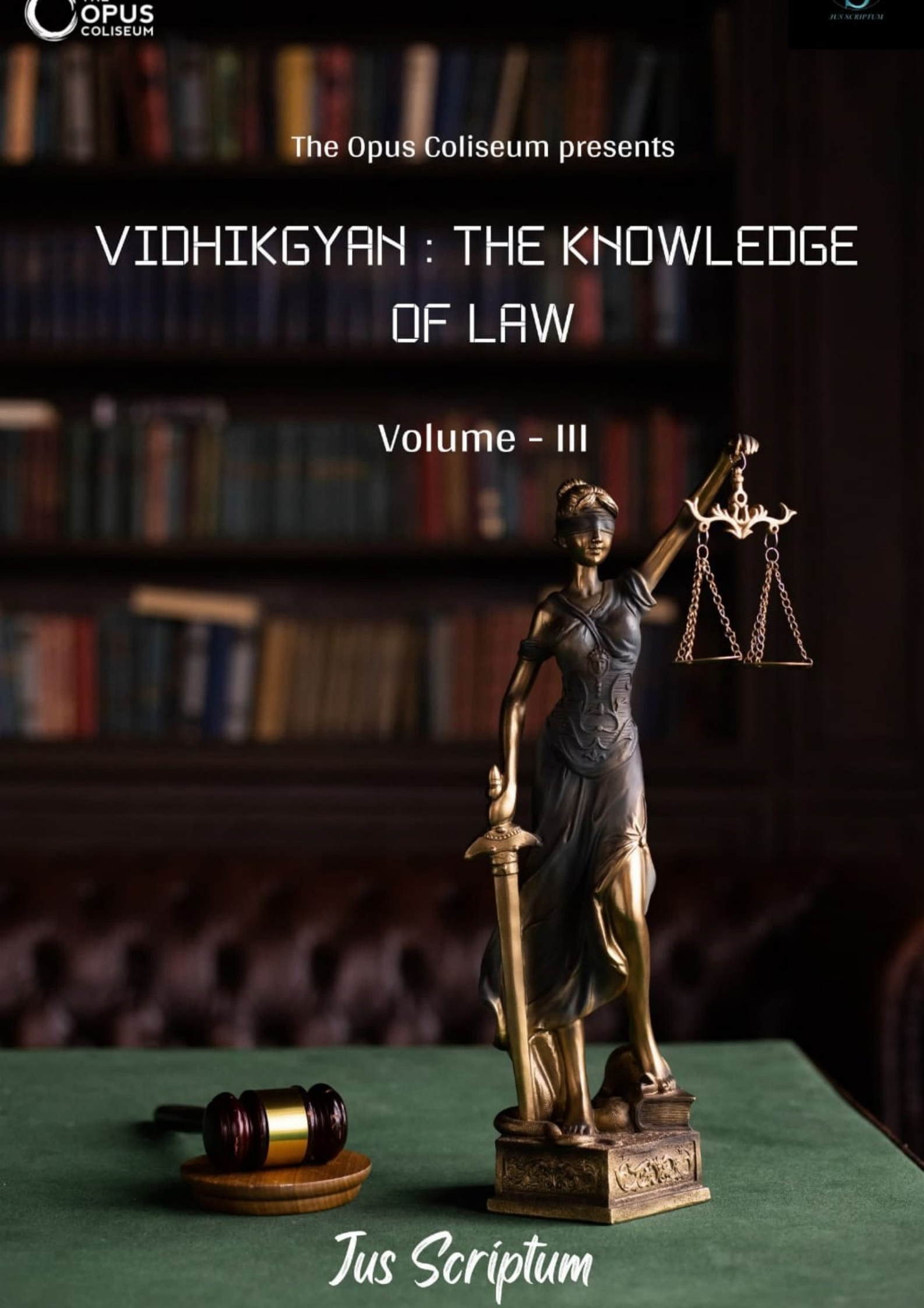
The Opus Coliseum presents

VIDHIKGYAN : THE KNOWLEDGE OF LAW

Volume - III



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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 aims towards promoting research in the field of law among the legal fraternity across the globe.

The book is intended primarily for students and teachers who are looking for different legal topics. It will serve as a scholarly platform for the readers to understand contemporary issues in law from the lens of academia. 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.

Contents

CHAPTER 1

IMPACT OF COVID 19 ON INDIAN BANKING SYSTEM: A COMPARATIVE STUDY VIS-A-VIS SELECT PRIVATE & PUBLIC SECTOR BANKS

Mr RahatPargal[1], Dr. Vinit KumarSharma[2]

ABSTRACT

The "COVID-19 epidemic" had a detrimental impact on several of India's industrial sectors as well as those in other nations around the world. A negative growth rate in the economy is being seen in India. Before the pandemic, several industries were doing well, but now they have been negatively impacted by it. As a result, it is crucial to analyse & provide statistics regarding the sectors that are severely affected by the epidemic because they are crucial to the "Indian economy" .The banking industry is one of the cornerstones of the "Indian economy", This oversees all financial activity there and assists all industries in terms of "financing", "credit", "transactions", "collection", &"payment", among other things.

There are a tonne of reports detailing the consequences of this virus pandemic that are available in the public domain. In addition to being in physical form, the data is also dispersed online in many formats. Getting the right data for the user's needs, despite the large volume of data, is the main challenge. The online databases are updated often, but they cannot give inference over the knowledge that has already been saved. Through the use of the inference capacity, we can retrieve latent & indirect data from the base of knowledge.

There are several online resources on the "COVID-19" issue, but none of them directly examine the efficiency of India's banking sector during "Covid 19". Customers frequently don't get the relevant information in accordance with the requested question. By creating and assessing the most extensive study to gather semantic data, this paper aims to highlight

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how“COVID-19" has affected the effectiveness of the Indian banking industry. We also go over some important study topics pertaining to the “Indian economy”.

Keywords: COVID-19, Epidemic, Indian bank, Economy.

INTRODUCTION

Almost every element of life has been influenced by the “COVID-19” epidemic on a global scale.[3] The corporate sector's financials have already begun to suffer from decreased productivity & lockdowns. A significant public allocation & stimulus are needed to maintain procedures in the wake of supply chain risks, manufacturing failures, &severely damaged health systems.[4]Hospitality & entertainment revenues, among numerous others, have already had a big impact on the economy. Up to “Rs 59.87 trillion” worth of damages in the financial markets have already been incurred due to this pandemic. “Investor confidence is at an all-time low, and it is becoming more and more obvious how challenging it will be for banks worldwide to keep onto their precious assets and healthy profitability”.

Closures and income declines may cause many loan repayments to stop, particularly in Europe and the “United States” , which would cause the banks to go bankrupt.They now faced a significant risk from what was formerly one of their assets. “As China recovered from this economic meltdown, America & Europe are the growing epicentres, as has already been demonstrated. When the Coronavirus hit the country, Italy, the second-best medical care nation in the world, descended into a socioeconomic catastrophe.”

Even with total shutdowns & the closing of all boundaries, the situation has gotten worse. The Italian banking system's “COVID-19” coping mechanism was previously mentioned in a warning from the Fitch ratings agency. Investors' concerns then grow as a result of countries like Greece, which were already on the verge of recession. People who invested sizeable sums of money in the US or Europe are now in a bind as a result of the pandemic draining their bank

[3]“C.Sohrabi,Z.Alsafi,N.O’Neill,M.Khan,A.Kerwan, A. Al-Jabir, et al., "World health organization declares global emergency: A review of the 2019 novel corona virus corona virus corona virus corona virus (COVID-19)", *Int. J. Surg*., vol. 76, pp. 71-76,Apr. 2020”

accounts & the global financial markets collapsing. The rapid decrease in bank stock prices demonstrates the waning faith in the global financial system.[5]

The global economy is under stress from these & other reasons, which could have an impact in the upcoming year. As the pandemic related lockdown halts commerce, India's biggest banks & businesses are in a dangerous position. In an economy troubled by salary cuts & layoffs, experts believe that lenders of both consumer & business loans will face delayed repayments & potentially defaults.

"Central banks from around the world have started taking aggressive measures to stabilise the markets & show that they are willing to use all of the tools at their disposal."“The Federal The Federal Reserve (the Fed) has reduced the federal funds rate by 50 basis points, marking the first reduction since the financial crisis of 2008" .The Fed has also made significant inroads into the repo market in an effort to boost liquidity. The Bank of Japan hinted in a statement issued in response to an emergency that it may increase asset purchases in order to boost market liquidity.

"The People's Bank of China (PBOC)" has flooded the financial system with more than "US$ 240 billion" in liquidity as a defence against the virus. "The European Central Bank (ECB)", the Bank of England, & other institutions have also introduced a range of tactics to tackle "COVID-19." The effect of COVID19 on regular operations is being reduced by global banking & capital market corporations through mobilisation and action. It is unknown how "COVID-19" would affect "financial markets", "banks", &"capital market" corporations in the long run.[6]

The introduction of "COVID-19" could expedite the switch to digital channels & connection even more. In addition, we now anticipate a more sluggish recovery across many nations, with a persistent downside risk to this base-case scenario. Regarding the corona virus pandemic rate of spread & peak, we acknowledge that there is a great deal of uncertainty.

While the pandemic may have reached or is nearing its peak in some locations, health specialists agree that it will persist as a problem regardless of the availability of a vaccine or

[5]"Yusuf Perwej, FirojParwej, M. M. Mohamed Hassan, Nikhat Akhtar, "The Internet-of-Things (Io T) Security: A Technological Perspective & Review", International *Journal of Scientific Research in Computer Science Engineering & Information Technology*,bankingbankingbankingbanking Volume 5, Issue 1, Pages 462-482,2019, DOI: 10.32628/CSEIT195193"

[6]"Robin Harding & Hudson Lockett, "Bo J spurs Asia markets rebound with vow to fight corona virus," Financial Times, 2020"banking

effective treatment. In analysing the pandemic's effects on credit and also the economy, we make this assumption.

INFLUENCE AREA OF COVID 19 AND DIGITALISATION OF INDIAN BANKS

Financial services are listed among the vital services in India. Banking & financial institutions faced pressure to continue with commerce as usual amid the shutdown & health crisis. When executing everyday teller tasks, including cash deposits, withdrawals, check to clear, & other banking activities, a safe distance of at least one meter must be maintained.“Social media users were outraged by a bank employee's effort to touch checks with tongues &sanities them with a steam iron”[7].

The technological & operational challenges that both employees & clients experienced highlighted a flaw & our financial institutions' overall inability to react swiftly enough in a crisis.The current “COVID-19”situation will provide the necessary rigour to digitise & optimise the backend operations of the bank. This will eliminate the dependency of banks on “paper-based reviews”, “manual data entry”, & “employee interaction”.[8]

It is projected that Indian banks will veer off course & stop using traditional banking practises after the “COVID-19” issue is resolved. The opportunity to integrate cutting-edge financial technologies ahead of schedule & lay the foundation for the digital revolution will be given to traditional institutions. Currently, “27 public sector (PSU) banks” in India will be merged into “10 big banks”. The PSUs should look into how to boost customer adoption & technical fusion. Public & private Indian banks that have already partially digitalized some of their core banking operations will focus on fully transferring all of their systems, procedures, & services.

IMPACT-ASSESSMENT

Due to COVID-19, there has been extreme volatility in the market & economic instability on the “world's capital markets”.We are examining the elements of the banking sector in its entirety that are more likely to be affected such as “valuation & profitability”.

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[7]“D. Ivanov, "Predicting the impacts of epidemic outbreaks on global supply chains: A simulation-based analysis on the corona virus outbreak (COVID- 19/SARS-CoV-2) case", bankingbankingbankingvTransp. Res. E Logistics Transp. Rev., vol. 136, Apr. 2020”

[8]“Baldwin, R.; di Mauro, B.W. “Mitigating the COVID Economic Crisis: Act Fast & Do Whatever ”,banking CEPR Press: London, UK, pp. 1–24, 2020”

1. The combination of the COVID-19's significant influence & the low rate of interest specific scenario has a detrimental impact on the profitability of banking facilities in developed economies. “As a result, banking firms are turning to commission-based income from industries such as payments & technology. The increasing credit risk of the banks' commercial & retail clientele is one of the immediate repercussions of the health catastrophe on the real world economy.”
2. Through increased disposal incentives, government corrective actions seek to lower risk profiles. It is conceivable that the market for synthetic securitizations will need to be revitalised in light of current events & potential severe economic implications. Over the past few years, a number of European banks have finished sizeable impaired loan disposal operations, dramatically reducing the NPL ratio.
3. "COVID-19" may trigger an economic catastrophe. Still, its consequences on the banking industry & customer relationships might be considered a "positive discontinuity" for the sector's digitalisation& ability to deliver excellent customer service. Given their clear awareness of the services gap, which "COVID-19" has made more apparent than ever, bank executives may be even more motivated to accelerate the rate of their digitalisation through collaboration & partnerships with the fin-tech industry..[9]
4. The availability of technological innovation can significantly contribute to ensuring the banks' continued operations. For example, the activation, enhancement, & mobility of robotics solutions or artificial intelligence in crucial processes would make it easier to protect against staff absences.
5. “The COVID-19 has caused major economic instability & extraordinarily high fluctuation on the international capital markets. Bank valuations have decreased in every nation on earth, making the banking sector one of the most severely impacted”.Banking stocks suffered during COVID-19. The majority of banks experienced a price decline in mid-March between January 1, 2019, & January 1, 2020. “The STOXX banks index for Europe experienced a significant drop of 40.18 percent, followed by the banks index for North America (31.23 percent) & Asia/Pacific (26.09 percent) during the same time period.”

[9] “D. Ivanov, "Predicting the impacts of epidemic outbreaks on global supply chains: A simulation-basedbankingbankingbanking analysis on the corona virus outbreak (COVID- 19/SARS-CoV-2) case", Transp. Res. E Logistics Transp. Rev., vol. 136, Apr. 2020”

6. The vast majority of banks are currently in full business continuity mode, & they must consider the potential consequences of "COVID-19" on the banking sector & its customers. They will be vital to the situation &, if they adopt the right actions, they may be able to significantly reduce the expected economic damage this crisis brings about. Along with being a health & humanitarian problem, the "COVID-19" pandemic is also a financial shock. Banks are essential to society. “Credit management”, “revenue compression”, “customer service”&“advice supply”, “operating model changes”, &“cost reduction” are the four essential areas of retail &“commercial banking” that we anticipate will be most adversely impacted in the immediate term.
7. Many consumers & companies experienced a cash flow collapse as a result of decreasing “business profitability”&“layoffs” caused by a “lack of demand” & Commercial & retail loan defaults will climb as borrowers struggle to make “regular interest & principal payments”.However, banks can take steps to “reduce damage”, “help their clients survive”, &“possibly even emerge with stronger client relationships”.
8. During the pandemic, the market value of the banking industry fell earlier than it did during the “2008–2009 financial crisis”. The marketplace has taken into consideration the “short-term income compression” from a number of sources, including the decline in payments revenue & in “financial transactions & international payments”, which is why this is the case.
9. Among of the pandemic’s initial repercussions will be rapid changes in customer service preferences. Although more & more customers prefer to manage their financial affairs online & then through applications, there will still be a need for the many bank branches to provide this essential service.
10. The three aforementioned points taken together will cause the banking industry's short-term earnings & expenses to be out of balance. “A 60 to 100 percent decrease in PBT is anticipated to have a variety of effects.” Banks should respond with the same kind of flexibility as the needs will change from what was anticipated six weeks ago to those of the following four to six months.

INDIAN BANKING SECTOR OVERCOMES THE IMPACT OF COVID 19

“The COVID-19 pandemic is really the third world war because it has quickly interrupted daily life & turned modern society upside down. Without spilling a drop of blood, the COVID-19

terrorised humanity while killing silently & instilled fear of death."[10] Therefore, it is acceptable to compare the current situation to a world war. The pandemic is still being fought around the globe. Bad debts will result from the COVID-19's effects on business & industry, which could significantly lower their profit. It is crucial to take into account how the COVID-19's warlike condition has impacted the Indian banking industry as a whole.[11]

In December 2019, Wuhan, China, announced the first case of COVID-19. China initially treated it casually but soon realised they were playing with fire. Before it struck them, other nations did not treat the sickness seriously. The COVID epidemic has had an impact on both developed & underdeveloped nations. The scenario caused the entire world to come to a standstill& put the brakes on the economy.[12] Nobody is certain that we will be able to end this epidemic; many individuals lost their lives, many are receiving treatment. It has had an impact on every sector of society & has resulted in loss & declining revenue.

It was severely impacted by COVID-19, the ensuing lockdown, & the Indian financial system. On March 24, the Central Government immediately halted all business activity by announcing a lock-down of the entire country. Bank lending activity began to decline at that point. During this prolonged shutdown, the banking industry underwent a number of changes. The banking hours were decreased, & only half the staff was employed. The banks had to make sure that their clients were socially isolated.

Interest on advances & loans is the primary source of revenue for banks. Loans, however, exhibited a negative trend throughout the lockout because people opted to deposit as much as they could to safeguard their future. As a result, the banks are now obligated to give them interest. During this time, neither loans were given to the needy sectors nor were they paid back to creditors. The nation's top bank has announced a freeze on term loan repayment in order to break this impasse. Along with this banking, the regulator has also made it easier for working capital loans to defer interest payments for a short period of time.

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[10]"MishraAmbrishKumar,ArchanaPatel&SarikaJain(Feb,2021),"ImpactofCovid-19OutbreakonPerformanceofIndianBankingSectorby"ImpactofCovid-19onIndianEconomywith SpecialReference toBanking Sector:AnIndianPerspectivebankingbankingbanking""

[11]"Michie J. "The Covid-19 crisis & the future of the economy & economics.", bankingbankingInternational Review of Applied Economics.;34(3), PP. 301–303, 2020"

[12]" D. Ivanov, "Predicting the impacts of epidemic outbreaks on global supply chains: A simulation-based analysis on the corona virus outbreak (COVID- 19/SARS-CoV-2) case", Transp. Res. E Logistics Transp. Rev., vol. 136, Apr. 2020 banking

This epidemic has significantly altered the financial industry. “The World Health Organization” has suggested using “digital payment methods”& minimising the use of banknotes. The maximum. based on a report from our nation's largest bank (“SBI”), online banking increased by up to 22% to 38 %. This demonstrates that RBI's projection that by 2021, the digital. In the nation, transactions will grow by a factor of four. People exclusively used checks at the bank during this time clearance & money deposit. There is a growing pattern in 25% to 45% of transactions are done online. therefore, the Customers were forced to shop online due to the pandemic financial system.

Owing to "COVID-19" problems, the commercial bank industry is currently having trouble; yet, only in coming years, this condition alone may increase bank earnings. The Indian banking sector has been significantly impacted by “COVID-19,” yet the long-term effects might be positive. Many Indians work abroad, & the “COVID-19” outbreak would tempt some of them to start anew by returning home.[13]These individuals have a wealth of abilities, therefore they may think about starting their own business in India. These people will submit loan requests in order to start their firms. As a result, the banks might be able to double their revenue. The transactions in the banking business were significantly impacted by the COVID.

ASSESSMENT OF COVID 19'S IMPACT ON“SBI” BANK &“HDFC” BANK

1. **“STATE BANK OF INDIA”**

Year	**NPAs(CR)**	**NetProfit(CR)**	**TotalAdvances(CR)**
2014-15	27590.58	13101.90	1300026.39
2015-16	42365.78	9950.65	1463700.42
2016-17	54065.61	10484.10	1571078.38

[13]“Yusuf Perwej, FirojParwej, M. M. Mohamed Hassan, Nikhat Akhtar, “The Internet-of-Things (Io T) Security: A Technological Perspective & Review”, International *Journal of Scientific Research in Computer Science Engineering & Information Technology*, Volume 5, Issue 1, Pages 462-482, 2019, DOI: 10.32628/CSEIT195193”

2017-18	110854.70	-6547.45	1934880.19
2018-19	65894.74	862.23	2185876.92
2019-20	51871.30	14488.11	2325289.56

During the aforementioned statistics, it is evident that the State Bank of India's NPAs from the years 2014–15 to 2019–20 are higher than its profit. The annual high increase in total advances may be the cause of this.[14]

The bank's NPAs are falling in 2018-19 compared to the previous year, & profitability has grown as well, rising to 862.23 crores from -6547.45 crores. The cause of this expansion was:

1. Public investments

2. The personal loan market's demand

3. More effective risk taking

The aforementioned statistics on advances & non-performing assets (NPAs) makes it evident that the NPA ratio in 2017–18 was 5.72%, while it dropped to 3.01% in 2018–19, increasing profitability.

Pandemic impact: Despite dealing with the “COVID-19”Pandemic, 2019–20 revealed a similar situation to 2018–19. Reasons include:

1. Online payments

2. Increasing Interest Income as Advances Rise

3. Demand for corporate credit

4. MSME financing

[14]https://”“SBI””.co.in/web/corporate-governance/annual-report

We can therefore draw the conclusion that both the drop in NPAs & the financial crisis brought on by the “COVID-19 epidemic”, which gave "SBI" a source of income through the payment of loan interest, contributed to a high demand for advances in the “2019–20 fiscal year”.

2. **“HDFC”**

Year	**NPAs(CR)**	**NetProfit(CR)**	**TotalAdvances(CR)**
“2014-15”	896.28	10215.92	365495.03
“2015-16”	1320.37	12296.21	464593.96
“2016-17”	1843.99	14549.64	554568.20
“2017-18”	2601.02	17486.73	658333.09
“2018-19”	3214.52	21078.17	819401.22
“2019-20”	3542.36	26257.32	993702.88

From 2014–15 to 2019–20, “HDFC Bank's” NPAs, “Net profit”, &“loan advances” all increased. Increased NPAs have no discernible impact on net profit, as can be demonstrated.[15] The same is due to the net profit & loan advances.[16] The companies' net profit is a lot higher than their NPAs. NPAs have thus had no impact on the company's earnings. In 5 years, their loan advancements increased from “Rs 265495.03 CR to Rs 993702.88 CR,” which is more than 4 times the loan advancements in 2014–15. The net profit will increase as the loan progresses. NPAs therefore do not act as a barrier to the bank's profitability.[17]

[15]“2021.*“HDFC”BANKIntegratedAnnualReport2020-2021*. “HDFC”BANK,p.186”
[16]““HDFC” Bank. 2021.
[17]“MishraAmbrishKumar,ArchanaPatel&SarikaJain(Feb,2021),“ImpactofCovid-19OutbreakonPerformanceofIndianBankingSectorby“ImpactofCovid-19onIndianEconomywith SpecialReference toBanking Sector:AnIndianPerspective””

Due to the moratorium that banks granted to defaulters, “total advances in 2019–20 increased to Rs 993702.88 CR”. As a result of the imposed embargo, their advances have increased but NPAs have not climbed as much as they otherwise would have. In addition, their NPAs pale in comparison to their net earnings over the course of five periods. Thus, even though the entire “Indian economy” was in decline, there was little effect on the bank's net profit.

CHALLENGES IN BANKING

Financial institutions all around the world have been undergoing constant business transformations as a result of “competitive & regulatory hurdles”, “a challenging interest rate environment”, &“changing customer expectations”. Due to their crucial function in providing citizens with the essential economic services they need; banking institutions are the bedrock of “Indian economy” & play a significant role in everyday life. Banks must keep operating throughout the current crisis. Their situation is made even more difficult by the ongoing “COVID-19”outbreak.

Challenges may result from this, including decreased revenue production as a result of “fewer customers”, “lower demand , less staffing & remote working”, & “even stress on net interest income as a result of unbalanced interest expense”. Despite these difficulties, banks have a great chance to reinvent themselves in terms of productivity, cost reduction, & digitalisation & grow more resilient, flexible, & lucrative. Customers are aware that they can still do banking transactions even if they are unable to visit a branch. Will this change the way that customers act & interact with banks?

In the future, as retail banking models are updated, how might banks save operational expenses? Which expenses banks can continue to pay for continued profitability & which expenses put more strain on the bottom line. Can banks use certain cutting-edge pay schemes to increase productivity & reduce labour costs? Do banks have the right tools to track productivity, increase it, & ensure quality & compliance for vendors & employees that operate remotely? How can banks quicken a model of assisted digit sales when the client & the vendor are more accustomed to using digital channels?

Are some of the operational procedures used by banks today obsolete? Can they do the necessary re-engineering to enable employees, vendors, & other parties to become appropriate for the present & the future? the short-term impact as 8–10% revenue erosion for real estate businesses, a brief suspension of building, & at least a 30% drop in yearly revenues. “Missed

loan payments", "a reduction in non-essential operations", "a sharp downturn in domestic & global trade", "widespread cancellations & changes", "massive layoffs & compensation reductions", &"a high bankruptcy rate", "notably for SMEs & airlines".[18]

CONCLUSION

The "COVID-19"global spread & the bank activities have been problematic. Every business in the world has recently been badly impacted by the "COVID-19"p&emic. Higher planning & new strategic efforts are required as sectors try to recover. The ongoing effects of "COVID-19"on a worldwide scale are posing numerous problems for banks & the broader financial services industry. The "COVID-19 pandemic" epidemic has significantly impacted the ""Indian economy" ". To meet these difficulties, banks should strive to use technology & incorporate versatility into their systems.[19]

"The list of essential services in India includes banking services." "Banking & financial institutions" faced strong pressure to carry on with business as normal in the midst of the shutdown & health crisis. When confronted with an emergency crisis, the "operational &technical" obstacles faced by both "clients & employees" revealed a vulnerability & a fundamental absence of flexibility in our finance systems. In this essay, we tried to show how badly the pandemic "COVID-19" affected the Indian banking system & briefly analysed how Indian banks were prepared to h&le it as well as its impact on the financial service sector.

[18]"MishraAmbrishKumar,ArchanaPatel&SarikaJain(Feb,2021),"ImpactofCovid-19OutbreakonPerformanceofIndianBankingSectorby"ImpactofCovid-19onIndianEconomywith SpecialReference toBanking Sector:AnIndianPerspective""

[19]"E. Buatois&C. Cordon, "A post COVID-19 outlook: the future of the supply chain," IMD Tomorrow's Challenges, 2020"

CHAPTER 2

STRUCTURE AND EVOLUTION OF SECURITIES MARKET IN INDIA

Gunjan Verma[20] and Dr. Chander Parkash Singh[21]

ABSTRACT

The capital market is a vital part of the financial system and plays an important role in the country's economic development. It enables the people to save and invest their savings. A well-functioning capital market allows investors to access long-term capital funds and efficiently channel their savings into productive investments. Despite the various challenges that the capital market has faced in promoting more efficient utilization of capital, it has still managed to grow significantly in the last decade. The country's liberalized economic policies and economic openness have resulted in significant increase in the free market. During the past few years, the capital market has experienced various regulatory and structural changes. Some of these included the emergence of scams.

KEYWORDS–Securities Market, Stock Exchange, Capital Market, SEBI

INTRODUCTION

The securities market is a vital part of the country's financial system and assumes a significant part in its development. It provides the necessary resources for the country's various sectors. Security refers to a type of financial instrument that can be bought and sold on the stock exchange or through a secondary market. It can also yield a fixed rate of interest.

The stock exchange is a type of formal trading facility that allows the general public to purchase and sell securities. It provides the necessary leverage and liquidity to the country's

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financial system. In India, stock exchanges are defined as individuals who are authorised to act as intermediaries or regulators for the securities purchasing, selling, and trading.

EVOLUTION AND DEVELOPMENT

The Bombay Stock Market launched India's first stock exchange in 1957. In 1982, it was joined by the Calcutta Stock Exchange, the Delhi Stock Exchange, and the Madras Stock Exchange. Several new stock exchanges were founded throughout the 1980s. The country now has 23 stock exchanges. The National Stock Exchange and the Over The Counter (OTC) Exchange of India are two of the country's most inventive highly advanced stock exchanges. The number of stock exchanges in the country is likely to increase dramatically by the end of the century because to the rapid introduction and growth of the equity cult.

THE FINANCIAL SYSTEM

The financial system of a country is as important to the economy as the land, capital, and labor it uses to produce goods and services. In a modern economy, the multiple institutions and markets that operate within it play a vital role in performing multiple functions.

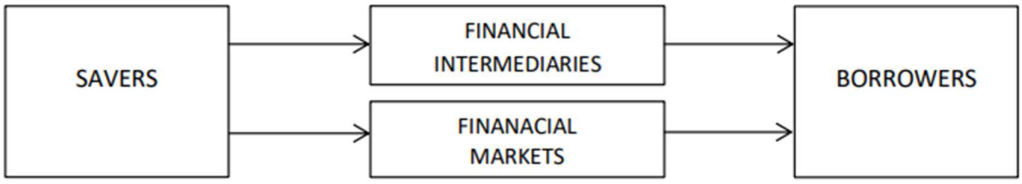


Figure No: 1.1 Simple Representation

TYPES OF SECURITIES MARKET

The Security Market is divided into two interconnected segments: the primary and secondary markets. These markets are known as the New Issues Market and the Stock Market, respectively.

The Primary Securities Market

The primary market of securities is where the demand and supply of capital are gathered for new capital funds. This segment is mainly composed of the domestic savings of individuals and businesses, as well as foreign investors and government agencies. The funds are used to fund various types of investments, such as housing, long-term loans, and businesses.

The Secondary Securities Market

Like other markets, the goal of a stock exchange is to facilitate the exchange of buyers and sellers. It is also designed to help investors make informed decisions and improve the efficiency of their transactions. Stock exchanges play a vital part in the economic life of the country. Without them, the community's savings would be unable to be used efficiently.

The term stock exchange refers to individuals or entities that are involved in the activity of purchasing, selling, and trading in securities. These include: stock brokers, securities dealers, and other individuals.

- A stock market is a platform where various types of securities, such as stocks, bonds, and scrips, are traded. These are also referred to as marketable securities.
- Government securities.
- Rights or interest in securities.

ORGANISATIONAL STRUCTURE OF STOCK MARKET

India has approximately 20 stock exchanges dedicated solely to the trading of stocks. Under the 25th Companies Act, these are incorporated as "Associations of persons." Members of these exchanges that provide brokerage services have the right to own and operate these facilities.

They are also responsible for overseeing the operations of the exchange. Prior to its recognition, the operational and legal jurisdiction of the exchange was restricted, which prevented it from competing with other exchanges.

Companies are required to publish their stocks on securities exchange. These facilities are also accessible to other investors. If a company wishes to list on other exchanges, it can do so as well.

Due to the existence of multiple stock exchanges, the country has 24 exchanges that are able to provide investors with access to the market. These facilities are designed to facilitate the multiple types of investors in the country.

Recently, the Securities and Exchange Board of India (SEBI) allowed stock exchanges to expand their operations by setting up trading terminals in different parts of the country. These facilities have also been equipped with the necessary technology to allow them to operate efficiently.

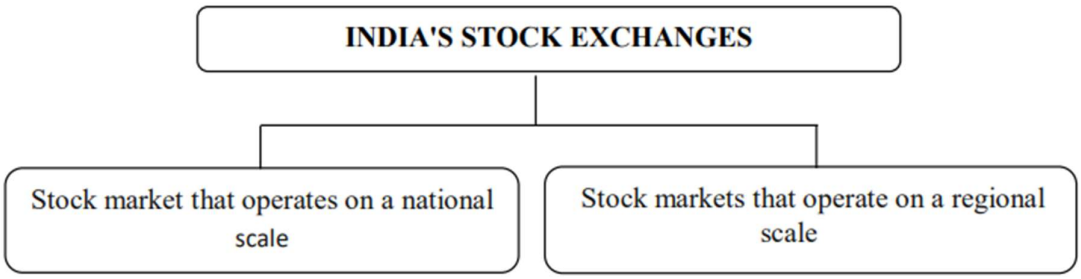
The decision by the SEBI allowed stock exchanges to expand their operations and provide investors with more convenient and accessible access to the market. It also helped the companies and investors list their securities on the exchange's national network.

FUNCTIONS OF STOCK MARKET

The stock exchange is a vital part of building shareholder democracy. Its role is to ensure that the public has a proper voice in the decisions that are made by the exchange.

- Due to the increasing number of complaints about the activities of the stock exchange's members and other groups, the authorities have been taking a strict approach to ensure that the public has a proper voice in the decisions that are made by the exchange. One of the most important steps that the authorities have taken is to require the Joint stock company directors must put their stakeholders up to date on the company's activities.
- Aside from being a market where investors can distribute their assets, the stock market also assures that the circulation of savings is used for the greatest interest of the public.
- The stock exchange's members and the authorities are responsible for ensuring that the transactions conducted on the exchange are conducted in a proper and orderly manner.
- The stock exchange also provides various services to the industries, such as the establishment of financing solutions for the companies.
- Although it is commonly believed that the stock exchange only serves the investors who have money to invest, it does more than just that. It also benefits the entire community by allowing producers to raise capital. This type of activity having the possibility to create jobs and increase the standard of living for millions of individuals.

- The stock exchange's overall trend is a vital part of keeping investors informed about the latest developments in the market. It allows investors to monitor the changes in the company's performance and the outlook for its future.



LIST OF STOCK EXCHANGES IN INDIA

The Bombay Stock Exchange (BSE)

Established in 1957, the Bombay Stock Exchange is India's premier stock exchange. Its capital accounts for around 40% of the total capital listed on various stock exchanges in the country. On the other hand, its market capitalisation is around 90%.

The number of companies and stock issues that are listed on the Bombay Stock Exchange is considered to be the most significant factor that influences its ranking. It is also estimated that the exchange's turnover is around 60% to 70% of the country's stock exchange turnover.

National Stock Exchange (NSE)

In 1991, a committee headed by Pherwani recommended the establishment of the National Stock Exchange. In 1992, the government allowed the state-owned financial firm, Industrial Development Bank of India (IDBI), to establish the exchange. The initial capital of the exchange is Rs.25. crore. It is focused on the trading of bonds, government securities, and equity shares.

The head office of the National Stock Exchange is located in South Mumbai. On December 31, 1996, over 1,200 companies were trading on the exchange. This is more than the number of firms that were listed on the Bombay Stock Exchange. 535 of them were listed, while the remainder were allowed securities. The exchange was operational in 179 cities throughout 18 states since about March 31, 1998.

In April 1997, the overall earnings of the National Stock Exchange was about Rs. 22,276 crore. However, in July 1997, the exchange's turnover rose to Rs. 40,980 crore, and in March 1998, it reached Rs. 30,625crore.

Calcutta Stock Exchange Limited (CSE)

The story behind the Calcutta Stock Exchange is very interesting. It started in 1830 when a group of brokers started trading under a tree. In 1908, the exchange was renamed It was located on Kolkata's China Bazaar Street.

The building was modified in 1928 and it was transported to Kolkata's Lyons Range. The exchange, which is considered to be one of the earliest stock exchanges in South Asia, started using electronic trading in 1997. The other major stock exchange, It is referred to as the Bombay Stock Exchange, has a 5% stake in the company.

Like the other stock exchanges, the CSE also has an index that is called the CSE-40. However, since April 2013, it has stopped updating its index. The exchange is still considered to be an active stock exchange despite its inactive status. Similar to other stock exchanges, the Securities and Exchange Board of India (SEBI) has asked the company to close.

India International Exchange (INDIA INX)

The Bombay Stock Exchange is an international exchange that is located in Gujarat's GIFT city. It was opened by Prime Minister Narendra Modi on January 9, 2017. Unlike other stock exchanges, it does not allow individual stocks to be traded. Instead, it allows investors to trade debt and derivates.

The India INX is regarded as the fastest and most advanced exchange in the world. It uses the latest technology platform of the European Exchange, known as the Eurex T7. It is also convenient for global investors and non-resident Indians (NRIs) who work in different time zones. It was established to replace the traditional banking activities of Indian companies.

The foreign exchange transactions conducted through India INX are carried out through various offshore facilities such as Singapore, Hong Kong, and Dubai. Before the inception of India INX, people had to go through exchanges abroad to invest in foreign currency. With the advent of this process, it has become very easy and fast to invest in foreign currency

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Multi Commodity Exchange of India (MCX)

The first commodity exchange in India, founded by the FMC, amalgamated with the Securities and Exchange Board of India (SEBI). It was founded on November 10, 2003, and is based in Mumbai. When it comes to commodities trading, it is recognised as the most comprehensive exchange in the country. It will have been in service for 15 years as of 2018. It has a $50 trillion annual revenue.

Currently, ComRIS is a web-based software released by the exchange, which is designed to keep track of transactions. It has been ranked as one of the most prominent commodity exchanges in the world. One thing to keep in mind is that companies which are not listed on the exchange are not permitted to trade on it. Besides gold, silver, cotton, and crude oil, other commodities are also traded through the exchange.

National Commodity and Derivates Exchange (NCDEX)

The National Central Exchange of India is a professional-managed online commodity trading platform. It was founded on April 23, 2003, with its headquarters in Mumbai. It has facilities available to its members in several locations across the country. The majority of its shares are held by numerous corporations and financial institutions.

This platform only offers commodity derivatives. It allows its members to trade various types of agri-products such as seeds, grains, and wheat. It has helped in improving the agricultural practices of the country by making trading easier and helping people who are involved in the industry grow. The NCDEX is a well-known stock exchange with over 30 lakh clients trading on its various terminals around India. Its trading hours are from 10 a.m. to 11:30 p.m. and it is open seven days a week.

Indian Commodity Exchange Limited (ICEX)

Unlike a stock exchange, ICEX is a regulated commodity exchange that is based in Mumbai. It was established in August 2017 by the Securities and Exchange Board of India (SEBI). It is the only exchange in the world that has launched a diamond derivative contract. It is also the only place where you can trade in multiple types of commodities and mutual funds.

Metropolitan Stock Exchange of India Limited (MSE)

The Stock Exchange of India was established in November 2008. It is one of the three stock exchanges in the country that allows individual investors to trade stocks. It has a very high tech

and transparent electronic system that allows you to trade various financial instruments. It has over 1500 companies that it can handle.

National Stock Exchange IFSC Limited

The National Stock Exchange of India's (NSE) International Financial Services Centre (IFSC) is located in Gujarat's GIFT city. It was established in November 2016 to expand the financial market in India. It is the subsidiary of the exchange, and its operations are governed by the Securities and Exchange Board of India (SEBI). Unlike India INX, which is focused on individual stocks, the exchange's products are not limited to one type of stock.

The IFSC staff members work in two sessions, each lasting around 8 hours. The first session runs from 8 a.m. to 5 p.m., while the second runs from 5:30 to 11:30 p.m. There were also 20 stock exchanges closed in the country. We will talk about the reasons why these exchanges were closed here.

REGULATORY FRAMEWORK

The Capital Issues (Control) Act of 1947, the Companies Act of 1956, the Securities Contracts Act of 1956, the Depositories Act of 1996, and the Securities and Exchange Board of India Act of 1992 are the primary legislations that govern the securities market. These statutes govern the regulation of securities trades. The laws' silent elements are also discussed. The Act's goal is to protect investors while also developing the securities industry.

Capital Issues (Control) Act, 1947

The goal of this act was to establish a mechanism that would allow the government to channel resources into supporting the war efforts. It was modified to allow companies to raise capital, but it was also aimed at ensuring that the funds were used properly.

It required companies to get approval from the government before they could issue securities. The type of securities that they could sell, as well as the price and amount of the issue, were also determined. This act was eventually repealed in 1992 as part of the market liberalization process. **Securities Contracts (Regulation) Act, 1956**

The Securities and Exchange Commission (SEC) is a central government agency that controls the operations of the stock exchange system. It also aims to prevent unlawful transactions in

the securities market. It establishes a framework for the recognition and supervision of the stock exchange's varied activities.

A stock exchange is recognized if it meets the requirements of the central government's regulations regarding the activities of the securities market. It also sets its own listing regulations. These regulations have to be confirmed by the stock exchange.

Companies Act, 1956

This section covers the various aspects of a company's operations, including the allotment, issue, and transfer of securities. It provides for the disclosure of information related to the company's management and other aspects. It also keeps track of the utilisation of premium and discount, dividend payments, or the annual report.

Depositories Act, 1996

The Depositories Act of 1996 was enacted to establish depositories that are designed to provide free transferability of securities. These depositories are required to maintain records of ownership and certain other requirements.

The act aims to simplify the process of transferring ownership of securities by allowing companies to make the transactions without making the transactions move from person to person. It also provides that the securities of public limited companies can be freely transferred. This eliminates the need for the company to carry out a transfer deed and provides a framework for the efficient use of its discretion.

SECURITIES EXCHANGE BOARD OF INDIA (SEBI)

During the 1980s, the stock markets in India experienced a boom. The public was provided with a lot of opportunities to invest in the various companies that were listed on the stock exchange. However, they were also cheated by the promoters of these companies who presented misleading and false information about their operations.

Due to the lack of proper legislation and the administrative agencies' lack of expertise, investors were not able to get a fair deal. There were also various issues that needed to be addressed such as the manipulation of the market price and the insider trading.

The government agreed to establish the Securities and Exchange Board of India (SEBI) as a non-governmental entity on April 12, 1988. It was assigned with a variety of activities and responsibilities concerning the growth and regulation of the securities market. The government granted the organisation statutory powers in 1992.

The demonstration was passed by the parliament and was given the consent of the parliament on April 4, 1992. On May 29, 1992, the public authority likewise gave a mandate to disintegrate the capital issues control act, 1947. This mandate, which supplants the rules gave by the Central Information Commission, accommodates the foundation of another administrative structure for the securities market.

The main objective of the act is to establish a board that will be responsible for the regulation and development of the securities market in India. As stated in its preamble, the board will be responsible for carrying out various tasks and responsibilities.

- To preserve the rights of securities investors.
- To encourage the growth of the securities market
- to oversee the securities industry; and
- For issues related to or incidental to it.

Securities and Exchange Board of India (SEBI) Act, 1992

By advancing the development and guideline of the protections market, as well as points connected with or accidental thereto, this Act shields the interests of financial backers in protections. These are the particulars of this Act:

Salient features of The SEBI Act

The Securities and Exchange Commission of the USA, which was established in accordance with the Securities and Exchange Act of 1934 for the purpose of regulating the securities market and preventing unfair activities on the stock exchange in the UK, served as a model for the SEBI. The Securities and Investing Board, which covers stock brokers, jobbers, unit trust managers, life insurance agents, pension fund managers, and advertising and financial advisory organisations, was established in 1986 with broad powers to enforce fair practises in the investment market. Among the SEBI's key characteristics are:

1. Bombay will be the location of the headquarters.
2. There shall be a chairman of the Board. Two representatives of the Central Government, one from the RBI, and two full-time members who will be chosen by the Government.

3. The Board will support the growth and regulation of the securities market and will have the authority necessary to defend the interests of investors in securities.
4. The Board must implement appropriate measures to control the securities market. The Board must carry out the following duties:-
    a) Control stock exchanges' and other securities markets' operations.
    b) Register all stock brokers, sub-brokers, share transfer agents, merchant bankers, underwriters, portfolio managers, investment advisors, and other intermediaries who are in any way connected to the securities market and control their activities.
    c) Register mutual funds and collective investment plans, and oversee their operation.
    d) Support and control organisations that practise self-regulation.
    e) Forbid unfair and dishonest business practises in the securities industry.
    f) Encourage the education of investors and the training of securities market intermediaries.
    g) Disallow trading in securities by insiders.
    h) Control major share purchases and corporate takeovers.
    i) Ask for information, perform inspections, and audit the securities market's stock exchanges, intermediaries, and self-regulatory organisations.
    j) Perform such responsibilities and exert such powers as the Central Government may assign to it under the provisions of the SC(R) Act 1956.
    k) Charging fees or other costs for putting out all the objectives of this section's research for the aforementioned purposes.
5. Other responsibilities as assigned by the Central Government
6. SEBI is obligated to abide by the policy initiatives of the Central Government in the use of its authority and execution of its functions.
7. The Central Government has the authority to enact rules to carry out the SEBI Act's objectives.
8. SEBI has the earlier endorsement of the Central Government, the ability to make guidelines for doing the reason for the SEBI Act?

CONCLUSION

The Indian security market has been growing at a rapid pace over the last decade due to the country's liberalisation policies and globalisation. This paper aims to analyse the various factors that affected the stock markets during the 1980s.

On April 12, 1988, the government constituted the Securities and Exchange Board of India as a non-governmental body to carry out its duties and responsibilities. It was laid out to give an extensive perspective on the turn of events and guideline of the protections market and financial backer insurance. Since it was established, the board has been instrumental in providing a platform for investors to manage their savings. In 1992, the government gave the board statutory powers.

The act was passed by the Parliament under the Securities and Exchange Act, 1992. The main objective of the act is to establish a board that is responsible for overseeing the development and regulation of the securities market in the country. It has been observed that the number of companies listed on the stock exchanges has increased significantly.

As per the data released by the National Stock Exchange, the number of sub-brokers has increased significantly. However, the number of these firms has declined due to the stringent regulations imposed by the regulator.

CHAPTER 3

Importance of Geographical Indication: With special reference to the Economic Welfare of the Society

Amit Charak[22], Vinit Kumar Sharma[23]

ABSTRACT

Intellectual property law protection, assists to gain benefits in terms of economic growth, employment, and revenue production. Geographical Indication (GI) protection is provided to a group of producers who are associated with a certain place where the commodity originated. Within the framework of intellectual property, A geographical indicator is a mark or symbol used to safeguard certain geographically unique or origin-based products. The goal of this research paper is to present an overview and relevance of geographical indication on traditional goods under the Indian GI, as well as to raise public knowledge about the value of geographical indication in social upliftment and rural development. Methodologically this paper is qualitative in nature, various research articles and published material have been reviewed. The study emphasised the current condition of GI registration in India as well as general information for filling out a GI.

Keywords- Economic welfare, Geographical Indication, Rural development, Traditional products.

INTRODUCTION

The law for insurance of GIs were principally authorised for monetary reasons. In late nineteenth and early twentieth century share products like wine and spirit were protected with Geographical Indications, and these indications were started gaining currency and demand in world economy. Natural products, craft products as well as Traditional products of different

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kinds found in different regions must be protected. As directly or indirectly these GIs have the capability to give a positive effect to our economy. Geographical indicator functions as a tool of identification, assisting manufacturers and producers to distinguish and differentiate their things from other competing items on the market. It assigns a proof of quality to a specific product. By a geographical indication, people will be able to mark the specific item which they demand. To enhance the monetary value of natural, craft and traditional commodity of all types, assuming that their precise component may attribute to their geographical origin, for this GI, more specifically appellations of origin may be used. Some type of indications which analyse the good, like horticulture goods, ordinary goods or composed or created goods of a précised territory, sector, any ambiance or association. There are numerous counts of items from diverse industries that are the result of traditional processes and intelligence implemented by one or more associations in a certain area. People respect the unique traits of these items, which may be expressed by the identification of sources used to identify the products. GI can help to afford better shield to protect the interest of the economy, of the associations and the sector of the origin of the product by providing a better promotion of the traditional knowledge.

CONCEPTUAL UNDERSTANDING OF GI

GI Tag, an acronym for Geographical Indication, is a unique identifier for a region, city, or state. Tags are attached to the names of some special products or marks that symbolise the uniqueness of a particular region.

Geographical Indications are collective in nature. Registration of GIs serves as a source identifier to indicate product's origin and it represents a quality signal which is associated with GI product. So far, no universal accepted definition of Geographical Indication is available because Geographical Indication provides variety of interpretations due to its nature and wider area of protection. However, it is very certain that the idea of Geographical Indication is created by two kinds of thoughts because of land and quality association of GI. These two notions may be distinguished as below:

1) Indication of Sources - it means quality-neutral Geographical Indications[24]
2) Appellation of Origin - it means qualified Geographical Indications.

[24] Quality neutral GI cannot provide details because the quality of a product is related to its origin. It merely 0shows product link with place of origin, like Made in China, Made in Japan and many more.

Geographical Indication are of two types i.e., indirect and direct GI. GI that contains geographical name is called "direct indications", but GIs can also be consist of "non geographical names" or "symbols" and these GIs are generally called "indirect geographical indications."[25]

WIPO define GI as: "a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin."

NAFTA[26] defined GI as: "Geographical Indications means any indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a particular quality, reputation or other characteristics of the good is essentially attributable to its geographical origin."

ADVANTAGES OF GEOGRAPHICAL INDICATION

- Local community benefits: Protecting geographical indicators has more extensive and broader implications, particularly for nearby networks. Specifically, it energises the conservation of biodiversity, neighbourhood skill and regular assets and this is where India can get along nicely.
- Economic needs of GI: Various advantages stream from major areas of strength for a biological system, which can be a wellspring of monetary and delicate power.
- Increases Tourism: Reputation of the GI tagged products increases after getting protection and world-wide recognition. As the media is very active nowadays, so every person whether from any part of the world must be well known about the GI products and get roused to visit those locales and utilise such items. In this manner, it helps in the development of the travel industry of that specific locale too. Increases GI tourism which is outcome of GI registration can help the government and the local community to earn more revenue.
- Economic and Soft Power: A robust GI environment has several benefits, including the potential for economic and soft power.
- Reverse urban Migration: Reverse urban migration means migration of population from urban areas to rural areas in the search of living needs. GI tags are playing a major role

[25] It has to be noted that 'Indication of Sources' and 'Appellation of Origin' are generally always a place name.
[26] The North American Free Trade Agreement (NAFTA) was signed on December 17, 1992, and took effect on January 1, 1994

in reverse urban migration by providing more and more employment, as the traditional knowledge increases the value of traditional product also increases which results in more employment and better economy. Because of this less localities are moving away from their villages in search of jobs. So, it is important to search more and more potential products to get registered under GI tags.

- Producer Advantages: Geographical markers boost local producer revenue and meet the needs of increasingly conscientious and demanding entrepreneurs. According to Amit et al. (2015), the manufacturers incur losses and damages as their significant business is diminished and their constructed reputation for the things is harmed. Geographical Indications must be protected by manufacturers. Geographic indicators have the most potential to reward local businesses if conventional small-scale manufacturing remains on the supply side and end-use items are pushed straight to customers. In other words, they are less likely to be significant when the commodity is primarily traded in bulk (Downes and Laird) (1999). This emphasises the possibility of using the economic advantages of geographical markers to help small communities throughout the world prosper.
- International recognition- As we know that today is the world of technology, huge number of people are on social sites, making blogs, reading articles and if we make the localities aware about the importance of GI registration and about the registered products, they will gain more and more knowledge about the products, more information is spread on the internet which is helping the registered products to gain recognition in the international market.
- Increases exports- With the increased demand of registered products in the Indian market the demand of the product also increases in international market. As the value of registered products increases in the international markets and the demand for the product also increases which will help to increase the exporting businesses, which will result in increased revenue.
- Social Advantages- Because of product quality, safety environment, and potential unity, a minority of customers seek the manufacture of separated agricultural commodities. The manufacturing industry and the goods are linked, and they point to a sustained competitive advantage that may be exploited to boost development and growth of the economy in rural and/or impoverished regions. With the help of GI, the people of the specific region can utilise their GI registered goods to create more job

opportunities in that region and can help to minimise the migration of people from rural to urban areas. GI has the potential to give a financial stability to many rural houses in many ways, so that they can also fulfil their basic requirements and live a healthy life. Local manufacturers may develop their product's reputation and, as a result, they face rivalry from larger firms, whereas GI's reputation may grow in a specific place or sector with GI's backing. Geographical Indications must be protected by manufacturers. Geographic indicators have the most potential to reward local businesses if conventional small-scale manufacturing remains on the supply side and end-use items are pushed straight to customers. In other words, they are less likely to be significant when the commodity is primarily traded in bulk (Downes and Laird) (1999). This emphasises the possibility of using the economic advantages of geographical markers to improve development in local communities throughout the world.

ECONOMIC WORTH OF GI

Geographical Indications not only assist to protect India's culture and traditional skills, but they also aid to provide employment for a large number of people. The marketability of Geographical Indications products has made the jobs of certain farmers, artisans, and weavers more profitable. The ever-expanding Indian diaspora contributes to this trend. Because of India's rich craftsmanship, environment, culture, and tradition, around four lakh objects with geographical indications tags can readily qualify for GI labels. These have the potential to create and sustain approximately 200 million jobs. According to a number of studies, items covered by GIs have better distribution of earnings and bigger economic gains as a consequence of their patent and copyright protections, which also encourage higher-quality production. Governments must support GI goods. GI contributes significantly to the country's and the world's economic prosperity. Increased economic growth—Protecting geographical indications results in more manufacturer and producer success. Furthermore, marketing and promotion of GI-tagged items increases secondary economic activity in that specific region, which in turn supports regional economic growth. Last but not least, geographical indication protection fosters a favourable image and reputation of the product in the eyes of customers while rewarding producers with incentives and higher ROI. The registered bearer of the GI tag has completed legal authority to ban anyone who is not from the GI region from using their GI tags. To protect their reputation, the owners might potentially take legal action against the illegal user. The primary and main goal of registering a geographical indication is to look for

the protection for some unique and specific things manufactured in a certain location, which stimulates and drives marketers to develop their businesses abroad. Furthermore, geographical indication protection boosts exports and helps farmers make a livelihood.

Global recognition for the items is increased by the protection provided by GI tags. People from all over the world become inspired to travel to such locations and utilise various GI items after noticing them in those regions. As a result, it also contributes to the expansion of the local tourist sector. Protecting regional-origin labels lowers search expenses and hence improves customer welfare. A reputation premium and a greater pay are received by high quality producers. As a result, it may be stated that GI protection alone is insufficient to safeguard a product or the craftspeople. Unfortunately, the GI Act of 1999 is insufficiently broad to protect the rights of artists and craftspeople from misuse. The GI process needs the backing of proper institutions and policies, as well as the requisite legal safeguards. Geographical Indications (GIs) have a considerable influence on the socioeconomic aspects of emerging nations such as India. The government and producers must collaborate in a methodical manner on this.

To empower local artisans and provide them a worldwide platform to advertise their goods, the government has already launched a number of projects. One of the government's projects is called "Digital India." The craftsmen will benefit from this project since it will allow them to market and sell their goods directly to customers without the help of a middleman. They will also be able to make a good living since they won't have to pay commission to anybody else when they sell their final goods. Although the government has launched a fantastic project, it is insufficient. Because the majority of these craftspeople lack formal education, it is crucial that the government raise their profile and inform them of the advantages of this project so they can prosper. Government could also provide incentives to help small, rural and semi-urban craftspeople gain access to international markets. Additionally, the government need to give these artists export subsidies so they may continue to compete on the international market. This will benefit these artisans economically as well as aid in protecting the GIApart from the export subsidies, they should also receive a subsidy on raw material acquisition, as this would significantly reduce production costs. Furthermore, the government need to offer these artists free legal support so that they may prevent exploitation of the traditional trade that has been handed down through the centuries. In order to safeguard the GIs, we must seek to create and develop producer organisations and institutional frameworks.

NEED FOR THE REGISTRATION OF GEOGRAPHICAL INDICATION

Only for a limited time is the Geographical Indication given to a product. In India, it is initially awarded for ten years. Following that, a renewal is necessary. The TRIPS Agreement states that governments are not obligated to give extra protection for a specific geographical indication unless that geographic indication already has that protection in the country from where it has been originated. Before 2003, India lacked legislation protecting geographical signs of Indian history. To meet its TRIPS requirements, India adopted the Geographical Indications of Goods (Registration and Protection) Act, 1999, which went into force on Sep 15, 2003. The present geographical indications framework in India is governed by the Geographical Indications of Goods (Registration and Protection) Act of 1999 and the Geographical Indications of Goods (Regulation and Protection) Rules of 2002. By licensing a geographical indicator in India, the holder of the GI rights can prohibit others from exploiting the geographical indication illegally and support the economic success of enterprises who create items in a given place. In India, there is no need to register a geographical indicator because an unregistered geographical indication can be enforced by filing a passing off action against the infringement. Nonetheless, registering the geographical indicator is preferred since the registration certificate serves as strong proof against the world for its validity and no further confirmation is required.

Geographical indication is viewed as a method of protecting people's and communities' traditional knowledge through intellectual property protection. A tool for defending a community's collective rights and cultural heritage. It can protect textiles, handloom goods, handicrafts, medicinal plants, traditional metal industries, and the art and craft of any other community. There are many goods in India that have been accorded GI designation like Tezpur lichi, Kashmir Pashmina, Gucci and many more. The purpose of this regulation is to make it simpler for unauthorised parties to avoid abusing geographical indications, to protect customers from deception, to boost the economic success of individuals who manufacture these things, and to promote goods with Indian GI on the export market.

CONCLUSION

The Indian GI economy, supported by a robust digital infrastructure, may serve as a plan for India to showcase to the world a paradigm for ethical capitalism, social entrepreneurship, de-

urbanisation, and integrating women into the workforce. It will be deliberately Indian-made. Governments must support GI goods. Because GI enterprises are small, it is vital that they address issues such as capacity building, official or informal funding access, marketing connections, R&D, product innovation, and competitiveness in both local and international markets. The new Account Aggregator data-sharing mechanism has already laid the basis for MSME access to formal finance. There is also the perplexing problem of intermediaries who manage the system. With the shift to digital platforms, the distribution margins of these gatekeepers or mandi agents must be competitive so that they do not act as countervailing pressures by entering comparable firms or product lines, diminishing GI producer revenues. This will be a dilemma for the federal and state governments, as shown with the new agricultural legislation; they must facilitate the transition without disrupting too many existing links. It is also necessary to establish local GI cooperative bodies or associations that should be managed nationally by a GI board overseen by the Ministry of Commerce's Department for the Promotion of Industry and Internal Trade (DPIIT), which should be in charge of promoting the growth of this new industry. For GI producers, digital literacy is a necessary ability. NGOs and stakeholders like the DPIIT should make this a top priority issue on their agenda. India has the chance to reimagine the nature of labour in the future by utilising automation, technology, and artificial intelligence while also upgrading and beautifying its skilled domestic workforce.

CHAPTER 4

COMPARATIVE STUDY OF SECULARISM: INDIA, UK & USA

KHUSHI JAIN[27]

ABSTRACT

The world is growing rapidly and its political structure is changing with respect to religion. One of the terms we use to differentiate the state from the religion is the word 'secularism'. Secularism has its own definition according to the political structure. When we talk about secularism in India, it means differentiating the state from the religion but not separating it. Since India is a multicultural country, we have many religions. The secularism in India states that every religion is equal before law and will be provided with equal opportunities. But on the other hand, when we talk about secularism in the USA and UK it means complete separation of state from the church. It creates a clear distinction between the state and the church.

It is not easy for people or a nation to come up with the idea to make itself secular. It has evolved from time to time. Secularism has its root deep inside the Earth with respect to different religious beliefs, practices and customs but it is not a religion rather it creates boundaries between the state and the religions so that they will not mix and interfere with each other. In secularism people are free to choose or not to choose their religion and the state will provide equal opportunities to every religion and would not favor one.

In this research paper the comparative study between the nature and the scope of secularism in India and Western countries like USA and UK are depicted. Like what is secularism? How did it evolve from ancient times? What is its structure now? And what are the impacts of secularism in people's lives?

Keywords: Secularism, India, USA, UK, Comparison

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INTRODUCTION

Our world where we are living is a diversified one. Here people are living with their own different beliefs, traditions and customs and most importantly they have different beliefs in God, ghosts and supernatural powers which lead them toward different religions which they practice differently but still are unified. Religion is something people ideally use as a positive energy or to differ right from wrong whenever they are confused but gradually it is changing its shape. Previously it was only used as a guide but modernization tends to change it from guide to master and this is one of the factors why people start to change and lose their interest.

It is well said that humans are curious animals. He started looking into the reasons for these superstitions and supernatural powers. This changes their thinking process. They started questioning why a religion which originally works as a guide or a positive energy to give directions to the person in dilemma changes its position to be the master who rules the world.

This led them to think differently. They started to become independent without relying on anything, especially religion. Now religion has no direct intervention on modern individual's lives. This objectivity of a human with religion gives a way to a new concept called "secularism".

This concept is first noticed in many western countries where they decided to separate themselves from divinity, supernatural powers and the intervention of church from the affairs of an individual's lives. When we talk about our home country , India, we also have a diversified religion and each religion is unique on its own. But no religion has power over state affairs.

SECULARISM

This is one of the very important factors for why western countries are more open- minded and neutral when it comes to religion. It helps them to differentiate themselves from other countries in the world.

The word secular is used in different meanings and ways that it has created lots of views and perspectives because of which it becomes difficult to know in what sense people are using it. In literal sense the word 'secular' means 'of this world' which is just the opposite of religion in Latin. Hence, secularism in its literal sense means excluding the religion. In a broader sense

it can be understood in two ways. First when we talk about rejection of religion in state matters and secondly when we say every religion is equal.

When we talk about the first connotation it says that religion will not interfere in the matters of state. It means whenever any laws, rules will be made it would not be from keeping any religion in mind. What will matter for its government is the people living in that nation, it doesn't matter for a government which religion is majority or in minority. Same goes for the second connotation where it says that every religion is equal before law. Everyone has the right to choose their religion or no religion. State will not be biased towards the one. It is one of the things we can see in India where it doesn't have any state religion.

But still, we need to understand to differentiate between the two phenomena 'secularization' and 'secularism'.

Secularism is phenomena which reject religion's role in the society and want any values or action of an individual to be independent of the religious authority. Hence, it does not directly differentiate religion from political life or social matters. Whereas, when we talk about secularization it means that it is differentiating religion and the society and its political structure completely. In this modern age when we are talking about secularization it means that people are completely differentiating and excluding religion from their life and are not letting religion to rule over them and subdue their rationality towards their life decisions.

Hence when we talk about secularism it means that that state is now completely separate from the religion and it does not require any religion to prove its authority over the people of the state. It means that the state will not intervene with the life of people such as what religion they want, what religion they want to adopt or what they want to believe unless and until it is not harming other people of the state. So, now when we are saying that secularism is an important factor to form a democratic nation it means that it is purely upon the citizens of that nation to balance between the state and religion in every aspect of the society so that the state would not consider one religion over another.

SECULARISM IN INDIA

WE, THE PEOPLE OF INDIA,

having solemnly resolved to constitute India into a

and to secure to all its citizens[28]

India is a country with varieties of customs, traditions, cultures, societies and religions too. But from a very old time we Indians believed in "unity in diversity" and this concept of such unity is purely based on democracy. When we are talking about democracy it means the type of constitution framed which is still binding every citizen of India with each other and the state till date.

Even though India was a country with a wide variety of religion and tradition in it , it has never put any religion before others. But officially India got itself of being a secular nation in 1976 according to the ***42nd amendment in the Indian constitution***[29].

But the question arises among the people: why do we need secularism? Why can't we opt for only one religion?

Since, we all know that India is a multicultural country where it has a wide range of diversity among the languages and religions that people follow. We have minorities as well as majorities. From a very ancient time minorities have been suppressed by the majority for one reason or another. So, secularism works as a binding force for all the religions and the people whether they are minorities or majority. The slogan ***"unity in diversity"***[30]can be maintained only if the minorities, who suffered injustice for a long time can preserve their unique customs, traditions and cultures'.

The history of India shows that the people from ancient India also practiced secularism. It is seen that Emperor Ashoka was found to be one of the rulers who used this concept to keep the state away from any religion so that they will not interfere with each other and the same can be seen in medieval India during the time of freedom struggle. During the period of freedom struggle we have many thinkers who try to combine every religion by stating that everyone is equal and urge not to differentiate between two religions.

One of the thinkers is Mohandas Karamchand Gandhi. Gandhi was the one who united the people from all the religions and brought them together to join a large national movement for

[28]The Constitution of India, 1950, Preamble
[29] 42nd amendment, the constitution of India, 1976
[30] Discovery of India by Jawaharlal Nehru

freedom. He believed in ***"Sarva Dharma Sambhava"***[31] which means the equality of all religions where no religion can dominate the values of other religions.

Another thinker was Jawaharlal Nehru. Nehru believed in the doctrine of ***"Dharmnirpekshta"*** which means state will not take any religion over while forming any laws, rules or acts. According to him, the state should give freedom to all religions and regard all faiths equally, but at the same time should not bind the state to any particular religion.

During the drafting of the constitution, there was a lot of confusion and debates whether India should be secular or not. Dr. B.R. Ambedkar and Jawaharlal Nehru were the ones who were in favor of the country being secular but there were some people like Prof. KT Sharma and Lokanath Mishra who were against it. After these long discussions and debates India got its secular constitution. Even though the word secular is not mentioned anywhere, it was explicitly there.

PROVISIONS IN INDIA

There are many laws and provisions provided in the Constitution which is secular even though explicitly:

Article 14[32]guarantee equality before the law considering people of all religions. ***Article 15***[33] prohibits discrimination predicated on religion, caste, race, etc. ***Article 16*** [34] prohibits discrimination on the basis of religion in public employment. ***Article 17*** [35] prohibition of touching is an important secularism-based prohibition of bad deeds occurring in the name of religion.

Article 25 [36] The Indian constitution provides every religion the freedom to practice, to propagate and to profess. It means that every individual has the right to profess and to practice

[31] The Constitution of India, 1950, influenced by Mohandas Karamchand Gandhi
[32] The Constitution of India, 1950, Art. 14, equality before law
[33] The Constitution of India, 1950, Art. 15, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
[34] The Constitution of India, 1950, Art. 16, Equality of opportunity in matters of public employment
[35] The Constitution of India, 1950, Art. 17, Abolition of Untouchability
[36] The Constitution of India, 1950, Art. 25, Freedom of conscience and free profession, practice and propagation of religion

the religion if it is subjected to the public safety, morality and health and if it is not affecting any existing law.

Article 26[37]The Indian constitution permits all citizens to voluntarily manage their religious affairs. This means that it gives every religion the right to form religious organizations and manage its affairs accordingly. It also allows any religion to acquire ownership of those institutions through law, but it does not give any religion the right to subjugate others.

In the case ***Sardar SyednaTaherSaifuddinSaheb v State of Bombay***[38]The Supreme Court held that cutting-off the head of Dawoodi- Bohras is outlawing ***Article 25 and 26***. But it was believed by the majority of people that expelling members from any religious community and loss of the rights of expelled members was considered acceptable as necessary consequences of excommunication.

According to the ***Article 27***[39]provided by the Indian constitution, it provides freedom from paying any taxes if religion is promoting themselves. It means that the person or any religion doesn't have to pay tax if they are promoting themselves or trying to maintain religious denomination.

It is clearly mentioned in the ***Article 28***[40]of the Indian constitution that no institution which is funded by the state can impart religious instruction for a particular religion.

In the landmark case ***M.P. GopalakrishnanNair&Anr v State of Kerala & Ors***[41]and **S.*R Bommai v Union of India***[42]The court held that India is a secular country which doesn't mean that it has no religion, rather it has such a varied form of religion that the state always tries its best to provide every religion with equal opportunities. It is the duty of the state to form those laws which are appropriate for all and can be followed without hurting anyone's sentiments. And it is the work of the court to watch over people. If someone is trying to mix politics with religion then he should be punished.

[37] The Constitution of India, 1950, Art. 26, Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right
[38] 1962 SCR Supl. (2) 496
[39] Freedom as to payment of taxes for promotion of any particular religion
[40] Freedom as to attendance at religious instruction or religious worship in certain educational institutions
[41] Civil Appeal No. 6675 of 1999
[42] 1994 SCC (3)

Article 29[43]The Indian constitution protects the interests of minorities, whereby minorities have the right to preserve their culture, traditions, customs, language and more. No child shall be denied admission to a state-supported educational institution because of religion, caste, language, customs, etc.

In ***Article 30***[44]of the Indian constitution, it is stated that a religious and linguistic minority can own an educational institution and that the state will not discriminate against this institution rather they will consider to redeem the budget for them.

In the case ***St. Xavier College v State of Gujarat***[45], it was held by the court that St, Xavier college is a minority institution since Christians are minority in nature. And minorities can open their institutions and the state will help them so that they can provide proper education to the students to become an asset for the society.

According to ***Article 51(a)***[46]of the Constitution, the fundamental duty of every citizen residing in India is to promote brotherhood and harmony and preserve the cultural diversity of India.

The idea of secularism is deeply rooted inside the history of India. Even if we see a few years back there are lots of debates and discussions over secularism whether India follows constitutional secularism or political parties' secularism or whatnot. Here, the political party secularism means when political parties approach religion or religious communities because of their vote bank or for their electoral benefits. We have many such incidents such as demolition of the Babri Masjid and same goes for the **Shah Bano case** where the Muslim minority went through great humiliation which create environment of communal violence, strikes and riots which led to a question mark on the secularism of India and shake its secular harmony.

On the other hand, when we want India to be a secular country in true way then we need these political parties to stop themselves and want a ***Uniform Civil Code*** which is mentioned under ***Article 44***[47]of the Indian constitution which clearly mentioned that any law form will be equal and apply to all the people equally irrespective of their religion, language, custom, caste, gender, sex, etc. But it is not applicable for every citizen as various religions have their own beliefs which make uniform code somehow unsatisfactory to everyone. Hence, in India

[43] Protection of interests of minorities
[44]Right of minorities to establish and administer educational institutions
[45] 1974 AIR 1389
[46] Promotion of international peace and security The State shall endeavor to
(a) promote international peace and security;
[47] Uniform civil code for the citizens

political parties secularism and constitutional secularism always come face to face and it will continue unless we find a proper solution for that.

SECULARISM IN USA

As we are evolving all mankind towards modernity, towards diversity of people, religion our world is getting more and more dynamic and paradoxical which is changing every day. It is providing us with various theories which lead to the evaluation of world politics and give those concurrent events multiple approaches. And secularism is one of those events.

It is often covered in the news or in various current events that a government should be secular and how it should be free from any bias and work for the well-being of the people. But what exactly do we mean by the secular government or does we actually have a secular government which is rational and unbiased. When we talk about secularism in the context of the USA it means that we are differentiating church from the state matters, not necessarily separating them but we are differentiating them. We are creating boundaries around them so that they can't be mixed with each other. In the USA, we can generally see Political form of secularism which ensures that every religion is legality and fulfills its moral necessity without letting any religion dominate over others.

When we talk about how secularism started in the USA it all starts with the secular movement that was in vogue in the USA during the early 20th century. These movements are somewhat social and political in nature which was founded by the American Association for advancement of atheism in 1925 and the American humanist association in 1941 in which free- thinkers, liberals, rationalists take part to make the USA a secular nation.

It was supposed that around 150 years of the existence of this particular Country there was still debate over the meaning of the ***first clause in the Bill of Rights***[48]. The first clause provided in the Bill of Right mentions that congress cannot make any law in the favor of any religion. which can be clearly interpreted that the constitution must separate the state from the church.

When we talk about American secularism, we found many characteristics such as;

[48] Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people

- First there is a clear distinction between the religious institutions and the state institutions. It means that religion can participate in various matters but cannot dominate over others. Sometimes America is treated as a Christian nation but it is not a Christian nation. It has 80% of its population as Christian. The United States of America hasa government who does not endorse any religion.
- Second characteristic is that in the constitution of the USA there is a right which is given by the 1st amendment which is the freedom of religion. In the USA you are free to worship any religion until you are not going against public harmony and harming other people. Here, when we are talking about the freedom of religion it also means that people can change their religion as per their choices or can be an atheist. It depends on what their choice is.
- And the third major characteristic of secularism which is followed in America is that there is equality between the different people of different religions who are practicing it. There are no practitioners of any religion who are getting advantages or privileges over another. Everyone is treated with the same rights and opportunities.

The United States of America is considered the first secular nation, not only in Western countries, but around the world. When talking about secularism in the United States, the carriage of being secular is neutral rather than positive. Due to modernization, people are losing interest in religion, while secular countries are blurring the lines between state and religion, because people want to get rid of religion. Instead of actively participating, they are constantly becoming passive.

SECULARISM IN UK

Most European countries have taken an adaptive stance regarding the delicate, down-to-earth, and adaptable relationship between state and religion. Christianity still holds a favored open capacity in some European countries. The UK case is an excellent example.

Although the UK is largely culturally and socially secular, the latest figures from the British Social Attitude show that 52% of adults now describe themselves as 'non-religious' or 'atheists'[49]. It maintains close institutional links with Christianity through the officially

[49] Morris, R. M. (Ed.). (2009). Church and state in 21st century Britain: The future of church establishment. London, UK: Palgrave.

established Church of England. The reigning monarch of the United Kingdom is the permanent head of the Church, and Anglican bishops continue to hold reserved seats in the upper house of the legislature. This is idiomatic among improved non- orthodoxy and broad-minded democracies.

Even in the societies which are considered more secular, such as the UK, sacred associations enjoy advantages that other social groups do not, such as trade unions or non-profit charities. Religion gives them recognition among the public that can also influence public policy decisions sometimes. Such cases in the UK include the participation of religious bodies in the upper legislature, a prominent role in the education system, and various exemptions for religious groups on tax and laws.

The United Kingdom, which claims that religion is completely cut off from public life, has led to a number of high-profile cases. In 2012 four such cases were brought to the European Court of Human Rights which were filed on the grounds that they were discriminated against because of their religion. But out of four three cases were rejected. Fourth case was about an airline employee who wants to wear a cross during her work. The court asked authorities to make some amends while keeping reasonable accommodation in mind.

COMPARISON BETWEEN WESTERN AND INDIAN SECULARISM

- While talking about Indian secularism there is no clear distinction between the state and religion. In fact, the state can make any law and if it is disrupting any public harmony but when we talk about secularism in the US there is a clear distinction between the state and the church there is no intervening church in any of the state matters.
- In the western secularism the state separates itself from all the religious institutions whereas in India the state is neutral to all the religious groups. It means it will provide every religion with equal opportunities. Ko
- The concept of secularism in the west came about in the 17th century when the concept of enlightenment occurred around the French revolution whereas in India it was practiced since ancient times but first time written in the constitution after the 42nd amendment in the year 1976.
- When we are talking about the western secularism like in USA or UK the state keeps all religion equal but it doesn't mean that it would provide any financial aid to the

religious institution but when we talk about the Indian secularism it provides the financial aid to all the religious institutions and the groups so that they can be equal.

- In the western secularism a single uniform code is applied. It means that regardless of any religion they will be the same uniform that would be followed but when we talk about Indian secularism there is no such concept of a single uniform code. People can wear anything according to their belief and religion.
- India follows the strategy of positive intervention which means that the state will intervene whenever religion needs it. On the other hand, in western secularism there is a strategy of negative approach used by keeping the state separate from the nation.

AFTERMATH OF SECULARISM

In the present world where the modernization is prevalent in nature. The modern generation shows less interest towards the religious rites of the family and becoming more secular in attitude towards the authority. Marriage which was earlier considered as the sacred and religious belief is now just considered as a contract between the two. But the position of girls and women in the society become more stronger than earlier. They are now treated equally with the liberty. Now they can opt for education, can choose their careers and there are a large number of companies which are employing females in higher positions with a better salary than men.

In India, the taboos of the society which are purely based on the caste and religion structures are rejected by the modern society and they no longer accept any traditions which have no scientific values or which are morally wrong. The Indian caste and religion system lost its rigidity. They are now getting more and more open. But still when we talk about secularism in the political structure, we have some figures who influence the decision of citizens such as the role of Hindu sadhus and sants. They have highly influenced the viewpoint of people in the Ayodhya issue which has become more of a political issue than a religious one. When the political parties talk about secularism just because they want to win the elections or collect votes. But when we talk about earlier than Nehru and other leaders who spoke about secularism, they mean it and they spoke for their belief rather than religionism.

In the US when we talk about secularization it means the shift of religion from being objective rather than subjective. Now, everyone has their own right to make their decision if they want to be religious or non-religious or if they want to practice religion or not, it is up to them. But

because of modernization religion has become less influential and less popular among the society which is leading secularism to passive rather than being active.

Secularism of the United Kingdom is more predictable in nature. People are becoming less and less religious than previous years. States do not provide any funding to religious institutions; however, these institutions and churches are exempted from paying taxes. The number of citizens who consider themselves 'no religion' or 'atheists' are increasing in number year by year. So when we talk about the United Kingdom the majority of people living there have their own beliefs and perceptions. They do not bother themselves with religion, rather they believe in right and wrong. and the people who believe in religion are getting less and less in number or are minority by nature. Therefore, when we talk about the United Kingdom in the 21st century it means it is secular with a small number of churches present.

CONCLUSION

Secularism refers to the non-intervention of the religion from the state while it is also mandatory to ensure that every religion is getting equal opportunities as well as equal treatment in a particular nation. If we talk about secularism, it is just simply an ideology where people in the nation are provided with the rights and freedom to choose their religion or not to choose their religion. It is all up to them if they want or not want to practice any religion. However, it is a condition for a nation or a state that they cannot favor any particular religion but will allow the citizens of that particular nation to follow any religion or not to follow any religion.

So, after this long period of time secularism has evolved many times. We have been practicing secularism in India from a very ancient time when we didn't even know the term secularism. But we have many emperors such as Ashoka who denied the interference of religion with the government or the state. So, it is followed from a very ancient time in India. In the U.S.A. secularism came with the first amendment in the Bill of Rights. Whereas the present situation of the UK is more secular.

The basic objectives of secularism are to prevent a state from favoring any religion. If so then no religion can dominate over others. Another objective is that the state will not enforce any law or act which is in the favor of any particular religion. So, it is important to create awareness among young minds because a secular nation is only possible when people are aware of what

secularism is. Because it is not possible for a nation to be secular only when it is just written in the books but by developing their ideology.

CHAPTER 5

RAPE BEHIND BARS: AN ANALYTICAL STUDY

Monika Sharma[50], Dr Shipra Jain[51]

INTRODUCTION

Rape is a sort of sexual assault that is started by one or more people without the victim's permission. Physical force, coercion, deception, impersonation, or using a person unable to give informed permission are all acceptable ways to carry out the act.

Rape is a matter of concern which, unfortunately, is a global phenomenon. It has affected the world and the cruelty of rapists is increasing day by day.Inmates are frequently the victims of rape and other sexual assaults, and these crimes are typically excused by both the correctional staff and the other offenders. Although the law has provided various protection to the victims still the safety concern a prisoner, faces in her day-to-day life can't be ignored. And because of all of these brutal acts, humanity sees the lowest points of its existence. Rape behind the bars has now become a serious and global issue, which needs attention from the authorities.

In this article, we will do a brief discussion on what rape is, and how rape behind the bars became a matter of concern for the jurisdiction.

WHAT DO MEAN BY RAPE?

Rape is a form of sexual assault that typically entails having sexual contact with another person against that person's will. Perhaps the most horrible acts somebody can commit is rape. Despite several demonstrations by people across India, rape has been on the rise. According to studies, rape is the most widespread crime against women in India.

Rape falls under the definition of sec 375 of the Indian penal code, 1860 (IPC). When a male engages in sexual activity with a woman, it is considered a rape:[52]

a) Without her consent;

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[51]Assistant Professor, UILS, Chandigarh University
[52]Sushant Biswakarma. (2020, August 19). (Indian rape laws in a nutshell).

b) Without her explicit permission;
c) By using force to get her to agree, or by threatening to harm or murder her or someone close to her;
d) By leading her to believe that the man is her legally wedded;
e) By getting her approval while she was not of sound mind, drunk, or by giving her any other chemicals that would impair her judgment;
f) If she is less than 16 years old, or 14 years old in the case of Manipur, then with or without her agreement. Additionally, it is stated in this section that merely penetrating another person is enough to engage in sexual activity, which is rape.

RAPE BEHIND BARS

The circumstances in which rape occurs, the identity or features of the victim, and the identity or qualities of the perpetrator are just a few examples of the various ways it can be classified. Some of the types of rape are marital rape, gang rape, war rape, rape by deception, rape behind bars, etc.

The term "rape behind bars" or "Prison rape" describes sexual assaults committed against prisoners. The most heinous crime that a man can commit is rape, as it only harms the victim physically but also mentally. Anyone can be a victim of prison rape, women, men, transgenders, etc. It is not a gender-specific issue. Sexual violence is a crime and the victims who are behind bars are also suffering the same. Within a jail setting, Prisoners have little control over practically everything in their sexual assault might function as a strategy for the sexual offender to experience strength and control.

Prisoners are frequently the victims of sexual assaults and rapes assaults, and these crimes are typically excused by both the custodial staff and the other prisoners on the basis that the offender had already suffered as much as the victim had because, after all, they are considered to be demons and should therefore be treated harshly with no mercy.The police and other legal systems' complacency prevents incidents of sexual assault and rape in jail from receiving the attention they need.Intriguingly, the Indian Penal Code does not recognized rape against men, despite statistics demonstrating that it occurs more frequently against men than against women inside prisons.[53]

[53] Vidhi Gupta. (Rape and Sexual Violence: Inside Prison Life)

CASES RELATED TO RAPE BEHIND BARS

The shocking reality of sodomy and rapes in jails, not just in India but all around the world, has gone untreated for decades, but Ram Singh's murder exposes it to the world. It occurs everywhere on Earth, even in the most human rights-conscious and well-equipped prisons.It is incredibly ironic that Ram Singh, who is arguably the most despised person in India right now for allegedly planning the Delhi gang rape, was also raped. Although his father has revealed that Singh had been raped in jail, we are still unsure of how he passed away.

Even his co-defendant had experienced sexual assault in addition to him.[54]

Rape behind bars or prison rape is not a matter of concern for India only. It has become a global issue that needs attention from the authorities.

In one of the cases, following male inmates paying a corrections officer $1,000 for keys to their housing units, dozens of female prisoners claim they were sexually and physically attacked for hours last year at an Indiana jail, they said in two federal complaints. Claims of rape, assault, and intimidation in October in the Clark County Jail in Jeffersonville, Indiana, located north of Louisville, Kentucky, were made by eight unnamed women in one lawsuit.[55]

As it is intended that jails will serve as warnings to individuals about committing crimes and that the prospect of going to prison will deter people from breaking the law, life in prison is difficult. The horrible deeds committed against the prisoners compound their misery and put them in a position where they are vulnerable to exploitation.

SEXUAL ASSAULT OR HARASSMENT IN JAIL

When an inmate is being bullied or purposefully coerced into engaging in sexual activity, its standard practice inside the jail to abruptly touch their private areas. It makes no difference whether consent is freely granted or coerced. According to studies, prisoners who are new to jail, mentally ill prisoners, and members of the LGBTQ community are more vulnerable than other prisoners. In order to engage the target in sexual activity, perpetrators may employ

[54] G Pramod Kumar. (2013, March 12). (Ram Singh's death: Rape and ugly sexual violence in Indian jails)
[55]Tyler Clifford, Cynthia Osterman. (2022, July 29). (Female prisoners at Indiana jail allege rape, assault after male inmates bribed guard)

intimidation, threats, or deception, but more frequently, it is found that force and power are utilized against the victim.

INDIAN LAWS COVERING CUSTODIAL RAPE

Section 375 [vi] of the Indian Penal Code defines rape and lists seven situations that a man is presumed to have attempted rape or sexual assault within.

a. In essence, clause 2 of section 376 seeks to include correctional personnel within its purview and specifies the conditions in which they may be punished for the crime of rape toward women.
b. According to Section 376 (2) (a), a police officer is considered to have raped a woman if she was in the custody of the officer or a subordinate police officer who worked under him or her and the woman was present within the boundaries of the police station where the officer is assigned or on its property.
c. Section 376 (2) (b) holds the private officer responsible for raping a woman if she was in his custody or the custody of his subordinate (subordinate public servant); Section 376 (2) (c) holds the army officers responsible for rape; Section 376 (2) (d) holds the staff members of the jail (including the managerial staff), of the remand homes, or even other locations of captivity provided that such places should have been constructed under Such custodial officials may face harsh penalties. The officials can be sent to prisons for a minimum of 10 years which may extend to life imprisonment with a fine.[56]

As women are recognized by Sections 375 and 376 of the Indian Penal Code and all the protection is provided to women, Men sometimes face the circumstances of it under bars.

Therefore, our criminal justice system needs certain urgent modifications in order to ensure that everyone receives equal protection regardless of the class to which they belong. It is important to create laws that are severe and inflexible in order to safeguard all social strata in both the general public and prisoners.

[56] Vidhi Gupta. (n2)

IMPORTANT RIGHTS OF RAPE VICTIMS IN INDIA

Rape falls under the ambit of cognizable offense and has been defined by the Indian Penal Code, 1860, Section 375. Indian law has provided six important rights to the victims of rape. The rights of the rape victim are:

1. Right to Zero F.I.R:

   After the **Nirbhaya case (Delhi gang Rape case),** this right was put into effect on the advice of the Justice Verma Committee. The right to "Zero FIR" refers to an FIR that is filed regardless of where the crime was committed, the victim can file an FIR at any police headquarters.

   E.g.: A woman get sexually assaulted in Delhi, and due to some circumstances, she filed her document in Noida. She can do it.In such a situation, the police cannot argue that they lack the authority to launch an inquiry. Later, that FIR filed by the victim will be moved by the Delhi Police to the Noida police.

   In the case **LALITA KUMARI V. GOVERNMENT OF U.P**,It was noted that if the complaint relates to a cognizable offense, an FIR must be filed pursuant to Section 154 of the Cr.P.C. It is an effective weapon for the nation's women to combat rape crimes like sexual assault and rape. However, the issue is that the majority of police officers are unaware of it and continue to deny the registration of FIRs on the basis of jurisdictional restrictions. Every officer needs to be educated on such a statute, and the State Government is responsible for doing so.[57]

2. Free medical treatment in any private hospital:

   No private or public hospital may charge a fee for the care of rape victims, as stated in Section 357C of the Code of Criminal Procedure. Any hospital, whether public or private, must offer free first assistance to victims right away.

3. No two-finger test during the medical examination:

   According to Section 164A of the Code of Criminal Procedure, this particular section outlines how to make the report and what would be put under the report. This right restricted doctors to the fact that they would not have two-finger tests when performing the medical examination.

[57] (2022, June 25). ([Know Your Rights] Rights of Rape Victim by Neha Ranjan Gupta).

4. Trial with full dignity, speedy and trial:

   According to Section 26 of the Criminal Procedure Code, the victim should not be asked any questions as this could indicate that the victim is the target of personal attacks, and the trial should be conducted by a court with a female judge.

   The Indian Evidence Act's Section 53 A mandates that all proceedings be recorded, the Criminal Procedure Code's Section 327(2) mandates that all rape investigations and trials be recorded, and Section 327(3) mandates that any statement provided by the victim to the magistrate must always be kept confidential. There are numerous other sections that address the rights of victims as well.[58]

5. Harassment free and time bound police investigation:

   A woman police officer or any other official must record the statement in accordance with Section 154(1) of the Criminal Procedure Code. The procedure must be harassment free and time limited police investigation. The primary reason for doing the same is to save the victim from having to recount the occurrence once more in the trial court. Instead, the victim's confession before the judge will be considered definitive, protecting the victim's right to privacy.

6. Right to compensation:

   As Section 357A of the Cr.P.C, a new provision has been added that outlines the victim compensation programme. According to this right, the victim can ask for compensation. This rule for creating a compensation plan was established by the Supreme Court.

SUGGESTIONS

- The important step that needs to be performed is to carefully consider the underlying factors that led to the current culture of rape, identify the peculiar aspects that contribute to such things, and further eliminate them using legal means.
- The awareness should be raised among the prisoners and inform them that what they are going through is unacceptable and that they should speak out vehemently about it.
- Regulators, organizations and authorities who are in a higher position and interested parties should take proactive measures to stop such horrible acts using a variety of

[58] Anjali Singh. (2022, July 19). (Important Rights of the Rape Victims).

instruments, including mental counseling, imprisonment, and other forms of retribution.

CONCLUSION

In a nutshell, rape is a curse for society. People are unsafe and suffering through mental and physical traumatization. Rape behind bars is a serious issue that has to be addressed by stringent laws and procedures.

It is the time when the authorities should take some action toward prisoners who face such brutal experiences in prison on daily basis.Raising rape legislation shouldn't be influenced by gender bias. Protection should be provided to all genders existing in society. Equal safety precautions for men and women, as well as for transgender people (as they are the most vulnerable), should be provided. According to statistics, life in male prisons is more terrible than it is in female prisons.Such heinous crimes committed within jails go unpunished by the law which is a matter of concern.

CHAPTER 6

Medical Negligence in India: An Insight on Judicial Trends

Diksha[59], Dr Radhika Dev Verma[60]

ABSTRACT

The primary goal of practicing medicine is to help people. A physician's first and foremost duty is to treat his or her patients while upholding human dignity A doctor should always be prepared to help the sick and injured for the good of humanity and the great traditions of the profession, but they should also be aware of the high character of their mission and the responsibilities they carry out while doing so. The Central Government authorized a Code of Medical Ethics, in accordance with Section 133 of the Medical Council Act. He must always keep in mind that the well-being of individuals under his care depends on his expert hands. The sick should be visited by their doctor as frequently as they request, and at the time they specify if possible. While it may be impossible to prevent a dissatisfied patient from seeking redress through the legal system, there are several steps that can be taken to reduce the likelihood that this will ever be necessary. The legal requirements for a doctor's care of a patient increase in complexity, making it all the more important for doctors to have a firm grasp of the law. This article makes an effort to provide a concise summary of the court approach to medical malpractice lawsuits in India, along with a few of the issues that have arisen and potential answers.

INTRODUCTION

The all-encompassing term “medical negligence” has recently gained popularity to describe the inappropriate behavior of medical practitioners while treating patients. None of India's statutes use the phrase or provide a definition for it.

Lifestyle shifts bring on a slew of previously unanticipated health problems, driving up the demand for medical attention. When seeking medical care, a patient naturally anticipates that he or she will recover, and at the very least, they anticipate that their doctor will exercise due

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care in their treatment. Patients sometimes put a great deal of faith in doctors, believing that they will be able to heal them of their illness with the proper therapy. However, even doctors make mistakes, the consequences of which can be devastating. Patients are often viewed as money-making blobs of tissue, to be probed, prodded, and sliced up at the slightest pretext, which might have disastrous consequences in some situations. Why would you need an MRI or ultrasound for a common cough? Unnecessary intervention, on the other hand, becomes the norm when the focus shifts from open communication to calculating profit margins. Could it be that modern doctors are laxer than ever before? In 1953, a young child with a broken arm died when a doctor in Pune performed surgery without first giving any form of anesthesia to him.[61]

"Managing trustee of the Anamika Ray Memorial Trust Ankuran Dutta has stated that around 52 lakh medical injuries are documented annually in India, and 98,000 persons in the country per year perish due to medical neglect. Ten persons in the United States fall victim to medical carelessness every minute, and more than eleven people every hour lose their lives as a direct result of medical negligence. It is the eighth leading cause of death in the world."[62]

The law must find a middle ground between a physician's independence in making diagnoses and a patient's entitlement to fair treatment. Courts in India generally offer doctors a lot of flexibility, and they explicitly acknowledge the human body's complexity, the limitations of medical research, the subjective nature of medical practice, the room for error in medical judgement, and the value of doctors' autonomy.

WHAT IS "MEDICAL NEGLIGENCE"?

The SC in ***Kusum Sharma & Ors. v. Batra Hospital & Medical Research Centre and Ors*** "placed reference to the Halsbury's Laws of England, 4th Edn., Vol. 26 pp. 17-18, wherein it was defined as 22. Negligence. - Duties owed to patient. A person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient, owes him certain duties, namely, a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give; and a duty of

[61] Dr. LaxmanBalkrishnaJoshi v. Dr. TrimbakBapuGodbole and Anr. (1969) 1 SCR 206 (India)
[62] 98,000 people lose their lives because of "medical negligence"? , India + Medical times, May 25, 2016,

care in his administration of that treatment. A breach of any of these duties will support an action for negligence by the patient."[63]

Thus, there are 3 components of "medical negligence":

- "Existence of legal duty
- Breach of legal duty
- Damage caused by such breach

Incorrect diagnosis, delayed diagnosis, faulty surgery, long-term negligent treatment, childbirth and labour malpractice, unnecessary surgery, and erroneous administration of anaesthesia are all examples of medical negligence committed by a doctor or other medical professional."

In "**Vinod Jain vs. SantokbaDurlabhji Memorial Hospital and Ors".,**[64] SC observed, "the test for negligence shall be from the view point that a doctor who has been accredited with a special skill or competence but does not possess highest expert skill, it would in such case be sufficient that he exercises skill of an ordinary competent man under similar scenario. This is primarily done for greater good of the community at large, to prevent the doctors from thinking about their own safety instead of the safety of the patients."

WHAT DOES NOT AMOUNT TO "MEDICAL NEGLIGENCE"?

An injured patient may not be able to hold the doctor responsible because of negligence. The doctor is immune from legal consequences for whatever decisions he makes in good faith, even if they turn out to be wrong. Due to the fact that they, too, are human, doctors deserve some leniency for making mistakes. Just because the doctor's choice didn't work out doesn't mean he should be punished for making a bad call. The Courts have observed, "merely because the doctor choose an different procedure/ treatment to cure the problem and it did not work as expected, will not make him liable. One must prove that there was breach of duty on his part. A doctor performing his duty with due care and caution could not be held liable for

[63] (2010) 3 SCC 480
[64] AIR2019SC1143

negligence.[65] However, where error in judgement was due to a negligent act, it shall then be termed breach of duty and the doctor shall be held liable for his actions."

DUTY OF CARE

The Hon'ble SC in **"Dr. LaxmanBalkrishnajoshi Vs. Dr. TrimbakBapuGodbole**"[66] had observed, "every doctor must exercise reasonable 'standard of care' that are set out in the profession. Any breach towards these duties shall hold him liable for medical negligence."

In "**Chandigarh Clinical Laboratory vs Jagjeet Kaur",** "the appellant was directed to pay the complainant a compensation of Rs.25,000 along with cost of Rs. 2,000. The appellant laboratory had issued the patient with wrong reports for which the Hon'ble Commission held that the appellant had 'duty of care' to give accurate findings to the patient and failure of the appellant to take due care shall amount to medical negligence."[67]

WHEN DOES THE LIABILITY ARISE?

In the event that a healthcare professional or facility fails to offer an acceptable minimum level of care to a patient, they will be held legally liable for any injuries that may have been caused as a result. The complaining party is responsible for providing adequate evidence in order to establish the case of carelessness. First, they must prove the defendant owes them a duty of care and breached it.

In "**Jagdish Prasad Singh v. Dr. A.K.Chatterjee"[68]** "the opposite party was directed to pay a sum of Rs. 25,000 to the complainant as compensation for his mental agony and physical harassment and Rs. 5,000 as litigation cost. It was observed that the accused had failed to take due care to return the precise findings in the reports. Whether harm came to the patient or not would not be the criteria for case against negligence."

But the principle of ipsa loquitur, which means the objects speak for themselves, is used by the courts in some instances. In this case, the medical provider's actions are assumed to be negligent since they fell short of the expected standard of care. According to this theory, the patient's harm must have resulted from the doctor's carelessness. If a judge actually applies this

[65]AchutraoHaribhaukhodwa and Ors v. the State of Maharashtra: 1996 SCC (2) 634
[66] 1969 AIR 128
[67] IV (2007) CPJ 157 NC
[68]Jagadish Prasad singh V. Dr.A.K.Chatterjee , 23 October, 2008

approach, it would be too late to prevent the consequences of the negligence. The onus of proof now goes to the medical professional. Errors in patient care include, the wrong patient being operated on, or something being left inside the patient's body are only two examples of what could go wrong during surgery.

LAW AND "MEDICAL NEGLIGENCE"

A recent survey confirms the alarming increase in reported cases of medical malpractice. Ninety percent of "medical negligence" lawsuits now include hospitals, up from fifty percent twenty years earlier; twelve percent of all consumer court cases are resolved on "medical negligence". Increased consumer education, more accessible consumer fora, the rising price of healthcare, and a more litigious outlook among consumers are the four main causes of this meteoric rise. Criminal negligence, civil negligence, and negligence under the Consumer Protection Act are the three types of "medical negligence" recognised by Indian law. In accordance with the specific statute, several sanctions may be imposed. Here is a comparison of the aforementioned "medical negligence" statutes.

CRIMINAL LAW AND "MEDICAL NEGLIGENCE"

According to Sec. 304A of the IPC, "anyone who causes the death of another via reckless or careless behavior that does not constitute culpable homicide shall be punished by imprisonment for a term of two years, a fine, or both."

"When a doctor's careless handling of anaesthesia results in a patient's death, the doctor can be held legally responsible for either their intentional or negligent actions. Sometimes the doctor will feel vicariously responsible as well. As a result, under the theory of Vicarious Liability in Tort law, both the doctor and his employee would be held responsible for a patient's death that was caused by the employee's reckless actions (the doctor has the liability to keep an eye on the employee)."[69]

Despite these options, doctors still have ways to defend their honesty and integrity. House of Lords decision[70] states that "a doctor cannot be held criminally accountable for a patient's death

[69]Jagdish Ram vs State of H.P (2007) AIR (NOC) 2498 (H.P-India.)
[70] R vs Adomako (1994) 3 All ER 79 (India).

unless it is demonstrated that the doctor was negligent or incompetent, showing such contempt for the life and safety of the patient as to constitute a crime against the State."

"Legal protections for doctors who are falsely accused of criminal wrongdoing can be found in Sections 80 and 88 of the Indian Penal Code. Nothing shall be considered an offence that is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by authorised means and with due care and caution, as provided in Section 80 (accident in doing a lawful act)."

"If a person acts in good faith for another's benefit, without intending to cause harm even if there is a risk involved, and the patient has given either explicit or implicit consent, then the person cannot be charged with an offence under Section 88."

It was decided in "*Kanhaiya Kumar Singh versus Park Medicare & Research Centre"*[71] that negligence must be proven, rather than just assumed. These decisions make it very clear that it is the patient's burden to provide evidence of carelessness causing financial harm.

CONSUMER PROTECTION ACT AND "MEDICAL NEGLIGENCE"

The SC's ruling in "**Indian Medical Association v. VP Shanthain** 1995 expanded the definition of 'service' under the Consumer Protection Act, 1986 to include the medical field. This established the parameters of the doctor-patient relationship by allowing consumers to sue their doctors in 'process free' consumer protection courts for financial compensation in the event that they were injured as a result of medical treatment."[72]

"If the service is provided at no cost to the patient or if they have paid only a small registration fee, they will have no recourse under the Consumer Protection Act (COPRA). Patients who are unable to pay their medical bills are not considered consumers and so cannot file a claim under the Consumer Protection Act."[73]

[71] Kanhaiya Kumar Singh vs Park Medicare & Research Centre III (1999) CPJ 9 (NC)(India)
[72] Disha Pareek, "medical negligence and Law in India- An Analysis", https://blog.ipleaders.in/medical-negligence-law-indiaanalysis/amp/.
[73] *Ibid*.

CIVIL LAW AND "MEDICAL NEGLIGENCE"

In theory, tort law is thought to take over where the Consumer Protection Act leaves off. Patients who receive medical care from a provider whose services do not qualify as "services" under the Consolidated Omnibus Budget Reconciliation Act (COPRA) may seek reimbursement through the tort of negligence. The patient has the burden of proving that his injuries resulted from the negligence on the part of the doctor's or hospital's.

Incorrect blood type transfusions16, leaving a mop in the patient's abdomen[74], organ removal without authorization, and the administration of the wrong medication all constitute examples of medical carelessness. People who give medical advise or provide medical care imply that they are competent to do so, that they can evaluate a situation, determine an appropriate course of treatment, and carry it out. This is what the industry calls a "implied undertaking" on the part of a doctor.

To differentiate between civil and criminal carelessness, the question of degree has always been important. Case law regarding Sec. 304 (A) of the I.P.C. was discussed in *"Kurban Hussein v. the State of Maharashtra"*[75].

"To impose criminal liability under Section 304-A, it is necessary that the death should have been the direct result of rash and negligent act of the accused, without other person‟s intervention."

BASIC FEATURES OF "MEDICAL NEGLIGENCE" AND STANDARD OF CARE

"To grasp the entire scope of carelessness, it is essential to understand the duty imposed on a physician or other medical professional. When deciding whether or not to take on a case, deciding what treatment to give, administering that treatment, and deciding not to perform any procedure that is outside his or her control, a doctor or other medical practitioner is expected to bring a reasonable amount of skill and knowledge and to exercise reasonable amounts of care."[76]

[74] AH Khodwa vs State of Maharashtra (1996) ACJ 505 (SC) (India).
[75]Kurban Hussein Mohammedali vs State of Maharashtra (1965) AIR 1616, 1965 SCR (2) 622 (India)
[76]LaxmanBalkrishnaJoshi (Dr) v. Dr. TrimbakBapuGodbole AIR 1969 SC 128.

It is essential to establish a "direct" or "proximate" causal relationship between the breach and the injury in order to establish negligent responsibility. “The causal link might be either direct causation or proximate causation, and in both circumstances, negligence can be assigned. For example, a finding of medical negligence was unavoidable in a case where a patient with roughly 50% burns died 40 days after the date of an incorrect blood type transfusion while receiving extensive care subsequently post-detection of error.”[77]

The SC has not yet established adequate standards to provide clear and transparent advice in determining where the line should be drawn between civil culpability and criminal liability. In “**Dr. Suresh Gupta v. Govt. of NCT Delhi”[78]**, the SC raised the bar for establishing criminal responsibility, ruling that the level of “medical negligence” must be "gross" or "reckless" before criminal charges can be filed. It was found that a simple failure to exercise reasonable care, attention, or skill was not enough to constitute criminal negligence. “Dr. Suresh Gupta made the observation that negligence resulting from simple carelessness or accidental harm would give rise to civil liability but would not be enough to warrant criminal prosecution. In this case, the SC overturned the order of the HC that had declined to quash the prosecution under Section 304A IPC after it was claimed that a young man had died during a routine procedure for nasal deformity because "not introducing a cuffed endotracheal tube of proper size as to prevent aspiration of blood from the wound in the respiratory passage." Some people have questioned whether or not the Supreme Court's perspective is valid because Section 304A of the Indian Penal Code does not include the word "gross," and because separate standards cannot be applied to the negligent behaviour of doctors and other people, respectively. As a result, the matter was sent back to a more powerful bench for additional consideration.[79]

In **“Jacob Mathew v. State of Punjab”[80],** the court consisted of a three-judge bench (in Dr. Suresh Gupta, the bench consisted of two judges).

Dr. Suresh Gupta's approach that a high degree of negligence is necessary to establish criminal liability was reaffirmed in SC Case No. 14, and it was noted, ″In order to hold the existence of criminal rashness or criminal negligence, it shall have to be found out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree

[77]Postgraduate Institute of Medical Education and Research v. Jaspal Singh (2009) 7 SCC 330.
[78](2004) 6 SCC 422
[79]Jacob Matthew v. State of Punjab, SC Order dated 09.09.2004.
[80](2005) 6 SCC 1.

that injury was most likely imminent." According to the SC's ruling in Jacob Mathew, the topic of carelessness of the medical profession requires a unique approach. In this instance, an elderly patient with terminal cancer was having trouble breathing, and it was discovered that the oxygen cylinder attached to the patient's mouth was dry. The patient had already passed away by the time a substitute was found. The SC reversed the HC's ruling, finding that the doctors could not be charged for criminal wrongdoing.

It's possible that the SC could reach a different decision depending on which bench looked at the case. HCs in both the Dr. Suresh Gupta and the Jacob Mathew instances, among others, almost certainly disagreed with the SC's decision. Like in the practice of medicine, the abstract principles might be challenging to apply to concrete situations.

Both criminal prosecution and civil litigation may be pursued in the same instance to address the same breach of duty.

Doctors are required to provide "neither the very highest nor a very low degree of care and competence considered in light of the individual circumstances of each case,"[81] according to the law. The Bolam test, which refers to the "standard of the average skillful man exercising and purporting to have that unique talent," rather than the "highest expert skill," is the one that courts have found to be applicable in cases of “medical negligence”. In the contexts of both "diagnostic" and "therapy," this holds true. There is a need to reevaluate the Bolam test's parameters, as the SC has recently recognized.[82]

Judgment failure may not always indicate carelessness. “Gross errors, however, would invite a finding of negligence, such as using the wrong drug or gas during the anaesthetic process, delegating the responsibility to a junior with the knowledge that the junior is incapable of performing the duties properly, removing the wrong limb, operating on the wrong patient, injecting a drug which the patient is allergic to without looking at the outpatient card containing the warning, and leaving swab swabs in the patient's body. It has been established as negligence for those who are not trained in medicine or a certain subspecialty to begin a treatment plan in that area.”[83] Negligence has been established as the failure to care for a preterm infant who requires extra oxygen and blood transfusions to prevent retinopathy of prematurity (a disease

[81]LaxmanBalkrishnaJoshi (Dr) v. Dr. TrimbakBapuGodbole AIR 1969 SC 128.
[82]V Kishan Rao v. Nikhil Super Speciality Hospital (2010) 5 SCC 513.
[83]Surendra Chauhan v. State of MP (2000) 4 SCC 110. See also, Martin F. D'Souza v. Mohd. Ishfaq (2009) 3 SCC 1

that causes progressive blindness in such infants) and the failure to obtain the opinion of a paediatric ophthalmologist.[84] "medical negligence" has also been found in cases where an experienced surgeon planned to perform a procedure but then decided to perform another procedure at the same time, leaving the patient in the care of a less-experienced surgeon who was not incompetent but did not have the necessary training (even if the surgeon did not make any mistakes during the procedure).

"The burden of proof in situations of medical negligence rests initially with the plaintiff; once they've established a prima facie case of negligence, the burden of proof transfers to the treating physician or hospital to show that they exercised appropriate levels of care and diligence."[85]

It is also crucial to remember that in order to hold a hospital liable in civil court, neither the treating physicians nor the nursing staff must be made parties to the proceeding (only the hospital may do so), and it is irrelevant whether the involved medical professionals are regular employees or temporary guests[86]

The level of knowledge and technology that existed at the time of the incident should be considered when making a determination about the level of care that should have been provided. If a doctor is accused of being negligent for failing to use necessary equipment, the court will consider whether or not that equipment was "usually available at that moment in time" and, consequently, whether or not it could have been used. This is done in order to determine whether or not the doctor should be found negligent. There is no way for a medical centre to provide state-of-the-art care if each of its hospitals is outfitted with the same state-of-the-art equipment and facilities. It may be difficult to establish if particular pieces of equipment are habitually available or not because there is neither a centralised nor a regional record of the equipment used by medical practitioners or hospitals. If a diabetic patient's arterial saturation couldn't be maintained after a hernia procedure at Hospital A for unclear reasons, the patient would be sent to Hospital B, which had a mechanical ventilator. When he finally arrived at Hospital B, the patient was already in a coma, and he ultimately passed away in that facility. In this particular instance, the State Commission imposed "civil liability" on Hospital A, finding it guilty of "medical negligence" and other offences. This decision was based on the assumption (rather than a formal finding) that mechanical ventilators were widely available in

[84]V. Krishna kumar v. State of Tamil Nadu and Ors. (2015) 9 SCC 388.
[85]Nizam's Institute of Medical Science v. PrasanthSDhananka (2009) 6 SCC 1.
[86]SavitaGarg v. Director, National Heart Institute (2004) 8 SCC 56.

Jaipur, Rajasthan, in September 2002, and that Hospital A should have had one as well. In addition, the State Commission found that Hospital A had committed additional offences."[87]

Expert medical testimony is frequently requested by both attorneys in medical malpractice trials. According to Section 45 of the Indian Evidence Act of 1872, expert testimony is admissible when a court must reach a decision on a scientific issue. Expert testimony is often disregarded by courts for various reasons, therefore it's important to keep in mind that just because an opinion is "relevant" doesn't mean it's "conclusive." The expert's primary job is to lay out all the evidence and explain why he or she has reached a certain conclusion so that the court, which is not an expert, can make an informed decision based on its own observations. Opinions from experts are only considered when they are "intelligible, compelling, and tested"[88] and corroborated by additional evidence. Courts do not replace expert testimony with their own, but they can rule that a medical practitioner was negligent if they conclude that the professional's actions were impossible or grossly irrational.

CONCLUSION

Despite the fact that patients worship their doctors as if they were gods and expect to be cured by the care they receive, research shows that this is not the case. However, even doctors make mistakes occasionally, and these can have devastating consequences for their patients. In certain cases, the errors they make are so serious that the patient must deal with a lot of trouble and suffering.

A consumer's injury, which could lead to a complaint against the doctors and other authorities involved, highlights the need for careful and cautious use of technology and medical tools in the health care industry. However, no law exists that holds the makers of defective machinery accountable for injuries they cause.

The fact that no protections are in place under the Consumer Protection Act of 1986 for services provided at no cost raises another serious issue. That's a concern because it leaves injured patients in a bind.

Some incidences of "medical negligence" have resulted in permanent disabilities, and as a result, patients are beginning to lose faith in the medical community as a whole. The medical industry needs to conduct some real soul-searching. Its attempt at self-government has

[87]Vimal Kumar Mundra and Others v. Pardaya Memorial Hospital and Others IV (2013) CPJ 9A (CN) (Raj).
[88]Ramesh Chandra v. Regency Hospital Limited (2009) 9 SCC 709.

completely failed. If healthcare is to be provided in an entirely righteous manner, the underlying medical ethics must be revised and improved.

CHAPTER 7

CONSUMER PROTECTION AND COMPETITION LAW

Harsh Sharma[89], Dr ChanderParkash Singh[90]

ABSTRACT

"The protection of the interests of consumers should always be a primary focus of any legislation enacted in this area, as well as an essential element of all modern rules governing competition. The rules that control competition and consumer protection address separate concerns and take different approaches to find answers, despite the fact that they cooperate to safeguard customers and companies. Consumer protection laws are based on the idea that consumers are typically the weaker party in transactions, and as such, they should be directly protected in their interactions with businesses through special consumer rights. This article takes a look at how consumer protection and competition regulations interact in the context of India, and it does so while making relevant similarities to the situation in the EU. The article highlights, given that the mandate of the CCI is to prevent practices that have a negative impact on competition, in circumstances where consumer protection laws and competition laws overlap, the Authority should only take action based on the negative effects on competition. This is because the Competition Commission of India's mandate is to prevent practices that have a negative impact on competition. Following a thorough examination of the relevant statutes and court decisions, we have arrived at this verdict. The manner in which "unfair trade practices" are addressed is provided as an example to highlight how appropriate this method is."

Keywords: Consumer protection law, Competition Commission of India, Competition law

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INTRODUCTION

Consumer Protection

The improvement of overall consumer welfare is the target of both consumer protection and competition policy, which are both working toward the same end. Both consumer protection and competition policy revolve upon the idea that there is an unequal connection between consumers and producers. Consumers are safeguarded by the establishment of minimal standards of quality and safety for products and services, as well as the provision of avenues for the resolution of consumer complaints. The purpose of competition is to ensure that there are sufficient producers for there to be no single entity that can develop a dominant position. If the structure of the industry makes it impossible to avoid dominance in terms of market share, then it is important that measures be taken to prevent abuse caused by dominance. Competition policy also works to eliminate other causes of market failure, such as collusive tactics to reduce supply, like price fixing and market segmentation. Mergers and acquisitions should be regulated by the law since they reduce the amount of competition in the market.[91]

Consumer Protection Policy

During the same period when trade and commerce emerged in India, a new consumer culture emerged there. A few brief passages in Kautilya'sArthashastra touch on the topic of consumer protection from commercial and retail abuse. “Alluding to issues with items' quality, short weight, measurement, and adulteration are the topics discussed here. However, until the late 1970s, there was no concerted attempt in this country to safeguard consumers' rights. However, current thinking holds that a country's level of development and the maturity of its civil society may be gauged by how well it protects and educates its consumers.”[92] The constantly expanding variety of goods and services that can be obtained as a result of the availability of modern technology is the primary cause behind this. The increased demand for consumer protection may be traced back to a number of factors, including the expansion of global production and distribution networks, the development of increasingly sophisticated marketing and selling activities (such as advertising and other types of promotion) and mass marketing strategies, and the increased mobility of consumers, which has reduced the degree of personal connection between buyers and sellers.

[91]United States v. Brown University, 5 F.3d 658, 677 (3d Cir. 1993)
[92]SVS Raghavan Committee on Competition Policy and Law

The contemporary history of the protection of consumer rights can be traced back to 1962. In an address to Congress that was delivered on March 15, 1962, President Kennedy of the United States of America declared the Consumer Bill of Rights.[93] This is what the message conveyed:

"(i) The right to information,

(ii)The right to be heard,

(iii) The right to choice, and

(iv) the right to safety"

Soon after, Consumer International incorporated the rights to consumer education, a healthy environment, and basic necessities into its list (including the right to have access to food, clothing, and shelter). National Consumer Rights Day is observed annually on December 24 in India to commemorate the passing of the Consumer Protection Act, 1986, which occurred on that date. The International Organization of Consumer Unions designated March 15 as World Consumer Rights Day in 1983. Since, this day has been celebrated annually as World Consumer Rights Day. The fifteenth of March was designated as National Consumers Day in India, and the holiday has been celebrated annually since its inception. Another important date in the annals of the global consumer movement is April 9, 1985.[94]On this date, the United Nations General Assembly adopted recommendations for the protection of consumers and authorized the United Nations Secretary General to lobby member nations to incorporate these principles into domestic law and policy. These recommendations formed the basis of an all-encompassing policy framework that outlined the actions that governments were required to take in order to promote consumer protection in the following areas:

(i) security against harm,

(ii) patrons' financial rights must be safeguarded and advanced.,

(iii) guidelines for the quality and security of commercially available products and services,

(iv) consumer protection provisions that allow people to file complaints,

(v) specific metrics pertaining to various fields (foods, water, and medications); and

(vi) program for consumer information and education.

[93]"Consumer Protection and Competition Policy" < https://niti.gov.in/>
[94]MRTP (Amendment) Act, 1984, w.e.f 01 August 1984.

WHAT IS THE LEGISLATION THAT ESTABLISHED THE COMMISSION FOR COMPETITION AND CONSUMER PROTECTION?

As required by the Competition and Consumer Protection Act of 2014, this agreement is made effective as of October 31, 2014. "In order to create the Canadian Competition and Consumer Protection Commission, the Competition Authority and the National Consumer Agency were combined. It is now responsible for carrying out the duties that were formerly performed by those two entities, both of which have since been dissolved."[95]

WHAT ARE THE STATUTORY FUNCTIONS THAT THE CCPC IS RESPONSIBLE FOR?

The CCPC is charged with both protecting consumers and promoting healthy competition. Section 10 of the Act of 2014 is where the legislative powers of the CCPC are laid out in their most comprehensive form. They are as follows:

- "Increasing the level of competition
- Serving the interests of consumers while ensuring their welfare and promoting their protection
- Conducting inquiries into alleged violations of legislation pertaining to consumer protection or competition law
- Enforcing laws pertaining to consumer and commercial competition
- Encouraging compliance with laws pertaining to competition and consumer protection, including the publication of guidelines that detail how to comply with the law in a practical setting"[96]

CONSUMER PROTECTION IN INDIA

The US government, in response to recommendations made by the United Nations, adopted the "Consumer Protection Act" in 1986 with the intention of "better protecting the interests of

[95]"Competition and consumer protection law"
[96]Mr. Gajinder Singh Kohli vs. Genius Propbuild Private Limited, Case No. 15 of 2016

consumers."[97]With a focus more on compensation than punishment or prevention, the Act effectively protects consumers from many forms of exploitation and unfair business practices. These safeguards are designed to protect consumers from being exploited and taken advantage of. The Act covers the commercial, public, and cooperative sectors and is applicable to all goods and services, unless they are expressly exempted. Additionally, it enables efficient and affordable conflict arbitration. The Act guarantees each of the following rights:

"• The entitlement to protection from the marketing of products and services that could endanger one's life or one's property.

• the right, depending on the situation, to information on the nature, quantity, potency, purity, standard, and cost of goods and services in order to protect customers from misleading business practices.

• The right to be guaranteed access to a diverse range of goods and services at costs that are comparable to those offered by competitors

• The right to have one's voice heard and the guarantee that one's interests as a consumer will be given appropriate attention in relevant forums.

• The right to seek remedy in cases where customers have been subjected to unethical business activities such as unfair or restricted trade practices or unscrupulous exploitation.

• The right to education for consumers as a consumer"

In accordance with the Consumer Protection Act of 1986, a straightforward, three-tiered, quasi-judicial apparatus has been built at the national, state, and district levels for the purpose of considering matters that have been brought up by consumers. The Act had been revised not once, but twice, in 1991 and 1993 respectively. In 2002, a significant change was passed in order to make the Act more efficient, useful, and relevant to its intended audience. The revised Act includes provisions, among other things, that allow the attachment and eventual sale of a person's property in the event that they do not comply with an order.

Even though it's possible to see how the Consumer Protection Act was put into place as a success, there are still a lot of problems with the way consumers are treated because the country's infrastructure isn't very good. First, many goods and services that affect customers' health, safety, and the environment suffer from regulatory gaps. Products such as electrical and

[97]Satish Kumar Pandey v. M/s. Unitech Ltd., Consumer Case No. 427/2014 Decided On: 08.06.2015

electronic items, IT and telecoms equipment, industrial and fire safety equipment, and toys are examples of categories for which no required standards have been specified. There are currently several regulatory, standards, and conformity assessment bodies operating, as well as a large number of certification and inspection organizations.[98] "The Quality Council of India (QCI) is the main accrediting body for conformity assessment companies carrying out product or system certification or inspection bodies, in addition to the National Accreditation Board for Laboratories." However, accreditation is not necessary for laboratories, inspection agencies, or conformity assessment bodies. Because of this, it is unclear whether there are quality systems, goods, tests, and laboratories. The infrastructure of the laboratory is inadequate by contrast to the standards established internationally. The expertise required to direct the quality improvement efforts being undertaken in industry is currently lacking among the quality specialists. [99] Many companies are unaware of how standards affect their quality, competitiveness, and bottom line. The disinterest shown by corporations in pursuing standardization is exacerbated by this information gap. Lack of consumer demand for high-quality products and services can be traced back to the public's widespread misunderstanding of the importance of quality. A more simple statement would be to say that the country does not have a culture of high enough quality. Immediate action is required to rectify the situation in the country as mentioned above at a time when tariff barriers are lowering worldwide as a result of multilateral trade discussions and in the framework of Foreign Trade Agreements (FTA), and when technical obstacles to trade have become more relevant as determinants of trade flows. This is because of the fact that multilateral trade negotiations are taking place. The impetus for improving the quality of products made in India and bringing them into line with international standards needs to come from within the country itself if this goal is to be achieved by Indian manufacturers. There is nothing that can have a more significant influence on the producers than the domestic consumers' quality-conscious need for products of a higher standard of quality.

The manner in which RTPs and UTPs are handled in India with regard to the enforcement of the "Consumer Act and the Competition Act" creates an unusual overlap in terms of the functions that are covered by each statute.[100]

[98]Leary, T.B., 2005. Competition law and consumer protection law: Two wings of the same house. *Antitrust Law Journal*, *72*(3), pp.1147-1151.
[99]Max, H., 2007. Competition Law and Consumer Protection.
[100]Supra note 5

(a) Restrictive trade practices

The manner in which RTPs are handled demonstrates the intersection of the substance and enforcement provisions of the two Acts, as well as the possible problems that can arise as a result of this confluence. The “Consumer Act” forbids “RTPs with the potential to cause manipulation of pricing or conditions of delivery, or to alter the flow of supplies in the market relevant to goods or services, in order to impose on customers unreasonable expenses or restrictions. The purpose of these RTPs, such as 'tie-in' sales and 'delayed delivery,' is to increase the price of the marketed product or service. Without a doubt, the definition of RTPs in the Consumer Act is broad, and it would cover any commercial behavior that has the potential to cause manipulation of pricing or delivery terms, or to impact the flow of supplies in the market pertaining to goods or services, in order to impose unreasonable costs or restrictions on consumers.”[101] Although the Raghavan Committee discovered some "tie-in" sales overlap between the two Acts, the “Competition Act's” definition of RTPs is inarguable. In another change to the “Consumer Act” that took place in the year 2002, it was made clear that "delay beyond the term agreed to by a trader in supply of such items or in providing the services which has led or is likely to lead to rise in the price" was specifically forbidden. With its implementation falling a full year after the publication of the Raghavan Committee Report and coinciding with the notice of the “Competition Act”, it is quite likely that the Committee did not look into the impact of this alteration.Because of this, there is a substantial amount of overlap between the “Competition Act and the Consumer Act” in terms of the regulations that apply to RTPs. However, in terms of the regulation of RTPs, how does this overlap manifest itself? The existence of a contract between merchants is a precondition that must be met in order for the “Competition Act” to be satisfied.

In the case of horizontal agreements, it applies the per se standard, whereas in the case of vertical agreements, it applies the rule of reason standard. This bears some resemblance to the MRTPA enforcement history and functions in a similar manner. In the early years of its existence, the MRTPA determined that the RTPs that fell within its purview were only actionable if they were found to eliminate or restrict competition. “As per se criteria for RTP violation was incorporated into the MRTPA by the Parliament through an amendment that took effect in the year 1984. Nevertheless, a rule of reason analysis continued to apply to certain RTPs even after this revision was implemented. The Competition Act makes it illegal for

[101]“Consumer Protection and Competition Policy”

regulated trading practices (RTPs) to exist to the degree that such activities constitute an abuse of dominant position. This pertains to the regulation of dominant enterprises."[102]

The history of enforcement of "the Competition Act" by the Competition and Consumer Commission (CCI) does not provide a great deal of insight into the question of whether RTPs in the form of abuse of dominance require a rule of reason or a per se analysis. The Competition Commission investigated, among other things, whether the National Stock Exchange's decision to waive transaction fees in the currency derivates segment violated Sec. 4 of the "Competition Act" in the NSE case. The CCI was of the view that

"The word 'unfair', which is used in the second sentence of the fourth section of the Act, needs to be investigated either in the context of injustice in relation to a customer or in relation to a rival. The "Competition and Consumer Commission of India" (CCI) made the observation that [NSE contention]'s that "there is no observation on harm to consumers in the Commission's order dated 25.05.2011 and that there is therefore no element of abuse deserves to be dismissed because section 4 does not require it to be established." The first and most important requirement of the provision is that "it must be demonstrated that a certain business or organization holds a dominating position in the relevant market." After that, it is necessary for it to provide evidence that "it has participated in a behavior that is described in clauses (a) through (e) of the section. After both of these things have been proven, there is no legal duty to investigate any additional impact that could have on competitors, consumers, or the market." The Commission, in its order, has substantiated both of the aforementioned questions to a sufficient degree. In contrast to section 3, the examination of an appreciable adverse effect on competition (AAEC) or evaluation of the considerations specified in section 19(3), which include accrual of advantages to consumers, is not required by section 4 of the Act."[103]

The decision in NSE necessitates a reevaluation of the coextensive treatment of RTPs under the "Consumer and Competition Acts" in light of the CCI's finding that the "Consumer Act" does not need a showing of the elimination or restriction of competition. This is because of the CCI's interpretation that the "Consumer Act" does not require a demonstration of the elimination or restriction of competition. This is due to the fact that the CCI has come to the conclusion that the "Consumer Act" does not mandate that this demonstration be provided. It would appear, based on the decision that the CCI made in the NSE case[104], that "neither statute

[102]"The FTC's consumer education efforts serve this purpose in part."
[103]Section 4, The Competition Act
[104]Manoj K. Sheth v. NSE, (Case No. 35 of 2019)

applied a strict effects-based criterion." This is the conclusion that may be drawn from the finding. In spite of the fact that this is unquestionably the case for the "Consumer Act", which mandates that a consumer must have suffered direct injury prior to the issuance of stop-and-desist and compensation orders, the CCI's decisional practice with regard to "Sec. 4 of the Competition Act" does not appear to reflect an effects-based criterion for enforcement, as stated in NSE. This is despite the fact that the "Consumer Act" requires the infliction of direct harm on a consumer prior to the issuance of cease-and- As a result, it would appear that without requiring proof of harm to customers or competitors, the "Consumer Act and the Competition Act" are implemented in the context of RTPs. This is so even though providing such proof is not strictly necessary. Although it was never the aim of the "Consumer Act" to examine any potential harm to a group of consumers, "Section 18 of the Competition Act's" broad mandate, which requires the CCI to eliminate practices that undermine competition, foster and maintain competition, protect consumers' interests, and guarantee other participants' freedom of trade in Indian markets, makes a compelling case for a rule of reason approach. According to "Section 5 of the Competition Act", the CCI must end any practices that: "Whether or not such an interpretation is supported by "the Competition Act" will be investigated in the next paragraph."

(b) Interests of consumers

The manner in which the customer is served is another another significant point of differentiation between the two Acts. According to the "Competition Act," those who buy products or services are considered consumers, regardless of whether they intend to use the item for a 'commercial purpose'[105], resell it, or use it for their own personal needs. This is in accordance with the preamble of the Act, which instructs the CCI to "prevent practices having an adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers, and to ensure freedom of trade carried on by other participants in markets, in India."[106] In contrast to the MRTPA, "the Competition Act" does not impose a need that the adjudication apparatus be activated by a consumer in order for it to take effect.[107] A person who makes purchases of products or services but does not do so for the purpose of running a business is considered a customer under the "Consumer Act". This illustrates that the goal of the "Consumer Act" is to defend the interests of final consumers, as opposed to the

[105]Competition Policy by Kovacic, p. 103.
[106]See William Page's Remarks at the FTC Workshop on the FTC Act's Section 5 as a Competition Statute, Trans. 99 (Oct. 17, 2008)
[107]References: FTC, International Organization for Competition and Consumer Protection

interests of other dealers engaging in a different trade. This disparity is made abundantly obvious by the functions for the redress of grievances that are outlined in both legislation as well as the addressability of their orders.

The “Competition Act” handles consumer welfare indirectly by ensuring that efficiency are encouraged and that customers have access to a greater variety of options, whereas the “Consumer Act” resolves consumer claims directly against traders. In actual practice, we find that the line between these two concepts is frequently difficult to draw. The DLF case is a key illustration of how direct regulation can benefit consumers in a meaningful way.[108]Several apartment owners have launched a lawsuit against DLF, claiming that the company's dominant market position is the result of abusive business practices, such as the inclusion of onerous terms and conditions in the company's standard form Apartment Buyer's Agreement. Other stipulations included additional fees and DLF's authority to change the complex's super area without consulting allottees. The layout and type of usage of the apartment complex may be changed at DLF's discretion without the consent of unit allottees. In addition to this, the complaint alleged that DLF had acted in an unfair manner toward apartment allottees by imposing stipulations on them. The Competition Commission of India (CCI) issued a final order in which it fined DLF 6.3 billion rupees and ordered it to stop "formulating" and "imposing" "unfair" terms in its agreements with buyers in Gurgaon. The CCI also fined DLF 6.3 billion rupees. The CCI likewise instructed DLF to alter the agreements it had with purchasers. The abuse that was carried out by DLF was referred to as "unfair" and "even exploitative" in the order that was issued.

(c) Regulation of unfair trade practices

It is also noteworthy that UTPs have been removed from the ambit of the “Competition Act's” jurisdiction. In the beginning, the Sachar Committee suggested keeping UTPs in the MRTPA despite the fact that these "practices were likely to inflict grave loss or injury to many consumers."[109] On the other hand, the “Competition Act” does not have a concept of UTPs in the same meaning that it is interpreted in the MRTPA. Although it is used in the “Competition Act”, the word "unfair" refers to acts that are considered to be restrictive to commerce and are carried out by dominant entities in accordance with Section 4. According to the “Competition

[108]A Conversation with Tim Muris and Bob Pitofsky about the FTC's Numerous Tools, More Than Enforcement: The FTC's Many Tools, 72 ANTITRUST L.J. 773, 780-81 (2005) (Former Chairman Robert Pitofsky said that enhancing consumer welfare is the overarching goal of the FTC's dual enforcement regimes.)
[109]The Real Estate (Regulation And Development) Act, 2016

Act", a "dominant entity" is one "that enjoys a position of strength in a relevant market that enables it to (i) operate independently of competition forces and (ii) affect its competitors, consumers, or the relevant market in its favor." This definition was derived from the concept of "position of strength." When purchasing or selling products or services, it is against the law to impose an unfair price or condition, as this is prohibited by "Section 4 of the Competition Act". The "Consumer Act" does not include a definition for the word 'unfair,' but it does prioritize the regulation of UTPs based on their consequences rather than their forms. As an example, in the cases involving Unitech,[110] the NCDRF held that "practices may be deemed to be UTPs even though it is possible that they are not expressly covered in Section 2(r) of the Consumer Act." "This is because the practices relate to adopting unfair means and methods in relation to the consumer. As we have demonstrated in the preceding section on the NSE case, the CCI's enforcement practice does not suggest an approach that prioritizes effects above form." However, the Competition Appellate Tribunal was presented with a distinct case in which they were asked to assess this particular definition of the word "unfair." In the case of Schott Glass44, the Competition Appellate Tribunal investigated whether or not Section 4(2)(a) of the Act was violated by the implementation of "unfair and discriminatory terms of price and conditions of supply". The Appellate Tribunal came to the conclusion that "the imposition of terms by a dominant corporation could not be considered unfair because there was no evidence that the terms had any influence on the market or on the consumers." Therefore, it is necessary for there to be a divergence between the encompassing "effects over form" handling of UTPs that is included in the "Consumer Act" and the understanding of the term "unfair" found in the "Competition Act". The precedent set by the CCI's decisional process has distinguished a number of previous UTP instances.

In the case of **Sanjeev Pandey v. Mahendra&Mahendra& Ors.**[111], the complainant asserted that the opposing parties introduced a particular model of car in several states, denying the advantage of higher sales to distributors. After observing that the "Consumer Act" provides a more appropriate path to attack UTPs, the CCI decided to bring the investigation to a stop. In a case that was very similar, **SubhashYadav v. Force Motor Ltd and Ors**[112]dealt with a consumer's complaint that stemmed from the purchase of a vehicle from the opposing party. According to the information provided by the informant, the engine began to overheat after the air conditioner was turned on. According to the insider, the adversary had swapped out the

[110]ibid
[111]Case No 17 of 2012.
[112]Case No. 32 of 2012.

vehicle's Daimler engine for a Mercedes one. This motor is often found in Mercedes SUVs that cost 300,000 rupees, but it was found in a Force One vehicle that cost over a million. It was also claimed that the competitor cornered the Indian automobile market by offering their product at a price far lower than that of their competitors. This was done in order to achieve a dominant position. The Competition and Consumer Commission (CCI) did not take action because it came to the conclusion that the provision of a grievance redress mechanism to the consumer under the "Consumer Act" is more important than the maintenance of competitive markets for the benefit of consumers more generally under the "Competition Act". The CCI came to this conclusion after declining to get involved in the situation. These instances actually brought fundamental consumer concerns to the attention of the CCI.

CONCLUSION

There is a substantial amount of overlap between consumer protection policy and law on the one hand, and competition policy and law on the other. An efficient competition policy reduces obstacles to entry and exit and creates an atmosphere that is favorable to encouraging entrepreneurial activity. This not only gives room for the expansion of small and medium businesses but also leads to an increase in employment opportunities. Competition law focuses on preserving the process of competition between businesses and works to find solutions to behavioral or structural issues so that there can be healthy competition once again in the market. As a consequence of this, there will be an increase in economic efficiency, as well as an increase in innovation and improvement in the welfare of consumers. As a result, consumers have access to a broader variety of options and a bigger number of products that are readily available at competitive rates. Contrarily, consumer protection policy and regulation focus on improving market conditions so that consumers can more freely exercise their right to make their own decisions about which goods and services to purchase.Therefore, the two fields of study concentrate their attention on distinct market dysfunctions and propose unique solutions to address those dysfunctions. Nonetheless, the overarching goals of each are the same: to preserve competitive, well-functioning markets that prioritize the welfare of customers. The two areas of study complement and strengthen one another.

CHAPTER 8

ANIMAL CRUELTY AN EMERGING CRIME IN INDIA: A CRITICAL STUDY

Vishal Sagar[113], Ms Anuradha[114]

INTRODUCTION

"Animal welfare" pertains to an animal's life quality and how well it adapts to its conditions and surroundings. It refers to man's relationship with the natural world. Since the dawn of time, people have been recognized to civilise animals. Animals are regarded as gods and goddesses in India, in addition to being employed for husbandry and agriculture. The welfare of animals is addressed in both the Indian Constitution and other laws. Aside from this, the Indian Supreme Court has regularly recognized the rights of animals. Despite India's efforts to safeguard and defend the rights of animals, animal cruelty is prevalent throughout the country. On a daily basis, there are countless instances of animal abuse that go unreported. The Central Government has enacted a number of legislation in the framework of safeguarding the rights of animals. As we all know, wildlife conservation began with the Ashoka dynasty, when he forbade the animal slaughter in his dominion[115].

There was an ethos of animal respect since animals had feelings, sentiments, pain, and the right to exist as god's creatures. Cruelty to Animals refers to animal mistreatment that is wilfully perpetrated on animals for monetary benefit. As Mahatma Gandhi properly stated, a nation's grandeur and ethical advancement may be assessed by how it treats animals. Animals are consistently victimised by humans, whether they are domesticated or wild. "Performing animals" are wild creatures that are kept captive for people's entertainment in places like zoos and circuses. Inhumane treatment of performing animals is common, but it is not restricted to that realm. Cruelty to animals is widespread, since mammals of all kinds, regardless of their characteristics, are exposed to brutality in many ways.

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[115]Akshita Gupta, "Instances of animal cruelty in India"

Animal Cruelty refers to any usage or treating animals that is unnecessarily cruel, regardless as to whether the conduct is illegal. “Animal cruelty” is described as putting animals in a situation where they are afraid, helpless, or terrorised. People mistakenly believe that individuals have a right to the lives of animals and can treat them as they see fit. Every day, hundreds of animals are killed as a result of the dehumanisation, cruelty, and savagery that are routinely inflicted on animals. Animals are sentient animals capable of experiencing love and loyalty, and it is the responsibility of all humans to ensure their health and survival. Animal cruelty cases are growing on a regular basis, and the motives for these deaths are unknown. Animals are slaughtered and mutilated for personal pleasure or entertainment.

TYPES OF ANIMAL ABUSE

Sexual Abuse (Bestiality):

Sexual activity between a person and a non-human is referred to as “bestiality” (animal). It basically refers to a human having sexual contact with an animal in a degrading manner. Animal wrath is in the headlines a lot these days, and it's horrifying and unnerving. It's no longer an once-in-a-lifetime occurrence. In July 2018, eight guys gang-raped a pregnant goat in Haryana, Gujarat. A 35-year-old man has also been accused of having sexual intercourse with a female dog. A man employed there as a worker was guilty for the simultaneous sexual assaults of three pregnant cows that occurred in Vadodara. These occurrences reflect humanity's daily deterioration into irrationality. Animals would not have the same rights as citizens, and as a result, many people see their lives as less significant. 60 per cent of female who have experienced domestic violence said their spouses have a record of murdering or injuring animals[116].

Physical Abuse in the Home:

This is a type of animal abuse in which the violence is done on purpose to the animals. The purpose is to cause the animal great pain, suffering, and emotional distress. Animals who are subjected to physical aggressiveness feel controlled, fearful, and terrified. Many individuals are unwilling to show affection and love to wildlife. Hitting, slashing, beating, neglecting, ignoring, and burning them are all examples of domestic abuse. If a male can hit, assault, or

[116]Khushi Goyal, “AN ANALYSIS ON ANIMAL CRUELTY IN INDIA” Vaidha Legal, 15 November 2021

harm his wife, he's likely to do the similar to his dog. One of the worst incidents of this kind happened in 2016. In Chennai, India, a 5-month-old puppy was hurled from the roof of a medical student's terrace. Despite the fact that the dog survived, it had multiple serious and internal bleeding[117].

Animal Abuse on a Large Scale:

Animal conflict, such as dog fighting, animal slaughter, and cockfighting, is an example of organised animal cruelty that is done largely for entertainment purposes. It's a type of simulated battle in which animals are taught to fight one other fiercely. Wildlife either die or suffer terribly at the end of their lives. Because such fights are usually held underground, authorities are usually unaware of them. Because of their secret character, such wars are difficult to detect.

SOME RECENT INSTANCES

The horrific shooting of a 15-year-old pregnant elephant in Kerala has prompted a worldwide uproar. On May 12, 2020, a pregnant elephant that had ventured away from the "Silent Valley Rainforest" in search of food ended up assaulting a nearby settlement. Wilson, the culprit, is accused of giving the elephant a coconut containing buried explosives. When she bit into the apple, it fractured in her mouth, causing her considerable agony and suffering. Her jaw was fractured, and her internal organs were severely damaged as a result of the explosion that occurred in her mouth. After the attack, the elephant limped around in severe pain for the next two weeks. Nobody went above and above to help her. The elephant arrived at the "Velliyar river in Malappuram" on May 25, 2020, and writhed in agony there for the next two days. The attacker was well aware that the pregnant elephant was experiencing considerable pain. Nonetheless, they did not demonstrate any concern or help. On May 27, 2020, the dissatisfied elephant fell into the river with her head buried and ultimately committed suicide by drowning. The accused stated that combustible fruits were used as bait to trap wild animals; yet, it is unethical to intend to cause the animal such severe pain. It is vital that legislation be implemented to protect diverse species from such heinous acts of animal cruelty, as they are abhorrent.

[117] Ibid

In September 2020, "The Shyamla Hills police station in Bhopal" detained adolescents after an online video of a guy throwing a pet into a lake went viral. The same individual uploaded the video. Animal rights activists filed a complaint under "Section 429 of the Indian Penal Code (IPC)" and other provisions of the "Prevention of Cruelty to Animals Act" with "Bhopal Deputy Inspector General (DIG) of Police Irshad Wali." This caused the submitting of fees in opposition to Irshad Wali, the Deputy Inspector General (DIG) of Police for the metropolis of Bhopal. The incident came about on VIP Road, which connects the antique metropolis and the brand new metropolis, while a man threw a stray domestic dog into Upper Lake at the same time as filming a social media-shared video. Eventually, the video become shared online. In the video that has long gone viral, the person may be visible beaming and watching the man or woman filming him at the same time as sitting at the sidewalks close to a lake with inside the overdue hours. Then, he alternatives up one of the puppies racing round and tosses it into the water. Suspect Salman acknowledged that he made an error while speaking to the media while in police custody. He claimed that he recorded the video for his own entertainment. He apologised for his behaviour while standing with his hands over his ears in front of the television camera.[118]

"Gurinder Singh," a 26-year-old man from Kapurthala in the Indian state of Punjab, was hauled into custody after being captured on camera intentionally running over a stray dog. There were twelve creatures that needed to be rescued from his residence. "The detention occurred a day after BJP MP and animal rights activist Maneka Gandhi shared a video on Twitter of him reportedly running his car over a dog, causing it tremendous agony, and then causing it to bleed to death." The video got considerable attention on social media. "The arrest occurred a day after the arrest of Maneka Gandhi, a member of the BJP and an animal rights activist."

The dog was witnessed wobbling in the direction of the sidewalk while his body sat in a pool of blood that had collected on the asphalt. Further investigation revealed that the defendant was a dog breeder and dealer who supplied dogfighting rings with dogs. Local residents contacted "People For Animals (PFA)" activists, which led to the filing of a FIR. The vehicle identifying number collected on CCTV of Singh's vehicle enabled his identification and location to be determined. Singh was prosecuted in accordance with the applicable "sections of the

[118]Akshita Gupta, “Instances of animal cruelty in India”

Prevention of Cruelty to Animals Act and the Indian Penal Code" after the court received a complaint from a member of People for Animals.[119]

In the Krishnagiri district of Tamil Nadu, three intoxicated men stoned to death a "Jallikattu bull." The incident occurred on June 5th, but was not released until Thursday when a video of the animal's aggressive behaviour went viral on social media. The bull belonged to his Mr. K. Vetrivel, 35, of Patparapatti, who was a village administrator in Chanasandra (VAO). After more than two years of searching for the dead cow, he finally found it. Vetrivel claims the bull participated in several "Jalikattu" events throughout its life. When Vetrivel arrived at the facility, he saw the bull dead. Both the bull's horns and muzzle were injured in some way. Vetribel believed that he was killed by hitting a tree as a result of the clash.

The body was then transported to a mortuary so that an autopsy could be done prior to its burial. Vetrivel seen a video of three intoxicated men throwing rocks at a dead bull on a social networking website. The stones had an effect on the bull, and it grew agitated after being hit by them. Its horns were broken when it attempted to attack the three intoxicated individuals who were disturbing it. After the investigation into the FIR lodged against them, none of them were taken into custody.

LEGISLATIONS IN INDIA

The Indian Parliament enacted the "Prevention of Animal Abuse Act" in 1960 to protect animals from unnecessary cruelty and violence. The formal name of this statute is "The Prevention of Cruelty to Animals Act of 1960." It explains the behaviours and actions deemed cruel to animals, as well as the repercussions linked with these actions. Section 11 of the Animal Cruelty Act of 1960 details the principal offences that are considered cruel to animals.

Each and every violation outlined in "Section 11 of the Act" is deemed a criminal crime. A first-time offender risks a fine of approximately ten rupees in addition to a larger fine of fifty rupees. For a second crime committed within three years of the first, the offender risks a minimum fine of 25 rupees, which may be increased to 50 rupees, a jail term of three months, or both, depending on the option they pick. Other portions of the law address topics such as

[119]Akshita Gupta, “Instances of animal cruelty in India”

restricting the practice of phooka (Section 12), legislating the killing of animals in suffering (Section 13), and regulating animal testing and experimentation (Section 14 of the act).[120]

During the approaching monsoon session of the legislature, parliamentarians will face heightened pressure to revise the "Prevention of Cruelty to Animals Act," which has been on the books for decades. The “Animal Cruelty Prevention Act” was enacted in 1960 and went into operation in 1974, notwithstanding the opinion of animal rights organisations that the penalties are, at best, "minimal." This law, which stipulates fines and/or restitution for a number of offences, including animal cruelty, was enacted in 1960. The maximum punishment for a first-time offender under this strict regulation is fifty rupees. The law is quite punishing. Organisations working for the rights of animals are using the hashtag #NoMore50 to demand for a reform in the law that would make cruel treatment of animals a crime. The Union Ministry of Fisheries, Animal Husbandry, and Dairy made a request to alter the 60-year-old act in February of this year.

“Despite the fact that the proposal was submitted to parliament during this session, no action was taken. As a direct result, animal rights groups are coordinating efforts ahead of the start of a new legislative session to lobby for passage of these laws. Previous Changes: The law has never changed in the past. According to Chini Krishna, former deputy chairman of AWBI now the Ministry of Environment, Forests and Climate Change, the Indian Animal Welfare Board has drafted the Animal Welfare Act and submitted it to the Ministry of Environment. Did. This information is provided by his website of the Animal Welfare Board of India”. The administration, on the other hand, is doing nothing. In the past, mistreatment with fines of Rs.10 to Rs.50 was considered a crime and punished accordingly. This includes common acts such as kicking, punching, provoking, overloading, overpowering, overpowering, as well as mutilating animals. Instead, the proposed law stipulates that a fine of up to Rs 75,000 or three times the value of the animal can be imposed if the actions of an individual or group cause the animal's death..

“**THE WILDLIFE PROTECTION ACT OF 1972**”

“The Wildlife Protection Act” was passed by the Indian Parliament on September 9, 1972. It is divided into sixty-six sections and six distinct schedules. The legislation's principal purpose

[120]Khushi Goyal, “AN ANALYSIS ON ANIMAL CRUELTY IN INDIA” Vaidha Legal, 15 November 2021

was to safeguard animals, plants, and biodiversity. Additionally, it tried to reduce the amount of unnecessary animal suffering. It offers protection to the natural species of the planet. Priority was given to animal welfare during the legislative process that led to the passage of this statute. Section 50 defines a person as one who is allowed by the director, chief wildlife warden, forest officer, or law enforcement official not below the level of sub inspector to incarcerate any individual without a warrant. To exercise this jurisdiction, the officer must have valid cause and reason to suspect that the individual has committed an act that causes harm to animals. According to "Section 51(1) of the Wildlife Protection Act of 1972", anyone who knowingly violates any provision of the act or any rule or order issued thereunder is guilty of an offence against the act and, if convicted, faces up to three years in prison, a $25,000 fine, or both, depending on the severity of the violation. This provision was included in the 1972 Wildlife Protection Act, which was signed into law. It is prohibited under Section 38 of the Act to harass or injure wildlife (J).[121]

SOME PROVISIONS OF THE CONSTITUTION OF INDIA

"Part IV of the Constitution" contains the "Directive Principles of State Policy", which include Article 48, "which permits the state to manage agriculture and animal husbandry along modern and scientific lines, as well as protect breeds and prohibit the slaughter of cows, calves, and other milch and draught animals". "Part IV of the Constitution" contains the "Directive Principles of State Policy".

"Article 48A of the Constitution" requires the state to "make every effort to protect and defend the environment, the forest, and the wildlife, as well as to maintain and safeguard the environment, the forest, and the wildlife".

"Article 51A(g) of Section IV A of the Constitution" declares that every individual possesses "fundamental rights". These "essential basic rights" include the obligation to preserve and enhance the natural environment. According to "Article 246 read with the Seventh Schedule of the Constitution, the Indian Constitution" also allows parliamentary and state legislators the right to pass legislation prohibiting animal cruelty and protecting wild birds and animals. This is mentioned in "Article 246 read with the Seventh Schedule of the Constitution". Article 243G

[121]Vaniadhana, "A Study On Crime Against Animals And Laws That Prevalent To Combat This Issue", Legal Services India

and the Eleventh Schedule confer upon the Panchayat the authority to make legislation controlling animal husbandry, dairying, and poultry farming, respectively.

"Article 243W", when read in connection with the "Twelfth Schedule of the Constitution", allows towns the right to create rules for cattle pounds and animal cruelty protection.

"Indian Penal Code 1860": In accordance with "Section 428 of the Indian Penal Code, 1860", the crime of inflicting hurt by injuring or killing any mammal having a monetary worth of 10 rupees is punishable by two years in prison, a fine, or both.

According to "Section 429 of the Indian Penal Code, 1860", the penalty for killing or wounding any listed species of any value or of fifty rupees or more in value is five years in prison, a fine, or both, depending on the circumstances.[122]

GOVERNMENT INITIATIVES

In 1972, the Indian government-started Undertaking Tiger, a work to safeguard the country's assorted natural life species. It has helped the security of tigers, yet additionally the climate all in all. The undertaking is upheld by the Service of Climate, Ranger service and Environmental Change. There are more than 48 tiger safe-havens in north of 17 locales, each with an alternate mission, including: B. Assess the quantity of tigers and the nature of their current circumstance. The Public Untamed life Commission has suggested the development of a Tiger Team to regulate the cross country execution of the drive. One way to deal with estimating the adequacy of the drive is to consider the way that tiger numbers have expanded from 268 out of 9 stores in 1972 to more than 2,000 of every 2016.

The Indian government launched "Project Elephant" in 1992 in an effort to both protect elephants and their habitats and develop elephants in a variety of ways. In addition, it takes into account concerns over conflict and violence, as well as measures to improve elephant protections and prevent their illegal slaughter.

The Crocodile Conservation Project is one of the Government of India's successful conservation efforts to protect Indian crocodiles. Crocodiles are an endangered species. The

[122]Akshita Gupta, "Instances of animal cruelty in India"

goal of this initiative is to increase wild crocodile populations by increasing breeding populations, expanding habitats and improving management.

As a result of the crocodile conservation initiative, we were able to successfully repopulate the area with “4,000 alligators, 1,800 crocodiles, and 1,500 saltwater crocodiles”.

The Olive Ridley Turtle Conservation Project was initiated by the Wildlife Institute of India in Dehradun in November 1999. The program targets eleven Indian coastal states, including Orissa, with the objective of lowering the number of marine turtles mistakenly killed by focusing on the reproduction of the animals and safeguarding their habitat. In addition, the Indian government has initiated other programs, including “the Indian Rhino Vision 2020”, “Project Hangul 1970”, and “Project Snow Leopard 2019”.[123]

LANDMARK JUDGEMENTS

1. **“People for Ethical Treatment of Animals v. Union of India”[124]**

   In this case, the Bombay High Court ruled that any film intending to utilize animals in its production must first obtain a “No Objection Certificate” (NOC) from the “Indian Animal Welfare Board”.

   PETA has appealed the Bombay High Court's decision to issue a certificate of censorship to a film titled "Taj Mahal" in compliance with the 1952 “Cinematography Act”. The challenge was presented as a Petition to Issue Writ. Affirmed under Article 51A (g) of the DPSPs and addressed in the 1960 Prevention of Cruelty to Animals Act, according to PETA, the protection of animal welfare is both a constitutional objective and a subject of legislation. According to the Entertainment and Television Association (ETA), a film that wants to utilize an animal inappropriately must first obtain a certificate of no objection from the “Animal Welfare Board of India”. Before the Central Board of Censure may award the film censorship certification, this is a crucial criteria that must be satisfied.

   In this occasion, the High Court sided with PETA and ruled in their favor, stating that any film wishing to use animals must first obtain certification from the “Animal Welfare Board of India”. This certification must include the Performing Animals

[123] Ibid
[124] Writ Petition (PIL) No. 2490 of 2004

Registration Rules, 2001 standards, which are of the utmost importance and must accompany every video. Additionally, certification must be renewed annually.

This 2006 ruling by the High Court of Bombay served to prevent mistreatment or inhumane treatment of human beings portrayed as non-living beings for the duration of filming, which can last several hours. The earlier quoted judgment from the Bombay High Court worked to safeguard animals from mistreatment or cruel treatment. Simultaneously, filmmakers were significantly more conscientious regarding their treatment of animals on and off the set. They provided them with food, drink, and a place to live, and ensured that none of the crew members mistreated them, including not being cruel.

2. **"Karnail Singh and others vs. the State of Haryana"[125]**

The Supreme Court's decision to recognize animal rights as fundamental rights was a landmark point in the development of the law.

The lawsuit focuses on the welfare of cows, but the ruling applies to other animals, birds, and aquatic species. The following is said by Justice Rajiv Sharma in his decision: The entirety of the animal kingdom, including both terrestrial and aquatic animals, are regarded as legal individuals with separate personalities. These creatures are considered to have rights, responsibilities, and obligations comparable to those of a living person. Consequently, individuals in loco parentis are being announced as the human face for animal protection in the state of Haryana, i.e., the people of Haryana. The parens patriae principle, which argues that the state has a responsibility to protect defenceless individuals, has lately been broadened to encompass non-humans.

3. **"N.R. Nair and Ors. v. Union of India and Ors"[126]**

The court found that the rights and obligations contained in the Constitution extend to animals as well as humans. During the course of this appeal, the issue of special leave by the Kerala High Court was brought before the Supreme Court as an important issue for consideration. The Kerala High Court ruled that bears, monkeys, tigers, leopards and lions are not allowed to be taught or displayed as recreational animals, upholding

[125]CRR-533-2013
[126]Civil Appeal Nos. 3609-3620 of 2001

the ministry's statement.The most important part of the case was issued under Section 22 of the Cruelty to Animals Act of 1960.

As a direct result, the Indian Circus Society has filed a complaint with the Delhi High Court to contest this notice. After the notification was published, additional law exempting dogs from the aforementioned prohibition was enacted. The Indian government then created a commission to investigate the situation. The aforementioned committee members have prepared a comprehensive report in response to the contested notifications. Section 22 of the PCA of 1960 prohibits the physical training of bears, monkeys, tigers, pumas, and lions, according to these notices.

This notification was subsequently challenged in the High Court of Kerala, and on 6.6.2000, the High Court of Kerala delivered a judgment affirming the validity of the notification issued by the aforementioned committee. The notification was issued by the committee previously indicated. In this appeal, the issue of whether or not Section 22 complies with constitutional standards was once again raised. According to the Supreme Court, animals are routinely abused and then confined to the four walls of a chamber, which limits their freedom of movement and confines them. Animals are frequently subjected to torture, following which they are frequently subjected to torture and confinement. The Supreme Court rejected the appellants' petition for the simple reason that Article 19(1)(g), which provides that a person has the right to own any trade or enterprise, had not been violated.

4. **"Animal Welfare Board of India vs. A Nagaraja and Others"[127]**

Bulls are not intended to be utilized as performance animals. The Supreme Court has ruled that Jallikattu, along with other forms of animal competition such as racing and fighting, are illegal. The rules of the "Prevention of Cruelty to Animals Act (PCA) of 1960"

, which make it illegal to put animals to unnecessary pain and suffering, were cited by the Supreme Court when it ruled to ban jallikattu in 2014. According to the ruling of the Honorable Court, which referenced Sections 3 and 11, all human-instigated animal battles, including those conducted under the cover of old practices, are forbidden. In addition, the Court made a number of suggestions, one of which was a rewrite of the PCA Act's fines and sanctions to make them a more effective deterrence in cases

[127]595 (2014) 7 SCC

involving the cruel treatment of animals. (TBI BLOGS: Seven Historic Decisions That Won Major Victories for Animal Welfare in India).

5. **"Shri. Ajay Madhusudan Marathe Vs. New Sarvodaya CHS Ltd"[128]**

   The Consumer Court of Delhi determined that a society does not have the authority to prevent its members from having pets or from purchasing pet-related goods and services from private businesses. A tenant who claimed his apartment's co-op society had approved a resolution prohibiting dogs from using the elevators petitioned the Consumer Court, which finally ruled in the tenant's favor. The organization that issued this determination indicated that the dog was not a client, that the dog's usage of the elevator could lead to the spread of disease, and that the dog would therefore be prohibited from utilizing the society's amenities. The court determined that, as a resident of the housing society, the dog's owner qualified as a customer and had the legal right to file a complaint with the Consumer Court.

6. **"Ozair Hussain Vs. Union of India"[129]**

   In its recent judgment, the Supreme Court ruled that the packaging of food, pharmaceuticals, and cosmetics must bear either a green circle to indicate the product's vegetarian origin or a red circle to show the product's non-vegetarian origin. In accordance with Article 19(1) of the Indian Constitution and "Article 10(2) of the International Covenant on Civil and Political Rights", the High Court of Delhi ruled that information regarding the origins of goods such as food, drugs (with the exception of those considered health necessities), and cosmetics must be included on the packaging of those goods. Any animal-based product that does not contain milk or dairy products must be marked with a brown circle surrounded by a square border. This marking is a legal requirement.

7. **Varaaki v. Union of India and others[130]**

   On September 28, 2016, a two-judge panel from the Supreme Court rendered a decision in this matter. The judges were the then-President of the Supreme Court, H.L. Dattu, and Supreme Court Justice Amitava Roy. The judges elected not to address the sensitive

[128]First Appeal No. 676 of 2009
[129]Civil Writ Petition No. 837 of 2001
[130]Writ Petition (C) No. 689 of 2015

religious considerations in their decision. In this particular religious ceremony, gods and goddesses were appeased by giving them with animals as offerings. The court determined that the Constitution prohibits the killing of animals in the name of religion for any and all reasons. The court reasoned that this method constitutes a clear instance of cruelty to wild animals and violates the legal norms contained in the 1960 Animal Cruelty Prevention Act.

Varaaki, a journalist based in Chennai, presented the Public Interest Litigation. The Supreme Court dismissed without delay the journalist's public interest action (PIL). The Supreme Court concluded that it did not have the authority to issue a notice forbidding the slaughter and killing of animals as a religious rite because the practice had already been legalized. The Court reasoned that it lacked the authority to issue the notice as the practice had already been approved. The Court, on the other hand, rejected the PIL submitted by the Petitioner. Referring to the religious practice of animal sacrifice, Chief Justice Dattu noted that the Prevention of Cruelty to Animals Act permits "such freedom" (Tajnani).

CONCLUSION

All living things, including humans and animals, are capable of experiencing pain. Only a small minority of folks feel bound to speak out against the heinous exploitation of vulnerable animals. As a form of vengeance, I made an attempt to draw attention to the numerous ways in which animals are abused, as well as the repulsive rituals and practices that are carried out around the globe. Everyone should recognize that all life, whether human or animal, has worth. People abuse their authority and lack compassion or regard for the welfare of animals. As a direct result of not having any rights or a voice to defend them from cruel treatment, animals are compelled to endure extreme suffering on a regular basis. Just like humans, animals have the right to an existence that is both unpleasant and joyful. As human beings, we are obligated to advocate on behalf of those who cannot do it for themselves.

The laws controlling animals in our country were created several generations ago, and they do not reflect the current economic context. Animal rights activists and non-governmental organizations (NGOs) in India have been advocating for modifications to the country's animal legislation for a considerable amount of time, but the government has yet to take action. In accordance with “Article 51A(g) of the Indian Constitution”, it is also our obligation to

safeguard and defend the rights of animals. The dramatic increase in animal cruelty over time can be linked to weak enforcement of current laws. By broadening the interpretation of "Article 21 of the Indian Constitution," the country's courts have been a major influence in the struggle to defend animal rights.

Animals are not used for religious devotion, pleasure, or any other activity that would be considered animal cruelty. This type of behavior should be thoroughly probed by the Animal Welfare Board, the executive branch, the judiciary, and any quasi-governmental bodies (NGOs). We are compelled to coexist peacefully with animals because we lack the capability to control their existence.[131]

[131]Vaniadhana, "A Study On Crime Against Animals And Laws That Prevalent To Combat This Issue", Legal Services India, available at <https://www.legalserviceindia.com/legal/article-952-a-study-on-crime-against-animals-and-laws-that-prevalent-to-combat-this-issue.html>

CHAPTER 9

BANK FRAUD, BANK AND ECONOMY

Himanshu Khanna[132], Dr Chander Prasad Singh[133]

ABSTRACT

Since the liberalization of the Indian economy and the reform of the financial sector in 1991, India's banking industry has expanded significantly. However, the banking sector still experiences financial crisis despite being closely regulated by the Reserve Bank of India. Still there is no specific law that deals with the issue on its own, the Indian Penal Code, 1860 has multiple laws that could apply to a given case of banking fraud.

In spite of its importance, banking fraud is a complicated problem in India. The rate at which fraud has increased during the time period under consideration has varied widely. Using secondary data sources like literatures and case studies that include all the players involved in such malpractices, this particular study aims to include the numbers & types of frauds in banking sector & analyze the current financial difficulties, illegal practices in the banking sector due to the scams and frauds.

According to the research, financial fraud has been on the rise, especially at public-sector financial institutions. The Punjab National Bank appeared to be hit the most by the fraud's revelation in 2018 when it first became public knowledge.

This research sheds light on pressing problems like the alarming increase of nonperforming loans (NPAs) in recent years, especially at public sector financial institutions, and offers suggestions for lowering the severity of future banking fraud.

Keywords: Banking Frauds,RBI, Section – 463 IPC, Non-performing assets (NPA), Economic Implications

INTRODUCTION

To put it simply, banking is the mechanism through which financial institutions facilitate the

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transfer of money from their original to their final destination. Banks are defined as institutions that "receive deposits of money from the public, repayable on demand or otherwise, and withdrawal by check, draft, or otherwise for the purpose of lending or investing" (Banking Regulation Act, 1949).

EVOLUTION OF FRAUDS IN BANKS

In the past, fraud was restricted to the circulation of counterfeit money (some of which made its way into the banking system), forged checks (again, a case of duplication and printing of phony security items like cheques, Demand drafts, and Pay Orders), and the granting of loans to well-known individuals without verifying their ability to repay the loan or generate income from the funds borrowed (s). Cybercrime has emerged as a major problem since the introduction of widespread Internet access. These days' bankers have to familiarize themselves with a whole new lexicon of contemporary banking jargon. In place of the hawala transactions of past, benami accounts have emerged, in which the account holder is either completely unaware of the existence of the account or, if aware, is in the dark about the type and amount of the account's transactions

1990 – 1999	**2000 – 2015**
• **Fake Currency**	**Cyber Crime**
• **Check Forgery**	**Benami Accounts**
• **Loan without Diligence**	**KYC Violation**

The effects of fraud extend across the entire global economy. It's a deceitful means of making a profit or acquiring anything you want.

Specifically, fraud is defined by RBI, as "any purposeful act of omission or commission by any person, carried out in the course of a financial transaction or in the books of accounts maintained manually or under computer system in banks, leading into wrongful benefit to any person for a temporary period or otherwise, with or without any monetary loss to the bank."

The words "Banking" and "fraud" are the two components of the term "Banking Fraud." Banking's earliest documented use was for the exchange of currency; today, the term is used interchangeably with the five main activities of receiving deposits, making loans, investing, recouping loans, and facilitating withdrawals.

As used in the law, "fraud" means making a materially false statement of fact with the intent to induce another party to enter into a contract on the basis of that statement, even if the person

making the statement does not believe it to be true. Thus, "fraud" is a broad term that encompasses any action taken with the intent to unfairly benefit one party at the expense of another.

For this reason, the phrase "banking fraud" is used to refer to any kind of fraud perpetrated against a banking institution. Banking fraud can involve any financial product or service provided by a bank, including but not limited to accounts, negotiable instruments, loans, securities, and investments. The bank, a customer, an employee, an outsider, or even two or more parties working together could be accountable for this. Concealment, theft, breach of trust, embezzlement, bribery, conspiracy, forgery, falsification of accounts, cheating, etc. are all means that can be used to perpetrate banking fraud.

Bank fraud has cost India's top private banks almost Rs. 20,523 crores[134] and top PSBs nearly Rs. 1,41,489.6 crore during the past eleven years. NPAs have also been rising, which had a particularly negative effect on the profitability of PSBs.

A number of economic factors, such as the worldwide and domestic recession, have been attributed for the prevalence of risky nonperforming loans (NPAs), but there is also some evidence linking scams and NPAs. Therefore, high levels of nonperforming assets (NPAs) in the banking system are cause for concern, since they indicate financial difficulty among borrowers or inefficiencies in the system's transmission mechanisms. These issues have a significant impact on the Indian economy, and the focused on the analysis of fraud in the Indian banking system in great depth from various perspectives.

LEGAL POINT

The Reserve Bank of India has released an alarming analysis showing that Indian banks have been under-reporting fraud, with 90.6% of the thefts recorded by banks in 2018-19 occurring between the years 2000 and 2018. In its most recent Financial Stability Report, the banks regulator revealed data indicating that between 2013 and 2016, three years, roughly 40 percent of the under-reported thefts occurred.

The RBI noted that there is sometimes a long lag time between when a scam occurs and when it is discovered. It was observed that many of the frauds that have been identified now actually

[134]RBI, Master Cicular for Fraud Classification &reporting (Issued on 1st July 2018)

date back several years. This has resulted in the RBI reevaluating its master guidance on frauds & contemplating new steps to improve detection of fraud and enforcement of rules in a timely fashion.

The proportion of fraud attributable to state-owned financial institutions in 2018–19 was higher than their proportion of total lending. PSU banks' 96% share of total fraud amounts reported at March's end far exceeded the norm of 60.9% for the banking industry as a whole. These figures are a major cause of the stability and growth of the banks vis-a-vis the economy.

FINANCIAL FRAUDS AND IRREGULARITIES IN BANKING SECTOR

Fraud is a deceptive conduct which acquire or aim to gain an advantage over another party. In other words, fraud is an act or omission that is likely to result in wrongful gain for one person and wrongful loss for the other, whether via concealment of facts or otherwise.

The 'fraud' in Black's Law Dictionary means:

- "A knowing misrepresentation on of truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (esp. when the conduct is willful), it may be a crime.
- A misrepresentation made recklessly without belief in its truth to induce another person to act.
- A tort arising from a knowing misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment.
- Unconscionable dealing, esp.in contract law, the unconscientious use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain."[135]

RBI in its Report named "Report of RBI Working Group on Information Security, Electronic Banking, Technology Risk Management and Cyber Frauds defines fraud" [136]as *"A deliberate act of omission or commission by any person, carried out in the course of a banking transaction or in the books of accounts maintained manually or under computer system in banks, resulting into wrongful gain to any person for a temporary period or otherwise, with or without any monetary loss to the bank."*[137]

The definition of 'bank fraud' in Black's Law Dictionary is taken from American legislation

[135]11th edition, Black's Law Dictionary

[136] Report to the Nations on Occupational Fraud and abuse, part of Global Fraud Study 2016 by Association of Certified Fraud Examiners

[137]Ibid

and is as follows:

"The criminal offense of knowingly executing or attempting to execute, a scheme or artifice to defraud a financial institution or to obtain property owned by or under the control of a financial institution, by means of false or fraudulent pretences, representations, or promises."[138]

A bank fraud is a deliberate act of omission or commission committed by any person in the course of a banking transaction or in the books of accounts maintained manually or electronically in a bank, resulting in wrongful gain to any person for a temporary or otherwise, with or without monitory loss to the bank. Bank losses as a result of fraud include losses from robbery, dacoity, burglary, and theft combined. Bank frauds on a practical level encompass all types of embezzlements, misappropriations, & manipulations of negotiable instruments (bills or statements of accounts, securities, drafts, cheques, etc). Misrepresentations, deception, theft, unfair favors, & irregularities are all included in fraud. Many frauds have taken place using mail transfers, telegraphic transfers and bank drafts.

For the purpose of uniformity in reporting by banks to the RBI and in accordance with the provisions of the IPC, the classification of frauds has done by the RBI in the following categories.

(a) Misappropriation of property & criminal breach of trust

(a) Forging documents & instruments, as well as tampering with accounting books.

(b) Negligence and a lack of funds.

(d) Cheating.

(e) Errors in the extension of credit facilities for unlawful gratification.

It is important to note that theft, burglary, and dacoity are not covered by any of the above classifications and must be reported individually to the RBI.

VARIOUS FORMS OF BANKING FRAUD

Widely, the frauds which are reported by banks can be divided into 3 main sub-groups: -

KYC Related

In response to the growing attention on know-your-customer procedures around the world, the Reserve Bank of India (RBI) implemented sweeping changes to how Indian banks handle KYC. Since it now only requires identity documents, introductions are no longer necessary. In addition, it transferred attention from the banks' monetary loss (as a result of frauds) to the

[138] Supra Note 15 at pp. 140-141

banks' reputational loss (by non-compliance). Furthermore, the customer's permission is required to collect any additional information not directly linked to KYC, and any such information must remain confidential and not be used for cross-selling or any other reason without the customer's express permission.

The Reserve Bank of India has outlined what each bank's Know Your Customer policy must include.

I. Acceptance Policy for Customers
II. Methods for Identifying Individual Customers
III. Maintaining a close eye on Financial Deals, and
IV. Handling Risk If you look closely, you'll notice that everything is designed to ensure a trustworthy interaction between you and your bank.

Here are a few common ones:

To avoid paying their fair share of taxes, some people use a complex web of shell accounts to launder their savings. Borrowing money under a false identity (obtained via stealing someone else's identification). In addition to verifying the authenticity of the submitted documents, KYC also verifies that all information provided relates to the same individual.

Advances Related

The major portion of all fraudulent activity in the Indian banking industry involves the advances portfolio. An alarming trend in the banking industry is an increase in incidents of high-value fraud (Rs. 50 crore or more) in accounts financed by consortium or multiple banking arrangements, sometimes involving as many as ten different banks. It's also important to note that public sector banks make up a sizable portion of the total money involved in these transactions.

Fraud involving credit occurs far more often than is necessary because of flaws in the evaluation process, a lack of oversight once funds have been dispersed, and insufficient follow-up.

a. Siphoning of cash occurs when bank loans are used for things other than the business for which they were borrowed.

b. Funds can be misappropriated in a number of ways:

Using restricted operating resources for non-conforming long-term investments

Not all of the money that was dispersed or pulled was used, and the difference wasn't accounted for.

C. Collateral overvaluation or insufficiency Valuation agencies or advocates may help perpetrate fraud by consorting with borrowers to exaggerate security valuation reports if there are no existing restrictions on the due diligence of professionals (Chartered Accountants or financial advisers) assisting borrowers at the time of loan disbursement.
To name a few instances: asset concealment, false reporting, and splatter tactics. The significant lag time in declaring frauds by several banks in circumstances of consortium/multiple funding is another issue that has to be addressed here. RBI has often seen a 12- to 15-month lag in the same case being declared as fraud by different banks, giving the borrower ample time to not only defraud the banking system to a greater extent but also to erase the money trail and change the pitch for the investigative agencies and statutory authorities.

Technology Related
About 65% of all bank fraud incidents reported in 2014 involved some form of technological deception (including but not limited to fraud perpetrated via internet banking, automated teller machines, & other payment channels including debit/credit/prepaid cards).
Banking industry is adopting cutting-edge business and technology to fuel its expansion, but this strategy comes with increased security dangers. These advancements are likely to have made the system more vulnerable and complicated.

Attack surfaces, for instance, have grown in tandem with the use of cloud, social media technologies, mobile and web. Similar as how institutional control over IT systems & access points might have been weakened by the waves of third- party contracting, offshoring & outsourcing driven by a cost-reduction purpose.

These shifts has created a more porous environment for financial institutions to function in, giving fraudsters a larger "attack surface" to work with. Among these are hacking (computer intrusion) and phishing (email fraud) Telephone phishing (Vishing), debit card skimming, computer malware, and fake instruments are all ways that criminals try to get at your personal information.

Given the rapid expansion of the mobile banking industry, we must allocate special attention

and resources to this emerging subset/channel of banking. The reason for this is that all e-Wallets are linked to our personal banking information, where we save our money in the form of debit card, credit card or bank account. The Reserve Bank of India estimates that 22 million of the 589 million people who have bank accounts used mobile banking apps in 2014–2015. According to a PwC study, the total amount of mobile banking transactions has skyrocketed from roughly Rs.1,819 crore in 2011-12 to about Rs.1.02 trillion in 2014-15.

Mobile banking fraud can occur in a few different ways, including through the use of phony apps, faulty SIM swapping, and the mapping of the cell banking app to the wrong mobile number. Threats associated with Mobile Wallets fraud are Money laundering concerns, phony retailers etc.

REPORTING OF BANKING FRAUDS

In July of 1970, RBI mandated that banks disclose instances of fraud. Urban cooperative banks and deposit taking NBFCs registered with RBI were included in the mandate to report fraud instances in 2005-06. The reporting requirements were expanded in March 2012 to include NBFC-ND-SIs (systemically important, non-deposit taking NBFCs) with an asset base of Rs. 100 crore or more. While banks have been required to disclose and track fraud instances electronically since May 2004, UCBs and NBFCs are still required to submit using paper forms.

There is a legal obligation to notify the RBI of any fraud within 21 days of discovery. The Reserve Bank of India has issued directives mandating that all relevant information be compiled and communicated to the Bank's central headquarters.

In addition, the circular said that Zone Managers must still record any event or account as "unresolved" and on account of any suspect of fraud would be reported to the Chief of Vigilance at Corporate Department of any suspected fraud within 7 (seven) days after its discovery to an agency that is directly under their jurisdiction, or any other office such as the Management Control Unit, the Federal Communications Commission, or the Processing Centers found inside their sphere of influence. After that, the Vigilance Division will release a report of frauds in the form of a "Note to ED/CMD" for their guidance. Following that, the Bank's Board of Directors & the RBI would be informed.

PROCEDURE FOR DETECTION OF FRAUD

Some fraud is inevitable despite precautions, albeit its frequency, severity, and frequency of occurrence may all decrease. Just as alertness is crucial for avoiding fraud in the first place, so too is maintaining composure when investigating possible instances of fraud. No matter how challenging the scenario, the officer must maintain his composure and not lose his anger. It IS wise to consider the following procedure.[139]

- Promptly gather all papers, documents, etc. that pertain to the matter at hand. Vouchers and other documents used as evidence in an investigation should be preserved securely.
- All employees of the bank who might have information regarding the fraud's when, where, and how should be questioned and their accounts written down.
- The officer should then attempt to put together, in his own opinion, the most likely sequence of events. If the man who comes next is trustworthy and can be confided in, then you can put your trust in him.

LEGAL REGIME REGULATING BANK AND BANK FRAUD

The word "fraud" is not defined anywhere in the IPC. But, the IPC specifies and punishes many conduct that may contribute to the commission of fraud. The Code simply defines the terms 'fraudulently'[140], 'dishonestly'[141],' and includes the concept of 'fraud' under the offence of 'cheating' [142] , 'forgery' [143] and so on. The Indian Contract Act, 1872 defines fraud comprehensively under Civil Law remedies, while the tort of 'deceit or fraud' is recognized under Tort law. Section 17 ICA (Indian Contract Act, 1872) covers a broad definition of fraud. It refers to a type of agreement in which one party induces the other with deceptive intent to imply certain facts that are not real but lead the other party to believe they are true.

In the case of ***Derry v. Peek***[144], it was stated that "fraud" involves a false statement made knowing or unknowingly, with or without belief in its veracity, or recklessly careless, whether true or false. A fraudulent misrepresentation is a misleading statement made by someone who doesn't believe it's real.

Sections **420** cheating & dishonestly inducing delivery of property, **415**-cheating, **124A** criminal conspiracy, Section **421**- dishonest or fraudulent removal or concealment of property,

[139] R.P. Nainta, "Banking System. Fraud and Leml Control" (2005), page 57, Deep & Deep Publication New Delhi
[140]The Indian Penal Code, 1860 (Section 25)
[141] Ibid., Section 24
[142] Ibid, Section 415
[143] Ibid., Section 463
[144]Derry v. Peek, (1889) LR 14 App Cas 337

and **405** criminal branch of trust, to avoid distribution among creditors are all included in the IPC 1860. As far as these offences are concerned, IPC mentions **464-**making false papers and **463**-forgery as having a punishment that includes imprisonment or the death penalty depending on the circumstances of the offence.

Section 463 of **The IPC** is an important section which deals directly with the offence of Fraud. According to Section 463 of the IPC, anyone who publicly or privately misuses any paper format, computer records, crucial documents, identity cards, etc. or violates any contract is subject to a two-year sentence. It is applicable to all Indian nationals regardless of location or region. The Madras High Court declared in ***Daniel Hailey Walcott And Anr. Vs State***[145] that in order to establish a crime under this clause, the document must be false, dishonestly or fraudulently fabricated, and made with one of the Section 463 specifies the intent. In the case named as ***State Trading Corporation of India Ltd v M/S Millennium wires (P) Ltd & Ors.***[146], it was determined the thing that mere existence of fraud is insufficient; what is required is that the bank be notified of such fraud. The court examined the idea of constructive fraud in ***Oriental Bank Corporation v. John Flentming*.**

The **Banking Regulation Act, 1949** is an important law in India which governs operations of banks. This Act the does not directly address banking frauds, but the provisions of this Act aid in understanding the processes of the banking company, which may aid in understanding the causes of banking fraud.

The **Information Technology Act of 2000**, in addition to amending the Indian Penal Code to include traditional electronic offenses, has established a whole new class of technology offenses, the prevention of which is incidental to the maintenance of a secure electronic environment for e-banking and the prevention of banking frauds and forgeries. Section 94 of the Act also revised the **RBI Act of 1934**. Online banking frauds are committed in a variety of ways, including digital forgeries, illegal access to computer networks, data manipulation, skimming, & online identity theft & impersonation.

Since past few years major incidents of frauds has taken place in banking sector which has shocked the country and these are:

A. PNB Case

The state-run lender PNB (in year 2018) startled the whole Indian banking industry

[145] Daniel Hailey Walcott &Anr. Vs State, AIR 1968 Mad 349

[146] State Trading Corporation of India Ltd v M/S Millennium wires Ltd & Ors., ILR (2014) 2 Del 1045.

when it revealed that it had been cheated by billionaire jewellerNirav Modi, his business partner MehulChoksi (owner of the Gitanjali Gems at PNB's Brady House Branch (Mumbai)) & his family members of Rs 11,400 crore. Following the scam, PNB workers, including general managers, were suspended for their probable inclusion in the largest financial fraud in Indian history. MehulChoksi's&Nirav Modi's passports has also been revoked by the authorities. Following the discovery of a Rs 12,000 crore fraud allegedly committed by Nirav Modi, the PNB discovered another 91 million fraud in March 2018. It concerns personnel from a little-known company called Chandri Paper and Allied Products Pvt Ltd. The fraud was discovered at the PNB's Brady House Branch in Mumbai, where the Nirav Modi scandal took place. The Punjab National Bank (PNB) reported another borrowing scam of Rs 38.05 billion ($556 million) in Bhushan Power & Steel Ltd.'s account to the Reserve Bank of India in 2019. (RBI). The corporation has misappropriated bank scams and altered books of accounts in order to raise financing from consortium lending banks.

B. Karnataka Bank Fraud Case

On March 28, 2018, private sector lender Karnataka Bank reported a fraud worth Rs 86.47 crore in fund-based working capital facilities extended to Gitanjali Gems Limited, the jewellery network under investigation in connection with the alleged involvement of promoter MehulChoksi in the mega banking scam.

C. Canara Bank

On June 13, 2017, the promoters of a mining business, Abhijeet Group, were arrested for failing to repay loans of Rs 11,000-15,000 crore from 20 banks and financial institutions using the group's 132 shell companies. Abhijeet Group established Jas Infrastructure to offer a contract for the erection, procurement, and construction of a power plant in Bihar to its group firm Abhijeet Projects while abusing loan payments totaling Rs 790 crore from Canara Bank and Vijaya Bank.

D. Rotomac Case

Following the stunning PNB scam, a fraud namely Rotomac fraud (Rs 3,700) was discovered. CBI & the Enforcement Directorate (ED) are investigating Kanpur-based Rotomac Global for allegedly defrauding a consortium of seven banks of Rs 3,700 crore. The investigating agency filed a case against Vikram Kothari and Rahul Kothari,

the business group's directors, for misusing credit sanctions issued by Bank of Baroda (BoB), a consortium bank, at its International Business Branch (IBB) at The Mall Kanpur for a total of Rs 456.63 crore.

E. SBI Fraud Case

The State Bank of India (SBI) is at the centre of a bank fraud involving the Kanishk Gold Pvt Ltd jewellery network (KGPL). The KGPL has been charged by the Enforcement Directorate (ED) and the Central Bureau of Investigation (CBI) with defrauding a consortium of 14 banks totalling Rs 824.15 crore, led by the SBI. Kanishk Gold was charged NileshParekh, the proprietor of the Kolkata-based Shree Ganesh Jewellery House, was arrested on May 8, 2017 in connection with a Rs 2,223 crore loss to a consortium of 25 banks led by the State Bank of India. To avoid import finance recovery, the accused used export finance from one bank & import finance from the other.

IMPACT OF FRAUD ON BANKING SECTOR VIS-À-VIS ECONOMY

There are several examples of fraud occurring in banks on a regular basis that are ignored & covert. Fraud has a direct financial impact as well as harm to the bank's brand and goodwill. A serious deviation and misuse that led to fraud will undoubtedly cast doubt on the institution's traditional methods of protection as well as the viability and usefulness of its guarded technical capabilities. Customers' morale has been damaged by frauds involving ATMs, Internet banking, and mobile banking, which has led to a lack of trust and trustworthiness in these services. The profitability & overall effectiveness of financial services will also be compromised by fraudulent conduct. It can degrade productivity and harm investors' interests, which can lead to an unanticipated rise in the bank's operational and capital risk.

It can significantly impede the expansion of the banking industry by causing instability in liquidity and causing capital adequacy standards to be improperly managed. Even worse, the amount of loan process defaults has gotten so bad that it has put too much pressure on the securitization company.

ECONOMICAL IMPACT OF BANKING FRAUD

Scams involving the financial sector or banks are not confined to any one country's economy. India, meanwhile, has seen a surge in the number of these undesirable foreigners during the

previous three to four decades. In several of these cases, including the recent ones involving Simbhaoli Sugars, Vikram Kothari, &Nirav Modi, as well as the well-known ones involving Subroto Roy, Spectrum Scan, Harshad Mehta, Satyam&KetanParekh, other participants are hampered, and the investigators are left to be suffocated.

Following the recent outbreak of India's largest fraud of bank, which totaled over INR 11,400 crore, But , the economy finally started showing symptoms of warning. There is concern that genuine credit development in the Indian economy could be stifled if authorities tighten their grip on the lending market and treat every potential borrower as if they were a default case. Swindles at financial institutions upset the economy's delicate equilibrium, which can have a negative effect on the stock market.

WHAT's THE IMPACT?

According to a working paper published in 2016 by the Indian Institute of Management (IIM), Bangalore, Indian banks lost more than INR 22,700 crore due to fraud over the course of the preceding three years, and the cost of fraud over the course of the preceding five years can be summed to INR 61,200 crore. When compared to the total credit in the banking system last year (INR 83 lakh crore), the amount of fraud committed represents a negligible fraction.

Due to the interconnected nature of modern economies, the "network externalities" of a failing bank can have far-reaching effects on society. One recent analysis estimated that INR 200,000 crore in additional costs were incurred due to the postponement of 359 infrastructure projects. More time will be needed to complete projects because of the increased monitoring of bank credit disbursement. Because of this, the general public's mood always drops when a financial scam is uncovered, or a bank fails.

SUGGESTIONS

Recently, fraud has been a burden on the banking business, and we need an efficient system to combat fraud. The frauds may be primarily caused by inadequate top management oversight, flawed employee incentive systems, collusion between staff, third-party agencies, corporate borrowers, a lack of effective regulatory systems, a lack of tools and technologies to identify early warning signs of fraud, a lack of awareness among bank staff and customers, and a lack of coordination among various banks in India and abroad. Few of the main causes of frauds & Non-Performing Assets have been attributed to systemic flaws and delays in legal reporting procedures. Some measures need to be taken in order to reduce these frauds.

1. Each bank should have a specialized cell to monitor the company/firm to which they are financing as well as the macroeconomic environment of the relevant industry or market where products are offered. This is separate from the credit officers. The job should be to constantly evaluate rather than just check during on-boarding. This policy would aid in minimizing fraud while also promoting economic development.
2. Re-KYC, when performed rigorously, can also aid in the detection of fraudulent activity, specifically related to liability's side. In fact, employees might be encouraged to follow same. This would aid in the reduction of KYC-related fraud.
3. The government should consider investigating the role of third parties such as chartered accountants, attorneys, auditors, and rating agencies in bank fraud cases and instituting harsh punitive measures to deter future crime. There is also a case to be made for calling into question third-party certification/credentials such as auditors' competency in reviewing accounts containing possibly fraudulent entries.
4. There is no specific legal framework for Banking Fraud. A specific legislation dealing with banking fraud should be made. Measures such as enhancing banks' and financial institutions' regulatory and supervisory frameworks in accordance with global best practices, as well as updating technology for effective fraud detection & efficient customer service.

CONCLUSION

The rapid blurring of the lines between banking and other economic activity is evidenced by the recent RBI decision to provide licences to new private banks and the increase in applications for these licences by various established commercial business houses.

Both the RBI & the Government of India can do much to combat banking fraud. But these efforts will only work if they help build a more reliable banking infrastructure; in fact, fraud is one of the most pressing problems in the financial sector that needs to be addressed right away. However, Banking Fraud is not treated as a distinct crime under the IPC 1860. According to the specifics of each case, various sections of the IPC 1860, may be applicable. This demonstrates that there is now no stand-alone law that specifically and fully addresses banking frauds. Banking fraud is a type of white-collar crime done by greedy people who exploit weaknesses in the banking system or internal procedures.

Banks have been increasingly aware of the need to strengthen fraud risk management in response to rising regulatory obligations and the quantity of fraudulent operations. Forensic

analytical approaches to ascertain the actual level of potential in different processes are scarce. Financial organizations should adopt more disciplined way to manage fraud risk. To address these challenges, the financial sector must collaborate on the development of innovative technical solutions and data analytics to manage the fraud and compliance landscape.

CHAPTER 10

REVENGE PORNOGRAPHY: SOCIO- LEGAL IMPACTS

Sakshi Dhawan[147], Dr Amritpal kaur[148]

ABSTRACT

The purpose of this review is to integrate the current investigations on retribution porn and the unapproved conveyance of physically unequivocal data. Utilizing pertinent pursuit terms, a complete inquiry was finished across five separate data sets. Following these pursuits, 82 distributions were picked for additional assessment as conceivable consideration possibility for the methodical audit. The exploration writing included legitimate and hypothetical fills in as well as observational mental articles. In spite of the significance of this endeavor, the information uncover that there are significant issues with respect to the execution of regulation to forestall vengeance erotic entertainment, in the United States as well as in different countries. This is valid particularly in the United States. Regardless of the way that the definition and estimation of non-consensual sharing can considerably affect the paces of both execution and exploitation associated with this way of behaving, the ways of behaving in issue have been reported in a sizable number of people of the two genders.

Key words: Technology-facilitated sexual violence; sexting coercion; image-based sexual abuse; sharing sexually explicit media

INTRODUCTION

In this paper, we will check out at revenge pornography in more profundity. This investigation will include separating all that into its parts and concocting an unmistakable definition for each. This won't just assist us with studying a subject that hasn't been concentrated on much as of not long ago, however it will likewise ensure we have a current decent comprehension of the point, which will make it more straightforward to make it unlawful necessary when. It's critical

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to focus on this issue since it includes an issue that makes individuals less free when they need to manage it. Emma Holtan's private, personal, and sexual photographs were delivered without her authorization. She recovered control by delivering other photographs with her authorization, which removed the consideration from her alleged disgrace and put it on the way that she didn't give consent for the photographs to be delivered. This is one of a few instances of retribution sexual entertainment that certainly stand out from the media lately. Emma Holten is one individual who's private, close, and sexual photographs were shared without her consent. TizianaCantone, who was a casualty of revenge erotic entertainment and couldn't move away from the consideration and prostitute disgracing she got as a result of it, committed suicide in 2016. She was unable to move away from the consideration and whore disgracing she got in light of the fact that she was a survivor of retribution erotic entertainment. Around the same time, another case that stood out was that of Chantal Rijken. She was unable to find the individual who got it done, so she needed to battle Facebook and a school in court to get client data. This case showed that a culprit's security is preferable safeguarded over a casualty's, since it showed that a casualty's protection is bound to be broken than a culprit's. In the media, the expression "revenge pornography" is frequently utilized erroneously to portray things that are not be guaranteed to vindicate erotic entertainment. This happens regularly. In 2014, when a programmer released personal, private, and sexual photographs of many superstars without their insight during the iCloud hacking emergency, this was what was going on. In light of the standards of this review, this occasion is more similar to "uninvolved revenge pornography" than "revenge pornography."[149]

India's first-ever case of revenge porn was that of **State of West Bengal v. AnimeshBaxi**, a 2018 case, wherein the accused was punished with five years of imprisonment and was imposed a fine of Rs.9000 for publishing and sharing private images and clips of his ex-partner without her consent as revenge porn after she ended the relationship with him. The victim was pressured to share her intimate and sexually explicit images with him on the pretext of marriage and was later blackmailed into uploading the previous pictures to leverage more such pictures from her. The accused even used her phone without permission to get more such pictures. Later when she ended their relationship, the accused uploaded those pictures in a famous adult website

[149]Ahern, N. R., &Mechling, B. (2013). Sexting: Serious problems for youth. Journal of Psychosocial Nursing and Mental Health Services.

revealing the identity of the victim and her father. This judgment directed the state government to treat such a victim as a rape survivor and grant appropriate compensation.

Another instance involved the arrest of an engineer and a law student by Bangalore Police cracking a blackmail racket. The two of them used to download images from social media sites and upload them on porn websites and engaged in blackmailing.

Another recent instance was in the case of **Subhranshu Rout v. The State of Odisha**, wherein the offender and the victim were a couple in a relationship. Once while the victim was alone at her home, the perpetrator went to her house and assaulted her while recording this horrific incident on his cell phone. Later, the perpetrator threatened and blackmailed the victim to not disclose the incident to anyone else he would release the photos and videos to the public. Finally, when the victim narrated the incident to her parents, the perpetrator uploaded all of such photos on Facebook. The Court refused to grant bail to the perpetrator and observed that "allowing such objectionable photos and videos to remain on social media without her consent is a direct affront on a woman's modesty and right to privacy." The Hon'ble Court also emphasised the significance of the 'Right to be Forgotten' (getting the photos deleted from the server permanently) in the context of the right to privacy.

With the rising of such cases, it has also been highlighted the dire need to have trained professionals in the police force who are familiarized with the matters of collection, reception, storage, analysis, and production of electronic evidence. As many times such negligence or no standard protocol weakens the case. This concern was brought to focus on the matter of **Subhendu Nath v. State of West Bengal**, the High Court of Calcutta.

Even beyond India, an article by British Broadcasting Corporation (BBC) News reported a surge in these cases as for the onset of the pandemic and impositions of lockdown. It articulated recent research that stated that one in every seven women has faced the issue and received threats of illegal sharing of their intimate images.

During the 1980s, Hawker started distributing physically unequivocal photos of "authentic" ladies. Nonetheless, not each of the women found in these pictures gave their assent or even realized they were being distributed in the magazine. These pictures would have been shipped off the paper by the exes of the ladies portrayed. It is generally acknowledged that these are the absolute first occurrences of retribution erotic entertainment (to some extent for a bigger scope). It was exhibited that the people were where they may sensibly hope to hold their protection. It is imperative to take note of that there is a major distinction between photos or recordings in which people are depicted bare out in the open and those in which they are depicted exposed in confidential circumstances. There is no such thing as the sensible assumption for security that individuals have in private openly. This implies that the non-consensual exposure of private photographs or movies likewise comprises an infringement of the sensible assumption for security, and is thus more unfavorable to casualties than the non-consensual divulgence of public pictures or movies. Since the Web has become such an unavoidable instrument, the quantity of events of revenge sexual entertainment has expanded decisively. Revenge obscene sites, for example, Tracker Moore's IsAnyoneUp.com and others were notable during the 2010s.[150]

The site is presently not available on the web, yet when it was, "those highlighted on the site are reluctant pornography stars, their photographs presented by vindictive ex-accomplices glad to impart once-appreciated badge of closeness to the world or programmers who broke into email or interpersonal interaction accounts where the noteworthy photographs were hastily put away" This site was in the long run supplanted by others, including, among others, ugotposted.com by Kevin Bollaert. Bollaert was seen as at fault for coercing the survivors of revenge porn whose photos were facilitated on his site using shakedown. As indicated by court filings, Bollaert's site allowed and empowered the posting of unequivocal photos of different people close by recognizing data like names, locations, and connections to Facebook profiles. From that point onward, he sent messages to the casualties by means of a subsequent site, proposing to erase the photographs for an expense of up to $350. The presence of a business opportunity for this kind of erotic entertainment brings about the production of consensual porn intended to look like retribution porn. This, thus, adds to the degree to which the explicit crowd

[150]Harris, A. L. (2011). Media and technology in adolescent sexual education and safety. Journal of Obstetric, Gynecologic & Neonatal Nursing.

sees retribution sexual entertainment as adequate. "Ex-accomplices are not by any means the only ones who distribute retribution pornography to get their own back. A significant number of individuals are genuinely keen on survey this." The crowd effectively searches out this sort of happy and accepts that the portrayed people have not given their assent for exposure of the materials; nonetheless, a great many individuals have seen explicit recordings professing to portray exes taking part in sexual follows up on free porn sites like PornHub. These locales have foul video content. "By embedding the expression "ex" in the title, these phony "genuine beginner" films look to make the possibility that they were distributed without the highlighted lady's consent," makes sense of one of the creators. As per Brown, by far most of recordings are basically indistinguishable. They make the deception of close minutes shared by couples, however as per the account's outlining, the "genuine exes" addressed in the movies are from that point demonstrated to be openly humiliated. Notwithstanding sexual substance and an attack of protection, the lady is embarrassed by a furious ex-sweetheart. This is the wellspring of the sensation. Individuals seem, by all accounts, to be watching these movies in developing numbers in spite of the way that they are not being requested informed assent.[151]

LEGISLATION

In addition to the fact that there is an absence of explanation encompassing the meaning of "retribution erotic entertainment" in the media, yet there is likewise an absence of lucidity in the overall set of laws. In the extraordinary greater part of countries on the planet, it isn't against the law to see or participate in revenge porn. A few countries' supports for not doing so are erroneous, while others have never at any point examined condemning the demonstration. A few states have not made the subject unlawful. However, a few wards have endeavored to prohibit retribution sexual entertainment. Because of the shortage of examination on the point within reach, the regulations ordered to boycott retribution sexual entertainment have various levels of progress in accomplishing their expected reason. Regardless of the way that these regulations are an endeavor to ban retribution sexual entertainment, little exploration has been directed on the point. This article gives a speedy survey of the states that have condemned retribution sexual entertainment and the details of those resolutions. The previously mentioned disarray encompassing the idea of revenge sexual entertainment can be deciphered as a sign of

[151]Albury, K., & Crawford, K. (2012). Sexting, consent and young people's ethics: Beyond Megan's story. Continuum: Journal of Media & Cultural Studies.

the errors in guideline that can be deciphered as a sign of the disarray. The laws of those wards that have condemned revenge sexual entertainment, as well as those expresses that are dared to have condemned retribution porn, can be ordered into four fundamental classes of approach.[152]

1. The culpability of the non-consensual divulgence of private sexual photos or films that were made with the express assent of the individual or subjects included.

2. The disallowance of the nonconsensual revelation of private sexual movies or photos, whether or not they were made with assent or not.

3. The criminalization of the nonconsensual divulgence of private sexual photos or recordings taken without assent, with the possibility that this would likewise boycott revenge porn.

4. In spite of what a few states might accept, there are presently no powerful regulation.

THE HARM OF REVENGE PORNOGRAPHY FOR THE VICTIM

Those casualties of revenge pornography who dare to stand up against what has been done depict their issue as miserable and discouraging. Annmarie Chiarini, a casualty of vengeance sexual entertainment, endeavored to commit herself by hanging herself, yet was fruitless. Chiarini was at long last ready to conquer his most memorable feeling of sadness and turned into a promoter for making retribution erotic entertainment a criminal lawful offense. A subsequent event happened in September 2016, when a self-destruction in Italy made global news. TizianaCantone committed herself after a private video was shot of her in 2015 without her insight and broadcast on the web. Web clients started badgering and tormenting her subsequently. "The pictures and movies started to arise on obscene sites and spread like quickly across web-based entertainment, joined by mocking remarks, altered screen captures, and horrible video spoofs, a large number of which used her complete name." She won in a fight in court with respect to one side to be neglected, which decided that the pictures and recordings ought to be taken out from different sites and kept from showing up in web crawlers; in any case, the court likewise decided that she should pay €20.000 in legitimate charges, which recommends that she bears some liability regarding the way that she was misled. Cantone has

[152]Angelides, S. (2013). 'Technology, hormones, and stupidity': The affective politics of teenage sexting. Sexualities.

previously endeavored to take her own life two times. These suicides are not separated episodes; survivors of explicit retribution have committed themselves end masse.

To some extent, the shortfall of agree to distribution and, likewise, agree to externalization recognizes the public effect of retribution erotic entertainment from the public effect of consensual porn. This is one of the contributing components behind this qualification. Assent is seen as a critical part of man's freedom, especially in regard to cozy, private, and sexual demonstrations. Sexual, private, or individual activities must be approved assuming that the two people will take an interest and give assent. These are considered destructive exercises on the off chance that the other party has not given their endorsement and the activities are done no matter what their desires. The execution of these activities without the assent of the gatherings is an assault, regardless of whether physical, on the body and, likewise, on the individual who possesses it. As these activities are actual articulations, their unapproved execution comprises an assault. Concerning depiction of this body, leaving this idea right now appears to be odd for reasons unknown. The portrayal of the body in photos or movies can be similarly as unsafe to the person whose body is being portrayed as certified actual maltreatment. This type of assault on the 'individual' might be much more serious than actual viciousness.[153]

Having a body or being a body

Merleau-Ponty makes sense of it as follows: "I sense my body, which is my point of view on the world, as one of the articles in that world." furthermore, "the association among soul and body doesn't have anything to do with the reasonably nonexistent goal body, yet rather with the perceptual body." Because of the way that an individual can't exist beyond their body, an attack on that body through the closeness and sexuality that the body has communicated comprises an attack on the nearest character of an individual (where the body and the sensation of what makes somebody an individual are associated with) a considerably more significant way than the divulgence of other confidential reports like bank explanations. In this manner, the unlawful disclosure of budget summaries doesn't represent similar danger to an individual's most personal way of life as the unapproved divulgence of sexual or close records. Lacey ventures to such an extreme as to say that an infringement of one's freedom in sexual issues is more serious than in different regions. Contrasting rape with different types of actual attack,

[153]Barmore, C. (2015). Criminalization in context: Involuntariness, obscenity, and the first amendment. Stanford Law Review.

that's what she reasons "the best encroachment on the liberal lawful subject's sexual personhood is the appointment of his sexuality without his assent." Furthermore, she perceives that rape is a more straightforward attack on personhood than different types of actual maltreatment. She contends further that "viciousness subverts the limit of its casualties to coordinate mental and actual sensations." This is connected with the idea that there are varying levels of earnestness in regards to security breaks: Assuming that the break of protection is likewise an assignment of the singular's sexuality (on account of vengeance porn by unveiling their cozy, private, and sexual pictures or movies), that break of protection can be seen as more serious than if it includes the exposure of an individual's bank proclamations. For example, assuming that the intrusion of security likewise comprises an assignment of an individual's sexual it's plausible that this has something to do with the elements of sexual closeness, specifically the way in which it requests a protected and cozy climate to for the transparent articulation of one's deepest contemplations and feelings. Hence, defending one's sexual security is a higher priority than safeguarding one's protection while enjoying other confidential exercises, the event of which isn't reliant upon protection. One can have bank proclamations, and when they are distributed without consent, somebody's protection is disregarded; yet, one is a body, no matter what the way that one can allude to the body as "having a body." The qualification among "having" and "being" is that one can have bank explanations, and when they are uncovered without authorization, it is a security infringement.[154]

Autonomy over the body

Non-consensual erotic entertainment seriously confines an individual's sway over their own bodies and, likewise, their personalities. It no longer has anything to do with the casualties of nonconsensual erotic entertainment to choose if they agree to being typified; this choice is made for them. An explicit entertainer has the choice to agree to being externalized in the media in which the person in question is working, and this assent is required. After they have been externalized despite their desire to the contrary, they are not generally seen as people, and along these lines, they get no acknowledgment for the mischief that has been finished to them. The casualties of nonconsensual erotic entertainment are typified despite their desire to the contrary since they are denied this choice. They are dehumanized by the crowd that uses and consumes them. They are made into objects despite their desire to the contrary. This is particularly evident in conditions including retribution sexual entertainment and uninvolved vengeance porn, when

[154]Bates, S. (2017). Revenge porn and mental health: A qualitative analysis of the mental health effects of revenge porn on female survivors. Feminist Criminology.

casualties are much of the time let sometime later know that they are liable for the damage they have supported since they agreed to being shot.[155]

Intention of intimate, private and sexual images of victims and victim-blaming

You shouldn't call the photographs or recordings utilized in vengeance porn "obscene" until they have been displayed to people in general. Regardless of whether the substance wasn't intended to be utilized for obscene purposes, it is OK to overlook how the public needs to manage it since they reserve the privilege to security and the option to encounter their own sexuality. This is motivation to address how well the expression "retribution porn" depicts how awful it is for individuals to make cozy, private, and sexual pictures public. This is on the grounds that the word doesn't cause equity to the harm done to casualties and the earnestness of what individuals who share these pictures do. Individuals who are displayed in this manner have never allowed anybody to make them into items or remove their personalities. If the individual in the obscene work would have rather not been generalized, as in vengeance porn, then, at that point, the demonstration of typification is corrupting. While attempting to sort out who the right crowd is, it's critical to give a great deal of weight to the objectives the individual imagined had as a primary concern when the person took or made the photographs or motion pictures being referred to (and with that, whether the materials are to be public and explicit). As has been said, the aim of the individual who conveys something makes it explicit or not. Along these lines, somebody other than the individual in the image or film can take those photos or films and choose to make them obscene by telling individuals they are explicit. In the event that the administrator figures it doesn't make any difference what the individual being addressed needs as to the security of the photographs or movies, then they won't treat the people in question or their expectations in a serious way. Saying that rape and sexual experiences are exactly the same thing is equivalent to saying that assault and sexual experiences are exactly the same thing. The outcome is similar in the two cases. On the off chance that you just gander at the outcome to conclude what something is, it doesn't make any difference what the casualty needed when photographs or recordings of them were shown or when they were assaulted. This couldn't care less about the person in question or the mischief that was finished to them. Faulting casualties for the wrongs that have been finished to them is a type of exploitation all by itself. While discussing assault cases, this is designated "optional exploitation." It depicts what is happening in which a casualty is re-defrauded by the legitimate, clinical, and emotional

[155]Borrajo, E., Gámez-Guadix, M., Pereda, N., &Calvete, E. (2015b). The development and validation of the cyber dating abuse questionnaire among young couple. Computers in Human Behavior.

well-being frameworks through hints that the casualty might have had something to do with the principal assault, inquiries concerning the casualty's garments, or potentially the likelihood that the casualty was plastered. In instances of vengeance erotic entertainment, it is normal to let the casualty know that they shouldn't have consented to the taking or making of private, close, or sexual pictures or movies, and that their consent to the making was the explanation that the pictures or movies were shown. On the off chance that the casualty had not given consent for personal and sexual pictures or recordings to be taken or made, there would have been no photos or recordings to show. With regards to vindicate erotic entertainment, faulting the casualty for their own misfortune is a typical subject. It can happen when there is genuine retribution erotic entertainment, however it can likewise occur before anybody has been harmed, despite the fact that sites, books, and different types of media express not to make cozy, private, or sexual photographs or recordings. Indeed, even in benevolent messages, it's not unexpected to fault the person in question, regardless of whether the casualty isn't named. Eric Goldman assumes that taking stripped pictures will turn into the standard later on (on the off chance that it hasn't as of now), and he sees nothing amiss with that. He keeps on saying that individuals who would rather not be the subject of retribution pornography or have other individual pictures of themselves posted online shouldn't take photographs or recordings of themselves when they are exposed. By offering this piece of guidance, he is building up the possibility that casualty must hold back from turning into a casualty, not the culprit's responsibility to hold back from harming the casualty by sharing personal, private, or sexual photographs or recordings without the casualty's consent. He expresses this to show that the casualty is the person who needs to safeguard themselves from turning into a casualty eventually. Individuals who consent to being recorded or shot in confidential spots are caused to feel like they are at fault for whatever might possibly have happened to them later.[156]

AN ANALYSIS OF THR REASONS FOR THE LACK OF APPROPRIATE, WELL THOUGHT THROUGH LAWS AGAINST REVENGE PORNOGRAPHY

This association, depicted by Marcel as "the association of soul and body," is reflected in German regulation, which addresses "harm the very close region." Assuming that an individual is physically externalized without their assent, they are typified in a way that mirrors their

[156]Cooper, K., Quayle, E., Jonsson, L., &Svedin, C. G. (2016). Adolescents and self-taken sexual images: A review of the literature.

deepest and most significant individual personality. Marcel depicted this association as "the consolidation of soul and body." The sexual generalization of people who show up in explicit materials isn't continuously harming; yet, one might contend that it is corrupting to the degree that it ought to be denied on the grounds that it ought to be stayed away from. In spite of the fact that there are numerous contentions that can be made and have been made for making (specific sorts of) obscene materials unlawful, it is critical to recollect that these contentions seem, by all accounts, to be pointed exclusively at the assurance of general society, and not at the security of the people portrayed in these materials. It is surprising that a matter as grave as retribution sexual entertainment has not been condemned by any state as it ought to have been. If one has any desire to counter the contention that states don't trust the issue of retribution sexual entertainment to be sufficiently huge to justify thought, then the absence of criminalization should be because of an absence of perception. Existing regulations encompassing vengeance sexual entertainment don't endeavor to safeguard the general population or outsiders; rather, they look to safeguard the people portrayed in the offense to fortify the culprit's status. This might be on the grounds that these guidelines don't fathom the idea of vengeance sexual entertainment and the damages it causes to casualties. With respect to sexual entertainment, individual states and their councils are liable for taking a position:

1. States might decide not to boycott the taking of close, private, and sexual photographs or movies in the conviction that the capability of turning into a casualty of retribution porn will keep people from creating such materials. States may likewise choose not to punish the catching of close, private, or sexual photographs or movies.[157]

2. States have the choice of taking a nonpartisan position regarding the matter of whether it is alluring to take close, private, or sexual pictures or films; consequently, they might decide to guard the right to individual freedom of the overall population. These states may accordingly consider executing regulations against retribution porn.

THREE WRONGS OF REVENGE PORNOGRAPHY

Commonly, revenge pornographic activity happens during or after a personal connection or contact. The way that the person in question and the guilty party were beforehand seeing someone a pivotal snippet of data in this occasion, considering that connections lay out limits

[157]Diliberto, G. M., &Mattey, E. (2009). Sexting: Just how much of a danger is it and what can school nurses do about it?

and assumptions among the people in question. The disclosure of cozy, private, or sexual photos or films that were taken or given to the casualty over the span of the relationship is an attack on the casualty's social decency, yet additionally on the casualty's identity regard. In this segment, the morals of retribution sexual entertainment will be separated in additional detail with the goal that the weightiness of the circumstance can be gotten a handle on. The expression "wrongs" alludes to ethically unpardonable activities all by itself. It ought not to be mistaken for "hurts," which are the adverse consequences of activities that need not have been inappropriate to have had an adverse consequence. The wrongs recognized here are not just helpful for estimating the seriousness of the mischief done to casualties, yet they may likewise be utilized as a meaning of wrongdoings and a method for laying out the legitimate disciplines for such violations. Since the illegitimacy of deeds is utilized to pass judgment on the gravity of acts, the wrongs should be researched to decide if vengeance sexual entertainment ought to be considered lawbreaker. Taking note of that the previously mentioned wrongs just relate to vindicate erotic entertainment and may not exist in that frame of mind of non-consensual porn is huge.[158]

Breach of trust

As the primary major wrong to be concentrated on in this part, the thought of "break of trust" will be presented. Herring suggests the thought "major areas of strength for that trust" is an essential for a nearby private relationship. Aggressive behavior at home, as per Herring, comprises a break of that trust. Over the span of a close connection, people open themselves to their accomplices in a way that is radically unique in relation to how they would introduce themselves to the overall population. As opposed to how they would depict themselves to the more extensive public, they introduce themselves as such. Along these lines, there is a degree of confidence in a personal connection, with the two accomplices feeling that the unveiled closeness will stay among them and will be securely safeguarded by the other. One of the commitments forced by the making of trust is "not to take advantage of the weakness delivered by closeness." Since "parts of our physical and individual personalities are uncovered" inside the setting of heartfelt commitment, it is clear that accomplices lay a lot of weight on keeping an elevated degree of trust. The trust that creates inside a relationship is the most perfect type of trust. At the point when the wrongs of retribution porn are laid out, it is apparent that this "break of trust" is undeniable. The casualty's trust is abused when their (ex-) accomplice

[158]Dobson, A. S., &Ringrose, J. (2016). Sext education: Pedagogies of sex, gender and shame in the schoolyards of tagged and exposed. Sex Education.

uncovers private, and sexual photographs or movies of them; by the individual with whom they were close. This "break of trust" happens when the (ex-) accomplice of the casualty reveals cozy, private, and sexual photographs or movies of them. This break of trust is an off-base that has been carried out against the person in question. The break of confidence in a personal connection "turns what ought to be a weapon for self-certification and self-recognizable proof into a device for distance and self-treachery," as per one specialist, and the person in question "nearly becomes utilized as a device against [him or her]self." This paper characterizes vengeance porn as the non-consensual divulgence of private, cozy, and sexual photographs or movies caught with assent by a (previous) accomplice. As a break of trust is a critical component of vengeance porn, the expression "retribution sexual entertainment" will be utilized all through this article.[159]

Coercive control

Herring distinguishes coercive control as a critical part of aggressive behavior at home, as the victimizer's goal is to rule the person in question and disintegrate their healthy identity worth. Herring states, "The motivation behind the victimizer's way of behaving is to rule the person in question and disintegrate their healthy identity worth." The part of coercive control that is inborn in vengeance erotic entertainment is framed in a way unmistakable from aggressive behavior at home. Herring refers to four methodologies of applying coercive control with regards to abusive behavior at home: restricting "the casualty's admittance to work; disengaging her from colleagues; genuinely controlling the person in question; and utilizing actual assaults." Even while direct actual viciousness isn't respected to be a part of retribution porn, the other three components are undeniably there. They are the consequence of the dispersal of private and express photographs, and in this manner, activities, rather than dangers as in aggressive behavior at home. Rather than retribution porn, in which the sexual demonstrations are the result of aggressive behavior at home, these sexual demonstrations are the aftereffect of homegrown maltreatment. This isn't true, in spite of the way that the anxiety toward explicit retribution can be utilized to apply coercive command over a casualty. It is extortion, and it could be between vengeance porn and abusive behavior at home: a (previous) accomplice undermining a potential casualty isn't retribution erotic entertainment; nonetheless, the training ought to be treated in a serious way since casualties will need to forestall their private, cozy, and sexual pictures or movies from becoming public. Shakedown is an illustration of

[159]Döring, N. (2014). Consensual sexting among adolescents: Risk prevention through abstinence education or safer sexting? Cyber psychology.

intimidation. Both the restricting of the independence of the individual displayed in vengeance sexual entertainment and the attack on the singular's identity worth add to the part of coercive control intrinsic in retribution porn.[160]

The social impact/objectification

Herring reasons that there is a component of bad behavior clear in the social impacts of abusive behavior at home. This infringement relates to the lawlessness of abusive behavior at home. Coming up next are his comments on the issue of aggressive behavior at home: "[Domestic violence] exists and is supported by the power men practice over ladies in the public eye in general." In the following sentence, that's what he contends "aggressive behavior at home depends on existing shameful acts inside society, yet in addition builds up them." The most effectively apparent part of vengeance porn's effect on society is the externalization of the people who are depicted despite their desire to the contrary in the recordings' substance. This specific feature of the issue has the best adverse impact on the local area. It is possible to consider the social effect of vengeance porn as the support of the idea that externalizing others without their assent is OK. This is one potential clarification of vengeance porn's social impact. Over the long haul, it becomes inescapable that an individual whose private, personal, or sexual photos or films are uncovered will let completely go over their own body. This is turning out to be increasingly more acknowledged as guaranteed. It is feasible to notice the cultural effect of vengeance erotic entertainment, which Herring portrays as fortifying existing orientation uneven characters. Then again, the social effect of aggressive behavior at home is seen as supporting existing orientation variations. The non-consensual externalization of individuals in retribution porn, alongside the degree to which this conduct is seen as ordinary, adds to a lessened respect for individuals overall and the human poise they have. Apparently, an individual is possibly qualified for their respect when there is no proof of pictures or movies that portray them in a sexual way. This gives off an impression of being what is happening in which an individual is qualified for their poise. At the point when an individual gives their agree to be depicted in a sexual way, society won't permit them to take a stand in opposition to typification similarly they would have the option to do as such in different circumstances where they have not given their consent to be depicted in a sexual way. The alleged "standardization" of vengeance erotic entertainment, which can likewise be expressed as the risk of retribution porn, is an extra part of the social impact of vengeance porn that should be thought of. This

[160]Englander, E. (2015). Coerced sexting and revenge porn among teens. Bullying, Teen Aggression & Social Media.

viewpoint impacts the degree to which the overall population would be apathetic regarding the foul play endured by the individuals who are presented to vindicate sexual entertainment. Without the crowd of society and the judgment that society has passed against the person in question, vengeance sexual entertainment could never have advanced to its ongoing level of conspicuousness (skank disgracing). An honest fundamental element, the infringement of which can host disastrous impacts for the gatherings concerned. On the off chance that accomplices in a relationship decide not to take close photos of each other out of worry that such pictures might be disclosed sometime in the future, this is a moment sign of an absence of trust in their relationship at that equivalent second. However long it is known that (one of the) accomplices wouldn't agree to the taking of cozy photos or recordings because of a paranoid fear of having them uncovered despite their desire to the contrary, the outer component of the presence of vengeance porn has sabotaged the confidence in that relationship, and the close connection itself is compromised accordingly (as well as by the shortfall of fittingly defensive regulation). Since these wrongs are available in vengeance porn no matter what the culprit's plan, numerous regulations expected to battle examples of retribution erotic entertainment miss the mark concerning their planned reason. Assuming that it is a legitimate prerequisite that the culprit planned to cause trouble (for all intents and purposes in the Unified Realm and California, among different spots), then, at that point, a critical number of those liable for the misery will slip through the cracks in the event that the aim can't be demonstrated or on the other hand on the off chance that it varies from the goal condemned by the law. This is because of the way that a significant level of those liable for the pain won't be punished in the event that the aim can't be exhibited or on the other hand assuming it ends up being unique in relation to what is condemned by the rule (similar to the case in the UK with revealing the pictures in light of the fact that the discloser thought it was entertaining.[161]

CONCLUSION

Revenge pornography alludes to the non-consensual divulgence of private, close, or physically unequivocal pictures or movies that were made with the assent of the member. Despite the fact that somewhat little exploration has been led on the point, scholastics, policymakers, and the media all have a restricted comprehension of it. Vengeance porn is expanding in ubiquity.

[161]Franklin, Z. (2014). Justice for revenge porn victims: Legal theories to overcome claims of civil immunity by operators of revenge porn websites. California Law Review

Vengeance porn is a subgenre of non-consensual sexual entertainment that is particular from both assent porn and other non-consensual obscene subgenres. Regardless of the way that a few governing bodies have endeavored to condemn retribution sexual entertainment, they neglect to understand the limits between ideas that are thoughtfully same. To help a more clear comprehension of the subject in question, this proposal investigated the few negative elements of vengeance sexual entertainment. It is the differential between "having a body" and "being a body" that characterizes the seriousness of an attack on an individual's nearest reality. It is unimaginable for casualties of vengeance erotic entertainment to eliminate themselves from the pictures or movies utilized in retribution porn, as they are portrayed as the genuine individuals they are as opposed to as imaginary people in the explicit works. At the point when the casualty is exposed to vindicate porn, their freedom, independence, and right to security are undeniably endangered.[162]

It is regularly accepted or concurred that the casualty implied for the records to remain private, which is one justification for why the matter has not been actually condemned. This is to some degree attributable to the way that the attention has been on the culprit's goal instead of the person in question. Both consensual erotic entertainment and vengeance porn fall under the idea of "private however open." This recognizes the subgenre of porn in which they are found. This further clouds the requirement for extra cures, one of which is the execution of vulgarity regulations to safeguard the overall population from unwanted openness to obscene substance. These guidelines are deficient to safeguard survivors of retribution erotic entertainment since they don't adjust the lawfulness of the items whose dispersal is being limited. "Vengeance sexual entertainment" alludes to explicit works that were planned for private review yet were erroneously disclosed. Since their distribution, these works have been moved to the "private yet available" circle. To get equity for casualties and forestall vengeance erotic entertainment, the security of the casualty actually must outweigh everything else over the wellbeing of the more extensive public.[163]

The casualties didn't mean for their close, private, or physically unequivocal photos or recordings to be made accessible to the more extensive public, and casualties ought to be the essential focal point of insurance endeavors. Three kinds of bad behavior can be credited to the activities of people who enjoy vengeance porn: a break of trust, the activity of coercive control,

[162]Franks, M. A. (2011). Unwilling avatars: Idealism and discrimination in cyberspace. Columbia Journal of Gender and Law.
[163]Hudson, H. K., Fetro, J. V., &Ogletree, R. (2014). Behavioral indicators and behaviors related to sexting among undergraduate students. American Journal of Health Education.

and the cultural effect/externalization. Three levels of hoodlums are answerable for these bad behaviors, and the casualties address the cost. The person who perpetrates the wrongdoing in the principal degree is responsible for every one of the three wrongs. The person who carries out the wrongdoing in the subsequent degree is answerable for the wrongs of coercive control and adds to the social effect and typification. This article doesn't advocate that every one of the three degrees of culprits be pronounced criminal by the law. In any case, condemning the initial two levels of retribution erotic entertainment would to the point of guaranteeing that it is appropriately condemned. In the event that it very well may be shown that the lawbreaker deliberately looked for retribution erotic entertainment, it would be profitable assuming the wrongdoer who committed an exhaustive round of questioning crime might be compelled to endure explicit side-effects.[164]

[164]Goldberg, D. P., & Hillier, V. F. (1979). A scaled version of the general health questionnaire. Psychological Medicine.

CHAPTER 11

COMMERCIAL AGREEMENTS DURING COVID-19 PANDEMIC

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ABSTRACT

Life during a pandemic is neither easier nor more forgiving; rather, we grow stronger and more resilient. The covid-19 pandemic is one of the most serious problems the world has ever faced in the years 2020–21.In this paper, we will talk about all the problems that the pandemic has caused in our beautiful world. Governments put everything on lockdown and closed everything down to stop the spread of the COVID-19 pandemic. As a result, all transactions ceased and all agreements expired. The market and its network have suffered as a result of the unprecedented global trade standstill. The global economy is falling, bringing us closer to the much-feared recession. This includes not only GDP or economy, but also a number of legal aspects, which we will attempt to analyze. When there are a number of issues, such as disrupting commercial contracts, it is necessary to carefully examine the situation to determine the best course of action. Supply chain interruptions, erroneous negligence, and an imminent delay in performance and release from contractual obligations are examples of immediate consequences. The various contract types that will be impacted by the spread of COVID-19 are, without a doubt, insignificant. These contract types include those for manufacturing, supply, and construction. Also, this new impossibility makes it hard to get land, make it hard to finance big projects, and make engineering and technical research take longer. By specifying a delay or performance resulting from an unforeseen event, opponents, including suppliers and professional service lenders (like independent consultants and accountants), can avoid immediate action. In order to renegotiate the contract's price and terms, the parties may cite this contagion. We will attempt to discuss the same in this paper. In addition, practical

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considerations and the impossibility of performance following contract execution will be discussed.

KEYWORDS: Pandemic, lockdowns, Economy, Business, Negative Impact, GDP, Supply-chain, Impossibility, Contract, Performance, unforeseen event, Execution.

INTRODUCTION

Jean Alesi quoted "*My contract is just for this year, but I have an option for next year. It is not signed at this moment, but I am only concentrating on this year. I don't know Exactly what I will do in the future*."[167] The year 2020 makes us live these lines as our country along with the whole world got to deal with a pandemic. A pandemic is a large scale outbreak that affects the entire world. When a new virus arises, it can cause significant illness and is easily transmitted from person to person. The only way to save ourselves from this is to get vaccinated, but every time it's a new virus so our medical team takes some time for developing the vaccine.

For time till we don't get vaccinated we should be isolated and keep ourselves in a private space where we don't come in touch with other infected humans. India is a country of 137cr. people and for the government, it was a huge challenge to isolate everyone. Our government came with complete lockdown in the country which means that everything will be closed till further notice except initial services e.g.- medicines stores, petrol pumps, etc. But this lockdown creates a lot of problems for the civilians as everything is closed so no one can go to offices and earn money. To compensate for the same, some organizations adopt the culture of work from home but there are only a few jobs that can be shifted for work from home. A report of DNA India on 18-Mar-2021 says that *59% of employers in India not in favor of work from home*[168]. The primary problem for the same is that there are various jobs in our country which can't be worked from home. Drivers, policemen, social workers, daily wage workers, farmers, vegetable vendors are some examples. World economic forum claims that 50% peoples in India don't use the internet so it was a big hurdle for our country but there is one another problem which is as big as it, that maximum of commercial agreements use to be over in March and we

[167]"Jean Alesi Quotes." BrainyQuote.com. BrainyMedia Inc, 2021. 5 June 2021.
[168]DNA**,** 59% employers in India not in favor of 'work from home', DNAINDIA, Mar 18, 2021,

have to reenter in the agreement or make some changes or perform in that last week but this time we have lockdown because of which lots of things are not possible.

Commercial agreements are often written contracts between commercial entities or agreements that govern the business connection between people who are doing business with each other. Commercial agreements will be verbal, in writing, or perhaps understood in a very formal or informal matter. they will cowl all aspects of business, as well as wages, leases, loans, hiring, and worker safety. Commercial agreements utilize simple easily understandable languages; however, they conjointly embrace warranties and boilerplate language that has usually been reviewed by a professional person beforehand. They're typically commonplace forms that will be used on an associate degree in progress basis with different suppliers. Business-to-business contracts are completely different from business-to-consumer sales. Business-to-business contracts have fewer default legal clauses to guard uneducated or unenlightened parties or to convey their parties. In this, we will try to understand all the aspects of ***Commercial Agreements During the Covid-19 Pandemic***.

FORCE MAJEURE

Covid-19 has either caused performance challenging or difficulty. It has made commercial hardship to some people in the execution of their contractual duties while providing others incapable of execution. Commercial contracts may include a "force majeure" clause[169], which temporarily excuses non-performance generated by circumstances beyond the non-performing party's control, such as war, terrorism, or "*Acts of God*."[170] The assurance provided by this clause will ordinarily reach both the parties even if most of the duties under the agreement are on one party: it is of course difficult for a party to assert that his duties should be subject to force majeure release while those of the other party should not.

Under various interpretations of force majeure, the COVID-19 pandemic may well trigger the requirement. Though, to understand whether it does so in any case, you must implement the force majeure clause to the details of that event.[171]

"A *force majeure* is a contractual term allotting the risk of damage if execution becomes difficult or impossible, particularly as a consequence of an incident that the parties could not

[169]CA. Rajkumar S. Adukia*, A book on drafting of commercial contracts and agreements*,47 (Asia Law House 2012)
[170]Satyabrata Ghose vs MugneeramBangur& Co and another, 1954 AIR 44, 1954 SCR 310.
[171] EDC- Trade Advisory Services, *Commercial Contract Terms*,7.

have predicted or managed.'[172] While force majeure has neither been described nor particularly dealt with, in Indian statutes, some reference can be found in *Section 32 of the Indian Contract Act, 1872.*[173]"

In light of Covid-19, on February 19, 2020, the Ministry of Finance issued an Office

Memorandum on 'Force Majeure Clause' providing that "*coronavirus should be considered as a case of natural calamity and force majeure may be invoked, wherever considered appropriate, following the due procedure in the Office Memorandum"*[174].

Any party trying to end a commercial contract for continued force majeure should be assured that the essential elements for force majeure have been in point for either the relevant continuous or aggregate time, or all-important notice rules have been complied with. The termination requirements for prolonged force majeure may need to *consider all* of the execution of the contract to have been checked and not only certain requisites. Any party trying to terminate should also naturally be careful that it is in full completion of its obligations to avoid a possible counter-claim for infringement of agreement.

DOCTRINE OF FRUSTRATION

The doctrine of frustration is affirmed in Section 56 of the Indian Contract Act 1852[9]. In situations in which execution becomes impossible, the contract may be frustrated and both parties are freed from their responsibilities. The Black's Law Dictionary defines frustration in association to contracts as "*the doctrine that if a party's principal purpose is substantially frustrated by unanticipated changed circumstances, that party's duties are discharged and the contract is considered terminated*," also termed as the frustration of purpose.[175]

Typically, there are 2 conditions of frustration, specifically, when a contract becomes impossible. In *"***Sushila Devi vs. Hari Singh***"*[176], It was noted that the impossibility contemplated by Section 56 of the Contract Act extends beyond the humanly implausible.

The theory of frustration comes into play when a contract becomes impossible to perform after it is made due to events beyond the parties' control or a change in circumstances that renders

[172] C P Thorpe and J C L Bailey, *Commercial contracts*, 144 (Woodhead Publishing Limited- 1996).
[173] S. 32, Indian Contract Act, 1872.
[174] Ministry of Finance, Government of India, Office Memorandum, s.. 56. Indian Contract Act, 1872.
[175] Bryan A Garner, Black's Law Dictionary (9th edn, West Group 2009)
[176]Sushila Devi vs. Hari Singh, AIR 1971 SC 1756: (1971) 2 SCC 288.

the contract impossible to perform.[177] The court can grant relief on the basis of subsequent impossibility if it finds that the entire plan or basis of the contract has been disrupted by an unforeseen circumstance or change in circumstances that the parties did not consider at the time of the contract.

The COVID-19 pandemic has the potential to be frustrating, especially if any government-imposed consequence order, law, policy, or legal limitation prevents contract fulfillment. The scope of the fault rule of frustration is limited, but it may be appropriate in light of the uncertain effects of the COVID-19 pandemic, depending on the details of the relevant commercial contract. Given prevailing limits on international/domestic travel and "non-essential" gatherings, for example, a contracting party may no longer be able to meet their contractual obligations without breaking the required limits in the framework of COVID-19. Yet, in some cases, a change of law may not be enough to make the contract to be frustrated or discharged due to supervening illegality, particularly if the state of affairs is brought about by the default of the party trying to rely on the frustration clause.[178] The party claiming frustration must show that COVID-19 executed the performance of the contract difficult.

IMPACT OF COVID-19 ON COMMERCIAL AGREEMENTS

This sudden covid pandemic has affected contractual performance across all over the world. We all believe that this situation needs to be tackled carefully with appropriate measures. The contractual performance will depend on practical and legal aspects of the contract.

In times of covid, we can see practically that almost maximum of performance is compromised as everything is closed from the government side. However, several businesses have faced a common problem of operational difficulty due to breaks in the supply chain, raw material delivery slowdowns, and labor shortages.

Given this bizarre certainty, the performance of economic contracts going forward is probably going to become harder within the post-pandemic atmosphere. Because the world's fifth-largest economy.[179] India is a paradigm of kinds for understanding a number of the legal ramifications associated with COVID-19 regarding breach of economic contracts. What will it mean, as an example, once a corporation is unable to satisfy its written agreement obligations? will a

[177]Satyabrata Ghose v. MugneeramBangur& Co., 1954 SCR 310: AIR 1954 SC 44.
[178]JDSUPRA
[179] JOE MYERS, *India is now the world's 5th largest economy*, according to IMF, THE PRINT, (22 February, 2020)

corporation obtain protection beneath the written agreement provisions for tragedy and also the ism of frustration of a contract? And what's the proper structure and also the purpose of the framework for planning economic damages, if any, in a very industrial dispute? (For example, disputes arising from nonperformance of a contract throughout the present crisis.)

The global economy has been negatively affected. The domestic market chain at its core has been harmed as a result. Supply chain disruptions, an "unintentional" delay in performance, and fulfillment of the "contractual obligations" were the immediate results. The variety of contracts that are certain to be hampered by the spread of COVID-19 is certain to be substantial, ranging from production and supply agreements to construction contracts. Additionally, this new issue creates obstacles to the acquisition of land, the financing of significant projects, and delays in technological and engineering research and development.

Counterparts, suppliers, and skilled service lenders (such as freelance Consultants & Accountants) may request immediate performance by citing associate degree sudden events as the cause of delay or non-performance. The parties may use this pandemic as a justification for renegotiating the contract's terms and value. For example- let some companies have an order to some company that you have to send 100 tons of rice in 3rd week of April and send 70% of amount as token and that companies have to buy that amounts of grains from the farmer and then to change in rice, pack accordingly and transport but due to lockdown no one can go and buy from farmers neither their mill's labors are working (as they are not allowed to come out from) nor transports are available.

Who is responsible for this? Let’s take another practical situation A has rented some area for his office from B. Due to some financial problems A decided to leave that space and rent some other budget-friendly place. He selected one area and made a contract from 1st

April as his last contract will over on march 31st as lockdown started before it. He can’t change the place due to this. Now, He has to pay for both places, or who will suffer?

HOW GOVERNMENT TACKLED COVID-19 IN INDIA?

As soon as our government gets to know about this noble virus, they started screening passengers who are returning from China (as the origin of the virus was there) then as it found

that it already transmitted in other countries and peoples who are returning from there are also found infected.[180]

As the pandemic already spread in the whole world, the government recommended social distancing, masks, use of sanitizer, and only go for initial travel. But as there is a regular rise in the cases in our country government closed schools, colleges, companies, and other important crowded places. The results are not that good, so our Prime Minister Mr. Narendra Modi, asks for JANTA CURFEW which is a curfew in general but there is no force from the government side and that impacts on public so well as a maximum of the population follows that and then the Government decided to announce a lockdown for the first time.

In India, everything got closed, except initial services. It was for the first time announced on 24th march 2020 when the government of India announced a complete lockdown in our country where there were confirmed cases of Covid. Some of the states sealed their borders baring inter-state. Then as per the need officials extended it for several next months. The government divided the whole country into 3 basic zones after the lockdown for relaxation. The zones are Red, orange, and green. Red zones are the ones that have high rates and more infection-containing people in that zone. Orange zones are the ones that have fewer cases and less rate of infections containing people. Green zones are the areas which are having no cases for the last 21 days. The relaxations are given accordingly to the zones. The biggest difficulties for the government are these listed below –

1. To circulate proper information to the people as there are several confusions in society about how to react, where to get admitted, what all remedies are to be given, what all instructions are there etc.
2. To fulfill demands for all the important drugs, oxygen, vaccine, and medical facilities.
3. India is a country of festivals and we all celebrate with our friends, family, and relatives for example in Durga puja we have a culture for mela and all to stop that.
4. To take elections in between as it is important for our democracy.
5. Marriage ceremonies are one of the places where a lot of peoples can get infected.

[180] "PTI, Coronavirus: Thermal screening of passengers flying in from China at 7 airports, ECONOMICS-TIMES,

6. Education as everything is closed and the difficulty for schools, colleges, coaching was that how to get students educated.
7. Employment
8. The economy of the country
9. To maintain law and order
10. Maintain plenty numbers of health workers

The above-given problems are tackled by the government as specified below

1. There is various news channel, websites, a social media platform that are helping the government but in India, there are some populations of our community who are not having sources for all these, and maintaining that was a great challenge at the time of lockdown there a lot of wrong information and which caused a lot of problems like for e.g., there are 1000 and more workers gather around Bandra station (Mumbai) as they got information that a train is there to take them there home.
2. Our government tried to maximize the production of important drugs and other essentials in this situation and also rise rate of import from other countries several big names are also on it. Several big countries like Russia, the USA, and others helped us in this.
3. The government completely banned everything and our PM requested everyone to celebrate in their house only.
4. Some elections got cancelled, some taken after the decrease in covid cases graphs in their area.
5. Government restricted all Indian fat weddings and minimize the guest list according to the situation of the place sometimes it 20, 50, and 100 with special permission.
6. Everything got shifted online. Even some of the exams got post ponded and others taken virtually or alternative option taken.
7. Employment is the only question that didn't have any solution in India. As everything closed several peoples lost their jobs but the government has not much to offer. But then some state governments come with different schemes. For eg- MP RojgarYojna, MNREGA and etc.

8. The economy is one of the biggest problems of our country in times of covid as everything got closed several peoples lost their jobs. The government issues several funds with help of the world bank and various other organizations
9. Maintain law and order would be challenging as there a lot of load on the local police as they have to work on criminal cases, lockdown rules, and other things. They worked hard as front liner workers and maintain everything.
10. Is there an of shortage for medical staff as the no of patients from daily life increase suddenly and the maximum of staff getting infected? So, the government did several things to appreciates them and allows final year students to tackle the situation.

The government did their best to save us with the help of front liners but it's our responsibility to act as responsible humans and obey their instructions.

SAFEGUARDS

Companies, governments, and other commercial enterprises are well-advised to consult their legal advisers to evaluate their contracts where there are clear suggestions that execution of their contractual obligations will be made difficult as a result of policies adopted by governments, given the essence of the emerging legal challenges arising as a result of the Covid-19 virus.

Analyze the impact of the COVID-19 outbreak on the agreement and its execution. Start a chance to complete the contract in a different way; if you fail, you may safely rule out any subsequent 'defenses' based on a different mode of performance.[181]

Re-evaluate and study the contract that contains the force majeure clause, and study the relevant facts and situations to begin the 'rule to excuse.' To follow the 'all' or 'any' notice method outlined in the contract's terms and conditions.

Collect evidence to attribute non-performance of the duty to a single force majeure occurrence, such as the pandemic in the current situation. Keep meticulous records of all government and administrative notices and orders. During the litigation/arbitration stage, the same can be demonstrated. All records pertaining to unforeseen additional expenses incurred must be kept.

[181]Anshu, *Doctrine of Frustration*, LEGALSERVICEINDIA

CONCLUSION

If commercial contracts are not completely studied, they can have grave consequences for businesses. To remain profitable in the post-COVID era, it is critical to retain professional risk reports of commercial contracts.

The effect of the COVID-19 outbreak on contracts is mostly determined by the contract's length. During the term of the force majeure occurrence, the contract's performance, including payments, is normally suspended. Modern business processes must be incorporated, which cannot be done without a system of suitable checks and balances in place on the legal obligations of the contracting parties. It is hard for a business plan to succeed if the foundation is not properly established.

CHAPTER 12

WOMEN AND RESERVATION

SnehaShelarTerdale[182]

ABSTRACT

Nearly half of the world's population is made up of women, but India has a disproportionally low female population compared to its male population. They sometimes don't receive the same social rank treatment as men in certain places.

In many facets of life, women in Western societies are afforded the same rights and position as males. However, gender-based prejudice and restrictions still exist in India. There were times when the contradictory situation made her worry like a Goddess, and other times like a slave.[183]

INTRODUCTION

As per the constitution and legislative provisions, women now have a unique status in India where they are treated equally with males. However, Indian women had to make a lot of progress to get where they are now.[184]

First, Draupadi was treated like a commodity by her husband during the historical events of the Mahabharata, which is when gender inequality in India first became a problem. History attests to the fact that women were forced to dance for men in both public and private settings.

Second, in Indian society, women have traditionally been dependent on the male members of their families; this was true even as recently as a few years ago.

Thirdly, a woman was not permitted to speak aloud when her in-laws' senior family members were present. In the family, she was held accountable for every mistake. Fourth, after being a widow, she has become considerably more reliant on her male family members. At many social

[182]Christ University Pune Lavasa Campus

[183] Singh, J. P. (2000). Indian Democracy and Empowerment of Women. Indian Journal of Public Administration, 46(4), 617–630.

[184] Singh, J. P. (2017). Indian Democracy and Empowerment of Women. *Indian Journal of Public Administration*.

gatherings, she is forbidden from socializing with other family members. However, she has very little influence over society's political, social, and economic affairs.

WOMEN IN INDIA

In the early part of the twenty-first century, Mahatma Gandhi served as the leader of the National Movement, an organization that battled for the elimination of all forms of prejudice that were directed toward women. In addition to highlighting the importance of women's education, Raja Ram Mohan Rai, Iswar Chandra Vidyasagar, and other social reformers called for an end to polygamy, child marriage, the sinful practice of sati, and other problematic social practices. They also stressed the necessity of putting an end to the institution of sati. They were able to break free from the constraints of social issues and religious dogma thanks to the efforts of the National Movement and other reform organizations. From this perspective, certain pieces of legislation, such as the Sati (abolish) Act of 1829, the Hindu Widow Remarriage Act of 1856, the Child Restriction Act of 1929, and the Women Property Right Act of 1937, amongst others, are all worthy of consideration. After India attained its independence, women and men continued to hold the same social standing as before, and the framers of the constitution and the national authorities both acknowledged this equality.

The Hindu Marriage Act of 1955 set the legal age for marriage, mandated monogamy and parental supervision, and permitted the dissolution of marriage in specific circumstances. In line with the Hindu Adoptions and Maintenance Act of 1956, women who are of sound mind who have never been married, have been widowed, or have been divorced are all eligible to adopt a child. Anyone who gives or receives a dowry, or who assists in either of these actions, is subject to a fine of up to Rs. 5,000 or imprisonment for up to six months, or both, under the Dowry Prohibition Act of 1961. Women are given preferential treatment under the Indian Constitution, which ensures gender equality. These are mentioned in three articles of the constitution. Article 14 states that the government cannot discriminate against anybody on the basis of their race, gender, religion, national origin, age, disability, sexual orientation, marital status, or income. No citizen may be subjected to discrimination by the government because of their sex, as stated in Article 15. To discriminate favorably against women, the state has the authority to do so under Article 15 (3). According to Article 42, the state must establish policies for fair and compassionate working conditions, including maternity leave. All citizens are

required by the constitution's Articles 15(A) and (E) in particular to reject conduct that is derogatory of women's dignity.

RESERVATION IN EDUCATION

In a nation like India, reservation is a contentious issue in and of itself. By relating it to gender, it raises the bigger question of whether such reservations will speed or, alternatively, slow down the country's progress toward gender equality.

On the one hand, it might be disputed that women should receive preferential treatment in order to take advantage of possibilities previously unavailable to them because they are a historically marginalized and disregarded group. According to a different perspective, women must be perceived as "equals to men" in order to overcome entrenched gender inequality and the subordinate perception of women.[185]

In order to diversify the talent pool, Chief Justice of India (CJI) NV Ramana vehemently advocated reservations for women in legal education during a Supreme Court function honoring the first "International Day of Women Judges." This clause, he continued, had produced "encouraging results" in terms of the appointment of female judicial officers at the district level.

According to the CJI, there are 52 percent female judges in Telangana, 46 percent in Assam, 45 percent in Andhra Pradesh, 42 percent in Odisha, and 40 percent in Rajasthan.

The CJI went on to say, “I firmly believe that the policy of giving reservations for women needs to be replicated at all levels and in all the states.”

He referenced Karl Marx in his remarks at the event sponsored by women's rights activists, saying, "Women of the world, unite; you have nothing to lose but your chains."

“The idea was to have my appeal be seen as the beginning of a revolution. I'm happy to be labeled a revolutionary if achieving gender equality means finally getting my hands on the pie.” he added.

He continued, “I enthusiastically embrace such a revolution.”[186]

[185]NIMISHA BANSAL, “Do We Need Reservations For Women In Educational Institutions?”, March 21, 2018
[186] “Strongly propose women reservation in legal education: CJI NV Ramana”, March 11, 2022

RESERVATION IN POLITICS

According to Abraham Lincoln, a government of, by, and for the people is what constitutes a true democracy. The participation of all citizens in politics, regardless of gender, is crucial to democracy's success. Although most democracies have a system where the government is chosen by all the different portions of society, it is questionable if this government represents all the different sections and, more importantly, whether it serves the interests of all the citizens of the democracy. Men and women have an equal right to take part completely in all facets of the democratic process, according to international conventions and treaties. As per Article 21 of the UDHR[187], everyone has the right to equal access to public employment and the right to participate in the government of his or her country. Again, the theory of representation contends that all citizens, regardless of gender, ethnicity, or other characteristics, should have equal access to political participation.

It is important for development, human rights, and morality to advance more women in political leadership and gender equality. "More inclusive parliaments have the potential to increase citizens' civic engagement and political participation... Men and women have fewer opportunities to influence and profit from political decisions under a system where only half the population participates completely." (2012) Fraser-Moleketi According to the experiences, political issues have seen a particularly high level of gender discrimination. At the top echelons of political decision-making, men predominate. Studies of the ancient and medieval eras generally indicate that the role of women in political decision-making was minor and limited to a select group of outstanding women from the governing elite. Women do, of course, have better status in some civilizations than others in the modern day.

At the end of the 20th century, women's political participation drastically grew over the world. In 1995, there were 11.3 percent more women in parliaments globally than men. While the percentage increased to 23.4% by 2017. The threshold for two houses of parliament (Rwanda, Bolivia) was exceeded. Over the past ten years, the number of female ministers at cabinet level has doubled globally. There are 17 nations with a female head of state or head of government, according to the 2017 Inter Parliamentary Union Map. 19.1% of presiding officer positions in the world were held by women (IPU 2017).[188]

[187] Universal Declaration of Human Rights
[188] Vivek Pandey, Shyam Singh, JeemolUnni. (2020) Markets and Spillover Effects of Political Institutions in Promoting Women's Empowerment: Evidence From India. *Feminist Economics* 26:4, pages 1-30.

RESERVATION IN CORPORATE

The phrase "corporate governance" relates to how a corporation is set up in terms of control and decision-making. It springs from the idea that there must be a means by which investors can be certain that the money they invest in a company is being used wisely and profitably. In reality, corporate governance is influenced by a number of factors, including the interconnectedness between businesses and their markets, technical, cultural, social, political, and institutional settings. These factors are in addition to agency and cost considerations. The power dynamics and political agreements between shareholders, creditors, and management are thus reflected in corporate governance. The scope and character of corporate governance are thus greatly influenced by public policy.[189]

Women's emancipation and gender parity are the pillars on which the entire system of reservations for women on the Board of Directors is built. Women made up 12% of the boards of the largest publicly traded companies in the EU on average in 2010. But just a small percentage—3%—were on the Board chairs.

The aforesaid statistic made it clear that more women needed to be in boardrooms. Thus, Norway became the first nation to compel all publicly traded corporations to reserve 40% of board seats for women by 2008. Following suit, Spain enacted a comparable law in 2007, and France followed suit in 2011.

The question that arises in this situation is if the government is attempting to combine corporate governance and the issue of corporate social responsibility through this program. Another concern raised by such a settlement is whether or whether corporations' intentions to promote and protect women truly benefit the business (and are therefore an essential component of corporate governance) or are only intended to generate "goodwill."[190]

MERITS OF RESERVATION

The benefits of having a female majority on the board of directors can be quantified in terms of more female representation, which may further contribute to women's empowerment and greater corporate sector representation. Another argument put out is based on the idea that the

[189] Neil Fligstein and Robert Freeland, "Theoretical and Comparative Perspectives on Corporate Governance" (1995) 21 Annual Review of Sociology 21
[190] deboshreeritambharabanerji, "Reservation For Women In The Board Of Directors", <http://www.legalservicesindia.com/>

board of directors will work better if it has a greater representation of the various business strata. This is because any company's board of directors will be more effective if it has a varied range of viewpoints. In addition to this, it has been observed and practiced that many women tend to leave their jobs for maternity and post-maternity reasons. The government may be attempting to encourage improved gender representation in the corporate sector by introducing such laws. In actuality, the Constitution of India's "equality" and "justice" principles are in line with the reservation of the "fair sex."

In fact, the McKinsey Report examined the financial health of 89 publicly traded European companies in the same industry that had a relatively high number of female directors in 2011. According to McKinsey, businesses that had more women on their boards of directors had higher returns on equity, richer operating profitability, and soaring share prices. Although the consultancy business examined the trend, it was unable to identify the factors that contributed to the rise in the management effectiveness of boards with a majority of women. Does this imply that women make better directors or managers in general? Does this imply that having women on a board of directors will boost a company's productivity and, in turn, its share price?

DEMERITS OF RESERVATION

On the other hand, women's reservations are disadvantageous in and of themselves. The main justification for adopting reservations for women was their social upliftment as well as a more equitable representation of the two sexes in the corporate world. But the question is, will this reform in corporate governance ensure, or at least guarantee, such a socio-economic upliftment? The Panchayati Raj system, where the 2009 Constitutional Amendment enabled the reservation of women, can be used as an example in terms of governance. However, over time, the Elected Women Representative in the Panchayati Raj Institutions just served as a surrogate for the male relatives. Without a question, the 33% reservation allowed women to participate in the political and social life of the nation, but most of the time they were little more than puppets in the hands of their male relatives. Therefore, making a reservation does not guarantee that social and cultural stigmas would end. Will it not result in a similar disaster if required reservations are introduced to the Board of a company? Additionally, the focus on the representation of the fair sex by the corporation may result in a decline in corporate productivity. Reservations themselves may lead to pareto efficiency. A situation such to

Norway might arise in India if the reservation is made mandatory and it becomes mandatory to fill the seats allotted for women on the Board of Directors.

The first nation to enact stringent regulations governing the reservation of women was Norway. On 2003, there were 9% women directors on Norwegian boards. Within the next five years, they were instructed to boost this number to 40% by making reservations in the Board of Directors. Many corporations did window-dressing to achieve this margin. The Norwegian corporations promoted numerous women with far less experience than the directors before them to the post of directors in order to conform with the rules of reservation. This caused the business of such a corporate entity to decline.

CONCLUSION

India scores much worse nationally than the global average of 22%[191] for female representation in national legislatures, with only 11.42% of women serving in its national legislature from 2014 to 2019[192] (as of 2014). India is falling behind, but this puts it in a position where it may benefit from learning from the errors of other countries. It has the benefit of enhancing both the design and the implementation of such a quota in order to achieve more effective results, which is a significant advantage. Which of the two reservation schemes is more effective is summarized by IDEA as "in nearly all political systems, regardless of what election regime, it is the political parties, not the public, that represent the true gatekeeper to elected seats."

Therefore, the political parties in India need to acknowledge the significant role they play in opening doors of opportunity for women to participate in politics. The Women's Reservation Bill will be strengthened by fundamental party reforms, which will also serve as a strategic complement to the bill. Much if the legislation is delayed even more, political parties should nonetheless undertake reforms inside their own organizations to make it simpler for women to enter political office. Following these procedures would ensure that the passing of the bill results in genuine empowerment for Indian women rather than merely a formal shift in their status.

[191] Puja Modal, “Women Reservation Policy in India”
[192]Soumya, “Essay on Reservation for Women: Why or Why not?”

CHAPTER 13

A STUDY OF FINANCIAL PERFORMANCE: A COMPARATIVE ANALYSIS OF SBI AND ICICI BANK

Manu Chopra [193], Dr. Chander Prakash Singh[194]

ABSTRACT

Banking Sector plays an important role in economic development of a country. The banking system of India is featured by a large network of bank branches, serving many kinds of financial services of the people.The State Bank of India, popularly known as SBI is one of the leading bank of public sector in India. SBI has 14 Local Head Offices and 57 Zonal Offices located at important cities throughout the country. ICICI Bank is second largest and leading bank of private sector in India. The Bank has 2,533 branches and 6,800 ATMs in India.The purpose of the study is to examine the financial performance of SBI and ICICI Bank, public sector and private sector respectively. The research is descriptive and analytical in nature. The data used for the study was entirely secondary in nature.The present study is conducted to compare the financial performance of SBI and ICICI Bank on the basis of ratios such as credit deposit, net profit margin etc. The period of study taken is from the year 2007-08 to 2011-12. The study found that SBI is performing well and financially sound than ICICI Bank but in context of deposits and expenditure ICICI bank has better managing efficiency than SBI.

KEYWORDS: Credit Deposit Ratio, ICICI, Net Profit Margin, Net worth Ratio, Advances, SBI,E-banking .

INTRODUCTION

THE INDIAN BANKING SECTOR

Banking in India dates back to the 18th century, when it was founded to serve the demands of the British colonial administration. The nationalization of major private sector banks in 1969

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was a watershed moment in the evolution of India's banking system, allowing citizens not having access to banking to gain access to the country's financial services and marking the beginning of a transition from elite to mass banking. The following wave of reforms, which saw the nationalization of six additional commercial banks in 1980, led to a four to eight fold increase in the number of banks and bank branches, respectively.

The financial system is essential to the functioning of any economy of world. Countries with well-developed and market-oriented banking systems grow quicker and more consistently than those with weaker and more rigidly regulated system, proving the importance of a well functioning financial infrastructure in fostering economic development. The state of the economy may be gauged by looking at the financial institutions there.

Online banking has become more common in recent years. E-banking refers to the practice of making banking services available to a broad range of consumers at their workplaces and homes using a variety of electronic delivery channels and electronic devices. Internet banking, telephone banking, mobile banking, etc., are all included under this umbrella phrase. Customers can now conduct their banking business via a wider variety of channels, including automated teller machines (ATMs), telephone, internet, and wireless channels, giving them more options than ever before for how and where they manage their finances. This has helped banks expand their customer bases and give them a competitive edge. Consequently, IT has played and continues playing a crucial role in enhancing financial services. In light of above discussion, it is necessary that, before delving into the many facets of e-banking, to reflect on the development of IT in banks.

The 1990s saw the debut of the first really "tech-savvy" banks of a new age. Some international financial institutions established base in India. In order to attract and retain consumers, these banks may use their cutting-edge infrastructure to take advantage of new technologies and improve their service quality. In response, public sector banks and older private sector banks in India felt a renewed sense of urgency to fix their methods and resuscitate their banking operations. As a result, the banking sector is undergoing a period of fast change as the business adapts to the challenges posed by new competitors and the needs of its clientele.

The banking sector has benefited greatly from technological advancements in the form of access to new markets, goods, services, and efficient delivery routes. These modern consumers are not only more demanding than their predecessors, but also more computers aware, and it is information technology that allows banks to satisfy their high expectations. Banking services must be available instantly, around the clock, and in any location, as customers have come to expect. Banks are progressively establishing up local area networks, wide area networks, and

linking them to the Internet in order to share data and processes not just between branches in the same city, but also between banks in other cities and even countries. The post-liberalization age has seen a meteoric rise in IT, which has improved almost every facet of life by making it simpler, quicker, cheaper, and more efficient. It's altering not just our way of life, but also the nature of commerce. It paves the way for new commercial opportunities and turns the corporate world into a global community. The banking industry has come to rely extensively on IT, and banks were among the first big organizations to do so. One of the most prevalent industries to gain from IT advancements is the banking industry.

The term "e-banking" refers to the practice of conducting financial transactions through the Internet. Internet banking, at its most fundamental, refers to a bank's publication of a web page detailing the products and services it offers. Providers may go as far as enabling account access, money transfers, and the purchase of financial goods and services online. To do business in this manner is to engage in "transactional" online banking.

There are a total of 44 private banks in India, 22 public banks (including the State Bank of India and its 5 partners such as BharatiyaMahila Bank, and the nationalized 19 banks plus IDBI Bank Ltd.). Currently, the CORE (Centralized online real time exchange) banking platform is used by all publicly-owned bank branches (RBI, 2016). The widespread use of online banking is facilitated by core banking solutions, which also allow for comprehensive integration of all channels of communication with customers.

PRESENT SCENARIO OF E-BANKING SERVICES IN INDIA

The evolution of E-banking in India is still in its infancy. The banking industry has seen dramatic transformation during the last five years due to increased competition, technological advancements, and shifts in consumer preferences. As a result of these shifts, banks now must adhere to strict competitive and regulatory requirements. Online banking has not yet had a noticeable effect in India. Many international research firms predict that the rate of E-banking adoption in India will be lower than in other major Asian nations in the near future. As competition from private banks and non banking financial institutions grows in India, electronic banking is still in its infancy, but it is quickly becoming a strategic need for most commercial banks. The Indian IT software and services industry is hopeful despite the global economic issues affecting the sector. A "Working Group on E-banking" has been established by the Reserve Bank of India to investigate several facets of online banking. Specifically, they discussed three key aspects of electronic banking: (1) technological and security concerns (2) legal issues (3) regulations and supervisory concern. RBI has approved the group's standards,

which provide valuable insight into the safety concerns surrounding electronic banking.
In addition, the Reserve Bank of India (RBI) will soon be India's first Certifying Authority (CA) for digital signatures. The move is being heralded as the beginning of the electronic transaction process in the banking industry and will have far-reaching consequences for the speed and cost of financial dealings between publicly-owned institutions. Therefore, there are three obvious justifications for introducing E-banking in India: efficiency, development, and the need to please a rising tech-survey customer base. The Indian financial sector is experiencing significant disruption due to the combined effects of four factors: customers, technology, convergence, and globalisation.

STRUCTURE OF INDIAN BANKING SECTOR

In India, the banking industry is governed by the Reserve Bank of India, the country's central bank. These are the key components of the banking sector:

Commercial Banks

A kind of bank that offers basic banking services as well as basic investment options including savings accounts, CDs, and loans to businesses and individuals. Commercial banks have typically been physical and mortar establishments with tellers, safe deposit boxes, vaults, and automated teller machines (ATMs). While most commercial banks do have brickand-mortar18 locations, there are a few that don't and force customers to do business only over the phone or online. They often offer less fees in return for better interest rates on investments and deposits.

Co-Operative Banks

Scheduled Commercial Banks and Unscheduled Banks make up India's commercial banking system. Any commercial bank that is included in the Second Schedule of the Reserve Bank of India (RBI) Act, 1934 is considered to be a Scheduled Commercial Bank.
The Banking Companies Act of 194920 and the subsequent nationalisation of the Reserve Bank of India marked the beginning of the transition toward State control of banks. In 1955, the SBI Act21 was passed after being recommended by the All India Rural Credit Survey Committee22, and the Imperial Bank of India was subsequently transferred to the SBI. In a similar vein, 8 State-owned banks (the State Bank of Bikaner and the State Bank of Jaipur were once two different banks but merged in 1959) became subsidiaries (now known as affiliates) of SBI. In 1968, a plan for "social control" was unveiled, and in 1969 and 1980, the government

nationalised 14 and 6 banks, respectively.

OVERVIEW OF SBI AND ICICI BANK

State Bank of India

The State Bank of India, the oldest Bank in the country and a premier in terms of balance sheet size, the number of branches, market capitalization, and profits, is undergoing a momentous phase of Change and Transformation; the two-hundred-year-old public sector behemoth is today stirring out of its Public Sector legacy and moving with an ability to give the Private and Foreign Banks a run for their money. The bank is expanding into several high-growth areas via a variety of strategic partnerships, including the following: pension and general insurance; custodial services; private equity; mobile banking; point-of-sale merchant acquisition; advisory services; structured products; and so on. With an eye on the immense untapped potential in the hinterland, the Bank is pushing forward with cutting-edge technology and creative new banking models to extend its Rural Banking base, with plans to include 100,000 communities over the next two years. To meet the needs of the expanding middle and upper-middle-class businesses in India, the bank is also honing its wholesale banking expertise. It is expanding into structured products and derivative instruments and integrating its worldwide treasury operations. The Bank has grown to become the country's primary arranger of external commercial borrowings and the leading source of infrastructure loans. It is the only Indian financial institution to make to the Fortune 500.

In order to provide a better experience for its customers as a whole, the bank is updating their antiquated front and back end procedures to more user-friendly ones. As of now, it has the biggest banking network available to Indian customers, with roughly 8500 of its own 10000 branches connected to the network and another 5100 connected via its Associate Banks.

With more than 21,000 automated teller machines and a variety of electronic channels (Internet banking, debit cards, mobile banking, etc.), the Bank is working to provide a one-stop shop for its customers' payment needs. The Bank is dedicated to its workers' professional development and maintains a network of 54 learning centres and four national-level Apex Training Colleges around the country.

Foreign bank employees have been known to enroll in several of the courses. The bank is actively seeking for expansion possibilities in both India and elsewhere across the globe. At the moment, it has 173 overseas branches in 33 countries. SBI Capital Markets, SBICAP Securities, SBI DFHI, SBI Factors, SBI Life, and SBI Cards are only some of its seven Indian subsidiaries that together make the company a major player in the Indian financial sector. It is

now combining its different assets and seeking funds to fund its expansion.

The Bank is also working to alter long-held beliefs and ways of thinking as it leads all of its workers along the path toward Transformation. The Bank just finished a massive internal communication initiative called "Parivartan," in which they sent out over 3300 two-day workshops around the nation and reached over 130,000 workers in a span of 100 days employing over 400 Trainers, to hammer home the message of Change and Inclusion.

The State Bank of India's is largest bank, with approximately 9,000 branches in India and 54international offices. Its Associate Banks have a domestic network of around 4,600 branches,withstrongregionalties.TheBankalsohassubsidiariesandjointventuresoutsideIndia,including Europe, the United States, Canada, Mauritius, Nigeria, Nepal, and Bhutan. The Bank has the largest retail banking customer baseinIndia.

ICICI Bank

Indian financial services provider ICICI Limited established its subsidiary ICICI Bank in 1994. Following a public offering of shares in India in fiscal 1998, an equity offering in the form of ADRs listed on the NYSE in fiscal 2000, the acquisition of Bank of Madura Limited in an all-stock amalgamation by ICICI Bank in fiscal 2001, and secondary market sales by ICICI to institutional investors in fiscal 2001 and fiscal 2002, ICICI's shareholding in ICICI Bank was reduced to 46%. In 1955, ICICI was established thanks to efforts by the World Bank, the government of India, and business leaders in India. Providing Indian enterprises with access to affordable, long-term project finance was the primary motivation for establishing this development financial organization.

ICICI and ICICI Bank's respective managements reached the conclusion that a merger of the two companies would be the best strategic option for both companies and would produce the best legal structure for the ICICI group's universal banking strategy after considering a number of corporate structuring alternatives in light of the changing competitive landscape in the Indian banking industry. Because of the combined company's improved access to low cost deposits, more chances to produce fee-based revenue, and enhanced participation in the payments system and provision of transaction banking services, the merger would increase value for ICICI shareholders. The merger will increase value for ICICI Bank's shareholders by allowing the company to tap into ICICI's substantial talent pool, expand into new business areas, and increase market share in existing ones, notably in fee-based services.

CASE STUDIES

V. Krishnamoorthy, and Dr. R. Srinivasan (2013)

The focus in this research is how customers feel about using online banking as a method of customer relationship management. A total of 154 participants with Internet Banking experience were surveyed. Based on the results of this survey, it's evident that banks are struggling to keep their current clients. To combat this, they need to do one of two things: offer consumers novel, tailored solutions; or establish and sustain strong relationships based on trust.

RehmathSafeena, Abdullah and H. Date (2010)

She has analyzed the customer viewpoint of online banking adoption in her study. The purpose of this research is to determine whether and how customers' perceptions of internet banking's utility, simplicity of use, risk, and general knowledge affect their willingness to utilize the service. The survey found that there are numerous positive aspects to internet banking, and as a consequence, the majority of consumers are adopting it. According to the results of the study, the most persuasive arguments in favour of the widespread adoption of online banking centre on its utility, the convenience of the system, and the knowledge of its associated hazards. Customers are more likely to use an online banking system if they enjoy these benefits.

Rachel Chitra (2017)

The RBI data reveals that 8 e-wallets, including Paytm, mobiwik, free charge, witnessed a drop in their market share after November 8, 2016, when demonetization was announced. The e - wallets witnessed maximum increase of 50% to 88 million transactions in December, and then decreased 1% in January, before declining another 10% in February to 78 million. In contrast, the number of digital bank wallets, prepaid cards, and vouchers grew by 57% year over year in December, reaching 173 million.

PURPOSE OF E-BANKING

It was because of these problems that the E-Banking programme was invented; before, banking had to be done manually, which was slow, insecure, and inaccurate when measured in percentage terms, and required a large amount of people to get satisfactory results. The fundamental concept is to provide a variety of banking services online so that customers don't have to physically visit a branch every time they need anything done, and so that they feel more at ease and have more freedom to do routine activities quickly and easily. In addition, current

account customers cannot use these features, which are exclusive to savings account customers. This research is meant to provide an outline of the Internet banking industry in the Indian economy, examine the ways in which it has influenced consumers' financial behaviours, and look forward to its potential.

ADVANTAGES OF E-BANKING

Everyone is familiar with the concept of a penalty for late payment of a bill. Of all, nobody enjoys the hassle of having to write a check, wait in line, and then make sure that the correct amount is in their checking account before making a purchase. The goal of Indian financial institutions is to facilitate your daily activities. In addition to paying bills, you now have the ability to invest, shop, purchase tickets, and even plan a vacation, all from the convenience of your fingertips. Actually, the number of customers who have signed up for online banking is growing at a staggering rate of growth. One may get started with online banking with nothing more than a computer, a modem or other dial-up device, a checking account with a bank that provides online service, and the patience to fill out a brief application that often only takes a page or two.

ORIGIN AND DEVELOPMENT OF E-BANKING IN INDIA AND INVESTING THROUGH E-BANKING

The process of opening a fixed deposit account could not be simpler. Through electronic money transmission, it is now possible to create a fixed deposit account online. Lazy investors may also find online banking to be a useful ally. When a deal is made in the stock market, the money is taken out of the investor's bank account, and the shares are added to the demat account, all without the investor having to lift a finger. Furthermore, some banks allow you to buy mutual funds straight from the internet banking system. As a result, you may stop stressing about completing that massive paperwork for mutual funds since they will now be accessible with a few mouse clicks. These days, most major financial institutions provide customers with the option of opening an online banking account as well as a demat account. You will need to sign a unique form in order to connect your accounts if you have a demat account with independent share brokers.

Under the Infinity brand name, ICICI was the pioneer in India's transition to online banking in 1997. In 1996, ICICI Bank was the first bank to provide internet banking. However, even for the Internet as a whole, 1996–1998 was the adoption period, and the growth in use that we saw in 1999 was due to factors like cheaper ISP online rates, more PC penetration, and a more

generally tech-friendly attitude. Banks and their clients benefit from the increased security afforded by the adoption and refinement of standards by the financial sector. Therefore, banks need to be ahead of the curve in order to avoid falling behind in the e-banking age.

With the advent of deregulation and liberalisation in India and the Reserve Bank of India (India's Central Bank), ICICI Bank was able to enter the market and compete with the preeminent state-owned and international banks of the time. The bulk of the population was served by state-owned banks, which had a widespread branch network but lacked automation and customer service sophistication. Foreign banks, on the other hand, serve primarily corporations and wealthy people via a tiny branch network while using cutting-edge technology and providing novel financial services. ICICI Bank saw an unfilled niche in the Indian market and set out to serve India's growing middle class and business sector by providing services on par with those provided by international banks but on a grander scale and at a cheaper cost. The use of cutting-edge technological advancements was a vital part of this plan. ICICI Bank promoted itself as a progressive, user-friendly bank that is at the forefront of technological innovation.

THE 1980s

Whether we want to accept this as fact or not, the 1980s were the first decade in which financial services could be accessed through electronic means. Anyone with a computer, a terminal, and a phone connection could use the banking system back then. An alternative method of communicating with your bank over telephone lines is by using a numeric keypad. Chase Manhattan and Citibank, two of New York's largest banks, were among the first to provide such services to their customers in 1981. By 1983, the Bank of Scotland in the United Kingdom was already taking use of this service, thus the idea had quickly crossed the Atlantic. A bank that offered online bill pay and statement viewing was an early adopter of the Internet and online banking.

THE 1990s

As the decade progressed, more individuals purchased personal computers and connected them to the internet using dial-up modems, marking the beginning of widespread home internet access. The Stanford Federal Credit Union bank was the first to provide the web based, internet banking services that are now standard. It was then that customers first experienced the convenience of online banking, and the trend toward using the Internet for banking only accelerated. However, some consumers at the time worried that making financial transactions

online was risky, and others were wary of the new technology out of a sense of caution. As a result, banks invested significant resources into creating robust security measures for their online banking platforms.

THE 2000s

In 2001, Bank of America was the first financial institution in the world to serve 3 million clients through its online banking platform. The following decade saw the meteoric rise of Internet banking, with the emergence of entirely virtual financial institutions. The fact that these banks did not have to bear the costs of maintaining physical bank locations allowed them to provide more attractive interest rates, more features, and other services to their clientele. In addition, we need to investigate the function of IT in the expansion of electronic banking (E-banking): The Rangarajan Committee's recommendations brought information technology into the banking industry in the 1980s, and in the 25 years afterwards, the banks that have placed the most value on IT have dominated the industry.42 Beginning in the 1980s, the Reserve Bank of India has pressured banks in the country to implement widespread branch-level computerization in pursuit of improved customer service. During the initial stage of development, banks focused on automating the time-consuming accounting process and back-office activities such maintaining deposits accounts, maintaining general ledgers, and calculating interest. We accomplished this with the help of Advanced Ledger Posting Machines (ALPM), and although this was only the beginning, it proved the benefits of using this technology on a larger scale. The second stage of growth occurred in the 1980s, when banks started seriously considering automating both front- and back-office functions in order to better serve their customers by cutting down on processing times and increasing efficiency, and to better maintain control by ensuring that both sets of operations were always in sync with one another. During this time, Total Branch Mechanization was implemented, and branches began recording all relevant data and transactions independently. Next followed the third stage, which coincided with the debut of a new crop of private-sector financial institutions. Despite their relatively modest size, these banks were early adopters of both networking and centralised operations, mostly due to the advantages of adding branches in a computerised environment. These financial institutions might provide cutting-edge services at cheaper prices if they made substantial IT investments and minimal operational expenditures. Existing financial institutions have recently begun centralising their operations and expanding the use of computer networks to link their many locations. Before the introduction of the "Core Banking Solution" (CBS), banks had already won a significant portion of their business through CBS. With the advent of

the "bank customer" idea, "branch customer" was deemed unnecessary and so eliminated. This meant that both public and private banks were able to fully reap the benefits of centralization, boosting their administrative and financial efficiencies while avoiding the pitfalls of a decentralised network such operating a separate server, apps, and databases. The rapid centralization has been fueled by the dropping prices of hardware and leased lines.

Now in the fourth stage of evolution, the centralised operations have given rise to Automated Teller Machines (ATMs), and all banks provide their customers the convenience of handling their own financial transactions through ATM, mobile banking, or the internet. Customers might choose between the standard method of doing business and the more modern electronic means. Online banking and automated teller machines make it possible to bank whenever, whenever, and however you choose. Although automated teller machines (ATMs) have been around in India for a while, their availability and use are very limited in comparison to those in other industrialised countries. Only one-third of all ATM withdrawals come from consumers in India. There may be a low level of use in India due, in large part, to a lack of awareness, aggressive marketing, and consumer education. Customers have more leeway in their transaction choices, and operating expenses are lower. In addition, "Internet" banking has a lot of potential to perform most banking operations and has a cheap operational cost. It shows that just 15% of customers in India are registered as "Internet" users, which explains the unrealized potential of doing business online.

As the intra-bank system matured, the banking industry entered its fifth phase. Interbank connectivity is a streamlined method of increasing available connections. (RTGS) "Real Time Gross Settlement" has made it feasible for banks to send and receive money online without using paper checks. Bank customers are now banking industry customers. As yet another customer-friendly innovation, the "Cash tree" is a networking group consisting of ATMs from different banks. Without a shadow of a doubt, the advancement of banking in general requires the use of technology. The branch is no longer the exclusive location for banking in the modern day. Customers in India now have a variety of options for doing financial transactions, including tele-banking, mobile banking, online banking, personal computer banking, and automated teller machine banking. There will be unavoidable changes to the procedures as a result of the implementation of new technology.

ROLE OF CUSTOMER WHEN USING E-BANKING

The only way to go into icicibank.com is to enter your User ID and Password. The bank will have sent you two passwords, one for logging in and one for transacting, and you will be

required to change both before you can use the system for the first time. To contact the bank in case you forget your password, use the "Email Us" link. After verifying your identity via other means, the Bank will create a new password and email it to the address on file, guaranteeing that your account information is safe at icicibank.com.47 The bank's website must be closed and locked out before you leave the computer. Don't ever write down your ICICIBank.com username or password. Never enter your username and password in a public place where anybody might see you. Don't ever tell somebody your personal information such as your bank login and password (no representative of ICICI Bank will ever ask you for your ICICIBank.com password). If you notice any suspicious activity on your ICICI Bank account, please contact the bank immediately. Make sure your account details and any supporting documentation are kept in a safe place.

CONCLUSION

The increased use of online banking has brought about a change in the traditional procedures followed by financial organisations. The advent of internet banking, higher levels of competition, and shifting patterns of customer behaviour have all had an impact on contemporary banking. In actuality, customers have to physically go to their local bank office in order to complete their financial activities. As a result of the proliferation of internet banking, customers no longer have to physically visit their bank's branch in order to conduct financial transactions, which frees up both their time and their money. Traditional banking contains several expenditures that are not essential, such as the cost of paper and printed copies of statements. These costs, along with many others, are being removed, which will result in cost savings for the banking sector as a whole.

With the aid of online banking, financial institutions are able to retain customers for a longer period of time since customers use the service more often. It not only enhances the reputation of the bank but also increases revenue owing to the newfound capacity of the financial services to differentiate themselves from the competition. This study develops a workable model for enhancing the customer experience by using the results of a survey that was administered to consumers who use internet banking as well as staff of two large financial institutions (SBI and ICICI). According to the findings of the study, customers of both public and commercial banks are pleased, but not too satisfied, with the services that E-banking provides. The major objectives of this study are to evaluate E-banking in relation to traditional banking and to investigate the six characteristics that are distinctive of online banking (tangibility, reliability, efficiency, responsiveness, and empathy). In order to investigate the precision and

dependability of online banking, statistical analysis was carried out.

Banks that are part of the public sector are notoriously sluggish to react to the requirements of their clients, and the lack of empathy and responsiveness shown by their employees is on full display. In order to effectively handle a key customer concern, banks that are part of the public sector have an obligation to place a higher priority on employee response. According to the findings of this study, customers of SBI are not entirely pleased with the online banking service that the bank provides for them; this discontent may be the result of issues with either the accessibility or the usability of the system. In order for them to be able to compete with ICICI Bank, they will need to advance their technological capabilities and simplify the online banking process. The State Bank of India (SBI), which is a part of the public sector, provides its customers with the standard facilities and ambience, although it is not on par with ICICI. This is a crucial factor for customers to take into account when selecting a financial institution, and it also has an effect on the level of contentment they have with that particular establishment. When acting as a mediator or conducting transactions using credit or debit cards, ICICI bank often maintains larger bank charges than SBI does. In addition to these expenses, the ATM fees charged by ICICI bank are more than those charged by SBI. ICICI Bank, in contrast to SBI, is a member of the private sector, which is one reason why. ICICI also offers a variety of extra cutting-edge features and customization possibilities in addition to this. Despite the fact that ICICI Bank offers more alluring programmes for an expanding number of sectors, the institution's other hidden charges are higher than those of SBI. It would be in the best interest of ICICI Bank to charge fair fees for the use of their online banking services for the convenience of their clients. As a result, one might draw the conclusion that customers have a stronger preference for ICICI bank than SBI. The difference between the two isn't very large, but it is clear enough to lend credence to this interpretation of the data.

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When E-banking services are compared to more traditional means of banking, the attitudes of bank workers from both public and commercial institutions are similar, as shown by the statistics. The perception that employees have of internet banking is, on the whole, a positive one. According to the findings of this survey, the vast majority of employees working in branches are of the opinion that e-banking helps improve employee-customer relationships by offering advantages to both customers and employees in the areas of cost, time savings, convenience, speed, efficiency, and privacy. In addition, the study discovered that customers of private sector banks, such as ICICI bank, had a greater awareness of and propensity to make use of the online banking services offered by their respective institutions. These findings also show that customers of a private sector bank (ICICI) are more satisfied with the bank's electronic banking services than customers of a public sector bank are with same services (SBI). Because it is a private sector bank, ICICI Bank has invested more time and energy into increasing the system's efficiency and making it more user-friendly. Based on these findings, we may draw the conclusion that customers who bank with ICICI are more satisfied than those who bank with SBI. Despite the fact that SBI Bank has recently established itself as a significant public sector bank and improved its ability to provide internet services over the past few years, it has been determined that ICICI Bank, which was the first bank in India to offer online banking, is superior in terms of the quality of its services. In addition to this, SBI is using innovative, cutting-edge strategies for providing customer service.

SUGGESTIONS

The researcher produced some suggestions based on the above conclusion. Clients of any age or demography, especially those who have difficulties moving about, should have no problem utilising online banking services. The development of new approaches or methods in five areas—access or convenience, availability, understanding, and suitability—makes such access possible.

It is strongly suggested that any technical difficulties that may arise at an ATM be handled as soon as possible. When it comes to automated teller machines, the management of the bank should make an effort to improve the customer experience in order to decrease the amount of time that customers are required to wait. Because of this, the efficiency with which the service is provided will improve, which will lead to an increase in customer traffic. The banks should prioritise the prevention of fraud and theft at automated teller machines and online banking platforms as a priority in their efforts to improve security across the board.

Encryption is very necessary in order to use the internet without compromising one's safety. Given the present state of online banking security, it is imperative that all financial institutions upgrade the level of SSL (Security Sockets Layer) encryption used on their customer-facing websites from 128 bits to 256 bits. The State Bank of India, like other financial institutions, has made significant strides in recent years.The number one concern that customers have about their bank is that it will be hacked; as a result, banks need to adopt additional safety measures to defend themselves from hackers. There are no significant measures in place to protect financial institutions from the kind of infiltration risks that have been discovered. It is expected that significant progress will be made in this sector by the banking industry.

CHAPTER 14

Socio Legal Aspect of Domestic Violence During Covid-19

Pooja Somani[195], Prof Amritpal kaur[196]

ABSTRACT

24th March,2020 drastically changed every Indian's life in a snap. Covid-19 not only brought with it severe medical emergencies and economic backlashes but it took a heavy toll on an individual's routine life. The aftermath of covid-19 made people psychologically vulnerable and mentally defenseless towards the outer world. According to Protection of Women from Domestic Violence, upon reviewing the phase of this virus, various professionals realized that there was a Shadow Pandemic emerging through data reports where crime against women has increased drastically during lockdown and especially cases of domestic violence have tripled in this period.

In a survey conducted by The National Commission of Women, there were total 587 complaints in a 30 day duration lodged in a Police Station out of which 239 are the ones reported against domestic violence. This only shows the demographic vision as to what extent the violence acts at home have increased during the pandemic[197].As stated by NCW Chairperson Rekha Sharma "it has brought the victim and the abuser within the same room and thereby leaving no chance for the victim to escape the situation"[198].

[195]Uid-21MLL1035, LLM Student
[196]Assistant Professor, UILS, Chandigarh University
[197]PhumzileMlambo-Ngcuka, Executive Director of UN Women, Violence against women and girls: the shadow pandemic 6 April 2020
[198] NCW, India receives steep Rise in Complaint among Women in lockdown (Apr17,2020)

DOMESTIC VIOLENCE

A lot of people often associate the word domestic violence with the physical harm and outward bruise, but what about the internal bruise that is caused due to the years of trauma and suffering within the four walls of the house.

According to Protection of Women from Domestic Violence[199]:

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—
(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse,
verbal and emotional abuse and economic abuse; or
(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable
security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct
mentioned in clause (a) or clause (b); or
(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Upon reviewing the phase of this virus, various professionals realized that there was a Shadow Pandemic emerging through data reports where crime against women has increased drastically during lockdown and especially cases of domestic violence have tripled in this period. In an interview the NCW Chairperson Rekha Sharma stated that "the high number can be attributed to the lockdown imposed due to the coronavirus outbreak which has locked the abuser and the victim together".

[199] Protection of Women from Domestic Violence Act, 2005 (Section 3)

The Sociological Perspective

A human being's behaviour is largely dependent on the society and its elements. A high socially standard people behave very different than a person who has a low social standard and upbringing.

The pandemic not only bring an economic downfall for an individual but they also faced downfall in their socio-economic status making them more prone to such abusive behaviour. There were a great economic downfall for the daily wagers, employers and many other labourers. Some people not only face a downfall but straightaway lost their jobs due to this pandemic situation. Around 10 million jobs were lost just only during the on-going of second wave and around 97 percentage of household income declined. This created a situation of chaos among the people itself and it affected different people in a different way. In this situation some retorted back to being realistic which some chose the path of violence.

The constrains of unemployment make a man more prone to being domestically violent and thus economic constrains acts as a lighter to boost up their fire of anger towards their wives and children. Moreover the non-availability of alcohol with limited resources of other entertainment modes and limited social life these men are becoming more aggressive and turn into a domestic abuser.

However several steps are being taken by the Government of India to help these underprivileged abuse victims. NCW National Commission of Women has released a WhatsApp helpline number so that such victims could seek relief[200].

Cases brought forward

The pandemic have highly changed the dynamic of every household and thereby In a conversation with a writer for Legal-Services India it was shocking to know about the harsh realities of the current status of Domestic Violence in India. According to her, her house help was going through Domestic Violence since years of marriage and her only escape from her husband was to run away through a narrow street where she took shelter at her very kind neighbour's house. But the sudden lockdown has made her helpless and defenceless. She wept and confessed that not only her but also her children were going through abuse where they are

[200] THE ECONOMIC TIMES, NWC launches WhatsApp number to report domestic violence. https://economictimes.indiatimes.com/news/politics-and-nation/ncw-launches-whatsapp-number-to-report-domestic-violence-during-covid-19-lockdown/articleshow/75082848.cms

forced to make face masks at home with cheap materials and if not done properly then they would have to face the wrath of her husband. This incident only highlights the condition of women in this country who have faced domestic violence during the Covid-19 pandemic[201].

DOMESTIC VIOLENCE AGAINST CHILDREN

During the ongoing of the pandemic, Domestic Violence against children had increased in an alarming rate[202].

There are mainly two forms of domestic violence that are incorporated on a child:

- The first being the Corporal Punishment when a guardian or parent uses physical force on a child in order to intimidate the child so as to attain their desired behavior.
- The second being verbal communication like aggression, threats or guilt.

This form of violence's have made the children more prone several mental traumas that travel with them throughout their life even after they have moved away from the situation of violence.

Moreover, during the ongoing of the pandemic, the children were stuck at home which made them more socially vulnerable to these types of abuses as they had no other form of social interactions except their family.

LEGAL PERSPECTIVE OF DOMESTIC VIOLENCE:

The Protection of Women from Domestic Violence Act 2005 was enacted by the Indian Parliament on 26 October 2006. This law differs from Section 498(a) of the IPC because it gives a broader definition of domestic violence.

Various statutes, such as Section 304(b) of the Indian Penal Code, 1983, have various provisions to protect women from domestic violence, which also falls under the definition of domestic violence.

[201] JeetikaAgarwal, Socio Legal Aspect Involved In Rise Of Domestic Violence Against Women Amid Lockdown (2020)

The 2013 Criminal Law Amendment was a milestone in this field as it amended several sections of the Indian Penal Code, Code of Criminal Procedure and Indian Code of Evidence.

As part of the amendments, the terms sexual assault and rape have been clarified and added, along with much stricter penalties and penalties. The 2013 revision also added punishment for acid attacks, stalking and violent undressing of women in public.

In **Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan**, the Supreme Court, based on a number of favourably decided cases, ruled that the right to life is within its scope the right to life with human dignity. *The right to dignity includes the right to degrading sexual conduct. This includes the right to be insulted. These two aspects of the right to life are mentioned under the definitions of sexual abuse and emotional abuse respectively. A commendable aspect of this law is the concept of emotional abuse as a form of domestic violence. The recognition of sexual abuse of wives by husbands as a form of personal injury is commendable. Especially since such sexual abuse is not recognized as a crime by her IPC. These acts fall within the scope of domestic violence as defined by law, but the definition is not so limited*[203].

LEGAL PERSPECTIVE OF DOMESTIC VIOLENCE TOWARDS CHILDREN

As far as children are concerned, there are no exclusive enactment that protects the children from Domestic Violence, bit there are several laws that have been enacted that encompassed the topic of violence that are generally faced by the children. These laws states how it can protect the children from the dangers of this society and retain its normalcy and the innocence of the children.

Some of such laws have been explained below.

1. **Juvenile Court Act 2015**

This act protects the children and their rights whose rights and privileges have been violated. This is a very fundamental law enacted in India so as to protect the children from practices such as domestic violence and other heinous crimes.

2. **Child Sexual Offenses Prevention Act (POSCO), 2012**

[203]Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan. 11 October, 1996

This Code of Law aims at protecting children from their sexual predator who have been sexually assaulted or harassed by someone. The law provides for severe punishment for those who have made the courage to play with the rights of victims.

3. **Indian Penal Code**

1. Section 373

This section encompasses that fact that anyone who engages in the activity of purchasing, employing or possessing any underage girls for the purpose or intent of prostitution would face a maximum fine of 10 years and imprisonment.

2. Section 376AB

According to this section anyone who is found guilty of raping a woman under the age of 12 years would face a fines and life imprisonment, and that the maximum sentence in such cases can also mean capital punishment for the perpetrator.

LANDMARK JUDGEMENT

Inder Raj Malik v. Sunita Malik

In this case, Sunita Malik(appellant) and her husband Inder Raj Mailk(defendant) were married. In order to extort more and more money and goods applicant Sunita was brutally treated, beaten, starved, and abused especially at festivals, by her husband and her in-laws after her marriage.

One day, she was physically and mentally torturedatherparents'home to the point that she losther consciousness, but no doctor was called for check-up.

The Court was of the view *"that an individual can be convicted under both Section 4 of the Dowry Prohibition Act, 1956 and Section 498A of the IPC without facing double jeopardy. The Court held that Section 498A, IPC, and Section 4 of the Dowry Prohibition Act are distinct, since, under Section 4 of the Dowry Prohibition Act, mere demand of dowry is subject to punishment, whereas, in Section 498A, an act of cruelty committed against a newly wedded woman is punishable. As a result, it is possible to conclude that a person is subject to*

prosecution under both Section 4 of the Dowry Prohibition Act and Section 498A of the Indian Penal Code"[204].

GLOBAL CRISIS

Not only in India but domestic violence is widespread throughout the world and has become of such a heinous nature that the World Health Organisation have indicated that around 30 percent of women in the world are subject to physical, mental or emotional violence by their sexual partner at least once in a lifetime[205].

Even before COVID-19 existed, domestic violence was already one of the greatest human rights violations. In the previous 12 months, 243 million women and girls (aged 15-49) across the world have been subjected to sexual or physical violence by an intimate partner. Since the onset of the pandemic, this number has grown with multiple impacts on women's wellbeing, their mental health, their sexual and reproductive health and their ability to participate and lead in the recovery of our societies and economy.

This rate of domestic violence is not only alarming in India, but also in several countries such as Brazil, China, UK and Spain. The women and children living there have no escape from their predators and activists have witnessed that the cases of domestic violence have increased in an alarming rate there. Theresa May, the former Prime Minister of the United Kingdom, in her address to all MPs, said: Measures to tackle coronavirus must not do more damage than the disease itself[206].

CONCLUSION

Summing up, Domestic Violence is one of the most heinous crimes in the history of mankind that scars an individual for a lifetime. Women are meant to be one of the most beautiful creatures of God and children are meant to be nurtured for good. The pandemic has changed some family dynamics in the worst way possible and the world is facing a turbulence that needs to be brought to sanity for society's sustenance and growth.

[204]Inder Raj Malik v. Sunita Malik (1986 (2) Crimes 435)

[205] Violence against Women,2021

[206] BBC News,2020

CHAPTER 15

ROLE OF THE DOMESTIC COURT IN INTERNATIONAL COMMERCIAL ARBITRATION

Dr Sapna Desai[207]

ABSTRACT

"International commercial arbitration" is now a widely utilised procedure to resolve investment, trade, and contractual disputes as a result of the enormous development in international commerce and investments. Contrary to judicial action, which requires time and money, the majority of people think that arbitration can hasten conflict settlement and save costs.

However, the courts must supervise and assist that process in order to preserve the impartiality of the arbitration process and the public interest. However, in order to prevent eroding consumers' trust in the arbitral system, the level of judicial oversight shouldn't be excessive. In international commercial arbitration, there is discussion about the appropriate level of judicial engagement. It is known that arbitration needs the backing of Domestic Courts even though it is asserted that arbitration must be free from judicial monitoring in order to be successful.

The study examines the function of Domestic Courts in arbitral disputes and how they have impeded arbitration. The problems about jurisdiction in international business arbitration are the article's main topic. The relationship between the domestic court and multinational arbitration is also discussed in the article, along with the subject of the recognition and execution of foreign arbitral awards. The question of whether disputes may be resolved through arbitration without the involvement of Domestic Courts is the main topic of the article.

The researcher comes to the conclusion that the expansion of global trade and investment necessitates the presence of active "International commercial arbitration" to resolve disputes; however, because arbitration is private in nature, parties must seek judicial enforcement the

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terms and decisions of the arbitration agreement. That Domestic Courts must be made aware of the need to support arbitration in order for it to be effective, especially in emerging markets.

INTRODUCTION

"I came to realise that a lawyer's primary responsibility is to mediate a conflict between the parties. My understanding of the lesson was so engrained that for the first twenty years of my legal profession, a sizable percentage of my time was spent negotiating private settlements in hundreds of cases. Nothing was acquired by me not even money, and certainly not my soul."
-M Gandhi

Involvement by Domestic Courts in international business arbitration is as common as the weather. The system of justice that was created by merchants is arbitration. It has existed in one form or another for a long time. Multinational business arbitration is the procedure of settling disputes between or among foreign parties through the use of arbitrators rather than courts.

The decision obtained is typically enforceable according to the parties' consent, which is typically granted by a "arbitration clause" placed into the contract like the The Geneva Convention (1927), the Geneva Protocol (1923), the New York Convention (1958), and the UNICTRAL Model Law (1985) are all examples of international treaties, International arbitration has been improved and advanced to its current prominence.[208]

It alternates between forced cohabitation and true partnership in the bond between the domestic court and the arbitral tribunal. Considering only the court has the jurisdiction to secure the arbitration when one of the parties attempts to undermine it, the ability of "International commercial arbitration" to become much more autonomous from Domestic Courts is essential to its success.[209] The Domestic Court's participation varies depending on what stage the arbitration procedure is in. For instance, the court may require the precise performance of an arbitration clause, promote arbitration, or issue pro-arbitration orders.

The international business arbitration process is a private one, therefore the proceedings are private and the outcomes are frequently private as well. An award made by private arbitration

[208] "Clyde Crofte, Christopher Kee et al., Guide to the UNCITRAL Arbitration Rules International commercial arbitration (Cambridge University Press, New York, 2013)"

[209] "Blackaby N, Redfern and Hunter on International Arbitration International commercial arbitration (6th edn, OUP 2015)"

may only be upheld by a domestic court in the country where implementation is to occur. Instead of replacing the arbitral process, courts should support it.

EARLY DISPUTES BETWEEN DOMESTIC COURTS AND INTERNATIONAL COMMERCIAL ARBITRATION

Regional courts first refused to take arbitration agreements into account in Rome, which resulted in conflicts between "domestic courts and global commercial arbitration." Business arbitration and courts compete with one another in "England," "the USA," "France," and "Germany."[210] The English Parliament then passed many Arbitration Acts, each of which consistently upheld the judiciary's authority over arbitration proceedings and provided for the annulment of arbitral rulings.

"The Arbitration Act of 1996", which gave arbitration agreements legal standing and gave courts the authority to halt legal action on claims governed by valid arbitration agreements, put an end to the animosity in England. helping the arbitral process in the process. Additionally, the act recognised arbitral tribunals in order to address jurisdictional disputes. "The Napoleonic Code of Civil Procedure of 1806", which was implemented in France, limited arbitration agreements and practises. The code specifically rendered arbitration agreements for future conflicts unenforceable.

Legislation supporting arbitration existed in Germany, but the judiciary showed its opposition by overturning arbitral verdicts on the basis that the tribunals had not complied with the law. "The Geneva Protocol of 1923" underwent a new iteration after Germany ratified it. The Parliament unanimously passed "The Arbitration and Conciliation Bill" in 1996, and the President also gave his approval. Further modifications to the "Arbitration and Conciliation Act of 1996" were introduced by "The Arbitration and Conciliation Act of 2015."[211]

"The 1996 Arbitration and Conciliation Act" is composed of two parts, the first of which contains "The New York Convention of 1958," and the second of which contains "UNICTRAL Model Law." The "1958 New York Convention" on the "Recognition and Enforcement of Foreign Arbitral Awards" has been recognised by 144 countries, while the "UNCITRAL Model Law" has been adopted by more than 60 nations. Complementary provisions to those of the

[210] "C.R. Data, Law Relating to Commercial and Domestic Arbitration (Along with ADR) : With Specimen Forms and Precedents International commercial arbitration (Wadhwa& Company, New Delhi, 2008)"

[211] "S.B. Malik, F.S. Nariman et al., Commentary on Arbitration and Conciliation Act International commercial arbitration (Universal Law Publication Co. 7th edn., Delhi, 2015)"

“New York Convention” are found in the “Model Law,” which is usually recognised as the best appropriate domestic law for interstate arbitration and incorporates what are typically deemed the principles and practises of international arbitration. However, the “Model Law” is more lenient when it comes to the function of courts.

“The Model Law was developed to restrict court involvement in arbitral proceedings.” “Article 5 of the Model Law” places severe restrictions on the circumstances in which arbitral disputes may require court intervention. Accordingly, the article states that “In topics governed by this legislation, no court shall intervene save as provided in this law,” but the courts have determined that the consequence to the restriction cited is that the court continues to have the option to change the status quo where issues of “International commercial arbitration” methods are not wrapped by the “Model Law.”

According to “Article 8(1) of the Model Law”, “A court that hears an action in a case that is the basis of an arbitration clause shall, upon a party's request, send the parties to arbitration, unless the court finds that the arbitration agreement is null and void, inoperative, or incapable of performance, not later than when the party submits his first statement on the substance of the dispute”. Domestic laws are built on the principles of “Model Law”. Both the arbitral tribunal and the Domestic Courts function under multiple jurisdictions and employ different procedures.

“On July 10th, 1958, the Convention on the enforcement and recognition of foreign arbitral awards” was completed in New York. According to private international law, it was the most successful pact. According to the convention, each member state must acknowledge the agreement in writing and ensure that any disputes can be resolved through arbitration. When handling a case where there is a legitimate arbitration clause, courts of negotiating nations must respond the parties to arbitration at the request of one of the parties, unless they determine that the said agreement according to the convention, something is “invalid,” “inactive,” or “completely devoid of being implemented.”

RELATIONSHIP BETWEEN DOMESTIC COURTS AND ARBITRAL TRIBUNALS

There are periods of forced cohabitation and real collaboration in the relationship between domestic courts and arbitration proceedings. The most efficient way to settle any transnational business issues is through international commercial arbitration. The parties may choose to resolve their disagreement through arbitration or legal action. When there is a significant level of independence from Domestic Courts, “International commercial arbitration” will succeed at

its peak. However, in arguendo, courts only have the capacity to save an arbitration when one of the parties is attempting to undermine it.

The House of Lords judgment in "**Heyman v. Darwins"**[212] in 1942 established "the theory of separability", a significant legal fiction. The argument used to justify the "doctrine of "separability" was that the "arbitration clause" functions as a separate contract from the underlying agreement.

The rationale underneath the premise of "separability" is that the agreements between the parties to adjudicate consist of commitments that are different from those made in the underlying contract: "The consensual obligations to arbitrate structure the quid pro quo of each other and conclude a separate and compulsory aspect of the memorandum of understanding."[213]

"According to Model Law Article 16(1), "An Arbitration agreement which Constitutes a Contractual Term Will Be Considered As an Agreement Free Like the Other Types of the Contract."

The fundamental problem is how to divide up the authority to resolve disagreements regarding the existence, enforcement, legality, and interpretation of international arbitration agreements between arbitrators and Domestic Courts.

According to the competence-competence notion, the arbitral tribunal may judge the validity of the arbitration clause based on its own competence. The "Model Law" increased arbitral powers while decreasing judicial involvement. The "Model Law" identified four themes, including increased arbitral tribunal authority, diminished court involvement, equality of treatment, and party autonomy.

In "**Coppee-Lavalin SA/NV Vs. Ken-Ren Chemicals and Fertilizers Ltd**"[214], Lord Mustill stressed that, regardless of one's position on how international arbitration and Domestic Courts should be balanced, it is indisputable that, at the very least in some circumstances, the Court's intervention may not only be legal but also very advantageous.

In "Articles I, III, and V of the New York Convention", two ideas are described. First, courts should only participate in the arbitration process if they are situated in the area where the adjudication or compliance will occur. Second, courts must be situated in the jurisdiction where

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[212] "Heyman v Darwins Ltd [1942]

[213] "Blackaby N, Redfern and Hunter on International Arbitration International commercial arbitration (6th edn, OUP 2015)xx"

[214] "Coppee-Lavalin SA/NV Vs. Ken-Ren Chemicals and Fertilizers Ltd International commercial arbitration (1994 UKHL J0505-1)xx"

the adjudication will take place or where the enforcement will occur before they can intervene in the arbitral proceedings.

"Article 8 (arbitration agreement and substantive claim before Court – stay of proceedings), Article 9 (interim measures), Article 11 (appointment of arbitrators), Article 13 (challenge procedure), Article 14 (failure or impossibility to act), Article 16 (competence of arbitral tribunal to rule on its jurisdiction), and Article 27 (Court assistance in taking evidence (recognition and enforcement of awards)) of the Arbitration Act govern the arbitration agreement of Model Law."

Other than the court situated at the arbitral venue, no other court has the power to interfere. Mutual recognition, the balance of ease, or even whether an arbitration looks to be burdensome, cannot be used by any court to support its decision to grant an injunction. The only issue before the court will be the legality of the arbitration agreement itself.

In the case of "General Electric Co. v. Deutz AG"[215], The American court exercised its discretion to issue an anti-arbitration order to stop arbitration that was taking place abroad. The court ruled that it should forego using the stringent criteria that applies to requests for anti-suit injunctions against proceedings in foreign courts.

In "Mitsui Engineering & Shipbuilding Co Ltd v. Easton Graham Rush and Another," the Singapore courts ruled that court intervention would only be permissible to the extent that it is expressly permitted by the "Model Law" itself. More proof that Singaporean courts "support rather than intervene when called upon to employ interventionist powers over arbitrations" may be found in this case. The "Arbitration Act of 1908," Section 5, gave the court the power to suspend court proceedings while arbitration was taking place. The Court nonetheless had the power to pause the arbitration while awaiting the resolution of the legal dispute, even if a stay request was denied.

Generally speaking, the arbitral tribunal has the authority to provide temporary relief during arbitration, but under certain conditions, the parties may turn to Domestic Courts. Perhaps tribunals lack the authority to bind third parties, in which case turning to a Domestic Court is required to get an enforceable judgement. Therefore, the crisis for which the Domestic Court issues conservatory measures is as follows: measures relating to witness attendance, considerations relating to the conservation and protection of evidence, measures pertaining to documentary disclosures, initiatives relating to preserving the status quo, initiatives relating to relief in respect of parallel proceedings, etc.

[215] "General Electric Co. v. Deutz AG 270 F.3d 144 (3rd Cir. 2001)"

THE THEORIES BEHIND JUDICIAL INTERVENTION

The proper extent of judicial intervention will depend on the fundamental nature of the arbitration. Three different concepts have been created about this specific topic. The first strategy emphasises how a court's ruling and an arbitration agreement should be compared closely. According to the second defence, an arbitration clause and the ruling it provides are intertwined.

A judgement differs from a judicial decision in that it is governed by contract law. The third hypothesis, which is a compromise between the first and second concepts, holds that an arbitral award is only comparable to a court decision when the court's order is required for its execution. The terms “jurisdictional theory,” “contractual theory,” and “mixed theory” are frequently used to refer to these three concepts. Later, the autonomous theory—a fourth theory—was also developed.

1. Jurisdictional Theory

   This view holds that because arbitral procedures are governed by the legal system, a country has the authority to control them. Despite the idea that the arbitral process is independent and based on a contract between the parties, the legality of the agreement, the authority of the arbitrators, and the implementation of the arbitral ruling are all governed by statutes. The parties involved in a dispute have the legal right to request arbitration. The sole difference between the duty of the court and the arbitral process, despite their striking similarities in duties, is that judges are appointed by the government while arbitrators are selected by the disputing parties.

2. Contractual Theory

   According to this perspective, arbitration is based on a settlement agreement reached by the opposing parties. This emphasises the arbitral clause in contractual nature. Without a written agreement, neither side may compel another to arbitrate a dispute, but there are several circumstances in which this is permitted, including such binding arbitration. An arbitration clause should control any disputes over the composition of the arbitral tribunal. The arbitral tribunal's decision is maintained and respected as a result of the arbitration clause.

3. Hybrid Theory

This theory is seen as a middle ground between the contract theory and the jurisdiction theory. This theory holds that the arbitration agreement is a private one between the parties, and that the court has exclusive authority over the situation.

4. Autonomous Theory

This idea presents a novel viewpoint on the arbitration procedure. This viewpoint views arbitration as a unique mechanism. It must continue to be independent and unaffected by the law if it is to continue operating effectively and maintaining its actual identity.

JURISDICTION OF NATIONAL TRIBUNALS AND COURTS

The initial decision on a jurisdiction challenge must be made either through the domestic court or, in the alternate, an arbitral tribunal. Different states have different positions on this issue. The parties will not be allowed to arbitrate the issue but rather will be allowed to go to court to resolve it if a judge in the United States decides that there is neither a legal arbitration clause or that the agreement does not apply to the parties' issues.[216]

Who in the United States has the power to address jurisdictional disputes is impacted by the presumption of "separability." The dispute between the parties about the legitimacy of the underlying contract must be arbitrated, according to American courts, as there is no jurisdictional question.[217] According to the American Supreme Court, claims contesting the validity of the parties' underlying contract should be Because "respondents question the agreement, and not particularly its arbitration provisions, which are actionable apart from the entirety of the contract," and "should therefore be evaluated by an arbitrator, not a court," the arbitration dispute must be firstly settled by the arbitrators."[218]

According to the "Model Law" jurisdictions, before presenting a case to arbitration, the court shall only make a preliminary determination of the parties' eligibility to arbitrate. A court may refuse to refer the parties to arbitration and allow the claim to be litigated only if it is evident that there is no genuine arbitration agreement. If a convincing claim can be made that a legitimate arbitration agreement exists, the arbitrators should be allowed to determine the jurisdictional issue first.[219]

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[216] "Jacob C. Jorgensen, Finding, Freezing and Attaching Assets: A Multi-Jurisdictional Handbook International commercial arbitration (Kluwer Law International, 2016)"

[217] "Gordon Blanke and Philip Landolt, EU and US Antitrust Arbitration : A Handbook for Practitioners International commercial arbitration (Kluwer Law International, The Netherland, 2011)"

[218] "FabienGelinas, Trade usages and Implied Terms in the age of Arbitration International commercial arbitration (Oxford, New York, 2016)"

[219] "Gomez K F, Lopez-Rodriguez A M International commercial arbitration (eds), 60 Years of the New York Convention: Key Issues and Future Challenges (Kluwer Law International 2019)"

The arbitral tribunal has the jurisdiction to rule on subjects within its purview, such as competence-competence. When an arbitration is cancelled for whatever reason, the court has the ability to assume responsibility for assisting the parties in resolving their impasse. In the case of "Olympus Superstructures Pvt. Ltd v. Meena Vijay Khetan"[220], it was determined that section 16(1) of the Arbitration and Conciliation Act, 1996 gave the arbitral tribunal the authority to address any challenges to the existence or legality of the arbitration agreement.

The two main defences set in place in section 16 of the Act were already, the adjudicative tribunal's ability to do solve issue in a final judgement on its own jurisdiction, including the decision ruling on any objection with respect to the existence or validity of the arbitration agreement, and second, to treat an arbitration provision that is a component of the substantive contract as an agreement independent of the other terms of that contract and the defeasibility of that agreement.

According to the "New York Convention," judges have the discretion to refuse enforcement of a foreign judgement on the grounds that it has been declared invalid in the nation where it was decided to make, irrespective of whether the judicial framework of the enforcement forum has accepted the same reasoning for the annulment. The court may have implementation jurisdiction under "Article 5(e) of the New York Convention", but unlike domestic awards, it may not set aside the award. From an Indian standpoint, if the arbitration is to take place in India but at least one of the parties is a foreign national, the matter will be conducted in accordance with Part-I of the "International commercial arbitration" Act and international commercial arbitration requirements. If the arbitration is held outside of India, Part I of the Act does not apply, and Part II of the Act takes precedence. "Under Section 9 of the Act, the court may provide the parties interim relief."

"Section 35 of the Act" makes the enforcement of an arbitral award legally obligatory on the parties, much like a decision given by a court of law based on the Code of Civil Procedure of 1908. "Part 1 of The Arbitration and Conciliation Act, 1996" gives impact to the Supreme Court's ruling in "Bhatia International v. Bulk Trading," and the court is entitled to provide interim relief even if the site of "International Commercial Arbitration" is outside of India.[221]

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[220] "Olympus Superstructures Pvt. Ltd. v/s Meena Vijay Khetan (Civil Appeal Nos. 2912-2914 of 1999)"

[221] "Tushar Kumar Biswas, Introduction to Arbitration in India : The Role of the Judiciary International commercial arbitration (Kluwer Law International, 2013)"

According to the court's ruling in "Bharat Aluminium v. Kaiser Aluminium Technical Services" (BALCO)[222], part 1 only applies when the arbitration's seat is in India and does not apply when the arbitration is conducted elsewhere. The court also ruled that because the arbitration will take place outside of India, no Part 1 lawsuits seeking interim relief can be brought in India.

CONCLUSION

The analysis backs up the notion that Domestic Courts are essential in international economic arbitration. Court involvement is used to support the practise of international corporate arbitration. "The 1996 Arbitration and Conciliation Legislation" was divided into two parts: the "New York Convention" and the "Model Law of UNICTRAL". However, the legislation was amended in 2015, introducing additional revisions to the law, such as limiting the ability of the High Court and Supreme Court to consider cases involving international commercial arbitration. When it comes to international arbitration involving all nations, Domestic Courts have greatly emphasised party autonomy and limited Domestic Courts' participation in the arbitral proceedings.

Several ideas could be debunked through the involvement of domestic courts in international commercial arbitration. To begin, despite its independence, international arbitration is dependent on domestic courts for assistance, efficacy, and backing of the arbitration proceedings. Second, Domestic Courts recognise international arbitration as legitimate because of the parties' agreement, the New York Convention, and the arbitration method. Third, because an award acknowledges the impartiality of arbitration, the courts should seek to give the tribunal's judgement force once it is proclaimed. The fourth and last alternative is anti-suit injunctions, which are intended to prevent a party from filing a lawsuit in a Domestic Court.

The acceptance and implementation of international arbitral verdicts effectively ends the relationship between domestic courts and global business arbitration. Article 5 of the New York Convention outlines the reasons for challenging the acceptance and implementation of a foreign arbitral ruling. Many arguments have been raised against the court's discretion in recognising and enforcing international awards, given the fact that every contracting state's jurisdiction is affected by its own judicial systems and regulations, and thus may use authority

[222] "Bharat Aluminium Co. v. Kaiser Aluminium Technical Services; AIR 2008 SC 1061"

in a unique manner than other nations. If one or more of the defences stipulated in Article 5 of the treaty are justified, the authorities may fail to acknowledge and execute the foreign award. Therefore, even though Domestic Courts' involvement in some cases may not be allowed, it is still very advantageous.

CHAPTER 16

STUDY ON ELECTRONIC TRADING MARKETS IN INDIA AND EMERGENCE OF ALGORITHMIC TRADING SYSTEMS

ReshabhChhetri223, Vinit Kumar Sharma[224]

ABSTRACT

In today's complex institutional trading environment, buy-side traders need to transfer big blocks of shares with the least amount of market impact. As a result, electronic and algorithmic trading has become a widely accepted solution. An overview of the major market providers is provided in this book. As electronic trading platforms develop, more cost-effective methods for handling higher order volumes are becoming a reality. For suppliers and consumers of information and trading products, the increased reliance on electronic trading has had significant ramifications. Broker dealers who offer solutions through their products must adapt their business models to new realities, including those relating to relationships with sell side and buy-side customers, broker neutrality's significance, the function of direct market access, and partnerships with prime brokers. The definitive resource for managers, institutional investors, broker dealers, and software vendors to better understand cutting-edge technologies that can reduce transaction costs, do away with human error, increase trading efficiency, and increase productivity is Electronic and Algorithmic Trading Technology: The Complete Guide. Financial institutions are seeking efficiency gains by upgrading the quality of their software systems as a result of economic and regulatory demands, and businesses are investing more financial and human resources to stay competitive.

INTRODUCTION

When India first started moving toward a more market-oriented economy in the early 1990s, one of the most important goals that policymakers set for themselves was to make significant

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changes to the country's financial markets. The widespread notion that markets should play a preeminent part in resource allocation, a knowledge of the potential cost that India was incurring as a result of its closeness to the free movement of global capital, and an instant reaction to the scandal that occurred in the fixed income and equities markets in 1992 were the primary impetuses behind these initiatives. The design of the equities market underwent a thorough overhaul throughout the course of the 1990s, which was a period of significant growth for the market. Since human market makers no longer functioned as the primary market makers in India's stock exchanges, all of them adopted computerised order matching. The clearing corporation, a newly established organisation for risk management, was successful in substantially reducing settlement risk. The operational vulnerabilities that were previously linked with physical share certificates were removed thanks to a new institution known as the depository. The practice of trading derivatives eventually became popular, and within approximately a year of its launch, the market for stock index futures had become more liquid than the market for the underlying stocks. At long last, rolling settlement was implemented on the spot market, which resulted in significant improvements to market integrity[225]. The equities market underwent a full sea change as a result of these innovations, which brought forth new market architecture. In the equity market, this was accompanied by a commensurate transformation of the human capital. It is difficult to identify many areas of the Indian economy that have seen such fundamental shifts in the span of fewer than ten years since the late 1990s, when the transition began[226]. At the same time, crimes committed in markets began to appear often on the front pages of newspapers. These instances of market fraud have caused significant disruptions to the fundamental operations of the stock market. (A) Efficient use of resources; and (B) Facilitation of communication between private homes and commercial enterprises through participation in stock markets. (C) Funding of the project through the issuance of shares. On the secondary market for government bonds, policymakers began a small project that, once completed, will address a loophole that was exploited during the scandal that occurred in 1992. During this time, the bond market for the Indian government was a small club of bond dealers located in the southern part of Bombay. Due to the lack of transparency in these discussions, there are barriers to access to this club, and there is not enough of a sustainable market for these middlemen.

[225]Reddy, A. Amarender. "Electronic National Agricultural Markets: The Way Forward." Current Science, vol. 115, no. 5, 2018, pp. 826–37. JSTOR.
[226]Reddy, A. Amarender. "Electronic National Agricultural Markets: The Way Forward." Current Science, vol. 115, no. 5, 2018, pp. 826–37. JSTOR

In addition, there are not many studies that deal with the topic of algorithmic trading in a direct manner. The measurement of AT is the reason why there has been so little research done. How do we keep track of the deals that were started by AT? Use of proxy, imprecise definition, inadequate dataset due to automated trading programme assumption and many synonyms of ATP, AT, and High Frequency Trading lead to uncertainty and difficulties in understanding the influence of AT on liquidity, volatility, and price discovery (Hendershott and Riordan, 2013)[227]. Hendershott3, a prominent author in the subject of AT, agrees with the statement that "such a proxy makes it impossible to directly investigate when and how ATs behave and their function in liquidity supply and demand." Hendershott3 is one of the main authors in the field of AT.

DEFINITIONS

- **Algorithm Trading:** It refers to the process of carrying out fully automated trades with the use of trading orders that are generated through the application of mathematical formulae-based calculations. It immediately begins the process of automating the execution of trades as soon as the algorithm issues a signal, and because it is an automated process, it eliminates the need for tedious live stock price monitoring. Instead of running on the investors' computers, the algorithm is hosted on the server of the broker.
- **Application programing interface (API):** Opening the flow of data to outside parties and establishing a link between external environments permits communication between the data supplier (Stock broker) and investors.
- **Floor Trading:** It is a term that refers to the execution of a trade order manually by the broker firm through the use of a messenger in a trading pit. The client or investor is not independent of their physical location.
- **Electronic Trading:** It is a term that refers to the execution of a trade order by a broker company without the investors or customers being physically present. This execution can range from a simple order transmission to completely automated trade execution through the utilization of algorithmic trading.

[227]HENDERSHOTT, TERRENCE, et al. "Does Algorithmic Trading Improve Liquidity?" *The Journal of Finance*, vol. 66, no. 1, 2011, pp. 1–33. *JSTOR*, http://www.jstor.org/stable/29789770. Accessed 29 Jul. 2022.

ALGORITHMIC TRADING IN INDIA

On June 22, 2009, the Advanced Execution Services (AES) division of Credit Suisse began offering algorithmic trading, also known as "AT," in the Indian market. The introduction of AT centered on the stocks and shares of Indian companies. In June of 2010, the NSE granted permission for co-location4 facilities, which was a major boost to the momentum of the AT industry in India. Co-location makes it possible for broker member servers to be situated next to the exchange server, which helps to reduce the amount of latency that occurs. The time it took for data (orders) to be transmitted from broker terminals to exchange servers was one of the primary areas of focus for this initiative. Given that speed is of the utmost importance for AT, the vast majority of brokerage firms have utilised co-location for their server terminals[228].

ALGORITHMIC TRADING AND LIQUIDITY

One of the most significant distinctions that can be made between developed markets and developing (emerging) markets is the fact that developed markets often make use of quote-driven systems, whilst developing markets such as India make use of order-driven systems. In markets that are driven by quotes, "market makers" are responsible for regularly updating the quotes and orders in order to contribute to the market's liquidity. On the other hand, in order-driven markets, the level of liquidity is entirely dependent on the level of supply and demand. When it comes to markets that are driven by orders, limit orders are the primary source of liquidity supply. It is also well known that AT is capable of rapidly assimilating any new information and incorporating the same knowledge into the prices, in addition to making use of lower order sizes in order to minimize impact costs[229].

ALGORITHMIC TRADING AND VOLATILITY

It is necessary to increase the liquidity of the markets, and it is equally important to maintain some level of control over the volatility of the markets. This is true for all market participants, as well as for regulators and exchanges. The ability of algorithmic trading to revive orders in a very short amount of time in response to the appearance of any fresh information or news in the market is one of its primary benefits. Because of the rapid response of AT and the numerous order cancellations and adjustments, there is a possibility that the stock or market will become

[228]Heston, Steven L., et al. "Are You Trading Predictably?" Financial Analysts Journal, vol. 67, no. 2, 2011, pp. 36–44. JSTOR, http://www.jstor.org/stable/23031988. Accessed 29 Jul. 2022.
[229]Hendershott, Terrence, and Ryan Riordan. "Algorithmic Trading and the Market for Liquidity." The Journal of Financial and Quantitative Analysis, vol. 48, no. 4, 2013, pp. 1001–24. JSTOR, http://www.jstor.org/stable/43303831. Accessed 29 Jul. 2022.

more volatile. This could also result in adverse selection, which will make the market less liquid and prevent improved price discovery. On the other hand, it's possible that AT is able to swiftly detect opportunities and prudently divide large orders into smaller ones in order to make more liquidity available at a cheaper price. This would be the opposite side of the debate[230].
Therefore, it is possible that AT is changing the orders, but this does not lead to a lopsided accumulation of orders. And by doing so, eliminating the order imbalance and also making pricing more efficient, riskiness diminishes, and as a result, volatility is either not much influenced at all or it is reduced. According to Kelejian and Mukerjee (2016), "the period since the introduction of algorithmic trading (AT) has seen increases in both the variance and covariance of return volatility in most industries." Kelejian and Mukerjee (2016) also suggest that "the period since the introduction of algorithmic trading (AT) has seen increases in both the variance and According to their findings, high-frequency trading (HFT), which is a subset of automated trading (AT), is responsible for an increase in volatility in some instances when information relevant to fundamentals becomes available. According to their findings, AT has been increasing while volatility has decreased (return variance). An strategy to trading often used by market players is to look at the connection between volatility and the high frequency arbitrage method market

EVIDENCE OF AT IN INDIA

On June 22, 2009, the Advanced Execution Services (AES) division of Credit Suisse began offering algorithmic trading, also known as "AT," in the Indian market. The introduction of AT centered on the stocks and shares of Indian companies. The opening of co-location3 facilities by NSE in June 2010 provided a significant boost to the acceleration trading industry in India. Co-location makes it possible for broker member servers to be situated next to the exchange server, which helps to reduce the amount of latency that occurs.
The time it took for data (orders) to be transmitted from broker terminals to exchange servers was one of the primary areas of focus for this initiative. Since speed is essential for AT, the majority of brokerage firms have used co-location for their server terminals. This is due to the fact that AT. Within a matter of weeks after the debut of co-location facilities, there was a waiting time of six months before co-location facilities could be utilised. According to Dubey (2016), as of August 2013 on the NSE in India for the Nifty 50 stocks, more than 95 percent

[230]Comerton-Forde, Carole, et al. “Why Do Traders Choose to Trade Anonymously?” The Journal of Financial and Quantitative Analysis, vol. 46, no. 4, 2011, pp. 1025–49. JSTOR

(20423.70 Lakhs) of the orders were placed using algorithms, and more than 75 percent (484.00 Lakhs) of the trades were algorithmic trades (by frequency, Total Orders: 21379.27 Lakhs, Total Trades: 641.12 Lakhs)[231].

This remarkable uptake of AT stood in stark contrast to the data that already existed of AT in industrialized economies. Since the middle of the 1990s, algorithmic trading has been widely used in US markets. According to Hendershott et al. (2011), it is possible that algorithmic trading will account for up to 75 percent of all transaction by 2009. Meaning that it took more than a decade to attain a specific adoption level, whereas in India, it just took a couple of years for AT to do the same thing[232].

AT AND LIQUIDITY

The primary objective of this study is to investigate the effect that AT has on liquidity. Which, in essence, means to determine whether or not AT is to blame for increasing the liquidity by narrowing the spreads, correcting the order imbalance, and deepening the market. We follow the methodology presented by Hendershott et al. (2011) and investigate the impact using time series regressions. We perform a regression analysis on the various indicators of liquidity using the algorithmic trading intensity (AT measure)[233].

IMPACT OF ALGORITHMIC TRADING ON VOLATILITY

In the last part of this article, we addressed the effect that AT has on liquidity and discovered that this effect is significant. Furthermore, we discovered that AT, on average, tends to increase liquidity by reducing spreads and order imbalances and improving depth. The following question that arises is whether or not AT can be contributing to an increase in volatility. If AT is so actively leading to improvement of the liquidity, as suggested by Dubey et.al., (2017), and the share of algo in orders and trades is more than 95% and 75% respectively, then the question is whether or not AT can be contributing to improvement of the liquidity. Groth (2011) and Kelejian and Mukerjee (2016) both present concerns that are very similar with regard to the alarming growth in the amount of AT found in different markets. Groth (2011) admits that there is a deficiency in rigorous study in the field of algorithmic trading due to the limited

[231]Kirilenko, Andrei A., and Andrew W. Lo. "Moore's Law versus Murphy's Law: Algorithmic Trading and Its Discontents." The Journal of Economic Perspectives, vol. 27, no. 2, 2013, pp. 51–72. JSTO.

[232]PANDEY, RITA, and GEETESHBHARDWAJ. "Comparing the Cost Effectiveness of Marketbased Policy Instruments versus Regulation: The Case of Emission Trading in an Integrated Steel Plant in India." Environment and Development Economics, vol. 9, no. 1, 2004, pp. 107–22. JSTOR

[233] Aggarwal, N., & Thomas, S. (2014). The causal impact of algorithmic trading on market quality. Working paper, IGIDR Mumbai – WP-2014-

availability of data. Because of this, the link between AT and volatility has not been subjected to much research[234].

It is possible that AT is changing the orders, but this does not lead to a lopsided accumulation of orders. And by doing so, eliminating the order imbalance and also making pricing more efficient, riskiness diminishes, and as a result, volatility is either not much influenced at all or it is reduced. In the prior part, we did come across our research that indicated that AT is really leading to a decrease in order imbalance. As a result, it will be quite fascinating to observe what kind of impact AT has on volatility because we came across this conclusion.

IMPACT OF ALGORITHMIC TRADING ON PRICE DISCOVERY

In the prior sections, we studied the impact that AT has on liquidity and volatility, and we came to the conclusion that there is a major impact that AT has on both of these factors. Additionally, we found that AT, on average, has a tendency to improve liquidity by lowering spreads and order imbalances while simultaneously boosting depth. AT the same time, it has been noticed that AT can lessen the degree of volatility. If AT is responsible for the improvement of the liquidity and doesn't necessarily increase volatility, then AT should also impact or improve price discovery. This leads to the next question that arises, which is, if AT is responsible for the improvement of the liquidity and doesn't necessarily increase volatility. According to the findings of Dubey et al., (2017), the share algo in changed orders amounts to an astounding 97 percent, which suggests that AT is attempting to factor in whatever new information that it comes across into the price of the stocks. They also discover that almost all of the algo orders are limit orders—99.9 percent to be exact. In addition to this, they discover that AT orders are not immediate or cancel orders; as a result, these orders remain in the trading system for a longer period of time. In addition, there is a general tendency for AT orders to be dispersed evenly throughout the buy and sell sides of the order book. Therefore, it is obvious that based on the findings of Dubey et al., (2017) and the fundamental nature of AT to quickly acquire information and adjust orders, one must anticipate that AT will significantly impact the price discovery process while also helping to enhance the price discovery process[235].

[234]CHABOUD, ALAIN P., et al. "Rise of the Machines: Algorithmic Trading in the Foreign Exchange Market." The Journal of Finance, vol. 69, no. 5, 2014, pp. 2045–84. JSTOR

[235]Litzenberger, Robert, et al. "The Impacts of Automation and High Frequency Trading on Market Quality." *Annual Review of Financial Economics*, vol. 4, 2012, pp. 59–98. *JSTOR*.

EVOLUTION OF THE ELECTRONIC TRADING SYSTEM AND EMERGENCE OF ALGORITHMIC TRADING

Understanding the past and the research that was done in the past is critical if one is to have any hope of predicting the future.

An electronic trading platform is a piece of computer software that enables users to place orders for financial products through a network with a financial intermediary. These orders can be placed using a computer programme that is called an electronic trading platform. Stocks, bonds, currencies, commodities, and derivatives are all examples of the types of products that fall under this category. Nasdaq was the first platform that saw significant adoption for computerized trading. The fact that such trading platforms are open to the public has led to an increase in the amount of money invested by individual investors[236].

Each and every second, technological advancements are made, and concurrently, the ways in which they can be applied are expanding. The financial market is one example of a sector that is pushed by technology. In this report, we will go into more detail on how the financial market is utilising technology such as software packages used for technical analysis such as Python and R, the automation of trading through Algorithmic Trading (AT), and embedding it with Artificial Intelligence, Machine Learning, and Deep Learning; this has resulted in the rise of High Frequency Trading. Algorithmic Trading is a burgeoning technology that has the potential to completely revolutionize the way that the financial market operates. In the following parts, we will go into great depth to gain an understanding of the origins of AT, how it has evolved from year to year, and the potential applications of AT in the future[237].

ALGORITHMIC TRADING AND ITS COMPOSITION IN INDIAN MARKETS

On the customer side of the NSE and BSE, algorithmic trading accounts for close to fifty percent or more of total orders. Forty percent or more of the total orders that are put on both exchanges are executed by prop side algo transactions. Colocation at both exchanges is responsible for the generation of more than 80% of all algorithmic orders. Approximately 80 percent of it may be found in developed markets.

[236]Osler, Carol. "Market Microstructure and the Profitability of Currency Trading." Annual Review of Financial Economics, vol. 4, 2012, pp. 469–95. JSTOR

[237]Litzenberger, Robert, et al. "The Impacts of Automation and High Frequency Trading on Market Quality." Annual Review of Financial Economics, vol. 4, 2012, pp. 59–98. JSTOR

DIFFERENCE BETWEEN ALGORITHMIC AND DISCRETIONARY (MANUAL) TRADING

1. One hundred percent mechanical, no human feelings are engaged, unlike in manual trading, when there is more human involvement, feelings play a much larger role in the decision-making process.

2. Watches the market around the clock, in contrast to the practise of manual trading, which makes it impossible for humans to maintain a constant vigilance over the market.

3. In contrast, the trading strategies may be tested at any given moment in time with the assistance of historical data. However, manual trading does not allow for this kind of strategic testing.

4. Consistent method, when a circumstance repeats itself, algorithmic trading will always choose the same decision, however humans are rational decision makers, and each time there is a comparable situation, there is a possibility that they will choose differently.

5. The effectiveness of algorithmic trading is contingent on the quality of the code that was developed, but the effectiveness of manual trading is contingent on the trading effectiveness of the individual who is participating in it..

ADVANTAGES AND DISADVANTAGES OF ALGORITHMIC TRADING

Algorithmic trading, colocation, and high-frequency trading each have specific advantages and disadvantages. The usage of algo trading and high-frequency trading has been seen to increase the costs of transactions, volatility, and buy-sell imbalance. The market's prices have become more effective, which has aided in the process of determining pricing. Algorithmic systems benefit from colocation by having more liquidity and less latency. Inadequate control has led to the emergence of systemic risks.. A simple typo or an error in the algorithm can result in significant variations from normal prices. Examples include the flash crash that took place on the BSE Muhurat Session in 2011, the flash crash that took place on the Nifty April futures on April 21st, 2012, and the flash crash that took place on the Reliance Industries stock in June of 2010, both of which were caused by the execution of a large "sell" order using algorithms. v The ability of algorithmic trading and high-frequency trading (HFT) to influence markets through the employment of strategies such as quotation stuffing, layering (spoofing), and

momentum igniting has been demonstrated in the past. There is evidence to show that algorithms designed to manipulate markets result in decreased liquidity, increased trading costs, greater short-term volatility, negative impacts on performance and fill rates, and large price swings that are supported by misleading volume.

2020: COVID-19 AND ALGORITHMIC TRADING

The difficult circumstances brought on by the Covid-19 outbreak served as the push for human dealers to transition to computerised trading systems. Traders opted for algorithmic trading tactics in order to reduce the risk of making mistakes caused by humans and to make decisions more quickly in uncertain environments like as those caused by the epidemic. During times of increased market volatility and decreased market liquidity, market players turned to tried-and-true algorithmic trading tactics. Algorithmic trading market share increased from 10.98 percent in 2020 to 20.75 percent in 2021, according to a survey of participants who trade 80 percent or more of their portfolio. When it came to the years 2020 and 2021, there was an increase[238].
Algorithmic trading is associated with decreased volatility and improved market stability for stocks, according to research. Algorithmic trading activity on stocks with lower levels is used to compare these figures. Algorithmic trading does not lead to a reduction in the quantity of market liquidity available during periods of significant volatility and crisis.

LEGISLATIVE ENACTMENTS ON ELECTRONIC TRADING SYSTEM AND EMERGENCE OF ALGORITHMIC TRADING

A stock market is a place where investors can buy, sell, and issue shares of publicly traded corporations. It is common to refer to the stock market as a "public market." Its principal function is to serve as a trading platform for financial goods that actively involves investors in such transactions. Because stocks are a representation of fractional ownership in a registered firm, a stock market is a venue where ownership of such assets can be bought and sold. The goal that the stock market serves is bilateral, and it is this purpose that serves as the foundation for the regulatory structure that governs the market.
The primary function of the stock market is to fulfil the companies' need for realised capital, which may then be invested. The companies are able to engage in activities related to expansion and development because they have successfully raised funds from the general public. When

[238]MANNING, ROBERT A. Trade and Financial Fragmentation: New Challenges to Global Stability. Atlantic Council, 2020. JSTOR

compared to borrowing money, it is a far more viable means of acquiring capital because it prevents the accumulation of obligations[239].

PRESENT SCENARIO OF ALGO TRADING IN INDIA

This part has been written in consideration of the second purpose of this article, which is to investigate the current state of algorithmic trading in India. The current situation of algorithmic trading has been illustrated and compared with various trading modes. The information has also been divided into the cash segment and the equity derivatives section at both the BSE and the NSE in their own respective ways.

FUTURE AHEAD

In India, the transaction velocity of algo trading orders, particularly in the cash segment, results in more transactions than non-algo trading orders. This is especially true in the case of the cash segment. Huge margins are produced as a result of the volume of orders that are placed by algorithmic trading. Concerns about how prices of securities are found have been raised as a result of the enormous margin caused by the spectacular expansion of algorithmic trading. According to Muniesa (2014), stock values are not actually discovered; rather, they are created artificially. The high frequency trading and algorithmic trading both need enormous investments, which has led to a competition to develop ever more advanced technologies (Budish et al., 2015). This further creates the potential for diverse market participants to introduce distortions into the price discovery process in order to derive the most possible profits from algorithmic and high-frequency trading (Ma and McGroarty, 2017). Even if the discussion on price discovery mechanisms and the virtuality of pricing is never going to end, regulators still need to maintain regular surveillance on market players to ensure that price discovery mechanisms are not affected by manipulative market actors. Algo trading and high-frequency trading (HFT) are sometimes viewed in the light of the abstraction that they provide in terms of trade and invisible dark pools; however, the growing use of disclosed volume by algo trading reflects a step toward a significantly more transparent system and a clear indication of lower impact cost. We are able to observe India's progression toward an efficient capital market thanks to the development of algorithmic trading and its phenomenal rate of expansion.

[239]Janssen, Philip Jost. "Historical Social Research: An International Journal for the Application of Formal Methods to History. Retrospective, 2004-2014." Historical Social Research / HistorischeSozialforschung. Supplement, no. 26, 2014, pp. 1–343. JSTOR

CONCLUSION

Regulation and exchanges have long sought to improve on liquidity, volatility, and price discovery in order to achieve a more efficient market. The markets and market participants have embraced rapid technological improvements to enhance market liquidity, volatility, and price discovery. It has been increasingly popular in recent years for traders to use algorithmic trading.

As a result, the existing research on AT is limited in scope due to a lack of data that clearly identify AT. Several proxies have been used because most stock exchanges are unable to recognise AT (message traffic, order cancellation time, etc.). Authors1 have frequently acknowledged the weak or inaccurate nature of the data obtained through the use of these proxies and recommended instead the utilisation of AT measurements taken directly. Research in this area is equally unclear about the effects of algorithmic trading on market liquidity and volatility. There is also conflicting evidence in the work of Hendershott et al. (2011) who claim that AT increases liquidity overall, but their study shows a reduction in one of their liquidity indicators called "realised spread."

AT has the ability to quickly gather information from the market and incorporate it into order prices by rapidly updating the orders, but the efficiency of those adjusted orders or algorithms can only be observed if those orders result in trades.. Order to trade ratios above one would denote poorer AT performance, while those below one would indicate improved algorithmic trading performance.

We've seen a lot of exchanges looking into whether or not algorithmic trading should be curtailed or promoted. This research will help them make a decision. To the individual traders, the findings are noteworthy because they don't have to worry about being targeted or affecting liquidity, volatility and price impact. Policymakers can use our findings on algorithmic trading efficiency to determine how close they should aim to be to the ideal order-to-trade ratio.

Algorithmic trading methods and efficient algorithms for enhancing market efficiency should be examined in future study in this sector. It is also possible to conduct more study on the impact of regulatory aspects such as penalties for greater order-to-trade ratios on AT behaviour and the deployment of circuit breakers. A derivatives market extension is possible with this study.

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