations increasingly depend on Big Data for decision-making, the significance of analytical applications has risen for making decisions based on evidence.[10].

Big data ecosystem

By harnessing the insights gleaned from Big Data, businesses can embark on a strategic transformation. Big Data empowers them to optimize production processes, leading to increased efficiency and cost reduction. Predictive analytics unlock the ability to anticipate market trends, allowing for proactive adaptation and strategic advantage. Data-driven decision-making supplants intuition with precision, ensuring well-informed choices that yield superior outcomes. Furthermore, the granular understanding of customer behavior gleaned from Big Data facilitates targeted advertising and personalized recommendations, fostering deeper user engagement and improved consumer segmentation, ultimately bolstering customer satisfaction and loyalty.[11]. The big data Ecosystem is an ever-evolving and complex system that involves data acquisition from various sources, various systems employed to store the large amount of data collected, the data processing sources for refining and preparing the data for further analysis, and finally different tools that are used to analyze the data to draw valuable insights from the processed data, transforming it into actionable knowledge for better decision-making.

It forms the foundation of the ecosystem as it is responsible for collection of the data from diverse and dynamic sources that serve as the raw material which is processed and analysed to form decisions. This phase needs meticulous preparation, implementation, and an effective framework that guarantees the efficacy, comprehensiveness, and accessibility of the data.

The companies primarily identify the relevant sources which can be broadly classified into internal and external sources. Internal sources comprise log files, sensor readings, transaction records, customer information, and other data created by the company.[12]. Information from external sources is very diverse; it includes everything from market research to social media sites and open databases. After identifying the data sources, the companies move forward with the acquisitions and check the integrity and completeness of the vital raw material. Specialized tools such as Apache Flume and Kafka are used to effectively capture data streams, these tools make sure that nothing is missed. At this point, strong data governance procedures are also put into place, guaranteeing regulatory compliance, and safeguarding sensitive data even before it reaches the ecosystem.

Once obtained, the enormous amount of data requires a scalable and safe location. Across clusters of commodity hardware, distributed file systems such as the Hadoop Distributed File System (HDFS) provide a reliable option for storing petabytes of data. Cloud storage solutions such as Microsoft Azure Blob Storage and Amazon S3 offer an enticing substitute for businesses looking for economy and flexibility. The need for costly hardware purchases is removed by these services, which provide storage space on demand. Furthermore, data lakes are becoming more and more common, serving as a central store for natively formatted structured and unstructured data. This opens many more potential insights for future investigation and analysis of various data sources.

This stage involves the transformation of raw data into useful and refined data, it involves a series of tasks to prepare the data for further analysis. It improves the quality of data, removing inconsistencies, missing values, and outliers. Frameworks like Apache Airflow and Luigi help ensure reliable and efficient data processing pipelines. By coordinating a variety of data processing tasks, these frameworks streamline the procedure and free up important resources. Ultimately, frameworks for distributed processing such as Apache Spark and Apache Hadoop MapReduce take the front stage, making it possible to process enormous datasets in parallel. This makes it possible to handle data more quickly and effectively, opening the door to greater in-

[9] "Russom P. Big data analytics. TDWI Best Practices Report, Fourth Quarter. 2011;19(4):1–34."

[10] "Mikalef P, Boura M, Lekakos G, Krogstie J. Big data analytics and firm performance: findings from a mixed-method approach. J Bus Res. 2019; 98:261–76."

[11] "OECD, 'Big Data: Bringing Competition Policy to the Digital Era', November 2016."

[12] "Janev, V., Graux, D., Jabeen, H., Sallinger, E. (eds) Knowledge Graphs and Big Data Processing. Lecture Notes in Computer Science, vol 12072."

depth research and insights. It is the most crucial step that involves taking useful information out of the processed data and turning it into knowledge that can be put to use to make well-informed decisions. Businesses can identify opportunities for development by using tools such as business intelligence (BI) dashboards and reports, which offer a picture of historical performance and present trends. By determining the underlying causes of issues and forecasting future results, data mining and statistical analysis go deeper. This enables businesses to proactively shape their success strategies by foreseeing obstacles and opportunities. Even more intricate insights can be revealed by deep learning and machine learning algorithms. These tools make sure that everyone in the organization can comprehend and gain from the insights drawn from the data by presenting difficult information in eye-catching charts and graphs.

Future trends

The future developments in Big Data are expected to encompass trends such as the emergence of FinOps, or Financial Operations, implementing financial management systems driven by Big Data that integrate all cloud-working teams. The utilization of Data Fabric and Data Mesh enhances the management and optimization of data exchanges originating from diverse sources. The growing reliance on cloud solutions necessitates data analytics to identify and proactively prevent cyberattacks. Leveraging Big Data, AI, and machine learning, predictive analytics holds significant promise, especially in the industry 4.0 sector, to enhance productivity and optimize resource utilization.[13].

Case studies

These examples illustrate how companies have harnessed the power of big data to gain a competitive edge, dominate niche segments, and deliver more value to their customers.[14]:

STARBUCKS: The prominent coffee company is leading the way in utilizing big data and artificial intelligence to enhance targeted marketing efforts, optimize sales strategies, and inform strategic business decisions. Through its widely used loyalty card program and mobile app, Starbucks possesses detailed purchase data from millions of customers. Utilizing this information and business intelligence tools, the company forecasts purchases and delivers personalized offers through its app and email, tailored to individual customer preferences. This strategy not only encourages existing customers to visit Starbucks more frequently but also boosts overall sales.

NETFLIX: Netflix has digitized its interactions with its 151 million subscribers, systematically gathering data from each user. Through the use of data analytics, the company comprehends subscriber behavior and viewing patterns, utilizing this information to offer personalized recommendations for movies and TV shows based on individual preferences. What sets Netflix apart from its competitors is its ability to create detailed subscriber profiles by collecting diverse data points, enhancing its ability to engage with users effectively.

In India, Big Data even plays a crucial role in several e-governance initiatives as part of the Digital India Mission. One such initiative is the Crime and Criminal Network Tracking System, where various states have opted for predictive policing methods.[15]. This involves leveraging existing structured data related to geographic locations and the types of crimes occurring in those areas, along with databases containing information on individuals with criminal histories and police reports, supplemented by alternative data sources.[16]. Predictive policing employs big data analytics to pinpoint potential targets for crime prevention through police intervention or the application of statistical predictions to address criminal activity. The success of this project is evident in its ability to facilitate more comprehensive and holistic analyses of crime patterns.[17]. Additionally, the government has successfully utilized Big Data in other projects like Seeding, cradle-to-grave, Smart Meters, and Intelligent transport systems.[18].

---

13 "Abdian, S., Hosseinzadeh, M., 2 , S., & Khadivar, A. (n.d.). A Bibliometric Analysis of Research on Big Data and Its Potential to Value Creation and Capture. In Iranian Journal of Management Studies (IJMS) (Vol. 2023, Issue 1)."

14 "Bernard Marr, Big Data Case Study Collection: 7 Amazing Companies That Get Big Data."

15 "National Crime Records Bureau. "About Crime and Criminal Tracking Network & Systems - CCTNS." available at http://ncrb.gov.in/cctns.htm."

16 "Walter L. Perry, Brian McInnis, Carter C. Price, Susan C. Smith, John S. Hollywood, Predictive Policing: The Role of Crime Forecasting in Law Enforcement Operations, available at http://www.rand.org/pubs/research_reports/RR233.html."

17 "Andrew Guthrie Ferguson, Policing Predictive Policing, forthcoming in 94 WASH. U. L. REV. (2017)."

18 "Elonnai Hickok, Sumandro Chattopadhyay, Sunil Abraham, Big data in governance in India: case studies, The Centre for Internet and Society, India, https://cis-india.org/internet-governance/files/big-data-compilation.pdf.

When it comes to big data and the digital market, competition authorities should not solely focus on the price effects of a transaction due to the dynamic and volatile nature of the data market. This perspective was embraced by the US Department of Justice in the Bazaarvoice and PowerReviews merger case.[19], where clearance was denied because the merger had the potential to establish a data monopoly, creating significant entry barriers in the 'ratings and reviews platforms market. In markets where transactions involve zero prices, evaluating market power should prioritize control over data rather than the share of sales. Facebook's acquisition of a 9.99% minority stake in Reliance Jio, valued at $5.7 billion, made headlines as Facebook became the largest minority shareholder in Jio Platforms.[20].

Unlocking the data vault

Both companies have substantial user bases in India, raising competition law concerns. With Reliance Jio's dominance in the Indian telecom sector and Facebook's extensive reach through platforms like WhatsApp and Instagram, the deal could create barriers to entry for new market players. The collaboration extends to JioMart operating on WhatsApp, potentially leading to discriminatory practices. The partnership's strategic rationale includes the creation of a 'super app' and monetizing payment volumes. However, concerns about data privacy, net neutrality, and the absence of regulations pose challenges, prompting calls for scrutiny under competition law and data protection regulations. Justice BN Srikrishna highlights the absence of a data privacy law as a factor in the deal and emphasizes the need for regulatory oversight in both the competition and data protection realms.[21].

Unmasking the Opportunities & Challenges of Big Data in Competition, Data Privacy, and M/A

Utilizing big data is undoubtedly a means for companies to generate value in mergers and acquisitions (M&A), enabling them to secure a competitive advantage. As proposed by prior researchers, harnessing big data analytics proves beneficial in optimizing revenue and achieving value creation during the integration process in M&A. The use of existing data facilitates the acceleration of synergy realization and enhances profitability by pinpointing cross-selling opportunities—essentially identifying the key elements for success. In the evolving landscape where industry boundaries blur and ecosystems undergo changes, big data analytics becomes a crucial component for navigating diverse behaviors across various sectors.[22].

Synergies and risks

However, numerous research pieces explicitly delve into the discussion of how competition law needs to adapt dynamically to address the economic challenges posed by the emerging digital era. This encompasses examining the antitrust perspective on harms arising from big data in the digital realm, as well as exploring the implications and concerns related to big data within the enforcement of competition law.[23]. Existing research explicitly outlines the issues between data-driven mergers including price discrimination and exclusionary conduct amongst others. Furthermore, Ifa merger occurs between two companies dominating distinct upstream and downstream markets, there is a potential risk of stifling the market for new entrants. This concern is frequently examined by competition authorities, as illustrated in the case of the Facebook-WhatsApp merger. Exclusive agreements, tied sales, and the mutual use of data can lead to the foreclosure of opportunities for competitors and a decrease in competition when executed by two dominant entities. The collection and retention of user data enable a platform to analyze purchasing patterns and anticipate the likelihood of a specific buyer accepting a particular price.[24].

---

19 U.S. v. Bazaarvoice, Inc* [2012] EWHC 247 (Ch)."

20 "Jabura, Calisto. (2021). Facebook Acquisition of WhatsApp."

21 "Bagnoli, Vicente, The Definition of the Relevant Market, Verticalization and Abuse of Dominant Position in the Era of Big Data. (November 6, 2017). Competition and Innovation: Annals of the international congress to promote debates on Competition Law and Technological Innovation facing the reality and challenges of the Digital Economy. Bagnoli, V. (coord.), Sao Paulo: Scortecci, 2018, Available at SSRN: https://ssrn.com/abstract=3216679."

22 "https://www.tcs.com/what-we-do/services/consulting/blog/merger-acquisition-big-data-analytics#:~:text=Leveraging%20big%20data%20analytics%20can,beans'%20of%20cross%2Dselling."

23 "Shahista Khan, The curious tale of Big Data and the merger control regime, Supremo Amicus, Vol 26, Sep 2021, ISSN 2456-9704."

24 "Ritam Arora, 'E-Commerce, (Big) Data and Competition Law Need for New Framework For the Application of Competition Law to Online Platforms' https://economics.hse.ru/data/2018/05/27/1149475986/Ritam%20Arora.pdf, Urbi Sinha, The Big data problem with the competition Act, 2002, https://ssrn.com/abstract=3977913, Competition Commission of India, 'Market Study on E-commerce in India: Key Findings and Observations' (2020)."

The key antitrust issue associated with these mergers arises from the non-organic nature of data accumulation, primarily through acquisitions. The concentration of data in the hands of a few companies, acquired through non-organic means, creates entry barriers for potential competitors who may struggle to obtain a comparable volume and type of data necessary for understanding consumer demands, needs, and preferences. Consequently, this situation results in the restriction of competition, the establishment of entry barriers, and the concentration of power[25]. Therefore, conducting a merger analysis serves as a valuable ex-ante approach to evaluate and address emerging competition concerns arising from mergers involving Big Data.

It is noteworthy how mergers between companies with substantial user bases and strong positions in distinct markets can result in market foreclosure. This may transpire through entering exclusive agreements with third-party data service providers, employing bundling and tying strategies, or withholding data access. By having access to intricate details of consumer profiles, companies gain insights into purchasing habits, enabling them to assess consumers' willingness to pay for specific services. Consequently, certain consumers may end up paying higher prices for identical products or services. Additionally, the exchange of big data between two established companies may hinder new entrants from accessing similar data, thereby creating significant barriers to entry into the market. The merger control regime in India is constrained by turnover-based threshold requirements, resulting in significant big tech mergers escaping scrutiny through the review process. Implementing a deal-value threshold in the merger control process faces certain operational challenges that need to be addressed before its effective implementation. This leads to the crucial question of determining the parameters for reviewing such mergers.[26].

Digital markets, unlike non-digital counterparts, exhibit characteristics such as fixed costs for information goods, high entry barriers, network effects, and low marginal costs. These attributes make them prone to market dominance and concentration. Big Tech companies utilize these features to amass significant market power in specific sectors, leveraging it to dominate related areas. Notably, the dominance of companies like Facebook and Google in digital advertising stems from their control over vast data resources across diverse sectors, allowing them to offset losses in one market with gains in another. The context reveals three categories of market failures: (i) excessive market power caused by anti-competitive behavior or entry barriers.[27], (ii) externalities, and (iii) the presence of information asymmetries[28], such as the absence of price knowledge[29].

Big data in regulatory reviews

Further, the consideration of privacy as a pivotal element in assessing adverse impacts on competition within a relevant market, where traditional price analysis constraints do not apply, demands thorough examination. While privacy undeniably stands as a noteworthy and distinct concern with widespread consequences for the general population, as consumers are reluctant to casually compromise it, a particularly acute issue arises. Frequently, consumers willingly sacrifice their privacy in exchange for improved service quality. This paradox necessitates the intervention of competition law to govern the market.[30]. While scrutinizing the merger of WhatsApp with Facebook[31], particularly regarding the data transfer and the potential reduction in the quality of services is an antitrust measure.

---

25 "Khan ZF, Alotaibi SR. Applications of Artificial Intelligence and Big Data Analytics in m-Health: A Healthcare System Perspective. J Healthc Eng. 2020 Aug 30;2020:8894694. Doi: 10.1155/2020/8894694. PMID: 32952992; PMCID: PMC7481991."

26 "Fanning, Kurt & Drogt, Emily. (2014). Big Data: New Opportunities for M&A. Journal of Corporate Accounting & Finance. 25. 10.1002/jcaf.21919."

27 "Harshita Chawla v WhatsApp Inc and Facebook Inc CCI Case No 15 of 2020."

28 "Sonam Sharma v Apple Inc CCI Case No 24 of 2011."

29 "Samriddha Sen, 'India's Antitrust Problem With Big Tech—Part 1' (*The RMLNLU Law Review Blog*, 27 October 2021) <https://rmlnlulawreview.com/2021/10/27/indias-antitrust-problem-with-big-tech-part-1/>."

30 "Shreyas Satardekar Int. Journal of Engineering Research and Application www.ijera.com ISSN: 2248-9622, Vol. 8, Issue4 (Part -III) April 2018, pp65-78."

31 "Vinod Kumar Gupta v WhatsApp Inc 2017 SCC OnLine CCI 32; In re Harshita Chawla 2020 SCC OnLine CCI 32; In re WhatsApp LLC 2021 SCC OnLine CCI 19, Whatsapp LLC v CCI 2022 SCC OnLine Del 2582; Whatsapp LLC v Competition Commission of India (2021) 2 HCC (Del) 212; Karmanya Singh Sareen v Union of India, 2016 SCC OnLine Del 5334."

Latest developments

Impact of Digital Personal Data Protection Act, 2023:

Section 17(1) of the Data Protection Act outlines exemptions from specific provisions in cases of processing personal data during corporate reorganizations or restructuring approved by a court or competent authority. This exemption, applicable in scenarios like mergers, demergers, and transfers of undertakings, requires approval from a court or competent authority. Referred to as "Exempted M&A Scenarios," this provision does not apply to situations like acquisitions through share purchase agreements that don't require such approval, leaving the full force of the Data Protection Act on the processing of personal data by a Data Processor. The situations listed as (i)-(iv) of Section 17 will now be termed as the "Exempted M&A Scenarios." However, because Section 17(1)(e[32]) of the Data Protection Act mandates approval from a court or competent authority, the exemption from applying the Identified Provisions is not applicable in other circumstances[33].

Thus, looking at the pre-DPDP act clauses related to sharing personal data were uncommon in M&A and investment agreements. Data sharing primarily relied on simple non-disclosure agreements. However, with acquirers and investors taking on the role of Data Processors to some extent, handling personal data from the target, thorough data processing agreements are now necessary. These agreements should include stringent requirements such as purpose limitation, robust security measures, notification obligations, and strict non-disclosure provisions.[34]. The target must refrain from sharing personal data without obtaining prior consent from the Data Principal, as mandated by the Act. Alternatively, measures like data encryption, masking, or real-time sharing via virtual data rooms can be explored to mitigate risks associated with data sharing or storage. Agreements may also include specific provisions enabling the sharing of employee personal data for fundraising or M&A activities. If a Data Principal withdraws consent, it is presumed that the specified purpose is fulfilled, placing responsibility on the target.[35].

The law mandates the target to ensure that personal data is shared only when necessary, contingent upon obtaining appropriate consent, limited to an absolute "need-to-know" basis, and excluding the broader acquirer/investor group. The target should share, whenever possible, anonymized or non-identifiable data during the initial due diligence stages. In such cases, the acquirer may also consider securing warranties regarding the accuracy of the data shared, particularly for facts that are challenging to verify.[36]. This is pertinent in asset sales or slump sales, where employee and commercial contract transfers are involved.

While standard conditions precedent or closing conditions for obtaining consents in M&A transactions are common, we anticipate that these conditions, particularly concerning data sharing, will be more detailed. Parties may have room to discuss alternatives in case required consents are not obtained, and the implementation of these conditions may take longer than previously experienced.[37].

The law mandates the target to ensure that personal data is shared only when necessary, contingent upon obtaining appropriate consent, limited to an absolute "need-to-know" basis, and excluding the broader acquirer/investor group. The target should share, whenever possible, anonymized or non-identifiable data during the initial due diligence stages. In such cases, the acquirer may also consider securing warranties regarding the accuracy of the data shared, particularly for facts that are challenging to verify. This is pertinent in asset sales or slump sales, where employee and commercial contract transfers are involved. While standard conditions precedent or closing conditions for obtaining consents in M&A transactions are common, we anticipate that these conditions, particularly concerning data sharing, will be more detailed. Parties may have room to discuss alternatives in case required consents are not obtained, and the implementation of these conditions may take longer than previously experienced.

---

32 "S. 7(i) of the DPDP Act."

33 "https://www.mondaq.com/india/corporate-and-company-law/1361066/impact-of-the-new-personal-data-protection-law-on-mergers—acquisitions-ma-and-corporate-restructurings."

34 "https://www.lexology.com/library/detail.aspx?g=ba9dd603-2f73-4e42-a015-9fd130b2b724."

35 "S. 17(e) of the DPDP Act."

36 "https://edpb.europa.eu/sites/default/files/consultation/edpb_guidelines_202007_controllerprocessor_en.pdf,"

37 "Circular DPSS.CO.OD.No 2785/06.08.005/2017-18 dated April 06, 2018."

Data as a Tool for Competition Advocacy- Impact of Competition(Amendment) Act, 2023:

The amendment aims to amend India's existing competition law in light of instances of anti-competitive behavior by leading corporations, especially in the technology sector. One significant modification introduced by the amendment is the incorporation of the 'deal value threshold.' This provision enables the Competition Commission of India (CCI) to scrutinize large-scale merger transactions involving big data, addressing the limitations of the current 'asset and turnover' threshold[38].

The Competition Amendment Act of 2023 injects a significant clause into Section 5, establishing a new deal value threshold of INR 20 billion for "Combinations" involving acquisitions, mergers, and amalgamations within India. This necessitates prior approval from the CCI when one party boasts substantial business operations within the country, even if a "de minimis exemption" applies. Notably, the Act defines "substantial" through forthcoming regulations, ensuring comprehensive coverage. Crucially, the deal value encompassing direct and indirect considerations, including deferred payments, ensures no transactions slip through the regulatory net. This amendment strengthens the CCI's grip on major mergers and acquisitions within India, promoting competition and safeguarding consumer interests.

Way forward

The existing threshold overlooks the fact that acquiring a company is not solely driven by turnover, particularly in the digital economy where the customer base and data sets hold greater significance. While the 'turnover threshold' provides an objective measure of the relevant turnover, triggering the obligation to report mergers and acquisitions, such transactions in the digital market often evade scrutiny due to the size of the target company. In contrast, the 'deal value' threshold is subjective, offering an estimate of the firm's market value, which can vary among different acquirers. Additionally, the acquirer's price inevitably considers the target company's market potential and assets, which may not be adequately reflected in the company's turnover.[39].

Nevertheless, the threshold has some drawbacks. Determining the threshold for these transactions could be challenging, as it may differ depending on the method employed. This amendment represents a positive shift in the regulation of mergers in India, aiming to enhance the country's standing in the Ease of Doing Business Index. Merging entities may be required to meet both the asset/turnover threshold and the deal value threshold, prompting the need for additional clarification from the Indian competition watchdog on this matter.

Post-merger integration

Post-merger integration (PMI) stands as a pivotal and intricate process initiated after the amalgamation of two companies or the acquisition of one by another. Its primary objective lies in achieving operational, cultural, and strategic congruence between the merging entities, ultimately giving rise to a unified and seamlessly integrated organization. PMI involves a comprehensive series of endeavour0073 directed towards materializing the anticipated synergies from the merger, orchestrating a seamless transition that mitigates disruptions for both internal and external stakeholders.

A cornerstone of PMI revolves around the amalgamation of business processes and systems. This intricate process entails the synchronization and optimization of diverse operational facets, spanning finance, human resources, and information technology. The overarching objective is to eradicate redundancies, elevate operational efficiency, and establish a cohesive framework that aligns with the overarching objectives of the amalgamated entity.[40]. The adept execution of integration in these domains proves instrumental in realizing cost efficiencies, optimizing operations, and unlocking the complete potential of the merged organization. In the realm of post-merger integration, the strategic utilization of big data analytics has the potential to elevate decision-making processes, streamline operations, and enhance overall organizational performance significantly.

---

[38] "Avaantika Kakkar, Kirthi Srinivas (Cyril Amarchand Mangaldas). "2023 Amendments to Indian Competition Law: Implications for M&A (Part 1)." Kluwer Competition Law Blog, April 18, 2023."

[39] "Ravisekhar Nair, "Competition Act Amendment: CCI Gets More Enforcement Tools to Address Emerging Challenges", Moneycontrol (3-4-2023), https://www.scconline.com/blog/post/2023/06/05/the-competition-amendment-act-2023-a-game-changer-for-mergers-and-acquisitions/."

[40] "Mayer-Schönberger, V., & Cukier, K. (2013). Big data: A revolution that will transform how we live, work, and think. Houghton Mifflin Harcourt."

A crucial domain where big data proves invaluable lies in the evaluation and alignment of organizational cultures. The merging entities often bring a diverse blend of corporate cultures, values, and structures into the newly established organization. Big data analytics facilitates a thorough examination of employee sentiments, communication patterns, and organizational hierarchies, offering a profound understanding of cultural intricacies. Employing sentiment analysis tools allows organizations to pinpoint potential areas of discord and implement precise interventions to cultivate a more cohesive and integrated corporate culture.

Furthermore, big data plays a pivotal role in optimizing operational efficiencies throughout the post-merger integration phase. Through the analysis of extensive datasets, organizations can identify redundancies, inefficiencies, and bottlenecks within their processes and systems. This data-centric approach enables the pinpointing of areas where consolidation or restructuring can yield the most significant benefits, resulting in cost savings and enhanced overall performance. For instance, data analytics can be applied to scrutinize supply chain processes, customer service interactions, and financial workflows, providing valuable insights that inform decision-making processes in the integration journey.

In the financial domain, big data analytics contributes to assessing the financial well-being of the amalgamated entity. By consolidating financial data from the merging organizations, finance teams can conduct comprehensive analyses to evaluate the merger's impact on key financial metrics. This encompasses assessing the profitability of various business units, scrutinizing cash flow dynamics, and projecting future financial performance. The insights derived from big data analytics in this context play a crucial role in formulating robust financial strategies and mitigating potential risks associated with the merger.[41]. Moreover, big data analytics facilitates the implementation of customer-centric post-merger integration strategies. Analyzing customer data from both merging entities allows organizations to gain a holistic understanding of customer preferences, and expectations. This insightful perspective enables the development of targeted marketing strategies, the creation of personalized customer experiences, and the optimization of product and service offerings.

The outcome is a more customer-focused approach to post-merger integration, ultimately enhancing customer satisfaction and retention. Successful execution of Post-Merger Integration (PMI) necessitates detailed planning, robust leadership, and proficient communication. It demands a holistic, interdisciplinary strategy that involves the active participation of diverse functional sectors and stakeholders. The efficacy of PMI is frequently gauged by the rapid attainment of integration objectives while ensuring the seamless continuity of business operations and maintaining high levels of customer satisfaction.

Analysis

Impact of big data mergers on consumers

Big data-driven mergers can have a profound impact on consumers by reshaping the dynamics of the market and influencing their overall experience. One significant positive effect stems from the potential for improved personalization and customization of products and services. The amalgamation of extensive datasets from merged entities can enable a deeper understanding of consumer preferences and behaviors, allowing for the delivery of more targeted and relevant offerings.[42]. This enhanced personalization may lead to increased customer satisfaction and a more tailored consumer experience.

However, there are also notable concerns associated with big data-driven mergers. The collection and integration of vast amounts of consumer data raise privacy issues, as consumers may worry about the security and responsible use of their personal information. Striking the right balance between leveraging big data for business insights and safeguarding consumer privacy becomes crucial in these scenarios. Additionally, the consolidation of data within merged entities may lead to market concentration, potentially reducing competition and limiting choices for consumers.[43]. While big data-driven mergers offer opportunities for enhanced

[41] "LaValle, S., Hopkins, M. S., Lesser, E., Shockley, R., & Kruschwitz, N. (2011). Big data, analytics, and the path from insights to value. MIT Sloan Management Review, 52(2), 21-32."

[42] "Shaver, J.M., 2006. A paradox of synergy: contagion and capacity effects in mergers and acquisitions. Acad. Manag. Rev. 31 (4), 962–976. Sheng, M.L., Hartmann, N.N., 2019. Impact of subsidiaries' cross-border knowledgetacititness shared and social capital on MNCs' explorative and exploitative innovation capability. J. Int. Manag. 25 (4), 100705."

[43] "M.M. Moeini Gharagozloo, C. Chen, A. Nair, A. Moeini Gharagozloo, Journal of Global Information Technology Management 25, 159 (2022)."

personalization and efficiency, careful attention must be paid to privacy considerations and the potential impact on market competition. Balancing the benefits of data-driven insights with consumer privacy protection is crucial to fostering a positive and sustainable environment for consumers in the wake of such mergers.[44].

Looking at another unexplored aspect, the post-merger integration of big data, it again presents both opportunities and challenges for businesses. From a favorable perspective, the amalgamation of datasets resulting from merged entities has the potential to generate a substantial amount of information. When appropriately analyzed, this data can offer valuable insights into consumer behavior, market trends, and operational efficiencies. This enhanced data analytics capability can lead to more informed decision-making, improved strategic planning, and a competitive edge in the marketplace. Moreover, big data post-merger integration can facilitate the development of innovative products and services.[45]. The synergies between datasets may uncover new opportunities for cross-selling or upselling, as well as the ability to create more personalized and targeted offerings. This, in turn, can enhance the overall customer experience and loyalty. However, there are also challenges associated with post-merger big data integration. One significant concern is the need to harmonize disparate data systems and ensure data quality and consistency across the merged entities. Technical, organizational, and cultural challenges may arise in aligning different data management practices and infrastructure, requiring careful planning and execution.

Impact on small firms

The impact of mergers driven by big data on small firms is currently undergoing substantial changes, reflecting a dynamic interplay of challenges and opportunities within the business analytics domain. In today's corporate landscape, prominent enterprises are increasingly prioritizing big data strategies as a central element of their mergers and acquisitions (M&A) initiatives. This trend presents small firms with a nuanced scenario where they must navigate intricate complexities to harness the advantages of data-driven integration. A notable trend revolves around the technological divide between large acquiring entities and smaller firms during big data-driven mergers. The substantial data infrastructure and advanced analytics capabilities possessed by larger organizations pose challenges for their smaller counterparts. Bridging this technological gap necessitates strategic investments in scalable data infrastructure and the enhancement of workforce skills to ensure a seamless integration process. Additionally, the complexity of aligning diverse datasets and operational systems underscores the importance of meticulous planning and strategic foresight for small firms.

Despite these challenges, discernible trends offer avenues of opportunity for small firms. The increasing accessibility to advanced analytics capabilities and extensive datasets from acquiring entities is becoming more prevalent. This trend aligns with the growing recognition that data-driven decision-making is crucial for sustained business success. Small firms can leverage this trend to refine their operational strategies, enhance efficiency, and elevate customer experiences, positioning themselves for sustainable growth in the post-merger landscape.

To foster a balanced future amidst these trends, strategic suggestions can guide small firms in optimizing their response to the inherent challenges and opportunities in big data-driven mergers. Foremost, there is a critical need for small firms to strategically invest in technological capabilities. This involves adopting scalable data infrastructure and embracing cloud-based solutions to facilitate integration with larger entities. Simultaneously, upskilling the workforce to proficiently engage with advanced analytics tools is imperative for maximizing the benefits of the integrated data environment.

Strategic partnerships and alliances emerge as a viable options for small firms aiming to capitalize on big data advantages without undergoing a full-scale merger. Collaborative ventures with larger entities can provide access to shared data resources, fostering mutual growth without the operational complexities associated with integration. This approach enables small firms to strategically tap into the benefits of big data while preserving their agility and independence. Emphasizing data security and compliance is paramount, given the heightened focus on data privacy and security. Small firms must establish robust measures to ensure

[44] "Suo, L.; Yang, K.; Ji, H. The Impact of Technological Mergers and Acquisitions on Enterprise Innovation: A Review. Sustainability 2023, 15, 12883. https://doi.org/10.3390/su151712883."

[45] "Rinkesh Jindal, Data Integration after Mergers and Acquisitions, https://rinkeshjindal.medium.com/data-integration-after-mergers-and-acquisitions-m-a-366021c7b47c."

compliance with data protection regulations, involving the implementation of stringent security protocols and transparent communication practices to build and maintain trust among customers and stakeholders. Cultivating an adaptive organizational culture is equally critical. Small firms should foster a mindset shift towards embracing data-driven decision-making as a strategic imperative. Encouraging continuous learning, adaptability, and a culture of innovation will be instrumental in navigating the evolving landscape of big data-driven mergers.

Tailoring integration plans to the unique needs and resources of small firms is essential. Acknowledging the specific challenges faced by smaller entities, integration processes should be designed with flexibility and scalability in mind, ensuring a smoother transition. This allows small firms to capitalize on big data advantages without feeling overwhelmed by integration complexities. Continuous monitoring and evaluation are integral to small firms' success in the post-merger landscape. Establishing mechanisms for ongoing assessment of integrated systems, refining processes based on insights, and adapting strategies to changing market dynamics contribute to sustained success. Creating a balanced future for small firms amidst big data-driven mergers requires a strategic, adaptive, and proactive approach. By embracing technological advancements, fostering a data-centric culture, and exploring collaborative partnerships, small firms can position themselves to navigate challenges and leverage opportunities successfully in the evolving landscape of data-driven business. Through meticulous planning, implementation, and continuous improvement, small firms can not only survive but thrive in the era of big data-driven mergers.

Conclusion

In conclusion, the authors have navigated through the complexities of big data, shedding light on its potential benefits and inherent challenges. From transitioning through the realms of data acquisition, storage, processing, and the authors have effectively conveyed the critical role of big data analytics in making informed decisions, optimizing operations, and enhancing customer experiences. The significance of big data in the context of competition, data privacy, and mergers and acquisitions has been thoroughly examined. The paper has highlighted the challenges and opportunities associated with big data-driven mergers, emphasizing the need for regulatory oversight to ensure fair competition and the protection of consumer privacy. The paper concludes by underlining the ongoing challenges and the potential ways forward, urging for a balanced approach that harnesses the benefits of big data while safeguarding consumer privacy and promoting healthy competition in the market. In essence, this research contributes valuable insights into the ever-evolving landscape of big data, offering a nuanced understanding of its implications across various domains and providing a foundation for further exploration and discourse in this dynamic field.

* * * *

SHAREHOLDER ACTIVISM IN THE INDIAN CORPORATE GOVERNANCE - CHALLENGES AND OPPORTUNITIES

Saumya Dwivedi *

Abstract

Recent years have seen a paradigm shift in corporate governance as shareholder activism has grown to become a potent force influencing business decision-making throughout the globe. This study explores the dynamic realm of corporate governance in the Indian context and looks at the substantial influence that activist shareholders have on the decision-making processes of Indian companies. India's business sector has experienced significant transformation due to the nation's continuous economic growth and integration into the global economy. As the corporate climate changes, activist shareholders have become important players. They challenge established procedures and demand changes that are in line with their objective of increasing shareholder value. Hence, this research contributes to the discourse on corporate governance at a period of heightened shareholder involvement by highlighting the need for a comprehensive understanding of shareholder activism in the Indian context and its noteworthy influence on corporate decision-making.

Keywords : Corporate Governance Reforms, Shareholder Activism, Financial Impact, SEBI, Company Act

Introduction

One of the main and revolutionary elements in the contemporary corporate governance environment that is transforming how businesses function internationally is shareholder activism. Based on the principles of corporate ownership, this tactic entails shareholders utilizing their ownership stakes in a firm to sway significant organizational changes. Shareholder activism has grown into a potent instrument with the capacity to actively engage with firms, critically scrutinize strategic decisions, advocate for legislative reforms, and demand more transparency from boards and management teams. Redefining the conventional paradigms of corporate governance, this strategic approach has acquired significant popularity in recent years and is based on the concept of corporate democracy. An indication of investors'active participation is shareholder activism, which represents a paradigm change in the corporate world. Previously, passive participants and shareholders are now active players who use their rights and obligations to shape business strategy and policy. Activist shareholders are more than just investors when they use their ownership positions to force corporations to adopt more responsible and responsive business practices and to challenge established business practices. The desire to create long-term value is the driving force behind shareholder activism. Activist investors frequently focus on underperforming businesses, pressuring them to enhance governance frameworks, maximize operational efficiency, and make sure that capital is allocated prudently. By doing this, they want to strengthen the organization's overall financial health, promote sustainable growth, and increase shareholder value. The stability and resilience of the larger economic environment are also enhanced by this calculated intervention, in addition to the advantages to the owners. Furthermore, the impact of shareholder activism has increased due to the development of digital technologies and social media platforms. Online forums give investors a great place to work together, exchange ideas, and rally support for their causes. The digital domain functions as a stimulant, expediting the spread of knowledge and enabling group initiatives, thereby amplifying the influence of shareholder activism on an international level.[1]

Rise of Shareholder Activism

Over the past few decades, shareholder activism has become a significant force that is changing corporate governance practices globally. This tendency began as shareholders began to demand more accountability, openness, and responsiveness from the businesses they invested in. In the past, stockholders were assigned

* **Final Year LLM, Bennett University, Noida, Uttar Pradesh.**

[1] Vijay Kumar Singh, Recent Developments in Corporate Governance in India: Role of Shareholder's Activism, 1, Journal on Governance, 297 (2010).

to passive positions with little to no control over important corporate decisions. But following massive financial crises and corporate scandals, shareholders started to stand up for their rights, calling for radical adjustments and a bigger say in the long-term plans of the companies they backed. This new wave of activism includes a wide range of tactics, all of which are carefully crafted to exert influence and bring about change within corporate organizations. Shareholder activism comes in various forms Proxy Contests, Shareholder Resolution, Litigation, Interaction with Management, Media Campaigns, etc.

Moreover, a rising disenchantment with traditional corporate structures that hitherto neglected the role of shareholders has spurred shareholder activism. Investors have been disillusioned and have taken to the streets, calling for a greater say in the policies, morality, and general management of the businesses in which they own stock. This paradigm change denotes a break from the previous passive investor mentality, as shareholders are increasingly actively involved in companies, raising concerns about corporate decisions, pressing management for answers, and requiring more accountability. Following this paradigm change, there has been a rise in the use of shareholder activism as a way to make companies answerable for their deeds. Activist shareholders carefully manage their stakes in firms, using their financial power to bring about revolutionary change.

Literature Review

Mishra V. (2022)[2]- This study aims to investigate how legislative procedures that masquerade as corporate governance are gradually and persistently intruding on shareholders' democratic rights.

NagalakshmiM.V.R. (2020)[3]- This article examines whether shareholder sovereignty promotes corporate governance to solve these concerns. To address this topic, the researcher employs a doctrinal approach, gathering information from primary and secondary sources.

Singh V.K. (2010)[4]- The importance of Shareholder Activism, which was important in uncovering the Satyam scam, is highlighted in this article.

Facet of Corporate Governance & the Shareholder Activism

Legal Framework

The nation's dedication to promoting open, responsible, and morally sound business practices is reflected in the careful weaving together of legislative mandates, regulatory frameworks, and voluntary norms that make up India's corporate governance structure. The Corporations Act of 2013, a historic piece of law that forms the cornerstone dictating how corporations operate in India, sits at the heart of this framework. The cornerstone of India's corporate governance framework is the Companies Act of 2013, a thorough and all-encompassing regulation. It meticulously lays out a broad variety of guidelines meant to promote the highest standards of accountability, transparency, and morality inside business entities. These regulations cover a wide range of topics, from board composition to financial reporting, to guarantee a comprehensive approach to corporate governance. The unwavering emphasis on openness is one of the primary characteristics of the Companies Act, 2013.

Impact on Decision-Making Procedures

To give stakeholders trustworthy information about the company's financial health, businesses must keep clear, accurate, and up-to-date financial records. This openness promotes informed decision-making and fosters shareholder trust at all organizational levels. Furthermore, the Act places a strong emphasis on accountability. Corporate directors have a fiduciary duty to act in the company's and its shareholders' best interests. They are held accountable for their decisions and deeds, and they have processes in place to regularly monitor their behavior. This strict accountability system guarantees that business executives are held accountable for their activities and serves as a deterrent against malpractices. Good corporate governance standards are promoted under the Companies Act, of 2013, in addition to accountability and openness. It

---

[2] Shareholder Democracy vis-a-vis Changing Landscape of Corporate Governance, 4 Indian Journal of Law and Legal Research, 1 (2022)

[3] Is Shareholder Activism - A True Means to Corporate Governance, 17 Supremo Amicus, 247 (2020)

[4] Recent Developments in Corporate Governance in India: Role of Shareholder's Activism, 1, Journal on Governance, 297 (2010)

ensures a fair and impartial decision-making process by requiring the creation of independent audit committees and boards with a range of specializations. The Act also promotes a corporate culture that values honesty and integrity by encouraging businesses to embrace ethical practices.[5] Regulatory agencies like theSEBI, which support legislative measures, are essential in forming India's corporate governance framework. The corporate governance structure is further improved by the rules and recommendations that SEBI, the regulating body for the Indian securities industry, produces. These laws, which address issues like insider trading, disclosures, and shareholder rights, strengthen the moral foundation of the Indian business community. Furthermore, the corporate governance system in India transcends legal and regulatory limitations. Companies can find a blueprint for best practices through voluntary standards like the Corporate Governance Voluntary Standards of 2009.[6] Although not legally obligatory, these standards provide a standard for businesses striving for superior corporate governance. These optional criteria greatly enhance the nation's overall standards of corporate governance by incentivizing enterprises to beyond the legally prescribed requirements.

One important component of corporate governance is shareholder activism, which is the range of tactics used by shareholders to exert control over the management and operations of businesses to protect their investments and promote sustainable growth. This practice has been more prevalent in India in recent years, particularly in the realm of publicly traded corporations.[7]

Maximization of the Shareholder Value

There are many different ways that shareholder activism takes shape. Direct communication with management promotes open channels of communication by enabling shareholders to voice issues, suggest modifications, and request clarifications. Formal proposals that address matters such as CEO remuneration, board composition, and corporate policy can also be filed by shareholders and put to a vote at shareholder meetings. More forceful activists turn to proxy fights, organizing other shareholders to elect candidates who share their values with the board instead of outgoing members.

When everything else fails, legal options, including lawsuits, may be explored. Activist shareholders concentrate on making sure that the targeted corporations conform to better governance procedures and have more accountability and transparency. They are ardent supporters of policy improvements, pushing for adjustments that serve the interests of shareholders. They frequently ask for the board to be reorganized, CEO compensation structures to be reviewed, and financial performance indicators to be improved. To solve these issues, the board of directors, as the guardians of corporate governance, is essential.

Activism by shareholders serves as an essential check and balance against actions made by managers. Actor shareholders uphold responsibility by closely examining management's activities, suggesting changes to the company's direction, and advocating for optimal governance procedures. Their efforts promote stakeholder confidence by improving corporategovernance standards. The increased level of inspection guarantees that businesses function morally, protecting the investments of shareholders and maintaining their faith in management. Activism by shareholders may have a lot of beneficial effects. In the first place, it encourages responsibility and openness in corporate governance. Improved governance also promotes trust, which increases investor confidence. Second, activists have the power to spark improvements in financial performance that will benefit both the firm and its shareholders by pushing for cost-cutting and strategic adjustments.[8]

Tata Sons – Cyrus Mistry Controversy

The sudden resignation of Cyrus Mistry from Tata Sons as chairman in 2016 caused a stir in India's business community. The alleged irregularities in the Tata Group's management were the source of the dispute. The complex legal struggle that resulted from this issue represents one of the biggest examples of shareholder activism in the corporate history of India. A thorough investigation of the company's internal operations was

[5] Malini Mukherjee, Incorporating Shareholder Ratification in the Companies Act, 2013: Relevance for Corporate Governance, 6, Journal on Governance, 148 (2023).

[6] M. V. R. Nagalakshmi, Is Shareholder Activism - A True Means to Corporate Governance?, 17, Supremo Amicus, 247 (2020).

[7] Ibid.

[8] Nagesh Rudrakanthwar, Recent Trends in Shareholder Activism and Its Impact on the Firm's Financial Performance and Its Governance, 4, Indian Journal of Law & Legal Research, 1 (2022).

started after shareholders voiced concerns over corporate governance standards. The disagreement brought to light issues with Tata Sons' governance and sparked a wider discussion about responsibility, transparency, and the role of shareholders in business decision-making.[9]

L&T – Mindtree Acquisition

The well-known engineering firm Larsen & Toubro (L&T) started an audacious and aggressive acquisition attempt for Mindtree, a well-known provider of software services, in 2019. A high-stakes struggle that captured the interest of the business world resulted. The founders of Mindtree and the current management fiercely opposed L&T's developments, exemplifying a conflict of corporate values.

This power struggle was a war for the company's spirit and identity and wasn't just about the statistics. L&T managed to get a controlling share in Mindtree after a lengthy negotiating process driven by Mindtree's determination and L&T's perseverance. This acquisition story was used as a case study, shedding light on the intricacies of business acquisitions, the value of organizational culture, and the tactical approaches taken by firms seeking to grow and consolidate.[10]

Challenges and Controversies

Several controversial and well-known activist campaigns that have sparked public controversy and prompted inquiries about the morality and techniques of shareholder activism have occurred in India in recent years. Activist investors and established business leadership frequently conflict in these efforts, which can result in court cases, negative media coverage, and severe market volatility. Analyzing these contentious instances offers insightful information on the intricacies of shareholder activism in the Indian business environment. Conflicts over board composition, CEO remuneration, and corporate strategy are notable instances that illustrate the underlying conflicts between management prerogatives and shareholder interests.

In India, shareholder activism takes place under a dynamic legal framework. Navigating the complex web of laws regulating corporate governance and shareholder rights is one of the main issues. Activist investors frequently have to choose between upholding corporate boards' autonomy and asserting shareholder rights, among other moral conundrums. Ethical considerations are also raised by issues with stakeholder transparency, possible market manipulation, and the use of privileged information. Regulators, business executives, and activists all constantly struggle to find a balance between shareholder activity and moral and legal bounds.

Shareholder activism's detractors highlight several drawbacks and difficulties with this strategy. A primary critique is on the transient orientation of several activist movements. Critics contend that activists frequently advocate for financial engineering and fast solutions, which could temporarily raise stock prices but hurt the long-term viability of the firm.[11].

The Way Forward instead of Corporate Governance and the Shareholder's Activism

India has undergone a paradigm shift in the management and oversight of corporations in recent years, particularly in the areas of shareholder activism and corporate governance. The Companies Act of 2013 and the strict guidelines established by the SEBI provide the basis for this change. The country's corporate governance procedures have been required by these regulatory frameworks, which place a strong emphasis on responsibility, ethics, and openness in the corporate sector.

The direction of corporate governance in India is toward increased regulatory scrutiny in the coming years. Expected actions include strict compliance standards that call for regular and thorough reporting. In addition, organizations have the option of conducting yearly director performance reviews to make sure that their duties are carried out with diligence. To prevent conflicts of interest and advance fairness, strict regulations about related party transactions are also about to be implemented.It is anticipated that independent directors will continue to play an increasingly important role in governance arrangements.

---

9 Janhavi Rajkumar, Practical Effects of Shareholder Activism in India, 15, Supremo Amicus, 129 (2020).

10 Supra note 7.

11 Heer Kamdar, Shareholder Activism in India: Analysis of Shareholders' Exercise of Their Corporate Franchise in General Meetings (March 5, 2023), http://dx.doi.org/10.2139/ssrn.4378593.

They will probably be in charge of overseeing executive management more effectively and making sure that strategic choices are in line with the goals of the business. Furthermore, these directors may be involved in improving how different board committees operate, thus raising their effectiveness and influence.It appears that institutional investors will play a significant role as change agents in the business environment. It is required of organizations like insurance firms, mutual funds, and pension funds to actively engage with businesses on ESG issues to wield their power. Their active use of their voting rights will be a powerful lever that forces businesses to follow moral standards and environmentally friendly business plans.

Indian businesses are encouraged to proactively embrace best practices in an ever-changing environment, rather than just following these standards as they become established. Keeping up with these developments is not only required by law, but it is also very strategic. Companies may manage the intricacies of the changing corporate governance landscape and attract discerning investors by embracing openness, developing accountability, and incorporating sustainable practices. This ensures long-term success and ethical leadership in the business world.

Conclusion

Corporate governance and shareholder activism have emerged as critical factors influencing the Indian economic environment in recent times. A key component of India's corporate governance structure, the Companies Act of 2013, has significantly altered how businesses are run. Furthermore, these initiatives have been strengthened by the SEBI laws, which have included several measures intended to promote not just compliance but also a true culture of good corporate governance.

These legislative developments represent a change in the direction of encouraging responsibility, justice, and openness among corporate organizations. Such programs not only protect the interests of shareholders but also boost investor trust, opening the door for long-term development and wise decision-making. These rules have had a significant influence, causing Indian firms to reconsider their methods and adopt a more moral and open strategy.

The Indian corporate governance scene is changing, and new changes are anticipated. Changes that are anticipated include stricter regulations, more protection for shareholder interests, and a clear focus on sustainable business practices. The role of institutional investors is certain to evolve as businesses adjust to these developments. An age of increasing investor activism is predicted to be ushered in by the growing power of mutual funds, pension funds, and insurance corporations.

Businesses that disregard the importance of shareholder rights and corporate governance face serious consequences. They run the danger of losing investors' trust and passing up priceless chances for expansion and improvement. As such, it is now essential for businesses to give top priority to putting strong corporate governance frameworks in place. This entails not just following the law but also implementing best practices and being proactive in resolving shareholder concerns.Effective company governance fundamentally provides a variety of advantages. They offer careful supervision, support thoughtful, strategic decision-making, and encourage significant stakeholder participation. When used responsibly, shareholder action is essential to this ecosystem. It ensures that businesses are held to the highest standards, fosters a culture of responsible investing, and acts as a catalyst for accountability and transparency.

* * * *

UNRAVELING THE TAPESTRY OF COPYRIGHT INFRINGEMENTS IN INDIA & ENTERTAINMENT LANDSCAPE: A CRITICAL ANALYSIS

Bagath Manish *
Priyanka Ratha **

Abstract

A famous urban myth says that the Mughal emperor Shah Jahan cut off the hands of laborers who built the Taj Mahal to prevent its replication. However, in today's generation, the idea of copyright is a little different. The prevailing milieu is characterized by robust copyright laws that have consistently demonstrated their efficacy in safeguarding intellectual property rights. It is plausible to hypothesize that these well-established legal safeguards not only deter unauthorized copying but also foster an environment conducive to creative innovation. This paper is posed to conduct a comprehensive and critical analysis of copyright violations within the entertainment industry in India, examining the underlying factors, legal frameworks, enforcement mechanisms, and their impact on creative innovation and intellectual property rights protection. The findings indicate that despite the solid laws to protect intellectual property rights, it's met with impediments that are dealt with as quickly as possible as the widespread availability of digital platforms and the internet has exacerbated the problem, leading to rampant piracy and infringement of intellectual property rights. This paper suggests a stronger hold on the field of law and technology, stricter enforcement of copyright laws, removal of pirated content incentives, and use of more advanced anti-piracy software.

Keywords: ***Copyright, Intellectual property, Creative innovation, Entertainment industry, Piracy***

Introduction

Copyright infringements like piracy have been an omnipresent obstacle that affects the Entertainment Industry and has been detrimental to factors like creativity, innovation, growth, and development. Between 2005 and 2013, there was a significant rise in global feature film production, reaching a peak of 7,610 films produced. A substantial portion of this output came from the top five leading countries in film production, with India taking the lead.[1] Therefore, India being one of the leading producers of films and music, faces several consequential challenges on account of copyright infringements such as piracy. India has enacted various laws and acts to prevent further ruckus in violations of Intellectual Property Rights like the Cinematograph Act, of 1952, the Indian Copyright Act, of 1957, and the Information Technology Act, of 2000.

Over the years, India's approach to copyright violations has changed significantly, especially with the Indian Copyright Act of 1957. Copyright, a type of Intellectual Property Right, protects literary and artistic works, encouraging artistic endeavors. Indian copyright law dates back to 1847. Before independence, the Copyright Act of 1911, modeled after English law, governed it.Post-independence, the 1957 Act replaced the 1914 Act and has been amended to broaden its scope. The 2012 amendment targeted digital platform infringements to curb online piracy. Other key laws include the Cinematograph Act, of 1952, the Information Technology Act, of 2000, and the Indian Penal Code, of 1860. These efforts have significantly reduced copyright violations in India.However, despite the present legislation, the challenge of online piracy and copyright infringements continues to persist due to rapid technological developments and a lack of proper implementation.

Films

The Indian Copyright Act, of 1957 governs the matters relating to copyright infringements of Intellectual Property in India. The following sections deal with copyright violations in the entertainment industry for matters relating to copyright infringement of cinematograph films:

* **Student, Christ (Deemed to be University), Bengaluru, Karnataka**

** **Student, Christ (Deemed to be University), Bengaluru, Karnataka**

[1] UNESCO institute for statistics, Diversity and the film industry analysis of the 2014 UIS Survey on Feature Film Statistics 5, 7 (2016)

It is a major legal framework that deals with copyright infringements and piracy. Even though there is no explicit mention of online piracy of cinematograph films, various High Court and Supreme Court orders have interpreted the abovementioned laws to prohibit digital piracy of cinematograph films.

In Star India (P) Ltd. v. 7Movierulz.TC, The Delhi High Court illustrated the widespread proliferation of websites, particularly those hosting popular copyrighted material. The Plaintiff's ownership of the rights in question is undisputed. Furthermore, various government agencies and internet service providers have complied with the court's orders regarding this matter. However, the challenge lies in identifying the individuals or entities behind these infringing websites, as they often remain anonymous or known only to a few parties.

Given this situation, concerning rogue and mirror websites, where no representation or defense has been presented, a permanent injunction against infringement is justified.[2] Moreover, due to the substantial number of websites found to be infringing the Plaintiff's copyright, the court also decrees damages of Rs. 20,00,000/- against the Defendants. These damages are to be paid jointly and severally by the mirror websites mentioned in paragraph 9 of the case.[3]This analysis highlights the complexity of dealing with online copyright infringement, especially when perpetrators hide their identities. It also emphasizes the importance of legal measures to protect intellectual property rights in the digital age.[4]

In the case of S. Thanu v. Government of Tamil Nadu (2016),Kabali, a film by the superstar Rajnikanth tried its level best to stop any such copyright infringement. Producer Kailapuli S. apprehended the piracy problem and moved to the Madras High Court. In a writ petition filed before the Hon'ble High Court, he requested to forbear internet service Page: 107 providers and websites from screening or telecasting the movie before its release on the 26 of July 2016. In the subsequent ruling, the court banned all kinds of screening or telecasting of the movie before its release.[5]

The John Doe jurisprudence

In the grand theater of justice, there exists a powerful decree known as the John Doe Orders, or as some whisper in hushed tones, the Ashok Kumar Orders. This decree, rooted in the profound principle that "if the accusing finger points towards shadows, the lack of a name is but a triviality," cast aside the shackles of anonymity that often obstruct the pursuit of truth and justice. It is a clarion call that echoes through the corridors of law, declaring that the mystery shrouding a defendant's identity shall not stand as a barrier to the righteous enforcement of justice's mighty sword.[6] John Doe orders are given by the courts to hold anonymous infringers of copyright liable for online piracy through injunctions and bans of ISPs, URLs, and websites. John Doe orders are a popular way of handling copyright infringement and online piracy in India. In the case ofRed Chillies Entertainment case, The Delhi High Court ordered an injunction and block of various websites for infringement of copyright subject to illegal distribution of copies acquired.[7]

The Information Technology Act, of 2000 lays down various to battle cybercrimes which include online piracy of cinematograph films. Section 66 of the aforementioned act deals with matters like illegal online distribution of copyrighted work and prescribes punishment of imprisonment of up to 2 years.

Section 4 of the new Cinematograph (Amendment) Bill, 2023 introduces sections for combating online piracy. Section 8 of the Cinematograph (Amendment) Bill, 2023 provides for the insertion of Clause 6AA and 6AB under section 6A of the parent act for the prohibition of piracy and creation of infringed copies of copyrighted film or its part thereof and its distribution in public for profit.[8] Section 9 of the aforementioned bill provides for the insertion of sub-clauses 1A and 1B under Section 7 of the parent act.

---

2 2022 SCC Online Del 2744

3 *Id.*

4 *Id.*

5 S. Thanu v. Government of Tamil Nadu, W.P. No. 24582 of 2016.

6 Shristi Talukdar, John Doe Jurisprudence- The Much-Awaited Hero of Bollywood, SCC ONLINE (Jan 20, 2021), https://www.scconline.com/blog/post/2021/01/20/john-doe-jurisprudence-the-much-awaited-hero-of-bollywood/#:~:text=John%20Doe%20orders%20are%20based,impediment%20in%20implementation%20of%20justice.

7 Red Chillies Entertainments (P) Ltd. V. Ashok Kumar/John Doe, 2023 SCC OnLine Del 2384.

8 Cinematograph (Amendment) Bill, 2023, § 8, No. XLVI, Acts of Parliament, 2023 (IN).

Sound Recordings

The Indian Copyright Act, 1957[9] Also governs matters related to copyright infringements of sound recordings in India. In the realm of Indian law, the shield of copyright protection unfurls in two grand forms: Economic Rights, outlined within the sacred scrolls of Section 14 of the Copyright Act, and Moral Rights, enshrined in the hallowed verses of Section 57 of the same act. These rights, akin to the dual blades of a noble warrior, defend the realm of creativity with both the power of prosperity and the might of dignity.

In R.G. Anand v. M/S Delux Films and Ors.[10]The Supreme Court for the first time emphasized this and materialized this[11]. Where it laid down the following proposition to determine the breach of copyright.[12]

In Tips Industries Ltd. v. Wynk Music Ltd.[13], In this case, Tips Industries, a prominent music company in India, filed a lawsuit against Wynk Music, a music streaming service. Tips Industries accused Wynk Music of allowing its users to access and stream Tips Industries' sound recordings without obtaining proper licenses. This case addressed issues related to online streaming and the need for licensing agreements to avoid copyright infringement.

Copyright protection serves to safeguard the rights of intellectual property creators, with the initial ownership vested in the author, as defined by Section 2(d) of the Copyright Act.[14]For sound recordings, the creator, typically the person with the recording equipment, owns the copyright. According to the Copyright Act, only this owner can authorize the use or distribution of the recording. Others must obtain permission to use the work.

Sound recording copyright usually belongs to producers, labels, or studios but can be shared with artists via contracts. It covers the recording, not lyrics or music, which belong to their creators. The Supreme Court in IPRS Society v. EIMP Association clarified that composers and lyricists initially held these rights. Producers need their permission to create and distribute recordings. This ruling balances copyright ownership.Additionally, if a producer commissions a composer or lyricist to create music or lyrics for their cinematograph film under Section 17, the producer becomes the primary copyright owner.[15]

The Fair use doctrine

In a dramatic twist of legal innovation, the Berne Convention unveiled a groundbreaking concept within Article 9, Section 2—the Three-Step Test, heralding a new era of fair use exceptions.[16] This test essentially empowers individual legislation to permit the reproduction of certain works under specific circumstances.[17] Under certain extraordinary situations, such as in unique scenarios, where reproduction takes place without hindering the rightful utilization of the work and without excessively jeopardizing the author's legitimate interests, these circumstances are deemed permissible.

In the context of the Indian Copyright Act of 1957, as amended in 2012, provisions for fair dealing are outlined in Section 52(1)[18], which exempts certain activities from being considered copyright infringement. While most of the provisions in Section 52(1) apply to all types of copyrighted works, certain provisions are limited to specific types of works. For instance, Section 52(1)(k) pertains to sound recordings that are intended to be heard in a confined space or non-profit club setting. Section 52(1)(z) deals with the storage of sound recordings, and Section 52(1)(za) addresses their performance during religious ceremonies, government events, or marriages.[19]

---

9 Indian Copyright Act, 1957, § No. 14, Acts of Parliament, 1957 (IN).

10 R.G. Anand v. M/S Delux Films and Ors AIR 1978 SC 1613

11 R.G. Anand v. M/S Delux Films and Ors AIR 1978 SC 1613

12 *Id*

13 Tips Industries Ltd. v. Wynk Music Ltd (12019) 4 SCC 268

14 Indian Copyright Act, 1957, § 2(d), No. 14, Acts of Parliament, 1957 (IN).

15 Indian Copyright Act, 1957, § 17, No. 14, Acts of Parliament, 1957 (IN).

16 Mahawar, S. (2022, June 20). What is copyright - leaders? iPleaders. https://blog.ipleaders.in/copyright/

17 Mandhyan, M. (2023, July 28). What Is Fair Use Of Copyright Doctrine? Copyright - India. https://www.mondaq.com/india/copyright/1348352/what-is-fair-use-of-copyright-doctrine

18 Indian Copyright Act, 1957, § 52(1), No. 14, Acts of Parliament, 1957 (IN).

19 *Id*.

In Indian Express Newspapers (Bombay) Private Ltd. v. Union of India (1985)[20], In a landmark ruling, the Supreme Court of India dramatically redefined the boundaries of the "fair dealing" provision within Indian copyright law. The verdict was akin to a legal thunderclap, illuminating the intricacies of permissible use under the law while casting a shadow of uncertainty over previously held assumptions. The court ruled that the reproduction of newspaper articles for reporting current events, without any commercial motive, could be considered fair dealing and not infringe upon copyright.[21]

The Cinematograph Act, 1952 (Amendment Bill, 2023)[22]

While primarily focused on cinematograph films, the Cinematograph (Amendment) Bill, 2023, introduces sections to combat online piracy of sound recordings as well:

(i) Section 8 of the Cinematograph (Amendment) Bill, 2023,[23] Provides for the insertion of Clause 6AA and 6AB under Section 6A of the parent act for the prohibition of piracy and the creation of infringed copies of copyrighted sound recordings or their parts and their distribution in public for profit.

(ii) Section 9 of the aforementioned bill provides for the insertion of sub-clauses 1A and 1B under Section 7 of the parent act.[24] Sub-clauses 1A and 1B provide for punishments for the violation of provisions under Sections 6AA and 6AB concerning sound recordings.

These legal provisions and case laws serve as a comprehensive framework for addressing copyright infringements and piracy related to sound recordings in India.

Analysis

Copyright laws and the entertainment industry are intricately linked together. Copyright laws protect the spirit of innovation and creativity in the entertainment industry by ensuring proper enforcement of intellectual property rights. However, problems like piracy of Intellectual Property Rights prove to be a curse to the Entertainment Industry.

The Copyright Act, of 1957 prohibits the illegal distribution of copyrighted content to the public in Section 51.[25]The Copyright Act falls short in explicitly labeling online movie piracy as illegal. Precedents like S. Thanu and Star India (P) Ltd, demonstrate the need to take action against piracy by shutting down websites and ISPs distributing copyrighted content. Despite these legal measures, piracy continues to thrive, driven by technological advancements and user awareness of the dark web. The problem lies in the Copyright Act's limited implementation and outdated, unclear definitions.

The major challenge to the issue of online piracy is the anonymity and enigma of the defendant. As a general rule, John Doe's orders are used as ex-parte orders to discontinue the illegal streaming of movies.[26] Pirates often remain anonymous, leaving film industry losses uncompensated. To combat this, Bollywood uses John Doe's orders to prevent piracy. For instance, in the case of "Jawan," the Delhi High Court restricted defendants from copying, recording, or distributing any content from the film.

Incorporating the insights from the R.G. Anand v. M/S Delux Films and Ors. Case, it becomes evident that this landmark ruling introduced pivotal principles for assessing copyright infringements.[27] The case underscored that the essence of an idea or plot does not fall under copyright protection; rather, it's the unique presentation or execution that holds significance.If a piece of art or content encourages replication, it could be seen as violating copyright. However, this decision also introduced a subjective aspect to how such instances are assessed.

---

20 *Id.* Indian Express Newspapers (Bombay) Private Ltd. v. Union of India (1985) 2 S.C.R. 287

21 *Id.*

22 Cinematograph (Amendment) Bill, 2023, XLVI, Acts of Parliament, 2023 (IN).

23 Cinematograph (Amendment) Bill, 2023, § 8, No. XLVI, Acts of Parliament, 2023 (IN).

24 Information Technology Act, 2000, § 66, No. 21, Acts of Parliament, 2000 (IN).

25 Indian Copyright Act, 1957, § 51, No. 14, Acts of Parliament, 1957 (IN).

26 Shristi Talukdar, John Doe Jurisprudence- The Much-Awaited Hero of Bollywood, SCC ONLINE (Jan 20, 2021), https://www.scconline.com/blog/post/2021/01/20/john-doe-jurisprudence-the-much-awaited-hero-of-bollywood/#:~:text=John%20Doe%20orders%20are%20based,impediment%20in%20implementation%20of%20justice.

27 *Id.*

Cases like Eastern Book Company v. D.B. Modak and University of Delhi v. U.P. Rajarshi Tandon Open University stress balancing copyright protection with access to educational and legal materials. They differentiate between the non-copyrightable idea and the copyrightable specific expression. These rulings highlight the need to balance knowledge access and copyright interests, though interpretations remain somewhat ambiguous...[28]

The unauthorized distribution of sound recordings remains a pressing issue, despite existing legal provisions. In the EIMP Association case, the Supreme Court clarified the complexities of ownership in sound recordings and underlying works. However, ongoing debates persist regarding the rights of producers and authors in these recordings.

Conclusion

The Indian Entertainment Industry, known for its films and music, faces significant piracy challenges. India has addressed these through laws like the Cinematograph Act, of 1952, the Indian Copyright Act, of 1957, and the Information Technology Act, of 2000. Despite these efforts, the industry continues to struggle with online piracy and copyright issues.

To enhance the effectiveness of piracy laws and protect the creative works of artists and innovators, it is imperative to take proactive measures. Collaboration with law enforcement agencies to improve the enforcement of copyright law and Allocate resources and personnel specifically will combat online piracy. Exploration of advanced anti-piracy technologies and digital rights management systems to deter piracy at its source.

Continuously reviewing and updating copyright laws to address emerging challenges posed by evolving technologies and distribution platforms. Introducing incentives for individuals and entities that actively support copyright compliance, thereby promoting legal consumption of creative works. Encourage collaboration between content creators, distributors, and technology companies to collectively combat piracy while ensuring ease of access to legal content.

* * * *

[28] De Beer, J. (2017). Making copyright markets work for creators, consumers, and the public interest. In R. GIBLIN & K. WEATHERALL (Eds.), What if we could reimagine copyright? (pp. 147–176). ANU Press. http://www.jstor.org/stable/j.ctt1q1crjg.8

ELECTORAL BONDS – A DERISION TO LARGEST DEMOCRACY

Aniket Jana *

Abstract

One of the biggest parts of the heart and soul of democracy is elections and it has always been a heavy-finance-driven process. Since the inception of elections in India, political parties have had to spend a lot on campaigns and the major chunk of such amount comes from donations. In the Budget speech of then finance minister Arun Jaitley India introduced a new and innovative way of taking such donations after amending and repealing many Acts and laws which have always been a center of controversy, and this new way was being called – Electoral Bonds. Since the introduction of this, directly or indirectly the whole process has mocked the Indian democracy and above all public at large.

Keywords : ***Electoral Bonds, Democracy, Right to Information, Political Funding, Government***

Emergence of Electoral Bonds

Every political party since the independence of our country, needs financial support to operate. Previously, with the absence of any system, the big industrialists like Birla and Thakurdas, used to donate directly to the party funds, eventually different rules, systems, and limitations were framed, to minimize the control of donations on the election results.[1]. These industrialists used to donate more to these political parties than to any charitable trust, as they got different paybacks in different forms, moreover with the Income Tax Act, of 1961, 100% tax was deductible u/s 80GGB and 80GGC.

Later in 1969, due to some political tussle, the provisions of political funding of companies as mentioned u/s 293A of the Companies Act, 1953 were repealed, to curb such funding. But by then, the fruits of such funding were being enjoyed by both, the political parties as well as the Industrialists, a mutual quid pro quo was settled and bans on such settlement were not taken in a good way by either of such parties, which again gave rise to large number of illegal transfersthat later got busted through*Graphite India Ltd. And Anr. V. DalpatRai Mehta and Anr.,1978*[2]Case.

With the increase of unregulated illegal means of funding, the then government struck off the ban on political funding under the Companies Act, of 1956 though with some limitations and a cap of regulated 5% of Industry profits as donations.[3] Which was later increased to 7.5% of the profits, with a numerical cap of 25,000 rupees[4], with an Annual report to be submitted with the donation numbers with exact designations.

Nevertheless, loopholes were still found and misused by political parties, even after the *Union of India V. Association of Democratic Reform and Anr.*[5]*,which* opened the background of candidates of the election, and amendment of Section 29C of the Representation of People Act, 1951. Thus, to tackle this black money problem and illegality, the then Finance Minister, Late Arun Jaitley introduced the concept of Electoral Bonds for Political Funding[6].

* **4th year BA. LL.B Student, Calcutta University, West Bengal.**

1 Taylor, D. (1987). The Indian National Congress: A Hundred-Year Perspective. The Journal of the Royal Asiatic Society of Great Britain and Ireland, 2, 303-304. http://www.jstor.org/stable/25212154

2 Graphite India Ltd. And Anr. v. Dalpat Rai Mehta And Anr., [1978]48COMPCAS683(CAL), 82CWN903

3 Mitta, M. (2013) Lifting of ban on political donations introduces conflict between Companies Act and IT Act, India Today. Available at: https://www.indiatoday.in/magazine/cover-story/story/19930715-lifting-of-ban-on-political-donations-introduces-conflict-between-companies-act-and-it-act-812073-1993-07-14 (Accessed: 14 May 2024).

4 Mahapatra, D. (2024) Unlimited corporate aid allows unrestrained clout on polls: Supreme Court: India News - Times of India, The Times of India. Available at: https://timesofindia.indiatimes.com/india/unlimited-corporate-aid-allows-unrestrained-clout-on-polls-supreme-court/articleshow/107733166.cms (Accessed: 14 May 2024).

5 Union of India v. Association of Democratic Reform and Another [2002] (3) SCR 294

6 (2017) Budget 2017 full speech: Full text of FM Arun Jaitley Speech on budget 2017: India Business News - Times of India, The Times of India. Available at: https://timesofindia.indiatimes.com/business/india-business/union-budget-2017-full-speech-of-finance-minister-arun-jaitley/articleshow/56913593.cms (Accessed: 14 May 2024).

The donors now have to buy electoral bonds of 1000, 10,000, 1,00,000, 10,00,000, and 1,00,00,000 rupees.[7]on the 1st to 10th of January, April, July, and October from 29 selected branches of the State Bank of India[8], and give it to any political party within 15 days of such purchase, who is registered u/s 29A of Representation of People Act, 1951 and secured more than 1% of the total vote in the last general election. Thus, removing any limitation and cap on donations.[9].

The Quid Pro Quo System

In the recent landmark case, *Association of Democratic Reform and Anr. V. Union of India and Ors. 2024*[10], the main allegation that was labeled on the system of electoral bonds scheme was the "quid pro quo" system that the political parties and business entities had with it[11]. The Supreme Court stated, "contributions made by companies (on Electoral Bonds) are purely business transactions made with the intent of securing benefits in return"[12]. The electoral bonds were proposed to be a completely anonymous donation that is not traceable to the source or the destiny and promoted as a tool with high-end privacy on both ends, but an investigative journalist buying 2 bonds and testing them in Forensic Laboratories revealed hidden unique codes which were useful to trace data[13]. Though primarily the same was denied by the Ministry of Finance[14] But later by the RTI filed by Lokesh Batra, SBI agreed that bonds are traceable.[15]. Now, the question arises, why are electoral bonds being traceable a big issue? The traceability of bonds has two major implications:

- As to supporting a party in power in a state or central
- As to supporting a party in opposition in a state or central

When a company buys electoral bonds to donate the same to a party in power, the company with this transaction, gets into a plethora of opportunities, and exposures and transforms itself into the first preference of the government for different projects.

On the other hand, when a company is donating to an opposition party, due to its traceability, the data, if reaches the other deprived party, can by different means compel the companies to donate them.The implications of the electoral bonds can be more easily understood by some case studies,

The Construction Companies - a construction company namely, "Ranjit Buildcon" which was booked for different negligent accidents were continuing to get different construction projects of government, and recent records reveal the company bought nine crores worth of electoral bonds between January to July of the previous year.[16].

Similarly, "Megha Engineering and Infrastructures Limited (MEIL)" donated a whopping 966 crores on Electoral Bonds between 2019 to present[17]. In return, the company got a massive project in June 2019, under

7 Quint, T. (2019) Elections are coming – and there's a problem with electoral bonds, TheQuint. Available at: https://www.thequint.com/podcast/what-are-electoral-bonds-supreme-court-india-2019-elections-podcast (Accessed: 14 May 2024).

8 Das, A. (2019) Sale of electoral bonds at authorized SBI branches from Tuesday, Zee News. Available at: https://zeenews.india.com/india/sale-of-electoral-bonds-at-authorised-state-bank-of-india-sbi-branches-from-tuesday-2237710.html (Accessed: 14 May 2024).

9 (2020) Lok Sabha elections 2019: All you need to know about electoral bonds, Hindustan Times. Available at: https://www.hindustantimes.com/lok-sabha-elections/lok-sabha-elections-2019-all-you-need-to-know-about-electoral-bonds/story-R0XyfNKYU0jAa8n38FSypO.html (Accessed: 14 May 2024).

10 Association For Democratic Reforms vs Union Of India [2024] INSC 113

11 Rajagopal, K. (2024) Supreme Court declares electoral bonds scheme unconstitutional, The Hindu. Available at: https://www.thehindu.com/news/national/electoral-bonds-scheme-unconstitutional-sbi-should-reveal-the-details-of-donors-rules-sc/article67848211.ece (Accessed: 14 May 2024).

12 *ibid.*

13 Mahaprashasta, A.A. (2024) ' Unique numbers recorded by Sbi': Investigative journalist who bought the electoral bond, The Wire. Available at: https://thewire.in/politics/unique-numbers-recorded-by-sbi-investigative-journalist-who-bought-electoral-bond (Accessed: 14 May 2024).

14 The government clarifies the in-built security features of the Electoral Bonds (2018) Ministry of Finance. Available at: https://pib.gov.in/newsite/PrintRelease.aspx?relid=178726 (Accessed: 14 May 2024).

15 Ahmed, S. (2023) Lokesh Batra: The war veteran on a mission to tackle the Electoral Bonds Scheme, The Wire. Available at: https://thewire.in/rights/lokesh-batra-electoral-bonds-scheme-rti (Accessed: 14 May 2024).

16 Mazoomdaar, J. (2024) In the list, of firms in Uttarakhand Tunnel Collapse, others with a dodgy record, The Indian Express. Available at: https://indianexpress.com/article/india/in-the-list-firm-in-uttarakhand-tunnel-collapse-others-with-a-dodgy-record-9217031/ (Accessed: 14 May 2024).

17 F. Khan, (2024). Electoral Bonds Data: Who's Behind MEIL, Linked to Donations Worth Rs 1,200 Cr? [Online]. Available at: https://www.thequint.com/news/politics/electoral-bonds-megha-limited-pp-reddy-telangana-bjp-brs-congress (Accessed: 14 May 2024).

the Telangana Government, "The Kaleshwaram Project", which was estimated to be a project of 81,911.01 Crores but later exceeded to 1,47,427.41 crores.[18], with an undue benefit of 7000 crores, as per reports by the Indian Audit and Accounts Department, in February 2024.

The Pharmaceutical Industry – Renowned pharma companies like Cipla got numerous show-cause notices for low standards of cough syrups, low quantities of redeliver in Cipremi, and various other medical violations, yet faced no critical consequences, later recently, the information revealed that Cipla bought 39 crores of electoral bonds and irrespective of such high degrees of health stakes of public at large is free of all obligations.[19].

Zydus Cadila, a Gujarat-based pharma company and one of the main manufacturers and suppliers of Remdesivir medicines during the COVID-19 period, had some batches of its medicine, critically dangerous for COVID patients, it was worsening the situation of patients, yet no questions were formerly asked by FDCA Gujarat, or government, who procured the medicine from the company, except Bihar Government, who only red-flagged the medicines in its state.[20]. In the recent unfold, it was seen the company bought 39.2 crores worth of Electoral Bonds of which the lion's share was encashed by the party in power.[21].

The quid pro quo system or this give-and-take policy was the water stream underneath the white surface of free and fair governmental organization.

Making a way through law

Even if the angle of the quid pro quo system is set aside, another controversy that has been present since the inception of the introduction of the system was the different methods and techniques that the government adopted to enact the electoral bonds. For this, different Acts were amended which disturbed the equilibrium of finance of the country. The Acts that were amended were:

RBI Act – according to Section 31 of RBI Act, 1934, the power to print currency notes, financial documents, and electoral bonds was exclusive to RBI, and the Central Government was amended by insertion of Section 31(3) permitting the Central Government to direct any schedules bank to issue Electoral Bonds.

Moreover, it is also contended that as the party in power was not strong in Rajya Sabha at the time of the introduction of this scheme, the government brought the bill as a Money Bill even though the RBI Act, was not within the purview of the Money Bill.

Companies Act – according to Section 182, the companies were given a cap of 7.5% of the aggregate profit of the company in the last three years, were canceled and the donations were made unlimited. The Election Commission of India, in this regard in its letter to the Legislative Department, stated that this removal of the cap would result in the emergence of shell companies for the sake of donations, eventually increasing money laundering.

In the letters of RBI to the Ministry of Finance, it stated the changes that are brought under the electoral bonds scheme, and the amendment of Acts will affect the whole spirit of the Money Laundering Act (PMLA), 2002, as black money would increase rather than getting curbed.

Representation of People Act, 1951 – The concept of 1% of the total vote to get donations under electoral bonds means that small political parties will be deprived of such donations and thus a financial bar of inequality is drawn between large political parties and small parties, which is a violation of Section 29B of the Act.

---

[18] (2024). Audit Reports [Online]. Comptroller and Auditor General of India. Available at: https://cag.gov.in/en/audit-report/details/119638 (Accessed: 14 May 2024).

[19] Barnagarwala, T. (2024) Seven firms that failed drug quality tests gave money to political parties through electoral bonds, Scroll. In. Available at: https://scroll.in/article/1065318/seven-firms-that-failed-drug-quality-test-gave-money-to-political-parties-through-electoral-bonds (Accessed: 14 May 2024).

[20] Pulla, P. (2021) The dangerous failure to stop tainted remdesivir, mint. Available at: https://www.livemint.com/science/health/the-dangerous-failure-to-stop-tainted-remdesivir-11640197634967.html (Accessed: 14 May 2024).

[21] Barnagarwala, T. et al. (2024) Of Rs 945 crore bonds donated by drug firms, most went to parties ruling states with Pharma Units, Scroll. In. Available at: https://scroll.in/article/1065817/of-rs-945-crore-bonds-donated-by-drug-firms-most-went-to-parties-ruling-states-with-pharma-units (Accessed: 14 May 2024).

Mockery to the largest democracy

The entire scheme of electoral bonds thus burlesqued the biggest and most extensive democracy in the world. It has scoffed at the whole idea of free and fair elections in India. The mockery can be perceived through different angles which have scooped out the soul of the Constitution of India.

The policy has prejudiced the common man at various levels without even bringing any skepticism to their character. These deprivations can be listed as follows:

Tax Deduction – One of the key highlights of the electoral bonds scheme, as mentioned earlier was that of tax deduction. Under Section 80GGB and Section 80GGC, any company can get a 100% exemption of tax on the amount donated to any political party. Thus, the companies and the political parties have a win-win situation, where the companies will be getting profits bagged based on the money, they inject into party funds, and political parties get free money to liquidate to buy votes.

The death of government services – in 2016 the government announced a 4 Dham road network widening connecting four shrines of Badrinath, Kedarnath, Yamunotri, and Gangotri. The 12,000 Crore project was declared and given to Navayuga Engineering Company; a Hyderabad-based construction company. The widened roads were objected to by many civil society groups, and despite the recommendation of the High-Powered Committee (HPC) recruited by the Supreme Court, of not widening the road unscientifically which could attract major landslides in the stretch, the company continued constructions which resulted into caving of 4.5km long Sylkyara Bend-Barkot tunnel.

The government didn't halt the project and why being an "engineering company" they couldn't sense such a failure claiming 4000 lives, is still a question to answer.[22]. With the inception and rise of donations in different fields, the quid pro quo automates the projects, that are later used as services by common people of the country, to less competent companies, capable of giving out donations. The Navayuga Engineering Company purchased Electoral Bonds of around 55 crores between the years 2019 and 2022[23]. Government services are mostly outsourced to these types of private companies and are selected through tenders, and Electoral Bonds are like cheat codes to acquire those tenders. The pharmaceutical industry and medicines procured through such favoritism of government are often priced at the spurious composition of medicine whose costs have to be borne by common people.

Funds and elections – In a large population like India, the marketing and campaign demand a cash cow, and more the cash cows, the bigger the chance of winning the election. In such a situation, the Electoral Bonds make it easier to grasp funds for the already privileged parties as the electoral bonds cannot be issued for political parties that are rising or new, as 1% of total general election votes is a floor criterion for encashing bonds on their name. Thus, the bigger political parties are being given a head start and new parties are being pushed back thus violating Section 29B of the Representation of the People Act, 1951, just like the Markovnikov effect, the rich getricher! Failing the soul of "democracy".

Choking opponents – Studying the patterns of purchasing electoral bonds for the ruling party can be traced after they were raided by Central Agencies like the Enforcement Directorate (ED) or Central Investigation Bureau (CBI). For example, the list consists of Future Gaming and Hotel Service Private Limited which purchased bonds for the ruling government in the same month on which raids were initiated against them. According to Activists, there are about 41 companies that are facing probes and the ruling government could suck out a whopping 2,471 Crore from such companies, involving shell companies.[24]. These types of instances pose a deterrent effect on the corporates who are the main buyers of electoral bonds, (as the electoral bonds were mainly purchased under the denominations of 1 crore as per reports), to purchase only bonds for the ruling party choking the opponents to death. Moreover, as mentioned earlier the traceability of electoral

---

[22] Upadhyay, K. (2023) The Silkyara Tunnel collapse reminds us exactly how contentious the Char Dham Project is, The Wire. Available at: https://thewire.in/environment/silkyara-tunnel-collapse-char-dham (Accessed: 14 May 2024).

[23] *ibid.*

[24] PTI, 41 companies facing probe by Central Agencies gave Rs 2,471 crore to BJP through electoral bonds: Petitioners The Economic Times (2024), https://economictimes.indiatimes.com/news/politics-and-nation/41-companies-facing-probe-by-central-agencies-gave-rs-2471-crore-to-bjp-through-electoral-bonds-petitioners/articleshow/108715232.cms?from=mdr (last visited May 14, 2024).

bonds makes it easier for the ruling government to get a top-view advantage over the opponent funders making it easy to attack such funders.

Stakes of shareholders – when a company is purchasing bonds in favor of a political party the same is "supposedly" anonymous making it completely unknown from the knowledge of its shareholders. When the shareholders are getting to know about all the other statements of the company a significant chunk of the expenses are not disclosed. Thus, making the shareholder, the common man, unknown of the expense he, indirectly made to a political party, and if the companies are small and loss-making then along with knowledge, the money pushed by the shareholders is also swallowed by a black hole. Thus, the public at large is deprived by yet another means through this scheme.

The scheme of electoral bonds thus, shows how easy it is to mock and ridicule the democracy of the country.

The Verdict

The Hon'ble Supreme Court in the recent case of *Association of Democratic Reform andAnr. V. Union of India and Ors. 2024*[25]Had several questions to answer and with the verdict it gave, all the questions were answered. The issues can be discussed as follows:

The Right to Information about Political Parties – previously in the landmark case of *Union of India V, Association for Democratic Reforms and Another*; With *People's Union for Civil Liberties and Another*[26]The Hon'ble Supreme Court stated that the voters have all the right to know the relevant information about the candidates who are contesting for office. The contestants or candidates have to disclose their past criminal records if any, and all other relevant documents to the Election Commission of India, and the following relevant documents to be made available to the public at large.

In the present case the first issue was whether this right to information of voters is limited only to the candidates or the Political Party at large too, the Court stated that the right to information of voters regarding elections is wide enough to include information about the political parties too, as voters vote for the party to vote the candidates thus, political parties are the face of elections which makes them liable to be transparent to the masses. Thus, the voters have the right to know under Article 19(1)(a) of the Indian Constitution, which political party is encashing how many and how much electoral bonds.

Information of funding and source – along with the previous issue, strings another issue that even if the voters need to know the political parties, the source of the funding is necessary to disclose to the public, In this contention, the apex court stated that "selective anonymity" is discouraged and restricted as both the source of funds and destination of funds both has to be disclosed as this can be a deciding point for the voters to get an idea, as per the funding scenario, at which direction the ruling party will license its projects as most likely effects of "quid pro quo" is a determinant factor of the same. Thus, the voter can have a clear idea of where he wants his nation to be in the next five years rather than betting his valuable vote on a party and its background anonymous players.

Donor's rights v/s Voters' rights – the next issue arose On the one hand there is the right to information of voters given, the same curtails the donor's right to privacy under Article 21 of the Indian Constitution. On this, the Hon'ble Supreme Court stated, the electoral bonds scheme gave an "absolute" right to the donors while no fundamental right can be "absolute" in nature and there shall be a balance that has to be struck down. The doctrine of proportionality should be adhered to while deciding the rights of both the parties, the "complete anonymity" cannot be a ground under Article 21.

Curbing black money – the issue raised to shield the Electoral Bonds Scheme is that the system was better than other forms of political funding and it is a tool to curb the black money circulation in the country, the Bench, barring Justice Sanjeev Khanna, i.e, Hon'ble Chief Justice D Y Chandrachud, Justice B.R Gavai, Justice J.B Pardiwala, and Justice Manoj Misra stated, curbing of black money is a point that can come under the domain of "public interest" and that cannot be termed as an exception to Article 19(1)(a), Justice Sanjeev Khanna stated there are different other ways to curb the problem of black money and the scheme of

[25] *ibid.*

[26] *ibid.*

electoral bonds cannot be the best means to do so, as it violates and restricts the voters the fundamental right to information.

The Finishing Touches

Political funding has a huge effect on the future of the nation and thus, the future of the citizen and its stand towards the world. In this era of fast communication, the world is not ignorant about such rampant scams from the core to the crust of the politics of India. If such unconstitutional schemes had not been stopped by the judiciary, it would have been a state of quasi-democracy with anarchy as its showrunner. The country has a lot to deal with now, and such schemes behind the backs of the masses are just a step backward. This verdict has put an end to this scheme, and such exposure to such constitutional violations will help in looking at any such future scheme with a skeptical mindset. Even if the funding to political parties cannot be stopped, the cap of funding should be restored, along with RBI's exclusive powers and other Acts that were mistreated earlier, to bring back the financial rule equilibrium as quickly as possible which will least create a boundary to the rampant quid pro quo partnerships of donors and donee and quashing any unfair advantage to the biggest donor with no eligibilities in respective quality grounds.

* * * *

DELVING INTO PROFESSIONAL MISCONDUCT BY ADVOCATES: A STUDY ON ETHICAL BREACHES IN THE LEGAL PROFESSION

Gangayee Saha *

Abstract

This paper delves into the nexus between ethics and the legal profession, emphasizing the nobility of advocacy and the paramount importance of ethical standards. It explores the concept of professional misconduct within the legal profession, delineating its various forms and consequences. An examination of landmark judgments and provisions of the Advocates Act, of 1961, elucidates the disciplinary mechanisms in place to address instances of misconduct by advocates. The paper highlights cases of misconduct such as misappropriation of client funds, negligence, contempt of Court, and providing false information, among others. It also discusses the role of disciplinary committees in investigating complaints and meting out appropriate punishments, including suspension or removal from the role of advocates. Furthermore, it underscores the duty of advocates to uphold the integrity of the legal profession and contribute to the administration of Justice. The conclusion reinforces the notion that law is not a commodity but a solemn duty, and advocates must adhere to ethical standards to ensure the fair dispensation of Justice.

Keywords : ***Legal profession, Professional Misconduct, Advocates Act 1961, Disciplinary Action, Punishment, Administration of Justice.***

Introduction

One essential attribute of advocacy which emerges is the nobility of the profession where having the highest degree of ethical standards carries the highest value. This view was further corroborated in as much as in the case of J.S. Jadhav v. Mustafa Haji Mohamad Yusuf, the esteemed Supreme Court of India has noted that "Advocacy is not a craft but a calling; a profession wherein devotion to duty constitutes the hallmark. The sincerity of performance and the earnestness of endeavor are the two wings that will Bear aloft the advocate to the tower of success. Given these virtues, other qualifications will follow of their account. This is the reason why the legal profession is regarded as a noble one."

Relation between Ethics and Legal Professional

The practice of law is a noble profession. Legal ethics is a code of conduct that may be written or unwritten and witches meant to regulate the behavior of a practicing legal professional toward the Court, the presiding Judge, and his client. Ethics and the legal profession are closely related. The Government of India established The Bar Council of India which is a statutory body under the Advocate Act, 1961 and it has codified and formulated the standards of etiquette and professional conduct for Advocates under the Bar Council of India Rules. Professional ethics comprehend an ethical code governing the conduct of persons involved in the practice of law as well as for other persons involved in the legal sector. The legal profession is not just living for an individual, but the backbone of an orderly society. It is the key to Justice and peace.

In the words of Chief Justice Marshall- "The fundamental aim of legal ethics is to maintain honor and dignity of the Law profession, to secure a spirit of friendly cooperation between the Bench and the Bar in the promotion of higher standards of justice, to establish honorable and fair dealings with the council, with his clients, opponent, and witnesses".

Professional Misconduct

In the Advocates Act of 1961, there is no definition for any misconduct or professional misconduct. Professional misconduct in the legal sense means an act intentionally committed by the people involved in the profession with the wrong intention. Professional misconduct, means any conduct which as an advocate

* 4th Year, BA. LLB., St. Xavier's University, Kolkata, West Bengal

brings disgrace or dishonor to their profession and their brethren hold that it is a wrongful act done by the advocate, then the advocate is liable for professional misconduct.

In Black's Dictionary, misconduct has been described as a transgression of some known and definite rule of action, a prohibited act, Unlawful behavior, an intentional act, or inappropriate or incorrect behavior. Misconduct, according to Oxford Dictionary means a wrongful, improper, odd, unlawful conduct motivated by a premeditated act.

In Roma Banerjee vsUshapati Banerjee[1], it was said that any act of reproach from duties favors someone's opinion by others about the legal profession.

In JamshedByramji Kanga[2] case, it was said that any act of reproach against the legal profession or any alienating from any favorable opinion, which one holds about our profession.

In the State of Punjab vs Ram Singh[3], we get to know what can be the meaning of professional misconduct irrespective of the profession because this case is not on an advocate but on a police officer. The meaning of professional misconduct can be understood from this case as any transgression from any excepted code of conduct or deduction of duties or any unlawfully done willful conduct.

The instances of professional misconduct by advocates include

Non-p*erformance of duty or dereliction of duty,*

Negligence on behalf of the professional,

Misappropriation,

Changing sides,

Contempt of Court and inappropriate behavior before the magistrate,

Giving out false information,

Giving improper advice,

Misleading the clients in the Court,

Speaking the truth,

Disowning allegiance to Court,

Moving an application without informing that a similar application has been rejected by another authority,

Suggesting to bribe the Court officials,

Forcing the prosecution witness not to tell the truth,

Financing litigation,

Obtaining the client's signature on blank papers,

Shouting slogans or holding demonstrations in front of the Court,

Approaching investigative officers for favor during the investigation of a case,

Writing a letter to the presiding officer in connection with the pending case,

Tampering with the witness,

*Tampering with r*ecords and documents.

Advocates Act, 1961

"Section 35 Punishment of advocates for misconduct [4].—

Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. 1[(1A) The State Bar Council may, either of its motion or on an application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.]

[1] Mrs. Roma Banerjee vsUshapati Banerjee, Muktear, Alipore on 29 January 1954

[2] Sir JamshedByramji Kanga vsKaikhushruBomanjiBharucha on 17 September 1934

[3] State of Punjab And Orsvs Ram Singh Ex. Constable on 24 July 1992

[4] https://indiankanoon.org/doc/1460739/

The disciplinary committee of a State Bar Council 2[***] shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.

The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity to be heard, may make any of the following orders, namely:

(a) Dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

(b) Reprimand the advocate;

(c) Suspend the advocate from practice for such period as it may deem fit;

(d) Remove the name of the advocate from the State roll of advocates.

Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practicing in any Court or before any authority or person in India.

Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf. 3[Explanation.—in this section, 4[section 37 and section 38], the expressions "Advocate-General" and Advocate-General of the State" shall, about the Union territory of Delhi, mean the Additional Solicitor General of India.]"

Section 35 and section 36 of the Advocates Act, 1961 deal with the provisions regarding the formulation and functioning of disciplinary committees. Under the State Bar Council as well as the disciplinary committee of the Bar Council of India. Under Section 35 of the Advocates Act, if any legal petitioner is found, guilty of both professional misconduct and other misconduct, after providing an opportunity of being hurt, may make any of the following orders.

Dismiss the complaint or where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed.

Three punishments when held liable for professional misconduct are:

suspend the advocate from practice for a period as it may deem fit;

reprimand the advocate;

removal of the name of the advocate from the state roll of advocates.

Section 10 of the Indian Bar Councils Act, of 1926 provided the punishment of advocates for misconduct (which is repealed by the Advocates Act, 1961). Misconduct means Dereliction of duty; transgression from any accepted norm, or code of conduct; or any wrongful behavior, both professional and otherwise.

To determine the other misconduct, we have two tests: i) unworthy of your profession; and ii) unable to discharge the responsibility of an advocate.

The Bar Council of India has the authority to establish guidelines for professional misconduct under Section 49 of the Advocate Act. According to the Act, it is against the advocate's code of ethics for anybody to make advertisements or solicitations. Additionally, he is not permitted to use his name or service for unlawful purposes, demand payment for training, or place advertisements in publications, personal communications, or interviews.

Landmark Judgements

In the L.C. Goyalvs Suresh Joshi[5], The Court dealt with a matter concerning misappropriation of Court fees. L.C. Goyal took money from the client to pay Court fees. But instead of giving the Court fee, he used the money for personal use. And he also misled his client, regarding the progress of the case. This amounts to professional misconduct. The State Bar Council suspended his license for five years. But later the Supreme Court lowered the punishment of suspension of license to two and half years.

In J.S. Jadhavvs Mustafa Haji Mohamed Yusuf[6], there was a property dispute suit which was compromised

[5] L.C. GoyalvsMrs. Suresh Joshi &Ors on 12 March 1999

[6] J.S. Jadhavvs Mustafa Haji Mohamed Yusuf And Others on 7 April 1993

or withdrawn and the Court appointed the advocate as the receiver, for collecting the money and giving it to his client. However, the advocate returned less amount to the client. Thus, he was guilty of professional misconduct as he was bringing dishonor to the profession.

In Harish Kumar Tiwari[7], the Court dealt with a matter concerning the misappropriation of a client's money by the advocate in a land acquisition case. Here, the cost amount given to the client by the Court, as prayed for by the client, was taken by the advocate. This act was held to be professional misconduct by the Court.

In B.R. Mahalkarivs Y.B. Zurange[8], the advocate misappropriated the maintenance amount which was awarded by the Court to the client but the advocate did not pay it back to the client and this act amounted to professional misconduct. The Court suspended the advocate for three years from practice.

In this case[9], the advocate here wrote a letter to the client saying that the Judge is corrupt and asked his client to bribe the Judge with Rs. 10,000 and influence the Judge to obtain a favorable order. However, the client complained against the advocate to the State Bar Council of Rajasthan. The disciplinary committee held the advocate guilty of misconduct and stated that such an act of an advocate is unfit to be a lawyer. The State Bar Council of Rajasthan suspended him for two years. Bar Council of India, then permanently removed his name from the list of advocates. The advocate was 80 years old, and he had no prior bad antecedents, saying this, he reviewed the decision of the Bar Council of India. Then the Supreme Court upheld the decision of the Bar Council of India saying that the advocate's age and his records will not be considered here, as he committed a serious crime. This act was regarded as professional misconduct. Members belonging to the profession have a particular duty to uphold the integrity of the profession and to discourage corruption, to ensure that Justice is secured legally.

In*Bhupinder Kumar Sharma*[10], the complaint was made to the Bar Association that an advocate (appellant) was carrying on and engaged in a full-fledged business viz, he carried on a photocopy shop in the Court compound and he also had a PCO/STD booth. The contentions of the advocate:The advocate, having been enrolled in the State Bar roll of advocates, transferred his practice to his father and brother. The State Bar Council of Punjab & Haryana found him guilty of misconduct and debarred him. Despite appealing to the Bar Council of India (BCI), the advocate's appeal was dismissed. Subsequently, the advocate approached the Supreme Court of India. The Supreme Court, after careful consideration, upheld that the advocate was indeed guilty of professional misconduct. However, due to mitigating circumstances such as the advocate being a handicapped person, the Supreme Court decided that the punishment of debarring him for life was too severe. Consequently, the Supreme Court modified the BCI's order, suspending him from practice until December 2006 rather than indefinitely.

Top of Form

In *R.D. SaxenavsBalram Prasad Sharma*[11], after the suit was decreed by the Court, the client did not pay the fees of the advocate. In redressing the grievance, the advocate retained all the client's files as a right of lien. However, the Court held that the files of the client cannot be equalized as goods as per the Sale of Goods Act[12] or Indian Contract Act[13]. Had it been goods, then the right of lien would be applicable. Hence, the advocate cannot retain a right to his client's files as they cannot be regarded as goods.

In *P.D. Gupta vs Ram Murti*[14] the Court dealt with the matter concerning the selling of a disputed land of the pending litigation. The case was decreed in favor of the client. The client sold the same property (disputed land) to the advocate at a very meagre price, since he represented the client in the Court as a token of gift. Later, the advocate sold the same property to a third party. This was regarded as other misconduct by the Court.

---

7 Harish Chandra Tiwari v. Baiju

8 B.R. Mahalkarivs Y.B. Zurange on 7 January 1997

9 Shambhu Ram Yadav vs. Hanuman Das Khatry

10 Bhupinder Kumar Sharma vs. Bar Association of Pathankot

11 R.D. SaxenavsBalram Prasad Sharma on 22 August, 2000

12 1930

13 1872

14 P.D. Gupta vs Ram Murti&Anr on 8 July 1997

In *N.G. DastanevsShrikant S. Shivde*[15], the advocate went for consecutive adjournments, causing inconvenience to the opposite party. This is a dereliction of duty as seeking adjournments for postponing the examination of witnesses who were present without making other arrangements for examination. And because of dereliction of duty, the litigant's interest suffers. Here the consecutive adjournment was held to be an act of professional misconduct and the advocate was held liable. Thus, seeking continuous adjournments can amount to professional misconduct and he was suspended from practice for three years.

In *Hikmat Ali Khan vsIshwar Prasad Arya*[16], the advocate committed an attempt to murder under section 307[17] and he was convicted of three years of rigorous imprisonment. Later, the advocate brought a letter in the name of the Governor, whereby it was written that the Governor had waived off his criminal conviction of three years. The Supreme Court held that the acts of misconduct found established were serious and ultimately, his name was permanently removed from the common role of advocates as the advocate was unworthy of remaining in the profession. This act was regarded as professional misconduct.

Why under suspension the advocate continue the practising in the Court?

While on suspension, the advocate cannot go to the Court and practice. In one of the such case[18], the advocate was convicted of civil contempt and he was barred from practicing for three years during this period he went to Court and practiced. This case then went up to the Supreme Court for appeal, in that he was held for a fresh/additional suspension period of three years.

The advocate must participate in the business of the Court[19]. It is the solemn duty of the advocate to represent his client since he signed the vakalatnama[20]. The advocate must not respond to any protest/strike/boycott/ demonstration, even if called for by any State Bar Council or Bar Association.

In *Vinoy Kumar vs State Of U.P.*[21], in alliance with the criminal proceeding, a writ petition was filed by the advocate in his name on behalf of his client. This filing of a petition in his name on behalf of the client is professional misconduct.

Punishments given to an advocate under the Advocates Act, 1961 for professional misconduct:

Senior advocate while admitting his client's appeal in the Court of law, the Senior Advocate browbeaten[22] the Judge personally in the open Court[23]. The advocate was held liable for professional misconduct. The Supreme Court suspended the license of a senior advocate on grounds of contempt of court.It was held that an advocate doing such an act should be debarred from practice by suspending his license, which can be only done by the respective State Bar Council, under the Advocates Act, 1961.

In *NoratanmalChourariavs M.R. Murli*[24], the advocates threatened the opponent clients for not appearing in the Court the following day and giving evidence. The advocates hit the opponent's clients' witnesses so that the evidence could be tampered and they also threatened to kill the opponent's witnesses. This was held to be professional misconduct by the Bar Council of India.

In *Bar Council of Maharashtra vs. M.V. Dabholkar*, Advocates standing outside the Magistrate's Court, jumped upon the prospective clients, so that they get the work. The advocates also tried to snatch the briefs of the case from the clients. Rule 36 of the Bar Council of India Rules, 1975 says that to hold any advocate liable for solicitation, these 3 things have to be fulfilled: solicitation of work, towards a particular person, and related to a case. High Court instructed BCI to take up this matter. Thus, these three elements were not fulfilled and he was absolved.

Conclusion *:* "Law is not trade briefs, no merchandise". Advocates must legitimately present their sight of the case to assist in the administration of Justice. Courts have dealt with various cases of professional misconduct wherein attempts of murder by the advocate towards his client have also been reported. However, an advocate who is guilty of professional misconduct or malpractice can be sued. Filing a complaint against an advocate is a serious concern and one must be very sure that their concern with an advocate involves professional misconduct.

* * * *

15 N.G. Dastanevs Shrikant S. Shivde And Anr on 3 May, 2001
16 Hikmat Ali Khan vsIshwar Prasad Arya &Ors on 28 January 1997
17 Indain Penal Code, 1860
18 Sardul Singh vsPritam Singh And Ors on 18 March, 1999
19 MahabirPrasan Singh vs M/S Jacks Aviation Private Ltd on 13 November 1998
20 A legal document in India that authorizes an advocate to represent a party in Court proceedings.
21 Vinoy Kumar vs State Of U.P. &Ors on 16 April, 2001
22 Threatening or insulting someone.
23 In Re: Vinay Chandra Mishra (The Alleged ... vs Unknown on 10 March, 1995
24 AIR 2004 Supreme Court 2440

FOSTERING ENVIRONMENTAL JUSTICE: INFORMED FOR IMPACT

Kamya Miglani *
Yoshita Manral **

Abstract

Amidst the cacophony of progress and development, a silent struggle unfolds—a struggle for environmental justice and access to information. Hidden behind the glittery glow of modernity, it is these disempowered communities who experience the crisis of ecological degradation the most, the roars of commerce and industry making their voices drown. The rivers overflowing with factory effluents, the destruction of forests due to uncontrolled exploitation, and the cloud of poison in the air engulfed the neighborhoods.

Yet, amid these grim realities, there lies a beacon of hope: the pursuit of environmental justice and the role of information in uplifting the marginalized This article explores the complex terrain of environmental justice, highlighting the social injustice and the vitality of information to the marginalized. Starting from the disproportionate share of the problem borne by the vulnerable communities to the unveiling of the transformational power of transparency, all aspects of the intricacy of the relationship between environmental health and social equity are illuminated to reveal the connectedness.

Through case studies and examples, these problems appear seemingly straightforward. However, the harsh realities of the neglected population in the region of the North-East force us to confront them. At this juncture, the portrayal of the existential prey of environmental challenges and systemic barriers creates an illustrative picture of injustice, which emphasizes the significance of intervention. This article concludes by proposing recommendations and actions to be taken to begin the change. Thus, the general idea is that this article expects the readers to stand for justice and to respect the environment.

The Fundamental Right to a Clean Environment and the Reality of Injustice

Environmental justice embodies the principle that all individuals, regardless of race, ethnicity, or socioeconomic status, have the right to live in a clean and healthy environment. Access to information plays a crucial role in ensuring the realization of this right, empowering communities to advocate for their environmental well-being. But if we see the environmental justice in India, one stark reality stands out: the fundamental right to a clean environment is often a distant dream for many, overshadowed by the harsh reality of injustice.

In the judgment of Subhash Kumar v. State of Bihar,[1] the Supreme Court (SC) held that the right to life is a fundamental right under Article 21 and it includes the right to the enjoyment of pollution-free water and air for the full enjoyment of life. However, the implications of this right in context with the right to a clean and healthy environment are far-reaching,

It is to be noted that there is inescapable division on account of the environmental loads between the different classes of people in India. Communities, already struggling with economic challenges and social marginalization, bear the brunt of environmental damage more. For instance, when the Oleum gas leakage happened in Delhi, the neighboring slum residents suffered grievously and Regardless of their cries for help, their voices were usually missed out due to bureaucratic inertia and corporate neglect, thus reflecting the cruel realities that these marginalized communities have to live through. In addition, more significant barriers make the obstacles experienced by marginalized communities much worse resulting to thus high levels of vulnerability to environmental damage. Language barriers in accessing useful information limit knowledge about risks in the vicinity of the uninformed masses. Moreover, the availability of scarce resources and the low literacy level make the environmental issue even more challenging and unfeasible for people to participate

* 3rd Year BA. LLB., Asian Law College, Noida, Uttar Pradesh
** 3rd Year BA. LLB., Asian Law College, Noida, Uttar Pradesh

[1] Subhash Kumar v. State of Bihar, [1991 AIR 420, 1991 SCR (1) 5]

in the decision-making process. In the important case of M.P. Environmental ControlMunicipal Council Ratlam v. Vardhichand[2] the SC held that the right to access environmental information is fundamental to the right to life and environment. And directed authorities to proactively disclose environmental data in a manner accessible to all, including translations and simplified formats for underprivileged communities., underscoring the importance of environmental justice to all.

Information as Power: Bridging the Gap for Environmental Justice

For the conservation of environmental justice in India, the saying Information is Poweris of paramount importance, being a vital tool in the filling of the contraction between communities and equitable environmental results. Transparency and disclosure become key in this quest, and environmental information becomes the most critical point for giving people their voice and power. For example, in the case of the Taj Trapezium Matter[3] The Supreme Court of India focused on the open disclosure of air quality monitoring data as a remedy to pollution issues of the Taj Mahal and adjoining communities. This is one of the examples that reminds us how important the idea of access to the full range of information is for good decision-making and advocacy.

Nevertheless, the present environment in India provides sorry manifestations of the loopholes and failures of environmental information disclosure leading to unequal treatment and injustice. Highlights from the report of the Centre for Science and Environment show that even with the Right to Information Act 2005,[4] There is evidence of difficulty in accessing crucial data, more so, for marginalized communities. It worsens the deficiency of this kind of transparency and prevents communities from understanding and addressing environmental risks. Besides existing inequities as seen in cases likethe M.C. Mehta v Union of India[5] Oleum Gas Leak Case, where inadequate information disclosure led to disastrous consequences for communities living near the affected area.

These voices must be empowered through the creation of platforms for public participation and grievance redressal if the country is to engage in a redefinition of its social justice discourse. Despite current ways of participation via impact assessment procedures and public hearings, their effectiveness is often overshadowed by some problems and procedures' complexity. Such calls demand the exploration and development of community monitoring and advocacy initiatives like the Citizen's Environmental Monitoring program initiated by the National Green Tribunal, which provides citizens tools to monitor, assess, and report the status of the environment and also a chance to hold polluters accountable.

The North-East: A Region Unique in Vulnerability and Challenges

The North-East corner of India presents a more intricate environmental problem. Diverse Indigenous groups here face overwhelming environmental problems than just the usual that need solutions now. Deforestation and biodiversity loss are among the main challenges, largely due to blatant forest chopping for agriculture, logging, and construction. Thus, habitat loss and the loss of our valuable plants and animals have become a critical problem to be addressed urgently. By increasing the scale and intensity of large-scale development projects, the vulnerabilities of the indigenous communities are often exacerbated, leading to displacement and depletion of livelihoods. Hydroelectric dams, highways, and mining projects often fragment ecosystems and are displacing native communities forcing development to be inclusive of the communities. It helps to ensure that affected communities are heard. In addition to the present-day challenges, Climate Change exacerbates the situation, which increases the vulnerability to extreme weather events, irregular and unpredictable rainfalls, and the rise of temperatures. Indigenous communities, which are closely related to nature, experience an increased chance of food insecurity, youth due to water shortages, and cultural losses, respectively. To a certain extent, the North-East climate change issue calls for the establishment of locale-tailored adaptation strategies that are enriched with indigenous know-how.

Nevertheless, information search and the attainment of justice are sizable obstacles. However, lack of language diversity creates communication barriers while limited capacities and poor awareness contribute to the deficiency of accessing necessary information and advocating for environmental protection rights. The absence

[2] Municipal Council Ratlam v. Vardhichand [AIR 1980 SC 1622]

[3] Taj Trapezium Matter [1987 AIR 1086, 1987 SCR (1)]

[4] Right to Information Act,2005, No. 22, Act of Parliament,2005 (INDIA).

[5] M.C. Mehta v Union of India AIR 1987 SC 965

of Strong Grievance Redressal Mechanisms in the lives of those impacted by environmental injustices means that they have no way to fight back and continue to face cycles of vulnerability.

To tackle these issues efficiently, it's necessary to address barriers and foster the inclusive nature of environmental governance. Relying on the voices of indigenous people, informing exchange of information, and improving complaint redressal mechanisms are very important steps toward the just and sustainable future of the North-East.

Towards a More Equitable Future: Recommendations and the Way Forward

In India, strengthening legal frameworks is pivotal in enforcing the right to a clean environment. To improve regulatory compliance and the enforcement of the existing laws, like the Environment (Protection) Act, of 1986[6] Have to be amended in such a way so that heavier penalties may be included for the non-compliance. Completing the legislative lag regarding issues of disclosure and community involvement is as important as any. Revising the Right to Information Act, of 2005, by mandating proactive disclosure of environmental information can contribute to transparency. Strongly, legislation on community participation similar to the National Green Tribunal Act, of 2010,[7] If implemented; this enables affected communities to take part in such decision-making processes concerning environmental development.

Empowering communities through knowledge-building initiatives is essential. Through multilingual information dissemination and awareness campaigns, the reception of environmental information becomes accessible to the different societal layers. Capacity-building programs and training programs jointly developed with educational institutions and NGOs help the communities master the skills to work with regulatory agencies and advocate for their environmental rights. Moreover, by promoting community-driven monitoring and advocacy networks, communities will have the ability to collect and analyze environmental data, do pollution levels monitoring, tracking of compliance with regulations among others. Sharing the benefits and the impacts of technology is the collective duty of the individuals and the agencies involved. The involvement of communities in decision-making, as well as the FPCIC principles (Free, Prior, and Informed Consent), allow for community approval of projects that may affect their lands and resources. The adjudication of historical wrongdoings requires the establishment of measures to repair previous environmental harm by providing compensation, rehabilitation, and health, as well as clean water facilities to affected communities. Pursuing sustainable development is a crucial element that focuses on social and environmental justice, which calls for a transition to renewable energy, sustainable farming, and equitable resource allocation.

By implementing these targeted recommendations, India can advance towards achieving environmental justice and ensuring equitable access to information. Such measures are essential for fostering a more sustainable and inclusive future for all citizens, where environmental protection and social equity go hand in hand.

Conclusion

The journey through the intricacies of environmental justice and access to information has been enlightening and sobering. Ranging from the realization of the necessity of clean air as a fundamental right to the comprehension of the systemic barriers in the way of disadvantaged communities, we have come to realize the urgency of the matter. The relationship between environmental sustainability and social justice must be considered to rethink the many changes that can be proposed as a way to bring about meaningful change and it is through collective action that the commitment will be maintained. Through fighting for transparency, societies, and the inclusion of everyone without discrimination, we can create a path toward a future where environmental justice will be not only an idea but a lived life for everyone. Let us respond to the call for action to be determined and make a world where no one is left behind and where everyone lives in harmony with their environment as our legacy of sustainability and justice is to be taken forward by the generations yet to come.

* * * *

[6] Environment (Protection) Act, 1986, No 29, Act of parliament,1986 (INDIA)
[7] National Green Tribunal Act, 2010, No. 19 Act of Parliament, 2010 (INDIA)

TAXATION ON 'ONLINE FANTASY SPORTS GAMING' OFFERED BY DREAM 11

REENA *

Abstract

Traditionally as well as in modern days, games are appreciated by individuals of every age worldwide because of the enjoyment and bliss they provide irrespective of their gambling nature. Indeed, gambling, regardless of its numerous drawbacks, has been ingrained in Indian culture since ancient times. Allusions to gambling can be identified in the Mahabharata, an ancient mythological epic of India, where the abilities of adversaries were evaluated through their proficiency/skill in board and dice games. The era of digitalization has led to the substantiation of market size which created a potential market and led to a proliferation of online gaming platforms.[1]

KPMG India submitted a report on the online gaming sector in India in September 2019. This report has projected that there is the potential of reaching a value of INR 250.3 billion by the year 2024 in the Indian online gaming sector.[2] *Digitalization has led to a surge in social and casual games, for that reason it felt essential that the gaming sector should be categorized into two primary segments: conventional or online gambling, and skill-oriented social or casual gaming. Now there remains a gap that till recent times there has been no law that deals with the taxation of online games. But recently it has got the public's attention because of GST Council's recommendations. It is recommended that separate and precise provisions should be created for online gaming as a lot of revenue was generated there but remains un-taxable. Now, on 01.10.23, Parliament has accepted these recommendations and implemented them.*[3]

This new enactment led to circular reasoning about the taxation of revenue generated from online gaming led to taxation of online gaming in the form of both goods and services, as it started with its inclusion in the category of services (under online gaming). Subsequently, these games are categorized as goods (specifically as actionable claims) and then later these are subjected to unique charging provisions concerning their imports, unlike other types of goods. It only exacerbated this complexity of taxation of online games.[4] *Moreover, the aforementioned taxing scheme inherently presents a qualitative contradiction. This is due to the inherent nature of online money gaming, which seems to align with the characteristics of a service (as affirmed by its statutory classification within the domain of online gaming). However, online money gaming is subjected to taxation as if it were a good.*

In Fantasy Sports, participants made imaginary teams using real players selected from a range of professional teams. These teams here compete according to the statistical performance of the players in real-life games. Various platforms in India provide fantasy games like Dream 11, My11 Circle, Gamezy, My team11, etc. When overseeing platforms providing games that are played on online platforms, Indian laws distinguish between such games as games of chance and games of skill. Now the biggest question remains is whether these fantasy sports provided by these platforms are games of chance (which are in nature of wagering contract) or games of skill (where the requisite amount of knowledge and skill is used). This article discusses taxation on gaming, particularly concerning fantasy games provided by platforms in this online era. For that purpose, Bombay High Court Judgement on the Dream 11 Saga has been analyzed in detail which was later upheld by the Supreme Court.

---

* **4th Year BA. LLB (Hons.), National Law University, Delhi**

1 Nishith Desai Associates, 'The Curious Case of Indian Gaming Law' 2019 <https://www.nishithdesaii.com/fileadmin/userupload/pdfs/Researrch%20Papers/The_Curious_Case_of_the_Indian_Gaming_Laws.pdf>

2 <https://assets.kpmmg/content/daam/kpmg/in/pdf/2019/08/india-media-enterrtainment-report-2019.pdf>

3 Press Release on 51st Meeting of the GST Council, 2-8-2023 <https://gstcouncil.gov.in/sitees/default/filess/news-tickerr/Press-Release-51-GSTC.pdf>

4 Tarun Jaint, 'Online Money Gaming under GST: The "Goods" Conundrum' 2023 SCC OnLine Blog Exp 76

Analysis of Supreme Court Decision on Applicability of GST Rules on Dream 11 Fantasy Sports

The Criminal Public Interest Litigation against Dream11 Fantasy Pvt Ltd has been presented to the Bombay High Court. Dream11 is a sports platform which is based in India and it offers fantasy sports that enable its users to participate in fantasy cricket, hockey, football, kabaddi, and basketball. It was contended in PIL that Dream11 is engaging in unlawful activities under the guise of Online Fantasy Sports Gaming (OFSG) which are in actuality categorized as betting or gambling, and therefore, it must be subjected to penalties according to the Public Gambling Act of 1867 (hereinafter referred as "Act"). Further, it was alleged in PIL that provisions of the Central Goods and Services Tax Act of 2017 (hereinafter referred to as "CGST Act") are also breached by Dream 11 in conjunction with Rule 31A of the Central Goods and Services Tax Rules of 2018 (hereinafter referred as "CGST Rules").

Further, it is stipulated by Section 7 of the CGST Act[5] that specific activities that are outlined in Schedule III of the same act are not considered either a provision of services or goods, thus exempting them from the imposition of the GST Act and Rules. Different things are included under Schedule III such as "actionable claims, excluding lottery, betting, and gambling," among activities falling under this category. Rule 31A specifies a method for assessing the value of supply concerning GST calculation for lottery, betting, gambling, and horse racing. According to the understanding of this abovementioned regulation, supply value for an actionable claim includes a chance to win in betting or gambling,……is determined to be "100% of the face value of bet or amount paid into the totalizator."[6] Relying upon the reasoning of this argument, it was asserted by the petitioner that the total amount paid by the player should serve as the foundation for GST calculation, which includes money submitted for betting, gambling, or lottery, all this should be taxed at 28% of rate as per current GST regime.

Issues

1. Whether activities performed on the Dream11 platform should constitute 'Gambling' or 'Betting' as per taxation laws?
2. Whether Dream11 is exempted under Rule 31 A (3) of CGST Rules, 2018?

Petitioner's Argument

The main arguments put forth by the petitioner primarily centered on the below-mentioned points:

Fantasy games serve as a method to entice individuals to invest their money in hopes of quick profits through chance; as a result, many ultimately lose their funds in such a process. This is essentially viewed as "gambling or betting or wagering, thus different forms of the same activity i.e. gambling.

When individuals engage in such contests (contents of which vary based on game to game) they contribute to what is purported to be the betting funds, after contributing to such funds they receive a tax invoice. This invoice solely taxes the portion retained by Dream11 for facilitating the platform's services to players and not the amount which has been contributed to the fund by the players. Regarding the remaining amount, which is contributed by the players for participation in these contests an "acknowledgment" is provided for that regard. The sum collected from each player as this "acknowledged money" is consolidated into an Escrow Account. This contribution is eventually distributed amongst players themselves as a monetary prize immediately after the game is concluded. Consequently, a few receive more than their initial contribution because they are winners, while others lose money in huge chunks and sometimes players do not receive the entire amount staked by them.

Petitioner argues that since these activities essentially are in nature of 'gambling' or 'betting', even if this acknowledgment amount is not held by Dream11 and stored separately in an Escrow account, GST laws should apply to this amount. Because this activity is conducted by the platform of Dream 11 and it essentially amounts to 'betting' or 'gambling' and thus it should be regulated by Rule 31A(3) of the CGST Rules.

Similar to horse racing, the aforementioned Rule should also apply to fantasy games that entail gambling,

[5] Section 7, The Centraal Goods and Services Tax Act, 2o17

[6] Rule 31A(3), Central Goods and Services Tax Rules, 2o18

betting, or wagering. As a consequence, the entire amount collected by Dream 11 should be taxed at a rate of 28% and not at the rate of 18% that is currently being applied to the amount kept by Dream 11 for providing the platform's services only.

Dream 11's Argument

Dream 11's arguments are primarily centered on the below-mentioned points:

The games offered on Dream11's platform do not qualify as betting or gambling activities. The honorable Punjab and Haryana High Court has already decided on this fact and which got ruled in favor of Dream11.[7] The High Court of Punjab and Haryana had determined that success in Dream11's fantasy sports primarily stems from users' application of superior knowledge, judgment skills, attention span, and application of mind. Thus it indicates skill on their part and for that reason platform's fantasy games are not subject to enforcement of penal provisions, as per Section 18 of the Act. The High Court also held that such platforms are protected under Article 19 (1) (g) of the Indian Constitution. In arriving at this decision about the game of skill or game of chance, the High Court of Punjab & Haryana has referred Supreme Court decision on the K. R Lakshmanan case. In K. R. Lakshmanan v. State of Tamil Nadu[8] (popularly known as "Lakshmanan case"), the Apex Court has asserted that there lies a difference between a game of skill and a game of chance, here game of chance is of a wager nature, and the application of mind and skill is needed in the game of skill. Relying on this reasoning the High Court has concluded that playing fantasy sports games necessitates a comparable level of skill, judgment, and discretion similarly as needed in the case of horse racing. The Supreme Court, on September 15, 2017, dismissed a Special Leave Petition challenging the verdict of the High Court of Punjab and Haryana.

Dream 11 platform in its defense explained the functioning of the game on such platforms. It outlined that players engage in competition against virtual teams formed by other users or participants.Here winners are determined by tallying points earned, utilizing statistical data derived from actual performance of players in real-life matches on virtual ground. Moreover, the latest time to form a team is before the official start time of the match, and no alterations can be made once this deadline has passed. Participants here do not wager/ bet on match results; instead, they assume a role similar to selectors by choosing their team. Hence, matches conducted on Dream 11's platform are deemed as games requiring skill rather than mere chance. Thus it falls beyond the scope of Rule 31 A (3) of the CGST Rules.

Held

It was decided by the Bombay High Court that fantasy games offered on Dream 11's platform are not in nature wager or betting games rather they fall under the category of games of skill like horse racing. Thus this court has dismissed the arguments which have been put forth by Petitioner.The court relied upon of judgment from the P&H High Court and Lakshmanan case to confirm that competitions held on the platform of Dream11 were skill-based rather than dependent on mere chance. It was further stated by the court that when the result of a game or contest is exclusively dependent on chance or random occurrence, and when any monetary bet is made with an understanding of taking risk and anticipation of profit then it would be classified as 'gambling' or 'betting'. Given that this circumstance does not apply to fantasy games played on the platform of Dream11, they do not qualify as gambling/betting.

The court dismissed the petitioner's contention which outlined that the outcome would heavily rely on external factors, such as which players perform better in the actual game on a given day. As per the petitioner's argument, it would amount to a matter of chance, regardless of how skilled a participant might be in the online fantasy game.

Regarding the issue of GST payment, the Court has rejected the petitioner's assertion that Dream11 had circumvented GST by misclassifying games that are hosted on their platform. The court further concluded that tax evasion could only be inferred if their online fantasy sports gaming (OFSG) fell under gambling/ betting. Additionally, it is determined that funds that have been pooled by players in the escrow account

[7] Shri Varrun Gumbber v Union Territory of Chandigarrh and Ors., CWP No. 7558 of 2017

[8] K. R. Lakshmanan v. State of Tamil Nadu, AIR 1996 SC 1152

represent a legally enforceable right/ actionable claim. Because that amount is intended to be distributed amongst winning participants based on the result of the game.

The court further clarified that as it has been mentioned earlier according to the Central Goods & Services Act, any 'actionable claims' apart from lottery, betting, and gambling are not classified as 'supply of goods' or 'supply of services'. When they are not classified as actionable claims they are exempted from GST application. The Court has determined that since online fantasy sports on the platform of Dream11 do not constitute betting or gambling, the GST laws cannot be levied on funds contributed by the players. The Court has also dismissed the petitioner's contention that funds deposited by players should be classified as consideration to the platform and therefore subject to GST. The definition of 'consideration' applies solely in the context of 'supply of goods or services or both'. The abovementioned activity or transaction concerning an 'actionable claim' regarding the amount pooled by participants in an escrow arrangement (for which only acknowledgment is provided) does not constitute either a supply of goods or a supply of services. Thus this activity falls clearly outside the scope of the term 'consideration'. The Court also concurred with Dream11's perspective that GST is applicable solely on the consideration payable for the supply of goods or services, or both, within the platform at a rate of 18% and not at the rate of 28%.

Special Leave Petition

A special Leave Petition was submitted to the Apex Court, contesting that the decision of the Bombay High Court is erroneous. On December 13, 2019, the case was heard by the Supreme Court and later dismissed by the division bench, presided over by Justices Rohinton Nariman and S. Ravindra Bhat. The bench determined that there were no grounds to accept these cases and overturn the decision of the Bombay High Court. Reports indicate that Justice Nariman made an oral observation by asserting that there is no uncertainty that fantasy sports entail skill, given that participants utilize their intellect and judgment in selecting one cricketer over another. However, the bench did grant permission for the Union of India to appeal to the Bombay Court and submit a review petition, seeking a fresh hearing on Dream 11's purported GST evasion amounting to Rs. 2173 crores.[9]

In doing this, the Apex Court appears to have dispelled any remaining uncertainty regarding the legal standing of fantasy sports in India, thereby clearing the path for platforms like Dream 11 to persist and flourish in an expanding market.

Analysis

K.R. Lakshmanan v. State of Tamil Nadu[10] (Lakshmanan Case)- here the Apex Court relied upon its earlier decision in the RDMC case to determine whether contests requiring significant skill are considered 'gambling activities' or not to further decide whether horse racing is gambling or not. The court here ruled that a 'game of chance' is defined by luck alone such as card shuffling or dice throwing whereas a 'game of skill' is characterized player's superior knowledge, training, and dexterity. Although a 'game of skill' might still involve some elements of chance, the dominance of skill over chance should be evident, as seen in games like chess or rummy. Based on this reasoning court has ruled that horse racing involves skill therefore it is a game of skill without falling under a game of chance.

RMD Chamarbauggwala v. Union of India[11]- here it was ruled by the Supreme Court that 'gambling' doesn't qualify as a 'trade'. Therefore it cannot be covered by the protection of 'freedom of trade and business' as guaranteed by Article 19 (1) (g) of the Indian Constitution. Conversely, competitions that require 'significant skill' constitute a separate category therefore are considered business activities. Hence such activities are safeguarded by Article 19 (1) (g).

Shri Varun Gumber v. UT of Chandigarh & Ors[12]- Here Punjab & Haryana High Court had the responsibility of categorizing Dream 11's fantasy sport engagements as either predominantly reliant on luck or primarily

---

9 SC dismisses all GST evasion and gambling appeals filed against Dream 11 Platform, Centre can approach HC again', (*Glaws*, 13 December 2019)

10 K.R. Lakshmannan v. State of Tamil Nadu AIR 1996 SC 1152

11 RMD Chamarbauggwala v. Union of India AIR 1957 SC 627

12 *Ibid 4*

dependent on skill. It observed that individuals participating in 'Dream 11' contests meticulously analyze players, assess their value objectively, and consider various factors such as anticipated statistics (like a cricketer's batting averages, total runs, etc.). Therefore, it is evident that achieving success in Dream 11 would result from the user's application of advanced knowledge, sound judgment, and careful attention. It thus indicates that success in these fantasy games would primarily be determined by the skill of players. Therefore, this Court concluded that punitive measures of the Public Gambling Act would not apply to the Dream 11 platform, affirming their protection under Article 19 (1) (g) of the Indian Constitution. Significantly, a Special Leave Petition has been filed to challenge this decision but it was rejected by the Supreme Court, as per its order dated 15th September 2017. Moreover, this ruling of P&H HC relied significantly on the Supreme Court's verdict in the case of K.R. Lakshmanan v. State of Tamil Nadu. There a three-judge bench determined that 'horse racing' is not considered gambling because it primarily is a game of skill rather than falling under the category of game of chance.

Game of skill or game of chance- The decision taken by the Bombay Court is likely to bring joy and optimism to online fantasy sports gaming. This decision by the High Court is seen as a positive development, particularly considering previous uncertainties regarding rulings in other states by various other courts. However, with the Court's siding with Dream11 and providing a well-explained judgment, it is evident that such 'online fantasy games' ought to be recognized as games of skill rather than mere games of chance. This clarification is crucial as it prevents them from being categorized as forms of betting, gambling, lottery, or wagering.

Application of GST Laws- the Court's decision provides with necessary clarity regarding the application of GST laws for the gaming industry, which was greatly needed. The court, in its rational understanding, has grasped the operational dynamics of these games, recognizing that Dream11's primary service is to furnish a platform where players can convene and engage in gameplay. Hence, the imposition of GST laws solely on the service fee is entirely warranted. An alternative perspective is that the value of services offered by the Dream 11 platform aligns solely with the service fee they charge for each game. Once it is established that these games are games of skill, there can be no room for exceptions. Now, these platforms should only incur an 18% charge based on the value of services they offer, rather than on the total amount contributed by players.

Escrow Account- In this particular scenario, the Dream 11 platform utilized an escrow account to consolidate funds contributed by players, from which winners are awarded. This has been a significant inquiry that the gaming industry has been endeavoring to resolve. Although the High Court ruling does not delve into this matter, the presence of an escrow account, where funds are pooled, can assist in establishing that money in such escrow account did not belong to the platform but to players. Consequently, there should be no GST applied to such funds. Nevertheless, the crucial issue to ponder is what happens if these platforms do not uphold an escrow account. Should GST laws be applicable in such a scenario? It is widely understood that funds belonging to players are not recognized as revenue for the platform and are therefore accounted for and disclosed accordingly in the balance sheet. Consequently, it implies that there is no necessity to uphold a distinct escrow account to qualify for GST exemption on these sums. Nevertheless, this question still lacks a resolution.

Implication for other participants in the industry- The stance that GST laws should applied to service fees if the game is skill-based is evident and, to that extent, it should apply to all industry participants in that sector. However, in cases where it is uncertain whether the game relies on skill or chance, the lingering question is whether these platforms should be liable to pay GST solely on service fees or on the entire amount pooled by participants with them.

Conclusion

In India, the regulation of betting and gambling falls under The Public Gambling Act, of 1867 (PGA), which prohibits all types of gambling activities and betting on games primarily based on chance but the PGA does not address online gambling, meaning there is no specific legislation prohibiting online gambling in India. Online gambling may encompass activities such as crossword puzzles, quizzes, card games, or fantasy sports.

Since, there is no specific law or regulation that provides for the applicability of taxation laws on these online games, one such issue that crops up before courts was of taxation of fantasy sports. The question that arises is whether the activities of Dream11 constitute 'Gambling' or 'Betting' & whether Dream11 is exempted under Rule 31 A (3) of the CGST Rules, 2018.

The Bombay High Court had ruled that when a game's result is exclusively dependent on the chance or random occurrence, and if any monetary bet is made with an understanding of risk-taking and anticipation of profit is there then it would be classified as 'gambling' or 'betting'. It observed that individuals participating in 'Dream 11' contests meticulously analyze players, assess their value objectively, and consider various factors such as anticipated statistics (like a cricketer's batting averages, total runs, etc.). Therefore, it is evident that achieving success in Dream 11 would result from the user's application of advanced knowledge, sound judgment, and careful attention. Thus it indicates that here success in the game would primarily be determined by the skill of the player and not by chance.

Regarding the issue of GST payment, the Court has rejected the petitioner's assertion that Dream11 had circumvented GST by misclassifying games that are hosted on their platform. The court further concluded that tax evasion could only be inferred if their online fantasy sports gaming (OFSG) are falling under gambling/ betting. Given that the online fantasy sports on the platform of Dream11 do not constitute betting or gambling, the Court had determined that GST cannot be levied on funds contributed by the players. It could only be imposed on platforms for services they are providing to users and not on funds pooled by participants.

* * * *

CYBERBULLYING

Keerthana K. *
Kruthika V. **

Abstract

Cyberbullying is a genuine criminal offense culpable beneath the law. Cyberbullying includes attacking someone's security for all intents and purposes in the advanced world and victimizing one of their mental well-being. It is to annoy, debilitate, or scare somebody on the web. Cyberbullying is the following step for cruel bullies- bullying as grown-ups. It is a cheap and obscene act to do, to rear behind veils and interfere in their individual space. A few acts of cyberbullying incorporate sending undesirable messages to somebody without their assent, spreading wrong data and rumors around them, commenting scornful things almost hacking into one's account, and imitating them.

Today we are going to talk about the serious issue of cyberbullying and its impact on mental health. Cyberbullying is a growing problem in today's digital age, it involves using technology to harass intimidate, or threaten someone and it can happen to anyone at any age this can happen through social media, messaging apps, online forums, or any other digital platforms, the effects of cyberbullying on mental health can be severe including depression, anxiety, low self-esteem and even suicide for victims of cyberbullying. The constant harassment and humiliation can lead to feelings of isolation, shame, and hopelessness. It's essential to keep in mind that cyberbullying is never the sufferer of criticism, recall you don't have to endure in quiet. There are assets accessible to offer assistance you overcome the trauma of cyberbullying and ensure your mental well-being.

Introduction

When we are cruel we might say or do things that harm others. We might be feeling irritated, disturbed, or desirous. It could happen once or maybe even twice. Being pitiless is not certify, but bullying is much more unfortunate. Bullying is when someone livelihoods their control more than once to hurt or irritate some person. It appears to be hurting them physically, or calling them names and saying malignant things. Cyberbullying is like bullying, but it happens on the web or a gadget like your phone, It appears to be hurting them physically, or calling them names and saying malignant things. Which can make it kind of distinctive. With cyberbullying, it can feel harder to elude, since it can be anyplace, anytime. Also, it's easier for cyberbullies to hide who they are Also, other individuals online might see what's happening, and indeed group up on somebody.

If you see somebody being bullied, in an individual or online, allow them back. It helps to show that you care. Be an upstander. Burlesque for others and say commodity to the bully. Cyberbullying happens when someone posts or shares harmful or mean content about someone else on the internet, social media, apps, texts, and video games. Around half of children involved in bullying are both victims and perpetrators. Casualties of cyberbullying commonly encounter fear, outrage, trouble, uncertainty, disgrace, and indeed self-destructive considerations. Victims are not always willing to report incidents. They fear restitution or losing computer, internet, or phone privileges. Bystanders may suffer behavioral consequences, including feelings of anger and guilt for not taking action. Perpetrators have an increased risk of depression later on in life.

Cyberbullying is when someone bullies or harasses others on the internet and in other digital spaces particularly on social media sites. It includes sending, posting, or sharing negative, harmful, false, or mean content about someone else It can incorporate sharing individual or private data approximately somebody else causing embarrassment or mortification. A few cyberbullying crosses the line into illicit or criminal conduct.

* 3rdYear B.Com LLB, Kristu Jayanti College of Law, Bengaluru, Karnataka
** 3rdYear B.Com LLB, Kristu Jayanti College of Law, Bengaluru, Karnataka

What is cyberbullying?

Cyberbullying is bullying by electronic means. We too utilize the terms cyber badgering and online bullying with the same meaning. Before the advent, this type of bullying did not exist. It is common today among schoolchildren, teenagers, and college students. Workplace bullying and harassment may also take place online that is in the form of cyberbullying.

Cyber bullying:

Cyber is short for cybernetics. A bully is a person who intimidates or harms seemingly vulnerable or weaker individuals, that is easy prey. The bully's behavior, which hurts the victim either physically, mentally, or emotionally, is habitual and done on purpose.

Cyberbullying and trolling have become serious problems worldwide. Victims become scared, frustrated, upset, anxious, angry, clinically depressed, and even some cases suicidal. Cyberbullying can be far as hurtful as physical bullying. The sufferer of a physical bully at school is absent from it all at domestic. The victim of a cyberbully, on the other hand, continues suffering every time he or she goes online, it's maybe at home.

5 signs Your Child Might Be a Sufferer of Cyberbullying

- Suddenly stop using the computer for fun.
- They do not want to go to school or seem uneasy about going.
- They seem nervous or jumpy when a text, email, or notification pops up.
- They do not want to use the computer in a place where you can see it.
- Being very secretive or protective of one's digital life.

When it comes to bullying young ladies were more likely to be casualties of verbal or social attacks, whereas boys were more likely to be physically bullied, and as kids age physical bullying diminishes, but cyberbullying increments.

According to research in Psicothema, one in four teens was cyberbullied in the year before the study. And unlike old-school bullying, the internet is in your pocket all the time, thanks to smartphones. 63% of the teens said they never shut off their phones, so they can be bullied anywhere, and as more people carry devices like phones and laptops the numbers will grow. The long-term impacts of this round-the-clock bullying are starting to be examined. According to the same psicothema study, with most, the cyberbullying lasted less than a month; but fourpercent of teens said they had been regularly cyberbullied for 3 to 6 months and 3% for more than a year.

According to the constitutional structure of India, cyberbullying is a criminal offense. This implies that any forceful, purposeful act of harassing somebody on social media or through emails and SMS is culpable in the eyes of the law.Do you know that India as a country stands 3rd in cyberbullying?

Do you know that in India 1 in 4 adults have seen a lot of images or a video of themselves and 50% of these were not reported to the police? Do you know that a total of 37% of parents across India which is the highest in the world that their child was bullied online with 14% of the total saying that bullying occurred regularly? Do you know that globally on average over half of a doll essence and teams have been bullied online about the same number have engaged in cyberbullying. Do you know that more than 1 in 3 young people have experienced cyber threats online? Do you know that over 25% of adults and teams have been bullied repeatedly on cell phones or the internet and shockingly over half of young people do not tell their parents wherebullying occurs all across the world or 80% of teams use mobile phones regularly they were making cell phones as the most common form of technology and a medium for cyberbullying?

What is cyber harassment?

Well as the name suggests it is a kind of bullying, harassment, intimidation, or stalking using electronic means including online bullying through social media or messaging apps or software it has become more and more common notably among teenagers as the digital domain and filled as expanded anonymously with the advanced technology.

Cyberbullying takes place when a person more often or as mentioned a teenager bully intimidates or harasses on the internet any specific individual or generally anybody, particularly on social media sites, serious and harmful behaviour that can lead to criminal consequences can include posting rumours spreads, sexual remark, victims personal information or morphed images or derogatory labels including hate speech the sad and tragic consequences of cyber bullying on the victims could be that these victims may experience depression increased suicidal tendencies lower self esteem and range of negative emotional responses including being and feeling nervous, anxious, sleepless, varied, distressed, frustrated, outraged, angry, miserable and so on. Internet trolling is a common form of bullying that takes place in an online community to provoke an extreme reaction or it could well be for sadistic pleasers in some cases cyberstalking is another kind of bullying or harassment that uses electronic communication.

Relatable sections:

Stopping a victim may present a plausible and real threat it the victim's safety life and liberty children in India reported the third highest online bullying rate after China and Singapore among the 25 countries surveyed under a commissioned project by Microsoft Corporation to understand the global persuasiveness of online bullying. Although in India there is no specific law that focuses on cyberbullying, there are adequate provisions in 3 statutes that treat it as a serious criminal offense for instance under the Indian penal code there are sections like

Section 499 of IPC for defamation.

Section 292 of IPC dealing with printing etc of grossly grossly beg a pardon indecent matter intended for blackmail.

Section 354 of IPC regarding making sexual remarks, and sexual harassment.

Section 354 D of IPCabout stalking.

Section 507 of the IPC deals with criminal intimidation by anonymous communication.

Section 509 of IPC you know deals with expressions intended to insult the modesty of women then under the Information Technology Act which many of you would already know there are many sections.

Section 67 of the IT Act deals with publishing or transmitting obscene material in electronic form and publishing or transmitting to you, know material containing sexually explicit, etc.

Section 66 of the IT Act there are certainly deals with violation of privacy which could be well invoked finally there is a new law named The Protection Of The Children From Sexual Offences Act 2012 which is known as in short form as Bakso Act it protects children below the age of 18 years from any form of sexual harassment, sexual assault and pornography but includes cyberbullying as well and I must remind you that in India the ministry of women and child and development and the ministry of home affairs have launched dedicated helplines and portals for reporting crimes against women and children including cyber-crimes so you may like to visit cybercrime.govt.in;[1]to report cyberbullying online harassment and cyber defamation, particularly against women and children.

Laws against cyberbullying in India

There are no particular laws in India that give assurance against cyberbullying. Be that as it may, the arrangement of Section 67 of the Information Technology Act deals with cyberbullying to a few degree. Section 67 of the IT Act endorses punishment for distributing or transmitting vulgar material in electronic form for five a long time and too with a fine which may expand up to Rs. 10 Lac.

Ways To Stop Bullying

Unfortunately, bullying is a widespread problem and it can take a toll on everything from your self-esteem to your physical health. But we are here to tell you, you are not at fault and you are not alone where you are with an army of people just like yourself.

Do not react or counter - The bullies' primary rationale is looking for a response. As per them, you are giving them control over you; if you do not react, you limit their control. One thing you can do in this

[1] https://www.cybercrime.gov.in/

circumstance is to be quiet and not answer them. If the issue proceeds, you can bestow with a cybercrime lawyer.

Keep the proof secure - The casualty must capture and spare all the confirmation of cyberbullying and can appear the same for demonstrating that they have fallen prey to cyberbullying. It is fundamental to keep all the pieces of proof, such as messages, posts, and comments, spared. You can moreover grandstand this to the concerned specialist of cyberbullying. Such as, if someone is bullying you on any social media account, you can piece the individual or indeed get the social media specialists concerning the same. If you complain against them, they will take it down. Numerous websites have a no-tolerance policy.

Reach out to offer assistance - After taking the steps specified over, if you feel you are getting bullied, contact a cyber legal counselor as an attorney can help you with this and get out of the cyberbullying circumstance.

Utilize innovation - Presently, as per the overhauled innovation, there are different highlights that one might utilize to secure them. You can take after the security arrangement of the concerned social media stage. Besides, you can report the account that you feel is advancing cyberbullying.

Secure your account secure - Make beyond any doubt that your secret word is secure. Never communicate your secret word with anybody, no matter if they are your closest companions, to halt bullying. Keep your phone and accounts' secret words ensured; do not let anyone snoop through your delicate information.

Keep your social profile and interaction secure - Social media presence has ended up being necessary to everybody's life whereas posting and collaborating with individuals on social stages. Social media has its aces and cons.

Judicial interpretation:

Seema Khanna [2] : An embassy employee in New Delhi wasn't aware that using the internet would result in an invasion of her privacy. Khanna (32) received a series of emails from a man demanding her to either appear naked for him or pay him Rs 1 lakh in an apparent case of cyberstalking. The woman stated in her statement to Delhi Police that she began receiving these emails in the third week of November 2020.

Khanna was threatened by the accused, who said he would post her altered photographs, as well as her phone number and address, on sex websites. He also allegedly threatened to display the photos in her south-west Delhi neighborhood.

"She initially ignored the emails, but she soon began receiving letters through posts, all of which had the same threat. She was compelled to report the incident to the authorities "stated an officer of the cybercrime cell.

Her struggle, however, was far from over. The accused sent the woman her photos over email. The woman said that these were the exact photos she had saved in her mail. The accused allegedly hacked her email password, allowing him access to the photos, according to the police.

According to a preliminary investigation into the complaint, the emails were sent to the victim from a cyber cafe in South Delhi. "We aim to find the accused as quickly as possible," said Dependra Pathak, Deputy Commissioner of Police (crime).The offender appeared to know a lot about the victim, which led the authorities to believe he knew her.

In *Poona Auto Ancillaries Pvt. Ltd., Pune v. Punjab National Bank*[3], HO New Delhi & Others (2018), Rajesh Aggarwal of Maharashtra's IT department (representative in the present case) ordered Punjab National Bank to pay Rs 45 lakh to Manmohan Singh Matharu, MD of Pune-based firm Poona Auto Ancillaries.

In this case, a fraudster transferred Rs 80.10 lakh from Matharu's account at PNB, Pune after the latter answered a phishing email. Since the complainant responded to the phishing mail, the complainant was asked to share the liability. However, the bank was found negligent because there were no security checks conducted against fraudulent accounts opened to defraud the Complainant.

---

[2] www.legalservicesindia.com;

[3] Poona Auto Ancillaries Pvt. Ltd., Pune v. Punjab National Bank (2018)

In *Kumar v. Whiteley* (1991)[4], during the investigation, the accused gained unauthorized access to the Joint Academic Network (JANET) and deleted, added, and changed files. As a result of investigations, Kumar had been logging on to a BSNL broadband Internet connection as if he was an authorized legitimate user and modifying computer databases about broadband Internet user accounts of subscribers. Based on an anonymous complaint, the CBI registered a cyber crime case against Kumar and conducted investigations after finding unauthorized use of broadband Internet on Kumar's computer. Kumar's wrongful act also caused the subscribers to incur a loss of Rs 38,248. N G Arun Kumar was sentenced by the Additional Chief Metropolitan Magistrate. The magistrate ordered him to undergo a rigorous year of imprisonment with a fine of Rs 5,000 under Sections 420 of IPC and 66 of the IT Act.

Conclusion

The Information Technology Act of 2000 and the IPC of 1860 do not particularly address the subject of cyberstalking and the defamatory or debilitating articulations made by the stalker whereas stalking the casualty through SMS, phone calls, e-mails, or blogging beneath the victim's title. A few of the arrangements of the above-mentioned Acts permit for the discipline of the wrongdoer. There is no particular clause that bargains with this offense. This wrongdoing is decently straightforward to commit, but the results are very long-lasting. It can hurt the victim's mental and physical well-being. The punishment given beneath current arrangements ought to be improved while keeping the victim's well-being in intellect.

* * * *

[4] Kumar v. Whiteley (1991) 93 Cr. App rep 25

STATEMENT OF OWNERSHIP

FORM IV RULE 8

1.	Place of Publication	Mangalore, India
2.	Name, address and Nationality of the Publisher	Dr. Tharanatha Indian Principal & Chairman S.D.M. Law College Centre for P.G. Studies & Research in Law Mangalore - 575 003.
3.	Name, address and Nationality of the Editor	Dr. Tharanatha Indian Principal & Chairman S.D.M. Law College Centre for P.G. Studies & Research in Law Mangalore - 575 003.
4.	Periodicity of Publication	Lex Plus Student Law Review 2024
5.	Name, address and Nationality of the Printer	Udaya Printery & Publication (P.) Ltd., Kodialbail, Mangalore - 575 003 Indian

I, Dr. Tharanatha do hereby declare that the above contents are true to the best of my knowledge.

Date: August, 2024

Dr. Tharanatha
Editor-in-chief