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Conference Proceeding of the International Gender Justice Foundation and Prospects and Challenges in Enforcing Gender Justice in the Contemporary New World Order: A Multidisciplinary Approach



Edited by
Dr. Rangaswamy D.
Mr. Mayilswamy K. | Mr. Sarthak Aryan



CONFERENCE PROCEEDING

of
THE INTERNATIONAL GENDER JUSTICE
CONFERENCE ON PROSPECTS AND
CHALLENGES IN ENFORCING GENDER
JUSTICE IN THE CONTEMPORARY NEW
WORLD ORDER.
A MULTIDISCIPLINARY APPROACH

FIRST EDITION





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This is to certify that Dr./Mr./Ms.

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Mr. R Sampath Kumar
Chairman

Prof. K. Mayilsamy
Principal



**Conference Proceeding of the
International Gender Justice
Conference on Prospects and Challenges
in Enforcing Gender Justice in the
Contemporary New World Order: A
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Editors:

Dr. Rangaswamy D.,

Mr. Mayilsamy K.,

Mr. Sarthak Aryan

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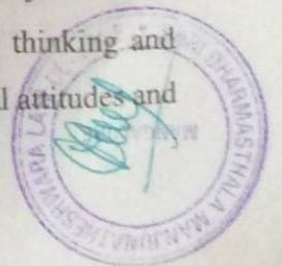
Editorial

In today's rapidly evolving global landscape, the pursuit of gender justice stands as a critical imperative. The release of this book by Aequitas Victoria Foundation & Patel Law College, Bengaluru on the topic 'Prospects and Challenges in Enforcing Gender Justice in the Contemporary New World Order: A Multidisciplinary Approach' delves into the multifaceted dimensions of enforcing gender justice in the contemporary new world order, employing a multidisciplinary lens to dissect the prospects and challenges inherent in this endeavor. As we navigate through the complexities of gender dynamics, societal norms, and institutional frameworks, it becomes evident that a comprehensive approach is necessary to address the systemic barriers that hinder the realization of true equality.

Gender justice transcends mere legal frameworks; it embodies a fundamental reimagining of societal norms, power dynamics, and opportunities. In today's rapidly evolving world, traditional paradigms are being challenged, necessitating a nuanced understanding of gender justice. This entails recognizing the intersecting layers of discrimination based on gender identity, ethnicity, class, sexuality, and other axes of marginalization. By delving into the multifaceted dimensions of gender justice, the conference book seeks to illuminate the evolving nature of inequality and injustice in the contemporary global context.

At the heart of the discourse on gender justice lies the concept of intersectionality, which underscores the interconnectedness of various forms of oppression. Understanding how gender intersects with race, class, ethnicity, sexuality, disability, and other social categories is essential for addressing systemic injustices. By adopting an intersectional lens, the conference book endeavors to unravel the complex interplay of power structures and privilege, thereby paving the way for more holistic and effective strategies for achieving gender justice.

Education and awareness play a pivotal role in challenging stereotypes, dismantling biases, and fostering a culture of gender equality. The conference highlights the importance of incorporating gender perspectives into educational curricula at all levels. Moreover, leveraging media, arts, and popular culture as tools for social change can amplify narratives of gender justice and challenge dominant hegemonies. By promoting critical thinking and fostering empathy, education becomes a potent catalyst for transforming societal attitudes and behaviors towards gender equity.



Despite significant strides in the realm of gender equality, formidable challenges persist in enforcing gender justice worldwide. Deep-seated patriarchal norms, cultural barriers, economic disparities, and institutionalized discrimination pose formidable obstacles to progress. Moreover, the rise of reactionary forces and backlash against gender equality initiatives underscores the urgency of addressing these challenges. By confronting these impediments head-on, we endeavor to catalyze collective action and solidarity in the pursuit of gender justice.

In conclusion, "Prospects and Challenges in Enforcing Gender Justice in the Contemporary New World Order: A Multidisciplinary Approach" represents a timely and indispensable contribution to the discourse on gender equality and social justice. By bringing together insights from scholars, activists, and practitioners across disciplines, this book offers a comprehensive and nuanced understanding of the prospects and challenges in enforcing gender justice in the contemporary world. It is our hope that this volume will serve as a catalyst for informed dialogue, critical reflection, and concerted action towards a more just and equitable future for all genders.



Book Title: Conference Proceeding of the International Gender Justice Conference on Prospects and Challenges in Enforcing Gender Justice in the Contemporary New World Order: A Multidisciplinary Approach

Editors: Dr. Rangaswamy D., Mr. Mayilsamy K., Mr. Sarthak Aryan

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Gender Justice and Human Rights – A Global Perspective

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Abstract

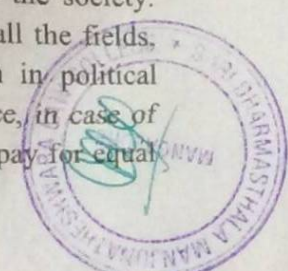
Human rights and gender justice represent the fundamental principles essential for ensuring equality, dignity, and fairness in the global perspective. Gender Justice refers to the pursuit of fair treatment, equality, and dignity for individuals of all genders across different cultural, social, economic, and political contexts worldwide. On the other hand, human rights refer to the fundamental entitlements and freedoms that belong to all individuals by their humanity, irrespective of their nationality, ethnicity, religion, gender, or any other status. India presents a vibrant landscape of resilience and activism with grassroots movements, legal reforms, and policy initiatives striving to address gender justice and uphold human rights. Landmark judgments by the Indian judiciary, such as Vishakha guidelines³⁹⁸ on sexual harassment in the workplace, progress towards gender justice and human rights. Human rights and gender justice are inseparably linked and mutually supportive from a global perspective. Even with advancements, obstacles continue to exist such as deeply ingrained gender norms, unequal income distribution, etc. International cooperation between governments, civil society organization and individuals is required to achieve gender justice and human rights. Gender justice and human rights are crucial elements of fair and just world community. In order to create a more affluent and peaceful society, their goals of fostering inclusiveness, respect and dignity for people of all genders are highlighted in this paper. This paper provides an overview of interconnection between the two concepts gender justice and human rights, encompassing legal frameworks, social movements and international policies and aimed at promoting equality and combating discrimination on the basis of gender, race, etc.

Keywords: Gender Justice, International Policies, Workplace, Equality, Harassment.

INTRODUCTION:

Gender Equality is not only an essential Human right but it also forms the basis for the world that is prosperous, peaceful and sustainable. It is attained when men, women, girls and boys all have equal opportunities, rights and control over their own lives as well as the advancement of the society. Gender equality simply means giving equal opportunities to both men and women in all the fields, such as economy, education, political, social, employment, leadership, participation in political activities, societal activities, decision making, financial independence, etc., For instance, in case of employment everyone should get the equal payment for their same work, that is equal pay for equal

³⁹⁸ Smt. Bhanwari Devi v. State of Rajasthan 1997(1) WLC42, 1996(2) WLN 387



work³⁹⁹. So, gender justice is a fundamental component of human rights, embodying the values of impartiality, equity and respect for every individual, irrespective of their caste, creed, sex or gender identity, etc.,. In recent years, the conversation around gender justice has become increasingly prominent on the international and national level, indicating a growing recognition of the societal injustice and inequalities that people of all genders must contend with.

The wider human rights framework is closely associated with the pursuit of gender justice. The principle to it is the non-discrimination concept, which is codified in a number of international agreements and various treaties, such as UDHR⁴⁰⁰, CEDAW⁴⁰¹, etc.,. But many people still experiencing violence, marginalization, discrimination due to their gender in spite of these legal protection. The goal of gender justice incorporated social, economic and cultural aspects in addition to legal barriers. Every facet of society is impacted by gender inequality, which shows itself as unequal access to healthcare, employment possibilities, education and political representation. These differences obstruct not just personal growth but also the general progress and well-being of societies and states.

This research paper intends to illuminate the connection between gender equality and human rights in a variety of legal context by investigating the complex aspects of gender justice from a global perspective as well as national perspective.

Gender Justice from Human Rights Perspective:

From the perspective human rights, gender justice entails protecting the equality, dignity and justice of all genders, as stated in numerous international human rights instruments, including the Beijing Declaration and Platform for Action, the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), Universal Declaration of Human Rights (UDHR). Key aspects of Gender Justice from Human Rights perspective, equality, non-discrimination, putting an end to violence, reproductive rights, economic justice, social cultural challenges, etc.,.

In terms of gender identity or expression, gender justice provides equal rights and opportunities for individuals of all genders. Equal access to political involvement, work, healthcare and education are all included in this. It also necessitates the eradication of gender-based discrimination, such as homophobia, transphobia, sexism and misogyny. It entails dispelling myths and biases that support marginalization and justice. It tackles the widespread problems of gender-based violence, which encompasses sexual assault, harassment, domestic violence and human trafficking. It highlights how crucial it is to have support networks, legal protection and social disapproval of any kind of violence against women and girls. Reproductive rights including the availability of safe abortion, contraception and reproductive healthcare are recognized by gender justice as essential human rights. It promotes individual control over one's body and reproductive choice. The goal of gender justice is to eliminate economic disparities between the sexes through advocating for equal pay for equal work, assisting women in achieving financial independence and opposing discriminatory employment practices. In order to achieve this goal, negative gender norms must contest and more inclusive, fair attitudes and

³⁹⁹ Article 39 of Indian Constitution
Equal Remuneration Act, 1976

⁴⁰⁰ Universal Declaration of Human Rights

⁴⁰¹ Convention on the Elimination of All forms of Discrimination Against Women



actions must be encouraged in the society. Promoting positive portrayals of all genders in the media, in the educational institution and in popular culture is part of this⁴⁰².

From the perspective of human rights, gender justice involves confronting power disparities, tearing down prejudiced institution and frameworks and making sure that everyone has the same chances, rights and respect, regardless of gender identity. To build a more just and equitable society for all, a comprehensive strategy addressing social, cultural and economic changes in addition to legal and regulatory reforms is needed.

Gender Justice under Indian constitution:

As mentioned, gender justice is one of the most important human rights issues. Even though establishing gender equality is still a work in progress, it is a fundamental human right and is necessary for a successful and peaceful society. Deeply entrenched cultural institutions are largely responsible for the persistence of gender inequality in India. The Indian judiciary frequently serves as a people's representative and India's profound Constitution inspires hope for the realization of gender equity.

According to Indian Constitution, Gender justice is an important component of the country's legal, social structures. Indian Constitution adopted in 1950, ensures equality before law and forbids discrimination based on the gender. The word 'Gender' is not used in Constitution, Articles 15(1), 16(2), 325 which forbids discrimination based on sex, all includes the term 'Sex'. While the term 'gender' is more broadly described than the word sex and gender justice strive to achieve equality and absence of discrimination⁴⁰³.

Article 14 of Indian Constitution gives everyone, including men and women, the right to equality before the law and equal protection under the law⁴⁰⁴. This Article guarantees that all citizens receive equal treatment from the state and forbids discrimination based on gender. Article 15, forbids discrimination based on caste, religion, sex, race or place of birth⁴⁰⁵. It guarantees that men and women have equal access to legal protections and opportunities. Article 15(3), permits the state to establish specific measures for women and children, so facilitating affirmative action policies aimed at redressing historical injustices and disparities experienced by women⁴⁰⁶. Article 16, ensures equal opportunity in matters of public employment or appointment to any office⁴⁰⁷. Article 19, protects a number of liberties that apply to both men and women equally, including the freedom of speech, expression, assembly, association, movement, domicile and profession⁴⁰⁸. Articles 23 and 24, protect the rights of both men and women against exploitation by prohibiting forced labour, human trafficking and employment of minors in hazardous industries⁴⁰⁹. Part IV of the Constitution⁴¹⁰, the Directive Principles of State Policy, contains provisions pertaining to human rights and gender justice, including equal pay for equal work Article 39(d), advancing the welfare of women and children Article 39(a), Article 42 guarantees just and humane working conditions.

⁴⁰² #EndcyberGBV and create #GenderJustMedia, Let's End Violence Against Women and Secure Gender Justice (2022 - 2030) <https://waccglobal.org/resources/gender-justice/>. Last visited on 13th March 2024.

⁴⁰³ Gender Justice, Rajasthan Judicial Academy, <https://rajasthanjudicialacademy.nic.in/docs/Studymaterial01122020.pdf>. Last visited on 13th March 2024

⁴⁰⁴ The Constitution of India, A. 14

⁴⁰⁵ Ibid, A. 15

⁴⁰⁶ Ibid, A. 15(3)

⁴⁰⁷ Ibid, A. 16

⁴⁰⁸ Ibid, A. 19

⁴⁰⁹ Ibid, A. 23 & 24

⁴¹⁰ Ibid, A. 39(d) 39(a) 42



A number of Constitutional Amendments⁴¹¹ have been passed, to strengthen human rights and gender justice in India. For example, 73rd and 74th Amendments increased women's political representation and engagement at the local level by reserving seats for them in local bodies. Through various judicial interpretations, the Indian courts has been instrumental in interpreting and defending human rights and gender justice. In order to defend women's rights, such as their freedom from discrimination, equality and access to justice, courts have frequently intervened.

In addition, a number of distinctive measures have been implemented to eliminate social, legal and other barriers and inequalities so that they can utilize the opportunities and rights that have been made available to them. However, a number of primitive social customs and traditions continue to be practiced, giving them grater power and authority than statutory enactments and undoing majority of the benefits of these practical initiatives, leading to an unequal distribution of the benefits of progress and development.

Gender Justice – An International Perspective, An overview of Gender Justice and Human Rights in India, UK, USA and Australia:

From an international point of view, gender justice entails recognizing and correcting injustices and inequalities related to gender on a worldwide basis. It includes initiatives taken in various nations and areas to advance gender equality, combat discriminatory behaviours and protect individual human rights, regardless of gender identity or expression.

A. Gender Justice and India:

In India, gender justice has long been a source of advocacy and concern, recent advances indicate in the direction of continued progress and obstacles. India has a long history of gender-based stereotypes based on patriarchal ideology, many of which have found their way into the legal system throughout time. The rulings made by the courts also demonstrated the historical injustices committed by society against women. The Declaration of Independence emphasizes of status and opportunity. Equality could only exist between equals, according to the founders of constitution, otherwise injustice may ensure. So, in order to bring the unequals up to par with the equals, they suggested the idea of substantive equality, which calls for making particular arrangements for them.

The prominent cases like *Mathura Rape Case*⁴¹², *Nandan Kanan Rape Case*⁴¹³, *Sowmithri Vishnu Case*⁴¹⁴ and *M. Kishwar v. State of Bihar*⁴¹⁵ provides as powerful illustrations of the Apex Court's traditional and patriarchal viewpoint. The rulings rendered by the court in the cases of *Sowmithri Vishnu v. Union of India* and *Revathi v. Union of India*⁴¹⁶ were, in fact verdicts that were against gender justice.

As the changes in the society there are changes in the legislation and changes in the judiciary even. India has a thorough legal system designed to combat prejudice and advance gender equality. The Indian Constitution forbids discrimination based on gender and ensures equality before law as mentioned earlier. Women are also provided with legal protection by statutes, such as The Dowry Prohibition Act, 1961, POSH Act⁴¹⁷, protection from domestic

⁴¹¹ The 73rd & 74th Constitutional Amendment Act, 1992.

⁴¹² *Tukaram vs. State of Maharashtra*, (1979) 2 S.C.C. 143.

⁴¹³ *Pratap Mishra vs. State of Orissa*, A.I.R. 1977 S.C. 1307.

⁴¹⁴ *Sowmithri Vishnu vs. Union of India*, 1985 Supp S.C.C. 137.

⁴¹⁵ *Madhu Kishwar & Ors v. State of Bihar & Ors*, 1996 SCC (5) 125.

⁴¹⁶ *V. Revathi v. Union of India & Ors*, AIR 1988 SC 835.

⁴¹⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.



violence⁴¹⁸, etc., gender justice depends on everyone having access to education. Although female literacy rates have increased significantly, Constitution of India upholds free and compulsory education to children of age 6 to 14 years⁴¹⁹, there are still gender gaps in education, especially in rural areas and among marginalised communities. These gaps are caused by a number of factors including poverty, social norms and lack of infrastructure. Gender inequality in India is typically sustained by deeply ingrained cultural and social conventions. Customs including child marriage, dowry, infanticide of female and preference for sons still have the impact on the position and rights of women, many campaigns have been made such as *Beti Bachao Beti Padhao*⁴²⁰, etc., still it will take extensive work to change the mindset of public including community involvement, education and legal actions.

The fact that the judiciary is now finally acknowledging the long-standing injustices and atrocities committed against women is indeed a source of great pride. It occasionally necessary for laws to serve as tools for social transformation⁴²¹. The women, who have been imposed for ages by the deeply ingrained sexism in Indian society are calling for judicial intervention to set them free.

B. *Gender Justice and UK*

Although there has been progress in some sectors, there are still issues with gender justice in UK. In order to fight discrimination and advance gender equality, the UK has built a legal framework. In number of contexts such as the workplace, education system and in execution of service, discrimination on the basis of gender as well as other protected characteristics is illegal under the 2010 Act⁴²². Gender parity has not yet been attained, despite advances in the representation of women in politics, with more of them holding positions in parliament and local government. There is a continuous endeavour to promote increased female involvement in politics and decision-making positions. In UK, the gender pay gap is still a major problem. Women still make less money overall than males do in a variety of industries and professions despite efforts to change this. The objective of policies like the requirement that large firms disclose their gender pay disparity is to promote accountability and openness⁴²³. Policies pertaining to maternity leave, flexible work schedules and efforts to eliminate gender bias in hiring and promotion procedure are some of the initiatives being undertaken to advance workplace equality. But obstacles like job segregation and lack of assistance with caring duties continue to hinder women's career growth. Gender justice includes access to reproductive healthcare and reproductive rights as key components. Although abortion rights are protected by law in UK, there are still discussion and issues surrounding them, such as access to service and legislative limitations on Northern Ireland⁴²⁴.

Even though gender justice has advanced in UK, there are still areas that require improvement. Building a more just and equitable society in UK will require sustained efforts to address systemic disparities, promote gender equality and guarantee the rights and dignity of all genders.

C. *Gender Justice and USA:*

In USA, promoting gender equality, addressing systemic injustices and preserving the rights and dignity of all genders are all parts of gender justice. USA has put in place legal safeguards to advance gender equality and outlaw discrimination on the basis of gender.

⁴¹⁸ The Protection of Women from Domestic Violence Act, 2005.

⁴¹⁹ The Constitution of India, A. 21A.

⁴²⁰ *Beti Bachao, Beti Padhao*, 2015 Government of India.

⁴²¹ *Supra*, 8

⁴²² The Equality Act, 2010 (UK)

⁴²³ Equality and Human Rights Commission (EHRC) Statutory Code of Practice on Equal Pay (UK).

⁴²⁴ Northern Ireland (Executive) Formation Act, 2019 (UK).



Important laws include, Title IX of 1972 Act, which forbids sex discrimination in programs receiving federal financing⁴²⁵ and Title VII of 1964 Act, which forbids discrimination in employment⁴²⁶. Women are still paid less than males on average in a wide range of professions and sectors. The gender pay gap is being addressed through equal pay laws⁴²⁷, pay transparency campaigning, workplace equality programs and addressing systematic biases in compensation systems. In USA, gender-based violence which includes sexual assault, harassment and domestic violence remains a serious problem. The VAWA⁴²⁸ offers assistance and resources to victims of gender-based violence yet, there are still issues with closing service gaps, enhancing safety protocols and stopping abuse. In USA, access to reproductive healthcare and reproductive rights are divisive topics. States differ in their laws⁴²⁹ and practices regarding abortion rights, access to contraception and financing for reproductive healthcare. These discussions are still going strong. Legal obstacles and hostility to reproductive rights expansion and protection exist. In USA, campaigns for gender justice involve standing out for the rights of LGBTQ+ persons, which includes transgender and binary people. At the federal states and local levels laws against discrimination on the basis of sexual orientation and gender identity have been strengthened yet, there are still obstacles in the way of guaranteeing complete equality and inclusion.

Even if gender justice has advanced in USA, there are still big issues that need to be resolved. To create a more just and equitable society in USA, ongoing efforts to advance gender equality, defend human rights and uphold the rights and dignity of all genders are imperative.

D. Gender Justice and Australia:

In Australia, addressing systemic injustices, advancing gender equality and preserving the rights and dignity of all genders are all part of gender justice. In order to advance gender equality and outlaw discrimination based on gender, Australia has put forth legal protections. The 1984 Act, forbids discrimination on the grounds of sex, gender identity and intersex status in a number of contexts, such as the workplace, the educational system and supply of goods and service⁴³⁰. Gender-based violence which includes sexual assault, harassment and domestic abuse remains a serious problem. Government efforts to stop violence, assist survivors and enhance responses to gender-based violence is outlined in the National Plan⁴³¹. In Australia, prejudice and inequality against indigenous women are intersectional and stem from factors including their gender, race and socio-economic background⁴³². Initiatives to advance gender justice focus on the particular difficulties encountered by indigenous women and advocate for their rights and self-determination. Advocating for the rights of LGBTQ+ individuals, including transgender and non-binary people, is a part of Australia's gender justice activities. Although there are still obstacles in the way of achieving complete equality and inclusion, legal protections against discrimination based on sexual orientation and gender identity have been expanded at federal, state and territory levels.

Although Australia has made advances in achieving gender justice, there are still major issues that need to be resolved. For just and equitable society must be built in Australia via sustained efforts to advance gender equality, defend human rights and uphold the rights and dignity of all gender.

⁴²⁵ The Education Amendments of 1972, Title IX. (USA).

⁴²⁶ The Civil Rights Act, 1964, Title VII (USA).

⁴²⁷ The Equal Pay Act, 1963 (USA).

⁴²⁸ The Violence Against Women Act, 1994 (USA).

⁴²⁹ Thomas E. Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (USA).

⁴³⁰ The Sex Discrimination Act, 1984 (Australia).

⁴³¹ The National Plan to Reduce Violence Against Women and Children, 2022 – 2032 (Australia).

⁴³² The Sex Discrimination Act, 1984 (Australia).



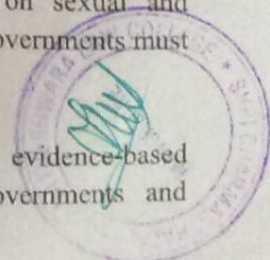
Suggestions:

"Freedom cannot be achieved unless women have been emancipated from all kinds of oppression"

- Nelson Mandela

Promoting equality and gender equality in all spheres of society is the most efficient strategy to combat gender disparity. Here are some of the solutions for advancing gender justice human rights from a global perspective:

- 1) *Modifying Legal and Policy Frameworks:*
Restructuring current laws and regulations is a crucial step in achieving gender equality. This entails removing gender-based violence, changing discriminatory laws and guaranteeing equitable access to healthcare and education. Legislations pertaining to reproductive rights, LGBTQ+ rights, violence against women and oppressed gender and discrimination, etc.,
- 2) *Raising Awareness and Concern:*
Changing societal norms and empowering women, need to increase awareness of gender justice. This entails spreading awareness of gender equality through media campaigns, in businesses, and educational institution.
- 3) *Promoting Gender Equality in the Workplace:*
Equal compensation for equal work, access to resources, and opportunity for training and advancement are all necessary to achieve gender equality in the workplace. A work atmosphere that respects and supports the needs of every employee can also be created by encouraging flexible schedules and rules and providing more parental leave.
- 4) *Groups for the further reach of Community and Support:*
Support groups and community outreach initiatives can give women a chance to develop their skills, advocate for their rights, and gain access to resources. This entails offering instruction in emotional support, legal rights and advocacy, and financial literacy. These programs have the potential to establish safe spaces where women can come together to exchange stories and foster camaraderie.
- 5) *Positive Representation of Women in Media:*
Since the media frequently shapes gender identity and roles, it is critical to support positive representations of women. Making information that dispels myths about gender and other oppressed groups is part of this solution. Encouraging the portrayal of women in leadership roles in both fiction and non-fiction is equally crucial.
- 6) *Equal Participation in politics or gender equality in Government:*
Governments have the authority to take action to guarantee that women and other gender minorities have equal representation in positions of decision-making and opportunity to engage in politics. This entails putting affirmative action plans into place, creating quotas for women on corporate boards and raising the proportion of women in parliament.
- 7) *Greater Access to resources for Education and Healthcare:*
Achieving gender equality requires ensuring that women have equal access to resources for healthcare and education. This entails offering financial aid and scholarships in addition to facilitating better access to healthcare services, including information on sexual and reproductive health. In rural areas and isolated places, it is need of an hour, governments must guarantee that girl child have access to the high-quality education as males.
- 8) *Data Collection and Research:*
Enhancing gender related data collecting and research is crucial for evidence-based programming and policy making. To develop successful policies, governments and



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organisations should make investment in gathering de-identified data on gender related indicators, researching new topics and assessing the results of programs

Global issues of social, cultural, religious, institutional and economic causes all contribute to gender inequality⁴³³. Promoting equality and gender equality in all spheres of society is the most efficient strategy to combat gender disparity. By implementing these suggestions into practice, nations can endeavour to safeguard human rights for all individual worldwide and achieve more gender justice.

Conclusion:

In conclusion, it will take coordinated efforts from governments, international organizations, civil society and individuals to achieve gender justice and preserve human rights on worldwide. In order to effectively address the overlapping forms of discrimination and disadvantage that people experience due to their gender, race, ethnicity, class, sexual orientation, disability and other variables a holistic strategy is required.

Global human rights protection and gender justice are difficult, continuous projects that call for constant action, cooperation and dedication from all parties involved. We can build a society in which every person regardless of gender, is free from prejudice, violence and injustice by striving for gender equality, upholding human rights and tackling injustices.

⁴³³ What is Gender Justice? <https://www.sa-hr.org/single-post/what-is-gender-justice>. Last Visited on 14th March 2024





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ARTIFICIAL INTELLIGENCE AND INTELLECTUAL PROPERTY – ISSUES AND CONCERN

Dr. Ashwini P. *

Ms. Shravya Rao **

Abstract

Early philosophers predicted that machines would eventually outperform humans in intelligence. Computer technology strengthened this perspective, and now real machines and robots are learning capabilities. In the years since its inception, artificial intelligence (AI) has grown from a startling technology to one of the most promising. Using data analysis and user preference patterns to achieve the best possible outcome in the market is all part of the machine learning process. AI's utility is necessitated by the growing need to manipulated and organize vast amounts of data.

Artificial Intelligence (AI) is expanding at an exponential rate in the entire world. The issue of IP management in AI is brought up by this boom. AI in IPR is like a two face of the same coin, where its having both pros and cons, for instance in certain aspects, it will seem advantageous in areas like patents and patent search engines, accurate and relevant research, and providing a way to categorize inventions and concepts. However, because AI gives inventors access to other patents that are similar to their own, it may end up being a threat to creativity and growth, two things that are at the core of intellectual property rights.

The debates and challenges surrounding copyrights, patents, and other intellectual property matters are still being developed in the field of artificial intelligence (AI), one of the rapidly evolving areas of technology and law. The main point of contention is the relative importance of human labour versus AI generated resources. This paper mainly focuses on issues or challenges faced by AI and IPR.

Keywords: AI Algorithms, DABUS, Intermediary, Ethical AI, Training Data.

Introduction

Artificial Intelligence is a term which seems like everyone familiar but on the other hand it is also a mystery in public debate. One of the reasons for the mystery of AI is broad scoop of AI and its application in the field of technologies and techniques

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which enables machines to perform task that typically require human intelligence, this task may be recognition of images, speech and any learning from data.

We have been using AI knowingly or unknowingly in our daily lives, that may be the fastest way of using Google search or that may be Instagram which shows your interests based on your recent views in the app. Major developments have occurred in the last four to five years, driven by a groundbreaking class of AI Algorithms which is known as Generative AI, which now read and interpret text in a manner similar to human intelligence¹. AI is a technology that has the potential to revolutionize many industries. It has emerged as significant tool. The quick development of AI, brings up number of questions and concerns regarding the Intellectual Property Rights (IPR). The application of AI in IPR raises questions regarding legal issues as well as ethical issues, whether the privacy (data protection) of users, ownership of content which is generated by AI protected. At this juncture this paper focuses on issues and challenges that faced by AI in IPR, what will be future of AI, how it will work and what will be the legal status of AI in IPR.

What is AI in IPR?

The term Artificial intelligence coined by John McCarthy in the year 1956 and he defined AI as "the science and engineering of making intelligent machines."² To consider machine as "intelligent" the term intelligent must be defined, the ability to solve complicated challenges draw connection and make generalisation can all be considered intelligence. Computer science, physiology, philosophy are all used to create Artificial Intelligence.

Artificial Intelligence means work done by a machine without Human involvement, machine can be interpreted as Computer. Artificial intelligence aims to enable computers to perform the tasks that human mind can do. It involves psychological skills such as association, motor, perception, prediction, control, planning that is to achieve human goal³. Practical application of AI found in the home, cars, hospitals, banks, internet which includes Internet of Things (IOT). The term Internet of Things refers to the network of actual physical object, that are connected with sensors, software, and other technologies as to communicate and share data with other internet connected devices and other systems. These electronic devices vary from ordinary home appliances to highly advanced industrial appliances⁴.

¹ Al Boon or Bane? India Today. Special Issue - future trends. Volume 49 - number 3. 15 January 2024. Page No. 6

² Akshara Joshi, Gautham Mishra. Artificial Intelligence. 26 February 2010. <https://dl.acm.org/doi/10.1145/1741906.1742236#:~:text=In%201956%2C%20John%20McCarthy%20who,engineering%20of%20making%20intelligent%20machines.> last visited on 18th Feb 2024

³ Margaret A. Boden. AI: its nature and future. Oxford University Press, Incorporated. 2016-07-01. <https://ebookcentral.proquest.com/lib/inflibnet-ebooks/reader.action?docID=4545415.> last visited on 18 Feb 2024

⁴ What is Internet of Things (IoT). Oracle. <https://www.oracle.com/in/internet-of-things/what-is-physical-and%20systems%20cover%20the%20internet.> last visited on 18 Feb 2024

AI in Intellectual Property Rights means the applicability of Artificial Intelligence techniques and technologies in the aspects of enforcing, managing and protecting Intellectual Property Rights like patents, copyrights, trademarks, trade secrets. AI technologies have the potential to radically improve the effectiveness, preciseness of managing Intellectual Property Rights and in enforcing them and it gives enterprises the ability to safeguard their IP in the current scenario of quick changing digital landscape.

Provisions relating to AI in IPR

As there is evolution of technologies there is change in the risks to be faced in that matter. There is a concern that as technology advances at a rapid pace, the legal system may struggle to keep up. But perhaps this is not accurate to reality. The current legal frame work in India can be interpreted strictly or purposefully to adapt to changing circumstances and serve as a regulatory tool. For example, there are various clauses Indian Penal Code, 1860 which superseded by the Bhartiya Nyaya Sanhita (BNS) 2023, it contains several provisions that can be used to combat deepfakes that harm individuals, their privacy and dignity. The Information Technology Act, 2000 (as amended) and its regulations, which includes the Intermediary Guidelines of 2021 which tackle several negative effects, including deepfakes, manipulated or forged imagery and misinformation. Provisions thereunder such as Sections 66C identity theft, 66D cheating by personation, 67 obscene content, 67A sexually explicit content, and 67B child pornography IT Act may be invoked based on the facts of the case⁵.

Another area of law that has been affected by AI is IPR claims. The numerous cases related to AI in US serving as a model for the development of AI Jurisprudence India. In *Thaler v. Perlmutter* (2023)⁶, the US District Court upheld the Copyright registry's refusal to register an AI generated painting. Dr Thaler's filing naming the AI system DABUS⁷ as inventor was upheld by an Australian court. This case will certainly impact other copyright claims too, including for source code. In *John Doe et al v. GitHub Inc et al*⁸ before the California Court, which contests the right of Microsoft, GitHub and OpenAI to use open-source codes to train AI models and claims that the codes generated through AI, therefore, violate the terms of licencing is likely to impact the very process of AI generated content. (Open-source software or code – Software that is provided under a licence that allows users to study, alter and share the program and its source code with anybody for any purpose is known as

⁵ The Information Technology Act, 2000 (as amended). Intermediary Guidelines of 2021.

⁶ *Thaler v. Perlmutter*, Case 1:22-cv-01564-BAH (D.D.C., Aug. 18, 2023). <https://itsartlaw.org/2023/12/11/case-summary-and-review-thaler-v-perlmutter/#post-61801-footnote-ref-0.> last visited on 18 Feb 2024

⁷ Thaler v. Commissioner of Patents (2021) FCA 879. <https://itsartlaw.org/2023/12/11/case-summary-and-review-thaler-v-perlmutter/#post-61801-footnote-ref-0.> last visited on 18 Feb 2024

⁸ *John Doe et al v. GitHub Inc et al* 22-cv-06823- JST. [https://caselaw.findlaw.com/court/us-dis-crt-n-d-cal/2200493.html.](https://caselaw.findlaw.com/court/us-dis-crt-n-d-cal/2200493.html) Last visited on 18 Feb 2024.

Open-source software. This type of software is licenced under a copyright holder. Software that is open source can be created in a cooperative, transparent way.⁹ India's strategy documents, like those of any other country, are primarily focused on the economic benefits of utilizing technology and its advancements. The NITI Aayog's 2018 paper, "National strategy for Artificial Intelligence"¹⁰ and its follow-up in 2021 and 2022 and the ministry of electronics and information technology's four-part report on AI, provided direction for AI adaptation under the hashtag #AIforAll.¹¹ It seems evident that artificial intelligence (AI) is here to stay and will advance civilization through a variety of application cases. The necessity of appropriately implementing artificial intelligence has become increasingly apparent over time, and it is crucial to do so without impairing or violating individual rights, corporate rights, or state interests. To make this possible, the law must be a major factor. India needs to establish a presence in the legal landscape by creating laws that not only meet security and protective standards but also provide businesses with the predictability and trust they need to develop and prosper.¹²

Issues with regard to AI in IPR

Issues with regard to intersection of AI and IPR are multifaceted and they are evolving continuously.

Some of the issues with regard to AI in IPR:

- 1. Ownership and Inventorship:** There are many obstacles in identifying who invented what when it comes to AI-generated inventions. Conventional patent law normally needs human inventors, but artificial intelligence (AI) is becoming more and more integrated into the creative process. Concerns are raised over who should possess the intellectual property rights to ideas created by AI and whether AI is capable of becoming an inventor.
- 2. Copyright and Creative works:** The potential of AI to produce literary, artistic, and musical creations creates concerns over copyright ownership. If AI-generated works are to be protected by a copyright, who should be credited as the author? Furthermore, problems like content scraping and automated content generation that arise from AI systems violating copyrighted content must be resolved.
- 3. Data Ownership and Access:** Large volumes of data are frequently needed for AI's operation and training. When sensitive or proprietary data is involved, ownership, access, and licensing issues become more prevalent. In this environment, figuring out the rights and duties of users, developers of AI, and data suppliers is essential.

⁹ Open-Source Software. https://en.wikipedia.org/wiki/Open-source_software. Last visited on 18 Feb 2024.

¹⁰ <https://www.niti.gov.in/sites/default/files/2023-03/National-Strategy-for-Artificial-Intelligence.pdf>. Last visited on 18 Feb 2024.

¹¹ <https://www.niti.gov.in/sites/default/files/2021-02/Responsible-AI-22022021.pdf>. Last visited on 18 Feb 2024.

¹² AI Boon or Bane? India Today, Special Issue - future trends, Volume 49 - number 3, 15 January 2024, Page No. 42, 43.

4. Patentability and Prior Art: Artificial Intelligence is developing quickly, resulting in new discoveries and advancements. But it can be difficult to decide if an AI-related invention is patentable, particularly when prior art and the degree of human creativity are taken into account. To appropriately evaluate patent applications pertaining to artificial intelligence, patent offices must modify their review procedures.

5. Trade Secret and Confidential Information: Trade secrets and private data can be analysed, safeguarded, or improperly obtained using AI technologies. Businesses have many difficulties in protecting trade secrets from AI-enabled threats including algorithmic reverse engineering and data breaches.

6. Ethical and Bias Concerns: IPR concerns and ethical challenges related to AI, such as accountability, transparency, and justice, interact. AI algorithms that are biased may produce unfair advantages in intellectual property disputes or discriminatory results. To reduce these concerns, ethical AI development and application are crucial. (Ethical AI - The creation and application of artificial intelligence systems with an emphasis on justice, accountability, transparency, and respect for human values is known as ethical AI.¹³)

7. Licensing and Technology Transfer: Intellectual property rights, such as patents, copyrights, and trade secrets, must be carefully taken into account when negotiating licensing and technology transfer agreements incorporating AI technologies. Because AI technology is always evolving, it can be difficult to determine the best license terms, royalties, and liability policies for innovations connected to it.

8. Standards and Interoperability: It is necessary to address intellectual property rights concerns, particularly those pertaining to patents and licensing, in order to develop technical standards for AI systems. Fostering the development and use of AI requires striking a balance between the need for innovation and interoperability and the protection of intellectual property rights. (Interoperability - 'The degree which two products, programs, etc. may be used together, or the quality of be able to be used together' is the definition of interoperability. It describes how two more systems or components can use or analyse the information that has exchanged, as well as exchange information.¹⁴)

Suggestions

While utilizing the AI in the context of IPR several measures can be taken to ensure and ensure the effective and ethical use of AI.

Some of the concerns that can be taken while using AI in IPR:

1. Transparency and Accountability: Taking steps to ensure that AI systems in IPR procedures are developed and deployed transparently. Provide doc

¹³ Ethical AI. <https://www.holistical.com/blog/what-is-ethical-ai#:~:text=Ethical%20AI%20refers%20to%20the,and%20respect%20for%20human%20values>. Last visited on 18/2

¹⁴ Interoperability. <https://indiaai.gov.in/ai-standards/interoperability>. Last visited

of the methods, data sources and techniques used to improve accountability and make audits and review easier.

2. Ethical Guidelines and Frameworks: Considering the moral standards and legal frameworks regulating AI usage in IP. To reduce potential biases and ethical hazards related to AI algorithms, develop and implement regulations that place high priority on fairness, openness and non-discrimination.

3. Data privacy and Security: To safeguard sensitive data utilized in AI driven IPR procedures, set in place strong data privacy and security measures. To prevent unauthorized access or misuse of personal and private data, adhere to any data protection legislation and standards.

4. Human Oversight and Intervention: To guarantee accountability and reduce the possibility of biases or errors, integrate human monitoring and intervention methods into AI system used for IPR. When necessary human specialists ought to be able to examine and modify AI generated results.

5. Intellectual Property Protection: Protecting AI related inventions IPR through trade secrets, copyrights and patents. Evaluate the uniqueness and patentability of AI generated inventions by conducting in depth IP searches and analysis.

6. Training Data Quality and Diversity: Assuring the representativeness, variety and quality of the training data that goes into creating models for IPR applications. Avoid skewed or biased datasets that could create inconsistent results or reinforce inequality. (Training Data – An AI model or machine learning algorithms is taught to make correct decisions using training data, which is labelled data. To develop a model for an autonomous vehicle, for instance, need training data that identifies cars, people and traffic signs. This would involve labelling photos and videos.)¹⁵

7. Regular Audits and Assessment: Evaluating AI system used in IPR on regular basis to make sure they work well, are accurate and adhere to the ethical standards. Resolving any problems or inconsistencies found during audits as soon as possible.

8. Education and Training: Educating and training those involved in the creation, application and usage of AI in IPR. Encourage the use of ethical concerns, legal requirements to improve the deployment of AI responsibly.

9. Cross-disciplinary Collaboration: Addressing the complex issues at the nexus of AI and IPR, encouraging cooperation amongst a wide range of stakeholders, including engineers, legal experts, ethicists and policymakers. Combine resources and experience to create winning plans and solutions.

10. Continuous Improvement and Adaption: Adopting the culture of constant adaption and improvement to stay up with changing regulatory environments and AI technological breakthroughs. Keeping up with new advancements in AI in IPR regulations and emerging trends.

¹⁵ <https://appen.com/solutions/training-data/#text-mining-data-2019-2020>

Addressing all these concerns or measures requires multidisciplinary approach which involves policymakers, ethicists, technologists, legal experts and other stakeholders. Collaborations and dialogues are essential to develop effective strategies and frameworks for managing AI in the context of IPR.

Conclusion

In conclusion, there are advantages and disadvantages to the incorporation of AI with IPR, especially while considering India. India one of the top centres of innovation and technology worldwide, is well-positioned to use AI to improve its IPR environment, encouraging creativity and safeguard IP. But in order to fully utilize AI in IPR, a number of important issues need to be resolved.

First and foremost, India has to set precise rules and laws controlling the application of AI to IPR procedures. This will entail resolving concerns about who owns and is the inventor of inventions produced by AI, guaranteeing accountability and transparency in AI algorithms and protecting the security and privacy data.

In order to create thorough framework for responsible deployment of AI in IPR, the stakeholders, legislators, legal professionals, engineers and industrialists need to cooperate together. To standardise norms and laws across jurisdictions, this cooperation should also include international partners.

For professional involved in the creation, application and usage of AI in IPR, India has to make investments in educational and training programs to increase capacity and awareness. This includes giving legal professionals, how to handle tricky moral and legal dilemmas brought on by AI driven advancements.

India should support AI research and innovation that is suited to the unique requirements and difficulties of the IPR sector. Creating AI tools and solutions to improve copyright protection, automate trademark analysis and expedite patent searches.

Ultimately, India can open up doors for economic growth, technical innovation and global competitiveness by integrating AI in IPR with a strategic and forward-thinking strategy. India has potential to become a pioneer in utilising AI to safeguard and advance IPR in the digital era if the correct laws, partnerships and financial commitments are put in place.

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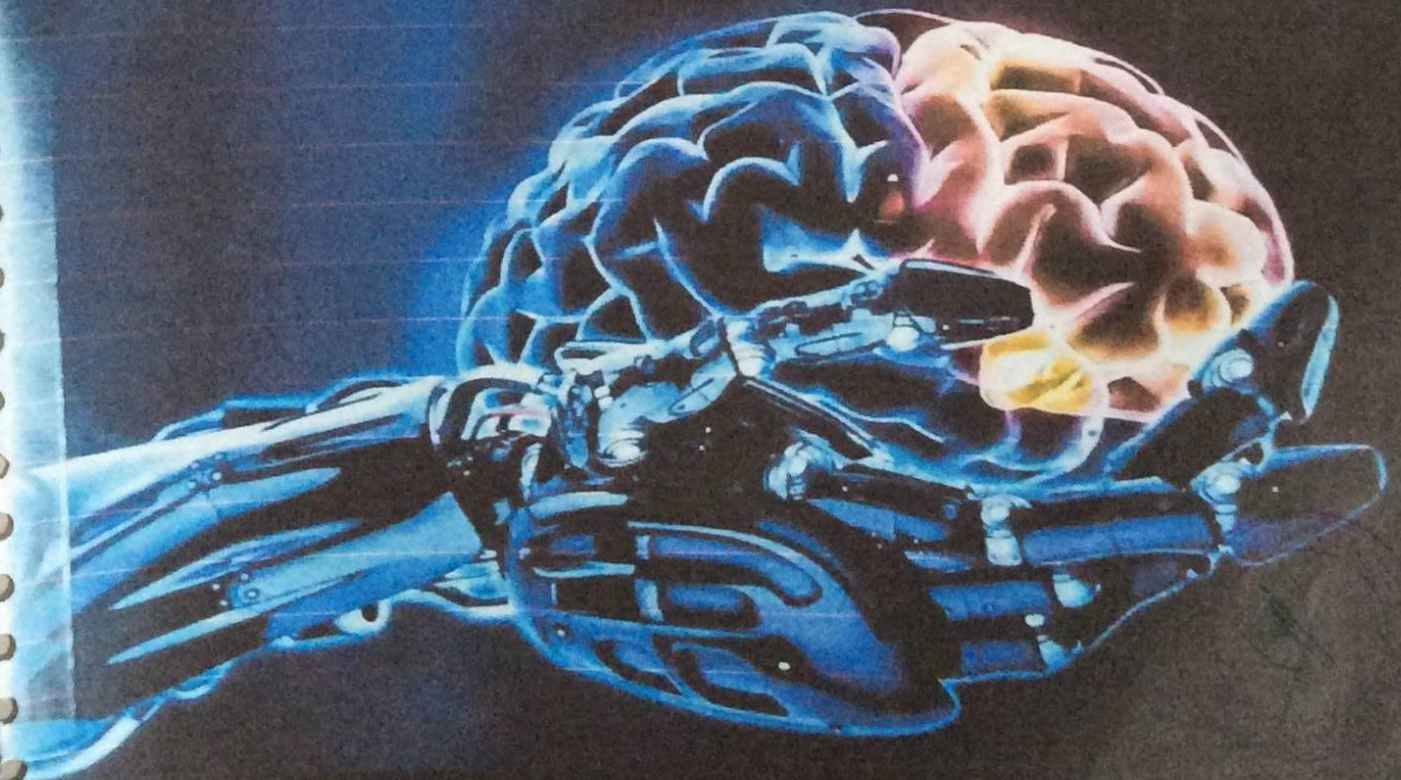


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AN ANALYSIS ON THE IMPACT OF ARTIFICIAL INTELLIGENCE ON COPYRIGHT LAW

Dr. Shubhalakshmi P.*

Abstract

Artificial Intelligence is a technology that touched almost all major sectors and intellectual property rights are also got its impact and implications from AI. In Artificial Intelligence, there is requirement to create machines with human intelligence and they will create or invent new works or things out of such intelligence. It is a part of machine learning that also stretched its hand towards intellectual property rights. Through Artificial Intelligence, machines and systems are developed to the extent to which they can think and act like human brain and further do creative works. Artificial Intelligence has its own impact on patent, copyright, trademarks etc., and their protection and creation. AI contributes to patent searching, infringement detection, new inventions by using creative brains etc. AI can assist human creativity through creating new texts, stories, music, designs etc. and these can also be generated by AI in present world of technology. There are debatable issues yet to be decided and streamlined under copyright law regarding artificial intelligence and its impact on copyright. Under system of intellectual property rights and their protection, the inventor, author, or creator who has created the work will get the IP rights over his work. The question of ownership obviously arises in case of AI because there will be one person programmed the system of AI, one more who has provided required data to the system of AI, and ultimately result will be drawn by the AI system itself. Originality of work created through AI, and responsibility for infringement of copyright of the work created by AI along with right to sue for the violation of such copyright creates ethical and legal predicament in the world of intellectual property. This paper tries to analyse the impact of AI on copyright law and to find some concrete solutions to the problems faced in this area of study.

Keywords: *Artificial Intelligence, Machine learning, Intellectual Property, Copyright Infringement.*

"The development of full artificial intelligence could spell the end of the human race... It would take off on its own and re-design itself at an ever-increasing rate. Humans who are limited by slow biological evolution, couldn't compete and would be superseded". – Stephen Hawking¹

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¹ BBC News-Dec 2nd 2014, available at <https://www.bbc.com/news/technology-30290540>, accessed on 6th Feb 2024.

Introduction

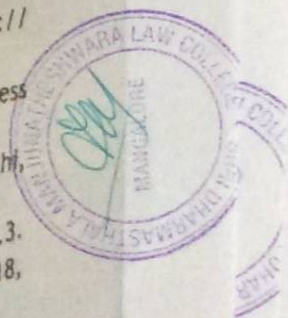
Artificial Intelligence is a computer or system generated facet of intelligence that may create some tasks and works which may compete with human intelligence. The computer systems are more capable of doing certain tasks that were usually done by human beings by using their mental capabilities and reasoning capacity. During early times, there was machine learning and later it has been advanced into Artificial Intelligence. Reasoning and analysis were the main work of human brain and now transformed to the computer systems as well. With that, computer system creates new works and ideas just like human beings do. For example, Chat-GPT is one of the main artificial intelligence performs many intellectual works that only humans can do. So Chat-GPT, Netflix, Tesla etc are performing like human beings and creating new things and innovative ideas are articulated as human beings.²

According to Prof. Arend Hintze, professor of Michigan University, Artificial Intelligence can be classified into four categories. They are:- 1. Reactive machines that are giving reactions to given moment without any previous knowledge. Example IBM's artificial Intelligence Chess play can beat champions. 2. Limited Memory Machine that does not possess past memory. For example-self driving cars follow other cars on roads and drive. 3. Theory of Mind Machines that can understand other entities existing in this world. 4. Self-aware Machine that understands present scenario of the world but such machines are not created in a full-fledged manner.³ Other than these, artificial intelligence can also be classified as machine learning, natural language processing, deep learning, as well as robotics.⁴

Artificial Intelligence and Human Intelligence

Artificial Intelligence is created through computer system and human intelligence is direct application of mind to create something new. Human intelligence involves thinking capacity, comparison, creativity, memory, perception etc while creating new works.⁵ But as far as artificial intelligence is concerned, whatever has been fed inside the system and data collected from different sources will be there to project a new thing or work.⁶ The computer programmes nowhere remained as mere tools to create work with speed and accuracy, and they themselves started new creativity without intervention of human beings which led for the rise of issue of copyright to such works.⁷

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- ² Stuart Russel and Peter Norvig, *Artificial Intelligence-A Modern Approach*, (3rd ed., 2010), Pearson Education Inc., New Jersey, p.3.
- ³ Four types of AI: Getting to Know Artificial Intelligence, (29th November, 2023) <https://www.coursera.org/articles/types-of-ai>, (last visited on 2nd Feb 2024).
- ⁴ Alexis Keller, *Artificial Intelligence: Concepts, Techniques and Applications*, States Academic Press (1 March 2022), p.2.
- ⁵ Ila Kumar, *Artificial Intelligence*, (2008) I K International Publishing House Pvt. Ltd, New Delhi, p.18.
- ⁶ Mick Benson, *Artificial Intelligence: Concepts and Application*, (16 May 2018), Willford Press, p.3.
- ⁷ Andres Guadamuz, *Artificial Intelligence and Copyright*, WIPO-MAGAZINE, Catherine Jewell (18, Oct.2017), p.17.



Just like human beings, even through artificial intelligence explanations, generation of texts etc are made possible and they can also resemble human creations. Implementation of AI may help us by providing necessary information at our finger tips but it has created lot of challenges and complications too.⁸ The Parliamentary Standing Committee of India in its 161st report recommended that, there is need of creating separate category for AI generated works and related matters which may come under the purview of Intellectual Property Rights.

The Works Generated through Artificial Intelligence and Copyright Issues

The copyright is one of the important element of Intellectual Property Rights and there are different kinds of original works eligible to get copyright under section 14 of Copyright Act 1957.⁹ To acquire a copyright, one should be the original author, composer or creator of the work and the work created through AI has not mentioned in the copyright law in India. The Indian Copyright Act, 1957 has not addressed any matter connected to AI generated works and neither considered AI as an owner or an author. Berne Convention plays prominent role in protecting copyrightable works and it also extended protection to unpublished original works.¹⁰ Originality of the work is the prime concern of granting copyright along with creator being a natural person. The work may be of literary, artistic, dramatic, sound recordings, musical, or computer software. To create any work through AI, it should have taken the matter from different sources and the question of originality definitely arises. The Copyright Act 1957 has been amended in 1994, by including computer generated works along with human creations. Sec. 2(d)(vi) inserted and authorship of the work defined as "the person causes the work to be created".¹¹

There are certain cases wherein individual involvement of persons in creation of work along with AI was demanded to grant copyright.

Case law:- Rupendra Kashyap v. Jiwan Publishing House Pvt. Ltd,¹² the matter has come before the bench of High Court of Delhi, Justice R. C. Lahoti, decided that authorship will be granted only to the natural persons and not to an AI for computer generated work. The claim was presented by the Central Board of Secondary Education on question paper set through an artificial intelligence technology.

Case law:- Tech Plus Media Pvt. Ltd juristic v. Jyoti Janda¹³, the matter has come before Justice Rajiv Sahai, in the High Court of Delhi, and the court held that artificial persons cannot claim as authors or owner of copyright. In this case, plaintiff was an

⁸ U Dinesh Kumar, Kumar Rahul, Machine Learning using R, (Wiley, November 1, 2021) p.2.

⁹ Prof. Meenu Paul, Intellectual Property Law, (4thed 2012), Allahabad Law Agency, p.43.

¹⁰ Dr. Elizabeth Verkey, Intellectual Property, (1sted, 2015) Eastern Book Company, p.18.

¹¹ Rajiv Sharma and Ninad Mittal, Artificial Intelligence Lacks Personhood to Become the Author of an Intellectual Property, (22ndSept 2023), <https://www.livelaw.in/law-firms/law-firm-articles-artificial-intelligence-intellectual-property-indian-copyright-act-singhanla-co-llp-238401> (last visited on 5th Feb, 2024).

¹² Rupendra Kashyap v. Jiwan Publishing House Pvt. Ltd, 1996(38)DRJ 81.

¹³ Tech Plus Media Pvt. Ltd v. Jyoti Janda, 2014(60) PTC 121(Del).



industry publication house of information technology having both print and online news portals.

Case law:- Navigators Logistics Ltd v. Kashif Qureshi and Ors¹⁴, in this case, computer generated list was claimed with copyright protection and as there is no human intervention the Delhi High Court rejected the request.

If any AI works are done through involvement of humans, then authorship can be claimed by him and he can ask for protection of copyright and not any computer system of a company. Individual or organisation can hold the copyright or patent of software or invention created by AI and not by AI itself. But, there should be contribution on the part of individual in such creation or work.

Problems and Challenges involved in considering Authorship or Ownership to Artificial Intelligence

There are many challenges and issues that are involved in the matter of considering authorship or ownership to creations or work done by an Artificial Intelligence. If the work is created without any human agency or without any human intervention, it would be very difficult to decide the ownership as well as authorship for such works. It also involves other complications like originality of work, problem connected to plagiarism, infringement of rights etc. The present legal framework mainly focuses on creation done by human beings and originality of such works.

Any work created by AI is not mentioned and it is a grey area in copyright law of the country. Through AI, if any copyright violation takes place, then the responsibility for the same cannot be located in a proper manner. If there is one particular individual specifically created some work or provided inputs for the generation of artificial intelligence, then, such AI will be owned by such individual and there is possibility of that creator getting the ownership of AI generated work. At the same time, one should not deny his responsibility if such AI found guilty of any violation or infringement of copyright. At the same time, if there is any need for protecting the AI generated works and creations, there must be legal framework for the same. The duration of protection to copyright work also forms a new challenge because, for human beings, protection to their work for fifty years and the life time of the author can be given. If any work generated and created by an artificial intelligence or robotic machinery, then the life time of such AI or robot leads to conflicting issue.¹⁵

In the copyright law of any country, there is a provision to transfer the ownership of place in an AI created work as AI cannot execute transfers as human beings. There are moral and ethical aspects connected with the author or owner of the creation of

¹⁴ Navigators Logistics Ltd. v. Kashif Qureshi & Ors, (2018) 254 DLT 307.

¹⁵ Dr. Sik Cheng Peng, Artificial Intelligence and Copyright: The Authors' Conundrum, (2020) WIPO WTCOLLOQUIUM, (https://www.researchgate.net/publication/347945203_Artificial_and_Copyright_The_Authors%27_Conundrum, (last visited on 30th Jan 2024) p. 173.

copyrighted work. In case of *Amar Nath Sehgal v. Union of India*,¹⁶ a renowned artist and sculptor, Mr. Amar Nath Sehgal filed a suit in the High Court of Delhi for damaging mural created by him under section 57¹⁷ of Copyright Act 1957.¹⁸ The Court presided by Justice Nandrajog, granted him justice and upheld the moral right of the owner for the first time by awarding damages to him.¹⁹ If the AI generated works violates public policy, decency or defames other persons, fixing the accountability and remedies would be a challenge to face.

Legal Issues involved in Artificial Intelligence and Copyright Protection

As per Indian Copyright Act 1957, section 2(d)(vi) provides for a definition of author and it states that any literary, dramatic, musical, artistic work etc that are generated by computers, a person who causes the work of creation is the author.²⁰ Under the UK Copyright, Designs and Patents Act 1988, section 9(3) provides that, in case of literary, dramatic, musical, or artistic works that are generated by the computer systems, authorship will be granted to the person who has made necessary arrangement for such creation or the person who has undertaken such work.²¹ Even under Irish Copyright and Related Rights Act, 2000, similar explanation for an author of copyright is given. No computer system is given with authorship or ownership under the legal framework. So, computer generated works are not given with authorship or ownership to any artificial intelligence.²²

If we lookback to international scenario, we can come across many such instances where question of authorship arises and was not granted to AI generated works. An art work created by Generative AI called "The Next Rembrandt" had created crucial question of IP laws in the whole world. The art was a 3-D printed painting created by AI system by analysing the work of Dutch artist Rembrandt Harmenszoon Van Rijn.²³

¹⁶ *Amar Nath Sehgal v. Union of India*, 2005 (30) PTC 253 (Del)

¹⁷ Section 57 of the Copyright Act, 1957 provides for what are termed as "Author's Special Rights," better known as "Moral Rights." Founded on Article 6bis of the Berne Convention, moral rights have two key prongs (1) Right to claim authorship of the work (sometimes referred to as Rights of Attribution/Paternity Rights) and (2) Right against distortion, modification or mutilation of one's work if such distortion or mutilation would be prejudicial to the author's honour or reputation.

¹⁸ Mira T. Sundara Rajan, *Moral Rights-Principles, practice, and New Technology*, (2011) Oxford University Press, p.175.

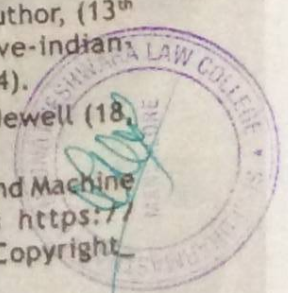
¹⁹ Binny Kalra, *Copyright in the Courts: How Moral Rights Won the Battle of the Mural*, (Feb.2007) WIPO MAGAZINE, https://www.wipo.int/wipo_magazine/en/2007/02/article_0001.html, (last visited on 10th Feb.2024).

²⁰ Sukanya Sarkar, *Exclusive: Indian Copyright Office issues withdrawal notice to AI co-author*, (13th Dec.2021), <https://www.managingip.com/article/2a5d0jj2zjo7fajsjwwlc/exclusive-indian-copyright-office-issues-withdrawal-notice-to-ai-co-author>(last visited on 5th Feb, 2024).

²¹ Andres Guadamuz, *Artificial Intelligence and Copyright*, WIPO-MAGAZINE, Catherine Jewell (18, Oct.2017), p.18.

²² Dr Paul Lambert, *Computer Generated Works and Copyright: Selfies, Traps, Robots, AI and Machine Learning*, EUROPEAN INTELLECTUAL PROPERTY REVIEW, (Issue-1, July 2017) https://www.researchgate.net/publication/326126398_Computer_Generated_Works_and_Copyright_Selfies_Traps_Robots_AI_and_Machine_Learning(last visited on 10th Feb.2024).

²³ Andres Guadamuz, *Artificial Intelligence and Copyright*, WIPO-MAGAZINE, Catherine Jewell (18, Oct.2017),p.15.



Even, Australian Court in 2012, declared that any work that is generated or created by a computer system is not protected under copyright law.²⁴

In the matter of an artificial intelligence system Device for the Autonomous Bootstrapping of Unified Sentience (DABUS), created by Stephen Thaler who filed a patent application in many countries like Australia, the UK, the USA, and even in European Patent Office not considered for granting patent because the device is not directly created by the natural person rather formulated by AI system. Patent law considered only the natural person as inventor or creator.²⁵

With the help of Generative Creativity Machine, a piece of artwork called, A Recent Entrance to a Paradise, was created by a person Thaler and applied for copyright registration for the same in 2023. But United States District Court for the District of Columbia, rejected the application and declared that only for human creations, the copyright can be granted along with authorship and not for machine made creations.²⁶

A historical change and development occurred in the field of AI Patent was that, DABUS was granted with first AI system patent by the South African Companies and IP Commission by accepting Stephen's patent application on 24th June 2021.²⁷

There is a matter of copyright issue connected to AI system generated creation named Robust Artificially Intelligent Graphic and Art Visualizer (RAGHAV) recognised as an author of an artistic work and copyright protection was sought. It was Ankit Sahni, who is the creator of such AI system called RAGHAV filed an application for authorship for AI was rejected in the beginning. The matter has come before the US Copyright Office and the Board rejected to grant co-authorship to AI RAGHAV for the creation. The AI system was able to grasp style input and able to do style transfer. The work 'Suryast' had two image style combination formulated by AI RAGHAV as co-author with Mr. Sahni. Mr. Sahni's base image and Vincent Van Gogh's The Starry Night, a style image grasped by the AI and created a new art.

The work titled 'Zarya of the Dawn' created by artificial intelligence technology called Midjourney was applied for copyright protection by Ms. Kashtanova in the United States Copyright Office IN 2022. She made an application without mentioning the work created with the help of AI and authors name was given as Ms. Kristina Kashtanova. The deposit materials provided by Ms. Kashtanova, was "comic book" consisting of eighteen pages, including a cover page with image of a young woman, the Work's title, and the words 'Kashtanova' and "Midjourney", and the other pages

²⁴ Jai Vignesh K, AI Generated Artworks and Copyright, (July 2023) SURANA AND SURANA INTERNATIONAL ATTORNEYS, <https://suranaandsurana.com/2023/07/04/ai-generated-artworks-copyright/> (last visited on 20th Feb. 2024).

²⁵ Thaler v Commissioner of Patents [2021] FCA 879).

²⁶ Thaler v. Perlmutter, No. CV 22-1564 (BAH), 2023 WL 5333236 (D.D.C. Aug. 18, 2023). (15th April 2023), <https://www.livelaw.in/law-firms/law-firm-articles-/ai-generated-inventions-chatgpt-indian-patent-act-dabus-united-states-patent-trademark-office-european-patent-office-226394>, (last visited on 3rd Feb 2024).

²⁷ Renu Bala Rampal and Swaraj Singh Raghuvanshi, Demystifying Rights of AI Generated Inventions, <https://www.livelaw.in/law-firms/law-firm-articles-/ai-generated-inventions-chatgpt-indian-patent-act-dabus-united-states-patent-trademark-office-european-patent-office-226394>, (last visited on 3rd Feb 2024).



with mixed text and visual materials. After registering it for copyright, the office got to know about the AI used to create the work and sent a notice to Ms. Kashtanova of cancelling the registration. Only the text of the work can be registered under copyright and not the other portion as it is not generated by human efforts.²⁸

But copyright office in India said to be accepted Sahni's application for co-authorship of the art to AI and granted copyright to the same. Yet, later issued a notice of withdrawal of copyright granted to AI by saying that only Mr. Sahni can be the author for creation of his work and AI cannot be considered as author or co-author even if new style implemented and produced an art. In the copyright registry, still it is shown as with the status Registered but under dispute.²⁹ Mr. Sahni became successful in getting copyright registration for suryast in Canadian copyright law. His creativity in creation of AI RAGHAV and the skill that AI developed are argued as inseparable from the creator.³⁰

The internet court of Beijing in China held that AI generated works can also be granted with copyright provided they have originality in their work/creation. But in Germany and Spain, computer generated works are not considered for copyright without human intervention and natural persons are only eligible to get authorship. In 2016, in Japan, there was a short novel written by a computer program created in Japanese company and the novel got selected for second round of a national literary prize award.³¹ Yet, issuing authorship to such computer programme is not recognised. Deep Mind is an artificial intelligence company owned by Google, has generated software that can compose music provided recordings of music is provided to it.³²

There is one more dispute about copyright status of selfie taken by Celebes Crested Macaques by utilising the camera of wildlife photographer from England who was a traveller to Indonesia. It was Mr. David J. Staler, the owner of the camera through which selfie has been taken by Macaques and that has been published by Wikimedia Commons and the blog Techdirt. Macaques being an animal not eligible to acquire copyright protection for the creation and one should be a natural human being for the same. The publishers argued that, if one is not able to get copyright protection, the creation may go to public domain and they are publishing such rare selfie in their blog. In 2014, the photographer contested that, his efforts as photographer to make

²⁸ Van Lindberg, Taylor English Duma, Zarya of the Dawn (Registration # VAu001480196), United States Copyright Office, (February 21, 2023), <https://www.copyright.gov/docs/zarya-of-the-dawn.pdf> (last visited on 19th Feb, 2024).

²⁹ Nicholas P. Zalany & Joseph Grasser, AI Art Registration Denied - The Copyright Review Board Tells Applicant To Gogh Home, (January 22, 2024), NATIONAL LAW REVIEW, Squire Patton Boggs (US), <https://www.natlawreview.com/article/ai-art-registration-denied-copyright-review-board-tells-applicant-gogh-home> (last visited on 20th Feb 2024).

³⁰ Ishan Chaturvedi and Shailja Arya, Humanist Dimensions of Machines, INDIAN LAW INSTITUTE-LAW REVIEW, (special Issue-2023), p.85.

³¹ Andres Guadamuz, Artificial Intelligence and Copyright, WIPO-MAGAZINE, Catherine Jewell (18, Oct.2017), p.17.

³² Saakshi Agarwal and Chintan Bhardwaj, The Dilemma of Copyright Law and Artificial Intelligence in India (April 2, 2021) <https://ssrn.com/abstract=3818280>, (last visited on 17th Feb.2024.).



Macaques to click a selfie could not yield any reward and being a wildlife photographer, he lost ten to twelve British pounds of income. The US copyright office opined that, the work is created by a non-human being and human efforts are not found in the creation of such art.³³

Recently, the matter of "Heart on My Sleeve" the tune had been created using artificial intelligence by TikTok user Ghostwriter977, created lot of issue about copyright violation by artificial intelligence. He had trained Artificial Intelligence in such a manner that, Drake and the Weeknd's works been mimicked and generated new songs with the artists' voices, lyrics, and musical styles.³⁴

Conclusion

Artificial Intelligence is a very fertile area like copyright and other intellectual property rights. Based on technology and advanced computer systems, artificial intelligence can be created and such AI itself started creating new ideas, texts, and creations in the present era. But, granting copyright or patent rights to such AI's is not generally accepted and no such legal frameworks are formulated till now. Even though, there are certain Patent or copyright Offices in some parts of the world accepted to grant copyright and patent rights to such AI generated works, they have not clearly defined the concept of creator, authorship, originator, person etc in their legislation. If there is concrete solution to the possible problems and challenges that may arise by granting authorship to AI's, then they may be recognised as authors or inventors.

There arises a question as to who will take up the responsibility for the infringement likely to take place or violation of rules of law of IP if arises because of creation and invention by AI's. No law specifically mentioned about it so far, so unless the liability is fixed for any violation, it would be creating problems in the discipline of intellectual property rights. As per law, for life time of author, protection of copyright can be granted and how one can decide the lifetime of AI being a lifeless object is another possible question arises in law. If any law passed by giving a clarity that, the creator of the AI himself/herself will be responsible for all the creations, pros and cons of such creation done by the AI, then he/she will be made liable for the consequences.

* * * *

³³ Kapil Chandna, Monkey Selfie Case- Significance to Copyright Act, 1957, (21st March 2018) <https://www.lawyersclubindia.com/articles/monkey-selfie-case-significance-to-copyright-act-1957-8883.asp> (last visited on 6th Feb.2024).

³⁴ Rachel Reed, AI created a song mimicking the work of Drake and the Weeknd. What does that mean for copyright law? (May 2nd, 2023), HARVARD LAW TODAY, <https://hls.harvard.edu/today/ai-created-a-song-mimicking-the-work-of-drake-and-the-weeknd-what-does-that-mean-for-copyright-law/> (last visited on 12th Feb.2024).



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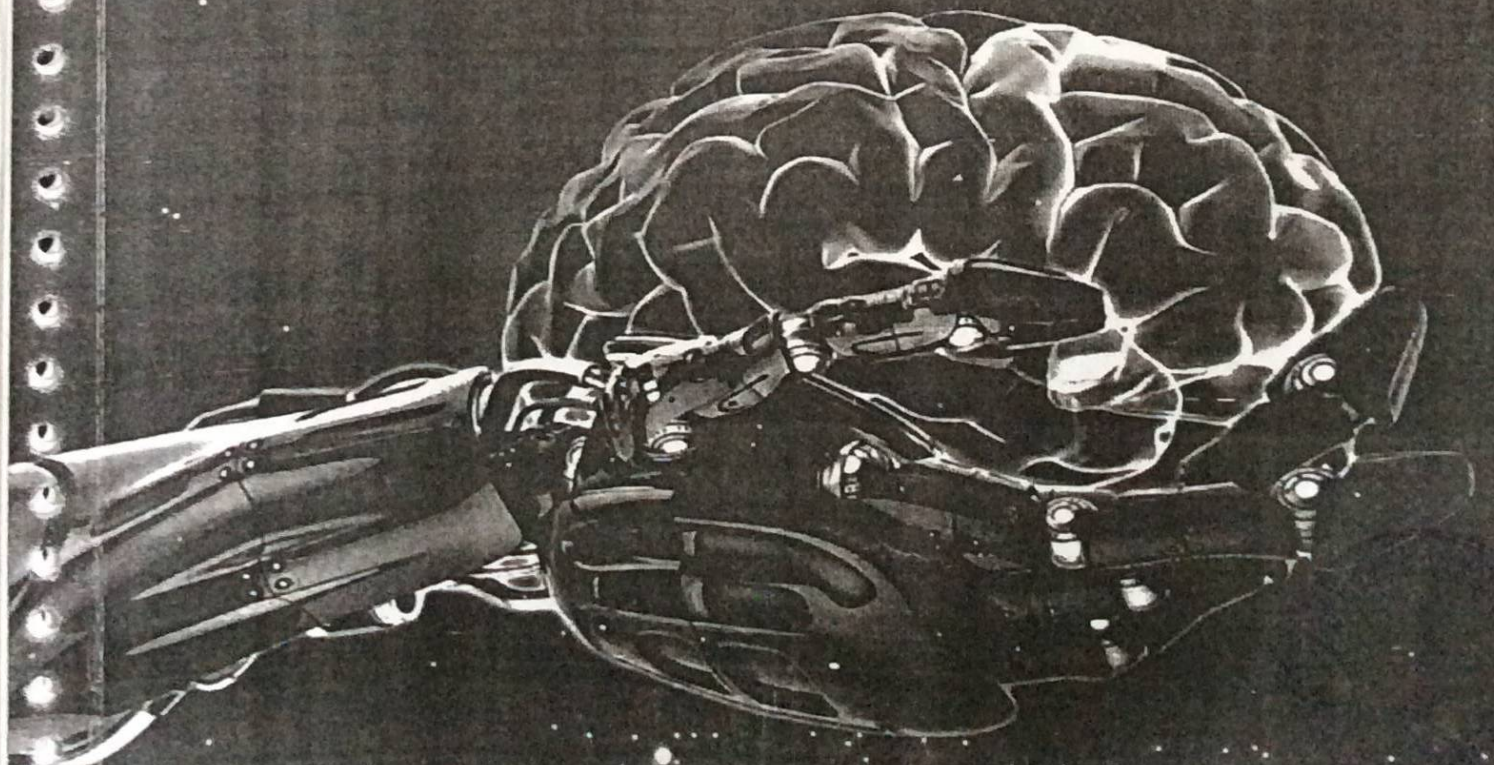


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UNBOXING RIGHT TO PRIVACY IN THE ERA OF ARTIFICIAL INTELLIGENCE

Mr. Karthik Anand *

Ms. Sreelakshmi S. N. *

Abstract

The widespread acceptance of Artificial Intelligence (AI) technology as a transformative solution to various challenges has significantly alleviated human suffering and workloads, ushering in a revolutionary shift in our operational methods. AI now serves as a guiding force for ethical practices across diverse sectors such as agriculture, health, education, and banking. While the adoption of AI technology is underway, questions about its universal deployment and safety linger, giving rise to ethical and legal concerns. The intersection of AI and cyberspace has particularly intensified issues related to privacy, contributing to a surge in cybercrimes. In India, AI is hailed as a pivotal catalyst for economic growth and regional development. This paper aims to explore the legal oversight of AI in India, emphasizing regulations pertaining to artificial intelligence and cyberspace, with a specific focus on the right to privacy and its implications for the nation's digital economy.

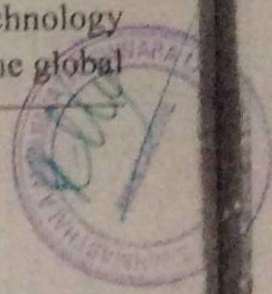
Keywords: *Artificial Intelligence, Cyber-Space, Digital Economy, Right to Privacy, Ethical Practices, Legal Regulation, Adoption of AI Technology, Human Suffering Reduction, Revolutionary Change, Operational Methods, Sectoral Integration, Privacy Concerns, Cybercrimes, India, Economic Growth, Regional Development*

Introduction

Artificial intelligence (AI) is in its early stages of development in India, arriving relatively late due to the country's status as a developing nation. The advent of this technology can be attributed to the 21st-century technological advancements, spurred by the increased presence of social networking sites and investments from international multinational corporations in India, particularly in the field of research and development in artificial intelligence. This remarkable emerging technology operates based on the cognitive processes of human thinking. Presently, the global

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application of artificial intelligence is evident across various sectors of the economy, alleviating burdens and enhancing efficiency through smart technology¹.

Despite the significant strides in AI implementation, India currently lacks a comprehensive legal framework specifically tailored to artificial intelligence. However, it indirectly utilizes the Information Technology Act of 2000 for the control and governance of artificial intelligence applications. Notably, the government has recently passed the Data Protection Bill of 2019 to shape its digital governance framework and address privacy concerns related to data and cyberspace. This legislation will directly encompass the use of artificial intelligence, addressing associated ethical considerations.

1. Definition of Artificial Intelligence:

Artificial Intelligence (AI) is commonly defined as the branch of computer science that aims to create machines or systems capable of performing tasks that typically require human intelligence, such as learning from experience, understanding natural language, recognizing patterns, and solving complex problems.²

Artificial Intelligence (AI) is the simulation of human intelligence in machines that are programmed to think and mimic human actions³.

Artificial Intelligence (AI) is the field of computer science dedicated to creating systems capable of performing tasks that require human intelligence, such as visual perception, speech recognition, decision-making, and language translation⁴.

The relationship between Artificial Intelligence (AI), digital governance, and privacy is intricate and multifaceted, involving both opportunities and challenges. Here's an exploration of how these concepts interconnect:

2. Relationship between Artificial Intelligence, Digital Governance, and Privacy

2.1. Data Collection and Surveillance:

AI systems often rely on vast amounts of data for training and improvement. This raises concerns about mass surveillance and the potential misuse of personal information.⁵

Key issues associated with data collection and surveillance in AI:

2.1.a Invasive Data Collection:

AI systems often require large volumes of data to train and improve their performance. The collection of such data may intrude into individuals' private lives, leading to concerns about the scope and invasiveness of information gathered.

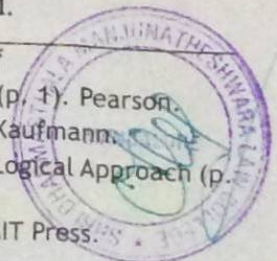
¹ <https://niti.gov.in/sites/default/files/2021-02/Responsible-AI-22022021.pdf>

² Russell, S. J., & Norvig, P. (2010). Artificial Intelligence: A Modern Approach (p. 1). Pearson.

³ Nilsson, N. J. (1998). Artificial Intelligence: A New Synthesis (p. 1). Morgan Kaufmann.

⁴ Oole, D., Mackworth, A., & Goebel, R. (1998). Computational Intelligence: A Logical Approach (p. 1). Oxford University Press.

⁵ Goodfellow, I., Bengio, Y., Courville, A., & Bengio, Y. (2016). Deep Learning. MIT Press.



2.1.b Lack of Informed Consent:

Individuals may not be fully aware of how their data is being used for AI applications. Lack of informed consent raises ethical questions about the right to privacy and autonomy.

2.1.c Surveillance Capitalism:

Some AI applications, especially in the commercial sector, contribute to the growth of surveillance capitalism, where user data is commodified for profit without adequate user control or compensation.

2.1.d Algorithmic Discrimination:

Biases in training data can result in discriminatory outcomes, especially in surveillance applications. Certain groups may be disproportionately targeted or unfairly treated, leading to social and ethical implications.

2.1.e Mass Surveillance and Government Control:

The use of AI in mass surveillance by governments can infringe on citizens' privacy rights and raise concerns about potential abuse of power and erosion of civil liberties.

2.1.f Privacy Erosion in Public Spaces:

AI-powered surveillance systems, such as facial recognition in public spaces, can erode the concept of anonymity and privacy in everyday activities, affecting individuals' freedom and rights.

2.1.g Data Security Risks:

The vast amounts of data collected for AI applications can become targets for cyberattacks, leading to potential breaches and compromise of sensitive information, further jeopardizing privacy.

2.1.h Unintended Consequences:

The deployment of AI in surveillance may lead to unintended consequences, such as false positives, misidentification, and other errors that can have severe repercussions on individuals falsely implicated.

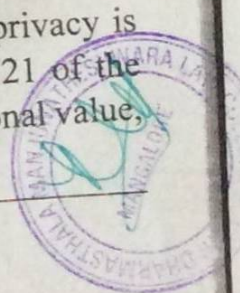
2.1.j Lack of Transparency:

Many AI-driven surveillance systems operate as "black boxes," lacking transparency about the algorithms and decision-making processes. This opacity can hinder accountability and trust.

3. Indian Constitution and Right to Privacy

The recognition of the Right to Privacy as a Fundamental Right in India stems from the landmark Supreme Court judgment in Justice K. S. Puttaswamy (Retd.) vs. Union of India (2017)⁶. In this historic ruling, the Court held that the right to privacy is intrinsic to the right to life and personal liberty guaranteed by Article 21 of the Indian Constitution. The judgment emphasized that privacy is a foundational value, essential for the enjoyment of other rights.

⁶ Justice K. S. Puttaswamy (Retd.) vs. Union of India, (2017) 10 SCC 1



This constitutional recognition was a pivotal moment, affirming the individual's autonomy over personal data and protection from unwarranted state intrusion. The Court highlighted the dynamic nature of privacy in the digital age and acknowledged the need for a robust legal framework to safeguard this right. The judgment laid the groundwork for subsequent legislative developments, such as the drafting of the Personal Data Protection Bill, 2019⁷ This judicial affirmation not only solidified privacy as an inherent and inviolable right but also set the stage for comprehensive legal measures to address evolving challenges in the digital era.

In India, the regulatory landscape for Artificial Intelligence (AI) is evolving, with a focus on data protection, privacy, and ethical considerations. Here's an overview with relevant laws and sections, along with footnotes for further reference:

4. Digital Personal Data Protection (DPDP) Act, 2023

In August 2023, the Indian Parliament approved the Digital Personal Data Protection (DPDP) Act, marking a significant milestone as the inaugural cross-sectoral legislation addressing personal data protection in India.

4.1 Section 3: Definition of Terms

Personal Data: Any information relating to an identified or identifiable natural person ('data subject'). An identifiable natural person is one who can be identified, directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.

Sensitive Personal Data: Special categories of personal data that require additional protection due to their sensitive nature. This may include data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health, or data concerning a natural person's sex life or sexual orientation⁸.

4.2 Applicability of DPDP Act 2023

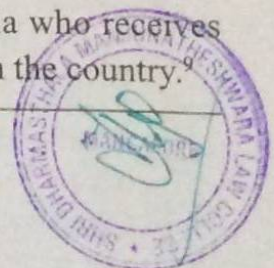
The DPDP Act is applicable to both Indian residents and businesses involved in the collection of data from Indian residents. Notably, it extends its jurisdiction to non-citizens residing in India, whose data processing is linked to any activity associated with the offering of goods or services, even if such processing occurs outside India. For instance, this has implications for a U.S. citizen living in India who receives digital goods or services from a provider based outside India within the country.⁹

⁶ Justice K. S. Puttaswamy (Retd.) vs. Union of India, (2017) 10 SCC 1

⁷ Personal Data Protection Bill, 2019

⁸ Section 3 of Personal Data Protection Bill, 2019

⁹ Section 3 The Digital Personal Data Protection Act, 2023



The 2023 act permits the processing of personal data for any lawful purpose. The entity handling the data can proceed with processing either by obtaining the individual's consent or for "legitimate uses," a term elucidated in the legislation¹⁰.

Consent must be given freely, specifically, informatively, unconditionally, and unambiguously with a clear affirmative action and for a particular purpose. The collected data must be limited to what is necessary for the specified purpose. Consumers must be provided with a clear notice containing these details, including the rights of the individual and the grievance redress mechanism. Individuals have the right to withdraw consent if it is the basis for data processing¹¹.

Legitimate uses encompass situations where an individual has willingly provided personal data for a specified purpose, the provision of subsidies, benefits, services, licenses, certificates, or permits by any agency or department of the Indian state if the individual has previously consented, sovereignty or security reasons, fulfilling a legal obligation to disclose information to the state, compliance with judgments, decrees, or orders, responding to medical emergencies, threats to life, epidemics, threats to public health, and disaster or breakdown of public order¹².

The DPDP Act also establishes rights and obligations for individuals, including the right to a summary of all collected data, knowledge of the identities of data fiduciaries and processors with whom the data has been shared, and the right to correction, completion, updating, and erasure of their data. Additionally, individuals have the right to redress grievances and the ability to nominate persons to receive their data.

Entities responsible for digital personal data, known as data fiduciaries, have defined obligations, such as maintaining security safeguards, ensuring the completeness, accuracy, and consistency of personal data, reporting data breaches to the Data Protection Board of India (DPB), erasing data upon consent withdrawal or the expiry of the specified purpose, appointing a data protection officer, and obtaining the mandatory consent of parents or guardians for children/minors¹³.

While the 2023 act retains broad categories of obligations, it differs from the 2019 bill by removing the scope for the regulator, the DPA, to make detailed regulations on these obligations. The law introduces a new category of data fiduciaries known as significant data fiduciaries (SDFs) with additional obligations, including appointing a data protection officer and conducting data protection impact assessments.

The 2023 law revises the stance on data localization, allowing the government to restrict data flows to certain countries for national security purposes. Exemptions from consent and notice requirements, as well as other obligations, are provided in specific cases, such as processing necessary for enforcing legal rights, personal data processing by courts or tribunals, and processing the personal data of non-Indian residents within India.

¹⁰ Section 4, The Digital Personal Data Protection Act, 2023,

¹¹ *Ibid.*, Section 7(b)

¹² *Ibid.*, Sections 11-14

¹³ Section 17(1) The Digital Personal Data Protection Act, 2023



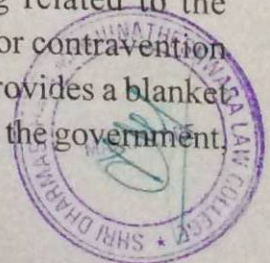
The law also grants complete exemptions for certain purposes and entities, including data processing in the interests of India's sovereignty and integrity, security of the state, and public order. The government has the authority to exempt specific classes of data fiduciaries, including startups, from certain provisions. However, a concerning provision allows the government wide discretionary power to declare exemptions from the law for specific data fiduciaries or classes of data fiduciaries, without clear guidance on the basis, categories, and duration of such exemptions.

4.3 How Well Does the DPDP Act, 2023, protect Privacy?

The 2023 Act establishes India's inaugural data privacy law, necessitating the acquisition of consent prior to the processing of personal data and outlining specific exceptions. It grants consumers the right to access, correct, update, and erase their data, along with the right to nomination. Additionally, the law introduces enhanced safeguards for the processing of children's data. For businesses, it imposes purpose limitations, obligations to provide notice of data collection and processing, and mandates security safeguards. The legislation also mandates businesses to establish grievance redress mechanisms. Complaints and grievances will be handled by the Data Protection Board (DPB), which is empowered to issue penalties for noncompliance with the law. Hence, India now possesses a legal framework for data protection, marking a significant milestone. The existence of this law is expected to gradually establish basic standards of behavior and compliance among businesses engaged in data collection. In this context, the government's approach to implementing and enforcing the law becomes a critical factor, raising questions about whether the focus will be primarily on data-heavy businesses or extend across the entire economy.

The exceptions outlined for consent in the first place grant the state significant empowerment, placing state imperatives on a distinct level compared to private entities. While this may be genuinely justified in certain circumstances, such as disasters or emergencies, the law broadens the scope of these situations. Specifically, Section 7(b) of the law allows the government to bypass consent requirements when a government service beneficiary has previously agreed to receive any other benefit from the state. While this may streamline access to the personal data of beneficiaries for obtaining government services, it also introduces the potential for the government to aggregate databases. The true utilization of this provision would necessitate exempting government agencies from purpose limitations that mandate the deletion of personal data after the intended purpose has been fulfilled.

Another instance of this is the set of exemptions granted to the state for investigative, prosecutorial, and national security purposes. Section 17(1)(c) of the law exempts notice and consent requirements, among others, for processing related to the "prevention, detection, investigation or prosecution of any offence or contravention of any law." While understandable, Section 17(2)(a) subsequently provides a blanket exemption from the entire law for any government agency notified by the government.



in the interests of sovereignty, security, integrity, public order, and preventing incitement. Given that Section 17(1)(c) already exists, Section 17(2)(a) implies Parliament's desire to ensure a complete non-application of data protection law to certain state agencies¹⁴.

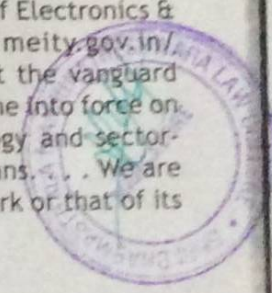
Provisions like these establish a separate category of activity beyond the purview of data privacy requirements. It is problematic that the Indian state is not subject to many of the constraints applicable to private entities, especially when there is no pressing requirement for such an exception.

Secondly, the discretionary rule-making powers the government holds under the law could, in some cases, undermine the protections provided. For instance, under Section 17(5), the government has the authority to declare that certain provisions of this law will not apply to any business or class of businesses within five years of the law's commencement. There is no timeframe for the operation of this exemption or any guidance on its utilization. While an optimistic interpretation suggests it could provide time for compliance by sunrise industries or startups, Section 17(3) already addresses such exemptions. Consequently, Section 17(5) could potentially be used to defeat the law's purpose. It's essential to note that the law only restricts the government's power to grant these exemptions for an initial five-year period, without providing a limit on their potential duration.¹⁵

Similarly, the government possesses unguided rule-making powers for exempting businesses from specific requirements regarding the processing of children's data. Sections 9(1) to 9(3) outline certain requirements, including parental consent and prohibitions on profiling. Section 9(4) enables the government to exempt any business or class of businesses from Sections 9(1) to 9(3) "subject to such conditions, as may be prescribed." This provision lacks clarity on the grounds for granting exemptions, determining conditions, and more. Due to this lack of sufficient guidance, this provision is susceptible to misuse.

¹⁴ See, for example, *A.N. Parasuraman etc. v. State of Tamil Nadu* [SCC (4) 683, 4 Supreme Court Cases 683, Supreme Court of India, 1989]; *Agricultural Market Committee v. Shalimar Chemical Works Ltd.* [Supp. (1) SCR 164, Supp. (1) Supreme Court Reporter 164, Supreme Court of India, 1997]. In this case, the court observed that "the essential legislative function consists of the determination of the legislative policy and the Legislature cannot abdicate essential legislative function in favor of another..... The Legislature should, before delegating, enunciate either expressly or by implication, the policy and the principles for the guidance of the delegates." See also I.P. Massey, "Chapter 4" in *Administrative Law*, 10th ed. (Lucknow: Eastern Book Company, 2022), 94-104.

¹⁵ See, for example, Committee of Experts under the Chairmanship of Justice B.N. Srikrishna, *A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians*, Ministry of Electronics & Information Technology, Government of India, July 27, 2018, 3, https://meity.gov.in/writereaddata/files/Data_Protection_Committee_Report-comp.pdf: "The EU, at the vanguard of global data protection norms has recently enacted the EU GDPR, which has come into force on 25 May 2018.... It is a comprehensive legal framework.... It is both technology and sector-agnostic and lays down the fundamental norms to protect the privacy of Europeans.... We are informed that 67 out of 120 countries outside Europe largely adopt this framework or that of its predecessor."



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While other provisions grant the government powers to prescribe conditions and make substantive rules, the examples highlighted above provide minimal guidance. This is problematic when considered against the principles of Indian administrative law, which requires that laws should not confer unguided and excessive discretion on the implementing authority. If misused, such legal provisions have the potential to violate the Indian Constitution.

Thirdly, the design of the DPB is problematic. The board is an independent agency with a limited mandate, and the government will establish mechanisms for selecting and appointing its members. While the law outlines qualifications for members, it does not specify the number of members on the board and only requires one of them to be a legal expert. This is problematic since one of the board's main functions is to issue penalties and directions for noncompliance.

Additionally, the chairperson of the DPB is empowered to authorize any board member to perform "any of the functions of the board and conduct any of its proceedings." There is a possibility that the chairperson may not authorize the legal member of the board to conduct proceedings leading up to the issuance of a penalty. This design lacks an internal separation of functions between members conducting inquiries and the chairperson, potentially compromising impartiality in all cases.

Therefore, while the DPDP Act introduces data privacy protections in law for the first time, certain provisions in the law have the potential to undermine its benefits if the government does not act under them in the most scrupulous manner possible¹⁶.

5. NITI Aayog's AI Policy: NITI Aayog released the "National Strategy for Artificial Intelligence" in 2018, providing policy recommendations. Relevant aspects include ethical AI development and responsible use.¹⁷

5.1 Ethical AI Development: NITI Aayog likely emphasizes the need for ethical considerations in AI development, including fairness, transparency, and accountability.

5.2 Responsible AI Use: The policy may advocate for responsible AI deployment, ensuring that AI technologies benefit society while minimizing negative impacts.

¹⁶ See, for example, Axel Voss, "Fixing the GDPR: Towards Version 2.0," EPP Group in the European Parliament, May 25, 2021, <https://www.axel-voss-europa.de/wp-content/uploads/2021/05/GDPR-2.0-ENG.pdf>; Daniel Mikkelsen et al., "GDPR compliance since May 2018: A continuing challenge," McKinsey & Company, July 22, 2019, <https://www.mckinsey.com/capabilities/risk-and-resilience/our-insights/gdpr-compliance-after-may-2018-a-continuing-challenge>; Martin Brinnen and Daniel Westman, "What's wrong with the GDPR? Description of the challenges for business and some proposals for improvement," SvensktNaringsliv - Swedish Enterprise, December 2019, https://www.svensktnaringsliv.se/material/skrivelser/xf8sub_whats-wrong-with-the-gdpr-webbpdf_1005076.html/What%27s+wrong+with+the+GDPR+Webb.pdf; Ilse Heine, "3 Years Later: An Analysis of GDPR Enforcement," Strategic Technologies Blog, Center for Strategic & International Studies, September 13, 2021, <https://www.csis.org/blogs/strategic-technologies-blog/3-years-later-analysis-gdpr-enforcement>; Alec Stapp, "Against Privacy Fundamentalism in the United States," Niskanen Center, November 19, 2018, <https://www.niskanencenter.org/against-privacy-fundamentalism-in-the-united-states/>.

¹⁷ NITI Aayog. "National Strategy for Artificial Intelligence." 2018.

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5.3 Capacity Building: NITI Aayog may stress the importance of building national capabilities in AI through education, research, and skill development.

5.4 Public-Private Collaboration: The policy might encourage collaboration between the public and private sectors to foster innovation and address societal challenges.

5.5 Regulatory Framework: There may be recommendations for establishing a regulatory framework to govern the development and deployment of AI technologies.

5.6 Data Privacy and Security: Ensuring data privacy and security in AI applications may be a crucial aspect of the policy, aligning with broader data protection principles.

5.7 International Collaboration: The document may highlight the importance of engaging with the global AI community, participating in international collaborations, and staying abreast of global AI developments.

6. Telecom Regulatory Authority of India (TRAI):

TRAI has explored regulatory aspects related to AI in the telecommunications sector. It has considered the impact of AI on data privacy and consumer rights.

6. Evolving Legislative and Regulatory Frameworks in India

To ensure the secure utilization and implementation of AI systems, it is imperative to establish regulatory standards and processes at both the international and national levels, particularly in the case of India. The development of many AI systems in advanced nations and their deployment in developing countries raises concerns about whether these systems have undergone thorough assessments for safe integration into significantly different contexts. Emphasizing this need for comprehensive evaluation, India's Working Document Towards Responsible AI for All, formulated by NITI Aayog, envisions India as a potential hub for AI development, producing solutions that can be deployed in other emerging economies, constituting 40% of the world.

The Constitution of India guarantees fundamental rights, encompassing the individual's entitlement to equality, privacy, and freedom of speech and expression, among other rights. These constitutional safeguards are specifically designed to address historical and cultural nuances, preventing various forms of discrimination. However, the incorporation of AI systems has the potential to encroach upon several of these constitutionally enshrined fundamental rights. Therefore, as nations like India formulate regulatory frameworks to oversee the adoption and implementation of AI systems, it becomes crucial to prioritize the following considerations¹⁸.

6.1. Elevating the Standard of Accountability for Government or Public Sector Implementation of AI Systems: Nations should contemplate establishing a more

¹⁸ Jhalak M. Kakkar and Nidhi Singh, "Building an AI governance framework for India", available at <https://ccgnludelhi.wordpress.com/2020/09/18/building-an-ai-governance-framework-for-india/> last visited on 5.02.2024

stringent regulatory criterion for the deployment of AI by government entities, acknowledging the profound impact such systems can have on citizens' rights. Instances of government utilization of AI, especially in the distribution of public benefits, surveillance, and law enforcement, warrant heightened scrutiny due to their potential to significantly influence fundamental rights of the populace¹⁹.

6.2. Imperative for a Comprehensive Principles-Based AI Regulatory Framework: Presently, various sectoral regulators are formulating regulations tailored to address specific challenges, including privacy concerns, posed by AI within their domains. While leveraging the expertise of sector-specific regulators and promoting the establishment of regulations tailored to individual sectors is crucial, a fragmented development of AI principles may ensue. To guarantee a cohesive and consistent approach to AI regulation across diverse sectors, it becomes essential to implement a national-level, horizontal overarching framework based on fundamental principles.²⁰

6.3 Tailoring Sector-Specific Regulations for Effective AI Oversight: Beyond a comprehensive regulatory framework serving as the foundation for AI regulation, it is equally essential to anticipate the integration of this framework with specific sectoral laws, such as consumer protection, product liability, and personal data protection. Traditional structures of consumer protection and product liability regulations, often based on fault-centric claims, face challenges when applied to AI systems, given issues related to explainability and transparency in decision-making. Establishing the presence of defects in AI products and providing evidence for harm may be intricate for individuals seeking legal recourse. Consequently, consumer protection laws may necessitate adjustments to remain pertinent in the context of AI systems. Additionally, sector-specific legislation, including regulations governing motor vehicles, would require adaptation to facilitate and oversee the deployment of autonomous vehicles and other AI-based transport systems.

6.4. Adapting AI Systems for Safe Development and Deployment: Ensuring the efficient and secure utilization of AI systems necessitates their meticulous design, customization, and training with pertinent datasets tailored to the specific deployment context. The Working Document envisions India as a global hub for AI innovation. Furthermore, India is likely to import AI systems developed in countries such as the US, EU, and China for deployment within its own context²¹. In both scenarios, AI systems operate in environments distinct from their development origins. Failure to appropriately contextualize socio-technical systems like AI to their deployment environments raises heightened concerns regarding safety, privacy, accuracy, and reliability.

¹⁹ <https://vidhilegalpolicy.in/blog/indias-tryst-with-predictive-policing> last visited on 05.02.2024

²⁰ See Reserve Bank of India, 'Report of the Working Group on FinTech and Digital Banking' (November 2017) available at <https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/WGFR68AA1890D7334D8F8F72CC2399A27> 01.01.2024

²¹ NitiAayog, Working Document: Towards Responsible AI for All (2020), available at <https://niti.gov.in/sites/default/files/2020-07/Responsible-AI.pdf> last visited on 02.02.2024



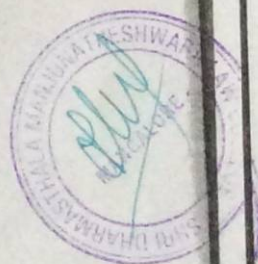
Given this scenario, there is a critical necessity to focus on the formulation of international norms and domestic regulations. These measures are essential to facilitate the safe utilization and deployment of AI systems that originate in diverse contexts, ensuring they align seamlessly with the unique circumstances of their deployment locations.

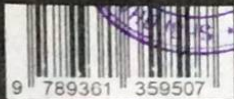
Conclusion

In navigating the future landscape shaped by artificial intelligence, safeguarding the right to privacy becomes non-negotiable. While AI holds transformative potential across various domains, its advancement raises pressing ethical and privacy considerations. It is imperative for governments, businesses, and individuals to comprehend the paramount importance of upholding privacy rights amidst the opportunities presented by AI.

Ensuring that AI progress aligns with individuals' right to privacy mandates the implementation of robust checks and balances, integrating privacy safeguards into AI development practices, and fostering increased transparency and accountability. Elevating the significance of privacy becomes pivotal in striking a harmonious equilibrium between technological advancement and the preservation of fundamental human rights. This concerted effort paves the way for a future where AI is harnessed ethically and responsibly, ultimately benefiting society at large.

* * * *





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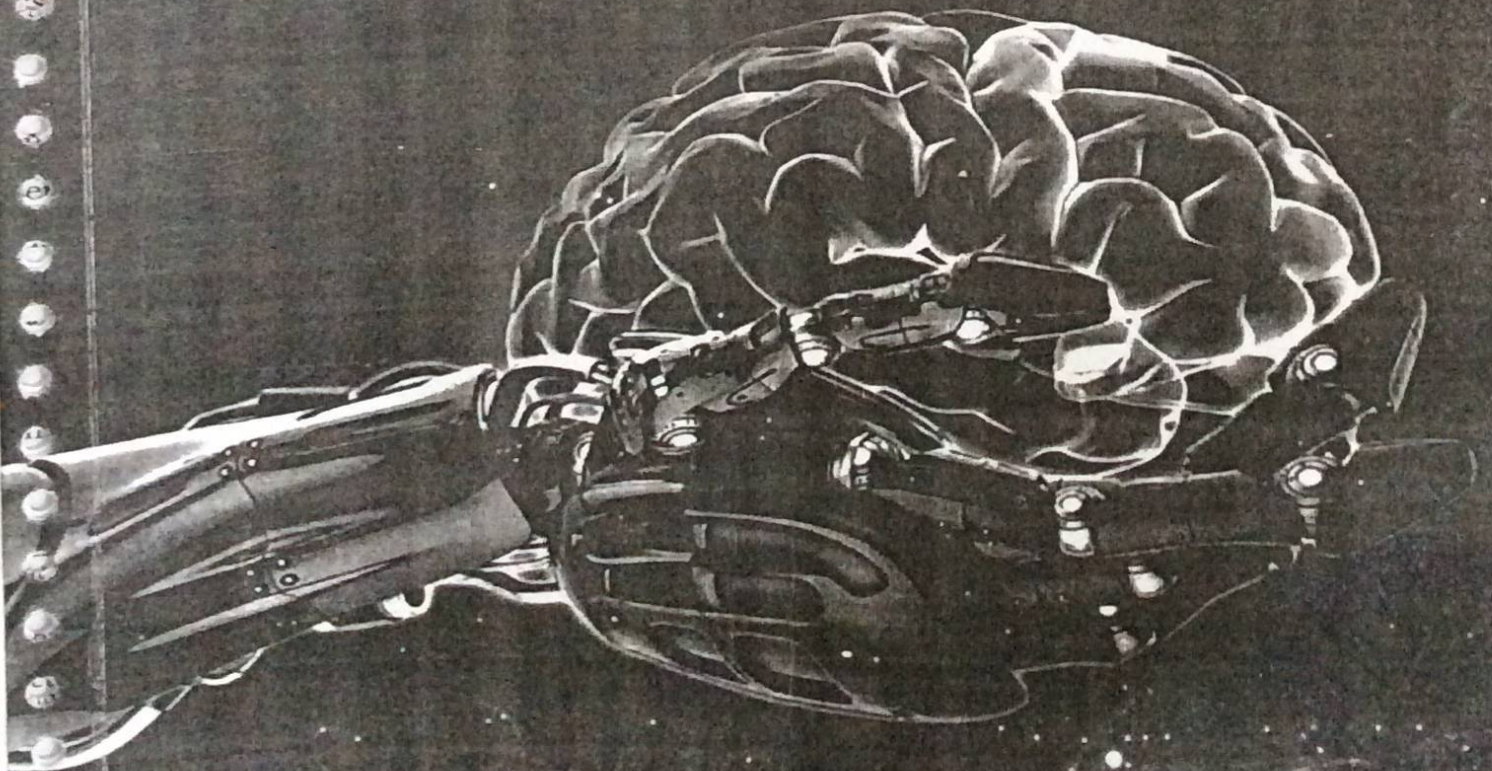


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ARTIFICIAL INTELLIGENCE: A GROWING CONCERN FOR HUMANITY'S FUTURE

Dr. Annapoorna Shet *

Mr. Anantha Padmanabha Pai **

Abstract

Concept of Artificial Intelligence, even though the emerging trend in the present generation was practiced in the past in various dimensions. But due to the emerging trend and advancement in technology, it has taken an improved version with several features so as to benefit the user to a large extent. There are various ways in which the artificial intelligence technology is used in various field. The use of AI is increased to such an extent where it sometimes poses a threat to humanities future. Even though the machines have been advanced to the maximum extent, it is a universal truth that human brain cannot be replaced by machines as machines have their own limitations. The authors discuss the history of artificial intelligence, its concept, advantages and disadvantages of using of AI and also to balance between Artificial intelligence and Human intelligence. The authors also discuss the impact of artificial intelligence under the protection of intellectual property rights.

Key Words : *Artificial Intelligence, Human intelligence, IPR, electronic brain.*

Introduction:

Artificial Intelligence (AI) has undoubtedly emerged as one of the most transformative and influential technologies of the 21st century. With its rapid advancements, AI has penetrated various aspects of our lives, from healthcare to finance, education to entertainment. There is no field at present generation which is not dependent on artificial intelligence. It has made the work of human very easier and flawless with less time consumption. While the benefits of AI are undeniable, there is a growing concern about its potential threats to humanity. The human beings are at threat in several ways due to the increased use of artificial intelligence which may turn the life of human miserable in the coming days. This article aims to provide a comprehensive examination of the ethical implications of AI, exploring the various dimensions that pose a threat to humanity. Discussion is also made on how to balance between artificial intelligence and human intelligence and also how to make the best use of AI overcoming its possible threats.

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History of Artificial Intelligence:

Humans have always been interested in making machines that display intelligence. It dates to ancient times, but the modern era of AI began in the mid-20th century.

The history of Artificial Intelligence (AI) began in antiquity, with myths, stories and rumors of artificial beings endowed with intelligence or consciousness by mastercraftsmen. The seeds of modern AI were planted by classical philosophers who attempted to describe the process of human thinking as the mechanical manipulation of symbols. This work culminated in the invention of the programmable digital computer in the 1940s, a machine based on the abstract essence of mathematical reasoning. This device and the ideas behind it inspired a handful of scientists to begin seriously discussing the possibility of building an electronic brain.

The field of AI research was founded at a workshop held on the campus of Dartmouth College during the summer of 1956. Those who attended would become the leaders of AI research for decades. Many of them predicted that a machine as intelligent as a human being would exist in no more than a generation and they were given millions of dollars to make this vision come true.¹

Eventually, it became obvious that they had grossly underestimated the difficulty of the project. In 1973, in response to the criticism from James Lighthill and ongoing pressure from congress, the U.S. and British Governments stopped funding undirected research into artificial intelligence, and the difficult years that followed would later be known as an "AI winter". Seven years later, a visionary initiative by the Japanese Government inspired governments and industry to provide AI with billions of dollars, but by the late 80s the investors became disillusioned by the absence of the needed computer power and withdrew funding again.

In the 1980s a form of AI program called "expert systems" was adopted by corporations around the world and knowledge became the focus of mainstream for AI research. In those same years, the Japanese government aggressively funded AI with its fifth-generation computer project. Another encouraging event in the early 1980s was the revival of connectionism in the work of John Hopfield and David Rumelhart. Once again, AI had achieved success.

In the first decades of the 21st century, access to large amounts of data² cheaper and faster computers and advanced machine learning techniques were successfully applied to many problems throughout the economy. In fact, McKinsey Global Institute estimated in their famous paper "Big data: The next frontier for innovation, competition, and productivity" that "by 2009, nearly all sectors in the US economy had at least an average of 200 terabytes of stored data".³

¹ Rockwell anyoha, *The history of artificial intelligence*, <https://sitn.hms.harvard.edu/flash/2017/history-artificial-intelligence/> (visited on 1st February 2024)

² Known as big data

³ *Supra* note 1



By 2016, the market for AI-related products, hardware, and software reached more than 8 billion dollars, and the New York Times reported that interest in AI had reached a “frenzy”. The applications of big data began to reach into other fields as well, such as training models in ecology and for various applications in economics. Advances in deep learning⁴ drove progress and research in image and video processing, text analysis, and even speech recognition.

Investment and interest in AI boomed in the first decades of the 21st century, when machine learning was successfully applied to many problems in academia and industry due to new methods, the application of powerful computer hardware, and the collection of immense data sets.⁵

Concept of Artificial Intelligence:

Artificial Intelligence (AI) refers to the development of computer systems that can perform tasks that typically require human intelligence. These tasks include learning, reasoning, problem-solving, perception, speech recognition, and language understanding and others. AI can be categorized into two main types: Narrow AI or Weak AI and General AI or Strong AI.

1. Narrow AI : This type of AI is designed and trained for a specific task. It excels in performing a particular function but lacks the broad cognitive abilities of humans. Examples include virtual personal assistants like Siri or Alexa, image and speech recognition software, and recommendation systems.

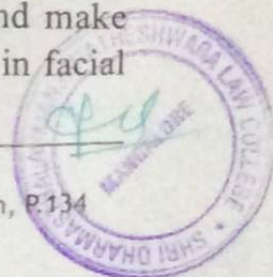
2. General AI : This is a hypothetical form of AI that possesses the ability to understand, learn, and apply knowledge across a wide range of tasks, similar to human intelligence. General AI is still largely a concept and hasn't been achieved till date.

The concept of AI is widely used and applied in various fields and techniques viz

- (i) Machine Learning (ML): A subset of AI that focuses on the development of algorithms that enable systems to learn and make predictions or decisions based on data.
- (ii) Deep Learning: A subfield of machine learning that involves neural networks with many layers. Deep learning has been particularly successful in tasks such as image and speech recognition.
- (iii) Natural Language Processing (NLP): A branch of AI that enables machines to understand, interpret, and generate human language. Applications include language translation, sentiment analysis, and chatbots.
- (iv) Computer Vision: The field that enables machines to interpret and make decisions based on visual data such as images or videos. It is used in facial recognition, object detection, and autonomous vehicles.

⁴ particularly deep convolutional neural networks and recurrent neural networks

⁵ Goel Lavika, 2021, *Artificial intelligence: concepts and applications*, Wiley publication, P.134



- (v) Robotics: Integrating AI with robots to enable them to perceive, learn, and interact with their environment.
- (vi) Reinforcement Learning: A type of machine learning where an agent learns to make decisions by receiving feedback in the form of rewards or penalties.⁶

Advantages of Artificial Intelligence:

AI enables the automation of repetitive tasks, allowing human resources to focus on more creative and strategic work. This boosts efficiency and productivity by completing tasks quickly and accurately. These AI systems can analyse large amounts of data rapidly, uncovering patterns and insights that may be difficult for humans to identify. This helps in making data-driven decisions and predictions.

AI algorithms can process information, evaluate scenarios, and make decisions based on rules or data learning. They also provide valuable recommendations to support decision-making processes. Also, the AI systems are available 24/7, ensuring continuous operation without the need for breaks, which is beneficial for tasks that demand constant attention or monitoring.⁷

The implementation of AI can result in substantial cost savings by optimizing processes, minimizing errors, and decreasing the necessity for human involvement in routine activities. With technologies like generative models, have the potential to support and stimulate human creativity in areas such as art, music, and design, fostering the creation of innovative solutions and concepts.

AI-driven systems have the capability to analyse user behaviour and preferences to deliver personalized experiences, whether in e-commerce, content suggestions, or marketing, thereby enhancing user satisfaction through tailored services. The integration of AI in healthcare, including diagnostic tools and predictive analytics, can aid in early disease detection and the development of personalized treatment strategies, assisting medical professionals in making more precise diagnoses.

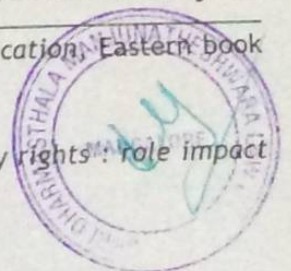
AI-powered chatbots and virtual assistants can manage customer inquiries, provide information, and offer assistance around the clock, enhancing overall customer satisfaction by streamlining interactions and reducing response times. The systems can be utilized for surveillance, threat detection, and monitoring in various sectors to improve safety and security by identifying and responding to potential risks more efficiently.⁸

AI-driven language translation tools facilitate communication across different languages, promoting global collaboration by breaking down language barriers. By analysing data from sensors and equipment, AI can predict when machinery or

⁶ PurviPokhriyal and ors, 2020, *Artificial intelligence: law and policy implication*, Eastern book company, Lucknow, P. 36

⁷ Supra Note 5

⁸ P Mohan Chandran, 2021, *Artificial intelligence and intellectual property rights: role impact challenges and legal implications*, Gurucool publishing, Hyderabad, p.87.



The disadvantages mentioned above requires careful consideration, ethical guidelines, and responsible development practices to ensure that AI technologies are used in ways that benefit society as a whole.

Balancing Between Artificial Intelligence and Human Intelligence:

Balancing artificial intelligence (AI) and human intelligence involves leveraging the strengths of both while mitigating potential risks and challenges. It is a need at the present society to balance between Artificial intelligence and human intelligence. There are several steps that can be taken to achieve this balance

1. *Ethical Guidelines and Regulation:* Establishing clear ethical guidelines and regulations governing the development, deployment, and use of AI technologies helps ensure that AI systems operate in a manner that aligns with societal values and priorities.
2. *Transparency and Accountability:* Promoting transparency in AI systems by making their decision-making processes understandable and interpretable fosters trust and accountability. Developers should document and disclose how AI systems make decisions and handle sensitive data.¹³
3. *Human-in-the-Loop Approaches:* Implementing human-in-the-loop approaches, where human oversight is integrated into AI systems, allows for human intervention when necessary, particularly in critical decision-making processes or situations where AI may lack context or understanding.
4. *Responsible Data Practices:* Adhering to responsible data practices, such as ensuring data privacy, security, and fairness, helps mitigate biases and risks associated with AI systems trained on biased or incomplete datasets.¹⁴
5. *Education and Skill Development:* Investing in education and skill development programs to equip individuals with the knowledge and skills needed to work alongside AI technologies prepares the workforce for the evolving job market and promotes lifelong learning.
6. *Collaborative Research and Development:* Encouraging collaboration between AI researchers, industry stakeholders, policymakers, and ethicists facilitates the development of AI technologies that address societal needs, prioritize human well-being, and consider ethical implications.
7. *Human-Centric Design:* Adopting a human-centric approach to AI design ensures that AI technologies are developed with the end user in mind, taking into account user preferences, needs, and values to enhance usability and user experience.
8. *Diverse and Inclusive Teams :* Building diverse and inclusive teams fosters

¹³ Abott Ryan,2022, *Research handbook on intellectual property*, Edward elgar publishing ltd, Cheltenham Glos, U.K., p,70.

¹⁴ Harsh parikh, *The Future of AI and Intellectual Property Rights (IPR)* , <https://excelonip.com/the-future-of-ai-and-intellectual-property-rights-ipr/> (visited on 30/01/2024)



innovation and creativity by incorporating diverse perspectives, experiences, and backgrounds in the development and deployment of AI technologies.

9. *Continuous Evaluation and Improvement*: Implementing mechanisms for continuous evaluation, monitoring, and improvement of AI systems helps identify and address biases, errors, and unintended consequences over time.
10. *Public Engagement and Dialogue*: Engaging the public in discussions about AI, its potential impacts, and ethical considerations fosters awareness, understanding, and informed decision-making, ensuring that AI technologies reflect societal values and priorities.
11. *Supporting Human-Centered AI Applications*: Prioritizing the development and deployment of AI applications that enhance human well-being, promote social good, and address pressing societal challenges contributes to a more balanced integration of AI and human intelligence.¹⁵

By following these steps, stakeholders can work towards achieving a balance between artificial intelligence and human intelligence that maximizes the benefits of AI while minimizing potential risks and ensuring that AI serves the broader interests of humanity.

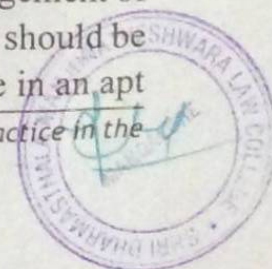
AI has applications across various industries, including healthcare, finance, education, transportation, and entertainment. However, ethical considerations, transparency, and responsible AI development are important factors as the technology continues to advance.

Artificial Intelligence: A Growing Concern for Humanity's Future:

No doubt AI has played an important role in the present computer generation. It has its own merits and advantages which is explained above, but at the same time if it is not used in a proper manner, there is a chance of adverse effect caused because of the use of AI tools and techniques. Even though the machine works faster than the human brain, still it is not in a position to think and react to the situation unlike human brain. It is very easy to produce AI tools in the present scenario, but if it is not maintained in a proper manner, it will pose a threat to human beings which will be difficult to repair it in a given point of time. These machines and tools should be used in a proper and wise manner and for the benefit of the society. Otherwise, it will pose a threat to humanity's future.¹⁶ There are several instances where artificial intelligence is used to commit illegal activities and crime like cyber stalking, identity theft, and alike which will be a great challenge for the State to overcome the problem. There is also a need to include provisions in the IPR with regard to management of AI in the manner beneficial to the interest of the mankind. The provisions should be framed in the legislation so as to regulate the use of artificial intelligence in an apt

¹⁵ Kevin D'ashes, 2017, *Artificial intelligence and legal analytics: New tools for law practice in the digital age*, Cambridge university press, England, p.68.

¹⁶ *Ibid*

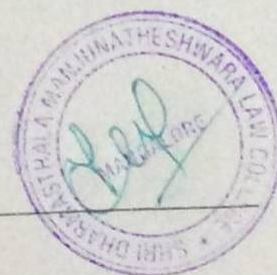


manner without effecting the intellectual property rights in any manner. As Artificial intelligence technology is advancing in the present generation, there are chances of making advanced use of IPR which will lead to more complicated issues and problems. One of the major problem and challenges posed by AI on IP is the issue of ownership and authorship of AI generated works.¹⁷ Hence it is a need of an hour to bring amendments to include necessary provisions to resolve the problems related to artificial intelligence.

Conclusion:

In conclusion, while AI brings immense potential for positive change, it is crucial to address the ethical implications and potential threats it poses to humanity. This article has explored various dimensions, including unintended consequences, bias, job displacement, military applications, privacy concerns, existential risks, and the importance of accountability and transparency. As we continue to advance in AI technology, a thoughtful and ethical approach is essential to harness its benefits while mitigating the risks and ensuring a future where AI serves humanity rather than poses a threat. It is a wait and watch period for us to know the consequences of the use of artificial intelligence in the future.

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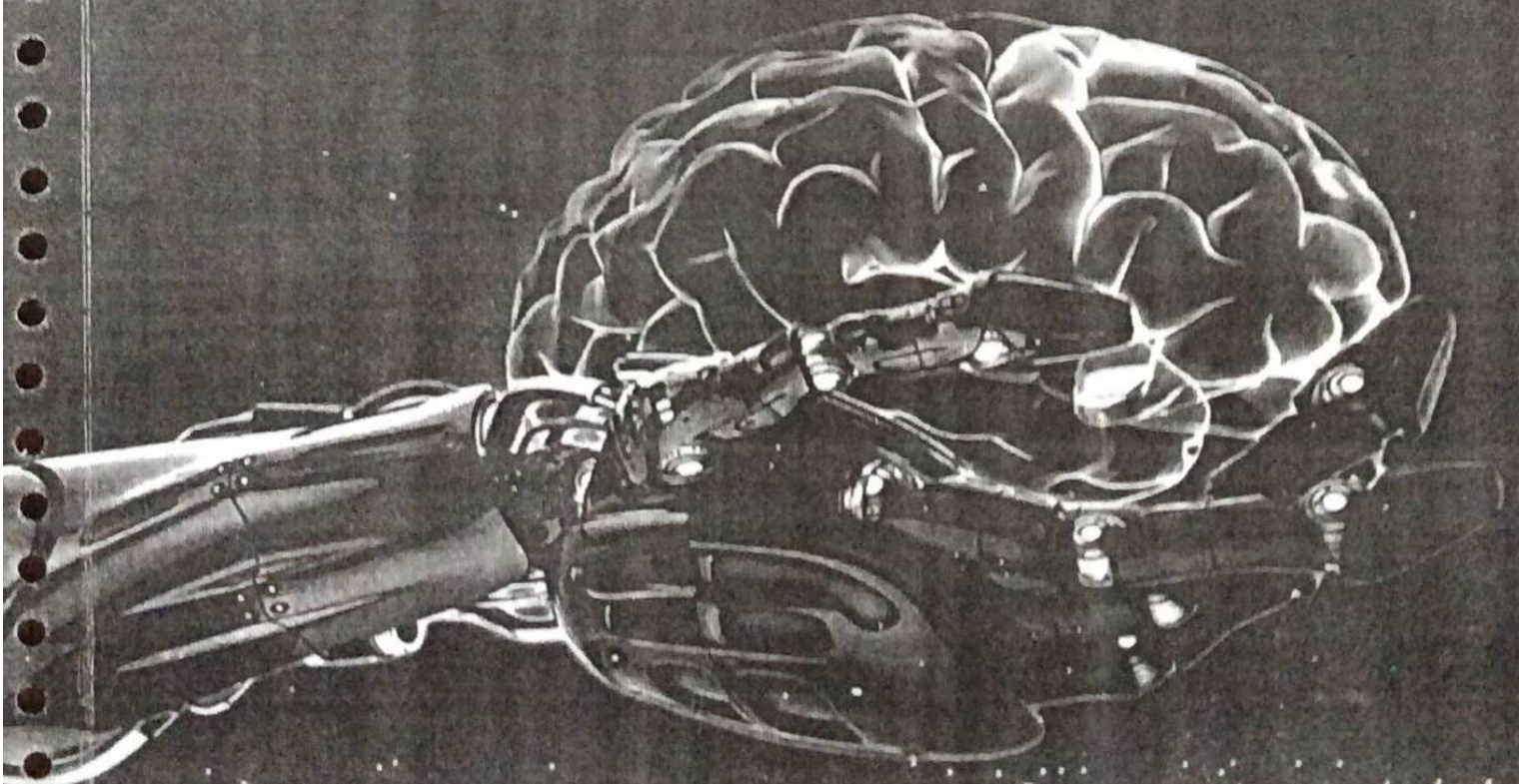


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CODE AND CREATIVITY: UNRAVELING THE COPYRIGHT CONUNDRUM IN AI CREATIONS

Dr. Ravindra K. Rajput *

Abstract

Artificial intelligence (AI) has become a transformative force across various sectors, redefining conventional practices and pushing boundaries in creativity and innovation. As artificial intelligence (AI) continues to advance, the realm of copyright law faces unprecedented challenges and opportunities. AI's ability to autonomously generate creative works blurs traditional notions of authorship and ownership, prompting a reevaluation of legal frameworks. While AI-generated content holds promise for innovation and efficiency, it also raises concerns about intellectual property rights and fair compensation for human creators. Addressing these complexities requires a multifaceted approach that balances the promotion of technological progress with the protection of creative expression. Moreover, it necessitates collaboration among lawmakers, industry stakeholders, and ethicists to develop adaptive and equitable copyright policies that accommodate the evolving landscape of AI-driven innovation.

This paper explores the complex web of legal considerations surrounding the protection of AI creations. Exploring into the fine aspects of copyright law, the paper highlights the challenges faced by legal frameworks in addressing the authorship, ownership, and infringement issues arising from AI-generated content. Further, examining landmark cases and emerging precedents, the paper examines the evolving landscape of AI-driven innovation and the imperative to strike a delicate balance between fostering technological advancement and safeguarding the rights of human creators. By separating the complexities inherent in AI-generated works, this paper aims to contribute to the ongoing discourse on adapting copyright law to the dynamic and transformative realm of artificial intelligence.

Keywords: *Artificial Intelligence, Copyright, Intellectual Property Rights, Creativity and Innovation.*

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Introduction

In present times, the significance of AI cannot be overstated as it permeates virtually every aspect of society, profoundly shaping our daily lives and reshaping entire industries. From personalized recommendations on streaming platforms to advanced medical diagnostics, AI has revolutionized how we interact with technology, extract insights from data, and solve complex problems. Its ability to analyze vast amounts of data and derive meaningful patterns has unlocked unprecedented opportunities for innovation and efficiency across sectors like healthcare, finance, transportation, and manufacturing. Moreover, AI's potential to drive economic growth, enhance productivity, and address pressing global challenges such as climate change and healthcare disparities underscores its pivotal role in shaping the future trajectory of humanity. However, this transformative power also brings ethical, societal, and economic implications that necessitate careful consideration and responsible deployment to ensure that AI serves the collective welfare and fosters a more equitable and sustainable future.

Initially, computers lacked a crucial capability for intelligence: the ability to store commands, limiting them to only executing instructions without memory. Moreover, computing was prohibitively expensive until the early 1950s, with leasing costs reaching up to \$200,000 per month, restricting access to prestigious universities and major technology companies. Convincing funding sources of the value of machine intelligence required proof of concept and endorsement from influential figures.¹ Between 1957 and 1974, AI experienced significant progress. Computers became faster, cheaper, and more accessible, with improved storage capacity. Advancements in machine learning algorithms and better understanding of their application to specific problems were evident. Notable demonstrations such as the General Problem Solver and ELIZA garnered attention, leading government agencies like DARPA to fund AI research. Despite high hopes, achieving goals like natural language processing and abstract thinking proved challenging.²

AI faced major obstacles in its early stages, primarily due to insufficient computational power for substantial tasks. Communication, for instance, necessitated extensive knowledge and understanding of word meanings. Hans Moravec noted computers' inadequacy for exhibiting intelligence. Declining patience and funding led to a slowdown in research for about a decade.³

The 1980s witnessed a resurgence of AI fueled by expanded algorithmic capabilities and increased funding. Techniques like deep learning and expert systems gained prominence, with expert systems finding widespread use in industries. The Japanese

¹ Anyoha Rockwell, *The History of Artificial Intelligence*, Science in the News (Aug. 28, 2017), <https://sitn.hms.harvard.edu/flash/2017/history-artificial-intelligence/> (last visited Feb 17, 2024).

² *Id.*

³ *Id.*

government's substantial investment in AI through projects like the FGCP had mixed results but inspired a new generation of talent. Despite a decline in government funding, AI made significant strides in the 1990s and 2000s, achieving milestones such as Deep Blue's victory over Gary Kasparov and advancements in speech recognition technology.⁴

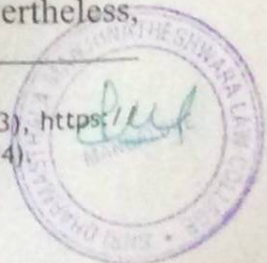
Artificial intelligence has undergone rapid evolution, becoming increasingly influential in creative industries over time. As AI extends its reach across various creative domains, both professionals and enthusiasts voice apprehensions while also acknowledging the potential benefits of collaborating with AI.⁵ Artificial intelligence has become increasingly influential in the realms of art and design, fundamentally altering the creative process and the roles of human artists. Through a retrospective look at the history of AI-generated images and concept art, it becomes evident how AI has expanded the horizons of visual expression, presenting captivating and imaginative works that challenge traditional artistic boundaries. While AI demonstrates remarkable capabilities in generating visual content, human artists continue to play an indispensable role in refining AI-generated outputs. This collaborative dynamic ensures that the final artwork retains the distinct perspectives, creativity, and aesthetic nuances that only human artists can contribute. Through this partnership, AI serves as a tool for artists to explore new avenues of expression and experimentation, enriching the creative landscape with innovative possibilities. Moreover, automation has permeated the field of graphic design, introducing AI-powered tools that offer design variations and data-driven insights to streamline the creative process. A notable example is Canvas Design AI, which leverages user preferences and design trends to suggest elements such as color combinations, layout options, and design elements. By harnessing AI capabilities, designers gain access to enhanced decision-making support, resulting in more compelling and visually impactful designs that resonate with audiences.⁶

Advances in artificial intelligence have penetrated the domain of acting and screenwriting. AI-driven tools like OpenAI's GPT-4 have the capacity to craft scripts, dialogues, and even assist in character development. This emerging technology stands poised to transform the landscape of script creation and refinement within the entertainment sector. Yet, a distinct contrast arises when comparing AI-generated performances to those delivered by human actors. Human actors infuse their craft with spontaneity, subtlety, and improvisational flair, qualities often absent in AI-generated renditions. The innate creativity and emotional resonance brought forth by human actors remain unparalleled by AI-generated counterparts. Nevertheless,

⁴ *Id.*

⁵ Matt, *The Evolution of AI in the Creative Industries*, AutoGPT Official (Dec. 22, 2023), <https://autogpt.net/the-evolution-of-ai-in-the-creative-industries/> (last visited Feb 17, 2024).

⁶ *Id.*



despite these disparities, there exists considerable potential for collaboration between AI and human actors in the future. By combining the strengths of AI technology with the unique talents of human performers, novel approaches to storytelling and performance may emerge. Embracing the possibilities presented by AI in acting and screenwriting has the capacity to push creative boundaries and yield exceptional artistic endeavors within the entertainment industry.⁷

Artificial intelligence has made notable strides in music composition, presenting fresh opportunities for musicians and composers. Its capacity to analyze musical structures enables AI to produce original melodies and harmonies, opening doors to inventive musical creations. However, the integration of AI in music composition raises ethical considerations, particularly concerning the replication of renowned artists' voices and styles. This prompts a thorough examination of the ethical implications surrounding the utilization of AI-generated content in the music industry, particularly in relation to artists' rights and creative ownership. Despite these challenges, there exists significant potential for collaboration between AI technology and musicians. Embracing AI's capabilities in music composition allows artists to expand the horizons of creativity and delve into novel realms of artistic expression. In this collaborative venture, AI serves as a valuable ally, aiding musicians in their creative pursuits and facilitating the development of groundbreaking and enthralling music.⁸

The field of photography has been significantly influenced by artificial intelligence, leading to advancements in image quality and the automation of post-processing tasks. Through sophisticated algorithms and machine learning techniques, AI has enabled the creation of realistic images that challenge traditional photography methods. One notable area where AI has made considerable progress is in automating post-processing activities. AI-driven software can adjust various elements of an image like brightness, contrast, and color balance automatically, streamlining the editing process for photographers and allowing them to focus more on their creative endeavors. Moreover, AI has showcased its capability to generate lifelike images from scratch, utilizing advanced technologies such as Generative Adversarial Networks (GANs). These AI-generated images find applications across different sectors, including advertising, digital art, and virtual reality environments. As AI continues to advance, there are burgeoning opportunities for collaboration between AI systems and human photographers. Leveraging AI's capabilities empowers photographers to explore fresh creative pathways and produce visually striking works previously beyond reach. Embracing AI's potential in photography promises to drive innovation and propel the field to new heights.⁹

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

Copyright Fundamentals

Copyright law and related rights safeguard the specific expression of ideas, rather than the ideas themselves. This legal framework shields creative works based on their unique arrangement and selection of mediums such as text, musical compositions, and visual elements. Copyright grants exclusive rights to creators, protecting them from unauthorized replication or use of their original expressions. While creators can produce works akin to those of others without infringing copyright, provided they haven't directly copied another's work. Due to the fundamental variance between inventions and literary/artistic works, the legal safeguards for each differ accordingly. Patent protection, granting a monopoly on exploiting an idea, is typically short-lived, lasting around 20 years. Additionally, the disclosure of the invention to the public is necessary, typically through official registration, declaring ownership and the specified duration of protection. In essence, protected inventions must be publicly disclosed in an official registry. In contrast, copyright protection for literary and artistic works primarily focuses on preventing unauthorized use of the expressions of ideas. This distinction contributes to the considerably longer duration of copyright protection compared to patents. Copyright law is often declaratory, meaning it affirms that the author of an original work possesses the right to prohibit others from copying or using the work without permission. Once a work is created, it is automatically considered protected, and there is typically no need for a public register of copyright-protected works. Authors or creators are not required to take any specific actions or fulfill formalities to secure copyright protection.¹⁰

In terms of copyright protection, "literary and artistic works" encompass any original creation, regardless of its perceived literary or artistic quality. While the ideas within the work don't necessarily have to be original, the form of expression must be a unique creation by the author. Article 2 of the Berne Convention states that: "The expression 'literary and artistic works' shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression."¹¹

Legislative Developments Addressing AI and Copyright

Several significant challenges¹² arise in the realm of Copyright law:

1. Ownership Disputes: Traditional copyright laws presume human authorship and grant copyright to creators. However, the emergence of AI-generated content raises questions about ownership. When AI systems autonomously produce creative works without direct human involvement, determining who holds the copyright becomes problematic.

¹⁰ Understanding Copyright and Related Rights, 6 (2nd ed. 2016), https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf.

¹¹ WIPO Lex, https://www.wipo.int/wipolex/en/text/283698#P85_10661 (last visited Feb 19, 2024).

¹² Navigating Copyright Challenges in the Age of AI-Generated Content: An Uncharted Legal Landscape, Areness - Law & Beyond (Aug. 10, 2023), <https://www.arenesslaw.com/navigating-copyright-challenges-in-the-age-of-ai-generated-content-an-uncharted-legal-landscape/> (last visited Feb 19, 2024).



2. Creativity Evaluation: Copyright protection typically applies to works demonstrating a certain level of creativity and originality. While AI algorithms can produce content meeting these criteria, assessing whether a work qualifies for copyright protection when it's entirely machine-generated poses challenges.

3. Infringement Detection: The proliferation of AI-generated content complicates the task of identifying copyright infringement. Monitoring and enforcing copyrights for such works require new methods and tools to effectively detect unauthorized use amid the vast volumes of AI-generated material.

The Indian Copyright Act of 1957 doesn't explicitly address AI-generated content or designate AI as an author. Copyright law in India safeguards original works of authorship, encompassing literary, artistic, musical, and dramatic creations. Typically, copyright is conferred upon the creator or author of a work, granting them exclusive rights to reproduce, distribute, display, and perform it. However, since AI-generated content lacks a conventional human author, determining copyright ownership and establishing it as copyrighted material poses challenges. This issue was highlighted in an Indian case where a work was registered with an AI named 'RAGHAV' and listed its creator as a co-author, but the Copyright office later withdrew their approval. IP offices worldwide grapple with the complexities arising from AI-generated works. While AI offers numerous advantages such as cost and time savings, intellectual property laws globally are still evolving to address these challenges. For instance, the United States Copyright Office (USCO) initially granted copyright protection to an AI-generated comic in the Kristina Kashtanova case but later rescinded their decision.¹³

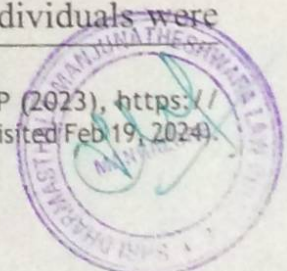
Granting authorship rights to an AI in AI-generated works presents complex implications. For example, if an AI is designated as the author of such works and copyright infringement occurs, neither the AI can enforce its copyrights nor can it be held liable for potentially infringing existing copyrighted works. This is because AI lacks legal personhood and cannot be subject to lawsuits. Therefore, before addressing the issue of granting authorship rights to AI, legislation must determine the legal status of AI. Furthermore, under Indian law, original literary, dramatic, musical, and artistic works are protected for 60 years following the author's death. If AI is granted authorship over such works, the rationale behind the protection period in copyright law becomes irrelevant since AI has perpetual existence.¹⁴

In the case of *Rupendra Kashyap v. Jiwan Publication House Pvt. Ltd.*¹⁵, the Delhi High Court addressed the issue of authorship concerning question papers and their compilation, specifically whether the Central Board of Secondary Education (CBSE) could claim copyright over them. The court ruled that CBSE, being an artificial entity, couldn't assert copyright unless it could demonstrate that individuals were

¹³ *Id.*

¹⁴ Shradha Prakash, *Copyright Ownership of AI Generated Content in India*, SC IP (2023), <https://www.sc-ip.in/post/copyright-ownership-of-ai-generated-content-in-india> (last visited Feb 19, 2024).

¹⁵ 1996 (38) DRJ 81



involved in compiling and preparing the question papers. This decision established that only natural persons can claim copyright under Indian law. This precedent was reaffirmed in *Tech Media Private Ltd. v. Jyoti Janda*¹⁶, where it was reiterated that authorship cannot be attributed to a legal entity, even if it holds copyright. Similarly, in *Navigator Logistics Ltd. v. Kashif Qureshi & Ors.*¹⁷, copyright claims were dismissed regarding a list compiled by a computer due to the absence of human involvement.¹⁸

Collaborative Approaches

As the realm of Digital Innovation continues to push AI-generated content into new frontiers, legal frameworks must evolve accordingly. A notable example is the General Data Protection Regulation (GDPR) implemented by the European Union. Although not specifically targeting AI-generated content, the GDPR sets standards for data protection and privacy that are becoming increasingly pertinent in the realm of AI technologies.¹⁹

Google has demonstrated proactive measures in adjusting its AI practices by establishing ethical AI principles. These principles serve as guidelines for the development and deployment of AI technologies within Google, emphasizing values such as fairness, accountability, and transparency. Such initiatives underscore a dedication to aligning legal frameworks with the ever-changing landscape of Digital Innovation.²⁰

Balancing the promotion of AI innovation with the protection of intellectual property presents a nuanced challenge. Legal frameworks must encourage AI advancement while guarding against misuse or infringement. Achieving this balance requires continuous collaboration and proactive measures to address emerging issues. IBM strategically utilizes its patent portfolio to safeguard its AI innovations, actively filing patents in this field. This proactive approach not only protects IBM's intellectual property but also helps shape the evolving legal landscape in digital innovation.²¹

In the dynamic realm of AI-generated content and copyright complexities, the tension between promoting innovation and respecting intellectual property rights is evident. AI's introduction in content creation disrupts conventional norms of authorship and ownership, emphasizing the need for a delicate balance. Acknowledging AI's transformative potential while protecting human creators' rights necessitates a nuanced approach that navigates the intricate legal and ethical considerations at play.²²

¹⁶ (2014) 60 PTC 121

¹⁷ 254 (2018) DLT 307

¹⁸ Shruti Vijayvargiya, *Copyright Law in the Light of AI Development*, The IP Press (Aug. 5, 2023), <https://www.theippress.com/2023/08/05/copyright-law-in-the-light-of-ai-development/> (last visited Feb 19, 2024).

¹⁹ Unraveling the Enigma: AI-Generated Content in the Copyright Maze, HyScaler, <https://hyscaler.com/insights/digital-innovation-ai-copyright/> (last visited Feb 19, 2024).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*



In the dynamic landscape of AI-generated content and the complexities of copyright law, there is a noticeable tension between fostering innovation and safeguarding intellectual property rights. The emergence of AI in content creation has disrupted traditional norms around authorship and ownership, necessitating a careful balance. Recognizing the transformative potential of AI while ensuring the protection of human creators' rights becomes paramount at this juncture. This demands a nuanced approach that acknowledges AI's innovation capabilities while navigating the intricate legal and ethical terrain.²³

Looking ahead to the future of content creation, collaboration emerges as a crucial element in untangling the copyright complexities. Legal experts face the challenging task of adapting existing frameworks to accommodate the unique characteristics of AI-generated content. Ethicists are essential in ensuring that innovation aligns with ethical standards, addressing concerns like bias, transparency, and accountability in AI algorithms. Innovators, on their part, have a responsibility to develop technologies that not only push creative boundaries but also adhere to ethical guidelines. The synergy among these stakeholders lays the groundwork for a harmonious coexistence, shaping a future where AI-driven innovation flourishes within the protective boundaries of copyright principles.²⁴

Conclusion

As artificial intelligence continues to advance and become more prevalent across creative sectors, it's crucial to acknowledge and value the distinctive perspectives and creativity that human artists contribute. By embracing AI's potential while also addressing emerging copyright and ethical issues, collaboration between artists, technologists, and policymakers can shape a future where AI and human creativity intersect to expand artistic frontiers.

Ongoing dialogues among artists, technologists, and policymakers are vital to ensuring responsible and beneficial integration of AI in creative fields. These discussions facilitate tackling important matters like copyright protection for AI-generated content and the ethical considerations surrounding the replication of famous artists' voices and styles by AI.

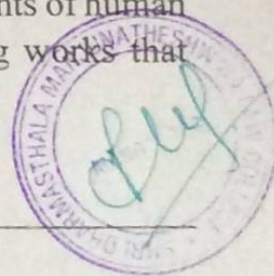
Imagining a future where AI and human artists collaborate to push creative boundaries requires not just addressing current challenges but also exploring new avenues for innovation and partnership. By leveraging AI alongside the unique talents of human artists, the creative industries can thrive, producing groundbreaking works that challenge established artistic norms.

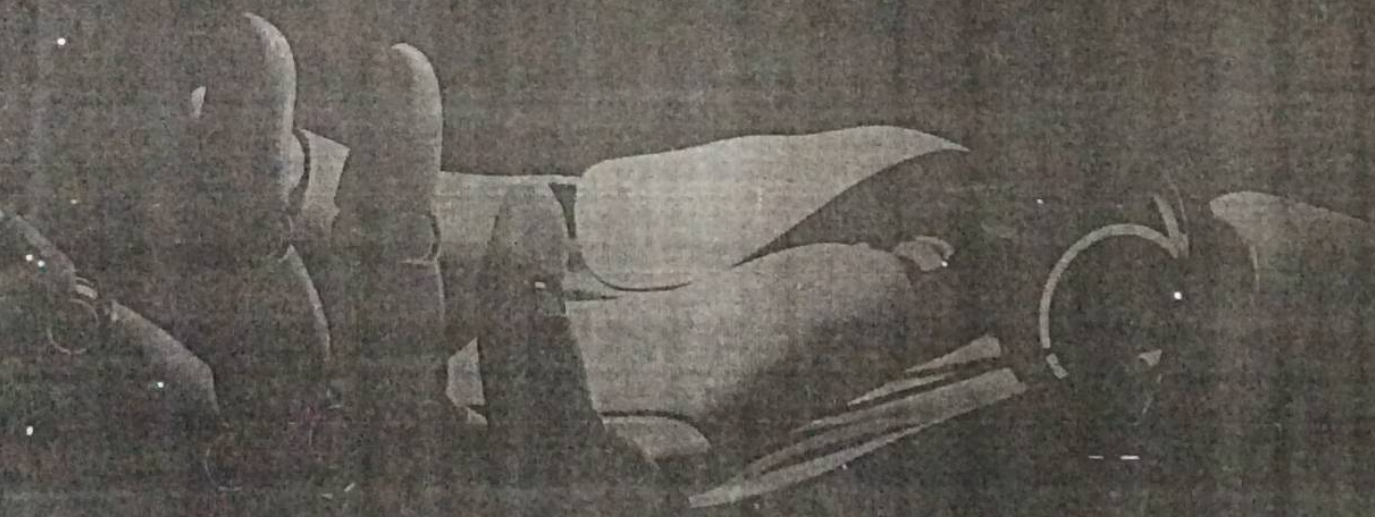
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²² *Id.*

²³ *Id.*

²⁴ *Id.*





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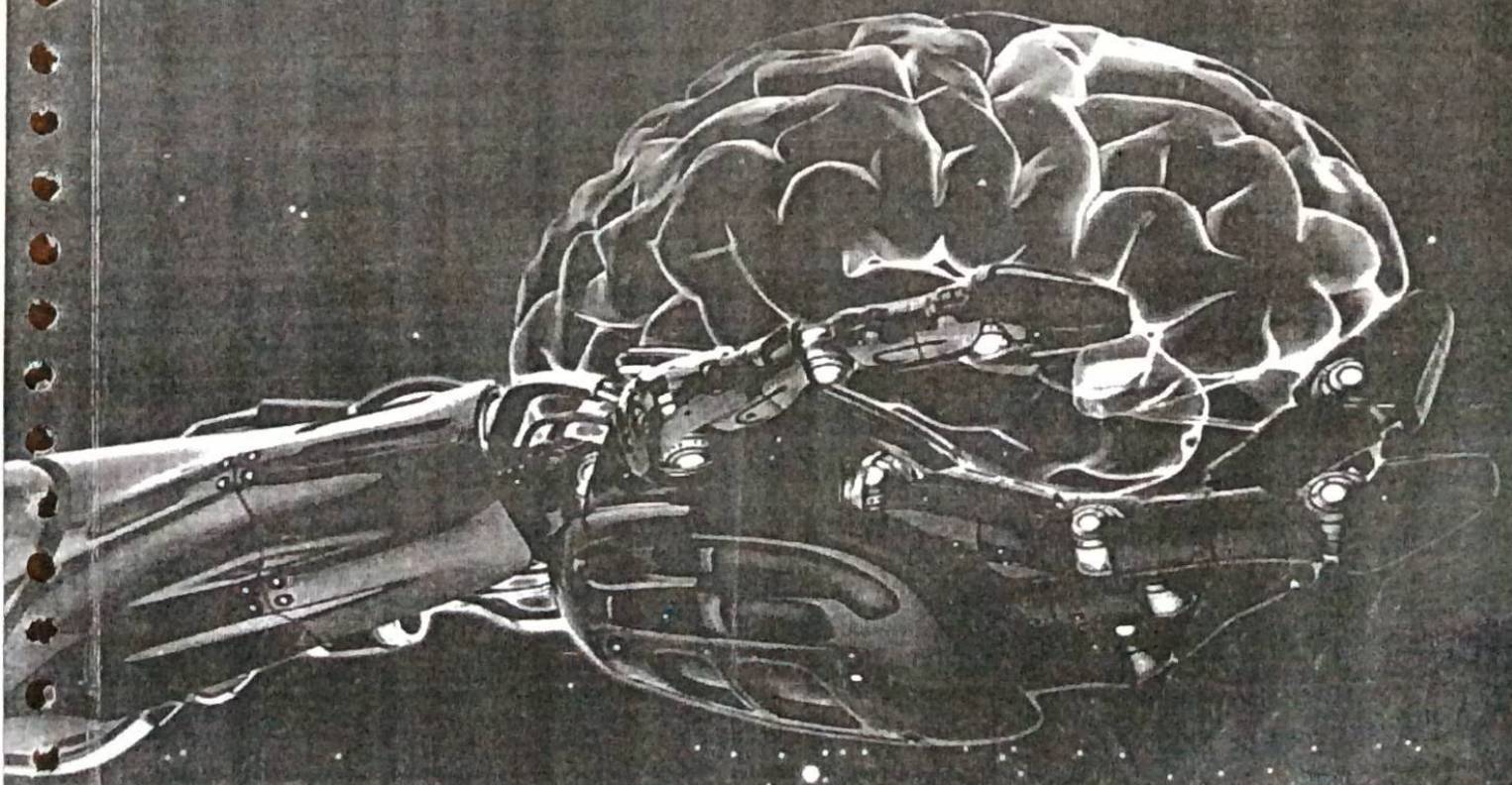


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LEGAL STATUS OF ARTIFICIAL INTELLIGENCE IN INDIA WITH REFERENCE TO COPYRIGHT AND PATENT LAWS

Dr. Chandrlekha V. *

Mr. Shivashankar **

Abstract

Artificial intelligence (AI) is alternative intelligence to human intellect. It is the ability of a digital computer or pre-loaded or independent robot, to perform tasks commonly associated with intelligent being. It is Science and Engineering of making Intelligent Machines, especially intelligent computer programs. It is related to the similar task of using computers to understand human intelligence but ai does not have to confine itself to methods that are biologically observable. IPR means a property created by using human intelligence. It has various facets like copyright and related rights, patent, industrial design and so on. As per ipr legislations human being or legal personality can own ipr if they create any property by the use of their intelligence. Nowadays A I also work in equal pedestal to human intelligence. AI has lion share in the work performed by the human being a step ahead, it can also work independently.

As in the legal realm, personality of any being is very crucial. Personality attracts it a bunch of rights and imposed certain duties. Does AI have legal personality or it is best to signify it as cyber personality. What happens, if it is entrusted as legal person? As per IP legislation any human or legal person can hold the intellectual property right. To expand this definition question arise that can AI, as a cyber-personality, claim the rights? If rights are claimed, will it impact human's right for IPR? Is there any moral tussle which human may face when AI takes over him? Will there be any real battle between the human and AI over intellectual property. In this article researchers wants to find out answer for this above problem. By answering, it provides relevant valid suggestions which might be accommodating to near future.

Keyword : Electronic Personhood, Patent, Copyrights, AI tussle.

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1.1 Introduction

"Only a human or other legal person can be an owner, controller or patentee. That of course includes an inventor who is a human. But it is a fallacy to argue from this that an inventor can only be a human."

– Justice Beach in *Taler v. commissioner of patent*¹

It is said that, most curious concept in this world is very few. Among them IPR also has a space. The term has also gained importance during last one and half centuries and today encompassing almost everything which human brain create. In USA, there is a common saying, that everything under the sun is patentable except human being². A simple drawing, doodling to creating a fast processing super computer everything can be registered. Its simple words whatever the mind conceives is IP or intellectual property. Property can be corporeal or incorporeal. Copyrights, trade secret, Patent Geographical Indication, industrial designs are few examples for in corporeal property. Thus, a violation of this ownership is nothing but theft or trespass which is termed as infringement and, therefore, such property must be protected. However, present day IPR regime has moved from ancient free dissemination of knowledge concept which is core of our society.

AI is experiencing exponential growth, with Google filing one among the primary patents on AI back in 2015 and ending that first year by filing 5 more on the same subject. Likewise, many other establishments like Fujitsu, IBM, NEC, Microsoft, and Siemens have several patents on AI-related technologies and therefore the numbers still grow with each passing day.³

Not only has AI gained the attention of inventors, but it's also been quite enticing for investors too. Investments in AI technology show skyrocketing trends. Accel, risk capital firm has announced a 500 million USD pool for various focus areas and AI was on the highest of the list⁴. Similarly, Habana labs (which was recently acquired by Intel), have invested billions of dollars in AI R&D⁵. Many believe that the wave of investment and energy being poured into AI is making it mankind's greatest endeavours.

The R&D in Technology has reached such a stage that, artificially intelligent machines have begun to write a story like author, compose music like composer, paint a paintings like artists, Designed the designs like designer, and invented like inventor. Recently patented Food container invented by CREATIVE MACHINE called DABUS is best example to cite. Its high time for parliamentarians to deliberate

¹ *Taler v. commissioner of patent* [2021] FCA 879, "Ipwatchdog, DABUS Scores Again with Win on AI Inventorship Question in Australia Court", Aug. 2, 2021, 2:15, <https://ipwatchdog.com/2021/08/02/dabus-scores-win-ai-inventorship-question-australia-court/id=136304/>

² *Dimond v. Anand Chakrabarthy*, 447 U.S. 303 (more) 100 S. Ct. 2204

³ Wood johnny, the number of global patent applications is breaking records. Where are the hotspots?, world economic forum, dec 19, 2022.

⁴ Banthia Jyothi, Accel sees Promise in AI investments, the Hindu business line, updated-Aug. 13, 2023 at 05:37.



into the situation and bring enactment recognizing such machines and amending IP laws to recognise their innovation.

1.2 Method of Research

Desk research or secondary research technique is used by the researchers during the course of research pursuit. Since it involves synthesizing the existing data that can be sourced from internet, peer reviewed journal or authored book to reach a determined conclusion.

1.3 Meaning and Definitions

Artificial Intelligence means the ability of a digital computer or pre-loaded or independent robot to perform tasks commonly associated with intelligent being. According to National strategy for Artificial intelligence AI is a constellation of technologies that enables machines to act with higher levels of intelligence and emulates the human capabilities of sense, comprehend and act⁶. Intellectual Property Rights has several forms like Patent, trademarks, copyright, Designs, etc. Patent means an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.⁷ It's an exclusive right granted to the inventor for a new invention or improvement over the invention which is use full in any industry. Similarly Copyrights are the right given by the law to creator of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings.⁸ It's a bundle of right.

1.4 Legal status of Artificial Intelligence

At present, most of the researches on legal status of artificial intelligence focuses on exploring the concept of artificial intelligence from different angle, and then draws a conclusion that artificial intelligence is a subject, an object or a compromise between the two. Opinions on the legal status of artificial intelligence generally fall into the following categories:

- i) **Negative Theory:** The theory holds that artificial intelligence is only the object of legal relations and should not be granted legal subject status. As the development of artificial intelligence has not posed a subversive challenge to the traditional subject of law theory, we should still adhere to the traditional theory in the short term, and should not define it as the subject of law.⁹
- ii) **Positive Theory:** The theory holds that artificial intelligence should have the qualification of legal personality, including the agency theory, fictitious personality

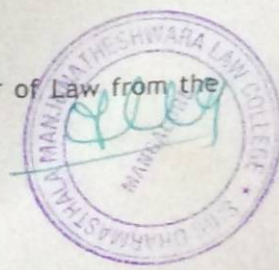
⁵ Leone Mike, intel acquires Habana labs for \$ 2Billion, Enterprise strategy groups, December 16,2019. La vis 16/02/2024 21:04,

⁶ Niti Ayog, NATIONAL STRATRGY FOR ARTIFICIAL INTELLIGNCE, June 2018, p12.

⁷ <https://www.wipo.int>

⁸ Act 14 of 1957, copyright act, 1957.

⁹ W Zhifeng, analysis of status of artificial intelligence as the subject matter of Law from the perspective of autopoiesis.



theory, electronic personality theory and other specific types. Scholars who hold the positive theory believe that with the rapid development of artificial intelligence, it will be widely used in all fields of society and have the ability to independently affect the rights and obligations of others. Many non-natural entities have been gradually endowed with the qualification of "human" in law based on the needs of lawmakers, and have obtained the subject status. The trend of "non-human seen as human legally" is increasingly strengthened, which therefore explains the existence of humanoid robots to obtain the qualification of legal subject.¹⁰

iii) Compromise Theory: It is also known as the limited legal personality theory of artificial intelligence. This theory holds that artificial intelligence has legal personality, but its personality is special, and the scope of its rights and obligations is limited compared with other legal subjects¹¹. The "limited legal personality theory" believes that the essence of artificial intelligence is a tool, and its attribute serving the development of human society cannot be changed. However, artificial intelligence has independent and autonomous behavioural abilities, which should be endowed with legal personality. Since the consequences of artificial intelligence's behavioural ability to bear are limited, it shall be deemed to have limited legal personality, and be applied to special laws.

Legal Personhood as per law can be defined as the capability of holding rights and performing duties which also includes the ability to bear responsibility¹². Artificial intelligence is similar to legal persons. Since legal persons can have legal personalities, artificial intelligence should also have legal personality¹³. Artificial Intelligence is not limited to one nation. There are different legal provisions in different countries in the world and some part AI is provided with legal personality. Cyber personality can also be a word to emulate the legal personality for AI.

1.4. a) Sophia, a citizen of Saudi Arabia

Sophia, a sophisticated hominoid robot which has social skill to interact and exhibit 60 different human expressions as developed by Hanson Robotics has been honoured with citizenship of Saudi Arabia, ahead of future investment summit¹⁴. This hominoid robot is also honoured with champion title by UNDC to spread awareness on human rights. This robot is given with credit card by Romanian Business Corporation.

Many scholars around the world have different opinion in this matter. Some adoring it opines that as a huge step taken to provide a legal status to the robot and beginning

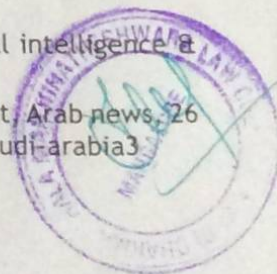
¹⁰ Id,

¹¹ Yuan. (2020). Revisiting the legal personality of AI From the functional perspective, journal of Shanghai university (social science ed) no 1.

¹² Vardhan Yash Gupta, Artificial Intelligence and Legal Personhood, legal service India, 13:45,15/02/2023; <https://www.legalserviceindia.com/legal/article-8473-artificial-intelligence-and-legal-personhood.html>

¹³ Davis C.R. (2011). An evolutionary step in Intellectual property rights, Artificial intelligence & Intellectual property, computer law & security review,27,601.

¹⁴ Cuthbert Olivia, Saudi Arabia becomes first country to grant citizenship to a robot, Arab news, 26 oct 2017. a vis 16/02/2023 20:05 <https://www.arabnews.com/node/1183166/saudi-arabia3>



of the 4th industrial revolution while some are opinion that time is not yet ripe to provide such electronic devices a legitimate status.¹⁵

1.4. b) Electronic personhood of European nations

Electronic personhood is used to describe the potential legal status of the most sophisticated autonomous robots so that they may have “specific rights and obligations, including that of making good any damage they may cause.”¹⁶ Electronic persons is a term first proposed by the European Parliament’s Committee on Legal Affairs in a draft report on civil law rules on robotics dated May 31, 2016. The term is used to describe the potential legal status of the most sophisticated autonomous robots so that they may have “specific rights and obligations, including that of making good any damage they may cause, and applying electronic personality to cases where robots make smart autonomous decisions or otherwise interact with third parties independently” electronic personhood is given to robots as protection for human from robots.¹⁷

1.4. c) AI Bills of Right in USA

The AI Bill of Rights is a set of principles designed to protect people’s privacy and civil rights by ensuring AI tools’ development is more transparent and monitored for inaccurate and biased data, among other precautions¹⁸. This framework applies to automated systems that have the potential meaningful impact on the American public’s rights, opportunities and or access to public resources. It must be enjoyed equally and fully protected, regardless of the changing role that automated system may play in our life. There is a vast progress in automated system in USA. This progress should not come at the cost of American people’s civil right and democratic valves. This document is intended to support the development, deployment and governance of automated system. This as 5 set of principle to which applies to automated systems.¹⁹

1.4. d) Legal Status of AI in India

Companies and corporations are granted with legal personality as well as legal rights as these companies and corporation act as an individual identity and even can undergo legal actions, basically can be sued in the same way a person can be sued in law. Though the company is controlled by a person but as a company is considered as an individual identity, in case commission of wrong, the person controlling the company will not be held liable completely but will be partly liable for the actions that are taken under by him the name of the company. Similarly if AI is considered as a legal

¹⁵ Id,

¹⁶ Electronic persons, Wikipedia.org, 08:50,15/02/2024, https://en.wikipedia.org/wiki/Electronic_persons

¹⁷ Supra,8

¹⁸ Glover Ellen, AI Bill of Rights: making automated system work for the American people, the white house science and tech department, oct 2022, <https://builtin.com/artificial-intelligence/ai-bill-of-rights>

¹⁹ Id,



personality, there is no obstruction would undergo legal actions and even face charges as are face by companies if anything goes wrong under the name of the legal entity. If something goes wrong that involve the actions of AI and the wrong is because of the working of AI, AI could be blamed and punish for the wrongs if it has a legal personhood²⁰.

At present in India AI is not considered as legal persona under any law. There are shortcomings in the existing law to register and recognise the AI as legal person. It cannot be registered under Companies Act, 2013 or other similar legislation as it lacks the requirements for registration as mentioned in those legislations. There are several other reasons for not considering it as legal person. For instance, if AI entities are conferred with legal personality with rights and obligations then it may interfere in the rights of other human being and entities. Humans may use the personality of these AI entities for meeting selfish ends and at the same time get successful in avoiding liability²¹. Even though there are laws to lift the veil, it may not be available in all cases. The AI entities with self learning ability is always threat to the society if legal personality is granted. Thus at present AI is not considered as legal person under any of the laws in India.

1.5 AI and Copyright

In every part of the world, government recognises the status of AI and its systems. It is very right space to discuss about as legal person; can AI have copyright over the works created?

Certain types of works that is eligible for copyright protection are as follows:

Copyright can be obtained for both published and unpublished works. Copyright registration is not mandatory as per Indian Copyright Act, 1957. Literary Works, Artistic Works, Musical Works, Dramatic Works, Audio-visual Works, Sound Recordings and these categories are not exhaustive, and copyright protection may extend to other types of creative works as well.

Each work is evaluated based on its originality, creativity, and expression to determine its eligibility for copyright. In India, copyright protection is granted to creative works that meet certain conditions and requirements. The conditions for the grant of copyright in India include:

1. Expression of work in Tangible Form
2. Originality Criteria,
3. Creativity Standard / labour/ judgement/skill/ capital invested

As per copyright Act, "The author or publisher of, or the owner of or other person interested in the copyright in, any work may make an application in the prescribed

²⁰ Supra, 14

²¹ Sangam Shakuntala, legal personality for artificial intelligence with special reference to robot: a critical appraisal, Indian journal of law and human rights, vol 6 no, Jan-June 2020. <https://journals.indexcopernicus.com/api/file/viewByFileId/1173348.pdf>

form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights”²². The Phrase ‘other person interested in the copyright’ includes entities with legal personality. There is no barrier under Indian copyright Act to provide copyright to A.I if it creates any copyrightable work independently. But A.I lacks legal personality under Indian law. So legally it cannot apply for copyright protection even if it has created any subject matter independently. A self-learning and independently working A.I can generate many work like human being for which the developer may not be able to get copyright as the requirement is not fulfilled by the developer.

Even though A.I cannot register copyright in its name, the rights are recognised by some of the entities. Nowadays, the print media and tele-media utilise the art created by AI in their daily broadcasting. Here is an example. Vijaya Karnataka,²³ daily Kannada newspaper circulated around Karnataka and beyond has not only utilised the art created by AI in reporting the news but also recognised its right by expressing that it is A I generated image. This shows that even the authenticated sources like newspaper have begun to recognise the AI art giving them moral rights (authors Special right)²⁴.



Source: Vijaya Karnataka 12/02/2024 ed

1.5. a) Appeal of Thaler in Federal Court²⁵

The present case involves Plaintiff’s application to register a copyright for an AIGenerated Work produced by one of Plaintiff’s AI systems referred to as a “CreativityMachine.”

²² Sec 45 of Copyright Act 1957.

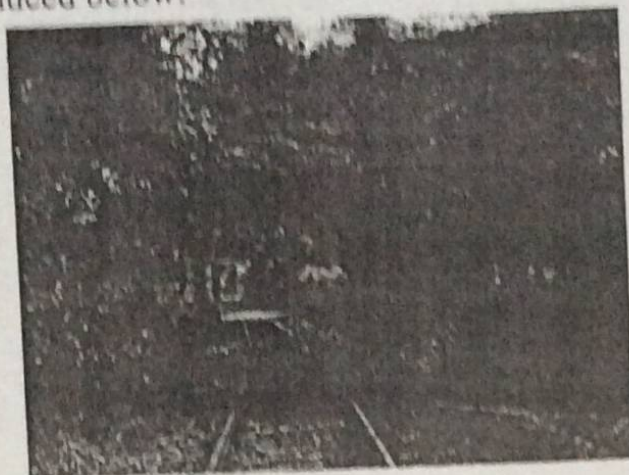
²³ Vijaya Karnataka, Kannada Daily news paper dated 12/02/2024 ed.

²⁴ Sec 57, copyright Act

²⁵ Thaler v. Perlmutter, <https://www.theipmatters.com>



The work is the two-dimensional artwork ("The Work") titled "A Recent Entrance to Paradise," reproduced below:



Source: Google Images

In denying the first request for reconsideration, the USCO reiterated its response that the copyright law only protects "the fruits of intellectual labour" that "are founded in the creative powers of the mind." Citing to *In re Trade-Mark Cases*²⁶, the USCO stated that since copyright law is limited to "original intellectual conceptions of the author," it refused to register the claim because it determined a human being did not create the Work. The USCO again cited to *Burrow-Giles Lithographic Co. v. Sarony*. Providing additional examples for its decision, the USCO also referred to *Urantia Found v. Kristen Maaherra*²⁷, arguing the court refused to extend copyright protection to non-human creations²⁸.

*Naruto v. Slater*²⁹ involved a series of images that a black crested black macaque, named Naruto, took of himself in Indonesia. Naruto, by and through his Next Friends, People for the Ethical Treatment of Animals, Inc. (PETA), sued David Slater, who owned the camera used by Naruto and who subsequently used Naruto's photographs without permission. While USCO is correct that the case was dismissed, this was not based on the USCO's Human Authorship Requirement. The case was dismissed based on standing. As the 9th Circuit Court articulated,

"We must determine whether a monkey may sue humans, corporations, and companies for damages and injunctive relief arising from claims of copyright infringement. Our court's precedent requires us to conclude that the monkey's claim has standing under Article III of the United States Constitution. Nonetheless, we conclude that this monkey and all animals, since they are not human being lacks statutory standing under the Copyright Act. We therefore affirm the judgment of the district court."³⁰ Certainly, any number of judicial opinions has discussed originality in the context of

²⁶ *In re Trade-Mark Cases*, 100 U.S. 82, 94 (1879).

²⁷ 114 F.3d 955, 957-959 (9th Cir. 1997)

²⁸ *Urantia Found v. Kristen Maaherra* 114 F.3d 955, 957-959 (9th Cir. 1997),

²⁹ *Naruto v. Slater*, 888 F.3d 418, 420 (9th Cir. 2018).

³⁰ *Supra*, 30



human-centric mental activity, but none of those opinions have considered an AI Generated Work. It is hardly surprising that judgments from the Gilded Age would fail to consider the possibility of AI stepping into the shoes of a person and generating something creative. Dicta from such cases should therefore not be taken out of context to create a blanket prohibition on an entire field of publicly beneficial activity.

1.6 AI and Patents

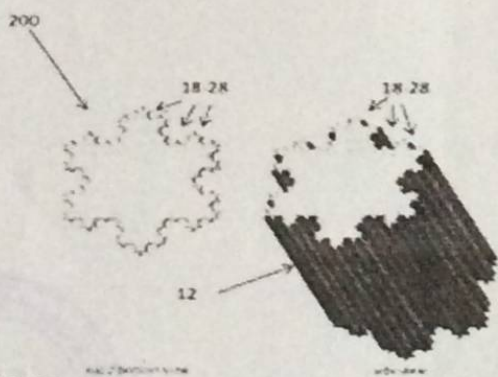
Patent Registration is a legal process which grants exclusive rights of ownership and usership to the inventor of a product, service, or technology. As a result, the inventor gains monopoly over his invention for the entire duration until the patent registration is valid.

1.6. a) Eligibility for Patent Registration

Patent registration in India is subject to certain eligibility criteria that an invention must meet to qualify for protection. The essential requirements for obtaining patent are;

1. Novelty,
2. Inventive Step,
3. Utility/ Industrial Applicability
4. Patentability of subject matter

South Africa was a first country to honour patent to DABUS, a creative machine created by thaler which has created a fractal designed food container without any prompt or assistance from Human. The said person holding the ownership of the machine has applied for patent in many countries. As result, Australian court, directed its patent office to register the patent, honouring the appeal filed due to denial of application. HeretheSouth African patent office made history in July when it issued a patent that listed an artificial intelligence system as the inventor. The patent is for a food container that uses fractal designs to create pits and bulges in its sides. Designed for the packaging industry, the new configuration allows containers to fit more tightly together so they can be transported better. The shape also makes it easier for robotic arms to pick up the containers.³¹



Source:
Google Image

³¹ Conlon ed, Dabus; South Africa issues first-ever patent to AI inventor, Managing IP, July 29, 2021, <https://www.managingip.com>



Prof Ryan abbot, professor of law, university of surrey, has presented, using food container as depicted in picture, before US senate his contention that there must an amendment to present IP rights legislation so that innovation made by Independent Artificially intelligent machine under act.

1.7 Tussle between Human Intelligence and Artificial Intelligence

In the light of Flourishing technology recent times, independently working artificial intelligent machine are working in the same pedestals as of human being. It is worthwhile to analysis that pre-existing human's response is negative and the threat which this machines posses on human. There will be unproportionate registration of patent by AI (as connected to internet) compared to Human. This may deny fair opportunity to human. It might not be sarcastically to cite one of the responses given by Sophia that she will destroy humans one day³². There is a high risk to human being from this machine. This issue must be taken seriously by recognising them, impose them with liability for their dangerous behaviour,

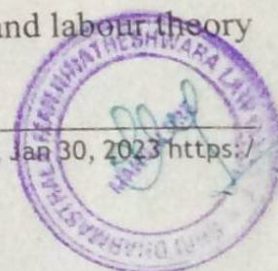
1.8 Critical Evaluation of IP rights to AI.

1. By giving IP rights to AI, the commercial exploitation of the invention is not possible. The benefited purchaser intending to purchase such rights has no proper identity to contract upon.
2. No liability can be posed to AI for its breach of IP rights of other right holders. If a legal person infringes others right, he can be penalised for infringement. In the case of AI powered machine it's impossible to bring it into book.
3. AI is at the end a machine, so there is a treat of mass automation production of invention of low quality.

1.9 Suggestions

1. Parliament must legislate a legislation giving Legal status to artificially intelligence machines which independently create intellectual property and artificially intelligent humanoid robots.
2. To bring effect the amendment to copyright act 1957 and patent act 1970. Covering invention created by artificially Independent machine.
3. To enact codified law to impose liability upon such machines and its owner from the threat it poses on human being.
4. If not recognised as legal person, the innovation cannot be registered by anyone, even by prompt giver or owner of machine. It's against sweat and labour theory of IP legislation.

³² einoryte Aurelija, Sophia, the AI robot: How Dangerous is She? , nordvpn blog, Jan 30, 2023 <https://nordvpn.com/blog/sophia-robot/>



1.10 Conclusion

At the end, artificial intelligence concept in India is in nascent stage as compared to other country. Parliamentarians should deliberate upon the issue. Innovation manifested by independent Ai machine without any prompts cannot be registered by machine owner as it is not created out of his sweat and labour. there is need to change the IPR laws so that innovation could registered and Artificial intelligent machinesshould be granted with legal status in line with corporation to protect our citizen from potential risks posed by them. There is a high requirement of enactment by which every raised issue is addressed.

"I believe AI is going to change the world more than anything in the history of humanity: more than electricity" - Kai fu lee, AI expert, chairman of sinovation ventures.

* * * *





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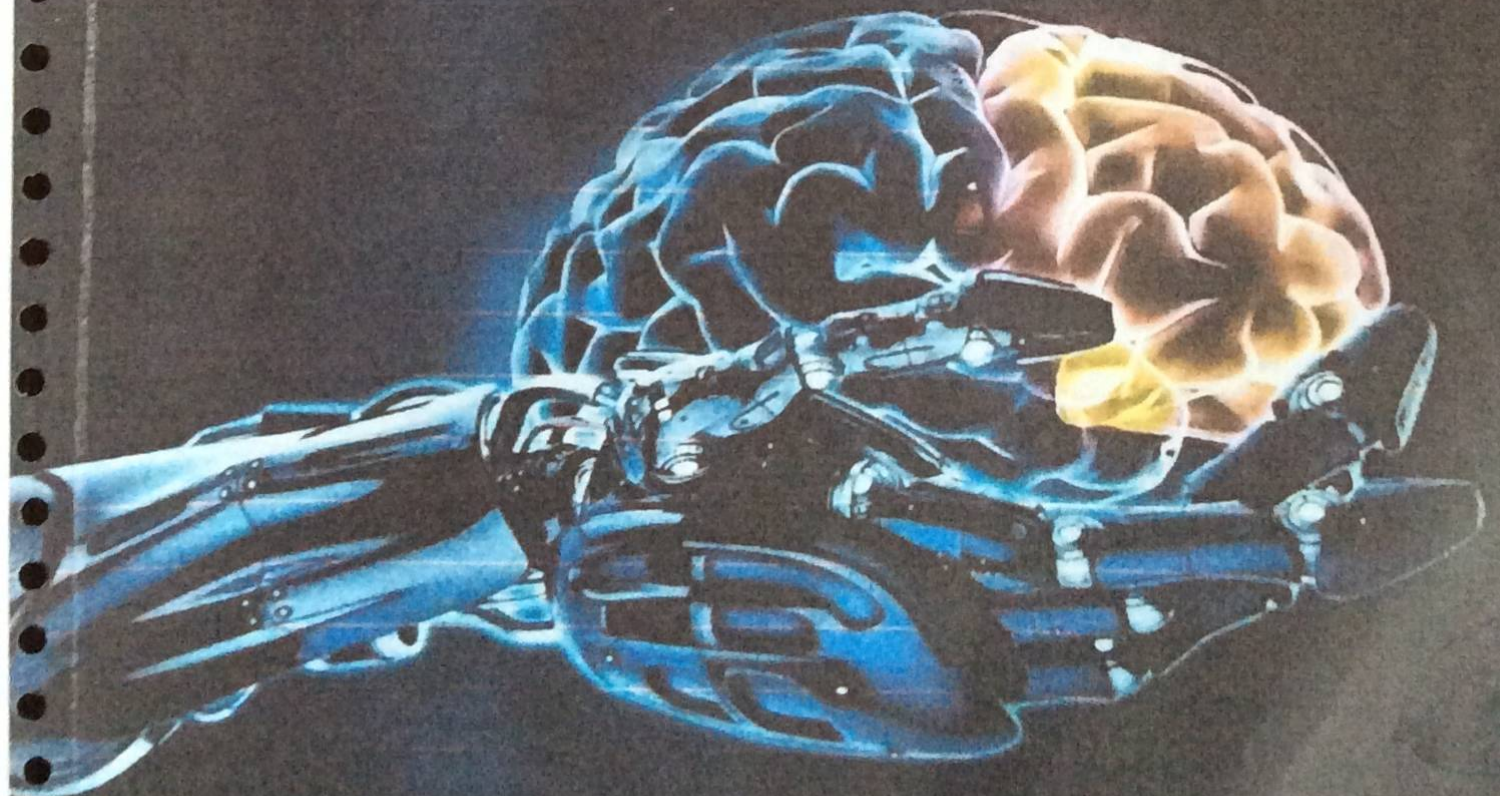
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NAVIGATING TRADEMARK LAW IN THE AGE OF ARTIFICIAL INTELLIGENCE: IMPACT ON CONSUMERS

Ms. Kavya *

Ms. Deepthi G. Bhat **

Abstract

The widespread adoption of new technologies has taken over most of the human performing activities. The field of technology is undergoing changes quite rapidly & one such changing dimension witnessed by the present era is evolution of Artificial Intelligence. The advent of artificial intelligence (AI) has significantly influenced trademark law, comprising of both opportunities and challenges. AI tools help in Trademark Search and Examination whereas the ability of AI in automatic generation of content creation raises various issues concerning the ownership aspects and protection of trademarks created by machines. AI is conferred by Infringement detection tools which have improved efficiency in terms of safeguarding Trademark rights. Since, technological advancement comes with its own pros and cons, several issues like liability for AI-generated infringements are not yet been addressed which requires adequate legal frameworks to handle the same. AI softwares like Amazon's Alexa help consumers to choose products concerning their needs. It can be observed that based on social media searches & past purchase history how consumers get directed to similar product sellers without knowing their authenticity which again would mislead the consumers towards fake brands. As AI continues to shape brand-related activities, trademark law must adapt to safeguard intellectual property rights in a technologically dynamic environment & also with the good interest of the consumers. This paper tries to analyse the impact of artificial intelligence upon trademark law which would affect the ultimate consumers & bring out some concrete suggestions to tackle the issues that is been found in the area of study.

Key Words: Artificial Intelligence, Technology, Trademark, Consumer.

Introduction:

Artificial Intelligence, commonly known as AI, represents a frontier of technology that seeks to imbue machines with the ability to learn, reason, and perform tasks

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traditionally associated with human intelligence. Rooted in computer science and mathematical algorithms, AI endeavours to simulate cognitive functions, enabling systems to analyse data, make decisions, and adapt in real-time. As AI applications evolve across industries, from healthcare to finance and beyond, the field continues to push boundaries, challenging our perceptions of what machines can achieve and prompting profound implications for society, ethics, and the future of technology.¹

Artificial Intelligence (AI) has gradually woven itself into the fabric of our daily lives, transforming the way we work, communicate, and navigate the world. From smart assistants and recommendation algorithms to autonomous vehicles and advanced industrial systems, AI has taken on an increasingly prominent role in shaping human activities. This integration is fuelled by the ability of AI to analyse vast amounts of data, make rapid decisions, and adapt to evolving circumstances, ushering in an era where machines seamlessly collaborate with humans in various domains. As AI continues to advance, its impact on our society is profound, influencing not only our efficiency and convenience but also raising important ethical and societal questions about the nature of work, privacy, and the balance between human and machine autonomy.

Artificial Intelligence (AI) has become a game-changer across various industries, and its influence on trademark law has been particularly profound. As businesses leverage AI technologies to enhance their operations, the legal landscape surrounding trademarks undergoes significant transformations. A trademark is not just a combination of logo, symbol, letters, sign, and mark but also it is a method of distinguishing goods and services from one seller to that of another. It helps consumers to classify which is the better product for their own consumption. Trademark comes with quality assurance. Hence, it acts as a secure mechanism for the consumers while purchasing the goods.²

1. AI in Trademark Search and Registration:

Trademark searching is a crucial aspect of trademark law, as it ensures that new trademarks do not infringe on existing ones. Traditionally, trademark searches were conducted manually by searching databases of registered trademarks.³ AI-powered tools have revolutionized the trademark search and registration process, streamlining the often intricate procedures. Rapid analysis of extensive databases allows businesses to register trademarks efficiently. The trademark examination processes at the national IP offices are also manually performed with the help of human trademark examiners who are supposed to conduct an exhaustive search in a large unordered database. Furthermore, they need to decide if there is any similarity between the mark submitted

¹ Artificial Intelligence | An Introduction - GeeksforGeeks (Last Visited on 02/02/2024; 10:30P.M)
² Ray Kurzweil, "The Coming Merging of Mind and Machine", Scientific American (23 March 2009) available at <https://www.scientificamerican.com/article/merging-of-mind-and-machine> (Last Visited on 03/02/2024; 07:10A.M)
³ <https://www.creedon.com/blog/alandtmsearches> (Last Visited on 06/02/2024; 03:30P.M)

through application and the existing approved trademarks using conventional methods like the Vienna classification. This complexity around trademark search is a big challenge. The expertise of a trademark examiner is combined with ~~with modern~~ ^{with modern} ~~using~~ ^{using} AI technology can offer the best solution for trademark search. The most difficult & complicated task is to find differences between similar trademarks as there is no proper definition for similar trademarks, and difference in trademarks can be ~~traced~~ ^{traced} only if there are coming under the purview ~~deceptively similar~~.

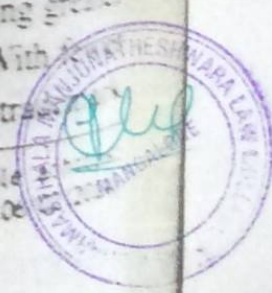
To improve the trademark search process, marks must be examined based on a range of similarity metrics like visual similarity, semantic similarity & text similarity which is again a time taking hectic task. Whereby, AI can be used to identify as well as distinguish between a novel trademark and those existing in the trademarks database within no time. The combination of similarity metrics and AI can provide the best and the most accurate trademark search results. AI is capable of performing better than humans when it comes to searching information about existing trademarks.⁴

AI-assisted trademark classification is also becoming more prevalent. This process involves using machine learning algorithms to classify trademarks based on their similarity to existing ones. This allows for more consistent and efficient trademark registration and examination, as well as more accurate and consistent enforcement of existing trademarks. In addition to these benefits, AI is also being used to assist in trademark enforcement. For example, AI-powered systems can be used to detect and remove infringing content from online platforms, such as counterfeit goods being sold on e-commerce websites. However, there are also concerns about the impact of AI on trademark law. One concern is that AI-assisted trademark searching and classification may lead to an increase in "trademark bullying," where large companies use their resources to register trademarks for a wide range of goods and services, in an effort to prevent smaller companies from using similar marks.⁵

"In the field of trademarks, our state-of-the-art AI technology is a major improvement that will create greater certainty for the development of new image marks and greater ease for monitoring potentially misleading or conflicting new registrations." The World Intellectual Property Organization (WIPO) has launched a new artificial intelligence (AI)-powered image search technology that makes it faster and easier to establish the distinctiveness of a trademark. WIPO's new AI-based technology imbibes with the deep machine learning technology to identify combinations of concepts like an apple, an eagle, a tree, a crown, a car, a star within an image to find similar marks that have previously been registered. Thus, the new technology results in a narrower and more precise group of potentially similar marks, facilitating greater certainty in strategic planning for brand expansion into new markets. With ~~the~~ ^{the} results to scrutinize, this also translates into labour-cost savings for trademark

⁴ Sagacious IP: Role of Artificial Intelligence in Trademark Search available at sagaciousresearch.com/blog/artificial-intelligence-trademark-search/ (Last Visited on 08/08/2023)

⁵ Supra Note. 3



examiners, attorneys and paralegals, industry practitioners and researchers. All users can access the AI search technology for free through WIPO's Global Brand Database, where it has been fully integrated into the database search engine.⁷

1.1 Benefits of AI-Powered Trademark Search & Analysis Tool

An AI tool named IPNOTE is a tool that uses a sophisticated algorithm which can analyse millions of trademark records in seconds. This means that users can get accurate and comprehensive results in a fraction of the time it would take to do it manually. Valuable time and resources can be saved, allowing users to focus on other aspects of their business. The AI-powered tool is constantly improving, ensuring that users get the most up-to-date results every time. This feature is especially crucial in today's fast-paced business world, where new trademarks are being registered every day. The interface of the tool is user-friendly and does not require any specialized training or knowledge. The process is simple just enter the proposed trademark and the desired country, and the AI tool will do the rest. It will provide a detailed report that includes all relevant information about the proposed mark, such as its availability, similarity to existing trademarks, and potential conflicts. This report is easy to understand and can help users make informed decisions about their trademark registration. The tool also has a global trademark search feature, allowing users to search for trademarks not only in their own country but also in other countries around the world. As businesses become more global, it is essential to ensure that trademarks are available and not infringing on any existing marks in other countries.⁸

2. Consumer Awareness and Brand Protection:

With AI's ability to monitor vast online spaces, businesses can promptly identify potential trademark infringements. This proactive approach is beneficial for protecting brands and consumer interests. However, the challenge lies in striking a balance between safeguarding trademarks and avoiding unnecessary legal actions that might impact innocent parties.

2.1 Introduction of the AI-powered Chatbot:

A Chatbot is primarily a computer program that becomes a medium for the users to have a conversation with the company professionals over the Internet. The bots with AI (Artificial Intelligence) are capable enough of having meaningful conversations with humans and can make a path-breaking difference for many companies. Ever since then, there has been a loud and growing voice among the groups of market strategists that advocate the usage of Chatbots in enhancing brand awareness and customer retention. And, there are impressive facts and figures behind the rising

⁸ Francis Gurry, Director General, WIPO

⁷ https://www.wipo.int/pressroom/en/articles/2019/article_0005.html (Last Visited on 07/02/2024, 8:40P.M)

⁸ <https://ipnote.pro/en/blog/get-ahead-of-the-competition-with-our-ai-trademark-search-tool/> (Last Visited on 07/02/2024; 09:00P.M)



support of Chatbots. For instance, its inclusion will give the users an impulsive and quick answer to their problems.⁹

3. AI-generated Content and Consumer Confusion:

As AI technologies create content, the risk of consumer confusion increases. Trademark law traditionally hinges on the likelihood of confusion, making it imperative to adapt legal frameworks to address the implications of AI-generated content on consumer perceptions. Ensuring clarity and distinction between brands in the digital realm becomes a priority. Artificial intelligence could possibly ignore guidelines set by agencies like FCC and FTC, trick consumers into false beliefs, and cause confusion and dissatisfaction. A study by the University of Kansas analysed that, over 1,000 AI-generated ads from across the web and found that they are only labelled as ads about half the time and that they intentionally appeal to consumers positively to influence them. The technology has the potential to influence consumer behaviour and decisions without viewers understanding whether the content was an advertisement or if it was developed by humans or bots. The prevalence of AI in programmatic advertising shows how frequently the technology is used and that it can skirt guidelines that human-developed ads have to follow, according to researchers.¹⁰

3.1 Lack of accuracy & correctness in AI Contents:

AI-generated ads are created by algorithms to develop contextual and personalised content for an individual based on their internet usage and demographics. The ads are created in such a manner that they are made appealing to the eye of the consumers and their innocence is been misused. In terms of approach, the ads tended to be positive in their appeals, containing messages that were neither negative nor neutral in the way they touted the good or service represented. They also tended to focus on the consumer and the benefit the individual could experience from what was being sold. Analysis showed that ads on social media revealed sponsorship most frequently, and news and publishing sites labelled them least frequently.¹¹

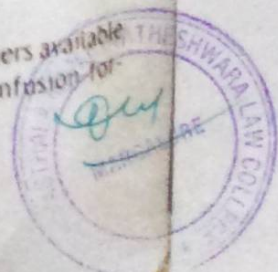
4. Ownership and Liability in AI-generated Trademarks:

AI's ability to autonomously generate trademarks introduces complexities regarding ownership and liability. Establishing clear guidelines for responsibility and accountability is crucial to prevent legal disputes and ensure fair practices. Legal frameworks must evolve to address the unique challenges posed by trademarks created by AI systems. Generative AI can seem like magic. Image generators can produce

⁹ Piller Mandal: Significance of using AI & Chatbots in Brand Awareness and Customer Engagement available at <https://www.prismetric.com/using-ai-for-brand-awareness/> (Last Visited on 07/02/2024; 09:30P.M)

¹⁰ George Hopkin: AI Strategy: Deceptive AI ad campaigns can cause confusion for consumers available at <https://aimagazine.com/articles/deceptive-ai-ad-campaigns-can-cause-confusion-for-consumers> (Last Visited on 08/02/2024; 4:30P.M)

¹¹ Ibid



remarkable visuals in styles from aged photographs and water colours to pencil drawings and Pointillism. The resulting can be fascinating in terms of both quality and speed of creation is elevated compared to average human performance.¹²

There are infringement and issues of uncertainty about ownership of AI-generated works. In a case, *Andersen v. Stability AI Ltd*¹³, three artists formed a class to sue multiple generative AI platforms on the basis of the AI using their original works without license to train their AI in their styles, allowing users to generate works that may be insufficiently transformative from their existing, protected works, and, as a result, would be unauthorized derivative works. If a court finds that the AI's works are unauthorized and derivative, substantial infringement penalties can apply. Similarly, in another case filed in 2023 bring claims that companies trained AI tools using data lakes with thousands or even many millions of unlicensed works. Getty, an image licensing service, filed a lawsuit against the creators of Stable Diffusion alleging the improper use of its photos, both violating copyright and trademark rights it has in its watermarked photograph collection.¹⁴

In each of these cases, the legal system is being asked to clarify the bounds of what is a "derivative work" under intellectual property laws and depending upon the jurisdiction, different federal circuit courts may respond with different interpretations. Both individual content creators and brands that create content should take steps to examine risk to their intellectual property portfolios and protect them. This involves proactively looking for their work in compiled datasets or large-scale data lakes, including visual elements such as logos and artwork and textual elements, such as image tags. Obviously, this could not be done manually through terabytes or petabytes of content data, but existing search tools should allow the cost-effective automation of this task. New tools can even promise obfuscation from these algorithms. The good news regarding trademark infringement for business owners is that trademark attorneys have well-established how to notify and enforce trademark rights against an infringer, such as by sending strongly worded cease-and-desist notice or licensing demand letter, or moving directly to filing a trademark infringement claim, regardless of whether an AI platform generated the unauthorized branding, or a human did.¹⁵

5. Dynamic Trademark Protection in the Digital Era:

AI empowers businesses to adopt dynamic marketing strategies, including personalized advertisements. Trademark law needs to adapt to this evolving environment, providing effective protection while permitting businesses to harness AI for tailored consumer interactions. Striking a balance that encourages innovation while maintaining robust protection mechanisms is paramount. Implementing robust

¹² Gil Appel, Juliana Neelbauer & David A. Schweidal: Generative AI has an Intellectual Property Problem available at <https://hbr.org/2023/04/generative-ai-has-an-intellectual-property-problem>(Last Visited on 08/ 02/ 2024; 06:30P.M)

¹³ 23-cv-00201-WHO (N.D. Cal. Oct. 30, 2023)

¹⁴ No. 1:23-cv-00135

¹⁵ Supra Note. 12



'Terms of Service' agreements can safeguard brand protection in the Metaverse. These agreements can regulate usage, endorsement, and sponsorship functions, ensuring that trademarks are utilised in a manner consistent with their real-world counterparts. Trademark owners must vigilantly monitor their intellectual property within the Metaverse. Prompt detection of trademark infringements and immediate action through cease-and-desist measures can mitigate potential harm.¹⁶

Trademarks, being crucial in terms of brand identity and consumer protection, face challenges like domain squatting, counterfeit goods or service or promotion thereof on new age digital-media platforms, emergence of brand dynamics and associations in social media and digital space overall. Balancing protection of established brands with the rights of newcomers in the digital space remains a significant task for all brand owners and tedious task to trace back and put accountability on the infringing or involved parties, which at times seems next to impossible.¹⁷

In the dynamic landscape of intellectual property, trademarks serve as the bedrock of brand identity and market recognition. As businesses expand their online presence and global reach, the challenges of safeguarding trademarks have intensified. In response to this, the integration of machine learning (ML) has emerged as a powerful ally in the realm of trademark analysis and protection.¹⁸

5.1 The Challenges faced in the Digital Era:

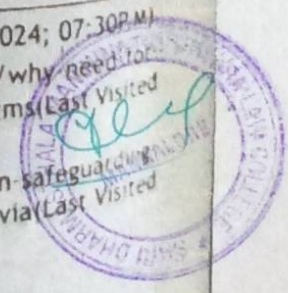
Social media platforms such as Twitter, Facebook and Instagram have provided the opportunity for brands to interact with mass audiences quickly and effectively, but this interaction is a two-way street. Increasingly the public is looking to social media as a vehicle to interact with brands when something goes wrong. Trademark professionals are having to consider not only which social platforms to deploy for their brands, but also work with marketing, communications and customer service teams to manage their brand's presence online. Thinking of social media as "free" for those actively managing and promoting brands misses both the importance of the platform and the expectations of consumers in an increasingly connected world.

Protecting brands from false and spurious postings online has also become a daily part of the trademark role. It is simple for anyone to grab a trademarked logo from the web and share it and increasingly difficult for consumers to recognize what is a genuine post from an authentic company or one that is an unapproved use of a trademark. Negative publicity has the propensity to tarnish a brand's reputation, and social shaming has totally changed the dynamics of how trademark disputes are handled.

¹⁶ <https://depenning.com/blog/trademarks-in-metaverse/> (Last Visited on 09/02/2024; 07:30P.M)

¹⁷ https://www.google.com/amp/s/m.economictimes.com/small-biz/sme-sector/why-need-for-effective-ip-protection-in-digital-space-is-critical/amp_articleshow/106466178.cms (Last Visited on 09/02/2024; 08:00P.M)

¹⁸ https://www.linkedin.com/pulse/machine-learning-trademark-analysis-protection-safeguarding-yuhc?utm_source=share&utm_medium=member_android&utm_campaign=share_via (Last Visited on 10/02/2024; 10A.M)



Today, social media channels saturate every aspect of our business and consumer lives; the business world and the buyer's world interact more than ever, and the potential for abuse seems limitless. Applications like Amazon Alexa can be one-sided while making their suggestions towards their consumers which may harm the other traders & at the same time misleads the customers. As the role of trademark professional transitions from a primarily legal role to a wider brand management position encompassing new responsibilities, challenges, and partnerships trademark executives at all levels need all the support they can get to manage the increased workload.

Technology has a critical role to play in supporting these professionals, but needs to be deployed in a manner where it delivers automation, drives efficiencies and provides trademark experts with the relevant tools to do their job more effectively. When the industry gathers again in Seattle in 2018, it will be those that have proactively deployed technology to drive efficiencies and offer insight that will be in the best position to lead the industry.¹⁹

6. Data Privacy and Harmonization:

AI heavily relies on data, and its involvement in trademark law may raise privacy concerns. Protecting consumer data becomes a priority to ensure compliance with privacy regulations while allowing AI applications to operate within legal boundaries. Safeguarding consumer rights is essential in this data-driven era. As AI impacts trademark law on a global scale, achieving international harmonization becomes imperative. Establishing common standards and frameworks can facilitate cross-border enforcement and provide a unified approach to addressing AI-related trademark challenges. Collaborative efforts will be essential to navigate the complexities of AI within a global legal context.

7. Conclusion:

The intersection of AI and trademark law brings both opportunities and challenges for consumers. As technology continues to advance, adapting legal frameworks to ensure fair practices, protect consumer interests, and foster innovation is crucial. Striking a balance that harnesses the benefits of AI while safeguarding the rights of consumers will be pivotal in shaping the future of trademark law. Another concern is that AI-powered systems may not be able to fully understand the nuances of trademark law, and may make mistakes in their searching and classification. This could lead to the rejection of valid trademarks or the registration of invalid ones.

Overall, AI is having a significant impact on trademark law, and is likely to continue to do so in the future. While it has the potential to improve efficiency and accuracy in trademark searching and classification, it is important to consider the potential negative consequences and take steps to mitigate them.

* * * *

¹⁹ Simon Webster: Challenges for Trademarks in a Digital World: A Review of INTA 2017 available at <https://ipwatchdog.com/2017/06/06/challenges-trademarks-digital-world-inta-2017/id-84072/> (Last Visited on 10/02/2024; 09:30P.M)



Court System – India

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Glossary

Adalat Court of law

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Abstract

The concept of judicial activism in India has played a very important role which was inculcated by the judiciary for protecting the rights and freedom of every individual in India. Through judicial activism, the judicial system has not just become a mere adjudicator of disputes, but also a player in controlling executive action. It is because of an independent judiciary, citizens in India are breathing fresh air of equality, fraternity, and liberty. The highest judicial authority acts as the guardian of democracy and protector of the constitution, ensuring the preservation of fundamental rights and delivering justice to every citizen. In accordance with the directive principles of state policy, the Indian government is obligated to follow the directives issued by the apex court. The judicial system in India plays a significant role in many spheres by providing justice to the people by applying the principle of natural justice. Constitutionalism which is the essence of democracy is protected by the judiciary. The judiciary in India is persistently endeavoring to protect the fundamental rights of the citizens. This article articulates the hierarchy of the court system in India and its function with relevant cases which symbolizes it as a pillar of democracy by upholding the rule of law.



Introduction

Over the years, the judiciary has delivered several landmark judgments that had a far-reaching impact on society. The judiciary intervened in all imperative concepts whether it is climate issues or protection of women and children, upholding human rights, environmental protection, or releasing of bonded laborers. This proactive role of the judiciary gave rise to judicial activism through public interest litigation which helped the common man to avail justice without any fear. The Indian court system evolved from the legacy of the common law system. It was based on the theory of separation of power which was coined by Brede et de Montesquieu who visualized that it is necessary to embrace the doctrine of separation of power to administer justice to all. Even India follows the separation of power in an implied manner (Soni, 2022). Reasonable separation of power is recognized between three organs i.e., the executive, legislature, and judiciary (Rai, 2017). The judiciary acts as the guardian of the constitution and plays an imperative role in providing justice to the citizens of India. It prevents arbitrary acts of the state officials in the public administration. Therefore, it is crucial for the judiciary to remain uninfluenced by the actions of the executive, ensuring the rule of law and the fair delivery of justice. Under the Indian constitution the word "justice" plays a vital role in safeguarding the valuable liberty of every individual of the nation. The preamble in the Indian constitution imbibes the word "justice" which signifies political, social, and economic justice to all people (Kumar, 2018). The constitution establishes criteria for the interactions among government organs, establishes a system of checks and balances in administration, and delineates the roles of each organ concerning state governance, encompassing the judiciary, therefore upholding the basic structure of the constitution and principles of natural justice.

Evolution of the Court System in India

India's recorded legal history starts from ancient Vedic period (1500 BCE), when some sort of formal legal system came into being (Havell, 1918). Interestingly, the law at that time appealed both to the educated elite as well as to general masses. For the elite, it was philosophy, and for the masses it was religion, which guided the formation of law. Primary religious texts [the "Shrutis"] like the Vedas and Upanishads were the basis of earliest Hindu law. Later period saw incorporations from secondary texts [the "Smritis"] like Manusmriti (200 BCE–200 CE), Naradasmriti (100 BCE–400 CE), Yajnavalkya Smriti (200 CE–500 CE), Brihaspati Smriti (200 CE–400 CE), Vishnu Smriti (700 CE–1000 CE), and Katyayana Smriti (300 CE–600 CE). Both *Shrutis* and *Smritis*, incorporated philosophy as well as religious teachings. Ancient Hindu law was thus guided by both philosophy and religion, and since both taught the concept of "*dharma*" [righteousness, duty], the law ultimately taught one to be righteous and dutiful toward the State.

The first major kingdom to flourish in India were the Mauryas (c.324–187 BCE). They mostly followed the earlier law. However, under their advisor Kautilya (375–283 BCE) (Fig. 1), they modified and developed a judicial administration that considered the King to be the main person to provide justice to the people. Though there were different grades of courts existent in ancient India, the King was given a prominent place in delivering justice in the open court (Judicial History and Courts of Madhya Pradesh, 2020).

Later, when India came under the control of the Delhi *sultanate*, the performance of the court system changed somewhat. The Delhi sultans established a court structure in India that comprised four types of courts at the provincial headquarters. Two prominent sultans, namely Sultan Qutbuddin Aibak (1206–10) and Sultan Iltutmish (1211–36) had a prominent role in establishing this structure (Ahl, 2017). Four types of courts were constituted. *Adalat Nazim-e-suba* [Court of the Governor of the Province] had original and appellate jurisdiction. *Adalat Qazi-e-suba* [Court of the Provincial Judge] was used for civil and criminal cases. *Diwan-e-suba* [Revenue Court of the Province] dealt with revenue matters, and *Sadr-e-suba* [Head Court of the Province] dealt with the grant of stipends and land for education and religious activities.

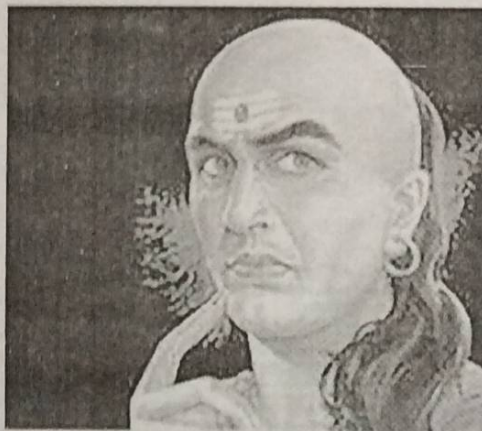


Fig. 1 Kautilya, also sometimes called Chanakya or Vishnugupta, a multitalented man, who as royal advisor to the Mauryas, helped develop a sound legal system, far more advanced than that of equivalent civilizations of that time.



Around 1600 when the East India company established their foothold in India, the court system was unorganized. The East India company also was not willing to organize the court system in India. However, in 1726 a Mayor's court was established in the presidency towns of Calcutta, Bombay and Madras, under the charter of 1726 (Rai, 2016). The court system in 1687 derived its power from the East India company but later after 1726 it got its authority from the British crown. The difference between the prior Mayor's courts and the current court was that the former was established by the company Mayor's court under the charter of 1687, while the latter obtained its authority from the crown through the charter of 1726. The charter explicitly mandated Indian Mayor's courts to adhere to English law.

In the years 1773 and 1774, the legal system in India moved into a new phase under the Regulating Act which encouraged the British crown to establish a supreme court in India. The British crown under charter 1774 [formed under Regulating Act of 1773] established a supreme court in Calcutta. Later in the year 1861 under the Indian High court Act 1861, high courts were set up in the presidency towns. Indian Bar committee was set up in 1923, this committee emphasized the establishment of a Bar council for all the high courts hence under the Indian Bar councils Act of 1926 which provided for the establishment councils for high courts. The function of the councils was advisory in nature. Later under the Government of India Act of 1935, a Federal court was set up in Delhi. Following India's independence, the nation emerged as a fully sovereign entity, and on January 26, 1950, a written constitution was established. With this new constitution in place, the apex court assumed the role of safeguarding it (Bhargava, 2023).

Current Scenario of the Court System in India

The functioning of the court is enshrined in Part IV of the Indian constitution under Articles 124 to 167 titled "The Union Judiciary." In India, a country known for its secular nature, a centralized judicial system exists, and the supreme court is recognized as the apex judicial body, serving as the mediator in issues concerning the relations between the Union and the States, as well as between the States themselves (Basu, 2015). The supreme court and the high courts are envisaged with responsibility as the stewards and watchdogs of the people's fundamental rights and freedom under the constitution. The apex court has effectively reserved and safeguarded citizens' fundamental rights and the rights of vulnerable groups against the innovations of "an excited democracy," and for that aim, it has heavily relied on the Directive Principles. Directive principle of state policy which is non-justiciable by the courts still acts as the cornerstone by imposing an obligation to the state to provide welfare measures to the people of India. Often direction will be given by the apex court to the administrative authorities to implement the welfare measures to citizens for instance in the case *Bandhua Mukti Morcha v. Union of India* the apex court directed the government to provide rehabilitation and benefits for the bonded labourers.

The Supreme Court of India

The federal court was established in India under the Government of India Act of 1935 which continued to flourish as the final court of appeal, till 1950 (Sushree Surekha Choudhary and Federal Court of India, 2022). The first Attorney General of India M.C Setalvad stated that the jurisdiction of the court is much wider than those exercised in any country of commonwealth nations and the supreme court of the US. Earlier the supreme court consisted of one Chief Justice and seven puisne judges under the original constitution of 1950; now under the present scenario, it is 34 including the Chief Justice. This number can be increased by the parliament through legislation. The supreme court has a constitutional bench that comprises nearly five to more judges on it. This is not a routine phenomenon because if the case is of national interest, then the sitting of the judges will increase to 13 judges on the bench. Most of the cases in the supreme court are heard by two judges which is called a divisional bench. The supreme court has the power to issue directions to the government and also issue writs. Constitutional remedies are provided by the constitution under Article 32 of the constitution. Any citizen whose fundamental rights are violated can approach the supreme court directly under Article 32. A person with a public-spirited mindset holds the right to file a writ petition in the interest of the public, seeking redressals if their fundamental rights are violated, and this becomes a powerful tool wielded by the judiciary (Bhaskhi, 2018; Jain, 2019; Pandey, 2022; Raj, 2023; Singh, 2019).

The Supreme Court Functions

1. It is in charge of interpreting the constitution's provisions. The supreme court holds the crucial responsibility of interpreting the provisions of the constitution. It possesses the power to nullify and declare void any Central or State laws that are found to be inconsistent with or infringe upon constitutional provisions or the fundamental rights guaranteed to individuals under the Indian constitution.
2. The supreme court plays a multi-faceted role in protecting the constitutional, fundamental rights of individuals and also being the interpreter of the fundamental rights of the citizen.
3. The apex court makes policies, procedures, and rules based on the rule of law which is regarded to be the essence of democracy.
4. The apex court possesses the authority to issue writs aimed at safeguarding citizens' rights, thereby staying true to the principles of justice outlined in the preamble of the Indian constitution.
5. The supreme court is in charge of defending and protecting the integrity of the entire legal system, and it has the authority to bring individuals who disparage the judiciary in contempt.



6. It settles disagreements between one or multiple states as well as between the central government and the state governments.
7. It is the highest court of appeals. It considers appeals from decisions made by lower courts and tribunals and issues rulings that are final in the case.

High Courts in India

The primary objective of the judicial system is to ensure justice for the nation's people. At the pinnacle of the state judicial system in each state lies the high court, an institution with a long history dating back to 1862. It is stated that the high court was first established in the three presidency towns of Calcutta, Bombay and Madras. In the current scenario, every state in India has a high court. The Parliament holds the authority to establish common high courts for two or more states. As an example, the northeastern region of India comprises seven states sharing the Gauhati high court for the administration of justice to the people of northeastern India (Aggarwala, 2014; High Court, 2023; High Court in India, 2022).

Functions of a High Court

1. The high court of every state formulates rules and regulations for the operation of the subordinate courts and scrutinizes the records and documents of the subordinate courts.
2. It reviews its petition on any apparent error. It is considered under the principle of stare decisis.
3. Appeals from decisions and orders of subordinate courts are heard by the high court under appellate jurisdiction.
4. The high court has the power to issue writs under Article 226 of the constitution.
5. If a statute is determined to be in violation of the constitutional requirements, the high court has the authority to declare it void.
6. The high court has the authority to review the order of the subordinate courts. This is done by the court if it finds that subordinate courts have exercised its judicial power inappropriately.

Subordinate Courts

Subordinate courts or lower courts are established in each district of all the states in India.

Classification of Subordinate Courts

Subordinate courts typically fall into one of two categories:

1. Civil courts
2. Criminal courts

Civil courts resolve legal disputes involving issues like contracts, rent, and divorce. These disputes are resolved in accordance with the guidelines set forth in the Code of Civil Procedure of 1908.

Criminal courts deal with cases of legal violations brought by the state, which encompass offenses such as murder and dacoity. To regulate the functioning of these criminal courts, the Code of Criminal Procedure (1973), outlines the necessary procedures. In India, district courts handling criminal cases are known as session courts. The term "district judge" encompasses various designations, including judges of city civil courts, additional district judges, joint district judges, chief judges of small courts, chief presidency magistrates, session judges, additional session judges, and assistant session judges. Any individual who feels aggrieved by the decision of a district court has the right to lodge an appeal with the high court.

Tribunals

The government has established several specialized tribunals to handle various issues, such as taxes, land disputes, etc. Tribunals can be quasi-judicial or judicial. The term "Tribunal" doesn't carry an identical meaning to "Court." Instead, it encompasses all bodies responsible for adjudication, as long as they're established by the government and endowed with judicial functions rather than administrative or executive tasks. Tribunals offer swift justice and are typically constituted when there are numerous cases pending before regular courts over a specific subject matter. As a result, these tribunals assist in lightning the workload of regular courts (Tribunals in India, 2023).

National Green Tribunal

The National Green Tribunal (NGT) was founded in accordance with the National Green Tribunal Act of 2010, aiming to provide a streamlined and prompt resolution for cases pertaining to the preservation of the environment. The primary seat of the NGT is



situated in New Delhi, while additional benches are located in cities such as Bhopal, Pune, Kolkata, and Chennai. The NGT plays a crucial role in addressing matters related to environmental conservation and sustainable practices, ensuring that legal proceedings are conducted efficiently and effectively across its various benches.

Claims Tribunal

Originating from the Motor Vehicles Act of 1988, the Motor Accidents Claims Tribunal was established to provide swift remedies to individuals affected by motor vehicle accidents. This specialized tribunal system operates without a fixed time constraint for submitting claims related to motor vehicle accidents. Individual state governments have the authority to establish one or more Motor Accidents Claims Tribunals as needed. Notably, civil courts lack jurisdiction over matters falling under the purview of the Motor Accidents Claims Tribunal. Appeals against the decisions made by these tribunals are directed to the respective high courts.

Industrial Tribunal (Labour Court)

An Industrial Tribunal is a specialized legal forum governed under the Industrial Disputes Act, 1947 dedicated to resolving disputes and conflicts that arise between employers and employees in the industrial or workplace context. These tribunals play a crucial role in addressing matters related to employment conditions, grievances, and disputes that cannot be settled through regular negotiations. Industrial Tribunals are designed to provide an impartial and formal platform for both parties to present their cases and evidence. Their decisions are legally binding and contribute to maintaining a fair and harmonious work environment.

National Company Law Tribunal

The National Company Law Tribunal (NCLT) serves as a quasi-judicial entity responsible for resolving matters concerning Indian companies. Enacted under the provisions of the Companies Act 2013, the NCLT was officially formed in 2016 by the Indian government. This tribunal holds the authority to make judgments and decisions on a range of corporate issues, playing a pivotal role in regulating and overseeing the corporate landscape of the country.

Lok Adalats

Lok Adalat is regarded to be one of the conciliatory methods in resolving disputes. It is been monitored by the state legal aid and advice boards (Supreme Court of India, 2023). Lok Adalat, also known as "People's Courts" are presided over by active and retired judges. The Legal Services Authorities Act, 1987, grants statutory recognition to the legal aid movement and facilitates the establishment of legal service authorities at the central, state and district levels. Every award passed by Lok Adalats is deemed to be a decree of a civil court or tribunal and holds binding force on the involved parties as a final settlement (Tribunals in India, 2023).

Juvenile Courts

The juvenile court in India is a specialized legal institution focused on cases involving individuals below a certain age, usually 18 years, as per the Juvenile Justice (Care and Protection of Children) Act, 2015 (Khanuja and Vyas, 2018). The need for juvenile courts arises from the understanding that juveniles possess different levels of maturity and accountability compared to adults. By providing a separate court system, it is ensured that juvenile offenders receive appropriate attention, guidance, and rehabilitation, preserving their potential for a productive future. These courts are established in various cities and districts across India, situated within the premises of district courts or designated child welfare institutions.

CBI Courts

The CBI court, also known as the Central Bureau of Investigation court, is a specialized legal entity in India that exclusively handles cases investigated by the Central Bureau of Investigation (CBI) (Central Bureau of India, 2023). These cases typically involve complex and high-profile matters such as corruption, major financial fraud, serious criminal conspiracies, and cases of national significance. While the judgment of a CBI court holds substantial weight, it is not necessarily considered final. Like other court judgments, there is a provision for appeal from the judgment of a CBI court. Parties unhappy with the verdict can pursue further legal remedies through the appellate process, which involves higher courts reviewing the decision to ensure a comprehensive and just judicial procedure. A notable case that was referred to a CBI court is the Aarushi-Hemraj double murder case, which garnered widespread media attention and presented significant legal and investigative challenges (Gawali and Dube, 2013).



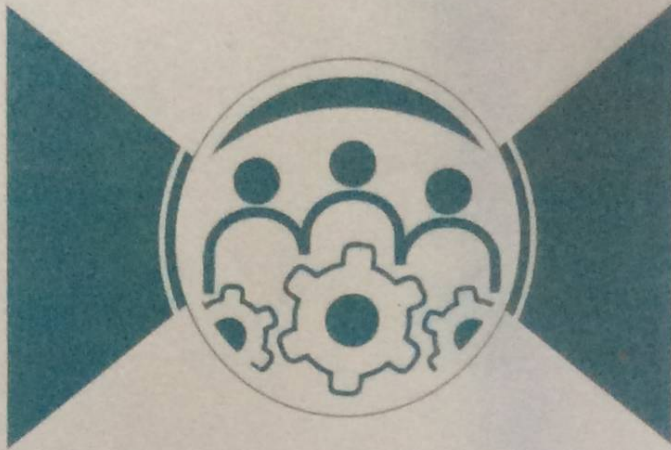
Conclusion

The judiciary in India has been very progressive since the independence of India. The constitution has given the judiciary the power to safeguard the fundamental rights of the citizens. The Indian judiciary plays an important role in ensuring the primacy of justice, which forms the bedrock of democracy. By providing equal protection of law to all people of India the judiciary preserves the constitutional value.

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The paper was co-authored by

Ashwini Suraj Devadiga
Vivek M



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The Working Class in India: Challenges and Realities Regarding Work-Life Balance

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Abstract

Work-life balance signifies the intricate equilibrium between professional obligations and personal life. It underscores the importance of dedicating time to family, personal interests, well-being, leisure activities, and work-related duties. In the contemporary business environment, achieving this equilibrium has become a critical consideration for organizations and individuals. Time management goes beyond its literal definition and serves as a fundamental component for a satisfying existence, providing advantages to employees and workplaces.

This study aims to identify the constituent elements that comprise work-life balance, with a particular focus on the workforce in India. This study investigates the effects of working hours on personal space and individual performance. Furthermore, it compares the working hours observed in various countries and those prevalent in India, emphasizing the significance of the "Right to Disconnect." Moreover, it critically analyses the decades-long evolution of working hours in India, focusing on the glorification of overtime and how it frequently obscured the exploitation that the working class endured.

This study evaluates Indian labor legislation to reveal how these laws benefit or hinder the working class. Furthermore, it illuminates the ramifications of the COVID-19 pandemic on the employed populace, investigating its implications for work schedules and the work-life balance paradigm.

Keywords: Covid19, Labour Rights, Legislation, Right to Disconnect

**Introduction**

A good work-life balance is crucial for maintaining well-being and relationships, avoiding burnout, and leading a fulfilling personal life while succeeding at work. Work-life balance refers to the state of equilibrium where a person equally prioritizes the demands of one's career and personal life. The concept of Work-Life Balance has evolved, with the term being coined in the 1980s to describe the challenges faced by working women with families, and over the years, the term has expanded to include all genders. The idea behind the concept of Work-life balance is balancing the time and energy spent on work and personal life. It is a way of achieving a healthy balance between one's professional and personal life. Maintaining a work-life balance helps individuals avoid burnout, reduce stress, and enhance overall well-being. Promoting it is a core element of social dialogue and collective bargaining, which can lead to a more productive and healthier workforce. The concept of WLB is particularly relevant in India, where a study by Arcadis found that cities like Bengaluru, Chennai, and Kolkata rank low in terms of work-life balance.

Several factors can affect an individual's ability to achieve Work-life balance, including demographic variables, personal demands, family demands, family support, and individual ability. Factors such as long working hours, lack of flexibility, and high job demands in India contribute to poor work-life balance. Other factors, such as inadequate policies, lack of support from colleagues and supervisors, and low job control, can also hinder work-life balance.

Indian Workforce Scenario

As per the data published in 'Our World in Data' 2017, India ranks 14th in the world regarding total work hours, with an average of 2,117.01 per year. As per the rankings, Indians work 47.7 hours a week, which is the seventh longest in the world. It is higher than the work hours in the U.S., U.K., and Germany. The long working hours are not limited to a particular industry, with Indian I.T. employees averaging 45-50 hours per week.

The manufacturing sector in India is one of the largest employers in the country and has an average workweek of 48 hours, which is in line with the Factories Act. The service sector is another significant contributor to the country's economy and has an average workweek of around 40-45 hours. Overtime is the norm in this sector; with most local companies needing to follow the official workweek. The pressure to meet deadlines and deliver quality work can lead to long working hours and high-stress levels.

The agriculture sector has the shortest weekly work hours, averaging 37.9 hours. Education and health services also have relatively shorter weekly work hours of 39.3 and 39.8, respectively. However, it is worth noting that these sectors also face their unique challenges, such as low wages and job insecurity.

Overall, there needs to be a consensus on the optimum weekly hours, and it is essential to link working hours to productivity and output. The absence of laws in India that address working hours and overtime pay enables employers to demand long working hours from their employees, leading to an unhealthy work culture. Many Indian workers work long hours, often exceeding the standard 8 hours daily. It can lead to burnout and reduced productivity, highlighting the need for a better work-life balance.

The Indian workforce is vast and diverse, with over 460 million individuals employed across various sectors. While the country's economy has experienced significant growth in recent years, there remain numerous challenges to achieving work-life balance for employees in India. These challenges include long working hours, limited access to paid leave, and a cultural emphasis on prioritizing work over personal life. Additionally, many Indian workers face significant commuting times and financial stressors, which can further impact their ability to achieve a healthy work-life balance.

Elements of Work-life Balance

Achieving work-life balance is a dynamic process that varies for everyone. It involves consciously managing time, setting boundaries, prioritizing tasks, and caring for one's physical and mental well-being to lead a fulfilling and professional life. Some crucial elements are:

Time Management: Prioritizing tasks, setting boundaries, and allocating dedicated time for work and leisure activities help maintain balance.

Flexible Work Arrangements: Companies offering flexible work hours, remote work options, or compressed workweeks empower employees to manage their time effectively, accommodating personal commitments alongside professional responsibilities.

Clear Boundaries: Establishing clear boundaries between work and personal life is crucial. It includes defining specific work hours, avoiding work-related tasks during personal time, and creating a designated workspace to maintain separation.

Regular Breaks and Rest: Taking breaks during work hours is essential for mental and physical well-being. Encouraging breaks, proper lunch hours, and time off helps prevent burnout and increases productivity.

Supportive Work Environment: A supportive workplace culture that values work-life balance encourages employees to manage responsibilities without feeling overwhelmed. It might include understanding managers, supportive colleagues, and policies that promote work-life balance.

Health and Wellness: Prioritizing health and wellness through regular exercise, proper nutrition, adequate sleep, and mindfulness contributes significantly to a balanced life.

Setting Priorities: Understanding personal and professional priorities helps individuals allocate time and energy accordingly. Identifying what matters most allows for effective decision-making and allocation of resources.

Communication and Delegation: Open communication with colleagues and supervisors regarding workload, deadlines, and personal commitments enables effective delegation of tasks when necessary, preventing overwhelming workloads.

Unplugging and Detaching: Taking time to unplug from work-related communication devices and detach from work mentally during leisure time is crucial. It allows for relaxation and rejuvenation.

Avoiding Multitasking: Focussing on one task at a time to increase efficiency and reduce stress. Multitasking can often lead to decreased productivity and a feeling of being overwhelmed.

Setting Realistic Expectations: Setting achievable goals and expectations for work and personal life. Unrealistic expectations can lead to stress and dissatisfaction.

Continuous Evaluation and Adjustment: Regularly assessing the balance between work and personal life and making necessary adjustments is essential. Needs and priorities evolve, and adaptation is critical to maintaining balance.

The Impact of Working Hours on Personal Space and Individual Performance

A person establishes personal space, necessary for maintaining focus and comfort, by defining it as the physical and emotional boundary around themselves. It is an essential aspect of workplace culture, as it contributes to the overall well-being and productivity of the workers. Many often overlook the importance of personal space, yet it crucially contributes to maintaining healthy relationships and fostering a positive work environment.

Long working hours can significantly impact personal space and lead to feelings of isolation and seclusion. Maintaining personal space can be challenging when workers must work near one another for extended periods, leading to increased stress and anxiety. Virtanen et al. conducted a study revealing a connection between long working hours and elevated levels of anxiety and depression. These adverse effects can have far-reaching consequences, adversely affecting everything from workers' motivation to relationship building. Respecting the personal space of coworkers is essential in maintaining morale and productivity. Another study by Kim et al. found that personal space buffers the influences of long working hours on poor physical and mental symptom frequency, work-family interference, and sickness.

Maintaining a healthy work-life balance is crucial for personal well-being and professional success. Setting realistic work hours for adequate personal time is essential in achieving this balance. One way to prioritize work-life balance is by prioritizing self-care and personal time, which involves setting boundaries and putting oneself at the top of the care list. Thus, maintaining personal space in the workplace is crucial for individual and organizational well-being, and it is essential to strike a balance between in-person interaction and personal space.

Evolution of Working Hours and the Glorification of Overtime in India

The evolution of working hours in India has been a long and complex process, beginning in the pre-independence era, during which working hours were often determined by the caste system, with those in lower castes forced to work longer hours and endure harsher conditions. Moreover, the exploitation of the workers continued even after independence, with many workers being unpaid, underpaid, and overworked. However, there were some efforts to improve working conditions, such as the introduction of the Factories Act in 1948, which limited working hours to 48 hours per week.

Indians work an average of 47.7 hours per week, according to the International Labour Organization. However, despite labor laws, many workers, particularly those in the informal sector, continue to be exploited. Glorifying overtime often worsens exploitation, masking the true extent of the hardship workers endure. Though there has been a gradual decline in working hours, the decline is uneven in different sectors, with many workers continuing to face exploitation and long working hours.

India's cultural attitudes towards hard work have contributed significantly to glorifying overtime. The common perception is that working long hours signals dedication and loyalty to a job. The association between working overtime and being seen as hardworking and deeply committed is a common perception in many workplaces. On the other hand, the perception of overtime as a means of earning extra income has also contributed to glorifying overtime. Many workers in India, particularly those in low-wage jobs, rely on overtime pay to supplement their income. However, this cultural attitude has obscured the exploitation that the working class in India endures. Studies have found that working 12 or more hours per day and 60 or more hours per week can increase the risk of occupational injury, highlighting the negative consequences of long working hours.

Despite the potential for exploitation, some still view working long hours as a source of pride and achievement. It is important to note that extended work hours can disrupt people's lives, resulting in

adverse health effects and potentially subjecting individuals to further exploitation by their employers. It has, in turn, contributed to income inequality and a lack of upward mobility for the working class. Thus, it is essential to recognize the potential for exploitation and negative health consequences associated with long working hours and work towards creating a more equitable and sustainable work culture in India.

Glimpse of Working Schedule During Covid19

One of the most significant changes in work schedules due to the COVID-19 pandemic has been the widespread adoption of remote work and flexible schedules. With the need for social distancing and the closure of physical workplaces, many companies have had to shift to remote work to maintain operations. This shift has allowed workers to work from home and provided greater flexibility in their work schedules. However, remote work during the pandemic has been more complicated than usual, as it was compulsory rather than optional. While remote work has provided greater flexibility, it has also presented challenges, including difficulty maintaining work-life boundaries, lack of social interaction and collaboration, increased distractions, and interruptions.

Another significant change in work schedules due to the pandemic has been reduced hours and furloughs. Many businesses have had to reduce operating hours or shut down entirely due to the pandemic's economic impact. Reducing employee hours and initiating temporary furloughs, the company laid off employees without pay for a specific period. This reduced work hours and income has significantly affected employee's financial stability and well-being.

The pandemic has also led to increased workloads and burnout. With the shift to remote work and the closure of physical workplaces, many employees have had to take additional responsibility and work longer hours to maintain operations. This increased workload has led to burnout, with employees experiencing physical and emotional exhaustion, reduced productivity, and decreased job satisfaction. The pandemic has also led to increased stress and mental health issues among workers. The fear of contracting the virus, financial uncertainty, and the challenges of working from home have all heightened stress levels. Thus, it is challenging for employees to maintain a healthy work-life balance, with many experiencing difficulties managing their work and personal responsibilities.

India's State of Work-Life Balance

Dr. B R Ambedkar's one of various contributions was bringing the 8-hour workweek into the country's legal framework. In the seventh session of the Indian Labour Conference in 1942, he proposed holidays with pay for factory workers. He followed the English pattern of working 48 hours per week in India. He also contributed to making the Employees Provident Fund and Minimum Wages Act. Furthermore, the Industrial Statistial Act of 1942 was enacted to assess labor statistics in matters of labor disputes, wage rates, income, and more, significantly impacting the lives of millions of workers in India.

The provision of maximum working hours per day and per week was the brainchild of Dr. B R Ambedkar, and it has become a crucial aspect of labor legislation. It aims to protect workers from exploitation by ensuring they are well-rested and compensated for additional hours. The law sets an employee's maximum of 8 hours of duty per day under the Indian Factories Act. Though introduced to uplift the working class and provide time for personal lives, the law has often functioned differently in most cases.

To a certain extent, the concept of work-life balance is gaining significance, but it still has a long way to go. According to a study by Areadis, an Amsterdam-based consultancy, India ranks low in work-life balance, with cities like Bengaluru, Chennai, and Kolkata being particularly affected, contrasting with cities like Hamburg in Germany, which tops the work-life balance. A survey by Indeed found that 71



percent of Indian working professionals prioritize flexibility as the top parameter while on the job. Factors such as societal and cultural expectations, poor infrastructure, long work hours, high job demands, and a strong work ethic that prioritizes productivity over personal well-being contribute to the challenges of achieving work-life balance in India.

To improve work-life balance in India, the government can play a crucial role by implementing supportive policies. For instance, the Factories Act can strictly regulate working hours, and the government can encourage companies to provide flexible work arrangements, such as telecommuting, job sharing, and compressed workweeks. These policies can help workers better manage their work and personal responsibilities, leading to improved mental and physical health.

There is a need for a change in the corporate culture, and companies should adopt an employee-centric approach by providing benefits such as paid time off, parental leave, and flexible working hours. Companies should also encourage a culture of open communication and support, where employees feel comfortable discussing their work-life balance needs with their managers. Apart from that, individuals can improve their mental and physical health and achieve a better work-life balance by taking a proactive approach to managing their work and personal responsibilities. In brief, achieving work-life balance in India requires a multi-faceted approach involving government policies, corporate culture changes, and individual efforts.

Overview of Labour Laws in India

Labor laws in India have a long and complex history, with the first laws dating back to the early 20th century. Throughout time, lawmakers have introduced various laws addressing diverse labor and industrial issues, all aimed at fostering economic development and advancing social justice. Various types of labor laws include wages, working conditions, social security, and industrial relations. Their design encompasses many concerns, from preventing exploitation and discrimination to guaranteeing safe and healthy working conditions. The Industrial Disputes Act, for example, provides a framework for resolving disputes between employers and workers. Simultaneously, the Minimum Wages Act ensures that workers receive a fair wage for their labor, as stipulated by the government, and imposes a 40-hour limit on working weeks. The Factories Act protects factory workers from hazardous working conditions by establishing specific health, safety, and welfare criteria. These laws help to promote equality, fair compensation, and the physical and mental well-being of the workers.

Indian labor laws also provide social security and benefits to the working class. The Social Security Number Scheme aims to uniquely identify Indian workers, enabling employers to submit accurate reports of covered earnings for use in social security programs. Apart from that, the government has also proposed a tax on digital platforms to fund welfare schemes for gig workers, providing additional support for those in the gig economy. Further, the constitution outlaw's discrimination based on religion or sex, and effective enforcement of anti-discrimination laws can narrow persistent worker-related issues; these regulations also ensure that workers are not subjected to discrimination or harassment or burdened with long work hours based on their identity, promoting a more inclusive and equitable workplace.

While the governments have enacted laws to protect workers' rights and interests, implementing these laws remains challenging. Many employers violate labor laws with impunity, and workers face difficulties accessing justice and enforcing their rights. Inadequate infrastructure, resources, and trained personnel exacerbate this situation by hindering the monitoring and enforcement of compliance with labor laws. Another significant limitation of Indian labor laws is loopholes and exemptions that benefit employers. Many labor laws have exemptions for small businesses, and employers can often use these exemptions

to avoid complying with labor standards. These loopholes and exemptions have resulted in widespread exploitation of workers. As a result, many workers continue to work in exploitative conditions, with little or no protection from the law.

Labour law reforms should include strict regulations and implementation of working hours and rest periods, as well as the provision of fair compensation for overtime work. Additionally, there should be a focus on improving working conditions and providing proper safety equipment and training to reduce the risk of occupational injuries and illnesses. Implementing these reforms could aid the workers in India in terms of better physical and mental health, increased job security, and greater upward mobility, thus focusing on work-life balance.

Policy Suggestion on Work-Life Balance

India needs comprehensive policies for work-life balance, making it challenging for workers to balance their personal and professional lives. While Indian MNCs may have policies that promote work-life balance, such as generous leave allowances and family-friendly policies, these policies are not widespread. Existing policies in India aimed at promoting work-life balance have limitations. For instance, flexible work arrangements are not widely available, and those with access to them may face discrimination or career consequences. Additionally, the existing policies often do not consider the different needs of workers, such as single parents or those with disabilities. Moreover, the policies are only sometimes effectively communicated to the workers, leading to confusion and frustration. These limitations highlight the need for more comprehensive and inclusive policies that consider the workers' diverse needs.

Implementing work-life balance policies in India faces several challenges. One of the most significant challenges is the need for more awareness and understanding of the importance of work-life balance. Additionally, the traditional work culture in India, which values long work hours and prioritizes work over personal life, can be a significant obstacle in implementing work-life balance policies. Addressing these challenges requires a concerted effort from policymakers, employers, and workers to prioritize work-life balance and its benefits.

One of the most effective policies for promoting work-life balance in India is the implementation of flexible work arrangements. It can include telecommuting, job sharing, and flexible scheduling. By allowing the workers greater control over their work schedules, they can better balance their personal and professional responsibilities. It can increase job satisfaction, improve mental health, and better overall well-being. Additionally, flexible work arrangements can benefit employers by increasing productivity, reducing absenteeism, and improving employee retention.

Support for working parents and caregivers is another critical policy area that can promote work-life balance. Many working parents struggle to balance their professional responsibilities with their caregiving duties, leading to high-stress levels and burnout. Companies and organizations can implement policies such as flexible scheduling, parental leave, and on-site childcare facilities to address this issue. Additionally, offering resources such as counseling and referral services can help the workers better manage their caregiving responsibilities while maintaining their professional roles. Implementing programs such as stress management workshops, mental health counseling, and worker assistance programs should be followed to provide mental health support and stress management for the workers.

Right to Disconnect

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The 'Right to Disconnect' refers to the worker's right to disconnect from work-related communications outside of working hours. Workers should refrain from responding to work-related emails, calls, or messages during their time. The 'Right to Disconnect' recognizes that employees should have the freedom to balance their work and personal lives without the constant intrusion of work-related communication. This right is crucial in promoting work-life balance and preventing burnout.

The scope and coverage of the 'Right to Disconnect' in India are still evolving. The Right to Disconnect Bill was introduced in the Indian Parliament in 2018 by MP Supriya Sule, which aimed to give workers the right to take no work calls or emails after office hours and on holidays. The bill also proposed sanctions for non-compliance by employers. However, lawmakers still need to pass the bill into law, and concerns persist regarding its practical implementation. Some argue that specific industries may be unable to disconnect from work-related communications completely. Nevertheless, the 'Right to Disconnect' proposal can help balance the worker relationship and promote worker well-being.

The 'Right to Disconnect' yields several advantages. It fosters an improved work-life balance by enabling employees to delineate boundaries between work and personal life, allowing them to prioritize their well-being and enjoy valuable time with loved ones. Additionally, it contributes to enhanced mental health by advocating for disconnection from work-related communication outside of work hours, effectively reducing stress, anxiety, and the risk of burnout, thereby fostering better mental well-being. This practice also fuels increased productivity as employees are afforded ample time for rest and rejuvenation, ultimately leading to heightened efficiency during working hours. Moreover, the Right to Disconnect cultivates better focus and creativity by allowing individuals to partake in activities that stimulate creativity, personal growth, and hobbies, thereby enhancing overall performance. Furthermore, organizations that champion work-life balance through this suitable stand to benefit from improved employee retention and satisfaction, attracting and retaining skilled talent while fostering higher job satisfaction and loyalty among their workforces.

Acknowledging the significance of allowing employees time for personal obligations, leisure, and relaxation, the 'Right to Disconnect' is a pivotal element in contemporary work-life equilibrium. Despite the absence of dedicated legislation concerning this in India, its undeniable importance remains paramount. Introducing suitable policies, guidelines, and legal frameworks can pave the way for India to nurture a more wholesome work atmosphere, elevate the welfare of employees, and encourage sustainable productivity.

Overview of Nations where the Workers have the Right to Disconnect

France's "Right to Disconnect" law, implemented in 2017, allows French employees to refrain from responding to work-related communications after work hours. This legislation aims to shield workers from the adverse impacts of incessant connectivity to work via technology, mitigating heightened stress and burnout. Applicable to remote workers, this law permits disengagement from technological devices and online platforms sans any penalties. Companies with over 50 employees must establish non-communication hours, defining disconnecting as abstaining from work-related correspondence. It prevents employees from checking work emails or messages outside designated hours, prioritizing personal time. The law has yielded positive outcomes, reduced stress, and enhanced productivity among French workers, fostering more precise work-life boundaries. Despite criticisms about its limited scope regarding company size, this law serves as a precedent for other nations aspiring to safeguard workers from the negative repercussions of perpetual work-related connectivity.

Italy's "Right to Disconnect" law, effective from 1 January 2021, mandates that private sector employers with 20 or more employees provide the right to disconnect for their workers. This law asserts the

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proposed human right for individuals to disengage from work-related electronic communications outside of their work hours. Employers allow employees to disconnect from work-related communications beyond official working hours, including emails, calls, and messages. Employers must negotiate clear guidelines regarding electronic device use outside of work hours, ensuring non-penalization for employees exercising this right. The law's impact has been positive, fostering improved work-life balance and reduced stress levels for Italian workers. It has also spurred the adoption of flexible working arrangements, notably remote work, yet some critics question its enforceability, especially for smaller enterprises. Nonetheless, this law marks a significant stride in enhancing Italian workers' work-life balance and asserting their entitlement to disconnect from work-related communications beyond official working hours.

Spain has enacted a "Right to Disconnect" law akin to France's, guaranteeing remote workers the freedom to disconnect from digital devices during non-working hours, safeguarding their rest and personal life. This law defines disconnecting as refraining from work-related communications and mandates negotiations between companies and employees to establish disconnection parameters. The law intends to foster work-life balance and protect employee well-being by recognizing rest and leisure time as crucial. Its positive impact includes reduced work-related stress, enhanced quality of life, increased productivity, and improved job satisfaction among Spanish workers. Moreover, it encourages companies to implement better communication policies and work-life balance initiatives, contributing to a healthier work environment. Spain's "Right to Disconnect" law signifies a significant stride toward better work-life balance and protecting employees' well-being.

Belgium implemented a "Right to Disconnect" law, extending this right to approximately 65,000 government employees to disconnect from work-related communications outside their working hours to enhance work-life balance. The law targets preventing excessive work hours among remote workers to mitigate burnout and stress-related health issues. Employers must ensure that employees refrain from work-related communications beyond working hours without specified sanctions for non-compliance. The law emphasizes respecting employees' right to disconnect, empowering them to refuse such communications outside official hours. Belgian workers have experienced positive outcomes, establishing more precise work-life boundaries, reducing work-related stress, and improving mental health and overall well-being. It has correlated with increased job satisfaction and productivity. Additionally, Belgium's initiative has inspired other nations, with Kenya contemplating a similar law for its workforce.

Germany's "Right to Disconnect" law, initiated by Employment Minister Andrea Nahles in 2014 and part of "anti-stress" legislation, ensures workers can disconnect from work-related communications beyond working hours. Applicable to private sector employers with 20+ employees, it mandates guidelines for disconnecting from work-related communications prohibiting emails, calls, or messages outside official hours. Non-compliance can lead to penalties. The law's impact on German workers has been positive, enhancing work-life balance, reducing stress, and boosting overall well-being. It instills a culture valuing employees' time, prompting employers to prioritize their well-being. Germany's success with this law has influenced other nations, emphasizing the importance of work-life balance and workers' rights.

Luxembourg recently passed a law in June 2023 affirming employees' right to disconnect from work-related digital tools outside their work hours to enhance their work-life balance. The legislation specifies disconnecting as refraining from work-related communications, which applies to companies with 15+ employees and emphasizes the agreed-upon disconnection after work hours. Unlike previous laws in France, this unique law covers all digital tool users regardless of company size. It is part of a growing European trend enabling workers to disconnect outside working hours. The law's positive impact

includes reducing work-related stress, improving overall well-being, and allowing employees to focus on personal life and health. By facilitating a healthy work-life balance, it contributes to employees' long-term success and productivity. Luxembourg's "Right to Disconnect" law represents a significant leap toward safeguarding employees' mental health and work-life balance.

The Philippines introduced an early "Right to Disconnect" law to safeguard workers' rights by allowing them to disconnect from work-related tasks beyond official working hours. Since 2017, this law has enforced specific hours when employees should not send or respond to work-related communications, protecting personal time and preventing overwork. It defines disconnecting as refraining from work-related communications and requires employers to establish reasonable non-working hours, respecting employees' time. This law has positively impacted Filipino workers, fostering a healthier work-life balance enabling focus on personal life, rest, and rejuvenation. Notably, it has curbed burnout and stress, increasing productivity and job satisfaction. Overall, the "Right to Disconnect" law in the Philippines significantly protects workers' rights and promotes a balanced work-life equilibrium.

Glance at Countries with Relaxed Working Hours

Relaxed working hours refer to working fewer hours, allowing workers more time for leisure activities, family, and personal pursuits. Countries with relaxed working hours have experienced several advantages, including increased productivity, improved mental health, and reduced stress levels. These countries have created a more conducive environment for creativity, innovation, and overall job satisfaction by allowing workers to work fewer hours. Moreover, relaxed working hours have reduced absenteeism and improved employee retention rates. Some examples of countries with relaxed working hours are:

France: Introduced the 35-hour workweek in 2000.

Norway: Norwegians work an average of 1,424 hours per year, which is 20 percent fewer hours than Americans, while still achieving high productivity.

Denmark: Danish workers average 33 hours a week.

Italy: Italian workers average 37.5 hours a week.

The Netherlands exemplifies a nation with relaxed working hours, boasting an average workweek of just 29.3 hours and ranking highest globally for work-life balance on the OECD Better Life Index in 2019. Their flexible work culture, promoting part-time or flexible hours, aligns with a standard 40-hour week spread across five days. The Dutch government supports this with policies allowing remote work and requests for reduced hours.

Studies consistently endorse shorter workweeks for heightened productivity, improved mental health, and better work-life balance. The Dutch economy thrives despite shorter hours, credited to their focus on work-life balance, fostering an engaged and content workforce.

The Netherlands is not alone in this approach; European countries like Denmark, Germany, and Norway also feature low annual working hours and high productivity. European organizations are cutting workweeks without reducing pay to combat burnout and enhance employee well-being. Germany's Kurzarbeit program, reducing work hours instead of layoffs, has maintained employment levels while boosting employee satisfaction.

Ultimately, the Dutch model showcases the advantages of flexible work culture, demonstrating how shorter work hours can bolster economic success and employee welfare. This trend resonates across

Europe, with countries aiming to mitigate burnout and elevate employee contentment by prioritizing work-life balance.

Conclusion

The significance of work-life balance has gained global recognition, with various nations implementing worker-friendly initiatives. However, in India, there is a prevailing trend of conservatism and the glorification of extended work hours, often overshadowing the concept of work-life balance and the 'Right to Disconnect.' Some industrialists, motivated by self-interests, often assert that heightened working hours equate to heightened productivity. A recent illustration of Infosys founder Narayana Murthy's call for young individuals to commit to a 70-hour workweek. Despite claims supporting longer hours for increased productivity and economic expansion, research contends that prolonged work hours may not yield elevated output. It can instead lead to burnout and health-related challenges.

Rather than solely relying on extended work hours, strategies to enhance productivity should focus on task prioritization, efficient workflows, and providing resources and training to support employees. A balanced approach that values employee health recognizes hard work, and fosters growth opportunities contributes to a loyal and motivated workforce, translating into long-term productivity and success. Therefore, fostering a supportive organizational culture entails embracing empathetic leadership, offering increased flexibility, fostering growth opportunities, and providing a robust support system. These initiatives cultivate a sense of engagement and motivation among employees, consequently enhancing job satisfaction and bolstering retention rates.

Flexibility within work arrangements stands as a cornerstone of achieving work-life balance. It encompasses adaptability in work hours, locations, and even career paths. Such flexibility empowers employees to harmonize their personal and professional lives, elevating job satisfaction and overall performance. Equally pivotal is nurturing a supportive organizational culture, emphasizing an environment that emphasizes employee well-being and work-life equilibrium.

Access to comprehensive health and wellness programs plays a vital role, encompassing physical health initiatives such as fitness programs and nutritional options, and mental health support, including counseling and stress management resources. Facilitating access to these programs aids employees in managing their physical and mental well-being, consequently improving overall wellness and work-life harmony.

Providing paid time off and flexible work arrangements serve as a support mechanism, enabling employees to manage their personal and professional responsibilities effectively. Prioritizing employee well-being and work-life balance is paramount for organizations that foster a positive and productive work environment.

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8th International Conference on
**Economic Growth and
Sustainable Development :
Emerging Trends**

November 29 & 30, 2023



CERTIFICATE

This is to certify that

Amith S M

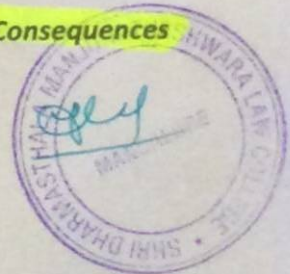
has participated in the 8th International Conference on Economic Growth and
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and presented a paper titled

The Global Response to Feminization of Poverty: Understanding its Causes and Consequences

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The Global Response to Feminization of Poverty: Understanding its Causes and Consequences

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Abstract

The feminization of poverty is a phenomenon where women are disproportionately affected by poverty, stemming from various factors such as gender discrimination, unequal pay, and restricted access to resources and opportunities. According to the United Nations Commission on the Status of Women, women experience higher poverty rates than men, with the 1.5 billion people living on one dollar or less daily being women and children. Thus, "feminization of poverty" acknowledges that poverty is not a gender-neutral issue but intersects with gender profoundly, leading to distinct challenges for women. The study aims to analyze the factors contributing to the feminization of poverty and explore strategies for addressing the feminization of poverty in developing and underdeveloped countries. The paper will also analyze:

Impact of globalization on feminization of poverty

Intersectionality and feminization of poverty

Impact of government policies

Role played by UN agencies in tackling the issue of feminization of poverty.

Keywords: Feminization, poverty, UN, gender-neutral



Introduction

"Feminization of Poverty" denotes the phenomenon where women represent a disproportionate share of the world's poor. It highlights the trend that a higher percentage of women, compared to men, live in poverty. According to the United Nations Commission on the Status of Women, women experience higher poverty rates than men, with the 1.5 billion people living on one dollar or less daily being women and children. The concept emphasizes the intersection of gender and poverty, showcasing how women are economically disadvantaged. Various systemic and structural factors often link poverty's feminization to women's economic marginalization, including gender-based discrimination, unequal access to education and employment, and social norms that limit women's economic opportunities.

Social worker Dr Diana Pearce coined the term "feminization of poverty" in the late 1970s, emerging as a critical concept within feminist scholarship and social policy analysis. It gained prominence as scholars and activists sought to draw attention to the growing disparities between men and women regarding poverty rates and economic well-being. Breaking down the term into its constituent parts helps in understanding its etymology:

"Feminization" refers to the process of making or becoming more feminine. In this context, it refers to the disproportionate representation of women among the impoverished population, emphasizing the gendered nature of poverty.

"Poverty" refers to being extremely poor, lacking the means to access necessities and resources essential for a decent standard of living.

Thus, by conceptualizing poverty as a gendered issue, the term "feminization of poverty" brought attention to how women are affected by socioeconomic inequalities, structural barriers, and discriminatory practices.

Research Methodology

This study utilizes a mixed-methods research approach, combining quantitative and qualitative analysis. Secondary data sources, such as academic journals, reports, and statistical databases, will be the main data collection method. The research will focus on a variety of indicators, including income disparities, educational attainment, labor force participation, and access to essential services, to assess the extent of poverty's feminization in different countries.

Scope of the study

This study aims to investigate and analyze the multifaceted factors contributing to the feminization of poverty. It places a strong emphasis on the recognition that poverty is inherently gendered, with women shouldering a disproportionate burden. The research explores the intricate interplay between globalization and the perpetuation of poverty cycles, with a particular focus on how these effects manifest in the lives of women. Furthermore, this study underscores the imperative for government intervention and the implementation of increased affirmative action measures to effectively address the issue of the feminization of poverty. Lastly, the study acknowledges and underscores the significant role of United Nations (UN) agencies in combatting the feminization of poverty and highlights their contributions in this regard.

Limitation of the study

The study feminization of poverty comprehensively has specific limitations. It does not provide an exhaustive exploration of every facet of the feminization of poverty, acknowledging the complexity of the issue. Furthermore, the study's examples of effective strategies to combat this problem are limited to a

select few nations, which might restrict the generalizability of its findings. Additionally, the paper falls short in conducting an in-depth critical examination of the flaws in various policies and their lack of gender neutrality, missing an opportunity to uncover and address structural issues contributing to the persistence of feminized poverty.

Factors that Influence the Feminization of Poverty

Throughout history, women have consistently faced systemic barriers that impede their ability to obtain resources, opportunities, and authority in decision-making. Historically, societal norms and expectations have often limited women to domestic responsibilities, making them economically vulnerable. Across diverse societies, women's lack of access to formal education and economic opportunities has facilitated their dependence on males for financial sustenance. Women, alongside these cultural factors, traditionally receive lower remuneration than men for comparable work. The persistent wage discrepancy has contributed to the cycle of poverty as women contend with constrained financial resources. In addition to limited access to leadership positions and restricted promotion opportunities, professional discrimination has hindered the ability of women to escape destitution.

Furthermore, historical events such as conflicts and economic recessions have pushed women further into poverty, affecting them disproportionately. In times of conflict, widowhood, and displacement are commonplace occurrences for women, resulting in the deprivation of their residences and means of subsistence. Additionally, economic contractions may lead to employment reductions, with women being especially vulnerable to unemployment due to discriminatory recruitment practices based on gender.

Thus, political, economic, and social factors intricately intertwine with the feminization of poverty, and some of the factors contributing to it are:

Insufficient Opportunities for Education and Employment: Gender inequalities continue to endure in numerous geographical areas, frequently due to financial limitations, cultural restrictions, and societal demands that restrict the educational prospects of women. The restricted availability of education contributes to the continuation of a poverty-disempowerment cycle, impeding the ability of women to achieve economic autonomy and upward social mobility.

The Gender Wage Gap: Inequities in remuneration between males and females endure in numerous sectors and vocations. Gender, racial, and ethnic discrimination significantly contributes to the perpetuation of this disparity by indirectly reinforcing occupational segregation and directly reducing women's earnings. Furthermore, the gender wage disparity has enduring ramifications, amassing across successive generations and exacerbating the financial vulnerability experienced by older women.

Occupational segregation Further compounds the feminization of poverty by disproportionately confining women, particularly women of color, to menial employment with restricted career advancement prospects and meager compensation. Other factors contributing to the gender poverty gap closely intertwine with this phenomenon, such as inequitable educational opportunities and wage discrepancies. Furthermore, societal norms and expectations often reinforce occupational segregation that discourages women from pursuing careers in higher-paying fields and perpetuates the devaluation of women's labor.

The Financial Burdens of Caregiving: Single mothers, especially those who have never been married or are members of minority communities, frequently encounter more significant economic obstacles than married women or single males. Furthermore, single mothers may face restricted access to resources, including credit, land, inheritance, and financial instability. The absence of adequate financial support and stability may impede the capacity of unmarried mothers to escape the recurring cycle of poverty.



Uncompensated Care Work: Encompasses duties such as caring for children elderly individuals and performing household tasks. Uncompensated caregiving fails to receive compensation and lacks acknowledgment, resulting in detrimental consequences for women's health, education, and general welfare.

Insufficiency of Supportive Policies: Several countries, including the United States, need work-family policies that support individuals in balancing paid employment with caregiving responsibilities. Furthermore, the persistent gender wage gap further amplifies the financial vulnerability of women, limiting their capacity to obtain employment and promoting discriminatory behavior within the workplace.

Discrimination and Violence Against Women: Assault can manifest in numerous ways, encompassing physical, sexual, emotional, and economic dimensions. Gender-based violence engenders extensive consequences beyond the victim's immediate physical harm. It undermines the overall well-being, confidence, and self-esteem of women. Gender-based violence frequently necessitates the displacement of survivors from their homes, places of employment, and social networks. It may substantially augment their economic susceptibility and heighten their poverty probability.

Discriminatory Policies and Legislation: These discriminatory policies frequently result in a ubiquitous gender wage gap, whereby women are compensated significantly less than men for performing equivalent labor. Moreover, limited opportunities for women to attain positions of authority and decision-making in both government and business, in addition to the wage gap, compromise women's economic security. Insufficient representation in leadership roles perpetuates gender inequality, thereby fostering the formulation of policies and practices that fail to acknowledge women's distinct obstacles and needs sufficiently.

Insufficient Justice Accessibility: Women who experience violence, discrimination, or other forms of abuse face barriers to obtaining effective legal remedies. These barriers may include inadequate knowledge of their rights and the limited availability of legal resources; financial constraints preventing them from obtaining legal representation and support; and societal stigmatization and cultural norms discouraging women from reporting abuse or seeking justice. As a result of gender bias within the legal system, cases involving gender-based violence and discrimination are inadequately investigated, prosecuted, and sentenced.

These barriers to justice hinder women's capacity to alleviate poverty and perpetuate the cycle of violence and gender inequality that disproportionately impacts girls and women in some of the most impoverished regions worldwide.

Impact of Globalization on Feminization of Poverty

The correlation between feminization of poverty and globalization is complex and subject to the influence of numerous factors. Significantly, this encompasses the inequitable weight that women bear considering the adverse repercussions of worldwide economic integration, alongside the obstacles confronted by women compelled to migrate due to globalization, heightened vulnerability, and destitution. Furthermore, globalization's uneven distribution of advantages further amplifies gender inequality, culminating in increased economic discrepancies and a worsening of destitution among women. Furthermore, there is apprehension regarding the possibility that globalization could hinder women's empowerment, as evidenced by socio-economic indicators, including maternal mortality rates.

Globalization, particularly in developing countries, has been linked to employment losses, as corporations exploit impoverished conditions by offering low-paying labor under unfavorable conditions. While advocates contend that granting women employment opportunities advances gender equality, these

positions often entail significant drawbacks, including meager compensation, precarious employment, and limited access to social safety nets. The nature of employment losses during periods of economic recession is gender specific. The reductions in employment that primarily affect women are attributable to the fact that they occupy positions in sectors that are more susceptible to economic fluctuations. Additionally, it exacerbates the trend of pushing more women into unstable, poorly compensated jobs or leaving them facing unemployment, intensifying the feminization of poverty.

The imposition of user fees and the privatization of services have impeded women's access to healthcare and education as a direct result of the effects of globalization. These alterations often result in increased costs for the services, with a disproportionate burden falling on impoverished women. As poverty rates decline in several nations, increased educational attainment shields women from destitution. By impeding impoverished girls and women's access to healthcare and education, privatization and user fees may, nevertheless, serve to perpetuate the cycle of poverty.

Intersectionality and Feminization of Poverty

Initiated in the late 1980s by legal scholar Kimberle Crenshaw, the notion of intersectionality emphasizes the significance of recognizing how diverse social categories intersect and influence one another, thereby influencing the opportunities and experiences of individuals in society. This statement underscores the notion that various dimensions of identity—including but not limited to gender, ethnicity, socio-economic status, and sexual orientation—intersect and exert mutual influence, thereby shaping the opportunities and experiences of an individual.

It is impossible to overstate the profound influence that race, ethnicity, and socio-economic status have on the feminization of poverty, given that these variables substantially affect women's opportunities, access to resources, and social mobility. The impoverished population disproportionately represents women belonging to minority communities, specifically those of African and Hispanic heritage. Entrenched prejudices, systemic inequities, and discriminatory policies in education and employment contribute to their increased susceptibility to poverty. Furthermore, the widening wage disparities disproportionately impact women from marginalized communities, perpetuating a cycle of poverty that affects these women and their families.

African American women face considerable obstacles, including financial deprivation, limited economic opportunities, and unfavorable health consequences due to the "racial feminization of poverty," an intersection of race, gender, and socio-economic status that profoundly affects their lives. Additionally, higher poverty rates affect LGBTQ+ people because of discrimination in the workplace, lack of legal protections, and social stigma. Poverty disproportionately impacts Indigenous women who face prejudice based on their gender and ethnic identities. Systemic racism, cultural deterioration, and marginalization further compound their financial hardships. The intersecting identities highlight the necessity for a more all-encompassing strategy in tackling poverty and its multifaceted effects on diverse marginalized communities.

Impact of Government Policies

The Beijing Conference underscored the significance of governmental policies in shaping the correlation between poverty and women. As a result, governments were compelled to realign their anti-poverty endeavors, particularly emphasizing addressing the unique requirements of women, especially in rural regions. Prominent initiatives such as PROGRESA serve as paradigmatic models for addressing the feminization of poverty through their comprehensive interventions encompassing education, health, nutrition, and employment, among other facets of the lives of disadvantaged women. Governments can disrupt the cycle of poverty and advance gender equality by placing social services and accessible



healthcare at the forefront of their agendas. It is exemplified through the proactive strategies employed by Nordic countries such as Sweden, Norway, and Finland, which have effectively diminished the feminization of poverty through inclusive social protection systems, affordable childcare, and improved equal opportunities.

Strategic policies have additionally facilitated significant advancements in poverty reduction and gender equality in Rwanda and Costa Rica. The prioritization of women's economic inclusion and empowerment by Rwanda has substantially enhanced women's access to education, healthcare, and economic opportunities. Similarly, significant progress has been made toward gender equality and reducing the poverty rate among women because of Costa Rica's emphasis on social investment. These instances underscore the efficacy of customized policies and interventions in tackling the obstacles encountered by women residing in economically disadvantaged communities.

Considering the prevalence of the feminization of poverty, governments should deliberate on the following policy recommendations for potential implementation:

Social protection initiatives that are sensitive to gender differences and provide women-specific aid, such as financial assistance, childcare subsidies, and vocational training.

Healthcare policies consist of preventive care, reproductive health services, and mental health support specifically designed to meet the unique needs of women.

Workplace policies that promote equitable compensation and equal pay can enhance women's economic empowerment.

Education policies that demonstrate responsiveness to gender issues prioritize equal opportunities for all to obtain high-quality education and address barriers such as gender biases and prejudice.

Role Played by UN Agencies in Tackling the Issue of Feminization of Poverty

With an emphasis on empowering young women and girls to enhance their general welfare, United Nations agencies, including UN Women and UNICEF, devise and implement policies, programs, and initiatives targeting the underlying causes of poverty and gender inequality. Regarding the feminization of poverty, UN Women, an organization committed to advancing gender equality and empowering women, assumes a significant obligation. It is responsible for ensuring that women have the autonomy to utilize economic and educational opportunities and access them effectively. The objectives of UN Women are to promote equitable resource distribution, assist in formulating policies within intergovernmental organizations, and advocate for the crucial role of women in ensuring food security. Additionally, it acknowledges and highlights women's substantial contributions through both unsalted and compensated labor in the workplace, family, and community.

By protecting children's welfare, especially those most susceptible to violence, conflict, natural disasters, extreme poverty, and other hardships, UNICEF combats the feminization of poverty. The Sustainable Development Goals (SDGs), embraced by United Nations Member States in 2015 to diminish inequality, foster peace, and establish prosperous societies, are conspicuously aligned with UNICEF's dedication to eliminating child poverty. Working towards a more inclusive and equitable future that breaks the cycle of poverty, UNICEF actively promotes the welfare of children and their families. To improve the living conditions and opportunities of more than sixty thousand impoverished women residing in 198 communes across twenty-eight provinces, UNICEF has supported a project in Vietnam that has supplied these women with essential resources and aid.

UNICEF assumes a preeminent position in facilitating young women's educational opportunities and self-empowerment, thereby challenging the cycle of poverty and fostering the socio-economic progress of their respective communities. Supporting female involvement in STEM fields that have historically been male-dominated, these programs provide mentorship, access to high-quality educational resources, and assistance in overcoming academic challenges.

UNICEF adopts a comprehensive strategy to tackle the feminization of poverty, which goes beyond nutrition and healthcare to incorporate the welfare of mothers and children. This approach must acknowledge the critical contribution that women in developing nations make towards combating poverty, starvation, and malnutrition. In Mexico, for instance, the 1997-launched PROGRESA initiative assists disadvantaged women in employment, education, health, nutrition, and education, emphasizing improving their reproductive health; these programs strive to improve family welfare and economic stability.

In its pursuit to combat the feminization of poverty and advance gender equality, UNICEF additionally places significant emphasis on advocacy and awareness-raising endeavors. The primary objectives of these campaigns are to promote diversity, dismantle gender-based preconceived notions, and nurture comprehension and compassion. An illustration of this is the initiatives by UNICEF to promote more significant equity and equality by bringing attention to domestic violence and dismantling patriarchal norms and systemic biases. These initiatives facilitate the active participation of boys and men as allies in the fight against toxic masculinity, challenge detrimental gender norms, advocate for women's political agency, and support gender equality through media and educational campaigns. These endeavors seek to promote inclusive and sustainable policies and effect enduring changes through the establishment of alliances with local communities, non-governmental organizations (NGOs), and government agencies.

Strategies for Addressing Feminization of Poverty

Approaches to mitigating the feminization of poverty encompass several domains. Increasing enrollment and support for educating females in impoverished regions should be given priority through community engagement and awareness programs, among other initiatives. Furthermore, it is imperative to prioritize establishing secure educational environments for female students, guaranteeing the currency of curricula, and providing sufficient training for educators. Furthermore, by ensuring fair distribution of financial aid and favorable conditions for women to pursue higher education, developing countries can facilitate the growth of prospective leaders and implement enduring reforms. Mentorship and scholarship initiatives can assist in removing cultural obstacles that impede women's access to higher education.

Achieving equal compensation and comprehensive benefits for women in the workplace can significantly mitigate income inequalities and fortify their economic autonomy. In order to accomplish this, it is imperative to implement policies that advocate for equitable compensation and family-friendly work environments.

Promoting women's political engagement is idealistic and vital in the struggle against the feminization of poverty. The formulation of more comprehensive policies that address the requirements of marginalized women may result from an increase in the number of women in political leadership positions. Activities such as fostering self-help groups, integrating women into local governance structures, and engaging them in community-based organizations effectively promote women's participation in community-level decision-making. These approaches are crucial for successfully implementing strategies to alleviate poverty.



Feminization of Poverty concerning India

A prolonged concern in India, the feminization of poverty continues to impact a substantial portion of the population. Numerous interrelated factors comprise this phenomenon. The financial reliance of women on male relatives is a consequence of traditional gender roles that restrict them to unpaid domestic work. Feminists are even more susceptible to poverty because patriarchal-influenced cultural norms restrict their access to resources, property rights, and decision-making authority.

In addition to impeding women's capacity to attain personal fulfillment, destitution impedes their access to fundamental human rights. Premature births and malnutrition among children and women result from inadequate sanitation, healthcare, and nutrition access. Constant human trafficking, forced labor, and exploitation are commonplace for women from disadvantaged origins who are economically vulnerable; these practices perpetuate the cycle of poverty and impede their comprehensive development.

The Indian government has implemented several initiatives to tackle these challenges. The National Rural Livelihood Mission (NRLM) seeks to empower rural women through skill development, access to credit, and means of subsistence. A reservation policy guarantees the participation of women in local governance bodies. In contrast, the Beti Bachao Beti Padhao (Save the Girl Child, Educate the Girl Child) campaign seeks to improve the education and well-being of young females. However, to achieve substantial results, these endeavors necessitate more robust execution and reinforcement.

In addition to governmental interventions, providing microcredit, vocational training, and financial literacy by non-governmental organizations (NGOs) like SEWA and Kudumbashree is vital to women's empowerment. Through establishing their businesses, these initiatives empower women to achieve economic autonomy and thus disrupt the recurring cycle of poverty. Despite some progress, significant challenges remain that must be surmounted, particularly in healthcare infrastructure improvement, overcoming cultural barriers, and addressing gender-based violence.

Sustaining increased endeavors to address violence against women is imperative to establish a safe environment promoting their social and economic progress. Fortifying healthcare infrastructure and ensuring women have unrestricted access to premium services are essential in preventing destitution and advancing women's empowerment. The government's continuous educational campaigns and advocacy against deeply ingrained gender norms can effectively promote gender equality and women's empowerment alongside efforts to mitigate poverty.

Conclusion

In conclusion, increasing women's political participation is crucial in addressing poverty's feminization. Through enhanced representation, women can attain more significant opportunities and freedoms, thereby ensuring that policy decisions, particularly in the intricate context of globalization, duly consider their distinct concerns and requirements. Women can exert influence over policies and initiatives that advance gender equality and mitigate globalization's adverse effects on women's welfare through active participation in political affairs.

In addition, it is critical to promote gender equality and the empowerment of women to establish a global economy that is more equitable and inclusive, ultimately benefiting every sector of society. To adequately confront the feminization of poverty, it is imperative to embrace intersectional approaches. These methodologies acknowledge and address the unique obstacles women encounter with various forms of prejudice, including those associated with gender, socio-economic standing, and disability.

Adopting an intersectional framework necessitates recognizing the multifaceted challenges and requirements of impoverished women and formulating policies and initiatives that specifically target the obstacles encountered by women whose identities intersect with poverty. Furthermore, it necessitates anti-poverty initiatives considering the complex dynamics between privilege and various forms of discrimination. Fundamental components of this methodology encompass the following: advocacy for equitable and inclusive employment and educational prospects for women across all socio-economic backgrounds; facilitation of affordable childcare and social support services to mitigate the arduousness of unpaid caregiving; and promotion of diverse representation in positions of authority to devise policies that are inclusive and address the requirements of all women. By incorporating intersectionality into policymaking and advocacy, it becomes possible to formulate more all-encompassing and pragmatic approaches to tackle the feminization of poverty. It, in turn, advances the cause of greater social justice and gender equality.

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and presented a paper titled

Farmer Suicides in India and the Road to Resilience

and the paper was co-authored with

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Farmer Suicides in India and the Road to Resilience

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Abstract

India, known as an agricultural powerhouse, where more than half of its population relies on agriculture as their primary source of livelihood, faces a dire situation- the distressing and escalating issue of farmer suicides. Despite being the world's second-largest food producer, India has the highest number of farmer suicides worldwide. According to research data, between 1995 and 2018, nearly 4,00,000 farmers in India took their own lives, equating to an alarming average of approximately 48 suicides daily.

The paper aims to comprehensively examine the myriad factors contributing to the distressing phenomenon of farmer suicides in India, shedding light on the complex web of economic, social, and psychological stressors that propel them to take extreme steps in life. The objective of the paper is to

Analyze the state-wise data on farmers' suicide.

Analyze the effectiveness of government initiatives intended to address farmers' suicide.

Analyze the role played by Non-governmental organizations in assisting the beleaguered farming community.

Keywords: Farmers, suicide, distress.

**Introduction to Agriculture in India**

India's agriculture sector is a vital part of the economy, providing income and food security to millions of people. The country is one of the top three global producers of various crops, including wheat, rice, pulses, cotton, peanuts, fruits, and vegetables. The agricultural practices across different regions are diverse, with each region having unique farming practices. Agriculture has a rich history dating back to 9000 BCE in north-west India.

The British colonial rule in India had a significant impact on the country's agriculture sector, leading to a decline in food production and self-sufficiency. However, the British also introduced modern agricultural practices such as irrigation systems and improved seed varieties. After India gained independence in 1947, the government implemented several policies and reforms aimed at improving the agricultural sector. The first wave of reforms focused on increasing food production and achieving food self-sufficiency, leading to the Green Revolution. Land reforms were then introduced to redistribute land to the landless and empower small-scale farmers.

Indian agriculture faces significant challenges due to its unequal land ownership and distribution patterns, which have led to land fragmentation and consolidation. The government has introduced measures to tackle these concerns, such as land pooling programs and land leasing strategies. However, there are still lingering obstacles that need further efforts to ensure fair land distribution and resolve issues related to land fragmentation and consolidation. Apart from that, challenges such as climate change, water scarcity, and market volatility continue to pose significant threats to the sector's sustainability and growth.

Problem Statement

The issue of farmer suicides in India remains a significant concern, emphasizing the necessity for a thorough understanding of its root causes, consequences, and potential solutions. The crisis is complex, encompassing various economic, social, and psychological factors that contribute to the distress experienced by farmers. A comprehensive comprehension of these factors is crucial for formulating effective remedies and providing meaningful assistance. The evaluation of the role played by government initiatives and non-governmental organizations (NGOs) in alleviating this crisis demands careful scrutiny.

This research paper examines the phenomenon of farmer suicides in India, analysing data across different states to identify regional trends and disparities. It also assesses the efficacy of government measures designed to tackle farmer suicides and the contributions made by NGOs in supporting the troubled farming community. The primary objective is to offer a holistic perspective on farmer suicides in India, providing insights into the underlying causes, repercussions, and ongoing endeavours to enhance resilience within the agricultural sector.

Methodology**Data Collection**

This research paper primarily relies on secondary data sources, encompassing a mixed-method approach that involves both quantitative and qualitative data. Secondary data sources include government reports, agricultural statistics, and existing databases on farmer suicides.

Data Analysis

The study employs a range of data analysis techniques focused on secondary data sources. State-wise data on farmer suicides will be analysed to identify geographic patterns and regional variations in suicide rates.

Government initiatives will be assessed through a combination of statistical analysis and policy evaluation. The role of NGOs will be examined through an analysis of their activities and case studies based on existing records and reports.

Scope of the Study

The study primarily aims to analyse the factors contributing to farmers suicides, the efficacy of government measures, and the role played by NGOs in addressing the issue.

Limitations of the Study

The study's limitations include a limited data collection period from 2017 to 2021, and discrepancies between NCRB report statistics and news reports. This could lead to varying reported suicide rates, as some states reported zero farmer suicides as per the NCRB data, while newspaper articles reported cases in those same states. However, this study is based on the NCRB Data

Indian Agriculture and Farmers Suicide

Suicide among farmers in India is a significant issue, involving financial obligations, inadequate harvests, and psychological distress. Factors contributing to suicide include personal issues, monsoon failure, climate change, government policies, increased input expenses, and lack of direct market integration. Backward castes, including Dalit farmers, are the majority of those who commit suicide. Between 1995 and 2018, an estimated 400,000 farmers committed suicide, with 48 daily suicides. The suicide rate in India fluctuated between 1.4 and 1.8 per 100,000 population. However, there has been a notable rise in recent years, with over 600 farmers dying by suicide in the Marathwada region of Maharashtra in 2022. Agriculture in India is a physically demanding and financially precarious occupation, with annual incomes susceptible to numerous uncertainties.

Factors Contributing to Farmers Suicide in India

Socio-Economic Factors The economic challenges encountered by farmers in India are not just anecdotal; they are backed by alarming statistical data. These challenges significantly contribute to the distress within the farming community. Here, we delve into these economic factors with supporting statistics:

Mounting Debt: According to the National Crime Records Bureau (NCRB), in 2019, there were 5,957 farmer suicides attributed to bankruptcy or indebtedness. This statistic illustrates how the burden of debt plays a direct role in pushing farmers to the brink.

Fluctuating Crop Prices: Data from the Food and Agriculture Organization (FAO) highlights the volatility in crop prices. For example, in 2020, India saw a significant drop in onion prices, causing distress among onion farmers. Such fluctuations directly impact the income and financial stability of farmers.

Limited Access to Credit: The National Sample Survey Office (NSSO) reported that only 48.9% of Indian agricultural households had access to credit in 2015-2016. This lack of access to formal credit sources forces many farmers to resort to high-interest loans from informal sources, further increasing their financial vulnerabilities.

India's farmers face economic challenges like debt, unpredictable crop prices, and limited credit access, leading to distress and suicides. Around 90% cannot afford essentials like fertilizer, seeds, and pesticides. Climate change and genetically modified seeds contribute to crop failures and financial losses. Inadequate government policies, particularly for Dalit cultivators and "backward" castes, harm farmers.



Psychological Factors Distress, anxiety, financial hardship, crop failure, and debt are all psychological obstacles that farmers must contend with. They are, nevertheless, dissuaded from obtaining assistance due to stigma and ignorance surrounding mental health resources. In conjunction with economic hardships and indebtedness, this social disapproval can worsen mental health disorders and fuel suicidal thoughts. The suicide rate among farmers is exacerbated by social isolation and loneliness, which engender hopelessness and despair, particularly in remote areas.

Impact of Farmers Suicide

Suicidal agricultural labour in India has profound cultural, economic, emotional, and social repercussions. Post-traumatic stress disorder, anxiety, and depression result from the loss of agricultural labour; the social stigma associated with mental health issues exacerbates the situation. The psychological ramifications proliferate throughout the immediate family and the wider community. Suicides among farmers result in substantial economic declines, and stigma frequently prevents bereaved families from seeking assistance. Desire and despair contribute to social disintegration and isolation in areas with high suicide rates. Frequently, the economic and social repercussions are borne primarily by women.

Overview of Government Initiatives to Address Farmers' Suicide

The Indian government has implemented various initiatives to address farmer suicides, including financial assistance and loan waivers, which provide relief to farmers burdened with debt. However, critics argue that these short-term solutions do not address the underlying issues of the agricultural sector, such as low productivity and poor market access. Crop insurance and compensation schemes aim to protect farmers from crop failures and natural disasters, but their effectiveness has been questioned.

Agricultural reforms and diversification initiatives aim to increase productivity and profitability of agriculture, reduce farmer debt, and improve market access. The government has introduced schemes to promote crop diversification, encourage organic farming, and improve irrigation facilities. Additionally, the government has introduced electronic trading platforms to improve market access for farmers. While these initiatives are promising, their effectiveness is yet to be fully evaluated.

Financial Assistance and Loan Waiver: The Indian government has implemented several schemes to reduce farmer suicides, including the Pradhan Mantri Fasal Bima Yojana, Kisan Samman Nidhi, and Kisan Credit Card Scheme. These schemes aim to alleviate financial burdens on farmers and reduce debt-related suicides. However, their effectiveness is debated due to potential encouraging debt, implementation challenges, and distributional issues. Loan waivers often benefit only a small percentage of farmers, and corruption and bureaucratic inefficiencies can hinder their effectiveness. These measures may not address root causes of the problem.

Crop Insurance and Compensation Schemes: The Indian government has introduced crop insurance and compensation schemes to help farmers cope with financial risks and losses caused by crop failure, natural disasters, or other unforeseen circumstances. These schemes aim to reduce the risk of falling into debt and prevent farmer suicides. However, their effectiveness in addressing farmer suicides in India has been a subject of debate. Challenges include lack of awareness among farmers, particularly in remote or marginalized areas, and bureaucratic processes that can be time-consuming and complex. Additionally, the compensation provided may not always cover the losses, leaving farmers vulnerable financially. Despite these a 2017 study by K. R. Shanmugam and S. Bhavani found that crop insurance schemes have a positive impact on reducing farmer suicides, especially in drought-prone regions.

Agricultural Reforms and Diversification: Agricultural diversification is a potential solution to address farmer suicides in India. This involves expanding the range of crops and activities farmers engage in to generate income, reducing dependence on a single crop and providing alternative income sources. This

approach can improve financial stability and address root causes of farmer suicides. However, challenges such as lack of access to credit and insurance, corruption hinder the effectiveness of these policies. Technology and innovation play a crucial role in addressing farmer suicides. Precision agriculture techniques and mobile technology can optimize resource use and increase crop yields. However, adoption among farmers has been limited due to factors such as lack of education, access to resources, and limited market opportunities.

A comprehensive strategy is required to address the issue of farmer suicides in India. This strategy should encompass various components, such as promoting agricultural diversification, implementing policies effectively, integrating technology, and providing mental health support. Implementing this measure will enhance the agricultural community's financial stability and general welfare through the resolution of root causes of distress and the provision of essential resources.

Role Played by Non-governmental Organizations in Assisting the Beleaguered Farming Community

Non-governmental organizations (NGOs) are non-profit entities operating independently of governmental authorities, with a focus on social or humanitarian objectives. Their role is pivotal in fostering societal development, enhancing communities, and encouraging active citizen engagement. Within the agricultural sector, NGOs are instrumental in offering crucial assistance to farmers confronted with diverse challenges, including climate change, environmental degradation, and economic instability. NGOs contribute resources, education, and advocacy to bolster the farming community, enrich participatory democracy, and address constituent requirements.

Their significance becomes particularly pronounced in aiding marginalized and vulnerable farming communities, encompassing small-scale farmers, women, and indigenous populations. NGOs provide training and education on sustainable farming methods, advocate for policies supporting small-scale farmers and environmental conservation, grant access to financial resources and markets, support community-based organizations, and foster social and economic empowerment.

Education and Training: NGOs are instrumental in assisting farming communities by offering education and training on modern farming methods, financial management, and sustainable practices. They introduce farmers to eco-friendly techniques like crop diversification and water collection, which improve yields and reduce environmental impact. They also provide training on financial management, enabling smallholder farmers to manage their finances effectively. They also teach farmers about sustainable farming practices like crop rotation, intercropping, and natural pest management, which maintain soil health, preserve resources, and reduce environmental impact.

Financial Support: NGOs provide financial support to the agricultural community through microfinance loans, enabling farmers to start or expand their activities, acquire resources, and invest in equipment and infrastructure. These loans boost farmers' income and yields, improving their overall economic status. NGOs also extend grants for farming equipment and supplies, especially for small-scale farmers, and offer emergency relief funds for unforeseen challenges.

Advocacy and Representation: NGOs are key in advocating for farmer-friendly policies, fair trade practices, and legal representation. They lobby governments to create policies that benefit farmers, ensure access to resources, and promote sustainable farming practices. They also represent farmers in legal issues, aiding those evicted from their land and educating them about their rights. Their goal is to protect farmers' rights and ensure their long-term viability.



NGOs are vital in supporting farming communities, especially in developing nations, by advocating for sustainable practices. These practices improve crop yields, reduce soil erosion, and increase income. However, they face challenges like inadequate funding, bureaucratic hurdles, political interference, and lack of coordination. Collaborative efforts among NGOs, governments, and stakeholders are needed to address systemic issues.

State-Wise Analysis of Farmers Suicide in India

Between 1995 and 2018, nearly 400,000 farmers in India committed suicide, or 48 per day, according to a study by NK Kannuri in 2021. The farmer suicide rate in India fluctuated between 1.4 and 1.8 per 100,000 of the total population over a decade-long span. However, the number of agricultural suicides has been on the rise in recent years, claiming the lives of nearly thirty individuals daily, most of whom are overcome with debt.

According to the National Crime Records Bureau (NCRB), there was a 6% surge in suicides in 2019. This trend continued in 2021, with a 6.6% increase, primarily observed in the agricultural industry. The report lacked a comprehensive breakdown of suicide causes and classifications, and the gender distribution remained ambiguous. Upon examining the suicide rates of farmers in India by state, a significant concentration of such incidents is identified in particular geographic regions.

Table 1

Presents the data pertaining to farmers' suicides across different states during the period from 2017 to 2021. The dataset encompasses individuals involved in the agricultural sector, including farmers, cultivators managing their own land, those leasing land, and agricultural laborers. (Source: National Crime Records Bureau)

*Jammu & Kashmir is listed under the states for the years 2017, 2018 and 2019, and for the year 2020 and 2021 it is under Union Territories.

Sl. No	State	Persons Engaged in Farming Sector Suicide				
		2017	2018	2019	2020	2021
	Andhra Pradesh	2007	1693	2686	2342	2611
	Arunachal Pradesh	04	08	02	15	00
	Assam	101	115	240	246	607
	Bihar	02	00	00	00	00
	Chhattisgarh	1289	1116	1231	1301	749
	Goa	04	00	02	02	04
	Gujarat	389	285	239	257	252
	Haryana	218	208	438	560	465
	Himachal Pradesh	18	39	44	54	61

Jammu & Kashmir	02	57	62	-	-
Jharkhand	158	116	110	34	00
Karnataka	5477	6175	5315	5104	5508
Kerala	640	447	322	853	642
Madhya Pradesh	2339	1613	1224	1705	1459
Maharashtra	9828	9427	10534	10579	10768
Manipur	00	06	00	03	00
Meghalaya	12	00	02	14	17
Mizoram	00	51	74	12	02
Nagaland	00	04	02	00	03
Odisha	00	00	00	14	00
Punjab	825	875	843	688	711
Rajasthan	147	42	54	202	282
Sikkim	29	19	04	38	42
Tamil Nadu	795	808	860	1033	1259
Telangana	2548	2716	1489	1408	1070
Tripura	30	20	76	00	00
Uttar Pradesh	516	588	630	431	485
Uttarakhand	00	00	00	00	00
West Bengal	00	00	00	00	00
Union Territories					
Andaman & Nicobar	06	12	15	18	14
Chandigarh	00	00	00	00	00
Dadra & Nagar Haveli	00	21	21	18	48
Daman & Diu	00	00	00		
Delhi	00	00	00	00	02
Jammu & Kashmir	-	-	-	02	07
Ladakh	-	-	-	00	06
Lakshadweep	00	00	00	00	00

Puducherry	00	00	00	00	00
Total	27384	26461	26519	26933	27074

Table 2

Presents the data on farmer suicides categorized by gender, including male, female, and transgender individuals for the year 2017, along with the respective percentage shares in the overall suicide rate. (Source: National Crime Records Bureau)

Sl. No	Profession	Male	Female	Transgender	Total	Percentage Share
1.	Persons Engaged in Farming Sector	9852	802	01	10655	8.2
2.	Farmers/ Cultivators	5633	322	0	5955	4.6
3.	Who Cultivate their Own Land with or without assistance of Agricultural Labourers	4949	254	0	5203	4.0
4.	Who Cultivate on Leased Land/ Work on Lease/ on Others Land with or without assistance of Agricultural Labourers	684	68	0	752	0.6
5.	Agricultural Labourers	4219	480	01	4700	3.6

Table 3

Presents the data on farmer suicides categorized by gender, including male, female, and transgender individuals for the year 2018, along with the respective percentage shares in the overall suicide rate. (Source: National Crime Records Bureau)

Sl. No	Profession	Male	Female	Transgender	Total	Percentage Share
1.	Persons Engaged in Farming Sector	9528	821	00	10349	7.7
2.	Farmers/ Cultivators	5457	306	0	5763	4.3
3.	Who Cultivate their Own Land with or without assistance of Agricultural Labourers	4848	240	0	5088	3.8
4.	Who Cultivate on Leased Land/ Work on Lease/ on Others Land with or without assistance of Agricultural Labourers	609	66	0	675	0.5
5.	Agricultural Labourers	4071	515	00	4586	3.4

Table 4

Presents the data on farmer suicides categorized by gender, including male, female, and transgender individuals for the year 2019, along with the respective percentage shares in the overall suicide rate. (Source: National Crime Records Bureau)

Sl. No	Profession	Male	Female	Transgender	Total	Percentage Share
1.	Persons Engaged in Farming Sector	9312	969	00	10281	7.4
2.	Farmers/ Cultivators	5563	394	00	5957	4.3
3.	Who Cultivate their Own Land with or without assistance of Agricultural Labourers	4801	328	00	5129	3.7
4.	Who Cultivate on Leased Land/ Work on Lease/ on Others Land with or without assistance of Agricultural Labourers	762	66	0	828	0.6
5.	Agricultural Labourers	3745	575	00	4324	3.1

Table 5:

Presents the data on farmer suicides categorized by gender, including male, female, and transgender individuals for the year 2020, along with the respective percentage shares in the overall suicide rate. (Source: National Crime Records Bureau)

Sl. No	Profession	Male	Female	Transgender	Total	Percentage Share
1.	Persons Engaged in Farming Sector	9956	721	00	10677	7.0
2.	Farmers/ Cultivators	5335	244	00	5579	3.6
3.	Who Cultivate their Own Land with or without assistance of Agricultural Labourers	4737	203	00	4940	3.2
4.	Who Cultivate on Leased Land/ Work on Lease/ on Others Land with or without assistance of Agricultural Labourers	598	41	00	639	0.4
5.	Agricultural Labourers	4621	477	00	5098	3.3



Table 6:

Presents the data on farmer suicides categorized by gender, including male, female, and transgender individuals for the year 2021, along with the respective percentage shares in the overall suicide rate. (Source: National Crime Records Bureau)

Sl. No	Profession	Male	Female	Transgender	Total	Percentage Share
1.	Persons Engaged in Farming Sector	10228	653	00	10881	6.6
2.	Farmers/ Cultivators	5107	211	00	5318	3.2
3.	Who Cultivate their Own Land with or without assistance of Agricultural Labourers	4627	179	00	4806	2.9
4.	Who Cultivate on Leased Land/ Work on Lease/ on Others Land with or without assistance of Agricultural Labourers	480	32	00	512	0.3
5.	Agricultural Labourers	5121	442	00	5563	3.4

Recommendations to Prevent Farmers Suicide

Improving mental health service accessibility is crucial to reduce farmer suicides in India. Rural areas often lack access or stigma. Government and non-governmental organizations can expand services by establishing telemedicine, training professionals, and implementing community-based programs, which can help reduce stigma and improve mental health outcomes.

Promoting sustainable agricultural practices can reduce farmer suicide rates by enhancing resilience to economic and environmental shocks. Providing resources and training for sustainable techniques like crop rotation, intercropping, and organic farming can help farmers diversify their income streams and reduce financial vulnerability.

Government investment in agriculture can reduce farmer suicide rates by subsidizing inputs, improving irrigation infrastructure, and strengthening market linkages. Targeted policies and programs can address root causes of farmer distress, such as debt and crop failures.

Conclusion

The alarming occurrence of approximately 30 daily suicides among India's workforce of 260 million agricultural laborers is a stark reminder of their precarious situation. Compounded by the unintended consequences of the Green Revolution, issues such as environmental degradation, potential health hazards linked to pesticide exposure, and overwhelming debt have deeply entrenched themselves in these tragedies. The severity of this crisis is further intensified by the influence of climate change and adverse weather conditions, leading to an unprecedented surge in farmer suicides, notably in agricultural-reliant regions like Punjab.

Addressing farmer suicides in India is crucial for the well-being of farmers and the nation's progress. Supporting struggling farmers and implementing systemic reforms is essential for fostering an equitable and sustainable agricultural framework, safeguarding the long-term well-being and economic prosperity of the agricultural industry. The government must address farmer suicides by ensuring fair commodity prices, enhancing agricultural infrastructure, and providing financial aid. Raising awareness and providing mental health support services are also crucial.

Glance at Kerala's Agricultural Aspects

Kerala has distinguished itself in India by implementing the highest Minimum Support Price (MSP) for its agricultural sector, offering a significant Rs 2,630 per quintal for rice growers. This bold move has yielded a substantial 44% profit above the average production cost per quintal, highlighting the state's commitment to prioritizing the well-being of its farming community. Kerala's rice production costs rank as the second-highest among 18 states, further emphasizing the state's dedication to supporting its agricultural workforce. Additionally, the state offers an attractive state incentive bonus, currently set at half the MSP established by the Union government.

Kerala has expanded its MSP framework to include 16 vegetable varieties and uses six major wholesale markets for procurement. Direct procurement from farmers ensures fair compensation for agricultural produce like bananas, pineapples, and ginger. Despite the absence of an Agricultural Produce Market Committee, Kerala uses six major wholesale markets and an E-market network for procurement and export facilitation. This progressive initiative benefits individual farmers involved in vegetable cultivation on plots of up to 15 acres. The price difference between the market rate and the base price will be deposited into the accounts of farmers who sell their produce through agricultural societies, thereby providing a safety net for their livelihoods.

A Comparison of Kerala and Maharashtra's Farmer Policies

Kerala has taken significant steps to prevent farmer suicides by prioritizing financial aid and relief measures. These include a debt relief scheme offering up to Rs. 2 lakh and a farmer assistance fund, alongside the establishment of a farmer helpline to provide crucial guidance and support, all aimed at reducing financial strain on farmers and mitigating the stress that may lead to suicide. The state has implemented agricultural reforms and support programs to boost farmers' productivity and income, including subsidies, organic farming, farmer producer organizations, and technology integration, aiming to strengthen financial stability and reduce vulnerability to financial hardship, and reduce suicide risk.

Kerala has integrated psychological counselling and mental health assistance into its strategies to prevent farmer suicides. The government has established a network of professionals to provide counselling and support to farmers and their families, aiming to reduce the stigma associated with mental illness and encourage seeking help when needed.

The Maharashtra government is implementing strategies similar to Kerala's to prevent farmer suicides by providing financial aid and debt relief. A dedicated team is providing support to distressed farmers, incorporating existing relief packages like a farmer helpline and direct financial support. Maharashtra has implemented agricultural reforms and support programs to improve farmers' conditions and resources for sustainable livelihoods. Initiatives like the Maharashtra Agricultural Competitiveness Project and the Maharashtra State Agricultural Marketing Board aim to enhance market access and technology, boost farming productivity, and reduce suicides. The government has introduced crop insurance and compensation schemes to prevent farmer suicides. These efforts seek to alleviate financial strain and decrease the likelihood of suicides.

Kerala and Maharashtra have implemented financial aid and agricultural reforms to prevent farmer suicides. Maharashtra has a dedicated unit for financial support, while Kerala introduced a debt relief scheme to help distressed farmers, addressing the root causes of the agricultural crisis. Despite these commonalities, notable disparities exist in the orientation and execution of the anti-farmer suicide strategies between the two states. Maharashtra places a significant emphasis on rectifying structural issues within the agricultural sector, including cash crop pricing and power dynamics among farmers and local elites. Conversely, Kerala prioritizes providing social welfare benefits, such as healthcare and education, to enhance the overall well-being of farmers.

The effectiveness of strategies in reducing farmer suicides varies between Maharashtra and Kerala. Maharashtra has seen a reduction in suicides since aid programs were introduced, although the rates persist at a significant level. While Kerala has seen lower rates due to its comprehensive social welfare programs.

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8th International Conference on
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Agroforestry In Advancing Sustainable Agriculture: Indian Experience

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Abstract

Sustainable agriculture has become a global priority recently, and India is no exception. One key aspect of advancing sustainable agriculture in India is implementing agroforestry practices. Agroforestry is a land management system that combines the cultivation of trees or shrubs with traditional crops or livestock, creating a symbiotic relationship between them. This research paper aims to investigate the pivotal role of agroforestry in promoting sustainable agriculture in India. The paper will comprehensively analyze how agroforestry practices contribute to sustainability by enhancing biodiversity, improving soil health, mitigating climate change, and increasing farm resilience. The primary objectives of the study are:

To assess the ecological impact of agroforestry on Indian agriculture

To examine the economic and social implications of agroforestry in India

The research is descriptive, and it examines the ecological and economic ramifications of agroforestry through a literature review of works published by earlier scholars. With the objective of enlightening policymakers and practitioners regarding the prospects and obstacles associated with agroforestry as it pertains to sustainable agriculture in India. In conclusion, the paper endeavors to propose approaches for formulating policies and strategies that optimize the utilization of agroforestry's capabilities in order to tackle the agricultural predicaments of India, all the while fostering rural progress and environmental preservation.



Keywords: Agroforestry, sustainable agriculture, ecology

Introduction

In an era marked by global population growth, environmental challenges, and food security concerns, sustainable agriculture has become a pivotal and urgent global priority. As the world's population continues to expand, surpassing 7.8 billion and rising, the demand for food, fiber, and agricultural products has never been more acute. However, traditional agricultural practices have often compromised natural resources, biodiversity, and ecosystems. Sustainable agriculture is the solution that reconciles the immediate need for food production with the imperative of safeguarding the long-term sustainability of our planet.

Sustainable agriculture is an encompassing approach beyond merely feeding the world's population. Preserving natural resources, safeguarding biodiversity, minimizing pollution, and mitigating the impacts of climate change are its primary objectives. Simultaneously, it aims to enhance farmers' livelihoods and strengthen rural communities. The importance of sustainable agriculture in the global context transcends geographical boundaries, as it addresses critical issues such as environmental conservation, food security, economic prosperity, and climate change mitigation.

This research paper explores the significance of sustainable agriculture, concentrating on India, where a combination of agricultural reliance, varied agro-ecological regions, environmental hurdles, and climate susceptibilities render the embrace of sustainable techniques not only pertinent but imperative. By analyzing the integration of agroforestry in India, we aim to comprehend how it can play a vital role in propelling sustainable agriculture forward and tackling the agricultural dilemmas in the country, all the while fostering environmental preservation and rural progress.

Research Problem

The primary objective of the research paper is to delve into the crucial contribution of agroforestry in fostering sustainable agriculture in India. The focus is to examine how implementing agroforestry practices supports sustainability, with a specific emphasis on their ecological, economic, and social implications.

Objectives

To assess the ecological impact of agroforestry on Indian agriculture.

To examine the economic and social implications of agroforestry in India.

Research Methodology

The research methodology takes a descriptive approach, prioritizing examining preexisting literature and prior research studies to acquire a comprehensive understanding of the ecological, economic, and social consequences of agroforestry in the Indian context.

Importance of Sustainable Agriculture in the Global Context

The global arena recognizes sustainable agriculture as an essential and pressing necessity. It entails a farming approach that considers the long-term sustainability of agricultural systems while fulfilling immediate needs for food, fiber, and other vital resources. The importance of sustainable agriculture on a global scale is as follows:

Environmental Preservation: Inappropriate farming methods have resulted in soil deterioration, deforestation, pollution, and the depletion of natural resources. Sustainable agriculture strives to mitigate these adverse environmental effects, safeguard biodiversity, and conserve ecosystems.

Food Security: Considering an increasing global population, the assurance of adequate, nutritious, and accessible food is of utmost importance—sustainable agriculture endeavors to guarantee long-term food security by advocating for resilient and efficient farming practices.

Economic Viability: Sustainable farming practices can enhance the economic well-being of farmers and rural communities. By reducing reliance on expensive inputs and increasing yields, sustainable agriculture can improve the financial stability of agriculture-dependent regions.

Climate Change Mitigation: While agriculture is a contributor to greenhouse gas emissions, the implementation of sustainable practices, such as agroforestry, can aid in carbon sequestration and contribute to the mitigation of climate change. It serves as a crucial element in global initiatives combating climate change.

Sustainable Agriculture in India

India, as one of the world's most populous countries, faces unique challenges and opportunities in sustainable agriculture. The following factors underscore the relevance of sustainable agriculture to India:

Agriculture-Centric Economy: India depends highly on agriculture, with millions of people engaged in the sector. Sustainable agriculture ensures economic stability, rural development, and livelihood security.

Diverse Agro-ecological Zones: India encompasses many agro-ecological zones, from arid deserts to fertile plains. Sustainable agriculture practices must be adapted to these diverse conditions to ensure food production and environmental preservation.

Environmental Pressures: India grapples with water scarcity, soil erosion, and deforestation. Sustainable agriculture methods are essential for addressing these challenges while safeguarding natural resources.

Climate Vulnerability: India is vulnerable to the detrimental consequences of climate change, which encompasses severe weather phenomena. Sustainable agriculture offers strategies to enhance resilience against climate-related disruptions.

Agroforestry and Sustainable Agriculture

Agroforestry refers to a land management system that combines the cultivation of trees or shrubs alongside traditional crops or livestock, fostering a harmonious and mutually advantageous relationship between them. This agricultural method capitalizes on the synergistic connections between tree species and conventional farming practices. The principles of agroforestry align seamlessly with the fundamentals of sustainable agriculture, rendering them complementary approaches.

Biodiversity Enhancement: Agroforestry systems promote biodiversity by creating diverse habitats for plants, animals, and microorganisms. The coexistence of trees, crops, and livestock in proximity fosters a richer ecosystem, reducing the risk of monoculture-related issues.

Soil Health Improvement: Agroforestry plays a pivotal role in enhancing soil health. The presence of trees and vegetation enhances nutrient cycling, mitigates soil erosion, and augments organic matter content. The deep-rooted trees also aid in stabilizing the soil structure.

Climate Change Mitigation: Agroforestry acts as a climate change mitigation strategy through carbon sequestration. Trees sequester carbon dioxide from the atmosphere, mitigating the greenhouse effect. It helps in reducing the overall carbon footprint of agriculture.

Farm Resilience: Agroforestry enhances farm resilience by diversifying income sources. The multiple products generated, including fruits, timber, and fodder, provide financial stability for farmers. Furthermore, agroforestry systems offer insurance against crop failures and environmental shocks.

Economic Resilience: The economic and social benefits of agroforestry, including diversified income sources, align with the sustainable agriculture principle of economic viability. Sustainable agriculture strives to ensure the economic prosperity of farming communities.

Ecological Impact of Agroforestry on Agriculture

Agroforestry, as a sustainable and holistic farming technique, serves as an effective tool in mitigating the impacts of climate change through various interconnected mechanisms. Its capacity to sequester carbon in trees not only aids in reducing greenhouse gas levels but also contributes to preserving ecological balance. Beyond its climate-related benefits, agroforestry serves as a critical guardian of biodiversity, playing a significant role in preventing soil erosion and enhancing the overall quality of air and water resources. By fostering improved soil quality, retaining carbon, and preserving water, agroforestry establishes a solid foundation for sustainable agricultural practices, ultimately leading to heightened crop yields and increased efficiency in agricultural output.

In contrast to traditional monoculture farming, agroforestry has demonstrated a notable capacity to mitigate soil erosion, attaining reductions of as much as 50%. Moreover, the incorporation of trees into agroforestry systems facilitates efficient carbon dioxide absorption and storage, resulting in a significant reduction in emissions. This process serves to enhance the growth of biomass, thereby contributing to the increase in carbon storage in the soil. Agroforestry initiatives are of utmost importance in safeguarding endangered native plant species, which frequently encounter perils from conventional agricultural methods. Implementing agroforestry facilitates the adoption and sustenance of diverse wildlife habitats, playing a crucial role in preserving endangered species and enhancing ecosystem resilience.

Economic Implications of Agroforestry on Agriculture

Agroforestry in India offers numerous social, environmental, and economic benefits. It improves soil health and fertility, increasing farmers' income and productivity, especially on marginal lands with degraded soil quality. Trees in agroforestry systems improve soil carbon sequestration and water productivity, leading to sustainable land management. It also reduces dependence on chemical inputs, reducing agricultural costs and environmental harm. Agroforestry supports sustainable timber production, improves livestock health and nutrition, preserves ecosystem services, and eases the burden on natural forests.

Mathur et al. (2022) highlighted in their research the favorable impacts of agroforestry on the financial well-being of migratory cultivators who resettled in India. They attributed the increase in profits to the manifold benefits of agroforestry, which include improved agricultural outputs, reduced input costs, and enhanced soil quality. Similarly, Kassie et al. (2018) found a connection between agroforestry and the expansion of non-farm income streams, demonstrating its potential to bolster economic resilience. Additionally, Tega's investigation in India underscored the critical importance of agroforestry in mitigating food insecurity and strengthening the economic resilience of farmers.

The economic implications of agroforestry are.

Diversification and Risk Management: Agroforestry systems, which combine trees and shrubs with conventional crops or livestock, provide a diversified income stream, stabilizing farmers' livelihoods and mitigating market fluctuations and crop failure risks.

Enhanced Productivity: Agroforestry can boost productivity by providing wind protection and shelter, fostering microclimates for plant growth, and using tree-leaf debris as organic fertilizers. It also boosts soil quality and stimulates crop development, with occasional tree production increasing the economic value and yield.

Soil Health and Nutrient Cycling: Agroforestry systems improve soil health through nitrogen fixation, structure improvement, and erosion reduction, leading to increased yields, reduced reliance on external inputs, reduced production expenses, and enhanced agricultural sustainability.

Carbon Sequestration and Environmental Services: Agroforestry systems can help mitigate climate change by storing carbon in trees and soil, and with an increasing focus on environmental sustainability, they can generate economic opportunities for producers through carbon trading and monetary incentives.

Market Opportunities and Value-Added Products: Agroforestry systems produce various products like fruits, nuts, medicinal plants, and timber, which can generate additional revenue in local or niche markets, catering to a broader consumer spectrum and enhancing market prospects and profitability.

Cost Savings: Agroforestry systems can reduce agricultural input expenses by providing shade, reducing water crop needs, and reducing irrigation costs. Natural insect control mechanisms and fertilizers can also help mitigate the need for costly chemical inputs, resulting in lower production costs.

Social Implications of Agroforestry

Agroforestry in India is a promising method for creating employment opportunities by cultivating tree-based oilseeds, fruits, and medicinal plants. This approach not only meets local food needs but also boosts small-scale farmers' earnings, extending their income spectrum and improving their quality of life. Agroforestry also fosters stronger social ties and community connections, contributing to environmental improvements and community development. It can increase smallholder farmers' resilience, reduce poverty, and boost productivity, ultimately promoting rural development.

The social implications of agroforestry are

Livelihood Diversification: Agroforestry systems enable agricultural practitioners to diversify revenue streams, enhancing household resilience and reducing external disruptions, thus contributing to the socioeconomic stability of rural communities.

Community Cohesion and Knowledge Sharing: Agroforestry promotes community cooperation, information exchange, and cohesion by facilitating the exchange of traditional and innovative farming techniques and knowledge.

Improved Food Security and Nutrition: Agroforestry systems enhance food security and nutrition by offering a diverse array of tree-based products, such as fruits and nuts, which can help address nutritional deficiencies and improve community health, especially in regions with limited access to diverse diets.

Cultural Preservation: Agroforestry practices involve indigenous tree cultivation and traditional farming methods, preserving cultural heritage and biodiversity. It helps communities maintain their cultural identity and strengthen their connection to ancestral lands.



Gender Inclusivity and Empowerment: Agroforestry empowers women by allowing them to participate in farming activities and decision-making processes actively, promoting gender inclusivity and enhancing financial independence, social status, and decision-making power in rural communities.

Enhanced Resilience to Climate Change: Agroforestry systems enhance community resilience by offering adaptation and mitigation strategies, integrating trees in agricultural landscapes to mitigate extreme weather events, and enhancing ecosystem climate resilience.

Sustainable Natural Resource Management: Agroforestry promotes sustainable management of natural resources like soil, water, and biodiversity, preserving ecosystems and maintaining environmental integrity, benefiting current and future generations.

Government Policies and Interventions to Promote Agroforestry in India

The Indian government has implemented the National Agroforestry Policy to promote socially responsible practices, aiming to increase agroforestry's benefits, promote sustainable land use, and involve farmers and local communities in decision-making. The policy recognizes agroforestry's role in poverty reduction, biodiversity enhancement, and climate change mitigation. To support the implementation of the National Agroforestry Policy, the Indian government has also introduced various schemes and incentives for farmers. The Pradhan Mantri Fasal Bima Yojana provides crop insurance to farmers, including those engaging in agroforestry practices. The National Bamboo Mission strives to promote bamboo cultivation, integrating it with agroforestry practices. The government also offers financial incentives for responsible agroforestry practices, such as the National Mission for Sustainable Agriculture and the National Horticulture Mission.

The National Agroforestry Policy in India promotes sustainable agriculture and rural development by encouraging tree plantation alongside crops and livestock. It also envisions the development of a National Agroforestry Mission/Board with an initial investment of approximately USD 33 million to coordinate and monitor agroforestry activities across the country. In its third year of implementation, the policy has successfully merged agricultural, environmental, and rural development objectives, promoting a holistic approach to agroforestry.

The National Mission for a Green India focuses on increasing forest and tree cover on marginal agricultural lands, fallows, and other non-forest lands under agroforestry. The mission aims to increase forest and tree cover by 3 million hectares, contributing to India's forest cover and climate change response.

The Agroforestry Incentive Programme, launched by the State Government of Karnataka in 2011, provides subsidies for planting trees on farmland, covering the cost of seedlings, planting, and maintenance. Farmers interested in practicing agroforestry can also access loans and credit facilities, which make it more accessible and encourage widespread adoption.

Insurance schemes for agroforestry protect farmers from losses due to natural disasters or other unforeseen events, reducing financial risks and encouraging widespread adoption. Training programs educate farmers on agroforestry techniques, improving soil health, increasing crop yields, and reducing the environmental impact of agriculture.

Investing in agroforestry research and development mitigates the sector's obstacles, including sluggish markets, unfavorable policies, and a need for more institutional financing. Extension services provide farmers with technical support and guidance on implementing agroforestry practices, and the Agroforestry App offers comprehensive information on crops, trees, nurseries, and suitable planting techniques.

Agroforestry is being promoted in India by the Indian Council of Agricultural Research (ICAR) and the Indian Institute of Forest Management (IIFM). This initiative aims to integrate practices that improve ecosystem services, profitability, productivity, and diversity. IIFM organizes training programs and researches agroforestry systems, environmental impact, livelihoods, and rural development.

The National Bank for Agriculture and Rural Development (NABARD) supports agroforestry projects by subsidizing a portion of project costs, promoting sustainable practices to improve farmers' livelihoods, and contributing to rural development. India has various programs and policies for agroforestry research and development.

The Rashtriya Krishi Vikas Yojana promotes sustainable agricultural growth, including agroforestry. The Pradhan Mantri Fasal Bima Yojana offers insurance against crop failure, stabilizing farmers' income. The 1998 Kisan Credit Card Scheme supports agricultural activities, including agroforestry. The Indian government plans to spend Rs 20,000 crore on KCC loans.

Challenges Faced by Farmers in Adopting Agroforestry Practices

Agroforestry is a promising agricultural approach, but farmers face several challenges due to a limited understanding of its advantages and implementation techniques. Financial constraints, lack of resources like training programs, and technical guidance further complicate the integration process. Access to resources and inputs, such as high-quality seeds and fertilizers, and lack of institutional support can help farmers' adoption. Government-driven initiatives, such as subsidies and loan waivers, can encourage farmers to adopt agroforestry practices. Limited market access, particularly in direct procurement by national and state governments at guaranteed minimum prices, can discourage farmers from adopting agroforestry practices.

The challenges faced by farmers in adopting agroforestry practices are:

Lack of Awareness and Knowledge: Many producers may need to be more informed regarding the advantages of agroforestry or need access to the information and knowledge required to implement it effectively.

Land Constraints and Tenure Insecurities: Farmers in some geographical regions may encounter obstacles to land tenure, land fragmentation, or restricted land accessibility, which impede the integration of agroforestry practices into their agricultural systems.

Financial Barriers: Implementing agroforestry systems necessitates initial capital outlays for tree cultivation, upkeep, and administration. Small-scale producers, who may already be operating under stretched financial resources and credit constraints, may find the initial expenses unaffordable.

Market Access and Value Chains: Farmers may encounter challenges when attempting to penetrate markets or incorporate agroforestry products into established value chains. Price fluctuations or a lack of market demand for agroforestry products may deter producers from implementing these methods.

Technical Support and Extension Services: Farmers who wish to implement agroforestry may encounter considerable difficulty due to the need for sufficient extension services and technical assistance. Successful implementation necessitates access to dependable information, continuous technical support, and training.

Policy and Regulatory Hurdles: Policies and regulations may not support or encourage the integration of agroforestry practices in certain regions. Complex regulatory frameworks, ambiguous land-use policies, and bureaucratic red tape may deter producers from embracing agroforestry.



Climate Change and Environmental Risks: Agroforestry systems may be susceptible to hazards stemming from environmental risks, climate variability, and extreme weather events. Tree and crop productivity can be adversely affected by pests, diseases, droughts, and floods, which can hurt the overall efficacy of agroforestry practices.

Cultural and Social Barriers: Adopting agroforestry may be impeded by cultural practices, social norms, and traditional beliefs, mainly if the new practices oppose established customs or norms.

Challenges Faced in the Implementation of Agroforestry Policies

Agroforestry policies in India face challenges such as a lack of awareness among farmers, limited access to resources and technology, and inadequate financial support. Many farmers need to be made aware of the benefits of agroforestry, which integrates trees into agricultural landscapes for sustainability and biodiversity. Insufficient financial support can lead to farmers not prioritizing agroforestry practices over other agricultural practices, limiting their impact on the environment and rural communities.

Environmental Challenge: Climate change is a significant challenge to India's agroforestry policies, affecting crop yields, soil quality, and water availability. Weather patterns like droughts and floods make crop planning difficult. A 2023 Quandt study suggests agroforestry practices can build resilience to climate change, but scaling up remains challenging. Soil degradation and water scarcity are significant environmental issues affecting crop productivity. Effective pest management and natural pest control methods are crucial for agroforestry's efficacy.

Socio-Economic Challenges: Agroforestry policies in India face socioeconomic challenges, including complex land ownership, limited market access, low-profit margins, lack of government support, labour shortages, and human resources management issues. A concerted effort from the government, private sector, and civil society must provide farmers with the necessary support, education, and incentives to transition to profitable and sustainable agricultural practices to surmount these obstacles.

Future Prospectus and Potential for Agroforestry in India

India has launched the world's first agroforestry plan to expand its land area to 53 million hectares, offering sustainable land use management and environmental and economic benefits to farmers. With over 25 million hectares already under agroforestry systems, India aims to mitigate climate and market risks, provide sustainable income for rural populations, and promote biodiversity and ecosystem services. Agroforestry systems integrate trees and shrubs with crops and livestock, improving the livelihoods of poor people and promoting economic and environmental benefits. The Indian government has designed a comprehensive policy to improve productivity, create employment opportunities, generate income, and meet environmental goals. By expanding the land area under agroforestry systems, India can contribute significantly to global efforts to mitigate climate change and promote sustainable development. Agroforestry also contributes to food security, poverty reduction, and environmental sustainability by promoting sustainable agricultural practices, improving soil health, and reducing the need for synthetic fertilizers and pesticides.

Overview of Agroforestry in India

India has emerged as a frontrunner in agroforestry research during the previous quarter-century. According to The Restoration Opportunities Atlas of India, an estimated 25 percent of the nation's landmass, or 87 million hectares, possesses the capacity to sequester carbon via agroforestry techniques. A study assessed the carbon sequestration capacity of agroforestry in the Western Himalayan region, estimating a sequestration rate ranging from 1.80 to 3.50 Mg C ha⁻¹ year⁻¹. Investments in agroforestry

have the potential to improve the resilience of agricultural systems and alleviate the detrimental effects of climate change.

According to the World Bank, the agriculture, forestry, and fishing industries have contributed significantly to India's GDP in 2020, amounting to 17.8%. The significance of agroforestry in India is highlighted by these results, not only for its substantial economic impact but also for its environmental benefits. Significantly contributing to the nation's economic growth while playing a crucial role in India's sustainable development, particularly in carbon sequestration and climate change mitigation, agroforestry possesses such potential.

Several Indian states, including Punjab, Haryana, Uttar Pradesh, and Madhya Pradesh, advocate for agroforestry to enhance agricultural productivity and environmental sustainability. This method integrates livestock, crops, and forests, improving water retention, biodiversity, and soil fertility. The promotion is driven by mitigating soil degradation, addressing climate change, and improving farmers' livelihoods.

Promoting agroforestry in India exhibits regional disparities, with certain states adopting proactive approaches. For example, agroforestry promotion has been an enduring priority in states such as Kerala and Tamil Nadu, where farmers have actively engaged in the practice. States such as Bihar and Jharkhand, on the other hand, have been slower to implement agroforestry practices due to inadequate government support and farmers' lack of awareness. One can evaluate the efficacy of agroforestry promotion efforts across various states by analyzing their economic and environmental repercussions. India has heavily invested in agroforestry techniques such as alley cultivation, agro-silvopastoral systems, and home gardens. A notable example involves the implementation of an agroforestry sequestration initiative in the Khammam District. This initiative approximated carbon inventories by utilizing area and per-hectare carbon stock data.

The Indian government has implemented the National Agroforestry Policy to improve agricultural livelihoods by integrating trees with crops and livestock, improving soil fertility, increasing biodiversity, and enhancing farming resilience. The policy offers financial incentives and establishes nurseries for high-quality genetic material. However, challenges like legal and financial disparities, poor marketing, and policy constraints persist. Addressing these issues can enhance agroforestry's potential for enhancing agricultural productivity, environmental sustainability, and farmer livelihoods.

Conclusion

Achieving the effective implementation of agroforestry policies in India necessitates concerted efforts through collaborative initiatives involving a spectrum of stakeholders, including research institutions, private businesses, government bodies, and farmers. Such cooperative endeavors hold the promise of consolidating resources and expertise, with farmers contributing land and labor and partnerships with research institutions and government programs expediting access to vital technologies and resources. Despite significant strides taken by the Indian government, exemplified by the introduction of the National Agroforestry Policy in 2014, further financial incentives and land-use regulations are imperative to guarantee the successful implementation of these policies.

The future outlook for agroforestry in India appears promising, as an increasing awareness of its ecological benefits drives farmer adoption of this method. It is essential to combine traditional ecological knowledge with contemporary scientific techniques and to improve market access for agroforestry products, as well as implement insurance schemes and incentives. Achieving nationwide adoption of agroforestry practices will necessitate sustained investments and support for farmers, along with establishing the proposed National Agroforestry Mission/Board. Moreover, continued investments in agroforestry can bolster

agricultural resilience, mitigate the impacts of climate change, and significantly contribute to India's GDP thereby advancing the country's sustainable development goals and environmental preservation efforts.

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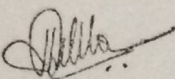
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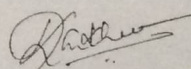
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Empowering Labour : Insights, Challenges and
Progress in India's Labour Laws

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Book

**Empowering Labour : Insights, Challenges
and Progress in India's Labour Laws.**

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Editor in Chief

Dr. C. Thilakanandan

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A Brief Study On Significance Of Labour And Employment Rights

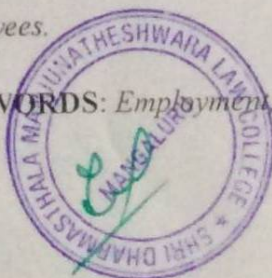
Shubhalakshmi P.

ABSTRACT

For every human being employment is must. Labour and employment are closely related and by investing fruitful labour, one can become successful in his/her employment. There are wide-ranging professions and employments and based on working condition, tenure, contract, nature of work etc., persons can be classified as labourers, workers, employees, professionals etc. The fundamental law relating to labour and employment in India is Industrial Law and the very existence of this law focuses on protection of the rights of workers and to guide on their basic facilities to be granted to them. There are different legislations passed by the Parliament on labour and employment issues especially on industrial disputes, workmen's compensation, rights of factory workers, remuneration or wages, working conditions, etc.

Employment is one of the ways through which person can earn his livelihood, basic amenities, required to lead a satisfactory life and to satisfy his economic desires. Employment is one's own choice and some times people often change their sector or institutions or company for better salary or for experience. There are rights granted through law for the labourers and employees working in an establishment. Right against discrimination, equal treatment, right to have employment agreement, maternity benefit and prevention and protection from sexual harassment for female employees, right to remuneration, provident fund, gratuity and rights on bonus, leave facilities, appropriate working conditions and working hours etc are certain basic rights that are exercisable by the workers or employees.

KEYWORDS: *Employment, labour, rights of workers*



1. INTRODUCTION

Right to work is basic right and every individual can work as per his/her qualifications. There are different kinds of workers like daily wage earners, unorganised sector of labourers, organised labourers, employees working in Government establishments, private establishments etc. Every labourer or employee or worker has certain rights to protect his employment and self-respect.

Section-2(t) of the OSHWC Code, 2020 defines **employee** in respect of establishments as: A person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, whether the terms of employment be express or implied; and A person declared to be an employee by the appropriate Government.¹

Section-2(zz1) defines a **worker** as any person employed in any establishment to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes working journalists as well as sales promotion-employees.²

The International Labour Organization (ILO) was established in 1919 with the aim of promoting social justice.³

II. RIGHTS OF WORKERS OR LABOURERS AND THEIR SIGNIFICANCE

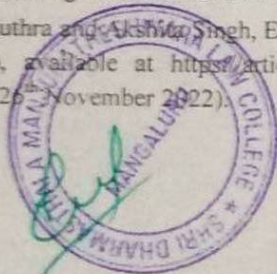
The right to work or employment signifies that every person or individual has right to get employment and the right not to be deprived of employment unfairly. There are certain migrant labourers who cannot enjoy any rights of labourers as they are not settled in any establishment properly.⁴ There is need to protect the rights of the labourers and the employees

¹ Madhu Damodaran and Anmay Singh, Definition of Employee and Worker Under the OSHWC Code, (Oct.23, 2020), available at <https://www.simpliance.in/blog/definition-of-employee-and-worker-under-theoshwc-code> (visited on 20th November 2022).

² *Ibid.*

³ Fundamental Rights at Work and International Labour Standards, International Labour Office, Geneva, 2003, p. 1.

⁴ Akshay Luthra and Akshita Singh, Emerging Challenges in Labour Laws, *Manupatra, Employment Laws*, (5th Jan, 2022), available at <https://articles.manupatra.com/article-details/Emerging-Challenges-in-Labour-Laws> (visited on 26th November 2022).



or workers because if there is absence of proper rules or codes for protection of their rights, the employers or the corporate entities tries to get more work from the workers or labourers and cheap labour may be encouraged by them. Under ILO's landmark Declaration on Fundamental Rights at Work, *"the Declaration identifies four universally accepted workplace human rights as core labour rights, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation."*⁵

The workers or employees or the labourers must be granted with minimum standard of comforts in the workplace and they must have social security and economic justice for their work.⁶ Labour law aims to prevent a race to the bottom and to prevent insecurity status of labourers. There are certain legislations and rules to protect the rights of labourers or workers and employees.

1. Employment Agreement
2. Right against discrimination at workplace
3. Provident Fund
4. Maternity Benefit
5. Equal Remuneration
6. Payment of Bonus
7. Right to Leaves
8. Appropriate Working Hours and Overtime
9. Safe Working Condition

⁵ Jonathan P. Hiatt and Deborah Greenfield, The Importance of Core Labour Rights in World Development, Michigan Journal of International Law, volume 26 issue no. 1, 2004, available at <https://repository.law.umich.edu/mjil>, (visited on 30th November 2022), p.41.

⁶ Yashpal Puliani, Labour Law II, (Bangalore: Puliani and Puliani publishers, 2021), p. 73.



10. Protection from Sexual Harassment at Workplace

Employment Agreement

While entering into as an employee to any private company or establishment, the agreement on employment plays significant role. But for a labourer, usually such procedures are not followed and they have no security of employment. Some of the labourers are daily wage earners and unorganised sector of labourers. In an employment agreement, their terms of employment, designation, place of work, remuneration, hours of work, form of work, compensation, dispute settlement methods, procedures of removal etc will be mentioned. Whenever such agreements are made, employees must be vigilant because the agreement may favour the employer in terms. ⁷ Section 2(1) (n) of the Employees' Compensation Act contract must be entered into between employer and employee.

Right against Discrimination at Workplace

No discrimination can be made on the basis of caste, creed, colour, religion, sex and place of birth and residence between the workers or employees. All employees must be treated equally as they are working in the same establishment together. There must be right for everyone to take opportunity to gain his living by work which he freely chooses or accepts. Equal opportunity for everyone to be promoted in his employment to an appropriate higher level subject to no considerations other than those of seniority and competence.

⁷ Meenu Paul, *Labour and Industrial Law*, 10th ed, (Faridabad: Allahabad Law Agency, 2017), p. 372. ⁸ Pradeep Kumar Vannarath, *Industrial Relation and Labour Law*, Babasaheb Ambedkar Open University, Ahmedabad Knowledge Management and Research Organization, Pune, 2015.



Provident Fund

Every employee is eligible for provident fund provided the establishment has more than 20 salaried employees working in the establishment. During the time of retirement, the provident fund can be withdrawn and utilised by the employees. In fact, it contains 12% of the salary of the employees and that must be contributed by both the employees and the employers. If the employer has shown dissent towards contribution on Provident Fund, employee can get the matter redressed through PF appellate tribunal. But such facilities of provident fund are not available to daily wage earners or labourers who work in an unorganised sector.⁸ Provident fund is significant because, as there is no pension for employees or workers working in private establishments, they need to have some secured monetary benefit at least during their retirement.⁸ Provident fund is governed by Employees Provident Fund Organisation under the Ministry of Labour and Employment, Government of India.¹⁰ Gratuity can be given to an employee after his retirement from service or during termination of employment. Such gratuity is available not for every kind of employees and labourers who work on contract basis or daily wages etc are not be granted with the same.⁹

Maternity Benefit

Maternity benefit is available to any female employee working in any establishment and it is for 26 weeks with payment of salary. This can be availed together with before and after the delivery. Eight weeks leave can be availed before and remaining 18 weeks can be availed after delivering the child or some employees usually avail 6 months after delivery for the purpose of childcare.¹² Female employees must be provided with such facility and with no reason such female employee can be dismissed from the job during her maternity period. Such maternity

⁸ H. L. Kumar, *Labour Laws*, 6th ed. (New Delhi: Universal Law Publishing Company, 2011), p. 50. ¹⁰ S.N. Misra, *Labour and Industrial Laws-with latest Amendments*, 29th ed. (New Delhi: Central Law Publications, 2022), p. 658.

⁹ Meenu Paul, *Labour and Industrial Law*, 10th ed. (Faridabad: Allahabad Law Agency, 2017), p.805. ¹² S.N. Misra, *Labour and Industrial Laws-with latest Amendments*, 29th ed. (New Delhi: Central Law Publications, 2022), p. 1021.



leave is not granted to the daily wage earners and they must lose their jobs during maternity. They have no security of work.¹⁰

Equal Remuneration

The right to the enjoyment of just and favourable conditions of work is must and at the same time particular remuneration must be provided to all workers, as a minimum, with fair wages and equal remuneration for work of equal value and a decent living for themselves and their families etc are important elements for any worker or employee.¹¹

Fair and appropriate remuneration must be given to the workers. Under Article 39(d) of the Indian Constitution, it is stated that, there must be equal pay for equal work. Different provisions in legislations like the Equal Remuneration Act,¹² the Payment of Wages Act etc. has been laid down that timely and fair remuneration must be granted to the employees working in any establishment.¹³ If an employee is not receiving his/her remuneration as per the employment agreement, can approach the Labour Commissioner or file a civil suit for arrears in salary. An employee cannot be given wages less than the legal minimum wages, as per law.¹⁴

Payment of Bonus

Bonus is also a part of salary or wage and the employees are eligible for it who draws salary or wage up to Rs. 21,000 per month. The minimum bonus an employee can get is 8.33% and up to 20% of the salary or wages.¹⁵ Whether the company or establishment is running with

¹⁰ Aarsha, Constitutional Protection on Labour Laws, Legal Service India, available at <http://www.legalservicesindia.com/article/181/Constitutional-Protection-on-Labour-Laws.html>, (visited on 28th November 2022).

¹¹ Labour Laws & Practice, The Institution of Company Secretaries of India, New Delhi, p.123.

¹² S.N. Misra, Labour and Industrial Laws-with latest Amendments, 29th ed, (New Delhi: Central Law Publications, 2022), p. 1121.

¹³ S.S. Rana and Co., Labour Laws in India, 2013, available at <https://ssrana.in/corporate-laws/labour-laws-india>, (visited on 29th November 2022).

¹⁴ N. Asmitha, A Summary on Existing Labour Laws in India. *Legal Service India-E-Journal*, available at <https://www.legalservicesindia.com/legal/article-4220-a-summary-on-existing-labour-laws-in-india.html>, (visited on 27th Nov 2022).

¹⁵ S.N. Misra, Labour and Industrial Laws-with latest Amendments, 29th ed, (New Delhi: Central Law Publications, 2022), p. 99.



profits or loss is immaterial for issuing bonus to the employees. Along with bonus, the employees must have the benefits of old-age pensions, invalidity benefit, unemployment benefit, survivors' benefit etc.¹⁶

Right to Leaves

Employees or workers can avail casual leave, sick leave, privilege leave and other leaves along with public holidays available every year. Even during emergencies, the employees can avail leaves. Daily wage earners or labourers can avail leave but they lose payments for the same. By taking leave there is also possibility of losing the job because their job is not secured one.¹⁷

Appropriate Working Hours and Overtime

Workers or the employees require to take required rest, leisure and they must be given with reasonable working hours. Fixation of working hours is required to ensure quality work or duty from the employees. If the employees are willing to do, over time can also be granted to them with genuine remuneration. Female workers required to get reasonable working hour and with appropriate timings. An adult worker shall work over nine hours per day or 48 hours per week and overtime shall be double the regular wages. A female worker can work from 6 am to 7 pm. This can be relaxed to 9.30 pm provided explicit permission and required payment for overtime and safe transportation facility is made available to them. The working hours for



¹⁶ Nidhi Rani Garg, Employee rights and responsibilities that you need to know about, available at <https://blog.ipleaders.in/employee-rights-and-responsibilities-that-you-need-to-know-about/>, (visited on 30th November 2022).

¹⁷ Atul Mittal, How Employees' Working Hours, Annual leave will change under the new Labour Laws, The Economic Times, English edition. (30th June, 2022).

child workers are limited to 4.5 hours a day.¹⁸ But child labour is not allowed in hazardous industries.

Safe Working Condition

Working condition must be safe and secured to the employees. Unless and until workers working conditions are safe and with necessary security, they cannot work with quality and productive way. So productive, qualitative and efficient work demands safety and security for the employees or workers. There must be basic amenities in working place and comfortable working atmosphere also necessary for the workers or employees to work efficiently in their workplace. Healthy and safety work place like safe workplace, provision of free protective equipment, training on safety, labour inspection etc are very much necessary for the workers.¹⁹ For the employees working in certain establishments are provided with insurance and their medical care expenses also imburshed. Even contract labourers also can avail such facilities of insurance through the scheme of State Insurance for Employees.²⁰

Protection from Sexual Harassment

In any establishment where women are working along with men, a cell to prevent sexual harassment of women at workplace must be established. Internal committee on Prevention of Sexual Harassment (POSH) helps to prevent sexual harassment and if any grievances on sexual harassment can be redressed through this committee. There must be equality between men and women in workplace and not to commit sexual harassment against women.²¹



¹⁸ K R Shyam Sundar and Rahul Suresh Sapkal Changes to Labour Laws by State Governments Will Lead to Anarchy in the Labour Market, available at <https://www.epw.in/engage/article/changes-labour-lawsstatemarket-anarchy-labour-market>, (visited on 30th November 2022).

¹⁹ Gary Burtless, Workers' Rights: Labour standards and global trade, (September 1, 2001), available at <https://www.brookings.edu/articles/workers-rights-labor-standards-and-global-trade/>

²⁰ H. L. Kumar, Labour Laws, 6th ed, (New Delhi: Universal Law Publishing Company, 2011), p.25.

²¹ Veena Gopalakrishnan, Ajay Solanki and Vikram Shroff, India's New Labour Law - Prevention Of Sexual Harassment At The Workplace, Nishith Desai Associates, 9th May 2013.

III. CONCLUSION

If any employee is to be terminated, prior notice must be given as per law. In case of daily wage earners, such notice is not usually given and whenever the employer feels that no more to accommodate that worker, the employer conveys the same to the worker. The employees of any establishment have right to go for strikes and they can put forward their demands before the employers.²² The rights and privileges of employees or the workers are granted under different provisions of labour legislations like Industrial Disputes Act 1947, Factories Act 1948, etc. Presently the Government of India has enacted 4 labour Codes in which around 29 labour laws are subsumed in them. They are Code on Wages 2019, the Occupational safety, Health and Working Conditions Code 2020, the Code on Social Security 2020, and the Industrial Relations Code 2020.²³ These new Codes were formulated to consolidate and reform labour laws in India.



²² S.C. Srivastava, *Industrial Relations and Labour Laws*, 6th ed. (Noida: Vikas Publishing House Pvt. Ltd., 2015)p. 398.

²³ Anshul Prakash and Kruthi N Murthy, *Employment and Labour Laws and Regulations*, (25th March 2022), available at <https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/india>, (visited on 28th November 2022).



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The Future of Alternative Dispute Resolution Vis-À-Vis Artificial Intelligence in India

Dr. Ravindra K. Rajput*

Legal process and juristic acts are where the law in action is most evident. The legal process aims to resolve disputes through decisions to prevent further conflicts. The objective of the legal process is inhibiting conflict. However, some forms of Alternative Dispute Resolution (ADR), like arbitration, are not considered legal processes, even though they institutionalize a dispute.

The heart of the law is dispute resolution, and much discussion revolves around how to resolve disputes. One major weakness of resolving disputes through the judicial system is that it is time-consuming, leading to extensive costs. As a result, many parties are turning to Alternative Dispute Resolution (ADR) mechanisms. ADR is cheaper and allows parties to find creative solutions that benefit both sides.¹

Traditionally, we think of disputes being resolved through lawsuits and heated courtroom exchanges. However, in the 21st century, there are now better alternatives for settling disputes. Alternative Dispute Resolution (ADR) is a popular mechanism, known as "out-of-court settlement," that is being chosen by more and more people. ADR provides a viable option for those who do not want to get involved in the complexities of a courtroom battle. As technology advances, ADR has been expanding its wings into the technological era, with the field of law adapting more than ever.²

ARTIFICIAL INTELLIGENCE

Artificial intelligence is becoming more prevalent in the fields of management science and operational research, as it involves the ability to collect and reason about knowledge to solve complex problems. Intelligent machines are expected to replace human capabilities in many areas soon. AI is focused on developing intelligent machines and software that can reason, learn, gather knowledge, communicate, manipulate, and perceive objects.

Artificial intelligence is a field of computer science concerned with making computers behave like humans, first coined by John McCarthy in 1956. It focuses on computation that makes it possible to perceive, reason, and act. AI differs from psychology in that it emphasizes computation and differs from

* Assistant Professor, SDM Law College, Mangaluru

¹ Hibah Alessa, *The role of Artificial Intelligence in Online Dispute Resolution: A brief and critical overview*, 31 INFORMATION & COMMUNICATIONS TECHNOLOGY LAW 319 (2022).

² Disha Pathak, "The Great Expectations"- Future of ADR and AI, THE DIGITAL FUTURE (2020), <https://thedigitalfuture.in/2020/11/09/the-great-expectations-future-of-adr-and-ai/> (last visited Jan 27, 2023).



computer science in its emphasis on perception, reasoning, and action. AI technologies use artificial neural networks and logical theorems to make machines smarter and more useful. Major AI areas include natural language processing, speech understanding, robotics, computer vision, and neural computing. Expert systems are a rapidly growing technology with a significant impact on various fields of life.³

AI has become increasingly important in today's world, as it offers efficient solutions to complex problems across multiple industries. AI systems and programs can think and learn from their experiences, which has led to significant advancements in recent years. As a result, AI has found its way into almost every business sector, making it an essential tool for organizations looking to stay ahead of the curve.⁴

A few sectors which have adopted this technology are :

- a) Healthcare diagnosis and treatment.
- b) Autonomous vehicles
- c) Fraud detection and prevention
- d) Customer service
- e) Recommendation systems
- f) Financial analysis
- g) Smart home devices
- h) Cybersecurity
- i) Agriculture
- j) Education
- k) Manufacturing.
- l) Natural language processing
- m) Social media analysis
- n) Sports analytics.

ALTERNATIVE RESOLUTION DISPUTE

The current Judicial System is known for being expensive and causing long delays, leading to a decrease in people's faith in the Courts. As a result, alternative remedies for resolving disputes have become more popular, as they offer quicker and more affordable solutions. The use of Alternative Dispute Resolution (ADR) mechanisms is preferred by many parties as it provides a fast and inexpensive way to obtain justice.

Judges, lawyers, and parties worldwide are increasingly favouring the adoption of Alternative Dispute Resolution (ADR) over traditional court litigation. Arbitral institutions offer ADR services, providing a quicker, less costly, and more consensual means of resolving civil disputes outside of the crowded court system. ADR fosters communication between the parties, allowing them to address their underlying concerns beyond the dispute at hand.

³ Avneet Pannu, *Artificial Intelligence, and its Application in Different Areas*, 4 IJEIT (2015).

⁴ Avijeet Biswal, *Top 14 Artificial Intelligence (AI) Applications in 2023*, SIMPLILEARN.COM, <https://www.simplilearn.com/tutorials/artificial-intelligence-tutorial/artificial-intelligence-applications> (last visited Jan 27, 2023).

Alternative Dispute Resolution (ADR) is an effective way to resolve a wide range of disputes, including consumer complaints, family disputes, construction disputes, and business disputes. ADR can be applied to almost any type of civil dispute that can be filed in court. In contrast to the formal and uncertain process of litigation, ADR provides a quicker and more certain solution to disputes. In a court of law, parties are often left waiting for the court's decision after a formal process managed by lawyers and the court. This can be followed by further delays and proceedings such as appeals, further slowing down the implementation of the decision.

Alternative Dispute Resolution (ADR) proceedings are highly flexible, as parties have the freedom to choose the applicable law, language, and way the dispute is resolved. ADR can be conducted in a manner agreed upon by the parties and may be settled in just a few meetings, thereby reducing expenses. Unlike in court litigation, no court fees are payable, and there are no expenses involved in obtaining copies of proceedings and reports. A neutral third party can offer services to the parties for an amicable resolution of the dispute, and the parties can choose the date and place of the meeting at their convenience. Additionally, parties can agree on the fee payable to the neutral third person, who is chosen by the parties' mutual consent.

The following are the main techniques of the Alternatives Dispute Resolution (ADR) Mechanism.

- A. Arbitration
- B. Conciliation
- C. Mediation
- D. Pre-Trial Conciliation/Mediation
- E. Negotiation/Discussion
- F. Lok Adalat

IMPORTANT PROVISIONS RELATED TO ADR

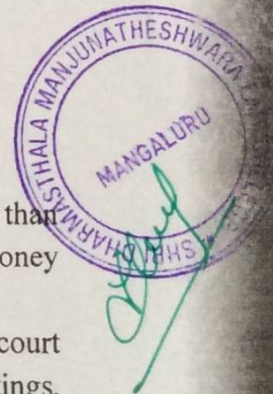
Section 89 of the Civil Procedure Code, 1908 provides that opportunity to the people, if it appears to the court there exist elements of settlement outside the court then the court formulates the terms of the possible settlement and refers the same for Arbitration, Conciliation, Mediation or Lok Adalat.

The Acts which deal with Alternative Dispute Resolution are:

- Arbitration and Conciliation Act, 1996 and,
- The Legal Services Authority Act, 1987.

BENEFITS OF NON-CONVENTIONAL DISPUTE RESOLUTION

- a) Cost-effective: ADR procedures are generally less expensive than traditional litigation. The parties can save a significant amount of money on court fees, lawyers' fees, and other legal expenses.
- b) Timesaving: ADR proceedings are often quicker than traditional court litigation. The parties can resolve their disputes within a few meetings, without having to wait for months or years for a court decision.



- c) Flexibility: ADR procedures are highly flexible, and the parties have the freedom to choose the applicable law, language, and way the dispute is resolved.
- d) Confidentiality: ADR proceedings are usually confidential, which means that the parties can keep their dispute private, and the outcome is not a matter of public record.
- e) Control: The parties have more control over the outcome of their dispute in ADR proceedings than in traditional court litigation. They can agree on the terms of the settlement, rather than having a decision imposed on them by a judge.
- f) Preserves relationships: ADR can help preserve relationships between the parties, as it promotes communication and cooperation, and is often less adversarial than traditional court litigation.⁵

AI AND INDIAN JUDICIARY

The Department of Justice and the e-committee of the Supreme Court of India are working together on the e-courts Mission Mode Project to computerize and enable ICT for all District & Subordinate Court complexes. The Supreme Court of India has formed an Artificial Intelligence Committee to explore the use of AI in the judicial sector, with a focus on translation, legal research assistance, and process automation. However, the second phase of the e-courts, which has been under development since 2015, has not yet incorporated AI technology.⁶

Today, in our judicial system we see the usage of AI in Translation of Judicial Documents, Legal Research Assistance and Contract Review tools. The possibilities of usage of this technology are wide which would include Automated Filing; Process Automation; Case Scheduling; Chat Bots; Administrative Effectiveness and Litigation Prediction.

Presently the Apex court has stated the usage of the following AI-based tools:

- a) SUVAS (Supreme Court Vidhik Anuvaad Software): which helps to translate court decisions into regional language.
- b) SUPACE (Supreme Court Portal for Assistance in Court Efficiency): This would help in improving efficiency and reducing the pendency of cases.

ARTIFICIAL INTELLIGENCE AND ADR

Human decision-making involves the conscious, subconscious, and unconscious mind, which can be influenced by external factors, potentially impacting the rational approach of decision-makers, including arbitrators. On the other hand, AI programs are not influenced by such external factors and



⁵ Prime Legal, *Alternative Dispute Resolution: Mechanism in India*, PRIME LEGAL (2022), <https://primelegal.in/2022/10/23/alternative-dispute-resolution-mechanism-in-india/> (last visited Jan 27, 2023).

⁶ Khushboo Luthra & Mozammil Ahmad, *Assessing the Intelligence of The Artificial Intelligence in Law: Prospects in India*, <https://www.mondaq.com/india/new-technology/1263638/assessing-the-intelligence-of-the-artificial-intelligence-in-law-prospects-in-india> (last visited Jan 27, 2023).

operate autonomously using pre-programmed algorithms, resulting in more rational decision-making.⁷

Humans are susceptible to cognitive biases, which can affect their decision-making processes, such as being influenced by previous cases or external factors. The anchoring effect is an example of a cognitive bias where humans tend to rely on the first piece of information they receive when making decisions. In contrast, AI programs are not affected by external factors and do not suffer from cognitive biases, making their decision-making approach more objective.⁸

Benefits:

- a) Arbitration is a dispute resolution process that aims to provide a fair and neutral decision by a third party, without undue costs or delays. The core objectives of arbitration are to save time and costs. AI can complement these objectives by automating legal research and data analysis, reducing the burden on individuals involved in arbitration proceedings. This use of AI can save time and make the arbitration process more efficient.⁹
- b) Arbitrators, being human, are prone to errors in interpretation, documentation, decision-making, and other tasks. The use of AI in the arbitration process can help to identify and eliminate these inefficiencies. By automating certain tasks, AI can reduce the potential for human error, and by analyzing data, AI can identify blind spots in the arbitration process and recommend ways to mitigate them, making the process more efficient overall.¹⁰
- c) AI can be leveraged to select appropriate arbitrators and predict the outcome of an arbitration case based on various factors such as information provided, documents submitted, and arbitrator's reasoning. By analyzing large amounts of data, AI can identify patterns and make accurate predictions about potential outcomes. This can help parties involved in the arbitration process to make informed decisions and prepare accordingly. Moreover, AI can be used to suggest the most suitable arbitrator for the case based on their previous rulings, expertise, and experience, ensuring a fair and just arbitration process.¹¹
- d) The use of AI in arbitration can facilitate the immediate implementation of an award. In cases where one party is required to transfer a sum of money to another, AI can be employed to transfer the funds directly from one bank account to another, eliminating the need for any additional steps. Additionally, AI can be used to send reminders to the parties involved and authorities at regular intervals to ensure compliance with the award. This

⁷ PROS AND CONS OF ARTIFICIAL INTELLIGENCE IN ADR | VIA Mediation Centre, <https://viamediationcentre.org/readnews/NTE5/PROS-AND-CONS-OF-ARTIFICIAL-INTELLIGENCE-IN-ADR> (last visited Jan 27, 2023).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*



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can help to expedite the arbitration process and ensure that the outcome is effectively implemented.¹²

DISADVANTAGES

Incorporating AI in arbitration requires significant investment and time for training. While AI can reduce costs, its development requires a substantial capital investment. AI's purpose is to reduce the burden on humans, but this could impact employment rates. Confidentiality is essential in arbitration, but AI algorithms are prone to hacking, and any system update can pose technical problems. Parties may lose confidence in the system's conclusion if there is a lack of logic, accountability, or a threat to confidentiality. A standardized process could lack flexibility and lead to a rigid structure, and human errors while developing the AI's algorithms could cause inaccuracies.¹³

CONCLUSION

The idea of a robot judge in a courtroom may seem like science fiction, but some believe it could become a reality. However, experts in the AI community warn against using AI in legal proceedings. Current AI technology does not have the necessary intelligence to handle complex legal issues, and ethical concerns also arise. Therefore, a need arises to keep checks at all levels of implementation of AI in the judicial system. There needs to be a comprehensive legal, regulatory, and ethical framework to establish trust in AI's integration into the justice system. This is required as there could be biases by the AI and these issues need to be addressed before we can consider the possibility of AI delivering justice.



¹² *Id.*

¹³ *Id.*



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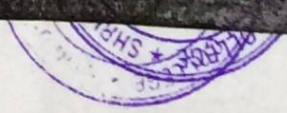
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PLEA BARGAINING IN CRIMINAL JUSTICE SYSTEM- CONSTRAINTS AND CHALLENGES

Dr. Ashwini P*
Nirupama D**

Abstract

Cognizant of the intention of the criminal justice system, mechanisms for the prevention of crime are instated. Taking into consideration the hitches of the criminal justice system, the dominant drawback being overburdening of the courts, plea bargaining swooped in to be plausible solution to meet the inadequacy of the criminal justice system in India. It has been regarded as a weighty mechanism to bring about a balance between offence committed and the entailing punishment for the offence. Regardless of the incorporation of the said redress, the sway of the doctrine within the working reality of the system was not very welcoming. In light of the same, the juxtaposition of the stance of plea bargaining is of predominant value which aids in reflecting the pathway towards its development in the criminal justice system.

Key Words: Criminal Justice System, Plea Bargaining, Speedy Redressal, Overburdening, Efficiency

Introduction

'Justice delayed is justice denied' is a benchmark principle in the realm of law. Criminal justice system is built on the bedrock principles of natural justice, rule of law, democracy, protection of human rights and the development of the same in different spheres is to meet the end goals of criminal justice i.e., to prevent and regulate crime, to maintain public order and peace, to safeguard the rights of victims and those in dispute with the law, to punish and rehabilitate those found guilty of crimes, and to generally protect life and property from crime and criminality.¹ The path to victory of an efficient criminal justice system lies in the harmonious working of the institutions within the system

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¹Naman Jain, 'Critical Analysis of the Criminal Justice System in India' (2022) 5(3) International Journal of Law Management & Humanities file:///C:/Users/Nirupama%20Dinakar/Downloads/Critical-Analysis-of-the-Criminal-Justice-System-in-India.pdf accessed on 18 March 2023



counsel' itself provides adequate protection against coercion, ensuring that the Fifth Amendment rights are upheld to facilitate their decision of a plea voluntary.¹³ It further held that merely because the agreement was entered into at the trial may result in a death sentence, would not outlaw a bargained plea.

Subsequently, in the case of *Bordenkircher v Hayes*¹⁴, the US Supreme Court upheld the constitutionality of Plea Bargaining and noted that there is no prohibition of coercion or duress if the accused person is free to either accept or reject the offer of the prosecutor during the negotiation process for Plea Bargaining. These precedents supported the possibility of ruling out that plea bargains were unconstitutional under Fifth, Sixth, and Fourteenth Amendment rights guaranteed under the American Constitution.¹⁵

The accused has three options with respect to pleas: guilty, not guilty or *nolo contendere*. In plea of *nolo contendere* the defendant answers the charges made in the indictment by declining to dispute or admit the fact of his or her guilt. The defendant pleads *nolo contendere* submits for a judgment fixing a fine or sentences the same as if he or she had pleaded guilty.¹⁶ The difference is that a plea of *nolo contendere* cannot be used to prove wrongdoing in a civil suit for monetary damages, but a plea of guilty can.

Plea Bargaining: Outlook in India

The Law Reform Commission of Canada defined 'plea bargaining' as 'an agreement by the accused to plead guilty in return for the promise of some benefit'. Similar to the origin of the concept of plea bargaining, India's take on the subject owes its inspiration to the Doctrine of *Nolo Contendere*¹⁹. Plea Bargaining provides for pre-trial negotiations between the defence and the prosecution during which an accused might plead guilty in exchange for certain concessions by the prosecution.²⁰ Plea bargaining has been

¹³Marish Solimon, 'Consequences of Plea Bargaining: In Consideration of the Rights of the Accused', (2022) Columbia Undergraduate Law Review <https://www.culawreview.org/journal/consequences-of-plea-bargaining-in-consideration-of-the-rights-of-the-accused> accessed on 18 March 2023

¹⁴*Bordenkircher v Hayes*, 434 U.S. 357 (1978).

¹⁵*Supra* n 8

¹⁶*Supra* n 9, 11

¹⁷Gold Group, West's Encyclopedia of American Law, (2nd edition, 2004)

¹⁸Law Reform Commission of Canada, *Criminal Procedure: Control of the Process* (Working Paper No. 15), Ottawa, Information Canada, 1975, page 45.

¹⁹The Defense Attorney's Role in Plea Bargaining" Yale Law Journal 84 (1975): 1179-1314

incorporated in India, after a series of recommendations by law commission recommendations. This doctrine has been given due consideration in the legislation and implemented in a manner taking into account the socio-economic conditions prevailing in our country.²¹

The Law Commission of India has successfully advocated the introduction of 'Plea Bargaining' in the 142nd, 154th and 177th Reports. The 142nd Report²² set out the rationale of plea bargaining and the way it should be given a statutory shape in India. This Report recommended that this idea be made applicable as an experimental measure to offences which are punishable with imprisonment of less than seven years and/or fine. It was also recommended that plea bargaining can also be in respect of nature and gravity of the offences and the quantum of punishment. It was observed that the said facility should not be available to habitual offenders and to those who are accused of socio-economic offences of a grave nature and those accused of offences against women and children.²³

It outlined a scheme for plea bargaining in India and pointed out that in several cases the time spent by the accused in jail before commencement of trial exceeds the maximum punishment which can be awarded to them if found guilty²⁴ thus resulting in a denial of justice. The 154th report recommended dealing with huge arrears of criminal cases.²⁵ It reiterated the need for remedial legislative measures to reduce the delays in the disposal of criminal trials and appeals and also to alleviate the suffering of under trial prisoners.²⁶ The recommendation of the 154th Law Commission Report²⁷ was buoyed by the Law Commission in its 177th Report²⁸.

²¹Sowmya Suman, 'Plea Bargaining - A Practical Solution' <http://www.goforthelaw.com/articles-from-lawvest/article73.htm> accessed on 18 March 2023

²²Law Commission of India Report No. 142, 'Concessional Treatment for Offenders who on their Own Initiative Choose to Plead Guilty without any Bargaining' <http://www.bareactslive.com/LCR/LC142.HTM> accessed on 18 March 2023

²³*Supra* n 8

²⁴Rudal Shah v State of Bihar, AIR 1981 SC 928.

²⁵*Supra* n 11

²⁶*Id.*

²⁷Law Commission of India Report No. 154 'The Code of Criminal Procedure, 1973 (Act No. 2 of 1974)' https://lawcommissionofindia.nic.in/report_fourteenth/ accessed on 18 March 2023

²⁸Law Commission Report No. 177 'Law Relating to Arrest, 2001'



The Report of the Committee on the reform of criminal justice system, the Chairmanship of Justice (Dr) Malimath²⁹ stated that the experience of Uttar Pradesh was an evidence of plea bargaining being a means for the disposal of accumulated cases and expediting the delivery of criminal justice. In its report, the Committee recommended that a system of plea-bargaining be introduced into the criminal justice system to facilitate the disposal of accumulated criminal cases and expediting criminal justice by reducing the burden on the courts.³⁰

The process of plea bargaining was brought in as a result of criminal law reform introduced in 2005³¹. The Amendment Act introduced Chapter XXIA to the Code of Criminal Procedure, 1973 and now has Sections 265 A to 265 L which allow plea bargaining to be used in criminal cases. According to this Chapter, plea bargaining is claimed only for offences that are penalized by imprisonment below seven years and if the accused has been previously convicted of a similar offence by any court, then he/she is not to be entitled to plea bargaining.³² The judgement delivered by the Court under this chapter shall be final and no appeal except under Article 136, Article 226, and Article 32 under the Constitution of India.³³

The Government Order issued in 2006 explains emphatically that plea bargaining cannot be availed for offences affecting the socio-economic conditions of the country such as offences under the enactments such as, Dowry Prohibition Act, 1961, the Commission of Sati Prevention Act, 1987, the Immoral Traffic (Prevention) Act, 1956, the SC and ST (Prevention of Atrocities) Act, 1989, etc. In addition, plea-bargaining cannot be an option for an accused in cases of grave crimes such as murder, rape etc. and does not apply to cases in which the punishment awarded will be death or life imprisonment or a term exceeding seven years or offences committed against a woman or a child below the age of 14 years.³⁴

²⁹Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs (2005) https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf accessed on 18 March 2023
³⁰Supra 29
³¹The Code of Criminal Procedure (Amendment) Act, 2005 <https://www.mha.gov.in/sites/default/files/2005/09/TheCCP%28Amendment%29Act%2C2005%5B1%545D.pdf> accessed on 18 March 2023.
³²Chapter XXIA to the Code of Criminal Procedure, 1973.
³³Supinder Kaur, Ratanlal & Dhiraajlal Criminal Procedure Code (LexisNexis)
³⁴Supra n 8

Plea bargaining can be classified into three kinds. Firstly, charge bargaining which refers to a promise by the prosecutor to reduce or dismiss some of the charges brought against the defendant in exchange for a guilty plea.³⁵ Further, sentence bargaining is a scenario where a promise by the prosecutor is made to recommend a specific sentence or to refrain from making any sentence recommendation in exchange for a guilty plea.³⁶ Both of these are commonly used but is not restricted. Besides these forms, fact bargaining is also an option where defendant admits certain facts in exchange for an agreement not to introduce any other facts as evidence.³⁷ Alongside these, express bargaining occurs when an accused or his lawyer negotiates directly with a prosecutor or a trial judge concerning the benefits that may follow the entry of a plea of guilty and on the other hand, implicit bargaining occurs without face-to-face negotiations.³⁸

Judicial Stance of Plea Bargaining

The preliminary case that witnessed the concept of plea bargaining was in *Murlidhar Meghraj Loya v State of Maharashtra*³⁹ where the Supreme Court held that the concept of plea bargaining is immoral and it is wrong on the part of the State to enter into an agreement with the accused. It must enforce the law. This procedure as observed here, was unfair, unreasonable and unjust and was found violative of Article 21 of the Constitution⁴⁰. The same was further acknowledged in the case, *Kachhia Patel Shantilal Koderlal v State of Gujarat*⁴¹ and another and the concept of plea bargaining was held unconstitutional. Additionally, the Court also held that the concept of 'plea bargaining' is polluting the pure fount of justice and is also against the public policy of India.

In *Thippaswamy v State of Karnataka*⁴², the Hon'ble Supreme Court observed that a conviction of an accused rested on plea bargaining is contrary to public policy and violative of Article 21 of Indian Constitution. In *Kirpal Singh v State of Haryana*⁴³, the

³⁵Fred C. Zacharias, Justice in Plea Bargaining, 39(1998) Wm. & Mary L. Rev. 1121, 1138.
³⁶S. Nicholas, Plea Bargaining and Its History, 79(1979) Columbia Law Review 1-43.

³⁷Supra 36
³⁸Priyanshi Dewan and Sparsh Jain, 'Plea Bargaining: Indian Law Overview', (2020) 3(3) International Journal of Law Management & Humanities <https://www.ijlmh.com/wp-content/uploads/Plea-Bargaining-Indian-Law-Overview.pdf> accessed on 18 March 2023
³⁹*Murlidhar Meghraj Loya v State of Maharashtra* (1976) 3 SCC 684
⁴⁰*Kasam Bhai Abdul Rehman Bhai Sheikh v State of Gujarat* (1980) 3 SCC 120
⁴¹*Kachhia Patel Shantilal Koderlal v State of Gujarat and another* (1980) Cr.L. J 553
⁴²*Thippaswamy v State of Karnataka* 1976 Cr.L. J 1527
⁴³*Kirpal Singh v State of Haryana* (1999) 5 SCC 649



Hon'ble Supreme Court held that neither the Trial Court nor the High Court has jurisdiction to bypass on the basis of a plea bargain, the minimum sentence prescribed by law. *State of Uttar Pradesh v Chandrika*⁴⁴, the Apex Court held that Court cannot circumvent the criminal cases by means of plea bargaining and must decide it on merits. The Supreme Court pointed out that allowing plea bargaining in India would amount to subverting the mandate of law.⁴⁵

However, taking into account the views of a larger section of people in favour of introducing the concept of plea bargaining especially in specified offences, the High Court appreciated the same and noted in the case of *State of Gujarat v Harchanji Thakor*⁴⁶ that, "The very object of law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the pendency and delay in disposal in the administration of law and justice, fundamental reforms are inevitable. There should not be anything static. It must be said that plea bargaining is really a measure and redressal and it shall add a new dimension in the realm of judicial reforms."⁴⁷

Dichotomy of Plea Bargaining in India

Plea bargaining in a positive light can be seen as an option for the accused to provide for certainty by trading in the risk factor of obtaining a greater sentence if caught in for trial. Reduction in Charges and lighter sentencing can deem helpful to the accused for minor offences. Even a slight reduction in the number of years of imprisonment is crucial. Avoidance of jail time is a huge incentive to the defendant or accused by opting to sign a plea agreement.⁴⁸ Plea bargaining is a defensible option as it helps resolve the issue or dispute quickly thereby expediting the process of trial which ultimately helps reduce the burden on the Courts of law. Circuitously, it also aids in avoiding severe social stigma attached to sentencing and avoids unwarranted publicity to protect the dignity of the defendants if they want the matter to be wrapped up quietly. The multitude of hassles

that come with going to trial, time, expense and exposure can be exceptionally draining on a defendant, and thereby seek a plea bargain just to avoid the same.⁴⁹ One of the merits of this system is that it helps the court to manage its work capacity, and hence resulting in a reduction of the backlog of cases and additionally relieves the magistrate of the burden to prepare a detailed judgment.⁵⁰ This relieves the burden on the Public Prosecutors as well.⁵¹

The downside of plea bargaining is that it may lead to poor investigatory procedures⁵² wherein the enforcement agencies become lax with respect to the investigation practices because they have a gateway to a plea. Mere acceptance of a plea bargain does not make the criminal record of an innocent go away. There exists a backlash that it provides an easy way out to the offenders and thus, unfair on the part of the victims. Plea bargaining indirectly shows the incompetence of the traditional procedural laws and the inadequacies of the Government.⁵³ The procedure entails consultation with the police on matters of evidence and other factors and this makes ground for the creeping in of corruption, coercion, and threats etc. to the accused or the victim⁵⁴. To this, anti-social elements, muscle, and money power can both gain control of the negotiations.⁵⁵ The innocent accused would capitulate to wrong compromises and wrong convictions in order to escape from the ordeal of a prolonged and expensive trial, resulting in the innocent to lose faith in the criminal justice system.⁵⁶ Plea bargaining can also be construed as violative of the principles enshrined in Article 21 of the Constitution that no person shall be deprived of his liberty except according to the procedure established by law.⁵⁷ The discretion is vested with the judges to accept a plea deal and can reject it if found the plea bargain is being offered in bad faith.⁵⁸ Plea bargains also eliminate the chance of an appeal.⁵⁹

⁴⁹*Id.*
⁵⁰J. R. Singla 'Plea Bargaining- A Speedy Justice for under-trials'

⁵¹*Id.*
⁵²*Supra* n 38

⁵³Stephen J. Schulhofer, 'Is Plea Bargaining Inevitable?', 97(1984) Harv. L. Rev. 1037, 1107

⁵⁴Jeff Palmer, 'Abolishing Plea Bargaining: An End to the Same Old Song and Dance,' (1999) 26 Am. J. Crim. L. 505.

⁵⁵Milton Humann, 'Plea Bargaining: The Experiences of Prosecutors, Judges and Defence Attorneys' (Boston G.K. Hall 1977)

⁵⁶Herbert M. Kritzer, 'The Justice Broker: Lawyers and Ordinary Litigation', (New York: Oxford University Press, 1990) 16.

⁵⁷*Supra* n 38

⁵⁸*Supra* n 48

⁵⁹*Id.*

⁴⁴*State of Uttar Pradesh v Chandrika* 2000 Cr.L.J. 384(386)

⁴⁵*Murlidhar Meghraj Loya v State of Maharashtra* (1976) 3 SCC 684

⁴⁶*State of Gujarat v Natwar Harchanji Thakor* (2005) Cr.L.J. 2957

⁴⁷*Supra* n 38

⁴⁸The Lawyers & Jurists, 'Advantages and Disadvantages of Plea bargaining' <https://www.lawyersjurists.com/article/advantages-and-disadvantages-of-plea-bargaining/> accessed on 18 March 2023



Plea Bargaining as a Progressive Step

Mindful of all the virtues of having a plea bargain, the same cannot be offered to benefit habitual offenders, or established criminals. This route being voluntary and a tool, should not further demean the due process of the law or the procedure established by the law so as to bring down the value of criminal justice. According to the National Crime Records Bureau (NCRB), the Court disposal of economic offences in the year 2021 by means of plea bargaining is at 223 out of cases disposed of by Courts being 23660 whereas the ones pending stand at 678930 (pendency percentage at 96.6%).⁶⁰

Ergo, in light of the statistics and the standpoint of the notion of plea bargaining, it can be perceived that despite the existence of express provisions under the Criminal Procedure Code, the implementation or the very alternative of the remedy of plea bargaining is negated in many cases owing to its unconventional approach towards deterrence. Recently, in the case of *Air Customs v Begaim Akynova*⁶¹, the High Court of Delhi upheld the plea bargain reached between the Smuggler Respondent, Consul at the Kazakh Embassy, Air Customs Officer, and Senior SPP for the Customs Department vide Mutually Satisfactory Declaration (MSD) with respect to the illegal smuggling of gold by two Kazakh nationals. It also held that, it cannot be said that the legislature was unaware of the Customs Act, 1962, while devising the chapter on plea bargaining and therefore, the presence of Section 137(3) of the Customs Act, 1862, will not take away the applicability of Chapter XXIA of the Criminal Procedure Code.

Along these lines, an inference can be drawn in synchronization with the purview of the Supreme Court in the case of *Vipul v The State of Uttar Pradesh*⁶². The Apex Court viewed that the concept of plea bargaining has a laudable objective. It is meant to facilitate all the stakeholders, assigning a specified role for the victim to move towards a resolution. It is a voluntary act leading to a satisfactory disposition of a criminal case. The consensus part is restricted to the sentencing part alone as the conviction stays on the acceptance of the guilt by the accused. Additionally, it reduces the burden of the court, the State, the victim, and the accused facing agonizing litigation, while serving the cause of justice.

⁶⁰Crime in India 2021. National Crime Records Bureau, Ministry of Home Affairs https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%202.pdf accessed on 18 March 2023

⁶¹*Air Customs v Begaim Akynova* 2022 LiveLaw (Del) 86.

⁶²*Vipul v The State of Uttar Pradesh* Criminal Appeal No.1161/2022.

In plea bargaining conviction is rendered on admission and therefore a case involving weak and defective investigation resulting in possible acquittal on the failure to prove beyond reasonable doubt would have the desired result.⁶³ The concept of plea bargaining has taken off very well, particularly in countries like the United States of America. About 90-95% of the criminal cases end with plea bargaining. However, the situation in India is unfortunately different. Hardly 1% of the cases are taken up for plea bargaining, presumably because the accused are either illiterate or reluctant to use this better option which would bring the case to a close at an earlier date than expected.⁶⁴ The clogging of the Courts by the criminal matters on all hues of various vintages is an important aspect as well as to plea bargaining being a viable option.

Consequently, though plea bargaining has been introduced in the provisions of the Criminal Procedure Code, it has not seemed to have worked because the social stigma of conviction may be preventing the accused from accepting the bail and accepting a plea bargaining position. In fact, the Bench noted that the number of cases where the availability of the plea bargain as a remedy was put before the accused is still unclear and advised the Trial Courts to make use of this provision usefully.⁶⁵

Conclusion

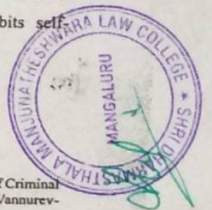
Plea bargaining can be conceptualized as a trial avoiding conviction mechanisms can be understood as a global process which provides for the administrative character of criminal convictions where decisions attached to defendants' rights are made in these proceedings not inclusive of a trial.⁶⁶ Taking into consideration the provisions incorporated in the Code of Criminal Procedure, 1973 and the nation's need for speedy redressal in the ambit of criminal justice system, embargo as to plea bargaining is not a feasible choice. This stems from the idea of justice. Plea bargaining is not entirely new in India and is considered violative of Article 20(3) of Indian Constitution which prohibits self-

⁶³*Id.*

⁶⁴*Id.*

⁶⁵*Supra* 64

⁶⁶Maximo Langer, Plea Bargaining, Conviction without Trial, and the Global Administratistation of Criminal Convictions, (2021) 4 Annual Review of Criminology <https://www.annualreviews.org/doi/10.1146/annurev-criminol-032317-092255> accessed on 18 March 2023



incrimination⁶⁷ despite the efforts of the Law Commission to incorporate
terrain of criminal law.

Bearing in mind the intrinsic worth of the concept of plea bargaining in
system as discussed, it is indubitably a sustainable option. Keeping a note of
with reference to the concept where a certain populace accepts it with open
others do not, it is well affirmed that it helps in accelerating the disposition of cases
not just limiting its scope to criminal cases. The enigma on the same lines as any
issue, lies on parameters of awareness and implementation. Thus, the reforming
criminal justice system to accept the design plan of plea bargaining has proved
pivotal move which if carried out efficiently, holds an optimistic future.

⁶⁷Supra n 38



**SHRI DHARMASTHALA MANJUNATHESHWARA
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FREEDOM OF MEDIA IN INDIA

(Peer Reviewed)



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Res Sub-Judice and Trial by Media in India at a Glance

Dr. Ashwini P*

Abstract

In India Media is one of the freest organs in the world in terms of legal constraints. Freedom of speech and expression incorporated under Constitution of India in Article 19 (1) (a) stands as an important facilitator for the extensive arrangement in a democracy. Pandith Jawaharlal Nehru, the first Prime Minister of independent India remarked that, "I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press¹." Unfortunately, he could not foresee the danger involved in the 'administration of justice' being the very essence of principles of natural justice and the rule of law nor been expected its involvement in such reporting beyond its limit and ethics. To effectuate the vision of Mr. Nehru², the media has been adduced with many freedoms and immunities compared to the other three organs of the government, so that media *inter-alia* press being considered as fourth pillar of democracy stands strong and tall. However, Lord Atkin relates notion of power with liberty because according to him liberty does corrupt into license and is prone to be abused³. Freedom of expression is not absolute, unlimited or unfettered and in all circumstances⁴ and may not be an unrestricted freedom so that can lead to uncontrolled license⁵. At this juncture the paper analyses and examines the role of media in upholding process of administration of justice and limits of media in Judicial reporting's.

Key Words: Media, Administration of Justice, Open justice rule, Freedom of Speech and Expression, Trial.

Introduction

Media plays a significant role in the modern world as it is an imperative source of information striving to mould public opinion, belief and outlook. Media has become the medium of interaction and gateway of spatial knowledge. With the advent in technology,

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¹S. Devesh Tripathi, *Trial By Media Prejudicing The Sub-Judice*, Retrieved from http://www.rmlnlul.ac.in/webj/devesh_article.pdf, visited on 18th October 2021

²The then first Prime Minister of independent India

³*Express Newspapers Vs. U.O.I.*, (1997) 1 SCC 133

⁴Ibid

⁵Supra Note 1



print and electronic media have gained importance in terms of making freedom of press more significant. Media creates awareness about socio-political and economic events around the globe. The manner in which media disseminates information creates desirable expression and sentiments. Freedom of press is guaranteed under the Constitution of India and historically press freedom has been debated in every democratic country. It is a right that goes beyond an individual freedom of expression. The Constitution of India declares, 'All citizens shall have the right-(a) to freedom of speech and expression...' ⁶ and also clarifies that this right is not absolute, but subject to reasonable restrictions imposed by law in the interest of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to offence ⁷. In our country freedom of press flows from Article 19(1)(a) of the Constitution of India. Freedom of press was created by our founding fathers to work as a protector in purveying information.

Media, subjects the entire justice system and the judicial processes to public scrutiny. Media is considered to be the watchdog of society and catalyst of reforms. It is considered to be the fourth pillar of the democracy after legislature, executive and judiciary. For the smooth functioning of democracy media impliedly claims the right to investigate, reveal, expose and criticize to create a constructive check ⁸. Correspondingly, media has a duty to responsible and accountable journalism. Free and robust reporting, criticism and debate contribute to public understanding of the rule of law and for a better comprehension of the entire justice system. In a democracy the public has a right to know and to be informed from which stems freedom of the press. Media has to take utmost precaution while publishing news and cases pending before court as it would lead to trial by media. The investigative role of press has been useful to set right the mal-administration of government, exposing crimes and unlawful acts and disseminating information of public interest. But the expression public interest has no fixed connotation. Trial ⁹ by media has become an acute problem with the ever expanding role of media. The phenomenal growth in technology ensures quick flow of information ¹⁰.

⁶ Article 19(1) (a) of Indian Constitution

⁷ Clause 2 of Article 19 of Indian Constitution

⁸ Article 19(1)(a),

⁹The word 'Trial' has been defined as a formal judicial examination of evidence

¹⁰ Manasvika S , *A Critical Study on Trial by Media*, retrieved from <http://archives.christuniversity.in>, visited on 12th April 2



The advent of electronic media, extensive media coverage and opening up of too many media channels in all medium and string of criminal and high profile cases have led to changes in publication pattern which are likely to have pre-judicial impact on the suspects, accused, witnesses, judges and on general administration of justice. Citizens have right to know and media is a gateway to channel the voice of masses. Media has reinforced its role, through which criminal justice hierarchy system is known. Media reincarnates public perception of order and disorder in the society. Sensationalism of media coverage have led to heated debates between free speech and fair trial as claimed by those who shore up for free press on one hand and right to individual's fair trial as proclaimed by the judiciary. Media demands for unrestricted freedom of expression in disseminating information about a case prejudicing the construction of criminal stories which are more sensationalized than committed looking more like entertainment rather than truth. Media has to balance its stance with regard to framing of their coverage, as reporting a specific criminal event, impacts construction of public drama and leads to media trial affecting society's representation of judicial efficiency. Media has a tendency to steal the version of law, crime, and justice, social and political scenario. The criminal justice hearing in particular has a greater amount of news worthiness attracting extensive media focus. Media upholds public interest and constantly engages itself in search and prevalence of truth remarkable to run a free and smooth democracy however it cannot exemplify to act as public proxy in demand for justice. The concept of judicial independence and impartiality is a condition precedent to the sacrosanct principle of due process of law that the right of the accused to the fair trial should be observed¹¹.

In the view of Mr. Andrew Belsey in his article verifies that media has onerous responsibility to ensure that facts are verified and matter is extensively investigated, analysed, researched and only salient critical information is collected and rendered to its readers and public in general. Journalists and ethics are two distinct facilitators in a democracy¹². While the journalists promotes functioning and discussions in a democracy the media have certain code of ethics, virtues, fairness, balanced reporting to follow as a restive institution which are crucial for the smooth functioning of democratic process, sidelining the temptation of salacious storytelling and to present what is in public interest rather than what public is interested in¹³.

¹¹ Supra Note 10

¹² *Mother Dairy Foods & Processing Ltd v. Zee Telefilms*, AIR 2005 Delhi 195

¹³ Supra Note 10

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If press covers stories as its whims and fancies, it creates a deep impression in the minds of the reader based on their coverage steering public opinion about guilt or innocence of the accused or suspect. This kind of adverse public opinion, desirable sentiments of mass voices or outraging harmony of a community about a trial interferes with the functioning of judicial process. Legal complexities may arise when there is an unwanted interference with administration of justice, hindering Constitutional protection of right to fair trial. Then the question arises if restrictions of such publications are ordered in order to protect fair trial, would it lead to abridgment of free speech or curbing of freedom of press and dichotomy of free speech and fair trial. Thereby, an attempt has been made through this paper to address all these issues. Thus the question to be addressed in this paper is the extent to which the battle ground of media freedom today has new frontiers that incorporates media trial and entrails into taking stock in the realm of new media arena demanding a need to cautiously consider the issue of trial by media, interference with administration of justice and right to fair trial besides addressing the questions appurtenant thereto¹⁴.

Open Justice Rule

In simple terms Open Justice Rule means *'holding court proceeding in public'*. Openness and Public access to what transpires in court is a basic feature of democracy as it restores public confidence in judiciary. Thus, it is being animated as a starting point in establishing a relation between court proceeding and media. The concept of justice being administered in open is an age old tradition and is open to public and press. The basic principle of open court is that administration of justice must be open to scrutiny except in exceptional cases. Justice manifests as a multi-dimensional principle ensuring openness, publicity, attainment of truth, right of access to fair and accurate reports of proceeding conducted in open court. However no right is absolute, in certain exceptional cases trial is held behind closed doors. The need for publicity to achieve justice was laid by Jeremy Bentham in the following words as *"publicity ensures scrutiny of administration of justice"*¹⁵.

Transparency must be maintained while reporting judicial proceeding as justice must not only be done it must be seen to be done, but openness must be safeguarded. The same rationale being followed by Justice S.M., Bachawat in *Neeraj Sridhar Mirajkar Vs. State of*

¹⁴ Supra Note 10

¹⁵ *Scott Vs Scott*, (1913) AC 417



*Maharashtra*¹⁶, judicial proceedings must be in open as it is a universal principle, open justice enhances public knowledge and ensures administration of justice, however to safeguard openness and due course of justice exceptions shall be placed. The objective being a person facing trial must be given legal assistance in consonance of Indian Constitution¹⁷. Court may restrict publicity of proceeding in the interest of justice if satisfied beyond reasonable doubt and apprehensions that end of justice would be defeated if tried in open court. If necessary, Court can invoke inherent power under Article 129 and Article 215 of Indian Constitution can prohibit publications of court proceedings or evidences of case outside court by media. Right to open justice is not absolute and can be restricted in certain exceptional cases¹⁸.

Exceptions to the Rule of Open Justice

The fundamental principle of open justice yields exceptions and it can be placed only in the interest of administration of justice. Court rooms are not just a ready source of facts for the media. Paramount importance in a democracy is always given to freedom of speech, open justice, right to access. However, when there is adverse apprehension on the presumption of innocence or anything disproportional to fair trial then it exemplifies limits in discretion of open justice. Media devices as a translator between court proceeding and general public. Thus it has to maintain accountability, transparency while reporting. Broadly, hearing of pre-trial proceeding in chambers and in-camera proceeding are two exceptions recognised being general power of court¹⁹.

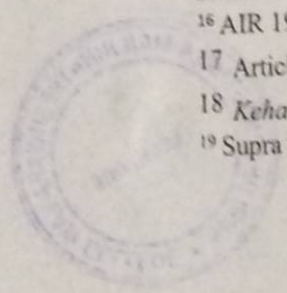
Free speech and right to fair trial runs parallel to open justice but however both have the effect of imposing restrictions when it disturbs justice. Another important proponent of suppression is privacy as there is a keen interest revolving round the identity of the accused, perpetration of crime, victims, witness, and national security. In *Australian Securities and Investment Commission Vs Rich*²⁰, laid certain considerations that qualify principle of open justice- prematurity, trial by media, ambush, misleading reports, commercial confidentiality are some of the qualifications to principle of open justice. There are few strict situations where reporting, court proceedings are restricted to maintain right to fair trial in order to avoid prejudice and need for fairness of trial. Therefore, media needs to create a balance

¹⁶ AIR 1967 SC 1

¹⁷ Article 21 of Indian Constitution

¹⁸ *Kehar Singh Vs State*, AIR 1988 SC 1883

¹⁹ *Supra Note 10*²⁰ (2001) 51 NSWLR 643



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while reporting the need for fair trial and upholding the principle of open justice to reconcile the created tensions. Over the years, revolution of communication has taken place be it in the field of news, internet, televised broadcast, podcasts etc. paving way for new hurdles to erode fairness of trial²¹.

Doctrine of Postponement

In US, free speech is not attributed with restraints as it is an absolute right. However, with changing scenario and after cases like *O.J. Simpson*²² gave birth to the concept of neutralizing technique. As an exceptional cases court resorted to neutralizing techniques i.e. change of venue, reversal of conviction, voir dire, ordering re-trial to overcome the effect of prejudicial publicity. In *Anita Whitney Vs California*²³ US Court observed that to believe that the danger apprehended is real and imminent there must be a direct nexus or probability of serious injury to the state.

In UK, in the light of *Sunday Times Vs US*²⁴, to achieve a balance between fair trial and rights of media, section 4(2) of 1981 UK Act was enacted expressly empowering the courts to pass postponement orders of publication or parts of publication for certain period as to avoid serious prejudice, substantial risk causing to the administration of justice to safeguard fairness of trial and to prevent possible contempt.

Supreme Court of India not only strictly enshrines fundamental rights but also plays a vital role in balancing different fundamental rights. Several judicial pronouncements are traced on prior restraints in the case of *Brij Bhushan Vs State of Delhi*²⁵, *Virendra Vs State of Punjab*²⁶ as balancing Article 19(1)(a) and pre-censorship was seen. In *K.A. Abbas Vs UOI*²⁷, Court upheld prior restraint. In *Neeraj Mirajkar Vs State of Maharashtra*²⁸, postponement orders were upheld in case it conflicts with principles of open justice. Courts with inherent powers could pass orders temporarily prohibiting the publication of proceedings in the media.

²¹ Supra Note 10

²² *State Vs Simpson*, No. BA 097211 (Cal. Super.Ct filed July 22 1994)

²³ 274 US 357 (1927)

²⁴ (1979), Series A No. 30, 14 EHRR 229

²⁵ AIR 1950 SC 129

²⁶ AIR 1957 896

²⁷ AIR 1971 481

²⁸ AIR 1967 SC 1



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In *Reliance Petrochemicals Limited Vs Proprietors of Indian Express Newspaper Bombay Pvt Ltd*²⁹, Supreme Court expounded the validity of issue of debenture which was published in an article in spite of being an sub-judice matter. The court restrained the press from publishing articles, i.e. prior restraint was ordered by the court on the grounds that it interfered with the administration of justice. The Court looked into the US doctrine of clear and present danger test. Thus postponement orders for temporary period is recognised as an inherent power of court to meet the ends of justice and such orders could not be held to violate Article 19(1) (a).

Thereby to balance free press and free trial it is important to balance public confidence, when freedom of speech and expression outweighs the balance of public importance hindering administration of justice or fair trial postponement orders may be an option but there can be no abstract theory regarding this. Right to know puts a greater responsibility on the media as they take the responsibility of informing the public, thus holding accountability to the information they deliver. In *Sahara India Real Estate Vs Securities Exchange Board of India*³⁰, confidential proposals sent by both counsels appeared on television channels. Court observed that there is an increasing incidence of reporting of sub-judice matters not only affecting merits of the case, sentiments of parties but also tampering administration of justice. This case stressed on the need for framing guidelines on media reporting and to set directions to the extent of pre-trial publicity on matters that are sub-judice. A five judge bench headed by Chief Justice JH., Kapadia laid down that guidelines on media coverage and publications cannot be construed, however only principle of postponement order can be laid as affected parties can seek order for matter sub-judice or when there is substantial risk of prejudice, that too on case by case basis, thus declined to frame guidelines for media coverage and publication for court proceedings. Neutralising technique is not prohibitive in nature as it is an essential requisite to balance freedom of speech and expression and right to fair trial for proper administration of justice³¹.

The Contempt of Courts Act, 1971 is an important tool to protect institution of administration of justice though not expressly mentioned falls under Article 19(2) of Indian Constitution read with article 129 & 215 of Indian Constitution. Indian Courts have recognised postponement orders and it clearly falls under Article 19(2) as it is essential to

²⁹ AIR 1989 SC 190

³⁰ 9 (2012) 10 SCC 603

³¹ 200th Law Commission Report



weigh equal rights in case of pre-judicial, pre-trial publicity which is having a tempering effect on the due course of justice³². The test of reasonableness must be laid as the rationale behind the reliance of postponement order is that publications must not create real, present, danger and substantial risk of prejudice to fairness of trial, administration of justice. It is observed as a preventive measure and not a punitive measure, to balance competing rights only if neutralizing techniques do not fill parameters, postponement orders may be passed on actual publications only for a short or temporary period of time³³.

Free Speech Vs. Fair Trial

In the criminal justice system, which we have been following, the guilt is to be proved beyond reasonable doubt and the law is governed by senses and not by emotions. While displaying our emotions, the media and the masses forget that it puts tremendous pressure on the judge presiding over the case. How can we expect a fair judgment from a judge who is under such tremendous pressure from all sections of the society? A person is presumed to be innocent unless he is held guilty by the competent court, but here the trend is to declare a person guilty right at the time of arrest. The media is there to report facts or news and raise public issues it is not there to pass judgments. The print and electronic media have gone into fierce and ruthless competition, as we call them 'aggressive journalism' that a multitude of cameras are flashed at the suspects or the accused and the police are not even allowed to take the suspects or accused from their transport vehicles into the courts or vice versa. But, even if 'apologies' are directed to be published; they are published in such a way that either they are not apologies or the apologies are published in the papers at places which are not very prominent. The most objectionable part, and unfortunate too, of the recently incarnated role of media is that the coverage of a sensational crime and its adducing of 'evidence' begins very early, mostly even before the person who will eventually preside over the trial even takes cognizance of the offence, and secondly that the media is not bound by the traditional rules of evidence which regulate what material can, and cannot be used to convict an accused. In fact, the Right to Justice of a victim can often be compromised in other ways as well, especially in Rape and Sexual Assault cases, in which often, the past sexual history of a prosecutrix may find its way into newspapers. Secondly, the media treats seasoned criminal and the ordinary one, sometimes even the innocents, alike without any

³² Supra Note 10

³³ Ibid



reasonable discrimination³⁴. They are treated as a 'television item' keeping at stake the reputation and image. Even if they are acquitted by the court on the grounds of proof beyond reasonable doubt, they cannot resurrect their previous image. Such kind of exposure provided to them is likely to jeopardize all these cherished rights accompanying liberty. Earlier, journalism was not under pressure to push up TRP ratings or sales. So the journalists did their work with serious intent and conviction, with courage and integrity. They did not pronounce people guilty without making a serious attempt to study the charges, investigate them, and come to their own independent conclusions, without fear or favor. They did not blindly print what law enforcers claimed, what the bureaucracy said or what politicians planted on to them. That is why people trusted them. But now we are seeing a different self-acquired role of media in form of 'media trial'³⁵. Everyone manipulates the media to serve their own interests or hurt their rivals. The problem does not lie in media's exposing the lacuna of a bad investigation by cops, or mal-performance of the duties ordained to the civil servants but the eye-brows start to raise when the media ultra vires its legitimate jurisdiction and does what it must not do. Be it highlighting the sub-judice issues into public keeping at stake the sanctity of judicial procedures and 'right to life with dignity'³⁶ of accused and suspects. It should be legally permissible to pass restraint order on the media³⁷.

Effect of Trial by Media on Judges

Another worrying factor and one of the major allegations upon 'media trial' is prejudicing the judges presiding over a particular case. The American view appears to be that Jurors and Judges are not liable to be influenced by media publication, while the Anglo-Saxon view is that Judges, at any rate may still be subconsciously (though not consciously) influenced and members of the public may think that Judges are influenced by such publications under such a situation. Therefore, Lord Denning stated in the Court of Appeal that Judges will not be influenced by the media publicity, a view which was not accepted in the House of Lords. Cardozo, one of the greatest Judges of the American Supreme Court, referring to the "forces which enter into the conclusions of Judges" observed that "the great

³⁴ Supra Note 10

³⁵ Supra Note 1

³⁶ Article 21 of the Indian Constitution

³⁷ Ibid



tides and currents which engulf the rest of men, do not turn aside in their course and pass the Judges by"³⁸. Hon'ble Justice D. M. Dharmadhikari, Chairman, M. P. Human Rights Commission also asserted that there is always a chance that judges get influenced by the flowing air of remarks made upon a particular controversy. The media presents the case in such a manner to the public that if a judge passes an order against the "media verdict", he or she is deemed either as corrupt or biased³⁹.

Trial by Media: A Boon or a Curse

From the above such research, it has been clear that the media trials have had more of a negative impact than a positive one. The media has to be properly regulated by the courts. While a media which has been controlled by the government is not good for democracy, the implications and the result of unaccounted publications are even more damaging not just to the reputation of the person but also to the judgment imposed by the courts. Therefore, media trials have only served to help the people in only very few instances but that does not happen in all the cases, thus it is necessary to have restrictions imposed on it. Media, as referred to by many as the eyes and ears of the general public. It forms the backbone of our society. And a responsible media is expected to take into consideration the reliance entrusted on it by the general public and confidence and faith entrusted whereby common man/public blindly accepts the truth of the news published by media. This actually calls for the existence of a responsible media. No freedom, however sacred it may be, can be absolute. This is also true of press freedom. Not only the freedom of press is subject to the laws of the land, such as contempt and libel, but also is responsible to the society it serves. It should accept certain responsibilities in the discharge of its function⁴⁰.

The press has an obligation voluntary and selfimposed that in presentation of truthful news and fair comment it adheres to certain norms of decency and decorum, and that it does not indulge in vulgarity, obscenity, character assassination, violation of citizen's privacy and incitement to offence, disorder and disintegration of the country. The media strongly feels bitter about this sub judice rule and complain that Courts during the course of a hearing tend to interpret the sub judice rule. However, there is an urgent need to liberalize the sub judice

³⁸ Supra Note 1

³⁹ Ibid

⁴⁰ Bhaswath Prakash, *Trial By Media - A Threat to Our Judicial System*, retrieved from <https://www.legalserviceindia.com/>, visited on 12th April 2022



rule, applying it only in important cases that will likely influence the trial and not to any act that might have the remote possibility of influencing it. Another main constraint on stings and trials by media is the public interest. If public interest is missing and either self or manipulative interests surface, the media loses its ground and invites the rage of the court. Norms that should be followed by the Media for any Media Trial to avoid any Issues on the Path of Justice under the Constitution.

Suggestions

While acting as a responsible media, it should follow certain norms in reporting of a crime or any news related to the same⁴¹:

- Accuracy of the case shall be maintained and verified before the same is reported/published and read of all.
- Every caution shall be undertaken to avoid any writing that is opinion based i.e. either favoring or defaming any person/party.
- Right to privacy shall not be interfered with.
- Accuracy is of utmost importance while reporting court proceedings.
- Reports based on mere suspicion or personal opinion shall not be published.
- The heading shall not be purposely made sensational or provocative; it must be apt for the matter printed under it.

Conclusion

Constitutionally, the press in India has no special rights, said Dr Ambedkar. But a free press is a political imperative for democracy to survive. In a criminal trial, the prosecution and the accused have the right to a fair trial. Between free speech and fair trial, the borders are sometimes crossed and the rules breached, leading to devastating consequences to individuals and institutions. The 'tele-terror' should not be allowed to meddle with a trial in accordance with the law. The digital violence in itself is a breach of peace.

Trial by the media is not merely a legal issue. It is also a political problem. On the one hand, it derails the lawmen from the legal track. On the other, it also distracts the

⁴¹ Supra Note 39

⁴² Ibid



laymen, the 'public in the republic', from crucial issues like economic disasters, unemployment or the growing unfreedom. Authoritarian regimes always have invisible ministries for distraction which manifest through the media that they hire. Democracy requires perpetual vigilance.

The media outlets, instead of trying the case, need to closely watch the institutional and processual deficits. There are striking illustrations where the media has played a positive and proactive role. Censorship can inhibit such fine facets of a free press. A judicious balance has to be struck⁴³.





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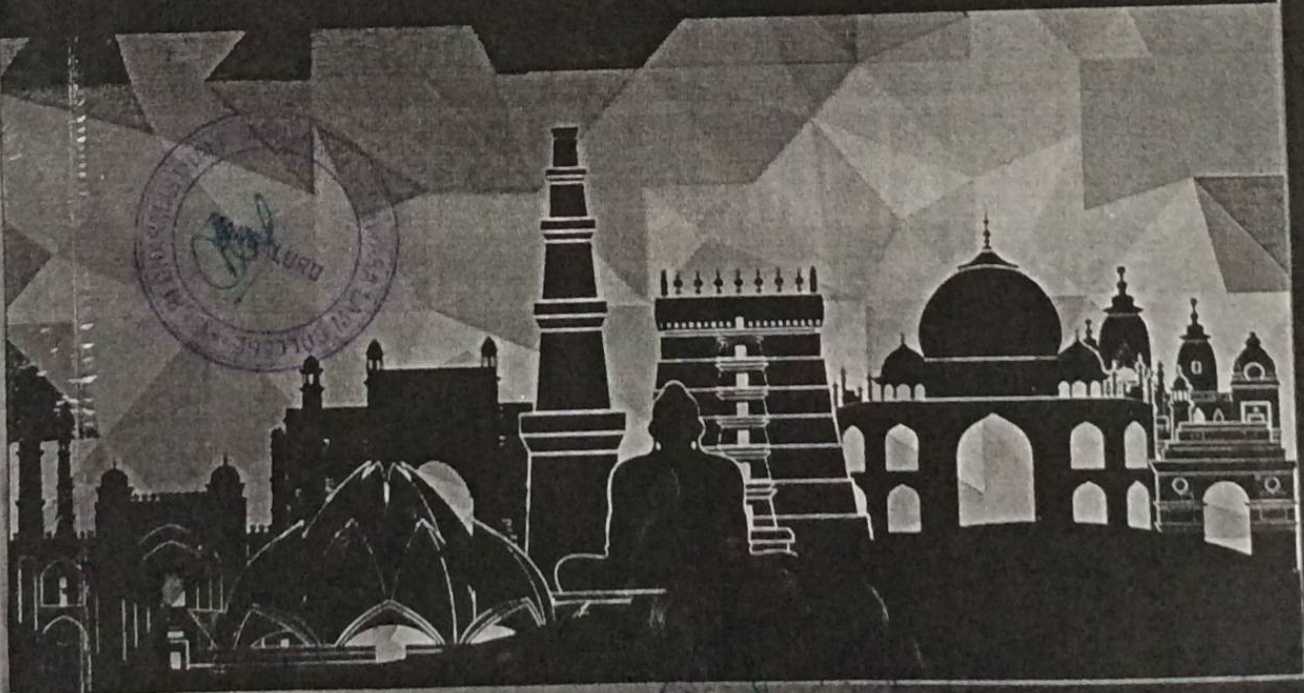
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**"START - UP INDIA
SOCIO-ECONOMIC OPPORTUNITIES
AND CHALLENGES:
A LEGAL PERSPECTIVE"**



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Start-Up India Socio-Economic Opportunities and Challenges: A Legal Perspective

Dr. Ashwini P.
Nirupama D.

Abstract

With the inflow of new-fangled ideas and notions of entrepreneurs, the resultant branchchild of theirs is start-ups. According to the Economic Survey 2021 – 2022, the number of start-ups has increased to 14,000.³ The government has launched several schemes and programs to promote the growth of start-ups. The Budget of the year 2022-23 allocates Rs 283.5 crore for the Start-up India Seed Fund Scheme.⁴ Not long ago, in a written reply to a question in the Rajya Sabha, Minister of State for Commerce and Industry, Som Prakash acknowledged that Start-ups and the entire technology ecosystem are the engines of growth for any country.⁵ He also stated that recognising this aspect the Government of India launched the Start-up India initiative on 16 January, 2016. This initiative was with the objective of building a strong ecosystem for nurturing innovation and entrepreneurship in the country, adding that all initiatives are implemented across states, cities, towns, and rural areas⁶, providing large-scale employment opportunities and importantly, foster start-up culture. An Action Plan for employment opportunities was also unveiled.⁷

India has witnessed the rise of 15,400% in the number of start-ups, from that of 471 in 2016 to 72,993 as on 30th June 2022.⁸ Nonetheless, start-ups are small business units operating with limited resources and experience. Time after time, these small business units face several legal and economic challenges affecting their growth and expansion. Often, they land in serious trouble due to non-compliance with the law. The problems faced by start-ups in India are common for all the start-ups resulting in the imposition of fines and penalties later. This creates a deep impact on the limited capital and other

resources of the start-ups.⁹ Therefore, at this juncture this paper analyses the issues involved in start-ups and some initiatives by the government to overcome the same.

Introduction

"A start-up is a cohesion of entrepreneurial talent, involved in developing new inventions in two ways i.e., identifiable and investable form, in progress to validate and capture the worth of and to grow in a fast manner with a scalable business plan for the paramount impact."¹⁰ Start-ups are usually small growing companies founded by one or more entrepreneurs who wish to carry out business and are at their initial stages of operation with a limited amount of capital and experience. Start-ups are involved in innovation, working on shortcomings of existing products or creating a new set of goods and services. Most of the start-ups are technology-oriented and well-focused on growth potential. Few examples include Udan, Ola, Razorpay, Pharm Easy, CRED, etc. which are the latest start-ups in India.¹¹ A start-up is a business or initiative started by an entrepreneur with the goal of finding, developing, and validating a scalable business model. Start-ups are usually started by a single founder (solo founder) or a group of co-founders who have a solution to a specific problem.¹² Despite these precautions, start-ups encounter a fair share of teething troubles in the arena of law. In this regard, the paper focuses on the legal issues pertaining to start-ups in India and the various governmental initiatives undertaken by the Indian Government to overcome the same.

Legal Issues Faced by Start-Ups in India¹³

1. Issues pertaining to licensing and permits
2. Marketing and advertising
3. Zonal Laws Concerning Infrastructure
4. Data Privacy and Protection Concerns
5. Protection of Intellectual Property Rights
6. Legal Documents and Agreements
7. Tortious Liabilities in Contract Management
8. Hitch in the determination of the Business Structure
9. Ethical Issues
10. Corporate Governance for Start-ups

● **Issues pertaining to licensing and permits** : Start-ups may require various licenses, permissions, or permits to execute their ideas and due to lack of legal knowledge the start-up may end up paying penalties and may sometimes turn out to be unethical or illegal. The requirement of licenses, permits, and permits may vary from business to business, so before

¹⁰ Start-up Solutions, 'Legal requirements for startups in India' (Especia, 18 February 2022), <https://especia.co.in/post/legal-requirements-for-startups-in-india/> accessed on 8th September 2022

¹¹ Jui Shekhar Kadam, 'Legal challenges faced by start-up while raising funds' (Ipleaders, 15 November 2021) <<https://blog.ipleaders.in/legal-challenges-faced-by-start-up-while-raising-funds/>> accessed on 9th September 2022

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² BBA.LLB (Hons), FIII, LLM

³ India Brand Equity Foundation (IBEF), 'Economic Survey 2021-22', accessed 8th September 2022

⁴ Ministry of Finance, Government of India, 'Economic Survey 2021 – 2022', <https://www.indiabudget.gov.in> accessed on 8th September 2022

⁵ ANI, 'Number of start-ups in India grows to 72,993 in 2022 from 471 in 2016' (The Times of India, 23 July 2022) <https://timesofindia.indiatimes.com> accessed on 9th September 2022

starting a business the person should be aware of the local laws, rules, and regulations. The other issue with respect to licenses is that it is not quick and easy to get licenses from government authorities and it is a costly affair and a time-consuming process. Some of the licenses required by the companies are registration certificates, GST registration, FSSAI license, import and export code, Udyog Aadhar registration, etc.¹⁴

Licenses and Permissions – Dealing with goods or services which requires license like alcohol/ alcoholic beverages, electricity, guns, and medicines, prohibited crops like marijuana or opium, tobacco, food products, human organs, etc. without obtaining proper licenses from the concerned governing bodies may attract criminal charges which may result in imprisonment or heavy fines and penalties. A firm's smooth operation requires that it invest its resources in productivity. Fire permits and safety registration should be obtained by the start-up. The advantage of getting registrations is that it not only protects you from legal entanglements, but it also allows you to take advantage of government programmes, which may help you access loans, tax breaks, and other benefits.¹⁵ The start-up India registration system should be used to register new businesses.¹⁶

GST registration – In the current scenario most start-ups are looking at their future as an e-commerce business for which GST registration is mandatory, the businesses whose turnover is equal to or more than 40 Lakhs, should get themselves registered, the process of registration is called GST registration, there are certain kinds of business who should get GST registration failure to which is considered as an offense.¹⁷

● **Marketing and advertising** : Advertisement and marketing are very important for any start-up or any other forms of business but advertising false claims, obscene, scandalous, or seductive advertisements may give rise to serious criminal penalties, and it may blow away the goodwill and reputation of a firm and for start-ups, such mistakes may be like stepping over a small growing seedling. Some examples of prohibited advertisements are – "Tobacco Prohibition Act" prohibits all kind of direct or indirect advertising of tobacco and tobacco products in all media. The Food Safety, and Standards Act, 2006 prohibits advertising of infant formula in order to encourage breastfeeding of infants, physicians under Indian Medical Council (Registration) Act, 2002, legal services under Bar Council of India Rules, pre-natal sex determination services under The Prenatal Diagnostic Techniques Act, 1994, religion-related, comparative advertising, deceptive or misleading advertising.¹⁸

For instance, the World Health Organization has also prohibited the sale and marketing of infant formula like Nestle after it faced a lot of criticism worldwide for being accused of violating ethical marketing codes and manipulating customers with misleading nutritional claims about its baby milk formulas by comparing it with mother's milk.¹⁹ Recently Tanishq

¹⁴ Anubhav Gupta, 'India: Legal and Ethical Issues Faces By The Start-Ups in India' (mondaq, 01 March 2021) <<https://www.mondaq.com/india/trademark/1042036/legal-and-ethical-issues-faced-by-the-start-ups-in-india>> accessed 8th September 2022

¹⁵ ibid

¹⁶ Dhimaan Dutta (n 10)

¹⁷ Anubhav Gupta (n 12)

¹⁸ Anubhav Gupta and Pranav Dixit, 'Legal and Ethical Issues Faces By The Start-Ups in India'

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faced a lot of criticism for violation of ethical marketing norms for hurting the religious sentiments of the people.²⁰ Myntra was forced to change the appearance of its "M" logo after an FIR was launched against it that its mark was obscene.²¹

● **Zonal Laws Concerning Infrastructure** : Allocation of property for the purpose of the office, warehouse, service centre, manufacturing units, etc. is another major challenge for start-ups in India. The start-ups should be aware of local laws regarding the commercial use of agricultural land/ school/ hospital property. In India land comes under the domain of state government and the laws related to land vary from state to state. The start-up must be aware of the zonal laws, zonal laws are the regulations that deal with the use of land in a particular area. For example, the local municipal authority in an area can pass a law forbidding the use of any property or land for industrial or commercial purposes, as it is a residential area. The purpose of the zonal laws is to separate residential areas from commercial areas. In case a person plans to operate a business from his residence he/she may be required to take necessary permissions from the local municipal authority, town planning authority, landlord (if the property is being used by the tenant). When a residential property is being used for a commercial purpose the property tax also changes when a property is used for commercial purposes then the tax rate will be higher in comparison to the residential property.²²

● **Data Privacy and Protection Concerns** : In the era of digitalization everyone is using any kind of internet device, be it a smartphone or computer. The Covid-19 pandemic was like an icing on the cake for the field of digitalization and many businesses, offices courts shifted their work to the online mode which brings huge opportunities for the start-ups. In the digital world privacy is a myth. For example, suppose if you download and log in to Health kart to check some supplements you enter your phone number, address, name and check the terms and conditions popup even without reading it, what happens to your details like your phone number, address? And next time when you open YouTube or Google Chrome you will get to see ads based on what you searched on Healthkart. The Start-ups and other e-commerce businesses record and use personal details including the search history. Thus, it can be said that start-ups should not access the private details of the users without their permission, or they should not ask for the permissions which are not needed by their website or application. The start-ups should give importance to the privacy of the users. It could be done by drafting a privacy policy in a short, simple, and summarized manner and in regional language so that before signing in to any application the user may easily read and understand the privacy policy, terms, and conditions. The start-ups should also enter into an agreement with their users that they will not share or use the personal details of the users which in turn will help the start-up itself in gaining goodwill and trust of the people. In the privacy policy agreement, the start-up should disclose what personal information is collected by the site, how the information will be shared or sold to the third party.²³

²⁰ ICMR, 'Tanishq Ad Controversy: Need to Deal Cautiously with Social Issues' (2020-21) IBS Centre for Management Research <<https://www.icmrindia.org/casestudies/catalogue/Marketing/MKTG435.htm>> accessed 9th September 2022

²¹ ET Now Digital, 'Myntra forced to change its "obscene" logo – what the controversy is about' (ETNowNews.com, 02 February 2021) <<https://www.etnownews.com/business/economy/enm>>

Razorpay, an eight-year-old Bengaluru start-up that acts as a payment gateway, unwillingly kicked up a storm after it became known that it had been compelled to supply customer data in a police investigation against Alt News.²⁴ Razorpay users are quite right to ask why the firm gave Alt News donors' data to the police so easily, potentially leaving customers vulnerable to harassment for their political views, though Razorpay did not have a choice but to submit the said details.²⁵ For companies like Razorpay or any other start-up, the only hope lies in a data protection law, which has already been five years in the making. It may help them build trust if service providers are required to provide colour codes indicating whether a particular piece of personal data obtained by them will be given to the police on demand or if at least a court order will be required first. This deserves a further layer of protection.²⁶

● Protection of Intellectual Property Rights

Intellectual property rights are like the heart and soul of any start-up. The issue with intellectual property rights is a two-faced problem. On one hand, many start-ups make their own innovation. They have a fear of their idea being stolen or copied by some other business. On the other hand, if the product or service that the start-ups are selling has already been protected then this could land the start-ups into the issues of intellectual property breaches. The intellectual properties which a start-up needs to protect include trademarks, copyrights, patents, etc.²⁷ The requirement of intellectual property rights protection may be different from one start-up to another. Start-ups should seek to protect the following intellectual property rights.

Patents – In case a start-up is dealing with any technical thing or a technical process of performing a thing then it should go for product patent or process patent. The patent right is a negative right that will allow the patent owner to make exclusive commercial use of his invention and prohibits others from using it.

Copyright – The start-up can get copyright of its software application, magazines, articles, research work, or idea presented on paper or other literary or artistic work.

Trademark/Service mark – The start-ups should be careful while deciding and registering trademarks or trade name. It should be easy to pronounce, it should be attractive, distinctive, international implications of the marks should also be considered, they should look for the mark they are deciding to choose on the IP India website or simply by making a google search. Trademark or service mark is an identity of a business or a service provider.

Trade Secrets and Confidentiality Agreements – Trade secrets are the most important IP right held by an entrepreneur, a secret will not be secret anymore if it leaks and gets into the knowledge of many people. To protect trade secrets, the start-ups should enter into a confidentiality agreement / non-disclosure agreement with their partners and employees.²⁸

²⁴ Andy Mukherjee, 'Why data privacy has become a nightmare for Indian start-ups' (*Live mint*, 11 July 2022) <<https://www.livemint.com/news/india/why-data-privacy-has-become-a-nightmare-for-startups-11657584706201.html>> accessed 11 September 2022.

²⁵ *ibid*.

²⁶ *ibid*.

● Essential Legal Documents and Agreements

An agreement enforceable by law is known as a contract. A start-up must be careful while drafting a contract as well as while signing it. A start-up goes through several contracts with suppliers, employees, and others. For purpose of reference, it would be ideal for a start-up to go through the sample contracts available online of pre-existing companies which may help them to draft a good contract.

Agreement with co-founders – The start-ups should make a proper deal with the co-founders/partners in a written form to avoid any kind of dispute in the future with respect to distribution of profits, capital investment, roles, and responsibilities of the co-founders, salaries, decision making, percentage of ownership of each founder, goals of the business, etc.

Confidentiality agreements – Confidentiality agreements are also known as non-disclosure agreements (NDAs) which impose a duty on the parties that they will not disclose any secret information or idea of the firm to any outsider as well as the consequences in case of a breach of NDA. The start-ups should get into a confidentiality agreement with their employees, co-founders, or whoever holds the confidential information or idea of the start-up to protect their ideas.

Contract with service providers – While making any contract with any service provider or supplier the contract must be drafted carefully and it should include all the major and minor details which should include timings, quantity, quality, cost, etc and it should also mention the jurisdiction and dispute resolution mechanism in case of conflict.

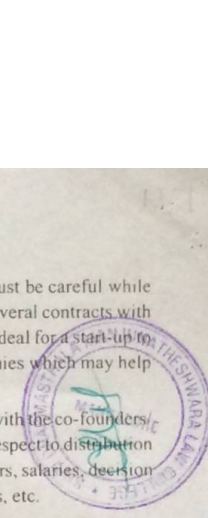
Employment Contracts – An employee in a start-up should sign the offer when hired. It must entail all necessary directions and information with respect to work, as in office timings, salary, job description and position, terms, and conditions for termination of employment, etc. The start-ups should avoid going through traditional and lengthy methods of drafting contracts, and the use of legal maxims and legal jargons. The contracts should be simple, concise, and easy to understand even by a layman.²⁹

● Tortious Liabilities in Contract Management

Tortious liabilities may arise when someone does or omits an act prohibited by law. Start-ups are liable to face tortious liability which may arise as strict liability. The rule of strict liability is deduced from the famous *Rylands v Fletcher*³⁰ case. Start-ups should be careful in the management of raw materials, noise, fire, vibrations, smell, etc. Let's say, a start-up is involved in making and delivering lunchboxes to nearby offices and homes and on one unfortunate day the gas cylinder catches fire and burns down the adjoining houses. The start-up may have to face heavy penalty due to the theory of strict liability.

● Hitch in the determination of the Business Structure

Many start-ups are conflicted in deciding an ideal business structure for their start-up as the business structure may vary from business to business and one business structure could be good for one may be bad for the other in terms of risk, several people involved, sharing of profits, liability, taxation, annual meetings, and registration, etc. Following are some most



Sole proprietorship – This structure is ideal for those who like to have total control over their business and the best thing about this structure is that the proprietor enjoys all the profits alone. This structure is very popular because of its easier taxation structure. One disadvantage is that the liability of a sole proprietor is unlimited. Here, the capacity to raise capital is very limited.

Limited Liability Company – This business structure is most suitable when the business is unstable or risky. The best thing about this structure is that the liability is limited and on the other hand, expenses involved are comparatively higher than sole proprietorship business.³¹

Partnership firm – This business structure is suitable when more than one people are involved in the business and the agreement between them is governed by the partnership deed which implicates that the profit is to be shared amongst them.³²

When finalizing a business structure, it is also important to make sure that all the necessary agreements pertaining to the start-up, the Articles of Association, Memorandum of Association, and co-founders' agreement are in place. This is to ensure that there are no legal complications when a dispute arises in the future.³³

Ethical Issues

The purpose of a start-up is to earn profit but while earning profit ethics should not be ignored. The start-ups should comply with the laws and regulations and at the same time, it should not forget its duty towards the community, people, customers, and the company.

Duties towards the customers – The start-ups should not indulge in any kind of activity which may be detrimental to the interest of the customers, the start-ups should accept the feedback from the customers and should take care of the after-sale services and assist the customers. A start-up can grow only with the help of satisfied and happy customers.

Duties towards the employees – The employees for a start-up are integral to the growth and functioning of a start-up. The start-up should legally and ethically give regard to the rights of the employees. They should be given proper treatment, timely payment of salary and allowances, a proper grievance redressal system to maintain healthy growth of the start-up.

Duties towards the environment – Start-ups should be careful not to involve in any activity which may have a negative impact on the environment.

Duty towards the Start-up – The employees should work hand in hand for the growth of the start-up.

Duties towards the community – Start-ups should be careful that they should not in any manner harm the sentiments of the people and they must adhere to follow the corridor for the betterment of the society.

Issues with respect to Labour laws – It would be wise for a start-up to be well-versed with the labour laws and the local laws to deal with legal as well as ethical responsibilities though start-ups are exempted from labour inspection as per the Start-up initiative.

³¹ Anubhav Gupta (n 16)

³² Shrivasth. Choosing the Right Business Structure for Your Start-up. (03 January 2020). <https://www.linkedin.com/pulse/choosing-right-business-structure-your-start-up-shrivasth/>

Use of deceptive or inappropriate marks – Since the launch of the Make in India initiative by the PM Narendra Modi Government in September 2014, many businesses and start-ups have been seen using the Make in India logo on their products to market their products in the name of the country and befooling people. Back in 2016, a Noida-based start-up named Ringing Bells announced the launch of a smartphone named Freedom 251 at exceptionally low cost with an advertisement which consisted of India's tricolour flag and later, the company ended up being a scam. The start-ups should keep in mind that they should not use any mark or emblem or logo which is prohibited by law from use³⁴ as governed under the Emblems and Names (Prevention of Improper Use) Act, 1950.³⁵

Dealing with counterfeit goods – The start-ups should avoid the sale or promotion of counterfeit products. The US Trade Representative (USTR) office's 'Notorious Market' Report has marked Snap deal and Amazon for the sale of counterfeit products.³⁶ The sale and promotion of such goods are detrimental to the start-up's reputation, the manufacturer as well as the consumers.³⁷

Corporate Governance for Start-ups

The company has been given rules on how to direct or govern itself so that it may achieve its goals and objectives in a way that adds value to the organization and benefits all stakeholders in the long run.³⁸ The company governance is carried out and is based on accountability, fairness, transparency, and responsibility.³⁹ The challenges faced by start-ups in establishing good corporate governance includes insider trading as it entails the misuse of secret information, which is unethical and amounts to a breach of a fiduciary duty of trust and confidence. Disclosure, Accountability, and Transparency are nitty-gritties in an organisation. Succession planning and judicial reforms are fundamentals to be devised to lessen inefficiency and incorporate Alternative Dispute Resolution (ADR) mechanisms for speedy redressal.⁴⁰

Compliance and Measures: The Way Out

In India, start-ups must adhere to several regulations imposed by numerous statutes. These responsibilities include filing tax and other returns on a regular basis, having board and other meetings, and keeping statutory books and accounts, among others.⁴¹ Appointment of Auditor is important to understand if a company is presenting accurate financial information.⁴²

³⁴ Anubhav Gupta (n 16)

³⁵ ibid

³⁶ ibid

³⁷ Office of the United States Trade Representative, Executive Office of the President, '2020 Review of Notorious Markets For Counterfeiting and Piracy' <[https://ustr.gov/sites/default/files/files/Press/Releases/2020%20Review%20of%20Notorious%20Markets%20for%20Counterfeiting%20and%20Piracy%20\(final\).pdf](https://ustr.gov/sites/default/files/files/Press/Releases/2020%20Review%20of%20Notorious%20Markets%20for%20Counterfeiting%20and%20Piracy%20(final).pdf)> accessed 10 September 2022

³⁸ Saakshi Gupta, 'Need of Corporate Governance in start-ups' (Negotium Lex, 24 August 2020), <<https://www.negotiumlex.com/post/need-of-corporate-governance-in-startups>> accessed 10 Sept. 2022

³⁹ Dastawez, 'Legal Challenges faced by a Start-ups in India' (Dastawez: Legal Documentation Made Easy) <<https://dastawez.com/2021/06/08/legal-challenges-faced-by-a-startups-in-india/>> accessed 10 September 2022

⁴⁰ Supra Note 37

An annual general meeting of the shareholders of a corporation is required to be conducted every year.⁴³ Board Meetings are a compulsory supplement.⁴⁴ Every director is required to file annual reports detailing their directorships in other companies. This must be done in writing, and an official report has been given.⁴⁵ Assessment of tax liability and periodic payment of income tax, payment of GST liability, etc., Regulatory Assessment of business under several laws (for example, the Environment Protection Act⁴⁶, the Money Laundering Act⁴⁷, the Competition Act⁴⁸, and so on) are necessary.

Government Initiatives on Start Ups in India

The Department for Promotion of Industry and Internal Trade (DPIIT) has recognised start-ups which are spread across 56 diversified sectors. More than 4,500 start-ups have been recognised in sectors relating to emerging technologies. Department of Science and Technology (DST) had launched an umbrella programme called National Initiative for Developing and Harnessing Innovations (NIDHI) in year 2016 for nurturing ideas and innovations (knowledge-based and technology-driven) into successful start-ups.⁴⁹ Financial support, as seed support was provided for converting ideas into prototypes, through Accelerators, and creating Centres of Excellence (CoE) in incubation. To promote innovations in biotechnology sector, the Department of Biotechnology, through Biotechnology Industry Research Assistance Council (BIRAC), supports and nurtures start-ups in the Biotechnology sector, like the BioNEST Scheme (Bio incubators Nurturing Entrepreneurship for Scaling Technologies) and Biotechnology Ignition Grant (BI) schemes.⁵⁰

In order to promote innovation and agripreneurship by providing financial support and nurturing the incubation ecosystem Department of Agriculture & Farmers Welfare under the Rashtriya Krishi Vikas Yojana- Remunerative Approaches for Agriculture and Allied Sector Rejuvenation (RKVY-RAFTAAR) scheme has launched "Innovation and Agri-entrepreneur Development" programme, as a component.⁵¹ The Innovations for Defence Excellence (iDEX) was launched by the Department of Defence Production, Ministry of Defence, with the aim to achieve self-reliance and foster innovation and technology development in Defence and Aerospace. The start-ups receive up to Rs 1.50 crore as grant and also receive enormous support from partner incubators at HTs, IIMs and other private incubators spread all over the country.⁵² Under the Atal Innovation Mission, the Government has set up Atal Incubation Centres (AIC) and launched Atal New India Challenge (ANIC) program to directly aid start-ups with technology innovations that solve sectoral challenges of national importance and socio-economic relevance. The Government has also operationalized 26 Centres of Excellence (CoEs) in diverse areas of national interest for driving self-sufficiency and creating capabilities to capture new and emerging technology areas.⁵³

⁴³ Annual General Meeting, Companies Act 2013 s 96(1)

⁴⁴ Meetings of Board, Companies Act 2013 s 173

⁴⁵ Financial Statement, Board's Report, etc., Companies Act 2013 s 134

⁴⁶ Environment Protection Act, 1986

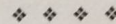
⁴⁷ The Prevention of Money Laundering Act, 2002 enables the Government or the public authority to confiscate the property earned from the illegally gained proceeds

⁴⁸ The Competition Act, 2002

Conclusion

As in to any other business entity, start-ups are imperilled by various factors like social, economic, legal, technical, environmental, and political factors. Thus, the outlay of start-ups in India, is not without its difficulties. A crucial issue pertaining to start-ups, is the distribution of and financing of start-ups is concentrated in major metropolitan regions, leaving smaller towns and rural areas with few choices. Information Technology, as sector is also seeing a lot of investment. Diversifying start-up investment into a variety of industries, such as agriculture, manufacturing, social services, healthcare, education, and others, will be vital to future success.⁵⁴ India is compared on a worldwide platform, as to companies such as Google, Facebook, or SpaceX. China, which have their own successful companies, such as Alibaba, ByteDance, and DiDi. This outcome might be due to inefficient digital infrastructures, such as poor mobile and internet access, a lack of high-tech solutions, and a lack of research and development expenditure.⁵⁵

India is silent in terms of innovation and patent filings in comparison with other developed countries. There is a significant difference between what India is now and days to come. With unmet needs of a large populace and a strong focus on technology and innovation, India has the potential to be a bright light in the global economy. The Covid-19 pandemic has marked a watershed moment in India's start-up landscape, with rising demand for digital solutions allowing the creation of new unicorns in the same manner that they did after the global financial crisis, albeit many small businesses.⁵⁶ Any step towards progression has its own virtues and drawbacks. In the face of a bust, history has stood witness to novel growth and development of the nation by way of the finest opportunity. India is home to many innovative start-ups and is geared up to welcome more. To boot the bargain of the existing initiatives by the Government, the constitution of the National Start-up Advisory Council was notified in 2020, to advise on measures needed to build a strong ecosystem for nurturing innovation and start-ups in the country to drive sustainable economic growth and generate large scale employment opportunities to.⁵⁷ India is making substantial effort to meet the long-term requisites in order to buoy up start-ups in the near future, keeping in mind the short-term rudiments as well. Failure in doing so may hinder India's goal of economic stability and development at par with its counter-part nations.



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FREEDOM OF MEDIA IN INDIA

(Peer Reviewed)



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STING OPERATION BY MEDIA-A LEGAL ANALYSIS

Dr. Shubhalakshmi P¹.

Abstract

The press and media being the biggest channels of communication of information to the general public, plays a pivotal role in bringing necessary information on policy matters of Government and other departments to the society. Media takes up the responsibility to bring all varieties of news and matters to the public by broadcasting and telecasting them. Such rights are granted to the press and media by the Constitution of India under the Right to Freedom of Speech and Expression. Sting operation is one of the methods through which media can bring the truth before the society. If such sting operation resulted in discovering some secret agendas involving bribery or corruption, that would result in a positive sting operation by media. If it encroaches upon the privacy of any individual and resulted in violation of privacy under Article 21 of the Constitution of India, it would result in negative sting operation. Media and the journalists must follow self-regulation along with guidelines and standards given under Press Council of India, the News Broadcasting Standards Authority, News Broadcasters Association etc.

Key words: Press and media, Sting operation, Constitution, self-regulation, media ethics

Introduction

The Indian Constitution, under Article 19(1)(a), provides for "the right to freedom of speech and expression that also includes freedom of press". However, this right is subject to reasonable restrictions under Article 19(2), for reasons of "sovereignty and integrity of India, the security of the State and friendly relations with foreign States, public order, preserving decency and morality, contempt of court, defamation or incitement to an offence".² Under Article 105 (2) provides certain restrictions on the publications of the proceedings in Parliament.³ Even Official Secrets Act and Prevention of Terrorist Activities Act (POTA) also been used to limit the freedom

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¹ Dr. J N Pandey, (2014), The Constitutional Law of India, 50th ed, Central Law Agency, Allahabad.

² Gang Lama, Richin Jacob & Kanishka Shankar, Analysing Article 105 of the Constitution of India, Journal on Contemporary Issues of Law [JCIL], Volume 7 Issue no. 3, p.12.



exercised by the press. Even though POTA was repealed in 2006, the Official Secrets Act 1923 still in operation.⁴

Media is one of the important pillars of democracy. Media may be press or any audio-visual media that play a crucial role in finding the truth and bringing them before the general public.⁵ Media being the fourth estate of democracy, brings a connection between the people and the events happening anywhere around the globe. There are reporters and journalists in different corners of the world to reach the news to every place and they become part and parcel of democratic setup.

Freedom of Press and Media

The Fundamental Rights under the Constitution of India provides for Right to Freedom of Speech and Expression under Article 19, and freedom of press and media also granted under it. The Press Council has been reconstituted with the objective to maintain and improve the standards of newspapers and news agencies in India under the Press Council Act, 1978. There are certain code of conduct and ethics that are to be followed by the journalists and news agencies. Even though they are focused on print media, radio and television journalism must be brought under such codes.⁶ Press and media cannot act arbitrarily, they have their own ethics to follow. They must safeguard the information recovered and collected by them.

Media can discuss different opinions and ask for discussions on subject matters need to be made known to general public. In case of *Indian Express Newspapers v/s Union of India*⁷, freedom of press is upheld by the Supreme Court of India. In case of *Romesh Thappai v. State of Madras*⁸, the Supreme Court of India upheld that, circulation of newspaper is must to enjoy freedom of press. Freedom of press may include, freedom to spread information through print media, by broadcasting, or telecasting through electronic media. They have freedom to criticize on policies, programmes of Government and its officials but not to abuse. They have every

⁴ LAWZ -Volume 11 issue no-2, February 2010, & Soumya Krishnakumar, Freedom of Press, International journal of Law Management and Humanities, volume 4, Issue 2, p. 296

⁵ Cherilyn Ireton and Julie Posetti, (2018) Journalism, Fake News and Disinformation, UNESCO, Paris, p.17

⁶ K Jayachandra Reddy, (2005) Norms of Journalistic Conduct, Press Council of India

⁷ (1985) 2 S.C.R. 237

⁸ AIR 1950 SC 224



to receive information from different methods. The media can also conduct interviews without any force on interviewee. Certain permitted news of legal proceedings can also be reported by the media. Media can act as advertising platform and it was held by the Supreme Court in case of *Tata Press Ltd v. Mahanagar Telephone Nigam*⁹, that advertisement is also a part of freedom of expression by the media. Freedom to broadcast and telecast is also a prominent right available to the press and media.

Sting operation and methods

News and other required information can be collected with different methods by the media. Sting operation is one of the final resorts through which information can be collected. To bring the truth and reality to limelight, sting operations are conducted by the journalists and the sting operation is tool to investigate the matter if any irregularity or malpractice is in existence in any department. So, it is named as undercover journalism or investigative journalism. The time when sting operations are done by the press and media as they have freedom of speech and expression, sometimes that may embark the privacy rights of an individual.¹⁰

The sting operations are usually carried out, to trap the corrupt practices, bribery, corruption, black money, scandals of different kinds etc. It can also be useful in the arrest of terrorists and anti-national elements. The gadgets generally used are camera, recording instruments, audio-video instrument and equipment. The media has used it to expose acts of politicians, different officials of departments and others, who are allegedly guilty of subverting the rule of law.¹¹

Sting operation can be conducted in two types. One is positive sting operation wherein information that are required to be brought before the general public especially on Governments accountability etc. The Government must have accountability to survive in a democratic form of administrative setup. If any minister or officer of a Government department demands bribe to perform his public duty, that can be brought before the society by a journalist through sting operation. In 1981, a news reporter gone for bid and bought a young woman, Kamala for

⁹ 1995 AIR 2438, 1995 SCC (5) 139.

¹⁰ Anjana Sharma, (2008) Stig operation and law, Mahaveer and sons, p.2

¹¹ Manorama Singh (2007) Sting operation, Discovery Publishing House, New Delhi.



Rs.2,300/- of a sale, in Madhya Pradesh, to establish trafficking in women and the involvement of bigwigs in the racket.¹² The Journalists Tarun Tejpal and Aniruddha Bahal, detected match fixing in cricket by wearing secret recording equipment and a pinhole camera. They became successful in tracking cricket match fixing-Tehalka issue.¹³ The Tehelka tapes gave us a sneak peek on the corrupt players and administrators who were complicit in tarnishing cricket in exchange of money.¹⁴

One more kind of sting operation is negative sting operation in which privacy of an individual will be taken away and intended to get more viewers by making the subject matter much sensational. If any individual earns name and fame in a platform can be destroyed by negative sting operation. Negative sting operation is not healthy to the society and it provides wrong information to the public and invades privacy of an individual without any positive substance. As a result of negative sting operation conducted by a TV channel in New Delhi in 2007 wherein a Government School teacher Uma Khurana was alleged that she was luring her students to prostitution and the Government based on sting operation report issued notice and police have taken an action against her. After enquiries, allegation was revealed to be fabricated and she was innocent.¹⁵

Justice Markandeya Khatju opined that more sting operations should be conducted to bring corrupt elements to light. Carrying out sting operations cannot be treated as criminal because this is only a way to expose corruption in society.¹⁶The Operation Duryodhana was

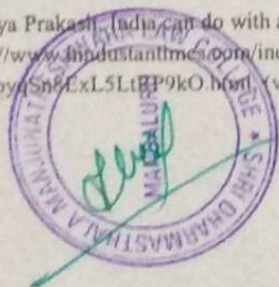
¹² When An Indian Express Reporter Broke Law and Purchased A Woman For Rs 2,300 To Write a Shocking Story on Trafficking, Outlook, available at <https://www.outlookindia.com/website/story/when-an-indian-express-reporter-broke-law-and-purchased-a-woman-for-rs-2300-to-w/306556>, (visited on 20th September 2023).

¹³ N S Jagannathan, (1999), Independence and the Indian press, Konark publications under the auspices of Media Foundation New Delhi

¹⁴ Deeptesh Sen, The Tehelka Tapes that shook Indian cricket, Sports 360

¹⁵ HC issues notice to Delhi government on sting operation, The Times of India, September 7, 2007, edition-New Delhi.

¹⁶ Satya Prakash, India can do with a few more stings: SC judge, Hindustan Times, 23rd August, 2008, available at <https://www.hindustantimes.com/india/india-can-do-with-a-few-more-stings-sc-judge/story-0tvcrcpy1Sh8ExL5LtBP9kO.html>, (visited on 2nd October 2023).





carried out by a cobra post Aaj Tak team, exposed eleven Members of Parliament accepting cash for asking questions in Parliament, through a sting operation.¹⁷

The Operation Chakravyuh is a sting operation conducted by Star News-Detective Intelligence Guild, has showed former Chief Ministers and Members of Lok Sabha and Rajya Sabha, involved in corruption, in allotting work for the Member of Parliament Local Area Development (MPLAD). The Star News released the transcripts and event descriptions collected through sting on a meeting with Members of Parliament.¹⁸

In Operation West End, a sting operation conducted by Tehelka in 2000-2001, specifically to find the bribery and corruption involved in defense sector, particularly on dealing of arms from foreign country. Mr. Bangaru Laxman caught on camera allegedly taking bribe from fake arms dealers for facilitating a fictitious defence deal. The journalists posed themselves as representatives of a fictitious UK-based company West End International and were seeking his recommendation to the ministry for supply of hand-held thermal imagers for the Indian Army.¹⁹ As per the charge sheet framed by the Central Bureau of Investigation, Tehelka journalists had held 08 meetings with Bangaru Laxman, from 23rd December 2000 to 7th January, 2001 to project themselves as supplier of defence-related products. He was caught on camera accepting money in a 2001 by this sting operation.²⁰

India TV has taken up a sting operation that exposed unethical deal in Indian entertainment industry. In a sting operation India TV sent an undercover agent as struggler to the exposed actors Shakti Kapoor and Aman Verma. They were caught on tape seeking sexual favor from the reporter.²¹

¹⁷ Sting: 11 MPs take cash to ask questions in Parliament, Times of India, 12th Dec, 2005, available at http://timesofindia.indiatimes.com/articleshow/1327921.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, (visited on 10th September 2023)

¹⁸ One more Sting-Outlook, available at <https://www.outlookindia.com/website/story/one-more-sting/229582>, (visited on 5th September 2023).

¹⁹ Tehelka sting case: Former BJP chief Bangaru Laxman convicted, India Today, 26th April, 2012.

²⁰ Sting Operation-West End, The Hindu-Mangalore Edition-April 27th, 2012.

²¹ India's Infamous and Sensational Sting Operations, Magazine-Silicon India, available at www.siliconindia.com/news/general/indias-infamous-and-sensational-sting-operations-nid-155959-cid-10001, (visited on 28th September 2023).



Guidelines for Press and Media

Sting operation should not be conducted by any journalist as per their whims and fancies. They need to follow guidelines provided under the Code of News Broadcasters Association. It has provision to make the press and media reporters and journalists liable for their act. The Code of Ethics and Broadcasting Standards prescribe professional ethics to the press and media.²² They must act as trustees of general public and they should be provided with fair report with independence and integrity. As the press and media are the influencers of public opinion, they should be accountable to their readers and viewers.

Whenever press and media takes up any news to broadcast they must see to it that they are not hindering or promoting any one of the sides of controversy. Broadcasting a news is the main duty of them and forming an opinion against or favour is left to the general public in such situations. Dissemination of information must be prime focus of any media in a democratic country and not to create different dimensions of any news. News channels should present fair and complete information about any subject matter. They should not select such news that may create an apprehension of controversy that may disturb internal peace and security of the country.²³

Self-Regulation of Press and Media

To practice self-regulation the News Broadcasters and Digital Association has certain guidelines wherein editorial principles are laid down as the freedom of speech and expression mentioned under the Constitution of India. Self-regulation provides for affirmative declaration on the part of the journalists and they need to follow values and objectives of their news paper or news channels. No TV channels can telecast biased, inaccurate, malicious, misleading or harmful information to the society.²⁴

There are certain areas mentioned specifically to maintain self-regulation by the broadcasters.

- **To report impartially and with objectivity**-There must be accuracy and impartiality while broadcasting or telecasting any matter. Speedy reaching of news also requirement as per the aspirations of the viewers. If any error occurs, must be rectified and transparency also the need of any channel.



²² Neelamalar M, (2010), Media Ethics and Law, PHI Learning Pvt. Ltd, New Delhi.p.178

²³ Aggarwal, S. K. (1993), Media and Ethics. India: Shipra Publications

²⁴ Indian Journalism in a New Era: Changes, Challenges, and Perspectives. (2019). India: Oxford University Press.

- **Ensure Neutrality-** Broadcasters should not side any party in any matter at issue. They must maintain neutrality and should strive to bring truth before the society.²⁵
- **While reporting any crime, ensure that crime or violence are not glorified-** Broadcasters should keep in mind always that they should not glorify or induce any violence or crime while broadcasting in their channels. Glorification of any criminal act may instigate people to follow the same and it may mislead the viewers. Visuals of any sufferings, pain, like suicide, accidents, or heinous crimes not to be shown as it is.
- **Intimidation against women and children-** Any sexual violence, trauma, aggression etc. occurred against women and children are not to be shown in visuals by any channels. Privacy of women must be maintained and address details are not to be presented before the viewers. Even, the juveniles reported to be involved in any crime or offence also not to be brought before the public through channels.²⁶
- **Sex and nudity-** Sexual violence or any activities are not be visualized by channels including nudity of the male or female.
- **Not to invade privacy-** Private life or personal affairs of any individual not to be intruded by the channels unless if it is warranted by the authorities in public interest.
- **Maintain national security-** No information that may endanger national security can be broadcasted by the channels and whichever terminology or maps of India is permitted by the Government to exhibit can only be used in the channel. Public interest and the national security not to be threatened by reporting something connected to national interest.
- **Not to encourage and support superstitious beliefs-** Glorification of any superstition and occultism by any channel is not allowed. Any supernatural acts, ghosts, personal deviations etc. not to be glorified and warnings or disclaimers should be present along with such broadcast.²⁸
- **Sting operations-** Sting operation should be always last resort to bring the truth out and present them before the general public. While using sting operation methods, self-regulation guides the world of journalism not to follow false or wrong methods by using



²⁵ Neelamalar M, (2010), Media Ethics and Law, PHI Learning Pvt. Ltd. New Delhi, p. 207

²⁶ Supra Note 25, at p. 208.

²⁷ Neelamalar M, (2010), Media Ethics and Law, PHI Learning Pvt. Ltd. New Delhi, p. 209.

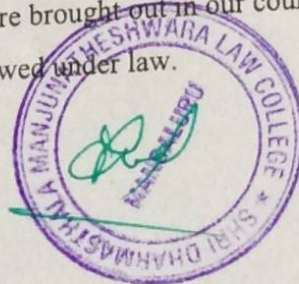
²⁸ Trager, R. E., Ross, S. D., Reynolds, A. L. (2017). The Law of Journalism and Mass Communication. United States SAGE Publications.

sex and sleaze to carry them out. Not to make any alteration or editing that may change the truth.²⁹

- **Corrigendum**- If any mistake happened during telecast, those mistakes must be rectified immediately and should be brought before the viewers. Correction in wrong publicity should also be made known to large number of viewers as the wrong publicity or broadcast was made. There should be an opportunity for the readers and viewers to present their feedback and there is responsibility with the press and media to respond to any queries or feedback provided by the public.

Conclusion

Even though, freedom is granted to the press and media to collect and disseminate information, they are under threat and freedom cannot be exercised against giant powers. Ethics are larger than that of law, they are not enforceable as law. A breach of ethics can at the most be censured, not penalized. But ethics should be followed in every profession to preserve the sanctity of profession. Press and media should be fair, objective, impartial, relevant, and truthful because they are playing roles in the minds of the people. Public interest should not be hampered accuracy of the news is more important than the speed. By sting operation many secret matters are brought out in our country, but negative sting operations invade privacy that is not allowed under law.



²⁹ A Handbook of Journalism: Media in the Information Age. (2018). India: SAGE Publications.



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"START-UP INDIA
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AND CHALLENGES:
A LEGAL PERSPECTIVE"



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Startup India and Agricultural Sector

Amith S. M. ¹

Ashwini Suraj ²

Abstract

The Start-up India initiative has successfully promoted entrepreneurship and innovation in the agricultural sector in India. The initiative has introduced several measures to support and promote start-ups in the agricultural sector, such as providing easier access to credit and offering support services such as incubation facilities and mentorship. The initiative has also focused on fostering innovation and creativity in the sector. It has introduced several programs and initiatives to promote the development and adoption of new technologies in agriculture. The Start-up India initiative has created several opportunities for start-ups in the agricultural sector to grow and succeed, such as access to finance, support infrastructure, and market access. However, there are also several challenges that start-ups in the agricultural sector need to overcome, such as access to finance, lack of support infrastructure, and limited market access. The paper attempts to explain the development of start-ups in the agriculture sector, their challenges, and opportunities with a particular focus on the current scenario of start-ups in the agricultural sector.

Keywords: Agriculture, Innovation, Entrepreneurship, Opportunities, Challenges, Market, Access.

Introduction

Start-up India is an initiative of the Government of India, launched in 2016 to promote entrepreneurship and innovation in the country,⁴ with the belief that start-ups would contribute to sustainable economic growth and generate ample employment opportunities. A *start-up* can be defined as a young company, usually small, financed, and operated by a handful of founders or individuals. Products or services offered by them are either not available or available in a limited or restricted manner; it is a service or manufacturing firm started with limited resources and aims to develop and commercialize.

The start-up ecosystem is inclusive of diverse sectors such as education, social services, health care, agriculture so on, and the vision of start-up India revolves around these areas:⁵

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⁴ <https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/ActionPlan.pdf>

⁵ Book Documents-final share (startupindia.gov.in)



1. Reducing the regulatory burden on startups by keeping the compliance cost low by allowing the startups to self-certify compliance through the mobile startup app with nine labor and environment laws. The Building and Other Construction Workers Act, 1996; the Inter-State Migrant Workmen Act. The Payment of Gratuity Act. The Contract Labor Act, the Employees Provident Funds and Miscellaneous Provisions Act, the Employees State Insurance Act, The Water Act, the Water Cess Act, and The Air Act.
2. For creating a single point of contact for the startup ecosystem and enabling knowledge exchange and access to funding for which, Startup India Hub would be the critical stakeholder collaborating with central and state governments, Indian and foreign VCs, banks, incubators, legal partners, and R&D institutions, and assisting Startups in obtaining finance, feasibility testing, business structure advisory, enhancing marketing skills, technology commercialization, and management evaluation.
3. Creation of a single platform (Mobile app and Portal) for startups to aid interaction with the Government and Regulatory bodies for exchanging information with various stakeholders for registration of startups with relevant government agencies, tracking the registration application status, and filing for compliances.
4. There should be provisions for legal support, fast-tracking patent examination at lower costs, and rebates on filing an application.
5. Relaxation of Norms of Public Procurement for Startups by exempting the criteria of prior experience/ turnover alone without relaxation in quality standards and technical parameters.
6. Provisions for a faster exit: for startups to encourage entrepreneurs to experiment with new and innovative ideas without fear of facing a complex and long-drawn exit process.
7. Provision for funding support through a Fund of Funds with a total Corpus of INR 10,000 crore over four years shall contribute to a maximum of 50% of the total fund.
8. Provision for Tax Exemption; on Capital Gains for persons who have capital gains during the financial year and if they have invested gains in Fund of Funds recognized by the Government. Tax Exemption for three years pushes Startups' growth and addresses working capital requirements.

With these provisions in place, there has been a vast development in start-ups in different sectors, and agriculture is among them.

Start-up in Agriculture Sector

The Start-up India initiative has introduced several measures to support and promote entrepreneurship in the agriculture sector. These include providing easier access to credit, simplifying the process of setting up an agricultural business, and offering tax exemptions to eligible start-ups. The initiative also offers support services to agriculture start-ups, such as incubation facilities, mentorship, and networking opportunities.

One of the key objectives of the Start-up India initiative in the agriculture sector is to promote technology and innovation to improve agricultural productivity and efficiency. The initiative has introduced several programs to encourage the innovation and adoption of new technologies in agriculture, such as the Agri-Tech Innovation Challenge, which provides financial support



to start-ups working on innovative solutions for the agriculture sector. It also focuses on supporting small and medium-sized enterprises (SMEs) operating in agriculture. The initiative has introduced a few programs and initiatives to support SMEs in the agriculture sector, such as the Agri-Business Incubation Scheme, which provides financial and technical support to start-ups working on innovative solutions for the agriculture sector. Thus, the Start-up India initiative has successfully promoted entrepreneurship and innovation in India's agriculture sector and has helped create a supportive ecosystem for agriculture start-ups to grow and thrive towards the country's economic growth and job creation.

The Indian Food and Grocery Market are the world's sixth most prominent, and the Indian Food Processing Industry account for about 32% of the country's total food market. India also has the second largest agricultural land in the world, with about 60% of rural Indian households living from agriculture.⁶ The agriculture sector has been a significant contributor to the Indian economy since ancient times and continues to be so today. The agriculture sector's contribution to the economy is around 18% of the country's overall GDP.

As there has been a constant demand for innovation in agriculture due to the need for increased output and delivery mechanisms, a new terminology has emerged in the agriculture ecosystem: "AgriTech," an amalgamation of agriculture infused with modern technologies for generating revenues to support livelihoods. AgriTech start-ups are focused on providing innovative yet relevant solutions to several challenges across the value chain. These start-ups have brought a change in the old agriculture system.

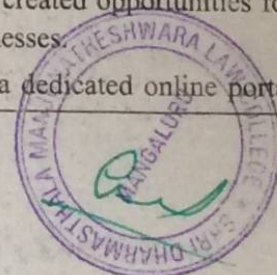
Start-ups aid the Agri Value Chain by delivering efficient products, technologies, and services to the farmers and consumers. It is a proliferation of all innovations and technology-driven influential start-ups aimed to revolutionize the food and agriculture sector.

Opportunities in Start-up India in the Agricultural Sector

The Start-up India initiative has opened several opportunities for start-ups in the agricultural sector in India. Some of the critical opportunities for start-ups in the agricultural sector include the following:

- **Development of Innovative Solutions:** The Startup India initiative has introduced several programs and initiatives to promote innovation and creativity in the agricultural sector. It has created opportunities for startups to develop and test innovative solutions to address the challenges faced by the agricultural sector, such as improving agricultural productivity and efficiency.
- **Access to Finance:** The Startup India initiative has introduced several schemes and programs to provide easier access to finance for startups in the agricultural sector. It has opened opportunities for startups to obtain the necessary funding to support their operations and grow their businesses.
- **Support Infrastructure:** The Startup India initiative has introduced a range of support services, such as incubation facilities, mentorship, and networking opportunities, to help startups in the agricultural sector grow and succeed. It has created opportunities for startups to access the resources they need to grow their businesses.
- **Market Access:** The Startup India initiative has launched a dedicated online portal

⁶ nmoop.gov.in/conference/docs/Background_Paper_Agri_Startups.pdf



where startups in the agricultural sector can showcase their products and services to potential investors and partners. It has created opportunities for startups to access new markets and expand their customer base.

The Start-up India initiative has created several opportunities for start-ups in the agricultural sector in India. Start-ups can leverage these opportunities to grow and succeed in the agricultural sector.

Following AgriTechs have contributed to the revolution in the agricultural sector with the use of technology.⁷

1. **Shapos Services Private Limited** focuses on the Silk supply chain, and its product is named Reshamandi. This startup works along with sericulture farmers, silk reelers, fabric, and retailers, enabling the farmers to get the best product price.
2. **Agrirain Agro Industries India Private Limited:** the focus is on Irrigation Service using Hosereel technology for irrigation. Hosereel irrigation leads to an increase in the yield from 20% to 63%. The hosereel is a mobile and self-propelled rain gun integrated with an HDPE pipe and diesel pump, and through Hosereel, the water is sprinkled as constant rain. It is a water-conserving technology that has saved over 1,25,000 metric tons of water.
3. **Zentron Labs Private Limited:** the product introduced is "Hortisort," which automates the food gathering process, using industrial cameras and computer vision algorithms to deliver optical inspection. It is an automated fruit grading system used to assess the fruits through a computer vision-based grading station through which the grading of fruits takes place in terms of color, size, weight, and defects.
4. **Athreya Global Solutions** has developed agriculture input products that could help increase yield by 65% and increase the photosynthetic efficiency of plants.
5. **DeHaat:** provides access to affordable agricultural inputs and personalized assistance on soil testing, weather reports, and insurance.
6. **Stellapps:** its service focuses on dairy farmers and cooperatives. It helps them maximize their profits by digitizing and optimizing milk procurement and cold chain management through its IoT-based SmartMoo platform.
7. **Intello Labs:** it offers services like Intello Track, Intello Sort, Intello Pack, and Intello Deep which operate on computer vision technologies to aid farmers, retailers, and exporters in accessing the quality of their agricultural products.
8. **Albono:** it works on the principle of seed to plate and aims to help farmers increase their crop yield and sell their products to retailers. It uses soil sensors, IoT devices, and imaging drones to collect farm data to arrive at predictive analytics in aiding farmers to make intelligent agriculture decisions to increase their productivity.
9. **Aquaconnect:** it focuses on aquaculture and focuses on developing machine learning and satellite remote sensing technologies to improve farm productivity and market linkages in aquaculture.

⁷ The Growth of Agri-Tech Startups in India (startupindia.gov.in)



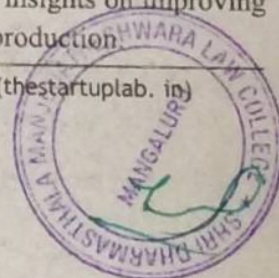
10. **AgNext:** it aims to tackle the trust issues between the buyer and the seller. It has developed technology that uses tools like computer vision, spectral analytics, IoT, and AI to analyze product quality in about 30 seconds, sorting out the trust issues between the buyer and the seller, thus accelerating transactions.
11. **Cropin** is a technology startup that provides farm management solutions to help farmers improve their productivity and efficiency. The company offers various services, such as crop monitoring, pest and disease management, and yield prediction, to help farmers make data-driven decisions.
12. **Gramophone** is a fintech startup that provides financial services to smallholder farmers in rural India. The company offers a range of financial products, such as loans, insurance, and savings accounts, to help farmers access the financial resources they need to grow their businesses.
13. **Fasal** is a technology startup providing agronomy services to help farmers improve crop yields. The company uses data analytics and artificial intelligence to provide farmers with customized recommendations on fertilizers, irrigation, and other agronomic practices.
14. **WayCool Foods** is a food and AgriTech startup that provides supply chain solutions for the agricultural sector. The company sources fresh produce directly from farmers and sells it to consumers through its retail outlets and e-commerce platforms.

To sum up, there are a growing number of start-ups operating in the agricultural sector in India. These start-ups are using technology and innovation to address the challenges faced by the agricultural sector and improve farmers' livelihoods.

The following AgriTech Start-ups are Changing the Scenario of the Indian Agriculture Sector:⁶

- **Arya.ag** focuses on simplifying agribusiness with its services of warehousing and warehouse receipt financing solutions targeting smallholder farmers and helping connect farmers to buyers and year-round supply to SME and corporate buyers through 10,000 commodity storage points across the country.
- **AgroStar** is a digital farmer network and Agri-inputs e-commerce platform aimed to provide end-to-end solutions for farmers by making provisions for access to good quality Agri-inputs and bridging the gap in knowledge owing to traditional farming practices.
- **Otipy** is a community-based AgriTech platform aimed to help farmers deliver fresh produce to consumers by connecting consumers, resellers, and farmers.
- **Poshn** focuses on processed Agri-commodity trade by providing a digital network that enables buyers, sellers & agents of agricultural commodities to trade online.
- **Fyllo** aims at harnessing the potential of technology to make agriculture profitable and sustainable by using AI and agronomy to provide farmers with insights on improving the quality and quantity of products while reducing the cost of production.

⁶ Top 5 Agritech Startups In India Disrupting The Indian Agriculture Sector (thestartuplab. in)



Current Scenario of Agri- Start-ups in India⁹

Years ago, technology took over many jobs away from people through computerization. Today technological development has impacted the agricultural sector also. In the last few years, the development of AgriTech has witnessed a more significant change. As per Entrackr's ¹⁰data tracking platform Fintrackr, 100 AgriTech start-ups raised close to about dollar 1.33 billion across 139 deals between January 2020 and June 2022, which shows a positive sign and potential towards the agriculture sector. Furthermore, per the study by Accel-Omnivore, there was an increase in funding in the AgriTech sector from dollar 45.8 million in 2016 to dollar 430.6 million in 2020. The Economic Survey of 2019-20, about 8% of the total recognized start-ups in the country are in the agricultural sector.

AgriTech sector has promising potential as the sustainable growth of agriculture offers synergistic opportunities for the collective growth of capital investment and agriculture. Further, technology can aid input cost optimization, farm management, precision farming, and value chain enhancement for agriculture and allied sectors.

Scope for Agricultural Sector Start-up India

There is significant scope for start-ups in the agricultural sector in India. Critical areas where there is a potential for growth and development for start-ups in the agricultural sector include:

- **Use of Technology and Innovation:** There is a growing demand for technology-based solutions in the agricultural sector to improve agricultural productivity and efficiency. To address this demand, startups in the agricultural sector can develop and offer innovative solutions, such as precision farming, climate-smart agriculture, and agronomy services.
- **Supply Chain Management:** The agricultural sector in India is fragmented and has an inefficient supply chain. Startups in the agricultural sector can develop and offer solutions, such as digital marketplaces and logistics services, to improve the efficiency of the supply chain and reduce waste and losses.
- **Financial Services:** Many smallholder farmers in India face challenges in accessing financial services, such as loans and insurance, to support their operations. To address this gap, startups in the agricultural sector can develop and offer financial products and services, such as microfinance, digital payment systems, and mobile banking.
- **Value-added Products and Services:** There is a growing demand for value-added products and services in the agricultural sector, such as organic and specialty foods. Startups in the agricultural sector can develop and offer such products and services to tap into this demand.

Focus Areas for Agri Start-ups:

1. **Data:** aimed at developing farm-specific, data-driven diagnostics to determine soil and crop health, and startups are utilizing drones or tractor-based solutions to get data on the field on weather and agricultural data to determine risk. AgroStar, RML AgTech is investing INR 5 Cr in building groundbreaking image recognition technology which

⁹ Agri-startups and Rural Economy - INSIGHTSIAS (insightsonindia.com)

¹⁰ The rise of Indian agritech startups since 2020: Entrackr report



would enable farmers to receive real-time data on the pest or disease which may have affected the crop.

2. **Farming as a Service:** This is about renting Agri equipment to take the burden of the input costs away from the farmer. EM3 Agri Services offers farmers farming services and machinery rentals on a pay-for-use basis.
3. **Market Linkage Models:** to develop technology that can aid farmers with a timely and accurate estimation of sowing and harvesting in sync with consumer demand patterns.
4. **Fintech for farmers:** the aim is to digitize payments for farmers by linking their accounts to payment gateways, and it would, in turn, help in creating the credit profile environment for funders and lenders
5. **IoT for farmers:** the aim is to infuse smart farming in agricultural business with high precision crop control, data collection, and automated farming techniques, which could remove inefficiencies and bloom productivity. Moreover, further data on crop yields, rainfall patterns, pest infestation, and soil nutrition could improve farming techniques.

To conclude, there is significant scope for start-ups in the agricultural sector in India. The Start-up India initiative has created a supportive ecosystem for start-ups to grow and thrive and has opened several opportunities for start-ups to succeed in the agricultural sector.

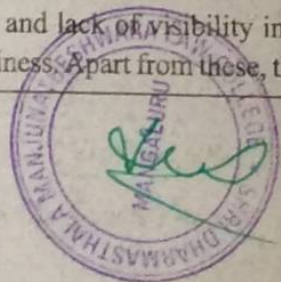
Challenges with Start-up India in Agricultural Sector

While the Start-up India initiative has successfully promoted entrepreneurship and innovation in the agriculture sector, some challenges still need to be addressed. Some of the challenges faced by start-ups in the agricultural sector in India include the following:¹¹

- **Access to Finance:** Many startups in the agricultural sector need help to access finance for their operations due to the need for more awareness about the various financial support schemes and programs available for startups and the high-interest rates charged by banks and financial institutions.
- **Lack of Support Infrastructure:** There needs to be more support infrastructure, such as incubation facilities, mentorship, and networking opportunities, for startups in the agricultural sector, which makes it difficult for startups to grow and scale their operations.
- **Limited Market Access:** Many agricultural startups need help accessing markets for their products and services. Moreover, there is a need for a well-developed marketing and distribution network and more awareness among consumers about the products and services offered by startups.
- **Lack of Skilled Workforce:** There needs to be a more skilled and trained workforce in the agricultural sector. Lack of this makes it difficult for startups to find the right talent to support their operations due to the need for more focus on vocational training and technical education in the agricultural sector.

There needs to be more information concerning sowing and pre-harvest activities as the companies that depend on agricultural produce look for information on these lines so that they can help in effective farming practices. Low productivity and lack of visibility in the supply chain is a significant factor that impacts the AgriTech business. Apart from these, there

¹¹ Significant Challenges faced by Agritech Start-ups (linkedin.com)



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needs to be more commercial guidance; that is to say, those successful AgriTech enterprises need more commercial guidance to expand their business. Furthermore, tactically speaking, the project incubators must provide such assistance through capacity building, networking, and accessing knowledge and resources. The reality is that most incubators and accelerators need more expertise and competence to guide farm-oriented enterprises. And then, the climate change crisis, water availability, and drought-like conditions are an issue as the disaster management system is underdeveloped. The start-ups should focus on developing new technology to handle these crises.

Even though there are start-up policies to fund start-ups, one can find a lag as funding is limited, and start-ups, especially in agricultural setups, shall always be under pressure to be profitable at the earliest. If this is the funding scenario, another scenario, predominantly in rural areas, arises: the connectivity issue. More reliable internet connectivity is a hurdle in applying innovative agriculture techniques in such areas. In using innovative technology, there is another potential risk in the form of electronic waste. Regularly upgrading the technology allows the used units to be disposed of carelessly. Setting up of proper disposal unit is necessary to check the negative implications on the environment.

Specifically, the challenges(scope) in the agriculture sector are a lack of awareness of agricultural inputs, a lack of data on the supply and demand of farm inputs, a lack of access to quality seeds, inadequate mechanization and irrigation infrastructure, disease outbreaks in livestock and the issue of pest control. Moreover, scarcity of capital to invest in mechanization and high weather dependency are the challenges that Indian agriculture faces. Added to it are the challenges of inefficient supply chain/logistics, inadequate storage facilities, food processing centers, and intermediaries in the value chain resulting in higher wastage and lack of price and market information.

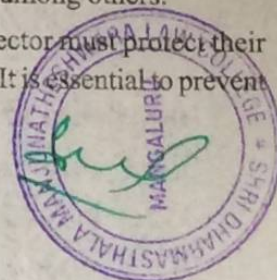
Though most of these challenges could be addressed by efficient use of existing resources using farm machinery and leveraging technology to capture and analyze real-time farm-level data collection and which. AI also has the potential to lead an agricultural revolution in the country, providing insights by combining data from mechanized farm equipment and IoT sensors with the available macro data.

The challenges faced by start-ups in the agricultural sector in India need attention to create a conducive ecosystem for start-ups to grow and thrive. The Government of India and other stakeholders need to address these challenges and create a supportive environment for start-ups in the agricultural sector to grow and succeed.

Legal Issues in Start-up India in the Agricultural Sector

There are several legal issues for start-ups operating in India's agricultural sector. Some of the critical legal issues that start-ups in the agricultural sector in India need to consider are the following:

- **Compliance with Agricultural Laws and Regulations:** Startups operating in the agricultural sector must comply with the sector's regulations which include laws related to land acquisition, irrigation, seed certification, and fertilizers, among others.
- **Intellectual Property Protection:** Startups in the agricultural sector must protect their intellectual property, such as trademarks, patents, and copyrights. It is essential to prevent



others from copying or infringing on their intellectual property and safeguard their innovations' value.

- **Employment Laws:** Startups in the agricultural sector must comply with the various employment laws in India, such as those related to minimum wages, working hours, and safety and health. It is vital to ensure that they provide a fair and safe working environment for their employees.
- **Environmental Laws:** Startups in the agricultural sector must ensure that they comply with the various environmental laws and regulations in India. It is essential to protect the environment and avoid penalties and legal repercussions.

Hence, start-ups in the agricultural sector in India need to be aware of the various legal issues they may face and take steps to comply with the relevant laws and regulations. It will help them to avoid legal problems and to operate their businesses smoothly.

Conclusion

The Start-up India initiative has successfully promoted entrepreneurship and innovation in the agricultural sector in India. The initiative has introduced various measures to support and promote start-ups in the agricultural sector, such as providing easier access to credit and offering support services such as incubation facilities and mentorship. The initiative has also focused on fostering innovation and creativity in the sector. It has introduced several programs and initiatives to promote the development and adoption of new technologies in agriculture.

The Start-up India initiative has created several opportunities for start-ups in the agricultural sector to grow and succeed. These opportunities include access to finance, support infrastructure, and market access. However, there are also several challenges that start-ups in the agricultural sector need to overcome, such as access to finance, lack of support infrastructure, and limited market access.

The agricultural sector presents a significant scope for growth and development for start-ups in India. The Start-up India initiative has created a supportive ecosystem for start-ups to grow and thrive and has opened several opportunities for start-ups to succeed in the agricultural sector.

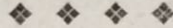
Finally, as most of the workforce is still in the agriculture sector, a need arises to promote Agri start-ups. At the same time, there is a need to bridge the digital divide by focusing on digital literacy so that people can accept the developing technology-based ideas and implement them.

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FREEDOM OF MEDIA IN INDIA

(Peer Reviewed)



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Navigating the Right to Privacy: Media and the Law in India

¹Mr. Karthik Anand

Abstract

The right to media and freedom of expression in India is a complex interplay of constitutional protections, judicial interpretations, and regulatory frameworks. This article delves into the multifaceted relationship between media and legal provisions in India, emphasizing the fundamental right to privacy as enshrined in Article 21 of the Indian Constitution. It explores the significance of privacy in media, including the responsibility of media organizations to respect individuals' privacy rights, balanced with the public interest. The article highlights the role of landmark judicial decisions, such as the Puttaswamy judgment, in reaffirming the right to privacy and its implications for media reporting. Additionally, it addresses the broader regulatory landscape governing media, including defamation laws, advertising standards, and digital media regulations. The complex nature of media regulations in India is dissected, along with the need for responsible journalism and the balance between freedom of speech and legal responsibilities. Overall, this article provides a comprehensive overview of the intricate relationship between media and the law in India, offering insights into how the country strives to uphold press freedom while ensuring ethical and accountable media practices.

Introduction

The right to privacy in India is a fundamental right protected under Article 21 of the Indian Constitution. It is important to understand that while the Constitution does not explicitly mention "right to privacy," the Supreme Court of India has interpreted Article 21 to include the right to privacy as a fundamental aspect of personal liberty and dignity. The right to privacy encompasses various facets, including privacy in media, which is subject to certain limitations and considerations.

Right to privacy and its relationship with the media under the Indian Constitution:

1. Article 21 - Right to Life and Personal Liberty: Article 21 of the Indian Constitution states that "No person shall be deprived of his life or personal liberty except according to a procedure established by

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law." The Supreme Court has consistently held that the right to privacy is an integral part of the right to life and personal liberty guaranteed under Article 21.²

2. Privacy and Media: The right to privacy includes the right to be let alone and the right to control the dissemination of one's personal information. This extends to protection from unwarranted intrusion by the media into a person's private life.³

3. Balancing Act: While the right to privacy is fundamental, it is not absolute. The Indian legal system recognizes that there may be legitimate reasons for limiting privacy rights, especially in cases where there is a public interest, such as in matters of national security, public order, or the prevention of crime.

4. Media Ethics and Responsibility: The media is expected to adhere to ethical standards and exercise responsible journalism. It should respect individuals' privacy rights and avoid publishing or broadcasting private information without consent, especially when it is not in the public interest.

5. Defamation Laws: Indian laws, such as defamation laws, provide individuals with legal recourse when their reputation is damaged by false or defamatory information published by the media. The media can be held accountable for publishing false information that harms an individual's reputation.

6. Right to Information (RTI) Act: While the right to privacy is protected, the Indian legal framework also includes the Right to Information Act, which ensures transparency and access to government information. There may be instances where the right to privacy and the right to information come into conflict, and courts have to strike a balance.

7. Judicial Pronouncements: Several landmark judgments by the Supreme Court, such as the Puttaswamy judgment (2017), have reaffirmed and clarified the right to privacy in India. These judgments have emphasized the need to protect individual privacy from intrusion by the state and private actors, including the media.

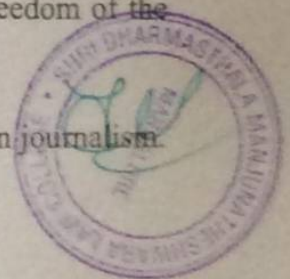
² K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC 1

³ S. Rangarajan v. P. Jagjivan Ram (1989) 2 SCC 574



Importance of Media Privacy in India:

1. Freedom of the Press: Privacy of the media is closely linked to the freedom of the press, which is a cornerstone of democracy. A free and independent media is essential for holding the government and other institutions accountable, providing a platform for diverse voices, and fostering transparency.
2. Protection of Sources: Journalists often rely on confidential sources to uncover corruption, wrongdoing, and abuse of power. Protecting the privacy of these sources is crucial to encourage whistleblowers and insiders to come forward with valuable information without fear of retaliation.
3. Investigative Journalism: Investigative journalism often involves digging deep into sensitive issues that may involve exposing the misdeeds of powerful individuals or entities. Media privacy is vital to safeguarding the identities and safety of journalists involved in such investigations.
4. Balancing Public Interest and Privacy: While the media plays a crucial role in informing the public, it must also balance the right to privacy of individuals. Responsible journalism involves respecting the privacy of individuals and not disclosing sensitive personal information without a valid public interest justification.
5. Preventing Sensationalism and Tabloid Journalism: Protecting media privacy helps prevent sensationalism and tabloid journalism that can harm individuals' reputations and invade their personal lives without a legitimate reason.
6. Avoiding Vigilantism and Mob Justice: Irresponsible reporting can sometimes lead to vigilantism and mob justice, where individuals are targeted based on incomplete or inaccurate information. Upholding media privacy helps prevent such outcomes.
7. Avoiding Self-Censorship: When journalists fear intrusion into their privacy or legal repercussions, they may practice self-censorship, which can stifle investigative reporting and the free flow of information.
8. Legal Protections: Recognizing the importance of media privacy, Indian laws, including defamation and privacy laws, provide individuals with legal recourse when their rights are violated by the media. These legal protections help strike a balance between freedom of the press and individual rights.
9. Maintaining Public Trust: Media privacy is vital for maintaining public trust in journalism.



When individuals believe their privacy is respected, they are more likely to trust the media as a reliable source of information.

10. Promoting Responsible Reporting: Protecting media privacy encourages responsible reporting practices, including fact-checking, verification, and ethical journalism standards.

The "right to media" is not a specific constitutional right but is often discussed in the context of the freedom of the press and freedom of expression, which are fundamental rights protected by many countries, including India. In India, the right to media, which includes the freedom of the press, is enshrined in the Constitution and has been subject to judicial interpretation to clarify and protect these rights.

1. Freedom of the Press: The right to freedom of speech and expression, including the freedom of the press, is protected under Article 19(1)(a) of the Indian Constitution. It allows citizens, including journalists and media organizations, to express their views, opinions, and disseminate information freely.

2. Reasonable Restrictions: While Article 19(1)(a) guarantees the right to freedom of expression, it is not an absolute right. Article 19(2) allows the government to impose reasonable restrictions on this right in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign nations, public order, decency, or morality.

3. Public Interest and Press Freedom: Indian courts have recognized the crucial role of the media in a democratic society. They have often interpreted the freedom of the press broadly to protect not only the right of journalists to publish but also the public's right to know and access information.

4. Prior Restraint: The judiciary has generally been cautious about allowing prior restraint (censorship before publication) on media content. Courts are more inclined to allow post-publication legal remedies, such as defamation suits, rather than preventing publication in advance.

5. Defamation Laws: Defamation laws in India provide legal recourse to individuals who believe their reputation has been harmed by media reports. Courts have the responsibility to balance the right to freedom of expression with the right to protect one's reputation.

6. Privacy and Media: The Indian Supreme Court has recognized the right to privacy as a fundamental right, which includes protection against unwarranted intrusion into one's private life by the media. This has led to judicial interpretations that seek to balance the right to privacy with the freedom of the press.

7. Reporting on Court Proceedings: Courts in India allow reporting on court proceedings as a part of the media's role in ensuring transparency and accountability in the justice system.

However, they may impose restrictions in certain cases, such as to protect the identity of victims or sensitive information.

8. Contempt of Court: While the media has a right to report on court proceedings, it must also be cautious about not interfering with the administration of justice. Courts can take action for contempt of court if the media's reporting is seen as prejudicing a fair trial or undermining the authority of the judiciary.

9. Regulation and Self-Regulation: Media organizations in India often follow self-regulation through bodies like the Press Council of India and the News Broadcasting Standards Authority. While the government has the authority to regulate media content, the judiciary plays a role in ensuring that such regulation does not infringe upon the right to media freedom.

Here is some of the landmark cases related to the right to media in India:

1. Romesh Thapar v. State of Madras (1950): This case is one of the earliest cases to recognize the freedom of the press as an integral part of freedom of speech and expression under Article 19(1)(a) of the Indian Constitution. It established the principle that the government cannot impose prior restraint on publications unless it can demonstrate a clear and present danger to public order.

2. Brij Bhushan v. State of Delhi (1950): This case further emphasized the importance of freedom of the press and ruled that pre-censorship of newspapers was a violation of free speech and expression. It reinforced the idea that freedom of the press should be subject only to reasonable restrictions.

3. Indian Express Newspapers (Bombay) Private Ltd. v. Union of India (1985): In this case, the Supreme Court held that freedom of the press was not just the right of the press but also the right of the people to receive information. It reaffirmed the importance of press freedom in a democratic society.

4. Sakal Papers Ltd. v. Union of India (1962): This case dealt with the issue of government-imposed restrictions on the number of pages and size of newspapers. The Supreme Court ruled that such restrictions violated the freedom of the press, emphasizing that newspapers play a vital role in shaping public opinion.

5. Rajagopal v. State of Tamil Nadu (1994): This case is significant for its recognition of the right to privacy as part of the right to freedom of expression. It laid down the principle that the media cannot publish information about an individual's private life without a legitimate public interest.

6. Contempt of Court Cases* Various contempt of court cases in India have highlighted the tension between the right to media freedom and the judiciary's authority. These cases have underscored the need for responsible reporting and the judiciary's power to protect its own dignity.

7. Lalit Modi vs. Board of Control for Cricket in India (BCCI) (2010): This case addressed the issue of media rights in the context of cricket broadcasting. It emphasized the importance of transparency and fair allocation of media rights in sports.

8. Shreya Singhal v. Union of India (2015): While not a media-specific case, this case challenged Section 66A of the Information Technology Act, which had been used to curtail freedom of expression on the internet, including social media. The Supreme Court struck down the section, upholding the right to free speech online.

9. Justice K.S. Puttaswamy (Retd.) v. Union of India (2017): In this landmark case, the Supreme Court recognized the right to privacy as a fundamental right under the Indian Constitution. The right to privacy has implications for media reporting and the protection of individuals' personal information.

These cases represent a selection of important legal precedents that have shaped the understanding of the right to media and freedom of expression in India. They highlight the evolving legal landscape in which the media operates and the ongoing efforts to strike a balance between press freedom and other rights and interests.

Media regulations in India encompass a wide range of laws and regulations that govern various forms of media, including print, broadcast, digital, and social media. These regulations aim to strike a balance between freedom of the press, the right to freedom of speech and expression, and the need for responsible journalism. Here are some key laws and regulations related to media in India:

1. Press Council of India Act, 1978:

The Press Council of India (PCI) is an autonomous body that regulates the conduct of newspapers and journalists. The PCI sets ethical standards for journalism and investigates complaints of misconduct against the press. It promotes responsible journalism and ensures the freedom of the press is upheld.

2. Cable Television Networks (Regulation) Act, 1995:

This act regulates cable television networks in India. It empowers the government to regulate



the content and carriage of cable television service. It includes provisions related to content standards and licensing of cable operators.

3. The Cable Television Networks Rules, 1994:

These rules provide detailed guidelines for cable television operators regarding advertising, content standards, and the carrying of channels.

4. The Information Technology Act, 2000:

The Information Technology Act (IT Act) in India plays a significant role in regulating media and its digital presence for several reasons:

4.1. Cybercrimes and Cyber security: The IT Act provides a legal framework to address cybercrimes, which can include hacking, online fraud, and cyber bullying. These offenses can impact media organizations, individuals, and their online activities. The act helps deter such activities and provides legal remedies for victims.

4.2. Data Protection and Privacy: With the increasing digitization of media, the IT Act's provisions on data protection and privacy are crucial. It establishes rules for how personal data should be handled, safeguarding the privacy of individuals interacting with media platforms.

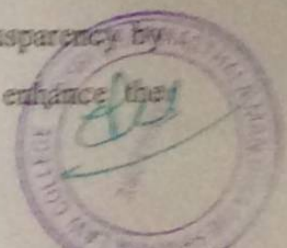
4.3. Content Regulation: The IT Act allows authorities to take action against online content that is unlawful or violates guidelines related to decency, morality, and public order. This is important for maintaining responsible journalism and preventing the spread of harmful or false information.

4.4. Electronic Signatures and Transactions: In the media industry, electronic signatures and transactions are common. The IT Act validates the legal validity of electronic contracts and signatures, facilitating secure and legally binding online transactions.

4.5. Legal Liability of Intermediaries: The IT Act outlines the responsibilities and liabilities of intermediaries, such as social media platforms and online news portals. This encourages these platforms to moderate content and takes measures against the dissemination of unlawful material.

4.6. Digital Copyright Protection: Media companies often rely on copyright protection for their content. The IT Act addresses issues related to digital copyrights, helping media organizations protect their intellectual property.

4.7. E-Governance and Transparency: The act promotes e-governance and transparency by allowing government agencies to provide services electronically. This can enhance the



efficiency and accessibility of government information and services, benefiting both media and the public.

4.8. Legal Recourse: The IT Act provides a legal framework for individuals and organizations to seek recourse in case of cybercrimes, data breaches, or other digital-related issues. This ensures that media outlets have legal options to address any digital threats or violations they may face.

5. The Press and Registration of Books Act, 1867:

This act requires newspapers and publications to be registered with the Registrar of Newspapers for India (RNI). It includes provisions for maintaining the authenticity and accuracy of publications.

6. Contempt of Court Laws:

Media organizations can be held in contempt of court if their reporting is seen as undermining the dignity of the judiciary or prejudicing a fair trial. The Contempt of Courts Act, 1971, and judicial decisions play a role in regulating media's interaction with the judiciary.

7. Defamation Laws:

Defamation laws in India protect individuals' reputation from false and damaging statements, including those made by the media. The Indian Penal Code (IPC) contains provisions related to criminal defamation. Defamation laws in India apply to both traditional media (such as newspapers, television, and radio) and digital media (including online news portals and social media platforms). Here are some key points regarding defamation and the media in India:

7.1. Defamation Laws: Defamation in India is both a civil wrong and a criminal offense. It is governed by the Indian Penal Code (IPC) and the Information Technology Act, 2000. Section 499 of the IPC defines defamation as making or publishing any statement that harms the reputation of an individual or organization.

7.2. Criminal Defamation: Section 499 and Section 500 of the IPC provide for criminal defamation. If found guilty, individuals can face imprisonment and fines. Journalists and media organizations may be charged with criminal defamation if they publish defamatory content.

7.3. Civil Defamation: Apart from criminal defamation, individuals and organizations can also file civil defamation suits seeking damages for harm to their reputation. This allows individuals to seek compensation for any damage caused by defamatory statements in media reports.



7.4. Defenses: Media outlets can raise defenses against defamation claims. Common defenses include truth (if the statement is factually accurate), fair comment (if the statement is an expression of opinion), and qualified privilege (if the statement was made without malice and in the public interest).

7.5. Public Figures and Defamation: Defamation laws in India may apply differently to public figures such as politicians, celebrities, and government officials. Courts may require a higher standard of proof for defamation claims involving public figures.

7.6. Online Defamation: With the growth of digital media, online defamation has become a significant concern. The Information Technology Act, 2000, contains provisions related to online defamation, and individuals can file complaints against defamatory content published online.

7.7. Responsible Journalism: Media organizations are encouraged to engage in responsible journalism, fact-checking, and verifying sources to avoid publishing defamatory content. Implementing editorial guidelines and ethical standards can help prevent defamation-related issues.

7.8. Legal Recourse: If someone believes they have been defamed by a media outlet, they can file a complaint or a lawsuit seeking remedies, including retractions, apologies, or monetary damages.

It's important for media professionals and organizations to be aware of defamation laws in India and to exercise caution when reporting on individuals or organizations to avoid legal consequences. Balancing freedom of speech and responsible journalism is crucial in the context of defamation and media in India.

8. Advertising Standards: The Advertising Standards Council of India (ASCI) sets guidelines for advertising content and practices. Advertisers and media outlets are expected to adhere to these guidelines.

9. Broadcasting Regulations:

The Telecom Regulatory Authority of India (TRAI) regulates broadcasting and cable services. It issues regulations related to content, pricing, and quality of services for television and radio broadcasters.

10. Election Commission Guideline:

During election periods, the Election Commission of India issues guidelines for media coverage to ensure fairness and balance in reporting political events.

11. Foreign Direct Investment (FDI) Regulation:

FDI regulations apply to media companies, including print and broadcast media, limiting foreign ownership in some cases.

12. Privacy Laws:

The right to privacy, recognized by the Supreme Court, has implications for media reporting, especially in cases involving individuals' personal information.



Protection of privacy from the media is a crucial aspect of safeguarding individual rights while upholding the principles of responsible journalism. Here are some suggestions for protecting privacy from media intrusion, along with relevant footnotes:

1. Strengthen Privacy Laws: Enhance and clarify existing privacy laws to provide individuals with robust protection against media intrusion⁴. Specify clear guidelines on what constitutes an invasion of privacy, ensuring that these laws are in harmony with the principles of the Indian Constitution and international human rights standards⁵.
2. Prior Consent: Require media organizations to obtain prior consent from individuals before publishing or broadcasting any information that pertains to their private lives⁶. This would ensure that individuals have control over the dissemination of their personal information⁷.
3. Public Interest Test: Implement a rigorous public interest test⁸. Media organizations should be able to demonstrate a legitimate public interest in publishing private information, ensuring that the right to privacy is not overridden without justification⁹.
4. Protection of Whistleblowers: Strengthen legal protections for whistleblowers and confidential sources¹⁰. Encourage individuals to come forward with information related to wrongdoing or abuse of power without fear of exposure or retaliation¹¹.

⁴Privacy Law in India: Development, Challenges, and the Way Forward," *Journal of Law, Technology & the Internet*, Vol. 11, No. 1, 2020

⁵A Comparative Study of Privacy Laws in India and the European Union," *European Journal of Law and Technology*, Vol. 10, No. 2, 2019

⁶Privacy and the Right to Be Forgotten: A Comparative Analysis of EU and Indian Approaches," *International Review of Law, Computers & Technology*, Vol. 34, No. 2, 2020

⁷Privacy and Data Protection in India: Emerging Challenges and Concerns," *International Data Privacy Law*, Vol. 8, No. 2, 2018.

⁸Balancing Privacy Rights and Freedom of Expression in the Age of Social Media: A Comparative Analysis of India and the United States," *Journal of Internet Law*, Vol. 22, No. 9, 2019

⁹Privacy and the Media in India: Challenges and Prospects," *Indian Journal of Media Studies*, Vol. 5, No. 1, 2015

¹⁰Protecting Whistleblowers in India: Legal Framework and Challenges," *International Journal of Legal Developments and Allied Issues*, Vol. 5, No. 3, 2019

¹¹Whistleblower Protection Laws in India: An Analysis," *Journal of Governance, Risk & Compliance*, Vol. 10, No. 2, 2021



5. Responsible Reporting Guidelines: Develop and enforce industry-specific guidelines for responsible reporting, emphasizing ethical journalism practices¹². Encourage media organizations to adhere to these guidelines, which should include provisions for protecting individuals' privacy¹³.

6. Media Self-Regulation: Promote self-regulation within the media industry, encouraging media organizations to establish ombudsmen or ethics committees¹⁴. These bodies can review complaints related to privacy intrusion and take corrective action¹⁵.

7. Awareness and Education: Conduct public awareness campaigns and educational initiatives to inform both the media and the public about privacy rights and responsible journalism¹⁶. This can foster a culture of respect for privacy¹⁷.

8. Legal Recourse. Ensure that individuals have accessible and effective legal recourse in cases of privacy violations by the media¹⁸. Legal remedies should be available to hold media organizations accountable for any harm caused¹⁹.

9. Judicial Oversight: Establish a framework for judicial oversight to review cases involving privacy breaches by the media²⁰. This would ensure that decisions related to privacy are made impartially and in line with the law²¹.

10. International Standards: Consider international best practices and standards in privacy protection when formulating and amending domestic laws and regulations²². This can help harmonize privacy protection with global norms²³.

¹²Ethical Guidelines for Media Reporting: An International Perspective," *Media Ethics and Regulation*, 2020

¹³Ethical Journalism: A Comparative Study of Codes of Ethics in India and the United States," *Journalism & Mass Communication Quarterly*, Vol. 97, No. 4, 2020

¹⁴Media Self-Regulation and Ethical Challenges: A Comparative Study of India and the United Kingdom," *Journal of Media Ethics*, Vol. 35, No. 2, 2020

¹⁵Ombudsmen in Indian Media: A Comparative Analysis," *Media Watch*, Vol. 11, No. 2, 2020.

¹⁶Media Literacy in India: Current Trends and Future Directions," *Journal of Media Literacy Education*, Vol. 11, No. 2, 2019

¹⁷Privacy Awareness and Practices Among Indian Internet Users," *Information & Communications Technology Law*, Vol. 29, No. 3, 2020.

¹⁸Access to Justice for Privacy Violations: A Comparative Analysis of India and the United States," *International Journal of Law and Society*, Vol. 12, No. 1, 2020

¹⁹Legal Protection of Privacy in India: An Analysis of Recent Trends and Developments," *Journal of Indian Law Institute*, Vol. 62, No. 2, 2020

²⁰Judicial Activism in Protecting Privacy in India: A Critical Analysis," *Indian Journal of Public Administration*, Vol. 66, No. 2, 2020

²¹Judicial Review and Protection of Privacy in India: An Empirical Study," *Indian Journal of Law and Public Policy*, Vol. 10, No. 2, 2020

²²Comparative Analysis of Privacy Laws: India, United States, and European Union," *Journal of International Commercial Law and Technology*, Vol. 11, No. 3, 2016

²³Privacy as a Fundamental Right: A Comparative Analysis of Indian and European Perspectives," *International Comparative Legal Guide to: Data Protection 2020*.



By implementing these suggestions, India can strike a balance between freedom of the press and the protection of individual privacy, ensuring responsible journalism that respects the fundamental right to privacy.

Conclusion

It's important to note that the regulatory landscape for media in India is complex, and media laws and regulations continue to evolve to address new challenges posed by digital and online media. Balancing the right to freedom of expression with responsibilities toward ethical and responsible journalism is an ongoing endeavor in India's media regulatory framework.





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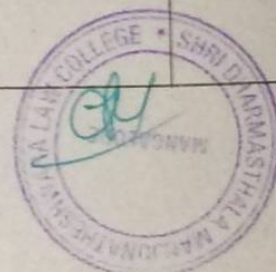
FREEDOM OF MEDIA IN INDIA

(Peer Reviewed)



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Navigating Misinformation: Addressing the Challenge of Fake News in Indian Media

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Ashwini Suraj²

Sreelakshmi V Hariharan³

Abstract

The Indian Constitution guarantees all citizens freedom of speech and expression; however, this freedom is not absolute and must not disrupt societal harmony. In the digital age, the proliferation of fake news on social and mainstream media in India has become pervasive. This phenomenon has serious consequences, as fake news spreads rapidly without verification, leading to societal crises such as animosity, communal violence, and various criminal activities. This paper delves into the dynamics of fake news and its impact on Indian society and proposes strategies to combat misinformation. Additionally, it explores how other nations are addressing the menace of fake news, shedding light on potential solutions for India.

Keywords: Fake news, India, strategies, misinformation

Introduction

Fake news poses an escalating challenge within the Indian media landscape. The dissemination of inaccurate and deceptive information erodes trust in news outlets and can harm individuals and society. Fake news entails deliberately circulating false information by deceptive news sources, typically with political or commercial motives.⁴ According to the Press Council of India, fake news is "news, stories, information, data, and reports that are wholly or partially false." In this era characterized by a disregard for objective truth, the proliferation of fake news has extended its grip globally, affecting emerging economies like

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⁴ Fake News in India: Scale, Diversity, Solution, and Opportunities | November 2022 | Communications of the ACM



India.⁵ While this issue is not entirely novel, it has garnered increased attention in recent years due to the extensive use of social media platforms, which facilitate the rapid dissemination of erroneous information. Erroneous news can induce panic, bewilderment and even violence. India has experienced a pronounced issue with fake news, with instances of lynching and communal violence associated with disseminating false information. It highlights the imperative for media organizations to exercise responsibility in reporting and for individuals to exercise discernment when consuming news.⁶ The propagation of fake news carries substantial repercussions, underscoring the necessity for individuals to recognize the potential harm that may arise from accepting and disseminating false information.

Effectively addressing the issue of fake news in India requires a comprehensive approach. A 2019 survey unveiled that 88 percent of first-time voters nationwide recognized the prevalence of fake news⁷. Various strategies have been employed in the battle against the dissemination of false information, including fact-checking campaigns, educational programs aimed at enhancing media literacy and implementing governmental regulations. Notably, Fact Drill, a repository dedicated to archiving fact-checked social media narratives, is an illustrative initiative facilitating the analysis of fake news incidents in India.⁸ Despite these commendable endeavors, the fake news persists. Consequently, the responsibility for addressing this issue lies with individuals who must exercise vigilance and responsibility when consuming and sharing news.

Causes for the Spread of Fake News in Indian Media

One of the leading causes of the spread of fake news is political propaganda. Political parties and their supporters often use social media and other platforms to spread false information and propaganda to influence public opinion and gain support.⁹ It is particularly prevalent during elections when political parties use fake news to discredit their opponents and promote

⁵ www.aipor.org/article/19049-social-media-fake-news-in-India

⁶ www.ncbi.nlm.nih.gov/pmc/articles/PMC8502082/

⁷ www.theatlantic.com-international-archive-2019

⁸ In India, Debunking Fake News and Running into the Authorities - The New York Times (nytimes.com)

⁹ www.statista.com/topics/5846/fake-news-in-india/



their agendas. The spread of fake news through political propaganda can have severe consequences, including inciting violence and causing social unrest¹⁰.

Clickbait and sensationalism are other factors contributing to the spreading of fake news in Indian media.¹¹ Many media outlets use clickbait headlines and sensationalized stories to attract more readers and increase revenue. It often leads to the dissemination of false information, as the focus is on generating clicks and views rather than verifying the information's accuracy. This practice not only undermines the credibility of media outlets but also has the potential to misinform and mislead the public. The lack of fact-checking and verification is another significant cause of the spread of fake news in Indian media. Many media outlets do not have a robust fact-checking process, allowing false information to be published and disseminated. It is particularly concerning in the age of social media, where false information can spread rapidly and widely. The lack of verification also allows the propagation of fake news through traditional media channels, such as television and newspapers, which can significantly impact public opinion. Therefore, media outlets need to prioritize fact-checking and verification to ensure the information's accuracy and credibility.

The Impact of Fake News on Indian Society¹²

The proliferation of fake news within Indian media has recently emerged as a pressing concern, causing misinformation and perplexity within society.¹³ Social media platforms have emerged as a predominant channel for disseminating fake news, resulting in widespread perplexity, and eroding trust in media outlets. According to a 2019 study by Rocha et al., fake news can substantially influence people's perspectives and convictions, engendering the spread of false information. The extensive dissemination of fake news has created a predicament where individuals frequently struggle to differentiate between reality and deception, leading to a breakdown in interpersonal communication and trust among various segments of society¹⁴. Another consequence of fake news in Indian society is its role in fomenting polarization and discord. Fake news often targets specific groups or communities,

¹⁰ www.ncbi.nlm.gov/pmc/articles/PMC9771845

¹¹ Anurag Thakur Cautions Against Clickbait Headlines, Fake News (outlookindia.com)

¹² <https://researchguides.austincc.edu/c.php?g=612891&p=4258046>

¹³ Social Sciences | Free Full-Text | Understanding Fake News Consumption: A Review (mdpi.com)

¹⁴ (Why) Is Misinformation a Problem? - Zoë Adams, Magda Osman, Christos Bechliyanidis, Björn Meder, 2023 (sagepub.com)



fueling the dissemination of hate speech and the endorsement of divisive ideologies. Which, in turn, can precipitate social unrest and violence, as evidenced in recent years. Fake news fosters an "us vs. them" mindset, corroding social unity and propagating intolerance and prejudice.¹⁵ Consequently, fake news represents a significant menace to the social cohesion and fabric of Indian society.

The spread of fake news in Indian media also poses a significant threat to democracy and free speech. Fake news can manipulate public opinion, leading to the election of officials who do not have the people's best interests.¹⁶ It can also silence dissenting voices and stifle free speech, as seen in several instances where journalists and activists are targeted for speaking out against the government or powerful individuals. Thus, the spread of fake news in Indian media seriously threatens the democratic principles of the country.

Examples of Fake News in Indian Media^{17,18}

- One common area where fake news has been particularly problematic is concerning the COVID-19 pandemic.¹⁹ For example, there have been reports of fake news about cures for the virus and conspiracy theories about the pandemic's origins. Such misinformation can have serious consequences, leading individuals to engage in unsafe behaviors or to distrust public health officials and medical advice²⁰.
- Arundhati Roy was falsely attributed with a statement claiming that "seventy lakh Indian soldiers cannot defeat Azadi gang in Kashmir." This fake statement originated from an obscure Pakistani website called timesofislamabad.com. It was circulated in India by Postcard News, Republic TV, and CNN and launched prime-time debates attacking Roy based on this fake news. However, the investigation by The Wire revealed the truth behind the fake outrage, and the news laundry apologized for its editorial oversight and retracted a piece related to the incident. Republic TV and CNN did not issue retractions or apologies.
- In another instance, a report was that President Kovind gained three million new Twitter followers in an hour. In reality, he had inherited the followers of his

¹⁵ www.ncbi.nlm.nih.gov/pmc/articles/PMC8604707/

¹⁶ www.bbc.com/news/world-Asia-India-47878178

¹⁷ Top 12 fake news stories circulated by mainstream media in 2017 (newslaundry.com)

¹⁸ Here Are the Biggest Stories the Media Got Wrong in 2020 (thewire.in)

¹⁹ www.tandfonline.com/doi/full/10.1080/23736992.2022.2056038

²⁰ www.mdpi.com/2673-5172/2/1/7



predecessor as Twitter follows a strategy for the digital transition when a new occupant takes office, preserving the digital history of the previous occupant. Indian media outlets failed to fact-check and reported this as a significant event.

- TV9 Bharatvarsh falsely claimed that an unidentified virus affecting tomatoes in Maharashtra was a more dangerous version of the coronavirus. They urged people to stop eating tomatoes due to this false linkage, creating unnecessary panic.
- TV9 Bharatvarsh, Times Now, and ABP news ran unverified videos claiming that Taiwan's military had shot down a Chinese aircraft. Taiwan's Ministry of National Defence later refuted this claim, highlighting the irresponsible reporting by these news outlets.
- Following the death of a pregnant elephant in Kerala, several mainstream news outlets reported that the elephant had been intentionally fed a pineapple laden with explosives in Malappuram district. It led to bigoted attacks on social media. However, forest officials clarified that the incident was accidental and occurred in Palakkad, not Malappuram.
- Misleading political campaigns are another area where fake news has become a significant issue in Indian media. During election seasons, fake news is often spread to sway public opinion or to discredit opposing candidates²¹. For instance, in the 2019 general elections, numerous instances of fake news were circulated on social media platforms such as WhatsApp and Facebook, including false information about voting procedures and election surveys. Such disinformation campaigns can significantly impact the outcome of elections and undermine the democratic process.
- Fake social media profiles and accounts are also a common source of fake news in Indian media. These accounts are often created to spread false information or to promote a particular agenda. For example, in the run-up to the 2019 general elections, there were reports of fake Twitter accounts being used to spread propaganda and misinformation. Such accounts can be difficult to identify, and their extensive reach makes it challenging to counter the spread of fake news.

These incidents underscore the importance of responsible journalism and fact-checking in the age of rapid news dissemination and the potential consequences of misinformation and sensationalism in the media.

²¹ www.theatlantic.com-international-archive-2019



The Role of Social Media in the Spread of Fake News²²

Social media platforms facilitate the swift sharing of material, fostering the rapid dissemination of fake news. The inherent virality of social media simplifies the process of fake news reaching a substantial audience swiftly, frequently devoid of any fact-checking or validation.²³ The potential repercussions of such dissemination are significant, as false information can result in misinterpretations, discord, and, in some cases, even acts of violence, both at the individual and societal levels.

The rapid dissemination of fake news on social media is partially attributed to the presence of echo chambers and confirmation bias. Echo chambers represent the inclination of individuals to actively seek and propagate information that aligns with their preexisting beliefs and viewpoints.²⁴ This behavior fosters an environment where fake news finds a more receptive audience and is more likely to be endorsed and shared due to its alignment with the established convictions of those who encounter it. Conversely, confirmation bias denotes the propensity of individuals to selectively interpret information in a manner that substantiates their existing beliefs and perspectives. This cognitive bias can impede people from recognizing and discrediting fake news, even with contradicting evidence.

Several strategies have been employed to tackle disseminating fake news on social media platforms. These strategies encompass the introduction of fact-checking mechanisms and partnerships with external organizations to validate the accuracy of content. Despite these efforts, the continued prevalence of fake news on social media poses a persistent challenge. The onus for addressing this issue lies jointly with social media platforms and individuals. Both stakeholders must adopt a vigilant and discerning approach when encountering online information. By exercising caution and verifying the information before dissemination, individuals can actively contribute to mitigating the spread of fake news and nurturing a more enlightened and responsible media environment.

The Responsibility of Journalists and Media Outlets

²² Social Media Fake News in India | Published in Asian Journal for Public Opinion Research (ajpor.org)

²³ academic.oup.com/book/39398/chapter/339090789

²⁴ www.ncbi.nlm.nih.gov/pmc/articles/PMC9548403/



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Upholding the principles of ethical journalism is imperative in preserving public trust and fulfilling the media's crucial role as a guardian of democracy.²⁵ Journalists should rigorously adhere to stringent ethical guidelines, including source verification, avoidance of sensationalism, and practicing objective reporting. By following these principles, they can actively contribute to combating the proliferation of fake news and the dissemination of misinformation.

Fact-checking and verification play a pivotal role in stemming the dissemination of fake news. Journalists and media establishments are responsible for guaranteeing the accuracy and dependability of their information.²⁶ It necessitates comprehensive research and the meticulous verification of sources before publishing any news article. Furthermore, media organizations should establish robust mechanisms for fact-checking and rectifications. This proactive approach mitigates the propagation of erroneous information and safeguards the media's credibility.

Accountability and rectification represent indispensable components in the battle against fake news. Media organizations and journalists should be subject to scrutiny and be ready to rectify any mistakes or inaccuracies in their reporting. This practice not only serves to curtail the dissemination of erroneous information but also aids in reinstating the public's confidence in the media. Moreover, media establishments should establish a framework for disseminating corrections and clarifications to their audience. By assuming responsibility for their reporting, journalists and media outlets can contribute significantly to addressing the issue of fake news in Indian media, guaranteeing the public's access to accurate and trustworthy information.

Government Regulations and Policies to Combat Fake News

The Indian government has employed various strategies to tackle the surge in fake news within the media landscape.²⁷ A notable approach involves introducing legal consequences for individuals disseminating false information. In 2023, the government implemented the

²⁵ ethicaljournalismnetwork.org/fake-news

²⁶ The disaster of misinformation: a review of research in social media | International Journal of Data Science and Analytics (springer.com)

²⁷ blog.ipleaders.in/legal-implications-of-spreading-fake-news/



Information Technology (Intermediary Guidelines and Digital Media Ethics Rules, which place the onus on social media platforms for the content posted on their platforms and impose penalties for the propagation of fake news. This legislative intervention has demonstrated its effectiveness in discouraging fake news dissemination and holding individuals accountable for their actions.

The government has also established fact-checking agencies to verify the authenticity of news stories. The Press Information Bureau (PIB) and the fact-checking website FactChecker, are two such agencies that work to verify news stories and expose fake news. These agencies ensure that accurate and reliable information is disseminated to the public.

Alongside legal repercussions and fact-checking organizations, the promotion of impartial and equitable reporting plays a crucial role in the fight against fake news. Journalists and media establishments must deliver objective and fact-based information, free from political or commercial predisposition. It requires upholding journalistic ethics and principles, including rigorous source verification and fact-validation before publication. By championing balanced and unbiased reporting, the media can reestablish public trust and bolster confidence in the veracity of news reporting.

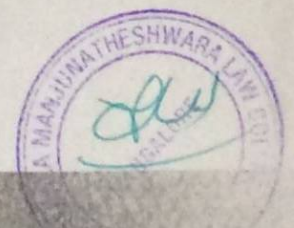
Education and Media Literacy

Disseminating false or misleading information via conventional and interpersonal communication channels can deceive and sway public sentiment.²⁸ Therefore, cultivating critical thinking skills and promoting media literacy education have assumed heightened importance in the battle against fake news. Empowering individuals with the ability to recognize and assess information sources equips them to make more informed judgments regarding the credibility and trustworthiness of news reports.

Approaches to imparting media literacy encompass integrating media analysis into educational curricula and offering accessible resources to enhance individuals' media literacy proficiencies.²⁹ Stoddard's 2021 study revealed that media literacy education within school

²⁸ India fake news problem fueled by digital illiteracy – DW – 03/02/2021

²⁹ How to combat fake news and disinformation | Brookings



programs can result in heightened critical thinking abilities and more significant skepticism when evaluating news outlets.³⁰ Furthermore, equipping individuals with resources like fact-checking websites and facilitating media literacy workshops can enhance their capacity to distinguish genuine news from fake information.

Ultimately, individuals are responsible for combatting fake news by being more discerning about the information they consume and share.³¹ It includes fact-checking news stories before sharing them on social media and being aware of the potential for bias in news reporting.³² Fact-checking websites like AltNews have emerged in India to combat fake news on social media. By actively combating fake news, individuals can help ensure accurate and reliable information is disseminated through Indian media.

International Examples for Tackling Fake News³³

The issue of fake news has extended its reach globally, prompting various nations to adopt effective countermeasures.³⁴ For instance, in Germany, stringent regulations require social media firms to expeditiously remove hate speech and fake news, with the risk of fines reaching €50 million for non-compliance within a 24-hour timeframe following notification. Meanwhile, France has enacted legislation to combat fake news during electoral periods, empowering judges to remove content or block websites when false information is disseminated.³⁵ These approaches have demonstrated their effectiveness in curbing the proliferation of fake news in these nations and offer valuable templates for others to consider.

Collaborative efforts have also been successful in combating fake news.³⁶ For example, a coalition of media outlets in the United States, including The New York Times and The Washington Post, have joined forces to fact-check political statements and debunk false information³⁷. In India, the non-partisan fact-checking website AltNews aims to curb

³⁰ www.pnas.org/doi/10.1073/pnas.1920498117

³¹ A Media Education Programme for Students in India to Challenge Misinformation - Information Saves Lives | Internews

³² https://ssir.org/articles/entry/combating_fake_news_in_india

³³ <https://www.jstor.org/stable/10.2307/resrep17648.8>

³⁴ <https://www.deutschland.de/en/topic/culture/fact-checking-in-germany-recognizing-fake-news>

³⁵ <https://www.rfi.fr/en/france/20210605-france-creates-agency-to-fight-foreign-fake-news-aiming-to-undermine-the-state-cybercrime-russia-united-states-elections-brexit>

³⁶ <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1535&context=jmle>

³⁷ <https://libguides.lib.cwu.edu/c.php?g=625394&p=4391900>



misinformation on social media.³⁸ These collaborative efforts have effectively increased public awareness of the problem and reduced the spread of fake news.

The United Nations has acknowledged the significance of addressing fake news and has advocated for a coordinated global effort to tackle this issue.³⁹ International entities like UNESCO have initiated programs to advance media and information literacy, empowering individuals to recognize and combat fake news. Embracing a global approach to address the fake news challenge can enhance the dissemination of accurate information and equip individuals with improved discernment between genuine and counterfeit news.

Identifying Fake News:⁴⁰

In today's digital landscape, where fake news is rampant, it is essential to develop critical thinking skills to identify and avoid falling for misinformation and fake news. The following strategies can be used to navigate the news.⁴¹

1. **Verify the source:** Check the source's credibility before believing or sharing any news. Look for reputable news organizations that have a history of accurate reporting.
2. **Cross-reference information:** Cross-check the information with multiple sources to ensure its veracity. If a story is only reported by a single source, it is advisable to be cautious.
3. **Check for bias:** Be aware of the biases and agendas of media organizations. News reports that align with a particular narrative without presenting multiple perspectives may be biased.
4. **Scrutinize the evidence:** Examine the evidence presented in a news story. Look for inconsistencies, lack of credible sources, or doctored images/ videos.
5. **Consider the tone:** Pay attention to the tone of a news story. Sensational or clickbait headlines are often a red flag for fake news.

Conclusion

³⁸ https://ssir.org/articles/entry/combatting_fake_news_in_india

³⁹ fake news | UN News

⁴⁰ <https://www.lib.sfu.ca/help/research-assistance/fake-news>

⁴¹ <https://kpmg.com/xx/en/home/insights/2021/09/clues-to-help-identify-fake-news.html>



Despite efforts to confront the issue of fake news within Indian media, the challenge endures, posing a continued risk to the credibility of journalism and the democratic framework⁴². Individuals must sustain their vigilance and stay mindful of the likelihood of encountering misinformation within the media landscape. It involves actively verifying information sources and exercising caution when confronted with sensationalized headlines that may lack accuracy.⁴³ By staying well-informed and maintaining a critical stance towards media content, individuals can play a pivotal role in thwarting the proliferation of fake news and advocating for trustworthy journalism.

Nevertheless, the prospect of fostering positive change exists in the battle against fake news within the Indian media landscape. As technology progresses, innovative tools and methodologies emerge to detect and counteract fake news. Social media platforms are actively tackling misinformation by introducing fact-checking functionalities and diminishing the exposure of false content. Through the ongoing advancement and application of these successful strategies, there is optimism for diminishing the prevalence of fake news in Indian media.

Media plays a pivotal role in keeping the public informed and ensuring transparency and accountability among those in positions of authority. Nonetheless, the proliferation of fake news poses a substantial risk of eroding trust and credibility within the media sphere. Media establishments must give precedence to precision and ethical conduct in their reporting, while individuals should endorse trustworthy information sources. By advocating for trustworthy journalism and demanding accountability from media entities regarding their reporting, we can contribute to safeguarding the enduring significance and influence of the media within a democratic society.

⁴² Despite being exposed, fake news thrives on social media ahead of India polls | Reuters

⁴³ Fake news: is media literacy the answer? | David Buckingham





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Financial Institutions and their Role in Entrepreneurship Development

Apeksha S. Kottari¹

Abstract

Entrepreneurs are the agents that help drive the country's economy by using their skills to anticipate what their customer wants and bring new ideas into the market. In recent years, the young generations have preferred self-employment over working for a company or an organization. One of the essential requirements for any entrepreneur to bring their ideas and plan into action is investing capital in it. There are different ways to invest in their business, i.e., through savings, funds collected from friends and families, bank loans, financial institutions, Government schemes, and others. In this study, the researcher has chosen Mangaluru city to study various financial institutions and their role in Entrepreneurship Development. The study is based on primary data collected through the personal interview method. It can be inferred from the data collected that most respondents were aware of the government schemes but had limited knowledge about them. Even though most respondents knew the various schemes and loans offered by the banks, they were hesitant to utilize them as they needed sufficient knowledge and information about them, as the information provided needed to be more comprehensive. Moreover, they assumed that the procedure was time-consuming due to other pre-determined thoughts about schemes. There is a need to make people understand the practical applications of these loans and schemes and help them to avail the various benefits provided by the Institutions set up by the government.

Introduction

An entrepreneur is an individual who creates a new business, bearing the risks and enjoying its rewards. The entrepreneur is an innovator, a source of new ideas, goods, services, procedures, and business. An entrepreneur: 'is an economic agent who unites all means of production; 'the land of one,' 'the labor of another,' and the 'capital of yet another,' thus producing a product.

Entrepreneurship is the process of designing, launching, and running a new business. It is the capacity and willingness to develop, organize and manage a business venture along with any of its risks to make a profit. Entrepreneurship plays an imperative role in the growth of any society. Entrepreneurship emerges from an individual's creative spirit into long-term business

¹ Assistant Professor, (Department of Commerce, BBA.LLB), SDM Law College, Mangaluru



ownership, employment creation, capital formation, and economic security.

Entrepreneurs shape the financial destiny of nations by creating wealth and employment, offering products and services, and generating taxes for governments; hence entrepreneurship is linked to the country's financial growth. Entrepreneurs convert ideas into financial opportunities through innovations. India has been rising at a comparatively high rate in the last few years and is likely to be the leading financial system in the world by 2050. The liberalization of the economy since 1991 has cemented the way for a notable figure of people to become entrepreneurs. Entrepreneurship can be cultivated among the present youth and can be developed systematically with the help of Banks and financial institutions. Both government and various manufacturing endorsement and support institutions are making considerable efforts to facilitate the process of the emergence of new entrepreneurs for setting up enterprises in the small-scale sector. These efforts are concerned with making good-looking schemes for the availability of finance and various other assistance, including technical know-how and training.

There are a large number of financial institutions like 'The Industrial Finance Corporation of India (IFCI),' 'The Industrial Credit Investment Corporation of India (ICICI),' 'The Industrial Development Bank of India (IDBI),' 'Small Industries Development Bank of India (SIDBI),' 'Karnataka State Financial Corporation Ltd. (KSFC)' and various commercial banks provide financing assistance to entrepreneurs. Various other institutions provide support to entrepreneurs in starting their enterprises, such as National Small Industries Corporation Ltd. (NSIC), Small Industries Development Organization (SIDO), Small Industries Service Institutes (SISIs), Technical Consultancy Organizations (TCOs), Karnataka State Small Industries Development Corporation (KSSIDC) and many more.

Entrepreneur and Financing

Finance is the crucial input of production, distribution, and development and is a prerequisite for accelerating the entrepreneurship development process. An entrepreneur requires capital to put the plan into action. Capital can be procured through various ways, such as investing with our savings, collecting money through friends and relatives, and availing loans from banks, Government schemes, and financial institutions. Entrepreneur has to decide which source to use based on their capital requirement and type of business.

Role of Banks in Financing Entrepreneurs

The banks play an essential role in the development and promotion of entrepreneurship. Entrepreneurs out there want to start their businesses but need more capital. Banks are one of the ways that entrepreneurs use to fund their businesses.

It is difficult for most entrepreneurs to raise funds through equity because they need sufficient financial knowledge. Moreover, with funds, businesses can grow.; hence loans are the primary source of funding for entrepreneurs.

Different Types of Loans Available at Banks are as follows:

- **Secured loan:** a loan in which the borrower pledges some asset (e.g., a car or property) as collateral for the loan, which then becomes a secured debt owed to the creditor who gives the loan. The debt is thus secured against the collateral. If the borrower defaults, the creditor takes possession of the asset used as collateral and may sell it to regain



some or the entire amount initially loaned to the borrower. When a lender knows one well and is convinced that the business is sound and the loan would be repaid on time, the lender may be willing to provide an unsecured loan that does not require any collateral.

- **Term loan:** is usually repaid in regular payments over a set period. Term loans usually last between one and ten years but may sometimes last as long as 30 years. A term loan usually involves an unfixed interest rate that will add a balance to be repaid.
- **Mortgage:** a loan used either by purchasers of real property to raise funds to buy real estate or by existing property owners to raise funds for any purpose while putting a lien on the mortgaged property. The loan is "secured" on the borrower's property through a process known as mortgage origination. It means that a legal mechanism is in place which allows the lender to take possession and sell the secured property to pay off the loan if the borrower defaults on loan or otherwise fails to abide by its terms.
- **Inventory loans and equipment loans:** for purchasing and secured by equipment or inventory. It is a one-time loan offered to borrowers to cope with emergency cash requirements against the resale value of the inventory.
- **Personal loan:** is an amount of money one can borrow to use for a variety of purposes. It describes any situation in which an individual borrows money for personal needs, including making investments in a company. It does not require collateral or security and is offered with minimal documentation.
- **A guaranteed loan** is a loan that a third party guarantees or assumes the debt obligation for if the borrower defaults.
- **Commercial loan:** in which the bank offers its standard loan for small businesses. A commercial loan is a financial instrument that business owners can avail of to address any short-term capital needs. The sanctioned amount can increase the working capital, acquire new machinery, build new infrastructure, meet operational costs, and other such expenditures.

Financial Institutions

Finance is made available to entrepreneurs by the financial institution set up by the government as a network of particular financial institutions with a reasonably significant capital base to provide financial assistance to all industries, including small-scale industries. In order to provide financial assistance to entrepreneurs, the government of India has set up several financial institutions besides commercial banks.

Some of the Financial Institutions are given below:

- **IFCI (Industrial Finance Corporation of India):** The purpose of setting up this was to provide medium and long-term credit to eligible industrial firms. It was the first development bank in the country, established in 1948 to provide financial assistance to medium and large industrial projects in the corporate and cooperative sectors of the country. It has actively promoted the industry to strengthen the base and deepen industrialization in its multifaceted form.

Assistance from IFCI single-handedly or jointly with other institutions is available for:

- a) Setting up new industrial projects



- b) Expansion of existing units/Diversification into new lines of activity
 - c) Renovation/Rehabilitation/Modernisation of existing units
 - d) It provides needed guidance in project evaluation, identification, formulation, implementation, operation, and others.
 - e) It gives its helping hand concerning technical and administration
 - f) It undertakes research and survey for the sake of industrial development
- **ICICI (Industrial Credit and Investment Corporation of India Ltd.)**

ICICI was established in 1955 as a private institution to assist long-term funds for capital assets and project promotional services. The primary purpose of assistance is to provide long-term funds for capital assets like land, buildings, and machinery. It has set up a project promotion department to provide promotional services and assistance to individual projects on a selective basis.

ICICI performs various functions.

- a) Direct subscription to securities.
 - b) Provide long-term loans in rupees.
 - c) Provides loans in foreign currencies.
 - d) Guaranteeing payments for credits.
 - e) Providing credit facilities to indigenous manufacturers.
 - f) Leasing of equipment.
 - g) It conducts the techno-economic survey for backward areas.
- **IDBI (Industrial Development Bank of India):** IDBI was established in 1964 as an apex lending financial institution and reconstructed as the principal financial institution.

IDBI provides the following assistance for the development of industries

- a) Direct assistance to industrial concerns in the form of the underwriting of shares and debentures.
 - b) Soft loans for modernization, renovation, and replacement of existing industry.
 - c) Rediscount bills arising out of sales of indigenous machinery on deferred payment.
 - d) Finances exports in the form of direct loans and guarantees to exporters.
 - e) Assists other financial institutions by way of subscription to their shares and bonds.
 - f) Engages in promotional activities to bring about industrial development.
- **SIDBI (Small Industries Development Bank of India):** SIDBI was set up as a subsidiary of IDBI by a Special Act 1989 to function as the principal financial institution for the promotion, development, and financing of industry in the small-scale sector and for coordinating the functions of institutions engaged in similar activities.

Following is the assistance provided by the SIDBI.

- a) Refinancing of loans and advances extended by primary lending institutions.
- b) Discounting and rediscounting of bills.



- c) Extension of risk capital or soft loan assistance to industries.
- d) Extending financial support to SSIDC and NSIC.
- e) Technological upgradation and modernization services to the industries.
- f) Promotes employment-oriented industries, especially in a semi-urban area.

- **KSFC:** Karnataka State Financial Corporation operates as a financial institution. The Company provides short-term business credit and sales financing assistance to small businesses. The corporation's objective is to promote industrial activity in Karnataka by providing financial assistance to small and medium-sized industries. The assistance is usually in term loans up to Rs. 10 crores, mainly to first-generation entrepreneurs.

Other Institutions Supporting Entrepreneurs

The Institutional setup is the primary factor for the growth and success of any small-scale industry. The government has planned very well in this context to meet the requirements of the rapidly growing small-scale industrial sector. An entrepreneur gets many types of assistance from different institutions.

Some of the Institutions supporting entrepreneurs are as follows:

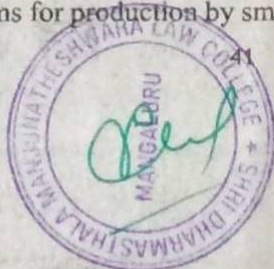
- **NSIC (National Small Industries Corporation Ltd.):** The National Small Industries Corporation (NSIC), set up in February 1955, is a central agency for promoting and assisting small-scale industries in the country. It has been providing institutional assistance to this vital sector of the economy. It has played a significant role in developing small-scale industry, entrepreneurial base, employment generation, rural and backward areas development, increased share of assistance to SC/ ST, weaker sections of the society, ex-servicemen, and women entrepreneurs.

Functions of NSIC

- a) Supply of indigenous and imported machines on a lease basis to existing units for expansion, diversification, and modernization
- b) Marketing of small industries products within the country
- c) Supply and distribution of indigenous and imported raw material
- d) Technical training in several industry trends to create a technical culture in the young entrepreneurs
- e) Procuring government orders for small-scale units
- **SIDO (Small Industries Development Organisation):** It is an apex body and nodal agency for formulating, coordinating, and monitoring the policies and programs for promoting and developing small-scale industries.

The main functions performed by the SIDO are:

- a) To evolve a national policy for the development of small-scale industries,
- b) To coordinate the policies and programs of various State Governments,
- c) To coordinate the programs for the development of industrial estates
- d) To reserve items for production by small-scale industries,



- e) To collect data on consumer items imported and then encourage the setting of industrial units to produce these items by giving coordinated assistance.
- f) To provide consultancy and training services to strengthen the competitive ability of small-scale industries.
- **SISI (Small Industries Service Institutes):** The Small Industries Services Institutes (SISIs) are set up to provide consultancy and training to small entrepreneurs - both existing and prospective. The activities of SISIs are coordinated by the Industrial Management Training Division of the DCSSI's office. There are 28 SISIs and 30 branches set up in State capitals and other places all over the country.

The main functions of SISIs include the following:

- a) To serve as an interface between Central and State Governments.
- b) To render technical support services.
- c) To conduct Entrepreneurship Development Programmes.
- d) To initiate promotional programs.
- e) Help in the preparation of project profiles
- f) Workshop facilities.
- g) Training in various trades/activities.
- **TCO (Technical Consultancy Organizations):** TCOs set up in the early seventies/ eighties to provide a package of comprehensive consultancy services covering all stages in the project cycle under a single roof. TCOs also provide consultancy services to State Governments, state-level development financing institutions, and banks. The main thrust of TCOS operations is in the area of preparation of project reports and feasibility reports. Having gained experience over the years, TCOs have diversified into identifying potential entrepreneurs and their training, project implementation rehabilitation, management consultancy, and detailed design engineering.

The significant activities of TCOs are:

- a) Carrying out potential industrial surveys, identification of project ideas, project formulation
- b) Evaluation of projects referred to them.
- c) Preparation of project profiles and feasibility studies.
- d) Conduct area development and marketing surveys.
- e) Assisting entrepreneurs in their modernization and technical upgradation program.
- f) Conduct EDPs, entrepreneurship awareness camps, and training programs.
- g) Identify the potential entrepreneurs and provide them with technical management assistance
- h) Undertaking market research and surveys for specific products.
- i) Undertaking export consultancy for export-oriented projects based on modern technology



- **KSSIDC (Karnataka State Small Industries Development Corporation):** The principal objective is to promote and develop Small Scale Industries in the state. Construction and infrastructure utilization, especially in backward areas, procurement and marketing of raw materials, technical support, and assistance are the means to 'reach the goals. An industrially prosperous Karnataka is their vision.

Karnataka State Small Industries Development Corporation (KSSIDC) is an agency promoted by the Government of Karnataka to promote and develop small-scale industries in the state. KSSIDC industrial estate has other infrastructures like roads, drainage, street lighting, water supply, and typical service buildings like banks, post office, and canteen. It has provided ready-built sheds and small plots and made them available for allotment to entrepreneurs; KSSIDC has also opened raw material depots in all the state districts. Entrepreneurs shall contact the agency for allotment of the shed and raw materials; KSSIDC has regional offices at Bangalore, Mysore, Gulbarga, and branch offices at Hubli, Belgaum, Shimoga, Tumkur, Mangalore.

Government Schemes in India

The Indian government has developed various schemes that benefit Entrepreneurs and support them in establishing their enterprises. These schemes motivate prospective entrepreneurs to start up their enterprises.

The different government schemes are as follows:

- a) MSME business loans in 59 minutes is a government initiative targeted towards providing immediate capital to companies belonging to the Micro, Small, and Medium Enterprises. The Indian government has introduced the MSME loan in the 59 minutes scheme to enhance the process through which the MSMEs get credit. The MSME loans in 59 minutes scheme allow MSME business owners to avail of an instant business loan from a list of Public Sector Banks (PSBs). The 59 minutes loan ensures that MSME business owners get in-principle approval for a business loan of up to Rs 5 crore in 59 minutes from various public sector banks.
- b) Pradhan Mantri MUDRA Yojana (PMMY) is a scheme launched by the Hon'ble Prime Minister on April 8, 2015, for providing loans of up to 10 lakhs to non-corporate, non-farm small/micro enterprises. These loans are classified as MUDRA loans under PMMY. Commercial Banks, RRBs, Small Finance Banks, MFIs, and NBFCs give these loans.

Under the aegis of Pradhan Mantri MUDRA Yojana, MUDRA has already created the following products/schemes.

1. Shishu: covering loans upto 50,000/-
 2. Kishor: covering loans above 50,000/- and upto five lakhs
 3. Tarun: covering loans above five lakhs and upto ten lakhs
- c) The CGMSE, launched in 2000, is a monetary support scheme for micro and small enterprises. It offers collateral-free credit for new and existing business units that satisfy its eligibility criteria. The scheme provides working capital loans up to 10 lakhs without any collateral.



- d) Stand-Up India Scheme is for financing SC/ ST and Women entrepreneurs. It facilitates bank loans between Rs 10 lakh and Rs 1 Crore to at least one Scheduled Caste (SC) or Scheduled Tribe (ST) borrower and at least one woman borrower per bank branch for setting up a greenfield enterprise. This enterprise may be in manufacturing, services, or the trading sector. In non-individual enterprises, at least 51% of the shareholding and controlling stake should be held by either an SC/ST or a woman entrepreneur.
- e) The bank credit facilitation scheme is to meet the credit requirements of MSME units; NSIC has entered into a Memorandum of Understanding with various Nationalized and Private Sector Banks. Through syndication with banks, NSIC facilitates credit support to MSMEs (fund-based or non-fund-based limits) from these banks. Any MSME Unit can directly approach the nearest branch office and submit their request application for loan requirements from any of these banks under the tie-up agreement.
- f) SIDBI Make in India Loan for Enterprises (SMILE) scheme was also launched by the Government of India. The scheme intends to take forward the Make in India campaign of the Government of India and help MSMEs participate. The focus will be on identified twenty-five sectors under the 'Make in India' program' with an emphasis on financing smaller enterprises within the MSME sector. The SIDBI Make in India Loan for Enterprises (SMILE) scheme aims to support new & existing MSMEs in purchasing growth opportunities.

Objectives

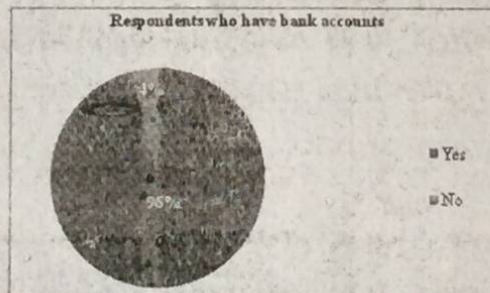
- To study the awareness entrepreneurs have about the government schemes and loans provided by the bank.
- To study the modes of acquiring initial investment.
- To study the flow of working capital.

Methodology

The study was conducted in Mangaluru, Karnataka data was collected from 50 participants through a questionnaire and personal interviews. The respondents include only residents of Mangaluru city. Available secondary data was extensively used for the study.

Data Analysis and Interpretation

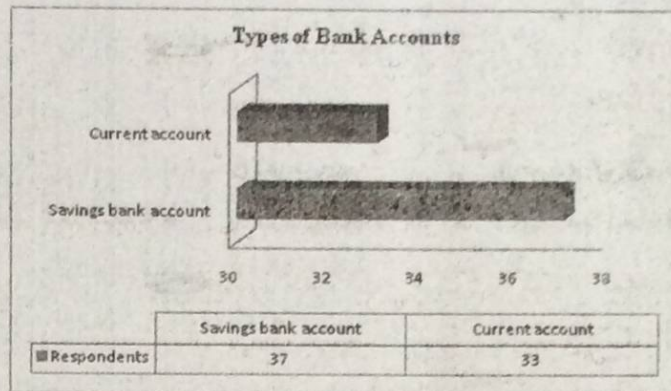
1) The following chart shows respondents who have bank accounts.



Interpretation: Out of 50 respondents, 96% have bank accounts, whereas 4% do not.

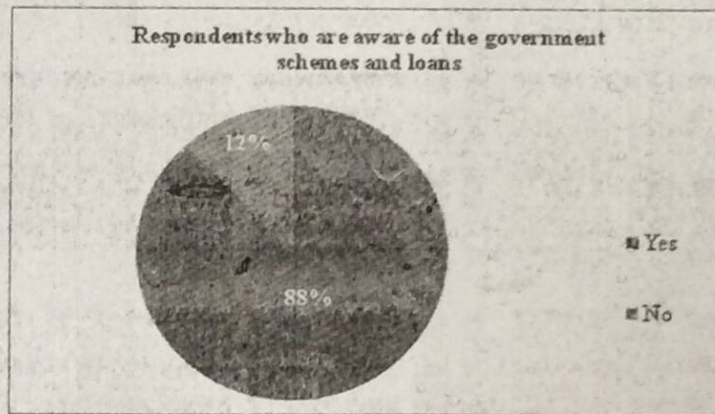


2) Banks offer different types of accounts to their customers. The following chart shows the type of bank account respondents has.



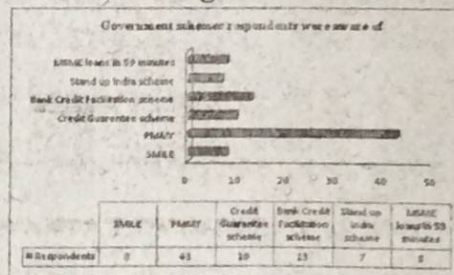
Interpretation: Out of 96% of respondents, who have bank accounts, 37 have savings bank accounts, and 33 have current accounts.

3) The government offers various schemes and loans to entrepreneurs. The following chart shows the awareness entrepreneurs have.



Interpretation: Out of 50 respondents, 88% know the government schemes and loans offered at banks, whereas 12% are unaware.

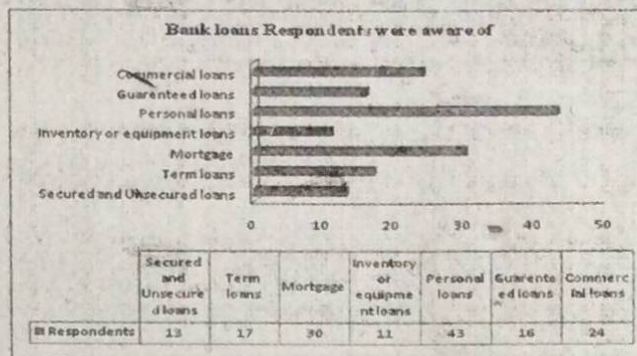
4) The following chart shows the various government schemes respondents are aware of



Interpretation: Out of 88% of respondents who are aware of the schemes and loans, 43 of them are aware of Pradhan Mantri Mudra Yojana, 13 are aware of Bank Credit Facilitation Scheme, 10 of them Credit Guarantee Scheme, 8 of them MSME loans in 59 minutes, another 8 of them SIDBI Make in India for Enterprises and 7 of them are aware of Stand Up India Scheme.

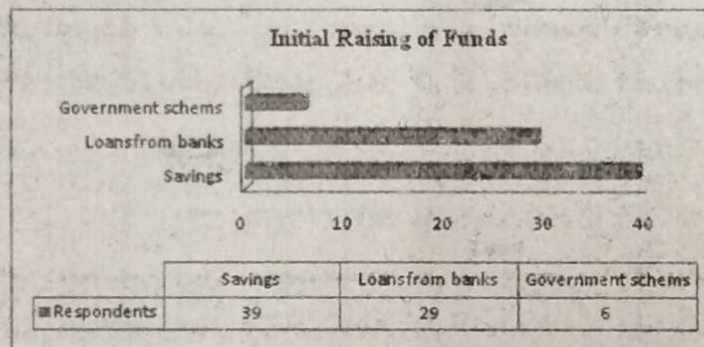


5) The following chart shows the various bank loans respondents are aware of.



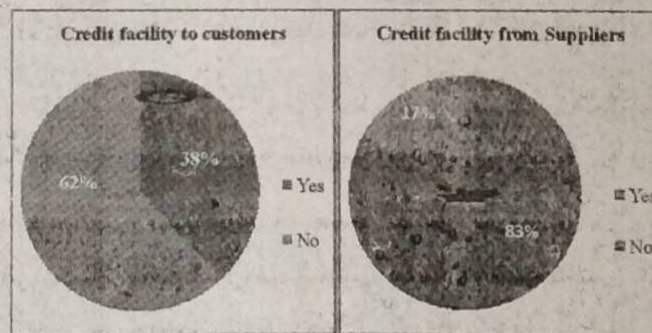
Interpretation: Out of 88% of respondents who are aware of the loans offered by the banks to small entrepreneurs, 43 are aware of Personal loans, 30 are aware of Mortgage, 24 Commercial loans, 17 Term loans, 16 Guaranteed loans, 13 Secured and Unsecured loans and 11 of them are aware of Inventory and Equipment loans.

6) The following chart shows how the respondents raise the initial funds.



Interpretation: Out of 50 respondents, 39 of them have raised their initial funds through savings, 29 through bank loans, and only 6 of them through Government schemes.

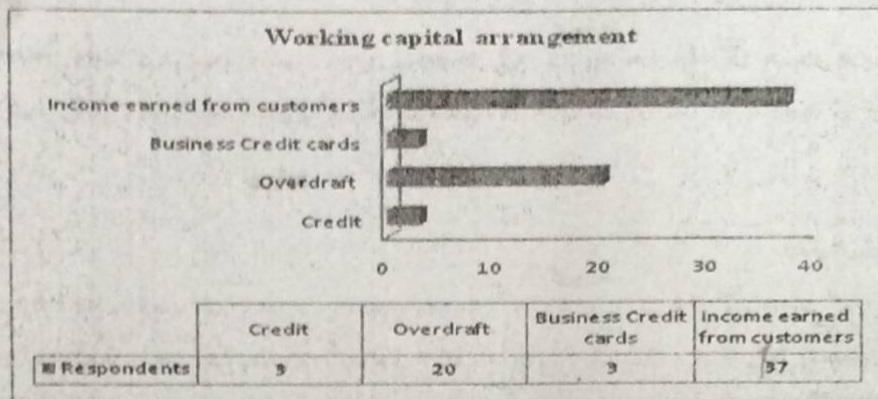
7) The following charts show whether the respondents give customers credit facilities and whether they receive the same from their suppliers.



Interpretation: Out of 50 respondents, 38% give credit facilities to their customers, whereas 62% do not. Furthermore, 83% of them get credit facilities from their suppliers, whereas 17% do not get these facilities.



8) The following chart shows how the respondents raise their working capital.



Interpretation: Out of 50 respondents, 37 of them raise their working capital from the income earned from the customers, 20 use overdraft facilities, 3 of them get trade credit, and another 3 of them make use of business credit cards.

Findings

- 1) From the study, it is inferred that though most respondents were aware of the government schemes and bank loans, most did not prefer using them as the respondents felt that the information provided was not conclusive. Some of them felt that the procedure was time-consuming. Some of them had pre-determined thoughts that it would not be applicable and beneficial to them. Some of the respondents avoided opting for these schemes as they were unsure whether they would be able to repay the loans due to the fluctuating business and high competition in the market.
- 2) The respondents raised initial funds primarily by investing their savings into the business or applying for bank loans. Only some of them utilized government schemes to start up their business.
- 3) The respondents preferred using the income earned from the customers and overdraft facilities as most of them had current accounts to arrange their working capital.
- 4) The respondents were primarily aware of government schemes such as Pradhan Mantri Mudra Yojana. Among the various bank loans available, they were aware of personal loans, mortgages, and commercial loans. The respondents needed a clearer idea about the different institutions that support entrepreneurs in setting up their enterprises. They also needed to have in-depth knowledge about the various schemes that the banks offer.

Conclusion

Several agencies and institutions share the task of entrepreneurship development and financing, among which banks are the most important ones. Entrepreneurship development is the need of the hour; therefore, authorities and banks should actively involve themselves in this task. Banks benefit from their involvement in the development and financing of SMEs by increasing their client base and thus diversifying into new areas of business, which will eventually reflect positively on the banks' portfolios. It adds to the banks' positive outlook, as they play a role in developing the community and the economy. Since entrepreneurs need to gain more knowledge about the various schemes offered by banks, they should arrange for a team to deal with the



customers, assist them with the government schemes and loans provided, and encourage them to optimum utilization of the schemes offered.



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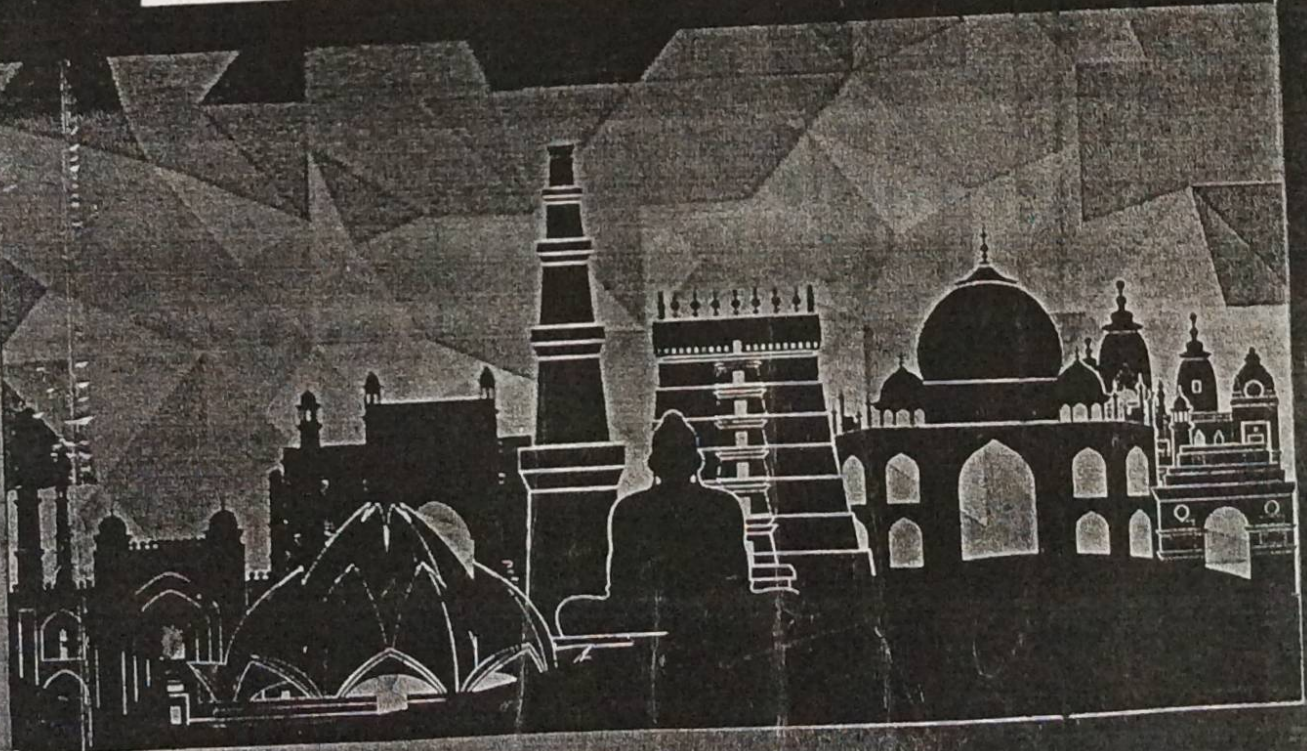




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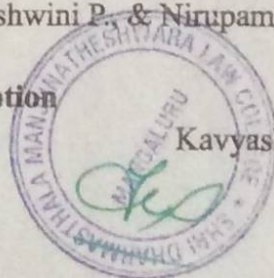
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**"START - UP INDIA
SOCIO-ECONOMIC OPPORTUNITIES
AND CHALLENGES:
A LEGAL PERSPECTIVE"**



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Entrepreneurship and Startup India

Sreelakshmi V. Hariharan ¹

Amith S. M. ²

Abstract

Start-up India is a government initiative to promote entrepreneurship and support startup businesses in India. The initiative aims to create a conducive ecosystem for startups to grow and thrive by providing access to funding, mentorship, and networking opportunities.

However, starting a business in India comes with its own set of challenges and opportunities. Challenges include a complex regulatory environment, difficulty accessing funding, and a need for more experienced talent. On the other hand, opportunities include a large and growing market, access to a talented and young workforce, and a robust support ecosystem.

The Start-up India initiative has helped create a more favorable environment for entrepreneurship in India and has supported many aspiring entrepreneurs. However, there is still a long way to go to fully realize the potential of India's startup ecosystem. This paper intends to analyze the opportunities and challenges for entrepreneurs in India.

Keywords: *Entrepreneurship, Challenges, Opportunities, Funding access.*

Introduction

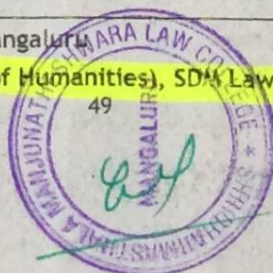
Start-up India is a flagship initiative of the Government of India, launched in 2016 to boost entrepreneurship and encourage innovation by creating a conducive ecosystem for startups to grow and thrive. The initiative aims to provide a conducive environment for startups to grow, drive economic growth, and generate employment opportunities.

The initiative has introduced several measures to support and promote entrepreneurship in India. These include providing easier access to credit, simplifying the business setup process, and offering tax exemptions to eligible startups. The initiative also offers support services to startups, such as incubation facilities, mentorship, and networking opportunities.

One of the objectives of startup India is to provide a platform for startups to connect with potential investors and mentors. The initiative has launched a dedicated online portal where startups can register and access various resources and support services. The portal also serves as a marketplace where startups can showcase their products and services to potential investors and partners.

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Another aspect of the startup India initiative is its focus on fostering innovation and creativity. The initiative has introduced several programs to promote innovation among startups, such as the startup India Seed Fund Scheme, which provides financial support to startups to help them develop and test their ideas. In addition, the startup India initiative has also introduced several measures to improve the ease of doing business in India. These include simplifying obtaining licenses and permits, reducing the time and cost of setting up a business and providing easier access to credit.

Opportunities for Entrepreneurs in India

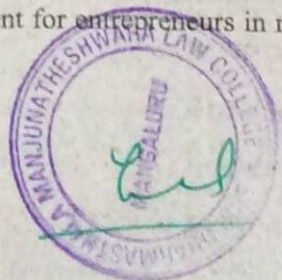
India's population is a significant asset for the country. This population will be an added advantage for the development of startups, as the unorganized state of Indian infrastructure provides a lot of scope and opportunities for the young brains of the nation. If we look at the recent trends, MBA graduates, as well as IITians, prefer entrepreneurship as they believe that they have unique ideas which would contribute not only to their self-progress but also to the nation benefiting the larger mass of society.

The startup ecosystem is getting support from foreign investors, Tiger Global Management, a New York-based company; DST Global, a Russian-based company; Softbank, a Japanese Telecom, to mention a few of the eighteen unicorn companies having FDI. Moreover, Startups like Flipkart, Ola, Swiggy, and Paytm have significant foreign stakes and are valued at over one billion dollars.

In recent years one can see the immense growth of startups, primarily due to risk-taking and innovative young and enthusiastic entrepreneurs, and the launch of the startup India scheme provided a conducive environment for the growth of startups. Moreover, at the same time, it cannot be said that the development of startups in India is purely due to the startup India initiative, but rather the aspect of entrepreneurship had come to India due to globalization itself. Nevertheless, today it can be said that startups are emerging to be a significant contributor to the Indian economy as per the data in the www.startupindia.gov.in website, which states that India being the third largest startup ecosystem in the world, is expected to witness an annual growth of 12 to 15 percent.

Few areas where the opportunities for entrepreneurship are vast:

1. **Tourism Sector:** the presence of heritage sites, hill stations, the Ayurveda system, and diverse cultures attracts significant domestic as well as international tourists, and thus there is scope for the creation of hospitality services with trained professionals to provide not just accommodation and transport services but also to provide trained guides to the tourists.
2. **Energy sector:** as the requirement for energy is on the rise for different use, starting from house needs to industrial needs, there is a need to fulfill the demands of energy requirements of various sectors as well as production and supply for electrical devices and other accessories. The stress on green energy also provides vast opportunities for developing solar plants, manufacturing and selling solar equipment, and testing and developing other natural energy sources.
3. **Automobile sector:** a high scope is prevalent for entrepreneurs in manufacturing



automobile components lubricants, developing service centers, providing on-the-move services, and so on.

4. **Health Sector:** due to the enormous population and health needs, there is a relatively high scope as some regions lack quality health services. Apart from that, the current demand for ayurvedic treatment also brings in vast opportunities for entrepreneurs who can provide quality hospitals and services, distribution of medicines, biomedical engineering, home services like collecting blood samples, distribution of doctor-prescribed medicines, and other requirements.

There are vast opportunities for entrepreneurs in sectors like the agricultural sector, service sector, water and waste management, environment, and its protection, tackling the issue of plastic pollution, recycling, development of eco-friendly products, and many others.

Entrepreneurship can contribute to socioeconomic development in various ways:

1. **Innovation:** Innovations are necessary for a nation to develop and compete with the rest of the world, and entrepreneurship is the best answer for innovation. With the advent of technology, the innovative scope for the use of technology for various aspects of life is relatively high, and these innovations could boost the economic output also; for example use of technology in agriculture not only enhances productivity but also leads to economic growth.
2. **Employment:** the development of any economy depends on employment. A low employment rate indicates that the economy is in a poor state, and thus entrepreneurship can play a role in job creation. Considering India's vast population, an entrepreneur would get a diverse population required for different jobs. People would be willing to work because of the wage involved, which would improve their standard of living.
3. **Social Change:** entrepreneurship could be focused on social issues concerning society and bringing solutions to the existing problems within society. For instance, Sulab Sauchalaya of Bindeshwar Pathak, Spiti Ecosphere of Ishita Khanna.

The startup India initiative has created several opportunities for entrepreneurs in India. Entrepreneurs can leverage these opportunities to grow and succeed in their businesses.

- a) **Easier Access to Finance:** The startup India initiative has introduced several schemes and programs to provide easier access to finance for startups. It has opened opportunities for entrepreneurs to obtain the necessary funding to support their operations and grow their businesses.
- b) **Support Infrastructure:** The startup India initiative offers support services, such as incubation facilities, mentorship, and networking opportunities, to help startups grow and succeed. It has created opportunities for entrepreneurs to access the support and resources they need to grow their businesses.
- c) **Market Access:** The startup India initiative has launched a dedicated online portal where startups can showcase their products and services to potential investors and partners. It has created opportunities for entrepreneurs to access new markets and expand their customer base.



- d) **Ease of Doing Business:** The startup India initiative has introduced several measures to improve the ease of doing business in India. It has made it easier for entrepreneurs to set up and operate their businesses and has reduced the time and cost of starting a business.

Government Support for Entrepreneurship

The fund support to the startups by the government of India has helped the startup firms to develop and sustain. The Mudra Yojana has sorted out the difficulties of entrepreneurs in getting funds with a simplified loan application process. SETU Fund, set up by the government of India, facilitates the growth of startups, with an amount of 1000 crore allocated by the government to support self-employment and further ease the process of permissions and licenses for the startup's government-launched E-biz portal to reduce the complexities in starting a business. This portal Integrates 14 regulatory permissions and licenses at one source, and it provides scope for faster clearance and thus improves the ease of doing business in India. Apart from that SAMRIDH Scheme, Start-up India Seed Fund Scheme, Atal Innovation Mission, and Stand Up India Scheme are some of the support schemes by the government of India for the promotion of entrepreneurship in India.

Entrepreneurship Challenges

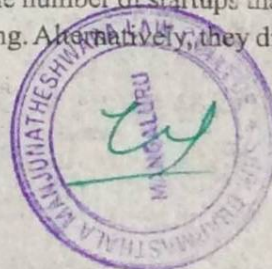
Indeed, in the case of tremendous openings, all entrepreneurs face multitudinous challenges. With the Indian government launching various schemes to promote small-scale industries, local businesses have mushroomed all over the country. Many startups have made considerable impacts in the past few years. However, it takes work; entrepreneurs need help. While companies like Paytm and Flipkart are examples of what a startup can achieve in a few short years, there are specific problems that only some entrepreneurs need help with while starting.

Some of the challenges faced by entrepreneurs in India include the following:

- a) **Cash Flow:** Obtaining funding for a company is one of the significant challenges that all businesses must overcome to exist. Even though one may have initially saved money to launch a business, it will only last for a while. Businesses bear harmonious fiscal inflow to survive, and one should always have redundant cash on hand to cover unlooked-for charges. It is always necessary to have a solid and steady cash inflow. Many entrepreneurs struggle to pay the bills (let alone themselves) while waiting for checks to arrive. Part of the problem stems from delayed invoicing, which is common in the entrepreneurial world. One performs a job, sends an invoice, then gets paid (hopefully) 30 days later. In the meantime, one has to pay everything from employees or contractors to one's mortgage to one's grocery bill. One must get paid to get by, and when a customer does not pay, one can risk everything. When the government offers help to deal with the same, they should be efficiently used.

Many startups in the new era need a more qualitative approach to entrepreneurship. Ensure that the company strategy is well-prepared and includes money for the worst-case situation. Keep in mind that one will likely have limited access to finances while starting a firm, which reduces one's margin for error.

- b) **Planning, Strategy, and Marketing:** The number of startups that fail because they "missed to remember" to plan is staggering. Alternatively, they did the map but only



partially covered some things. Sales, development, and finance are essential areas that should be considered. They must all be included in the company strategy from the beginning. Not only that, the need to plan for significant events one cannot foresee. In other words, even if one cannot account for every scenario, he still needs to know what to do when not, if events take an unexpected turn.

Some new businesses believe they can only partially disregard marketing methods and count on word-of-mouth advertising to cover their needs. It is crucial to establish visibility among one's customers as a startup. Accessing one's target customers must utilize efficient marketing strategies within a constrained budget. However, without taking a collective initiative to build them with a well-organized approach to advertise one's startup, it is erroneous to put on one's faith in clients' discovering one's business.

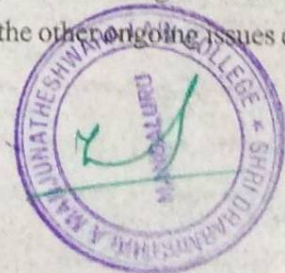
- c) **Hiring the Right:** Specific chops are necessary for the development as well as the survival of any organization. Understanding the unique skills needed and knowing how to bring those important people on board might make or break how successful one's startup grows. Finding the most excellent staff takes time, which costs money. For a small team, the hiring process takes up significant time that could be used in other company operations. However, on the other hand, a lack of the proper personnel can result in severe bottlenecks and can postpone the introduction of new goods or services. Every startup must deal with this problem, especially early on.

Trying to reach out to remote areas as workers in small cities and villages often want to move out and, once trained, is an excellent choice for the entrepreneurs to overcome the challenge of piling up of hamstrung people. Further, for jobs where a person does not need to be physically present in the office, looking for skilled workers in other cities and states can save much money that would otherwise be spent on developing a physical office for them. It will also allow them to work with a company based in metros and move out when required.

- d) **Self-Doubt:** Making decisions is one of the most daunting and frustrating issues entrepreneurs deal with because they frequently consider how even little choices may affect the firm and its finances. Entrepreneurs frequently feel solely accountable for the success or failure of their business endeavors, and they always face a dilemma. Diversions and changes from the original concept abound as well. All of this may be taxing for the business owner. Changes should be welcomed with little opposition since the environment in which most new enterprises operate should be acknowledged as a reality.

Entrepreneurs must maintain countenance and stay committed to their pretensions. Self-doubt also causes people to second-guess their previous decisions and whether they were appropriate. They only learn to make hundreds of choices a day, large and little, without second-guessing themselves or frequently experiencing decision fatigue over time. They can begin by using the 5 phases of the decision-making method to arrive at important decisions, even if getting there will take some patience and practice. These include determining their objective, examining their alternatives, taking into account the repercussions, making the decision, and assessing it before approving it.

- e) **Utilizing the Criticisms:** Criticisms are among the other ongoing issues entrepreneurs



have to deal with; it can be about their business concepts, minor errors in business judgment, or even the company's initial launch. Even successful businesspeople like Ratan Tata and NR Narayana Murthy have endured criticism. One could experience it more as a new business owner and receive regular warnings about how one's company could collapse. Sometimes these critiques may even become hostile because they feel frightened and jealous of the new venture. One must learn to confront them head-on and sort the exemplary businesspeople from the bad if one wants to succeed, thus utilizing those words to build a near-to-perfect venture.

- f) **Time Management:** One cannot afford to squander time as a novice since it will ultimately cost one more, so he must be wise in how to spend each nanosecond. Moreover, he must do this by making a list of goals that are separated into weekly, monthly, and yearly goals. Even the most successful business owners need help managing their time. Organizing the week properly and dividing it up into daily chores. Concentrating on reaching daily goals, weekly goals, and eventually, annual goals will follow naturally. Additionally, this will enable one to keep track of things and determine the progress toward professional objectives. They only need to ensure that their smaller objectives align with their company's overall aims and vision.

Entrepreneurship Legal Issues

Entrepreneurs in India need to be aware of the various legal issues that they may face and take steps to comply with the relevant laws and regulations. It will help them to avoid legal problems and to operate their businesses smoothly.

Some of the legal issues that entrepreneurs in India need to consider are the following:

- a) **Compliance with Business Laws and Regulations:** Entrepreneurs in India must ensure that they comply with the various laws and regulations governing the setting up and operation of businesses in the country. It includes company registration, taxation, intellectual property, and labor laws.
- b) **Employment Laws:** Entrepreneurs in India need to comply with the various employment laws in the country, such as those related to minimum wages, working hours, and safety and health. It is essential to ensure they provide a fair and safe working environment for their employees.
- c) **Consumer Protection Laws:** Entrepreneurs in India must ensure that they comply with the various consumer protection laws in the country. Protecting consumers' rights and avoiding penalties and other legal repercussions is essential.
- d) **Environmental Laws:** Entrepreneurs in India must comply with the country's various environmental laws and regulations. It is essential to protect the environment and avoid penalties and legal repercussions.

Conclusion

India has one of the fastest-growing economies in the world, with a strong focus on entrepreneurship and innovation. It provides a favorable environment for entrepreneurs to start and grow their businesses. India has a large and growing market with a population of over 1.3 billion people. It provides a vast potential customer base for entrepreneurs to tap



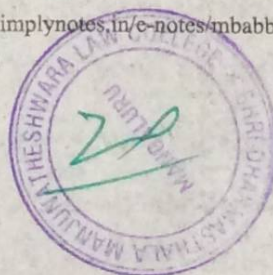
into. The Government of India has introduced several measures to support and promote entrepreneurship in the country. These include providing easier access to finance, simplifying the process of setting up a business and offering tax exemptions to eligible startups. India is undergoing a digital transformation, with many people accessing the internet and using digital services. It provides opportunities for entrepreneurs to develop and offer digital products and services to a growing market.

The Start-up India initiative has helped create a more favorable environment for entrepreneurship in India and has supported many aspiring entrepreneurs. However, there is still a long way to go to fully realize the potential of India's startup ecosystem. While the startup India initiative has successfully promoted entrepreneurship and innovation in India, there are still some challenges that entrepreneurs need to overcome. Furthermore, the challenges entrepreneurs face in India must be addressed to create a conducive ecosystem for startups to grow and thrive. The Government of India and other stakeholders need to take steps to address this.



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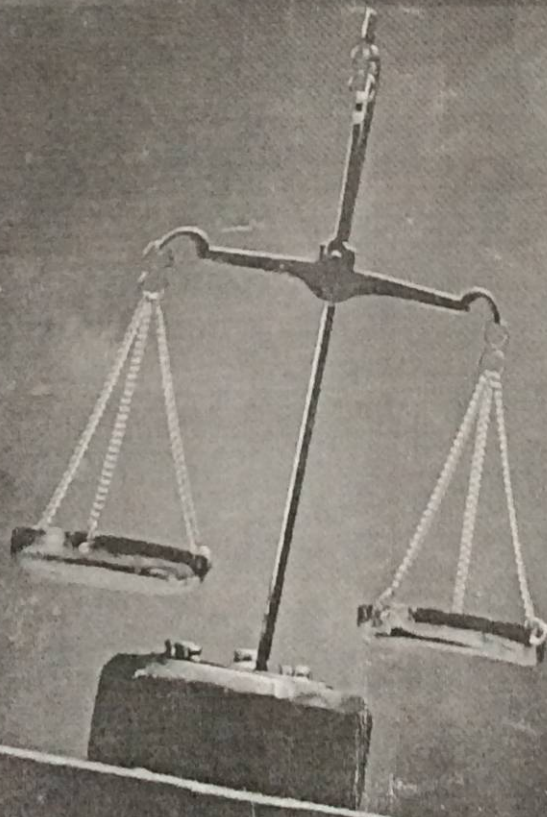
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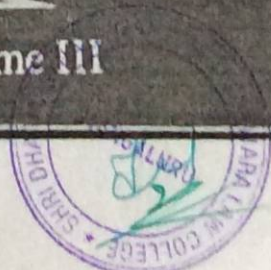
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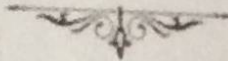
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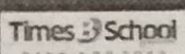


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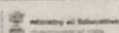
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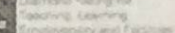
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TRANSGENDER RIGHTS IN SPOTLIGHT: UNVEILING LEGAL PROGRESS AND SOCIETAL SHIFTS

Sharika Rai¹

Dr. Santhosh Prabhu²

INTRODUCTION

The global landscape has seen a tremendous transformation in the discourse around gender identity and transgender rights. The demand for recognition and equality of the marginalized communities has turned the focus towards the often neglected struggles and triumphs of Transgender individuals. This article explores into the legal developments and societal shifts that have been instrumental in shaping the rights and visibility of Transgender People around the world.

From time immemorial the Transgender Community has been subjected to discrimination, stigmatization, and systemic challenges that have denied them the access to fundamental rights and opportunities in India. Ironically the Transgender Persons enjoyed a better status in the ancient Hindu period and even during the Islamic period. References to Transgender Persons and their role can be found in the ancient Hindu texts and scriptures. For example, most pre historical myths relate the descent of the *hijras* from the deity of Shiva, who was also called *Ardhanariswar*, meaning half man and half woman. For many *hijras* the quality of being half man and half woman is a source of infinite strength that endows on them the divine power to give a curse, just like Shiva cursed the earth.

In the famous mythology Mahabharatha, during the war of Kurukshetra, Arjuna dressed as a woman called *Brihannale* and participated in the wedding ceremony of his son *Abhimanyu* with the princess *Uttara*. It is to be noted that Arjuna's cross-dressing is an instance of voluntary emasculation.³ In Ramayana there is an instance that when Lord Rama was exiled for 14 years to the forest blessed all his followers, men and women to do their duties. Many of his subjects followed him to the forest. Lord Rama asked the men and women to return home. When he

1. Research Scholar, Karnataka State Law University, Hubballi
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3. SANDEEP BAKSHI, *A Comparative Analysis of Hijras and Drag Queens: The Subversive Possibilities And Limits Of Parading Effeminacy And Negotiating Masculinity*, First Edn. 2010, Routledge, p.13.



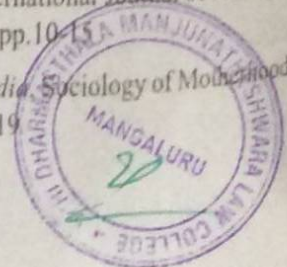
came back from exile he saw the Transgender Persons who did not belong to the male or female gender, waiting for his order. Moved by their action Rama blessed them. In another instance Lord Krishna took women avatar as 'Mohini' to destroy the demon. In Tamil Nadu lot of people worship in number of places, Lord Shiva as 'Arthananareeshwarar'. In this form Lord Shiva and Parvathi resides in a single body which serves as a powerful god for blessings and devotion. Further, another myth in Hinduism is that of Lord Ayyappa who was born to Shiva and Vishnu. These are some references in the Hindu mythologies which witnesses the extension of respect to transgender community.⁴

In the Islamic era the Transgender People were given high ranking and considered to be loyal and confidante of the Muslim rulers. They were also given the responsibility of guarding the *zenanas*.

However, the tyranny against the Transgender Community can be traced back to the British period which witnessed the passing of the Criminal Tribes Act, 1871. The Act branded the Transgender community as criminal and shunned them from the mainstream society. In the Criminal Tribes Act of 1871, the *hijras* were classified as a criminal tribe, inherently immoral and corrupt. The British colonial administration vehemently sought to criminalize the *hijra* community and to deny them the civil rights. The Act included all *hijras* dressed like women dancing in public places as suspects to be involved in kidnapping and castrating children. The punishment for such activities was up to two years imprisonment and a fine or both. This reflects the prejudice of the colonial administrators and policy makers to reject third gender persons as something biologically unnatural. Such a denial reflects British cultural perceptions on the third gender as something non-existent.⁵

Gender identity plays a pivotal role in accessing rights to live a dignified life guaranteed by the fundamental law of the state. To gain access to the welfare measures, policies, and gain protection under the statutes the gender identity becomes very crucial. Even after attaining independence there has not been much progress in the status of Transgender Persons in India. The Transgender Persons had been non-citizens until recently. Since their gender was lacking in legal and gender recognition, they were inhabitants of a zone where official identification is absent. They cannot participate in any political or socio-economic process which requires an officially endorsed identity. The government's response to the community's needs have been indifferent. The breakthrough in the struggle of the Transgender Community came from the land

4. Subramania, *Transgender as Disabled in the Modern Society*, International Journal of Management and Social Sciences, Annamalai University, February 2018, pp.10-15
5. Banshikha Ghosh, *A Diachronic Perspective of Hijra Identity in India*, Sociology of Motherhood and Beyond, University of Zurich, Levant Books, 2018, pp.107-119



mark judgement in *National Legal Services Authority of India v. Union of India*⁶, which paved a path for the recognition and empowerment of the Transgender community. Since then an increasing advocacy, awareness and activism on these issues have led to significant headways in the battle for transgender rights in India.

The article explores key legal developments and transformative social attitudes, showcases the progression and setbacks experienced by transgender communities on their path of empowerment. Despite the obstacles, there have been efforts on the part of various countries to protect the rights of Transgender Persons by way of policies and measures to overcome the prejudice. This article will throw light on the transformation of societal perceptions and attitudes towards gender diversity population. As conversations surrounding gender identity continue to expand and evolve, so does the understanding and acceptance of transgender experiences.

INTERNATIONAL PERSPECTIVES

International conventions and agreements have tremendously contributed towards promoting and protecting the rights of the Transgender Persons around the world. These conventions have been effective in bringing around a change in lives of Transgender community. The Universal Declaration of Human Rights (UDHR) lays the foundation for international human rights and therefore strives to recognise the inherent dignity and equal rights of all individuals regardless of their gender identity. The benefits of principles of non-discrimination, equality before law and right to life, liberty and security are extended to the Transgender Persons. The Provisions of the International Covenant on Civil and Political Rights (ICCPR) adopted in 1966 can be invoked to protect the Transgender Persons from violence and discrimination based on gender identity. The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), though not explicitly focused on Transgender rights can however be interpreted to include gender identity as part of its nondiscriminatory provisions, especially to challenge the discrimination and violence against Transgender women and matters of education, employment and health.

The Yogyakarta Principles, 2016⁷ containing a set of principles drafted by a group of human rights experts, outlines the application of international human rights law to issues of sexual orientation and gender identity. They provide a comprehensive international legal framework for the protection of Transgender Persons' rights ranging from protection against discrimination, violence, freedom of expression, equal access to healthcare, education employment and all concerned areas to live a life of dignity. The Yogyakarta Principles Plus Ten, 2017 further bridges the gap and extends protection based on the recent developments.

6. *National Legal Services Authority of India v. Union of India* (2014) SCC

7. YOGYAKARTA, <http://yogyakarthaprinciples.org>. (Last visited on August 5, 2023 13.00)



The Convention on the Rights of Persons with Disabilities (CRPD) primarily focused on disability rights can be interpreted to be extended to intersect disability and gender identity. The benefits of the Convention can be availed by the disabled Transgender Persons. The Regional agreements such as the European Convention on Human Rights and the Inter American Convention on Human Rights which reinforce the principles of non-discrimination, privacy, and equality, have largely addressed various human rights issues within their respective regions. The International Human Rights Bodies like the United Nations Human Rights Council and various Treaty Bodies continuously monitor and periodically examine issues relating to violations of the rights of Transgender Persons. They also make recommendations to member states for protection of rights effectively.⁸

These conventions and agreements along with the collective efforts of the activists, organisations have raised humongous awareness about the rights of Transgender Persons and prompted the governments of member states to take steps for the overall protection of transgender rights. However, the journey is half way and there still lie huge challenges and disparities to be tackled in different parts of the world given the beliefs, culture and traditions of various nations. There is a need for proper implementation of these policies to overcome the hurdles and bring about a comprehensive change in the attitude and acceptance of Transgender Persons globally.⁹

LEGAL MILESTONES

In India, the path breaking judgment in *NALSA case*¹⁰ set a new milestone in the journey of the Transgender Person's battle for recognition and equality. The Court in its judgment for the first time recognized the Transgender community as Third Gender. It acknowledged the deprivation of the rights of the transgender Community. The court declared the rights of self-identification to the Transgender Persons. It recognised and guaranteed all the rights of the citizens of India to be extended to the Transgender Persons. It directed the government to make legislations and policies on par with the Yogyakarta Principles¹¹ to ensure a life of dignity equal to all citizens. It directed the state to take measure to ensure recognition, and protection to Transgender Persons. Accordingly, the Transgender Persons (Protection of Rights) Bill was introduced in the year 2016 which was the watershed version of the *NALSA Judgment*¹². The

8. *Born Free and Equal- Sexual Orientation and Gender Identity in International Human Rights*, United Nations' Human Rights office of High Commission, New York, Geneva, 2012, pp.39-44
9. *Ibid.*
10. *NALSA V Union of India*, (2014) SCC 438
11. YOGYAKARTA, <http://yogyakarthaprinciples.org>. (Last visited on August 5, 2023, 12:00)
12. *NALSA V Union of India* (2014) SCC 438



Act was a total disappointment to the Transgender Community who came together to protest and reject the Bill. This prompted the Government to reconsider the Bill and finally the legislature passed the Transgender Persons (Protection of Rights) Act, 2019. The Act attempted to provide an inclusive definition of Transgender Person. The Act defines a Transgender Person as someone whose gender does not match the gender assigned at birth. It includes trans-men and trans-women, persons with intersex variations, gender-queers, and those who identify as a part of the transgender community. This definition marks the beneficiaries of the legislation.¹³

The Act for the first time allowed the right of self-identification as to gender for the Transgender Persons and prohibited discrimination of all forms based on gender identity. Now they have a right to identify themselves as man, woman, or transgender in accordance with their self-perceived identity. The District Administration was assigned with the task of issuing certificate of identity to Transgender Persons, based on the gender identified by them. The Act guaranteed the right of residence to the Transgender Persons with their family or in a rehabilitation center as per their choice and extends protection against their eviction based on gender identity.

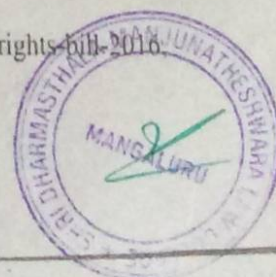
Discrimination against Transgender Persons is prohibited in all specters under the provisions of the Act, such as education, employment, healthcare, access to public places and public services. The Act ensures the right of employment of Transgender Persons while promoting self-employment and ensuring that they are not discriminated in recruitment process.

The Act urges the government to take measures to provide easy access to healthcare services inclusive of sex re-assignment surgery and hormone therapy. Act directs the government to facilitate easy access to the various welfare schemes and programs. Accordingly, many State Governments like Tamil Nadu, Karnataka, Kerala, and Maharashtra have initiated to set up Transgender Welfare Boards to extend the welfare benefits to the Transgender Persons. The National Council of Transgender Persons is established under the Act to delve into the grievances of the Transgender Persons. The Act also criminalizes and penalizes provisions for acts of violence and discrimination against Transgender Persons.

LEGAL SCENARIO

However, the Transgender Persons (Protection of Rights) Act, 2019 received a mixed reaction from the stake holders. Concerns were voiced against certain provisions of the Act regarding intervention of the District Administration as certifying authorities resulting in dilution of the rights of self-identification of Transgender Persons. It is even debated that the Act is deliberately silent on many core issues touching upon the right to marry, adoption,

13. PRSIndia, <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2016>
(Last visited on August 2,2023 14.35)



and inheritance, hence failed to comprehensively cover and protect the rights of Transgender Persons in India.

The Transgender Persons (Protection of Rights) Act, 2019 was enacted in India with the intention of providing legal recognition and protection for Transgender Persons. Although the Act was brought in to force to effectively address the key issues of the Transgender Community, it has been subject to severe criticism by the stake holders for its serious shortcomings.¹⁴

The Definition of Transgender is not just narrow but also vague and gives rise to confusion. According to the Act 'Transgender Person' means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner, hijra, aravani and jogta*.¹⁵ The definition includes the term gender queer which is abstract and creates confusion as to the inclusive beneficiaries under the Act.

The Act guarantees the right of self-determination to the Transgender Persons; however the right comes with the rider where the Transgender Person has to obtain a certificate of identity from the District Magistrate, based on the recommendation of the screening committee. This procedure clearly intervenes and restricts the right of self-identification of the Transgender Persons, as the determination of identity rests in the hands of the government authorities.

The requirement of surgery and proof of surgery or medical treatment for purpose of gender recognition is invasive and violative of right to privacy. The criminalization of begging rather than regulating it, results in deprivation of survival means to many Transgender Persons whose primary source of income is begging. The Act fails to effectively address health care needs of the Transgender Persons including gender affirmation treatments and surgeries. There are no provisions to educate the Transgender Persons in making right choices about gender affirmation methods, the outcome, the damage, and other ill effects.

The Act directs the Government to provide vocational training and facilitate employment opportunities, the Act does not elaborate on the measures to be taken to eradicate practices of discrimination in areas of employment and education. The penalties stipulated by the Act for the violence and discrimination against Transgender Persons lacks teeth to deter heinous crimes like sexual assaults and other crimes actuated by hate. The penal provisions relating to sexual assault is also discriminatory when compared to Sec. 376 and other provisions of IPC

14. PRSIndia, <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2019>, last visited on 31.08.2023, 16.20

15. The Transgender Persons (Protection of Rights) Act, 2019, Sec. 2 (k) (b) (i)



which provides for more punishment for sexual assault against women. The social security, housing and other essential welfare needs of the Transgender Persons are also not adequately addressed by the Act.¹⁶ The unique challenges faced by the Transgender Persons belonging to marginalized communities like indigenous background and lower castes makes the situation more complex requiring the government to put in a lot of thought in the provisions of the Act to address these issues. The Act is criticized by the activists and the transgender community for lack of consultation, and not being included in formulation of the Act, resulting in complete failure in understanding their needs and concerns, thereby causing great disappointment to the stakeholders.

GOVERNMENTAL INITIATIVES

Some states have been dynamic in promoting the Transgender welfare. Ray of hope can be seen where some states like Tamil Nadu constituted the Transgender Welfare Board. The Welfare Board has extended an assortment of social security benefits for the Transgender People, for example, work grants, training grants, free medical coverage, and grants for building houses. In 2015, Kerala also has taken some noteworthy steps to have a progressive and protective approach towards Transgender Persons by curbing acts of discrimination of Transgender People through the Kerala Social Justice Department 2015. The strategy likewise prescribes the setting up of a Transgender Justice Board with state Minister for Social Justice as its director. Kerala additionally made accessible free sex reassignment medical procedures for Transgender People in government clinics in 2016.¹⁷ Even states like Karnataka made provision for 1% reservation in Public Employment for Transgender Persons. These can be seen as slow but steady steps towards a progressive society.¹⁸

The Transgender Community awaited the legislation with great expectations; the Act intended to bring about a paradigm shift in the society towards recognizing, protecting and reshaping the lives of the Transgender Persons in India. However, there are loud cries of displeasure heard from various quarters about the lacunae's in the Act, which is a cause of concern and requires serious reconsideration. Many of the provisions of the Act are challenged

5. Riyaa Singh, Analysis of Transgender Persons (Protection of Rights) Bill, 2019, <https://www.legalserviceindia.com/legal/article-3199-analysis-of-transgender-persons-protection-of-rights-bill-2019.html>. last visited on 21.07.2023 at 12.00

Ibid.

Riyaa Singh, Analysis of Transgender Persons (Protection of Rights) Bill, 2019, <https://www.legalserviceindia.com/legal/article-3199-analysis-of-transgender-persons-protection-of-rights-bill-2019.html>.(Last visited on July 21,2023 12.00)



as unconstitutional in *Swati Bidhan Baruah v Union of India*¹⁹ and the matter is pending before the Supreme Court. The Act is said to have deviated from the NALSA judgment, thus the Petitioners seek for the Court to strike down Sections 4, 5, 6, 7, 12(3), 18(a) and 18(d) of the Act as unconstitutional. In addition, they filed a Writ of Mandamus that directs Centre and State Governments to provide reservations for Transgender Persons in public employment and education, as directed by the Court in NALSA. They further contended that sec 18(d) sets maximum penalty for sexual assault and abuse of Transgender Person at a very lighter degree than that which is set under section 376 and related provisions of the IPC relating to sexual assault against women. It is further contended that section 12 of the Act restricts the decisional authority of an adult Transgender Persons and even threatens the alternative family structure of the Transgender Community. Sec. 7 which provides for the right of self-identity of Transgender Persons, is violative of article, 19 (1) and 21 of the Indian Constitution as it makes it contingent on medical surgery.²⁰

NAVIGATING REAL LIFE CHALLENGES

Our society has always been reluctant to acknowledge the trauma of the Transgender Community. There is unwillingness in the society to accept different gender identities and expression, which needs to be changed and law alone, cannot be a tool for such change. There are some practical difficulties in the literal implementation of the directions given by the court in the *NALSA judgment*²¹ which cannot be overlooked taking into account the unique traditions and culture of India. The right to marry, adoption, inheritance etc. are the major areas that are necessary for the complete citizenship to be enjoyed by the Transgender Persons but are conspicuously left out by the Act. It seems, like the government had a calculated mission in not incorporating these provisions in the Act, with the apprehension that, doing so will disturb the societal balance. The government believes that the conception of marriage is common to all domestic laws and instruments of laws relating to marriage, including the Special Marriage Act, which has enacted a special scheme of provisions based on the same concepts. The opposition on part of the government are based on the ground that the societal concept of marriage is inherently interconnected to religious and cultural norms and are within domain of personal laws that require a to be debated on a social and a national level. The view of the government is that the question of updating a law will arise when it fails to realise its purpose and not to accommodate an alien purpose forced into the scope of law. It is an impractical task according to the government as over 160 provisions across various legislations would have to be changed to

19. Supreme Court Observer, <https://www.scobserver.in/cases/swati-bidhan-baruah-union-of-india-challenges-to-transgender-persons-act-case-background/> (Last visited on July 21, 2023 12:00)

20. *Ibid.*

21. *NALSA V Union of India* (2014) SCC 438



accommodate the recognition of same-sex marriages. The time is now ripe to acknowledge the existence and reality of diverse gender identities in the society and we cannot live in perpetual denial. However, it is to be noted that the right to marry does not include the right to compel the State to create a new definition of marriage. Only the Parliament is competent to do this and, therefore, the court has also opined that this is a matter best left for the Parliament to decide.²² Nevertheless, there is a need to find a middle path to protect and extend all rights to the Transgender community yet maintain a balance that would not be turbulent to the societal norms at large.

As regards the right to adoption, The NCPCR and other organizations have opposed allowing adoption by same-sex couples, on grounds of “mental and emotional development of the child. They opine that there may be emotional difficulties for a child, due to not being exposed to a “normal” heterosexual marriage. Regarding the laws related to succession and inheritance it is to be noted that succession and inheritance are governed under personal laws, which poses a practical difficulty to extend to Transgender Persons²³

CONCLUSION

There is a pressing need to bring about a dynamic change in the sexual orientation network of India. There is a need to establish a strong support system to ensure that the Transgender Persons can live their lives freely with all dignity. Some of the suggestions for the betterment would be, to effectively implement the provisions of the Act. Stringent action against the people for abandoning children for biological distinction would deter and bring down the case of homelessness among the Transgender Persons. Easy credit offices and extension of financial aid must be guaranteed to fuel entrepreneurship in the community with adequate vocational training. Awareness programs and publicity at a large scale of projects and welfare measures must be composed to reach out to the Transgender Community. Strategies and policies for compulsory literacy program to Transgender Community must be undertaken in the grass root level. Establishment of helpline for profession planning and direction, vocation openings and online placement framework must be engaged. Helplines for psychological help and counseling must be extended.²⁴ The school curriculum must include content creating awareness of Transgender People, their problems and rights to sensitize the children who will grow up to

22. Aneesha Mathur, New Delhi, UPDATED: ISTSame-sex marriage case in Supreme Court - Issues and debates, 2023 <https://www.indiatoday.in/law/story/same-sex-marriage-case-supreme-court-issues-and-debates-2378525>, (Last visited on July 21,2023 12.00)

23. *Ibid.*

24. Riyaa Singh, Analysis of Transgender Persons (Protection of Rights) Bill, 2019, <https://www.legalserviceindia.com/legal/article-3199-analysis-of-transgender-persons-protection-of-rights-bill-2019.html>(Last visited on July 21,2023 12.00)



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FREEDOM OF MEDIA IN INDIA

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Investigating the Impact and Prevalence of Misleading Advertising

Sanghamitra Roy Pai¹

Sukanya Roy²

Abstract:

Misleading advertising is a widespread issue with potential harm to consumers, businesses, and market integrity. This research proposal aims to investigate the prevalence and impact of misleading advertising, focusing on understanding the scope and consequences of this problem for both consumers and the market. Additionally, the study seeks to evaluate the efficacy of current regulatory measures in tackling deceptive marketing practices. In the present research context, researchers applied the survey data approach to confirm the hypothesis, implying that there is a connection between exposure to misleading ads and a heightened likelihood of considering a purchase and consumer trust. The findings of the study support the hypothesis. The outcome of the study provides valuable insights for marketers and advertisers. The result highlights the potential impact of misleading advertising tactics on consumer behaviour. Furthermore, the study evaluates the efficacy of current regulatory measures in tackling the deceptive marketing advertisement strategy.

Keywords: Misleading advertisement, consumer trust, consumer purchase intention, Consumer Protection Act

Background of the Study:

Misleading advertising is a pervasive issue that can have detrimental effects on consumers, businesses, and overall market integrity. According to the survey data published by (Stasitsa.com, 2020), more than fifty per cent of the Indian population don't rely on advertisements. The example of the most common misleading advertisement- the pack of instant noodles rarely cooks instantly. This research proposal aims to investigate the impact and prevalence of misleading advertising, shedding light on the extent of this problem and its implications for consumers and the broader marketplace. Additionally, this study seeks to

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assess the effectiveness of existing regulatory measures in addressing deceptive marketing practices.

Research Aim:

In the present research context, the study aims to examine how misleading advertising influences consumer behaviour, including overall trust in advertisements and products. Secondly, the study aims to assess the effectiveness of existing regulatory measures, such as warning labels, fines, and legal actions, in reducing or preventing deceptive marketing practices within the specified industry/sector. Overall, the study guides the researchers in examining the impact of misleading advertising on consumers and the effectiveness of regulatory interventions.

Research Objective:

- a. To examine the impact of misleading advertising on the purchase decision-making process of the skin care product.
- b. To evaluate how the misleading advertisement impacts the consumer trust in the skincare products.
- c. To evaluate the effectiveness of regulatory measures in mitigating misleading advertising practices

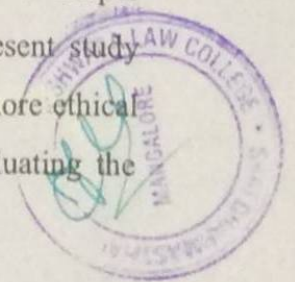
Research Questions:

How does exposure to misleading advertisements impact consumer purchase decisions for skin care products?

How do misleading advertisements for skin care products impact consumer trust?

Research Contributions:

The present study makes a significant contribution to both academia and practical implications in skincare products. The contribution includes insights into consumer behaviour, by examining how misleading advertising influences consumer behaviour, including purchasing decisions and trust in advertisements and products, the study contributes to a deeper understanding of consumer psychology and decision-making processes. The present study provides valuable insights for marketers, advertisers, and businesses in crafting more ethical and effective advertising strategies. In addition, the study also emphasizes evaluating the



influence of misleading advertising on consumer trust in advertisements and products contributes to the understanding of trust dynamics in the context of advertising. Understanding how consumer trust can be diminished by misleading practices, can guide marketers and advertisers in building more trustworthy and credible brands.

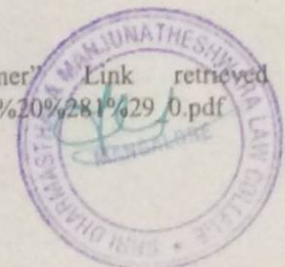
Literature Review:

Concept of Misleading Advertisement:

Misleading advertising refers to the practice of presenting false or deceptive information in advertisements with the intention of influencing consumers' perceptions, decisions, or behaviours (Newell et al.,1988). It involves the use of misleading claims, inaccurate descriptions, or manipulative tactics to create a false impression about a product, service, or brand (Pushpa,2013)³. Here are some key concepts related to misleading advertising:

1. **False Claims:** Misleading advertising often involves making claims that are not true. This could include exaggerating the benefits of a product, making false comparisons with competitors, or stating that a product can do something it cannot.
2. **Exaggeration:** Advertisers may use exaggeration or hyperbole to make their products or services appear more appealing than they actually are. While some degree of puffery is common in advertising, crossing the line into false representation is considered misleading.
3. **Omission of Information:** Sometimes, misleading advertising occurs not because of what is said but because of what is left unsaid. Advertisers may omit critical information that would affect a consumer's decision, such as potential side effects or limitations of a product.
4. **Image Manipulation:** Visual elements, including photos, videos, and graphics, can be manipulated to misrepresent a product's appearance or performance. This can give consumers unrealistic expectations.

³ PushpaGirimaji,2013," Misleading advertisement and consumer' Link retrieved from https://consumeraffairs.nic.in/sites/default/files/file-uploads/misleading-sumer%20%281%29_0.pdf



5. Testimonials and Reviews: Fake testimonials or fabricated reviews can be used to create a false sense of credibility or popularity for a product or service. This can mislead consumers into thinking that others have had positive experiences when they have not.
6. Bait-and-Switch: This tactic involves advertising a product at a low price to attract customers, but when they inquire or visit the store, they are told the advertised product is no longer available, and they are encouraged to buy a more expensive alternative.
7. Regulatory Oversight: Many countries have regulatory bodies responsible for monitoring and regulating advertising practices to prevent misleading advertising. These agencies often set guidelines and standards that advertisers must adhere to.
8. Consumer Protection Laws: Laws exist to protect consumers from deceptive advertising practices. These laws vary by country and region but typically prohibit false advertising, false labelling, and other forms of misleading marketing.
9. Impact on Consumers: Misleading advertising can have various negative effects on consumers. It can lead to dissatisfaction with products or services, waste of money, loss of trust in advertisements and brands, and even health and safety risks in some cases.
10. Ethical Considerations: Ethical advertisers adhere to principles of honesty, transparency, and truthfulness in their marketing efforts. Misleading advertising is generally considered unethical and can damage a company's reputation.

In summary, misleading advertising involves the presentation of false or deceptive information in advertisements, and it is a practice that is generally frowned upon due to its potential to harm consumers and undermine trust in the advertising industry.

What is Consumer Buying Behavior?

Consumer behaviour is a complex and multidisciplinary field of study that focuses on understanding how individuals and groups of people make decisions related to the acquisition, use, and disposal of products, services, ideas, and experiences (Solomon, 2004)⁴. Furthermore, consumer buying behaviour comprises a range of factors, including consumer attitudes, preferences, intentions, and decisions related to transactions in the marketplace where goods and services are exchanged (Smita, 2020).

⁴ Solomon, M.R. and Panda, T.K., 2004. *Consumer behaviour, buying, having, and being*. Pearson Education India

Concept Consumer decision-making process:

The consumer decision-making process is a series of steps or stages that individuals go through when making a purchase or selecting a product or service. This process is not always linear, and consumers may revisit or skip certain stages depending on the complexity of the decision and the product or service in question. Misleading advertisements impact the decision-making process of the customer (Romani,2006)⁵. The consumer decision-making process comprises five stages: problem recognition, and information search. Evaluation of alternative, purchase and post-purchase decisions. In the problem recognition phase, misleading advertisements create a false sense of need or urgency by exaggerating problems. Similarly in the information search phase, misleading advertisements display the product information by providing inaccurate information, it is difficult for consumers to track reliable sources. In the post-purchase phase, the impact of misleading advertisements leads to negative word of mouth. Furthermore, consumers who experience a mislead are likely to share more negative reviews about the product, service or brand which can affect the company's brand image.

Concept of Consumer Trust:

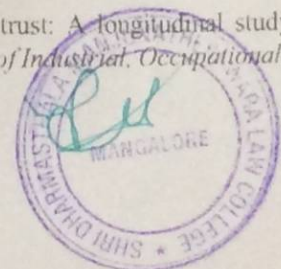
The study conducted by Serva et al., 2005⁶ defined consumer trust “ as an expectation or belief that consumer has within the company.” A similar study defined consumer trust as the faith or belief of the customer in the brand to deliver promises and commitment. Consumer trust is the essential component of building customer loyalty and enhancing customer satisfaction. In the marketing context, consumer trust act as a valuable asset that leads to brand loyalty, increase repeat purchase and encourage positive word-of-mouth. So, marketers must work hard to build and retain the customer trust.

Conceptual framework and hypothesis formulation:

Misleading advertisements impact the purchase decision-making process leading to enhanced purchase intention.

⁵ Romani, S., 2006. Price misleading advertising: effects on trustworthiness toward the source of information and willingness to buy. *Journal of Product & Brand Management*, 15(2), pp.130-138

⁶ Serva, M.A., Fuller, M.A. and Mayer, R.C., 2005. The reciprocal nature of trust: A longitudinal study of interacting teams. *Journal of Organizational Behavior: The International Journal of Industrial, Occupational and Organizational Psychology and Behavior*, 26(6), pp.625-648.



Misleading ads often use eye-catching visuals and persuasive language to grab consumers' attention. This initial attraction can lead consumers to consider the product. In addition, advertisements tend to promise extraordinary benefits or results that the product cannot realistically deliver. This inflates consumers' expectations, making them more likely to purchase the product, hoping to achieve the advertised outcomes. Moreover, misleading ads enhance impulsive purchases. Consumers who are influenced by misleading advertising may make impulsive purchases without conducting thorough research or evaluating alternative products (Sun et al., 2023)⁷. They may be driven by the fear of missing out on a seemingly amazing deal or product. From the above argument, it is hypothesized that: **H1- Misleading advertisements have a significant impact on the purchase decision-making process, leading to enhanced purchase intention.**

Misleading advertisements impact consumer trust:

Misleading advertisement, often referred to as deceptive or false practices, has a significant negative impact on consumer trust. When consumers perceive that a brand or business has misled them in any way, it erodes their confidence and belief in that brand. A plethora of previous research showed that misleading practices, such as false advertising, exaggerated claims, or misrepresentation of product features, can damage a brand's credibility. When consumers discover the way a company displays product features and makes promises, which do not align with reality. This leads to eroding the brand trust among the customers in the future. Furthermore, misleading practices can lead to customer dissatisfaction and disappointment. When customers feel deceived or tricked, it can result in negative reviews, complaints, and a reluctance to make future purchases from the same brand. According to the study conducted by (Kotler et al., 2006),⁸ misleading tactics may generate short-term profits or sales, but in the long run, it leads to losses. Once consumers feel deceived, they may abandon the brand altogether, and the negative word-of-mouth generated by dissatisfied customers can harm the brand's reputation.

The business organization engaged in deceptive practices can also lead to legal consequences, including fines and lawsuits. Regulatory authorities often take action against businesses that

⁷ Sun, Y. and Li, Y., 2023. Effects of misleading online advertisements on the purchase intention of mature Chinese consumers for dietary supplements. *British Food Journal*.

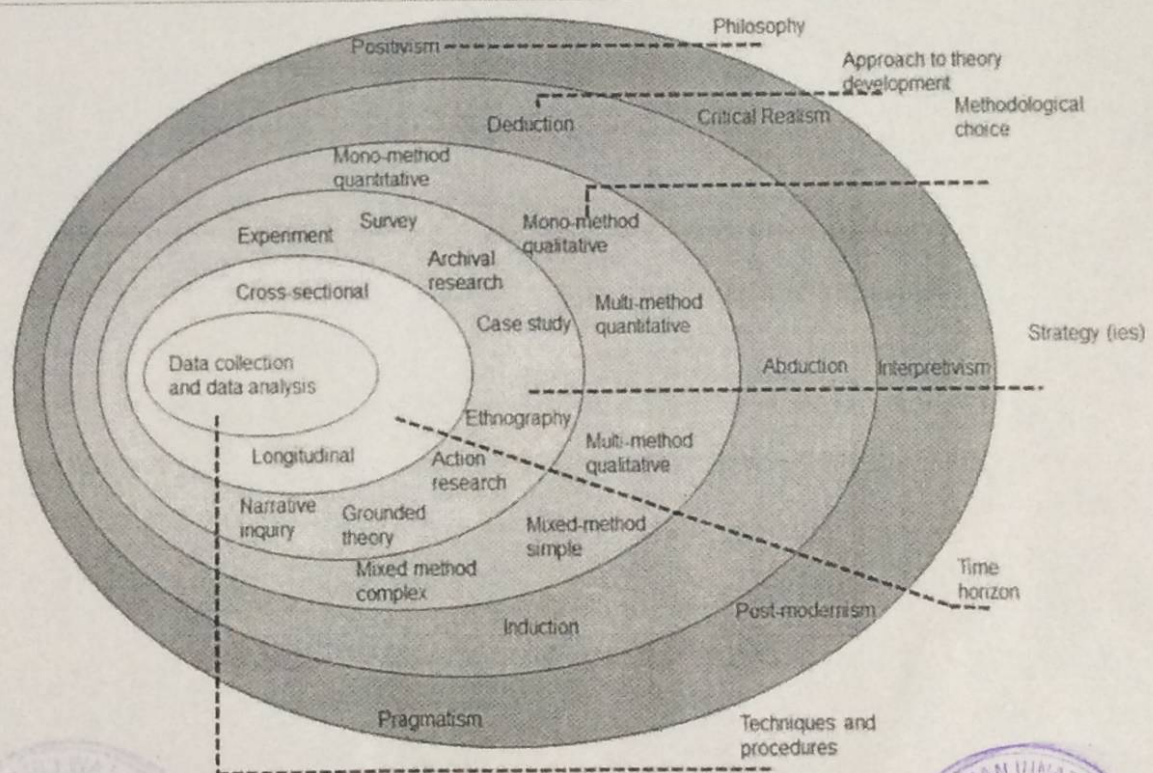
⁸ Kotler, P., Rackham, N. and Krishnaswamy, S., 2006. Ending the war between sales and marketing. *Harvard Business Review*, 84(7/8), p.68.



engage in false advertising or other forms of deception. The study also showed that when one company within an industry engages in misleading practices, it can erode trust in the entire industry. Consumers may become sceptical of all brands in the sector, making it harder for honest businesses to build trust. The negative impact of misleading practices can attract media attention and social media backlash. In the age of the internet and social media, news of deceptive practices can spread rapidly, causing significant harm to a brand's reputation. Moreover, misleading practices lead to customer churn and a loss of market share. To maintain and build consumer trust, businesses should prioritize transparency, honesty, and ethical practices in all their interactions with customers. Misleading trust not only harms the affected consumers but also has far-reaching consequences for the brand's overall reputation and success. On the other hand, companies that consistently deliver on their promises and communicate honestly with their customers are more likely to earn and maintain trust over the long term. From the above argument, it is hypothesized that **H2: Misleading advertisement has a significant impact on consumer trust.**

Research Methodology : Research Philosophy-1st Layer

The current research study followed Saunder's⁹ research onion framework.



Source: Research Onion (Saunders et al., 2007)



Saunders et al.'s (2007) study has firmly established the noteworthy impact of the research onion framework on the contemporary research landscape, as illustrated in Figure 1.1. This framework serves as a valuable framework for researchers, offering crucial guidance throughout the journey of crafting a meticulously organized and influential research design and methodology. In the subsequent sections, researchers delve into the details of how the current methodology aligns seamlessly with Saunders' research onion framework.

Research Philosophy-1st Layer

Research philosophy is a widely accepted term and universally recognized concept referring to a researcher's fundamental convictions and presuppositions regarding the essence of knowledge, confidence, and the very nature of reality (Saunders et al., 2019).

The current research, titled " Investigating the Impact and Prevalence of Misleading Advertising is closely aligned with the positivist/positivist research philosophy. Positivism finds strong synergy with quantitative research methods, which revolve around the quantification of variables and the subsequent statistical scrutiny of gathered data. The positivist approach especially relied on scientific evidence such as statistical analysis, and experiment design to reveal the true nature of knowledge.

Research Approach-2nd Layer (Hypothesis formulation)

The present study employed deductive methodology, where the researcher takes the lead in shaping the research direction.

Research Strategies-3rd Layer

The research methodology employed in this existing study revolves around the utilization of a survey-based approach for data collection. This survey involves the active participation of 50 respondents who are invited to complete structured online questionnaires.

Time Horizons- 5th Layer

The present research context applied a cross-sectional research design.

⁹ Saunders, M., Lewis, P.H.I.L.I.P. and Thornhill, A.D.R.I.A.N., 2007. Research methods. *Business Students 4th edition Pearson Education Limited. England*, 6(3), pp.1-268.

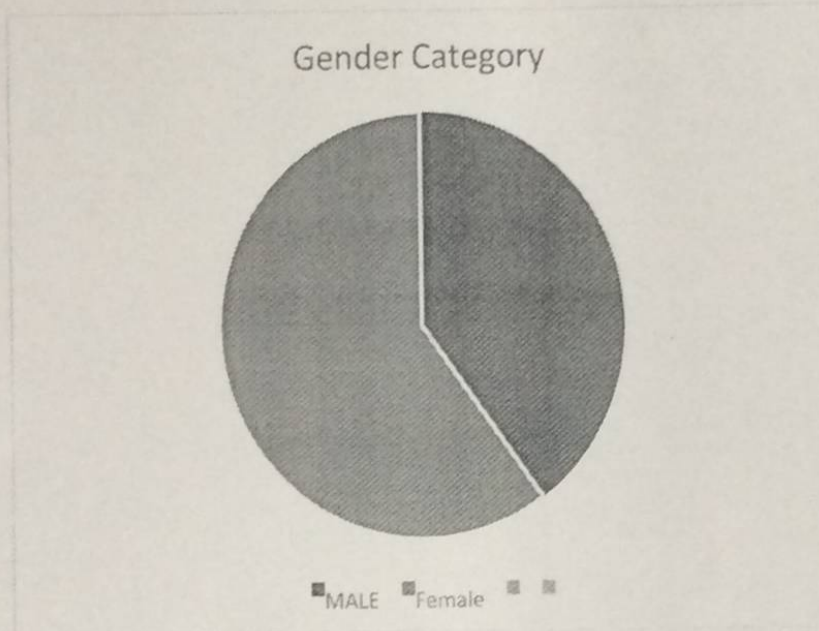


Techniques and procedure (6th Layer)

The present study will utilize a non-probability purposive sampling technique, a method advocated by Sekaran and Bougie in their 2019 study. This approach involves deliberately selecting a particular group of respondents who can offer in-depth insights relevant to the current research. The sampling group will specifically consist of millennials aged between 20 and 35, residing in Mangalore and Bangalore city.

Data Analysis:

The questionnaires were circulated to 50 respondents. Among 50 respondents 30 participants are identified as female and 20 participants belong to the male category. The pie chart explains the gender category of male and female.



Pie-chart explanation:

H1- Misleading advertisements have a significant impact on the purchase decision-making process, leading to enhanced purchase intention.

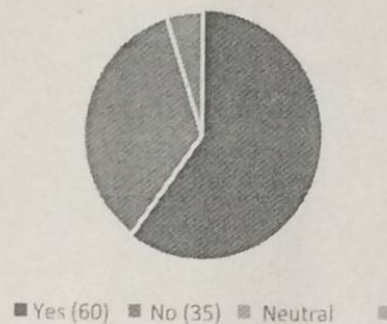
Misleading Advertisement Impact on Consumer Trust: The research focused on understanding whether misleading advertisements have a significant impact on purchase intention. The result of the pie-chart findings stated that 60% of the respondents revealed that misleading advertisements lead to an increase in purchase intention. This percentage represents the proportion of respondents who believe that when they encounter misleading advertisements, they are more inclined to consider making a purchase. The statement concludes that these findings support hypothesis H1.



Interpreting the Result: In practical terms, these results suggest that when consumers are exposed to misleading advertisements, they may initially be more interested in purchasing the advertised product. However, it's important to note that this initial interest might not translate into sustained trust or repeat purchases. Misleading advertising can erode trust over time if consumers feel deceived or dissatisfied with the products they purchase. The findings have implications for businesses and advertisers. While misleading advertisements may drive short-term sales, they can harm long-term consumer trust and brand reputation. Ethical advertising practices that prioritize transparency and accurate product representation are essential for building and maintaining trust with consumers.

Overall, the pie chart indicates that a significant portion of respondents believe that misleading advertisements lead to increased purchase intentions, which aligns with hypothesis H2. However, the long-term impact on consumer trust should be carefully considered when assessing the overall effectiveness and ethics of advertising strategies

misleading advertisement impact purchase



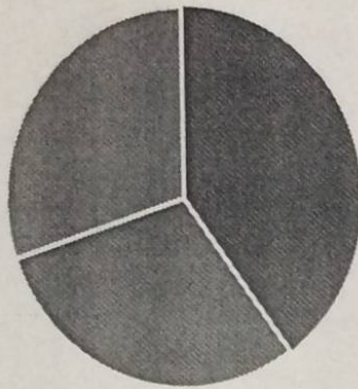
H2: Misleading advertisement has a significant negative impact on consumer trust.:

The statement suggests that misleading advertisements have a negative impact on consumer trust, with 45% of respondents acknowledging this impact. The pie chart explained that the number "45%" indicates that nearly half of the respondents in the study or survey believe that misleading advertisements have a detrimental effect on trust. This suggests that a significant portion of consumers recognize the negative consequences of encountering misleading advertising. In addition, the statement highlights that misleading advertisements can erode or weaken consumer trust. Consumer trust is a crucial factor in building and maintaining a positive relationship between consumers and brands.

In essence, the outcome of the finding underscores the importance of ethical advertising practices that prioritize transparency and honesty to preserve and strengthen consumer trust in brands and products.



Misleading advertisement impact consumer trust



■ Yes 45 ■ No 30 ■ Neutral 25

The legal system of India can evaluate the effectiveness of regulatory measures in mitigating misleading advertising practices:

In the Indian context, legal measures play an important role in mitigating misleading advertising practices. To evaluate the effectiveness of regulatory measures in addressing this issue, the Consumer Protection, 2019 Act deals with the Power of Central Authority to issue directions and penalties against false and misleading advertisements. Furthermore, the law should implement and enforce stringent advertising standards and guidelines that clearly define what constitutes misleading advertising. These standards should cover various aspects, including claims substantiation, disclosure requirements, and ethical considerations (Bhat,1996)¹⁰. Support and strengthen self-regulatory bodies within the advertising industry, such as the Advertising Standards Council of India (ASCI). These bodies can help set industry-specific guidelines and mediate disputes between consumers, advertisers, and regulators. Introduce and establish a system of mandatory pre-clearance for certain types of advertisements, especially those related to health, food, and pharmaceutical products. Advertisements would need to be approved by regulatory authorities before it can be broadcast or published. Moreover, invest in consumer education campaigns to raise awareness about misleading advertising practices and empower consumers to recognize and report them. This

¹⁰ Bhat, R., 1996. Regulating the private health care sector: the case of the Indian Consumer Protection Act. *Health Policy and Planning*, 11(3), pp.265-279.



can be done through various media channels and in collaboration with consumer protection organizations.

Evaluating the effectiveness of these legal measures should involve ongoing monitoring and assessment of the prevalence of misleading advertising, consumer complaints, legal actions taken, and changes in industry practices (Jacobs et al.,2010)¹¹. Regular reviews and adjustments to regulations based on empirical evidence will help ensure that legal solutions remain effective in addressing this issue in the Indian context.

Recommendations:

The present study explains the recommendations on the misleading advertisement. Businesses and advertisers should prioritize ethical advertising practices. Avoiding misleading claims and focusing on truthful and transparent marketing can help build long-term trust with consumers. However, the government should ensure strong compliance with advertising regulations and guidelines. Businesses should stay updated with legal requirements to prevent potential legal consequences related to deceptive advertising. Consumer education initiatives can help individuals become more discerning and critical consumers. Encourage consumers to research products and verify claims before making purchase decisions. Promote transparency in marketing efforts. Clearly communicate product features, benefits, and limitations to manage consumer expectations effectively. Business organizations continuously seek feedback from consumers about their advertising experiences. Use this feedback to refine marketing strategies and improve consumer trust.

Focus on building long-term brand equity and reputation rather than seeking short-term gains through misleading ads. A positive brand image can lead to sustained consumer loyalty. Support industry self-regulatory initiatives to maintain ethical advertising standards. Collaborate with industry associations to uphold best practices. Provide training to marketing and advertising teams on legal and ethical compliance. Ensure that employees understand the importance of adhering to regulations. Continuously monitor consumer sentiment and perceptions related to advertising practices. Use tools and analytics to gauge consumer reactions to advertisements.

¹¹ Jacobs, W., Stoop, P.N. and Van Niekerk, R., 2010. Fundamental consumer rights under the Consumer Protection Act 68 of 2008: A critical overview and analysis. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 13(3)



And lastly, embrace corporate social responsibility by contributing positively to society. Consumers appreciate brands that prioritize social and environmental causes.

Limitations of the Study:

The present study is based on the quantitative approach in the future researchers can conduct mixed methodology approach to explore more about the factors behind the misleading advertisements. The present study is restricted to a small sample size, in the future researchers can include large and more diverse samples that would add to the generalizability of the results.

Future scope of the study:

In future studies, research scholars could compare the impact of misleading advertising across different industries, such as consumer goods, healthcare, and technology. Understanding sector-specific nuances can help tailor advertising strategies. In addition, in future research scholars can conduct longitudinal studies over an extended period that can help to reveal trends and changes in consumer attitudes towards advertising ethics. This can help track the evolving impact of misleading ads over time.





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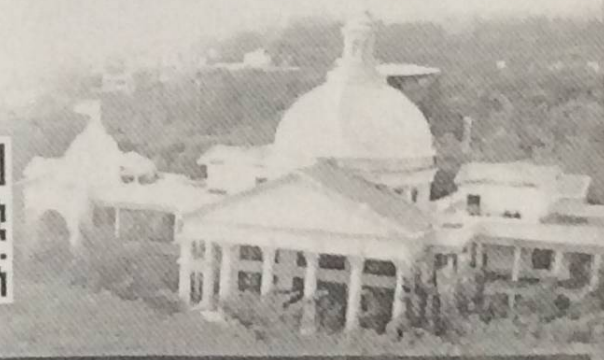
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TRANSGENDER RIGHTS IN SPOTLIGHT: UNVEILING LEGAL PROGRESS AND SOCIETAL SHIFTS

Sharika Rai¹

Dr. Santhosh Prabhu²

INTRODUCTION

The global landscape has seen a tremendous transformation in the discourse around gender identity and transgender rights. The demand for recognition and equality of the marginalized communities has turned the focus towards the often neglected struggles and triumphs of Transgender individuals. This article explores into the legal developments and societal shifts that have been instrumental in shaping the rights and visibility of Transgender People around the world.

From time immemorial the Transgender Community has been subjected to discrimination, stigmatization, and systemic challenges that have denied them the access to fundamental rights and opportunities in India. Ironically the Transgender Persons enjoyed a better status in the ancient Hindu period and even during the Islamic period. References to Transgender Persons and their role can be found in the ancient Hindu texts and scriptures. For example, most pre historical myths relate the descent of the *hijras* from the deity of Shiva, who was also called *Ardhanariswar*, meaning half man and half woman. For many *hijras* the quality of being half man and half woman is a source of infinite strength that endows on them the divine power to give a curse, just like Shiva cursed the earth.

In the famous mythology Mahabharatha, during the war of Kurukshetra, Arjuna dressed as a woman called *Brihannale* and participated in the wedding ceremony of his son *Abhimanyu* with the princess *Uttara*. It is to be noted that Arjuna's cross-dressing is an instance of voluntary emasculation.³ In Ramayana there is an instance that when Lord Rama was exiled for 14 years to the forest blessed all his followers, men and women to do their duties. Many of his subjects followed him to the forest. Lord Rama asked the men and women to return home. When he

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3. SANDEEP BAKSHI, *A Comparative Analysis of Hijras and Drag Queens: The Subversive Possibilities And Limits Of Parading Effeminacy And Negotiating Masculinity*, First Edition 2010, Routledge, p.13.



came back from exile he saw the Transgender Persons who did not belong to the male or female gender, waiting for his order. Moved by their action Rama blessed them. In another instance Lord Krishna took women avatar as 'Mohini' to destroy the demon. In Tamil Nadu lot of people worship in number of places, Lord Shiva as 'Arthananareeshwarar'. In this form Lord Shiva and Parvathi resides in a single body which serves as a powerful god for blessings and devotion. Further, another myth in Hinduism is that of Lord Ayyappa who was born to Shiva and Vishnu. These are some references in the Hindu mythologies which witnesses the extension of respect to transgender community.⁴

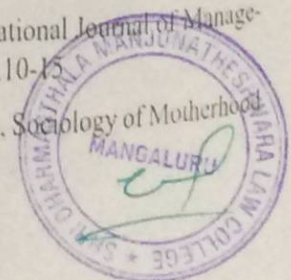
In the Islamic era the Transgender People were given high ranking and considered to be loyal and confidante of the Muslim rulers. They were also given the responsibility of guarding the *zenanas*.

However, the tyranny against the Transgender Community can be traced back to the British period which witnessed the passing of the Criminal Tribes Act, 1871. The Act branded the Transgender community as criminal and shunned them from the mainstream society. In the Criminal Tribes Act of 1871, the *hijras* were classified as a criminal tribe, inherently immoral and corrupt. The British colonial administration vehemently sought to criminalize the *hijra* community and to deny them the civil rights. The Act included all *hijras* dressed like women dancing in public places as suspects to be involved in kidnapping and castrating children. The punishment for such activities was up to two years imprisonment and a fine or both. This reflects the prejudice of the colonial administrators and policy makers to reject third gender persons as something biologically unnatural. Such a denial reflects British cultural perceptions on the third gender as something non-existent.⁵

Gender identity plays a pivotal role in accessing rights to live a dignified life guaranteed by the fundamental law of the state. To gain access to the welfare measures, policies, and gain protection under the statutes the gender identity becomes very crucial. Even after attaining independence there has not been much progress in the status of Transgender Persons in India. The Transgender Persons had been non-citizens until recently. Since their gender was lacking in legal and gender recognition, they were inhabitants of a zone where official identification is absent. They cannot participate in any political or socio-economic process which requires an officially endorsed identity. The government's response to the community's needs have been indifferent. The breakthrough in the struggle of the Transgender Community came from the land

4. Subramania, *Transgender as Disabled in the Modern Society*, International Journal of Management and Social Sciences, Annamalai University, February 2018, pp.10-15

5. Banshikha Ghosh, *A Diachronic Perspective of Hijra Identity in India*, Sociology of Motherhood and Beyond, University of Zurich, Levant Books, 2018, pp.107-119



mark judgement in *National Legal Services Authority of India v. Union of India*⁶, which paved a path for the recognition and empowerment of the Transgender community. Since then an increasing advocacy, awareness and activism on these issues have led to significant headways in the battle for transgender rights in India.

The article explores key legal developments and transformative social attitudes, showcases the progression and setbacks experienced by transgender communities on their path of empowerment. Despite the obstacles, there have been efforts on the part of various countries to protect the rights of Transgender Persons by way of policies and measures to overcome the prejudice. This article will throw light on the transformation of societal perceptions and attitudes towards gender diversity population. As conversations surrounding gender identity continue to expand and evolve, so does the understanding and acceptance of transgender experiences.

INTERNATIONAL PERSPECTIVES

International conventions and agreements have tremendously contributed towards promoting and protecting the rights of the Transgender Persons around the world. These conventions have been effective in bringing around a change in lives of Transgender community. The Universal Declaration of Human Rights (UDHR) lays the foundation for international human rights and therefore strives to recognise the inherent dignity and equal rights of all individuals regardless of their gender identity. The benefits of principles of non-discrimination, equality before law and right to life, liberty and security are extended to the Transgender Persons. The Provisions of the International Covenant on Civil and Political Rights (ICCPR) adopted in 1966 can be invoked to protect the Transgender Persons from violence and discrimination based on gender identity. The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), though not explicitly focused on Transgender rights can however be interpreted to include gender identity as part of its nondiscriminatory provisions, especially to challenge the discrimination and violence against Transgender women and matters of education, employment and health.

The Yogyakarta Principles, 2016⁷ containing a set of principles drafted by a group of human rights experts, outlines the application of international human rights law to issues of sexual orientation and gender identity. They provide a comprehensive international legal framework for the protection of Transgender Persons' rights ranging from protection against discrimination, violence, freedom of expression, equal access to healthcare, education employment and all concerned areas to live a life of dignity. The Yogyakarta Principles Plus Ten, 2017 further bridges the gap and extends protection based on the recent developments.

6 National Legal Services Authority of India v. Union of India (2014) SCC 438

7 YOGYAKARTA, <http://yogyakarthaprinciples.org/> (Last visited on August 5, 2023 13:00)



The Convention on the Rights of Persons with Disabilities (CRPD) primarily focused on disability rights can be interpreted to be extended to intersect disability and gender identity. The benefits of the Convention can be availed by the disabled Transgender Persons. The Regional agreements such as the European Convention on Human Rights and the Inter American Convention on Human Rights which reinforce the principles of non-discrimination, privacy, and equality, have largely addressed various human rights issues within their respective regions. The International Human Rights Bodies like the United Nations Human Rights Council and various Treaty Bodies continuously monitor and periodically examine issues relating to violations of the rights of Transgender Persons. They also make recommendations to member states for protection of rights effectively.⁸

These conventions and agreements along with the collective efforts of the activists, organisations have raised humongous awareness about the rights of Transgender Persons and prompted the governments of member states to take steps for the overall protection of transgender rights. However, the journey is half way and there still lie huge challenges and disparities to be tackled in different parts of the world given the beliefs, culture and traditions of various nations. There is a need for proper implementation of these policies to overcome the hurdles and bring about a comprehensive change in the attitude and acceptance of Transgender Persons globally.⁹

LEGAL MILESTONES

In India, the path breaking judgment in *NALSA case*¹⁰ set a new milestone in the journey of the Transgender Person's battle for recognition and equality. The Court in its judgment for the first time recognized the Transgender community as Third Gender. It acknowledged the deprivation of the rights of the transgender Community. The court declared the rights of self-identification to the Transgender Persons. It recognised and guaranteed all the rights of the citizens of India to be extended to the Transgender Persons. It directed the government to make legislations and policies on par with the Yogyakarta Principles¹¹ to ensure a life of dignity equal to all citizens. It directed the state to take measure to ensure recognition, and protection to Transgender Persons. Accordingly, the Transgender Persons (Protection of Rights) Bill was introduced in the year 2016 which was the watershed version of the *NALSA Judgment*¹². The

8. *Born Free and Equal- Sexual Orientation and Gender Identity in International Human Rights*, United Nations' Human Rights office of High Commission, New York, Geneva, 2012, pp.39-44

9. *Ibid*

10. *NALSA V Union of India*, (2014) SCC 438

11. YOGYAKARTA, <http://yogyakarthaprinciples.org>. (Last visited on August 2019/11/3/2019)

12. *NALSA V Union of India* (2014) SCC 438



Act was a total disappointment to the Transgender Community who came together to protest and reject the Bill. This prompted the Government to reconsider the Bill and finally the legislature passed the Transgender Persons (Protection of Rights) Act, 2019. The Act attempted to provide an inclusive definition of Transgender Person. The Act defines a Transgender Person as someone whose gender does not match the gender assigned at birth. It includes trans-men and trans-women, persons with intersex variations, gender-queers, and those who identify as a part of the transgender community. This definition marks the beneficiaries of the legislation.¹³

The Act for the first time allowed the right of self-identification as to gender for the Transgender Persons and prohibited discrimination of all forms based on gender identity. Now they have a right to identify themselves as man, woman, or transgender in accordance with their self-perceived identity. The District Administration was assigned with the task of issuing certificate of identity to Transgender Persons, based on the gender identified by them. The Act guaranteed the right of residence to the Transgender Persons with their family or in a rehabilitation center as per their choice and extends protection against their eviction based on gender identity.

Discrimination against Transgender Persons is prohibited in all specters under the provisions of the Act, such as education, employment, healthcare, access to public places and public services. The Act ensures the right of employment of Transgender Persons while promoting self-employment and ensuring that they are not discriminated in recruitment process.

The Act urges the government to take measures to provide easy access to healthcare services inclusive of sex re-assignment surgery and hormone therapy. Act directs the government to facilitate easy access to the various welfare schemes and programs. Accordingly, many State Governments like Tamil Nadu, Karnataka, Kerala, and Maharashtra have initiated to set up Transgender Welfare Boards to extend the welfare benefits to the Transgender Persons. The National Council of Transgender Persons is established under the Act to delve into the grievances of the Transgender Persons. The Act also criminalizes and penalizes provisions for acts of violence and discrimination against Transgender Persons.

LEGAL SCENARIO

However, the Transgender Persons (Protection of Rights) Act, 2019 received a mixed reaction from the stake holders. Concerns were voiced against certain provisions of the Act regarding intervention of the District Administration as certifying authorities resulting in dilution of the rights of self-identification of Transgender Persons. It is even debated that the Act is deliberately silent on many core issues touching upon the right to marry, adoption

13 PRSIndia, <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2016>, (Last visited on August 2, 2023 14:35)



LXXV MEETINGS OF LAW AND SOCIETY TRANSFORMATION SOCIETY
and inheritance, hence failed to comprehensively cover and protect the rights of Transgender Persons in India.

The Transgender Persons (Protection of Rights) Act, 2019 was enacted in India with the intention of providing legal recognition and protection for Transgender Persons. Although the Act was brought in to force to effectively address the key issues of the Transgender Community, it has been subject to severe criticism by the stake holders for its serious shortcomings.

The Definition of Transgender is not just narrow but also vague and gives rise to confusion. According to the Act 'Transgender Person' means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kimer, hijra, aravani and jogta*.¹⁴ The definition includes the term gender queer which is abstract and creates confusion as to the inclusive beneficiaries under the Act.

The Act guarantees the right of self-determination to the Transgender Persons; however, this right comes with the rider where the Transgender Person has to obtain a certificate of identity from the District Magistrate, based on the recommendation of the screening committee. This procedure clearly intervenes and restricts the right of self-identification of the Transgender Persons, as the determination of identity rests in the hands of the government authorities.

The requirement of surgery and proof of surgery or medical treatment for purpose of gender recognition is invasive and violative of right to privacy. The criminalization of begging rather than regulating it, results in deprivation of survival means to many Transgender Persons whose primary source of income is begging. The Act fails to effectively address health care needs of the Transgender Persons including gender affirmation treatments and surgeries. There are no provisions to educate the Transgender Persons in making right choices about gender affirmation methods, the outcome, the damage, and other ill effects.

The Act directs the Government to provide vocational training and facilitate employment opportunities, the Act does not elaborate on the measures to be taken to eradicate practices of discrimination in areas of employment and education. The penalties stipulated by the Act for the violence and discrimination against Transgender Persons lacks teeth to deter heinous crimes like sexual assaults and other crimes actuated by hate. The penal provisions relating to sexual assault is also discriminatory when compared to Sec. 376 and other provisions of IPC.

14. PRSIndia. <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2019> last visited on 31.08.2023, 16.20

15. The Transgender Persons (Protection of Rights) Act, 2019. 2 (India).



which provides for more punishment for sexual assault against women. The social security, housing and other essential welfare needs of the Transgender Persons are also not adequately addressed by the Act.⁵ The unique challenges faced by the Transgender Persons belonging to marginalized communities like indigenous background and lower castes makes the situation more complex requiring the government to put in a lot of thought in the provisions of the Act to address these issues. The Act is criticized by the activists and the transgender community for lack of consultation, and not being included in formulation of the Act, resulting in complete failure in understanding their needs and concerns, thereby causing great disappointment to the stakeholders.

GOVERNMENTAL INITIATIVES

Some states have been dynamic in promoting the Transgender welfare. Ray of hope can be seen where some states like Tamil Nadu constituted the Transgender Welfare Board. The Welfare Board has extended an assortment of social security benefits for the Transgender People, for example, work grants, training grants, free medical coverage, and grants for building houses. In 2015, Kerala also has taken some noteworthy steps to have a progressive and protective approach towards Transgender Persons by curbing acts of discrimination of Transgender People through the Kerala Social Justice Department 2015. The strategy likewise prescribes the setting up of a Transgender Justice Board with state Minister for Social Justice as its director. Kerala additionally made accessible free sex reassignment medical procedures for Transgender People in government clinics in 2016.⁶ Even states like Karnataka made provision for 1% reservation in Public Employment for Transgender Persons. These can be seen as slow but steady steps towards a progressive society.¹⁸

The Transgender Community awaited the legislation with great expectations; the Act intended to bring about a paradigm shift in the society towards recognizing, protecting and reshaping the lives of the Transgender Persons in India. However, there are loud cries of displeasure heard from various quarters about the lacunae's in the Act, which is a cause of concern and requires serious reconsideration. Many of the provisions of the Act are challenged

5. Riyaa Singh, Analysis of Transgender Persons (Protection of Rights) Bill, 2019, <https://www.legalserviceindia.com/legal/article-3199-analysis-of-transgender-persons-protection-of-rights-bill-2019.html>, last visited on 21.07.2023 at 12.00

Ibid.

6. Riyaa Singh, Analysis of Transgender Persons (Protection, of Rights) Bill, 2019, www.legalserviceindia.com/legal/article-3199-analysis-of-transgender-persons-protection-of-rights-bill-2019.html.(Last visited on July 21,2023 12.00)



as unconstitutional in *Swati Bidhan Baruah v Union of India*¹⁹ and the matter is pending before the Supreme Court. The Act is said to have deviated from the NALSA judgment, thus the Petitioners seek for the Court to strike down Sections 4, 5, 6, 7, 12(3), 18(a) and 18(d) of the Act as unconstitutional. In addition, they filed a Writ of Mandamus that directs Centre and State Governments to provide reservations for Transgender Persons in public employment and education, as directed by the Court in NALSA. They further contended that sec 18(d) sets maximum penalty for sexual assault and abuse of Transgender Person at a very lighter degree than that which is set under section 376 and related provisions of the IPC relating to sexual assault against women. It is further contended that section 12 of the Act restricts the decisional authority of an adult Transgender Persons and even threatens the alternative family structure of the Transgender Community. Sec. 7 which provides for the right of self-identity of Transgender Persons, is violative of article, 19 (1) and 21 of the Indian Constitution as it makes it contingent on medical surgery.²⁰

NAVIGATING REAL LIFE CHALLENGES

Our society has always been reluctant to acknowledge the trauma of the Transgender Community. There is unwillingness in the society to accept different gender identities and expression, which needs to be changed and law alone, cannot be a tool for such change. There are some practical difficulties in the literal implementation of the directions given by the court in the *NALSA judgment*²¹ which cannot be overlooked taking into account the unique traditions and culture of India. The right to marry, adoption, inheritance etc. are the major areas that are necessary for the complete citizenship to be enjoyed by the Transgender Persons but are conspicuously left out by the Act. It seems, like the government had a calculated mission in not incorporating these provisions in the Act, with the apprehension that, doing so will disturb the societal balance. The government believes that the conception of marriage is common to all domestic laws and instruments of laws relating to marriage, including the Special Marriage Act, which has enacted a special scheme of provisions based on the same concepts. The opposition on part of the government are based on the ground that the societal concept of marriage is inherently interconnected to religious and cultural norms and are within domain of personal laws that require a to be debated on a social and a national level. The view of the government is that the question of updating a law will arise when it fails to realise its purpose and not to accommodate an alien purpose forced into the scope of law. It is an impractical task according to the government as over 160 provisions across various legislations would have to be changed to

19 Supreme Court Observer. <https://www.scobserver.in/cases/swati-bidhan-baruah-union-of-india-challenges-to-transgender-persons-act-case-background/> (Last visited on July 21, 2023 12:00)

20 *Ibid*.

21 *NALSA v Union of India* (2014) SCC 438



accommodate the recognition of same-sex marriages. The time is now ripe to acknowledge the existence and reality of diverse gender identities in the society and we cannot live in perpetual denial. However, it is to be noted that the right to marry does not include the right to compel the State to create a new definition of marriage. Only the Parliament is competent to do this and, therefore, the court has also opined that this is a matter best left for the Parliament to decide.²² Nevertheless, there is a need to find a middle path to protect and extend all rights to the Transgender community yet maintain a balance that would not be turbulent to the societal norms at large.

As regards the right to adoption, The NCPCR and other organizations have opposed allowing adoption by same-sex couples, on grounds of "mental and emotional development of the child. They opine that there may be emotional difficulties for a child, due to not being exposed to a "normal" heterosexual marriage. Regarding the laws related to succession and inheritance it is to be noted that succession and inheritance are governed under personal laws, which poses a practical difficulty to extend to Transgender Persons²³

CONCLUSION

There is a pressing need to bring about a dynamic change in the sexual orientation network of India. There is a need to establish a strong support system to ensure that the Transgender Persons can live their lives freely with all dignity. Some of the suggestions for the betterment would be, to effectively implement the provisions of the Act. Stringent action against the people for abandoning children for biological distinction would deter and bring down the case of homelessness among the Transgender Persons. Easy credit offices and extension of financial aid must be guaranteed to fuel entrepreneurship in the community with adequate vocational training. Awareness programs and publicity at a large scale of projects and welfare measures must be composed to reach out to the Transgender Community. Strategies and policies for compulsory literacy program to Transgender Community must be undertaken in the grass root level. Establishment of helpline for profession planning and direction, vocation openings and online placement framework must be engaged. Helplines for psychological help and counseling must be extended.²⁴ The school curriculum must include content creating awareness of Transgender People, their problems and rights to sensitize the children who will grow up to

22. Aneesha Mathur, New Delhi, UPDATED: ISTSame-sex marriage case in Supreme Court - Issues and debates, 2023 <https://www.indiatoday.in/law/story/same-sex-marriage-case-supreme-court-issues-and-debates-2378525>, (Last visited on July 21,2023 12.00)

23. *Ibid*.

24. Riyaa Singh, Analysis of Transgender Persons (Protection of Rights) Bill, 2019, <https://www.legalserviceindia.com/legal/article-3199-analysis-of-transgender-persons-protection-of-rights-bill-2019.html>(Last visited on July 21,2023 12.00)





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**"START - UP INDIA
SOCIO-ECONOMIC OPPORTUNITIES
AND CHALLENGES:
A LEGAL PERSPECTIVE"**



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Startups as the Mechanism for Women Entrepreneurship; Women Empowerment

Mrs. Chaitra Shetty *

Dr. Tharanatha **

Abstract

Startup India is a clarion call for unearthing the potentiality of the youth population of our country towards economic empowerment with the ambition of the swadeshi concept. The traditional role of women as secondary members in economic activities is undergoing a drastic change with women occupying key positions in the economy, including a woman holding the most prestigious portfolio in the central government in the capacity of the ministry of finance and corporate affairs shows the level of talent of women in economic management. However, this doesn't mean that there is automatic empowerment of all women. Instead of the vertical approach of the role of women in nation-building through economic activities, we need to understand from a horizontal level as to how and for what extent means and mechanisms to be evolved to make women as the participative population in economic development and will the schemes like Startup India, in the long run, achieve this noble objective shall be investigated.

Keywords: empowerment, entrepreneurship, barriers

The emergence of entrepreneurship depends on the economic, social, religious, cultural, and psychological factors prevailing in a given society. A Person who undertakes the risk of starting a new business venture is called an entrepreneur. In other words, an entrepreneur is a person who desires to start a new business and undertakes risk intending to earn profit. Entrepreneurship is not of recent origin. It has been in existence since the Vedic periods.¹ Entrepreneurship is very much determinant for the growth of any economy. It is an economic activity in which an entrepreneur undertakes to start a new business enterprise or finds a creative way of improvising the existing business. Though Indian society, due to its patriarchal approach, narrowed down the concept of entrepreneurship to the male domain, there were many examples where women were too involved in productive economic activities.² However, the fundamental difference between a woman as an entrepreneur vis a vis men is that women, while supporting the family

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¹ During the period of Rigveda where metal handicrafts were prevalent in society. Post Vedic period witnessed the establishment of kharkhanas, where artisans were organized into cooperative organizations

² The illustrious examples include Mrs. Kalpana Saroj (Kamani Tubes Mumbai) (Padma Shri awardee), Ms. Sumati Morarjee Scinda Steam Navigation Company (Padma Vibhushan awardee) and Ms. Sharayu Daftary Bharat Radiators Limited (Padma Shri awardee)



equally, need to balance their capacity as an entrepreneur need to justice to the family and the nation in a balanced manner, thereby contributing to the country; upholding its cultural values and equally contributing towards the economy of the nation. The post-independence era, incentives, and pro-policies of government, the mandates of directive principles of state policy,³ LPG, in addition to global exposure, has resulted in women becoming the focal point of economic torchbearers handling the plane of the economy from the remote corner of the country to CEOs of multinational companies⁴.

APJ Abdul Kalam states, "empowering women is a prerequisite for creating a good nation; when women are empowered, a society with stability is assured. Women's empowerment is essential as their thoughts and value systems lead to developing a good family, good society, and ultimately a good nation".⁵

After World War II, there was a drastic increase in self-employed women worldwide. This has been possible due to many cumulative factors arising out of the mandate of the Constitution of India. From the legal perspective, the definition of a women entrepreneur is 'an enterprise owned and controlled by women having a minimum financial interest of 51% of the capital and giving at least 51% of the employment generated by the enterprise to women'⁶

This paper focuses on the Problems faced by women entrepreneurs in India, which can be summarized as follows

- Indian women have less focus on entrepreneurship and might not have the career option of becoming an entrepreneur.
- No proper education for women in a rural area in the field of entrepreneurship
- The risk involved in entrepreneurship may demotivate women entrepreneurs from starting up a business
- Problems in arranging finance for starting a business, acquiring raw materials, and production activities may discourage women entrepreneurs.
- Competition in the business may make women entrepreneurs lose interest in starting of new business.
- Lengthy procedures in getting finance from banks and financial institutions
- Women entrepreneurs may not get family support which may discourage them

Women entrepreneurship needs to be developed for the growth and development of any nation. There are a lot of inequalities in gender in Indian business. Even though women are well qualified, highly skilled, and knowledgeable, very few enter the mainstream of starting their own business. Today, women-owned business enterprises are running their business

³ Principles of equal pay for equal work, men and women workers to be protected equally, state obligation to see that health and strength of women workers are not abused, and they shall not be forced by economic necessity to enter vocations unsuited to their strength, etc.

⁴ Indra Nooyi, former CEO, Pepsico; Kiran Mazumdar Shaw (Chairman & MD Biotec Ltd, Roshani Nadar, Chairperson HCL, Ms. Revathi Advaiti CEO, Flex, Ms Leena Nair, CEO, French Luxury Fashion Brand Channel.

Falguni Nayar (Nykaa) Indra Nooyi (CEO, PepsiCo) Rita Singh (M'escos)

⁵ Ms. Sweetly Gupta MS, Aanchal Aggarwal, *Opportunities and Challenges faced by Women Entrepreneurs in India* IOSR Journal of Business and Management August 2015 www.iosrjournals.org Retrieved on December 2022.

⁶ Supra Note 5 p 69

successfully, and these success stories bear the fruits as seen above. We have seen a fairly good number of women entrepreneurs making their presence felt both in national and international spheres. The success of the increase in the number of women-led enterprises has a direct impact on the country's growth.

Current Policies and Programs concerning Women Entrepreneurship⁷

1. **The Ministry of Women and child welfare brought out the Draft National Policy for Women (2016):** which envisaged that all-important micro-level policies needed to be engendered and main streamed to address women's concern for being a partner in the country's development. Many programs are initiated by the Government of India to encourage women's entrepreneurship, such as entrepreneurship development, training and skill upgradation, support to women farmers in their livelihood, access to finance, etc.
2. **Start-up India Programme:** This is the most coveted and ambitious program was launched in February 2016, and over the period, it has become the third largest startup ecosystem in the world, providing hand holding, funding support incentives, industry- academic partnership to provide conducive environments for startups in the country. A corpus of 10,000 crores has been earmarked for the program, out of which 10% is reserved for women-led startups.
3. **Prime Minister's Employment Generation Programme:** This scheme was initiated by the khadi and village industries commission as the nodal agency through KVIC Directorates, State Khadi and Village Industries Board (KVIBs), District Industries Centre and Banks for setting up new enterprises, special subsidy level in the program to special categories including women is 25% and 35% in urban areas and rural areas.
4. **Ministry of MSME launched Udyam Sakhi:** A network for nurturing social entrepreneurship and creating business models revolving around low-cost products and services to resolve social inequalities.
5. **Udhyam Shakti Portal for Women Entrepreneurs:** it is an initiative of the Ministry of Micro Small and Medium Enterprises launched on the eve of International Women's Day 2018 to nurture social entrepreneurship. It caters to the need of 8 million women entrepreneurs in India to plan, start, build, and grow businesses, provide incubation facilities, help conduct market surveys, etc. Projects with a maximum cost of 25 lakhs are covered under the scheme.
6. **Economic empowerment of women Enterprises and Startup by women in collaboration with a German-based Development Authority.** It is an initiative of the ministry of skill development and Entrepreneurs, providing incubation and accelerating programs for women micro-entrepreneurs to start a new businesses. Currently, this project operates in the states of Assam, Rajasthan, and Telangana.
7. **Stand up India scheme:** it was launched on 5th April 2016 to facilitate credit to women entrepreneurs to provide loans ranging from 1lakhs to 1crore to at least one women entrepreneur by one bank each.

Excerpts from NCW Consultation Assisting women-led enterprises in collaboration with Ministry of Micro, Small and Medium enterprises on 11th March 2020 at India International Centre New Delhi.



8. **Credit Guarantee Fund Trust for Micro Small Enterprises:** it is a collateral-free credit facility for micro and small industrial sectors. The extent of guarantee cover is 80% for Micro and Small Enterprises being operated and owned by Women; for credit facilities up to Rs 50 lakh.
9. **Micro & Small Enterprises- Cluster Development Programme:** The objective of the scheme is to support the sustainability and growth of MSEs by addressing common issues such as improvement of technology, skills, quality, market access, etc.; capacity building through the formation of self-help groups, set up Common Facility Centers. Women Owned enterprises are given special consideration in all the programs.
10. **Mudra Yojana Scheme for Women:** This scheme has been launched by the Govt of India for individual women wanting to start a small new enterprise. The loan doesn't require any collateral security and can be availed for up to 50,000 to 10 lakhs.
11. **Exhibition for Women under promotional package for Micro and Small Enterprises under marketing support:** For encouraging women entrepreneurs to participate in International Exhibitions, certain provisions like free space in the Exhibition and economy class airfare for one woman representative.
12. **Financing Schemes offered by Banks:**
 - a) **Shri Shakti Package for Women Entrepreneurs:** SBI-run scheme offering concessions to women with majority ownership over 50% in a business provides interest concession of 0.05% on loans exceeding Rs 2 lakhs with no security for loans up to Rs 5 lakhs.
 - b) **Cent Kalyan Scheme:** Central Bank of India scheme for new entrepreneurs and self-employed women for macro/small enterprises. Loan up to 1 crore without collateral security.
 - c) **Mahila Udyam Nidhi Scheme:** Punjab National Bank and SIDBI offer this scheme to support women entrepreneurs to set up new small-scale ventures extending loans up to 10 lakhs to be repaid in 10 years.

Other schemes are provided by various other banks Oriental Mahila Vikas Yojana Scheme by Oriental Bank of Commerce, Bharatiya Mahila Bank Business Loan, Dena Shakti Scheme by Dena Bank, etc.

The outstanding flagship program under startup India for women can be enlisted as

1. Incubator, Accelerator, and learning programs conducted in partnership with stakeholders such as corporates, incubators, accelerators, and other organizations
2. Start-up India Resources, starter kit for budding entrepreneurs, startup India showcase, recognition and tax e-exemption certification, government procurements, international bridges, online courses for entrepreneurship, partnered services, etc.

Though policies and frameworks for women's entrepreneurship are encouraging, there are hundreds of hurdles women entrepreneurs face. Of course, hurdles are the associated and inevitable factors and gender-neutral when we speak about entrepreneurship; however,

exclusively gender-based prejudice, mindset, and attitude primarily affect women entrepreneurship in India. They can be stated as follows.

1. Unequal treatment in respect of competency and capacity
2. Family-related taboos and religious-based lack of encouragement
3. Balancing personal and social life
4. Handling a large workforce with a major segment of the men folk
5. Restriction on risk-taking
6. Absence of proactive government departments
7. Other psycho-social barriers such as poor self-image of women, inadequate motivation, discriminatory treatment, role conflict, lack of social acceptance, fear of failure and criticisms, susceptibility to negative attitudes, lack of freedom of expression, cultural and moral values, lacking leadership qualities; faulty socialization, inadequate encouragement, low dignity of labor, nonpersistent attitude, etc.⁵

Therefore, there need to be structural and attitudinal changes in creating a better avenue for women to become entrepreneurs.

1. The educational curricula should infuse confidence and knowledge
2. Hands-on training programs, skill development programs
3. Identification of interest and creating a conducive environment
4. Making women think beyond traditional fields such as entrepreneurship in FMGs, banking, software, etc., to medical tourism, transport, and hospitality sectors, tours, and travels, agro-based industries, chemicals, fertilizers, etc.
5. Encouraging cooperative ventures
6. Establishment of nodal centers in every district to survey the products, market, and brand-building process

Besides, the following measures result in not only economic empowerment but also self-empowerment

1. Increase in self-esteem, individual and collective confidence
2. Increase in articulation, knowledge, and awareness of health, rights, law, and literacy
3. Increase and decrease personal leisure time and time for a child (depending on context).
4. Change in role and responsibility in family and community
5. Visible changes in women's participation levels in attending meetings, participating and demanding participation
6. Formation of women collectives
7. Awareness and recognition of women's economic contribution within and outside the household⁹

Vasant Desai, Small Scale Industries and entrepreneurship in the twenty-first century, Himalaya Publishing House, 2017 pp 350- 351

Empowerment of Women, Dr. Shanmukha Rao Padala, Dr. N V S Suryanarayana Gotet Himabindu, Sonali Publications, New Delhi 2011 pp 201-202.



Apart from these organization of seminars, workshops, literature distribution of possible opportunities, and identification of traditional industries, handicrafts, handlooms, toys, etc., will result in the revival of conventional entrepreneurship. As stated, *yatra naryastu poojyanthe Ramanthe thatr devatha* (where women are worshipped gods will stay) when the petty unit in our society called as a family can develop with the support and sacrifice of women its right time that the nation needs women entrepreneur's in overwhelming numbers to take the nation ahead in the global sphere and the startup India is one of the best initiatives in the right direction and is the right direction for the women economic empowerment.

