



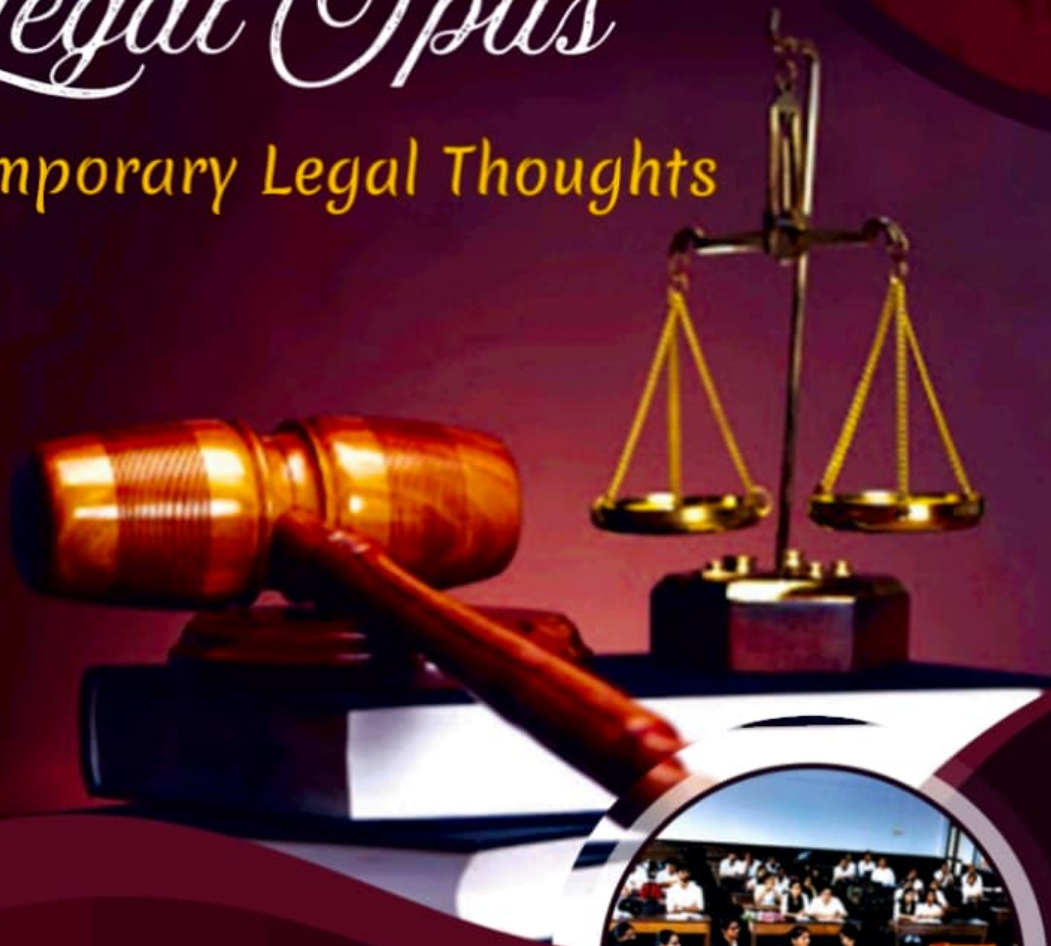
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Contemporary Legal Thoughts



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EDITORIAL

The 21st century is the era of the knowledge revolution. The age-old notion of the human mind as the ultimate epicenter of knowledge is challenged by the emergence of artificial knowledge in the form of artificial intelligence. In pursuit of knowledge the factor that is feared most is the loss of original or creative knowledge. Creative knowledge in any field is meant for understanding human problems, application of new tools, procedures for testing the established truths, and arriving at a solution to the problem from multidimensional levels. A true researcher always strives to achieve above objectives. In this process he needs to develop objectivity, impartiality, honesty and above all intellectual integrity.

The 16th issue of Legal Opus- Contemporary Legal thoughts brings forth chapters, articles from academicians and other personnel from the legal sphere aspiring to be researchers of quality and integrity. We have received a good number of articles which have undergone blind peer review. We acknowledge all our contributors for presenting their scholarly thoughts. A heartfelt gratitude to our Management headed by Dr. D. Veerendra Heggade, the President SDME Society, Ujire, Vice President Sri. Surendra Kumar, Secretaries Sri. Harshendra Kumar, Dr. Satheeshchandra S and all other members of the Management for all support extended to us in our endeavors. I appreciate the efforts of Dr. Santhosh Prabhu, Associate editor for the compilation of this work. Special thanks to Manjushri Printers for the quality printing of this issue.

Dr. Tharanatha
Editor & Principal

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I, Dr. Tharanatha, hereby declare that the particulars given above are true to the best of my knowledge and belief.

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ACHIEVING SUSTAINABLE DEVELOPMENT GOALS THROUGH GENDER EQUALITY IN EDUCATION: A HUMAN RIGHTS PERSPECTIVE

Dr. Anu Prasannan¹

Abstract

Gender Equality is a fundamental human right and the essence of human rights jurisprudence. It symbolises the needs and interests of all the genders-women, men, transgenders thereby, allowing them to take independent decisions as human beings brushing aside all stereotypes and prejudices. In simple words, Gender Equality means equality in opportunities for women, men, transgender in fields of education, employment, health care, economic resources, leadership positions, participation in decision making process and contributing towards social, economic and political development of the nation. Although these rights are guaranteed evenly to both men and women, the disparity exists even today and women are found to be more discriminated. There are many ways to remove the stereotypes and prejudices but one of the primordial ways to remove the gender disparity is through educating the women globally and thereby, empowering them and enabling them to stand at par with men. The same is reflected in Sustainable Development Goal 4 (SDG 4) and it should be achieved in cooperation with Sustainable Development Goal 5 (SDG5) that emphasises on 'Achieving Gender Equality and Empowering all Women and Girls'. However, it is to be noted that Education is not the sole way to achieve gender equality. In order to bring a change in the existing situation, realisation should happen within oneself and one's family, then in the Community and ultimately in the society wherein, the values of equality can be inculcated thereby, shattering the social stigma that women are inferior and an object for discrimination.

Keywords: *Women, Gender Equality, Human Right, Sustainable Development Goals, Social Stigma*

Introduction

In the words of UN Secretary General Mr. Antonio Guterres: Achieving Gender Equality and Empowering Women and Girls are the unfinished business of our time, and the greatest human rights challenge in our world.² Gender Equality is thus a fundamental human right and the essence of human rights jurisprudence.³ The very essence of human rights jurisprudence is that it symbolises the needs and

¹ Assistant Professor, Karnataka State Law University, Hubballi.

² *The UN Secretary General's Message on International Women's Day*, UN Women (Jan. 15, 2024 3.30 P.M) <https://www.unwomen.org/en/news/stories/2018/3/statement-un-sg-iwd>

³ *Peace, Dignity and Equality on a Healthy Planet*, United Nations, (Dec. 28, 2023 1.15 A.M) <https://www.un.org/en/global-issues/gender-equality>

interests of all the genders-women, men, transgenders thereby, allowing them to take independent decisions as human beings brushing aside all stereotypes and prejudices. In simple words, Gender Equality means equality in opportunities for women, men, transgender in fields of education, employment, health care, economic resources, leadership positions, participation in decision making process and thus contributing towards social, economic and political development of the nation.⁴ Although these rights are guaranteed evenly to both men and women, the disparity exists even today and the intensity of the same varies from nation to nation. Among all, women are found to be more in a disadvantaged situation. If we see the statistics of women globally, it is found that women constitute half of the world's population and therefore, deserve greater potentiality than what she actually enjoys. Providing more opportunities to women or shifting opportunities from men to women cannot be said to be a solution for gender equality but creating an environment where everyone has a right to realise their growth is required.⁵ There are many ways to remove the stereotypes and prejudices but one of the primordial ways to remove the gender disparity is through Educating the women globally and thereby, empowering them and enabling them to stand at par with men. As we are nearing towards the Sustainable Development Goals, it will be pertinent to mention the global education development agenda reflected in the Goal 4 (SDG4) of the 2030 Agenda adopted by India in 2015 which seeks to “ensure inclusive and equitable quality education and promote lifelong learning opportunities for all” by 2030.⁶ This is to be achieved within the perspective of Sustainable Development Goal 5 (SDG 5) that emphasises on ‘Gender Equality and Empower all Women and Girls’. In this backdrop it becomes necessary to look into the main causes of gender inequality and the recent global statistics so as to ascertain the position of women in education and related fields.,

Causes and Extent of Gender Inequality

The main cause of increasing gender discrimination faced by women is because of the following factors:

- Illiteracy
- Poverty and Economic dependence

⁴ Daizy Thankur, *Gender Equality and Human Rights in India: Issues and Perspectives* (Dec. 16, 2023 12.00 A.M) <https://www.gapjournals.org>

⁵ Esuna Dugarova, *Gender Equality as an Accelerator for Achieving the SDGs* (2019).

⁶ *National Education Policy*, Ministry of Human Resource Development, Government of India (2020).

- Caste Restrictions and Religious Prohibitions
- Disability
- Early Marriage and Pregnancy
- Gender based violence

According to World Bank, In India women constitute 48 per cent of the India's population and presently for every 1000 men India has 1020 women.⁷ Still discrimination and crimes against women are on a rise. Cruelty by husband and relatives, Assault on women with intent to outrage her modesty, Kidnapping and abduction of women, other heinous crimes like Rape are still rampant in the society. National Crime Record Bureau in its Report Accidental Deaths and Suicide in India 2021⁸ has pointed out that the proportion of women who died by suicide was highest in case of marriage related issues followed by Impotence and Infertility.⁹ The list is not exhaustive and above all the traditional attitude towards the status of women in the society still remains unchanged resulting in more and more gender disparity. The realisation of the main causes compels one to analyse the global index for Gender Equality and the position of women globally.

Based on the Global Gender Gap Report 2023¹⁰, it is evident that the global gender gap in health and education has narrowed over the past years. The key benchmarks focused by the Global Gender Gap Index are based on four dimensions namely, Educational Attainment, Health and Survival, Economic Participation and Opportunity and Political Empowerment. The report has analysed 146 countries across the globe including India showing the progress of the Countries' efforts in closing the gender gaps over the time. The 2023 final report reflects that the global gender gap score for all 146 countries stands at 68.4 per cent closed.¹¹ The Gender

⁷*Most Populous India has big gap in Sex Ratio*, (Jan. 19, 2024 2.30 P.M), <https://www.livemint.com/news>

⁸*Deaths by Suicide at their highest rate in 2021, shows NCRB data*, Hindustan Times, August 29, 2022, <https://www.hindustantimes.com/india-news/suicide-rate-soars-to-highest-ever-in-2021-crimes-accidents-close-in-on-2019-levels-101661711716349.html>

⁹ *UNDP Report exposes India's Gender Bias Crisis*, Frontline dated, June 19, 2023.

¹⁰ This Report is based on the information collected and compiled by the World Economic Forum which is an International Organisation established in 1971 as a not-for-profit foundation and is headquartered at Geneva, Switzerland. The Global Gender Gap Index was first introduced by the World Economic Forum in 2006.

¹¹ The result shows that there is an improvement of 0.3 per cent compared to 2022-23.

Parity Index of Eight Regions as per the final report is listed as follows:

Sl. No	Regional Result	Gender Parity Index
1	Europe	76.3%
2	North America	75%
3	Latin America and Caribbean	74.3%
4	Eurasia and Central Asia	69%
5	East Asia and Pacific	68.8%
6	Sub-Saharan Africa	68.2%
7	Southern Asia	63.4%
8	Middle East and North Africa	62.6%

Source: World Economic Forum: Global Gender Gap Report 2023

The list shows that no country has achieved full gender parity and the position of Southern Asia including India has the second lowest score of the eight regions. It is to be noted that among the four benchmarks, across 146 countries, Health and Survival Gender Index has closed by 96 per cent followed by Educational Attainment by 95.2 per cent. Educational Attainment is the subindex with the second-highest global parity score with 4.8 per cent of the gender gap left to close. As per the report, India has 64.3 per cent overall gender gap ranking 127th on the global index and has attained parity in enrolment across all levels of education. This being the present status it should be noted that compared to other countries, India has made strides in equity when it comes to education. All these call for a need for an in depth understanding as to the right to education under the International and National Scenario.

Right to Education vis-à-vis Gender Equality under UN initiatives

Education is included in the Universal Declaration of Human Rights (UDHR) as Art. 26 which states that ‘Everyone has the right to education’.¹² Articles 13¹³ and 14 of the International Covenant on Economic Social and Cultural Rights (ICESCR)

¹² In addition, Articles XII and XXXI of the American Declaration on Rights and Duties; Art. 18(4) of International Covenant on Civil and Political Rights (ICCPR); Art. 12(4) of the American Convention on Human Rights, Art.17 (1) of the African Charter of Human and Peoples’ Right speaks on the importance of education as a fundamental Human Right.

¹³ Art. 13 (2) (a) provides that Primary Education shall be compulsory and available free to all. At the same time Art. 13(2)(b) is emphasising on Secondary Education in different forms including technical and vocational secondary education which shall be made accessible to all after the progressive introduction of free education. Art. 13(2) (c) also speaks on making Higher Education accessible to all on the basis of capacity. By virtue of Art. 13 (2) (d) individuals who have not received or completed the whole period of their primary education have a right to fundamental education or basic education as defined in the World Education for All.

speaks on human right to education which means that education is regarded as necessary for all human beings at all times in all societies and the State is responsible for fulfilling this right to everyone.¹⁴ The strong words of UDHR have been forcefully reaffirmed by the World Declaration on Education for All in the World Conference on Education for All, Jomtien, Thailand 1990 which affirmed the notion of education as a fundamental right.¹⁵ The Dakar Framework for Action 2000 is a re-affirmation of the vision set out in the Jomtien World Declaration on Education for all and established the new Millennium Development Goal to provide every girl and boy with primary school education by 2015 and presently, the Sustainable Development Goals also emphasise on Inclusive and Equitable quality Education for all by 2030.

Under the aegis of United Nations, UNESCO also plays a significant role to promote equal opportunities in quality learning. UNESCO launched the Global Partnership for Girls' and Women's Education, known as 'Better Life, Better Future' in 2011¹⁶ with the conviction that educating girls and women can break the cycle of poverty and foster social justice.

The World Bank along with UNICEF and United Nations Population Fund, through many of their reports stresses on the intergenerational benefits of women's education.¹⁷

In addition, the right to education has been reaffirmed in various international instruments namely:

- UNESCO Convention against Discrimination in Education¹⁸
- The Convention on the Elimination of All Forms of Racial Discrimination against Women (CEDAW)¹⁹
- The Convention on the Rights of the Child (CRC)²⁰

¹⁴ Kate Halvorsen *Notes on the realization of the human right to education*, Human Rights Quarterly, 12(3): 341-342 (1990).

¹⁵ *UNESCO World Declaration on Education for all and Framework for Action to meet basic Learning Needs*, (Nov. 26, 2023 5.00 P.M), <https://unesdoc.unesco.org/>

¹⁶ *Better Life, Better Future: UNESCO Global Partnership for Girls' and Women's Education* UNESCO, UNESDOC Digital Library (2014).

¹⁷ Azza Karam, *Education as the pathway towards Gender Equality*, UN Chronicle, United Nations.

¹⁸ Under Art. 1 of the Convention 'Discrimination', includes any distinction, exclusion based on race, colour, sex, language, religion which has the effect of nullifying equality of treatment in education and 'Education' under the Convention refers to all types and levels of education.

¹⁹ Art. 10 provides that State Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure them equal rights with men in the field of education.

²⁰ Art. 28 of the Convention specifically says that the State Parties recognize the right of the Child to education through Primary Education, Secondary Education, Higher Education and also to make educational and vocational information and guidance available and accessible to all children. In addition, Art. 29, 30 and 32 mentions about education.

- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families²¹
- Convention on the Rights of Persons with Disabilities²²

Indian Initiatives in Gender Equality through Education

India has always recognised its commitment towards Gender Equality, women empowerment and access to education by being signatory to International Conventions and Treaties which resulted in enactment of various legislations in the National level. Plethora of legislation has been enacted under the Indian Constitution some of which are listed as follows:

- Protection of Women from Domestic Violence Act, 2005
- The Commission of Sati (Prevention) Act, 1987
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- The Immoral Traffic Prevention Act, 1956
- The Indecent Representation of Women (Prohibition) Act 1986

In order to achieve the Constitutional goals, set for education, the Government of India in 1964 appointed the Kothari Education Commission²³ wherein, the Commission recommended need for radical transformation in the existing education system.²⁴ It is pertinent to note that the Constitution (Eighty Sixth Amendment) Act, 2002 inserted Art. 21 A in the Constitution of India to provide free and compulsory education for all children in the age group between 6 to 14 years as a fundamental right. The Right of Children to Free and Compulsory Education (RTE) Act 2009 is the consequential legislation enacted to fulfil the Constitutional mandate envisaged under Art. 21 A. The Act specifies in its title ‘free and compulsory’ education which has its own implications. ‘Free Education’ means that no child shall be liable to pay any kind of fee which will prevent him from completing the elementary education.

²¹ Art. 30 of the Convention deals with Education to each child of the migrant worker on the basis of equality of treatment with nationals of other States. In the context of Equality of treatment education is included in Articles 43 and 45 also.

²² Art. 24 of the Convention speaks on Education and recognizes the rights of persons with disabilities to education and emphasizes on inclusive education accessible at all levels.

²³ This was in the period 1964-1966. Kothari Commission was the 6th Commission in India but it is the first Commission mandated to comprehensively deal with the education sector in India.

²⁴ *Report of the Education Commission 1964-66*, Education and National Development, Ministry of Education, Government of India, (1968).

When it comes to ‘Compulsory Education’ it casts an obligation on the Government to implement the rights enshrined in Art. 21 A through the provisions of RTE Act.²⁵

In addition to Constitutional and Legislative measures, various policy initiatives and Programmes are also taken by the Government of India. The first National Policy on Education 1968 recommended free and compulsory elementary education and equalisation of educational opportunities especially for girls and children belonging to SC/ST.²⁶ The National Education Policy, was adopted in 1986 and updated on 1992, gave much emphasis to girl’s education and held that:

Education will be used as an agent of basic change in the status of woman. In order to neutralise the accumulated distortions of the past, there will be a well-conceived edge in favour of women. The New Education System will play a positive role in the empowerment of women. It will foster the development of new values through redesigned curricula, textbooks, training and orientation of teachers, decision makers and administrators and the active involvement of educational institutions. This will be an act of faith and Social Engineering²⁷ ...

When it comes to the very recent National Education Policy 2020 it has given much emphasis not only to school education but on Higher Education aiming at an inclusive and equitable education.²⁸ It is a vision document based on the principle that education must develop not only cognitive capacities but also social, ethical and emotional capacities and dispositions. To mention on the programmes initiated by the government²⁹, India launched

- Sarva Shiksha Abhiyan (SSA) in 2001 under the Ministry of Human Resource Development for universalization of Elementary Education.
- National Scheme for Incentive to Girls for Secondary Education launched in 2008 to promote enrolment of girl child of the age group 14-18 at secondary stage.
- *Beti Bachao Beti Padhavo* Scheme launched in 2015 by Government of India to look into the issue of declining child sex ratio and to improve it by eradicating female foeticide

²⁵ *Right to Education*, Department of School Education and Literacy, (Jan. 26, 2024 12.50 P.M), <https://dse.education.gov.in/rte>

²⁶ *National Policy on Education*, 1968, (Dec. 24, 2023 10.20 A.M), <http://www.education.nic.in>

²⁷ *National Education Policy, 1986*, Ministry of Education, Government of India.

²⁸ *National Education Policy 2020*, Ministry of Human Resource Development, Government of India.

²⁹ Urvashi Sahni, *Mainstreaming Gender Equality and Empowerment Education in post-primary schools in India*, Policy Brief, December 2018.

- Sukanya Samridhi Yojana launched in 2015 as part of *Beti Bachao Beti Padhavo* Scheme for the education and marriage of the girl child
- Udaan CBSE Scholarship Program was launched by CBSE under the aegis of Ministry of Human Resource Development to address low enrolment of girl children in Engineering Institutions.

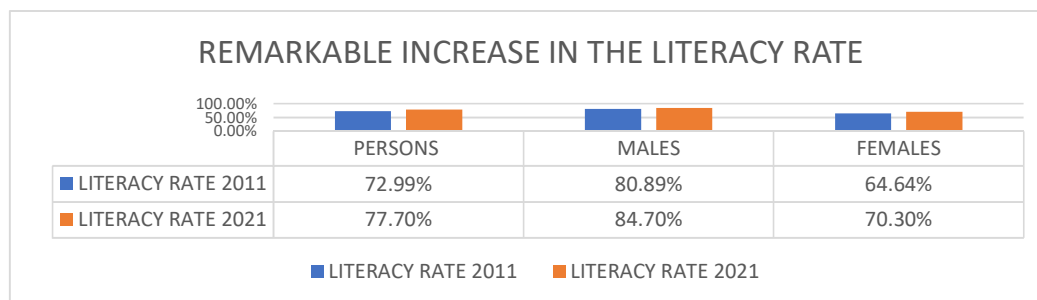
In addition to these Centrally Sponsored Schemes, there are many State schemes and programmes for the general upliftment of girl child.³⁰

As a result of these initiatives there has been a remarkable increase in the literacy rate of females in India which is evident from the statistics. As per statistics according to 2011 Census there are 76.34 billion literate people in India. Of these 32.88 Crore are women and 43.46 Crore are men. While the nation's total literacy rate is 72.9 per cent with males having 80.89 per cent and Females having a rate of 64.64 percent, the Gender Gap at National level is 16.25 per cent. If we compare the literacy rate of women in 2021 there is an increase from 64.64 per cent to 70.30 per cent which is more compared to the men that is, from 80.89 per cent to 84.70.³¹ The increase in literacy rate can be represented as follows:

Variables	Literate Population 2011	Literacy rate 2011	Literacy Rate 2021
Persons	763498517	72.99%	77.70 %
Males	434683779	80.89%	84.70%
Females	328814738	64.64%	70.30%

Source: National Statistical Office (NSO) Data 2022

The remarkable increase in literacy rate can be shown through pictorial representation as given below:



³⁰ There are State sponsored schemes like Ladli Lakshmi Yojana, Delhi Ladli Scheme, Mukhyamantri Rajshri Yojana etc.

³¹ Khritish Swargiary and Kavita Roy, *Literacy Rate in India in 2022*, *Academicia: An International Multidisciplinary Research Journal*, 12 (2022).

Though we failed to achieve the MDGs it is pertinent to note that in 1981 about 30 per cent of female population were literate and by the year 2021 it became 70.30 per cent. There has also been a significant progress when it comes to primary education wherein, as part of MDGs approximately 70 per cent of girls between 6 to 10 attended primary school in India in 2012 compared to 76 per cent of boys.³² In 2021 the literacy rate was 77.70 per cent wherein, the male literacy rate was 84.70 per cent and female 70.30 per cent.³³

The list of States having highest rate of literacy is as follows:

Sl. No.	States	Male (%)	Female (%)	Average (%)
1	Kerala	97.4	95.2	96.2
2	Mizoram	93.72	89.4	91.58
3	Delhi	93.7	82.4	88.7
4	Tripura	92.18	83.15	87.75
5	Uttarakhand	94.3	80.7	87.6

Source: Survey by National Statistical Office

The statistics clearly shows that India has moved ahead when it comes to Education. An attempt is also made to look into the situation of Higher Education in India.

Gender Equality in Adult Education and Higher Education

National Education Policy 2020 and 1986 emphasised also on adult education for eradication of illiteracy particularly in the age group of 15 to 35.³⁴ Various programmes of adult and continuing education was implemented through various ways and establishment of Centers in rural areas. At the National level, National Literacy Mission Authority (NLMA) an autonomous wing of MHRD is the nodal agency for overall Planning, Management and Funding of Adult Education Programmes and Institutions. Presently, the provisions of Adult Education are through Saakshar Bharat Programme (SBP) which is a Centrally Sponsored Scheme.³⁵

³² Sonny Kalsi, *Gender Equality in Education in India: Problems and Progress are not Equal*, (Jan. 27, 2023 8.30 A.M), <https://sonnykalsi.org/gender-equity-in-education-in-india-problems-and-progress-are-not-equal/>

³³ *Id.* at 30.

³⁴ Manoj Kumar Sinha, *Right to Education: Indian and International Perspectives*, Indian Journal of International Law (2008).

³⁵ *Adult Education*, Ministry of Education, Government of India, (Dec. 3, 2023 at 12.40 P.M), <https://www.education.gov.in/nlma>

To advise both the Centre and State in the field of Education, the Central Advisory Board of Education was set up in 1920. But the same was dissolved in 1923 and was revived in 1935 and has been functional since then.

When it comes to Higher Education, the status of female students enrolled in Higher Education can be analysed based on the All India Survey of Higher Education (AISHE) Report 2020-21 which is the latest report on Higher Education.³⁶ Analysing the background of the survey, it can be found that the AISHE was initiated in the year 2011 as it was necessary to have a complete picture of the Higher Education in the Country. The practice started in 2011 continued because of its immense utility and output over the years annually.

The AISHE Report 2020-21 has revealed that the total enrolment in Higher Education has increased from 3.85 Crore in 2019-20 to 4.13 Crore in 2020-21³⁷. Of the total enrolled in 2020-21 female was 2.01 crore which amounts to 48.67 per cent and Male enrolled was 2.12 which is 51.33 per cent. A comparison with 2019-20 enrolment is listed as below:

Year	Male	Female
2019-20	1.96 crore	1.89 crore
2020-21	2.12 crore	2.01 crore

Source: AISHE Report 2021

The Programme wise enrolment shows that the highest enrolment among all the programmes is in Bachelor of Arts (B.A) with 104 lakh students. In B.A., enrolment 52 per cent are female and 48 per cent are male. The Report reflects good percentage of enrolment of female in other programmes as well namely, Bachelor of Science (B.Sc.) with total enrolment of 49.12 lakh students, 52.3 per cent are female. Same is reflected in other programmes like B.Com wherein out of 43.22 Lakh enrolled 48.5 per cent are female. Bachelor of Engineering (B.E) has 13.42 lakhs students enrolled out of which 28.5 per cent are female.

The top six states in terms of highest total student enrolment are (i) Uttar Pradesh (ii) Maharashtra (iii) Tamil Nadu (iv) Madhya Pradesh (v) Karnataka and (vi) Rajasthan and the major States with female enrolment more than male enrolment are

³⁶ This is the 11th survey and the 1st Survey conducted through Web Data Capture Format.

³⁷ The survey focused on

- a. University and University level Institutions
- b. Colleges affiliated with Universities
- c. Stand-alone Institutions not affiliated with Universities

(i) Kerala (ii) Chattisgarh (iii) West Bengal (iv) Assam (v) Uttarakhand (vi) Telangana and (vii) Tamil Nadu.

There is also a simultaneous increase in the pass-out from 94 Lakh in 2019-20 to 95.4 Lakh in 2020-21.

Conclusion

The statement made by the UN Secretary General that ‘achieving gender equality is the greatest challenge in the world’ holds absolutely true analysing the existing situation. The most desirable way to achieve the goal is to educate girl child and empower them. Although women’s participation has improved in all fields with greater results in Education, there is a greater obligation on the part of the State to effectively update and implement the programmes and policies initiated to achieve the Sustainable Development goal of gender equality and empower all women and girls. Presently India stands at 127th position out of 146 in the Global Index for Gender Equality which strengthens the obligations further. In order to bring a change in the existing situation:

- Realisation should happen within oneself and one’s family then in the Community and ultimately in the society wherein, the values of equality can be inculcated and thereby, breaking the social stigma that women is inferior and an object for discrimination.
- Gender Education should be made compulsory in school level itself.
- Teachers can be made as the key drivers for the change wherein, they can be trained for effectively involving with the community
- Continuous Teacher Education Programmes should be organised and the teacher pupil ratio should be maintained as 1:25
- Facilities for effective counselling should be provided in the school level itself for girl child to avoid drop outs.
- The programmes and schemes of the government should be updated and effectively implemented.

TRANSGENDER ISSUES AND THE INDIAN CRIMINAL JUSTICE SYSTEM

Sharika Rai B.¹

Abstract

This research paper explores the multifaceted challenges faced by the transgender community within the Indian criminal justice system. Despite legal advancements such as the recognition of a "third gender" in the National Legal Services Authority v. Union of India (2014) Supreme Court judgment and the Transgender Persons (Protection of Rights) Act, 2019, the systemic discrimination and bias against transgender individuals persist. The paper critically examines the intersection of transgender rights and the criminal justice system, focusing on issues related to legal recognition, police brutality, wrongful incarceration, and access to justice. The study highlights the inadequacies of law enforcement, judicial processes, and correctional institutions in addressing transgender-specific concerns. It also discusses the impact of social stigma and marginalization, which exacerbate these issues, and suggests reforms to promote inclusivity, protection, and equitable justice for transgender persons. By drawing on legal precedents, and international human rights frameworks, this paper aims to provide a comprehensive analysis of how the criminal justice system in India can evolve to meet the needs of its transgender population.

Keywords: *Transgender, Cis-gender, Law, Eunuch, Crime, Marginalisation, Discrimination, Gender Justice.*

Introduction

India, a land rich in ancient wisdom and cultural traditions that celebrate respect for all beings, presents a paradox. The *Hijra* community, an integral part of Indian society for centuries, now faces severe challenges that threaten their dignity and existence. The 2019 law, once a symbol of hope, now appears inadequate against the backdrop of societal prejudice. Despite India's rich history of recognizing and respecting diverse identities, the current reality for transgender individuals remains bleak².

With the onset of British colonial rule in the 18th century, the status of transgender individuals in India, particularly the *Hijra* community, changed drastically. The British introduced the Criminal Tribes Act of 1871, which classified the entire *Hijra*

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² Ankush Kumar, *Anti-transgender discrimination, violence in India persists*, The Hindu (Sept. 24, 2024)

community as inherently “criminal” and predisposed to “systematic commission of non-bailable offenses.”³ In India, the police and the justice system systematically fail to protect the rights of queer individuals, contradicting the nation's international human rights obligations.”⁴

Human rights are embedded in various international agreements to which India is a signatory. The application of international human rights law is based on core principles of universality, equality, and non-discrimination. Every individual, regardless of their sexual orientation or gender identity, is entitled to the full protection afforded by international human rights law. Indian authorities are obligated to uphold the human rights of all individuals, including queer people, without discrimination based on sexual orientation or gender identity. This includes the rights to equality, privacy, liberty, security, and justice. These obligations are enshrined in both international human rights law and the Indian Constitution, specifically Articles 14, 19, and 21. While the landmark *National Legal Services Authority v. Union of India (NALSA)*⁵ judgment recognized the right of transgender individuals to self-identified gender, systemic discrimination and violence continue to plague the queer community in India. This stark contrast between constitutional guarantees and the reality faced by queer individuals underscores the urgent need for effective legal protection and redress mechanisms. States are obligated to establish a legal and institutional framework that ensures access to independent and effective judicial mechanisms, providing fair outcomes without any form of discrimination. However, merely granting legal access is insufficient to guarantee real access to justice. States must take proactive steps to ensure laws and policies are substantively non-discriminatory and address conditions that perpetuate discrimination. Often, laws and procedures may unintentionally discriminate or disproportionately impact those living in poverty. Additionally, various extra-legal factors can further obstruct their actual access to justice.⁶

³ Tanya Arora, *Reflecting on Transgender Rights in 2023: Have Legal Recognition and Advocacy Efforts Broken the Cycle of Discrimination and Ostracism?*, Centre for Policy Research (Mar. 31, 2023), <https://cjp.org.in/reflecting-on-transgender-rights-in-2023-have-legal-recognition-and-advocacy-efforts-broken-the-cycle-of-discrimination-and-ostracism/>

⁴ The International Commission of Jurists (ICJ), *Unnatural Offences: Obstacles to Justice in India Based on Sexual Orientation and Gender Identity*¹ (Feb. 2017).

⁵ (2014) 5 SCC 438 (India)

⁶ *Id.*

Status of transgender person and law

The identity of transgender persons are under perpetual scanner. The Transgender Persons (Protection of Rights) Act, 2019, mandates District Magistrates to issue Certificates of Identity to transgender individuals. However, this process contradicts the Act's recognition of self-perceived gender identity. By requiring individuals to seek official validation, the Act undermines their autonomy and places excessive power in the hands of government officials."⁷

Transgender individuals face systemic discrimination and harassment under various criminal laws, often denying them equal justice. Instead of protecting their rights, India's legal system, including the police and courts, frequently perpetuates human rights abuses against queer individuals. Discrimination against queer individuals often persists into adulthood, extending into various aspects of life and heightening their vulnerability to violence and abuse. To secure their livelihoods, they face an elevated risk of human rights violations based on sexual orientation and gender identity. For instance, the experiences of *launda dancers*—men and transgender women who perform at weddings in certain Indian states—illustrate these dangers.

Additionally, discrimination and marginalization frequently push queer individuals into activities that put them at odds with the law. Limited access to education and economic opportunities forces many to rely on sex work and begging for survival. Hijras and transgender sex workers are often harassed by police for soliciting or begging. Due to rejection by families and communities, transgender individuals often use public spaces like parks and toilets for sex work, increasing their exposure to violence, particularly from law enforcement.⁸

A global study, Trans Murder Monitoring (TMM), reveals a grim picture of violence against transgender and gender-diverse individuals. Between 2008 and 2021, India reported 102 murders of transgender persons. Globally, Brazil topped the list with 1645 such killings, followed by Mexico (593) and the USA (324). However, these figures may not fully reflect the extent of the problem. India's National Crime Records Bureau (NCRB) 2021 data reports only 236 transgender persons as victims of

⁷ Vandana Bansal, *How lack of documentation of transgender persons in India is hindering justice for them*, Scroll.in (June 27, 2022), <https://scroll.in/article/1026766/how-lack-of-documentation-of-transgender-persons-in-india-is-hindering-justice-for-them>

⁸ Supra note 4

all crimes. This significant discrepancy is attributed to underreporting and inadequate documentation of the lives of transgender individuals, as highlighted by legal experts and activists.⁹

The 2016 study by the National Institute of Epidemiology found that police and other law enforcement agencies are the primary perpetrators of violence against transgender individuals.¹⁰

The 2022 National Crime Records Bureau (NCRB) report paints a grim picture of violence against transgender individuals in India. While India wrestles with a staggering number of crimes, the specific experiences of transgender individuals remain largely invisible. Of the 29,356 murders recorded, only nine victims were identified as transgender. This alarmingly low figure suggests a significant underreporting of crimes against this community. Similarly, among the 110,140 cases of kidnapping and abduction, only one victim was identified as transgender. This lack of representation raises serious concerns about the accuracy of these statistics and the extent to which transgender people's experiences are being overlooked or dismissed.

The NCRB's report on rape further underscores this issue. While 236 transgender individuals were listed as victims of rape, this number likely underestimates the true extent of sexual violence faced by this community. Notably, the report does not include any cases of rape or sexual assault involving transgender individuals, suggesting a significant gap in data collection and reporting. This systemic failure to accurately record and address crimes against transgender individuals perpetuates a cycle of violence and discrimination. It is imperative to recognize the unique challenges faced by this community and to implement measures to ensure that their voices are heard and their rights are protected.¹¹

Analysis of Criminal Law

The harassment of Transgender persons can be traced back to the Colonial era. The draconian Criminal Tribes Act of 1871, branded the Transgender community as a whole as criminals. Part II of the 1871 Criminal Tribes Act identified "eunuchs" as a group requiring surveillance due to presumed criminal tendencies. The term "eunuch" broadly applied to men viewed as sexually deviant or transgender but primarily

⁹ Sumedha Pal, *Why Lives and Deaths of Trans Persons Remain Underreported, Undocumented*, Behan Box (Nov. 20, 2023), <https://behanbox.com/2023/11/20/why-lives-and-deaths-of-trans-persons-remain-underreported-undocumented/>

¹⁰ Puja Bhattacharjee, *4 Years After SC Decriminalised Homosexuality, Police Violence Against LGBTQIA+ People Hasn't Stopped*, Article 14 (Jan. 2, 2022)

¹¹ Supra note

targeted those who dressed in female attire, challenging colonial gender norms. Efforts to criminalize and regulate these individuals frequently involved invasive police and medical interventions, leading to severe disruptions in their lives.¹²

The Act mandated registration, surveillance, and control of certain groups, including eunuchs, and penalized those registered as eunuchs who appeared in public dressed or adorned as women, as well as those who danced or played music publicly. Such individuals could be arrested without a warrant and sentenced to imprisonment for up to two years, a fine, or both. Under the Act, local authorities were required to register eunuchs' names, residences, and properties if they were suspected of kidnapping or castrating children, committing offenses under Section 377 of the IPC, or abetting these offenses. The Act also criminalized keeping a boy under 16 in the care of a registered eunuch, punishable by up to two years of imprisonment or a fine. Additionally, registered eunuchs were stripped of civil rights, barred from acting as guardians for minors, making gifts or wills, and adopting sons. The Act was eventually repealed in August 1949. Section 377 of the Indian Penal Code, introduced in 1860 before the enactment of the Criminal Tribes Act of 1871, criminalized all penile-non-vaginal sexual acts between individuals, including anal and oral sex. At the time, transgender individuals were often associated with these prohibited sexual practices. The 1871 Act was later repealed and replaced with a more inclusive and reformatory law, eventually renamed the Habitual Offenders Act of 1952, reclassifying these groups as "De-notified Tribes."¹³

The Telangana Eunuch Act of 1919, colonial-era legislation, has its roots in the repealed Criminal Tribes Act of 1871. Both Acts categorize 'eunuchs' as inherently criminal, predisposed to petty offenses. This discriminatory law empowers police and state authorities to arrest transgender individuals for seemingly innocuous activities like singing, dancing, or cross-dressing in public. The Telangana High Court fortunately stayed this archaic law, recognizing its unconstitutionality. Furthermore, the Immoral Traffic Prevention Act (ITPA) of 1956, originally intended to address sex work, has been misused to target transgender sex workers. The 1986 amendment,

¹² Manju Ludwig, *Bodies in Pain: Violence and Sexually 'Deviant' Male and Transgender Bodies in Colonial India, 1862-1922*, in *Gender and Violence in Historical and Contemporary Perspectives* 15 (1st ed. 2019).

¹³ *Supra* note 3

expanding the Act's scope to non-female sex workers, has provided a tool for harassment and discrimination against this vulnerable community.¹⁴

In 2012, the Karnataka Police Act was amended to introduce Section 36A, granting the police commissioner authority to "regulate eunuchs." This provision mandated the creation and maintenance of a register documenting the names and addresses of transgender individuals residing within their jurisdiction, who were "reasonably suspected" of various offenses, including kidnapping, castration, and unnatural offenses. This discriminatory legislation, rooted in outdated stereotypes and harmful prejudices, criminalized an already marginalized community. By using the stigmatizing term "eunuchs" and associating transgender individuals with criminal activities, the law violated their fundamental rights to equality, liberty, life, and dignity. The Bombay Prevention of Beggary Act, a colonial-era law, continues to discriminate against transgender individuals. It criminalizes various forms of begging, including traditional practices like seeking alms at weddings and births or performing on the streets, which are common livelihoods for many hijras. This law not only restricts their economic opportunities but also limits their access to public spaces. As a result, transgender individuals are often subjected to arbitrary arrests and police harassment under the pretext of anti-beggary laws. This outdated legislation, with its broad and ambiguous definitions, has been used to target and marginalize one of India's most vulnerable communities.¹⁵

Today India has a complex legal framework with several gender-specific provisions, particularly aimed at protecting women. Criminal laws, such as the Indian Penal Code, address offenses like assault on women, selling female minors for prostitution, rape, and domestic violence. The Code of Criminal Procedure ensures that women under arrest are searched only by other women and provides mechanisms for their protection. The Indecent Representation of Women Act prohibits the indecent portrayal of women in various media. Civil laws, like the Protection of Women from Domestic Violence Act, offer protection to women in domestic relationships experiencing abuse. Additionally, the Sexual Harassment of Women at Workplace Act safeguards women from sexual harassment in professional settings. While these laws are significant steps, challenges remain in their effective

¹⁴ Mansi Singh, *Transgender Persons and Public Spaces: Lack of Protection from the Law* (Mar. 23, 2021).

¹⁵ Ajita Banerjee, *Beyond Decriminalisation: Understanding Queer Citizenship through Access to Public Spaces in India*, 12 NUJS L. Rev. 3-4 (2019).

implementation and enforcement, particularly in rural areas and marginalized communities.¹⁶

Following the *NALSA* decision, decisive legislative action was needed to uphold constitutional principles and ensure equality for the transgender community. A comprehensive statute was required to grant equal status and recognition. In 2019, the Transgender Persons (Protection of Rights) Act received presidential assent and became the governing law for transgender women in India. However, the Act fell short of expectations, failing to address existing socio-legal issues. Despite the six years between the *NALSA* ruling and the 2019 Act, there was minimal effort to ensure fair treatment for transgender individuals. Even now, in 2023, nine years after the *NALSA* decision and four years after the Act's adoption, transgender women have yet to achieve true equality before the law.

The 2019 Act's provisions are criticised to be inadequate and unjust because they do not offer transgender women the same legal protection as cisgender women under laws such as the Indian Penal Code (IPC). Section 18 of the Act stipulates a minimum sentence of six months to two years, along with a fine, for anyone who harms a transgender person physically, mentally, or emotionally. This is considerably lighter than the punishment under Section 498A of the IPC for similar offenses against cisgender women. As a result, acts of violence or abuse against transgender women are treated with less severity than crimes against cisgender women. This disparity underscores the dual discrimination faced by transgender women: as women and as transgender individuals. Institutionalized prejudice further complicates their access to justice¹⁷

The Transgender Persons (Protection of Rights) Act prescribes penalties ranging from six months to two years, along with fines, for offenses against transgender individuals. However, the NCRB's annual report reveals a stark reality: only one case has been registered under this Act in the entire country, specifically in Tamil Nadu. The low crime rate reported by the NCRB, particularly the decline from previous years, is even more alarming. Tandon attributes this to a lack of trust in the

¹⁶ *Issues for Consideration: The Transgender Persons (Protection of Rights) Bill, 2019*, PRS Legislative Research, the Transgender Persons (Protection of Rights) Bill, 2019.

¹⁷ *Supra* note 3

police system among transgender individuals. They often fear being blamed or not taken seriously if they report crimes, such as murders, within their own community.¹⁸

Rape of Transgender: The Transgender Persons (Protection of Rights) Act, 2019 defines transgender individuals as those whose gender identity does not align with their assigned sex at birth. This includes trans men, trans women, hijras, and intersex individuals. However, Section 18 of this Act provides only a maximum sentence of two years for offenses related to abuse—far less than the penalties prescribed under Section 375 IPC (now Section 64 of the BNS), which mandates a minimum of ten years and up to life imprisonment for rape.¹⁹

In the realm of criminal justice system, Rape of a trans man presents a unique legal challenge. Prior to the *NALSA v. Union of India* judgment and the enactment of the Transgender Persons (Protection of Rights) Act, trans men were legally recognized only as women and were therefore protected under laws specifically designed for women.

Over the years, opposition strategies against LGBTQIA+ rights in India have evolved. During the *Naz Foundation v. Government of NCT of Delhi* (2009)²⁰ case, the Solicitor General dismissed the issue as a "western concept." However, with growing support from the private sector, which plays a significant role in attracting foreign investment, this argument has lost traction. In the *Suresh Kumar Koushal v. Naz Foundation*²¹ case, the LGBTQIA+ community was dismissed as a "minuscule minority," a view now widely discredited. In the current marriage equality hearings, opponents have introduced a new argument, labelling calls for LGBTQIA+ rights as an "urban elitist" perspective. This argument draws from right-wing and religious narratives, overlooking the fact that many petitioners come from smaller towns and rural areas, not just urban centres. Furthermore, the Solicitor General has argued that the legal frameworks supporting marriage equality are foreign to the Indian subcontinent. However, Nepal, a neighbouring country with shared cultural roots, has

¹⁸ Huda Ayisha, *If only transgender lives were as rosy as depicted in NCRB data*, The Leaflet (May 26, 2024), <https://theleaflet.in/if-only-transgender-lives-were-as-rosy-as-depicted-in-ncrb-data/>

¹⁹ Farhan Zia, *What do the new criminal codes mean for queer people?* The Leaflet (July 7, 2024), <https://theleaflet.in/what-do-the-new-criminal-codes-mean-for-queer-people/>.

²⁰ (2009) 6 SCC 712 (India)

²¹ (2013) 16 SCC 605 (India)

recently recognized marriage equality, showing that this concept is not alien to the region.²²

Bharthiya Nyaya Samhitha:

The Bharatiya Nyaya Sanhita (BNS), India's new criminal code, replaced the colonial-era Indian Penal Code on July 1, 2024. A significant omission lies in the absence of a replacement for Section 377 of the IPC. This section, though criticized for its colonial origins and criminalization of consensual same-sex relationships, also provided crucial legal protection against sexual violence for individuals who did not identify as heterosexual cisgender women. The removal of Section 377 raises concerns about the potential loss of this vital safeguard.²³ The deletion creates a legal gap. In a system that acknowledges transgender individuals, a Section 377 that only applies to “men, women, or animals” could inadvertently exclude transgender people from its scope. Previously, while Section 375 of the Indian Penal Code (IPC) only recognized rape as an act committed by a man against a woman, a gay man who had survived rape could file a complaint under Section 377. However, the removal of Section 377 has not been replaced by any provision offering specific protections for transgender and homosexual individuals, representing a missed opportunity for lawmakers. As a result, most queer people remain unprotected by laws that safeguard them from sexual assault, an issue acknowledged by the committee that drafted the current version of Section 375 IPC. In several situations, legal protection is minimal or absent.²⁴

The Himachal Pradesh High Court recently clarified that Section 69 of the Bharatiya Nyaya Sanhita (BNS) 2023, which penalizes sexual intercourse on a false promise of marriage, does not apply to transgender individuals. In this case where the victim identified as a transgender, the Court determined that the accused could not be charged under Section 69 of the BNS. While acknowledging the serious nature of the alleged offense, the Court emphasized that the accused's guilt had not yet been proven. To prevent undue detention during the trial process, the Court made the interim bail order permanent, subject to certain conditions. The accused was charged

²² Sarah Thanawala, *Gender fluidity will slowly dissolve the rigid opposition to it—An interview with transgender rights activist Vyjayanti Mogli*, Article 14 (Aug. 16, 2023).

²³ Akshita Prasad, *Does The New Criminal Code (BNS) Protect Men And Trans Persons From Sexual Violence?* Feminism in India (July 8, 2024), <https://feminisminindia.com/2024/07/08/does-the-new-criminal-code-bns-protect-men-and-trans-persons-from-sexual-violence/>

²⁴ Supra note 18

with offenses under Section 69 of the Bharatiya Nyaya Sanhita (BNS) 2023 and Section 18(d) of the Transgender Persons (Protection of Rights) Act, 2019. However, upon examining the case details, including the victim's explicit identification as a transgender person, the Court concluded that the charges under Section 69 of the BNS were not applicable. The Court reasoned that since "woman" and "transgender" are distinct legal identities, the fact that the physical relationship between the victim and the accused began before the victim's sex reassignment surgery was irrelevant. The Court also noted that there was no evidence to suggest that the relationship continued after the surgery. While acknowledging the serious nature of the alleged offense, the Court emphasized that the accused's guilt had not been proven. To balance the need for justice with the principle of presumption of innocence, the Court granted bail to the accused, subject to certain conditions. These conditions were designed to ensure the accused's appearance in court and to prevent any interference with the ongoing investigation. The Court clarified that these conditions could be reviewed if the accused were to violate them.²⁵ This development raises serious concerns about the lack of protection for transgender persons under newly enacted Criminal law. There are many other provisions in the Bharatiya Nyaya Samhita which needs to be reconsidered, for instance, While Clause 2 of the BNS promotes the inclusive use of pronouns like "he" and its derivatives, a closer examination reveals inconsistencies when compared to other sections of the code. For instance, Clauses 75 and 76, which replace Sections 354B and 354C of the IPC, still rely on gendered language in their descriptions of offenses and the parties involved. This inconsistency highlights the need for a more comprehensive approach to gender-inclusive language in the new criminal code.

Conclusion

The introduction of the BNS presented an ideal opportunity to align with the principles established in the *NALSA* and *Navtej Singh Johar v. Union of India*²⁶ judgments and to broaden the scope of protections to include gay individuals, alongside transgender individuals. The definition of rape under Clause 63 could have been broadened by replacing "woman" with a gender-neutral term like "person," thereby extending protection to transgender individuals, regardless of their reproductive organs. Alternatively, the post-Navtej Section 377 of the IPC, which

²⁵ *Bhupesh Thakur v. State of H.P.*, 2024 SCC OnLine HP 4513 (decided Aug. 30, 2024)

²⁶ (2018) 10 SCC 1 (India)

criminalized bestiality, non-consensual sex between men, and other forms of "unnatural sex" involving children, could have been retained with language modifications to explicitly protect LGBTQ+ individuals, animals, children, and others from sexual offenses not covered by other sections of the BNS. This approach would have ensured the BNS's inclusivity regarding sexual violence faced by marginalized groups and aligned with the progressive realization of rights doctrine. While the BNS represents a step towards gender neutrality, its shortcomings in protecting the rights of the LGBTQ+ community highlight the need for further legislative reforms. To ensure equitable treatment for all, regardless of gender or sexual orientation, the law requires more comprehensive and consistent revisions.²⁷ There is an immediate necessity to amend the Criminal law and augment protection to the transgender persons making the law gender neutral.

²⁷ Kanav Narayan Sahgal, *The BNS: A missed opportunity for gender inclusivity and LGBTQ+ rights*, Deccan Herald (Sept. 21, 2023).

KNOW THE SIGNS, SAVE A LIFE - ACQUAINTANCE RAPE

Mamatha R.¹ & Juli Sathiyar Kumar²

Abstract

Acquaintance rape, also known as date rape, is a form of sexual violence where the perpetrator is someone known to the victim, such as a friend, co-worker, family member, or professional. It involves non-consensual sexual activity, and the absence of a clear "No" does not imply consent. Statistics reveal that a significant portion of sexual assaults are committed by someone familiar to the survivor. Contributing factors include societal attitudes toward consent, gender stereotypes, power dynamics, alcohol and drug use, and miscommunication. Cultural norms and victim-blaming attitudes perpetuate this crime. The impact on survivors can be profound, leading to feelings of guilt, shame, PTSD, anxiety, depression, and challenges in personal and professional life. Addressing acquaintance rape requires education, awareness campaigns, and support services for survivors, including counselling and legal aid. By promoting a culture of consent and providing resources, society can work toward reducing this pervasive form of violence.

Keywords- *Sexual Violence, Non-Consensual, Societal Attitudes, Rape Myths, Victim - Blaming and Prevention Efforts*

Introduction

“Anyone whose previously everyday existence was suddenly destroyed by sexual assault knows that the pain and fear can destroy them long after the initial horrible incident. It continues. You're not sure who to call or where to go. And it seems like it's your fault rather than the fault of the guy who attacked you because of what you were wearing or drinking. Even now, we don't speak out against sexual assault as often as we ought to. We apologise and ignore the situation. If we don't alter the culture that tolerates attack in the first place, [laws] won't be sufficient.”- In September of 2014, President Barack Obama³

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Acquaintance rape⁴ is a deeply concerning and prevalent issue that continues to affect individuals and communities worldwide. Also known as date rape or non-stranger rape, acquaintance rape refers to a form of assault where the perpetrator is someone known to victim, such as friend, romantic partner, co-worker or acquaintance⁵. This type of assault can occur in a variety of setting, including social gatherings, parties' college campuses and even within established relationships. One of the most alarming aspects of acquaintance rape is the fact that it often goes unreported and unrecognized. Victims may feel a sense of betrayal, confusion, shame or fear, which can prevent them from coming forward and seeking justice. Additionally, societal misconceptions and victim-blaming attitudes can further discourage survivors from speaking out, perpetuating a culture of silence and impunity. It is important to recognize that acquaintance rape is a violation of consent and personal boundaries. Consent is an ongoing and enthusiastic agreement between all parties involved in a sexual encounter. It is crucial to understand that consent cannot be assumed or implied and it can be withdrawn at any point. Lack of consent, coercion, manipulation or incapacitation due to alcohol or drugs are all factors that make an encounter non-consensual and potentially criminal. The ripple effects of this crime extend beyond the individual survivor, affecting families, friends and communities as a whole.

Addressing and preventing acquaintance rape requires a collective effort from society. Education and awareness campaigns can play a crucial role in challenging harmful stereotypes, promoting consent culture and supporting survivors. By fostering an environment that encourages open dialogue, empathy and respect, we can work towards dismantling the culture of silence and ensuring that survivors receive the support and justice they deserve.

What is rape⁶?

A form of sexual assault⁷ known as rape occurs when someone is sexually assaulted without their permission, usually by sexual contact or other means. The act

⁴ Date rape is a subtype of acquaintance rape that includes events involving individuals who are romantically or sexually involved with one another. Campus rape is the word sometimes used to describe rapes committed by college students against other students. A person the victim knows commits the majority of rapes on 05/02/2024

⁵ Rape by a known individual to the victim. On 05/02/2024

⁶ Cases And Materials on Criminal Law by Mike Molan, page -325 and 3rd line, A man was guilty of rape if he had sexual intercourse with person (whether vaginal or anal) who at the time of the intercourse did not consent to it.

may be performed by physical force, coercion, misuse of power, or against an individual who is not capable to provide informed permission, such as an individual who is unconscious, incapable of giving informed consent, has an intellectual handicap, or is not of legal age to give consent. There are situations where the terms "rape" and "sexual assault" are used interchangeably.

Two finger tests⁸

In the past, the two-finger test was one of the techniques used when medical examiners examined victims of sexual assault. In a misunderstanding that this would provide information about the survivor's sexual history or permission, it required sticking two fingers into the victim's vagina to measure the laxity of the vaginal muscles. Due to its lack of scientific validity, violation of the survivor's dignity, and potential to promote victim-blaming, this test has received a great deal of criticism and ridicule. It is important to stress that this test is largely seen as unethical and has received criticism. In order to ensure a more considerate and trauma-informed approach for victims of sexual assault, contemporary forensic examination methods concentrate on gathering evidence without using intrusive or unnecessary procedures.

Zero FIR⁹

No matter where the incident happened or whether the police station has jurisdiction over them, anyone can submit a FIR and file a complaint there. We refer to this as a Zero FIR. The complaint's facts will be noted by the police officer at the station where it is filed, and a FIR¹⁰ will be filed. A distinct number will be given to the FIR. Afterwards, the police station whose jurisdiction the incident actually occurred can get the Zero FIR. Usually, senior authorities issue directions to higher-ranking officers, who carry out this transfer. The local police station will take up the

⁷ POSCO Act, 2012 and allied laws by Nayan Joshi, page -11, No 13. under section 2(y) wherein it is provided that the Sexual Assault which covers sexual touching with the use of any body part or object, voyeurism, exhibitionism, showing pornographic pictures or films to minors, making children watch others engaged in sexual activity, issuing of threats to sexually abuse a minor, verbally abuse a minor using vulgar and obscene language.

⁸ <https://blog.ipleaders.in/everything-need-know-acquaintance-rape>

⁹ A police station files a formal complaint (FIR) and forwards it to the appropriate police station for additional investigation when it receives a report about an alleged offense that may have taken place under the jurisdiction of another police station. We refer to this as a Zero FIR. <https://indianexpress.com/article/explained/everyday-explainers/what-is-zero-fir-why-it-is-registered-8854310/> on 01/02/2024

¹⁰ FIR (First Information Report) is a written document which is prepared when the police first receive information about the commission of a crime. It contains the details of the informant, the details of the crime, and the date and time it was committed according to the informant. <https://blog.ipleaders.in/what-is-fir-and-how-to-fie-an-fir/> on 05/11/2024

matter and start the investigation after the FIR has been forwarded to the proper jurisdiction.

The Zero FIR option is especially crucial in situations where immediate action is needed and jurisdictional problems could impede the inquiry. It is particularly useful when the complainant or victim is unable to get to the relevant jurisdictional region in order to file the FIR. The goal of the Zero FIR provision is to guarantee that the police register the complaint and launch the investigation as soon as possible. This is important in circumstances of crimes like sexual assault, kidnapping, or any other infraction where prompt action is required. A legal expert knowledgeable about the most recent rules and procedures in the applicable jurisdiction should be consulted if you have a specific legal question or require assistance on a specific situation.

What is acquaintance rape?

Acquaintance rape, also Known as date rape, is a form of sexual assault where the perpetrator is someone known to the victim, such as a friend, acquaintance, relatives, romantic partner etc. It occurs when sexual activity is forced or non-consensual, despite the prior relationship or familiarity between the individuals involved. It is important to note that consent must be freely given by all parties involved in any sexual activity.

What is the cause of acquaintance rape?

Despite previous relationships or familiarity between the individuals involved, forced or nonconsensual meetings are the primary cause of acquaintance rape. Date rape, also known as acquaintance rape, is a kind of sexual assault that takes place between acquaintances, whether they be close friends or just acquaintances. The causes of acquaintance rape are complicated and varied, often involving a combination of social, psychological, cultural, and personal factors. It's important to keep in mind that sexual assault is never justified by the victim's conduct; rather, the abuser is always at blame¹¹.

A few things that could lead to acquaintance rape are as follows¹²

Inadequate Communication and Unconsent: People may become confused and misunderstand one another if limits and consent are not communicated clearly.

¹¹https://www.legalserviceindia.com/legal/article-3176-acquaintance-rape-and-categories-of-acquaintance-rape.html#google_vignette

¹² <https://blog.ipleaders.in/everything-need-know-acquaintance-rape>

Social Conventions and Gender Roles: Societal expectations, preconceptions, and established gender roles may contribute to power imbalances and perceptions that could permit sexual violence.

Alcohol and Drug Abuse: Impaired judgment and decision-making caused by alcohol or drug use might make it simpler for offenders to take advantage of weaker people.

Social Coercion: Situations where consent is unclear may result from social dynamics and peer pressure, which may at times convince people to act in ways they might not have otherwise chosen.

Cultural elements: Cultural variables, such as attitudes regarding sex, relationships, and the balance of power, can have a role in shaping individuals' behaviour.

Gaps in Education: A lack of knowledge and awareness regarding healthy relationships, consent, and the prevention of sexual assault may worsen harmful behaviour and lead to a lack of understanding.

Dynamic Power: Relationship power imbalances can result in circumstances where one partner feels under pressure or coerced, regardless of the cause—age, status, or additional factors.

By addressing these underlying causes through awareness campaigns, education, and societal transformations, acquaintance rape can be prevented. Fostering a culture of respectful relationships, healthy communication, and consent is essential. Moreover, preventative initiatives must prioritize providing care to survivors, holding offenders accountable, and creating a culture that rejects sexual violence.

History

Research distinguishing between rape by an unknown attacker and that by an acquaintance of the victim dates back to the 1950s. An analysis of American police rape files from 1958 and 1960 revealed that around half of the cases were reported to have been committed by individuals who were acquainted with their victims. In 1982, feminist author and activist Diana Russell¹³ developed the term "acquaintance rape" for the first time in print. In her report on a study of 930 women in San Francisco, she used the term "friendship" to refer to any rape involving people who know one

¹³ Diana E. H. Russell (1990) [1982]. Rape in marriage

another. She discovered that 35% of the women had experienced rape or attempted rape by an acquaintance, while 11% had been raped by strangers.¹⁴

The implementation of rape shield laws in the 1970s and 1980s, aimed to protect victims from aggressive questioning about their sexual histories during trials. A greater number of awareness campaigns and educational activities addressing sexual assault, including acquaintance rape, took place in the late 20th century, especially on educational institutions. With the arrival of the 21st century came new difficulties brought about by advances in technology like dating apps and internet communication that changed the structure of interactions between people. As the #MeToo movement¹⁵ gained growing in 2017, it raised attention to the widespread nature of sexual harassment and assault, pushing survivors to come forward and share their stories and sparking talks about responsibility. Modern culture's reaction to acquaintance rape has been influenced by past efforts to understand and fight the crime, which have included societal shifts, modifications to the law, and on-going assistance for victims.

Effects of Acquaintance Rape

Rape can have important psychological¹⁶ harm in addition to the initial physical trauma. Rape does not always include physical force, although the reality that victims frequently claim bruises and problems with their reproductive health following the sexual attack. Mental health issues and low self-esteem are two of the most common and long-lasting consequences of sexual assault.

Physical effects of Rape for Women

Forced sexual assaults as well as non-forceful ones, such drug-assisted in date rapes, can have physical consequences. Visible bruising or bleeding in and around the vaginal or anal area, as well as marks on other body parts from forceful violence, are common outcomes of forced sexual assault. However, there are many more possible bodily effects of forcefully and other forms of rape.

- Painful sexual relations (with a significant other)
- Infections of the urine

¹⁴ Reeves Sanday, Peggy (1997). A Woman Scorned: Acquaintance Rape on Trial

¹⁵ https://en.wikipedia.org/wiki/MeToo_movement_in_India

¹⁶ Psychological abuse doesn't leave bruises and broken bones, it can cause severe emotional issue and mental health conditions. Researchers have shown that emotional abuse can have long lasting negative effects on mental wellbeing, including a high prevalence of anxiety, depression, stress and neuroticism. <https://www.verywellmind.com/psychological-abuse-types-impact-and-coping-strategies-5323175> on 05/11/2024

- Uterine fibroids: tumours in the muscular wall that are not dangerous
- Birth of a child
- Sexually transmitted infections (STDs): gonorrhoea, chlamydia, syphilis, HIV, genital warts, and others

Rape's Psychological Effects for Women

Rape has immediate and long-term psychological impacts on victims. Self-blame is among the most prevalent psychological effects of rape. Self-blame is an avoidance-based coping mechanism used by victims. Self-blame hinders or sometimes completely halts the healing process. Other typical rape-related emotional and psychological repercussions include:

- Extremely high levels of stress and anxiety are symptoms of posttraumatic stress disorder (PTSD).
- Depression
- Flashbacks are recollections of rape that seem to be happening again.
- Personality disorder borderline
- problems of sleep
- eating disorders
- Identity disconnection disorder
- Guilt Mistrust of people: uncomfortable in regular social settings
- rage
- Victims experience a sense of personal helplessness, believing the rapist has taken control of their body.

Other than the penetration itself, the vast majority of rape victims do not experience any physical harm. Unlike often believed, stranger rape is less likely to result in physical harm than acquaintance rape, especially when it involves an intimate partner who is still alive or has left: Compared to 40–50% of women raped by a current or previous boyfriend, 24% of women raped by a stranger experience physical harm in addition to the penetration.¹⁷

Aftermath of Rape

Numerous acute and long-term psychological and physical repercussions are associated with the aftermath of sexual assault. As the short- and long-term

¹⁷ Eriksson, Maria (2011). *Defining Rape: Emerging Obligations for States under International Law?* (The Raoul Wallenberg Institute Human Rights Library) Martinus Nijhoff. pp. 157–158, 166.

repercussions of rape become evident, it is critical that victims receive thorough care. If the victim had an intimate connection before the assault, it often ends within a year of the rape. This simply makes the victim's psychological effects from the rape worse. Those who were raped severely violently, or who were raped repeatedly or when they were very young, may require treatment for the rest of their life.¹⁸

Indian Laws Prohibiting Rape and Other Sexual Offenses

Sections relating to rape in India

IPC and Rape: The Indian Penal Code, 1860 (IPC) has long since made rape and other sexual offenses against any gender crimes under the authority of Indian law. Regarding definitions, they are found in section 375, which states that rape is defined as follows:

A male is considered to have committed rape if he engages in sexual activity with a woman in any of the six situations listed below, except for the one mentioned below:

- Against her wishes.
- Without her permission.
- With her consent, if that consent was acquired by instilling fear of harm or death in her or any other person in whom she has an interest.
- When the guy has her approval, even if he is aware that she does not consider him to be her spouse and that she is giving him permission because she thinks she is legally married to another man.
- When, at the time of giving consent, she is incapable of understanding the nature and implications of the thing to which she is giving consent due to intoxication, mental instability, or the administration of any stupefying or unwholesome substance by him or another, it is with her consent.
- When she is, legally speaking, under sixteen years old, with or without her permission. According to this, any kind of penetration is enough to qualify as the sexual contact required for the commission of the rape crimes. It is a subject of considerable discussion because there are still some exceptions.

The following is a summary of these exceptions

Any sexual activity a man engages in with his spouse, provided the woman is not younger than eighteen, is not considered rape. According to the requirements, sexual relations with a spouse prior to 2017—even if the spouse was a minor—should not be

¹⁸ https://en.wikipedia.org/wiki/Effects_and_aftermath_of_rape

considered rape if the spouse is over the age of 15. However, in the case of Independent Thought (Petitioners) and The Child Rights Trust (Intervener) vs. Union of India and Others¹⁹, a Division Bench of the Supreme Court of India, composed of Justices Madan B. Lokur and Deepak Gupta, read down Section 375 of the IPC and held that sexual relations with any minor girl, even if the minor is married and the accused is the husband will now be considered a rape offense. This Bench declared that it could not find any justification for a married minor female between the ages of 16 and 18 to be denied protection against her husband for unwelcome sexual relations, only because they are married. Regarding coerced sexual intercourse between an adult husband and adult wife, the Bench declined to remark. The matter of an adult married woman being raped by her husband in marriage is still a discussion.

India's Statutory Rape Laws

Statutory rape²⁰ differs from ordinary rape in that the consent received is not regarded as legitimate. Normal rape has the aspect of lack of consent or consent obtained through deception or force. The purpose of this offense is to prevent adults from abusing adolescents by tricking them into engaging in sexual activity with someone they wouldn't otherwise consent to. Regardless of whether the victim of this type of rape agreed to the conduct or not, an adult is punished if he had any kind of physical contact with a woman or girl who was 18 years of age or younger. Even if the minor gave their assent, it makes no difference and won't be used against the guilty. In India, the age of consent is defined as the minimal age at which a person is deemed to be of legal age to provide permission to engage in any sexual conduct. This age is eighteen years old. It should not be deemed that a person who is 17 years of age or younger is of legal age to offer valid consent for engaging in any form of sexual conduct. Therefore, even if a male and a female under the age of 17 engage in consenting sexual relations, the guy may still be taken into custody and accused of rape. Nonetheless, in the majority of these situations, where the child is not really exploited, the accused is frequently cleared based on the minor female's allegation.

Families abusing the legal right to rape

¹⁹ <https://indiankanoon.org/doc/143006470>

²⁰ Sexual relations between an adult and a person who is not of legal age to consent is known as "statutory rape." Regardless of whether the juvenile involved grants consent or not, it is a crime. The purpose of the legislation pertaining to statutory rape is to safeguard young people from exploitation and to protect their welfare.

In India, given the social setting and religious beliefs that are still deeply rooted in our country, when young men and women fall in love or elope and run from their families, the girl's parents usually charge the boy of rape in order to stop the couple from getting married. Police must respond right away since statutory rape is seen as a very serious offense. However, in these situations, the courts are required to release the male if the female maintains her position and tells the judge that she left willingly and was not subject to any blackmail or acts of force.

Criminal Law (Modification) Act of 2013

- The most terrible gang rape occurred in Delhi, the nation's capital, in 2012. The incident, which is still often referred to as the Nirbhaya rape case, shocked the nation and prompted the implementation of harsher regulations in the shape of the Criminal Law (Amendment) Act, 2013.
- The minimum term for rape was changed from seven years to ten years under the new amending Act. Moreover, the minimum punishment had been appropriately raised to twenty years in circumstances where the victim died or was left in a vegetative state. Nonetheless, in the previously mentioned instance, one of the accused was 17 years old and only a few months away from becoming an adult, thus he had to be tried as a juvenile at that time and avoided the full force of the law.
- The age of being tried as an adult for severe crimes like rape and murder has been appropriately lowered from 18 to 16 in order to prevent such cases in the future.
- It was further maintained by the statute that children between the ages of 16 and 18 who engage in violent and graphic murders and rapes should be prosecuted and punished as adults.

Sexual Offenses with Children

- Only minor victims were presumed to be protected from rape and other sexual offenses by the term "statutory rape" until 2012. The government, with the assistance of many NGO's, understood that the current IPC was woefully unable to address such heinous crimes, nevertheless, as all offenses of a sexual nature against minors had been rising at an alarming rate between 2001 and 2011.
- The majority of the time, friends or family members would sexually abuse children, leaving them even more traumatized and mentally disturbed. As a

result, these kids were not given the rigorous protections provided by the Criminal Procedure Code. This is the reason behind the enactment of the Protection of Children from Sexual Offences Act (POCSO Act)²¹, 2012, which aims to shield minors from sexual exploitation and facilitate their access to the legal system by establishing special courts staffed by professionals who are trained to attend to the mental and emotional needs of the accused throughout the trial.

Rape in custody as defined by Indian Penal Code, 1860 Section 376(2)

- Minimum sentences based on the seriousness of the offense in rape cases.
 1. The IPC's Section 376(2)(a) addresses rapes that occur while a police officer is being held in custody.
 - a) One public servant was raped.
 - b) Management of the workforce committed rape.
 - c) Sexual assault committed by hospital staff or management.
 2. A medical examination of the victim of sexual assault must be conducted as soon as possible, according to Section 164 A (5) of the CRPC.
 3. According to Section 327 (2) (6) of the CRPC, all of the rape victim's comments must be captured on video in order to prevent any alterations being made without legal evidence.
 4. The Indian Penal Code's Section 376(2) [e] describes the penalties meted out to perpetrators of rape who knew the victim was pregnant before they committed the crime.
 5. Article 376 (2) [f] of the Indian Penal Code describes the penalties for raping a girl who is a minor or younger than 12 years old.
 6. The interim laws pertaining to the imprisonment of Gang Rape offenders are discussed in Section 376 [g] of the IPC.

Though many changes to the law and court decisions still need to be made, all of these provisions of the IPC and CRPC discuss the many penalties, including fines and imprisonment that are related to the many different rape cases that occur in India.

Breach of Article 14

Article 14 of the Indian Constitution states that the “State shall not deprive any person within its boundaries of equality before the law or equal protection under the

²¹ <https://www.indiacode.nic.in/bitstream/123456789/9318/1/sexualoffencea2012-32.pdf>

law”. Even so, the Indian Constitution guarantees everyone's equality. Indian criminal law treats women who have been sexually assaulted by their husbands unfairly. When the Indian Penal Code was created in the 1860s, a married woman was not considered a separate legal entity. She was instead viewed as her husband's property. The second exception, which essentially exempts husbands' actions against their spouses from being considered rape, is largely derived from the old conception of integrating a woman's identity with her husband's.²²

Breach of Article 21

Exception 2 further violates Article 21 of the Indian Constitution. It states that “No one may have their life or personal freedom taken away from them unless it is done so legally”. The Supreme Court has interpreted this Article to mean more than just the literal defence of life and liberty in a number of rulings. Rather, it decided that the rights enshrined in Article 21 encompass a number of rights, such as the rights to privacy, dignity, health, safe housing, and a healthy environment. Courts have recently acknowledged that the broader rights to life and personal liberty encompass the freedom from unwelcome sexual behaviour and the right to abstain from sexual activity. In *The State of Karnataka v. Krishnappa*²³, the Supreme Court declared that sexual assault is not only a degrading crime but also an illegal violation of a woman's right to privacy and sanctity. The same rule classifies non-consensual sexual relations as both physical and sexual assault.

Marital Rape

In India, marital rape²⁴ is not considered a criminal offense under the law. Other than while the partners is separated by court. According to the Indian Penal Code's section 375 an exception 2 on marital rape, a man having sex with his own wife as long as she is not under the age of eighteen is not committing rape. Women's rights organizations pushed to make marital rape illegal in the 1980s. Government representatives contended that criminalizing marital rape would undermine Indian family values because the contract of marriage requires consent for sexual relations. In Indian matrimonial law, forcing a spouse to have sex against their will has legal

²² <https://advocatetanwar.com/rape/> on 05/02/2024.

²³ <https://privacylibrary.ccnlud.org/case/state-of-karnataka-vs-krishnappa> on 05/02/2023.

²⁴ Marital rape or spousal rape is the act of sexual intercourse with one's spouse without the spouse's consent. The lack of consent is the essential element and doesn't always involve physical violence. Marital rape is considered a form of domestic violence and sexual abuse. https://en.wikipedia.org/wiki/Marital_rape

consequences because it may be viewed as a marital fault that leads to the breakup of the marriage.

Rights of Victim²⁵

- 1) She is entitled to the greatest medical care available at that time in order to remedy her loss as soon as possible.
- 2) There is no way for her to stop her from filing a police report, or First Information Report, about the offence.
- 3) During the course of the legal proceedings, she is entitled to receive proper care and respect.
- 4) She deserves to be treated as a victim, not a criminal, and to have her needs met by her family and the community.
- 5) She has a right to information about the case's procedural and court proceedings.
- 6) She is entitled to be informed about the case's procedure and court hearings.
- 7) She is entitled to select the advocate of her choosing and to routinely bring him or her to the trial.
- 8) She is entitled to recover any harm incurred during the act, and the offender must bear financial responsibility for the same.
- 9) She has every right to be maintained legally, as prescribed by the law, by the court, and based on her relationship with the offender.

Male Victim

The desire to hold victims²⁶ accountable for their actions is a dual tendency. Sexual assault and rape by both men and women may not always involve a female as the victim. Research from 1987 claims that men and women have different sexual drives at all times. Boys are also coerced by women to satiate their sexual cravings if girls are forced to engage in sexual relations with men. Males between the ages of 16 and 28 make up the majority of victims of sexual assault; these males are often the

²⁵ The Indian Supreme Court tried to establish a balance between the accused's rights and the victim's right to participate in the proceedings through its decision in *Rekha Murarka v. State of W.B.* The outcome is both reason for celebration and reason for concern. While the victim's participation is no longer legally possible, the Supreme Court has still established an important new path. All things considered; the ruling surely adds to the ambiguity surrounding the victim's entitlement to take part in our criminal justice system. The present piece aims to clarify the confusion, if not completely resolve it.

²⁶ "Victims" are defined as individuals or groups who have experienced harm—such as bodily or mental harm, emotional distress, financial loss, or significant impairment of their fundamental rights—as a result of acts or inactions that contravene criminal laws that are in effect in the Member States, particularly those that forbid the criminal abuse of authority.

targets of large women's advances or are raped by men in order to appease them. Any number of people, including friends, family, dates, college roommates, and other acquaintances, could drive him into an unpleasant relationship or attention-seeking behaviour. He is then considered a victim of the crime and is eligible for certain rights and remedies granted by the state and the legislation. The male victim questions whether the woman will question his sexuality if he reports the crime that occurred involving him. Any kind of assault, regardless of gender, is illegal. Accepting that you were a victim of a crime because you are a man is a source of shame. A case from 1980 was brought to my attention, involving a 55-year-old woman who, in order to satiate her cravings, routinely engaged a 19-year-old boy in sexual relations for several months. The boy's family later reported it after learning that a well-known aunt had been raping their acquaintance for months; she used blackmail to get the lad to give her the money, designer clothes, and other items in order to satiate her unwarranted and unfounded yearning. A few days later, as the child continued to deny, she began to threaten him into telling his parents about it, even though the youngster was acting against his will and breaking the law.

Rape of Minor

Human Rights Watch²⁷ estimates that around 7,200 children in India are sexually assaulted annually, or 1.6 out of every 100,000 children, based on a small sample survey. Those victims who do come forward and report the assaults claim they are mistreated and humiliated by the police. Rape of minors sometimes results in a lifetime of pain since young girls are trafficked into prostitution in India. India was placed seventh out of all the nations Maplecroft examined for sex trafficking and crimes against kids.

POSCO Act 2012

In order to address and prevent sexual offenses against children, India passed the Protection of Children from Sexual Offenses (POCSO) Act, 2012, which established a comprehensive legislative framework. Its main goal was to create an

²⁷ An international non-governmental organization called Human Rights Watch (HRW) dedicates itself to advancing and defending human rights. HRW was founded in 1978 and focuses on policy changes, human rights abuses, and fighting for justice through the completion of in-depth research and the production of yearly reports. The group is recognized for its objectivity and dedication to recording violations by both non-state and government organizations. <https://feminisminindia.com/2024/01/30/how-human-rights-watch-illuminates-indias-human-rights-landscape-a-focus-on-minorities-and-freedom-of-expression/> on 05/02/2024

effective legal structure that would shield minors from sexual assault ²⁸and harassment when it went into force on November 14, 2012. Given children's vulnerability and the need for extra protection, the Act acknowledges the necessity for a specific legislation focused only on dealing with crimes against children.

Key elements and articles of the POCSO Act of 2012 are as follows:

- Sexual assault, sexual harassment, and utilizing a kid for pornographic purposes are among the many types of sexual offenses against children that are defined by the Act.
- Considering the age of the child as specified by the Act, the Act recognizes that a kid cannot give legal permission to any sexual conduct.
- Gender-neutral, the POCSO Act acknowledges that sexual assaults can affect both boys and girls. Neither the perpetrator nor the victim's gender is a factor in its discrimination.
- The Act calls for the creation of special courts so that cases involving child sexual abuse can be tried quickly. The goal of these courts is to guarantee that matters are heard and resolved quickly.
- In order to protect the privacy of the child victim during court procedures, the Act requires that trials for offenses falling within its jurisdiction be held in camera.
- The Act includes measures to safeguard the identity of the child victim, such as limitations on media reporting of the kid's name and other personally identifiable information.
- A child-friendly officer is responsible for recording the child's statement in a way that creates a safe, encouraging environment for the child.
- The Act places a strong emphasis on the necessity of providing the child victim with compensation as well as rehabilitation. It also calls for creating a fund for the same purpose.
- The Act imposes severe punishments on violators, which might include life in prison or a few years in jail, depending on how serious the offense was. It also contains clauses regarding fines.

²⁸ POSCO Act, 2012 and allied laws by Nayan Joshi, page -11, No 13. under section 2(y) on 24/01/2024

- The Act focuses on crimes against children that are perpetrated in institutions, such as schools, care facilities, and other locations where kids might be in the custody or watchful eye of others.

Research Question

- What role do cultural perceptions of gender and relationships have in the prevalence of rape among acquaintances?
- What effect do court decisions have on victims' willingness to come forward with allegations of acquaintance rape?

Rape in India Statics

In India, the fourth most frequent crime against women is rape. In India, the fourth most frequent crime against women is rape. The National Crime Records Bureau (NCRB)²⁹ reported in its annual report for 2021 that there were 31,677 recorded rape cases nationwide, or an average of 86 instances per day. This represents an increase from 28,046 crimes in 2020 and 32,033 cases in 2019. Approximately 89% of the 31,677 rape incidents were carried out by individuals who knew the victim, accounting for 28,147 of those cases. The percentage of victims who were under the legal consent age of 18 or were minors was 10%. The phrase "countries with the lowest per capita rates of rape" has been applied to India. The government also considers consensual intercourse that is performed under pretexts of marriage to be rape. In the past several years, there has been a rise in the number of rapes reports due to the media's extensive coverage of multiple occurrences and the ensuing local and national public demonstrations. As a result, the government changed the penalties for sexual assault and rape in the penal code. Based on NCRB 2021 numbers, Rajasthan led all Indian states in the number of rapes reported, with Madhya Pradesh and Uttar Pradesh following closely behind. With 1,226 incidents reported in 2021, Delhi, the nation's capital, maintained to have the highest incidence of rape among metropolitan areas, while Jaipur had the highest rate of rape at 34 per 100,000 people. Among major cities, Kolkata had the lowest rate of reported rape cases and the fewest total instances.

²⁹ The Indian government's National Crime Records Bureau (NCRB) is in charge of gathering and examining crime data as specified by the Special and Local Laws (SLL) and the Indian Penal Code (IPC). NCRB is a division of the Indian government's Ministry of Home Affairs (MHA), with its headquarters located in New Delhi.

*Case Law: Bodem Sundara Rao v. State of Andhra Pradesh*³⁰ (22/09/1995)

Facts: On February 16, 1985, in broad daylight, the respondent sexually abused, the prosecutor's assistant, who was between the ages of 13 and 14. The prosecutrix was suddenly grabbed by the respondent and, in spite of her protestations, she was raped while she was carrying lunch for her father, who was feeding the cows in the fields. The prosecutrix reported the incident to her mother and father when she was bleeding heavily from her vagina due to the respondent's rape. Afterwards, the police received the First Information Report. Following a medical examination, the prosecutrix's physician concluded that she had been raped. Section 376 of the Indian Penal Code was used to send the respondent up for trial. In a judgment dated February 7, 1986, the Trial Court found the respondent guilty of an offence under Section 376 of the Indian Penal Code after examining the facts in the file. The court sentenced him to ten years of hard imprisonment. The respondent appealed his conviction and punishment to the High Court. The High Court did, however, shorten the sentence to four years while upholding the respondent's guilt. As the High Court lowered the penalty, it only made observations

Issue: The appeal is denied, however, because the punishment of 10 years, which was considered to be on the higher side, is now only 4 years R.I.?

Judgement: It is clear from the prosecutrix's, her parents', and medical evidence that the respondent sexually assaulted her, and as a result, his conviction is well-documented. Prosecution evidence is persuasive, trustworthy, and dependable. Consequently, we conclude that the respondent's conviction, as noted by the Trial Court and confirmed by the High Court, is firmly based.

We have observed an increase in crime against women in recent years. These offenses are an insult to society's human decency. A criminal may be encouraged by the imposition of an obviously inadequate punishment, which goes against the Legislature's mandate and is unfair to both the victim of the crime and society at large. When determining punishment, courts have a duty to apply the proper penalty in order to address the crime committed by society and bring those responsible for it to justice. The court's decision regarding the appropriateness of the penalty must take the public's disapproval of the crime into consideration. When determining the proper punishment, the courts must take into account not only the rights of the offender but

³⁰ <https://indiankanoon.org/doc/1355852/>

also the rights of the victim and the community at large. The heinous act of raping a defenceless 13 or 14-year-old girl disturbs our conscience as judges. It was an inhumane offense. No mitigating or extenuating circumstances exist in the record that would allow a sentence shorter than the minimum set by the Legislature in accordance with Section 376(1) of the Act.³¹

*Case Law: MUKESH & Ans. v. STATE (NCT OF DELHI & ORS)*³²

Facts: On the evening of December 16, 2012, Jyoti Singh, a 23-year-old lady, and her male companion were on their way back home from Saket, South Delhi, where they had seen the movie *Life of Pi*. About 9:30 p.m. (IST), they boarded the bus at Munirka to go to Dwarka. Other than the driver, there were just six people aboard the bus. Travelers were informed that the bus was headed in their direction by one of the males, who were identified as a child. The bus's closed doors and departure from the intended path alarmed her friend. The six men who were getting ready, including the driver, irritated the couple when he objected, asking what they were doing by themselves at such a late hour. The friends were thrashed by the offenders when he attempted to defend Nirbhaya. Her companion and the group of men got into a brawl after their discussions. He was struck, choked, and then struck with an iron rod until he lost consciousness. After dragging Jyoti to the back of the bus, the men raped and thrashed her with the rod while the bus driver kept driving. In addition to being sexually assaulted, Nirbhaya's body was horribly disfigured. According to a later medical report, she was assaulted and had major wounds to her belly, intestines, and genitalia. Doctors concluded that the injuries suggested that a blunt object—possibly the iron rod—may have been used for penetration. Police later described that bar as an L-shaped piece of rusty equipment similar to the handle of a wheel jack. Later, on December 29, she passed away from multiple organ failure, internal haemorrhage, and cardiac arrest.

Issues

- Is the crime of rape fully covered by Section 375 of the Indian Penal Code?
- Is the death sentence appropriate for those found guilty of these types of crimes?
- Is it appropriate to punish a minor who commits such horrible acts with the same penalties as an adult?

³¹ <https://indiankanoon.org/doc/1355852/> On 05/02/2024

³² <https://indiankanoon.org/doc/68696327/>

- Can the public's indignation over a particularly horrific event be used as a standard to decide how someone should be punished in a case?

Judgement: A three-judge panel concurred that the accused's actions were not deserving of pity. In a forceful statement, the killer said that the atrocious crime had shocked society's general understanding and that the court could consider this to be one of the very few situations in which the death penalty is appropriate. The accused's presence on the bus and their involvement in the crime were established by DNA ID, fingerprints, witness statements, and odontology, according to the Supreme Court. The bench declared that it was humanly inconceivable how they could have handled her so casually and played such a diabolical game with her body, identity, and dignity. By upholding the death penalty for the four defendants in the Nirbhaya gangrape and murder case and characterizing the crime as the most unusual, brutal, and archaic attack on 23-year-old paramedic student Jyoti Singh, the Supreme Court brought justice to the victim's family as well as to all women across the nation. The victim was sexually abused to the greatest extent by the prisoners, who saw her as a source of amusement. A three-judge panel jointly maintained the Delhi High Court's ruling, which had concurred with the case's trial court conclusion. Because of their cruel behaviour towards a national woman, Mukesh, Pawan, Vinay Sharma, and Akshay Kumar Singh were hanged. Because their crime satisfied the extremely uncommon criteria, the bench sentenced them to death. Because he was still a kid after the incident, the fifth accused was not tried and spent three years in a prison.³³

Conclusion

Sexual Assault and Social Contact Girls are not very honest about what they want out of life, which leads to the occurrence of rape. Men are aware of their desires, but the means by which they pursue them are purely inhuman. In our society, girls ought to be more forthcoming with their personal information, and boys ought to respect it when a girl says no to something that really means no. People needs to understand that rape victims experience difficult pain, and that they must create conditions that allow them to escape the situation they are in. The victims of rape or other sexual assaults need to hear from us as a society that they are not any different

³³ <https://indianlegalsolution.com/mukesh-another-vs-state-for-nct-of-delhi/>

from other women and that society treats them equally, despite the fact that this is still not the case. This is why we continue to witness victims of suicide. Even after the victim passed away, the story was continued for a few days, during which time another victim experienced the identical circumstances. Everyone who needs to be treated, regardless of gender, speaking more generally, when it comes to women being held responsible for things like their attire, staying out late at night, etc., why does society not encourage men to exercise self-control or that they should not force a woman—even if she is their wife—to say no? However, material rape remains a contentious issue. Furthermore, some people experience sexual assault on the basis of their gender as well, but they choose to remain silent about it due to societal norms and a fear that primarily stems from childhood. Therefore, we must foster an atmosphere where everyone understands that saying "NO" in any circumstance is appropriate and should never be forced.

UNVEILING THE IMPACT OF SOCIAL MEDIA ON HATE CRIME: CHALLENGES AND SOLUTION

Sanghamitra Roy Pai¹ & Mohamad Eajazul Haq²

Abstract

Social media platforms have become effective tools for community engagement, information sharing and communications in the current digital era. Nevertheless, in addition to all of their advantages, hate speech, hate crime, extremism, and the spread of prejudicial opinions thrive on social media. This paper looks into the relationship between hate crime and social media, examining the difficulties in controlling hate speech on social platforms and outlining potential remedies. This study investigates the role of social media in spreading extremist narratives, amplifying hate speech and creating online spaces that encourage the coordination of discriminatory actions. The purpose of the study is to highlight the obstacles that make efforts to control hate speech on social media more difficult, such as the conflict between the right to freedom of speech and the need to prevent harm, algorithmic biases and lack of accountability. The present study highlights the role of media in contributing to hate crime in the society and challenges being faced due to hate crime.

Keywords: *Hate Crime, Hate Speech, Social Media*

Introduction

“Darkness cannot drive darkness; Light can do that. Hate cannot drive out hate; Love can do that.” -Martin Luther King (1963). Social media platforms play a vital role in today’s connected world as a means of community-building, communication and information sharing. These platforms however contain darker aspects that have significant societal ramifications in addition to their main positive aspects. One such problem is the way hate crimes are fueled by social media, as online rhetoric can turn into physical violence and discrimination. One major concern is the spread of hate speech on social media facilitates the propagation of discriminatory ideologies by making it simple for people to spread damaging content. Hate speech may consist of xenophobic remarks to calls for violence against

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marginalized groups³. Regulating content on social media platforms is a significant challenge in addressing the issue. Policymakers and platform moderators alike face difficult challenges in striking a balance between the demands of preventing harm and the ideals of free speech. Further, social media algorithms frequently give priority to content that is shocking or controversial, which unintentionally amplifies hate speech and creates echo chambers where extreme viewpoints can spread unchecked. Hate speech on the internet has far-reaching effects that affect communities in real life in addition to the virtual world. Psychological distress, social alienation and increased susceptibility to violence are experienced by targeted individuals and communities. Hate speech can exacerbate social tensions and undermine social cohesiveness by acting as a trigger for physical crime based on hatred.

Definition

Hate Crime “Any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice based on a person's race or perceived race; religion or perceived religion; sexual orientation or perceived sexual orientation; disability or perceived disability and any crime motivated by hostility or prejudice against a person who is transgender or perceived to be transgender.”⁴

Types of Hate Crime

1. Physical Assault- Any form of physical assault is illegal and needs to be reported. A perpetrator may face charges of common, assault, actual bodily harm or grievous bodily harm, depending on the degree of violence used.
2. Verbal Abuse- Minority groups may frequently encounter verbal mistreatment, threats or name-calling, all of which can be distressing.
3. Incitement to hatred- An act of threatening behaviour with the intent to incite hatred is considered an incitement to hatred offence. This includes information found on websites and can take the form of text, images, videos or music.⁵

Concept of Hate Crime

Hate crimes are defined as crimes committed with the intent to cause harm to any specific group of people because of their race, religion, ethnicity, sexual

³ Amita Charan, Jitendra Kumar Verma, Characterizing Social Media Contents for Regulating Hate Crimes and Cyber Racism against Marginalized and Dalits in India, 2020 International Conference on Computational Performance Evaluation. ISBN:978-1-7281-6644-5

⁴<https://www.met.police.uk/advice/advice-and-information/hco/hate-crime/what-is-hate-crime/> (Last Accessed on 01st September, 2024; 01:00 P.M)

⁵ <https://www.eastcambs.gov.uk/content/types-hate-crime> (Last Accessed on 1st September, 2024; 02:30 P.M)

orientation, gender identity, disability or other characteristics. Crimes motivated by hate are not like other violent crimes rather they are targeted at people or groups who are thought to be less than or different because they belong to a particular social group. Physical assault, vandalism, harassment, verbal abuse and threats are just a few examples of the different ways that hate crimes can manifest. These crimes are different from others because of the underlying prejudice or hostility directed towards the victim's perceived identity or belonging in a specific social community "*A criminal offence committed with bias motive is one of the two components of all hate crimes*".⁶ Beyond the immediate victims, hate crimes frequently have a ripple effect on entire communities, causing fear and insecurity. They weaken institutional trust, erode social cohesiveness and uphold systemic inequalities and discrimination. Further victims of hate crime may experience severe psychological and emotional fallout, making them feel even more vulnerable, traumatized and isolated.⁷

Reasons for Commission of Hate Crime

When interpreted literally, the phrase "hate crimes" and "hate motive" can be deceptive. Numerous acts motivated by animosity are not classified as hate crimes. For example, murders motivated by hatred are not classified as "hate crimes" unless the victim was selected based on protected characteristics.⁸ On the other hand, inappropriate behaviour can still be categorized as such even if the offender has no hatred for the victim in question it's possible that most hate crimes do not truly represent hatred, which is a very particular and intense emotion.

Some of the motives for committing hate crimes are as follows

1. Several emotions, including hate, envy, or the need to fit in with peers could be guiding the offender.
2. The perpetrator might not be personally attracted to the victim but instead be driven by fears or emotions regarding the group that the victim is part of.
3. The perpetrator might harbour hatred towards everyone who does not share their identity or is not a member of the group they identify with.

⁶ <https://www.legalserviceindia.com/legal/article-8812-hate-crime.html> (Last Accessed on 1st September, 2024; 02:45 P.M)

⁷ M. Mohsin Alam Bhat, Mob, Murder, Motivation: The Emergence of Hate Crime Discourse in India, (2020) 16(1) Socio-Legal Review 76 (P 77-108)

⁸ Rania Hamad, City of Edinburgh Council, Hate Crime: Causes, Motivations and Effective Interventions for Criminal Justice Social Work, <https://cycj.org.uk/wp-content/uploads/2017/06/Hate-Crime-causes-and-motivations.pdf> (P 4-80)

4. More abstractly, the target might just represent an idea that the offender disagrees with them.⁹

Role of Social Media

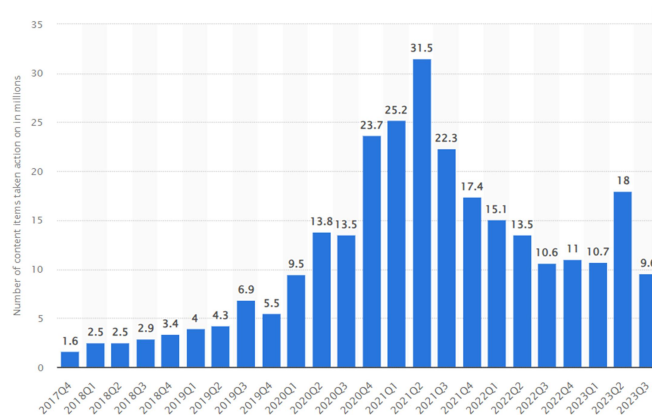
Hate crimes are fueled by hateful ideologies that are powerfully amplified by social media. Its impact is felt through several different channels, intensifying social tensions and fuelling the rise in discriminatory behaviour due to its accessibility, social media is being used as a tool in the modern era to spread rumours, and fake news and instigate enmity among communities. At present, social media platforms like Twitter, Facebook, WhatsApp, YouTube, Instagram and Telegram are being used to spread hate crimes and communal hatred against majority and minority groups by disseminating false information which is regrettably a practice. Therefore, it is necessary to implement limitations and restrictions on social media to prevent hate crimes. We are compelled to consider social media's boundaries after witnessing multiple instances of caste dispute, communal violence, lynchings and murder connected to it. We cannot compromise our national integrity and unity for such features alone, as they divide the nation along religious lines and further divide it into caste lines.¹⁰ Numerous instances of caste conflicts and communal violence occurred, and it was found that social media played a major part in these incidents. It contributes to the spread of false information and creates a false impression of the victims, leading to the public's misinformation and the incidents that are being utilized for political agenda, promoting organized crime, fabricating false information about certain individuals and spreading false information against the majority in a minority group.

Actioned hate speech content items on Facebook worldwide from the 4th quarter of 2017 to the 3rd quarter of 2023¹¹

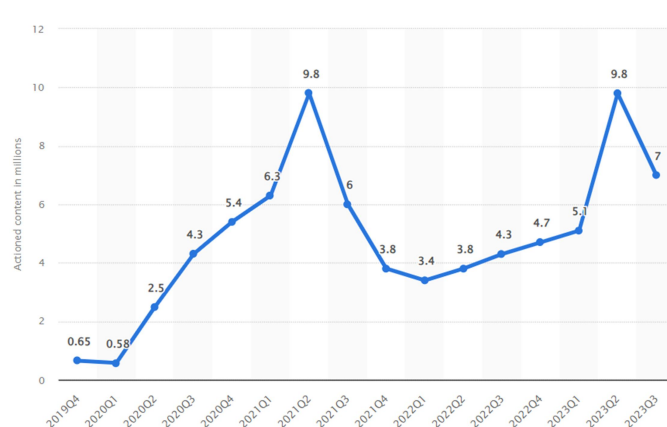
⁹ Mark A. Walters and Rupert Brown with Susann Wiedlitzka, Causes and motivations of hate crimes, © 2016 Equality and Human Rights Commission First published July 2016 ISBN 978-1-84206-678-2, <https://www.equalityhumanrights.com/sites/default/files/research-report-102-causes-and-motivations-of-hate-crime.pdf>(P 6-52)

¹⁰ Kunal Chaudhary, Role of social media in the Promotion of Hate Crimes in India, Think India Journal ISSN:0971-1260 Vol- 22 Issue 14- December 2019, <https://thinkindiaquarterly.org/index.php/think-india/article/view/13939/9184>(P 5281-5291)

¹¹ <https://www.statista.com/statistics/1013804/facebook-hate-speech-content-deletion-quarter/>(Last Accessed on 12th September, 2024; 10:05 A.M)



Actioned hate speech content items on Instagram worldwide from the 4th quarter of 2019 to the 3rd quarter of 2023¹²



From the above statistical report, we conclude that social media has largely contributed to hate crime.

The role of social media in the proliferation of hate crime

1. Amplification of Hate Speech – Hate speech can now be amplified globally because of social media platforms, which offer a low barrier to entry for individuals and groups seeking to reach a large audience. Hate speech become more common on social media due to the viral nature of content sharing, normalizing judgemental attitudes and actions.¹³
2. Algorithmic Bias- User engagement metrics including likes, shares and comments are frequently used by social media platforms’ algorithms to determine which content is to be prioritized. Sensational or polarizing content

¹² *Id.*

¹³ Nazmine, & Manan, Khan & Tareen, Hannan Khan & Noreen, Sidra & Tariq, Muhammad. (2021). Hate Speech and Social Media: A Systematic Review. Turkish Online Journal of Qualitative Inquiry. 12. (P 5285-5294)

such as hate speech may spread as a result. Such content is more likely to provoke strong emotional responses and gain more exposure.¹⁴

3. Anonymity- People who feels comfortable expressing hateful opinions on social media platforms may do so without worrying about repercussions. Because they feel protected from consequences for their actions, anonymous users tend to have lower inhibitions and promote the spread of discriminatory content.
4. Echo Chambers- When people are exposed to content that supports their preexisting opinions and preferences, social media algorithms produce echo chambers or filter bubbles. This has the potential to further polarize online communities and encourage the spread of hate speech by supporting extreme ideologies and discriminatory attitudes.¹⁵
5. Targeted Advertising- Advertising that is specifically targeted to a particular demographic can be achieved by using social media platforms to distribute content that is extreme or divisive. By intensifying preconceived notions and dividing society, this targeted advertising can help normalize hate speech and discriminatory action.¹⁶
6. Viral Misinformation- On social media, false or misleading information spreads quickly and frequently has a negative effect. Misinformation campaigns have the potential to promote distrust and animosity towards particular groups, which can escalate hate crimes and violent incidents.¹⁷
7. Lack of Content Moderation- Inadequate policies and enforcement mechanisms regarding content moderation on social media platforms can lead to an unchecked spread of hate speech. Hate crimes are more likely to occur when discriminatory content is left unchecked or ignored, which fosters an atmosphere that is conducive to the spread of hateful ideas.

Besides, there are multiple factors which include algorithmic biases, anonymity, echo chambers, targeted advertising, viral propaganda and inadequate

¹⁴ <https://www.engati.com/glossary/algorithmic-bias> (Last Accessed on 12th September, 2024; 03:30P.M)

¹⁵ Vasu Goel, Dhruv Sahnun, Subhabrata Dutta, Anil Bandhakavi, Tanmoy Chakraborty, hatemongers ride on echo chambers to escalate hate speech diffusion, PNAS Nexus, Volume 2, Issue 3, March 2023, pgad041, <https://doi.org/10.1093/pnasnexus/pgad041>

¹⁶ <https://www.adl.org/resources/blog/meta-profits-hateful-advertising>(Last Accessed on 15th September, 2024; 4:00P.M)

¹⁷<https://www.coe.int/en/web/to-speak-safe-to-learn/dealing-with-propaganda,misinformation-andfake-news> (Last Accessed on 15th September, 2024; 5:53P.M)

content moderation that play a significant role in the propagation of hate crime via social networks. To handle this problem, social media giants, legislators, civil society groups and individuals must cooperate on hate speech fighting, digital literacy upgrading and the creation of online spaces that respect tolerance and humanity.

Challenges

There are many obstacles to overcome when navigating the regulation of hate crime and hate speech on social media, which calls for thoughtful analysis and calculated solutions. Some of the challenges are as follows:

1. **Defining Hate Speech-** The definition of hate speech is a complicated and individualized term that varies greatly among legal systems, contexts and cultural groups. Regulators and social media platforms alike face a great challenge in defining hate speech in a way that is both universally applicable and unambiguous.¹⁸
2. **Balancing Free Speech and Harm Prevention-** Achieving a balance between defending the right to free speech and protecting people and communities from harm is necessary when regulating hate speech. It is difficult to strike the correct balance between these conflicting interests, and doing so calls for sophisticated strategies that take into account the wider societal ramifications.¹⁹
3. **Algorithmic Bias-** Hate speech and extremist content may unintentionally be amplified by social media algorithms, which frequently prioritize content based on user engagement metrics. To stop hate speech from spreading online, it is important to address algorithmic biases and create more efficient moderated content.²⁰
4. **Global Legal and Cultural Differences-** Cultural norms and laws against hate speech and hate crime differ greatly among nations and communities. Because social media platforms are global in scope, it is difficult to implement uniform content moderation guidelines that adhere to a variety of legal requirements and cultural norms.

¹⁸ <https://unesdoc.unesco.org/ark:/48223/pf0000379177>(Last Accessed on 17th September, 2024; 10:00 P.M)

¹⁹ Kunaljha94, Mar 26, 2023, Human Rights, Politics, Walking A Tightrope: Balancing Free Speech and Hate Speech in India, <https://www.youthkiawaaz.com/2023/03/walking-a-tightrope-balancing-free-speech-and-hate-speech-in-india/> (Last Accessed on 19th September, 2024; 07:11 P.M)

²⁰<https://www.linkedin.com/advice/1/how-can-you-address-algorithmic-bias-social-media-skills-algorithms-> (Last Accessed on 19th September, 2024; 07:23 P.M)

5. Content Moderation Challenges- Effective content moderation is a difficult task because of the overwhelming amount of user-generated content on social media platforms. The task of identifying and eliminating hate speech presents a challenge for human moderators as they must strike a balance between the necessity of making decisions quickly and accurately.²¹
6. User Privacy and Freedom of Expression- Concerns about user privacy and freedom of expression arise when hate speech on social media is regulated. Over-permissive content moderation guidelines run the risk of unintentionally restricting free speech or violating user's right to privacy and expression.²²
7. Lack of accountability- Due to their alleged incompetence in combating hate speech and upholding content moderation guidelines, social media platforms are currently facing criticism. To make sure that platforms are held accountable for their choices and actions, there needs to be an increase in transparency.

To effectively address these issues, social media platforms, users, civil society organizations and legislators must work together in a multifaceted manner. The protection of vulnerable groups must come first in effect to control hate speech and hate crime on social media, while also respecting the rights to free speech, privacy and cultural diversity.

Impacts of social media on communication

Social media has revolutionized communication by enabling instant, global connections. It has increased the speed of information dissemination but also altered the depth and quality of interpersonal interactions. While it fosters connectivity, it can also lead to shallow relationships, misinformation spread, and reduced face-to-face communication skills. Around 3 billion people use social media today, which means that 40% of the world uses social media for communication. It is not unexpected that the extensive usage of social media has an impact on communication. 11% of adults reported preferring staying home on Facebook than going out on the weekend. Personal experience, our expectations from others, and the way of businesses interact with their clients are all impactful areas of communication. Social media began with the advent of the internet and email in the 90s, which revolutionized the way people

²¹ <https://riseuplabs.com/what-are-the-challenges-of-content-moderation> (Last Accessed on 19th September, 2024; 07:31 P.M)

²² <https://www.article19.org/data/files/medialibrary/38657/Expression-and-Privacy-Principles-1.pdf> (P.No.6-30)

communicate. The first social networking site, SixDegrees.com, was launched in 1997, followed by Friendster, Myspace, and LinkedIn.²³ However, it was the launch of Facebook in 2004 that marked the beginning of the era of social media as we know it today. Since then, social media platforms have expanded to include a wide range of functionalities such as live streaming, photo and video sharing and text-based messaging. Social media has become a vital part of our everyday lives due to the increasing use of smartphones and other electronic devices, which enable us to connect and communicate with people instantly anywhere in the world.

Impacts of social media on communication

- 1. Increased Accessibility:** Social media platforms have made communication more accessible than ever before, allowing people to connect across vast distances instantly.²⁴
- 2. Diverse Communication Channels:** Social media offers a variety of communication channels such as text, images, videos, and live streaming, giving user's flexibility in how they express themselves.
- 3. Global Reach:** Individuals and organizations can reach a global audience through social media, facilitating international communication and collaboration.
- 4. Erosion of Privacy:** The social media blurs the line between public and private communication, leading to concerns about privacy and data security
- 5. Filter Bubbles and Echo Chambers:** Algorithms on social media platforms often personalize content based on user preferences, leading to the formation of filter bubbles and echo chambers, where people are exposed primarily to viewpoints similar to their own.
- 6. Impact on Relationships:** Social media can both strengthen and weaken relationships. While it enables people to stay connected with friends and family regardless of distance, excessive use can lead to less meaningful face-to-face interactions and a sense of isolation.

²³ The relationship between social media and communication, 25/05/2023 | Humanities and Social Sciences, <https://www.varsitycollege.co.za/about/articles/the-relationship-between-social-media-and-communication> (Last Accessed on 19th September, 2024; 08:43 P.M)

²⁴<https://www.uopeople.edu/blog/how-social-media-affected-communication/> (Last Accessed on 19th September, 2024; 09:03 P.M)

7. **Dissemination of Misinformation:** Social media has facilitated the rapid spread of misinformation and fake news, challenging the reliability of information shared online.
8. **Impact on Language:** The use of abbreviations, slang, and emojis on social media has influenced language usage, leading to concerns about its impact on formal communication skills.
9. **Cyberbullying and Online Harassment:** Social media platforms can be breeding grounds for cyberbullying and online harassment, affecting individuals' mental health and well-being.²⁵
10. **Digital Divide:** Access to social media platforms is not universal, leading to disparities in communication opportunities between those with internet access and those without.
11. **Boredom in Conversation:** An Unfortunate Impact of social media on the conversation. Our genuine face-to-face conversations are starting to bore us. Social media consumption has become so necessary for people, who often turn to their phones during actual conversations because they get bored easily and prefer the instant colourful feedback that social media offers. The quantity and quality of conversations have declined.
12. **Social media is Changing Traditional Media:** Traditional media was such that a brand would just post an article and it would reach audiences. Social media and the way information reaches consumers today make it so that it's important who is posting or writing about a product. Influencers, bloggers, and YouTube celebrities can all have a much bigger impact on getting a product successful in the market.
13. **Social media Impact on non-verbal communication:** The impact of social media on nonverbal communication is multifaceted. While social media platforms lack the direct transmission of nonverbal cues like facial expressions and body language, they offer alternative means of expression such as emojis, GIFs, and stickers. These digital cues attempt to convey emotions and tone, but they may not always accurately reflect the sender's intent or the receiver's interpretation. Additionally, the absence of nonverbal cues can lead to misunderstandings or misinterpretations in online communication, as

²⁵ Hinduja, S., & Patchin, J. W. (2018). Cyberbullying: Review of an old problem gone viral. *Journal of Adolescent Health, 63*(3), (P.No. 315-318.)

individuals may rely more on written words, which can be open to interpretation. As a result, social media can both supplement and challenge traditional nonverbal communication methods, shaping how individuals express themselves and interpret the messages of others in the digital realm.

Overall, while social media has transformed communication in many positive ways, it also presents challenges that society continues to grapple with as it navigates this new digital landscape.²⁶

The role of social media in business communication

1. **Increase in opportunities:** With the rise of social media platforms like LinkedIn, Twitter and Facebook, businesses now have more opportunities to connect with customers and to market their products and services.
2. **Increase in collaboration and networking:** Social media can now be used by businesses to connect with like-minded people and find collaborators or employees.²⁷
3. **Damage to reputation:** The risk that social media brings to business through unfavourable comments or reviews on social media platforms is one of its drawbacks. Companies should keep a close eye on their social media profile and reply to criticism promptly and expertly.
4. **Issues of privacy:** Social media may be an effective tool for communication and marketing but companies need to be aware of legal consequences about privacy rights. Companies must ensure that staff members are trained on the company's social media policies and being implemented with clarity.

Suggestions to Stop hate speeches on social media

Stopping hate speech on social media involves a multi-faceted approach. Here are some steps that can be taken:

1. **Stronger Moderation:** Social media platforms can employ more stringent moderation policies and algorithms to detect and remove hate speech.²⁸
2. **Community Reporting:** Encourage users to report hate speech, which can then be reviewed by moderators.

²⁶<https://researchgate.com/2023/05/04/top-20-impacts-of-social-media-on-communication> (Last Accessed on 20th September, 2024; 10: 23 A.M)

²⁷ <https://business.gov.au/online/social-media-for-business> (Last Accessed on 20th September, 2024; 11: 05 A.M)

²⁸ Cassidy Armbruster, 24, Apr 2023, Social Media Moderation: Why It's Essential and How to Do It, <https://blog.brandbastion.com/social-media-moderation> (Last Accessed on 20th September, 2024; 11: 17 A.M)

3. **Education and Awareness:** Educate users about the impact of hate speech and the importance of respectful communication.²⁹
4. **Legal Measures:** Governments can implement laws to hold individuals accountable for hate speech online.
5. **Promote Positive Content:** Highlight positive and constructive content to counterbalance hate speech.³⁰
6. **Dialogue and Engagement:** Encourage dialogue and engagement between different communities to foster understanding and reduce hostility.
7. **Technology Solutions:** Develop technologies like AI and machine learning to detect and remove hate speech automatically.
8. **Transparency:** Increase transparency about how hate speech is handled on the platform.

Combining these approaches can help reduce hate speech and create a safer online environment.

Conclusion

The complex relationship between hate crime and social media poses significant challenges that require creative thinking and teamwork. Social media platforms have helped hate speech spread and discriminatory acts escalate, but they also have a great deal of potential to be catalysts for positive change. A comprehensive strategy that strikes a balance between the protection of free speech and the avoidance of harm is needed to address the impact of social media on hate crimes. This calls for stringent content moderation procedures, an open algorithmic system and proactive steps to encourage users' digital literacy and critical thinking. To further combat the polarizing narratives spread by hate speech, it is necessary to promote an atmosphere of empathy, inclusivity and respect in online communities. Individuals can play a crucial role in creating a more harmonious digital landscape by amplifying voices of tolerance and solidarity, opposing discriminatory attitudes and supporting marginalized groups. However, online interventions alone will not win the war against hate crimes. It requires concerted efforts from every aspect of society, including the legal system, community organizations and educational systems. We can

²⁹ <https://en.unesco.org/5-ways-to-counter-hate-speech> (Last Accessed on 20th September, 2024; 11: 31 A.M)

³⁰ <https://marieennisconnor.medium.com> (Last Accessed on 21st September, 2024; 09:22 A.M)

build a society that is less vulnerable to the appeal of extreme ideologies and more resistant to the influence of hate speech by solving the root causes of discrimination and social inequality. Let us not waver in our commitment to advancing inclusivity, fostering, understanding and defending the core value of equality and justice as we negotiate the complexities of the digital age. Combined, we can use social media's transformative power to create a world in which hate crimes are not only decried but also forgotten.

POWERS OF NCLT UNDER COMPANIES ACT, 2013

Swapna Somayaji¹

Abstract

In 1999 Justice Eradi Committee Recommended setting up of a National Company Law Tribunal (NCLT) and proposed repeal of SICA. It is a quasi-judicial authority incorporated for dealing with corporate disputes that are of civil nature arising under the Companies Act. However, a difference could be witnessed in the powers and functions of NCLT under the previous Companies Act, 2013. The Supreme Court had preserved the constitutional validity of the NCLT, however, specific provisions were rendered as a violation of the constitutional principles. On 1st June, 2016, the National Company Law Tribunal and National Company Law Appellate Tribunal were finally constituted by the Central Government. Over the last two decades, India has witnessed an increase in NPA. Over time, the enlargement in NPAs has led to bank collapse and undermining financial soundness. The setting up of the NCLT and NCLAT are part of the efforts to move to a regime of faster resolution of corporate disputes, thus improving the ease of doing business in India. The Ministry of Corporate Affairs (MCA) on 1st June, 2016 notified the Constitution of National Company Law Tribunal (NCLT) & The National Company Law Appellate Tribunal (NCLAT) in exercise of powers conferred under section 408 and 410 of the Companies Act, 2013. The constitution of NCLT & NCLAT was a step towards improving and easing all the judicial matters relating to the Company law under one roof.

In the first phase the Ministry of Corporate Affairs has set up eleven Benches, one Principal Bench at New Delhi and ten other Benches at New Delhi, Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai. These Benches are headed by the President Chief Justice (Retd.) Ramalingam Sudhakar and comprises of sixteen Judicial Members and nine Technical Members at different locations.

Keywords: MCA, NCLT, Investigation, Functions, Committee Report, Liquidation

Introduction

The Supreme Court in its decision dated 14th May, 2015, held that certain provisions dealing with the Constitution and selection process of the Tribunal members are unconstitutional.²

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² Writ Petition (Civil) No.502 of 2021

The NCLT was constituted on the recommendations of Eradi Committee. It was planned to introduce NCLT in Indian legal system in the year 2002 under the Companies Act, 1956, but the litigation regarding the constitutional validity of NCLT went on for more than 10 years and later on got notified under the 2013 Act. The powers of Company Law Board have been transferred to NCLT. Further the Centre has planned to inject second set of notifications through which the NCLT. NCLT now has the powers of the CLB and the newly injected powers placing NCLT on an equal footing with High Courts and BIFR via the Act of 2013.³ On 1st June 2016, the proceedings pending before CLB were transferred to NCLT and Tribunal was granted a discretionary power to take up the pending cases of CLB from any stage they want to.

Concept of NCLT in India - Eradi Committee

The concept of forming the Tribunal for dealing with various activities of companies was first introduced in the Companies Act, 1956 by the Company (Second Amendment) Act, 2002. The Tribunal was proposed to be established partly as a result of the recommendations of Eradi Committee. In 2010, the Union of India constituted a High-Level Committee on 'Law relating to Insolvency of Companies' under the *Chairmanship of Justice V. Balakrishna Eradi*, a retired Judge of the Hon'ble Supreme Court. The purpose of the committee was to examine the existing laws relating to winding-up proceedings of the company in order to remodel it in line with the latest developments and innovations in the corporate laws and governance and to suggest reforms to procedures to be followed at various stage during insolvency proceedings of the company to avoid unnecessary delay in tune with International practices in the field.

The said Committee identified the following areas which contributed to inordinate delay in finalization of winding-up/dissolution of companies:

- a) Filing statement of affairs;
- b) Handing over updated books of accounts.
- c) Realization of debts.
- d) Taking over possessions of the assets of the company and sale of assets.

³ *Madras Bar Association v. Union of India*, (2014) 10 S.C.C. 1.

- e) Non-availability of funds for the Official Liquidator to discharge his duties and functions.
- f) Settlement of the list of creditors.
- g) Settlement of list of contributories and payment of calls.
- h) Finalization of income-tax proceedings.
- i) Disposal of misfeasance proceedings.

The Committee found that multiplicity of court proceedings is the main reason for the abnormal delay in dissolution of companies. It also found that different agencies dealing with different areas relating to companies-Board for Industrial & Financial Reconstruction (BIFR) and Appellate Authority for Industrial & Financial Reconstruction (AAIFR) dealt with reference relating to rehabilitation and revival of companies' High courts dealt with winding-up of companies and Company Law mismanagement etc. Considering the Laws on corporate insolvency prevailing in industrially advanced countries, the Committee recommended various amendments to provisions of the Companies Act, 1956 for setting-up a National Company Law Tribunal which will combine the powers of the CLB under the Companies Act, 1956 BIFR and AAIFR under the Sick Industrial Companies (Special Provisions) Act, 1985 and jurisdiction and powers relating to winding-up presently vested with the High Courts.

2002 Amendment Challenged

The Tribunals were never constituted under the Companies Act, 1956 as the constitutionality of the Companies (Second Amendment) Act, 2002 was challenged by the Madras Bar Association in 2003.

The Madras High Court by its order dated 30 March 2004 held that creation of the NCLT and vesting the powers hitherto exercised by the High Courts and CLB in the Tribunal was unconstitutional. It referred to and listed the defects in several provisions (mainly sections 10FD(3)(f)(g)(h), 10FE, 10FF, 10FL (2), 10FR (3), 10FT) in Parts IB and IC of the companies Act, 1956. Therefore, it declared that until the provision of Part IB and IC of the Act, introduced by the Amendment Act which were defective being in violation of the basic constitutional scheme (of separation of judicial power from the Executive and Legislative power and independence of judiciary enabling impartial exercise of judicial power) are duly amended by removing the defects that were pointed out, it will be unconstitutional to constitute a

Tribunal and Appellate Tribunal to exercise the jurisdiction now exercised by the High Court or the Company Law Board.

The Union of India accepted certain defects pointed out by the High Court in Parts IB and IC of the Act and agreed to amend the relevant provisions to remove the defects.

However, it did not accept certain suggested changes and thus the matter went to the Apex Court. The Supreme Court in its order passed on 11 May 2010 in *Union of India v R Gandhi President, Madras Bar Association*⁴ declared that certain provisions of the said sections were unconstitutional and passed judgement. This decision was passed in 2010 by the Supreme Court and is hereinafter referred to as “2010 NCLT Case”.

JJ Irani Committee

JJ Irani Committee was formed to make suggestions for the enactment of a new company law. In its report dated 31 May 2005, the Committee noted the importance of the establishment of Tribunal and welcomed the move to establish specified Tribunals under the new company law. It observed that:

“Corporate issues will also require quick resolution. The time taken in the existing framework needs to be reviewed. This is particularly so in the context of rehabilitation, liquidation and winding up. Mergers and amalgamation also need to be facilitated to take place through a speedier process. Through the Companies (Second Amendment) Act, 2002 the Government has envisaged setting up of the National Company Law Tribunal and the National Company Law Appellate Tribunal. We welcome this move. It is time the forum with specialization to deal with corporate issues, bringing together expertise from various disciplines, is established. We are informed that there are certain legal issues to be resolved before these institutions can be set up. We hope that this process is speedily concluded so that a single forum is available for an informed consideration of corporate issue.”

Tribunal under Companies Act, 2013

In the Companies Act, 2013, the concept of Tribunals was introduced again. The nomenclature namely “NCLT” and “NCLAT” was retained. However, the powers and scope of the Tribunals were much wider under the new legislation (check table Power of NCLT: At a Glance).

⁴ SC/0378/2010

The Companies Act, 2013 introduced the provisions for formation of NCLT and NCLAT. Many of the suggestions set out by the Supreme Court in the 2010 judgement were essentially complied with and the provisions pertaining to the Tribunal and Appellate Tribunal were suitably introduced in the revised format.

However, the Madras Bar Association (MBA) again field a case challenging the said provision in the Supreme Court in 2013 and the matter was referred to a 5 judge bench of the Supreme Court.

Nature of Challenge under 2013 Act

In *Madras Bar Association v Union of India (UOI) and Ors*⁵ ('**2015 NCLT Case**'); Madras Bar Association raised three-fold challenges which were decided as follows:

Issue No.1: Challenge to the validity of the constitution of NCLT and NCLAT;

Held: Constitutional

Issue No.2: Challenge the prescription of qualifications including term of office and salary allowance etc. Of President and Members of the NCLT as well as Chairman and Members of the NCLAT.

Held: The Supreme Court held that "having regard to the aforesaid clear and categorical dicta in 2010 judgement, tinkering therewith would evidently have the potential of compromising with standards which 2010 judgement sought to achieve, may so zealously sought to secure. Thus, we hold that sec 409(3)(a) and (c) are invalid as these provisions suffer from the same vice. Likewise, sec 411(3) as worded, providing for qualifications of technical Members, is also held to be invalid. For appointment of technical members to the NCLT , directions contained in sub-para (ii), (iii), (iv), (v) of para 120 of 2010 judgement will have to be scrupulously followed and these corrections are required to be made in sec 409(3) to set right the defects contained therein. We order accordingly, while disposing of Issue No. 2".

Issue No. 3: Challenge to the structure of the Selection Committee for appointment of President/Members of NCLT and chairperson/members of the NCLAT.

Held: The Selection process was held unconstitutional. The prime consideration in the mind of the Bench was that it is the Chairperson, viz, Chief Justice of India, or his nominee who is to be given the final say in the matter of selection with right to have a casting vote. The 2010 judgement specifically provided that a casting vote should be

⁵ 2015 VII AD (S.C.) 229

provided to the Chairperson of the Selection Committee which was sought to be avoided by the Companies Act, 2013. Therefore, the Supreme Court held that provisions of sec 412(2) of the Act was invalid and direction was issued to remove the defect by bringing this provision in accord with sub-para (viii) of para 120 of 2010 judgment.

Reasons for Establishing Tribunals

The necessity of establishing tribunals was discussed in the judgement of 2010 and 2015 and a brief overview is provided to understand the need for such an institutional set up under the Companies Act, 2013.

Under regular civil process, to ensure fair play and avoidance of judicial error, the procedural laws provide for appeals, revisions and reviews and allow parties to file innumerable applications and raise vexatious objections as a result of which the main matters get pushed to the background.

All the litigation in the Courts get inevitably delayed, which leads to frustration and dissatisfaction among litigants. In view of the huge pendency, courts are not able to bestow attention and give priority to cases arising under the special legislations. Therefore, there is a need to transfer some selected areas of litigation dealt with by traditional courts to special Tribunals.

As Tribunals are free from the shackles of procedural laws and Evidence Law, they can provide easy access to speedy justice in a ‘cost-affordable’ and ‘user-friendly’ manner.

Tribunals can have both Judicial Member and a Technical Member. The Judicial Member will act as a bulwark against apprehensions of bias and will ensure compliance with basic principles of natural justice such as fair hearing and reasoned orders. The Judicial Member would also ensure impartiality, fairness and reasonableness in consideration. The presence of a Technical Member ensures the availability of expertise and experience related to the field of adjudication for which the special Tribunal is created, thereby improving the quality of adjudication and decision-making.

In the UK, the Committee was constituted to undertake the review of delivery of justice through Tribunals chaired by Sir Andrew Leggatt. The Leggatt Committee in 2001 explained the advantages of Tribunals, provided they could function independently and coherently, thus: “*Choosing a tribunal to decide disputes should bring two distinctive advantages for users, first, tribunal decisions are often made*

jointly by a panel of people who pool legal and other expert knowledge and are the better for that range of skills. Secondly, tribunals' procedures and approach to overseeing the preparation of cases and their hearing can be simpler and more informal than the courts, even after the civil justice reforms. Most users ought therefore to be capable of preparing and presenting their cases to the tribunal themselves, providing they have the right kind of help. Enabling that kind of direct participation is an important jurisdiction for establishing tribunals at all". De Smith's Judicial Review⁶, sets out the advantages of Tribunals, thus: "In the design of an administrative justice system, a Tribunal may be preferred to an ordinary court because its members have specialized knowledge of the subject matter, because it will be more informal in its trappings and procedure, because it may be better at finding facts, applying flexible standards and exercising discretionary powers, and because it may be cheaper, more accessible and more expeditious than the High Court, Many of the decisions given to Tribunals concern the merits of cases with relatively little content, and in such cases a Tribunal, usually consisting of a legally qualified Tribunal judge and two lay members, may be preferred to a Court. Indeed, dissatisfaction with the over technical and allegedly unsympathetic approach of the courts towards social welfare legislation led to a transfer of functions to special Tribunals".

Meaning of NCLT and NCLAT

The NCLT or "Tribunal" is a quasi-judicial authority created under the Companies Act, 2013 to handle corporate civil disputes arising under the Act. It is an entity that has powers and procedures like those vested in a court of law or judge. NCLT is obliged to objectively determine facts, decide cases in accordance with the principles of natural justice and draw conclusions from them in the form of orders. Such orders can remedy a situation, correct a wrong or impose legal penalties/costs and may affect the legal rights, duties or privileges of the specific parties. The Tribunal is not bound by the strict judicial rules of evidence and procedure. It can decide cases by following the principles of natural justice.

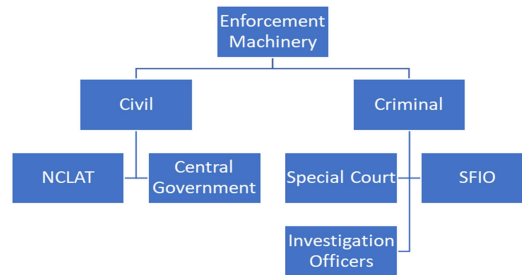
The NCLAT or "Appellate Tribunal" is an authority provided for dealing with appeals arising out of the decisions of the Tribunal. It is formed for correcting the errors made by the Tribunal. It is an intermediate appellate forum where the appeals

⁶ (6th Edi. Page 50 Para 1.085)

lie after order of the Tribunal. The decisions of Appellate Tribunal can further be challenged in the Supreme Court. Any party dissatisfied by any order of the Tribunal may bring an appeal to contest that decision. The Appellate Tribunal reviews the decisions of the Tribunal and has power to set aside, modify or confirm it.

New enforcement mechanism- place of tribunals

The chart below provides a holistic view about the enforcement mechanism contemplated under the Companies Act, 2013 and the place of Tribunals in this machinery.

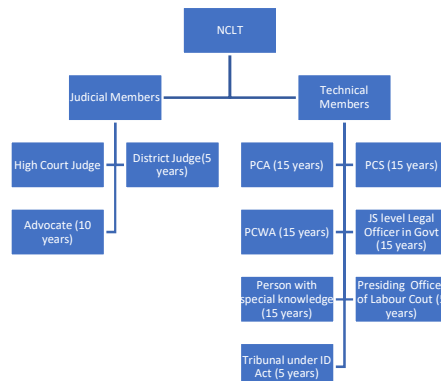


Constitution of NCLT

The National Company Law Tribunal is a quasi-judicial body, is constituted under section 408 of Companies Act 2013 and is recognized under IBC as adjudicating authority for the purpose of insolvency resolution as well as liquidation of corporate persons and LLP. In June 2016, National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) were formed and was constituted.

The NCLT is an authority and deals with the issues of compromise, arbitration, arrangements, reconstruction, disposal and winding up of the companies. The powers are entrusted as the Companies Act to National Company Law Tribunal. The Tribunal will consist of a President Judicial and Technical member.

Qualification of members of NCLT



President: The President of NCLT shall always be a person who has been a Judge of High Court for five years, to be appointed after consultation with the Chief Justice of India.

Judicial Member: The Judicial Member shall be a person having at least 10 years of experience as an advocate or a Judge of a District or High Court for 5 years. This criterion is approved by the Supreme Court and the constitutionality of this provision has been upheld. A Judicial member shall be a person who is or has been a Judge of a High Court or is a judicial member of the Tribunal for five years.

Technical member

A technical member shall be a person of proven ability, integrity and standing having special knowledge and experience, of not less than twenty-five years, in various field like law, industrial finance etc. This provision has been held unconstitutional and the Central Government is directed to comply with the 2010 decision of Supreme Court as regards the qualification.⁷ To be appointed as a technical member one needs to fit in one of the following criteria.

- Member of ICLS (Indian Corporate Law Services) or ILS (Indian Legal Service) of pay scale of Joint Secretary for at least 3 years out of a total minimum service of fifteen years. This criteria is however held unconstitutional; or
- A member of ICAI or ICWA practicing for at least fifteen years. The Supreme Court has held that considering practicing ICWA as eligible is unconstitutional and asked the Central Government to revise the said condition in accordance with 2010 decision of the Supreme Court⁸; or
- A person of proven ability, integrity, knowledge and practice for at least 15 years in the area of law, Industrial finance, industrial management or

⁷ 2010 NCLT Judgement as under “26. We may now tabulate the corrections required to set right the defects in Parts IB and IC of the Act: (v) The first part of clause (f) of sub-section(3) providing that any person having special knowledge or professional experience of 20 years in science, technology, economics, banking, industry could be considered to be person with expertise in company law , for being appointed as Technical Member in Company Law Tribunal, is invalid (vi) Persons having ability, integrity standing and special knowledge and professional experience of not less than fifteen years in industrial finance, industrial management, Industrial reconstruction, investment and accountancy , may however be considered as person having expertise in rehabilitation/ revival of companies and therefore, eligible for being considered for appointment as Technical Members”.

⁸ CIVIL APPEAL NO. 2482 of 2014

administration, industrial reconstruction, investment, accountancy, labor matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.

- A person who has at least for five years at present or in the past, served as a presiding officer of a Labor Court, Tribunal or National Tribunal constituted under Industrial Disputes Act, 1947 (14 of 1947).

Number of members

The Tribunal can have any number of members. No bar is placed. Under the old Act, the number was restricted to 62. The Government in the 2015 NCLT case (discussed in previous Chapter) pointed out that it has given approval for creation one post of President and 62 posts of Members of NCLT. It has approved for one post of Registrar and one post of Secretary for NCLT. The Appellate Tribunal shall have one chairperson and can have maximum eleven members. The Central Government in the 2015 NCLT case has stated that it has approved one post of chairperson and five posts of members of NCLAT.

Seat of NCLT

The seat of NCLT should be in New Delhi; however, it is possible that like CLB, they can have benches in Mumbai, Kolkata & Chennai. The government had indicated before the Supreme Court that they are considering the creation of a Tribunal for every state. It is possible that over time there will be around 16 Tribunals in India.

Jurisdiction of NCLT

Under section 5(1) of the Insolvency & Bankruptcy Code, 2016, the National Company Law Tribunal is designated to act as the adjudicating authority in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors.

The jurisdiction for an insolvency resolution and liquidation of corporate persons, corporate debtors and personal guarantors lies in that place where the registered office of the corporate entity is situated. To initiate an insolvency resolution process or liquidation of corporate debtor one must file an application for the same before having jurisdiction over such place. Likewise one can voluntarily file for a liquidation of corporate person in the same manner.

The Debt Recovery Tribunal established under securitization Act is recognized as adjudicating authority for partnership firms and individuals, but, where an

individual is personal guarantor of a corporate debtor and a corporate insolvency resolution process or liquidation proceedings of such corporate debtor is pending before a NCLT, an application relating to the insolvency resolution or bankruptcy of personal guarantor of such corporate debtor shall also be filed before such NCLT.

In dealing with the application relating to the insolvency resolution or bankruptcy of personal guarantor of corporate debtor, the NCLT shall have the powers of DRT dealing with the insolvency resolution or bankruptcy of individual.

The NCLT has been given an authority to deal with cases of fraudulent and malicious initiation of proceedings to ensure proceedings are brought only for the purpose of resolution of insolvency, or liquidation, as the case may be. The NCLT has a power to impose a penalty which may not be less than rupees one lakh, but which may extend to rupees one crore.

Under section 408 of the Companies Act, 2013 it is provided by the Central Government for constitution of a National Company Law Tribunal, to exercise and discharge such powers and functions as are or may be, conferred on it by or under the Companies Act or any other law for the time being in force. Under section 410 the NCLAT is constituted by the Central Government to hear appeals against the Orders of the Tribunal.

There are no separate provisions in the Companies Act, exclusively dealing with the jurisdiction and powers of NCLT. Under Section 60 (4) and (5) of IBC, 2016 give an indication about the powers and jurisdiction of the NCLT.

The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located. The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III in of this Code for the purpose of subsection 60 (2).

The National Company Law Tribunal shall have jurisdiction to entertain or dispose of any application or proceeding by or against the corporate debtor or corporate person; any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and any question of priorities or any question of law or facts, arising out of or in relation to the

insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

The tribunals cannot be considered as substitute to High Courts, but rather a supplement.⁹ *In Embassy Property Development Pvt. Ltd. v the State of Karnataka*¹⁰, the civil courts have the authority to invoke their powers under articles 226 and 227 and interfere with an order passed by the NCLT in a proceeding under the Insolvency and Bankruptcy Code 2016, if such order falls under the realm of public law. In such situation, it is immaterial even if a statutory remedy of appeal exists before the appellate tribunal, NCLAT.

The territorial jurisdiction of the Tribunal across whole India is divided among the ten regional benches. These benches have jurisdiction in their particular state as well as nearby states and union territories. The jurisdictions of regional benches are as follow:

- New Delhi bench: the Union Territory of Delhi, Rajasthan and Haryana.
- Ahmedabad bench: Gujarat, Madhya Pradesh, Union Territory of Dadra and Nagar Haveli and Union Territory of Daman And Diu.
- Allahabad bench: Uttar Pradesh and Uttarakhand.
- Bengaluru bench: Karnataka.
- Chandigarh bench: Punjab, Himachal Pradesh, Jammu and Kashmir and Union Territory of Chandigarh.
- Chennai bench: Kerala, Tamil Nadu, Union Territory of Lakshadweep and Union Territory of Puducherry.
- Guwahati bench: Arunachal Pradesh, Assam, Manipur, Mizoram, Meghalaya, Nagaland, Tripura and Sikkim.
- Hyderabad bench: Andhra Pradesh and Telangana.
- Kolkata: West Bengal, Bihar, Jharkhand, Odisha and Union Territory of Andaman and Nicobar Island.
- Mumbai: Maharashtra, Chhattisgarh and Goa.

The jurisdiction of the company who have paid capital of more than 50 lakhs and by special order by Hon'ble President NCLT lies with the principal bench New Delhi and the jurisdiction for the companies who had paid up capital up-to 50 lakhs

⁹K. C. Joshi, 'Constitutional Status of Tribunals'(JSTOR, March 1999) www.jstor.org/stable/43951702 (Last Accessed on 10th November 2021)

¹⁰AIR 2019

lies with the regional benches.

Role of NCLT in Dispute Resolution:

As NCLT is conferred with judicial powers, it becomes essential that the decisions taken by the tribunal should be precise and just. NCLT is not bound by CPC provisions but adheres to the guidelines given under the Companies Act and IBC provisions along with the principles of natural justice.¹¹ NCLT has also been conferred with the powers of Civil Court such as the power to issue a summons, issue commissions, receive evidence on affidavits, etc.,¹² The tribunal is bound by the Limitation Act of 1963.

In the new framework that is created for enforcement of the Act, the authorities like Registrar of Companies (ROC) and Regional Directors (RD) are retained. The powers of Central Government are also revisited. The Companies Act, 2013 provides for specialized judicial mechanism consisting of NCLT & NCLAT to deal with civil matter and Special Courts to deal with corporate criminal cases, Serious Fraud Investigation Office is recognized under the Act to investigate into the cases of serious frauds. For listed companies, powers of Central Government and SEBI are sought to be clearly demarcated.

Difference between NCLT and NCLAT

The NCLT has primary jurisdiction whereas NCLAT has appellate jurisdiction. NCLAT is a higher forum than NCLT. Evidence and witnesses are generally presented before NCLT for taking the decisions and NCLAT generally reviews decisions of NCLT and checks it on a point of law or fact. Fact finding and evidence collection is primarily a task of Tribunal whereas the Appellate Tribunal decide cases based on already collected evidence and witnesses.

Court v Tribunal

The Civil Courts are Judicial Institutions that deal with any and every civil dispute that arises in India (provided the jurisdiction of civil courts in not barred). Tribunals are specified quasi-judicial bodies for resolution disputes that arise under the Companies Act and other specified acts (RBI Act, LLP Act etc.,).

Like Courts, Tribunals are also independent of the executive and the legislative bodies of governance. They are also open to public that can access them for

¹¹Companies Act, 2013, s 424(1)

¹²ibid

redressal of their grievances under the Companies Act, 2013 (where the Tribunal empowered to deal with cases). Both Courts and Tribunals are transparent, as they need to give reasoned orders. Orders of both the institutions are subject to appeal. In Courts, the matters are strictly decided on the basis of rules of evidence and civil procedure code. In Tribunals, the decisions are taken in an informal manner. The strict rule of procedure and evidence do not apply to Tribunals. Only lawyers can appear in the court whereas in Tribunal, the party can be represented by a wide variety of person including different professionals. The Courts have the power to adjudicate in a variety of cases whereas Tribunals specialize in a particular area. In terms of cost, courts are very expensive as compared to Tribunals that provide a cheaper and quicker forum for resolution of disputes. The Tribunals has lesser powers than a Court. For example, Courts are vested with wide powers under CPC whereas the Companies Act, 2013 confers only some of these powers on the Tribunal.

Powers of NCLT

Under the Companies Act, 2013, NCLT has wide powers to deal with several matters. The power from various authorities and judicial forums have been transferred to NCLT. The basic intent is to create a single forum to deal with the entire gamut of corporate civil cases in an efficient and expeditious manner in accordance with the recommendations of Eradi Committee that were endorsed by several other committee, like JJ Irani Committee.

Amongst the powers that are conferred on NCLT, many powers were enjoyed by other erstwhile Authorities. These powers have been removed from the purview of those Authorities and brought into the purview of NCLT. However, the Companies Act, 2013 has not merely transferred the powers, role and functions of these other Authorities, but has also modified the powers of NCLT and the nature and scope of these powers, for instance, the laws on compromise and arrangements and the scope of powers of Tribunal have undergone a change.

The powers of NCLT are wider than that of the Company Law Board (CLB) and the Board of Industrial and Financial Reconstruction (BIFR). Only the broad overview of powers is discussed here. In every matter like class action, an oppression and mismanagement, deregistration of incorporated company, the NCLT has a unique set of powers for dealing with cases.

Conclusion

The NCLT can be called as a jumbo Tribunal for the reason that it will merge the corporate jurisdiction of Company Law Board, Board for Industrial and Financial Reconstruction and The Appellate Authority for Industrial and Financial Reconstruction. The formation of NCLT will help in reducing backlog of winding up cases and cut down the period of winding-up process. The Speedy disposal of cases will save time, energy and money of the parties concerned. Therefore, undue hardships will be reduced if not completely eradicated. No criminal court will have the jurisdiction to entertain any proceedings, in respect of any matter which the Tribunal or Appellate Tribunal is empowered to determine by the Act. Along with this, no injunction will be granted by any court in respect of any action taken by the Tribunal or Appellate Tribunal in pursuance of the Act.

A STUDY ON SIGNIFICANCE OF CONSERVATION OF FOREST FOR MAINTAINING ECOLOGICAL BALANCE AND POLICIES TO CONSERVE FOREST IN INDIA

Dr. Shubhalakshmi P.¹

Abstract

Protection of environment is one of the prime concerns for the wellbeing of all living creatures. Because of numerous reasons, degradation of natural environment has occurred, especially population explosion, over consumption, excess technological growth, deforestation etc. These factors not only resulted in negative impact on the environment but also put humans and animals at risk. In the ecosystem, there are different biotic and abiotic components like organisms, vegetation, forest land, rivers, mountains, lakes etc. Natural forests play a major role in balancing the ecological cycles by absorbing toxic gases like carbon dioxide and support a wide range of biodiversity. Forest also provides habitat for many living organisms, creatures, wildlife and creates natural infrastructure which supports climate change mitigation, disaster etc. Forest is a natural resource and there is need to conserve forest and the Constitution of India also provides provisions for protection of environment and its elements. Legal provisions and judicial decisions related to forest, provides us a clarity about the substantial role played by the forest in maintaining ecological balance by contributing for the protection of environment. Different Courts, Tribunals, including National Green Tribunal have emphasised on environmental significance of forest and conservation of forest in India.

Keywords: - Environment, Forest, Conservation, Ecological Balance.

Introduction

“It is not so much for its beauty that the forest makes a claim upon men’s hearts, as for that subtle something, that quality of air that emanation from old trees, that so wonderfully changes and renews a weary spirit.”– Robert Louis Stevenson. Forest is the abode of many living beings and it is one of the sources of energy and fresh air for human beings too. Forest being a natural resource, must be preserved and protected for balancing the ecosystem on the earth. In the ancient days, trees were preserved by the people and protected the varieties of plants out of great care. They also used to worship trees and there was a belief that some trees are abode of Gods and Goddesses. Even during Vedic period, instances of worshipping trees and nature

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was there and Rig Veda, Atharva Veda also highlights the same.² In ancient Indian civilization especially during Harappa Mohenjo-Daro, people were much dependent on products made from wood and there was presence of faith and devotional affection towards the forest and trees. Great scholars like Yajnavalkya, Kautilya etc gave prominence to conservation of trees and Mauryan emperor Ashoka also gave importance to afforestation.³

During British period, deterioration in the growth of forest can be witnessed as they have utilised our natural resources for exportation and timbers were used for their own business. For the construction of railway lines, ship building, preparation of furniture etc., lots of trees were put down and the volume of deforestation got increased.⁴

Significance of Forest Conservation

In the process of photosynthesis, green leaves of trees and plants produce oxygen that is the significant lifesaving gas for the humans and animals. In this process, the plants absorb carbon dioxide from the atmosphere and it contributes to reduce air pollution. Forest not only helps as air purifiers, but also protects soil from erosion. Forests maintain moisture level in the ecosystem and it helps to reduce global warming and extreme hot temperature during summer season. Forests grant shelter to different varieties of animals, birds, creatures, and wildlife. Other than these, there are forest dwellers those developed traditional culture and forest being home for them they also strive to conserve the forest.

There are different kinds of forests with their own significance in framing topography and climate and they contribute to ecological balance and environmental sustainability.⁵ The coastal area belt is covered with mangrove forests they preserve soil from erosion in coastal areas even resist storm surges, tsunamis etc. Tropical rain forests of Western Ghats well known for biodiversity and it has secured a name as the

² P. B. Sahasranaman, (2009). Handbook of Environmental Law, New Delhi: Oxford University Press, p.198.

³ Samudra Gupta Kashyap, (November 10, 2016), “Wildlife, environment protection in India dates back to Kautilya, Ashoka’s time”, The Indian Express, accessed from, (last visited on 4th March 2024).

⁴ Kailash Thakur, (2007), Environment Protection Law and Policy in India, New Delhi: Deep and Deep Publications Pvt. Ltd. p.108.

⁵ Exploring the Rich Diversity of Forests in India, Newsletter, accessed from <https://www.theearthsafari.com/tour/forests-of-india>, (last visited on 10th Feb.2024).

UNESCO's World Heritage site of India.⁶ Malabar giant squirrel and rare species like lion-tailed macaque etc are inhabited in this region. Lots of medicinal plants and varieties of flora, fauna spontaneously grown in this forest. Coniferous Forests of Himalayan ranges are unique in nature and they are full of mighty trees and acts as resistant walls to heavy snow fall.

Deciduous Forests are mainly found in Central and Southern India is the homeland of many species and trees with capacity of moisture conservation. In North and North Eastern part of India Subtropical Forests are found and they are having special feature of increasing the fertility of soil. The Great Himalayan National Park is well known for its beautiful forest and considered as UNESCO's World Heritage Site and it has also ecological significance with its wild life resource.⁷

The forest covered in States Rajasthan and Gujarat are significant in preventing desertification of the land and they are survived even in an extreme drought condition. Dry scrub forests of Deccan Plateau are mainly helpful in soil conservation and water retention as the area mainly extended with agricultural activities. Another important variety of forest found in India is Montane Forests that are stretching above the Himalayan Region and they have ecological significance by maintaining flow of water and sources of many rivers of Northern India.⁸

To protect the forest in Western Himalayan ranges, Chipko movement has taken place under the leadership of Sundarlal Bahuguna in 1970's. It was a mass movement of villagers against the felling of trees and dragged the attention of whole world on conservation of trees.⁹ In late 1978, Silent Valley Movement, a social movement under the leadership of Sughathakumari, to protect evergreen tropical forest of Palakkad area of Kerala State from a hydroelectric project has taken place.¹⁰

⁶ Clara Lewis, (July 3rd, 2012), "39 sites in Western Ghats get world heritage status", Times of India, accessed from <https://timesofindia.indiatimes.com/city/mumbai/39-sites-in-western-ghats-get-world-heritage-status/articleshow/14622091.cms>, (last visited on 20th March 2024).

⁷ Anukul Nath, Pallabi Chakraborty, and Gautam Talukdar, (May 4, 2022), "Monitoring Outstanding Universal Value: An Analysis of the Status of Natural World Heritage Sites in India", *Journal of Heritage Management*, Vol.7, issue 1, Ahmedabad: Sage publications, p.38.

⁸ Exploring the Rich Diversity of Forests in India, (2011), The Erath Safari, accessed from <https://www.theearthsafari.com/tour/forests-of-india>, (last visited on 27th March 2024).

⁹ Vandana Shiva and J. Bandyopadhyay, (May, 1986), "The Evolution, Structure, and Impact of the Chipko Movement", *Mountain Research and Development*, Vol. 6, Issue No. 2, International Mountain Society, p.134.

¹⁰ J S Singh and Surendra Pratap Singh, (September 1984), "India's Silent Valley and Its Threatened Rain-forest Ecosystems", *Environmental Conservation*, Vol.11, issue 3, Switzerland: Foundation for Environmental Conservation p.223.

Forest Conservation and Ecological Balance

To maintain ecological balance and healthy environment, conservation and development of forest and forest lands is very much essential. Each forest has its own ecological significance and because of deforestation, ecological imbalance takes place and environmental degradation occurs. Natural calamities like flood, famine, tsunami, earthquake etc., are in increasing trend and rainfall is not taking place on right time. Increased human activities like urbanisation, industrialisation, expansion of agricultural pursuit, construction of buildings etc led for deforestation and erodes the ecosystem altogether.¹¹

Indian forests are not only meant for ecological balance but also meant for ecotourism. It is a source of revenue to the Government and maintaining the same is also a prime duty of the Government and public. Forests considered a lung of the earth and they play a major role in maintaining hydrological cycle by reducing global warming, absorbing toxic gases, conserving soil etc. With the destruction of forest, protection of wild life also becomes a challenge.

Excess commercial use of forest also creates endanger to certain species of trees and they may not be available for emergencies. For example, the Pacific yew or western yew called *Taxus brevifolia*, is a species of forest tree whose bark yields the cancer drug taxol. In 1962, Taxol marketed by Bristol-Myers Squibb Co. with brand name Paclitaxel, as per United States National Cancer Institute's research programme, became one of the top selling drugs in later years. Yet, the supply of trees required to produce medicines became gradually insufficient and scarcity arose.¹² So, conservation and sustainable use of such forest resources is mandatory and need of the hour.

In 1980's, a flora of Korup National Park, a forest in Cameroon identified with Anti-HIV compound michellamine-B in it. The United States National Cancer Institute has done research on such flora derived from the forest liana *Ancistrocladus korupensis*. But research on this compound later stopped because of toxicity in it, yet

¹¹ K. V. Pawar and Ravi Rothkar, (2015), "Forest Conservation & Environmental Awareness", *Procedia Earth and Planetary Science*, p.212, accessed from <https://www.researchgate.net/publication>, (last visited on 20th Feb. 2024).

¹² Sarah A. Laird, (2001), The Convention on Biological Diversity: changing ethical and legal frameworks for biodiversity research and prospecting, *UNASYLVA-An International Journal of Forestry and Forest Industries* (Ed., A. Perlis), Vol. 52, Issue 3.

created tremendous hope in research programme of the United States National Cancer Institute's for many years.¹³

International Conventions to Conserve Forest

The environment protection is not just confined to a particular country or the State, it is a global challenge and related to all the countries of the world. Nearly 30% of the earth's surface is covered with forest and they provide food, fodder, pure and fresh air along with shelter to wild life.¹⁴ In International level, different conferences, meetings, and conventions are held with the spirit to protect environment. For conservation of forest, conventions are held especially the Rio Conventions-action on forest. Convention on Biological Diversity, the United Nations Convention to Combat Desertification, the United Nations Framework Convention on Climate Change, the Ramsar Convention, the Convention on International Trade in Endangered Species are remarkable amongst them. The General Assembly of the United Nations in 2012 proclaimed that, 21st March should be celebrated as the International Day of Forests and awareness should be created amongst the people on different kinds of forests and their significance. The member countries are called for to organise various activities in national and international level to conserve and plant trees.¹⁵

The UN has implemented International Arrangement on Forests with the objectives to promote sustainable forest management, enhancement of cooperation, coordination, and coherence with synergies on forest-related issues, strengthening and implementation of forest governance frameworks, developing and promotion of international cooperation and public-private partnership etc.¹⁶

The Convention on Biological Diversity (CBD) mainly focused on achieving certain objectives like conservation of biological diversity, sustainable utilisation of components of biological diversity and fair and equitable sharing of benefits arising

¹³ Sarah Laird, A B Cunnigham, and Esterine Lisinge, (2000), "One in Ten Thousand? The Cameroon Case of *Ancistrocladus korupensis*", *People, Plants and Justice*, New York: Columbia University Press, p. 346.

¹⁴ The Rio Conventions-Action on forests, (2012), Secretariat of the Convention on Biological Diversity, the United Nations Convention to Combat Desertification and United Nations Climate Change, accessed from https://unfccc.int/resource/docs/publications/rio_20_forests_brochure.pdf. (last visited on 4th Feb. 2024).

¹⁵ Food and Agricultural Organization, (2020), *Forests for human health and well-being – Strengthening the forest–health–nutrition nexus*. Forestry Working Paper No. 18. Rome, <https://doi.org/10.4060/cb1468en>, (Last visited on 22nd Feb.2024).

¹⁶ United Nations- Department of Economic and Social Affairs Forests, (2015), New York, accessed from <https://www.un.org/esa/forests/documents/international-arrangement-on-forests/index.html>, (last visited on 23rd Feb. 2024).

out of genetic resources¹⁷. Under this convention, protected areas conservation was given with prominence and guidelines are prepared to select, manage, and establish a protected area to conserve biodiversity.¹⁸ The United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol refer to forests and forestry and are relevant to forest policies. Under Article 4 (1)(c)(d) and Article 4 (8)(c) mainly focuses on regulating and controlling of emissions of greenhouse gases especially in relevant sectors like energy, transport, industry, agriculture, and it also includes forestry. It also includes protection of forests and oceans in its agenda. It also urges that countries should involve in funding, insurance, and transfer of technology to support developing economies in the preservation of arid and semi-arid areas, forested areas, and areas with forest decay.¹⁹

Under UN Convention to Combat Desertification, as per Article 4(2)(a) states that the main objective of the convention was to adopt an integrated approach by addressing physical, biological and socio-economic aspects of the processes of desertification and drought especially in African continents.²⁰ For example, China is having more threat of desertification and it tries to develop forestry and environmental conservation to combat desertification.

In 1992, with the formulation of the United Nations Framework Convention on Climate Change (UNFCCC), the role and significance of forest in curbing the greenhouse gases in the atmosphere has come up for discussion and policy developments are made in this regard. Even in the Kyoto Protocol, contribution of afforestation and reforestation in reduction of greenhouse gas emissions in the environment been analysed.²¹

The Ramsar Convention has made remarkable change in the conservation of wetlands and because of this convention, even India also recognised some areas as wetlands and special attention is paid to preserve and protect them. One more significant convention is Convention on International Trade in Endangered Species of

¹⁷ Article 1 of the Convention on Biological Diversity.

¹⁸ Article 9 of the Convention on Biological Diversity.

¹⁹ United Nations Framework Convention on Climate Change, (1992), accessed from https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conven_g.pdf, (Last Visited on 24th Feb. 2024).

²⁰ Richard G. Tarasofsky, (2002), Recent Developments in International Treaties Relating to Forests, Policy Trend Report, p.146,

²¹ Pedro Moura Costa, (2001), "The climate convention and evolution of the market for forest-based carbon offsets", *UNASYLVA-An International Journal of Forestry and Forest Industries* - Vol. 52, Issue 3.

Wild Fauna and Flora mainly focused on preventing harmful effects of international trade on listed species that are endangered species in the worldwide.

Laws and Policies Regulating Conservation of Forest in India

Even though during British period, lot of forest areas been cleared for business motive, some policies to conserve forest have also come up. Demarcation of boundary for forest area was also one of the ideas the Government had brought. The enactment of first Indian Forest Act occurred in 1865 and later the enactment replaced by the new Act 1878 and later the Forest Act came in to force in 1927. Forests are segregated as reserved forests and protected forests.²² Provision for cutting of timber and felling of trees and duty leviable on them also been formulated under the Act.²³ The Forest Act of 1927 made a provision for appointment of forest officers and they were provided with the power to administer and look after the management of the forest and to inquiry upon forest offences.²⁴ There was also a provision of forest court done under the Act and any complaints relating to deforestation used to be heard and State Government appoints members to it.²⁵

Forest policy in India was brought in 1894 for the first time and forest officers were also appointed by the Government. To conduct research on forestry, Imperial Forest Research Institute also formulated in 1906. After independence, as the population increased, lot of agricultural expansion took place in nearby forest areas and dense forest started disappearing gradually.²⁶

National Forest Policy is one of the major policies taken up to conserve and preserve forest and it has classified forests as protection forests, national forests, village forests, and tree-lands. This policy gave prominence to conservation of forest in a scientific way and the forest dwellers and rural local people are discouraged to use the forest products.²⁷ Based on physical and climatic considerations, forests are categorised as protection forests. Forests that are maintained and managed for the purpose of needs of defence, communications and of public importance are

²² A K Ghosh, Forest Policy in India, (1993), in Indian Forestry, a Perspective, Ajay s Rawat (ED.,) India: Indus Publishing Company.p.77.

²³ P. B. Sahasranaman, (2009). Handbook of Environmental Law. India: Oxford University Press, p.198.

²⁴ Kailash Thakur, (2007), Environment Protection Law and Policy in India, New Delhi: Deep and Deep Publications Pvt. Ltd. p.276.

²⁵ Ram Babu Singh, Suresh Misra, (1996). Environmental Law in India: Issues and Responses, New Delhi: Concept Publishing Company, p.150.

²⁶ Sunny Sharma, (2022) "Forestry in India: A Historical Perspective", *Law Audience Journal*, Volume 4, Issue 2.

²⁷ Aruna Venkat, (2011). Environmental Law and Policy, New Delhi: PHI Learning Pvt. Ltd, p.151.

considered as national forests.²⁸ Forests that are maintained for provision of firewood, small timber for agricultural tools, local requirements, for grazing for cattle etc., are village forests and forest that can enrich the physical condition of the country and are outside the scope the forest management can be considered as tree-lands.²⁹ During the Fifth Five Year Plan, social forestry scheme has been introduced by the Government and through institutional financing man-made forestry also been encouraged.³⁰

After Independence, Forest (Conservation) Ordinance in 1980 has been enacted and later repealed the same with Forest (Conservation) Act, 1980. The 1980 Act, has been enacted with the objectives to protect the forest, its flora, fauna with the ecological components of the forests, to preserve forest biodiversity and to prevent the conversion of forest lands into agricultural, grazing or for commercial purposes so that restriction has been put on the use of forest lands for non-forest purposes.³¹ An advisory committee also formulated under the Act to advice the Central Government on matters connected to conservation of forest.³² Further, amendments also been proposed in 2021 to the Act 1980.

National Forest Policy 1988 has been brought and it mainly aims at bringing 33% of the geographical area under forest or tree cover.³³ It also aims at maintaining environmental stability along with restoration of ecological balance, prevention of soil erosion, increasing productivity of forests etc.³⁴ As per this policy, natural forest must be retained and preserved along with supply of necessary food, fodder, fuel, and other minor forest products in need of forest dwellers or rural, tribal population.³⁵ Protection of wildlife is also one of the connected and most closely associated with the conservation of forest because, forest is the abode of wild life and there are different categories of forests to preserve them. They may be reserve forests,

²⁸ Kailash Thakur, (2007), Environment Protection Law and Policy in India, New Delhi: Deep and Deep Publications Pvt. Ltd. p.115.

²⁹ N. H. Ravindranath, P. Sudha, (2004), Joint Forest Management in India: Spread, Performance and Impact, Universities Press Pvt Ltd. Hyderabad, p.2.

³⁰ Kailash Thakur, (2007), Environment Protection Law and Policy in India, New Delhi: Deep and Deep Publications Pvt. Ltd. p.118.

³¹ Gitanjali Nain Gill, (2016). Environmental Justice in India: The National Green Tribunal, London, and New York: Taylor and Francis-Routledge Group, p.212.

³² Section 3 in the Forest (Conservation) Act, 1980-Constitution of Advisory Committee.

³³ N. H. Ravindranath, P. Sudha, (2004), Joint Forest Management in India: Spread, Performance and Impact, Universities Press Pvt Ltd. Hyderabad, p.3.

³⁴ N. Maheshwara Swamy, (1998). Law Relating to Environmental Pollution and Protection, Vol. 1, New Delhi: Asia Law House, p.55.

³⁵ Bruce G. Marcot, (1993), Conservation of Footrests of India-An Ecologist's Tour, US Department of Agriculture-Forest service, Oregon: Miscellaneous Publication, p.10.

protected forests, or national parks with wild life sanctuaries.³⁶ The Constitution of India, the sacred law of the land also has provision for protection and safeguarding environment. Under Article 48-A of the Directive Principles of State Policy, it states that the State shall endeavour to protect and improve the environment and in 1976 the 42nd Amendment to the Constitution was made to place responsibility on State to protect the natural environment including wildlife.³⁷ Under Article 51-A(g) of the Constitution of India, the citizens of India are bound by fundamental duty to protect and improve natural environment including forests, lakes, rivers, and wildlife and to show compassion of all living creatures.³⁸

In *MC Mehta v. Kamal Nath* case, the Supreme Court of India delivered a landmark judgement to protect the forest land and conservation of environment. Encroachment of forest land and diverting the course of river Beas to beautify the span motel owned by the family members of Shri. Kamal Nath, then Minister of Environment and Forest, considered as activity against the environmental conservation and the forest land was handed over to the Government of Himachal Pradesh as per Court order.³⁹

In *State of H.P. and Others v. Ganesh Wood Products and Others*,⁴⁰ the Supreme Court held that, while giving permission to any factories run through forest products or forest-based industries, forest health and public interest should be considered.⁴¹

In *T. N. Godavarman's case*⁴² a writ petition has been filed before the Supreme Court of India to protect the forest areas of Nilgiris hill from timber operations that are illegally done. The Apex Court gave certain directions to make sustainable use of forests.⁴³ With a view to prevent deforestation, directions are given and the activities

³⁶ K R Gupta, (2006). Environmental Legislations in India, Vol.4, New Delhi: Atlantic Distributors and Publishers, p.327.

³⁷ Kailash Thakur, (2007), Environment Protection Law and Policy in India, New Delhi: Deep and Deep Publications Pvt. Ltd. p.119.

³⁸ Shyam Divan and Armin Rosencranz, (2022), Environmental Law and Policy in India: Cases and Materials, 3rd ed, United Kingdom: Oxford University Press, p.770.

³⁹ Kanchi Kohli, Manju Menon, (2022), Development of Environmental Laws in India, United Kingdom: Cambridge University Press, p.237.

⁴⁰ *State of H.P. and Others v. Ganesh Wood Products and Others*-(1995) 6 SCC 363.

⁴¹ Accessed from <https://indiankanoon.org/doc/1149168/>, (Last Visited on 3rd March 2024).

⁴² *T.N. Godavarman Thirumulkpad v. Union of India & Ors*, (1997) 2 SCC 267.

⁴³ Dharmendra S. Senger, (2007). Environmental Law, New Delhi: PHI Learning Pvt. Ltd, p.142.

relating to forest must be conducted only with the prior permission of the Central Government.⁴⁴

In case of *Ambika Quarry works v. State of Gujarat*,⁴⁵ the Supreme Court held that, even though economic needs of the state are significant one, there should be protection of ecological interest and environmental concern. Extraction of the mines inside a reserved forest was questioned and there was a contention that State Government deserved the reserve forest for mining purpose. Deforestation and ecological imbalance is a social menace and that must be prevented. No further renewal of licence for quarrying can be granted in a reserved forest land.⁴⁶ India is lacking forest resources and it has less than 22% of land with forest cover by 2019 and it should have been minimum 30% and above to maintain ecological balance.⁴⁷

Conclusion

Every one of us should know the intrinsic value of natural heritage and respect the due of every other person. There is duty on all of us to maintain the resources for future generation by utilising them for our need and not for greed. There is no prohibition in using the forest for productive purposes without creating pollution or destruction. One can use the forest product in a reasonable and wise manner. Forest pharmaceuticals, medicinal plants herbs etc are having medicinal value and they can be utilised. For the development of eco-tourism forests can be used and it can be a recreational centre too. Forest products like honey, mushrooms, and other by-products of trees like flowers, fruits can be made use of various purposes.⁴⁸ But, cutting the trees, selling the timber etc., has a devastating impact on environment and for planting and growing a tree takes more than a decade.

⁴⁴ *T.N. Godavarman Thirumulkpad v. Union of India & Ors*, UN Environment Programme, Judicial Portal, (12 Dec 1996), accessed from <https://indiankanoon.org/doc/298957/>, (Last Visited on 2nd Feb 2024).

⁴⁵ *Ambika Quarry works v. State of Gujarat*, AIR 1987, S C 1072.

⁴⁶ Aruna Venkat, (2011). Environmental Law and Policy, New Delhi: PHI Learning Pvt. Ltd, p.367.

⁴⁷ Shyam Divan and Armin Rosencranz, (2022), Environmental Law and Policy in India: Cases and Materials, 3rd ed, United Kingdom: Oxford University Press, p. 403.

⁴⁸ Food and Agricultural Organization, (2020), Forests for human health and well-being – Strengthening the forest–health–nutrition nexus. Forestry Working Paper No. 18. Rome, <https://doi.org/10.4060/cb1468en>, (last visited on 22nd Feb.2024).

ASSESSING THE ENVIRONMENTAL CONSEQUENCES OF INDUSTRIAL POLLUTION AND REGULATORY MEASURES IN INDIA

Dr. Dimpal Mestha¹

Introduction

Since the advent of industrial revolution, performances on economic indicators alone have been used as the principal criteria for measuring progress. However, rapid industrialization carried with it the seeds of environmental damage. Industrial pollution is one of the most evident environmental problems experienced by now industrialized countries and majority of the newly industrializing economies are facing it today. Pollution of natural environment not only affects people but also have adverse impact on economic growth in the long run. Industrial pollution is a type of pollution that's produced by factories and industries. It produces diseases and deaths globally due to the pollutants it produces. The effects of industrial pollution are severe and widespread. So, there is an urgent need on the part of policymakers to give top most priority for controlling pollution in these industries which will help in reducing industrial pollution to a great extent.

Industrial Pollution in India

Environment connotes surroundings. The environment contains air, water, food and sunlight etc. Environment affects all the living creatures including the plants and trees. Number of necessities of life are fulfilled rather derived from the environment. The environment is the life support system.² The term "Environment"³ includes water, air and land and human beings, other living creatures, plants, micro-organism and property. Industrial structural composition is one of the main determinants of pollution in any country. Liberalization has changed the structure of Indian industrial sector.⁴ Some of the important causes of industrial pollution are, lack of policies and monitoring systems, which resulted in mass-scale pollution; Unplanned growth of industries also causes pollution; Old technology that is still in-use generates a large amount of waste; Lack of responsibility on the part of an individual sector or organization; A large number of small scale industries also aids in

¹ Assistant Professor, SDM Law College, Mangaluru.

² Dr. S.C Tripathi, Environmental Law, 5th edition, Central Law Publications, 2012, p.1

³ Section 2(a) of the Indian Environment (protection) Act, 1986,

⁴ Maria Khan and Md. Tarique, Industrial Pollution in Indian Industries: A Post Reform Scenario, Journal of Energy Research and Environmental Technology, Volume 2, Number 2; January-March, Krishi Sanskriti Publications, 2015, p. 182

generating pollution; Lack of proper methods for waste disposal. This inefficiency causes many chronic problems related to health and the environment.⁵

Water pollution occurs when the waste from an industrial facility is dumped into rivers and water bodies. These toxins, which are toxic chemicals, can kill aquatic life and contaminate the water supply of humans and animals. Soil Pollution is the rapid growth of industries has dumped vast amounts of industrial wastes on the soil. These wastes, which usually contain toxic chemicals, are not biodegradable and are mainly discharged into the environment. The effects of industrial waste on the soil are severe and can affect the health of the organisms living in it. Air pollution is caused by industries which produce smoke and chemicals. Some of these include steel plants, cement factories, oil refineries, and sugar cane plants. Noise pollution is caused by the level of sound pressure depends on the source and the environment. For a machine, the pressure depends on its component parts that are used to convert the energy into acoustical energy.⁶

Causes of Industrial Pollution

Lack of Policies to Control Pollution, lack of effective policies and poor enforcement drive allowed many industries to bypass laws made by the pollution control board which resulted in mass scale pollution that affected the lives of many people. In most industrial townships, unplanned growth took place wherein those companies flouted rules and norms and polluted the environment with both air and water pollution. Most industries still rely on old technologies to produce products that generate a large amount of waste. To avoid high cost and expenditure, many companies still make use of traditional technologies to produce high-end products. Many small scale industries and factories that don't have enough capital and rely on government grants to run their day-to-day businesses often escape environment regulations and release a large number of toxic gases in the atmosphere. Water pollution and soil pollution are often caused directly due to inefficiency in the disposal of waste. Long term exposure to polluted air and water causes chronic health

⁵ Industries do require a large amount of raw material to make them into finished products. This requires the extraction of minerals from beneath the earth. The extracted minerals can cause soil pollution when spilled on the earth. Leaks from vessels can cause oil spills that may prove harmful for marine life.

⁶ Avanthika A, "A Brief Note on Industrial Pollution", Journal of Industrial Pollution Control, Vol. 37, Issues 8, 2021, P.1

problems, making the issue of industrial pollution into a severe one. It also lowers the air quality in surrounding areas which causes many respiratory disorders.⁷

Impact of Industrial Pollution on Environment

Environmental pollution is a global phenomenon because of its adverse on human health, plants, animals and exposed materials. Industrialization and urbanisation are greatly attributed to the pollution issues. A large number of organic and industrial effluents has been introduced into the environment that has increased water and land pollution problems manifold.⁸

Due to rapid economic development, environmental pollution has escalated over the last few decades. It is mainly due to manufacturing and industrial sectors, which is the backbone of a country's economy. Environmental pollution by different types of industries occurs in different forms but can usually be thought of as gaseous and particulate pollutants that are discharged from different industries and become part of the earth's atmosphere. With regard to water pollution, the effects of industrial pollution are far-reaching and liable to affect the ecosystem for many years to come. Most industries require large amounts of water for their work. When involved in a series of processes, the water comes into contact with heavy metals, harmful chemicals, radioactive waste, and even organic sludge. These are either dumped into open oceans or rivers. As a result, many of our water sources have a high amount of industrial waste in them which seriously impacts the health of our ecosystem. The same water is then used by farmers for irrigation purpose which affects the quality of food that is produced. Water pollution has already rendered many groundwater resources useless for humans and wildlife. It can at best be recycled for further usage in industries. Soil pollution is creating problems in agriculture and destroying local vegetation. It also causes chronic health issues to the people that come in contact with such soil on a daily basis. Air pollution has led to a steep increase in various illnesses and it continues to affect us on a daily basis. With so many small, mid and large-scale industries coming up, air pollution has taken the toll on the health of the people and the environment. By and large, the issue of industrial pollution shows us that it causes natural rhythms and patterns to fail, meaning that the wildlife is getting affected in a severe manner. Habitats are being lost, species are becoming extinct and it is harder

⁷ Eman E. Elsharkawy, Industrial Pollution, ARC Journal of Forensic Science, Volume 5, Issue 1, 2020, P. 21.

⁸ David Noel S. and Rajan M.R, "Impact of Dyeing Industry Effluents on Groundwater Quality by Water Quality Index and Correlation Analysis" Journal of Pollution Effects & Control, 2014

for the environment to recover from each natural disaster. Major industrial accidents like oil spills, fires, the leak of radioactive material and damage to property are harder to clean-up as they have a higher impact in a shorter span of time. With the rise in industrial pollution, global warming has been increasing at a steady pace. Smoke and greenhouse gases are being released by industries into the air which causes an increase in global warming. Melting of glaciers, extinction of polar bears, floods, tsunamis, hurricanes are few of the effects of global warming. The issue of industrial pollution concerns every nation on the planet. As a result, many steps have been taken to seek permanent solutions to the problem. Better technology is being developed for the disposal of waste and recycling as much polluted water in the industries as possible. Organic methods are being used to clean the water and soil, such as using microbes that naturally use heavy metals and waste as feed. Policies are being pushed into place to prevent further misuse of land. However, industrial pollution is still rampant and will take many years to be brought under control.⁹

GLOBAL RANK	COUNTRY	STATE	CITY	AVG. PM 2.5*
1	India	Rajasthan	Bhiwadi	106.2
2	India	Uttar Pradesh	Ghaziabad	102
3	China	Xinjiang	Hotan	101.5
4	India	Delhi	Delhi	96.4
5	India	Uttar Pradesh	Jaunpur	95.3
6	Pakistan	Punjab	Faisalabad	94.2
7	India	Uttar Pradesh	Noida	91.4
8	Pakistan	Punjab	Bahawalpur	91.0
9	Pakistan	Khyber Pakhtunkhwa	Peshawar	89.6
10	India	Uttar Pradesh	Bagpat	89.1
11	India	Haryana	Hisar	89.0
12	India	Haryana	Faridabad	88.9
13	India	Uttar Pradesh	Greater Noida	87.5
14	India	Haryana	Rohtak	86.9
15	Pakistan	Punjab	Lahore	86.5
WHO's AIR QUALITY GUIDELINE				5.0

Source: IQAir's World Air Quality Report, 2021 | * (microgrms/cubic meter) | NDTV.COM

Figure 1: Top 15 Cities with Worst Air Quality in the World (World Air Quality Report 2021)

Control of Industrial pollution

According to scientists at the National Environmental Engineering and research Institution (NEERI), 70% of the available water in India is polluted.¹⁰ The Major cause of water pollution is the letting out of untreated industrial effluents into

⁹ Ibid. 4, p.21

¹⁰ India-2001 Encyclopaedia, page C2-15

rivers and open spaces around industries. For example, leather tanneries paper mills, sugar mills, dye industries and many other industries let out their effluents into the adjacent rivers or allow them to stagnate on land. These effluents seep through and pollute the ground water.¹¹

The goal of pollution control is to keep people and materials clean. It is usually carried out by enforcing rules and regulations that are designed to keep pollutants in check. The government can also impose strict regulations against factories that produce more toxins than the pollution board has prescribed. Before an industry can be established, the site should be thoroughly examined to take into account the various factors that will affect its operation. Control at Source process involves improving the handling of exhaust gases and ensuring that they are properly mixed with the pollutants that are discharged. Environmental Impact Assessment process aims to identify and evaluate the environmental impacts of various industries.¹²

Any industrial activity causes pollution in one form or the other. Industry covers a wide spectrum of manufacturing activities and is diverse in terms of raw materials and techniques employed chemicals used and the final products. The impact of textile production on the environmental aspects such as air, water, land and human body and the social aspects such as child labour and poor unhygienic working conditions must be considered. Another dimension is introduced for the environment friendliness of the finished product. This includes the ban on certain azodyes, which are known or suspected to be carcinogenic and the presence of harmful chemicals and certain metals.¹³

Since February 2014, the government of India has been monitoring industrial emissions and effluents in rivers and lakes across the country. The monitoring is done through what is called the Online Continuous Emissions/Effluents Monitoring Systems (OCEMS).¹⁴

Environmental Issues in India in 2024

Undoubtedly one of the most pressing environmental issues in India is air pollution. According to the 2021 World Air Quality Report, India is home to 63 of the

¹¹ *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715

¹² Eman E. Elsharkawy, Industrial Pollution, ARC Journal of Forensic Science, Volume 5, Issue 1, 2020, PP 21

¹³ Ibid p.15

¹⁴ <https://www.stateofglobalair.org>

100 most polluted cities, with New Delhi named the capital with the worst air quality in the world. Vehicular emissions, industrial waste, smoke from cooking, the construction sector, crop burning, and power generation are among the biggest sources of air pollution in India.¹⁵ In recent years, the State Government of the Indian capital has taken some stringent measures to keep a check on air pollution. One of which is the Odd-Even Regulation – a traffic rationing measure under which only private vehicles with registration numbers ending with an odd digit will be allowed on roads on odd dates and those with an even digit on even dates. Starting from January 2023, there will also be a ban on the use of coal as fuel in industrial and domestic units in the National Capital Region (NCR). However, the ban will not apply to thermal power plants, incidentally the largest consumers of coal. Regardless of the measures taken to curb air pollution, as the World Air Quality Report clearly shows the Air Quality Index in India continues to be on a dangerous trajectory.¹⁶

Other recent environmental issues in India

Among the most pressing environmental issues in India is also water pollution. The Asian country has experienced unprecedented urban expansion and economic growth in recent years. This, however, comes with huge environmental costs.¹⁷ Illegal dumping of raw sewage, silt, and garbage into rivers and lakes severely contaminated India's waters. The near-total absence of pipe planning and an inadequate waste management system are only exacerbating the situation. A World Bank Report suggests that, every day, a staggering 40 million litres of wastewater enter rivers and other water bodies, of these, only a tiny fraction is adequately treated due to a lack of adequate infrastructure. In middle-income countries like India, water pollution can account for the loss of up to half of Gross Domestic Product growth.

Water pollution costs the Indian government between 6.7 and 7.7 billion a year and is associated with a 9% drop in agricultural revenues as well as a 16% decrease in downstream agricultural yields. Besides affecting humans, with nearly 40 million Indians suffering from waterborne diseases like typhoid, cholera, and hepatitis and nearly 400,000 fatalities each year, water pollution also damages crops, as infectious bacteria and diseases in the water used for irrigation prevent them from

¹⁵ The country's dependence on coal, oil, and gas due to rampant electrification makes it the world's third-largest polluter, contributing over 2.65 billion metric tonnes of carbon to the atmosphere every year

¹⁶ <https://earth.org/environmental-issues-in-india/>

¹⁷ Besides its air, the country's waterways have become extremely polluted, with around 70% of surface water estimated to be unfit for consumption.

growing. Inevitably, freshwater biodiversity is also severely damaged. The country's rivers and lakes often become open sewers for residential and industrial waste. Especially the latter which comprises a wide range of toxic substances like pesticides and herbicides, oil products, and heavy metals can kill aquatic organisms by altering their environment and making it extremely difficult for them to survive. Fortunately, the country has started addressing the issue by taking steps to improve its water source quality, often with local startups' help. One strategy involves the construction of water treatment plants that rely on techniques such as flocculation, skimming, and filtration to remove the most toxic chemicals from the water. The upgrade process at one of the country's largest plants located in Panjrapur, Maharashtra, will enable it to produce more than 19 million cubic metres of water a day, enough to provide access to clean water to approximately 96 million people. The government is also looking at ways to promote water conservation and industrial water reuse by opening several treatment plants across the country.¹⁸

In 2019, Gujarat, a state of more than 70 million citizens, launched its Reuse of Treated Waste Water Policy, which aims to drastically decrease consumption from the Narmada River. The project foresees the installation of 161 sewage treatment plants all across the state that will supply the industrial and construction sectors with treated water.¹⁹

Indeed, over 85% of India's freshwater is used in agriculture. This has led to a crisis in several states, including Punjab, Haryana, and Western Uttar Pradesh. The indiscriminate use of water for irrigation, coupled with the absence of conservation efforts and the huge policy gap in managing water resources has left over 10% of the country's water bodies in rural areas redundant.²⁰ The most pressing environmental issues in India is 'Waste'. As the second-largest population in the world of nearly 1.4 billion people, it comes as no surprise that 277 million tonnes of municipal solid waste (MSW) are produced there every year. Experts estimate that by 2030, MSW is likely to reach 387.8 million tonnes and will more than double the current value by 2050. India's rapid urbanisation makes waste management extremely challenging. Currently, about 5% of the total collected waste is recycled, 18% is composted, and

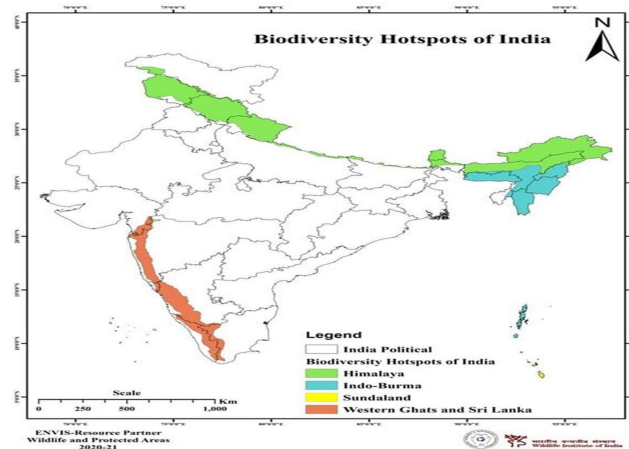
¹⁸ In Chennai, a city in Eastern India, water reclamation rose from 36,000 to 80,000 cubic metres between 2016 and 2019.

¹⁹ According to the Intergovernmental Panel on Climate Change (IPCC), India is the country expected to pay the highest price for the impacts of the climate crisis.

²⁰ A 2019 report predicts that 21 major cities – including New Delhi and India's IT hub of Bengaluru – will run out of groundwater by 2030, affecting nearly 40% of the population.

the remaining is dumped at landfill sites. The plastic crisis in India is one of the worst on the planet. According to the Central Pollution Control Board (CPCB), India currently produces more than 25,000 tonnes of plastic waste every day on average, which accounts for almost 6% of the total solid waste generated in the country. India stands second among the top 20 countries having a high proportion of riverine plastic emissions nationally as well as globally. Indus, Brahmaputra and Ganges rivers are known as the 'highways of plastic flows' as they carry and drain most of the plastic debris in the country. Together with the 10 other topmost polluted rivers, they leak nearly 90% of plastics into the sea globally.

To tackle this issue, in 2020 the government announced that they would ban the manufacture, sale, distribution, and use of single-use plastics from July 1st 2022 onwards. Furthermore, around 100 Indian cities are set to be developed as smart cities. Despite being still in its early phase, the project sees civic bodies completely redrawing the long-term vision in solid waste management, with smart technologies but also awareness campaigns to encourage community participation in building the foundation of new collection and disposal systems. The country has four major biodiversity hotspots, regions with significant levels of animal and plant species that are threatened by human habitation: the Himalayas, the Western Ghats, the Sundaland (including the Nicobar Islands), and the Indo-Burma region. India has already lost almost 90% of the area under the four hotspots, according to a 2021 report issued by the Centre for Science and Environment (CSE), with the latter region being by far the worst affected.²¹



²¹ <https://www.linkedin.com/pulse/environment-sustainability-issues-india-husain-fls->

Some of the major environmental concerns confronting India include: Air pollution from industrial effluents and vehicle emissions; Energy-related environmental problems such as, chemical & oil pollution and Greenhouse Gas (GHG) emissions; Water pollution from raw sewage, the lack of adequate sanitation, and non-potable water throughout the country; Municipal solid waste management (MSWM) remains a challenge for India due to the rising population and the resultant infrastructural needs; Over-population and its strain on natural resources; and Agricultural factors such as, runoff of agricultural pesticides, overgrazing, short cultivation cycles, slash and burn practices, destructive logging practices, and deforestation of timber reserves for fuel, all contribute conjointly to the decimation of the subcontinent's environmental system.

In particular, municipal solid waste (MSW) collection and disposal is a major urban environmental problem facing India. India is not the only country with this problem, it appears many of the developing countries and a few of the developed countries are also confronted with MSW as an environmental concern. But, in India the critical concern is in the way MSW is disposed. The waste that is collected by municipalities in India is simply dumped on the outskirts of the urban centres. In addition, the MSW release methane and carbon dioxide that increase the effects of greenhouse gases. On environmental issues and concerns, India carries a heavier burden because it is generally accepted that pollutant concentrations are exceedingly high in many developing countries imposing substantial health costs and shortened lives. Many of the current environmental concerns in India such as the air pollution, GHG emissions, chemical and oil pollution, etc., have many far-reaching consequences for its people. The two major areas of concerns for policy makers are high infant mortality rates and low life expectancy. According to study, for the year 2013, out of 1,000 live births in India about 41 will die before they reach the age of 5. By comparison, in China only 2 die and in Japan and Singapore only 2 will not survive beyond the age of 5. Similarly, India is ranked 139th among 194 countries in life expectancy with people living up to 66 years of age. By comparison, people in Japan on an average live up to 84, in Singapore up to 83, and in China they live up to 75. The link between environmental concerns, its effects on people, and the resulting consequences on human life and the economy are easily traceable. Higher the

environmental destruction greater the health problems faced by the people resulting in both human and economic costs.²²

Public Interest Litigation

The concept of PIL has its origin in USA where it is known as Public Interest Law. The council for Public Interest Law set-up by the Ford foundation in USA has defined PIL as legal representation to previously unrepresented groups and interest.²³

Procedure for PIL public interest litigation is different from private litigation, therefore, the technical rules of procedure applicable to the private litigation cannot be applied with the same rigidity in case of PIL. Hence the court has developed procedural norms and ethos to suit the philosophy of PIL can be initiated by any public-spirited person or group having sufficient interest and action bona fide, on behalf of any person or determinate class of persons who because of social economic handicap or disability cannot approach the Court for relief or where the right which is related is violated is a diffused right. However, no busy body or middle some interloper is allowed to abuse the process of law, since the dominant object of PIL is to ensure observance of the provisions of the constitution or the law which can be best achieved to advance the cause of community or disadvantage group and individuals or public interest by permitting any person, having no personal game or private motivation or any other oblique consideration to put the judicial machinery in motion. Thus, only a genuine public-spirited person or group has been allowed standing in PIL. The Supreme Court and the High Courts have by rules prescribed procedure for moving the court under Article 32 and Article 226 of Constitution of India, in PIL the court does not insist on a regular writ petition. In number of cases courts have entertained 'letters' in lieu of regular petition.²⁴

Mere initiation of social and economic rescue programmes by the executive and legislature would not be enough and it is only through multi-dimensional strategies including Public Interest Litigation that these social and economic rescue programmes can be made effectively.²⁵

²² Mahesh Chandra, Environmental Concerns in India: Problems and Solutions, Journal of International Business and Law, Vol.15, Issue.1, p.

²³ A.K Tiwari, Environmental Law in India, Deep and Deep publications pvt. Ltd, 2006, pp. 179, 180

²⁴ Ibid, p.191

²⁵ Geetanjali Chandra, Public Interest Litigation and Environmental Protection, Deep and Deep Publications Pvt Ltd., 2005, p.5

Environmental legislation in India

India is the first country which has provided in its constitution the protection and improvement of environment. There are no specific environmental laws for textile sector alone. However, there are industry specific standards, which the textile industry has to comply while setting up or operating an industrial unit. In addition to environmental standards, the Indian textile exporters confronted with social issues like child labour, poor and unhygienic conditions at the work place, low wages etc. it is pertinent to mention the thinking of Europeans regarding Social Accountability Standards. The Indian environment legislation is very stringent but poorly enforced. The regulatory authorities are the Ministry of Environment and forests, Central Pollution Board at the central level and the State Pollution Control Board at State level. In India, the policies are poorly enforced and in some case the judiciary had to intervene to enforce the environmental policies. Judiciary has got its own limitations and cannot act as enforcement agency. Environment is a social responsibility therefore desirable compliance should come voluntarily from the industry and not by policing.²⁶

Legislative fight against pollution continued in independent India. Now there is a host of legislation in India aimed at protecting the environment from pollution and maintaining the ecological balance. The Environment (Protection) Act, 1986 is one major Act for environmental protection. The Government of India has launched various programmes and made use of audio-visual media to educate the people and arouse their consciousness for the protection of environment.²⁷

The Indian Constitution contains specific provisions for environment protection under the chapters of Directive Principles of State Policy and Fundamental Duties. The absence of a specific provision in the Constitution recognizing the fundamental right to clean and wholesome environment has been set off by judicial activism in the recent times. According to Article 48-A, the protection and improvement of natural environment is the duty of the State. Article 49-A, states “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.”²⁸ Article 51-A (g) which deals with Fundamental

²⁶ R.B Chavan, Indian Textile Industry- Environmental Issue, Indian Journal of Fibre & Textile Research, Vol. 26, March-June, 2001, pp. 14,15

²⁷ <https://www.indianbarassociation.org/wp-content/uploads/2013/02/environmental-law-article.pdf>

²⁸ This amended article imposed a responsibility on every citizen in the form of Fundamental Duty.

Duties of the citizens.²⁹ Article 253 states that ‘Parliament has power to make any law for the whole or any part of the country for implementing any treaty, agreement or convention with any other country.’³⁰ Article 14 implicitly imposes an obligation on the state to exercise fairness in its environmental protection measures. Article 19(1) has also been interpreted by the Supreme Court to address the threat of noise pollution. Article 21 of the Indian Constitution grants right to life and personal liberty to each and every individual.³¹

Environmental laws in India are adopted, implemented, and enforced by 3 main entities: the Ministry of Environment, Forest, and Climate Change along with the Central Pollution Control Board at the National level as well as the State Pollution Control Boards at the State level. The main environmental laws in India are, the: Environmental (Protection) Act 1986, The Water (Prevention and Control of Pollution) Act, 1974, The Water (Prevention and Control of Pollution) Rules, 1975, The Water (Prevention and Control of Pollution) Cess Act, 1977, The Water (Prevention and Control of Pollution) Cess Rules, 1978, The Air (Prevention and Control of Pollution) Act, 1981, The Air (Prevention and Control of Pollution) Rules, 1982, The Environment (Protection) Rules, 1986, Hazardous Wastes (Management and Handling) Rules, 1989, Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, The Forest (Conservation) Act, 1980, The Forest (Conservation) Rules, 1981, The Wildlife Protection Act, 1972, The Wildlife (Transactions and Taxidermy) Rules, 1973, The Wildlife (Stock Declaration) Central Rules, 1973, The Wildlife (Protection) Licensing (Additional Matters for Consideration) Rules, 1983, The Wildlife (Protection) Rules, 1995, The Wildlife (Specified Plants - Conditions for Possession by Licensee) Rules, 1995, The Public Liability Insurance Act, 1991, The Public Liability Insurance Rules, 1991, The National Environment Tribunal Act, 1995, The National Environment Appellate Authority Act, 1997.

²⁹ “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.”

³⁰ Parliament’s use of Article 253 to enact Air Act and Environment Act

³¹ Decent standard of living and a pollution free environment is an inherent part of the right to life.

Conclusion

Industrial pollution is a pressing threat to nature and human well-being, with dire consequences for the environment, biodiversity, and public health. Industrial pollution is main part of environment pollution of our entire world. Industrial pollution can be caused by harmful chemicals and gaseous waste of heavy industries and small industries as well. This waste can dissolve into water and air and make our environment poisonous and harmful for living creatures. It needs continuous observations to maintain limit of those waste to make them less effective on environment. Raising awareness about the environmental and health impacts of industrial pollution can encourage responsible consumer choices and advocacy for change. The Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution, so it is the responsibility and duty of the appropriate government to take all the measures to protect environment by means of implementing the existing laws properly.

DUTIES AND RESPONSIBILITY OF LOCAL GOVERNMENT IN ENVIRONMENTAL PROTECTION

L. Srishyla¹

Abstract

In the modern era, it is highly impossible to look after the affairs of the state from corner to corner of the state. So the power of the Government has been decentralized. So in the 90's through 73rd and 74th amendment to the constitution local self-government has been introduced with some obligation to look after all the affairs of the particular area, it also includes environmental protection. In this paper I am discussing the concept of local government, environment and duties and responsibilities of the local governments in the protection of environment.

Keywords: *Environment, Local Self Government, Duties and Obligations, etc.*

Introduction

The local Government is a type of democratic decentralization where the cooperation of even the grass root level of the society is ensured during administration. In the recent years local government and non-government organisations has been a subject of extraordinary arrangement of social research and assessment with regards to improvement being looked through a procedure of decentralization of political power at the grass root level. After the enactment of 73rd and 74th Amendments to the Constitution it appropriate to deliberate on the barriers and the way forward in shaping up effective²

Local government is the regulation and administration of local affairs by the people inhabiting the locality through representative bodies composed mainly of elected representatives. Local government refers to the operations of Municipal corporations, Local authorities, District boards, Panchayats and other local bodies which are entrusted with the execution of functions, relating to and concerning the residents of a locality.

The institutions of local government have flourished in India since time immemorial. The Panchayats or village governments were ancient institutions and were

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² <http://www.jeywin.com/wp-content/uploads/2010/03/Optional-Public-Administration-12-> (Last Seen on 27-09-2023).

themselves small republics. Although local government existed in India in ancient times, in its present structure and style of functioning, it owes existence to the British rule in India. A beginning of local government in India may be said to have been made in the year 1687 when, for the first time, local governing body — a Municipal corporation was set up for Madras.

Definitions of Local government

Sidgwick — “*Local government consists of certain subordinate bodies which have defined powers of making rules and regulations within their prescribed area of administration*”³

W. A. Robson — “*Local government may be said to involve the conception of territorial, nonsovereign community possessing the legal right and the necessary organisation to regulate its own affairs*”⁴

Environment

Environment can be defined as a sum total of all the living and non-living elements and their effects that influence human life. While all living or biotic elements are animals, plants, forests, fisheries, and birds, non-living or abiotic elements include water, land, sunlight, rocks, and air.

Environment– Environment has been defined to include air, water, and land, and the inter-relationship among and between air, water, land and human beings, other living creatures, microorganisms, plants and property⁵

Local Environment

The term "local environment" refers to the immediate surroundings and conditions within a specific geographic area or community. It encompasses the natural, built, and social elements that shape the environment in which people live. The local environment includes factors such as the local ecosystem, land use patterns, infrastructure, air and water quality, waste management practices, and community dynamics⁶.

³ Henry Sidgwick, “The Elements of Politics”, De Boeck Superieur publication, 2001. p. 43

⁴ William A. Robson's "Welfare State and Welfare Society Illusion and Reality"(1976) Routledge publication (1st ed) p 23

⁵ Sec. 2 of Environmental Protection Act, 1986.

⁶ J.R. Karr's "Environmental Impact: Concept, Consequences, Measurement" PMC Publication, p.34

Understanding and caring for the local environment is essential for maintaining a healthy and sustainable community. The local environment directly impacts the quality of life, well-being, and overall health of residents. It influences factors like access to clean air and water, availability of green spaces, exposure to pollution, and the ability to engage in outdoor activities.

Local environmental factors can vary significantly from one community to another, depending on geographical location, climate, industrial activities, population density, and urban development. For instance, a coastal community may face challenges related to coastal erosion and sea-level rise, while an urban area may struggle with air pollution and limited green spaces.

The local environment affairs are connected with various stakeholders, including local self-government bodies, environmental agencies, community organizations, and residents themselves. It requires a comprehensive understanding of the local ecosystem, environmental issues, and sustainable practices. By actively engaging with the local environment, communities can work towards protecting natural resources, minimizing pollution, promoting sustainable development, and enhancing the overall well-being of residents.

Taking care of the local environment goes beyond individual actions; it requires collective efforts and collaboration among different stakeholders. It involves implementing policies and regulations that prioritize environmental protection, promoting sustainable practices in waste management and energy use, conserving natural resources, and raising awareness among residents about the importance of environmental stewardship. Ultimately, the local environment is the foundation upon which communities thrive. By valuing, protecting, and enhancing the local environment, communities can create a sustainable and resilient future for both people and the planet⁷.

The British Government in India showed some interest in promoting local self-governing institutions. Through regulations in 1816 and 1819, the British Government in India was authorised to raise contributions for the construction and repair of roads, bridges and ferries. During national movement in India, the leaders advocated village

⁷ Sahib Singh Bhayana and Swinder Singh's "Local Government in India" New Academic Publishing Company, 1985 p.121.

communities. In this regard, Gandhian view-prevailed and Panchayats became the foundation of self-government. Article 40 of the Indian Constitution enshrines one of the Directive Principles of State Policy which lays down that the State shall take steps to organise village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. Local Self-Government is the third stratum of Government, the first two being the Central and the State Governments. Presently, Rural Self Government i.e., Panchayati Raj system is working in accordance with the 73rd Constitutional Amendment Act and Urban Self Government i.e., Municipal Bodies is working in accordance with the 74th Constitutional Amendment Act. Following the enactment of the 73rd Amendment Act, 1992, almost all the States in India passed legislation in conformity with the provisions of the 73rd Amendment Act. There are some States which have two tier Panchayats – one at the village level and second at the district level. And there are also other States where Panchayati Raj Institution is a three tier system- Gram/ Gaon Panchayat as first level, Samiti, Mandal or Anchalik or Taluk or Block or Janapad or Union or Kshetra as second level and Zilla or District as the third level. At the rural level the Gram Sabha constitutes the foundation of the Panchayati Raj system. Gram Sabha performs the functions and powers entrusted to it by the state legislatures⁸.

Local self-government plays a crucial role in environmental protection as it is at the forefront of addressing environmental issues and implementing sustainable practices within their jurisdiction. With their close proximity to communities and understanding of local needs, local self-government bodies are well-positioned to make a significant impact on environmental conservation and sustainability.

Functions and Responsibilities of Local Governments

Conservation and protection of the environment have been an inseparable part of Indian heritage and culture. Realizing its importance, necessary amendments have been made in the Indian Constitution from time to time. The incorporation of the Part IX and IX A in the Constitution of India, made through 73rd and 74th Amendment in 1992, enabled the Grama Panchayats and Local authorities to perform functions related to environmental management. Therefore, the Panchayats are assigned with functions as much as 29

⁸ Dr. A M Sultana, “Local Government and Politics in India” Panchanan Publication, 2021, p. 23.

subjects, in the Eleventh Schedule of the Constitution and Municipality is assigned 18 Subjection. Among these subjects, the following are related to environment management.

Municipal bylaws affect the environment in many ways, from regulating and licensing businesses, to controlling nuisances, to a wide variety of measures designed to protect or enhance the general welfare of the community. While a comprehensive review of municipal jurisdiction is beyond the scope of this paper, key areas of jurisdiction are examined briefly below.

In many cases, it is through their jurisdiction over land use planning and development that Local authorities have their greatest impact on the environment. This process, the applicable law, and opportunities for public involvement are examined in detail in Part 2, Municipal land use planning and the environment.

Business licensing and regulation⁹

Local authorities are authorized to license and regulate businesses within their boundaries. This includes the power to restrict or prohibit businesses that are unsuitable or undesirable due to local health or environmental impacts, provided the regulation does not conflict with federal or provincial law. However, decisions regarding acceptable locations for different types of businesses and industrial facilities, and site-specific development conditions, are made through the land use planning process.

Nuisances¹⁰

Local authorities are empowered to pass bylaws respecting nuisances and unsightly property. “Nuisance” is not defined in the legislation, leaving Local authorities with the power to manage and control Nuisance happens within the Jurisdiction of the Local authorities like air, water, environmental pollution by the people of the Communities.

Safety, health and general welfare¹¹

Local authorities are empowered to pass bylaws respecting the safety, health and welfare of people and the protection of people and property. This power, referred to as the general welfare power, has been broadly interpreted by the courts. In addition, the

⁹ List 18 of 12th Schedule of Indian Constitution

¹⁰ Sec 87, The Karnataka Panchayat Raj Act, 1998 and Sec 224 to 242, Karnataka Municipalities Act, 1964.

¹¹ Sec 213 to 223, Karnataka Municipalities Act, 1964

local authorities specify that the power to make bylaws is intended to enable councils to respond flexibly to present and future concerns. Both the Grama Panchayat¹² and ZillaPanchayat have to perform the functions which are specified in the first and Second schedule of the panchayat Act.

Agriculture, including agricultural extension¹³

Both GramaPanchayat and ZillaPanchayat has to take appropriate steps for promotion and development of agricultural and horticulture activities, development of waste lands into cultivable and eco-friendly lands and development and maintenance of grazing lands and prevent their unauthorized use of the land.

Animal husbandry, dairying and poultry¹⁴

It is the obligation of both Grama and ZillaPanchayat is to improvement of breed of cattle, poultry and other live stocks, promote dairy farming, poultry and piggery forming, and to take all necessary measures for the development of Grassland.

Social and farm forestry, minor forest produce, fuel and fodder¹⁵ and Urban forestry, protection of the environment and promotion of ecological aspects¹⁶

Objectives of Social Forestry is as follows

- Improve the environment for protecting agriculture from adverse climatic factors
- Increase the supply of fuel wood for domestic use, small timber for rural housing, fodder for livestock, and minor forest produce for local industries,
- Increase the natural beauty of the landscape; create recreational forests for the benefit of rural and urban populations,
- Provide jobs for unskilled workers,
- Effect land rehabilitation
- Raise the standard of living and quality of life of rural and urban people.

Khadi, Village and cottage industries¹⁷

¹²Sec. 58 of Act.

¹³List 1 of 11th Schedule of the Indian Constitution

¹⁴List 4 of 11th Schedule of the Indian Constitution

¹⁵List 5 of 11th Schedule of the Indian Constitution

¹⁶List 8 of 12th Schedule of the Indian Constitution

¹⁷List 9 of 11th Schedule of the Indian Constitution

The panchayat has to promote rural and cottage industries which are environmental friendly and also organize conferences, seminars and training programs, agricultural and industrial exhibitions for the benefit of the rural areas.

Drinking Water¹⁸

The Local self-government has to construct, repair and maintenance of drinking water, wells, tanks and ponds which must maintained by panchayat and provide pure and drinkable water to the villagers, prevention and control of water pollution, maintenance of rural water supply schemes.

Roads, buildings, culverts, bridges, ferries, waterways and other means of communication

¹⁹

Healthy environment need cleanliness, which can maintained by construction and maintenance of proper roads, drains and culverts and the panchayat has to maintain boats, ferries and waterways which are under the control of panchyats.

Non-Conventional energy sources

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Non-conventional sources are also known as renewable sources of energy. Examples of non-conventional sources of energy include solar energy, bio energy, tidal energy and wind energy.

Solar Energy

Solar Energy is produced by sunlight. The photovoltaic cells are exposed to sunlight based on the form of electricity that needs to be produced. The energy is utilized for cooking and distillation of water.

Wind Energy

The Panchyat has to encourage the Wind Energy. Wind energy is generated by harnessing the power of wind and mostly used in operating water pumps for irrigation purposes. India stands as the second-largest country in the generation of wind power.

Tidal Energy

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Tidal energy is generated by exploiting the tidal waves of the sea. This source is yet to be tapped due to the lack of cost-effective technology.

¹⁸ List 11 of 11th Schedule of the Indian Constitution

¹⁹ List 13 of 11th Schedule of the Indian Constitution and List 4 of 12 Schedule of Constitution

²⁰ List 15 of 11th Schedule of the Indian Constitution

²¹ A form of power produced by the natural rise and fall of tides caused by the gravitational interaction between earth and the sun and the Moon

The Panchayat has an obligation to promote and development of non-conventional energy schemes, maintenance of community non-conventional energy devices, including bio-gas plants and propagation of improved chulhas and other efficient energy devices.

Sanitation²²

The Local Sanitation includes the maintenance of general sanitation, cleaning of public roads, tanks, wells and other public places, maintenance and regulation of burning and burial grounds, construction and maintenance of public latrines, disposal of unclaimed corpses and carcasses which makes environmental pollution and manage and control of washing and bathing ghats.

The rural sanitation campaign has the following as its objectives:

- Accelerate sanitation coverage in rural areas.
- Generate a push from the people to get facilities rather than expect the Government to do it (demand-led promotion).
- Focus on intensive education and awareness campaigns to ensure that people understand the need for safe sanitation.
- Take the scheme beyond rural households to rural schools and nursery schools. Here again, the emphasis was placed on promoting good hygiene practices.
- Promote cost-effective and appropriate technologies.
- Through all the above, improve the health and quality of life in rural areas.

Public amenities²³, electric crematoriums²⁴, public parks, gardens, Play grounds²⁵ are the some of important environmental aspect under the 11th and 12th schedule of the Constitution. Apart from these function both Karnataka Municipality Act and Karnataka Panchayat Act having plenty of Environmental protection provisions for protection of the Environment.

Conclusion

The role of local self-government in environmental protection is crucial for creating sustainable and resilient communities. Local self-government bodies have the authority and proximity to address environmental issues effectively within their

²² List 6 of 12th Schedule of the Indian Constitution

²³ List 17 of 12th Schedule of the Indian Constitution

²⁴ List 14 of 12th Schedule of the Indian Constitution

²⁵ List 12 of 12th Schedule of the Indian Constitution

jurisdiction. By developing and implementing environmental policies, regulating and enforcing environmental regulations, promoting sustainable waste management practices, conserving natural resources, raising public awareness, and fostering collaboration, local self-government bodies can make a significant impact on environmental protection.

Through their actions, local self-government bodies contribute to maintaining a clean and healthy environment, mitigating pollution, conserving natural resources, and promoting sustainable practices. They play a vital role in shaping the environmental consciousness of their communities, empowering residents to take responsibility for their environment, and fostering a culture of sustainability. Furthermore, the role of local self-government in environmental protection extends beyond immediate environmental concerns. It also encompasses the broader aspects of sustainable development, public health, and the well-being of communities. By prioritizing environmental protection, local self-government bodies contribute to creating livable and resilient communities that can thrive in the face of environmental challenges.

In a world grappling with pressing environmental issues such as climate change, pollution, and biodiversity loss, the role of local self-government in environmental protection is more critical than ever. By embracing this role and actively working towards environmental sustainability, local self-government bodies can pave the way for a greener future, ensuring a better quality of life for both current and future generations.

SUSTAINABLE DEVELOPMENT: A PATH TO THE BRIGHTER FUTURE

Subashini J¹

Abstract

Sustainable development represents a holistic approach to balancing economic growth, environmental protection, and social well-being to ensure a prosperous future for all. It addresses the pressing global challenges of climate change, resource depletion, inequality, and poverty by promoting practices that meet present needs without compromising the ability of future generations to meet theirs. This path to a brighter future is built on key principles such as responsible resource management, innovation in green technologies, and inclusive policies that ensure equitable development. As societies move towards sustainability, they foster resilience against environmental and economic shocks, ensuring long-term prosperity and stability. This paper explores the frameworks, challenges, and opportunities associated with sustainable development, advocating for a transformative shift towards practices that nurture both the planet and humanity.

Keywords: Sustainable Development, Green Economy, Renewable Resources.

Introduction

“Progress is impossible without change, and those who cannot change their minds cannot change anything.” - George Bernard Shaw. Sustainable development is an essential framework for advancing human prosperity while ensuring that natural systems continue to provide the resources and ecosystem services upon which our well-being relies. The concept emerged in response to the realisation that economic growth should not compromise environmental quality and social equity. Sustainable development encompasses a broad range of policies and initiatives aimed at reducing poverty, preserving the environment, and promoting sustainable economic growth. This essay explores the multifaceted nature of sustainable development and the various arguments supporting its critical role in shaping our future.

Environmental Preservation through Sustainable Development

One of the crucial components of sustainable development is its emphasis on environmental preservation. The natural environment provides invaluable resources and services, including clean air and water, fertile soil, and biodiversity, all of which are fundamental to human survival. Deforestation, pollution, and climate change

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threaten these resources. For instance, deforestation contributes to the loss of biodiversity and disrupts carbon cycles, leading to increased carbon dioxide concentrations in the atmosphere. According to data from the World Wildlife Fund ², tropical rainforests alone are home to more than half of the world's species, and their destruction equates to an irreversible loss of biodiversity.

Sustainable development strategies promote the responsible management of natural resources to mitigate such adverse effects. For example, practices such as reforestation, sustainable agriculture, and conservation efforts aim to restore and maintain ecosystem balance. These initiatives not only protect natural habitats but also support biodiversity and enhance ecosystem services. A notable example is Costa Rica, which has implemented comprehensive reforestation policies resulting in a significant increase in forest cover from 21% in 1987 to more than 52% by 2020³. This has not only improved biodiversity but also aided in carbon sequestration, contributing to the global fight against climate change.

Furthermore, sustainable development encourages the adoption of renewable energy sources, such as solar, wind, and hydropower, to reduce dependence on fossil fuels, which are major contributors to greenhouse gas emissions and air pollution. Germany's Energiewende policy, aimed at transitioning to a sustainable energy system, has significantly increased the share of renewables in the country's energy mix, thereby reducing carbon emissions and fostering energy security.

Economic Advantages of Sustainable Development

Sustainable development is not only about protecting the environment but also about fostering economic growth in a manner that ensures long-term prosperity. Traditional economic models often emphasize short-term gains while overlooking the depletion of natural resources and environmental degradation. In contrast, sustainable development promotes a balanced approach where economic activities are undertaken without compromising environmental integrity and the well-being of future generations. Investing in sustainable practices can drive economic growth by creating new industries and job opportunities in sectors such as renewable energy, sustainable agriculture, and green technology. For example, the renewable energy sector has become a significant source of employment worldwide. The International Renewable Energy Agency (IRENA) reported, the renewable energy sector employed 11.5

² <https://www.worldlife.org>

³ <https://www.worldbank.org>

million people globally, with an increasing number of jobs in solar and wind energy industries⁴. This shift towards sustainable energy not only provides economic benefits but also enhances energy security and reduces greenhouse gas emissions.

Moreover, sustainable tourism, which promotes environmentally responsible travel and conservation efforts, has become an essential aspect of sustainable development. This form of tourism generates revenue for local communities while preserving cultural heritage and natural landscapes. Costa Rica is a prime example, where sustainable tourism has become one of the leading economic sectors, contributing significantly to the country's GDP and providing employment for thousands of people. Organizations such as Rainforest Alliance have worked to certify eco-friendly tourism practices, ensuring that tourism growth aligns with environmental conservation and social equity.

Furthermore, sustainable development encourages increased efficiency and reduced waste in industrial processes, leading to cost savings and improved competitiveness. Circular economy models, which emphasize recycling, upcycling, and resource efficiency, help reduce the environmental footprint of production and consumption. Companies like Tesla have adopted such models by focusing on sustainable product design and the use of renewable energy in manufacturing, setting a benchmark for other industries.

Social Equity and Sustainable Development

Social equity forms an integral part of sustainable development, addressing issues related to income inequality, access to education, and healthcare. Sustainable development aims to create societies where all individuals, regardless of their socio-economic background, have equitable access to resources and opportunities.

Education is a pivotal area where sustainable development exerts a profound impact. Ensuring access to quality education for all is critical to breaking the cycle of poverty and fostering inclusive growth. According to UNESCO, every additional year of schooling can increase a person's future income by an average of 10%, illustrating the long-term economic benefits of education. Sustainable development initiatives, such as the United Nations' Sustainable Development Goals (SDGs)⁵, prioritize inclusive and equitable education, promoting lifelong learning opportunities for all. The implementation of programs that provide scholarships, vocational training, and

⁴ Renewable Capacity Statistics 2020

⁵<https://sdgs.un.org>

infrastructure improvements in underprivileged areas can significantly enhance educational outcomes and contribute to human development.

Healthcare access is another vital aspect of social equity within the realm of sustainable development. Ensuring that communities have access to essential health services is a fundamental goal of sustainable development policies. For example, the introduction of community health programs, mobile clinics, and telemedicine services can bridge healthcare gaps in remote and underserved regions. The World Health Organization (WHO) supports various initiatives aimed at improving healthcare infrastructure and providing training for healthcare professionals in developing countries. These efforts help reduce disparities in health outcomes and contribute to overall human well-being.

Income inequality is addressed through the development of policies that promote fair wages, social protection, and inclusive economic growth. Nations such as Denmark have implemented progressive taxation, robust social safety nets, and strong labour market regulations to reduce income disparities, resulting in lower poverty rates and higher levels of social cohesion. Such models illustrate how sustainable development aims to create societies where wealth is more equally distributed, and everyone has the opportunity to thrive.

Sustainable Development and Technological Innovation

Technological innovation plays a crucial role in enabling sustainable development. Advancements in technology can drive efficiency, reduce environmental impact, and enable the transition toward more sustainable practices. Innovations in renewable energy, sustainable agriculture, and waste management are particularly impactful.

Renewable energy technologies, such as advancements in solar photovoltaic systems and wind turbines, have seen significant improvements in efficiency and cost reduction over the years. According to the International Energy Agency (IEA), the cost of solar photovoltaic electricity has decreased by 89% since 2010, making it one of the most affordable power generation sources available. These technological advancements have facilitated the large-scale deployment of renewable energy systems, contributing to the transition away from fossil fuels and the reduction of greenhouse gas emissions.

In sustainable agriculture, precision farming technologies, such as satellite imaging, drones, and IoT sensors, have revolutionized the way farmers manage their crops. These technologies enable more efficient use of water, fertilizers, and pesticides, thereby reducing the environmental footprint of agriculture and enhancing crop yields. For instance, the use of precision farming technologies in India's agricultural sector has led to significant increases in productivity and resource efficiency, demonstrating the potential for technology to drive sustainable agricultural practices⁶.

Moreover, technological innovations in waste management, such as advanced recycling technologies and waste-to-energy systems, are critical for addressing the growing issue of waste generation. Japan's extensive recycling programs and waste-to-energy facilities exemplify how technology can be leveraged to minimize waste, promote resource recovery, and reduce environmental pollution.

Technological innovation also extends to the development of sustainable transportation systems. The rise of electric vehicles (EVs) and advancements in battery technology have the potential to significantly reduce carbon emissions from the transportation sector. Companies like Tesla and BYD are leading the charge in EV manufacturing, with ongoing research and development aimed at improving battery performance and reducing costs. Governments worldwide are investing in EV infrastructure, such as charging stations, to support the widespread adoption of electric vehicles.

Policy Frameworks and Global Collaboration

Effective policy frameworks and international collaboration are essential for the successful implementation of sustainable development goals. Governments, international organisations, and the private sector must work together to create policies that promote sustainability and address global challenges.

National governments play a crucial role in setting policies and regulations that drive sustainable development. For example, the European Green Deal, implemented by the European Union, outlines a comprehensive strategy to achieve carbon neutrality by 2050. The policy framework includes measures to promote energy efficiency, renewable energy, sustainable transportation, and circular economy

⁶ *Id.*

practices. By setting ambitious targets and implementing supportive policies, governments can accelerate the transition toward sustainable development.

International organizations, such as the United Nations (UN) and its various agencies, facilitate global collaboration and provide technical and financial support for sustainable development initiatives. The UN's Sustainable Development Goals (SDGs) serve as a universal blueprint for addressing global challenges, including poverty, inequality, and environmental degradation. The Paris Agreement, under the UN Framework Convention on Climate Change, is another example of international collaboration aimed at combating climate change through collective action and commitments from participating countries.

The private sector also plays a pivotal role in advancing sustainable development through corporate social responsibility (CSR) initiatives and sustainable business practices. Companies are increasingly recognizing the importance of sustainability and integrating it into their core business strategies. For instance, Unilever's Sustainable Living Plan aims to decouple the company's growth from its environmental footprint while increasing its positive social impact. Such initiatives demonstrate how businesses can contribute to sustainable development by promoting ethical sourcing, reducing waste, and supporting community well-being.

Additionally, public-private partnerships are essential for mobilizing resources and expertise to implement sustainable development projects. Collaborations between governments, businesses, and non-governmental organizations (NGOs) can drive innovation, scalability, and impact. The Lighting Global program, a partnership between the International Finance Corporation (IFC) and private companies, aims to provide affordable and sustainable lighting solutions to communities in off-grid areas. This initiative has successfully improved energy access for millions of people, highlighting the power of collaborative efforts in achieving sustainable development goals.

Conclusion

Sustainable development is a holistic approach that seeks to balance economic growth, environmental preservation, and social equity. By promoting responsible resource management, fostering economic opportunities, ensuring social equity, leveraging technological innovations, and creating robust policy frameworks, sustainable development paves the way for a prosperous and resilient future. The

imperative for sustainable development is clear; our present choices determine the legacy we leave for future generations. Therefore, it is crucial for individuals, communities, governments, and businesses to work together in achieving the goals of sustainable development. In conclusion, sustainable development is a critical path forward for ensuring the well-being of current and future generations. The evidence is compelling: environmental preservation, economic growth, social equity, technological innovation, and effective policy frameworks all contribute to the successful realization of sustainable development goals. By embracing sustainable practices and fostering collaboration, we can create a harmonious and sustainable future that ensures prosperity, equity, and environmental health for all.

TOWARDS A SUSTAINABLE FUTURE: EXPLORING THE ROLE ESG REPORTING IN PROMOTING SUSTAINABLE CONSUMERISM

Ms. Nelvita Cleona Noronha¹ & Dr. Fincy Pallisserly²

Abstract

Understanding what spurs sustainable consumerism or motivates consumers to buy environmentally sustainable products can always be on the move. Emphasis is laid on individual viability to understand his/her responsibility in the growth of green products. Sustainable consumerism via self-regulation is a growing trend in which individuals take responsibility for their consumption patterns and aim to reduce their negative impact on the environment and society at large. This approach emphasizes personal accountability and encourages consumers to make informed choices by considering the environmental and social impact of their purchasing decisions. The consumer today relies on the disclosures made by the companies to understand the impact of the products and businesses on the society, environment and governance on the whole. This in turn imposes an obligation on the part of the companies to have a acceptable standard of working and implications on ESG factors. However, understanding the legal mechanisms and forces that drive the company to address the negative impact of consumerism may be necessary to incentivize sustainable consumer behaviour. This paper examines the role of ESG Reporting in promoting sustainable consumerism via self-regulation, with a focus on the effectiveness of legal mechanisms in incentivizing environmentally responsible consumer behaviour.

Keywords: *ESG Reporting, Sustainable Consumerism, Consumer Self-Regulation, Legal Mechanisms, Sustainable Consumption.*

Introduction

Living in a world where there is a threat to the climate, environment, and its components, it becomes important to identify the root cause of these threats and to arrive at a solution. For a very long time, industries and their products have been identified as the major contributors to environmental issues such as climate change, pollution, and resource depletion. As the companies take the necessary resources from the society it is bound to return and have a positive impact on the societal needs. To deal with these issues, sustainable consumption is considered the key. Sustainable

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consumerism refers to the conscious and responsible purchasing of goods and services that have a minimal impact on the environment, society, and economy. It is defined as "the adoption of lifestyles and consumption patterns that promote environmental sustainability and social justice".³ It involves choosing products that are environmentally friendly, socially responsible, and ethically produced, and avoiding those that contribute to environmental degradation, social injustice, and economic inequality.

Sustainable consumerism is based on the belief that individuals have the power to influence businesses and governments through their purchasing choices. By supporting companies that prioritize sustainability, consumers can encourage them to adopt more responsible practices and policies⁴. With environmental degradation looming, many individuals and organizations have recognized the need to adopt sustainable practices in all aspects of life. It is an important aspect of the transition toward a more sustainable and equitable world, and it can help individuals to reduce their ecological footprint and contribute to positive social change.⁵ This article aims to explore the concept of sustainable consumerism in greater depth. It will also examine the role of ESG disclosures in promoting sustainable consumption, and explore ways in which individuals can adopt more sustainable behaviours in their everyday lives.

The Non-Financial Disclosures of the Company Impacting Sustainable Consumption

One of the key legal frameworks that support sustainable consumerism is environmental law. Environmental law includes regulations and standards that promote the sustainable use of natural resources and reduce the negative impacts of human activities on the environment. Environmental law can incentivize businesses to adopt sustainable practices by imposing penalties for non-compliance, such as fines or revocation of licenses. Examples of environmental laws that support sustainable

³ Garvey, G., & Huong, T. T. (2019). Consumer behaviour, sustainability and the circular economy. *Journal of Cleaner Production*, 213, 1193-1204. doi: 10.1016/j.jclepro.2018.12.035

⁴ De Groot, J. I., & Steg, L. (2010). Relationships between value orientations, self-determined motivational types and pro-environmental behavioural intentions. *Journal of Environmental Psychology*, 30(4), 368-378

⁵ Haas, R., Schmidt, M. W., & von Weizsäcker, E. U. (2017). A fresh look at the green economy: Aligning policies with sustainable consumption and production. *Environment: Science and Policy for Sustainable Development*, 59(1), 4-13.

consumerism include product standards for energy efficiency, emissions limits for air and water pollution, and waste reduction and recycling requirements.

Similarly, Consumer protection law⁶ seeks to protect consumers from unfair or deceptive business practices, and to empower consumers to make informed purchasing decisions. Consumer protection law can promote sustainable consumerism by requiring businesses to disclose information on the environmental and social impacts of their products, such as the materials used, the energy efficiency of the product, and the labour practices involved in production. By providing consumers with this information, consumer protection law can incentivize businesses to produce sustainable products and services. Likewise, International agreements and treaties set global standards and guidelines for sustainable production and consumption, and provide a framework for cooperation among countries to address sustainability issues. For example, the United Nations Framework Convention on Climate Change (UNFCCC) provides a framework for international cooperation to reduce greenhouse gas emissions and mitigate climate change. The Sustainable Development Goals (SDGs), adopted by the United Nations General Assembly in 2015, provide a framework for sustainable development, with specific targets related to sustainable consumption and production.

ESG reporting in India refers to the disclosure of information related to environmental, social, and governance (ESG) issues by companies operating in India. The Securities and Exchange Board of India (SEBI) has made it mandatory for the top 1000 listed companies in India to report on ESG factors as a part of their annual reports starting from the financial year 2022-23.⁷ SEBI's guidelines require companies to disclose information related to environmental factors such as energy consumption, greenhouse gas emissions, waste management, and water management. Companies also need to report on social factors such as labour practices, human rights, community engagement, and health and safety. Governance factors such as board diversity, executive compensation, and anti-corruption policies also need to be disclosed.

The ESG reporting requirements in India are aimed at promoting greater transparency and accountability among companies and improving the management of ESG risks and opportunities. ESG reporting also helps the investors and stakeholders

⁶ The Consumer Protection Act, 2019

⁷ SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

to make informed decisions about the companies they invest in or work with, based on their sustainability performance.⁸ In addition to SEBI's requirements, many companies in India are voluntarily reporting on ESG issues as a part of their sustainability efforts. ESG reporting in India is still in its early stages, and there is a need for more comprehensive reporting frameworks and standardization of ESG disclosures to ensure consistency and comparability across companies.

By providing greater transparency and accountability, ESG reporting helps the consumers identify companies that prioritize sustainability and social responsibility, and avoid those that do not. This can encourage companies to improve their sustainability practices in order to attract and retain environmentally conscious consumers. ESG reporting can also help promote greater awareness and understanding of sustainability issues among consumers, which can lead to increased demand for sustainable products and services. This, in turn, can create incentives for companies to invest in sustainable production practices and innovation, and improve their overall sustainability performance.

Influence of Sustainable Consumption and Consumerism

1. Environmental Impact: Consumerism has a significant impact on the environment. Unsustainable production and consumption practices can lead to resource depletion, pollution, and climate change. By choosing sustainable products and supporting companies that prioritize sustainability, consumers can help reduce their environmental impact and contribute to a more sustainable future. For instance, Unilever has reduced Greenhouse Gas (GHG) emissions per consumer use by 19% since 2010 and by 5% since 2021. In 2022, indirect consumer use emissions fell by 11% from 2021. The company's goal is to halve GHG emissions per consumer use of our products by 2030.⁹ However, the industry is of the opinion that, emission can be reduced with collective efforts from consumers.

2. Social responsibility: Consumer choices can significantly impact social issues such as labour practices, human rights, and economic inequality. By choosing products from companies that have fair labour practices and support local communities, consumers can help promote social responsibility and contribute to positive social

⁸ PWC. (2019). Sustainability and the Board: What directors need to Know

⁹ UNILEVER -Reducing emissions from the use of our products Retrieved from (<https://www.unilever.com/planetand-society/climate-action/reducing-emissions-from-the-use-of-our-products/>)

change. Taking the example of ITC, it has large-scale programmes in water stewardship, afforestation, waste management and climate-smart agriculture that stretch across 22 Indian states, and help empower rural communities. Adoption of decarbonization measures, developed sustainable packaging solutions, and training for women, children, and youth is also provided so that they can participate in economic life now and in the future.¹⁰

3. Health and well-being: Many unsustainable products and production practices can have negative impacts on human health and well-being. By choosing sustainable products and supporting companies that prioritize health and safety, consumers can protect their own health and well-being, as well as that of others. It was in 2014 when food safety regulators from the Barabanki district of Uttar Pradesh reported that samples of Maggi Noodles had high levels of monosodium glutamate (MSG) apart from high lead content above the permissible level. At the time, the labelling on packets of Maggi Noodles indicated that it had no added MSG. Almost a year later in April 2015, the CFL confirmed the Gorakhpur lab report and also confirmed that the amount of lead found was over 1,000 times more than what Nestle India Ltd had claimed. Nestle was left with no choice but to recall the popular snack from the market. Between June 5 and September 1, 2015, nearly 38,000 tonnes of Maggi Noodles were recalled from retail stores across the country and destroyed. Maggi's share in the Indian market went down from 80 per cent to zero.¹¹

4. Economic sustainability: Unsustainable production and consumption practices can also have negative impacts on the economy. By supporting companies that prioritize sustainability and ethical practices, consumers can help promote economic sustainability and the development of a more equitable and resilient economy. An action was initiated by consumers and investors, alleging a fraudulent scheme by Exxon Mobil Corporation to deceive investors about the company's management of risks posed by climate change regulation.¹²

Challenges and Barriers

Self-regulation can be an effective means of promoting sustainable consumer behaviour, but it may not be sufficient on its own. Legal mechanisms, such

¹⁰ Sustainability at ITC, Retrieved from <https://www.itcportal.com/itc-stories/itc-sustainability-at-itc.aspx>

¹¹ Nestle 'unhealthy' food controversy: Looking back at the Maggi Noodles crisis in India Retrieved from <https://www.indiatoday.in/business/story/nestle-unhealthy-food-controversy-looking-back-at-the-maggi-noodles-crisis-in-india-1810003-2021-06-02>

¹² *People of the State of New York v. Exxon Mobil Corp.* Docket number(s): 452044/2018

as ESG reporting, environmental labelling, taxation, and product standards, can complement self-regulation and incentivize environmentally responsible consumer behaviour. Environmental labelling can provide consumers with information on the environmental impact of products and encourage the purchase of environmentally friendly products. Product standards can set minimum environmental standards for products, which can incentivize companies to produce environmentally friendly products and encourage consumers to purchase these products. Non-financial disclosures create an arena to the public to understand the impact businesses have on the environment. Accordingly, consumers are free to make choices considering green products.

However, the effectiveness of legal mechanisms is dependent on several factors, such as the credibility and transparency of industrial actions, the level of tax imposed, and the availability and affordability of environmentally friendly alternatives. Additionally, legal mechanisms such as ESG, face challenges in their implementation, such as resistance from industry stakeholders and the difficulty of enforcement. Addressing these challenges will require a collective effort from policymakers, businesses, and consumers to promote sustainable practices and reduce the environmental and social impacts of consumption.¹³

Combination of self-regulation and legal mechanisms can play a critical role in promoting sustainable consumerism and achieving a more sustainable future. Legal mechanisms can complement self-regulatory approaches by providing incentives and accountability mechanisms that encourage environmentally responsible behaviour. Addressing these challenges will require collaboration and cooperation among stakeholders, including consumers, businesses, regulatory agencies, and civil society organizations.

1. Lack of Awareness: One of the primary barriers to implementing self-regulatory and legal mechanisms for sustainable consumerism is a lack of awareness among consumers and businesses. Many consumers are not aware of the environmental and social impacts of their purchasing decisions, and may not prioritize sustainability when making purchasing decisions. Similarly, businesses may not be aware of the benefits of sustainable practices or may not have the knowledge or resources to adopt them.

¹³ Brouwer, S., Hagens, J., & van der Straaten, J. (2018). Sustainable consumption and production. In the book 'Greening of Capitalism: how Asia is driving the Next generation transformation', (573-593)

2. Lack of Enforcement: Even when regulations and standards for sustainable consumerism are in place, enforcement can be challenging. Regulatory agencies may not have the resources or expertise to effectively monitor and enforce compliance with sustainability standards, and businesses may not face significant penalties for non-compliance.

3. Resistance from Industry: Some businesses resist the implementation of self-regulatory and legal mechanisms for sustainable consumerism, viewing them as a burden or a threat to their bottom line. For example, some industries may resist regulations that require them to reduce their use of natural resources or to limit their emissions, as these regulations may increase their costs of production.

4. Trade-Offs and Conflicting Priorities: Sustainable consumerism involve trade-offs between environmental, social, and economic priorities. For example, while environmentally-friendly products may be more sustainable, they may also be more expensive, making them less accessible to low-income consumers. Similarly, regulations that promote sustainable practices may be viewed as limiting economic growth or impeding innovation.

5. Lack of Standardization: The lack of standardization in sustainability practices and certification schemes can make it difficult for consumers to compare products and make informed purchasing decisions. This can also make it challenging for businesses to adopt sustainable practices, as there may not be clear guidelines or benchmarks to follow.

Conclusion and Recommendations

This article has explored the potential of legal mechanisms in promoting sustainable consumption via self-regulation and ESG mechanisms. Simultaneously, acknowledged the impact of sustainable consumerism. The challenges and barriers to be overcome to achieve a more sustainable future are highlighted. It is suggested that self-regulation can be an effective means of promoting sustainable consumer behaviour, but it may not be sufficient on its own. Legal mechanisms, such as ESG reporting, environmental labelling, taxation, product standards, and disclosure policies, can complement self-regulation and incentivize environmentally responsible consumer behaviour.

However, the effectiveness of legal mechanisms depends on several factors, such as the credibility and transparency, and the availability and affordability of environmentally friendly alternatives. Additionally, legal mechanisms can face challenges in their implementation, such as resistance from industry stakeholders and the difficulty of enforcement. To enhance the effectiveness of legal mechanisms in promoting sustainable consumerism, it is recommended that a multi-stakeholder approach involving government, industry, and civil society be adopted. The government can create a supportive regulatory environment that encourages sustainable consumerism, and industry stakeholders can collaborate with the government to develop and implement environmentally friendly policies and practices. Civil society can also play a critical role in promoting sustainable consumerism by raising awareness and advocating for environmentally responsible behaviour. Moreover, it is recommended that future research explores the effectiveness of legal mechanisms in promoting sustainable consumerism in different contexts, such as developing countries and emerging economies. Additionally, the research could investigate the potential of emerging technologies, such as block chain and artificial intelligence, in promoting sustainable consumerism via self-regulation. In conclusion, sustainable consumption is a complex issue that requires a multi-faceted approach. Legal mechanisms play a critical role in promoting sustainable consumer behaviour, but their effectiveness depends on several factors. A multi-stakeholder approach involving government, industry, and civil society is necessary to enhance the effectiveness of legal mechanisms and achieve a more sustainable future.

RESOLVING REAL ESTATE DISPUTES THROUGH ALTERNATIVE DISPUTE RESOLUTION (ADR): CHALLENGES AND OPPORTUNITIES

Akshatha A. P.¹

Abstract

Real estate disputes often result in lengthy and costly litigation, straining relationships and financial resources. Alternative Dispute Resolution (ADR) methods, such as mediation, arbitration, and negotiation, offer promising solutions. This study explores the challenges and prospects of utilizing ADR in resolving real estate conflicts. Through a critical review of existing literature and expert interviews, this paper identifies key barriers to ADR adoption, including lack of awareness, limited expertise, and regulatory frameworks. Conversely, highlighting the benefits of ADR including reduced costs, increased efficiency, and preserved relationships. Paper reveals opportunities for innovation, such as technology-enabled ADR platforms and specialized real estate dispute resolution centres.

Keywords: *Alternative Dispute Resolution (ADR), Real Estate Disputes, Conflict Resolution, Mediation, Arbitration, Negotiation*

Introduction

The real estate sector plays a pivotal role in economic development; encompassing the buying, selling, leasing, and development of land and buildings for various uses, including residential, commercial, industrial, and agricultural.² It significantly contributes to the Gross Domestic Product (GDP), especially in emerging economies, where it constitutes a substantial portion of economic activity.³ Activities within the sector, such as construction, sales, and property management, generate considerable economic value, creating numerous job opportunities for both unskilled labourers and highly skilled professionals. Moreover, real estate development stimulates ancillary industries like building materials, finance, and insurance, further boosting employment and economic growth.⁴ Real estate also serves as a major avenue for investment and wealth creation, with property ownership providing potential for capital appreciation and rental income. Institutional investors,

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² ICICI Direct Research, Role of the Realty Sector in the GDP of India, ICICI Direct, <https://www.icicidirect.com/research/equity/finace/role-of-the-realty-sector-in-the-gdp-of-india> (visited Mar. 25, 2024).

³ *India's Real Estate Sector Growth Beyond 2024*, Sell. Do Blog, <https://www.sell.do/blog/indias-real-estate-sector-growth> (last visited July 10, 2024).

⁴ Gaurav Bhatia, *Role of Real Estate in Indian Economy*, LinkedIn (July 18, 2024), <https://www.linkedin.com/pulse/role-real-estate-indian-economy-gaurav-bhatia-1f>.

including pension funds and insurance companies, often allocate significant portions of their portfolios to real estate, thereby enhancing financial stability and economic growth. The sector drives infrastructure improvements, such as roads, bridges, and utilities, benefiting the broader community and supporting economic development. Despite challenges like regulatory hurdles, market volatility, and the need for affordable housing, the real estate sector presents numerous opportunities. Technological advancements, policy reforms, and sustainable development practices can enhance efficiency and promote long-term growth. By addressing these challenges and leveraging available opportunities, the real estate sector can continue to drive sustainable economic development, improve living standards, and contribute to overall prosperity.

Legal Issues in Real Estate Contracts

The real estate sector, while a significant driver of economic growth, is increasingly threatened by disputes arising from its complex legal frameworks, procedural delays, and the high stakes involved in transactions. The intricate web of regulations governing property transactions, including zoning laws, environmental regulations, and building codes, often leads to misunderstandings and conflicts. These disputes can involve various parties, including buyers, sellers, developers, and regulatory authorities, each with their interests and interpretations of the laws. The complexity is further compounded by frequent amendments to real estate laws, leaving stakeholders grappling with compliance issues and legal ambiguities.⁵

Delays in the real estate sector are another major source of disputes. Bureaucratic red tape and lengthy approval processes for permits and licenses can stall projects, leading to financial losses and contractual breaches. Such delays can cause significant frustration among buyers, who may have already committed substantial funds, and developers, who face escalating costs and potential penalties.⁶ The backlog in the judicial system also exacerbates these issues, as legal proceedings related to real estate disputes can drag on for years, offering little respite to the aggrieved parties.⁷

⁵ Wright Research, Challenges & Investor Overview of India's Real Estate Sector, Wright Research, <https://www.wrightresearch.in/encyclopedia/chapter-report/chapter-6-challenges-and-investor-overview-of-indias-real-estate-sector/> (last visited Sept. 12, 2024).

⁶ Akshay kumar P. Udasi, Milind M. Darade, "Delays in Construction Projects: Causes, Effects and Impacts of RERA" International Research Journal of Engineering and Technology (IRJET) 2018 IJRTI | Volume 3, Issue 7 | ISSN: 2456-3315

⁷ Harshad Shah, Analysis of Court Case Backlog in India: Causes & Implications, LinkedIn, <https://www.linkedin.com/pulse/analysis-court-case-backlog-india-causes-implications-harshad-shah-drvyf> (last visited Sept. 13, 2024).

This protracted uncertainty not only hampers project completion but also erodes trust between the involved parties, making amicable resolutions more challenging.

The high financial stakes involved in real estate transactions add another layer of complexity to these disputes. Real estate investments often represent a significant portion of an individual's or company's assets, leading to heightened sensitivity to any perceived injustices or breaches of contract. The significant sums of money at stake make parties more inclined to litigate rather than negotiate, seeking to protect their investments and recoup losses. This litigious environment further strains the judicial system and increases the overall cost and time required to resolve disputes. As such, there is a growing need for effective dispute resolution mechanisms, such as mediation and arbitration, to address these issues more efficiently and restore confidence in the real estate sector.

Exploring ADR: An Alternative to Traditional Court Conflict Resolution

Alternative Dispute Resolution (ADR) has become a valuable tool for resolving conflicts outside traditional court systems, particularly in real estate disputes. ADR includes methods like mediation, arbitration, and conciliation, offering more flexible, efficient, and cost-effective solutions than conventional litigation. In real estate, where disputes often stem from complex legal frameworks, delays, and significant financial stakes, ADR provides an alternative pathway to help stakeholders navigate conflicts effectively and reach mutually beneficial resolutions. Mediation, involving a neutral third party, facilitates negotiations and is especially beneficial for maintaining relationships and project timelines. It allows parties to control the resolution process and fosters collaborative problem-solving. Arbitration offers a formal yet flexible alternative, where arbitrators with specific real estate expertise deliver binding decisions, avoiding court backlogs. By incorporating ADR, the real estate sector can address disputes more efficiently, preserve business relationships, and support timely project completion.⁸

Purpose of ADR in Real Estate Disputes

The primary purpose of Alternative Dispute Resolution (ADR) in real estate disputes is to provide a more efficient, cost-effective, and amicable means of

⁸Astha Dhawan, How Can ADR Be Beneficial for the Real-Estate Sector?, VIA Mediation Centre, <https://viamediationcentre.org/readnews/MzIx/How-can-ADR-be-beneficial-for-the-Real-Estate-Sector#:~:text=ADR%20can%20help%20both%20the,the%20closest%20alternative%20to%20litigation> (last visited Oct. 25, 2024).

resolving conflicts compared to traditional litigation. Real estate transactions often involve complex legal frameworks, high financial stakes, and multiple parties, which can lead to disputes that are lengthy and expensive to resolve in court. ADR methods such as mediation, arbitration, and negotiation offer a streamlined process, enabling parties to reach resolutions faster and with less expense. These methods prioritize collaborative problem-solving and allow parties to maintain more control over the outcome of their disputes.⁹

Mediation, for example, facilitates communication between parties with the assistance of a neutral mediator, helping them to explore mutually acceptable solutions without the adversarial nature of court battles.¹⁰ Arbitration, on the other hand, provides a binding decision from an impartial arbitrator, akin to a private court, but typically faster and less formal.¹¹ Both methods aim to minimize the disruption and uncertainty that can arise from prolonged litigation, allowing real estate projects to proceed without unnecessary delays and financial strain.

Significance of ADR in Real Estate Disputes

The significance of ADR in real estate disputes lies in its ability to offer more adaptable and practical solutions tailored to the specific needs of the parties involved. Real estate conflicts often require specialized knowledge of the sector's regulations and practices, and ADR allows for the selection of mediators or arbitrators with the requisite expertise. This sector-specific understanding can lead to more informed decisions and settlements that are better aligned with industry standards and expectations.

ADR also plays a crucial role in preserving business relationships, which can be severely strained or permanently damaged by contentious litigation. The collaborative nature of mediation, in particular, encourages parties to work together to resolve their differences, fostering a spirit of cooperation and understanding. This is essential in real estate, where long-term partnerships and reputational considerations are vital. Additionally, the confidentiality of ADR proceedings protects sensitive

⁹ Tariq Khan & Shriya Luke, Making Alternative Dispute Resolution the Primary Mode of Dispute Resolution, SCC Online, <https://www.sconline.com/blog/post/2022/04/26/making-alternative-dispute-resolution-the-primary-mode-of-dispute-resolution/> (last visited Oct. 13, 2024).

¹⁰ ANUPAM KURLWAL, AN INTRODUCTION TO ALTERNATIVE DISPUTE RESOLUTION SYSTEM (ADR) (Central Law Publications, 2022).

¹¹ Saurabh Bindal, Avtar Singh's Law of Arbitration and Conciliation and Alternative Dispute Resolution (ADR) Systems (12th ed. 2022).

business information and helps maintain the privacy of the parties involved, which can be a significant advantage over the public nature of court cases.¹²

Overall, ADR contributes to the sustainability and health of the real estate sector by offering mechanisms that reduce the time, cost, and adversarial nature of dispute resolution. By promoting quicker and more amicable resolutions, ADR helps maintain the momentum of real estate projects, supports investor confidence, and enhances the overall efficiency and stability of the market. As such, it is an invaluable tool for addressing the unique challenges posed by real estate disputes.

ADR in the Real Estate Sector - Current Scenario

Increasing Recognition and Implementation

The adoption of Alternative Dispute Resolution (ADR) in the real estate sector is steadily gaining traction as stakeholders recognize its benefits over traditional litigation. With the complexity and high stakes involved in real estate transactions, more developers, investors, and property owners are turning to ADR methods such as mediation and arbitration to resolve disputes. This trend is driven by the efficiency, cost-effectiveness, and confidentiality that ADR offers, which are highly valued in a sector where time and reputation are critical.

Institutional Support and Legal Frameworks

The support for ADR in real estate is also evident in the legal frameworks and institutions promoting its use. For instance, in India, the Real Estate (Regulation and Development) Act (RERA) encourages the use of ADR mechanisms for dispute resolution between homebuyers and developers.¹³ Many jurisdictions have established specialized real estate arbitration centres and mediation services to handle sector-specific disputes. These institutions often provide access to arbitrators and mediators with expertise in real estate law and practice, ensuring that decisions are informed and relevant. The existence of such dedicated ADR bodies helps streamline the resolution process and provides parties with confidence in the fairness and effectiveness of the outcomes.

¹² M.S. Unnati Khajanchi, How are Disputes in Real Estate Industry Resolved, iPleaders, <https://blog.iplayers.in/how-disputes-real-estate-industry-resolved/> (last visited Sept. 24, 2024).

¹³ Section 32(g) in Real Estate (Regulation and Development) Act, 2016

Challenges and Opportunities in Implementing ADR for Real Estate Conflicts

Alternative Dispute Resolution (ADR) mechanisms have gained significant attention as efficient means to resolve conflicts in various sectors, including real estate. ADR encompasses processes like mediation, arbitration, and conciliation, offering a less adversarial and more cost-effective resolution compared to traditional litigation. The real estate sector, characterized by complex transactions and frequent disputes, stands to benefit immensely from ADR. This article explores the challenges and opportunities in implementing ADR for real estate conflicts, shedding light on its potential to transform dispute resolution in the industry.

Challenges in Implementing ADR for Real Estate Conflicts

1. Legal and Regulatory Framework:

a. Inconsistent Enforcement of ADR Clauses in Real Estate Contracts

One of the primary legal challenges in the adoption of Alternative Dispute Resolution (ADR) for real estate disputes is the inconsistent enforcement of ADR clauses in real estate contracts. While many real estate agreements include clauses mandating arbitration or mediation before litigation, courts sometimes vary in their recognition and enforcement of these clauses. This inconsistency can arise from differences in judicial interpretation of the validity and scope of ADR clauses. For instance, some courts may strictly uphold these clauses, requiring parties to exhaust ADR mechanisms before approaching the judiciary, while others might bypass them if they deem the clauses to be unfair or improperly drafted. The MahaRERA has decided in the case of *Ganesh Lonkar v. D S Kulkarni Developers*¹⁴ that, despite the existence of an arbitration agreement between the parties, it has the authority to decide disputes that are covered by arbitration agreement. But in contrast to the Lonkar case, in *Ayyaz Khan and Saba Khan v. Era Realtors*¹⁵ case MahaRERA ruled that an arbitration clause in an agreement entered into before the enactment of the RERA Act would prevail. This decision marked a deviation from earlier interpretations, emphasizing the sanctity of pre-existing contracts and the parties' autonomy to choose arbitration.

The variability in enforcement is also influenced by the specific legal frameworks and judicial attitudes within different jurisdictions. In some regions, the judiciary might be more inclined to uphold ADR clauses to reduce the burden on

¹⁴ *Ganesh Lonkar v. D.S. Kulkarni Developers Ltd.*, Complaint No. CC050000000317, Final Order (MahaRERA Dec. 26, 2017).

¹⁵ *Ayyaz Khan and Saba Khan v. Era Realtors*, Complaint No: CC006000000194835, Order (MahaRERA Jan. 14, 2022).

courts, while in others, they might be sceptical of ADR's effectiveness or fairness, particularly if there are concerns about power imbalances between the parties. This inconsistency creates uncertainty for stakeholders, undermining the predictability and reliability of ADR as a dispute resolution mechanism in the real estate sector.

b. Conflicts between ADR mechanisms and Statutory Remedies under Laws like RERA

Another significant challenge is the potential conflict between ADR mechanisms and statutory remedies provided under laws such as the Real Estate (Regulation and Development) Act (RERA) in India. RERA establishes a regulatory framework aimed at protecting homebuyers and ensuring transparency in real estate transactions. It provides a specialized forum for resolving disputes between homebuyers and developers, which can sometimes conflict with pre-existing ADR agreements in real estate contracts.

For example, under RERA, homebuyers have the right to approach the Real Estate Regulatory Authority (RERA) for redressal of grievances, which may include issues related to delays, quality of construction, and other contractual breaches. However, if the contract also contains an arbitration clause, there may be confusion and legal contention over which forum has jurisdiction. In some cases, courts have upheld the primacy of statutory remedies under RERA, allowing parties to seek relief from the regulatory authority despite the presence of an arbitration agreement. This can lead to dual proceedings and increased legal costs, further complicating the dispute resolution process. In the case of *Anil Kumar Arya v. SVS Buildcon Private Limited*,¹⁶ the Madhya Pradesh Real Estate Regulatory Authority (MP RERA) determined that its jurisdiction remains intact despite the presence of an arbitration clause in the agreement. The MP RERA highlighted that the Real Estate (Regulation and Development) Act, 2016 (RERA) takes precedence over the Arbitration and Conciliation Act, 1996, based on the legal principle that a special law (RERA) overrides a general law (Arbitration Act), and that a later statute supersedes an earlier one. This ruling underscores the dominance of RERA in resolving real estate disputes, even when arbitration agreements are in place.

¹⁶ *Anil Kumar Arya v. SVS Buildcon Pvt. Ltd.*, Complaint No. M-BPL-17-0036, Interim Order (M.P. RERA Aug. 4, 2017).

2. Institutional and Operational Challenges in ADR for Real Estate Disputes

a. Lack of Awareness and Understanding of ADR among Stakeholders

One of the significant institutional challenges in the adoption of Alternative Dispute Resolution (ADR) in the real estate sector is the lack of awareness and understanding of ADR processes among stakeholders. Many developers, investors, real estate agents, and even legal professionals may not be fully informed about the benefits and procedures of ADR. This lack of knowledge can lead to hesitancy or resistance to incorporating ADR clauses in real estate contracts. Additionally, stakeholders may not be aware of how to effectively utilize ADR mechanisms when disputes arise, leading to underutilization or improper application of these methods.

b. Limited Availability of Qualified Arbitrators and Mediators Specializing in Real Estate

Another critical operational challenge is the limited availability of qualified arbitrators and mediators with specialized knowledge in real estate. Real estate disputes often involve complex technical, financial, and legal issues that require expertise beyond general ADR skills.¹⁷ Finding professionals who possess both ADR proficiency and in-depth understanding of real estate law, market practices, and industry standards can be difficult. This scarcity can result in suboptimal outcomes, as arbitrators or mediators without specific real estate expertise may not fully grasp the nuances of the disputes they are resolving.

c. Procedural Inefficiencies and Administrative Hurdles in ADR Processes

Procedural inefficiencies and administrative hurdles present significant operational challenges in the ADR process for real estate disputes. Despite the potential for quicker resolutions, ADR can sometimes be bogged down by bureaucratic delays, unclear procedures, and inadequate administrative support. These inefficiencies can frustrate parties seeking a swift resolution and can diminish the perceived advantages of ADR over traditional court proceedings. For instance, delays in appointing arbitrators, scheduling hearings, or issuing decisions can extend the timeline of dispute resolution, negating one of ADR's primary benefits.

Streamlining ADR procedures and improving administrative support is crucial to addressing these inefficiencies. ADR institutions should focus on developing clear, standardized protocols for case management, from the initiation of proceedings to the

¹⁷Real Estate Law Corp, how is the Mediator or Arbitrator Selected? <https://www.realestatelawcorp.com/how-is-the-mediator-or-arbitrator-selected/> (last visited Oct. 18, 2024)

final resolution. Leveraging technology, such as online dispute resolution platforms, can enhance efficiency by facilitating virtual hearings, document sharing, and communication between parties. Additionally, improving administrative infrastructure, including better training for ADR support staff and ensuring adequate resources, can help smooth the ADR process and make it more user-friendly and effective.

Addressing the institutional and operational challenges of ADR in the real estate sector requires concerted efforts to increase awareness and understanding, expand the pool of qualified ADR professionals with real estate expertise, and streamline procedures to reduce inefficiencies. By tackling these issues, the ADR process can become a more robust and reliable method for resolving real estate disputes, ultimately benefiting all stakeholders involved.

3. Cultural and Perceptual Challenges in ADR for Real Estate Disputes

a. Resistance to Change from Traditional Litigation to ADR

One of the foremost challenges in the adoption of Alternative Dispute Resolution (ADR) in real estate is the resistance to change from traditional litigation to ADR mechanisms.¹⁸ Many stakeholders in the real estate sector, including developers, investors, legal professionals, and even some consumers, have long relied on the court system to resolve disputes. This reliance is deeply ingrained due to the historical precedence and perceived legitimacy of judicial processes. Shifting to ADR requires changing long-standing habits and trust in an unfamiliar process, which can be met with scepticism and reluctance.

Overcoming this resistance necessitates comprehensive educational initiatives that highlight the tangible benefits of ADR, such as reduced costs, quicker resolutions, and the preservation of business relationships. Case studies and testimonials from successful ADR outcomes can also play a crucial role in demonstrating its effectiveness. Additionally, integrating ADR training into professional development programs for real estate and legal professionals can help normalize its use. Building a culture that views ADR as a complementary and viable alternative to litigation, rather than a secondary option, is essential for broader acceptance.

¹⁸ An Overview of Challenges in ADR Mechanism in India, <https://disputeresolution.medium.com/an-overview-of-challenges-in-adr-mechanism-in-india-e15168a3260b#:~:text=Costs%20and%20Accessibility%3A,parties%20to%20access%20these%20services> (last visited Oct. 7, 2024).

b. Perceived Lack of Authority and Finality in ADR Decisions Compared to Court Judgments

A significant perceptual challenge to ADR in real estate disputes is the perceived lack of authority and finality compared to court judgments. Traditional court judgments are often seen as more binding and enforceable due to the formal legal process and judicial power. In contrast, ADR outcomes, particularly mediation agreements, may be viewed as less conclusive and harder to enforce, leading parties to prefer litigation for a more definitive resolution. To address this, the legal framework supporting ADR decisions must be strengthened to ensure enforceability, with arbitration awards backed by law and mediation agreements streamlined for enforcement. Promoting the binding nature of arbitration awards and ensuring mediation agreements facilitate enforceability can boost confidence in ADR. Additionally, the credibility and professionalism of ADR practitioners are crucial; qualified and experienced arbitrators and mediators, supported by robust institutions and high standards, can legitimize ADR as a trusted method of dispute resolution.

4. Enforceability of ADR Outcomes:

The enforceability of ADR outcomes in real estate disputes faces several significant challenges, including the need for robust legal recognition and enforcement mechanisms for ADR agreements. While arbitration awards typically have a clear path for enforcement under laws such as the Arbitration and Conciliation Act, mediation agreements often lack a comparable framework, leading to potential non-compliance and renewed disputes.¹⁹ Inconsistent judicial attitudes and interpretations further complicate enforcement, as courts may be reluctant to uphold ADR outcomes due to concerns about fairness or procedural integrity. Procedural inefficiencies and administrative hurdles also pose obstacles, with cumbersome processes for converting ADR decisions into enforceable orders. Ensuring party compliance remains critical, particularly in high-stakes real estate disputes where financial interests are significant. To address these challenges, it is essential to strengthen legal infrastructures, harmonize judicial interpretations, streamline procedural requirements, and develop robust enforcement mechanisms. Creating awareness among stakeholders about the benefits of adhering to ADR decisions and

¹⁹Gurvinder Pal Singh Raina, *The Power of Arbitration in Navigating Real Estate Disputes*, *Construction Week Online*, <https://www.constructionweekonline.in/people/> (last visited Oct. 12, 2014).

fostering a culture of respect for ADR processes can significantly enhance the reliability and effectiveness of ADR in resolving real estate disputes.

5. Complexity of Real Estate Disputes:

The complexity of real estate disputes, arising from multifaceted transactions, technical and legal intricacies, and procedural challenges, presents significant hurdles for ADR mechanisms. Real estate transactions involve various stages—agreements, financing, construction, and final sale or leasing—each generating unique disputes like contractual breaches, payment defaults, and zoning issues. The involvement of numerous stakeholders further complicates matters. ADR processes, unlike traditional courts, often lack the comprehensive discovery and expert witness support required to handle these complexities. Therefore, ADR practitioners must possess specialized expertise in real estate law and technical fields. Additionally, procedural inefficiencies and administrative support gaps in ADR processes can lead to delays and increased costs. To address these challenges, ADR institutions should develop specialized panels, establish procedural guidelines, and adopt technology-driven solutions for efficient case management and streamlined dispute resolution.

Opportunities in Implementing ADR for Real Estate Conflicts

- **Policy and Legislative Reforms**

The implementation of ADR in real estate conflicts offers significant opportunities, especially through policy and legislative reforms. Strengthening ADR provisions within real estate laws can enhance the efficiency and effectiveness of resolving disputes outside of traditional court systems. For instance, incorporating clearer and more detailed ADR clauses in real estate contracts, along with mandatory ADR processes for certain types of disputes can streamline conflict resolution and reduce the burden on judicial systems. Laws like RERA (Real Estate Regulation and Development Act) can be amended or supplemented to formalize the use of ADR, making it an integral part of dispute resolution in the real estate sector.

Government initiatives play a crucial role in promoting ADR by raising awareness and providing training programs for stakeholders. These initiatives can target real estate developers, investors, legal professionals, and consumers to ensure that all parties are familiar with ADR options, their benefits, and how to effectively use them. Training programs can focus on building the capacity of arbitrators and mediators with expertise in real estate law and practices, ensuring a high standard of

professional service. Additionally, the government can create public awareness campaigns to demystify ADR processes and increase trust in their outcomes.

By supporting these legislative reforms and promoting educational initiatives, the government can foster an environment where ADR becomes a mainstream method for resolving real estate disputes. This would not only reduce the caseload on courts but also create a more efficient, transparent, and cost-effective approach to handling real estate conflicts, benefiting all stakeholders involved.

- **Technological Advancements**

Technological advancements present significant opportunities in implementing ADR for real estate conflicts, particularly through the use of online dispute resolution (ODR) platforms and the integration of artificial intelligence (AI) and data analytics.²⁰ ODR platforms enhance accessibility by enabling parties to engage in dispute resolution remotely, reducing geographical and logistical barriers. These platforms allow for more efficient case management, quicker resolution times, and the convenience of conducting hearings, exchanging documents, and finalizing agreements online. As a result, ODR can make ADR more accessible to a wider range of stakeholders, from individuals to large real estate corporations, while also lowering the costs typically associated with in-person proceedings.

In addition, AI and data analytics can further streamline ADR processes by automating routine tasks such as document review, contract analysis, and scheduling. AI-powered tools can assist in identifying patterns in past disputes, suggesting potential solutions based on previous cases, and even predicting the likely outcome of a dispute based on historical data. This can help ADR practitioners make more informed decisions and offer better, data-driven recommendations to parties. Moreover, AI can improve the quality of decision-making in ADR by assisting arbitrators and mediators in understanding complex real estate issues, such as property valuation or regulatory compliance.²¹

- **Best Practices and Innovations**

Implementing ADR for real estate conflicts presents several opportunities for innovation and improvement through the establishment of specialized ADR centres, the creation of industry guidelines, and the encouragement of collaborative

²⁰ Unnaty & Aaryushi Goyal, The Evolution and Effectiveness of Online Dispute Resolution (ODR) Platforms: A Comprehensive Analysis of ADR in the Digital Age, *Indian Journal of Integrated Research in Law*, Vol. III, Issue V, (ISSN: 2583-0538).

²¹ Ibid

approaches. One of the most promising opportunities is the development of specialized ADR centres focused on real estate disputes. These centres can bring together arbitrators, mediators, and legal experts who are specifically trained in real estate law, property rights, construction issues, and zoning regulations. By concentrating expertise in one place, these centres can handle complex real estate conflicts more effectively and efficiently, ensuring that decisions are well-informed and tailored to the unique needs of the sector.

In addition, creating industry-specific guidelines and standards for ADR implementation can further enhance the effectiveness of dispute resolution. These guidelines can provide a clear framework for conducting ADR processes in real estate disputes, including best practices for managing multi-party negotiations, addressing technical issues, and ensuring enforceability of outcomes.²² Such standards can help streamline ADR procedures, reduce confusion, and increase stakeholder confidence in the process. They can also ensure consistency in how disputes are handled, promoting fairness and transparency across the industry.

Finally, encouraging collaborative approaches and multi-party negotiations in complex real estate projects can lead to more holistic and sustainable solutions. In large-scale development projects, multiple stakeholders—developers, investors, contractors, local authorities, and community groups—are often involved. ADR mechanisms, particularly mediation and facilitated negotiation, can help all parties come together to find mutually beneficial solutions, rather than pursuing adversarial litigation. This collaborative approach not only fosters better relationships among stakeholders but also leads to faster and more cost-effective resolutions, reducing the potential for long-lasting disputes. By adopting these best practices and innovations, the real estate industry can enhance the effectiveness of ADR, making it a more attractive option for resolving conflicts in the sector.

Proposals for legislative amendments and institutional support - ADR for real estate disputes

To enhance the implementation and effectiveness of Alternative Dispute Resolution (ADR) for real estate disputes, several legislative amendments and institutional support measures can be proposed. These reforms would address existing challenges and create a more robust framework for ADR within the real estate sector.

²² M.S. Unnati Khajanchi, How Are Disputes in the Real Estate Industry Resolved, iPleaders, <https://blog.iplayers.in/how-disputes-real-estate-industry-resolved/> (last visited Oct. 14, 2024).

Legislative Amendments for Strengthening ADR in Real Estate Disputes:

- **Incorporating Mandatory ADR Clauses:** Amendments to real estate laws such as the Real Estate (Regulation and Development) Act (RERA) could require mandatory inclusion of ADR clauses in real estate contracts. This would ensure that parties engage in ADR before seeking judicial intervention, particularly for disputes related to delays, construction defects, and non-compliance with contractual terms.
- **Recognition of Mediation and Conciliation:** Amendments could expand the scope of legally binding mediation and conciliation outcomes, establishing a clearer process for enforcement. This would enhance confidence in ADR as a final, enforceable mechanism for dispute resolution.
- **Clarification of ADR Processes in Property Laws:** The legal framework surrounding land disputes, property titles, and ownership conflicts could be updated to include specific provisions for ADR processes, including the appointment of subject matter experts in property law and construction to arbitrate or mediate complex cases.
- **Expedited ADR for Real Estate Cases:** Legislative changes could introduce timelines for ADR procedures in real estate disputes, ensuring quicker resolutions. Fast-track mechanisms for issues such as title disputes or delayed project completions would further reduce the burden on courts and provide timely justice.

Institutional Support for ADR in Real Estate:

- **Establishing Specialized ADR Centres:** Government or industry bodies could set up dedicated ADR centres focused solely on real estate disputes. These centres would provide expert arbitration and mediation services tailored to the nuances of property law, construction practices, zoning, and land-use regulations.
- **Certification and Training of ADR Professionals:** Establishing programs for the certification of ADR professionals, particularly in the real estate sector, would ensure that mediators and arbitrators are highly skilled in real estate law and practice. These programs could be coordinated by national or regional bar associations, industry groups, or ADR organizations.
- **Creating Public Awareness Campaigns:** Governments and professional bodies can launch campaigns to educate real estate developers, investors, and consumers about the benefits of ADR. Training programs and workshops on how to use ADR effectively would empower stakeholders to embrace it as an alternative to litigation.

- Providing Financial and Logistical Support: To reduce the financial barriers to ADR, particularly for small property developers and homeowners, governments could consider subsidizing ADR fees or offering financial assistance. Additionally, technological innovations such as online platforms for virtual ADR hearings could be encouraged, making the process more accessible and affordable for all parties involved.

By implementing these legislative amendments and institutional support measures, ADR can become a more integral and effective tool for resolving real estate disputes. These changes would not only streamline dispute resolution but also reduce court congestion, lower the costs associated with lengthy legal battles, and ensure fairer, quicker resolutions for all stakeholders in the real estate sector.

PRESS COUNCIL OF INDIA – A TOOTHLESS TIGER

Dr. Ashwini P.¹

Abstract

This article describes about the global necessity for the systems regulating media in India. It declares the need for free press systems for the survival of democratic institutions and claims that society has an obligation to monitor media systems so they remain free. The alternative will be government regulation, which will suspend the vital characteristics of a free press. A press council, on the other hand, can work more cooperatively with the press to assure responsibility. National forces make it important for the mass media to explore the virtues inherent in media accountability systems, such as press councils. This article suggests why those systems are increasingly important, proposes structures and functions for such councils, and uses the Press Council of India as an example of a working organization².

Keywords: *Press, Media, Regulation, Press Council, Accountability*

Introduction

Communication is a fundamental human requirement and is the underpinning of all human dealings since it is the mode through which humans exchange information³. The free exchange of ideas and knowledge take place when there is unrestricted full-fledged communication. It is guaranteed through the “freedom of speech and expression”, the most cherished fundamental right, as envisaged under various international covenants and most of the constitutions including the Indian Constitution. The right to freedom of expression has a wide ambit which includes the freedom to hold opinions, freedom to impart information, the freedom to receive information and even the freedom to dissent against the democratically elected governments of the day. It is also related to free thinking, imagination and deliberation which are prerequisites for a human being’s self-realisation. Moreover, it is a vital right to form a good democratic government where citizens are well informed about political happenings.

This liberty of communication and expression though guaranteed to the public, citizens in particular, it is through press and media that the information is disseminated in the form of news. Hence, it is universally accepted that media is the

¹ Assistant Professor. SDM Law College, Mangalore.

² P. B. Sawant, “*Accountability in Journalism*”, Journal of Mass Media Ethics, Published online: 17 Nov 2009
Pages 16

³ G. Adams, John Foster et.al., “*Policymaking, Communication, and Social Learning*”: Essays of Sir Geoffrey Vicker 56 (New Brunswick Publishing, New Jersey, 1987)

tool through which the freedom of speech and expression is attained. Though press and media are used interchangeably, the basic difference is that one is in print form and the other is in electronic form. Both serve the same purpose of gathering, processing and disseminating information to be provided to the public. For this reason, media is definitely the fourth estate functioning in the domain between the state and the citizens and thus acting as a channel of information which makes people sufficiently informed. From a democratic society's point of view, the media plays a pertinent role by providing information which is indispensable for two reasons. Primarily, it ensures that citizens formulate proper and updated views by analysing the authentic and genuine facts as provided by media. Secondly, it provides information as a "checking function"⁴ by guaranteeing that the chosen government and its representatives act upon electoral promises and achieve the desires of those who chose them. Media thus plays a central role since it is the single means through which public opinion is engendered⁵. The stability of a country is assessed by the way the media report the news of that country. Thus, it becomes the obligation of the media to circulate only applicable and valid facts locally and globally. In some societies, there exists an antagonistic relationship⁶ between press and administration that might persuade media to spread negative influences in the society⁷. Often it happens that media reports give rise to revolutions, rebellions and violence, for example, the problems of the uprising in Libya leading to Civil War in 2011. Many jurists severely condemned this as negative media reporting⁸. Hence, media activities are to be observed meticulously so that the information circulated would not give any negative effect. However, the fact is that, to monitor and watch the watchdog, there is no proper authority.

The role of media has been changing from what it was perceived⁹. The neutrality of news in reporting is missing in the mainstream media today because of the hidden agendas that many press and media outlets hold. Taking an illustration of India, reading or watching news is an ingredient of people's daily routine. As the rate

⁴ Vishwanath Iyer, *The Indian press* 45 (Padma Publications, Bombay, 1945)

⁵ Shefali Bedi, "Responsibility of media in a democracy", 7 *International Research Journal* 235 (2009)

⁶ Shafqat Munir, "Features of Print and Electronic Media" *Law Resource of India*, Dec, 17, 2010

⁷ A Fog, "The supposed and the real role of mass media in modern democracy", 35 *Duke Law Journal* 63 (2004)

⁸ Herman Wasserman, "Tabloid Journalism in South Africa: True Story!", (Indian University Press, Bloomington, 2013)

⁹ M. Ethan Katsh, "The Electronic Media and the Transformation of Law", (Oxford University Press, New York, 1991)

of literacy is rising, the press is attaining a robust foothold in the country even in the rural regions. There is extensive coverage of local, national and regional news which transmits the reports from nook and corner of the country on a daily basis. They also print in the form of periodicals or weeklies which proffer news in affordable price¹⁰. Though today there is a paradigm shift¹¹ from traditional media to digital media, the web media is popular among the new generation educated group although the belief is that print media is the more trustworthy source since the professional journalists write the reports that are fact-checked by assigned editors. Every profession functions by certain standards and a set of standards applicable to media should also be developed. Media is a universally recognised pillar of democracy that is considered to act itself in maintaining certain practice of professionalism¹². It is also labelled as watchdog since it checks and balances the power of the other three branches of government i.e., the executive, the legislature and the judiciary¹³. The free press facilitates the individuals to partake in all pertinent matters affecting them. It has been universally accepted that only an autonomous press or media can endow citizens with a diversity of information and views on matters of public significance. The liberty to impart information is vested with media¹⁴. Freedom of expression and communication through mediums including a variety of electronic media or published materials is an application of the individual human rights principle on freedom of expression. Therefore, the freedom of the press or media is very essential since this enables the public to know the performance of the government, the state, financial system, social systems and other matters of public concern.

Significance of Press Council as a Regulatory Body

In India, the institution of Press Council started functioning from the 6th November 1966 following the enactment of the Indian Press Council Act, 1965. This

¹⁰ S SivaKumar, "Fourth Estate: A Shield or Sword of Human Rights?" 1 Lanka Vigil 34 (2005)

¹¹ See Maitrayee Chaudhuri, "Feminism in Print Media" 7 Indian Journal of Gender Studies 264 (2002). See, "The digital media underwent dramatic transformations with the onset of liberalisation. The term 'liberalisation' refers to the opening up of the Indian market by the Indian state to enable it to be more integrated into the global economy. As commercial imperatives of the media intensified in an unprecedented manner, at the beginning of the new millennium we are in a better position to judge the impact of these changes in the Indian media. The central debate within the media world today is about the impact of liberalisation"

¹² R. D Wimmer, J. R Dominick, et.al., Mass Media Research: An introduction 23(Wadsworth Publishing Company, California, 2003)

¹³ Shirley Biagi, "Media/Impact: An Introduction To Mass Media", 35(Wadsworth Publishing Company, Belmont, 2006)

¹⁴ E. Siapera (eds.) , "Radical Democracy and the Internet: Interrogating Theory and Practice" (Palgrave Macmillan publisher, London, 2010)

was later amended on the 31st March 1970. The press council's term, which expired in December 1975, was not extended during the Emergency. The Press Council was dismantled on 1st January 1976. When the Janata Party came to power, it reconstituted the Press Council of India in April 1979. This reconstitution followed the enactment of a new Press Council Act in 1978. Justice A.N. Grover, a former judge of the Supreme Court was appointed its chairman. The objectives of the revived press council of India were to assure more freedom of the press and better journalistic standards. This second council was more or less on the same lines as the first press council of India. The Press Council of India is empowered to hold enquiries on complaints, made to it or otherwise against, made to it or otherwise against offending newspaper and news agencies. For the purpose of performing its functions or holding any enquiry, the council has ample power throughout India, as are vested in a civil court, while trying a suit under the code of civil procedure in certain respects. These powers include summoning and enforcing the attendance of persons and examining them on Oath, requiring discovery and inspection of the documents, receiving evidence on affidavits, requisitioning any public record and issuing commissions for the examination of witness or documents.

Press Council is a mechanism for the Press to regulate itself. The *raison d'être* of this unique institution is rooted in the concept that in a democratic society the press needs at once to be free and responsible. If the Press is to function effectively as the watchdog of public interest, it must have a secure freedom of expression, unfettered and unhindered by any authority, organised bodies or individuals. But, this claim to press freedom has legitimacy only if it is exercised with a due sense of responsibility. The Press must, therefore, scrupulously adhere to accepted norms of journalistic ethics and maintain high standards of professional conduct.

Where the norms are breached and the freedom is defiled by unprofessional conduct, a way must exist to check and control it. But, control by Government or official authorities may prove destructive of this freedom. Therefore, the best way is to let the peers of the profession, assisted by a few discerning laymen to regulate it through a properly structured representative impartial machinery. Hence, the Press Council.

A need for such a mechanism has been felt for a long time both by the authorities as well as the Press itself all over the world, and a search for it resulted in the setting up of the first Press Council known as the Court of Honour for the Press in Sweden in 1916. The idea gained quick acceptance in other Scandinavian countries,

and later in other parts of Europe, Canada, Asia, Australia and New Zealand. Today, the Press Councils or similar other media bodies are in place in more than four dozen nations.

The basic concept of self-regulation in which the Press Councils and similar media bodies world over are founded, was articulated by Mahatma Gandhi, who was an eminent journalist in his own right, thus: “The sole aim of journalist should be service. The newspaper press is a great power, but just as unchained torrent of water submerges the whole country side and devastates crops, even so an uncontrolled pen serves but to destroy. If the control is from without, it proves more poisonous than want of control. It can be profitable only when exercised from within¹⁵ .

Press Council of 1979 and Composition of Press Council of India

A fresh legislation providing for the establishment of the Council was enacted in 1978 and the institution came to be reviewed in the year 1979 with the very same object of preserving the freedom of the press and of maintaining and improving the standards of Press in India. The present Council is a body corporate having perpetual succession. It consists of a Chairman and 28 other members. Of the 28 members, 13 represent the working journalists of whom 6 are to be editors of newspapers and remaining 7 are to be working journalists other than editors. 6 are to be from among persons who own or carry on the business of management of newspapers. One is to be from among the persons who manage news agencies. Three are to be persons having special knowledge or practical experience in respect of education and science, law and literature and culture. The remaining five are to Members of Parliament: three from Lok Sabha and two from Rajya Sabha.

The new Act provides for selection of the Chairman by a Committee consisting of the Chairman of the Rajya Sabha, the Speaker of Lok Sabha and a person elected by the members of the Council from among themselves. The twenty representatives of the Press are nominated by the associations of aforesaid categories of the newspapers and news agencies notified for the purpose by the Council in the each category. One member each is nominated by the University Grants Commission, the Bar Council of India and the Sahitya Academy. Of the five Members of Parliament, three are nominated by the Speaker of the Lok Sabha and two by the

¹⁵ Available at <http://presscouncil.nic.in/> (last visited on Feb 25, 2017).

Chairman of the Rajya Sabha. The term of the Chairman and the members of the Council are three years. A retiring member is eligible for re-nomination for not more than one term.

An extremely healthy feature of the Indian Press Council is the scheme and procedure of the nomination of its Chairman and other members, following a long search based on the experience of several years of functioning of the Council. Despite being a statutory body, the Government and its authorities have been completely kept out of the nomination process except for publishing the notification in the official gazette of the names of the members nominated. Nor has it been left to any individual to decide, however eminent or highly placed he may be. A totally non-subjective procedure which leaves no scope for the interference or influence by Government or any other agency was evolved with remarkable ingenuity. The scheme is in force since the enactment of the Press Council Act of 1978 under which the revived Press Council was set up in 1979¹⁶.

Objects and Functions of the Council

The objects of present Press Council are substantially the same as were laid down under the Act of 1965 and it is not necessary to repeat them here. But the functions have undergone some change in that the three of the functions listed in the earlier Act were not included in the 1978 Act as they were considered to be burdensome for the Council to perform. These related to:

- (a) promoting the establishment of such common services for the supply and dissemination of news to newspapers as may, from time to time, appear to it to be desirable;
- (b) Providing facilities for proper education and training of persons in the profession of journalism; and
- (c) Promoting technical or other research.

In addition, the Act of 1978 lists two new functions of the Council: (i) to undertake studies of foreign newspapers, including those brought out by any embassy or any other representative in India of a foreign State, their circulation and impact; and, (ii) to undertake such studies as may be entrusted to the Council and to express its opinion in regard to any matter referred to it by the Central Government¹⁷.

¹⁶ Available at <http://www.prsindia.org/theprsblog/?tag=press-council-of-india>. (last visited on March 3, 2017)

¹⁷ Ibid

Powers of Press Council of India

The PCI¹⁸ has the power to receive complaints of violation of the journalistic ethics, or professional misconduct by an editor or journalist. The PCI is responsible for enquiring in to complaints received. It may summon witnesses and take evidence under oath, demand copies of public records to be submitted, even issue warnings and admonish the newspaper, news agency, editor or journalist. It can even require any newspaper to publish details of the inquiry. Decisions of the PCI are final and cannot be appealed before a court of law¹⁹.

Limitations on powers of Press Council of India

The powers of the PCI are restricted in two ways. (1) The PCI has limited powers of enforcing the guidelines issued. It cannot penalize newspapers, news agencies, editors and journalists for violation of the guidelines. (2) The PCI only overviews the functioning of press media. That is, it can enforce standards upon newspapers, journals, magazines and other forms of print media. It does not have the power to review the functioning of the electronic media like radio, television and internet media²⁰.

Functioning of the Council

The Council discharges its functions primarily through the medium of its Inquiry Committees, adjudicating on complaint cases received by it against the Press for violation of the norms of journalism or by the Press for interference with its freedom by the authorities. There is a set of procedure for lodging complaint with the Council.

A complainant is required essentially to write to the editor of the respondent newspaper, drawing his attention to what the complainant considers to be in breach of journalistic ethics or an offence against public taste. Apart from furnishing to the Council a cutting of the matter complained against, it is incumbent on the complainant to make and subscribe to a declaration that to the best of his knowledge and belief he has placed all the relevant facts before the Council and that no proceedings are pending in any court of law in respect of any matter alleged in the complaint; and that he shall inform the Council forthwith if during the pendency of the inquiry before the

¹⁸ Press Council of India

¹⁹ Available at <http://www.prsindia.org/theprsblog/?tag=press-council-of-india>.(last visited on March 3, 2017)

²⁰ Supra Note 4

Council any matter alleged in the complaint becomes the subject matter of any proceedings in a court of law. The reason for this declaration is that in view of Section 14(3) of the Act²¹, the Council cannot deal with any matter which is the sub judice.

If the Chairman finds that there are no sufficient grounds for inquiry, he may dismiss the complaint and report it to the Council; otherwise, the Editor of the newspaper or the journalist concerned is asked to show because why action should not be taken against him. On receipt of the written statement and other relevant material from the editor or the journalist, the Secretariat of the Council places the matter before the Inquiry Committee. The Inquiry Committee screens and examines the complaint in necessary details. If necessary, it also calls for further particulars or documents from the parties. The parties are given opportunity to adduce evidence before the Inquiry Committee by appearing personally or through their authorized representative including legal practitioners. On the basis of the facts on record and affidavits or the oral evidence adduced before it, the Committee formulates its findings and recommendations and forwards them to the Council, which may or may not accept them. Where the Council is satisfied that a newspaper or news agency has offended against the standards of journalistic ethics or public taste or that an editor or working journalist has committed professional misconduct, the Council may warn, admonish or censure the newspaper, the news agency, the editor or journalist, or disapprove the conduct thereof, as the case may be. In the complaints lodged by the Press against the authorities, the Council is empowered to make such observations as it may think fit in respect of the conduct of any authority including government. The decisions of the Council are final and cannot be questioned in any court of law. It will thus be seen that the Council wields a lot of moral authority although it has no legally enforceable punitive powers²².

The Inquiry Regulations framed by the Council empower the Chairman to take *suo motu* action and issue notices to any party in respect of any matter falling within the scope of Press Council Act. The procedure for holding a *suo motu* inquiry is substantially the same as in the case of a normal inquiry except that for any normal inquiry a complaint is required to be lodged with the Council by a complainant. For

²¹ Press Council Act, 1978.

²² Supra Note 18

the purpose of performing its functions or holding an inquiry under the Act the Council exercises some of the powers vested in a Civil Court trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters namely:

- i. Summoning and enforcing the attendance of persons and examining them on oath.
- ii. Requiring the discovery and inspection of documents.
- iii. Receiving evidence on affidavits.
- iv. Requisitioning any public record or copies thereof from any court or office.
- v. Issuing commissions for the examination of witnesses or documents; and.
- vi. Any other matter which may be prescribed.

The Council expects the parties to cooperate with it in the conduct of its business. At least in two cases where the Council noticed that the parties were literally uncooperative or adamant, it exercised, its authority under Section 15 of the Act²³ to compel them to appear before it and/or to furnish record etc. In the complaint of some Chandigarh journalists against the Chief Minister and the Government of Haryana, the erstwhile Council had to warn the authorities about the use of Council's coercive powers if they failed to respond to the notices sent by the Council. Similarly, in the famous case of B G Verghese against The Hindustan Times, the Birlas were directed to provide complete correspondence exchanged between Shri Vergese and Shri K K Birla.

The Council, in 1980 had proposed amendment of the Act, for empowering the Council to recommend to the authorities concerned, denial of certain facilities and concessions in the form of accreditation, advertisements, allocation of newsprint or concessional rates of postage for a certain period in the case of a newspaper which was censured thrice by the Council. Acceptance of the Council recommendations on the part of the authorities was sought to be made obligatory. The Council was further of the view that, as in the case of newspapers, the power vested in it under Section 15(4) of the Press Council Act, 1978, to make such observations as it may think fit, in any of its decisions or reports, respecting the conduct of any authority including government, should expressly include the power to warn, admonish or censure such authorities and that the observations of the Council in this behalf should be placed on

²³ Press Council Act, 1978

the Table of both the Houses of Parliament and/or of the Legislature of the State concerned. In the year 1987, the Council reconsidered the matter and after detailed deliberations, decided to withdraw its proposal for penal powers because it was of the reconsidered opinion that in the prevalent conditions these powers could tend to be misused by the authorities to curb the freedom of Press.

Since then, time and again, suggestions/references have been made to the Council that it should have penal powers to punish the delinquent newspapers/journalists. In response, the Council has consistently taken the view that the moral sanctions provided to it under the existing scheme of the Act are adequate. The suggestion was repeated by the Union Minister for Information and Broadcasting in his inaugural address to the International Conference of Press Councils held in New Delhi in October, 1992, but the Council unanimously rejected it with the following reasoning:

Were the Council to be endowed with the power to impose sanctions/penalties, it would be equitable that the power to impose sanctions applies also when complaints are made by the Press against the Government and its authorities. A power to impose meaningful sanctions raises a number of issues, including, (a) the onus of proof; (b) the standard of proof; (c) the right to and cost of legal representation; and (d) whether review and/or appeal would be available. The effect of any or all of these issues may militate against the basic premise, that the Press Councils provide a democratic and efficient and inexpensive facility for hearing of the complaints, and that the consequent inevitability would, in effect, become courts, exercising judicial power and well known problems of access, cost, formality and delay would equally apply, thus defeating the basic purpose of the Press Council."

In December 1992 the Council received a reference from the Central Government soliciting its views on "whether a procedure can be laid down to ensure that newspapers/magazines censured by the Press Council for breach of guidelines in connection with communal writings, can be deprived of incentives from government, such as advertisements etcetera, and whether the Press Council would be in a position to suggest what action should be taken when it holds a newspaper/magazine guilty of breach of guidelines." The Council considered the matter in the meeting held in June 1993 in the light of the stand adopted by it in the past against arming the Council

with punitive powers. Having considered the matter in depth, the Council felt that the moral authority presently exercised by the Council is quite effective and the Council does not need any punitive powers in showing the Press the path of self-regulation. The Council, however, decided that if the newspaper is censured twice for any type of unethical writings within a period of three years, copies of such decisions should be forwarded to the Cabinet Secretary to the Government of India and to the Chief Secretary of the concerned State Government for information and such action, as may, in exercise of their discretion, be deemed to be appropriate in the circumstances of the case. The Council decided that that the period of three years will be taken as preceding three years counted backwards from the date of the second censure.

Press Council of India: A Toothless Tiger

The Press Council of India, a statutory body under which entire print media industry comes. The whole print media of India comes inside the purview of the Press Council. The Council is entrusted with the mission of acting as a supervisory body over print media and maintaining the highest possible levels of journalistic veracity and conduct. The Council is headed by the Chairman, Retired Judge of the apex court, i.e. Supreme Court. Twenty members are nominated by the Recognized press agencies and organizations from the media as members to the PCI. Eight other members are nominated to the PCI by the Sahitya Akademi Union Parliament, University Grants Commission and Bar Council of India. One would make up that a council entrusted with the absolute authority of regulating the media would enjoy enormous powers. But regrettably, PCI has no powers to its credit except that of censuring and scolding which is plagued with imprecision, sensationalism and corruption²⁴. PCI's ability to take action against an erring newspaper or reporter concerned is limited and only extends up to warning, admonish and censuring. PCI more or less plays an advisory role. It is for the parties to adhere to it. But unfortunately, many newspapers including the biggest one have ignored the PCI directives. Things won't get any better until and unless PCI is entrusted with the power to levy fines. Mere censuring is too abject and hopeless. There have been talks to commence the process of licensing journalists. Just like Medical and Bar council of India giving licenses to doctors and lawyers, PCI should be approved to deal freely

²⁴ Available at <http://www.legallyindia.com/Blogs/transforming-the-toothless-tiger-empowering-the-pci>, (last visited at 10:00 am on 25. 02.2017).

with the journalists. Wronged journalists would have their licenses confiscated and consequently, proper journalistic code of conduct would be maintained²⁵.

Factors require for corrective mechanism

Media ethics is a topic of grave apprehension in general. There has to be an unequivocal thought process on what issues are to be dealt with in the legislation of the Press Council of India²⁶ since not all areas of journalistic rights are a theme of legislation. Further, equilibrium is to be maintained as to editorial liberty and the liberty of journalists so as to adopt editorial decisions. Management and the officials need to assure freedom to reporters and journalists so that they can also report the news as it is with no persuasion from political or governmental departments. The Press Council should come up with course formats in cooperation with notable journalism training establishments and associations that make issues of ethics prominent topics to be solved. The need of the time is to draft a common code of conduct for journalists - reporters and editors - separately taking ideas from working journalists across print, TV and web, retired veteran journalists, and those affiliated with media. It can be concluded that if the government really believes in self-regulation, it should have taken efforts to mandate or facilitate the coming together of the broadcasting fraternity under one umbrella. It should have formalised the self-regulatory code and penalties by consensus and by giving some sort of legal recognition for the decisions of self-regulatory bodies and thereby limiting the applicability of extant laws and by prescribing some minimum standards to be followed by them in the interests of viewers²⁷.

Competition has led the media to turn out to be increasingly working solely for public attention and rating points. Self-regulation would be workable only if due acceptance is given to it by the press and it should remain committed to it. Only such commitment and acceptance will give the Press Council some teeth. Press councils and such regulatory bodies across the world have played a more proactive role in setting industry standards, undertaking regular studies, organising regular public consultations and also empowering readers. The existing model of PCI is, therefore, an ineffective comparison or benchmark for on-going discourse on regulating

²⁵ Ibid

²⁶ (PCI Act)

²⁷ Tilak Jha “*Critique on Press Council of India*”, 92 Bar Council of India Review 38 (2012)

broadcast content. Any self-regulatory system needs to be prompt, proactive, participatory and, above all, one to which the newspaper and magazine publishing sector is committed and accountable. There is a clear need to re-look at accountability systems across media, including print. It is a shocking revelation that from 2003 to 2016 PCI received more than 7000 complaints while from 1990-2000 it received more than 9000 complaints. Of the complaints received most (average 70%) complaints are against the press. Roughly 25% are adjudicated upon, and around 60-70% are dismissed. While many cases keep awaiting their chance as the council takes inordinate amount of time over its interventions. This also happens because the council is largely Delhi-based. These are some of the factors that may account for these successes and failures²⁸. The Indian media in the last seventy years has transformed rigorously. The transformation can narrowly be classified into two categories- the positive accomplishments of the media and negative impact the media had created. Our system should also follow the policies of German Press Council. There, nearly half of all issues were dealt with at an early stage through conciliations devoid of any formal decision by the complaints commission. Only in the next stage, the Press Council of Germany intervenes between the parties concerned. The German Press Council has its own complaints commission that looks into the issues related to editorial pages of newspapers to see if it infringes any norms, if so, they take *suo moto* actions. The unique quality about the commission in Germany is that they have another branch evaluating the public's complaints even if it is anonymous. This procedure compelled most media establishments in Germany to voluntarily accept the press code as the ethical guideline which eventually compelled them to publish the reprimands from readers. The data protection is the other area that the German Press Council had involved in. It facilitates a reader to make a complaint to the Press Council if he or she believes that data pertaining to them have not been handled correctly. The expanded Press Code will automatically apply then and complaints regarding the contravention of individuals' rights are then dealt with accordingly. Additionally, an index with safety measures for data protection has to be published in

²⁸ Available at : http://presscouncil.nic.in/Content/WhatNew/7_WhatNew.aspx (Last Visited on Sep. 5, 2016)

editorial offices mandatorily²⁹. Apart from this, some recommendations that can be adopted are:-

- i. There is a need for having the contracts made and drafted among media and journalists or guest contributors that lay prominence on clear requirement to follow the Code of Practice. Each media establishment should have concerned branch to see if it is followed strictly.
- ii. Sufficient amendments are to be incorporated and that are to be put up under the Data Protection³⁰ which must be an indispensable part of contracts of employment service for journalists, editors, freelancers who write as guest columnists;
- iii. There should be a universal code of ethics made and those should be distributed to staff journalists without impediment; assets and income or earnings of the newspaper company, the editors, journalists are to be made public. There should be meticulous appraisal controls for cash payments.
- iv. There should be an independent ombudsman appointed to solve any issues pertaining to newspapers and channels. This can be done assessing the circulation or viewership and further on the basis of revenue threshold. The ombudsman should act as a support system for reporters who are asked to refrain from covering any matters, and additionally for readers to lodge complaints³¹.
- v. There is a necessity for media training that can be commenced by media establishments as part of journalism courses. New approaches need to be developed where students will be well informed about the current affairs, the working of press, media and that inculcates interests in them³².

²⁹ Jenifer Whitten-Wooding, *“Watchdog or Lapdog? Media Freedom, Regime Type, and Government Respect for Human Rights”*, 53 *International Studies Quarterly* 595–625 (2009)

³⁰ Information Technology Act, 2000, s. 43A of provides for the protection of sensitive personal data or information (‘SPDI’). Also, s. 72A protects personal information from unlawful disclosure in breach of contract. The author feels that these sections need to be interpreted widely

³¹ Keval J Kumar, *“Media Education, Communications and Public Policy: An Indian Perspective”*, (Himalaya Publishing House, Bombay, 1995). Available at : <http://www.diplomatie.gouv.fr/pdf> (last visited on Aug. 25, 2016)

³² Here, the author means training and not marketing by media. There was an allegation that some newspaper publishers, under the pretext of doing ‘media education’ have entered schools to market their products. Such is the attempt of The Times of India, one of the foremost national dailies, (with a circulation of over a million copies every day), to market the paper in the schools of New Delhi, Bombay, Pune and Bangalore. The experiment is termed ‘Newspapers in Education’ (NIE), and is taught during regular school hours, not by school teachers but by young men and women carefully recruited by the response department

Conclusion

Press Council of India was brought in the picture with acute good will few decades back. It's better to have irresponsible media than controlled media. The Council shall make all out efforts to safeguard the freedom and independence of the press. While doing so the Council shall be guided by the Constitutional principles.

Take any newspaper, it would be full of advertisement and page 3 news. The capacity of content in the newspaper has gone down incredibly. PCI owns a duty towards this downfall. Obviously, there is no denial that PCI is more teeth and less byte. The time is ripe to entrust it with wider powers. While, the fact remains that PCI hardly disposes of case on time, which has led to tremendous backlog. In the case of *Ajay Goswami v. Union of India*³³, the press council had themselves accepted that their hands are tied as it has no punitive power to ensure that its directions are complied with.

³³ (2007) 1 SCC 143



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