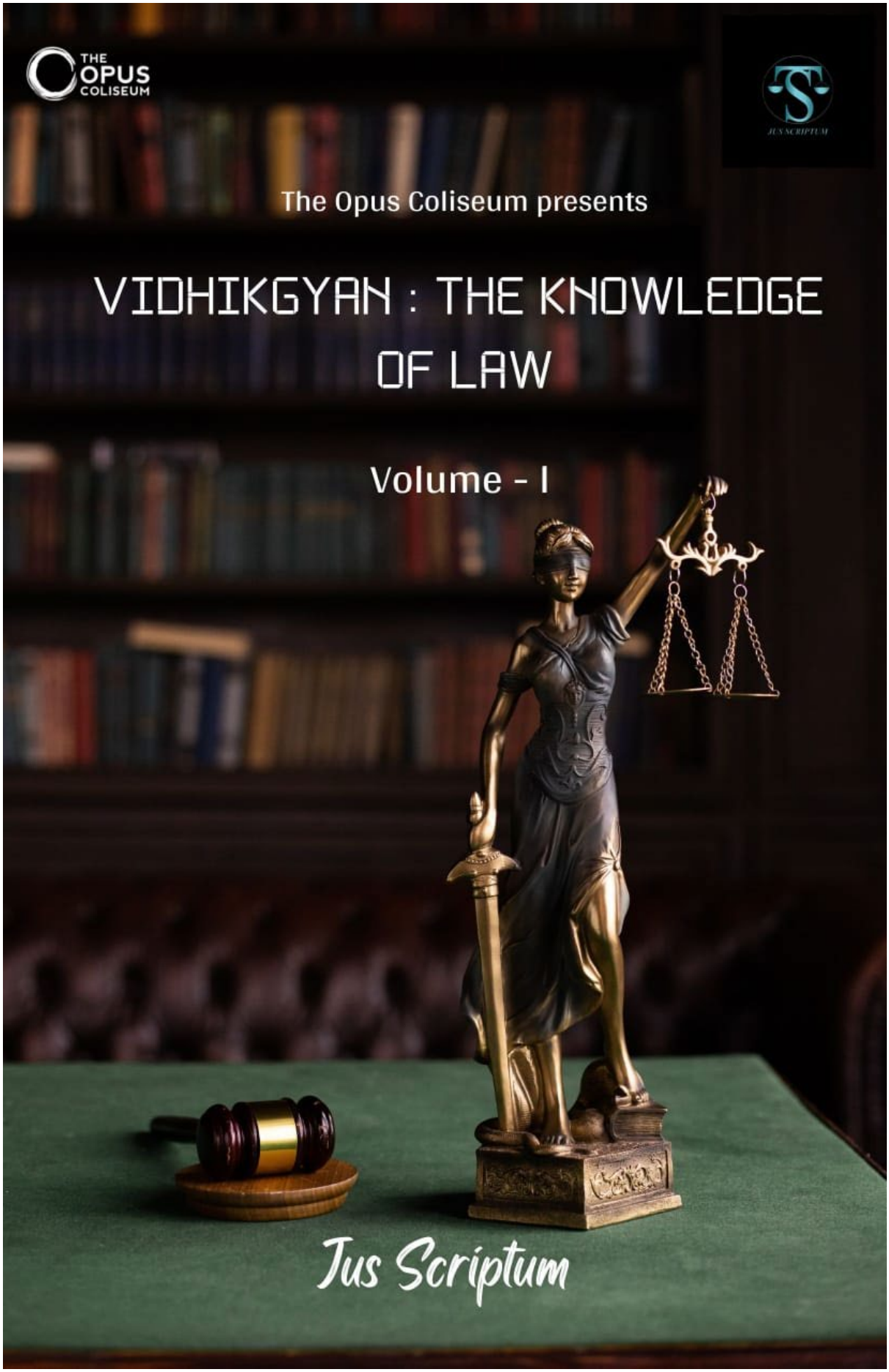
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JUS SCRIPTUM
The Opus Coliseum presents
VIDHIKGYAN : THE KNOWLEDGE OF LAW
Volume - I
Jus Scriptum

VIDHIKGYAN:

THE KNOWLEDGE OF LAW

Volume 1

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PREFACE

The articles of the edited book deals with various legal topics related to Constitutional Law, Criminal Law, Business Law and some contemporary issues. The idea of this book is vested in all authors who have contributed in the form of research papers, with all academic integrity and professionalism.

Efforts has been made to provide a deep understanding of number of different topics. The object of the book is to provide a platform to recognise intellectual talent. When it comes to the end result of the hard work put in by so many, the much-awaited outcome is simply amazing.

The book is intended primarily for students and teachers who are looking for different legal topics. Suggestions from readers will be welcome and thankfully acknowledged.

ACKNOWLEDGEMENT

We are grateful to all authors who have provided various chapters which are original as per their declaration about originality. We would like to thank everyone on publishing team for providing necessary facilities for preparation of this book. I take this opportunity to congratulate all authors. I take this opportunity to congratulate all authors and contributors and everyone who have put in extra efforts to make this book a success.

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ABOUT JUS SCRIPTUM

Jus Scriptum is established by Vidhi Chouradia and Ritik Agrawal with one goal in mind; that is to reach out to the student community and lend them a hand in their education. We assist students in every manner. This initiative by Jus Scriptum empowers students to build a better and effective community around us. A platform bridging the gap between the student community and the education sector, we incorporated elements such as our quality videos, articles, webinars and workshops, Internships, Publications and much more. We look forward to recognising and promoting the new talents in our industry and their skills to be showcased as well. We put forward combining education and technology to make it more accessible for the student.

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CHAPTER 1

JUDICIAL ACTIVISM IN INDIA

Author: Kirti Puri[1], Mr. Mohit kanwar[2]

ABSTRACT

Supreme Court of India has certain constitutional limitations, but for many times it has gone beyond its traditional role. Executive, Legislature, and Judiciary are three wings of Government with their own defined powers and duties, but there are cases when Judiciary has to fill the vacuum created by failure of other two wings. Be it the case of protecting working women from sexual harassment or be it a case of bonded labour or be it a M.C. Mehta case, Honourable Court has taken stands for protection of human rights as well as for animals and environment. These are the cases where either there were no laws to deal with the situation or the interpretation of law was required. There are contentions in opposition that judiciary is violating the principle of separation of powers. The paper tries to discuss the activist tendencies of Judiciary, it is necessary to analyse the reasons, dimensions and growth of judicial activism in Indian perspective. It contends that judicial activism has done positive justice but judiciary has to take care of sanctity of the Constitution. Various judicial decisions and many constitutional provisions have been discussed for this purpose.

INTRODUCTION

The Judiciary plays a vital role in the Indian democracy as judiciary helps in interpretation of various laws enacted by the legislature and also gave the directions to the Executive if executive lacks in execution of laws. The judiciary sort out the disputes arising between the centre and the States, or state and state or between group of states and a single state. Because of this

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[2] Assistant Professor, Chandigarh University

adjudicating behaviour Indian judiciary is also known as "**Savior of Democracy".** Good governance constituted by three pillars of the government namely:

i) Legislature
ii) Executive
iii) Judiciary

Indian judiciary is considered as an independent body which is supposed to be unbiased and unprejudiced. On the other hand, Judicial Activism is a legal terminology which means judgments given by the courts based on personal and political motive rather than current and existing laws.

BACKGROUND OF JUDICIAL ACTIVISM

Indian judiciary had been adopting an orthodox approach from very long time regarding the concept of judicial activism. As the concept of judicial activism was not known to India, despite of incidents of judicial activism occurs in India, that incidents did not come to the public at all. Judicial activism in India originates in the year 1893 by the dissenting opinion of Justice Mehmood of Allahabad High Court. It was a case of under trial prisoner who was not able to appoint his lawyer.

The concept of Judicial Activism has been originated much later in India with the theory of "Social want". The concept of Judicial Activism is seen in various judgments of privy council. In **Emperor v. Sibanth banerjee**[3] the Privy Council held that the court has authority to make investigation about the validity of the decrees passed under section 59(2) of Government of India Act, 1935.

In **High Commissioner of India vs I.M Hall**[4] the privy Council under section 240(3) of Government of India Act, 1935 stated the principles of "reasonable opportunity to be heard".

In India, the concept of judicial activism was first introduced in the case of **Mumbai Kamghar Sabha v. Abdul Bhai**[5].In India, the development of doctrine of Judicial Activism can be seen in three eras:

[3] AIR (32) 1945 PC 156.
[4] AIR (35) 1948 PC 121.
[5] AIR 1976 SC 1465

i) Pre- emergency era (1950 to 1974)

ii) Emergency era (1975 to 1977)

iii) Post- emergency era (1978 onwards)

JUDICIAL ACTIVISM: A CONCEPTUAL FRAMEWORK

Judicial activism has continually been supplying of heated dialogue, particularly within the light of recent developments during this regard. Over the previous couple of years with various polemic selections, judges of the Supreme Court moreover as varied High Courts have yet again triggered off the controversy that has continually generated a lot of warmth. But still, what the term "judicial activism" really connotes is still a mystery. From the origin of legal history until date, varied critics have given varied definitions of interpreting, that aren't solely totally different however also contradictory. This can be a shot to bring out the precise connotation of "judicial activism" and to seek out its effects on today's ever-changing society.

NATURE AND SCOPE OF JUDICIAL ACTIVISM

It should from the start be created clear that the idea of interpretation will not lend itself to a definite definition. It's multifariously been outlined as, a philosophy advocating those judges ought to interpret the Constitution to replicate contemporary conditions and values; once courts don't confine themselves to cheap interpretations of law, however instead produce law or once courts don't limit their ruling to the dispute before them, however instead establish a new rule to use broadly speaking to problems not bestowed within the specific action[6]. At the core of the idea is that the notion that when deciding a case judge (particularly those of the appellant court) could, or some advocate should, reform the law if the prevailing rules or principles seem defective. On such a read, judges mustn't hesitate to travel on the far side their ancient role as interpreters of the constitution and laws given to them by others so as to assume a task as independent policy manufacturers or freelance "trustees" on behalf of society. The array of existing disparate, even contradictory, ways in which of shaping the idea has created its which means more and more unclear[7]. This idea is historically the opposite of the idea of judicial

[6] Kmiec, Keenan D. "The origin and current meanings of" judicial activism"." *California Law Review* 92.5 (2004): 1441-1477.

[7] K.D Kmiec, "The origin and current meaning of 'Judicial Activism'" 92 California Law Review 1441 (2004) at p. 1446.

restraint, whereby the courts interpret the Constitution and any law to avoid second dead reckoning the policy choices made by alternative governmental establishments like Parliament, and also the President within their constitutional spheres of authority. On such a read, judges haven't any popular mandate to act as policy manufacturers and may defer to the choices of the elective "political" branches of the govt in matters of political affairs so long as these policymakers keep at intervals the bounds of their powers as outlined by the Constitution. We have a tendency to aren't about to loves the on-going dialogue on the pros and cons of those 2 ideas[8]however can begin from the premise that judicial activism could be a reality and handle it consequently.

PIL AND JUDICIAL ACTIVISM

Articles 13,32,226,141,142 of Constitution of India measure of considerable importance in judicial activism. Article 32 makes the Supreme Court because the defender and supporter of the fundamental rights. Article 13 presented wide power of review to the Apex court. Within the exercise of the review, it will examine the constitutionality of government or enactment the high courts have conjointly the same power during this regard. Article 141 indicates that the facility of the Supreme Court is to declare the law and not enact it, however within the course of it operate to interpret the law, it alters the law. Article 142 permits the Supreme Court in exercise of its jurisdiction to pass such order or create such order as is important for doing complete justice in any cause or matter unfinished before it. Through these Articles the Supreme court as well as High courts have vied a major role in redressed of many social issues, environmental problems etc.

JUDICIAL ACTIVISM AND HUMAN RIGHTS

In the field of basic human rights too, the judiciary has been systematically building new linkages of a brand-new egalitarian democratic and free society in consonance with new universal socio-political and economic order by evolving some rights as basic Rights below part III of the Constitution. Some of them are unit price mentioning e.g., right to information[9],

[8] Canon, Bradley C. "Defining the dimensions of judicial activism." *Judicature* 66 (1982): 236.
[9] L.I.C. v. Manubhai Shah, AIR 1993 SC 171; Secretary, Information and Broadcasting v. Cricket Association of W. B., AIR 1995 SC 1236.

right to work[10], right to get minimum wages[11], right to speedy trial[12], right to secrecy[13], right against inhuman treatment[14], etc. Above all, rendering itself is that the saviour of one basic right, as Justice Krishna Ayer states that, "the access to justice is the 1st among human rights." The development of rendering has made simple the cumbersome procedure of the court that making hindrances between public justice and also the courts. Thus, throughout the previous couple of decades, rendering has competed a serious role in protecting the rights and freedoms of people, as bonded below the constitution. when the landmark call within the Maneka Gandhi case, courts have assumed Associate in Nursing activist posture and have come to the fore to the rescue of aggrieved voters. In a very range of cases, behind the Maneka Gandhi case, the judiciary taken the constitutional provisions in its wider attainable meaning to defend basic civil liberties and basic rights.

During this era, our judiciary developed the conception of social policy litigation and public interest judicial proceeding by discarding the standard and self-imposed limitations on its own jurisdiction. In 1975, Justice VR Krishna Iyer for the primary time within the Bar Council of Asian country case advocated the liberal interpretation of locus standi publicly interest judicial proceeding. He discovered that in a very developing country like Asian country, public oriented judicial proceeding higher fulfils the rule of law if it's to run getting ready to the rule of life. Public interest judicial proceeding and rendering have touched nearly each side of life. Be it the case of secured labour, rehabilitation of freed secured labour, payment of minimum wages, protection of pavement and slum dwellers, juvenile offenders, child labour, embezzled detentions, torture and ill-treatment of woman in police lock-up, the implementation of varied provisions of the constitution, surroundings issues, the courts took awareness of every case and set down varied judgments to shield the fundamental human rights of every and every member of society.

CRITICISM OF JUDICIAL ACTIVISM

The thought of judicial activism has been under scanner by the critic since its origination. It's been criticised on many counts. One such criticism is that the PIL strategy could be a standing

[10] Sodan Singh v. New Delhi Municipal Committee, AIR 1989 SC 1988
[11] People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473
[12] R.Antulay v. R.S Nayak, AIR 1992 SC 1701
[13] R. Rajagopal v. State of T.N (1994) 6 SCC 632
[14] Kishore Singh v. State of Rajasthan, AIR 1981 SC 625

quoits approach of the court to avoid any amendment in the system then it's a painkilling strategy that doesn't treat the disease. It is argued that the issues of the poor, disadvantaged and also the underprivileged cannot be resolved by any trickle-down technique, so regardless of the court is doing in PIL is just symbolic, merely to earn a legitimacy for itself that it's lost over the years. The critics have any argued that thanks to broad interpretation; separation of power has been beneath stake. The judiciary is busy within the field of executive and a number of other times it's become troublesome for government to manage new reasonably downside with new strategy because it is anticipated that judiciary can struck down this kind of strategy' It is any argued that by extending its jurisdiction through PIL, the court is trying to bite over what it will chew. Lawyers have started whiny that abundant of the court's time is being consumed by PIL and hence for the court a card is additional vital than a fifty-page legal document. It's argued that at a time once the figures of unfinished cases before the courts are astronomical, this new space of proceeding would spell a complete collapse of the judicial system in Asian nation because it would open floodgates of proceeding. However, the history of PIL in Asian nation doesn't support this apprehension. Contrary to the popular belief contemporary PIL filing has registered a decline within the sequent years.

According to one opinion, the misuse of PIL has reached ridiculous limits and petitions are being filed everywhere the country before the official document courts for matters like student and teacher strike, shortage of buses, lack of cleanliness in hospitals, irregularities available exchange, painting of road signs, Dengue fever, examinations and admissions in universities and school etc. one can go on, however the list won't be complete. Classical case came up once, PIL petition was filed in metropolis Supreme court to hunt direction to the coalition Government at the centre (1997) to create a coalition cupboard with the congress. A petition (1999) was filed for unsupportive no-confidence vote against the Vajpayee Government. Power and content apart, several judges ought to entertain PIL thanks to the liberalization of the rule of locus standi and also the thought of social justice for the poor, laden and exploited sections of the society. Therefore, indiscriminate use of this strategy is transferrable it into dishonour as a result it's become the privilege of the privileged to possess access to the court. In fact, majority of the petitions either mustn't are filed or mustn't are pleased. PIL must be confined to cases wherever justice is to be reached to it section of the society which cannot return to the

court thanks to socio-economic handicap or wherever a matter of grave public concern is concerned[15].

LANDMARK CASES

1. Hussainara Khatoon v. State of Bihar[16]

The inhuman and barbaric conditions of the undertrial prisoners mirrored through the articles printed within the newspaper. Several prisoners UN agency was underneath trial had already served the most abuse while not being charged for the offence. A legal instrument petition was filed by associate advocate underneath article 21 of the Indian Constitution. The apex court accepted it and commands that right to speedy trial may be a elementary right and directed the state authorities to supply free legal facilities to the under-trial inmates so they may get justice, bail, or final unfairness.

2. Sheela Barse v. State of Maharashtra[17]:

A letter written by a journalist was self-addressed to the Supreme Court avouching the tutelary violence of ladies' prisoners in jail. The court treated that letter as a legal document petition and took cognizance of that matter and issued the appropriate pointers to the involved authorities of the state.

3. Sunil Batra v. Delhi Administration[18]

The court exercised its expostulatory jurisdiction, and a letter written by a unfortunate person was treated as a petition. The letter supposed that the pinnacle law officer atrociously inflicted pain and maltreated another unfortunate person. The Court expressed that the technicalities cannot stop the court from protecting civil liberties of people.

CONCLUSION

Even if all of these criticisms are valid nobody would counsel abolishing this strategy that the courts have innovated to succeed in justice to the underprivileged section of the society.

[15] Annual Report (2007-2008) of Supreme Court of India.
[16] 1979 AIR 1369, 1979 SCR (3) 532
[17] 1983 AIR 378, 1983 SCR (2) 337
[18] 1978 AIR 1675, 1979 SCR (1) 392

Something contrary would be like suggesting the abolishment of wedding so as to unravel the matter of divorce. This socio-economic movement generated by court has a minimum of unbroken alive the hope of the individuals for justice and so has weaned individuals removed from self help or seeking redress through a non-public system of justice It is necessary for sustaining the democratic system and therefore the institution of rule of law in society. Therefore, one must be each fearless and cautious during this respect and therefore the judiciary has to continue learning largely by expertise. Indian courts square measure a cornerstone of our democracy, distinctive for the transparency, certainty and accountability of their method in a very democratic country like Asian nation, the role of judiciary is important. Judiciary administers justice as per law. It is required to market justice in assessment method. Quality of judicial process ultimately depends on the style of doing administration of justice.

Judiciary will promote social justice through its judgments. Otherwise, common man can suffer heaps. In a very democracy, the system and therefore the judiciary square measure important constituents among the larger political surroundings. The trendy judiciary in India derives its sources from the Constitution and acts as a check on the discretional decisions of the assembly and therefore the govt. The Constituent Assembly foresaw the significance of Judiciary as a guardian of rights and justice. While the Supreme Court is the highest court of law in Asian nation, whose choices square measure equally binding on all the High Courts and therefore the Subordinate Courts guarantee justice at the state and district levels severally. The supply for review and public interest legal proceeding makes sure that the rule of law is maintained, thereby providing for a dignified living and rightful concern for all. The critics of rendering should bear in mind the very fact that in Asian nation till the general public Interest legal proceeding was developed by the Supreme Court; justice was solely a distant and even theoretical proposition for the mass of illiterate, deprived and exploited persons within the country. At a time of crucial, social and economic transformation, the judicial method contains a half to play as an accoucheuse of modification.

The issue of Public Interest legal proceeding touches a matter of the best importance virtually touching the standard of lifetime of many Indians. Besides this, it'll conjointly unfold wide the canvas of judicial common support and ethical authority particularly at a time once alternative establishments of governance face a legitimate crisis. The need for rendering was conjointly stressed within the task of levelling interest of ethnic teams as each the manager and therefore the assembly would invariably replicate the aspirations of the bulk community. Judicial inaction in such circumstances may irritate perceptions of injustice and eventually lead to

violence. It absolutely was maybe the maximum amount recognition of those dangers because it was a response to issues of social justice that witnessed the expansion of Public Interest legal proceeding in Asian nation. It's true that the independence of the judiciary is the initial concern of the constitution. Court is named upon to dispense justice as per the constitution and therefore the law of land. Therefore, in activity it should not forget the limits of its power that decision for restraint and in periods of restraint it should not be unmindful of its constitutional duty and obligation. Reality remains that the judiciary in Asian nation has performed well, lapses even so. There's an absence of understanding and scholarship in Asian nation on the conception and application of judicial activism and therefore the decide cannot act at random rather they must act judicially. Once the judges approach the law going on the far side two persons or two parties of the case or suit effectively, then it's known as 'Judicial Activism'.

Judicial Activism will be the simplest tool for the protection of human rights. However, the State is that the main perpetrator for the violation of human rights. Existing poor mechanism of the protection of Human Rights in Asian nation and breaking down of the 'Rule of Law' square measure nice issues for a sound rendering. Disappearance, cross-fire square measure often being traditionalised and women square measure being victimised within the safe custody that square measure the gross violation of human rights. Sometimes somebody is detained unlawfully and ultimately the court says that 'you are free now' that can't be an honest observe of rendering. However, Judges square measure in higher place to be associate degree activist of human rights. Thus, the unit broadly analyses the structure, process, behaviour and interaction of the judiciary within a broad framework to realise the goals of development and democracy and conjointly discuss concerning the theoretical framework of rendering.

CHAPTER 2

EUTHANASIA- THE NEVER- ENDING DEBATE

Author: Disha Deopura[19]

ABSTRACT

Every person born has to die one day. Death is inevitable. The law and the land respect natural death. The person is taking his own life is not permitted. Our law does not recognize right to die but if a person finds himself lying on death bed, incapable to live and waiting for his death to end his excruciating pain from incurable disease- Passive Euthanasia has now been recognised legally as a way to end one's suffering. Article 21 of the Constitution[20] which provides Right to live with dignity and a person hit with incurable disease is forced to live undignified life. Lately, the law has recognised right to die with dignity that gives the choice to the person to end their life. Euthanasia itself is sub- categorised, wherein some are considered as voluntary taking one's life, indirectly suicide while other could be to provide relief from the vegetative state. Human body is complex and disease of what nature might hit is difficult to conclude. Therefore, the subject remains dynamic and under constant observation for classifying cases to allow passive euthanasia. With every new case there come arguments for and against practicing Passive Euthanasia. Different countries have implemented different laws and procedures to justify euthanasia, India being one of them. It is observed that most of the countries to recognize euthanasia have granted allowance to involuntary; passive euthanasia but none favour active euthanasia. Apart from the scientific reasoning, socio-religious aspects play an important role in defining the status of euthanasia. India is a secular country where most of the religion terms euthanasia as unholy. Nevertheless, the law has declared passive euthanasia legal under specific cases with the support of medical board.

[19] Institute of Law Nirma University
[20] Right to Life, Constitution of India

INTRODUCTION

Doctors are termed as life savers, is it justified to the sanctity of their profession to terminate a patient's life? Euthanasia is the process of ending someone's life to liberate him/her from pain and suffering manually. The term was coined by English philosopher Sir Francis Bacon[21] in the 17th century. The word is derived from Greek language "Eu*"* means "good" and "thantos*"* means death. It is a way to inoculate a painless death, deduce from good death. It has evolved various definitions. According to Oxford dictionary[22], the term euthanasia means "The painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma." According to Merriam- Webster Dictionary[23] it is "The act or practice of killing or permitting the death of hopelessly sick or injured individuals (such as persons or domestic animals) in a relatively painless way for reasons of mercy." The process is known to be practices the most in the medical field. People with conditions like AIDS and other diseases where there is no immediate or effective treatment exists seek to euthanasia. Other than that, physical as well as psychological factors are also considered. Physical factors like excruciating pain, paralysis, coma, breathlessness affects the quality of life. Psychological factors like suicidal indentation, depression and anxiety, feeling of burden loses the will to live.

What element differentiates euthanasia from murder, when both includes killing of a person by another? Why does the law authorise it? It is important to note that euthanasia comprises of good intention, something not present in murder. Another major differentiation is that the former is in best interest of the subject, while the latter is concerned with the mala fide intent of the agent. This shows that law is the pivotal factor that governs the aspect of euthanasia in every country.

TYPES OF EUTHANASIA

1. Active euthanasia- It is means where a person directly ends the patient's life by an overdose of medications or use of lethal substances. In many countries it is illegal to practice active euthanasia and seen as criminal homicide

[21] Euthanasia: Past, Present and Future,
[22] McKean, E. (2005). The New Oxford American Dictionary. New York, N.Y: Oxford University Press.
[23] Merriam-Webster's Collegiate Dictionary, 1999

2. Passive euthanasia- Here, the patient's life is not directly taken. Their life support is removed and left to die slowly.
3. The distinction doesn't justify when morally as in the end the person's life is taken by an external force.
4. Voluntary Euthanasia- Occurs with the will of the patient to die. It takes into consideration Right to Die, which doesn't hold any legal recognition in India.
5. Non-Voluntary Euthanasia- When the person is unable to take the decision of living or dying on his own and an appropriate person on his behalf takes the decision. The consent is unknown however, the wishes are known. This includes a young baby, person with mental illness or of unsound mind.
6. Involuntary Euthanasia- The person's life is taken even when he wishes to live. It is usually called murder because neither the consent nor the wishes are known of the person who dies, might be due to unconscious state. But sometimes it is in benefit of the dead person therefore it is not murder.

PRACTICE OF EUTHANASIA IN DIFFERENT COUNTRIES

NETHERLANDS

The act of euthanasia in Netherlands is regulated by "Termination of Life on Request and Assisted Suicide (Review Procedures) Act" which came into effect in 2002. Euthanasia is still regarded as criminal offence there, but an exception has been made for doctors terminating life to not come in purview of criminal liability. The country has given recognition to voluntary euthanasia and assisted suicide. It is granted only in specific circumstances. They are ordered to prepare a report that shows they have fulfilled due care and conditions mentioned in the Act to perform euthanasia. The criteria are as follows:

1. It is required that the patient is voluntarily signing for euthanasia and should persist over time (the request cannot be granted when under the influence of others, psychological illness or drugs).
2. It should satisfy the condition that the patient is suffering from unbearable pain and there is no scope of improvement.
3. The patient must be made notified of his condition, disease, diagnosis and available options.

4. The physician in charge of the patient must consult with one independent physician who has experience and prior knowledge in the field, who must then report in writing that the primary conditions mentioned above are satisfied by the concerned physician with due care criteria.
5. The death must be carried out on specified medical conditions by the doctor or patient, and the doctor must witness it.
6. The age of patient must be at least 12 years (those between 12 to 16 years require their parents' consent).

CANADA

Canadian Law has not legally recognised euthanasia or assisted suicide till 2016. The patient only had the right to refuse treatment that supports their life. In the case of ***Carter v. Canada***[24], the Supreme Court of Canada quashed the prohibition on medical assisted death. It concluded that it violated the Canadian Charted of Rights and Freedoms and thus, demands for a new law. In 2016, the Parliament passed a new legislation that grants patients who are terminally ill to request for medical assistance in dying. Recently in 2021, Bill C-7[25] overruled some provisions of Bill C-14 and added new provisions. The Bill mentioned grant to request euthanasia for those patients whose death was not reasonably foreseeable, under the guidance of medical practitioner with specialisation in medical assisted death, further, will be kept on 90- day assessment after their request is made, lastly, they will be made aware of alternative options, counselling on treatment methods before their final consent is taken.

AUSTRALIA

In the period 1996-1997, euthanasia was legal in the Northern territory. Both physicians assisted suicide as well as active voluntary euthanasia were allowed under special circumstances. After that period a federal law, Euthanasia Laws[26] overruled the Rights of Terminally Ill Act[27], 1996, rendering the act of euthanasia illegal. They produced an alternative applicable throughout Australia, where a patient can choose not to continue his treatment by removing life support system.

[24] 2015 SCC 5
[25] Bill C-7, 2021
[26] Euthanasia Laws Act 1997.
[27] Rights of the Terminally Ill Act 1995

SWITZERLAND

Active euthanasia is illegal in Switzerland. The Swiss Criminal Code of 1937[28] upheld the act of active participation in voluntary euthanasia even with bona fide motive like that of mercy killing. It gives legal status to assisted suicide carried out with non-mala fide intentions. The act of "inciting and assisting suicide for selfish motives" is punishable offence under Article 115 of the Code.

UNITED KINGDOM

Euthanasia whether active or passive; voluntary or involuntary are prohibit by English Law. Assisted suicide is also termed illegal under the Suicide Act 1961[29] prescribed punishment up to 14 years of imprisonment. It is considered as an act of intentional killing- the act of mercy killing is taken into the same prospect- is treated as murder, suicide or manslaughter which is illegal.

UNITED STATES OF AMERICA

Euthanasia either active or passive is illegal in certain states of United Sates. The Federal Government has implemented no laws regarding euthanasia or assisted suicide and directed its jurisdiction to respective states. Therefore, certain states have legalised physician- assisted suicide.

PRACTICE OF EUTHANASIA IN INDIA

Euthanasia is means to terminate a person's life. However, in India the law has recognised right to life under Article 21 but not right to die[30]. Nevertheless, right to die with dignity achieved the legality through **Aruna Shanbaug's case**[31].

Till the date, passive euthanasia is the only kind which has gained legal status in India. It is only justified in the cases where the life support is removed of the patients in a vegetative state. It is performed by:

[28] Anton Pestalozzi-Henggeler, Euthanasia under the Swiss Penal Code, 15 Sw L.J. 393 (1961)
[29] 9 & 10 Eliz 2 c 60
[30] Rao S. India and Euthanasia: The poignant case of Aruna Shanbaug. *Medical Law Review.* 2011; 19:646–656.
[31] Aruna Ramchandra Shanbaug v. Union of India, (2011) 4 SCC 454

- Detachment of life supporting systems like ventilators, respirators, etc
- Stoppage of feeding tubes and water
- Halting medications and life- saving drugs

On March 2011, the patient Aruna Shanbaug, a nurse serving at Mumbai's Kem Hospital was brutally assaulted in 1973 and since then, she laid in a permanent vegetative state (PVS). The author Pinki Virani acted as 'Next Friend' under the Constitutional provision constituted a plea on behalf of Aruna Shanbaug. She was in an autonomous state, unable to give her consent. She insisted for stoppage of feeding through Ryles Tube which is attached to her for a year or so. In 2014, the Supreme Court allowed passive euthanasia in "certain situations".

- For a brain-dead person the ventilator support can be detached.
- Those in a Persistent Vegetative State (PVS) for whom the feed can be tapered out and pain-managing palliatives are added, according to laid-down international specifications.

GUIDELINES BY SUPREME COURT

Further, the Supreme Court laid down specific guidelines:

1. The decision to terminate the life support systems should be taken by the parents, or the spouse, or any close relatives of the patient. In case of absence of any of them, a person or a group can take decision acting as a 'next friend'. Doctors treating the patient can also be the one who take this decision. The important factor is the decision taken should be bona fide in the best interest of the patient.
2. The decision taken by near relatives, doctors or next friend has to be approved by the High Court of the respective state.
3. When such application comes for approval, the Chief Justice of the High Court constitutes a judge- bench of at least two judges. The Bench then appoints a committee of three learned doctors who prepares a report that exhibit the condition of the patient. Thereafter, a notice regarding the report is given to the close relative and the State. Lastly, both the parties are given chance to be heard and then the High Court give its verdict.

To validate passive euthanasia, Ministry of Law and Justice said that the guidelines laid by the Honourable Supreme Court are to be followed and abide by. There was no legislation passed on the subject, therefore, these guidelines are of binding nature to all the cases related to passive euthanasia.

It was observed in the case of **Gian Kaur vs State of Punjab**[32], right to die cannot co-exist with right to life. The right to live with human dignity is inclusive of death with dignity. However, the unnatural termination of life is not guaranteed as right to die with dignity. Person while attempting to suicide fails, shall be punished with imprisonment or fine or both. This case is in contradiction to Aruna Shanbaug case, where passive euthanasia is allowed.

The State's foremost responsibility towards its citizens is to provide to live with dignity. However, there is no proper definition of human dignity given yet. A person in a detrimental condition is not living a life with dignity. He doesn't have the option to die considering right to die is illegal. Therefore, right to die with dignity is taken to be the last resort to liberate the person from his suffering. In 2018, Supreme Court in the case of **Common Cause**[33] held that right to die with dignity would be considered fundamental right under Article 21.

Right to die with dignity has standing, when the patient is unable to give his consent. The treatment is directed by the doctors and medical practitioners. What if the person consented by drafting his living will? Article 21 has guaranteed a legal right to the patients to deny medical treatment. On the contrary, the patient has right to explicitly mention the medical treatment he wants to be administered when he is terminally ill or not in the condition to provide his consent. It is accomplished by signing a living will. The government opposed this concept of living will in case of terminally patients as it can be misused and not in public interest. They argued if the person who signed the will, might not be aware of future developments that can lead to his better treatment. They also pointed that there is no legislation over the withdrawal of living will in the future. The Management of the Patient with Terminal Illness Withdrawal of Medical Life Support Bill was put forward in this regard.

[32] 1996 SCC (2) 648
[33] Common Cause v. Union of India (2018) 5 SCC 1

RELIGIOUS PERSPECTIVE ON EUTHANASIA

*"*Death is one of the most important things that religions deal with. All faiths offer meaning and explanations for death and dying; all faiths try to find a place for death and dying within human experience."[34]

Different religious ideologies have concluded euthanasia on the basis of their religious preaching. Most have them have stood against the act of euthanasia declaring it unholy and minority justified in as two faces of the same coin.

Islam banishes practicing euthanasia. They said that it the creator who blessed us with life and chooses how long a particular human will live. Human being should not interfere with the already destined path. It is forbidden to take one's life or another in the Islamic Code.[35] Therefore, Muslims are forbidden to end their life through self- will. This can be seen in many Gulf countries that prohibits euthanasia or assisted suicide.

Christianity is also against euthanasia. Human life is of utmost dignity and value because God has created a part of his own image. Life is gift from God who also designed the life-death cycle. Catholic group terms it as "crime against God" to destroy human life on self-will. The Declaration on Euthanasia provides for the terminally ill patients to be given palliative care and company of their family members. Eastern Orthodoxy also sees euthanasia as illegal act of ending human life. Protestants have dynamic view on physician assisted- suicide. However, conservatives mostly oppose about the idea.[36]

Hinduism and Buddhism[37] provide mixed views on euthanasia. On one hand it is an act of compassion to relive the pain of a person. While, it is observed as immoral to end human life by the way of suicide or helping one to end his life. It is said to disturb the cycle of life-and-death. Death is a process that occurs naturally without any external interference. Hinduism also developed the concept of fasting to death that not considered unholy "prayopavesa", it is for those who have lived their lives and left no desires. Therefore, is acceptable for them to commit suicide by fasting.

Jainism in a way has supported euthanasia by the concept of "santhara" respectively, which means fasting to death.

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[34] Religion and euthanasia
[35] The Qur'an 4:29 (Translated by Muhammad Taqi-Ud-Din Al-Hilali and Muhammad Muhsin Khan)
[36] Religious Perspectives on Euthanasia
[37] Euthanasia, assisted dying and suicide

POINTS TO CLARIFY

The concept of euthanasia has many arguments for and against it:

- Constitutional Validation- 'Right to Life is a fundamental right but suicide is an unnatural termination of life inconsistent with 'right to life'. It is the duty of the medical practitioners to take care and cure the patient. Legalising euthanasia would harm the quality of treatment of terminally-ill patients.
- Eliminating the undesirable- By adopting passive euthanasia, patients with incurable disease would be considered vulnerable in the society.
- Palliative care- Taking care of the terminally-ill, relieving them from stress and reducing their sufferings would make euthanasia unnecessary.
- Mental Health- A person in agonising pain might be a victim of depression seeking euthanasia.
- Burden on caregivers- The sufferers or the family members as well as their caretakers are usually burdened financially, mentally, physically and socially. The resources might be constraint to carry out big surgeries and treatment.
- Refute to be treated- Right to refuse medical treatment is recognised by the Constitution which gives a way to passive euthanasia.
- Too much power with the doctors- The knowledge of doctors is immense when it comes to analysing the treatment of the ill. Making a decision to incorporate passive euthanasia can sometimes be made with ill will under the influence of third-party.
- There is a much high possibility that the subject of passive euthanasia becomes a tool of corruption and ends a person's life that is considered bothersome.

CONCLUSION

The passive euthanasia has obtained legal status still, the matter remains under constant debate. There is no legislation has been passed yet to govern the matters of the subject. In the absence of a firm act or law, it is taken that the cases of passive euthanasia can only be dealt with precedents and guidelines of the Supreme Court. A bill is recognized to operate Living Will, but there is risk of it being misused. It is with the consent of parents, spouse, close relatives or doctors that the process can be carried out, once the court gives its final verdict. Currently in India end of life care or passive euthanasia are legalised, whereas, physician assisted suicide and voluntary active euthanasia remains illegal. It remains a delicate subject in terms of

religious and philosophical parameters. Nevertheless, with growing understanding and knowledge of modern science, it is discovered that some diseases are just incurable and snatch away the right to live with dignity from the patient. It is in the interest and will of the patient to terminate his life by an external force to do away with the never- ending suffering.

CHAPTER 3

PURPOSE OF HUMAN TRAFFICKING IN INDIA

Author: Rashmi Duhan[38]

ABSTRACT

Human trafficking is buying and selling of human beings as if they are a commodity. Trading in human beings is illegal globally and is prohibited by several laws and conventions. Human trafficking is a global crime and the increasing rate of this crime has led to several questions. There are several reasons behind human trafficking like poverty, lack of education, population, unemployment and demand for cheap labour. Human trafficking does not only cover sexual exploitation of women but it also includes forced labour, bonded labour, child labour, organ harvesting, forced marriages, domestic servitude, slavery. In this article we will study about the purpose of human trafficking. The researcher has tried to explain various purposes of human trafficking happening in India. The researcher also used the current crime report of National Crime Records Bureau (NCRB) on human trafficking to explain the purpose of trafficking in humans and the reasons behind increasing rate of trading in humans. The current article also includes the elements of human trafficking. There are basically three elements of human trafficking the act, the means, and the purpose. The main focus of this article is on the third element of trafficking that is 'the purpose'.

Keywords: Human Trafficking, Child trafficking, Women trafficking, Purpose, forced marriages, child labour, forced labour, poverty, population

INTRODUCTION

The Constitution of India is the "fundamental law" or as said "*The Grund Norm*" of the Indian legal system. In hierarchical order the Constitution is the superior law and controls all the other subordinate laws. The Indian constitution is divided into 25 parts and includes 12 schedules.

[38] UILS, Chandīgarh University

The fundamental rights are dealt under part III of the constitution and it incorporates article 12 to article 35. Human trafficking and prostitution are discussed under article 23, which is covered under the 'right against exploitation' chapter. Human trafficking means 'buying and selling human beings' like they are a property. Trafficking in humans is abolished by article 23(1), but the articulation of article 23 is wide and also includes the prohibition of trafficking in women for immoral purposes. The only reason why trafficking takes place in humans is "money', for earning easy and fast money the trafficker deals in humans. However the motive behind trafficking is one but the purpose is not limited; there are several reasons behind trafficking like selling for the purpose of prostitution, labour, organ harvesting, child labour and prostitution. According to United Nations Office on Drugs and Crime - "Human trafficking is the recruitment, transportation, transfer, harboring or receipt of people through force, fraud or deception, with the aim of exploiting them for profit." [39]Trafficking is basically trading in illegal manner so trafficking in humans is trading humans as commodities. This type of trade is globally illegal and is prohibited by UN. Humans are born free and nobody except the person himself has the right over the body of other person. The worst form of exploitation is human trafficking in this entire universe and it is increasing at an alarming rate. Trafficking in humans is prohibited under art 23 (1) of the Indian Constitution.[40]This trading practice is carried away in many different ways like fraud, forced or fake marriages, kidnapping and abduction, threat, by use of money or power. Females are mostly trafficked into sexual exploitation for commercial purposes. Sexual exploitation in women/girls has become the greatest challenge of this generation. "Trafficking is exploiting women in worst manner and has put the dignity of women into threat".[41]Women are destroyed in every way possible; physically, psychologically, socially, economically and in other manners. Not only women are victims of trafficking but children as well as adult male are trafficked too. The victims of child trafficking are forcefully indulged into begging, theft, drugs and minor girls are brought into the sex industry, pornography and also in segment of forced marriages. Trafficked adult male are primarily forced into labour or bonded Labour. Human trafficking is not only sexually oriented but also includes forced marriages, forced/bonded labour and organ harvesting. According to the International Labour Organization, The estimated number of victims in trafficking was 40.3 million as of 2016 report out of which 71% were women and girls. 24.9 million Victims were

[39] United nations, "Office on Drugs and Crime", published on December 10,2021,
[40] Indian Constitution, Article 23, clause 1
[41] [3]M.P Jain, *Indian Constitutional Law* 1286 (LexiNexis, Chennai)

forced into labour and 15.4 million were forced into marriage[42]. Victims are trafficked from one country to another or within the same country. In most of the cases such incidents are unavoidable and victims suffer without their will. No room for escape is left as the traffickers create weak conditions and victims are left with no other choice than to obey the trafficker. These weak conditions are created by using different methods such as taking over the passport or other documents of the victims, by torturing the victim physically, by threatening the victim, by imprisoning the victim or by forced drug use[43].

Every year millions of people are transported from one country to another without their will and are exploited in every way possible. This practice of transportation is as also done within the country; the victims are transported from one state to other. The traffickers use different modes of transportation.

CAUSES OF TRAFFICKING

There are several causes behind trading in humans. The causes are as follows:

Poverty- Poverty is the utmost cause of human trafficking. Poor population can be easily manipulated in the name of money due to lack of economic resources. It is hard to believe but in many cases the father sold his daughter to the trafficker either for fulfilling the needs of his family or for his own benefits. Poverty is the sole reason that the labours are exploited and are not given proper wages.

Lack of Awareness- Most of the Indian population is not aware of their rights. People should be made aware about their rights and duties. Spreading awareness and educating people will lead to lessening of trafficking. 77.7% population of India can read and write but they don't know their rights and remedies[44] Labors are exploited every day but they don't raise their voices because they are not aware of their rights, they don't know that the government has fixed the daily wage rate which should be given to the labor for their services.

Population and Unemployment- The current population of India is 140 crores and only 38% population is employed. India is the second most populous country and one day India might

[42] International labour Organization, "What is forced labour,modern slavery and human trafficking", https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm last accessed on July 18, 2022

[43] Dr. Deepali Gangwar, " An Essay on the Right Against exploitation: A fundamental right to protect Dignity and freedom". Published January 25, 2022

[44] Jaffar Latief Najar, Human trafficking in India: How the colonial Legacy of the Anti-human trafficking regime undermines Migrant and Worker Agency, published February 11th, 2021

leave China behind in terms of population. Population and unemployment are also the important causes of trafficking. Victim goes abroad in search of work and is trapped into trafficking. Many traffickers offer jobs to the victims and after reaching the country the trafficker either forces them into prostitution or forced labour or domestic servitude. Traffickers also publish advertisements in the newspaper for job opportunities. India being a populous country can't offer jobs to everyone therefore people move out and then become victims of trafficking.

Demand for cheap labour- Everybody wants cheap labor nobody wants to pay to the laborers. Rich people need labor for their factories, houses, agricultural fields and mines etc. Instead of paying them the deserving amount the trafficker forces the victims to work for unreasonable hours and at low pay. The clothes we wear, the food we eat might have been produced by the victims of forced labor or bonded labor.

ELEMENTS OF HUMAN TRAFFICKING

There are three elements of human trafficking.

- The act
- The means
- The purpose

The act- which is done to commit the crime of trafficking by way of abduction, threat, coercion, Abuse of power and money, fraud. These are the acts done to traffic a person. The act is also called as 'recruitment' in terms of trafficking. Phase of recruitment is the phase in which the victims are lead to trafficking and become part of this chain. Recruitment of victim is done by winning the trust of victim through internet, love, friendship and then offering them a good life or by abduction, threat or by offering jobs or are sold by their families for money.

The Means- after recruiting the phase of transportation starts. The victims are transported to different cities or countries. Transportation is done as soon as the victim reaches the trafficker and several means are used to transport the victim like by road, water, air.

The Purpose- the final phase of trafficking is the purpose. Victims are forced into sexual acts. Children are either exploited by way of forceful sex or by putting them to beg on the streets. The female victims are sexually exploited and the male victims are forced to work in bad

conditions. Not only physical exploitation is done by the trafficker but also mental exploitation. The main purpose of the trafficker is to earn profit out of the work done by the victims

PURPOSE OF HUMAN TRAFFICKING

Every crime is done for a purpose and that purpose falls under the first stage of crime- 'mens rea'. the only motive is to earn huge amount of money by selling humans like commodities. Trafficking in humans is done for various purposes that are as follows[45]:

Sexual Exploitation- In sexual exploitation the victims are exploited for sexual purposes. The trafficker who has bought or sold the victim uses the victim either for fulfilling his own sexual urge or taking payments from others to indulge into sexual activities with the victim without the consent or will of the victim. Sexual exploitation is popularly known as commercial sexual exploitation which means exploiting a person sexually for commercial benefits. The sex industry is a billion dollar industry. Girls/women are bought and their bodies are sold every day for money without their consent. All genders and people of all age groups are the victims of sexual exploitation.

Child Exploitation- "A child is one who has not attained the age of 14."[8] The legal age in India is 18 and above, a person is considered as minor when he/she has not attained the age of 18.[9] Every year millions of children are trafficked and transported to different places. The young children are exploited by forcing them into begging, theft and child pornography. The adolescent girls are forced into marriages and prostitution. A child below the age of 14 cannot works under hazardous condition like mining factories etc according to the article 24 of Indian Constitution.[10] The trafficker forces the children to work for unethical hours into bangle factories or mining places or construction sites.

Forced Marriages- The victims are forced to marry a person of whatever age. Mostly the victims are forced to marry aged men. According to the 2016 report of International Labour Organization, 15.4 million victims were into forced marriages.[11] The minor girls are the main victims of the forced marriage exploitation.

Involuntary Domestic Servitude- Domestic servitude means helping in domestic works like household works cleaning, washing, babysitting and cooking. Normally these tasks are paid

[45] British Columbia, "The purpose of Exploitation, or why it is done", Published 2014, 2

and are performed by the helper known as maid, servant or Nanny. The helpers work voluntarily and proper work environment is provided to them. But in trafficking the victims are forced to perform household tasks. They stay in abnormal conditions and neither are they paid for their services nor they get any day off. This form of exploitation remains hidden as the victims are not allowed to go outside the house.

Organ Harvesting- Organ harvesting is selling of organs illegally. The trafficked victim's organs are taken out by surgery and then sold in the market. The person executing the medical task is not necessarily a professional and no medical care is taken. "THBOR It's not a new phenomenon, with the shortage of legally sourced organs around the world, it is estimated that the illegal trade of human organs generate about $1.5 billion each year from roughly 12000 illegal transplants." WHO in 2014 requested the countries to take measures on the matters of organ trafficking.

Forced Labor/ Bonded Labor- The meaning of forced labor and bonded labor is different but the task performed is similar. Forced labor is forcing someone to perform the activities of labour by creating the conditions like physical torture or taking away their important documents etc. Victims are forced to work in manufacturing industries, construction sites, mines etc for unethical hours and are not paid for the work done. In bonded labor the victims are given loan on very high rate of interest by the employer and the employer confiscates the documents of the victims so that they cannot escape the place. The employer asks the victim to repay the amount of debt and then he will set the victim free. Sometimes the debt is forwarded to next generations of the family and this way the generations become bonded labor to repay the debt. In '**Vasudevan vs. S.D. Mittalṅ***[46]'*, The Supreme Court approved the meaning of begar by Bombay High Court that is "Begar is involuntary or forced or compulsory labour with or without payment.[47]"

Table 1: The purpose of Human Trafficking 2020:

[46] Vasudevan Vs. S.D. Mittal and ors.(AIR 1962)
[47] National Library of Medicine, "Organ Trafficking and Migration: A bibliometric Analysis of an untold Story, Published May 2020

1- Forced Marriages (187 cases)
2- Domestic Servitude (846 cases)
3- Sexual Exploitation (1466 cases)
4- Forced Labour (1452 cases)
5- Petty Crimes (11 cases)

The above data was released by NCRB in 2020, cases reported with the purpose of human trafficking.

Explanation of Table 1

•According to the reports released by NCRB in 2020, 187 cases of trafficking were reported for the purpose of forced marriages in India.

•846 cases were reported for the purpose of domestic servitude. 846 victims were in the clutch of the trafficker for serving them in their domestic or household works without their will and without any payment.

•1466 victims were forced into prostitution and other sexual exploitation acts. The number of cases reported for the purpose of sexual exploitation and prostitution tops the chart.

•1452 cases were reported for the purpose of forced labour in India.

•For the purpose of petty crimes like pocketing theft etc the cases reported are 11. Mostly children are trafficked for the purpose of petty crimes.

•If we look at the data provided by NCRB, state of Maharashtra has highest number of cases reported for the purpose of prostitution and sexual exploitation. 514 cases were reported in the year 2020.

•Odisha has reported the maximum number of cases for the purpose of forced labour that is 653.

•Cases reported for domestic servitude are highest in the state of Rajasthan that is 683 and the total cases reported are 846.

•Kerala reported the maximum cases of forced marriages in 2022, 46 cases of forced marriages were reported in Kerala.

Table 2: Trafficking in different states of India

Table of cases reported in 2015 and 2020 of trafficking in different states of India**:**

S.No	States/ Union Territories	2015	2020
1	Maharashtra	517	184
2	Telangana	228	184
3	Assam	91	124
4	Jharkhand	109	140
5	Odisha	84	103
6	Kerala	21	166
7	Delhi	66	53
8	Andhra Pradesh	239	171
9	Chhattisgarh	68	38
10	Madhya Pradesh	51	80
11	Bihar	43	75
12	West Bengal	3579	59
13	Rajasthan	422	128
14	Karnataka	404	13
15	Goa	40	17
16	Tamil Nadu	439	11
17	Uttar Pradesh	79	90
18	Punjab	13	17

19	Haryana	51	14
20	Gujarat	548	13
21	Uttarakhand	12	9
22	Manipur	3	6
23	Chandigarh	1	2
24	Arunachal Pradesh	2	2
25	Andaman & Nicobar Island	1	0
26	Tripura	0	1
27	Jammu & Kashmir	0	2
28	Daman & Diu & Dadra Haveli	7	2
29	Himachal Pradesh	8	4
30	Meghalaya	7	1
31	Mizoram	2	0
32	Sikkim	1	1
33	Nagaland	0	0
34	Pondicherry	0	4
35	Lakshadweep	0	0
36	Ladakh	0	0
	Total	8132	1714

Explanation of Table 2

In 2020, 1714 cases were reported with over 3000 victims across India.[14] The table 2 shows the number of cases of human trafficking reported in different states of India in 2015 and 2020. The shocking part is that the year 2020 was the year of Covid-19 and for almost a year people were asked to stay inside their houses. 1714 cases in 2020 are the reported cases but there are many more cases which were not reported. If we look at the data released by NCRB in 2015 the cases were very high.[15]

- West Bengal had the highest trafficking cases in the year 2015. 3579 cases were reported only in West Bengal. In many states rather than decreasing the number of cases during pandemic the cases increased.
- According to the table 2 states like Madhya Pradesh, Bihar, Kerala, Assam had an increase in the number of cases reported in 2020 when compared to 2015.

- In 2015, the numbers of cases reported in Assam were 91 and in 2020 it increased to 124.
- In 2015, the numbers of cases reported in Kerala were 21 and in 2020 it increased to 166.
- In states like Madhya Pradesh Bihar Uttar Pradesh Punjab Manipur the number of cases has slightly increased in comparison to 2015.

If we believe the report of 2020 on human trafficking then the number of cases has decreased to a good level. The hard fact to digest is that even after so much strict rules during the pandemic the numbers of cases reported are 1714, it should have been less then this number. States like West Bengal, Rajasthan, Maharashtra, Gujarat, Tamil Nadu, Karnataka should implement more strict laws on human trafficking. Places like Nagaland, Mizoram, and Lakshadweep recorded zero cases of human trafficking in year 2015 and 2020. During the pandemic in July, 2021 a 13-year-old girl was forced to marry a 38-year-old man in exchange of one lakh rupees in Uttar Pradesh. The police reached the crime place on time and saved the girl from being trafficked.[48] Trafficking is not an issue faced only by India, it has become global issue with the increasing rates of trafficking around the world. The purpose of trafficking is same around the globe as it is in India. Victims are trafficked to foreign countries by creating fake documents with the help of other traffickers. India has become the hub of sex industry for foreign visitors. Millions of girls till date have been transported to foreign countries in last decade. Some are transported through airplanes, some through cargo, and some are forced to cross the borders illegally.

EFFECTS OF TRAFFICKING

- Physical or health effects: victims of trafficking are physically abused by the traffickers, they are beaten, sexually exploited and their body parts are damaged. Due to sexual exploitation victims are at high risk of getting infected with HIV aids or other sexually transmitted disease.

- Emotional effect: the victims are not only physically tortured but also tortured emotionally and mentally. Due to the harassment and commercial sex the victim feels

[48]Times of India, "A 'Goonda Act' for islands of peace", published May 27, 2021, https://timesofindia.indiatimes.com/city/kochi/a-goonda-act-for-islands-of-peace/articleshow/82985630.cms last accessed August 3, 2021

guilty of having sex with so many people. The guilt leads to anxiety and depression and sometimes the victim also commits suicide due to the mental and emotional torture the victim is suffering.

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– Economic Effect: the victims who are trafficked for sexual exploitation suffers a lot after escaping the traffickers. Society doubts the victim's character and do not let them live a good life and no jobs or sources of income are provided to them. The trafficker earns more from the victim by selling the victim or forcing into commercial sex.

– Social effect: The victims who were trafficked for sexual exploitation suffers a lot after escaping or rescue. Society doubts the character of the victim and do not let the victim live a good life. Sources of income or not provided to the victims. The victims are treated as if they have committed any crime and society does not accept them as a human.

Trafficking does not only mean sexual exploitation, it has wide meaning. Trafficking includes slavery, domestic servitude, forced labour, bonded labour, forced marriages, child prostitution, using children for illegal purposes, forcing children to beg. Table 1 shows that humans are trafficked for the purpose of forced marriages, domestic servitude, forced labour, petty crimes and sexual exploitation in India.

CONCLUSION

Trafficking is a complex offense, there are so many people involved in it and is viewed with different perspective. The problem of trafficking lies with the social economic conditions of a country or state, legal factors and poverty. Indian literature focuses more on commercial sexual exploitation and this subject completely dominates the actual problem of human trafficking. Trafficking affects the victims in so many ways.

SUGGESTIONS

1- Lack of education is the main cause that people aren't aware about their rights. Children should be taught about their rights and duties in schools and by their parents. People living in ruler or urban areas should be made aware of their legal and fundamental

rights. Children should be made aware about trafficking and its purposes and how one can protect oneself from traffickers via play, short movies, skit etc.

2- Person involved in trafficking should be punished strictly. Such punishment shall be given to the trafficker or other offender involved in trafficking that sets an example for all the other people in the society.
3- Proper protection should be provided to the victims of trafficking. The victims of trafficking shall not be treated badly and special legislative provision should be made related to their protection employment and stay facilities.
4- Due to poverty children lack in education and are not made aware of their rights. The access to education should be provided to all.
5- Fast track courts shall be established to deal with the cases of human trafficking. The state government or the Centre government should provide the funding to establish fast track courts.
6- The subject of child sexual abuse and trafficking should not be ignored and the innocence of a child should be saved and the childhood of the children should be protected from the hands of trafficker.
7- Anti-human trafficking units should be established by the state or central government in all the districts of India to prevent human trafficking.

CHAPTER 4

SUPREME COURT ON SEDITION LAW: AN ANALYTICAL STUDY

Author: Aastha Sharma[49]**, Ranjana Sharma**[50]

ABSTRACT

Sedition is the incitement of rebellion against the government. Sedition encompasses all actions and practices that aim to incite dissatisfaction or disillusionment toward the constitution, the government, or parliament to cause a public disorder or lead to civil war, as well as all strategies to encourage public discord or disorder in particular, Since, its inception in the English court, the rule of seditious conspiracy has indeed been described by ambiguity and non-uniformity in its implementation. Centuries of the ruling governing elite have made sure that they will have an instrument to suppress any speech that ends up going against their best interest by conspiring to keep its scope ambiguous. There's been a shift in our understanding of state security as a justification for restricting freedom of speech and expression. Furthermore, there has been a significant change in the pattern of the government, as well as reduction in the receptivity of the ordinary folk to be incited to conflict by offensive language. Even the preservation of 'public order' could be used to rationalize these laws because it is meant to address local law and order problems instead of incentive the very foundation of the State itself. In this paper, we will look into the law of sedition in present day. We will firstly understand what sedition law is and its history of origin in India and after this; we will look into the view of the SC on this topic after the independence. We will analyze the decisions of the SC. In the end I will provide some suggestions for the problems faced, if any.

Keywords: Incitement, Public order, Rebellion, Restricting freedom

INTRODUCTION

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Sedition law was a contentious aspect of the Indian penal system before independence, and it remains so today. Sedition law is imperial era legislation, and the reasoning behind it was to endorse British rule, and those who were dissatisfied with the administration were accused under Sec.124A. In the Privy Council, the Federal Court, and the trial courts before independence, there was an interpretation of sedition law, and then after such decisions, British laws were enacted. The sedition law was amended several times. Following the Independence of India, the Indian constitution was enacted and some rights were granted to Residents and non-residents, one of which is freedom of speech and expression which is granted to Indian citizens under Article 19(1) (a), but this fundamental right is not granted as an absolute right but some limitations are there under which this right can be restricted. These restrictions are given under article 19(2).

So, after the freedom constitutional validity of the Sedition act was questioned, Allahabad HC and Punjab HC stated that Sec. 124A is ultra vires; however, the Supreme Court upheld the constitutional validity of Sec.124A in **Kedar Nath Singh v. the State of Bihar**[51]. The latest advancements in the judicial system regarding the Sedition act are the same as that given in the Kedar Nath Singh Case; it was held in **Common Cause v. Union of India**[52]. In the Kedar Nath Case, the 'propensity of conflict or maladaptive behavior' concept was applied to determine whether or not an infraction of seditious conspiracy was committed. The components of the sedition act under Section 124A of the Indian Penal Code, 1860 include a proclivity for conflict or disorder.

In his 42nd report, the Law Commission report recommended that Mens rea that is intent be clearly referenced in the Sedition act under Section 124A, and lately in 2018, the Law Commission report authored a Discussion paper on Sedition Law, which recommended that there is a need for reconsidering about Sedition Law with the assistance of legal personas.

In this paper, we will look into the law of sedition in the present day. We will firstly understand what sedition law is and its history of origin in India and after this; we will look into the view of the SC on this topic after the independence. We will analyze the decisions of the SC. In the end, I will provide some suggestions for the problem faced, if any.

WHAT IS SEDITION LAW?

[51] 1962 AIR 955
[52] Writ Petition (CIVIL) No.215 of 2005

Sedition, in the broadest sense, is the incitement of rebellion against the government. Sedition encompasses all actions and practices that aim to incite dissatisfaction or disillusionment toward the Constitution, the Government, or Parliament to cause a public disorder or lead to civil war, as well as all strategies to encourage public discord or disorder in particular. "None of it is crystal clear than the legislation on this head – notably, that whoever by dialect, either authored or spoken, incites or inspires others to use physical violent force in some public issue linked with the Nation, is accused of publicizing a seditious libel," the court stated in **Rex v. Adler**[53]. In its normal natural meaning, the term "sedition" signifies a tumult, an insurgency, a popular ruckus, or an outcry; it assumes violent behavior or lawlessness in some type..."

Section – 124(A) of the IPC defines "Sedition" in broad and altruistic aspects. It states that "Whoever, by phrases, either spoken or published, or by signs, or by the system of signs, or otherwise, helps bring or efforts to bring into contempt or to excite disaffection, or energizes or intends to excite disillusionment against the Government established by law in India, shall be fined with life in prison." While it encompasses the offenses that are punishable by law, it does not provide an exact meaning of the concept "sedition."

HISTORY OF SEDITION IN INDIA

The law of seditious conspiracy, as enshrined in Section 124A of the IPC, does have an indisputably remarkable history. Thomas Macaulay outlined sedition as a crime in clause 113 of the Proposal IPC in 1837, but it wasn't until 1870 that the clause for seditious conspiracy was decided to add by the Indian Penal Code (Amendment) Act, designed to deal with rebellion and dissidence against colonial rule. During his trial, Gandhi mentioned that a few of India's most famous freedom fighters had been tried under Section 124A. In British India, sedition had become equated with nationalism. This clause was later repealed by a trying to amend Act of 1898, which supplanted it with the current Section 124A.

The foremost documented state prosecution for seditious conspiracy is **Queen-Empress v. Jogendra Chunder Bose**[54], in which Bose, the publisher of the daily paper 'Bangobasi,' published an essay criticizing the 'Age of Consent Bill' for posing a danger to faith and for its forcible connection with Indian citizens.

[53] 2020 ONCA 246
[54] (1892) ILR 19 Cal 35

This scandal and discussion on the sedition act would have been most evident in the case of the sedition prosecution in the history of India, the trial of Bal Gangadhar Tilak, who'd been booked underneath this law three times. The colonial government claimed in **Queen Empress v. Bal Gangadhar Tilak**[55] that Tilak's statements on Shivaji's killing of Afzal Khan incited and motivated the killing of 2 British officials. This prosecution was presided over by recently promoted Justice James Strachey, who widened the ambit of section 124A in the deliberations by equating "disillusionment" to "lack of loyalty." He construed "feelings of discontentment" to mean loathing, animosity, despise, hostility, contempt, and any other type of ill will toward the government.

Mahatma Gandhi was taken for prosecution in 1922 for his publications in the journal names Young India. Gandhi notably decried the rule against seditious conspiracy in court, citing Section 124(A) as the "prince among political sections of the Indian Penal Code designed to limit the freedom of the citizen".

After this, in the new parliament session, the question of seditious conspiracy was hotly debated. After a lot of debate, a revision or modification was proposed to remove the term "sedition" and restrict it to intrude article 19 of the constitution.

When the constitution was ratified on November 26, 1949, the term was removed from the constitution, but Section 124 (A) remained in the IPC. After this in the year 1950, the Nehru government was prompted by two Supreme Court decisions to enact the much-criticized first amendment. India's first prime minister that is Jawaharlal Nehru, critiqued the legislation during a parliament session on freedom of speech in 1951, saying: "Now as far as I am worried, that particular part is strongly morally repugnant and impolite, but it should have no spot, both for pragmatic and cultural reasons, if you like, in any system of laws that we might pass." The quicker we get it out of here, the better."

HISTORY OF SEDITION AFTER INDEPENDENCE: SC VIEW

Despite all this in past India, the law is still in effect 70 years later. Many dissenting voices, human rights activists, and government critics have been accused of it, including recently.

[55] (1897) I.L.R. 22 Bom. 112

Three significant decisions concerning seditious conspiracy laws were turned down in the 1950s. **Tara Singh Gopi Chand v. The State**[56] and **Sabir Raza v. The State** and **Ram Nandan v. The State**[57] was the cases. The court system during the first two cases mentioned, Tara Singh Judgment and Sabir Raza Decision, have been of the view that S.124A of the IPC had become null and void as a result of the implementation of the Indian Constitution.

The first case to deal with the constitutional issues of S. 124(A) was **Ram Nandan v. State of Uttar Pradesh**[58], in which the Allahabad HC held, "Section 124-A, Indian Penal Code, is ultra vires of Article 19(1) of the Constitution, too because that is not in the interest of the common order and also because the limits imposed thereby are not reasonable limits." As a result, the reservations in Article 19(2) of the Constitution do not apply to this Section, and should be declared null and void."

As noted previously, the Supreme Court's ruling in **Kedar Nath**[59] established the modern interpretation of the rules of seditious conspiracy. In this judgment, the Apex Court combined five appeals to determine the constitutional validity of Section 124A of the Indian Penal Code in the context of Article 19(1) (a) of the Constitution. According to the Court's explanation, motivating public disorder is an essential component of the offense of seditious conspiracy. In this case, the court decided to follow the Federal Court's viewpoint in Niharendu Majumdar. As a result, the offense of seditious conspiracy was defined as an act against public tranquility rather than an ideological crime influencing the very foundation of the Nation.

The Court examined the pre-legislative background as well as the opponents in the Constituent Assembly debates concerning Article 19 of the Constitution.

It was mentioned here that, despite being included in the Constituent Assembly, sedition was expressly excluded as a relevant and valid ground for limiting the right to free speech and expression. This indicated the legislature's actual intent that sedition not be viewed as a genuine exception to freedom. Consequentially, sedition is only legally valid if it is based on one of the 6 exceptions listed in Article 19(2) of the Constitution. The Court considered ‘state security as a potential ground for upholding the constitutionality of section 124 A of the IPC. The Court upheld the hypothesis that whenever a legal provision can be construed in more than one way,

[56] 1951 Cri LJ 449
[57] 1959 Cri LJ 1
[58] 1959 Cri LJ 1
[59] 1962 AIR 955

the Court must accept the point of view that generally makes the clause legal and does not contravene any of the constitution's articles. Any clarification that would make a clause unconstitutional should be rejected. However, a simple reading of the section does not support such a requirement, it was asserted that any treasonous act should be accompanied by an attempt to incite dispute and conflict. Nonetheless, the Court ignored the above-mentioned Irish method of analysis of "trying to undermine order in society or the authority of the state," which was rejected by delegates of the Constituent Assembly. Despite having made a mention of this fact previously in the ruling. The Court reasoned that because seditious conspiracy laws will be used to ensure continued public order, and maintaining public order would have been in the best interest of state security, these regulations could be substantiated in the latter's interests.

The court's methodology has demonstrated its unwillingness to assign a broad magnitude to the crime of seditious conspiracy and instead has limited this to the narrowest of margins plausible. Nevertheless, the latest detentions of certain Kashmiri students, the arrests of persons after the CAA controversy, and others demonstrate a clear lack of connection between both the established precedent of the law and its effective application. Dissension between both the upper and lower judiciaries, as well as the police, have did result in a state of things that makes a mockery of the legislation as it currently stands.

In a case at the Punjab high court, the High Court quoted the SC's decision in **Balwant Singh v. the State of Punjab**[60], in which it was determined that the informal raising of tag-lines a bunch of times alone without having the intention to instigate individuals to build disorder would not encompass a threat to the GOI. It was also decided that clear and specific requests for secession and the institution of a separate country will not be considered seditious acts. As a result, the suspect's FIR was dismissed. Court systems also have continuously determined that criminal conspiracies and terrorist acts do not qualify as seditious acts. The accused in **Mohd. Yaqub v. State of West Bengal**[61] conceded to being a secret agent for the Pakistani Intel agency ISI. The agency would give him orders to engage in anti-national operations. As a result, he was accused of committing sedition under Section 124A of the IPC, 1860. The Calcutta HC discovered that the trial had failed to prove that the actions were seditious and had the impact of instigating people to violence, quoting the components of seditious conspiracy

[60] (1995) 1 SCR 411
[61] 2004 (4) CHN 406

set down in **Kedar Nath**. As a result, because the stringent evidence necessities were not encountered, the suspect was discovered not guilty.

Likewise, in **Indra Das v. the State of Assam**[62]**,** it was established that the suspect was a supporter of the forbidden institution ULFA. He was also accused of murdering some other man, but there was no evidence for this claim. Using the Jury's ruling in **Kedar Nath and Niharendu Majumdar**[63], the Supreme Court determined that no seditious acts might be attributed to the suspect, and the appeal was permitted.

This stringent evidence requirement was emphasized by the courts in the cases of **State of Assam v. Fasiullah Hussain**[64] and **State of Rajasthan v. Ravindra Singh**[65], in which the judges exonerated the suspect of seditious conspiracy because the prosecution had failed to offer substantial proof that they'd have determined to undertake seditious conduct.

One of the suspects, Piyush Guha, testified in the case of **Binayak Sen v. the State of Chhattisgarh**[66] that Binayak Sen who is a public health proponent had provided him messages to deliver to some cities. These letters allegedly contained Naxal works of literature, as well as information about police brutality and violations of human rights. The defendant was found guilty of sedition by the High Court, citing street violence by prohibited Militancy organizations against armed forces personnel. Nonetheless, it did not explain how the simple ownership and distribution of literary works could be considered a seditious act. In addition, the HC avoided dealing with the issue of inciting violence, which was absent in this case. As a consequence, the Chhattisgarh HC's judgment has received a lot of attention.

In the particular case of **Shreya Singhal & Ors. v. Union of India**[67], the Court highlighted the difference between 'advocacy' and 'inciting violence,' and how constraints under Article 19(2) should be purely construed to exclude 'innocent speech.' According to the Supreme Court, "the discernible difference is clear – the internet provides any person with a platform that necessitates little or no fee through which to air his views."

[62] Criminal Appeal No. 1383 of 2007
[63] AIR 1939 Cal 703
[64] I.A.(Crl.) 339/2017
[65] 2007 (3) WLN 242
[66] Saurabh Singh, "Dr Vinayak Binayak Sen vs. the State of Chhattisgarh", Probono India
[67] AIR 2015 SC 1523

In the particular instance of **Kanhaiya Kumar v. State (NCT of Delhi[68])** the petitioner, who was accused under section 124A of the IPC, applied to the Delhi High Court for bail. In reaching its decision, the Court stated that "while practicing the right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution, one must keep in mind that Part-IV Article 51A of the Constitution provides Fundamental Duties of every resident, that also form the other side of the same coin."

Because of the foregoing court decisions, it can be asserted that – unless words used and behavior in inquiry do not endanger the security of the Nation or the community or cause any type of public disorder that is serious, the act just wouldn't fall under the purview of section 124(a) of the IPC, 1860.

Also, it can be analyzed through these decisions that the crime of seditious conspiracy has started losing significance. There have only been 12 cases heard by the High Court and 3 heard by the Supreme Court. The suspect has been acquitted in the vast overwhelming majority of cases. Even if a guilty verdict has been acquired, it can be proved that it was obtained due to the incorrect implementation or ignoring of the law, and thus was per incuriam.

CRITICISMS OF SEDITION LAW

- **Colonial law** was used by the British government to repress defiant critiques, voices, and viewpoints against British rule. Despite having highly specialized legislation to deal with various threats to national security interests, this colonization law is still used in Indian Independence. As a result, in a modern democracy where residents have sovereign power, such a law is meaningless[69].

- While trying to introduce the Constitution (First Amendment) Act, 1951, the then Prime Minister, Jawaharlal Nehru, stated in Legislature that the crime of seditious conspiracy was profoundly unlawful and stated, "As far as I am worried, that particular Part is extremely unsatisfactory and obnoxious, which should have no spot, for both pragmatic and historical reasons, if you like, in any system of laws which we might pass." It's best if we can get rid of it as soon as possible. We may deal with this problem in other, more limited cases, as any other nation is doing, but then that specific thing, as it is, has no

[68] Writ Petition (Criminal) No. 558/ 2016
[69] Pranjal Sharma, "*Sedition Law in India: Critical Analysis",* Lexforti, 23 October 2020

spot, because everybody has had enough experience with this in several ways, and aside from the logic of the situation., our urges are against it."

- **Sedition Law**: The law of seditious conspiracy is more probable to be political parties' last resort, and they use it to one's advantage. The ruling party uses its power to suppress opposing opinions that criticize the government's operation or question its initiatives. It has been said so because the legislation has still not been revised or rescinded, even though the Indian Supreme court has repeatedly critiqued the legislation.
- The offense of seditious conspiracy is becoming less and less relevant. An investigation of the IPC reveals that its other regulations are adequate to address all damage to public order and crime, making S. 124(A) outdated.

FREEDOM OF SPEECH AND EXPRESSION AND SECTION 124 A OF THE IPC

To emphasize the value of free speech, John Stuart Mill tried to argue that for the stabilization of a society, one should not repress residents' voices, no matter how opposite they may be. Discussions and open public discussion and debate are unavoidable in some situations in a way to attain a conclusive decision. Mill went on to argue that a strong government promotes the "intelligence of the people."

A democratic republic is not associated with majority rule; rather, it is an entire ecosystem in which every voice can be heard. In the immortal words of Charles Bradlaugh, "a thousand-fold misuse of freedom of speech is preferable to rejection of freedom of speech."

The abusive behavior passes away in a day, but refusal kills people's lives and buries the race's sense of hope." Noticing that criminal behavior and moral standards do not exist side by side, the Supreme Court held that a free spread of thoughts in society keeps its citizens informed, which leads to good democratic accountability.

The connection between Section 124-A of the Indian Penal Code and Art 19 of the Indian Constitution is stretched. **Article 19(1) (a) of the Indian Constitution** guarantees the right to freedom of expression, stating that "all citizens of the state have the right to freedom of speech and expression."

The SC of India has ruled that under Article 19(1) (a), freedom of expression would include the right to obtain and receive data, along with data held by public bodies. In the case of **Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. & Ors**.[70], the SC stated that "freedom of speech cuts to the core of the basic right of a structured freedom-loving culture to 'divulge and obtain information about such mutual interest."

The freedom of speech and expression is provided in the constitution, even so, is limited by Article 19(2). In this regard, the Indian Constitution is much less defensive of peaceful affirmation than that of the ICCPR. The scope and extent of freedom of speech and expression safeguards in India are primarily dictated by how the words "in the interests of," and "reasonable restrictions" of the number of grounds contained in Article 19 are interpreted. Even so, the SC's rulings on the subject have indeed been incongruent.

One instance would be that the court has widely construed the word "in the interests of" in section 19(2), going to hold that speech with a "propensity" to create widespread disorder may be constrained even when there is no danger of it doing so.

"If consequently, specific actions have a history of causing public disorder, a law punishing such actions as a crime cannot but just be held to be a law enforcing additional limits 'in the sphere of public order,' even though in a few instances those actions may not lead directly to a violation of public order," the court explained. Furthermore, the court stated that "the expected risk must not be remote, speculative, or far-fetched." It must have a close and direct relationship to the expression. Thought expression ought to be incredibly risky in the interest of the public. In other phrases, the affirmation should be inextricably linked to the action under consideration, like a ‘spark in a powder keg.[71]'"

To the question of whether Article 19(2) and Section 124-A are mutually exclusive or complementary. There seem to be three possible arguments:

1. Section 124A is unconstitutional because it violates Article 19(1)(a) and that is not justified by the phrase "in the public interest."

[70] 1995 SCC (5) 139
[71] Nivedita Saksena & Siddhartha Srivastava, “*AN ANALYSIS OF THE MODERN OFFENSE OF SEDITION”,* Manupatra,

2. Section 124A is not null and void since the phrase "in the interest of public order" has a broader scope and is not limited to "conflict." It must diminish the government's authority by instilling hostility, callous disregard, or disdain for it.

3. Section 124A was found to be partially void and partially valid in **Indramani Singh v. the State of Manipur**[72]. Exciting or intentionally causing mere disaffection is illegal, but the limitation under Article 19(2) to incite hate against the government established by law in India is legitimate.

Only constraints in the interest of one of the 8 specified best interests can pass muster, according to the Indian Supreme Court.

The Supreme Court decided in March 2015, outlawing **section 66A of the Information Technology Act** that "any legislation wanting to impose a limitation on freedom of expression could only pass constitutional muster if this is roughly linked to any of eight relevant topics listed in the article 19(2)."

SUGGESTIONS

- All speech-related offenses must be deemed non-cognizable, ensuring that security agencies acting on politically inspired issues are subject to judicial scrutiny. It would also mitigate the negative impact of simply using ownership and detain to oppress anyone exercising their rights to free expression and expression under Article 19(1). (a).

- All law enforcement agencies should be ordered that decisions about whether or not to detain somebody for speaking must not be grounded on violent speeches or civil disorder created by the persons who loathe or are incited by the hateful speech. Arresting people for their speech should be entirely based on evidence-based analysis of whether or not the person has done something illegal.

- In the instances of offenses under Sections 153-A and 295-A of the IPC, Section 196(1) of the CrPC requires obtaining the government's prior condemnation before actually

[72] 1955 CriLJ 184

having awareness of the infringements. It is proposed that it be expanded to S.124A of the IPC, which is the crime of seditious conspiracy.

- Start education programs for all law enforcement officers to ensure it remains knowledgeable of the Supreme Court's constraints on laws that restrict free expression.
- If Section 124A of the IPC, 1860 is repealed or amended, police should be made aware that, according to relevant SC rulings, the seditious conspiracy rule only applies to speech that has the propensity or original intent to cause civil disturbance.
- Under the Indian Penal Code section 124A, mere opposition to the government or its regulations cannot be the basis for prosecutors.
- A prosecution for seditious conspiracy cannot be based solely on speaking or expression viewed as demeaning of India or its national symbols.
- Following the rules acknowledged by the Bombay HC, make it a requirement for authorities to acquire a written legal analysis from the state's law enforcement agent and the government's prosecuting attorney before actually filing sedition charges[73].
- All proceedings and investigations into incidents in which the underlying conduct involved peaceful expression or assembly will be dropped and closed. India must create a detailed plan and set for rescinding or modifying laws that prohibit peaceful expression or arrangement, or, if the law is to be modified, this should discuss thoroughly with the legal field in a clear and public manner.

CONCLUSION

Since its inception in the English court, the rule of seditious conspiracy has indeed been described by ambiguity and non-uniformity in its implementation. Centuries of the ruling governing elite have made sure that they will have an instrument to suppress any speech that ends up going against their best interest by conspiring to keep its scope ambiguous.

In addition, the judges were unable to provide clear guidance on the legislation. While India's final result on the legislation was established in 1960, the legislation of sedition is notable for

[73] Pranjal Sharma, "*Sedition Law in India: Critical Analysis",* Lexforti, 23 October 2020

its inaccuracy and use as a tool for bullying. Thus, some of the reasons for which people have been charged under these sections (and frequently imprisoned) include liking a Facebook post, criticizing some famous personality, applauding a foreign team mainly Pakistan during a cricket match against India, simply asking in a university exam about whether the stone-palters in J&K were true heroes, and so on. An examination of the Judge's Decision in Kedar Nath reveals some flaws in the way the law is understood. There's been a transition in our understanding of state security as a justification for restricting free speech and expression[74].

> There's been a shift in our understanding of state security as a justification for restricting freedom of speech and expression. Furthermore, there has been a significant change in the pattern of the government, as well as a reduction in the receptivity of the ordinary folk to be incited to conflict by offensive language. Even the preservation of 'public order' could be used to rationalize these laws because it is meant to address local law and order problems instead of incentive the very foundation of the State itself. It could be argued, based on the abolishment of the legislation of sedition in England, that the legislation of sedition has now become outdated. Numerous other laws and regulations regulate civil order and might even be invoked to strengthen public peace and serenity. In light of the foregoing observations, it is time for the Indian legislature and judicial system to rethink the presence of insurrection regulations in the law books. These regulations continue to stay as relics of colonial exploitation and may jeopardize citizens' rights to dissent, protest, or challenge the government in a democratic republic. Based on the abolition of sedition legislation in England, it could be argued that sedition legislation is now obsolete. Numerous other laws and regulations govern civil order and may even be activated to promote public peace and tranquility. Given the preceding observations, it is the moment for the Indian legislature and judiciary to reconsider the inclusion of sedition regulations in the law books. These regulations remain as colonial relics and may jeopardize citizens' rights to dissent, protest, or challenge the government in a democratic republic.

[74] Nivedita Saxena & Siddhartha Srivastava, "*AN ANALYSIS OF THE MODERN OFFENSE OF SEDITION",* Manupatra,

CHAPTER 5

JUVENILE JUSTICE ACT, 2005, LEGISLATIVE AND JUDICIAL

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ABSTRACT

Juvenile delinquency is one of the grave problems faced by almost every society in the world and Meghalaya, Shillong are no exception. The current study in Meghalaya, Shillong aims to explore the causes that cause children or young people to commit crimes and how we as a community can take preventive measures to help limit the spread of crime. increase in juvenile crime. An exploratory study design was used for this study. The sample for this study was 26 respondents who were said to be teachers, police chiefs, police officers, juvenile observer staff, social workers, and teachers, but only 18 of them paid answer and out of 18 respondents, 7 of them are teachers and 11 of them are from the police department. A semi-structured questionnaire and thematic analysis were used to collect and analyse the data. After completing the study, it was found that the main causes of children committing crimes were peer pressure, adolescence (emotional and personality instability), financial instability, and so on. environmental factors (family background, parenting skills and environment) and social media... It has also been recognized that education plays an important role in shaping belief systems and ethical values, and that communities and schools can provide awareness-raising programs, which play and counselling to help young people learn positive self-assessment and conflict management. and aggression

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INTRODUCTION

Juvenile delinquency means children who are sufferers in their society which need to be converted as well as rehabilitated. The most important court for juvenile become installed to make the conventions in operation. It becomes every other version and every other machine, completely indifferent from the grown-up criminal fairness machine. Cases falling below its locale integrated all delinquency, dependency and infant dismiss cases.

The conference of persevering with become restrained and separate places of work have been set up for adolescents and grown-ups in the equity system. Essentially, the closing pass closer to juvenile change and recovery, commenced in the 19th century, become completed. Adolescents who have been dealt with via the juvenile courtroom docket have been to be treated in place of rebuffed, with the goal of retreating the effect in their in advance poisonous environments. From this time ahead courts might cross approximately as supporters on behalf of minor culprit and might prepare their picks with appreciate to warranty of what serves the well-being of infant. Separate structures records, faculty, and foundations become the standard.

Fundamental precept of the juvenile court time body become to eliminate disgrace from the administration of teen fairness. Instead of stage juveniles as criminal wrongdoers being dealt with via crook fairness structures yet again terminology become composed for juvenile procedures. The modern time disappeared all through the Twenties and completed whilst of the terrific depression. By and through Progressive speculations approximately juvenile remedy and the institutionalisation of teenybopper courts had gotten public acknowledgment simply earlier than the brilliant expression. Till 1925, 46 states had installed juvenile courtroom docket structures. Since 1960s become a time of disastrous social transition in the USA. With respect to India, the importance of Juvenile delinquency gives no such issues which are raised in the 'USA' and a few numerous nations.

CONSTITUTIONAL PROVISIONS RELATED TO JUVENILE DELINQUENCY

Since independence, constitutional provisions have allowed for expansion in the field of juvenile justice to take place. With respects to “Fundamental Rights” and “Directive Principles

of State Policy", there are certain specific provisions for juveniles in parts III and IV, respectively.[77]

i) Article 15(3): "Nothing in this article shall prevent the State from making any special provision for women and children."

ii) Article 21A provides for Right to education: "The State shall provide free and compulsory education to all children between the ages of 6 to 14 years in such manner as the State may, by law, determine."[78]

iii) Article 23 Prohibits the trafficking of human beings and forced labour[79] :

"(1) Traffic in human beings and beggar and other similar forms of labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law;[80]

(2) Nothing in this Article shall stop the State from imposing compulsory service for public objectives, and in imposing such service the State shall not discriminate on the basis only of religion, race, caste or class or any of them."[81]

iv) Article 24 Prohibits the employment of children in factories, etc. "No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

v) Article 39(e) states "that the health and strength of workers, men and women, and the tender age of children are not abused and the citizens are not forced by economic necessity to enter avocations which are nor suited to their age of strength";

vi) Article 39(f) states "that children must have been provided with the opportunities and facilities to grow in the healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."[82]

vii) Article 41 provides for Right to work, to education and to assistance in certain cases: "The State shall, within the limits of its economic jurisdiction and development, make effective provision for protecting the right to work, to education and to public

[77] The Constitutional law of India (Universal law Publications, Edition 2014).
[78] Article 21 of Constitution of India
[79] Article 23 of Constitution of India
[80] Ibid.
[81] ibid
[82] Article 39(f) OF constitution of India.

assistance in cases of unemployment, old age, sickness and disablement, and in other unwanted cases."[83]

viii) Article 45 talks about the Provision for free and compulsory education for children: "The State shall endeavour to provide, within a period of 10 years from the commencement of this constitution, for free and compulsory education for all children up to the age of 14 years."[84]

ix) Article 47 talks about the "duty of the state to raise the level of nutrition and the standard of living and to improve public health": "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvements of a public health as its basic duties and, in particular, the State shall endeavour to prohibit of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health." [85]

DEVELOPMENT OF JUVENILE JUSTICE SYSTEM AFTER INDEPENDENCE OF INDIA

Several respectable and non-respectable traits have been contributed to the improvement of sweet sixteen justice considering 1950. The below phase highlights some methods, along with legal, that have been contributed for the growth of care as well as welfare steps with respect to children.

Five Year Plans

In 1951, as the planning commission was established, the Five-Year Plans have been begun out and some provisions related to juveniles have been formed under these Plans with the implementation of offerings beneath Neath juvenile justice has now no longer been a particular part of expenditure within side the Five-Year Plans. Enactment of Nation in addition to principal Acts regarding disregarded and antisocial kids has been provided with the states. With respect to those Plans, a secretary to the authorities said: "Since India has the final objective to establish a socialist society, the final objective with regard to monetary improvement is the

[83] Article 41 of Constitution of India
[84] Article 45 of Constitution of India
[85] Article 47 of Constitution of India

welfare of the own circle of relatives. And in the own circle of relatives, the maximum valuable property is the child. Therefore, in the method of deliberate countrywide improvement, India centered its primary hobby in the younger infant."[86]

To respond, "Tara Ali Baig" succinctly located that this "changed into a laudable thought" however, if it's changed into gift in the minds of the organisers, it changed into surely now no longer evident of their planning. She changed into extra superb after 10 years in lieu of the pretty large-scale provisions related to the budget; putting in place of the Working Groups for the Welfare of juveniles to assist in formulation of the "English Five Year Plan"; and separation of the juvenile care from the ladies and kids slot.[87] Though there were an exceptional growth in the allocation of budget related to the social welfare under the 7th Five Year Plans from Rs 4 crore in the 1st five year Plan to Rs 29,350 crore in the 7th five year Plan for all topics under the social welfare. [88]

The Ganga Sharan Sinha Committee in the year 1968 had envisioned a non-routine value of Rs 160 crore, and routine value of Rs 4866 crore for programmes endorsed with the aid of using it for the care of juveniles alone. The 7th Five Year Plan allotted Rs 799.97 crore handiest for principal and subsidised

schemes such as the Integrated Child Development Services (ICDS), offerings for kids in want of care and protection, prevention and manage of sweet sixteen maladjustment, crèches and day-care facilities for kids of working/unwell mothers, and schooling of ICDS and-ICDS functionaries[89].

The Eight five-year Plan identified the Girl Child as a crucial goal category, worrying interest of the authorities for improvement improvement of the girl child and to combat towards the triumphing sex discrimination. In relation to the combat "National Policy on Education 1986" and the "Programme of Action 1992", diverse measures have been adopted for the duration of the eight five-year Plan to centralise simple schooling and enlarge early infant care schooling. This focused on a step-up of diverse programmes together with "Operation Blackboard",

[86] G. Chatterjee, "The Reformation of Neglected and Delinquent Children in British Raj: An Historical Overview", 2 (New York). Pg 54.
[87] T.A. Baig, "We are still far from true investment in the child", The Times of India September 22, 1988.
[88] The Seventh Five Year Plan, vol. I (1985-90).
[89] The Seventh Five Year Plan, vol. II (1985-90).

Limited sources of Learning and informal schooling. In the sphere of ladies and infant improvement, “Integrated Child Development Services (ICDS)” is still the essential intervention for the general improvement of kids. Out of the 5614 “Integrated Child Development Services (ICDS”) venture sanctioned until 1996, 4200 have become operational for the duration of the “8th five-year Plan”. The “8th five-year Plan” contemplated universalisation of the “Integrated Child Development Services (ICDS)” with the aid of using the stop of 1995-96 with the aid of using increasing the offerings all around the country[90].

The summary of the 9th five-year Plan is to empower the initial, pleased length of play and education, particularly of the lady child, thru powerful growth of “day care” offerings and associations of child care offerings and number one faculties for promotion of developmental possibilities for the lady infant. To acquire this, unique linkages among the ICDS and number one schooling are to be developed; looking for reinforcement of coordination of timing and vicinity primarily based totally on network assessment and micro-planning at ground levels.

To combat the unfair treatment of female infants, the Ninth Five-Year Plan sought to abolish all types of injustice and infringement on the rights of the child. Women’s foeticide/woman infanticide; infant marriage; child maltreatment; and child prostitution are all examples of pre-natal intercourse choices that are subject to stringent punishment of the law. This might be done over a long period of time by delivering particular incentives to mothers and their daughters so that a woman child's birth is greeted with joy and family members know they can depend on the government to support their daughter's future well-being.[91].

Juvenile criminality, neglect, and exploitation are all part of the Ninth Plan's emphasis on social maladjustments. Growing appropriate/appropriate juvenile justice options will have a clear boost owing to this policy's special focus. Further the present country and principal stage tracking structures can be activated to make sure powerful implementation of the “Juvenile Justice Act of 1986.” As to avenue kids who is the maximum prone many of the disadvantaged group, it guarantees to evaluation and restructure the present schemes for his or her welfare and improvement in view of the child’s proper development. “Towards this stop, emphasis can be given to offer good enough health, nutrition, educational, vocational schooling, and different

[90] The Ninth Five Year Plan (1996-2000).
[91] The Ninth Five Year Plan (1996-2000), Para 3.8.96

related offerings to make sure healthful improvement of those kids as a way to make them efficient participants of the society."[92]

The mandate of the "Ministry of Social Justice and Empowerment" is outlined in the draught of the "Tenth Five Year Plan". These essential rights must be protected for every "child in want of care and protection", as mandated by this mandate. To achieve its goal of providing a formative childhood experience to every child, the organisation intends to accomplish the following objectives:

- To make sure that each document, policy, or programme advanced by the ministry will observe the spirit and letter of the conference at the Rights of juvenile.

- To make sure that everyone programmes might be deliberate and carried out with the active participation of kids in any respect degrees.

- To Provide the infant as an entity with constitutional rights in place of as a beneficiary.

- Implement programmes constructing self-assurance and self-reliance in kids rather than developing dependency on aid structures

- Work closer to enhancing inter-ministerial conversation and co-ordination on problems associated with baby safeguard.[93]

The major targets[94] of its programmes might be kids without a familial aid, kids with households in crisis, abused kids, kids with unique wishes, kids of industrial sex-workers, kids in struggle with law, and kids affected via way of means of catastrophe or struggle. The techniques for enforcing the targets encompass national, state, and district - stage session for partnerships among the authorities and NGO sectors:

- putting of child safety under the agenda of state;

[92] Ibid, Para 3.10.39.
[93] Ibid.
[94] Supra n. 77

- figuring out quantity of the troubles of kids in want of protection and safety by series of macro and micro-degrees data;

- To evolve experienced offerings for juveniles in want of care and safety;

- organising a community of child line offerings masking each district;

- constructing a preventive system to stem the numerous troubles confronted via way of means of the kids of the country;

- figuring out schooling wishes and facilitating schooling at diverse degrees;

- To sensitise the allied structures and the network at big to apprehend the individuality of every child and the unique necessities of kids in want of care and safety;

- And growing a device of child care sanction.

THE JUVENILE JUSTICE ACT, 1986

The "Juvenile Justice Act, 1986", changed "The Children's Acts", previously in operation in the States and the Union Territories. This Act got here into pressure in the year of 1987 on a uniform foundation for the complete country. The Preamble of the Act states that:

"The Act is to offer for the care, safety, remedy, improvement, and rehabilitation of omitted and antisocial juvenile and adjudication of positive omitted and antisocial juveniles and adjudication of positive subjects referring to disposition of antisocial juveniles."

The major targets of The Juvenile Justice Act, 1986, have been as below:

i) To ensure that no kid is ever held in jail or police custody in the country by establishing a standard body painting for juvenile justice. In order to do this, the juvenile welfare boards and juvenile courts have been streamlined.

ii) In order to better meet the needs of children who are experiencing social maladjustment, a more specific approach to preventing and treating adolescent delinquency must be developed.

iii) In order to outline the equipment and infrastructure needed for the care, safety, treatment, rehabilitation, and development of a wide range of children under the jurisdiction of the juvenile justice system. Comment houses, juvenile homes for the omitted, and specialised homes for anti-social juveniles are all suggested methods for accomplishing this goal.

iv) Norms and standards for the administration of adolescent justice in terms of research and prosecution; adjudication; disposition; care, treatment; rehabilitation; as well as the establishment of norms and standards for the management of juvenile justice.

v) The legal system of adolescent justice should be linked and coordinated with non-profit organisations working to help children who have been excluded or who are socially maladapted, and areas should be clearly defined in terms of their responsibilities and functions.

vi) To illustrate juvenile-specific offences and suggest appropriate penalties;

vii) To implement the "United Nations Standard Minimum Rules for the Administration of Juvenile Justice" in the nation.

The Act has supplied for the class and separation of delinquents at the foundation in their age, the type of their antisocial, and the character of offences devoted by the offences devoted by them.

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) AMENDMENT ACT, 2000

To deliver impact to numerous resolutions of the United Nations as followed by the global network and to triumph over the weaknesses of the "Juvenile Justice Act, 1986", appears to

have stimulated the “Ministry for Social Justice and Empowerment” move in for drafting a brand new law on “Juvenile Justice”, the very last concluding results of which turned into the “Juvenile Justice (Care and Protection of Children) Act, 2000”, got here into pressure on first April, 2001, in entire India besides Jammu and Kashmir. The preamble of the Act states that:

“An Act to consolidate and amend the regulation referring to juveniles in conflict with regulation and kids in want of care and safety, by presenting for correct care, safety and remedy by catering to their improvement needs, and via way of means of adopting a child-pleasant technique in the adjudication and disposition of subjects in the excellent hobby of kids and for his or her final rehabilitation and with regards to subjects connected therewith or incidental thereto.”

The fundamental capabilities of The Juvenile Justice (Care and Protection of Children) Act, 2000, have been as under:

i. The core principle of this Act is that adolescents who commit offences and juveniles who are in need of care and safety may be included in the juvenile justice system. When it comes to releasing a child to new guardians, adoptive or foster parents, suit people, or biological parents, the law creates several pathways for doing so.
ii. This Act is extra child-pleasant and presents right care and safety as additionally for final rehabilitation of kids in want of care and safety.
iii. It makes the clean difference among the juvenile offenders and the neglected toddler.
iv. It prescribes a uniform age for each the lads and ladies to be handled as kids, that is primarily based totally at the “United Nations Convention at the Rights of the Child, 1989”.
v. The Act additionally directs that the instances associated with juveniles must be finished within a duration of 4 months.
vi. The purpose of the Juvenile Police Unit is to be established under this Act. The national police will be tasked with the creation of such a unit. This unit's personnel must have specialised training in working with children. A child welfare officer must be appointed to every police station, at the very least, if the officer has the necessary training and flair. He and his co-workers must work together to talk to children. He might be a member of the previously described specialised unit.

vii. Various voluntary corporations and nearby government had been certain with the powers of dealing with and rehabilitating kids at numerous stages.

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) AMENDMENT ACT, 2015

The "Juvenile Justice (Care and Protection of Children) Act, 2015", ensures right care, safety, development, remedy and social re-integration of kids in hard situations with the aid of using adopting a child-pleasant method maintaining in view the fine hobby of the child. Preamble of the prevailing Act states that:

"An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, herein-under and for matters connected therewith or incidental thereto."

The principal objectives of "The Juvenile Justice (Care and Protection of Children) Act, 2015" had been as under:

1. As a result of this law, serious crimes including rape and murder may be prosecuted against minors as adults once they reach the age of 16. The most heinous crimes are those for which a jail term of seven years or more is the maximum sentence.

2. "Juvenile Justice Boards" and "Child Welfare Committees" must be established in each district under the Act. At the very least, each should have one female member.

3. A judicial Justice of the Peace and two social workers are required to serve on the Juvenile Justice Board, which will make the decision on whether or not to charge a 16-year-old as an adult. The youngster may be sent to rehabilitation if the board so decides.

4. There are four separate committees that review juvenile detention facilities in their respective jurisdictions. Members of the committees are all specialists in the field of children's education, and each committee has a chair and four additional members.

5. The Act objectives to "consolidate and amend the regulation referring to kids alleged and discovered to be in battle with regulation and kids in want of care and safety with the aid of using catering to their simple wishes via right care, safety, development, remedy, social re-integration, by adopting a child-pleasant method."

6. This Act additionally objectives at adjudicating and disposing instances handling juveniles maintaining in mind "the fine hobby of the kids and their rehabilitation.

JUDICIAL APPROACH TOWARDS THE JUVENILE JUSTICE SYSTEM IN INDIA:

In **Ganga Paharia v. State of Bihar**[95], the offence is stated to have taken place on 26.6.1995 at approximately 1 a.m. the case became registered below sections 448, 325, 302 study with section 34 Indian Penal Code. After committal of the case the plea of juvenility became raised in the year 1997. By that point the accused crossed the age of juvenility. The courtroom docket ordered for exam via way of means of the clinical board. At the time the clinical record via way of means of radiological exam showed that they may be major. Prosecution witnesses have been tested. The accused have been tested below segment 313, Criminal Procedure Code. The petition filed by the accused became that they may be juvenile and their trial ought to be one after the other conducted. The court held that the accused are denied the blessings because of their very own fault for prolonging the lawsuits.

In **Mehmood Khan v. State**[96], the court became of the view that willpower of the age of minor antisocial have to be completed in totality. Two units of faculty certificates had been produced displaying exclusive dates. Similarly ration playing cards had been produced depicting exclusive dates. Date in the voter listing and date as consistent with clinical record became additionally exclusive. So, the court needed to see the totality of the document and the

[95] (1993)3 Pat LJR 660
[96] 2002 Cr. LJ 2123 (Raj).

circumstances the court located that the age of the culprit became now no longer below sixteen years.

In **Prem Chand Sao v. State of Jharkhand**[97], the age of the accused as consistent with faculty leaving certificates became 15 years. But as consistent with the opinion of clinical board he became approximately twenty years of age. Doctor, who tested the accused, became now no longer tested as a witness. No cloth became produced to rebut the faculty leaving certificates and to show that it's far fake. Merely due to the fact the faculty admission sign in became now no longer signed by the father of the accused, the stated access can not be doubted. The view of the decrease court is erroneous. Accused became held to be juvenile.

In **Vijai Singh v. State of Uttar Pradesh**[98], held that the availability in recognize of pending instances has been made with reference to lawsuits in recognize of a juvenile however it does now no longer say that someone now no longer held to be a juvenile below the antique Act may be treated juvenile by the brand-new Act if he's below the age of 18 years. This segment best speaks approximately the lawsuits which can be pending below the antique Act.

In **Sheela Barse v. Union of India**[99], the problem became whether or not someone, who's now no longer a juvenile below the Juvenile Justice Act, 1986, may be taken into consideration as a juvenile in warfare with regulation below the Act. By the time charge sheet was filed, new Act has come into force.

So, whether or not prosecution is to be performed earlier than the Juvenile Justice Board or Sessions Court, it is held that earlier than the Act got here into force, the graduation of court cases had begun out and as such the provisions of the Act specifying "a juvenile in conflict with regulation" will apply. The court treated the aim behind the enactment that juveniles in warfare with regulation ought to be treated below the unique boards and keep them from the rigours of a everyday trial.

In **Man Jyoti v. State**[100], the incident happened on 23.4.1997. F.I.R. become registered on 24.4.1997 below section 302 IPC. Much after the commission of crime, utility become filed

[97] 2003 Cr. LJ (NOC) 86 (Jhar).
[98] 2003 Cr. LJ 3461 (All).
[99] AIR 1986 SC 1773.
[100] 2002 Cr. LJ 2777.

that the accused was born on 02.10.1981 and as such he's a juvenile. The juvenile court did not vicinity any reliance at the stated start certificates and after thinking about different cloth on report such as the ossification take a look at got here to the end that the accused isn't always a juvenile. The stated order become upheld as proper.

In **Bikau Pandey v. State of Bihar**[101], eleven it become observed that the plea of juvenility become raised earlier than the trial court. It became taken into consideration as negative. It was a case of murder. It was now no longer challenged and had grown to be final. No argument on that trouble become raised either at some stage in trial or earlier than excessive courtroom docket. Disputed problems having attained finality cannot be accepted to be raised earlier than the Supreme Court.

CONCLUSION

The Juvenile Justice System in India, as operationalised by the Juvenile Justice Act, blanketed delinquent kids in lots of ways. They couldn't be sentenced to death, or imprisoned, even in case of default of fee of nice or furnishing surety. No statistics revealing the identification of the kid become accredited except it become in their hobby. It additionally furnished for elimination of disqualifications attaching to conviction for an offence. For the fine interest of the kid or juvenile; and for his/her right care and protection, some of legislative provisions, schemes and programmes have been organised from time to time The present Act named as the "Juvenile Justice (Care and Protection of Children) Act, 2015" offer country wide uniform rules incorporating provisions for rehabilitation of "child in conflict with law" and additionally "child in want of care and protection". The "Juvenile Justice (Care and Protection of Children) Bill, 2014", presents for the trial of these between the age of 16-18 years as major for serious offences. Also, all of us among the age of 16-18 who commits a much less heinous offence which can be tried a major if he is apprehended after he attains the age of 21.

[101] AIR 2004 SC 997.

CHAPTER 6

BANKING STRUCTURE IN INDIA, SWITZERLAND, AND CHINA

Author: Mridula[102]

ABSTRACT

The backbone of commerce, trade, and industry is financing and banking. The banking system now serves as the foundation of modern enterprise. The financial system is crucial to every nation's progress. A bank is indeed a type of financial organisation that handles savings, mortgages, and other operations. It collects cash in the form of deposits from individuals who wish to save and loans money to those in need. Banking is among the highly crucial and vital areas of human existence. People in today's faster-paced society may be unable to make good transitions without establishing a proper banking network. Nationalised banks govern the Indian financial system. The banking industry's success is possibly more directly related to the business than any other industry. This paper analyses the organisational efficiency of banking institutions in India, Switzerland, and China, bearing in mind the divisive issue of structural disparities in these two economies' banking sectors, as represented in the development of non-performing loans. The research will look into the use of non-performing loans to offer exporting firms with countervailing subsidies. Our findings suggest that the disparities in efficiency among banks within those three nations are clearly attributable to institutional factors.

Keywords: Financial system, Banks, India, capital market, Switzerland and China financial sector reforms

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[102] UILS, Chandigarh University

INTRODUCTION

Banks collect public deposits and then also acquire money in other ways in order to raise Working Capital Funds. They must pay interest here on monies earned to cover their costs. To recoup this cost, cover regulatory and other expenditures, and remain profitable, banks must use working capital money by extending loans or investing money. Working capital funds, that are obligations for banks, are thereby turned into resources.[103] However a bank's revenues are derived solely from advancements and investments, it is required to have money on hand or accounts with some other institutions in current accounts, and also deposit some funds in its physical location, furnishings, fittings, as well as other property that are necessary for its business.[104]

These assets don't really create any cash inflow, but depreciation must be supplied to compensate for their wear and tear. Banks are legally required to reimburse deposits and bank debt whenever they become due. Because these funds have been already transformed into holdings, banks must verify that all these securities are recoverable, or flexible, and it can be completely recovered to fulfil obligations when necessary. The primary goal of giving loans or investing money is to make a profit. If any revenue is not made on any advancements, it is classified as a Non-Performing Asset, which means that the asset's accruing or projected revenue has ceased, with the risk of not retrieving even the principle invested.

The global catastrophe has raised concerns about the banking industry's employment and proper implementation in numerous nations throughout the world. It has sparked worry over the financial industry's claimed responsibility for national economic growth. Because of the global economic slowdown, authorities have been confronted with challenges that have forced experts to handle monetary and economic structures in a conflicting environment. It has been concluded based on the findings that the Indian objective of financial industry doesn't really score well in terms of overall bank profitability. If there might be an incidence of banks in urbanised states and Union territories, then rate offering of branch offices in regional pieces defines deterioration but with the entrance of organisational change, while augmentation with in store and loan arrangement.

[103]Singhal, Rahul. "Future Prospects with Universal banking In India." International Journal of Latest trends in Engineering and Technology (IJLTET) 1.1 (2012).

[104] Muranjan, Sumant Khanderao. Modern banking in India. New Book Company, Bombay, 1940.

Nevertheless, the liberalisation process and new tactics have resulted in more growth for private as well as outside institutions than for nationalised banks and also the SBI organization. In addition, the area discovered that the impact of the financial crises in recent years has shifted the focus back to nationalised banks and the SBI group in terms of advances, investment, and businesses, as opposed to privatised and FSBs. According to Acharya and Kulkarni (2011), this happened not just because of the power of state-owned banking over PSBs and FSBs, but also because of clear and well-understood government backing for open-ended banks in India. There was also a dip in the amount of nationalised bank and SBI group portions in 2009-10, followed by a partial recovery in 2010-11.

Surprisingly, the performance of the maintaining an accounts industry is generally impacted by the financial emergency in terms of shops, advances, and wagers. Despite the fact that the number of improvements varies across many metrics, its been suggested that there were significant improvements in the implementation of the Indian financial industry following the reform. Whether there are earnings on assets and returns for returns over time, the much more essential commitment has indeed been observed. It has been observed that banks that have been subjected to the effects of RBI's tough rules and supervision have continued to operate profitably.

Finally, it may be concluded from the preceding discussion that the Indian savings industry has produced mixed results following the implementation of RBI and Indian legislative amendments. Excluding the most latest couple of decades, it has been confirmed that India's accounting industry is growing at a reasonable speed and also in a rightful manner.[105] It was also discovered that India's booked banking institutions have responded forcefully in the areas of profitability, revenue growth, and asset reliability, i.e., decreasing nonperforming assets (NPAs), enhancing market dominance, supervisory control mechanisms of record keeping, income affirmation, configuration management, and appearance, and presenting the supervisory rating scheme to provide better and skilful leaderships to the public.

[105] Dhar, Sujoy. "Basel Committee Recommendation & Performance of the Banking Industry in India." *Prism India* 6 (2009).

ECONOMIC COMPARISONS IN THE FINANCIAL DEVELOPMENT REPORT

The amount of economic growth is linked to a country's economic execution, long-term progress, welfare, and advancement. The financial administrators will become broader as the degree of financial growth rises.

In 2009, the European National Bank ranked India twenty-second out of thirty countries after compiling a composite ranking using twenty-one points. According to the research, India did better in the financial industry and has to improve its commercial situation. A study conducted by emphasised the importance of the formed financial industry for long-term monetary growth. The assessment predicted guidelines for India's financial market's future growth. World Monetary Discussion created the Financial Progress Report, which uses a scale ranging from 1 to 7 to assess the financial progress of countries, where 1 is the least conducive to financial progress and 7 is the most beneficial.

These studies explore for clear constraints as a result of drastic changes in the order of affairs and some fascinating economic conditions. It also provides an extensive structure of data to te degree that it speaks to the evolution of the financial system.

The financial deepening list clarifies three key variables, methodologies, and underpinnings: wealth management, access to finance, and financial sector advancement. These records also are divided into the following categories: organizational situation, industry environment, financial solidity, bank components, non - bank elements, currency sector, and access to finance (World Economic Forum, Financial Development Report).[106] The preservationist method of allocating burdens to particular components has been well appreciated.

As a result, examining the structure, expansion, and growth of the Indian banking system during the last 2 decades has been a subject of interest. The current chapter focuses on numerous metrics to illustrate the banking sector's status in India. The current study chapter is broken into two portions.[107]

The first component focuses on descriptive performance measurements such as financial metrics and solvency ratio. The debates will highlight the importance of maintaining a healthy

[106] Haralayya, Dr, and P. S. Aithal. "A Study On Structure and Growth of Banking Industry in India." International Journal of Research in Engineering, Science and Management (IJRESM) 4.5 (2021): 225-230.

[107] Nayan, K. 1985. Commercial Banks in India – Performance Evaluation. Deep and Deep Publications, New Delhi.

finance industry as a prerequisite for an economy's success and expansion. In particular, the part covered technical advancements made by India's banking industry.

COUNTRY		**RANK**			**SCORE (1-7)**	
YEAR	**2013**	**2012**	**2011**	**2013**	**2012**	**2011**
INDIA	40	36	37	3.29	3.29	3.24
SWITZERLAND	8	9	8	4.78	4.63	4.71
CHINA	23	19	22	4.00	4.12	4.03

PRODUCTIVITY MEASURES

The framework, laws, organisational structures, and range of commercial activity in India's banking industry have all changed. During the liberalisation of the economy, it saw remarkable development.

These measures have changed the whole structure of India's banking system, as well as the speed with which banks operate. Since the beginning of the deregulation process in the Indian banking sector, it has been more than two decades.

The purpose of this research was to measure the effects of these changes on the profitability of scheduled commercial banks (SCBs) throughout time. During time, overall quantity of Indian commercial banks has fallen between 284 to 151, while the amount of scheduled commercial banks has dropped from 16 to 4.[108]

The most frequent method for assessing the banking sector's efficiency and assessing a bank's condition is to look during specific leading factors and related ratios. Every one of these

[108] Haralayya, Bhadrappa and Saini, Shrawan Kumar, An Overview on Productive Efficiency of Banks & Financial Institution (2018). International Journal of Research, Volume 05 Issue 12, April 2018

indications, however, are interconnected. The cornerstone of the banking operation is deposit and credit mobilisation.

Likewise, bank investments in government and non-government assets implied that funds were obtained from the local or foreign marketplace. Furthermore, banks' competence may be assessed using profitability measures such as returns on assets, return on capital, wage budget to total expenses, and changes in technology throughout time.

INDIA'S FRAMEWORK FOR BANKING INSTITUTIONS

The banking industry in India has been experiencing balance sheet difficulties. The persistent decline in asset quality resulted in increased provisions in 2017-18, and the banking sector saw losses for the very first period after 1993-94. To strengthen the financial soundness of public banks, the Central Bank took a three-pronged approach: Capital Adequacy Assessment for providing for nonperforming loans, settlement of stressed assets underneath the Insolvency and Bankruptcy Code, and recapitalisation of public banks.[109]

The preponderance of Indian institutions has satisfied the capital ratios of Basel III and therefore are focusing on managing risk and the global banking regulation treaty Basel II. As part of its efforts to enhance the banking industry, the RBI established the Public Credit Registry to offer a repository of creditworthiness.

The NBFC industry accounts for 15% of the aggregate balance sheet of Scheduled Commercial Banks and has been gradually rising in recent years. In a time when bank credit is tightening, it provides an important source of funding. It will also aid in the provision of low-cost funds with reduced operational costs.

The monies generated and deployed by the All-India Financial Institutions has constantly expanded. Housing financing is primarily provided by Scheduled Commercial Banks and Housing Credit Companies, with the latter accounting for 43.6 percent of total housing loans in 2017-18.

[109] Bhadrappa Haralayya, P. S. Aithal, "Study on Productive Efficiency of Banks in Developing Country," International Research Journal of Humanities and Interdisciplinary Studies, Volume 2, Issue 5, pp. 184-194, May 2022.

In India, the mutual fund sector has experienced remarkable expansion in terms of assets under administration. As of February 2019, the industry output AUM was Rs 23.16 trillion (US$ 321.00 billion).

Traditional financial advisory companies' beliefs and philosophies are being called into question by technology advancements and changing customer expectations. It affects all aspects of banking, including payments, deposits, and loans, as well as asset management and product access. Consumers anticipate to conduct financial transactions from their mobile devices at the push of a button, as opposed to conventional banking, which is characterised by low security and rapid transactions. Digital payments applications and digital banking portals, for example, make transactions and investments easier and provide a better customer experience.

SWITZERLAND HISTORY IN BANKING

Banks in Switzerland seems to have a lengthy history dating back to the Middle Ages. The early growth of the transported goods industry was aided by Switzerland's restricted agricultural community, absence of sea access, or ethnolinguistic variety. By the 14th century, either Geneva and Zurich had provided several tools financial and currency exchange systems.

As even the Industrialisation swept through the nation in the nineteenth century, forerunners to banking institutions began to surface in Swiss cities, especially Basel, in which the Basler Bankverein, the forerunner of the Swiss Bank Corporation, has been founded in 1854 as that of the outcome of a merger of 6 well-established financial services units. Because of import constraints during World Wars, I and II, Switzerland shifted its attention to elevated sectors, such as financial activities.[110]

Several Europeans moved their resources to Switzerland amid the turbulent first half of the last century, it was seen as a place of refuge due to its political impartiality and long-standing name for competence in the banking world. The Federal Financial Law, which was passed in 1934, established the centuries-old Swiss tradition of banking secrecy. Swiss banks may officially keep hidden financial and personal information about its customers from authorities from that point on. In the latter part of the twentieth century, the nation saw rapid economic expansion.

[110] Hossain, Mohammed. "The extent of disclosure in annual reports of banking companies: The case of India." (2008).

The banking sector's resilience was guaranteed by solid fiscal and monetary policies, as well as rigorous bank supervision. In the 1980s, banks began to grow abroad, resulting in an era of acquisitions and market structure. UBS and Credit Suisse have risen to the top of the industry during the last three decades.[111]

In 2015, the Swiss financial industry, which includes insurance, produced roughly 9.5 percent of GDP and employed around 6% of the workforce (EIU, 2016). The industry peaked in 2007, with a 12.8 percent part of GDP as well as a 6.3 percent proportion of jobs. The holdings of the Swiss financial industry fell substantially during the Global Financial Crisis, and also the rebound has indeed been gradual.

Banking provides for around 65 percent of capital instruments but only about half of the value created in the financial industry. Insurance businesses account for about 15% of assets but 45 percent of value created in the industry. The pension fund business is likewise big, with 1,866 pension plans accounting for 15% of the sector's holdings.[112]

The banking sector in Switzerland is quite diversified. Swiss banks use a variety of business strategies, ranging from conventional banking to investments banking products and services; they provide a wide variety of facilities and complex designs, and they have a high degree of knowledge. As a result, the clustered image is compact. Nevertheless, private banking, or investment management, would be where Swiss financial sector actually shines.

SWISS-INDIA CHALLENGES

The Swiss financial cluster is confronted with a variety of issues that might threaten its long-term viability. The source of fresh wealth is migrating from the Old World to Asia and other large emerging economies, where Swiss banks are competing fiercely. Furthermore, increased transparency standards and the progressive elimination of confidentiality are jeopardising key aspects of the Swiss value offer, notably privacy and identity. Then there's regulatory adherence. Swiss banks are under stress from growing expenses, that are eroding profitability but have already sparked a surge of restructuring. Finally, the fast emergence of digitization

[111] Sharma, V.K. 1993. “Computerized Banking: Efficacy and Limitations Changing Profile of Indian Banking.”

[112] Robbins, S.P., Judge, T. A. and Sanghi, S. 2009. Organizational Behaviour. Pearson Education, Delhi

and fintech threatens the traditional financial and investment management value chains by giving adequate and much more immediate customer service.

According to the latest statistics from Switzerland's banking system, India has dropped 3 positions to 77th place in monetary terms deposited by its residents and businesses with Swiss banks there at ending of 2019, whereas the UK has held its top spot. The prior year, India was rated 74th.

According to the Swiss National Bank's (SNB) most recent annual financial services statistics, India consistently ranks very low in monetary terms parked by Indian consumers and firms in Swiss banks, such as thru all their India-based branch offices, taking account for only about 0.06 percent of the overall financing parked by every foreign customer of Swiss banks.

The information for Swiss banks' 'current debt' to Indian customers includes all forms of funds held by Indian clients with Swiss banks, comprising deposits from people, financial institutions, and businesses. This covers information about Swiss bank locations in India, and also non-deposit obligations.

All of those are official data provided to the SNB by banks and therefore do not reflect the amount of suspected black funds invested by Indians in Switzerland. Those statistics also exclude any funds held in Swiss banks in the identities of third-country businesses by Indians, NRIs, or others.[113]

The United Kingdom is trailed in the top 5 by the United States, the West Indies, France, and Hong Kong. Indians as well as other nations are accused of using many layers of countries, notably tax shelters, to move their unlawful riches to Swiss institutions. The vaunted secrecy barriers of Swiss banks were alleged to have cracked as a result of Switzerland instituting an automated exchange of information mechanism with India as well as other nations.

Last year, India began receiving this automated data, in addition to providing information on banks where evidence of illegal payments may be provided. Although India tended to be one of the top-50 countries when it comes of ownership in Swiss banks until 2007, it was ranked 75th in 2015 and 61st the year before. The country was placed 37th in the world this year.

The data that India has acquired can be extremely beneficial in building a solid prosecution case against people who have undocumented money, as it contains complete information of all

[113] Uppal, R. K. and Jha N. K., 2008, “Online Banking in India,” Anmol Publications Pvt. Ltd., New Delhi.

deposits and transactions, and all revenues, such as those earned via investments in stocks and other properties. Nevertheless, there seem to be reports that many locals may have cancelled their accounts as a result of global demand on Switzerland to expose its banking industry to inspection in order to dispel the long-held notion of Swiss banks as a safe place for undeclared wealth.[114]

The ball is now in the jury's hand. This must make use of the information collected to track down unaccounted money and subject it to justice. Those who appeared on the HSBC list, the Panama and Paradise documents, and then the Swiss bank catalogue, should be held accountable. While most of the first batch of data pertains to accounts which have already been shuttered afraid of actions, it may be extremely beneficial in building a solid prosecution case regarding anyone who had any undeclared riches in those banks.

CHINA'S BANKING STRUCTURE

The financial sector, which consists of a complex interaction of financial organisations, markets, tools, and activities, allows the flow of cash and hence aids economic growth and development. Over time, a stable and efficient monetary sector has served as a basis for long-term growth. In many nations, the threat of market inefficiency has been used to justify government involvement, laying the groundwork for institutionalisation.[115]

China's financial process is integrated by banks. China's economy has shifted from restricted, centralised to more market-oriented. Within previous 40 years, the Chinese financial technology has undergone. Ever since 1990s, banks have been driven by business interests and have broadened their operations.

In 2019, China's "Big Four" banks led the global list for banks with even more than $3 trillion in assets, with a total capital value of $13.784 trillion. Chinese financial markets were the

[114] Passah, P.M. 2002. Banking and Financial Sector Reforms in India Rationale, Progress, Efficacy and Future Agenda (eds.). Banking and Financial Sector Reforms in India. Deep and Deep Publications, New Delhi. pp. 18-37.

[115] Saez, Lawrence. "Banking reform in India and China." International Journal of Finance & Economics 6.3 (2001): 235-244.

world's second largest economy by market capitalisation by the end of 2016. The development of trust corporations, mutual funds, and venture funding is underway.[116]

The underground financial system exists. The banking sector in China is crucial to financial intermediaries and the country's high savings rate. Foreign-owned institutions account for a minor percentage of the Chinese financial system. In contrast to the United States, banks control the Chinese banking markets, and the debt market is undeveloped. Because the government has already had a powerful effect in industrial growth in India, the banking financial sector has dominated.

Bank nationalisation and interest rates set by the government led to the domination of a bank-based banking markets. The Indian Banking System has changed since liberalisation, with more access to the market. Liberalisation and globalisation have had a significant impact on how banks and other financial organisations operate.

Monetary norms are being adopted by banking systems around the world, but at differing rates. Banks in developing nations are predicted to grow at a quicker rate than banks in industrialised ones. The profitability of emerging-market banks, on the other hand, demonstrates a growth in distressed assets over times. Financial sector changes were implemented in both China and India to boost financial efficiency and stability. The monetary institutions of the two markets have figured prominently in boosting economic growth and would have an influence on the world at large.[117]

HISTORICAL BANKING REGIME OF CHINA

Economic growth has shifted from restricted, government controlled to much more business oriented.

Since 1978, the GDP has increased at an average annual pace of around 9%. Since 1978, when structural reforms were implemented, China's real GDP per capita income went up by more than fivefold. China effectively weathered the 1997 East Asian turmoil and also the 2001

[116] Sufian, Fadzlan, and Muzafar Shah Habibullah. "Bank specific and macroeconomic determinants of bank profitability: Empirical evidence from the China banking sector." Frontiers of Economics in China 4.2 (2009): 274-291.

[117] Huang, Yasheng, and Tarun Khanna. "Can India overtake china?." Foreign Policy 137.July–August (2003): 74-81.

worldwide recession. In the previous 40 years, the Chinese banking system has evolved. Originally, banks were responsible for allocating state budget capital monies. Several banks have been formed in the 1980s and 1990s. Banks have been commercially oriented since the 1990s, diversifying their business from lending to credit card payments, mortgage loans, or consumer financing. The People's Bank of China acted as the central bank.

State-owned financial institutions are the most common kind of financial intermediary, following by commercial joint stock banking, cooperative banks, government banks, or non-bank economic enterprises.[118] Financing firms and investment firms are part of a fast non-bank financial intermediation sector. Foreign-owned banks create up a modest component of the Chinese financial sector, accounting for less than 2% of liquid wealth. Regardless of the fact that at the end of 2011, there were 37 locally established foreign banks and 77 international banks functioning under a subsidiary licence. International banks were unable to gain a significant share of the Chinese market due to difficulties in cutting prices, volume, and item, as well as governmental regulations on certain activities such as getting a license supply local assistance, engaging in derivatives contracts, and so forth.[119]

China has a sizeable unregulated financial market. Since they take deposit-like funds as well as issue credit beyond the standard, and more heavily regulated, banking model, this informal sector is frequently lumped along with wealth management services of licensed banks and corporations and alluded to as the "financial services" industry.

For bank financing, local authorities vie with nearby companies. Borrowed funds, the credit markets, and the share market are all restricted to local private corporations.

As a result, they obtain funds through unofficial ways.

INSTITUTIONAL & REGULATORY FRAMEWORK

China's banking regulatory and institutional structure is distinct from that of many other countries. The Chinese government owns a significant portion of the country's main banks. The Chinese government has a lot of power over lending and deposit-taking activities.

[118] Supra note 15

[119] Sherpa, Dawa. "Shadow banking in India and China: Causes and consequences." Economic and Political Weekly (2013): 113-122.

The Chinese government owns a significant portion of the country's main banks. The Chinese government has a lot of power over borrowing and payment operations. The Chinese financial system is distinct from those other privately operated and regulated banking systems. Because the Chinese government owns a bulk of the resources in the Chinese banking sector through stock holdings, it selects the upper executives of these institutions.

The Peoples Bank of China implements monetary and fiscal policy in a controlled exchange rate system by establishing money supply growth objectives. It controls credit creation and redistribution across the industry. Government action, which favours state-owned firms and infrastructure improvements, influences financial intermediation choices in China.[120]

Profitability, liquidity, and capital adequacy are the major metrics used to evaluate the worldwide banking sector. The Basel III criteria are being adopted by banking systems across the world, but at varied rates. Banks in developing nations are predicted to grow at a quicker rate than banks in industrialised ones. The performance of emerging-market banks shows the rise in distressed assets over history. Finance industry reforms were implemented in both China and India to boost financial reliability and efficiency.

Chinese banks have risen to become among the world's largest ever since start of financial liberalisation. The financial system of the Central Bank has indeed been successful. China has taken a more aggressive approach to bank recapitalisation, with the central bank injecting money and keeping interest rates low.

The Indian market has the potential to overtake China's because it benefits from a demographic transition, with a large workforce that may be boosted by development regulations, competitive pressures, infrastructure expenditures, and labour force changes. The implementation of financial liberalisation in India has resulted in a more diverse financial industry with less reliance on the banking sector.[121] The banking industry has seen more capital injection as stressed debts have grown, while NBFCs are experiencing a crisis due to asset-liability mismatches and governance practices difficulties. For a very well financial growing market, India has to implement multi-pronged finance industry changes instead of one at a moment.

[120] Muirhead, Stuart, and Edwin Green. Crisis banking in the East: The history of the Chartered Mercantile Bank of London, India and China, 1853–93. Routledge, 2016.

[121] Haralayya, Bhadrappa, “E-Finance and the Financial Services Industry,” March 2014

CONCLUSION

India and China both implemented financial sector reforms around the same period. However, at the time of reform, there were considerable discrepancies in the two systems' levels of development.

While India's financial sector had already been pretty well established and market-based, having private industry and international banks functioning alongside public banks, China, but at the other side, had to transition from a centrally planned economy to a competitive one. As a response, China's banking industry continues to experience several issues, the most serious of which is the banking system's low asset quality. In the future, China's reforms should concentrate on improving the banking markets and then further modernising the financial market.

In India, financial reforms have resulted in considerable improvements, particularly in the banking system's asset quality. Overall, the Indian financial sector has now become significantly stronger after the reforms. The fundamental problem for the Indian government is to reduce the financial system's financial intermediary costs while retaining its viability.

Transparency is a key component of a fair playing field, as well as the unfettered expansion of nonperforming loans (NPLs) can change the worldwide economic landscape by extending export subsidies. In the case of Switzerland, large economies like as the United States and the European Union need not regard such subsidies to be illegal, although small breaches by other nations similar as India or S. Korea quickly elicit enforcement measures. This technique appears to skew the competitive landscape and has limited market access for goods from trade openness. Future studies should look at tracking the real flow of non-returned bank debt in open and market businesses.

Because of some of its unique benefits, such as renegotiate flexibility and the advantages of a financing networks with sources of capital, alternatives financing may be the favourite option of financing over banking and marketplace finance. Enforcement provisions, by their very design, are much more inflexible and slower to act than other systems. As a result, various procedures may be more appropriate for emerging markets (India, China), corporate categories (SMEs in India and the Hybrid Sector in China), or businesses (information services).

The degree of constitutional protection has been highlighted as a significant predictor of bank and marketplace financing in the legal and financial perspective.

Finally, the preceding discussion shows that the banking industry in India has produced mixed results following the implementation of RBI and GOI reforms. Excluding the previous few years, it’s been established that India's banking industry is developing at a strong rate. It was also disclosed that scheduled commercial banks in India have reacted favourably in the areas of profitability, efficiency, capital adequacy, i.e., reducing nonperforming assets (NPAs), boosting the relationship between market forces, corporate governance accounting standards, income acknowledgement, configuration management, and publicity. Nevertheless, the profitability of Indian commercial banks during 2011-12 was influenced by the slowing domestic market and growing bond yields in the surroundings, despite the fact that Indian banks were adequately funded.

CHAPTER 7

CROSS –BORDER INSOLVENCY IN INDIA

Author: Sumit Raj Poswal[122]

ABSTRACT

In the current era of globalisation, national economies are integrated into a global economic system. There has been a rise in the number of goods transferred across international borders as a result of alterations in the organisational structures of businesses. As a result of increasing globalisation, multinational firms now have economic prospects in a variety of countries. Ahuge number of multinational corporations would fail as a result of the Covid-19 epidemic, which would raise the likelihood of complicated insolvencies involving numerous countries. To be able to enforce a bankruptcy, a firm or creditor will need international agreements on how to carry out enforcement across borders. The investor may choose to invest in these international corporations with assets and creditors situated in different countries; nevertheless, if the company declares bankruptcy, there will be a dispute over the insolvency and liquidation process. Cross-border insolvency makes it feasible to preserve the legal interests of both domestic and international investors in the event that a company declares bankruptcy. 1997 saw the recommendation of the United Nations Commission on International Trade Law ("the Model Law") in an effort to achieve the common good and standardise International Trade Law in respect to Cross-Border Insolvency. This action was taken in an attempt to create "the Model Law." The major objective of the law is to consolidate and implement a legal framework that is impartial with respect to insolvency laws and the process.

This study is limited to the decisions and acts adopted by the Insolvency Law Committee pertaining to cross-border insolvencies. As a result of globalisation, governments across the globe have developed national laws aimed at protecting the interests of creditors by striking a balance between the benefits gained by creditors and those received by debtors. Several affluent nations are currently standardising business bankruptcies through the use of cross-

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border insolvency, with the support of government and regulatory agencies. A waterfall process is utilised to liquidate the business debtor's assets and distribute the revenues to secured creditors, unsecured creditors, workers, and any other interested parties.

Keywords: Cross-border insolvency, comparative study, UNCITRAL corporates, foreign courts

INTRODUCTION

Legal framework governing cross-border insolvency in India

Whenever a cross-border insolvency circumstance happens, it is oftentimes on the grounds that the account holder has resources or creditors in more than one ward, or on the grounds that particular bankruptcy procedures have been started in more than one country. Accordingly, the worldwide liquidation component is principally concerned about managing bankruptcy procedures that work outside the limits of neighbourhood ward and the imperatives forced by its regulations and guidelines.

Joint effort and co-ordination among courts and legal experts in different wards, as well as between the municipal law relevant in every country; Coherence and consistency in various nations' indebtedness regulations and practices. In India, the essential piece of regulation overseeing indebtedness and liquidation processes is the Insolvency and Bankruptcy Code, 2016. While the Code has taken significant steps toward aligning India's indebtedness cycle with worldwide principles, it comes up short on component for controlling cross-border insolvency. Section 234 and 235 of the Code, which manage worldwide insolvency, contain two standards that might be appropriate in these conditions. The Central Government has the power to go into respective concurrences with outside nations to guarantee the Code's requirement, as accommodated in Section 234 of the Code. A suit is filed to a court in a country where an understanding according to Section 234 has been placed empowers the Code's arbitrating power to manage resources situated in that country in a specific way, as per Section 235 of the Code.[123]

Except for the Code's previously mentioned section, India misses the mark on thorough lawful structure for cross-border insolvency. Along these lines, this Indian general set of laws

[123]R.W.Harmer, The UNCITRAL Model Law on Cross-Border Insolvency, 6 INTERNATIONAL INSOLVENCY REVIEW 145-146 (1997).

administering cross-border insolvency misses the mark regarding tending to the key troubles that create during the cycle and is filled with flaws, some of which are featured underneath.[124]

1. Section 234 and 235 of the Code have not been advised, and no activity has been done to execute them. Thus, the foundation of a cross-border insolvency system remains basically theoretical, with few significant advances taken around here.

2. One of the preconditions for the effective working of cross-border insolvency is India's readiness to negotiate and afterward go into two-sided concurrences with unfamiliar state run administrations. It is difficult to exaggerate the time responsibility expected to arrange and conclude such arrangements, nor would it be a good idea for them they be undervalued.

3. There is no design set up to address cross-border insolvency issues where the borrower's resources or lenders are arranged in a country.

4. Moreover, there is restricted direction accessible to bankruptcy experts with respect to the interaction and choices accessible when an Indian debt holder's resources are situated in an alternate country, like the United States.

APPROACHES FOR APPLYING THE CROSS-BORDER INSOLVENCY LAWS

The utilisation of cross-border insolvency regulation ought to be seen from three perspectives: creditor friendly, debtor friendly, who have not yet taken a situation on this subject or are as yet chipping away at their foreordained conventional way to deal with bankruptcy. The favourable to loan boss viewpoint contends that lenders ought not be constrained to bear misfortunes because of borrowers' defaults. The goal is to guarantee that, on the off chance that dangers to lenders are not relieved, comparable shields are produced for borrowers to guarantee that they participate in no way of behaving that vindicates them of obligation.[125]Singapore, the United Kingdom, and Australia all utilise this technique. This supportive of account holder strategy empowers the indebted person to expand its resources for the place where they are adequate to finance conveyance in lieu of the different leasers' cases. The regulation is utilised to survey how much and how much an expansion in the indebted person's abundance ought to be allowed. The law's goal is to protect the debt holder by permitting lenders to

[124]ASHISH MUKHIJIA, INSOLVENCY AND BANKRUPTCY CODE OF INDIA (2018).
[125]In re PSI Net Inc., Ontario Superior Court of Justice, Toronto, No. 01-CL-4155 (United States Bankruptcy Court for the Southern District of New York).

mediate.[126]France, Italy, and Spain are only a couple of the nations where this can be seen. To expand the financial effect of such a methodology, the fruitful rearrangement should be connected with the borrower's ability to keep working the business as a going worry by collecting the essential amount of money. Attaining this equilibrium of approaches will empower banks to seek after creditors while ensuring that neither one of the gatherings experiences a misfortune when an association arrives at its monetary base.[127]

GUIDELINES ON CROSS BORDER INSOLVENCY PROPOSED BY THE INSOLVENCY LAW COMMITTEE

A. Features of the UNCITRAL Model Law and India's draft Guidelines

The United Nations Commission on International Trade Law's ("UNCITRAL") Model Law on Cross-Border Insolvency, embraced in 1997 (the "UNCITRAL Model Law"), gives authoritative direction to countries regarding the matter of cross-line bankruptcy. Because of its broad extension and application, the UNCITRAL Model Law has been regularly recommended as a total answer for settling cross-line chapter 11 worries. The World Bank has perceived the significance of global parts in indebtedness procedures and has stressed that bankruptcy regulations ought to incorporate arrangements for jurisdictional standards, decision of regulation, coordination among courts in various nations, and acknowledgment of unfamiliar decisions. Furthermore, the International Monetary Fund (IMF) supports the reception of the UNCITRAL Model Law since it would give a compelling instrument to settling cross-line debates and cultivating collaboration and coordination among courts and other significant experts in different wards and Sections.[128]

The UNCITRAL Model Law is administered by the standards of Access, Recognition, Cooperation, and Coordination. The last three standards are commonly building up. Its goal is to offer global experts and leasers with direct admittance to nearby courts, empowering them to take part in and additionally start home-grown indebtedness procedures against the account holder named in the understanding. As far as acknowledgment, the UNCITRAL Model Law takes into consideration the acknowledgment of unfamiliar procedures in home-grown courts and allows courts to decide the appropriate solutions for award because of this acknowledgment

[126]Bob wessels, cross border insolvency law: international instruments and commentary (2007).
[127]Fletcher, Insolvency In Private International Law, National And International Approaches, 473 (2009).
[128]jason j. Kilborn, international cooperation in bankruptcy and insolvency matters (2009).

and assurance. Moreover, the UNCITRAL Model Law advances powerful participation between indebtedness specialists and courts from various nations, while likewise guaranteeing coordination to give the most effective administration of simultaneous methods in various locales. The UNCITRAL Model Law gives off an impression of being planned to help states in creating current, orchestrated, and even-handed indebtedness regulation to all the more actually resolve cross-line bankruptcy. It perceives and regards the qualifications between assorted public regulations and spotlights basically on upgrading joint effort and coordination among nations, instead of on endeavouring to bring together their regulations.[129]

The Government of India has drafted a bunch of draft guidelines that remembers a section for cross-line indebtedness named Part Z ("draft section") trying to address the deficiencies of the present cross-line chapter 11 framework, or the scarcity in that department. These proposed propositions depend on the United Nations Commission on International Trade Law's Model Law, for certain minor changes. The Insolvency Law ("Committee") proposed the reception of these guidelines in a report recorded on October 16, 2018.

The Committee proposed in its report that the draft section be taken on into the IBC. The draft part is explained into 29 Sections, most of which manage the General Provisions and Public Policy Exception, Access of Foreign Representatives and Creditors to the Adjudicating Authority, Recognition of a Foreign Proceeding and Relief, Cooperation with Foreign Courts and Foreign Representatives, Concurrent Proceedings, and a few random arrangements.

Several of the most basic parts of the draft section incorporate the accompanying:

1. **Application of the draft chapter:** Additionally, the proposed chapter applies only to corporate borrowers and makes no reference to individual debtors or personal insolvency. As a result, the government may determine that it is desirable to first monitor and evaluate the new chapter's impact on corporate borrowers before extending it to individual debtors. The rationale for this distinction could be described as circumspect.
2. **Reciprocity**: Therefore, just those unfamiliar states who have previously taken on the UNCITRAL Model Law into their municipal law overall sets of laws would be expected to respond. Thus, the issue of how to lead a cross-line indebtedness

[129]Michael Veder, Cross-Border Insolvency Proceedings And Security Rights (2004).

methodology in nations that poor person endorsed the UNCITRAL Model Law keeps on being open.

3. **Foreign main proceedings and foreign non-main proceedings**: The draft part characterises two separate classifications of unfamiliar strategies, considering the differentiation between global primary procedures and worldwide non-principal procedures. An unfamiliar chief procedure is one that happens in the state wherein the corporate indebted person has most of its essential advantages in the corporate debt holder. As opposed to a primary procedure, continuing is an unfamiliar method other than an unfamiliar fundamental procedure that happens in a State where the corporate debt holder keeps a foundation. This differentiation is expected to fathom, decide, and delineate the degree of control that an unfamiliar ward might use over the Indian bankruptcy process, as well as the sorts and degree of help that the Adjudicating Authority might concede regarding such unfamiliar procedures.
4. **Determination of Centre of Main Interests ("**COMI"): Section 14 of the draft part gives direction to deciding the COMI esteem. Except if the court decides in any case, this section lays out an assumption that the creditor's enrolled office is the corporate debt holder's chief business environment (COMI). Albeit this assumption is pertinent on the off chance that the corporate borrower's enrolled office has not been migrated in somewhere around 90 days preceding the initiation of indebtedness procedures in that state, it is just appropriate on the off chance that the corporate debt holder's enlisted office has not been moved in no less than 90 days before the beginning of bankruptcy procedures in that state. Moreover, the Adjudicating Authority will direct an appraisal of the corporate borrower's focal organisation site to learn the corporate debt holder's COMI (Corporate Management Information System). Furthermore, such an evaluation might incorporate elements indicated by the Central Government, and it ought to be directed such that outsiders, like the creditor's leasers, can without much of a stretch check.[130]

B. Benefits and implications of implementing the draft chapter

It is significant that the UNCITRAL Model Law has been taken on by around 51 locales to really address cross-border insolvency procedures. Along with the correspondence benefit appreciated by nations like Singapore, the United Kingdom, and the United States, among

[130]Neil Hannan, Cross Border Insolvency: The Enactment And Interpretation Of The Uncitral Model Law (2017).

others, that have taken on and carried out the UNCITRAL Model Law, India would likewise profit from the accompanying advantages by embracing the UNCITRAL Model Law as the draft part and fusing it into its regulative structure:

1. **Economic benefits:** Taking on a proficient cross-border insolvency regulation will work on the consistency and sureness of the speculation climate, making India a more alluring venture objective for unfamiliar lenders.

2. **Flexibility:** The draft section perceives the qualifications between public bankruptcy regulations and takes into account changes from the UNCITRAL Model Law to oblige neighbourhood conditions while being consistent with home-grown indebtedness regulation.

3. **Protection of domestic interest and public policy exception:** 1. The proposed section accommodates the refusal of acknowledgment of unfamiliar procedures or the arrangement of other help while doing so would be obviously in opposition to Indian public strategy as characterised by the Indian Constitution. Therefore, the public interest and public strategy are raised in importance, and cutoff points on unfamiliar lenders, creditors, and other closely involved individuals are forced to keep these gatherings from manhandling the law and legal cycle.

4. **Precedence to domestic insolvency proceedings:** Systems brought under the Code as per the arrangements of the draft part are given priority. Subsequently, in the wake of starting techniques as per the Code, an Adjudicating Authority might decline to perceive any later procedures that are conflicting with the Code and were started as per the first part's necessities.

5. **Remedy in jurisdictions with reciprocity:** Various nations have taken on the UNCITRAL Model Law with an official correspondence necessity, and that implies that a nation will give acknowledgment, collaboration, and different advantages regarding Indian procedures provided that India has endorsed the UNCITRAL Model Law in some structure. Thus, endorsing the drafted section will go far toward empowering Indian lenders and specialists to get help from such responding states in more quickly settling cross-border insolvency issues.

6. **Domestic and global mechanism for corporation:** The proposed part lays out direct collaboration and coordination among courts and insolvency experts in both unfamiliar

and homegrown locales. It is plausible that this methodology will help with foundational consistency, bringing about a more reliable line of legal choices and decisions, as well as quicker and more viable help in case of simultaneous procedures.

ANALYSIS OF THE CROSS-BORDER INSOLVENCY AS PER THE INSOLVENCY AND BANKRUPTCY CODE (IBC), 2016 OF INDIA:

The Central Government is qualified for go into a concurrence with some other country as per the Code's arrangements by applying the Code's cross-line bankruptcy methodology. Section234 sets a structure for such equal arrangements to be placed into to address such debates. It is given that these arrangements give direction on issues connecting with the organisation of the creditor's resources and those of the corporate debt holder's very own underwriter who are situated in any country other than India with which a corresponding understanding of this nature is as of now active. 1 The focal government has the power, under Section 23 of the Code, to go into reciprocal concurrences with unfamiliar nations to complete the Code's arrangements.[131] Indebtedness experts can send letters to the courts or settling specialists of nations with which they have complementary arrangements, mentioning that proper move be made against the defaulting account holder and that fundamental data in regards to the borrower's resources situated in that nation be given, assuming the debt holder is in default. Because of these Sections' inadequacy to plan a suitable system, a lacking and incoherent methodology will be taken. Thus, clashes, imbalances, time utilization, and unusualness would emerge. The Sections are vague in regards to the ban's status and the strategy for settling any gridlocks that might happen among unfamiliar and homegrown courts. Cost-cutting estimates should be utilised in cases brought under the Code, as well as in case of countries with unfamiliar indebted individuals however no complementary concurrence with that country.[132]

THE REPORT ON INSOLVENCY LAW COMMITTEE ON CROSS BORDER INSOLVENCY

[131]Nidhi Shetye, International Insolvency: An Indian Perspective on Cross-Border Treatment of Cases, 39 FORDHAM INTERNATIONAL LAW JOURNAL (2015).
[132]Bar Council of India v. A.K. Balaji &Ors. AIR 2012 Mad 124 (Supreme Court of India).

The October 2018 "Report on Insolvency Law Committee on Cross Border Insolvency as given by the Ministry of Corporate Affairs, Government of India" advocates for the international bankruptcy court to take on the Model Law (IBC). It endeavours to determine the Committee's essential worries about the fundamental variant of the Code managing cross-line bankruptcy that is presently under audit. Section 234 and 2354 of the Bankruptcy and Bankruptcy Code, individually, don't fittingly address cross-line indebtedness procedures. The Committee has made ideas and proposed changes to the Model Law to guarantee that it is taken on actually in the Indian setting. The proposed Draft Z is made sense of more meticulously underneath.

INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT), 2020

The COVID-19 worldwide pandemic, which is unleashing devastation, is a consequence of the issues it has made. Around the world, countless individuals have been contaminated, and the number keeps on climbing day to day. Because of this monstrous worldwide debacle, for all intents and purposes the whole planet was put on guard. This lockdown significantly affected the economy, monetary business sectors, and gigantic organizations, with many compelled to close. It is accepted that this worldwide closure affected income on the lookout, bringing about an expansion in non-performing resources (NPAs), which at long last brought about bank, loan boss, and monetary establishment defaults on reimbursement.

The Government of India has endeavoured to change the 2016 indebtedness and liquidation act to safeguard corporate interests and salvage organisations that are nearly insolvency because of current obligation. The Indian government ordered this Ordinance in light of the country's AtmaNirbhar monetary changes. As indicated by the introduction to the Ordinance, it was made in response to the Covid-19 pandemic and other outrageous conditions to safeguard organisations from bankruptcy or liquidation.

Section 7, 9, and 10 of the Code of Civil Procedure address monetary leasers, functional lenders, and corporate debt holders straightforwardly. These Section were recorded against corporate borrowers whose assortments were frozen for a time of somewhere around a half year. In the meantime, the time span starting 25 March 2020 and finishing 24 September 2020 is available, or incorporating extra time-frames can be extended. The suspension of Sections 7,

9 and 10 doesn't have any significant bearing, notwithstanding, to any corporate default happening before to the 25th of March 2020, as those Sections state.[133]

SECTION OF CONFLICTS

In any endeavour to facilitate or advance cross-line the executives of indebted firms, every country's liquidation code might take on entirely gone against positions on a few essential issues.

1. Gotten Creditors: Whether liquidation systems hinder the assurance of tied down banks' inclinations corresponding to how any procedures are directed, and assuming this is the case, whether they are or alternately are not.

2. Corporate recovery programs: Closing-down techniques are on a very basic level unmistakable in reason and impact from insolvency procedures fixated on business restoration, which are utilised to exchange organisations and disseminate the returns to debt holders.

Three. The option to invalidate claims: While certain purviews require loan bosses with complementary debt holders to reimburse the debt holder in full, others grant banks to pay any instalments owed to the debt holder until the indebted person requests everything in the procedures. There might be errors between locales that license set-offs, as well as conflicts about whether set-offs ought to be founded on an individual or a local Section.

CONCLUSION AND SUGGESTIONS

To guarantee that the UNCITRAL Model Law is supported completely in Draft Z, changes and alterations are required. There are various worries that should be tended to before it very well may be executed accurately. These escape clauses should be addressed sufficiently assuming that India is to stay cutthroat in the requirement of cross-line indebtedness regulation, which is sure to decidedly affect the country's economy later on. Worldwide liquidation mediation is generally tedious, wasteful, and expensive in its plan and activity. As recently said, the primary justification for this is on the grounds that every country has its own insolvency regulation, which is written in a wide range of dialects and complies with a wide range of customs and

[133]Nidhi Shetye, International Insolvency: An Indian Perspective on Cross-Border Treatment of Cases, 39 FORDHAM INTERNATIONAL LAW JOURNAL (2015).

frameworks. With regards to settling such debates, an absence of consistency and consistency makes legitimate inconveniences. Among the most genuine of these contentions are those unsettling the acknowledgment and implementation of procedures and orders gave by unfamiliar courts, the believability of cases brought by unfamiliar lenders, and inconsistencies between the separated regulations used to discard the resources of indebted individuals situated in various purviews. 1 Because indebtedness orders are first considered to be powerful for upholding financial decisions, it becomes hard to implement orders gave by a few nations' specialists. To augment the advantage to the account holder, nearby loan bosses, and global banks, help from skilled courts in numerous locales should be given during the debate goal process. 2 When looking at the Draft Z, it is basic to remember that it doesn't contain a meaning of what characterises a 'corporate borrower' on the outer layer of the law. It is expected to assess the degree of the corporate borrower's commitments to distinguish who ought to confront legitimate activity. The arrangements of the Firms Act, 2013 should be separated and applied unequivocally to the organisation of unregistered organisations, as they apply to both global and homegrown partnerships. This isn't reflected in the Draft. The Draft doesn't characterise correspondence top to bottom, and the report doesn't give a reasonable significance to 'other closely involved individuals.' The particular cure available to such people in homegrown bankruptcy procedures isn't yet indicated. The scientist has made proposals for enhancements that ought to be made to guarantee that the Draft Z is executed fittingly and that cross-line indebtedness matters in India are mediated and settled in an opportune manner. The theory that applying the UNCITRAL Model Law in India will further develop the IBC's viability will be demonstrated right provided that proper corrections to Draft Z are made during the cycle. Coming up next are the suggestions made:

Furthermore, the IBBI ought to foster a set of principles and disciplinary measures for unfamiliar delegates working inside its purview. IBBI ought to keep a rundown of all delegates who talk in the interest of the association.

- To stay away from superfluous uses related with notice conveyance, the manner by which notification should be conveyed should be characterised. Furthermore, arrangements for the dispersion of electronic notification and their distribution on the authority administrative power's site will guarantee that they are open to abroad banks.

- The Central Government ought to devise a technique for direct admittance to global leasers, as unfamiliar law offices are at present restricted from laying out workplaces

in India, according to the decision in Bar Council of India v. A.K. Balaji. As indicated by them, they can supply clients with "fly in/fly out" prompt.

- Because of the shortfall of a definition for the expression "borrower" in the Model Law, just those substances determined in the Code as "corporate debt holders" ought to be viewed as while talking about the initiation of bankruptcy procedures. Since the Model Law has no unmistakable arrangement for deciding COMI, and to forestall gathering shopping and misuse, courts ought to be engaged to settle on such choices.

- The Code will give a think back time of something like three months for deciding COMI, notwithstanding the time expected for the Adjudicatory Authority to lead a proactive examination. This is significant because of the way that India's implementation engineering is at present being made.

- Arrangements ought to be made to allow COMI conclusions in situations when the enlisted office isn't a similar Section as the COMI assurance. The United Nations Commission on International Trade Law's (UNCITRAL) standards will be noticed.

- Because of the absence of specific principles for settling these sorts of conflicts, it is expected to give a rundown of indicatives that will be used to assess the COMI.

- There is compelling reason need to lay out an exact date for benchmarking the COMI, as it ought to be assessed considering worldwide and homegrown circumstances.

- It is fundamental to examine indebtedness business groupings until there is wide global agreement on the need of such a system.

- When giving access or acknowledgment, the Code should contain a prerequisite that all documentation be provided in English. This improves acquiring exhaustive data on the lawful activities brought against the account holder in any case. To allot these worries the right weight and need, it ought to be passed on to the settling authority's attentiveness.

- This archive proposes a timetable for pursuing a choice on an application for access and acknowledgment in thirty days or less. The Adjudicating Authority might give thirty extra days relying upon the grounds that the Adjudicating Authority considers reasonable.

- Whenever an acknowledgment request is given, an arrangement for survey might be consolidated to guarantee that the getting court has the choice of re-examining its previous choice assuming the request's grounds have been adjusted or disposed of totally.

- No changes are fundamental because of the expansion of Article 17 to the Code. Therefore, the Model Law can be used to order arrangements that are same.

- It is likely that the Article 19 ability to allow interval alleviation might be excluded. The Code doesn't vest the Adjudicating Authority with the power to grant impermanent help, as was previously the situation under the Sick Industrial Companies (Special Provisions) Act, 1985, bringing about a postponement in independent direction and the maltreatment of such interval alleviation, as was appropriately seen at that point.

- As opposed to that, a ban, as characterised in Section 14 of the Code, ought to be naturally forced upon acknowledgment of an unfamiliar chief cycle, dependent upon every material exemption and constraints. It isn't satisfactory to separate the whole of article 20's application. The Adjudicating Authority will not be enabled to change the cure, as doing so would vest the Authority with an unnecessary degree of circumspection.

- As per Section 60(6) of the Code, the ban time frame ought to be wiped out from the calculation of the restriction time frame's span. Article 21 accommodates "the cross examination of witnesses and the procurement of data and confirmation concerning the borrower and her business."

- Article 21 accommodates "the cross examination of witnesses and the obtaining of data and proof concerning the account holder and her business." This is as of now accessible

to the Insolvency Professional and shouldn't be vested in the unfamiliar delegates, as the Code gives.

- Because of the way that the draft guidelines incorporate no arrangement for resource circulation as a break alleviation, resource dispersion won't occur as a between time help. The importance and need of adjusting the interests, everything being equal, should be unequivocally thought of and tended to.

- The Adjudicating Authority should confirm that the decisions are appropriate before they can be additionally upheld as a consolation. In Draft Z. 6, the term 'public approach' is given an expansive translation and is characterised as follows: It is fundamental to characterise the expression "public strategy" exactly. Assuming any such action that is clearly in opposition to the country's public strategy happens, the mediating body will tell the Central Government, which will can make a Suo moto move against such demonstrations.

- Because the country's insolvency framework is in its early stages and the Adjudicating Authority needs insight in imparting and organising with global courts.

- Given the component's earliest stages, the Central Government ought to lay out a fitting power to help the Adjudicatory Authority in imparting notification and speaking with the suitable unfamiliar courts, subsequently mitigating the Adjudicatory Authority's weight and advancing quick and proficient independent direction. To look for help and data, the settling authority will contact the abroad agents straightforwardly. A statement taking into consideration joint hearings is essential in case of various simultaneous procedures. It is arranged that Articles 26 and 27 be taken on unaltered. Neighbourhood courts will have authority over how joint effort should be completed, and that way will be expressed in the previously mentioned articles of arrangement.

- Articles 28 and 29 should be acknowledged completely. This part will be discarded, and thought will be given to the assessment of the strategies set out in Article 20.

CHAPTER 8

Dwindling Financial Sector in the .com age

Author: Ritika Saxena[134]

ABSTRACT

When the technical revolution entered into the veins of India, firstly people were hesitant to accept it but now no corner of it is left which hasn't switched to the digital interface. Every sector whether it be Automobiles, Finance, Industries, Health, Energy, Estates, etc. have embraced the technological advancement which has benefitted them and boosted India's economy. Finance Sector; backbone of India's economy is greatly affected after this digital swap. This digital shift apart from providing the customers almost all financial services relaxing back at home unintentionally provided a new zone of committing crimes like frauds, money laundering etc. This article further discusses the impacts of the digital move in Financial Sector and how it has metamorphosed it.

KEYWORDS: Digital Banking, Frauds, E-Banking, Fake policies, Digital Crimes

INTRODUCTION

"Change is the law of nature"[135]

The above quote holds true in each and every aspect and the transformation brought up by the introduction of technology is the best example to it. This transformation has not just updated the way people work but it has also changed the way they think, live and survive in the society; in short it transformed the humanity. 'Change' and 'the adaption to it' go hand-in-hand and therefore slowly TECHNOLOGY became the part of everybody's life.

[134] UILS, Chandigarh University
[135] By John Fitzgerald Kennedy

Technology served as the greatest blessing for the mankind in true sense of words. Not just one but all the sectors have switched from “manualized” to “computerized” and its best instance could be seen in the Finance Sector. All over the world along with India, Banks and Insurance companies have adopted this computerised way of working termed as Electronic Banking or Digital Banking. Digital Banking means a lot more than just being paperless; it has served as the cure for the financial exclusion in India. The burden of managing distinct products and services on the shoulders of Banks and Insurance Companies were relieved by this technological change and automation. Technology empowered the Financial Sector to attract more and more customers, move ahead towards financial inclusion and to carry out its business at lower cost.

But with every boon, curse comes following; here the curse stands for the crimes that have upsurge after the introduction of internet and digital platforms. Our reliability and dependency on internet and the digital platforms have strengthened the criminals to commit crimes using these platforms. It will not be wrong to say that your single wrong click can make you lose your entire life’s saving.

THE DOT COM AGE

Internet, which was once just a tool of opulence, has now become a necessity in everybody’s life. From using landline phones to using wireless gadgets; from wireless gadgets to wearing a gadget that can sense your calorie level, with each passing day we are witnessing something which was just a dream turning into reality.

In 1989, the **WWW** or the **World Wide Web** was invented by the English physicist **Tim Berners-Lee,** who is now serving as the Director of World Wide Web Consortium. In 1990 a **"web of nodes"** which was used to store **"hypertext pages"** viewed by **"browsers"** on a network was proposed and released. The overall usage of the Internet saw a massive rise from year 2000 to 2009, hence increasing the number of its users form **394 million to 1.858 billion approx.**And, by today no human is devoid of technology and therefore it will not be wrong to say that

"Sense to the human is the gift of God but the sense to technology is the gift of Human"[136]

Round the clock we are surrounded with technology which has made our life easier, hassle free and convenient. People are accustomed to the fact that they can handle everything on just a simple click and can get their work done in the lesser time then required to blink an eye.

ADVANCED BANKING

We are successfully moving towards a cashless society with the help of Digitalisation and it is going to strengthen the bank's performance. Introduction of Advanced Banking in India gave a hike to the banking business and opened new doors to do banking. It provides the quality and quick service to the customer. All the banking transactions can now be processed quickly and easily and in the coming years we will witness more advancement in the Banking Sector. Some types of Modern Banking are listed below:

E-Banking- E- Banking refers to as Electronic Banking. Here, the term electronic relates to the use of various digital platforms to carry out any specific task. E-Banking is also known as Internet Banking which enables the customer of the bank to carry out financial transactions and many more things from any corner of the world. And customer can also, access the functions of the bank at his fingertips. It is simply the use of electronic and digital network for delivering distinct banking products and services.

CBS Banking- CORE is an acronym for "Centralised Online Real-time Exchange", and the Core banking pertains to a centralised system established by a bank which allows its customers to conduct their business irrespective of the bank's branch i.e. the branches of the bank can access applications from centralised data centres and thereby removing the impediments of geo-specific transactions.

UPI Banking- UPI stands for Unified Payments Interface, it is a payment system that allows customer to transfer money between any two parties. UPI Application allows you to instantly transfer money to someone using the IMPS payment framework, without knowing their bank account number or IFSC code.

[136] Ritika Saxena

Mobile Banking- This type of banking has reached greater significance because of their pervasive nature as it allows the customers to carry transactions like making payments, paying bills, etc. on a mobile device like cell phones, laptop, tablet etc. It is like the customer's bank branch is now in his small portable device.

WhatsApp Payment: New kid in the town- newest way of banking launched in the year 2022. "The familiarity and simplicity of the WhatsApp messaging platform makes it easy for customers to interact with the bank and get answers to queries in a seamless and convenient manner", said by Deepak Sharma, Chief Digital Officer, Kotak Mahindra Bank.

We are now able to chat with our bank to get details of our passbook, cards, fixed deposits, requests for mini statement, pre-approved loans, receive alert messages or important notifications from our bank through WhatsApp instead of getting them as text message, etc..

ADVANCED INSURANCE FACILITIES

Previously, the only means of communication in the insurance sector were post cards and face-to-face meetings, but in today's scenario the industry has adopted new digital technologies as a medium of communication and has begun disseminating information about policies and spreading awareness about the insurance policies through the internet, social media, SMS, mobile, mail, and other channels[137]. Insurance sector is also being digitalised speedily. Insurance Companies are currently developing their technologies to interact more closely with current clients and draw in new ones.

Customisation: Today's consumers demand for fast service and assistance, and technologies like AI provides a unified, customised and tailored experience for both clients and companies. Customers' lives are made simpler since they can use a specific app to pay the bills, examine the policies, and file claims, while insurance companies can receive and process all information through a single system and utilise a single dashboard to view all requests they have handled. Insurance Companies and other banks have developed their own applications which provide the customers of that bank with the access to their bank account without even visiting to the bank's branch. This facility has granted the customer with the ease of doing banking and

[137] 8 T. RadhaKrishna, how digitisation propelled India's insurance sector during pandemic, Economic Times, July 01, 2021.

availing its services sitting back at their homes. It is also available 24 x 7 so the customers feel happy to be a part of the bank.

User Friendly: By generating different types of advertisements Insurance Companies try to attract the customers. These advertisements are designed especially after taking in consideration the problems faced by the public at a large and are directly related to the issues faced by the person and pinch the person. For instance, LIC's tagline "Zindagi ke saath bhi, Zindagi ke baad bhi", gives the customer a feel that LIC will be providing something that will remain not only until he lives but also after his death. So, these advertisements attract the customers like the bee is attracted towards the honey.

Increased Efficiency: Almost all aspects of insurance operations, from processing claims via apps to accelerating customer service through digital transformation, have been simplified for speed and efficiency in large part because of AI, machine learning, and predictive analytics.

CONSEQUENCES OF DIGITAL HIT

Account Hacking- Hacking of bank accounts is done by hackers for illegal transactions. What they do is get unauthorised access to the account of a person and make transactions for his account to which the person is totally unaware of. Till this comes into the notice of the legal account holder the money has already been transferred.

OTP Frauds- OTP or One Time Password is a unique code used by the banks for debiting the money from the account while making payment electronically. It is received on the mobile number registered with the bank. Fraudsters try to avail that OTP from the victim and can make payment where he wants to.

Fake policy receipt- Insurance companies carry out their business by reaching out to people and selling them various plans and policies. In order to do so they appoint some professionally trained persons called as "agents" who sell the policy to the customer. Many cases have been reported where the agents take the money from the persons for the purpose of investing it in a policy and produces false e-receipt to befool the customer.

Fake Calls Frauds- Fraudster also befool the innocent minds by making trap calls to them and providing exciting and greedy offers like lottery, job, etc. Once the people fall in the trap, they ask for sharing their bank's details and within no time the account is left empty.

Lack of Awareness- When compared to other nations, India has very little knowledge about the new revolutionary technologies, which is the major obstacle in financial sector, affecting India's economy. The digital transformation of insurance companies and banks is crucial, but still many insurers are not aware of it and are not ready to accept it completely.

Trust and Security- The success of the adoption of digital banking and insurance services is significantly influenced by customer's trust and this is why trust serves to strengthen the security of digital services, but as more customers adopt the transformation of services into digital ones for their convenience, trust and security become less acceptable to the customers and become the main downsides in the digitalisation process.

Adaption to new features- Undoubtedly, one of the biggest challenges for both employees and customers will be to reinvent themselves in the new digital environment. The bankers and the insurers have to put the customer's preferences first and also have to adapt to the newest technology to satisfy the customer in the best possible way. This adaption may be a bit easy for the young generations but is like a barrier to the older ones and to first understand it and then make the customer understand the same becomes a really big task.

Data Leak- Some criminals also deal in leaking the data of the account holders or policy holders by tempering into the bank's system. When data transfer it does so in the form of many small packets and then when it reaches its destination, it unites again as one, therefore the hackers can temper the travelling data and can use it for their own purposes.

CONCLUSION

After stepping into the pool of 21st century we swam with the various revolutions amongst which the biggest was the Technical Revolution. The good part is that it was so easy, convenient, and helpful that no one can deny accepting it; therefore, it was whole heartedly accepted by the world. Also, the tremendous rise of technology has raised a host of legal and ethical issues that the both directly and indirectly harming many of us. We must be at red alert

all the time to stay away from such emerging crimes although government has already taken many steps and is still trying to do their best, we at our end also have some duty to do as we are the only one who could be our savior and no one else.

CHAPTER 9

BANKING INDUSTRY IN THE ERA OF DIGITALIZATION WITH CRITICAL ANALYSIS OF INCREASING DEBTS AND PROCEDURE OF ITS RECOVERY

Author: Aarzoo[138], Ritika Saxena[139]

ABSTRACT

The practice of lending and borrowing is millenniums old. The concept of banking was incepted ever since humans started engaging in economic transactions of any kind. A dynamic banking system is essential for a thriving economy. Conversion of data to a digital format is the process of digitisation and technological adoption is what is meant by digitalisation. Banking in India faces the difficulty of mounting Non - Performing Assets (NPA), which is unfavourable for the bank's financial health. For the banking sector, digitisation is not a choice. Instead, it is indispensable as every industry, including the banking is now being digitised. Banks are able to reach more clients and give them better services since of technology.

E-banking has significantly reduced costs and assisted in generating income through a variety of channels. With the adoption of ATMs, interconnection among bank branches, MICR-based cheque processing, electronic funds transfers, and interbank communication, debt settlements have become swifter with technological innovation through e-banking and automation. The Reserve Bank of India has made significant efforts to improve the banks' payment and settlement systems.

With the passage of time and the help of substantial technological advancements, debt collecting has changed. In this context digital debt collections can be characterised as a strategy where a lender or debt collector uses advance technology for getting in touch with debtors via the internet, email, and text messaging. In this way many Businesses can reduce customer

[138] UILS, Chandigarh University
[139] UILS, Chandigarh University

default and improve their overall cash flow by employing effective customer interaction strategies in Debt recovery process. The implications and growth prospective of digitisation on banking and debt recovery has also been emphasised across the board.

Keywords: Banking, Digitalisation, Debt Recovery, DRT, IBC

INTRODUCTION

In all industries, digitalisation is the current sensation or newest manifestation. It alludes to the incorporation of digital technologies to modify company models and provide new services alternatives for generating income and adding value. Over the past few decades, technology in the world has advanced quickly. Technology has permanently altered anything and everything humans are capable of comprehending. All industries have experienced a technology explosion, and the banking industry was one of the initial to use IT. In order to compete globally and offer their customers the finest services, banks and the insurance industry are taking significant steps toward digitisation.

The term "digital banking" implies the digitalisation of traditional banking processes to make financial transactions simpler. Unlike traditional banking, digitally created banking aims to develop adaptable computerized products and services to meet the needs of their digitalised clients. The banking industry has undergone a transformation because to digital banking, which has also altered how money is moved between accounts. Customers have also benefited because it is now simpler for them to check account information, pay bills online, and transfer money across accounts more rapidly. Now that they have a well-organised financial life, end users want hassle-free internet banking. The capabilities and expectations of consumers are growing as a result of the increasing use of mobile devices and the Internet. People become accustomed to the idea that they can handle an increasing number of tasks online, like banking, and these expectations are carried over to other businesses, like insurance.

In civil courts, banks have had to wait a very long period for matters involving debt recovery to be resolved and money recovered. This led to the trapping of crores of rupees in litigation proceedings, which the bank could not re-advance, forcing the Government to establish a Debt Recovery Tribunal (DRT) to assure expeditious recovery proceedings and speedy adjudication of matters concerning debt recovery of banks. Herein focus has been made on the procedure of debt recovery through the Debt Recovery Tribunals established following the Recovery of

Debts due to Banks and Financial Institutions Act, 1993 and alternative mediums, along with other relevant statues.

A data-driven and insight-driven service called the digital debt collection enables lenders and debt collectors to use cutting-edge technologies like AI and ML to enhance their borrower engagement methods. A more comprehensive and humanistic approach to debt collection can increase customer experience and recovery rates as a result of these customer-centric and data-driven techniques.

Debt recovery and related procedures have been digitalised in recent times. New technology have helped processes become more streamlined. The debt collection procedure is covered under the IBC statue, with the debt recovery tribunal handling any fraud related to debt recovery. Even if everything can now be accessed with the touch of a finger and is highly quick and efficient, there are still many difficulties brought on by new technological improvements since everyone needs time to adjust to the latest digital developments.

EVOLUTION OF DIGITAL BANKING

The banking industry in India felt the need for computerization in the late 1980s so to enhance customer support, bookkeeping, and record keeping.

In 1988 RBI constituted a committee with Dr. C. Rangarajan as the director to examine digitization of computers in banks. In India economic reform of 1991–1992 accelerated the computerization trend. The increasing presence of private and international banks in the banking sector was one of the major forces behind this evolution. To stay on top & prominent in the race, several commercial banks started the transition to digital client care.

The advent of MICR oriented cheque processing, electronic cash transfers, branch interconnection and the ATMs usage have all contributed to the commercial banks in India moving in the direction of technology. This has made it possible to conduct business at any time. The Reserve Bank of India has put a lot of work into enhancing the settlement systems and payment used by the banks. The government of India has recently started to aggressively promote electronic transfers.

The National Payments Corporation of India (NPCI) has made considerable gains in the realm of payment systems innovation with the inception of Bharat Interface for Money (BHIM) &

United Payments Interface (UPI). Customers can instantly transfer funds between financial institutions based on a digital address using the UPI smartphone UI without disclosing the actual bank account. In order to expand their banking business, attract new clients, etc., Indian banks are currently exerting significant effort to provide the following services to their customers.

The process of computerization intensified with economic development in India when the foreign & private banks initially entered the market in 1991–1992, with the goal to digitise the economy and enhance the offerings given to the clients by the government owned banks. E-banking and internet banking were first used in India between 1996 and 1998. The Indian government subsequently passed Information Technology Act, 2000 and enabled the legal legitimacy of e-payments and other types of electronic business.

With technologies like Point-of-Sale Terminal MICR, Tele-banking, RTGS (Real-Time Gross Settlement) Electronic Compensation Service, EFT (Electronic Funds Transfer), and others, the banking sector often experiences new developments. E-banking has helped in a number of ways to generate income while also drastically reducing expenditures. The National Payment Corporation of India & RBI took numerous steps to improve the settlement systems and payments in banks, including the Bharat Interface for Money and United Payments Interface (UPI). Clients do not need to hold or carry cash longer on them to complete financial transactions at any time or location.

NEED FOR DIGITISATION IN THE BANKING SECTOR

Through the reinvention of established business models and the creation of entirely new ones, digitisation and technological disruption are altering the structure of our world and redefining society, industries, and economies. The banking sector must create new operating models as a result of these uncontrollable pressures.

But what goes into creating a bank that is genuinely digital? Using a fundamentally new view of strategy, operations, and technology, IBM Digital Reinvention is a framework that captures the significant changes needed.[140] For banks, digital reinvention entails reinventing stakeholder

[140] Berman, Saul J., Peter J. Korsten and Anthony Marshall. "Digital reinvention in action." IBM Institute for Business Value. May 2016.

connections, consumer experiences, and employee engagement with new emphasis, knowledge, and working methods.[141]

IMPACT OF DIGITISATION

Technologies are diminishing entry barriers and creating opportunities for new financial service providers in the banking sector. Banks are now being driven to speed up their digital reinvention by growing restrictions, competition from start-ups, internet behemoths, and non-banking industries. This inevitable fact is understood by most of the bankers. Lately in the survey of global banking executives conducted by the IBM Institute of Business Value (IBV), nearly 60% of respondents reported that industry boundaries are eroding, the competition emanating from new and unexpected sources.[142]

The underlying mechanism, technology, and organisational structures enable new ways of thinking about customer engagement and the development of successful, effective operating models that promotes an open ecosystem of participation. Consumers gain from reasonable rates, enhanced transparency, promptness, and highly effective interplays.

Customers gain from reasonable prices, enhanced transparency, promptness, and highly effective relevant interactions. Additionally, they gain access to wide range of customised products and services from the bank as well as the emerging ecosystem. These goods may include comparison services, non-financial goods, and financial counselling. Efficient organisational structures that promote quick processing and encourage open partner ecosystems are made possible through reinvention. Agile development and cloud deployment can be used by the integrated IT organisation of the digital bank to incorporate more efficient decision and governance procedures.[143]

Based on their distinctive strategy and level of readiness to compete in the digital sphere, banks need to grasp what the term "Digital Reinvention" means for them. To achieve targeted corporate goals with available funds and within a reasonable time frame, their efforts will need to be strategic. This brings us to digital banking frameworks, often known as "DBFs."

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[141] Ibid.

[142] Diamond, Sarah, Anthony Lipp, Nick Drury and Anthony Marshall. “Realizing tomorrow today: Digital Reinvention in banking.” IBM Institute for Business Value. October 2017.

[143] Rajeshwari Shettar (2019) “Digital Banking An Indian Perspective” Journal of Economics and Finance,Vol. 10, (3) PP. 01-05

HOW DIGITALISATION HAS IMPACTED THE DEBT RECOVERY PROCESS

Debt collection has evolved through time and benefited from significant technical developments. Digital collections in debt management can be defined as a technique where a lender or debt collector makes use of cutting-edge tools like artificial intelligence and machine learning to develop efficient contact methods for contacting debtors using internet tools, email, and text messaging. By implementing efficient customer interaction techniques through digital collections, businesses can decrease customer delinquency and boost their overall cash flow.

Strict laws and regulations governing lending practices have been developed as a result of growing privacy and borrower protection concerns. Debt collectors can use data and an AI-led methodology to discover the best consumer communication strategy in light of the growing regulatory issues. The standards and requirements for debt collection can be met by collectors with the aid of compliant communication. Because of this, FinTech companies can guarantee compliance with regulations, never default, and draw in more clients by adhering to standardized practices.

FinTech businesses may enhance client experiences and offer profitable business prospects to debt lenders and collectors by utilizing cutting-edge technology like AI and ML. This will help the debt collecting sector become more digital, which is a good thing. Due to their leadership in the digital transition, fin tech companies are able to forge ahead of the traditional debt collection industry by adopting a data-driven strategy to debt collection.

The McKinsey report to which I previously made reference highlights a part in which a thorough survey of lenders who rely on digital collection strategies for debt recovery was done. The survey's findings showed that reaching out to borrowers increased generally by 65 percent, and lenders reported an increase in payback collection of between 89 and 92 percentIn order to better serve consumers and establish a long-lasting lending/borrowing relationship between financial institutions and borrowers, banks and NBFCs have started deploying tech-based solutions, launching a new phase of debt collection. A data-driven and insight-driven service called digital debt collection enables lenders and debt collectors to use advanced technologies like Artificial intelligence and Machine leaning to enhance their customer engagement methods. These communication techniques include sending emails, texts, WhatsApp messages, or other digital channels that customers can choose. Lenders and collectors can efficiently use AI-powered insights to deliver customers customised messaging. Customers also have the option of making

payments digitally at any time using their preferred payment method. A more comprehensive and humanistic approach to debt collection can increase customer experience and recovery rates as a result of these customer-centric and data-driven techniques.

To regularly contact clients for debt collection, traditional debt collectors frequently use individuals who have little to no access to customer profiles or insights. Due to a lack of information, consumers who don't even owe money are occasionally harassed by debt collectors. But clients increasingly want communications that are more authentic and personalized to them. Employees may personalise their interactions, choose channels that customers like, and choose the best times and frequencies to reach out to customers by utilising AI and ML to acquire information on customer requirements and preferences. Such a customer-focused strategy can improve the reputation and success of FinTech businesses.

However, bankruptcies are also increasing as the Indian digital lending ecosystem grows at historically high rates. Due to increased credit issuance, NPAs have increased for both NBFCs and banks. In a period of rising bad loans and haunted debt collection practises, FinTechs are ensuring customer collection efficiencies with decreased human dependency, lower bounce rates, and increased self-pay through the implementation about big data analytics & machine learning.

Machine learning-based platforms & Big Data that allow digital channels AIs to carry out various collection-related tasks, increases reach and contact of the client's portfolio using advanced analytics, which reduces collection efforts/cost by removing redundant steps. For example, in India Banks and farmers now work together to find a one-stop solution, and banks won't have to worry about farmer loan payments under Kisan Credit Cards. This ground-breaking programme collects information from farmers, including the due date and outstanding, leveraging language features for greater penetration.

CURRENT STATUS OF INDIAN BANKS IN THE DIGITAL WORLD

In the given times Banks endeavour to provide their customers a swift, precise, and elevated banking experience. Digital revolution is presently the major focus area amongst the Indian banks. The government is actively promoting digital interactions. National Payments Corporation of India (NPCI) have innovated two key moves toward innovation in the Indian payment systems industry with the development of Bharat Interface for Money (BHIM) & UPI

(United Payments Interface). In accordance with the RBI Report for 2016–17, there are 25,29,141 outlet devices and 2,22,475 automated teller machines (ATMs) (POS). [144]

Digital transaction methods such as NEFT (National Electronic Fund Transfer), RTGS (Real Time Gross Settlement), ECS (Electronic Clearing Service), Prepaid cards Debit cards, Mobile Banking Industry, Credit Cards, and Cheque Truncation System have all been widely adopted by the banks in India. All These are significant turning events for the digitalization of financial sector. The digitization of banks has altered the way that finance is conducted and brought about substantial changes.

The utmost prevalent digital payment method in India for inter-bank funds transfer is known as the National Electronic Funds Transfer (NEFT). Currently, 23 establishments are there, and it operates in partial batches.[145] Real-Time Gross Settlement (RTGS) is typically used for high-value transactions that can be processed in "real-time." Two lakh rupees is the RTGS minimum transfer amount and there is no outer limit. Immediate Payment Service (IMPS) is real-time electronic payments transfer service offered by National Payments Corporation of India (NPCI), which is open twenty-four hours a day, seven days a week.

Prepaid payment instruments (PPIs) have been increasingly popular in recent years for fund transfers and retail purchases of goods and services as well. PPI Cards incorporates mobile prepaid instruments, coupons, corporate cards, mobile wallets, and overseas travel cards were used in a significantly higher number of transactions in 2016–17 than they were in 2014–15, rising from Rs. 105 billion & Rs. 82 billion to Rs.532 billion and Rs.277 billion.

ROLE OF DATA ANALYTICS AND ARTIFICIAL INTELLIGENCE IN E-BANKING

Artificial intelligence has long served as the foundation of electronic banking and has been consistently making contributions to the banking industry in order to give us a higher degree of value, reduced risks, and higher prospects like economic shapers of our contemporary economy.

[144] lden, “An Overview of Digitization in Indian Banking Sector”, IndoIranian Journal of Scientific Research, vol: 01, Issue: 01, (2017), Pp: 209 – 211.
[145] Digital Payments: Trends, Issues and Opportunities, Niti Aayog Report, July 2018

Artificial Intelligence is revamping how client expectations are handled and helps with new innovations in an important method. AI also aims to deliver tailored support, time and space efficiency, an improved better client experience, lesser risk, and monetary savings.

The three primary objectives that the financial services and banking segment are currently attempting to achieve in order to stay ahead of the competition in the global market are better performance, higher revenue, and risk mitigation.

Performance in our data-driven world depends on big data solutions that can manage and store data in real-time. Banks are also required by law to lend money to high-priority industries like agriculture, housing, and education at lower interest rates. For banks, data analytics has been crucial in cost reduction, development, and client growth

BANKING SECTOR AND INDIA'S DEBT ISSUE

The Indian banking system has been clogged by bad debts. Asia's other problem with bad debt has been deemed to be India. Politicians and Business tycoons and have been leveraging the clout for years to get low-priced loans from financial companies & banks that led to the disaster been created.so far.

The issue is not resolved at this point. The issue persists even in written contracts, where everything is well understood and formalized. The most crucial clause of the Agreement is the loan agreement's terms and conditions, which many parties rarely read or discuss. They agree to these terms and the conditions as if they were an ordinary contract, without question. The agreements that other financial institutions & banks frequently formulate to engage with clients remain void from the start, cancelling the whole transaction and giving the banks minimal to no redress.[146]

RECOVERY THROUGH DEBT RECOVERY TRIBUNAL (DTRs) AND ALTERNATIVE RECOVERY MECHANISMS

To hasten the recovery of bank loans, the Reserve Bank and the Government have launched many institutional initiatives. Prior to 1993, banks had to pursue failing borrowers through a

[146] Una Galani, Breakdown: Solving Asia's other bad debt problem, Reuters, June 30, 2016

drawn-out judicial process that started with the filing of lawsuits. Thus, the legal process took many years before banks had any prospect of getting their loans back.

The 1993 Recovery of the Debts Due to Banks and Financial Institutions Act, DRTs were formed to help banks with the quick resolution of cases involving recovery of the Non-Performing Assets Worth Rupees 10 lakh & above. The appeals of DRT orders are heard by Debts Recovery Appellate Tribunal (DRAT).

5 DRATs & 33 DRTs actively working across the country.[147] Through the enactment of Security Interest and Recovery of Debts Laws (Amendment) Act of 2012, on the similar lines DRT Act has recently been modified for the effective operation of the DRTs, specify deadlines for filing pleadings, adjournments, etc., and recognize and validate agreements reached by banks and borrowers in settlements or compromises.

It was discovered that DRTs could not produce the required outcomes in less than ten years, and the need was to grant sufficient authority to settle debts with no intervention by the tribunals or law courts. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest also called the SARFAESI Act, came into being in 2002. That remarkable enactment allows banks and financial institutions the necessary power to speed up the recovery of their debts, but cunning defaulters found a method to get in touch with the court or the debt recovery tribunal to stall the process and drag out the banks' legal troubles.

In accordance with the SARFAESI Act, there are three ways to recover funds: (1) asset reconstruction, (2) securitization, and (3) security enforcement without court a tribunal or a court. In a nutshell, the SARFAESI Act gives financial institutions (FIs) banks and the authority for sending demand notices to defaulter and the guarantor of the debt as well, when the amount owed needs to be settled within 60 days from the date of notification was served. Banks have the authority to seize the security used to secure the loan, manage, or appoint, assign and sell the right anyone to manage the security in the event that the notice is not followed. However, if the secured property is an agrarian asset, no legal action can be taken under the Act.

The main distinction between the two Acts is that the DRT Act clearly permits the banks and other financial institutions to recover the debts exceeding 10 lakhs through DRTs and is authorized to the doctrine of election, which means that it doesn't limit itself to the secured or

[147] Nidhi Singh & Ritika Rishi, Debt Recovery Tribunal: An Analysis, 2 Jlsr (2016).

unsecured debts. In contrast, SARFAESI Act only permits the recovery of secured debts and allows recovery deprived of the participation of any judicial process. As established in the Deshpande Committee Report, the idyllic number of cases to be handled by any DRT at a given point of time was supposed to be only 30, but even in early stages, this number was approx. 4000 in major cities. Creation of DRTs and DRATs was intended to decrease weight on legal system and to deliver an effective measure, but now problem has only been shifted to the DRTs. DRT success rates have been estimated at under 25%, which is worrying. Additionally, DRTs were burdened with problems relating to state dues, worker dues, and claims concerning unsecured assets. Borrowers often slowed down the legal process by filing lawsuits against lenders in the civil courts.

THE JUDICIAL PERSPECTIVE

In Union of India v. Delhi High Court Bar Assoc, & Ors,[148] the legitimacy of the RDDB & FI Act 1993 was contested, is the most significant one in terms of debt recovery. The particular act was stated to be illegal by the High Court of Delhi but the SC upheld its legality & imposed some modifications. The courts have interpreted some of the clauses to safeguard the debtors even though CPC do not apply and the procedures are in a summary fashion. One instance Mathew Varghese vs. M. Amritha Kumar case, wherein the law court determined that notice to defaulters prior to the sale of secured as well as unsecured property must be issued as soon as practically possible in accordance with provisions 8 and 9 of the SARFAESI Act.

In Swiss Robbins Private Limited & Anr. Vs. Union of India & Ors.[149] Insolvency and Bankruptcy Code, 2016, was disputed as being unconstitutional. The judgment was issued on January 25, 2019, and the Supreme Court upheld its legality. The Insolvency and Bankruptcy Code is said to be helpful piece of law that helps corporate debtors get back on their feet and is not only a means of creditor collection. It is the primary instrument for insolvency resolution & reconstruction of corporate debtors, according to the Apex Court. The court further ruled that the distinction between financial and operational creditors is not arbitrary or discriminatory and does not violate Article 14 of the Constitution. Finally, the court underlined that there is an understandable distinction between the two creditors.

[148] Union of India v Delhi High Court Bar Assoc, & Ors, 2002 2 S.C.R 450
[149] Swiss Robbins Private Limited & Anr. Vs. Union of India & Ors, 2019 SCC Online SC 73

CRITICAL ANALYSIS

To critically analyze we can say that even though new digital technology is coming up in order to make the debt recovery process more efficient and easier for both the customers and the banks/non-banking financial corporations. Using the artificial intelligence and machine learning, the banks and corporations have started to inculcate new technologies for the benefit of the clients. Earlier the debt recovery process was cumbersome and time-taking as banks and companies but now it has become quicker and well-organized. In India, the process Digitalization is difficult due to lack of education and awareness in the large sect of people who do not have proper access to internet or computers/laptops or smart phones. As a result, India's growing debt crisis is affecting the banking sector and the economy.[150]

The regulators & government, including the RBI, are engaged with number of initiatives for the enhancement of debt recovery procedures in the wake of the revisions to the SARFAESI, RDDBFI, and IBC.[151] Even though it is one of the 3 laws that specifically allows for the debt Recovery, the Insolvency & Bankruptcy Code 2016 offers a further real - time and target-oriented approach that helps in a faster settlement for the stakeholders of the owing organization by offering a sufficient opportunity for rehabilitation. While the DRTs first succeeded in achieving their goal, they were unable to continue when the large and powerful borrowers started employing their evasive strategies. Therefore, there is a stringent need to use all the new technologies and make amendment in the statues so, that we can boost our economy and make the best use of digital technologies that are available to us.

CONCLUSION

In the present era, digital banking is becoming ever more popular, and clients have become more and more aware of financial services on a routine basis, especially in the wake of demonetisation. Due to the rising popularity of smartphones, the banking industry had to go digital in order to keep up with global standards; this minimised human mistake and improved convenience.

[150] Dr. S. Yuvaraj, Sheila Eveline.N "Consumers' perception towards cashless transactions and information security in the digital economy." (July 2018).
[151] Mrs B.Kishori, R. Kumaran, "A Study On Digitalization Of Insurance Industry: Customer's Opportunities And Challenges" ISSN NO: 2249-2976.

Digital banking services could be improved by holding orientation programs, educating the underprivileged about the services, and outlining the advantages of the services to them. Because of this, consumers can save a lot of time on manual tasks, which greatly boosts their productivity. It is now evident that the mounting debt problem in India is affecting the banking industry and the economy. The RBI has acknowledged this substantial problem. The RDDB & FI Act and SARFAESI Act both helped to some extent to alleviate the debt recovery issue. The number of non-performing assets has been continuously increasing, the banks have been undervaluing them, and the banks have been unable to wipe them off of their books. Regarding the first issue, which asks what role DRTs play in enhancing debt collection, it can be said that the system is superior to using civil processes, that it is quicker due to the use of summary proceedings, but that it is not equipped to deal with complex legal issues. The convenience of "Anywhere Banking" has also increased the number of customers.

SUGGESTIONS

To enable smooth and long-term execution of this creative business model, regulatory compliance must be ensured. Making sure that all clients are secured from cybercrime and that the most cutting-edge cybernetic values are used is the core issue in the digital age. Given that digitalisation would automate the system and eliminate labour, the industry should see cost reductions as a result of the transformation. Technical errors should be prevented by using qualified and experienced computer specialists, in order to prevent data loss.

India could not adopt fully digital banking because the population is not prepared to accept it. Therefore, orientation programs could be delivered through the media, and both bank customers and non-customers should be made aware of the value of digital banking. Customers believe that the security of digital banking services is lacking because so-called techies who misuse their skills can simply hack into online transactions. As a result, security measures should be strengthened to prevent fraud. E-banking services should be tailored based on factors such as age, gender, occupation, and others so that people's wants and requirements can be met in a suitable manner. Government spending on infrastructure and well-appointed buildings should be increased. The adoption of digital offerings by banks is constrained by new restrictions, which increases competition from new competitors.

CHAPTER 10

Digital Governance of E-Commerce in India

Author: Vivek Kumar Athankar[152]

ABSTRACT

Buying and selling goods and services over an electronic or digital network is referred to as e-commerce. The digital revolution has opened up access to a wide range of items at low prices, and India has played an important role in this change. The E-Commerce market in India has been steadily growing in recent years. The Indian e-commerce business has experienced a growth unlike any other, thanks to rising digital literacy and mobile usage across the country. Electronic commerce has altered the structure and climate of business around the world. E commerce is gaining traction as a viable alternative to traditional commerce due to its flexibility and benefits for both businesses and customers.

The online population of the world is a potential market for an E commerce merchant. It establishes a virtual market environment that is devoid of geographical boundaries. The expansion of e-commerce has impacted businesses by providing a virtual area for selling things online and creating new revenue avenues, but it has also resulted in the establishment of a lot of job opportunities and simplified the lives of modern customers. This paper deals with the legal framework for E-commerce and various legal issues which even after governed by various existing laws and regulation is not sufficient to deal with such issues related to the growing use of E-commerce in India. In the year 2000, the Indian government passed the Information and Technology Act, which recognized digital records, digital signatures, and other electronic transactions as lawful. This paper outlines the rules governing E-commerce in India, as well as the shortcomings of current laws and some recommendations for the need of a new law which governs the E-commerce industries and its transactions.

Keywords: E-commerce, Data protection, Taxation, E-governance

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INTRODUCTION

E-commerce (electronic commerce or EC) is the buying and selling of goods and services, or the transmitting of funds or data, over an electronic network, primarily the internet.[153] These business transactions occur either as business-to-business, business-to-consumer, consumer-to-consumer or consumer-to-business The term e-tail is also sometimes used in reference to transactional processes for online shopping.

The buying & selling of products & services by businesses & customers through on electronic medium, without using any paper documents. E-commerce is widely considered the buying & selling of products over the internet, but any transaction that is completed solely through electronic measures can be considered e-commerce. E-commerce is majorly subdivided into three- categories: business to business or B 2 B (Cisco), business to consumer or B 2 C (Amazon) & Consumer to consumer C 2 C (eBay).[154]

1. Business to Business (B2B): In a business-to-business arrangement, a company sells its products to an intermediary buyer, who then sells them to the final client. A wholesaler, for example, makes an order on a company's website and then sells the product to the ultimate client who visits one of the company's retail locations after receiving the consignment. Take, for example, Tata Communications (network provider).
2. Business to Consumer (B2C): In a B2C model, a company sells its items to a client directly. Customers can look at the products that are shown on the website. The customer can select a product and place an order for it. The website will then send an email notification to the business, and the business will subsequently dispatch the product/goods to the client. These B2C companies are online merchants. Amazon, Flipkart and other similar sites are examples.
3. Consumer to Consumer (C2C): In this type of business model, by uploading their information on the website, consumers help consumers sell their assets such as residential property, vehicles, motorbikes, or rent a room in the C2C model. The consumer may or may not be charged for the website's services. For instance, OLX, Quirk, and online auctions.[155]

[153] M. Baskaran &S. Selvi, E-Commerce in India, (Feb. 8, 2022),

[154] Id.

[155] E-Commerce and E-Governance: Notes - Simply Coding, (Feb. 8, 2022),

LEGAL FRAMEWORK FOR E-COMMERCE IN INDIA

There are no dedicated e-commerce regulations in India when it comes to the regulatory framework that governs e-commerce activity. The Indian government's several ministries and departments deal with various aspects of e-commerce. The Ministry of Electronics and Information Technology, for example, is responsible for the technical aspects of e-commerce, such as data protection issues, through the Information Technology Act.[156]

Legal issues are divided into two categories: regulation and making legal systems compatible with and for e-commerce.[157] The latter, despite appearing to be content-friendly, relies on the former to be effective. In fact, there are a slew of things that governments would seek to regulate on the Internet. Not just serious affronts to human values like child pornography and incitement to racial hatred, but also consumer protection, intellectual property rights defence, and taxes are among them. All of these are topics that governments have already passed legislation on. Existing norms and laws would apply to the Internet and e-commerce, and they should. The issue isn't whether the Internet should be governed, but rather how it should be regulated. Regulators face a slew of new challenges as a result of this whole new type of communication.

The Information Technology Act of 2001 provides a legal foundation for e-commerce, making India only the twelfth country in the world to have such complete legislation in place.[158] The Indian Penal Code, the Indian Evidence Act, 1872, and the RBI Act, 1934 are all amended as a result of this Act to bring them into compliance with the requirements of digital transactions.

The IT Act aims to address three areas or perceived needs for the digital era:

(a) making e-commerce transactions possible (both business to business and business to consumer);

(b) making e-governance transactions possible (both government to citizen and citizen to government);

[156] S. Shairwal, Legal & regulatory framework governing e-commerce in India, Lexology, (Feb. 8, 2022).

[157] Id.

[158] E-Commerce in India: Economic and Legal Perspectives, (Feb. 9, 2022).

(c) curbing cybercrime and regulating the Internet.

The IT Act has been amended, and a national controller for enforcing the Act has been established. The certifying authorities that will issue digital signatures and the systems for authentication will be regulated by this controller. These steps must be accompanied by the resolution of security and payment challenges. Security and authentication arrangements must be universally recognised and acknowledged. On the one hand, while governments (such as the United States government) have taken a number of initiatives, countries such as India have yet to build trustworthy technologies.[159]

The media and free-speech advocates have criticised the IT Act's security and control provisions, particularly those relating to cyber-crime. After all, the right of freedom of speech and the right to information are important to democracy and attempts to manage IT and e-commerce must not look to be attempts to hinder the spread of the Internet, as certain nations in the Middle East and China are attempting to do. NASSCOM and numerous experts have criticised the extensive and sweeping powers given to the police (without a warrant or court oversight).[160] The government must use extreme caution in this area, as measures to regulate pornography should not be interpreted as, or result in, impeding the growth of the Internet in India.

With the emergence of new security mechanisms such as electronic/digital signatures, certificates, etc., the future of electronic commerce hinges on confidentiality. Privacy is another aspect of security, and it is linked to data collection, interpretation, distribution, and circulation. Personal information must be collected, revealed, and used in a certain way when it is collected, disclosed, and used online.

One of the concerns levelled against the IT Act is that it lacks a language protecting online consumer security and protection. Some legal experts argue that the existing Consumer Protection Act of 1986 is extremely extensive and may be extended to encompass on-line consumers as well, because, after all, on-line buying is just another means of doing business. Even though this is true, there are various features of digital transactions that are unique to them, such as electronic payments, confidentiality, transaction data, and so on, that might lead

[159] Mathur, eCommerce laws in India—All you need to know, (Feb. 9, 2022).

[160] Id.

to problems in cyberspace.

The OECD guidelines on the protection of privacy and trans-border flows of personal data, which embody well-established principles of fair information practises, are forming the basis of an international agreement on privacy protection.[161] In the Indian e-commerce sector, these standards could serve as the foundation for ensuring privacy and secrecy.

Much of the IT Act, as it is now, is concerned with citizen-government engagement. Certainly a proper and far-reaching e-governance mission. However, there are various obstacles to overcome before this becomes a reality. The fundamental reason for this is that government agencies will not only lack the necessary gear for electronic transactions, but will also need to reorganise their systems and procedures before they can interact using electronic documents.

Legal Issues related to E-commerce

In India there are certain legal issues that troubles business in online environment, which requires better e-governance. Considering this, lets analyse if there are solutions available to these problems.

- E-contracts:

  Electronic contracts are governed by the Indian Contract Act, 1872 (ICA), which stipulates that a legitimate contract must have been signed with the free assent of both parties and for a lawful consideration. E-contracts are allowed under Section 10A of the Information Technology Act of 2000.[162] So, both ICA and IT Act has to be studied in conjunction to understand and offer legal legitimacy to e-contracts. Section 3 of the Evidence Act also stipulates that the evidence may be in electronic form.[163] **Trimex International FZE Ltd. Dubai v. Vedanta Aluminium Ltd.**, a case before the Supreme Court, concluded that e-mail discussions between parties about mutual obligations form a contract.[164]

[161]Anjali, E-Commerce Laws and Regulations in India, (Feb. 9, 2022)

[162] Information Technology Act, 2000, S. 10A

[163] Indian Evidence Act, 1872, S. 3

[164] Trimex International FZE Ltd. Dubai v. Vedanta Aluminium Ltd., (2010) 3 SCC 1

The probability of minors entering into contracts rises in an online environment, especially with the increasing use of online medium among minors and their inclination to shop or acquire goods/services online. It's critical for an online business portal to contemplate this possibility and qualify its website or form by indicating that the person with whom it's trading or entering into a contract is a major.[165]

Another issue is contract stamping, if the relevant stamp duty and penalty have not been paid, an instrument that is not properly stamped may not be admitted as evidence. Stamp duty, on the other hand, is only applicable to physical papers and is not possible to pay in the event of e-contracts. However, since that stamp duty may be paid online and e-stamp sheets are available, it's possible that stamp duty will be requested on e-contracts as well.

Another important consideration is permission and how offers are received in an online setting. Customers do not have the ability to negotiate the terms and conditions of a click wrap and shrink wrap contract, and they must simply accept the contract before proceeding with the transaction. The burden of proving that a contract was not induced by undue influence shall lie on the person in a position to dominate the will of another, according to Section 16(3) of the ICA.[166] When a person in a position to dominate the will of another enters into a contract with him, and the transaction appears, on the face of it or on evidence adduced, to be unconscionable, the person in a position to dominate the will of another bears the burden of proving the same.

So, in the event of a dispute over an e-contract, the entity performing the e-commerce will be responsible for proving that there was no undue influence. Furthermore, section 23 of the ICA states that a consideration or object of an agreement is illegal if it is prohibited by law, or is of such a nature that if allowed, would defeat the provisions of any law; or is fraudulent, or involves or implies injury to another's person or property, or the Court considers it immoral or contrary to public policy.[167]

[165] Supra Note 9
[166] Indian Contract Act, 1872, S. 16(3)

[167] Indian Contract Act, 1872, S. 23

1. **Data Protection:**

The safety of the data sent during an online transaction is a key problem. The Reasonable practises and processes and sensitive personal data or information Rules, 2011 have been proposed under section 43A of the IT Act, and establish a framework for data protection in India.[168] Personal data is defined as any information that relates to a natural person and is capable of identifying such person, either directly or indirectly, in combination with additional information accessible or expected to be available with a body corporate.

Some data consist sensitive information and passwords, financial data, physical, physiological, and mental health conditions, sexual orientation, medical records and history, and biometric information are all examples of sensitive personal data. The company collecting data should have a privacy policy in place, acquire consent from sensitive information providers wherever possible, and use acceptable security policies and processes. Unauthorised access to personal data, as well as any misuse of that data, should be investigated by online goods/service providers.

Another problem in online transactions is interacting with payment gateways. The EFT was introduced in 1995 as a retail money transfer system that allows clients to transfer monies from one account to another and from one region to another without having to physically shift instruments. Without prior RBI clearance, banks were allowed to offer internet banking services based on the Board-approved internet banking policy. The RBI launched the RTGS in March 2004 as a move toward risk mitigation in large-value payment systems, allowing transactions to be settled in real time and on a gross basis. The RBI is in charge of the RTGS System.

In 2005, NEFT, a more secure, nationwide retail electronic payment system, was introduced to allow bank customers to transfer funds between networked bank branches across the country. The Payment and Settlement Systems Act of 2007 gave the RBI the jurisdiction to regulate and monitor payment and settlement systems in the country, as well as to provide permission to set up/continue such systems, request information/data, and issue directions to payment system providers.

[168] Information Technology Act, 2000, S. 43A

The IT Act established legal recognition for transactions involving electronic data exchange and other forms of electronic communication, which are generally referred to as "electronic commerce" and involve the use of non-paper-based methods of communication and information storage. The IT (Amendment) Act 2008, RBI's guidelines on Mobile Banking and pre-paid Value Cards, Guidelines on Internet Banking, and Mobile banking guidelines are some of the steps implemented so far to ensure a secure e-transaction. With the adoption of section 43A of the IT Act, the basis for increasing cyber security and data protection in India has been built. This clause requires bodies corporate to implement "reasonable security practises" to protect sensitive personal information.[169]

The IT Act formalises the concept of data protection in Indian law, introduces the concept of "sensitive personal information," and establishes a corporate liability for preserving and protecting such sensitive personal information. It also makes failure to protect personal data and information a civil and criminal offence. Furthermore, for all online transactions, the RBI has established a mechanism of giving additional authentication based on information encrypted on the cards but not visible. Banks must also implement alarm systems in order to keep track of online activities. Since, an e-commerce website relies on an online means of payment, the RBI has established a number of regulations, the most important of which is the payment gateways. When using such payment gateways, however, contractual duties for data protection and utilisation should be clearly established.

2. **Intellectual Property Rights (IPR):**

Infringements of trade marks, copyright, and patents are quite likely in the online medium. Other people design and build e-commerce websites, and third parties often create the content as well. There can be major IPR ownership concerns unless the parties' agreements clearly provision for IP rights. Any use of third-party intellectual property should be accompanied by legitimate approvals. The disclaimer and IPR policy for interactive websites should clearly state these difficulties, and goods/service providers should monitor their websites' usage on a regular basis. Domain names are protected as trademarks, and deceptively similar domain names might cause confusion.

[169] Supra Note 16

In **Satyam Infoway Ltd v. Sifynet Solutions Pvt Ltd**., the Supreme Court had held that a domain name may pertain to the provision of services within the meaning of section 2(z) of the Trade Marks Act.[170]

3. **Efficient delivery system and an effective supply chain and service management:**
In e-commerce, it is critical to address consumer protection considerations at all times. The Consumer Protection Act of 1986 (CPA) controls consumer-goods-and-services relationships, however there are no particular regulations for online transactions. When there is a "deficiency in service" or "defect in products," or when a "unfair trade practise" occurs, a goods/service provider may be held liable.[171] Any service provided for free is clearly excluded from the scope of the CPA. As a result, users will be regarded as customers under the CPA if only the actual sale takes place online. The goods/service providers may be asked to correct defects/deficiencies, replace the goods, refund the money already paid, compensate, and cease and desist from engaging in unfair or restrictive trade practises.

The Information Technology Rules of 2011 require intermediaries to disclose their rules and regulations, privacy policy, and user agreement for anyone who wants to access or utilise the intermediary's computer resource.[172] Users of computer resources must be informed that certain banned categories of material may not be hosted, displayed, uploaded, modified, published, transmitted, updated, or shared under these rules and regulations. In addition, the intermediary must not intentionally host or publish any banned content, and if it does, it must remove it within 36 hours of becoming aware of it.

In **Consim Info Pvt. Ltd v. Google India Pvt. Ltd**, the Delhi Court recognized that no injunctive relief could be granted to Consim since it did not pass the triple test of (i) prima facie case (ii) balance of convenience and (iii) irreparable hardship but here the decision of the court was greatly influenced by the fact that the trademarks in dispute were generic in nature.[173] The court also noted that, while the intermediary, Google,

[170] Satyam Infoway Ltd v. Sifynet Solutions Pvt Ltd., 2004 Supp (2) SCR 465

[171] Supra note 17

[172] Information Technology (Intermediaries Guidelines) Rules, 2011

[173] Consim Info Pvt. Ltd v. Google India Pvt. Ltd., 2013 (54) PTC 578 (Mad)

cannot be held liable for infringement arising from a third party's actions because it is impossible to check every advertisement posted online on a regular basis, this observation was subject to section 3(4) of the aforementioned Intermediaries Guidelines, which required Google to act within 36 hours of receipt or risk being held liable.

4. **Taxation of e-commerce transactions:**

Due to the rapid technical advancements, the lack of boundaries, and the intangible character of goods/services transactions, assessing tax and collecting income for transactions carried out over cyberspace is problematic. The High-Powered Committee (HPC) established by the Central Board of Direct Taxes considered introducing a separate tax regime for e-commerce transactions, but citing the principle of 'neutrality', HPC maintained that no separate regime for the taxation of e-commerce transactions is required and that existing laws are sufficient. Indian states are looking for ways to tax ecommerce transactions in order to capture a portion of the booming e-commerce revenue. Tax rules are trying to stay up with changing company models and corporate structures, which is especially important given that most significant e-commerce enterprises have marketplace models.[174]

5. **Big Data & Antitrust:**

Small business owners are becoming more comfortable with e-commerce platforms. The lockdown imposed to stem the spread of the coronavirus brought small business owners' daily operations to a standstill. The only other option was to adapt to shifting market conditions in order to stay afloat. According to a recent market analysis conducted by the CCI, small shops choose to join a third-party market place rather than create their own website because the former is far more cost effective. The question is whether e-commerce marketplaces engage in any unethical business activities, such as manipulating their algorithms to encourage the sale, use, or supply of a service or product, putting new vendors at a disadvantage.

[174] Ankit Singh, Regulating E-Commerce in India A Work in Progress, IJLMH, (Feb. 10, 2022)

Consumer advantage is inextricably related to antitrust issues. Healthy market competition guarantees that consumers have access to a wide range of goods and services from which to choose. This also assures that the market is constantly evolving, which ultimately benefits the customer. The recent move for sellers from traditional markets to e-commerce companies is significant, as the former relies on interpersonal relationships while the latter relies on data-driven algorithms. Data is a commercial commodity with the power to influence competitiveness. Antitrust authorities have been on the lookout for mergers involving companies with valuable data sets and their potential market impact.[175]

For similar reasons, the recent Facebook-Jio agreement was also scrutinised. Concerns about deep-discounting and targeted advertising were raised by the data set collected by Facebook-owned WhatsApp and Instagram, as well as local businesses working under Jio's umbrella and relying on it. Similarly, Amazon's Sambhav project, which debuted in early 2020, intends to bring over 10 lakh Indian SMEs online.[176] This is in response to the backlash that the internet giant received for attracting customers with unusually large discounts. Before dismissing such activities by large data fiduciaries like Amazon as merely a move to boost the inclusion of small company owners, the genuine benefit of such initiatives must be examined.

It is necessary to comprehend the significance of data in this setting. The importance of data in e-commerce firms cannot be overstated. For example, it customises shopping recommendations based on a customer's browsing history in some circumstances. Concerns arise when they utilise this to 'tweak' the recommendations in order to maximise profit while potentially degrading service. Small business owners listed on such e-commerce sites would suffer a considerable disadvantage as a result of this. Even if disruptive technologies have a chance to penetrate a highly concentrated e-commerce industry, this hazy possibility cannot be utilised to provide current anti-competitive behaviours blanket protection. Despite the fact that the CCI has allowed specific exemptions in terms of techniques used to assure the supply of vital commodities to consumers, the commission has the right to conduct ex post facto investigations into alleged violations of the Act's requirements.

[175] THE FUTURE OF E-COMMERCE IN INDIA | RSRR, RSRR, (Feb. 12, 2022).

[176] 7 Challenges Faced by E-Commerce in India – Explained! YAL, (Feb. 12, 2022).

SCOPE FOR A SEPARATE LEGISLATION FOR GOVERNING E-COMMERCE SECTOR

Minister of Electronics and Information Technology, announced in February 2020 that the parliament has intentions to legislate a new Information Technology Act. Since, technology is now at the heart of concerns such as privacy, cybercrime, service delivery, and digital payments, the IT Act must reflect this. This ministry began a consultation process with stakeholder ministries and industry organisations in April to get feedback on the proposed law.[177]

In 2000, the IT Act was passed to give legal status to electronic records and digital signatures. In 2008, it was updated to include rules on intermediary liability, data security, and cybercrime. The terrain it controls has far surpassed its statutory remit in the last 20 years.[178] New players have emerged, and the internet ecosystem is now confronted with numerous problems. More than 687 million Indians have access to the internet, which they use to purchase, chat, entertain, commute, and get medical care. Any policy governing the internet must take into account this hyper connected reality.

INTERMEDIARY LIABILITY

Intermediaries are entities that facilitate information flow or host information in cyberspace, among other things. Internet service providers, social media firms, and messaging platforms are just a few examples. The "safe harbour" provisions in the bill provided conditional immunity to intermediaries from third-party content. This had two purposes: it sparked economic innovation as well as new levels of communication. As a result, these platforms have become ingrained in people's digital lives today. This development was accompanied by a number of significant problems, the most notable of which was the rapid rise of social media, which gave rise to phenomena such as fake news and misinformation, which frequently resulted in violent repercussions.

[177] India can be a digital economic powerhouse if new IT Act removes ambiguity around e-commerce, (Feb. 15, 2022).

[178] Id.

Between January 2017 and June 2018, rumours on WhatsApp were responsible for 69 incidences of mob violence in India, with 33 persons killed.[179] Revenge pornography, in which explicit sexual imagery is shared without the agreement of the person represented, has also become a terrible reality. The current state of circumstances needs more control of these platforms than ever before.

There arises a question that, will it be viable to regulate intermediaries in a way that addresses these issues while also allowing them to stimulate innovation. Intermediaries have a safe harbor under Section 79 of the IT Act if they follow the rules set out in the Information Technology (Intermediaries Guidelines) Rules, 2011.[180] However, these standards are littered with broad phrases that could be interpreted in a variety of ways. Intermediaries, for example, are required under Rule 3(2)(b) to notify users not to publish or share any information that is disparaging, blasphemous, obscene, or libelous.[181] However, neither the Rules nor the Act define what constitutes obscene or insulting behavior.

The Parliamentary Committee on Subordinate Legislation highlighted this gap in its 31st report and advised steps to eliminate such misunderstandings. Regrettably, the recommendations went unheeded. The persistence of offensive content on social media sites has prompted many users to approach the courts. Users have asked for legal help with anything from a ban on pornography to the removal of libellous content. Different courts have adjudicated these instances, which has contributed to the intermediaries' liabilities, which are currently uncertain in law.

Consider the **Prajwala case**, which showed the widespread distribution of sexually violent movies over WhatsApp. The Supreme Court proposed measures in 2017, including barring users from uploading such films and restricting search inquiries based on specified keywords. Putting such restrictions in place would necessitate proactive content monitoring. This is in contrast to the Supreme Court's 2015 decision in Shreya Singhal v. Union of India, which stated that intermediaries were not compelled to use their own judgement to determine the legality of

[179] A.S. Hazare, Pranav Rajput & Jay., Child-Lifting Rumours: 33 Killed In 69 Mob Attacks *Since Jan 2017. Before That Only 1 Attack In 2012*., (Feb. 12, 2022)

[180] Information Technology Act, 2000, S. 79

[181] Information Technology (Intermediaries Guidelines) Rules, 2011, Rule 3(2)(b)

information.[182] This just emphasises the necessity for a comprehensive law that gives certainty to both intermediaries and users.

Illegal material is a global problem for which no comprehensive answer has yet been identified. Until now, most governments have depended on solutions that are either burdensome or overwhelming. The Protection from Online Falsehoods and Manipulation Act, 2019 (POFMA) in Singapore, for example, gives the government broad censorship powers, allowing it to order the correction, redaction, or blockage of information that it deems harmful to the public interest. POFMA was used in January of this year, just three months after it went into effect, to order Facebook to remove a news website's page.[183]

Some governments have taken into account the ability of social media to sway public opinion. The Network Enforcement Act of 2018 (NetzDG) in Germany, for example, takes a threshold-based gradation approach to social media platform regulation, limiting its application to networks having more than two million registered users in the country. Smaller platforms, particularly startups, will find it easier to operate as a result of this.

SYNTHESISE NEW REALITIES

A new IT Act provides a chance to harmonise the existing e-commerce legal framework. Despite being enacted to facilitate electronic commercial activities, the IT Act never defined what commercial activities entail. Instead, the IT Act envisioned a liability paradigm that would apply to all intermediaries on a horizontal basis. The digital ecosystem got more diversified as new business models emerged, resulting in distinct kinds of actors. Aggregation platforms like Uber and Zomato, as well as digital payment systems like Paytm, are among them. There are also functional sub-categories within specific categories. User-generated videos and curated content, for example, are included in the video-on-demand sector.

Furthermore, the Act's imprecise approach to platform governance resulted in fragmentation involving various agencies. The Consumer Protection Act of 2019, the Central Goods and Services Tax Act of 2017, and the current Foreign Direct Investment (FDI) policy are among the legislation that govern e-commerce today. As a result, establishing rules for e-commerce has grown difficult. While the Allocation of Business Rules places e-commerce under the

[182] Shreya Singhal v. Union of India, AIR 2015 SC 1523

[183] *Supra* Note 26

Department of Promotion of Industry and Internal Trade (DPIIT), the IT Act, which oversees it, remains under the Ministry of Electronics and Information Technology (MeitY). Furthermore, the Consumer Protection Act of 2019 gives the Department of Consumer Affairs the authority to create e-commerce rules.[184] As a result, its unclear which ministry has control over e-commerce and to what extent.

STABLE BUT ADAPTIVE REGULATION

For India to grow a $5 trillion digital economy by 2024, it will need a stable regulatory environment that ensures regulatory action is predictable.[185] As a result, the new law will face a difficult task in bridging present regulatory gaps while remaining future-proof. Traditional business strategies rely on the 'regulate and forget' strategy, which is ineffective for technology-driven companies. To keep up with technological change, regulators in other jurisdictions have altered their procedures and embraced agile models. One such paradigm is adaptive regulation, which is an iterative technique based on rapid feedback loops. Another example is risk-weighted regulations, which are a risk-based and segmented strategy influenced by data analysis.

A principles-based approach is perhaps the most well-known. Rather of mandating methods, it defines outcomes that stakeholders can attain. This approach is shown by Australia's Federal Privacy Act, which establishes 13 privacy principles that govern the processing of personal data. The government now has the opportunity to handle India's unique digital concerns thanks to a new IT Act. It's also an opportunity to clear up legal ambiguities around technology, re-examine the roles of actors in cyberspace, and, in the end, build a regulatory climate that supports India's transformation into a digital economic powerhouse.

CONCLUSION

The Indian government attempted to address a variety of difficulties by combining too many clauses in the IT Act. As a result, a number of provisions critical to the growth of the e-

[184] Rani Adgulwar, CONSUMER PROTECTION AND E-COMMERCE IN INDIA, PJAEE, (Feb. 15, 2022),

[185] Hardeep Singh Puri, *India to become $5 trillion economy by 2024-25,* (Feb. 15, 2022),

commerce ecosystem are either missing or neglected. When the IT Act of 2000 was amended in 2008, the e-commerce industry hoped for a better version. However, certain concerns remain unresolved, such as the establishment of online contracts and the legal enforceability of online contracts involving international parties. The Reasonable security practises and procedures and sensitive personal data or information rules were developed in 2011 to offer a framework for data protection and to list security practises and standards as a result of the inadequate provisions of the IT Act 2008. Although the High-Powered Committee (HPC) believes that no separate taxing structure for e-commerce transactions is required and that existing laws are sufficient, India's e-commerce is still facing taxation difficulties. It can be seen that the current form of e-commerce legislation is too weak, and it has to rely on other laws to deal with numerous legal difficulties in e-commerce. Only a robust legislative framework can establish an environment in India that is beneficial to the e-commerce industry. To keep up with rapid technological advancements, policymakers should enact a distinct e-commerce law.

CHAPTER 11

RUSSIA-UKRAINE: WAR

Author: Richa Mittal[186]

ABSTRACT

Geopolitical tensions between the West and “Russia” grew after “Russia” invaded Ukraine in February 2022, which lowered hopes for global growth because it was uncertain how the conflict would affect the global supply chain in particular.

There are several underlying causes of the current Ukrainian conflict, which is not just a Ukrainian issue. In accordance with a deal reached between the “United States” and “Central and Western Europe”, Vladimir Putin, the president of “Russia”, has identified Ukraine as the forerunner of efforts to revive the Soviet Union or at the very least to quickly exert new influence in “Russia”. Due to its advantageous location in Central Europe, it very certainly is. The political, energy, and cyber moves made by “Russia” seem to be a part of a larger plan that primarily targets the Baltic Republic**.**

Another viewpoint is that Putin wants "Russia" to play a significant role in guaranteeing European security. The US and most "NATO" allies have fought to reduce the Russian impact in Europe over the past 20 years. Whether the two possible explanations for Putin's intentions are correct—possibly both are, to some capacity—it is essential to regard the recent situation in Ukraine as a starting point for long-term relations between "Russia" and “the West”. "Understanding the scenario is important for knowing Russia's aspirations to reclaim its status as a big power, directing Western efforts to redirect Russia's goals in non-threat directions, and averting the start of a new cold war.

Sanctions imposed on “Russia” by Western countries have a negative impact on the global economy. The conflict has led to energy supply, trade**,** commodity, and rising energy, food**,** and commodity prices, leading to global inflation in many countries. This article also examines the impact of the “Russian-Ukrainian war” on the global economy**.**

[186] Madhav Vidhi Mahavidhyalaya and Research Centre Gwalior(M.P)

INTRODUCTION

Optimism about post-COVID-19 growth is widespread in early 2022. This is due to the fact that several states have stepped up their efforts to reduce inflation and revitalise the economy. This has led to an optimistic estimate of global GDP, which is expected to grow by 4.4% in 2022.In parallel, in February 2022, "Russia" invaded Ukraine. The battle increased geopolitical tensions between "Russia" and Western countries, dampening hopes for global growth and raising questions about how the crisis might affect the world supply chain. This article will discuss how the "Russian-Ukrainian War" has affected the world.

This article aims to identify a justification for launching a war. The effects of the "Russian-Ukraine war" on the global economy may not be fully understood until the war is over, but early economic indicators point to severe repercussions. This article summarises the most important predictions by specialised scholars and international economic organisations.

Early economic indicators indicate that the "Russian-Ukraine war" has considerably influenced the global economy. However, the total economic impact may not be understood until the crisis is over. The goal of this article is to provide a summary of the most important predictions made by experts and international economic organizations. [187]

HISTORY OF CONFLICT

Putin and historians contend that Nikita Khrushchev's 1954 transfer of Crimea from the "Russian Socialist Republic" to the "Ukrainian Socialist Republic" in honour of the 300th anniversary of "Ukrainian-Russian unity" marked the beginning of the current Ukraine crisis of the USSR in 1991. Crimea's position in the newly independent Ukraine was necessary at that time.[188]

The beginning point for modern purposes was Christmas Eve, 1991, when the Soviet Union officially disintegrated. Since then, maintaining security for all of Europe's nations and allowing "Russia" to participate in the political development of the continent without isolating Moscow or perceiving it as a danger has been the continent's main geopolitical problem. Remarkably, the latter goal continues to be unattainable. [189]Avoiding a repeat of the aftermath

[187] Al-Naseralla F, 'The European Union As A Global Actor: The Russia-Ukraine Conflict Starting In 2014-2022' (*DIVA*, 2022)
[188] 'How Nikita Khrushchev gave Crimea to Ukraine' (*Russian culture*2
[189] 'Project MUSE - The History behind the Regional Conflict in Ukraine' (*Project MUSE*)

of World War I, when a defeated Germany was singled out as the sole cause of the conflict in the Treaty of Versailles, forced to pay reparations, and generally branded as a pariah state, was a top post-Cold War priority for the “United States” and most “NATO” allies. The way in which Adolf Hitler was treated had a big impact on his rise to power.[190]

In the late 1980s, Western nations realised that “Russia” could not be viewed as a vanquished country. Both his successors, “George H.W. Bush” and “Bill Clinton”, were mindful not to do so. It was possible that, given enough time, “Russia” might restore some level of national strength to challenge European peace and protection if it so chose, despite the fact that it was at the time complacent and no longer an essential participant in continental politics, economics, or security.

The achievement of “George H.W. Bush's” vision of a "whole and free" and peaceful Europe would depend in part on the success or failure of this effort. This was a difficult task. In contrast to Germany, which was occupied after the war, neither Japan nor Germany had the same democratic traditions as “Russia”. Germany’s future was the main topic of discussion.
Notably, it was decided that there should be one Germany that would join “NATO” in the so-called "Two Plus Four Agreement" of 1990, which was marked by “East and West Germany” as well as the aftermath of “World War II” occupying nations of “France”, “the Soviet Union”, “the United Kingdom”, and “the United States”.[191]
Self - abnegation was not agreed by Moscow's with free consent, however, as it could see that a unified Germany, integrated into “NATO” and subject to American control, would deter a resurgence of German militarism—a possibility that, albeit remote, alarmed other “NATO” members. The question of whether the United States made explicit or implicit commitments to refrain from expanding “NATO” to other nations in exchange for a united Germany's participation is still up for debate.[192]

The United States continues to be a European power. The centralised military command structure of “NATO” is preserved. The late 1860s saw the emergence of the German dilemma, which is still unsolved. As “NATO” works to forge tight ties with the European Union, Central

[190] Karina K, ‘War of textbooks: History education in Russia and Ukraine’ (*University of California Press*, 7 May 2010)
[191] Simma, Bruno. "NATO, the UN and the Use of Force: Legal Aspects." *European Journal of international law* 10.1 (1999): 1-22.
[192] (Nitoiu C, 'Towards Conflict or Cooperation? The Ukraine Crisis and EU-Russia Relations' (2016) 16 Southeast European and Black Sea Studies Last accessed on 17 july 2022

Europe will be eliminated from the geopolitical chessboard. These objectives were accomplished with the assistance of American leadership (which became the European Union).

Cooperation between “NATO” and “Russia” was made possible during what can only be described as a golden time. In fact, the Russian defence minister once told the US secretary of defence in a bilateral meeting, that Moscow has no problems with “NATO”, except for the name of the organisation during the Cold War. Following the Dayton Accords, “Russia” backed Western diplomacy. It joined the Implementation Force, which was put explicitly under official US command and not “NATO”, in an effort to maintain the peace until “NATO” decided to deploy air power to end the “Bosnian war” in the summer of 1995

Problems started when “NATO”, under the leadership of Washington, proceeded towards expansion, giving in to the demands of potential new members to be shielded from potential “Russian revanchism” as they underwent internal reform.6 The idea that “NATO” membership would encourage the growth of local institutions, contact with the West, and Western financial assistance was also prevalent.

A few allies had reservations about the expansion, primarily for two reasons. First off, an expansion might weaken the Alliance and its military power. Second, the credibility of the clause may be weakened if the political criteria for launching a collective “NATO” to attack under Article 5 become excessive. For several “NATO” members, enraging “Russia” and resulting in further splits in Europe was a severe but secondary issue.

"We expect and would welcome "NATO" expansion that would expand to democratic governments to our East, as part of an evolutionary process, taking into account political and security developments in the entirety of Europe. This was the commitment made by the partners at the "NATO" summit in Brussels in January 1994." 7 The final two provisions were added to reduce conflict with “Russia” and prevent some friends from being pressured into making security commitments they might later find themselves unable to fulfil.[193]

Even this conditional declaration was met with opposition in “Russia”, notably from Boris Yeltsin, who is notoriously obedient. Despite this, Moscow permitted "NATO's" acceptance of the first three invitees: "The Czech Republic," "Poland," and "Hungary." “Moscow” continued

[193] Nitoiu C, 'Towards Conflict or Cooperation? The Ukraine Crisis and EU-Russia Relations' (2016) 16 Southeast European and Black Sea Studies

to view “NATO” enlargement as a violation of Germany's commitment to unification and **a** breach of its legitimate political and security rights.

The first two demonstrated American engagements by surrounding Germany with “NATO”. Helmut Kohl, the German chancellor, prioritised this aspect of the international expansion project even though the youth of today of Germans had abandoned global political or nationalist objectives. He did so because he understood that assurances about Germany's future behaviour would depend on Germany's connections in Central Europe and with "Russia."

“The US and its allies realised that “Russia” needed to be given much more serious consideration in terms of both its political role in the future of Europe and its involvement in European security before "NATO" formally invited the first Central European nations to join the Alliance at the July 1997 "NATO" summit in Madrid. The “NATO Russia” Founding Act of May 1997 lists 19 particular areas for collaboration in addition to many general guiding principles.” 8

The Act also contained unilateral “NATO” declarations that set restrictions on the use of conventional forces and nuclear weapons in Central Europe. These declarations were carefully put into the Act without consulting “Russia”. “The Founding Act established a “NATO- Russia Permanent Joint Council”, which changed its name to the “NATO”-”Russia” Council in 2002 and gave “Russia” equal standing with the allies.

One significant issue remained, namely what to do about Ukraine. One of the significant achievements during the time of largely amicable relations between “Russia” and "NATO" was the Budapest Memorandum, which was signed in December 1994 by “Russia”, the UK, and the US (as well as separately by China and France) addressing the continued deployment of nuclear weapons in "Belarus," "Kazakhstan," and "Ukraine." In the instances of "Ukraine," "the US," "the UK," and "“Russia”," their nuclear weapons were transferred to the latter two countries.

"To uphold Ukraine's independence, sovereignty, and existing boundaries to never threaten or use force against Ukraine's political independence or territorial integrity, and to never use force against Ukraine other than in self-defence or in other circumstances authorised by the UN

Charter. [and] to abstain from economic coercion intended to undermine Ukraine's exercise of the rights innate in its sovereignty and thereby secure benefits of any type."[194]

This promise was unambiguous in every way. It is obvious that “Russia” violated the 1975 Helsinki Final Act when it annexed “Crimea” in February 2014 and carried out additional military operations against “Ukraine”.[195]

Following the conclusion of the "NATO"-” Russia” Founding Act, “Russia” vigorously opposed any idea that Ukraine may be considered for "NATO" membership as "NATO" was scheduled to extend an invitation to the first three Central European countries to join "NATO" at its 1997 summit. Nearly all "NATO" allies concurred with the Kyiv government, which at the time did not submit an application for membership. However, due to its strategic location and history as a part of the Soviet Union, Ukraine could not be viewed as being just like any other Central European country.[196]

A “NATO-Ukraine Commission” was established as a result of these worries, and a comprehensive list of areas for collaboration between “NATO” and “Ukraine” was also included in the “NATO-Ukraine Charter”. The creation of "a crisis consultative structure to confer together anytime Ukraine detects a direct threat to its territorial integrity, political independence, or security" was another demand made in the letter. 10 As a result, Ukraine and the Alliance forged a special bond. Despite the charter's reference to "the basic freedom of all governments... to be free to select or amend their security arrangements, including treaties of alliance," the “West and Kyiv” recognised that Ukraine would not join "NATO."

The "NATO “Russia” Founding Act," which was designed to temper Moscow's response to the initial "NATO" expansion, quickly revealed that “Russia” would not actually be included as part of a "Europe entire and free," supposing it had such goals. "NATO" has regularly displayed a reluctance to consult Moscow, even when Moscow felt its interests were at issue.

The problem reached a boiling point in 1998 when the US-led "NATO" decided to use air power against Serbia over Kosovo, following Russia’s ratification of the first "NATO" enlargement and its active participation in the Implementation Force for Bosnia. Given “Russia” and Serbia's unique ethnic and religious links, the provocations of the ethnic-Albanian

[194] Karina K, ‘War of textbooks: History education in Russia and Ukraine’ (*University of California Press*, 7 May 2010)
[195] ‘Project MUSE - The History behind the Regional Conflict in Ukraine’ (*Project MUSE*) 2
[196] (*Rasanah-iiis.org*, 2022

Kosovo Liberation Army, and the lack of a UN Security Council resolution, “Russia” was more concerned about the West's disregard for its worries about attacks on Serbia than Serbia's human rights breaches. According to “Russia”, stopping aggression against Bosnia-Herzegovina, a sovereign state, was very different from invading Serbia over Kosovo, a territory of Serbia.[197]

“NATO” had to think about the future of the three Baltic countries before the issue of enlargement even came up because the US had never recognized their inclusion into the Soviet Union in accordance with the “Molotov-Ribbentrop Pact of 1939”. Considering their proximity to “Russia” and relative smallness, all three nations were particularly concerned about potential Russian assault or, at the very least political dominance. All of them joined PfP with the hope that it would result in “NATO” membership, supporting their domestic political growth. In addition, a number of “NATO” countries close to the Baltics, notably Denmark, urged them to join the Alliance. Despite its objections, Moscow acknowledged that despite their proximity to “Russia”, the Baltic republics could be in exceptional situations.

The "George H.W. Bush and Bill Clinton" administrations were mindful of the geopolitical and historical difficulties that would come with re-establishing European security. However, the George W. Bush administration thought that since the US and "NATO" had won the Cold War against the Soviet Union, they could do whatever they wanted. Neglected were the increasingly apparent and active Russian regressive impulses. As a result, "NATO" encouraged Bulgaria and Romania to join in November 2002, further enclosing “Russia” in the alliance's gaze.

The US also left the 1972 Anti-Ballistic Missile (ABM) Treaty in June 2002 because it was no longer regarded necessary in the absence of a nuclear conflict between the US and the USSR. This only served to make the situation worse. That was true enough, but one of the few indications that the United States had recognized “Russia” as the principal Soviet Union legatee as still being competitive was the ABM Treaty. The US was allowed to install anti-ballistic missiles in “Poland and the Czech Republic” in 2007 as a result of the treaty's abrogation in order to defend the US homeland (and, in principle, Western Europe) from potential missile attacks by North Korea or Iran.[198]

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[197] Karina K, ‘War of textbooks: History education in Russia and Ukraine’ (*University of California Press*, 7 May 2010)

[198] Nitoiu C, 'Towards Conflict or Cooperation? The Ukraine Crisis and EU-Russia Relations' (2016) 16 Southeast European and Black Sea Studies

Moscow threatened to launch more offensive missiles despite Washington's accurate assessment that these defences would not be enough to degrade Russia's nuclear deterrence. Moscow felt embarrassed by the way its strategic interests were being disrespected.

"Russia" withdrew from the Conventional Armed Forces in Europe Treaty in July 2007, citing "NATO" development and its plan for missile defences in Central Europe as reasons. As a result of these changes, typically expresses embarrassment. "Putin has exaggerated the issue, calling the fall of the Soviet Union the worst geopolitical catastrophe of the 20th century." His address at the yearly "Munich Security Conference" in January 2007 stood out for its ability to be sombre in a setting that has always been calm and matter-of-fact.

Among other things, he singled out the US for establishing a unipolar world: "One single centre of power." a solitary centre of force one single place where decisions are made. One ruler and one master rule this globe. "Mainly, the United States has overstepped its national bounds, and in every sector," is only one of the numerous alleged faults. He emphasized "NATO" expansion in particular: [199]

Apparent that "NATO" has nothing to do with it Restoring the unity or guaranteeing security in Europe. It instead suggests a serious provocation. And we have a right to inquire: What is the goal of this expansion? What happened to the duties, too? Did our Western allies respond to the Warsaw Pact's demise? Where are those advertisements now? Nobody even brings them up. But let me reiterate what has already been communicated to this audience. I wish to quote Mr. Woerner's remarks from the "NATO General Secretary's address in Brussels" on May 17, 1990 He claimed that the Soviet Union had a clear security assurance because are these promises anywhere? [200]

Putin did mention some areas where the interests of "Russia" and the West were aligned, such as "energy", "space", "arms control", "non-proliferation", and "economic security". Journalists and US officials, however, emphasized his unfavourable remarks. [201] "Russia" suggested a new security agreement for Europe in November 2009. Its primary goal was obviously to undermine "NATO"'s role, which the US and "NATO" both found intolerable. Putin's suggestion was not taken seriously by them, and it is questionable if he ever intended for it to be. He might have simply wished to make clear Russia's presence and displeasure. In any event, Putin was further

[199] 'Administrative And Legal Protection of Land Relations In Russia And Ukraine: Comparative And Legal Analysis' [2017] LEX RUSSICA Last accessed on 17 July 2022
[200] Alcaro R, *West-Russia Relations in Light of The Ukraine Crisis* Last accessed on 17 July 2022
[201] Karina K, 'War of textbooks: History education in Russia and Ukraine' (*University of California Press*, 7 May 2010)

persuaded by the West's contemptuous attitude that it was unwilling to recognise “Russia” as a substantial force.

An important turning point in the development of “NATO” and Western ties with “Russia” was marked by the Bucharest Summit in 2008. It almost happened by mistake. In order to move Ukraine and Georgia closer to membership in “NATO”, the Bush administration sought “NATO” approval. Other allies largely did not support the “Membership Action Plans” of these countries. Some others were concerned that Moscow's encirclement phobia might worsen.[202]

“Furthermore, the allies were unwilling to commit to providing Ukraine or Georgia with security guarantees, especially the strong mutual and collective ones, despite the fact that Article 5 of the “North Atlantic Treaty” does not automatically require any ally to go to war or use force to stop aggression.”

Bush, though, had political exposure, and the allies decided he could not be sent home without a fight. Therefore, they declared generically that "we decided today that these countries will become members of NATO” rather than approving “Membership Action Plans” for the two nations.

Despite the literal interpretation of the statement, it was intended to put off Georgia's and Ukraine's “NATO” membership indefinitely, maybe forever.

The president of Georgia, Mikheil Saakashvili, interpreted it as a formal promise to ally Georgia and Ukraine. He immediately put the hypothesis to the test by seeking to use force to recapture disputed Georgian lands from the “Russian Federation” in South Ossetia, despite a last-minute telephone call to stop from a senior US State Department official.

In just five days, “Russia” destroyed the Georgian effort. Georgia received limited military assistance from the US, but none of Georgia's “NATO” allies were willing to defend it. The Bucharest formulation was essentially a drafting error and was found to be false. “NATO” would have been better off permanently eliminating it.

Unfortunately, it was reiterated in communiqués from later “NATO” summits and at the meeting of the organization's foreign ministers in November 2021.14 Thus, the partners' actions seem to support Putin's claim that “NATO” is attempting to encircle “Russia”. Any European nation rising from the rubble of the “Soviet Union”, “the Warsaw Pact”, and “Yugoslavia” was

[202] (*Rasanah-iiis.org*, 2022)

allowed to make an application to join "NATO" in the 1990s. However, it was also stated that not every candidate would be approved as a legitimate "NATO" member (15)

Overall, this “NATO” stance is a little bit dishonest because few formally qualifying nations have any realistic chance of joining. The unanimous consent of current allies is the one prerequisite for “NATO” membership, and it is challenging to meet. “NATO” has formed a number of auxiliary actions. One is completing a Membership Action Plan, and another is signing up for the PfP. [203]

Even if they choose not to join “NATO”, these are meant to assist countries in becoming democratic, Westernised governments that can secure their security. It has been clear from the start that “NATO” did not intend to admit aspirants as a matter of right when it adopted the freedom-of-choice proclamation, but its language now sticks to it.

Internal change in Ukraine, which has struggled to establish both a healthy political economy and a secure geopolitical stance, is another element leading to the current crisis. Prior to Viktor Yanukovych becoming president, there was a crucial period.

He did, however, violate the deal in November 2013, which brought up a massive street protest. After a horrific brawl between opposing forces in Kyiv in February 2014, he fled to “Russia”. (16) During a visit to Kyiv, Victoria Nuland, the assistant secretary of state for European and Eurasia Affairs, publicly praised the protesters, demonstrating that the US was behind them.

More significantly, she later spoke with Geoffrey Pyatt, the US ambassador in Kyiv, over an open line to discuss ways to support new, American-friendly leadership in Ukraine.[204]

It's possible that "coup-plotting" is overused. Regardless of whether they were acting independently or at the instruction of senior US officials, Nuland and Pyatt were aiming to securely integrate Ukraine into the US orbit. Ukraine was now undoubtedly a point of contention between “Russia” and the West, as well as the subject of Moscow's efforts to influence its politics.

The “Nuland-Pyatt” phone chat was made sixteen days before the “Russians began annexing Crimea and interfering in the Ukrainian Donbas region. Given their size and complexity, these military actions must have been under continuous planning.”

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[203] Al-Naseralla F, 'The European Union as A Global Actor: The Russia-Ukraine Conflict Starting In 2014-2022' (*DIVA*, 2022)
[204] Alcaro R, *West-Russia Relations in Light of The Ukraine Crisis* Last accessed on 17 July 2022

It is unclear if the “Nuland-Pyatt” phone call was the direct cause of their activation or merely Putin's handy excuse. It was not helpful. “NATO” has boosted its military and other capacities in reaction to “Russian military intervention, notably in Central Europe. According to Putin, this has had an adverse effect or, to put it another way, blowback.

EFFECT OF WAR ON GLOBAL ECONOMY

Due to persistent inflation brought on by expensive commodities, which puts the economy in danger of deflation and public unrest, the motor, shipping, and chemical industries are particularly vulnerable. The disruption of financial markets brought on by the conflict between “Russia” and Ukraine casts doubt on improving the global economy. In the past, it has been demonstrated that militarised conflicts and wars significantly impact local and worldwide economies. The Russian economy will experience a severe 7.5 percent recession in 2022, causing the country's risk grade to drop to D. (very high).

The most vulnerable economies are those in Europe: Institutions forecast at least 1.5 percentage points of more deflation in 2022, with possible reductions of 1% in GDP growth. The violence is also destabilising Central Asian and European rising economies. This region is already in danger of experiencing a recession this year due to the pandemic's continuing effects. Aside from “Russia” and Ukraine, all countries have seen a decline in growth prospects due to war-related spill overs, the eurozone's slowing development, and resource, marketing, and monetary rundowns.

As a result of its extensive trade with Asia, “Russia” sends remittances to several Middle Asian nations, like Tajikistan and the Kyrgyz Republic, equalling 30% of their gross domestic product. While “Russia” and Ukraine import roughly 40% of the wheat in the region, Middle Asia and the South Caucasus import about 75% of it.

Unknown are the long-term consequences of these cash-based weapons of war. It is difficult to predict how events will turn out, but there may be increased pressure on nations to put off or stop global integration.[205]

Whatever we say, the reality that existed prior to the legalisation of massive economies cannot be returned. When the assault started, financial markets worldwide fell, sending prices for steel,

[205] Alcaro R, *West-Russia Relations in Light of The Ukraine Crisis* Last accessed on 17 July 2022

oil, biogas, and food soaring. The expensive goods that cause the constant rise in inflation and unstable societies that follow are delaying the financial situation's recuperation.[206]

CONCLUSION

“Russia” and Ukraine have had linguistic, cultural, and familial ties for hundreds of years. Many people in “Russia” and the regions of Ukraine with a Russian ethnic majority view the countries' shared past as an emotive matter that has been abused for political and military ends. Ukraine was an integral element of the Soviet Union and was the second-most powerful Soviet republic after “Russia” from a strategic, economic, and cultural standpoint.

The essay looked at how the war between “Russia” and Ukraine affected the world economy economically. The article delves deeply into the origins of war.

[206] Al-Naseralla F, 'The European Union As A Global Actor: The Russia-Ukraine Conflict Starting In 2014-2022' (*DIVA*, 2022) <https://www.diva-portal.org/smash/record.jsf?pid=diva2%3A1679360&dswid=8431> accessed 8 July 2022

CHAPTER 12

LAW OF SEA AND CLIMATE CHANGE

Author: Ankit[207]

ABSTRACT

The future of the "Law of the Sea" is about to shift dramatically. Awe, adoration, terror, and surprise have all been elicited by the vast expanses of water that now make up 71 % of the surface of earth or over 139 million square miles. However, they have also been inextricably linked to human existence since antiquity. Climate change, one of the most urgent problems facing human society, has posed enormous difficulties in practically every part of our life. The oceans of the planet are also like this. The international community has encountered legal, political, and scientific difficulties in addressing its adverse effects. This also holds for the system of maritime law embodied by the "UN Convention on the Law of the Sea" ("UNCLOS"). This article examines how the "law of the sea" applies to impacts of climate change on the marine ecosystem and biodiversity in general and also the difficulties posed by the sea level rise, particularly for low-lying governments like the Small Island Developing States and baselines and maritime boundaries (SIDS. It examines alternative responses with particular reference to "UNCLOS" in addressing damages and determining the extent to which means and mechanisms may be available to protect affected states. The paper specifically looks at the harm climate change, which is already a severe concern, would do to marine ecosystems, state sovereignty over maritime areas, and low-lying SIDS. This is followed by an analysis of the potential utility of the "UNCLOS" provisions for the conservation and preservation of the marine environment and the mandatory dispute settlement provisions in addressing the climate problem. The study also discusses the difficulties associated with pursuing a particular course of action, such as climate litigation, in order to defend the affected states from the projected worst-case situation.

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INTRODUCTION

Oceans cover over 70% of the planet's surface and therefore are home to diverse natural resources crucial to almost every country. Nevertheless, sea-level rise and “global warming” have raised the “frequency of natural disasters and extreme weather” events since the 1980s, negatively impacting ocean health considerably. “Low-lying coastal and island states, particularly SIDS, are predicted to experience some of the earliest and most severe effects of climate change over this century, with significant environmental, social, and economic repercussions.” These are recognized as dangers to the environment and a "threat multiplier" for social unrest and economic instability to the long-term sustainability of humanity.[208]

As anticipated temperature increases have sped up, the extent of rise in level of sea and the world's oceans in devastating threat have become a worldwide catastrophe that goes beyond environmental concerns. The negative climate change consequence and the search for answers to this enormous issue have risen to the forefront of civil society, business, and government agendas. They significantly impact each state.

Strong and targeted global action is urgently required to reduce the harmful effects of climate change, and pressure for this action is increasing.

It is unfortunate that the current focal points "United Nations Framework Convention on Climate Change" (UNFCCC) and its companion "Kyoto Protocol", are unable to compel meaningful involvement and applicable standards in reducing the rising levels of “greenhouse gas” that are catastrophe.

Nations and global organisations have encountered substantial political as well as legal challenges in seeking to identify methods to protect the afflicted states. As a result, the article investigates the actual and potential effects of climate change on coastal ecosystems and low-lying states as SIDS, evaluates the viability of the "UNCLOS" as the "Constitution for the Ocean" in suggesting a cooperative of permanent member states to enact climate change mitigation measures, and establishes the scope prospective be desired "UNCLOS" regulation to safeguard impacted state.[209]

The "UN Convention on the Law of the Sea" in 1982 passed and implemented in 1994, is the primary tool governing the seas and the most extensive international pact ever signed. It covers

[208] Feldman, Ilana. "Ad hoc humanity: UN peacekeeping and the limits of international community in Gaza." *American Anthropologist* 112.3 (2010): 416-429.
[209] ‘Overview - Convention & Related Agreements’ (Welcome to the United Nations), 2014

several standards of international customary law and laws that apply to state relations and the oceans.[210]

As of 7 November 2012,[211] "UNCLOS" had 164 ratifications plus the European Union, making it very widely accepted.[212]The "UNCLOS" creates a framework that combines the goals and aspirations of the global community and unifies the laws for all states with more significant potential than envisaged. In addition to measures for conserving and preserving the maritime environment, it incorporates regulations for exploring and exploiting ocean biodiversity. Its procedures for mandated dispute resolution and framework for managing marine pollution may be suitable for handling the climate change challenge and safeguarding affected nations.

CLIMATE CHANGE'S POTENTIAL IMPACTS ON MARINE ECOSYSTEMS AND IMPORTANCE OF ENVIRONMENT

Even though climate is frequently talked globally, its effects are consistent throughout research domains. [213] "The current study offers convincing proof that ecosystems are responding to temperature changes and high carbon dioxide (CO2) levels, which has significant ramifications for ecological and marine resources as well as national security."[214] Recent studies have proved that changing climate rapidly alters the raising the temperature of ocean and salinity of the saltwater and changing the circulation of the atmosphere and the oceans. [215]

There has been much writing about the anticipated effects and the mitigating and adapting measures. Under "business as usual" scenarios, level of sea would rise by one meter even by the end of the century, according to predictions based on recent research by scientist and climate patterns. At the same time, continental glaciers will continue to melt. "Due to global warming, sea levels have been rising at a rate which is accelerating and are projected to rise dramatically in the following decades regardless of any mitigation measures taken. The ecosystems of the oceans are being attacked."[216]

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[210] 'Oceans and Law of the Sea' (Welcome to the United Nations)
[211]'Our oceans, our future: Ocean Conference in New York | United Nations' (United Nations)
[212] 'Special Report on the Ocean and Cryosphere in a Changing Climate — Special Report on the Ocean and Cryosphere in a Changing Climate' (IPCC — Intergovernmental Panel on Climate Change)
[213] 'Ocean Resources ~ MarineBio Conservation Society' (MarineBio Conservation Society)
[214] Elliott LM and Anthony MC, Human security and climate change in Southeast Asia: Managing risk and resilience (Routledge 2013)
[215] Caminos H, Law of the Sea (Routledge 2017)
[216] Tanaka Y, 'International Tribunal for the Law of the Sea' (2011) 26(3) The International Journal of Marine and Coastal Law 481

ENVIRONMENTAL DEGRADATION DETERIORATION OF ECOSYSTEMS

The most severe environmental disaster currently affecting the world is climate change, which has various negative effects. The most significant worry has been the loss of all biodiversity through global extinction due to "ecosystems and species" inability to sudden. This is due to the close relationship between ecosystems, biodiversity, their services, and climate. [217]Along with other known risks, the rate and severity of temperature change and ocean acidification will hasten any possible effects on biodiversity. [218]

The physical effects and possible risks of acidification of the oceans on marine ecosystems have drawn a lot of scientific attention. The data from observations showed that the coastal region and marine ecosystems are sensitive to "increasing coastal populations", "habitat loss", and "pollution". They are also intrinsically linked to climate. Coastal habitats like "tidal zones", "estuaries", and "wetlands" may move further inland as a result of rising sea levels, which might lead to "habitat loss and fragmentation", the "introduction of invasive species", "environmental contamination", and effects on the species that depend on them. Thus, ecosystem issues already present are made worse by acidification and temperature change, which directly affects the distribution of marine species.

DRAINED RESOURCES AND VANDALIZED HABITAT

Oceans produces substantial economic wealth via "fishing", "aquaculture", "tourism", and "mining", while ocean ecosystems offer priceless functions like "coastal defence", "oxygen production", "nutrient recycling", and "climate control". Numerous people throughout the world make a living by fishing, and for the majority of them, it is more than just a means of subsistence; it is life living way. Fish are a remarkable natural resource with significant ecological, social, and economic value. Fish makes up at least 50% of the protein of animal intake in a number of SIDS.[219]

[217] Aguiar Branco I, 'Solving the Potential Conflict: High Seas Marine Protected Areas and the Exercise of Sovereign Rights Over the Continental Shelf Beyond 200 Nautical Miles' [2017] SSRN Electronic Journal 2
[218] 'United nations convention on the law of the sea' (2019) 2019(98) Law of the Sea Bulletin 1
[219] Warner R and Rayfuse R, 'Securing a Sustainable Future for the Oceans Beyond National Jurisdiction: The Legal Basis for an Integrated Cross-Sectoral Regime for High Seas Governance for the 21st Century' (2008) 23(3) The International Journal of Marine and Coastal Law 399

“The biological distribution of tropical and temperate marine mammals and seabirds may be affected by pervasive physical changes in the ocean, such as rapid warming and decreased calcification in ocean plankton and reef corals. These changes may also threaten coastal systems of low-lying estuaries and tidal flats.”[220]

Approximately 280,000 km2 of coral reefs, also referred to as "rainforests of the oceans" and "oases in a sea desert," are home. Additionally, reefs provide a diverse range of services that are advantageous to both people and the environment. These include aiding in the recycling of nutrients, shielding coastlines from storm surges, supplying an essential amount of food to the tropical and subtropical marine food web, providing medical services to people, and generating revenue for nearby communities through tourism.[221]

“The annual value of goods and services derived from coral reefs is estimated to be between $172 and $375 billion dollars.”

Several kinds of coral reefs in the Pacific Islands are presently surviving at the thermal tolerance limit, which is between 25 and 29 degrees Celsius. Coral reefs have a very limited temperature range. In several parts of the world, including the “Pacific Ocean” and “Indian Oceans”, “the Red Sea”, and “the Caribbean Sea”, “coral reefs” have been devastated by increasing sea heat and acidity. “As a result, coral bleaching has caused a loss of 50% of subsistence and artisanal fisheries.”[222]

As coral reefs are essential to the health of the oceans and their disappearance could lead to decreased net productivity and restricted growth in some species, their value may actually be much higher. Several species will be directly impacted by the destruction of vast swaths of mangrove trees along tropical coastlines across the globe and also important beach habitats (for sea turtles).

MARINE GEOENGINEERING PROJECTS: UNRESOLVED ISSUES

“One of the really pressing issues on the climate policy agenda is reducing CO2 emissions.” Some initiatives that employ as a major and receiver of CO2 emissions have been proposed or

[220] Aguiar Branco I, ‘Solving the Potential Conflict: High Seas Marine Protected Areas and the Exercise of Sovereign Rights Over the Continental Shelf Beyond 200 Nautical Miles’ [2017] SSRN Electronic Journal
[221] Caminos H, Law of the Sea (Routledge 2017
[222] ‘United nations convention on the law of the sea’ (2019) 2019(98) Law of the Sea Bulletin 1

are now being implemented around the world in an effort to prevent global warming. [223]These initiatives, which are referred to as marine geo-engineering projects and include ocean fertilisation (OF) and carbon capture and storage (CCS), have attracted intense interest on a global scale. 35

The expected effects and probable consequences of CCS and OF have indeed been heavily debated, even though they are thought to be unresolved topics. Concerns have been raised regarding the possibility of disastrous results and the absence of international rules for defining the division of environmental liability. 39 “Circumstances they abide by the "law of the sea," and other agreements which are internationally controlling the preservation of the aquatic environment and biological variety are also up for debate. 40 How much human interaction with the marine ecology is permitted in order to mitigate the effects of change in climate? What actions have been taken or should be taken to regulate such conduct according to international law?"

OCEAN AS LAST RESORT: ENVIRONMENTAL IMPLICATIONS

We are now experiencing the effects of climate change, which range from social to economic to legal to environmental. That's because “the ocean represents our last chance for survival and existence”, the environmental ramifications are obvious and horrific, particularly in light of the detrimental effects that climate change and ocean acidification have on marine ecosystems.41

From a human standpoint, the rapid loss of biodiversity threatens human security since the “food chain”, “water supplies, and other resources” we depend on could significantly change. [224] “According to Edward O. Wilson, the loss of biodiversity is causing the extinction of both humans and other species. 43 Humanity is breaching nature's laws not merely at the level of individual species and ecosystems, but at the level of atmospheric functioning and ocean health - a truly global level," notes Mary Wood as she tracks the “development of international law”. 44

[223] Tanaka Y, ‘International Tribunal for the Law of the Sea’ (2011) 26(3) The International Journal of Marine and Coastal Law 481

[224] Warner R and Rayfuse R, ‘Securing a Sustainable Future for the Oceans Beyond National Jurisdiction: The Legal Basis for an Integrated Cross-Sectoral Regime for High Seas Governance for the 21st Century’ (2008) 23(3) The International Journal of Marine and Coastal Law 399

The ocean systems are moving toward circumstances that have not existed for millions of years, which carries the possibility of a fundamental and permanent ecological shift. [225]

"Additionally, over the past 50 years, there has been a dramatic increase in the size and quantity of marine dead zones, which are regions with insufficient dissolved oxygen to support life. It is no accident that dead zones are found downstream from regions with dense populations of people." 48 "According to the IPCC, the combination of global warming and conventional threats like habitat destruction and pollution would certainly cause major biodiversity loss in the near future, with many different types of ecosystems being transformed or lost." [226]

Climate change, the primary environmental concern of our generation and those to come, is certain to worsen if the world community doesn't take drastic mitigation steps. Under this growing demand, the current biodiversity protection techniques are ineffective. Many of the marine ecosystems throughout the world will die off in the absence of deliberate action and modernised law and policy. States must acknowledge their vested maritime, comprehend value state of biodiversity, take effective steps to address the issues of habitat destruction.

SEA LEVEL RISE'S POTENTIAL IMPACTS ON BASELINES AND LEGAL IMPLICATIONS

In the past, states only controlled a small portion of the ocean close to their coasts; the rest were considered the high seas, which belonged to no one and were free and available to everybody.[227]

The "UNCLOS"'s most creative feature is the creation of different marine zones using distance parameters derived from baselines. Baseline systems that the rise in sea levels may significantly affect include state relations due to the delineation of marine boundaries. UNCLOS" regime's legal implications and how baselines are affected by sea level rise.

RIGHTS OF STATES REGARDING MARITIME ZONES AND RESOURCES

[225] Caminos H, Law of the Sea (Routledge 2017) 2
[226] 'United nations convention on the law of the sea' (2019) 2019(98) Law of the Sea Bulletin 1
[227] Aguiar Branco I, 'Solving the Potential Conflict: High Seas Marine Protected Areas and the Exercise of Sovereign Rights Over the Continental Shelf Beyond 200 Nautical Miles' [2017] SSRN Electronic Journal

The ““UNCLOS”” uses baseline measurements to split the ocean into different types of regions. The sea which are territorial, or directly internal waters that is adjacent,[228] is the area that marks the seaward boundary of the coastal state's sovereignty and has an impact on its airspace, seabed, and subsoil. “It has a breadth of 12 nautical miles (nm) from the baseline”. 56 The coastal region has jurisdictional power over things relating to its customs, finances, hygienic conditions, and immigration rules inside the economic zone, which stretches for 24 nautical miles from the baseline and is close to the territorial sea[229]

Less than 200 nm separate the territorial ocean from the “exclusive economic zone” (EEZ). In terms of environmental preservation, scientific investigation, and natural resources usage, the state in coastal area enjoys sovereign powers. The continental shelf, which is the extension of the submerged land territory of the coastal state, “extends up to 350 nm (or 100 nm from the 2,500 metre isobaths) from the outer edge of the continental margin if it is wider.” 60 Regarding the discovery and use of natural resources, “the coastal state has sovereign powers over this region.”

“200 nautical miles’ maximum distance from the baselines, the high seas lie outside the EEZ's external boundary and are not governed by the sovereign nation. According to the “UNCLOS” regulation, baselines play crucial role in defining state marine zones and borders.”63

There are two circumstances that need to be taken into account while drawing the baselines in regards to the sort of baseline that is used. “The straight baseline is drawn across coastal sections connecting relevant locations on land following the configuration and curvatures of the coastline, but the normal baseline, as described in Article 5, might be the low-water line following the natural configuration of the coast. As a result, without unreasonably extending the territorial sea, the legal boundary between land and the sea as well as between the territorial sea and the other zones will run parallel to the shore.” an island, if regarded a component of the coastal layout, may offer a base point. [230]

Depending on how the "UNCLOS" regime is set up, rise in the level of sea may significantly affect gauging marine zones. A piece of "the continental shelf," "the contiguous zone," "the exclusive economic zone," and "the territorial sea" were all alleged to change toward land.

[228] Østhagen A, ‘Maritime boundary disputes: What are they and why do they matter?’ (2020) 120 Marine Policy 104118

[229] Østhagen A, ‘Maritime boundary disputes: What are they and why do they matter?’ (2020) 120 Marine Policy 104118

[230] ‘Troubled seas? The changing politics of maritime boundary disputes’ (2021) 205 Ocean & Coastal Management 105535.

There might be problems if coastal features are altered or destroyed; as a result, the claims' seaward extension might be severely reduced.

“Because coastal governments all have diverse interests in maritime zones, receding coasts may generate issues with coastal nations' claims to ocean biodiversity in their coastal states, both live and non-living”. Neither sea level rise protections nor measures that directly address the issue of determining the normal baseline are provided by “UNCLOS” Article 5. “The notion that it is the land which confers upon the coastal State a title to the waters off its coast is contested in the context of climate change and the anticipated large-scale melting of ice, which would partially deprive a state of the advantages of a territorial sea.”

This could have a significant impact on the maritime zones' external boundaries, especially in relation to low-lying coastal areas. “With the exception of the maximum area of the outer continental shelf, which must be established based on the recommendations of the Commission on the Limits of the Continental Shelf (CLCS), coastal states may in the worst cases lose jurisdiction over the border of maritime zones and rights to vital marine resources as maritime zones recede.” [231]

In accordance with article 76(9) of “UNCLOS” states that he CLCS shall, however, make a permanent determination of a continental shelf's outer limits. According to Article 7, the relevant places may be used as a baseline in cases when the coastline is very changeable due to the presence of a delta. Additionally, it grants coastal states the freedom to modify the baseline to the degree that doing so is permitted by “UNCLOS”. The EEZ's and even territorial seas' boundaries are not fixed by any legislation. This would suggest that the EEZ and territorial sea's legal and physical boundaries, which are unaffected by the “UNCLOS”, are merely provisional.

BOUNDARY DELIMITATION AND STATE RELATIONS

Even more clear is the direct significance of baselines in the marine delimitation between States that are adjacent to one another and those that are not. Many coastal states may experience a shift in their current coasts or the submerging of base points due to the rate of rise in level of sea. Full disappearance of islands which are low-lying and rocks and the retreat or advancement

[231] Tanaka Y, ‘International Tribunal for the Law of the Sea’ (2011) 26(3) The International Journal of Marine and Coastal Law 481 <http://dx.doi.org/10.1163/157180811x576938> accessed 17 July 2022

of coastlines could create issues along maritime boundaries with significant repercussions for international "law of the sea" and relations with states. The resolution of maritime delimitation issues may find additional motivation given the impending significant rise in sea levels. "It should be emphasised that the clause in Article 121(3) that states that rocks that cannot support human habitation or economic life of their own shall not have an Exclusive Economic Zone (EEZ) has no bearing on the regulations on straight baselines."

UNCERTAIN STATUS AND TERRITORIAL ENLIGHTENMENT

Every maritime zone has a baseline from which it is measured. Therefore, any modification to such a baseline will result in a modification of maritime boundaries. "It may be argued that the boundary based on a base point" just like a rock which is exposed has migrated or vanished if the base point disappears. The "UNCLOS" does not specifically provide that the boundary and base point must be adjusted jointly. "It is necessary to consider various scenarios of an island or rock belonging to a state submerging under water and critical effects occurring to the types of baselines regarding which an issue may be raised due to the rising while taking legal ramifications and potential solutions into consideration. This is because we are facing unprecedented changes on the scale of coastline and maritime boundaries"

LEGAL REMEDIES AND LITIGATION STRATEGIES

States may not hurt one another is a core tenet of customary international law. If a state intentionally harms another state or negligently causes harm to another state, the state is in violation of this rule. This regulation applies to impacts of climate change, as supported by numerous declarations and agreements, such as the UNFCCC and Kyoto Protocol. "There are more preparations for litigation worldwide for consequences of global warming and sea level rise as a result of the big nations that generate the most greenhouse gases failing to adequately"

The idea of litigation may strengthen states' will to address this urgent problem as a key tool for increasing awareness among the public, the political class, and business community. The likelihood that litigation could be a viable option for many governments that may be hardest hit by climate change during this century and beyond is as significant, and its importance goes beyond the courtroom. On the other hand, this type of litigation is complicated and encompasses relevant legal and scientific issues "due to the nature of the science and the facts

of climate change". It also covers on a wide range of international and domestic legal issues, as well as a problem that occurs in all legal disputes: proving legal causation.

Current climate change legal framework pertaining to responsibility of state under "UNFCCC" as well as the "Kyoto Protocol", constructed at the intersection of international law, "environmental law", "energy law", and "business law", is to handle a subject that is inherently interdisciplinary for example change in climate as well as litigation. It may take some time before climate change measures are implemented because it will be difficult to prove that a single defendant's emissions were significant enough to be considered the cause of the damage.

The polluter pays principle is important when discussing environmental liability, but it may be challenging because reimbursement for the harm caused depends on a variety of factors, including emission scenarios, the effects of climate change, and its accounting. For instance, illness, predators, and pollution are just a few of the numerous challenges that coral reefs encounter and that may potentially contribute to their degeneration. "As a result, it might be challenging to link dam-ages solely—or even significantly—to the decline of reefs. It would be challenging for the small, weak states to present proof of such connections".

Regarding damage brought on by nuclear activity and in the area of marine oil pollution, there is a lengthy history of international agreements. More contemporary tools address damage brought on by the maritime transfer of toxic and hazardous materials. The operational strategies used in these efforts will support the progression of the climate litigation. The growing tide of global climate litigation will soon put an end to the "business as usual" strategy and environmental disregard.

CONCLUSION

Oceanic systems and biodiversity around the world are already suffering from the widespread. "The rights of coastal states to their maritime zones and access to their important resources have been severely hampered by sea level rise". These "low-lying states: suffer negative effects from global warming, which also causes sea levels to increase, posing severe concerns "to human welfare and sustainability". In the ensuing decades, it is predicted that the threat posed

by climate change will increase significantly. In light of this, this paper serves as a springboard for future discussion of significant challenges created by change of climate and matters related to legal responses to its potentially catastrophic outcome. The heavy emphasis on remedies may contribute in the development of detailed research on the larger impact.

A key test of humanity's capacity to steer a sustainable course in the future will be how states manage the oceans. Litigation has become inevitable as a result of the main GHG emitting countries' unwillingness to take climate change seriously. [232]

The "UNCLOS" provides a comprehensive framework for putting measures in place to alleviate various sources of maritime pollution and explicitly defines state liability for failing to uphold its obligations. The UNCLOS can be a crucial tool and tactic in the fight against climate change. Even though "UNCLOS," like other international treaties, lacks the administrative authority of enforcement, it may end up being a crucial battleground as "climate change," "species extinction," "overfishing," and "maritime pollution" put increasing strain on the world's oceans.

Due to its expansive definition of maritime environmental contamination and its dispute settlement procedures, "UNCLOS" has great potential to give affected countries, like SIDS, a way to seek compensation for climate disruption. As "UNCLOS" establishes its normative impact in the maritime domain, it will become a crucial tool in the battle against climate change.

[232] Warner R and Rayfuse R, 'Securing a Sustainable Future for the Oceans Beyond National Jurisdiction: The Legal Basis for an Integrated Cross-Sectoral Regime for High Seas Governance for the 21st Century' (2008) 23(3) The International Journal of Marine and Coastal Law 399

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