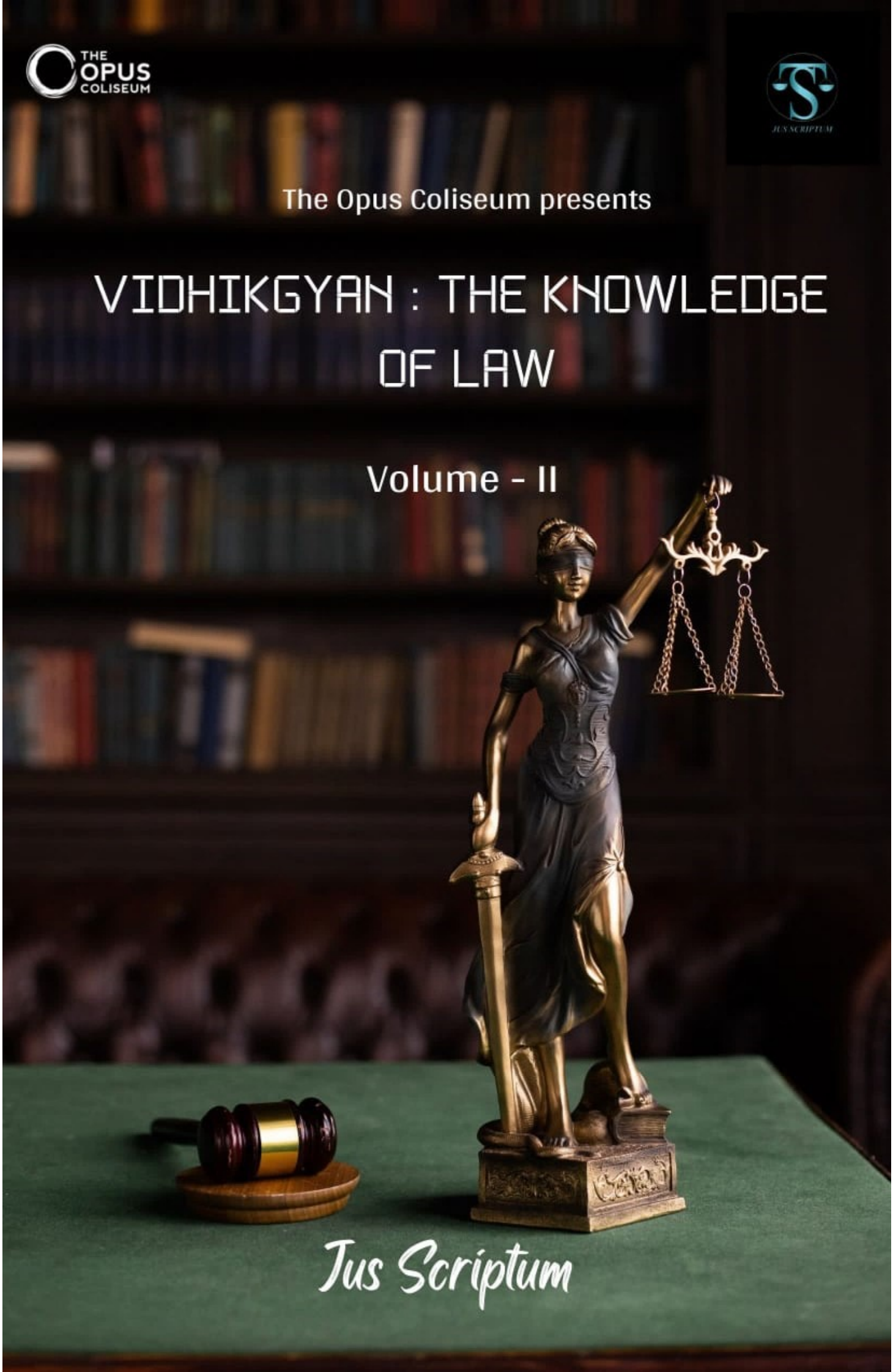
THE OPUS COLISEUM
JUS SCRIPTUM
The Opus Coliseum presents
VIDHIKGYAN : THE KNOWLEDGE OF LAW
Volume - II
Jus Scriptum

VIDHIKGYAN:

THE KNOWLEDGE OF LAW

Volume 2

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THE OPUS COLISEUM PUBLICATIONS

ISBN: 978-93-5616-508-3

Published by:

THE OPUS COLISEUM

At Amrut Vihar

Near Tata motors Ainthapali, Budharaja,

Sambalpur, Odisha

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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.

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CHAPTER 1

PROFESSIONAL ETHICS AND HUMAN RIGHTS IN POLICING: WITH RESPECT TO MODEL CODE OF CONDUCT

Author: Sourav Kattal[1], Dr. Sugandha Passi[2]

ABSTRACT

Probably two potential guarantees that we would focus on are our consistency in practice and responsiveness. Additionally, attention must be given to developing a work atmosphere, recruitment, and induction program for the police department that is compatible with fundamental principles. The law enforcement training technique should be restructured. Here the methodology followed by the researcher is the doctrinal type of research. The department's culture must be imbued with fundamental social ideals and rendered cognizant of the republican ethos. Steps must be made to alter the mindset and behavior of police officers conducting operations so that they do not violate fundamental human principles during questioning or revert to questionable interrogation techniques. To promote accountability, the involvement of the arrestee's lawyers during the interview can prevent the police from utilizing third-degree tactics. This paper represents that brutal policing practiced by Indian Police and other security forces should be condemned strongly by the public. Subsequently, it is about time to re-sanction our current out-of-date police regulations to guarantee better responsibility, effectiveness and a society-friendly approach.

Keywords – Abuse, Arrest, Interrogation, Investigation, Police, Protection, Records.

INTRODUCTION

The police department continues to be one of the culture's most influential institutions. As a consequence, law enforcement officers are the regime's most visible participants. When a citizen is in distress, danger, disaster, or difficulty and is uncertain what to do or whom to call,

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law enforcement and cops are the most appropriate and likable entities and individuals to reach. The police can be the most approachable, engaging, and diverse organization in every community. Their positions, tasks, and responsibilities in the community are normal to be diverse and broad and difficult, knotty, and dynamic on the other side. In general, the police are required to fulfill two functions in a society: the protection of the law and the maintenance of order. Besides the police, many other government organizations exist, including the Central Industrial Security Force (CISF), R.A.W., Border Security Force (BSF) and many more.

There have also been cases of brutality and murder when in the care of these officials. In **Sawinder Singh Grover**[3] case, the court took matters into their hand on account of Sawinder Singh Grover's[4] death when in the control of the Directorate of Compliance. After receiving a report from the Additional District Judge establishing a prima facie case for inquiry and trial, this Court ordered the CBI to file a FIR and begin criminal charges against all individuals listed in the Additional District Judge's document and continue toward them.

Union of India, Directorate of Compliance was ordered to give a temporary compensation of Rs 2 lacs. to the victim's wife as an ex-gratia compensation. Amendments of pertinent statutes to safeguard the interests of detained individuals in certain instances are indeed a legitimate necessity.

There is one additional factor that requires our attention. We are aware that the police in India faces a fragile challenge, made all the more challenging by the worsening peace and security community protests, political instability, student agitation, and terrorist attacks, not to mention the new generation of underground and violent militias and offenders. Numerous hard-core offenders, such as radicals, jihadists, cocaine traffickers, and dealers who have formed cartels, have developed deep roots throughout the community.

Some areas argue that increasing economic reform and regulation of constitutional freedoms would make it increasingly challenging to identify criminal acts by other groups of violent offenders through soft selling questioning. The concern is legitimate, and the issue is substantial.

A holistic solution is required to achieve the administration of justice in such a case. This is all the truer in light of the current societal belief that police would negotiate with crimes efficiently to effectively and apprehend those responsible for crimes. However, the treatment cannot be

[3] President of India v. Sawinder Singh Grover, 1995 Supp (4) SCC 450.
[4] Ibid.

greater than the condition.

The Supreme Court of America's answer to a question in the case of **Miranda v. Arizona**[5] is informative. According to the Court, a recurring contention in these situations is that society at the large desire for questioning outweighs the right. The Court is not uncomfortable with this point. The entire purpose of our debate so far has been to show that the Constitution has established the privileges of persons faced with the force of government by providing in the Fifth Amendment that a person cannot be forced to testify against himself. This is an inalienable privilege[6].

There is no point in asserting that a person's liberty must be subordinated to the state's welfare. The privilege of persons to protective incarceration in the name of the state's welfare in a variety of cases authorized under specific laws has been affirmed by the courts.

The Latin imperatives **salus populi est suprema lex** and **salus reipublicae est suprema lex** are not only significant and valid but also at the core of the theory that a person's well-being must contribute to the public's wellbeing.

Even so, the state's actions must be correct, just, and equitable. Including any form of coercion to obtain the knowledge would be neither 'correct nor just nor equitable' and thus would be prohibited, violating Article 21. Such a criminal defendant must be interviewed and exposed to prolonged and empirical examination, as defined by statute. He cannot, therefore, be tortured, exposed to third-degree techniques, or controlled in order to obtain evidence, collect confessions, or induce intelligence regarding his coconspirators, arms, or other details. His constitutionally protected right cannot be truncated only in the way allowed by statute, though by definition, the mode of questioning of such an individual will be qualitatively different from that of a normal suspect.

Terrorism's obstacle must be approached with novel theories and approaches. Terrorist violence is not a viable strategy for counterterrorism. Terrorist violence will only legitimize 'violence.' That would be detrimental to the state, the culture, and, most importantly, Law and Order. Thus, the Government must guarantee that the numerous institutions it deploys to fight extremism operate under the limits of the law and will not become legislation unto itself. While the fact that the attacker abused the human rights of unarmed civilians could make him

[5] Miranda v. Arizona, 384 US 436 (1966).
[6] Chambers v. Florida**,** 309 US 227 (1940).

punishable, it cannot excuse violating his human rights in any way other than those allowed by statute. Thus, it is essential to improve analytical techniques of inquiry and to better prepare investigators to conduct interrogations in order to face the task.

In accordance with the legislative and statutory provisions listed previously, we believe it will be beneficial and efficient to provide adequate machinery for the contemporaneous monitoring and reporting of all capture and incarceration proceedings in order to increase clarity and responsiveness.

It is important that the policeman who arrests a citizen prepares a memo of his detention in the possession of a minimum of one eyewitness, who may be a member of the arrestee's family or a reputable part of the family from which the detention is issued. The memorandum must have the date & time of the detention and must be signed and dated by the arrested person.

The following conditions must be met in all instances of arrests or imprisonment (illegal arrangements are rendered in this regard as protective steps, as first given in **Shri Dilip K. Basu vs State of West Bengal**[7]**)**

- Policemen conducting the arresting and questioning of the arrested person should wear correct, identifiable, and legible identifying and identity labels with their classifications. A file must be kept with all those police officers who manage the arrested individuals questioning. (CrPC Section 41-B).
- A person who has been convicted of a crime and is currently kept in detention in a police precinct, questioning Centre or in lock-up is allowed to have one acquaintance or family member or other individual related to him or take an interest in his wellbeing notified, as quickly as feasible, that he has been detained and is being kept in jail at the specific place until the investigator determines otherwise. (Section 41-B of the CrPC) The police shall notify an arrestee's nearest acquaintance or family who resides outside the district or town of the arrestee's time, location of detention, and location of custody by telegraph to the Legal Assistance Organization in the police department in the region involved during an 8-to-12-hour timeframe after the detainment and to the Legal Assistance Organization in the district also.
- The accused party must be made conscious of his or her ability to have someone told of his or her detention immediately upon detention.

[7] Shri Dilip K. Basu v. State of West Bengal, (1997) 6 SCC 642.

- An application must be produced in the publication about the prosecution of the suspect, which include the identity of the individual's first associate who has been told of the arrests, as well as the contact information for the police official entrusted with the arrestee's supervision.
- The arrested person should also be checked at the moment of his arrest if he so asks and any serious or small bruises to his or her body must be reported at that time. The Inspection Memo should be signed by both the arrested person and the officer who arrested the arrestee, and a copy of the memo must be given to the arrestee. (Section 54 CrPC) During his stay in prison, the arrested person should be examined by a qualified professional every 48 hours by a specialist on the committee of authorized doctors selected by the designated State or Union Territory's Director, Medical Care. The Director, of Medical Care, should also arrange such a committee for all tehsil and Districts.
- Prints of both papers, such as the above memorandum of detention, should be forwarded to the Judge for his records.
- During questioning, the arrested person could be entitled to speak with his counsel, but not in the questioning. Both district and state offices should have a security command center where details about the detention and position in detention of the arrested person shall be shared by the policeman who made the detention within 12 hours of making the arrests and placed on a law enforcement panel in the police station. Failure to conform to the conditions set forth above not only subjects the responsible executive to divisional prosecution, but also to punishment for contempt of Court, and contempt trials can be initiated in any High Court of the nation with legal boundaries over the issue.

The above provisions stem from Articles 21 and 22(1) of the Constitution[8] and must be adhered to. These will also extend equally to all federal entities, to which a comparison was made previously.

These provisions are in accordance with constitutional and legislative protections and do not supersede the many other directives issued by the Courts from period to period about the protection of the arrestee's privileges and integrity.

Increasing recognition of the arrestee's freedoms will, in our view, be a positive move toward

[8] Bakshi, Parvinrai Mulwantrai, and Subhash C. Kashyap, The constitution of India. (Universal Law Publishing, 1982).

combating the evil of custodial wrongdoing and promoting openness and responsiveness It is anticipated that these provisions would serve to curtail, if not completely abolish, the usage of dubious questioning and investigative techniques that result in custodial criminal acts.

While the Indian Constitution does not expressly provide for reimbursement for violations of a fundamental right, as stated in **Nilabati Behara v. State**[9], this Court has judicial process formulated a right to claim damages in situations of proven arbitrary denial of individual rights or existence.

ABUSE OF POLICE FORCE AND PROTECTION OF ACCUSED UNDER INDIAN PENAL CODE,1860

The Malimath Board suggested that there are several cases of police officers failing to invoke relevant parts of legislation, accepting only formal grievances, and bending evidence in order to turn a punishable crime into a non-cognizable situation or conversely, and criticized such officer working trends in its study. After responding to the question of policemen failing to register grievances, the Malimath Commission recommends that action be taken against leaning law enforcement. As per the Panel, *"Section 154 of the Code of Criminal Procedure*[10] requires the officer in control of a police department to record any records, oral or recorded, related to the conduct of a punishable offense." Events not being recorded are significant grievances against the officers. In its fourth study, the National Police Committee complained that the policemen "avoid filing incidents for prosecution when serious allegations are registered at local police." It cited a survey undertaken by the Indian Institute of Public Opinions in New Delhi on the cop's reputation in India, in which it was discovered that more than half of the participants cite non-registration of grievances as a prevalent occurrence in local police.

In the instance of **Vikas Kumar Roorkewal v. State of Uttarakhand and Others**[11], A report was submitted pursuant to Section 406 of the CrPC. 1973 seeking relocation of the plaintiff's dad's murder investigation from the trial of additional district magistrate quick track court in Haridwar (Uttarakhand) to a court of qualified authority in Delhi. In this scenario, the plaintiff's dad was violently assassinated at his home by three individuals. Petitioner brought this action after he, his close relatives, and potential witnesses were repeatedly threatened not to testify before the Court. They were unable to testify before the Court due to imminent danger to their

[9] Nilabati Behara v. State, AIR 1993 SC 1960.
[10] S.N. Misra, The Code of Criminal Procedure 193-220 (Central Law Publications, 19th edn., 2015).
[11] Vikas Kumar Roorkewal v. State of Uttrakhand and Others, (2011) 2 SCC 178.

lives. One observer had been violent, and the trial judge was unable to guarantee that purpose was served

Only Published Grievances Would Be Considered: Policemen also accept only formal grievances. They either declined to lodge an oral complaint or return the plaintiff with instructions to file a formal grievance The Malimath Committee has condemned law enforcement officers' practice of requiring informants to submit documented reports. The Panel condemned this activity, stating that "enrollment is postponed, leading to significant time lost in initiating an inquiry and apprehending suspects.

The Supreme Court noted that despite the fact that not only the families of the victims but also the authorities were informed of the victim's assassination and the perpetrator was also in custody, no lawsuit was lodged until the next day.

The Apex Court cited the following instances of police officers abusing their authority under these instances:

- “Not only is the seven-hour pause in filing the case inexplicable, but it is also highly mysterious given that the person-accused Kishan Bhai is known to have been in police custody since 9:00 p.m. on 27.2.2003. This could be the product of fabricating the period and day that the victim Gomi went missing, as well as the timestamp when the victim's corpse was found, culminating in the identification of the incident. The concern that emerges is why the investigating department used the customary technique of covering in order to portray the event in a way inconsistent with the real event. A further concern exists as to whether the prosecuting department was required to follow the above procedure, considering the reality that the matter was portrayed as closed.”
- The security force is charged with the responsibility of stopping and solving offenses. They are responsible for maintaining civil morality, protecting VIPs, and contributing significantly to the State's welfare. To carry out these functions, the police are entrusted with broad legislative authority. This provides the authority to seize and search individuals and their belongings. Invite them to the law enforcement for questioning and to take any lawful steps necessary to carry out the tasks. To guarantee that the public adequately uses these powers, the statute imposes a variety of limits on the officers. Through the establishment of political structures, the citizens gained control, and the government recognized their fundamental human rights. And other terms, the cop's primary responsibility now is to uphold the 'legal system,' which is at the heart of every liberal democracy.

In **Shukla's matter**[12], the Supreme Court ruled that strangling is prima facie cruel and barbaric, unfair, and unconstitutional, and hence violates Article 21 of the Indian Constitution[13]. **Sunil Batra's situation**[14], The Apex Court has ruled that the widespread use of handcuffs for transporting convicted individuals to and from the court, as well as the practice of forcing irons on prisoners, was unconstitutional and must be discontinued immediately, but under limited circumstances where an alleged offender has a legitimate propensity toward aggression and escaping, a compassionately regulated standard of "iron" restriction is essential.

It is critical to watch a convicted person's privileges when in police detention. State authorities appear unaware that this is a serious offense that requires urgent action. Torture is a criminal offense in the Indian Penal Code. Cruelty and execution of incarceration are also criminal acts.

In **Bhagwan Singh and another v. State of Punjab**[15]**,** the Apex The court stated that whilst it is appropriate for law enforcement officials to investigate or apprehend any person based on truthful information, it is unnecessary to state that such an apprehend must be lawful and that questioning does not include causing injury. The officers will be carrying out just what the requests or our legislative order prohibits behind locked doorways.

In the **Bhagwan Singh case,**[16] The court's findings are particularly profound as it states that the police, as the legislation's creation, cannot be permitted to break the same law they are supposed to enforce. The conduct of law enforcement officials administering third degrees care to an innocent criminal whilst in their detention and thereby murdering him is not attributable to or dependent on the allocation of the government's competencies to certain police officials in order for them to invoke constitutional protections.

In **Emperor v. Miran Baksh,**[17] The policeman was convicted of violating section 331 of the Indian Penal Code and subjected to ten years of stringent detention, comprising 3 months in an isolation cell, for torturing an offender in police detention that resulted in his execution.

The Apex Court of India in **State of U.P. v. Rafuddin Khan**[18] ascertained that excessive force would be used to prevent deaths in police detention. In those situations, the penalty should be severe enough to prevent anyone from engaging in similar actions.

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[12] Prem Shankar Shukla v. Delhi Administration, AIR 1980 SC 1535.
[13] P M Bakshi. The constitution of India (Universal Law Publishing, 14th edn., 2017).
[14] Sunil Batra v. Delhi Administration, AIR 1978 SC 1675.
[15] Bhagwan Singh and another v. State of Punjab, 1977 (SCC) 68.
[16] Ibid.
[17] Emperor v. Miran Baksh, (18) 1917 Cr. LJ 710.
[18] *State of U.P. v. Rafuddin Khan*, AIR 1990 SC 709.

Testimony to a policeman is not admissible as proof. Police forces are frequently exploited with the intent of robbery and exploitation.[19] The use of excessive coercion by officers to extract confessions has become the topic of regular judicial commentary. The purpose of this clause is to prohibit confessions taken from convicted people under duress from being held against them as proof.[20] If the policeman obtains a statement, the statute states that it shall be completely removed from testimony, since the individual of whom it was obtained is not to be counted upon or used to prove such a statement, and he is therefore accused of using force to extract the testimony.[21] The legislation's rationale is mentioned in **R. v. Babu Lal,**[22] Where these regulatory provisions leave a little question on how the legislature views officers' misconduct in blackmailing confessions from convicted persons in an attempt to secure prosecutions.

The legislation, in enacting certain strict laws, considered policeman testimony as unreliable, and the regulations' aim was to bring an end to confession coercion by depriving police officers of the benefit of confirming such coerced admission during the convicted individual's prosecution. This Section has no exceptions or limitations, and a confession to a policeman is invalid in a court other than as described in Section 27. It is preferable to perceive a clause such as this, which was meant to provide nourishing security to the defendant, in its broadest and more common interpretation in order to maintain consistency.

PHYSICAL RESTRICTION AND INTERROGATION OF ACCUSED

The CrPC adds another constraint on the cop's authority to deal with an accused suspect. It declares that policemen should not use greater restraint than is required to deter an accused suspect from fleeing. The police use this clause to practice their power to handcuff an individual who has been detained in an attempt to denigrate him or her. The question of handcuffing an individual was brought before the Apex Court of India in a range of instances, and the Supreme Court, after extensive deliberation, provided instructions and recommendations to be implemented by policemen and other officials.

Once more, the Gujarat High Court found that, notwithstanding the existence of rules under

[19] *R. v. Babu Lal*, (1884) 6 All 509.
[20] *State v. Rajan Raja*, 1991 SCC 139.
[21] Sir John Woodroffe and Syed Amir Ali, *Law of Evidence*, (Lexi Nexis, 20th ed., 2016).
[22] *R. v. Babu Lal,* (1884)6 All 509.

the CrPC. 1973, the main defendant was not detained or summoned to present before the police officials. There was no direct statutory questioning of the main defendant, and his testimony was reported only at his request and at his leisure. It demonstrates that, from the time the FIR was recorded, the defendant exercised

power over the inquiry.[23]

RECORDING OF VICTIM's STATEMENT

The omission of a victim's argument occurred in the situation of **Mukhtiar Singh v. State of Uttar Pradesh & Anr**[24]**,** where its informer lodged a motion before the Judge on 10th January 2003 for the documenting of the sufferer's testimony according to Section-164 of the Legislation, which was not done at the time since the inquiry was already ongoing. When questioned about the documentation on this issue, it was stated that because the policemen lodged a charge sheet in this case on 13th January 2003, because it was lodged only after the informer filed a petition on 10th January 2003, there is no reason to document the sufferer's comment at this time. On this basis, the Judge dismissed the whistleblower's appeal. The appellant then lodged another application with the High Court, which was approved, and the Court ordered that the sufferer's declaration be recorded according to Section 164 of the Statute.

MODEL CODE OF CONDUCT

On July 4, 1985, the guidelines for the code of conduct[25] are issued by the Ministry of Home Affairs for the police and communicated to Heads of Central Police Organizations and to the Chief Secretaries of all Union Territories and States.

1. The police must uphold and respect the rights of citizens as defined by the Indian Constitution and pledge their unwavering commitment to it.
2. Any law that has been lawfully enacted is valid, and the police should not challenge it. Firmly and impartially, without showing favoritism or fear, or out of hate or retaliation, they should enforce the law.
3. The boundaries of the police's authority and duties should be understood and respected. In order to vindicate people and punish the wicked, they shouldn't usurp the role of the

[23] 2012 SCC OnLine Guj 6072 at para 9 (d) & 9 (g).
[24] Mukhtiar Singh v. State of U.P. & Anr., AIR 1957 All 297.
[25] Code of conduct for the police in India *available at:* https://police.py.gov.in/MHA%20-%20Model%20Code%20of%20Conduct%20-%20Indian%20Police.pdf (Last visited on June 29, 2022).

judiciary.

4. The police should apply persuasion, counseling, and warning techniques wherever possible to ensure that the law is followed or to maintain order. Only the minimum amount of force needed under the circumstances should be deployed when the use of force becomes inevitable.
5. The police must understand that they are part of the public, with the exception that they are employed to allocate their complete attention to obligations that would ordinarily be the responsibility of every citizen.
6. The police should always put their duties above themselves, maintain calm in the face of peril, derision, or humiliation, and be willing to give their lives to save others.
7. The police should always be polite and well-mannered, dependable and unbiased, courageous and dignified, and they should work to earn the public's respect and trust.
8. The police should understand that maintaining a high standard of discipline, faithfully carrying out their duties in accordance with the law, implicitly obeying the legitimate orders of commanding ranks, exhibiting unwavering loyalty to the force, and keeping themselves in a constant state of training and preparedness are the only ways to ensure their full utility to the State.
9. The welfare of the public should always be considered, and the police should always show compassion and consideration for them. Without regard to anyone's wealth or social standing, they should always be willing to give friendship, individual service, and any other essential assistance.
10. As citizens of a democratic, secular state, the police should continuously work to put aside personal prejudices in order to promote harmony and a sense of common brotherhood among all Indians, transcending differences in religion, language, or social class, and give up behaviors that are demeaning to women's dignity and the rights of underprivileged groups in society.

CONCLUSION

When performing their tasks, the officers conduct acts such as detention, searches, and interrogations, among others, for which they are required by statute to follow a variety of operational procedures. These instructions can be deduced or respected from a reading of the Indian Constitution; the 1973 Code of Criminal Procedure and even other statutes such as the Police Act or the Police Guide. The importance of each of these standards is critical. It is

important to consider the law enforcement system in its entirety, and the full spectrum of privileges of defendants pertaining to police processes generally alluded to as pre-trial procedures. A practice must be "equal, equitable, and just" in order to be legal and lawful.

India needs effective, legal, and humane policing. The Government is in charge of making sure that police agencies have enough resources. The government and legal institutions must also conduct ongoing external oversight and surveillance. To ensure that people are treated with respect and involvement by society in policing, the police must adhere to the human rights laws. This will improve relations between the policemen and the general public and promote a friendly environment. Before I finish, I'd want to say that the Government has to modify the law adequately to not prevent police officers who abuse people in their care and should not escape by reason of lack of proof or scarcity of evidence. There should be no political interference and the police should serve as guardians rather than rulers. India must also act quickly to stop excessive adjudication delays, and proper policing and investigation are essential for the right judgement.

CHAPTER 2

ROLE AND POWERS OF JUDICIARY

Author: Lakshyadeep[26], Dr Sugandha Passi[27]

ABSTRACT

Judiciary is one of the essential pillar which solves the dispute and convicts the crime committed. The Judgment passed by the Judges is binding to all the citizen and to the government or government agencies. The liability of Courts in India to safeguard the Fundamental.

Rights and other Human Rights of the Citizens in our country. So, the wide powers should be provided to the Courts by the law of land so that they will maintain peace and harmony and shall achieve the objectives which has been set out by the mini constitution. If the judges are partial to their work or the work is done is done under the political influence, the whole system will be paralyze. The main aim of this research paper is to find out role of judiciary in criminal justice system. The role played by the Judiciary in Indian criminal justice system appreciable. Methodologically this research is doctrinal research various published material has been reviewed. Judiciary protects the basic liberties, and also protects the constitution and promotes peace in the nation. It has the power keep check on all the actions of the Government.

Keywords- Constitution, Executive, Judiciary, Legislature, Supreme Court.

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INTRODUCTION

Indian Constitution is world's lengthiest Constitution. These three organs which under which government works or functions includes: Legislature, Executive, and Judiciary.

"Legislature is the law making body. There are two houses i.e. Lok Sabha(The Lower House) and the Rajya Sabha (The Upper House). Bills are drafted and passed with the majority in the Lok Sabha. Then after passing, the bill moves to the Rajya Sabha for discussion and if it is passed in Rajya Sabha then it moves to the president for taking the assent. Once the assent is given by the President the bill becomes law. Executive is another important organ of the constitution. The role played by the Executive includes the enforcement of the law. If the law is not enforced literally then the Judiciary has the power to punish the guilty. So, very important role is played by the judiciary i.e. to punish the guilty or the wrong doer. It is, therefore, expected from the judiciary to play its role very cautiously and impartially so that justice should not be denied to anyone on the ground of sex, caste, creed or religion".

India is following the blend legal system which has elements of various laws e.g. "civil law, common law, customary laws". The "**Constitution of India"** establishes a single unified "**Judicial System**"."**Apex Court" in the nation** is head of all court and after that there are High Courts at state level followed by some other subordinate courts Courts. The "**Apex Court"** controls the judicial administration in India.
In Indian the judiciary acts as the protector of Human rights of individuals. The "Right to Constitutional Remedies" additionally furnishes individuals with the security of their rights from courts, on infringement of the same. The Apex Court and the top most Court in the state are only courts which have the power to issue writs under Article 226 and Article32 of the Constitution.

The objective which accomplishing sustainable development stands on a big pillar, the judiciary. Its objective is to safeguard the right and personal liberty of people and public against its invasion by others it is essential to make judicial system effective and helpful as it is a vital part of domestic setup. An essential judicial system which is capable of resolving disputes and punishing rapidity and fairness, is one of the groundwork of majority rule society and is viewed as significant for the smooth working of the judiciary.

JURISDICTION OF COURTS IN INDIA

Jurisdiction means how much a court can practice its power and to attempt litigation, appeals and applications. In its specialised sense, this implies that the jurisdiction of the Court of Rights isn't just regarding the matter of lawsuit, but also concerning the local and financial limits of its jurisdiction. The Indian Judiciary is separated into 2 sections Higher Judiciary and Lower Judiciary. Lower Judiciary comprises of the Trial Courts and Session Courts or District Courts. Higher Judiciary comprises of High Courts and Supreme or Apex Court. High Courts and Supreme Court are designated with the position of Constitutional Courts by the Constitution of India. Those Courts are otherwise called the 'Courts of Records.' These Courts act as the guardian of the Indian Constitution and these have the supreme ability to safeguard the Fundamental Rights of the residents ensured by III part of the Constitution.

The lawful explanation of the word 'Jurisdiction', we know that the limits set by the Constitution or any statutes, inside which the Courts can practice its legal powers. The jurisdictions might be subject matter jurisdictions, territorial jurisdictions or pecuniary jurisdictions, etc.

Administration of justice is the important function of the state. For this cause our Constitution has laid out different segments of courts. The Apex Court is the principal body, followed by 25 High Courts in India, and jurisdiction and powers of those courts has been defined in the Constitution. From articles 124 to 147 of the Constitution states the structure and jurisdiction of the Supreme Court, Similarly High Courts are founded under Part VI, Chapter V, and Article 214 of the Indian Constitution and those have been provided with the status of Constitutional Court.

ROLE OF JUDICIAL OFFICERS IN INDIAN CONTEXT

The supreme law of India protects the individual’s from any halfway order passed by the judiciary. That is why the supreme power is provided to Judiciary to make decision in light of law and order. The Apex Court of the nation is the supreme body of the judiciary in judicial system. But, first of all, need to grasp the role of the judiciary system. Courts in India are liable

for handling and passing decisions on many issues- how a school ought to treat the students, or on the other hand in the event that two states can share each other's resources etc.

Judiciary plays an important or vital role under Indian constitution. It has been playing beautiful performance in every part of the country. As judiciary in one of the secure corporation of the world, it solve all kind of cases to the human existence and links. It protects the basic rights of individuals, and known as defender of the constitution and promotes peace, sincerity and keeps the balance between various organs of government. The Indian Constitution which has been made by the Constitutional Assembly which came into working on 26th January 1950. It consist many laws which deals with the powers, functions and structure of judicial officers. It has introduced a unified system in the nation. It has effectively introduced the three tier judicial system. E.g. The Apex Court, the High Courts and the subordinate courts in every part of the nation.

The judiciary has its involvement in the different nations constitution may rely upon the different legal system followed by different nations in the world. In USA, the judiciary are considered as the superior body over other organs of the nation. The Constitution of USA has provided the power to judiciary to keep check on the other pillars of the constitution assuming if they enjoy overabundance of their power[28].

Extremely remarkable features of the Judicial system in India that judiciary has the ability to decide the legitimacy of changes made in constitution which maybe is seen no place under other constitution, whether codified or un-codified. The judiciary for the most part performs one or a significant number of the functions in constitutional democracies:

> Judiciary upholding the administrative guideline to maintain the balance between the different organs of the government or among centre and the states. It also Guard and protects the fundamental rights of the individuals, Applying and interpreting the regulations made by the legislature. To check and balance the a legislative or executive actions of the government, Under Article 32 and 226 the Supreme Court and the High Court individually has the ability to give writs or orders for accomplishing the goals of those articles, and Through Public Interest Litigations, Judiciary has the ability to ask

[28] Omdutt, Role of Judiciary in Democratic System of India (Judicial Activism under the Supreme Court of India): Golden Research Thoughts, Vol.2, Issue 3. (last Revised on July 5,2022)

the government about the execution of the plans schemes run by the public authority. For example, the Direction in **Common Cause v. Union of India**[29], the Apex Court laid down the directions for how the blood should be collected, stored and given for transfusion and how the blood transfusion could be made free from hazards.

"Again in **M.C. Mehta v. Union of India**[30], the Supreme Court issued directions to the government to disseminate knowledge about environment through slides in cinemas, theatres or special lessons in schools or colleges".

It is provided in this case[31] that the Apex Court has laid down the directions on the kids of prostitutes that how they should be educated as like other kids. Similarly, the command in this particular case it was stated that in **Azad Rickshaw Pullers Union (regd.) Ch. Town Hall, Amritsar V. State of Punjab & Ors**[32] that the 'Punjab National Bank' to provide pre funds to the rickshaw sailor's and provide a new scheme for repayment of such provided funds.

Although, Chief Justice J.S. Verma in the case of **Vishakha and Others v. State of Rajasthan** stated, "The primary responsibility for ensuring the safety and the dignity of the citizens through suitable legislations and the creation of a mechanism for its enforcement is of the legislature and the executive. When, however instances of violation of fundamental rights of citizens taken place then some guidelines should be laid down for the protection of this right to fill the legislative vacuum".

IMPORTANCE OF JUDICIAL ROLE IN LAW MAKING

In India, Judiciary is working effective throughout the long term that fall on a very basic level inside the regulation raises a few genuine and noticeable concerns such as 'judicial Activism.' Likewise, this area of 'judicial Activism' holds the gap from being clearly obvious field among others since the law made by the adjudicator has got vast acceptance through the world. The Indian courts have added to such acceptance to a very vast degree by offering heading to the organisation sometimes searching for consistence under its despite power and various on

[29] (1996) 1 SCC 753 (Blood Bank Case)
[30] AIR 1992 SC 382: (1992) 1 SCC 358.
[31] Gaurav jain v. union of India, AIR 1990 SC 292.
[32] 1981 AIR 14 1981 SCR (1) 366.

numerous occasions by managing precisely in a manner like the governing body. Alike cases of legitimate mediation require a need to eagerly look at the exemplification and the laid out perspective of the 'law making' limit of judges in separation with the historically presented legislative forces of the assembly.

The Judiciary plays an important or vital role in the law making. The decisions made by the judges explains the significance and extent of the regulations passed by the legislation. They can likewise make regulations in such a case, the legislation has not passed any regulation in a specific case. The regulations made by the higher courts will be followed by the lower courts while making decisions on the cases or cases connected with the specific case.

CONSTITUTIONAL INTERPRETATION

Judges in actual sense they do not 'make' law nut find the situation where the law has not been made[33]. The judicial officers not just make laws similarly they also state what the law is by interpretative method, they additionally affirm what it should to be. The outskirts of judicial activism have extended all over. After the extraordinary aim in the legal world i.e. Maneka Gandhi case has given another lift for making of law on the Articles 14 and 21. The decision of Supreme Court in the case of Maneka Gandhi has expressly verified the opinion that Indian Supreme Court judges don't just uphold or interpret the law, but also develop the Constitution. The Supreme Court has subsequently changed itself into a continuous constitutional assembly[34]. The High Court of Patna stated in **Kameshwar Singh v. State of Bihar**[35] this case introduced the right to ownership, while to oppose the "Bihar Land Reforms" Act 1950 was brought under Article 14 and not under Article 31 of the Constitution. This decision led to the first amendment in the Constitution of India. In case of **State of West Bengal v. Beta Banerjee,**[36] "the Court overruled the West Bengal Land Act and ruled that 'compensation' included only equal or full reimbursement". This case was accompany by the Court in **State of West Bengal v. Subodh Gopal**[37] with **Dwarkadas Shrinivas v. Solapur Spinning and Weaving Co.**[38]. These decisions were put away by the 4th Amendment Constitution. The order for pay damages made an unjustifiable issue. Yet, in the Bank Case, The Apex Court

[33] HLA Hart, *"The concept of Law"* (Oxford University Press, 1961), p. 12.(lase revised on July 22, 2022)
[34] Upendra Baxi (ed.) K.K. Mathew, *"Democracy on Equality and Freedom"* I (1978).

[35] AIR1951 Pat 91.
[36] AIR 1954 SC 170.
[37] AIR 1954 SC 92.
[38] AIR 1954 SC 119.

proclaimed by a larger part of 10/1 that the Constitution safeguards the right to remuneration for the same in cash of the compulsory gained property.

Judicial proceedings were not streamlined in India, it relies totally on the appointed judges. Apparently that the council's role also plays nearly a vital part in the direction. **Saheli v. Commissioner of Police, Delhi Police Headquarters** [39] and **Premchand v. State of Haryana**[40] "were decided by a bench that the judges have transformed the obiter into a ratio, and in the latter case, the clear legislative provision has been defied which clearly shows the law making power of Supreme Court of India".

Alarmingly, the evils of heinous acts against women have risen. Custodial rapes tragedies are also rising alarmingly. However, the attitude of the judiciary did not altered, and the judges have adhered to the age-old laws and understanding of criminal law, evidence law. This statement is supported by evidence in the case of **Tuka Ram v. State**[41] where two police constables assaulted a child at a police station and they were charged with sexual offence but they were acquitted for some reasons. This resulted in many protests and criticism in the nation.

The Court may take an idea to transformation from the Constitution but it cannot overrule the legislative function. Judicial restraint is the need of the hour particularly in PIL cases. On the off chance that self-control isn't noticed, the Court should take upon them administrative and judicial functions. [42]. It is difficult to introduce social and political legislative changes through the judicial process. The judicial process has to operate within the prevailing social, economic and political environment.

Power of Judiciary under the Code of Criminal Procedure Act, 1973: "Chapter two, Section 6 to 35[43] of The Code of Criminal Procedure deals with the Constitution of Criminal Courts and their powers although section 6 of Code of Criminal Procedure deals with the classification of criminal Courts. According to (section 6) there are four kinds of Criminal Courts i.e. Court of Session, Court of judicial Magistrate, Court of Metropolitan Magistrate and Executive Magistrate".

[39] AIR 1990 SC 513.
[40] AIR 1989 SC 937.
[41] 1979 2 SCC 143 [2].
[42] Sachidananda v. State of West Bengal, AIR 1987 SC 1109.
[43] Section 6 to 35, Constitution and powers of Criminal Court(The Code of Criminal Procedure,1973)

Establishment: "The establishment of Supreme Court is provided under article 124[44] of the Constitution of India and establishment of High Court is provided under article 214[45] of the Constitution of India. As being a Constitutional Courts there is no restrictions on the power of Supreme Court and High Court and even the powers of High Court mention in section 28(1) of the Code. According to section 28(1) High Court may pass any sentence authorised by law."

Establishment: "The establishment of Court of Session is provided under section 9 and 10[46] of the Code. According to section 9 Court of Session or session's court is established by the State Government."

CONCLUSION

The judiciary acts as the mediator and guardian of the Constitution in India. Judicial officers is essential part of the nation. India is the biggest democracy in world, we have an extensive judicial officers which ensures that it protects the interests of its individuals. Similarly, Apex Court of our nation is at crown of our judicial system and then accompany by high courts which functions at the state level and accompanied by the district courts working at the local level. There are likewise many courts underneath. Apex Court in Indian plays very important role for the protections of rights of individuals. The judicial officers on other also has the power to keep check and balance on the other organs of the government. A judicial officers plays many roles to play. As a legal executive is liberated from the executive, however it can without much of a stretch defend the rights of people to guarantee harmony and concordance. Nonetheless, its job here isn't finished to this as it were.

It plays many roles to guarantee there is great working of judiciary in the nation. Judicial officers are playing vital part in making new laws and guidelines as well as overrule such approaches that might abuse our constitution. Judicial officers in a while when required sometimes act as an advisory body. Indian legal authorities additionally also acts as guardian of human right of the people. Legal decisions made by the judicial officers are binding on both individuals and government.

So at last, the study uncover that Apex Court has a huge played its job quite well and consistently maintained the head of constitutionalism. The courts ought to remain off from

[44] Article 124, the establishment of Supreme Court (The Constitution of India).
[45] Article 214, the establishment of High Court (The Constitution of India).
[46] Section 9 to 10, Establishment and Powers of Court of Session(The Code of Criminal Procedure,1973)

political field by not wearing the political job. They should review that the court can't save the nation yet rather they must be proficient just to acquire some time for the recovery of other organization of legal bodies. Anyway it is an exceptionally settled truth that the legal activism of the Supreme Court has helped in carrying out privileges and interests of the occupants, and furthermore in keeping various limbs of the council within their limits, the judicial officers should regularly remind itself that the law is supreme but legal authority are not supreme. So therefore it can be said that judiciary play very vital role in the society.

CHAPTER 3

HUMAN RIGHTS AND CUSTODIAL VIOLENCE

Author: Heena Khan[47], Dr SuganDha passi[48]

ABSTRACT

This article assists to know about the concept of Custodial Violence and why is it so important to deal with it to maintain the peace and harmony of the society. It tries to analyse the areas to make you understand how such uncalled act leads to violation of Human Rights and the Fundamental Rights respectively.It tries to establish the linkage between the human rights and the issues arising out of the act. The above concept is well explained in detail in specific to the country India analysing the landmark judgements. The article also includes the possible steps and initiatives that are taken into the consideration. Let's discuss and know the concept, analyse to find out the possible ways to curb this issue.

Keywords: Custodial, Fundamental, Peace, Humans,Society, Violence

INTRODUCTION

The history alone would be the greatest testimony to the violations of Human and basic rights of the public due to the abuse of powers.This act is committed when the power is left in the hand of a unfit or unfair personality without having a check upon. Violence in the custody of police against the accused is the clear evidence of abusive use of power. There shall be a good governance system to ensure the power is transferred to the right person, right place and also being enforced in the right way. Lack of which is the cause for the our failure to tackle with the act effectively[49].

The term 'Custodial violence' is very common as we often come across now and then. Even the people with a limited or very minute legal knowledge would ascertain and deliver the

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[49] Sambith Rath, "Custodial Violence"

negativity of the term. So, the kinds of Custodial Violence and how are they constituted are the major aspects to focus on to understand the concept. However, the violations of human rights and the protection and safeguard system that has been laid down by various authorities in the nation would still manage to be in the spotlight of the discussion about the topic.

This article has been written based on doctrinal research through the secondary resources. The data collection has been made by journals, newspaper articles, e-sources and books. Apparently on the data collected and analysis, the study concludes that there has been provided with many rights to ensure prohibition of the custodial violence and other abusive powers although there is a need for a stringent law to bring on the change and awareness among the people within the society.

CUSTODIAL VIOLENCE – MEANING AND CONCEPT

The term 'Custodial violence' is the combination of two words that is "Custody" and "Violence". Custody is not defined by any procedural law although it has been used often in the court proceedings. However, it is known as a legal right or duty to take care of someone.The Violence being a well-known term reflects the derogatory behaviour of someone which leads to damage of a person physically or detrimental to their being. In the common man's language, the term violence is referred as cruelty, atrocity and hurt etc.

In this discussion of the concept the term custody has been used to refer the detention or arrest by the official authorities like police, judicial or any other authorities who are bound to show the due care over that detained individual in ensuring their safety and protection. The special homes for juveniles and hospitals which treat the wounded or ill health prisoner, or an individual are also considered in the above reference.Hence, it can be noted that there is no established definition for the custodial violence, and it is known that the violence or derogation over the prisoners by the official authorities through misuse of the power during the period of safekeeping according to the common analysis of the concept.

Further, in section 167 of Code of Criminal Procedure (1973), states that there are two types of custody, one being the police custody and the other as judicial custody[50].

[50]Thë Criminal Procëdurë Codë, 1973 (Act 2 of 1974), s. 167

S***ection- 167(1)***, states about the initial stage of the custody and the proceedings respectively[51]. The accused is taken into the custody by the police at very first in two cases, where a person is presented before the station to arrest or when a police official obtain a order of remand by the magistrate on presenting the accused before the court. However, the police custody is identified to be granted for the maximum period of ***15 days***. Therefore, the police officer has an opportunity to custody a person in two cases i.e., firstly, the period between the arrest and producing him before the court that is the maximum period of ***24 hours***. Secondly, when the remand is obtained by the police after producing him in the court.Later, the accused would be sent to the judicial custody until he obtains a bail or convicted by the court of law and in that case, he/ she may be called as prisoner.

INDIAN PERSPECTIVE

Custodial violence is the strongest form of abuse of power obtained by the law. It is found to be committed by the enforcing machineries like police. It is very unfortunate to see the wide spreading abuse of power day by day by the official authorities in democratic country. This issue has been the global challenge to deal with and hence the international communities are also involved[52].

Torture is the term that has been used since the British era as to ascertain the confessions of the accused subject to the criminal laws that were drafted.There is a thought of decision which strikes that how would it have been considered that this kind of acts would be committed to extract confessions in a justified manner. And it is even more bothering that the Custodial violence still stand in the society strongly in era of post-Independence and in the existence of constitutional tenets, law, and regulations. The act leads to the disruption of the moral standard of the society and diminishes the trust of the public over the governance of the Nation. The Media, Judiciary, Legislature and the Common public were awoke to fight against the terrible act since the past decade as that awareness increased. As a result the institutions like National

[51]Thë Criminal Procëdurë Codë, 1973 (Act 2 of 1974), s. 167(1)
[52] Vaasawa Sharma, "Custodial Violence: BLASPHËMING HUMAN RIGHTS", Know law, 25 February 2021, available at <https://knowlaw.in/indëx.php/2021/02/25/custodial-violëncë-blasphëming-human-rights/>accëssëd 18 August 2022

Human Rights Commission also have come way forward and joined in the fight against such act[53].

It cannot be ignored that the public awareness about the individuals fundamental rights, activism by the judiciary, robust coverage of media regarding the cases of custodial crimes and issues, led to promote the institutions to challenge ain order to curb the issue. On that case the National Human Rights Commission has took certain initiatives and the interaction of the Civil Society did also show the effect in the fight and ensuring the dignity of the human. Be that as it may, such violations in guardianship have recently expanded multi crease as well as progressively turning into a standard cross examination practice these days.

VIOLATION OF RIGHTS?

This act is observed to be an evil practice in the modern times which amounts to the inhuman treatment and torture of a person which is detrimental to the wellbeing of an individual. This act is often understood which a short term ‘inhuman treatment' which involves all the factors that could lead to such crime. The situation become more worse when the accused has to lose their self-respect, self-esteem, religious beliefs and other such aspects in the process. This act is mainly committed to ensure the false confessions from the accused and this can be understood as clear misuse of the power.Therefore the act leads to the violation of the human rights, fundamental rights and other statutory rights of an individual.

REMEDIAL MEASURES STATED UNDER THE CONSTITUTION OF INDIA

In the process to maintain the human dignity the Constitution of India has recognised several prisoners’ rights. The judicial system is in the highest position to examine the issue and protect the prisoners from the Cruelty. The court is in the state to favour the prisoners by imposing the concept of human rights with the usage of their powers. The following are the rights of the individual provided by the Constitution of India:

[53] Sambith Rath, “Custodial violëncë”, iPlëadërs Blog, 23 Junë 2022, availablë at < https://blog.iplëadërs.in/custodial-violëncë/#:~:tëxt=16th%20Lok%20sabha.Rolë%20of%20NHRC%20in%20prëvëntion%20of%20custodial%20violëncë,in%20casë%20of%20custodial%20dëaths>accëssëd 18 August 2022

Article 14:The provisions of this article states about the Equality before the law[54] –

It mandates the officials to treat the accused equally and take the due care towards them. There shall not be any case of discrimination shown towards them.

Article 19:Protection of right with respect to discourse and articulation and so forth. Here specialists, gatekeepers of regulations are suspended their ability to speak freely[55].

Article 20: The provision of this particular article ensures the protection in regard to the conviction offences[56].

Article 20(1): The provision of this article ensures the protection of the accused with respect to the criminalising and penalising as per the substantive laws.The article prohibits the *ex-facto* laws in that case and the criminal legislations are said not have the retrospective effect, the accused shall be punished or examined based on the present existing laws itself.

Article 20(2): The provision of this article states that:

"No person shall be prosecuted and punished for the same offence more than once. This prohibits against double jeopardy. Here must shows that person prosecuted for the offence and convicted for the same once so prosecuted again for the same is prevented."

Article 20(3): The provisions of this articles states that no individual can be the witness for his own conviction

Article 21: This is the well-known right of an individual that is ensures the Protection of Life and Personal Liberty the provisions of the article are as stated below[57]:

"No person shall be deprived of his life or personal liberty except according to law. This article does not expressly say against torture or custodial violence. But 'Life or Personal Liberty'. Therefore, to include the constitutional protection against torture, assault or injury against a person."

In the case of **Meneka Gandhi Vs. Union of India[58]**, the court has expanded the scope and extent of the*Article 21*. It has stated that the article doesn't only mean about the life of a person

[54]Thë COI, art. 14
[55]Thë COI, art. 19
[56]Thë COI, art. 20

[57]Thë Constitution of India, art. 21
[58]AIR 1978 SC 597

in the name of right to life but also about the right to live with human dignity which is a crucial aspect.

In **Sunil Batra Vs. DelhiAdministration**[59], the court states it's observation that the handcuffs are the derogatory to the human dignity of an individual and it shall not be permitted to tie the accused when he is before the court of law.

Article22:The individual may be protected from arrest or detention in the following cases –

Article 22(1):"No person is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice. If this is not followed by police authority, then it shall be illegal arrest or detention of person."

In the case of **A.K. Gopalan v. State of Madras,** It was observed by the court that the individual has the right to counsel and it is an statutory provision.

Article 22(2):This article states about the right to speedy trail as below:

"Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."

The following are the rights that has come out as the amendments to the criminal law in order to ensure the fair and safe trail of an individual –

- Right to be educated about the grounds regarding capture to blamed.
- Right to move toward a lawful counsel and have legitimate help to address under the watchful eye of the court.
- Right to be created before the justice before 24 hours of the capture.
- Right to opportunity after the 24 hours of capture (in the situations when there is no request for the judge).

[59](1978) 4 SCC 409

In the landmark case of **Kadra pahadia vs State of Bihar**[60], it was noted by the Supreme Court that the right to expedient preliminary would be the key right of a blamed under Article 21 for the Constitution of India.

APPLICABILITY OF HUMAN RIGHTS

The Commission for Human Rights at national wide which is addressed as Nation Common freedoms Commission (NHRC) had set up on twelfth October 1993. It fundamentally objects in guaranteeing the assurance and advancement of common liberties. It has the watchdog role over the officials and police. It has the power to issue guidelines for process followed in the cases of the custodial deaths. The commission is given the equal power as to the civil courts. This Commission would be the major right step to curb the issue as the police officers would refrain them back or think twice they commit any such crime which is against to the human rights of an individual as the fact known that the commission has an eye on them. This NHRC can take up the cases *suo motto.*

The following are the guidelines issued by the committee –

- The inquiry shall be conducted by the magistrate in the cases of the custodial deaths.
- The magistrate is obliged to visit the place of crime, note down the relevant facts, record evidence and identify witnesses.
- The public notice shall be issued to the witness.
- An inquiry should must be inclusive of following findings like the reason for death, Factors that lead to the death of the victim, any sort of suspects of the said crime and the details of the medical treatment provided to the victim if any.
- The statements of family members, relatives, and witnesses shall be recorded.
- At last a report in detail shall be prepared.

[60]AOR 1981 SC 641

STEPS TAKEN TOWARDS THE ISSUE

There is need to bring the following significant changes in the system to curb the issue permanently:

- Need to establish the body cams just like in the foreigners countries to keep a track on the police and ensuring that they are bound to the legal responsibility in the right path.
- Police must be kept in the tract of the officials in their duty period by the way of GPS tracking etc.
- Ensure that the CCTV cameras are setup properly and adequately as per the requirements. It is also necessary to keep a track on the functionality of the CCTV camera timely.
- Regular Medical tests need to be conducted by the authorities to ensure the mental well-being of the police officers
- Every station must ensure to have a poster stating about the rights of the arrested person so that the individual who lack the awareness would know thar he can exercise such rights.
- The police shall be ensured to be frontrunners of the awareness program organised by the government in regard to the issue.

There is an immediate need for Anti- torture laws to punish and convict the perpetrators. Some of the sources where India can take reference from would include the following –

Section 2340A of Title 18, United States Code

It ensures the prohibition of torture including custodial torture. It is also applicable to act that has been committed outside the territory of the country too. This act does not only object to protect the national public but also the victims who are from the other countries that reflect to the wider scope of the act. It holds the personal liability of the person whoever have committed such an crime. This act would be worth referring by India to draft a law that ensures the liability of the perpetrators and bring on the change in the society at the broader aspect.

Human Rights Act (1998), the act laid down by United Kingdom where it states about theProtection of the human rights under this Act. ***Section 3*** of the Act states that the individual has a*right to not be ill-treated*. The provisions of the section clearly state the factors which

constitute the ill-treatment and later it explain the procedure in cases of the breach of the right that were provided. It is significant to have a such an clarified law in the country to deal with the issue and curving off.India must refer to this act to bring the codified law which is clear and understandable in the easy way so that it is an benefit.

Along with these India need to ratify the treaty that it has signed with the United Nations con6along with the other countries to deal with the torture, inhuman or ill treatment etc. Where the Torture bill, 2010 was introduced.

273rdReport of Law Commission of India –

The 273rd Report of the commission focused on the *"Implementation of United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment' through Legislation."* The following are the some crucial recommendations:

- It recommends that the meaning of torment ought to incorporate incurring injury, either purposefully or deliberately, or even an endeavour to cause such a physical issue which will incorporate physical, mental or mental injury.
- The Commission expressed about the draft "The Prevention of Torture Bill, 2017" which guarantees to the casualties interest security via giving pay and so forth. And furthermore incurs the discipline for the authority who has committed the foul acts like torment, cruel treatment and so on .
- The Commission proposed the sanction of Convention Against Torture. This will help the public authority in getting crooks removed and guarantee people's all in all correct to life.
- Code of Criminal Procedure and the Indian Evidence Act needed some amendments like the Indian Evidence Act shall but the burden of proof on the police in the cases of the custodial death.
- It suggests to have the strict punishments for the persons who commit such a serious crime.
- It also recommends to have a compensation policy for the victims and the power has been remained to the judicial courts to allot such compensation.

- Ensuring an effective mechanism that shall be put in place in safeguarding the victims, complainants and witnesses against ill treatment and threats[61].

Implementation of the above mentioned suggestions and recommendations would definitely help to curb the crime from the society.

CONCLUSION

It has been noted that the crime leads to physical, mental psychological distortion of an individual. Moreover it remains the reason for the development of the distrust in the society towards the police. It has also been observed that there is increasing tend of the commission of the crime although there has been the possible measures taken by the authorities. The welfare of the society can be ensured only when the crime is completely erased from the society. The existence of the crime is leading to loose faith of the civilians[62].

Therefore, it is observed that there is a need of stringent law to address, examine and deal with the issue as suggested and recommended by the various committees which would help out to remove the existence of the crime in the society completely and bring back the faith of the civilians towards the police. Moreover there shall be certain regulations bounded on the police authorities which would oblige their accountability towards the society. Hence, there is a complete need of new system to deal with issue which is the serious crime in the present time. Such an illegality among the officials shall be eradicated with special focus and norms[63].

[61]Ibid
[62] Mishra, Jitëndra. "CUSTODIAL ATROCITIËS, HUMAN RIGHTS AND THË JUDICIARY" 47(4) Journal of thë Indian Law Institutë (2005)
[63] Dr. Anju Sinha, "Custodial Violëncë And Human Rights: Constitutional Përspëctivë"19(2) Ilkogretim Online (2020)

CHAPTER 4

DIVING INTO DEATH PENALTY

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ABSTRACT

Laws are formed in a state to control the activities and behavior of society to maintain peace and order. It regulates illegal activities by punishing the wrongdoers, and these punishments are given based on the circumstances and severity of the crime committed. Earlier, there were no proper rules and laws for crimes committed; the severity and degree of punishment were in the hands of the Monarch. There are different punishments, of which the most extreme and heinous one is the death penalty. The death penalty means what its name suggests, and it involves legally punishing a criminal with death. It is the highest level of punishment given to maintain law and order. It has been held that the death penalty is barbarous and against human rights. However, many people have the opposite opinion as well. Therefore, with time, this has become a debatable issue. The United Nations is not in favors of the death penalty and believes that the death penalty hurts human dignity. A large number of states have recognized that its end will lead to the enhancement and growth of human rights [66] .

Keywords: Criminal, Crimes, Dignity,Death penalty, Human, illegal, Punishment, Rights,

INTRODUCTION

In India, capital punishment has been legal for quite some time. In any case, throughout the British era, numerous Indians were sentenced to death. Following India's independence, the legal structure was enhanced, and the act of causing capital sentences was generally reduced. Prior methods of discipline were, in general, an impediment in nature. This type of discipline implies a curse of severe punishments on wrongdoers with the ultimate purpose of

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[66] Saif Ali "A Retrospective Analysis of Capital Punishment", Legal Services India, available at <https://www.legalserviceindia.com/legal/article-5312-a-retrospective-analysis-of-capital-punishment.html>(last visited on 15 July 2022)

discouraging them from misbehavior. Each criminal manifestation is motivated by the desire for retaliation. The hindrance theory also attempts to instill fear in the minds of others by punishing and disciplining guilty parties in such a way that they are no longer culpable. As a result, the rigour of correctional treatment serves as appropriate forewarning to both guilty persons and others. Thus, despite the fact that it frequently fails in its practical application, prevention is without a doubt one of the powerful techniques that almost every penal framework admits. One could argue that the principle of obstructive discipline is inextricably linked with the rudimentary hypotheses of wrongdoing and criminal obligation. The discipline was to be a terror to scoundrels and a horrible warning to anyone who might be tempted to imitate. Throughout the discipline's history, capital punishment has always occupied a critical and contentious position. Capital punishment was a common form of discipline throughout ancient and, unexpectedly, mediaeval times. 'Danda' is the equivalent of discipline. Disciplines were often supported by the emperor in old India, although other legal authorities also had an impact. Danda is a component of 'vyavahara,' or legal procedure, which was also an obligation owed to the sovereign.[67] The idea of not being set in stone with the rank of the wrongdoer and the person in question was prevalent in ancient India. Regardless of the rank of the culprit, numerous infractions received similar or comparative discipline. The Brahmins were an exception, being excused from beating even in extreme circumstances. The severity of discipline was the most severe for the Sudra at the time, and decreased dynamically as one advanced in the job request. Nonetheless, in ancient India, Brahmins were never subjected to the death penalty. Passing/capital punishment was not arranged under either Hindu or Muslim law. During the British period, capital punishment was instituted.

During previous British rule, Muslim criminals were pursued by the opportunities and customs of Islam, with the support of Kaji and Mufti, and Hindu gangsters were pursued by the honors and customs of Hindu Law.[68]

The IPC has been framed by the First Law Commission headed by Lord Machaley and came in to drive in the year 1860. The Code is at this point existing in India with several redresses.[69]

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[67]Donald R. Davis, "The Spirit of Hindu Law" (Cambridge University Press, 2010)
[68]Sudipta Sen. "Retribution in the subaltern mirror: popular reckonings of justice, and the figure of the Qazi in medieval and precolonial Bengal." 8(4) Postcolonial Studies (2005)

[69]Khushi Agarwal, 'All you need to know about capital punishment in India' iPleaders Blog, 27 May 2019, available at <https://blog.ipleaders.in/capital-punishment-in-india/> (last visited on 15 July 2022)

As a result, death penalty has been used as a form of discipline from ancient times. However, as society progressed, capital punishment evolved. The discipline of capital punishment is now known as capital sentence. The death penalty is the act of purposely putting a wrongdoer to death as a social tactic. It is compelled by the country's governing body. For the first, intolerable offences against human culture or individuals, death discipline is generally imposed. It is the most severe level of discipline that a criminal can receive by regulation, i.e., his life is terminated by this discipline.

Capital punishment, sometimes known as the death penalty, is a legal process in which an individual is executed by the state as a form of retribution for wrongdoing. A capital punishment is the legal option that an individual be rejected as such. Historically, most social orders drilled the death penalty as a punishment for criminals and political or strict rebels. Almost all social regimes have used executions of lawbreakers and political opponents to punish crime and quell political dissent. Capital punishment is used as a primary deterrent, but not for retaliation. It is compelled to permanently remove the most heinous offender from society. This punishment is the legal curse of death as a discipline, and it has been used for a wide range of offences from ancient times.

The death penalty is used in several countries for homicide, surveillance, conspiracy, or as a part of military equity. Drug trafficking is a criminal felony in several countries that have the death penalty. In China, capital punishment is used to punish illegal exploitation and major cases of defilement[70]. Sexual misbehavior, such as assault, infidelity, interbreeding, and homosexuality, is punishable by death in certain countries. In Islamic countries, strict infractions such as heresy (formal repudiation of the state religion) are punishable by death. In order to invalidate it, the UNGA has taken on non-binding objectives mandating a global restriction on executions.

This research will concentrate on what exactly is capital punishment, global norms, and the death sentence within Muslim guidelines. In this audit, we will also gain proficiency with the courses of action linked with the death penalty. Furthermore, by delving deeply, we will learn about all of the offences in numerous criteria that warrant the death penalty. It also combines legal professions.

[70]TaranDeol, "Rarest of rare' — history of death penalty in India and crimes that call for hanging", The Print, 19 March 2020, available at <https://theprint.in/theprint-essential/rarest-of-rare-history-of-death-penalty-in-india-and-crimes-that-call-for-hanging/383658/> (last visited on 16 July 2022)

WHAT EXACTLY IS DEATH PENALTY?

Capital punishment is a thoroughly scrutinized system in which an individual is executed by the state as a kind of criminal discipline. The verifiable rationale for someone being rebuked as such is offered as capital punishment, however the specific appearance of murdering someone is assumed as execution. There has been a general trend toward the abolition of the death penalty; nevertheless, India has not taken this stance. The tangible component of immutability associated with this type of discipline distinguishes it from all others. A individual who has been executed for bad behavior cannot be reinstated. As a result, if an error occurs when making a decision, it cannot be reviewed subsequently.

The death punishment has existed since ancient times. Anthropologists largely agree that the drawings of old cavern residents at Vallaloid depict an execution. Butchers may have had an impact on the death penalty. The death punishment was first mentioned in Hammurabi's Code of Hammurabi's lex talionis in 1750 B.C. Furthermore, the Scriptures mandated capital punishment for acts such as magic, Sabbath intrusion, contemptuousness, extramarital affairs, gay shows, revoltingness, faithlessness, and attack. Plato's ruling also clarified the domain of the death punishment.

The modern nullification movement began with Cesare Beccaria, who persuaded various politicians of the futility and dehumanization of capital punishment. During the talks on the difference in the FPC in 1791, there was a fiery debate for the abolition of the death sentence.

During the Middle Ages, the death sentence was often unforgiving. Political ideologists such as Gramsci, Thomas Hobbes, and John Locke all kept up with this type of evolution. The severe test times, water, and other proposals used during the 1600s should be seen as a form of capital punishment. The cancelling improvement had been completed in the nineteenth century. Michigan was the first to boycott the death penalty in 1846, and was joined by Venezuela and Portugal in 1867. During the 1948 formulation of the UDHR, the abolition of the death penalty was raised as a goal for newly constituted countries[71].

Capital punishment is now used in 47 countries, including the United States, Japan, Belarus, Cuba, and Singapore. As per the current situation, there appear to be approximately 108 abolitionist nations. According to Humanitarian Groups, China (1000+ deaths), Iran (314+), and Iraq (129+) have been the most egregious violators. The alliance recorded 722 capital

[71] Ibid

penalties and 682 hangings in the previous year (aside from China). However, the Republic of Belarus is currently a virtually forgotten event in Europe. According to one study, over 66% of countries have either implemented the death penalty or have not carried out any executions in the last ten years.

GLOBAL STANDARDS

(a) Announcements and Treaties

Capital punishment has been supervised in general open doors settlements as part of the right to life, as stated in the 1966 International Covenant on Civil and Political Rights ('ICCPR'). With the passage of time, various aspects of the weight and execution of this punishment have also been discovered to justify the rejection of cruel, ruthless, and debasing treatment and discipline. With the entry into force of the Second Optional Protocol to the International Covenant on Civil and Political Rights (1989), the general public received the first worldwide, globally recognized instrument that included a prohibition on capital punishment[72].

(b) Universal Declaration of Human Rights (1948)

According to Article 3 of the Universal Declaration of Human Rights (1948), "everyone has the right to life, opportunity, and security of person." When the UDHR was being prepared, there was a lot of debate among States Parties about whether there should be a customary clarification that they should progress toward invalidation, or whether the death penalty should be consolidated as an expressly special situation for the right to life. Obviously, with the death penalty being used in the majority of countries at the period, justifications in favour of revocation were certain to be suspect. The compromise was to keep the matter mostly peaceful and to let the legitimate consultants compete over the vulnerability[73].

(c) The International Covenant on Civil and Political Rights (1966)

The United Nations General Assembly embraced the International Covenant on Civil and Political Rights (ICCPR) in 1966, and it went into force on March 23, 1976. Pretty much

[72] Report No. 262- The Death penalty, Law Commission of India, August 2015, available at <https://lawcommissionofindia.nic.in/reports/report262.pdf> (last visited on 16 July 2022)

[73]TaranDeol, "Rarest of rare' — history of death penalty in India and crimes that call for hanging", The Print, 19 March 2020, available at <https://theprint.in/theprint-essential/rarest-of-rare-history-of-death-penalty-in-india-and-crimes-that-call-for-hanging/383658/> (last visited on 16 July 2022)

every country on the planet had upheld it. As per Article 6 of the ICCPR, "each individual has a characteristic right to life." Guideline will protect this right. Nobody will be denied his life for irrational reasons. In nations where capital punishment has not been abrogated, the sentence of death might be forced exclusively for the most serious encroachment as per the law in force at the hour of the commission of the terrible way of behaving, as opposed to the plans of the continuous commitment and to the show on the assumption and discipline of the awful way of behaving of Genocide. This discipline ought to be done as per a last judgment conveyed by a pre-arranged court.

At the point when the trouble of life is the unfortunate lead of annihilation, obviously nothing in this text will uphold any State Party to the proceeding with Covenant to avoid any liability conceived under the Convention on the Prevention and Punishment of the Crime of Genocide.

Anybody condemned to death will have the pleasure of looking for exculpation or compensation for their capital punishment in all circumstances.

Death penalties won't be restricted for criminal way of behaving perpetrated by individuals younger than eighteen, and they won't be done on pregnant ladies.

Nothing in this article will be conjured to defer or discourage the abrogation of the death penalty by any State Party to the continuous Covenant Convention[74].

In its 1982 General Comment, the United Nations Human Rights Committee (the UN body whose interpretations of the ICCPR are viewed as official) carefully described Article 6 of the ICCPR. The Committee made sense of that, while the ICCPR didn't explicitly need the cancelation of the death penalty, it was engaging, and any push toward invalidation would be viewed as "advance in the delight justified to life." The Committee likewise expressed that death penalty ought to be a "uncommon measure." It underscored huge procedural shields, for example, that death penalty should be forced as per the law essentially at the hour of the bad behavior, and that the right to a fair hearing by a free court, the suspicion of irreproachability, minimal confirmations for the gatekeeper, and the choice to study by a higher board ought to be completely noticed.

[74] H.Q. Agarwal,' Human Rights'(Central Law Publications, 11th edn, 2008)

The Committee has additionally checked on irregular reports of state adjustment to the ICCPR, and has every now and again implied the annulment of the death penalty in its perspectives on reports from retentionist States. In a few cases, the Committee has stressed the need of sticking to the freedoms illustrated in Article 6 and different arrangements of the ICCPR, and has given direction on crossing out.

THE DEATH PENALTY IN MUSLIM LAW

During Muslim times, criminal law was governed by the Quran. Outer India had been composed and created by the structure. Its primary sources were the Quran as enhanced and unwrapped by case law and judicial evaluations. Because all three sources were "Trans Indian," it became critical for the Indian Qazis to understand Islamic Law. The last framework was Fatawai-Alamgiri, which was consolidated by an Aurangazab-based union of theologians. Akbar's concept of value can be gleaned from his regulations to the Government of Gujarat, which state that he should not end life until after the most evolved contemplations. The sovereign himself was the last court of charm, and when he came at his window every day, anyone could demand value eventually, even if the interest was rarely made.

Akbar rushed to establish that lethal punishment should not be coupled by mutilation or other callousness, and that, save in cases of dangerous disobedience, the Governor should refrain from inflicting Capital punishments until the measures were passed off to the Emperor and approved by him. During Jahangir's reign, no death sentence could be carried out without the Emperor's assent. It is stated that capital discipline was the standard for dark Aurangazab. He never solicited death under the coordinates of shock and energy. Under Muslim Law, the death penalty is imposed once the offence has been truthfully supported in the preceding cases.

When a victim's nearest relative requests the attendance of the executioner and refuses to accept the option of monetary compensation.

In unambiguous situations of unethical behavior, the ladies blameworthy party is battered to death by everyone.

On the highway, thieves.

While Hastings aired, the Muslim Law was laid down, on the most gentle standard and a horror of blood.

DEATH PENALTY PROVISIONS IN CRIMINAL PROCEDURE CODE(1973)

The going with methodologies for the death penalty have been figured out in the 1973 Code of Criminal Procedure, which is suggested underneath:

Fragment 354(3) of the Criminal Procedure Code communicates that when a conviction is for an offense meriting demise, or, in the other choice, by life confinement or restraint for a period of years, the judgment will give the motivations behind the sentence recognized and, by virtue of a death penalty, the remarkable purposes behind such sentence. In addition, stipulation (5) of a relating fragment communicates that if an individual is sentenced to death, the sentence will organize that he be hung by the neck until he passes on. Segment 367 of the Criminal Procedure Code expresses that when the Court of Session conveys a capital punishment, the strategy is documented to the High Court, and the sentence isn't done except if confirmed by the High Court. The indicted individual will be kept under guardianship under the particulars of the sentence forced by the Court.

Segment 367 of the Criminal Procedure Code expresses that assuming that the High Court trusts that a further investigation into, or extra confirmation of, any point bearing on the culpability or blamelessness of the indicted individual ought to be made, it might make such request or take such proof itself, or direct the Court of Session to make or take such request. The sales examined by area 367 would be viewed as in assessing the charged under segment 313(1). (a). At the point when the High Court doesn't make or acknowledge the sales or check (if any), the deferred consequence of such requesting or affirmation is guaranteed to such court. Nonetheless, assuming that the High Court aids some way, the presence of the sentenced individual might be deferred when such a solicitation is made or such check is taken.

The proposition for the interest of capital punishment by the High Court have been given under segment 368 of the Criminal Procedure Code. It is expressed that no solicitation for statement will be made under this part until the period considered ideal for an allure has passed, after which tolerating an appeal will be given until such allure is arranged upon.

Under segment 369 of the Criminal Procedure Code, it is conveyed that for every situation so presented, the statement of the sentence, or any new sentence or requesting passed by the High Court, will be made, passed, and embraced by something like two of them when such court incorporates something like two assigned trained professionals.

As per Section 392 of the Criminal Procedure Code, in the event that any such case is heard under the vigilant focal point of a seat of judges and such doled out experts are correspondingly confined in assessment, the case will be determined in the way determined in Section 370 of the Criminal Procedure Code.

It is bestowed under piece 371 of the Criminal Procedure Code that in cases introduced by the Court of Session to the High Court for the testament of a death penalty, the genuine force of the High Court will, following the mentioning for confirmation or different deals has been made by the High Court, send a copy of the mentioning, under the nature of the High Court and checked with his position signature, to the Court of Session.

OFFENSES UNDER OTHER LAWS PUNISHABLE BY DEATH

Aside from the IPC,1860, a couple of recommendations indicate the death sentence as a possible punishment in India, which are discussed below:

- **The 1950 Air Force Act**

Sections 34, 37, and 38(1) of Part VI "Offenses" of the Air Force Act of 1950 are emphasized over the death penalty schemes depicted below:

Section 34 – Enemy acts and the death penalty: At the conclusion of the day, anyone subject to this Act who commits any of the following offenses –

(a) blatantly abandons or conveys up any post, stronghold, post, location, or gatekeeper that is zeroed in on his charge or under his supervision, or uses any means to power or start any boss or other person to commit the aforementioned act; or

(b) deliberately employs any means to compel or motivate any person subject to military, maritime, or flying corps rules to do something other than act against the opponent, or to prevent such a person from acting against the adversary; or

(c) disgustingly projects his armaments, ammunition, contraptions, or equipment in the presence of the enemy, or acts devilishly in such a way as to display weakness; or

(d) surreptitiously communicates with, or gives intelligence to, a foe of any person in arms against the Union; or

(e) directly or indirectly aids the adversary with cash, firearms, ammunition, storage, or supplies; or

(f) through treachery or omission, delivers a message of détente to the opponent; or

(g) in time of war or during any flying corps operation, intentionally provides a deception to cause mindfulness or horror, whether in camp, quarters, or while still in the air; or

(h) quits his employer or his position, screen, piquet, watch, or party without regularly feeling better or taking leave; or

(i)give or help the enemy on purpose after being imprisoned; or

(j) harbors or shields a non-prisoner enemy on purpose; or

(k) takes up his place as a watchman during a time of war or vigilance; or

(l) willfully refuses to gamble on the outcome of India's military, naval, or air forces, or any powers partnering with them, or any portion of such forces; or

(m) forces the enemy to catch or destroy any plane equipped with the abilities in a deceitful or dishonest manner; or

(n) employs deceptive air signs or changes or dials back any air signal; or

(o) misleads or forgets to use his most outrageous efforts to transmit such needs when indicated by his superior or generally compelled to complete any aeronautics-based military exercises. into effect; will, on conviction by court-military, be mindful to persevere through end or such less discipline as is referred to in this Act.

Section 37 - Mutiny: Any individual subject to this Act who commits any of the following offences, in total -
(a)starts, prompts, provokes, or plots for others to start any insurrection in India's military, oceanic, or flying corps, or any powers collaborating with them; or

(b) participates in any such revolt; or

(c)while present at such such uprising, does not use his most outrageous efforts to suffocate something essentially the same; or

(d) knowing or having reason to believe in the face of any such revolt, or of any expectation to commit such insubordination or any such plan, does not immediately inform his telling or other prevalent; or

(e) makes every effort to persuade any individual in India's military, maritime, or flying corps to reconsider his commitment or dedication to the Union; and, upon conviction by court-military, will be mindful to endure through downfall or such less discipline as is mentioned in this Act.

(a) Any individual subject to this Act who deserts or attempts to leave the assist with willing on conviction by court-military, if he commits the offence on unique help or when constrained for dynamic help, be capable of getting through destruction or such less discipline as is referred to in this Act; and 161 if he commits the offence under other circumstances, be committed to grieve confinement for a term which could contact

(b) Any anyone subject to this Act who knowingly harbors any such swindler risks grievous detention for a length of up to seven years or such less discipline as is mentioned in this Act.

(c) Any individual subject to this Act who, being aware of any takeoff or attempt at renunciation of a singular subject to this Act, does not immediately withdraw to his own or another transcendent, or takes any steps a possibility for him to make such individual be caught, will, on conviction by court-military, be committed to mull confinement for a term of up to two years, or such less discipline as is referred to in this Act.

- **The Control of Organized Crime Act of Andhra Pradesh, 2001**

Region 3(1) (I) of the Andhra Pradesh Control of Organized Crime Act, 2001 is related to the death penalty plans, which are discussed below:

Region 3: Punishment for deliberate bad behavior: (1) Anyone who commits an offence of assisted harmful behavior will,

I if such offence has resulted in the death or detention of any individual, be charged with death or captivity indefinitely, as well as a fine, subject to a base amount of one lakh rupees;

(ii) in another case, be charged with incarceration for a duration of up to five years and be subject to a fine, subject to a base amount of Rs. five lakhs.

PRONOUNCEMENT BY A JUDGE

- **The State of U. P. vs. Jagmohan Singh**

The appealing party, Jagmohan Singh, was indicted for homicide and condemned to death by the Sessions Court, which was affirmed by the High Court. Following that, the litigant requested of the Supreme Court for exceptional leave. It was contended for this situation that capital punishment disregarded Articles 19 and 21 of the Indian Constitution since it didn't lay out an instrument. It was fought that the Criminal Method Code (CrPc) strategy is exclusively bound to deciding culpability and not giving a capital punishment. The Supreme Court decided that capital punishment isn't unlawful and doesn't go against Articles 14, 19, or 21 of the Constitution. The Supreme Court pronounced that the choice to sentence somebody to death is chosen as per the law and depends on current realities, conditions, and gravity of the offense.

- **Bachan Singh vs the State Of Punjab[75]**

Facts: The appellant, Bachan Singh, committed murder and was tried and convicted with a death sentence under Section 302 of the Indian Penal Code by the Sessions Court. Confirmation was also given by the High Court regarding the death sentence. Bachan Singh filed an appeal before the Supreme Court[76].

[75]AIR 1980 SC 898

[76]Radhika Maheshwari, "Bachan Singh Vs State Of Punjab – Case Analysis" Law Corner, 16 August 2021, available at <https://lawcorner.in/bachan-singh-vs-state-of-punjab-case-analysis/#:~:text=Facts%2520of%2520Bachan%2520Singh%2520Vs%2520State%2520of%2520Punjab,with%

Issues: a. Whether the facts establish specific grounds for the court to impose the death punishment, as required by Criminal Procedure Code Section 354 (3)?

b. Does Indian Penal Code Section 302 violate Article 21?

b. Whether or not Article 19 determines the validity of IPC Section 302

By a 4:1 majority, the Supreme Court dismissed the objections to Section 302 of the IPC and Section 354(3) of the CrPc, ruling that Section 302 does not infringe both Articles 19 and 21. The court explained that the six freedoms guaranteed by Article 19(1) are subject to reasonable limits and are not absolute. In addition, the court declared that it recognizes the state's power to deprive a person of his life under Article 21 in accordance with the fair and reasonable method established by law.

The Court made the following important observations: In other words, the death sentence should be applied only in exceptional circumstances. The offender's and crime's circumstances must also be examined.

Only in cases when life imprisonment is deemed insufficient due to the circumstances and nature of the crime shall the death sentence be imposed.

CONCLUSION

The legitimate cycle by which an individual is executed by the state as discipline for a wrongdoing is known as the death penalty. A capital sentence is the conventional declaration that somebody be dismissed, though an execution is the real course of killing the person. Capital punishment has been abrogated in a few nations all over the planet, however India has not gone with the same pattern. The evident part of irreversibility related with this discipline separates it from others. A man who has been executed for a wrongdoing can't be resurrected. Thus, in the event that a mistake occurs during the subject determination process, it can't be helped later. Human retributions could be followed back to the starting points of the death penalty. It is a troublesome issue with social and moral ramifications. The Court widened the extent of "elective other options" that should be investigated before the death penalty is thought

2520his%2520cousin%2520Hukam%2520Singh%2520and%2520his%2520family>(last visited on 16 July 2022)

of, and the Supreme Court maintained Bachan Singh's conviction. We risk executing somebody who ends up being honest assuming that we keep capital punishment.

Investigation in an assortment of data spaces, new manifestations and exposures, etc have brought about a huge development in how we might interpret the overall population, the individual, and the state in present day times. The basic inspiration for discipline is presently to guarantee government-supported retirement and presence. Various solicitations and missions have been made to annul capital punishment. Indeed, different overall and neighborhood hostile to the death penalty gadgets are extending consistently. Since around 1997, the United Nations Commission on Human Rights has laid out a point of reaching nations who have canceled capital punishment and putting a ban on executions.

The contentions for and against the death penalty are vigorously impacted by contemporary originations about bad behavior and discipline. Some contend that the terrible punishment of death is as of now not fitting in this day and age. Thus, they consider it to be a necessary evil, and the sooner they dispose of it, the better. Then again, others, prominently purported abolitionists, feel that eliminating capital punishment from the rulebook would transform the world into a hellhole where just bad behaviors and crooks would flourish. An offender is dauntless on the grounds that he realizes that regardless of what happens, he won't die. Accordingly, with regards to capital punishment, it might be said there are two groups. One group upholds for capital punishment, while the other gathering lobbies for its cancelation or annulment.[77] Hon'ble Justice Dr. M. Hidayatulla (previous Chief Justice of India) supported for the continuation of capital punishment. He expressed that he had never dreaded noteworthy deadly punishment since he had experienced a couple of events in where passing was the essential response. In any circumstance, he exhorted that the blamed ought to be given the advantage for the uncertainty; the adjudicator ought to be guaranteed for certain of his obligation; and there ought to be no extraordinary necessities. He chastised the Supreme Court's command to force capital punishment just in the "most uncommon of the fascinating cases." How could one tell which models were more strange than others and which were the most remarkable? He expressed that such feeble definitions just confound judges, especially those in lower courts. He expressed that it was not for the adjudicators to discredit capital punishment

[77] Fr. John Friday Mordi, "Right to Life and Death Penalty: A Critical Analysis", Global Academic group, available at <https://www.globalacademicgroup.com/journals/the%20intuition/Right%20to%20Life%20and%20Death%20Penalty.pdf> (last visited on 16 July 2022)

by neglecting to think about the discipline in their choices. On the off chance that a guideline exists, it is the obligation of the designated position to follow it," and it is just the obligation of the chamber to nullify it.

CHAPTER 5

PROHIBITION OF CHILD MARRIAGE (AMENDMENT) BILL, 2021: A BOON OR BANE

Author: Rajveer Singh[78] and Dr. Namah Dutta[79]

ABSTRACT

The Prohibition of Child Marriage Act 2006 is the current legislation which deals with prohibition of child marriage in India. Recently a bill was proposed to amend this act and to increase the legal marriageable age of females to 21 years from 18 years in the amendment. Section 14A is also inserted in the amendment to override all the existing laws that will contradict with the amendment. Child marriage is mostly the result of gender inequality which affects the girls disproportionately. Gender equality would be brought if the enactment of the amendment of 2021 is done by the government. Multiple laws for marriage creates a confusion and difficulty in implementing a uniform child marriage prohibition law in India. India has the world's highest population of people adding to the terrible loop of illiteracy in the country. Illiteracy is major challenge as illiterate people are unable to understand outcomes of early marriage. It is noted that the area which have more poverty rate has more cases of child marriage. This is because poor people do not have enough resources to educate their children and provide them food Despite the Prohibition of Child Marriage Act's theoretical promise of support for girls who annul their child marriages; women and girls encounter numerous practical obstacles in receiving these payments. This creates a hindrance in passing of the further amendment or any law related to the prohibition of child marriage.

Key Words : Child Marriage, Boon , Bane , Gender Equality, Poverty, Illiteracy

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INTRODUCTION

The Prohibition of Child Marriage (Amendment) Bill was proposed by Smt. Smriti Irani, who is minister of women and child development, on 21 December 2020 in the Lok Sabha. This bill proposes the amendment of Prohibition of Child Marriage Act 2006. It seeks to Increase the women's legal age of marriage to 21 years which is previously 18 years in the Prohibition of Child Marriage Act 2006.

The following amendments are proposed in the bill:

i. Despite any legislation or customary practise to the contrary, child now is any male or female who has not completed 21 years of age under the Child Marriage Act (Section2).
ii. The child marriage can be annulled by the child by filing petition two years after attaining majority under section 3(3) ,which was 5 years in Prohibition Of Child Marriage Act 2006
iii. Section 14A has been inserted to override existing customs or laws contradicting the amendments
iv. Also all the personal marriage laws like the Indian Christian Marriage ,the Hindu Minority and Guardianship Act, The Hindu Marriage Act, the Foreign Marriage Act, the Special Marriage Act, the Muslim Personal Law (Shariat) Application Act and , Act to be amended according to the provisions in the amendment
v. The legislation is to be implemented two years after the consent of the President

IMPORTANCE OF THE AMENDMENT

Enacting the Prohibition of the Child Marriage (Amendment) Bill is not an easy task. There are numerous challenges which would be faced by the government to bring this amendment to the practice. The challenges to the enactment of the amendment are discussed below:

- **Gender equality:**

In everyday reality, the terms "gender" and "sex" are typically used interchangeably, however in social science, they're often distinguished. The term "sex" refers to disparities among women and men primarily based totally on feminine or masculine characteristics. Gender refers back to the cultural factors of female and male roles. In different words, the anticipated actions, personality, and other social characteristics of ladies and men create the foundation of feminine and masculine characters. Sensuality and the varied reproductive roles of males and females are more likely to be regarded as "natural" explanations for societal gender inequalities.

Child marriage is the result of established gender inequality which affect the girls disproportionately. Child marriage is six times more in girls than the boys over the world. Girls' childhoods are taken away and their health and lives are jeopardised, when they are married in their childhood. Girls who are married before they are 18years old are much more likely to be victims of domestic violence and school drop outs. They have worse health and economic consequences than their friends who are not married. It put a country's capacity to offer decent education and health services to individuals and children under more hardship. It is a fact that India is a male dominated society. Though there are various other laws for equality of the female but males are considered superior to females in the Indian society. So it was always considered that female partner for marriage should always be of less age than that of the male and considered as responsibility of the male partner. It was also considered that if female partner is younger than the male partner than there are very good chances of a long term marriage and less conflicts. But these types of stereotypes have been broken to a very good extent. Thus with the enactment of this amendment these stereotypes can be abolished from society as it is a major step towards bringing gender equality in Indian society.

- **Uniform Marriage Law:**

India is a secular country. Thus there are many religions in India and each religion has its different concept of marriage. According to Hindu religion marriage is regarded as sacramental, mutual cooperation, self sacrifice and a sacred responsibility. On the other hand marriage is regarded as civil contract under the Muslim law .Hindu Marriage Act, 1955 governs the marriage of Hindus in India .Hindu Marriage Act, 1955 also governs the marriages of person belonging to Sikh, Jain and Buddhist religion. The law that governs marriage of a Christian couple is Indian Christian Marriage Act, 1872. Parsi Marriage and Divorce Act, 1936 governs marriages of couple from Parsi religion. On the other hand the law for governing Muslim marriage is uncodified in India. There is also difference between the ages of marriage under different laws of different religions. So basically in India there are separate marriage laws and acts for different castes and religions in India .Multiple laws for marriage creates a confusion and difficulty among the judiciary for deciding the cases relating to the child marriages in India . This new amendment can be very helpful for the judiciary as it aims at a uniform marriage law in India and thus making the process of solving the conflicts very simple and easy.

- **Reduced Pressure From Family**

Families of many children believes that as soon as their boy child gets a job or girl child completes her education or even they have attained marriageable age they must marry . Most of the parents in India took their girl child as their responsibility and to marry her as early as possible. Girls in India are emotionally blackmailed when they attains marriageable age and are forcefully married .They are deprived of attaining their goals and achieving success in their career. Also their dreams are suppressed , some are forcefully deprived from their dreams while others voluntarily give up their dreams for sake of the happiness of their parents. Thus this amendment will play a major role in uplifting women in India as the legal age for marriage would be increased for women and the pressure from the family on the girl child will be reduced for getting her married .In the meantime the girl child will have opportunity to complete her education and fulfil her dreams or to build a career.

- **Better Understanding of Family Planning**

Child Marriages lead to high fertility rates and the younger couples tends to have more children than the mature couples . Also the girls married at a very young age are not well educated and are not aware of their contraceptive rights and also are not able to understand the concept of family . Thus it can be concluded that child marriages are very direct link to increasing population in the country. The amendment in the age of marriage would indirectly lead to population control in India as the increase in age of marriageable age will prevent any young age pregnancies and couples married after the age 21 years will have a better chance of understanding their contraceptive rights , rights of conceiving a child and importance of family planning.

CRITICAL ANALYSIS OF THE BILL

According to the critiques of the bill, this bill will not empower women or reduce child marriages but only creates confusion among the people due to other legislations which are implemented in India. The critiques opposed the bill due to following reasons:

i. According to the Majority Act of 1875, the age of obtaining majority is 18 years. The Bill raises the minimum marriageable age of females from 18 years to 21 years, putting it in line with that of males. This distinction may have implications for the rights and duties of people aged 18 to 21.

ii. If this Bill is enacted, it will be lawful to have sexual intercourse but prohibited to marry for people aged of 18 and 21 as In 2018, the Supreme Court decided that consensual sex

between consenting adults is a basic right under Articles 14, 15, 19, and 21 of the Constitution.

iii. According to experts, 70 percent of early weddings occur in poor communities like as SCs and STs, and the law will only force these marriages undercover rather than prohibit them. Rural women would be impacted more than metropolitan women.

iv. Another difficulty that arises is that the law would criminalise huge number of marriages which will be solemnised after the law will come into force. While 23percent of brides are under the age of 18, brides under the age of 21 account for significantly more marriages. The median age of marriage for women aged climbed to 19 years in 2015-16, up from 17 years during 2005-06, but stayed below 21 years.

v. Another criticism to the plan is that it affects the girls from particularly traditional and patriarchal households .These girls escape from the clutches of their families by marrying someone of their choosing beyond the age of 18. Due to the proposed legislative change, these girls would be affected as they have to wait three more years, meanwhile in this time the families and the larger society could try to control and scare such girls.

vi. The critiques also argue on the point that this amendment will limit the personal laws. Thus, it is in the direct violation of the Article 25 of the constitution which provides freedom of free conscience and practice and spread any religion.

CHALLENGES

Although the bill has its positives and negative points . They can be debated over the period but on the other there are major challenges to this amendment bill which are discussed below:

- **Cultural Traditions**

In majority of child marriages, a cultural practise, or what is thought being a cultural practise, is to blame for the continuous incidence of child marriages. This is not to say that cultural factors do not influence the attitude that drives the incidence of child marriages in the absence of laws or riches. Cultural beliefs and social behaviours are among the variables that promote the practise to thrive in these instances. Marriage is deeply rooted in custom and culture in India. Dominant moral and honour concepts are major elements in supporting child marriage. Many such households place a high value on "family honour" and urgency to "defend it." The virginity of female is frequently valued - it is thought in many such communities that if a female is not a virgin until she gets married, it brings disgrace and shame upon the family.

There is also the reality that young females are encouraged to marry older men due to cultural customs that govern the lifetime of the older spouse, often due to the assumption that an older husband would be capable of acting as a guardian against immoral and inappropriate behaviour. Unmarried women are frequently viewed as a liability to family honour and integrity. This motivates families to do whatever they can to protect themselves from shame by marrying their daughters as near to adolescence as possible. It is a habit that simply serves to increase a woman's reliance on males for her entire life. There are also those parts of society that are coloured by culturally motivated notion that more the children a woman carries, the more prosperous the family. This forces them to compel their daughters into marrying young so that their reproductive potential is not limited.

Thus, it can be seen that cultural traditions play a very crucial role in Indian community. Traditions has an very deep impact on the minds of people .It drives people towards blind beliefs and faith ,ultimately , creating a challenge for the implementation the amendment of the Prohibition of Child Marriage act in India.

- **Lack of programmes and schemes**

There are no special programmes or strategies aimed at dealing with the problem of child marriage. One important element is that most of programmes are geared on the development of girls and only indirectly address the issue of child marriage. The issue has mostly been addressed as element of the government's initiatives on women's reproductive health and adolescent female empowerment. While women's health is a major concern, particularly for young girls who marry at a young age, it is crucial to remember that women's health was never a priority in patriarchal societies. As a result, campaigns and other efforts focusing on the problem of child marriage out from perspective of reproductive health have failed to elicit an emotional response from the general public. Incorporating child marriage into school curricula and encouraging girls' education as a means of reducing such behaviours has not yielded the anticipated results. On the contrary, a lack of proper safety for girls who flee their families for education or work is being used as a reason to marry them young. Conditional cash transfer systems never reach people who need help them the most since they need some form of identification or evidence of residency, among other requirements, that the poor of the nation are unable to meet.

Children who are forced into child marriage and the consequent women's reproductive rights violations have the right to seek redress under international humanitarian law and Indian

constitutional law. Married girls, on the other hand, are frequently unable to obtain treatments because of the scarcity of physiological, financial and social freedom, and scarcity of formal assistance in providing opportunities for married girls' recovery. Women who are married frequently lack the power to seek remedies available to have their marriages declared null and void. The lack of access to legal representation exacerbates these consequences. Despite the Prohibition of Child Marriage Act's theoretical promise of support for girls who annul their child marriages, women and girls encounter numerous practical obstacles in receiving these payments. In addition to the general hurdles women have in accessing the legal system as a result of their relative lack of autonomy and education, the Prohibition of Child Marriage Act lacks clear advice on how to compute maintenance. Instead, the Prohibition of Child Marriage Act simply stipulates that maintenance must be based on the child's requirements and lifestyle, as well as the paying party's sources of income. Furthermore, maintenance is only payable in the case where the marriage is voidable but not in the case where marriage is marriages void ab initio.

Thus, due to the lack of schemes by the government for prohibition of child marriage and failure of the available schemes people are less motivated towards the prohibition of child marriage or to report any child marriage .This creates a hindrance in passing of the further amendment or any law related to prohibition of child marriage.

- **Illiteracy:**

Illiteracy in India is an outcome of the country's tangled web arising due to economic and social inequalities. Illiteracy in country is driven by socioeconomic inequities, gender based discrimination, caste racialization, and technical hurdles. India does have world's largest population, but it only adds to the country's terrible loop of illiteracy. Literacy is defined as having the capacity to write and read by the child aged seven years. By the data from the National Statistical Office (NSO), average literacy rate in India in year 2021 was 77.70 percent. In 2021, female literacy was 70.30 percent while male literacy was 84.70 percent in India. There only a slight increase in literacy rate in last years in our country. According to a 2017 report issued by National Commission for the Protection of Child Rights, 39.4 percent of 15-18 year old girls in India drop out of school and college. Apart from poor girl literacy rates and very low female secondary school enrolment rates, women's participation rate in labour force in the country is also extremely low. According to statistics from the National Sample Survey Organisation (NSSO Periodic)'s Labour Force Survey, Indian female labour force participation

rate in 2017-2018 was 23.3 percent. Only thirteen countries in the world have worse female labour force engagement rates than India. Thus, illiteracy is there in India which not only prevents enactment of this amendment only but also the enactment of the various other legislations passed by the parliament in India. This is due to the following reasons:

i. Illiterate people failed to understand the consequences of early marriage of the child
ii. Illiterate people fail to understand the impact on the mental health of the child due to early marriage.
iii. Illiterate people fail to understand the importance of the education in the life of the child and considers girl as only a child bearing machines to the husband
iv. Illiterate people are not fully aware of ,most of the legislations for the protection of the children so they unknowingly indulges their children in child labour and also do early marriage of their girl child in order to reduce her education expense and use that money for dowry , which is illegal in India as per the law.

- **Poverty**

In India, 66.67 percent of the people are living below the poverty line, with 68.8% of the people are living below $2 per day. 33.33 percent of the people in India lives on below $1.25 per day, this fits them into category of exceptionally poor. Thus the result is that India is one of the world's poorest countries, where weakest parts of Indian society, who are women and children, bear the burden of the repercussions. It is noted that the area which have more poverty rate has more cases of child marriage then they are having low poverty rate this is because poor people do not have enough resources to educate their children and provide them food. They prefer to educate boy over girl child with their resources and as a result the girl children are not much very aware of their rights. Also it is the hope of the parents that their girl child will have better livelihood after getting married, so poor people marry their children young in order to save their resources and also according to them the younger the girl is married less the dowry they have to give . Thus it is considered that if the girl is of old age more dowry is demanded so to prevent themselves from resource collapse poor people marries their girls at very young age i.e. less than 18 years. So if the age is increased to 21 years as mentioned in the bill, the poor would not cooperate for enactment of this amendment at any cost. So poverty in India is a major challenge to the bill.

FAILURE OF PROHIBITION OF CHILD MARRIAGE ACT, 2006

Since 1978, the age for girls to marry has been at least 18 years. Despite the presence of the Prevention of Child Marriage Act (PCMA), 1978 and 2006, India is continuously having the largest absolute number of young brides in the world. Even though that one in every four Indian girl is still married before attaining the age of 18, just 501 cases were filed under this Act in 2018. The legislation is clearly not being used effectively to prevent or decrease the number of child marriages. The PCMA is largely utilised by families of girls to prohibit self-arranged weddings at the grassroots level. Here, young people who marry on their own volition are criminalised just for exercising their right to do so. Due to society's profound support of such social norms, the PCMA is not often invoked to stop incidents of forced or coerced early marriages.

When the present legislation is ineffective, relying solely on age and harsh actions will not help. Raising the marriage age to 21 increases the risks and harm to young people - the same individuals it is supposed to safeguard. Thus, failure of the present and previous legislations passed is another reason that the future legislations cannot be implemented easily in a practical way.

CONCLUSION

It can be concluded from the above article that this amendment has very positive points like gender equality, uniformity in marriage laws but on the other hand critics have also evaluated the bill and brought forward the negative effects of this amendment on the society . Thus the enactment of the amendment requires special diligence and care due to different personal laws for marriage in India, various cultures having different rituals and different views about the marriage. Also governing of the marriage cannot be suddenly made uniform for all religions in India and also there no schemes or incentives which can make this amendment a boon rather than a bane to the society like the other previous legislations.

Following are some suggestions for proper and successful implementation of the Prohibition of Child Marriage (Amendment) Bill, 2021:

i. Providing incentives for reporting and stopping child marriages
ii. Girls from low-income households are mostly coerced getting into child marriages. Thus providing them with financial assistance, particularly for schooling, could immediately affect the age of getting married among women.
iii. Implementing special programmes and schemes to prohibit child marriage

iv. Preparing a proper plan for implementing uniform law for all religions without compromising their religious beliefs

v. Creating awareness among the people about the ill effects of the child marriage like early pregnancy, failure to understand concept of family and social values, not understanding concept of family planning, failure to manage economy of the house etc.

vi. By eradicating poverty and increasing literacy rate in India

CHAPTER 6

Availability of Law to the under privileged or Below Poverty Line

Author: Sudarshan Shabadu[80]

ABSTRACT

Today, the human involvement, intelligence and the technology dominance in every field have become a new norm in order to develop, maintain and transform anything to get best possible results, and that keeps it accessible to all the people from all the walks of life, and is so in the field of law has become anticipatory and mandatory, however, while ensuring developments and applying law in every possible manner in every field on one side, and we do this enactments and pass the bills in parliament one after another other side, but citizens of the society is not able to aware, utilize, get justice out of laws passed in parliament, what could be a possible introspection that government and judiciary body must think of? many people in rural India do not believe that law is accessible to the underprivileged that can provide justice to them against the disputes.

HISTORICAL BACKGROUND

Going back to few decades, There had been a senior or a group of seniors by age and experienced in every village of rural India acts as judges who used to settle disputes between the parties using their knowledge, wisdom and experience, and the aggrieved party to go quickly , and explain everything and ask for justice, and bench of village call for setting up meeting with both parties, discuss and provide relief or remedy as part of justice, it was easily accessible, and the whole process was in the course of short time, when these traditions or customs are in place, the settlements are happenings in easy and speedy manner, and a question comes now that who would like to go through the whole process of legal system which is time consuming, costly and mental agony? here exactly the challenge comes to introspect deeply to

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find the root causes for delay in the due process, and how quickly expedite the trails and further disposal of cases.

From the post-independence, there have been tremendous changed made in laws to keep up the human rights, freedoms, social, economic, and political developments of each citizen for their better life and liberty, somehow governments or legal fraternities are not able to succeed to create such healthy awareness among citizens of this country that who would fearlessly come forward to ask for legal help, go through whole process courageously, and people still carry that mindset of apprehension of easy accessibility of law.

Following are the best possible reasons that accessibility of law to the underprivileged is still a distant moon if the legal, legislative, and executive bodies do not take steps to mitigate the distance

POVERTY IN ILLITERACY AND ILLITERACY IN POVERTY

Poverty is one such reason that India has been struggling to improve the economic status of the poor and lower middle class from post-independence, there have been certain social reforms or welfare policies introduced from time to time from various governments, however situations might have been improved a bit but could not work completely, till today date, there are crores of people living under below poverty line, when we talk of fundamental rights of every citizen of this country, underprivileged or lower sections of the society could not protect their rights of minimal such as right to equality[81], right to life and personal liberty[82] because of their poor conditions of life and depriving with certain basic privileges.

WHEN NO AWARENESS, DO THEY KNOW THEIR RIGHTS?

While we are reading this article, this very moment, there are many possible disputes are happening across this nation but how many come and ask for legal aid to settle their disputes? When they do not have basic awareness of law, and their freedoms and rights, how do they know that they can get free legal aid[83].

[81] General Equality Clause under Article 14, Judicial Interpretation on Equality
[82] Protection of life and Personal liberty under Article 21 of Constitution
[83] Under Article 39A of The Constitution

PROBLEMS FACED BY UNDERPRIVILEGED

- **Fear of Legal System**

Although, the constitution of India provides free legal aid under the umbrella of DPSP with the inspiration from preamble that says "justice of social, economic and political" could not generate strong belief and assurance in the people of underprivileged, when they think of these terms of law, lawyer, advocate, judge, court and police creates jeopardy in their minds and they distance themselves not to get into it rather than the compromise for the justice though law might be favorable to them and bring justice to their disputes.

- **Going to Advocate is The Costly Affair**

Today when a person thinks of filing suit in a court, first thing comes to their mind is "it is a costly affair, I cannot afford to pay money to the lawyer", the notions about lawyer fees created in society is huge and it cannot be undone easily, even the upper class of society is worried about going to court to seek for justice thinking about financial consequences they face.

- **Trust in Advocate or Lawyers**

Trust in the advocates or lawyers is one of the primary concerns that citizens of the society are facing today, and the question comes when those are there to help to get justice might use ulterior motivates to grab money out of client innocence to law is one such reason cannot be easily accessible to underprivileged.

- **In the Process of Due Course of Time**

As we say "Justice delayed is justice denied", as the decades are being passed and many developments in laws happened, and are happening , and technological advancements are happening, even at times, the advantage of cutting edge scientific tools are being used for case analysis, however the greater extent we moved into the advanced life style of the world, still justice is being delayed, there could be some genuine reasons why it is happening, however a common man or underprivileged who fights for their survival on daily basis cannot comprehend the intellectual understanding , reason and analysis behind this.

The best landmark case of "Justice delayed is justice denied" is that of **Jayalalitha v. UOI**[84] that the first charge-sheet was filed and a year later, in June 1997, and the final verdict was

[84] J. Jayalalitha Etc. Etc vs Union Of India And Anr on **14 May, 1999**

delivered by the Supreme Court in February 2017 that is, twenty years after the charge sheet was filed. Jayalalitha was held guilty but by that time, as we all know, Jayalalitha had already died.

SOLUTIONS GOVERNMENT OR ONE CAN THINK OF

- **Creating Awareness Programs:**

It is very important if government can conduct legal awareness programs to get to know the citizens their rights, freedoms, and free legal services, if a government can work with legal fraternity to send the legal-knowledgeable-individual to each village in a periodical manner and educate the public would be really a forward step.

- **Adding a Basic Course as Part of Regular Education:**

Since right to education[85] has been evolved and the importance of having education from the childhood became a constitutional right in society and parents are taking responsibility in that regard, if the government can introduce a course on basic laws comprises of their rights, freedoms, remedies, and free service of legal aid, etc. in their secondary or intermediate education which help them to aware, understand and give them a dutiful courage to act when needed or face unfair situations in their life.

- **Setting Up Free Legal Aid Centers:**

As the way basic education is needed, it is everybody right to seek justice within stipulated time, if free legal aid centers are set up at village level can create easily access to the underprivileged, as we have village secretariat offices in each village, government can plan to run the free legal centers from there by setting up the equipment that needed at the minimum cost.

- **Interns - Working from Rural Areas**

Today, internship is integrated as part the of every 3- year or 5-year LLB programs to gain the skills for the practical aspects of law, if a university can create such tasks as part of internship

[85] Under Article 21A of The Constitution

that could provide awareness about law in rural India, and encourage students to go and should spend some time in order to educate the people in rural India would be a really worth to try for

CONCLUSION

Knowing that whole country run on these laws directly or indirectly daily, it has wider and broader scope to discuss and know the consequences before we can take a step ahead. This article simply and effectively brings up simple knowledge how a citizen of India thinks, and the notions, belief behind it, and how the government and legal fraternity can come together to create awareness among underprivileged ,provide them justice in due course of time, help them to get rid of notions and beliefs to regain trust in legal fraternity , the rural India is one such as it has huge population where people really need to be educated, and the government and legal fraternity should come together to put continuous and consistent efforts to generate trust, confidence and courage in underprivileged to give them best access of laws.

CHAPTER 7

A CRITICAL ANALYSIS OF ROLE OF INFORMATION AND COMMUNICATION TECHNOLOGY IN RURAL DEVELOPMENT

Author: Ashima Mahajan[86], Dr Namah dutta[87]

ABSTRACT

This study tends to analyze that how the information and communication technology has played an indispensable role in strengthening local democracy. Being a welfare state, Indian government has numerous roles to play. Information and communication technology helps to expand the reach of the government. Information and communication technology is expanding its ambit day by day and it is important for government to implement it in its governance as well. India is still a developing country and has been doing all possible efforts to digitalize India. Also this study has discussed various impacts that have been created by application of information and communication technology. Various initiatives by the government to strengthen local democracy are also discussed in the study. Despite of many efforts by the government still India has not been able to strengthen its local democracy. Suggestions for improvement have also been provided under this study.

Keywords:- local democracy; management; information and communication technology; e-governance; digitalization.

INTRODUCTION TO INFORMATION AND COMMUNICATION TECHNOLOGY

Information and communication technology refers to such technology that operates activities related to telecommunications, data transfer, network based web, chain of broadcasting, arrangement of intelligent building and its management, audiovisual processing etc.

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'The term "Information and Communication technology" is usually contemplated to be a developed branch of information technology. But this concept has a very wide implications and scope. It involves various kind of transmission of diverse data.

"Information and communication technology signifies all kinds of technology that creates, stores, transfers, any kind of data or information whether audio or visual. It includes various technologies such as radio, television, online portals, DVD, computers and all associated hardware and software required to have access to these technologies[88]. It further comprises all such technologies that are corresponding to such technology.

Information and communication technologies (ICTs) are fast changing the way citizens engage with one another, as well as with private businesses, public utilities service, and government agencies. Citizens traditionally travelled to a government office to complete a government transaction, such as applying a license or getting a birth or death certificate.

SIGNIFICANCE OF INFORMATION AND COMMUNICATION TECHNOLOGY

Today the whole world is aiming towards Digitalization. Indian government has launched a mission to digitalize India called "Digital India"[89]. Various initiatives have been launched to enhance local democracy as well. Different purposes are served by way of Information and Communication Technology such as

1. Promotion of Participative Democracy: - It is a form of unprecedented opportunity to obtain community collective choice. It helps to get views of citizens for whom rules are to be framed. It ensures both the parties have equal representation and share to voice their respective opinions. It is done with the aim of discussing the priorities and effective decision making. Such mechanism can assist in strengthening the social audit and social organization. For example: a platform named My-Gov[90]. has been launched for public suggestions on different matters.
2. Implementation of good governance; - With the help of Information and communication technology, decision making has been made quick and efficient. It helps in implantation of decision making at different locations across the

[88] Stated by Owusu and Ansah in 2014.
[89] As launched by PM Narendra Modi on 1st of July 2015
[90] Launched by Shri Narendra Modi on 26th July 2014 in public domain

country at the same time. We can also state that information and communication technology is an effective way to ensure transparency as well as accountability towards their citizens from the governments. Quick and less complex audits have been made possible with the help of this technology. In result of it, response of the public has also been quick and effective in form of suggestions, reviews and recommendations.

3. To achieve sustainable development goals:- To achieve public service delivery, many e-platforms have been designed and implemented such as use of smart meters, solar system, irrigation programs, rainwater harvesting (upgraded) to ensure efficient use of local resources and avoid the exploitation as much as it can. Sustainable energy is accepted and promoted by smart appliances, smart grid etc.[91]

VARIOUS DIMENSIONS OF INFORMATION AND COMMUNICATION TECHNOLOGY

Information and communication technology is often restricted to access of an individual. But it has much more significance attached to it. It includes haves and have nots for the Information world. From, serving educational purposes to students or a company's management it has power to do everything. It shapes the electronic world in numerous ways.

There is also sociological aspect attached to it. We can co-relate four pillars to form an ideal society if used in a righteous manner. Four pillars are information, people, service and technology[92].

The most common and widely accepted aspect is Information sharing and its accessibility. With the help of this technology information can be assessed and utilized at any time and place.

INFORMATION AND COMMUNICATION TECHNOLOGY AS A TOOL OF GOOD GOVERNANCE:

i. Better health care and educational services in the rural areas.
ii. To have more literate population in the rural areas.

[91] As per energy efficiency 2020 analysis report by IEA
[92] Stated by Dutton in 1999.

iii. Empowering farmers with technology, equipment and productivity.
iv. Multimedia and information service toe incorporated in a righteous manner.'
v. Enhanced rural connectivity.

DIFFERENT APPROACHES OF E-GOVERNANCE

Various models of e-governance that denotes the relationship between different stakeholders are discussed below:-

1. **Government to citizen:** This model is also known as G2C. This kind of platform provides communication between government and its citizen. The focus of this model is to address public at large. It helps government to expand their accessibility to its citizen at all times siting anywhere in this world.
2. **Government to Business**: Another name of this model is G2B. This model provides information and interaction between government and its associated businesses. It has various advantages such as less expense, quick approvals, and time-saving, less risk of data misuse, transparency and accessibility. Examples of this model are: licensing, revenue collection etc. this interaction can further be classified into promotional and facilitative.
3. **Government to Government:** India is a federal country which makes communication between the governments necessary to ensure smooth functioning. This model of governance involves only the governments, its agencies and departments. Interactions can be vertical and horizontal. The major aim behind this interaction is to ensure transparency, and any kind of duplication.
4. **Government to Employees**: This model signifies service delivery to government employees. These services are basically related to human resources most of times. These can be classified into four genres- people-oriented, process-oriented, and technology-oriented and resource oriented.

SCHEMES TO STRENGTHEN LOCAL DEMOCRACY BY WAY OF ICT

E-governance is a way of[93]: Accessing electronic technology in three domains such as

[93] As per Recommendation of the Committee of Ministers(CoE)to member states on electronic governance (15.12.2004)

1. Relationship between governing and being governed
2. Working of public Services and society as a whole
3. Electronic public services

Following are the initiatives taken by the government to strengthen local democracy.

1. **Bhoomi Project- online delivery of land revenue**: This initiative has been taken by the Karnataka government. It is a well-known fact that most of the population residing in villages depends on land for agriculture. Till now there has been a record of delivering 20 million to more than 6 million farmers within Karnataka.
2. **E-Seva:** This initiative has been recorded on the name of Andhra Pradesh government. This scheme falls under the domain of government to Citizen. It provides e business services to citizens. This project has been prominently used by the citizens for basic utility services such as payment of bills, etc.[94]
3. **E-courts:** E-courts have been launched by the department of justice under the directions of ministry of law and justice. Further it is a part of Mission Mode Project. E courts have been established to deliver faster justice in an efficient way. This step has been taken to upgrade the judicial system of India.
4. **E-Districts**: This scheme comes under the purview of department of information and technology. This is a citizen centric scheme aiming to provide basic services such as registration of birth, death and certificates of the same, caste certification, income or residence certificate. This scheme also covers all kinds of pension such as old age and widow pension.
5. **MCA 21-** This scheme is launched by ministry of corporate affairs. This scheme aims to provide services to such companies and firms that are registered under The Companies Act 1956.
6. **E-Office-** Saving environment is also comes under good governance. This scheme is introduced by administration reforms and public grievance department. This project focuses on improvement of operational efficiency.[95]
7. **Common Services Centre 2.**0- In rural India, there is less awareness regarding the use of Information and communications Technology. It covers

[94] Started in 1999 with just one single centre which currently has over 200 centres.
[95] CM of AP Mr.Chandrababu Naidu initiated E-office on 20th Dec 2014.

providing private and social services to doorstep of every citizen. Accessing the internet for utility services etc.

8. **E-panchayats**- This initiative expressly focuses on local democracy in the rural areas. Panchayati rule has always been prominent in participative democracy. This scheme helps in strengthening of self-government as people can voice their opinion, give suggestions and much more.[96]
9. **E-Kranti-** This scheme is another vital step taken to strengthen rural democracy with the help of information and Communication technology. This scheme specifically aims to link the remote and backward villages with the Information and communication technology. This focuses to expand the reach of Information and communication technology to all possible areas where it is new. It also assists government for record keeping of such areas to promote development in other spheres. This also creates job opportunities in the remotest areas.

IMPORTANCE OF INFORMATION AND COMMUNICATION ON LOCAL DEMOCRACY

Speedy communications has been enabled by the use of information and communication technology. Its reach has been expanded especially in terms of governance.

Public administration has been made very easy along with better appraisal to information and quality services.

Not only for citizens, but Information and communication technology is an able weapon to transform inter-governmental procedure. With the help of Information and communications technology, forging of documents has been decreased, lowered cost of transaction, less operational Coordination has been improved within the offices and department, secured transfer of data and information, easier management of records are another changes that has been brought by introduction of information and communication technology.

[96] In 2018, the e-panchayat mission was launched by the Ministry of Panchayati Raj, as a component of the Mission Mode Projects (MMP).

We can categorize the changes into internal and external. Internal changes are: rapid service distribution, improved potency, flexible procedure, increased participation, citizen empowerment, costs, enabling transparency.

CHALLENGES FACED BY ICT IN DEMOCRATIC WORLD

1. Lack of infrastructure- Infrastructure in India is lacking in many ways. This is also a major concern for information and communication industry. Due to lack of infrastructure implementation of various plans suffers. In the growth of Indian development lack of infrastructure is a major concern in various spheres.

2. Digital Divide created- There is no doubt that information and communication has introduced convolution in the Indian citizendue to lack of awareness. India is ranked at 96th position in terms of e-governance[97]. If we compare it with previous years it has improved. However, still India needs to buckle up its electronic administration.

3. Risk of security and privacy- Due to recent spark of hacking and leaking of data, people's trust in e-services as well as e-governance has been terrorized. Various documents are forged and there is risk of stealing of information due to which people avoid to use Information services.[98]

4. Reluctant to change-If we talk about India especially minorities and backward classes, there is a reluctance to change in them. They are bias towards a particular action and procedure. Although government cannot risk the development of whole nation owing to this and have to introduce the changes as per the requirement time to time. There must be awareness created among them in-order to complete utilization of information services.

A WAY AHEAD

The pandemic's disruption has created an opportunity for government institutions to deploy technical capabilities to fulfill their constitutional obligations. This will necessitate the establishment of norms for safeguarding participation, security, and

[97] As per United Nations e-governance survey published in 2018
[98] As per the report from cybersecurity company Surfshark India ranked third in the world in terms of number of data breaches, with a total of 86.63 million Indian users breached till November 2021.

technological reliability. To emerge as a successful and well-governed country in the twenty-first century, it is necessary to focus on the 6Cs of IT.[99]

We've seen the concepts of e-governance[100] and m-governance have grown in and how important they are for government openness and accountability. It's also a way to improve people's engagement in policymaking by providing them with the correct information at the right time. In the last decade, India's internet and telecommunications penetration has expanded, providing residents with a ray of hope in their struggle against the country's long-standing challenges of poverty, corruption, regional inequity, and unemployment. However, due to the sluggish pace of project completion, red tape and resistance from government officials and residents has not abated.

Use of information and communication technology has been accepted by most population in India. Gradually it is gaining the required momentum. In-order to promote this technology there shall be such methods adopted that creates awareness and gain the public trust. Issues related to digital divide shall be addressed by the authorities and public collectively. Capacity building Mechanism shall also introduced at various level among different stakeholders. A hybrid approach must be taken by the government to enhance its operation. Grass root realities shall be paid attention and actions shall follow.

[99] 6Cs - computer density, communication, connectivity, cyber laws, cost, and commonsense.
[100] E-Governance Market is anticipated to flourish at a CAGR of **13.20%** from USD 48.3 Billion during the forecast period 2022-2030 $48.3 billion Market Size.

CHAPTER 8

LEGAL FOUNDATION OF

"REPRODUCTIVE RIGHTS" IN INDIA

Author: Aadeesha Basotra[101], Dr. Radhika Dev Varma Arora[102]

ABSTRACT

"Reproductive Rights" are meant to guarantee that, not just every woman, but every couple has the dignity and respect to decide whether two people want to be parents or not; in the same instance to have the right to a proliferating reproductive health. These rights are perceived as fundamental privileges to keep up with women's equality corresponding to pregnancy.

Everything, from the Legal Right to contraception, to access to information about one's reproductive body along with the right to not just have an abortion but also to have all the information about it, information about fertility treatments and reproductive health is included within the ambit of "reproductive rights". "reproductive rights" imply the amalgamation of Human Rights especially the ones implying matters of sexual and conceptive health[103]. "reproductive rights" have been established as rights recognized under Basic liberties expected to safeguard the intrinsic nobility of the person on various events by the Indian Judiciary while likewise being significant to accomplishing population, health and development goals.

Keywords – reproductive rights, Abortion, Bodily Autonomy, Women

INTRODUCTION

Sexual and Reproductive Health and Rights (SRHR)[104] are basic to individuals' wellbeing and prosperity, and also, in addition, to financial turn of events and global prosperity. Governments have resolved to put resources into SRHR through international agreements. Nonetheless, advancement has been hindered by an absence of political will, lacking assets, preceded with

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[103] J.N. Erdman, R.J. Cook, in International Encyclopedia of Public Health, 2008
[104] SRHR: Sexual and Reproductive Health and Rights

exploitation of women and girls. Oppressed women, particularly from non-industrial nations are impacted by accidental pregnancies which lead to maternal deaths and incapacity, physically transmitted diseases such as HIV, orientation based brutality and different issues connected with reproductive framework and sexual behavior.

The consideration of SRHR[105] in SDGs[106] and "its reverence in international policy accords commits nations to guarantee its satisfaction and command the acknowledgment of sexual and reproductive wellbeing inside the structure of basic freedoms. India, being signatory to the declaration on the 2030 Agenda for Sustainable Development and home to one-6th of all mankind is committed to guarantee execution of strategies and regulations that take care of the sexual and regenerative wellbeing freedoms." These national regulations and strategies applicable to "reproductive rights" in India avail a lot of extension for activity toward this path and show colossal holes. Outrageous infringement of autonomous decision making and sexual and conceptive privileges, particularly of women having a place with marginalized communities, have taken place over the years.[107]

This paper will highlight the various legislations that provide the right of women to settle on reproductive choices, the provisions of Indian Legislative System that legalize abortion, as well as the International treaties defining and providing for "reproductive rights" India is a signatory to.

DEFINITION AND MEANING

"Reproductive Rights" have been defined by the *World Health Organization* as[108]:

"Reproductive Rights rest on the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence."

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[105] Ibid.
[106] SDGs: Sustainable Development Goals.
[107] Sexual and Reproductive Health Rights in India, available at: https://timesofindia.indiatimes.com/blogs/nonpartisan-perspectives/sexual-and-reproductive-health-rights-srhr-in-india-part-1/ (visited on May 10, 2022).
[108] *"Gender and reproductive rights". WHO.int. Archived from the original.*

The Cairo Program has been listed as the primary International policy agreement to characterize "reproductive rights" and Reproductive Health, stating:

"Reproductive rights": "Embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic rights for all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to the highest attainable standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents."[109]

Reproductive Health: "Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed [about] and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant."[110]

REQUIREMENT OF SEXUAL AND REPRODUCTIVE RIGHTS IN INDIA

A few stunning occasions of assault across nation lately have prompted scores of public fights, requests for effective guidelines, and calls for swifter execution of regulations generally through India hinting boldly at the need to have less politically cautious discussions and ignores of sexual savagery on National stages in the country.

"India has various reproductive wellbeing concerns which must be addressed as a way to further develop the conceptive wellbeing status of individuals. 78% of the 15 million early

[109] Sexual and Reproductive Health and Rights (www.choiceforyouth.org/information)
[110] "Advancing Reproductive Rights beyond Cairo and Beijing" International family planning perspectives

terminations in India occur outside clinical offices"[111]. More than 30 million married women in their fertile age can't utilize contraception, as per proof.[112]

"According to a fact sheet, in India, 2 million adolescent women lack access to contemporary contraception; 52% of adolescents who conceive a child go to the suggested least of four antenatal consideration arrangements; and 78 percent of fetus removals performed on juveniles involve a high risk, seriously jeopardizing them of dangerous complications. Likewise, after a hazardous early termination, 190,000 adolescents don't get the treatment they require."[113]

As per a national contextual investigation in light of exploration, the Indian state's way to deal with reproductive privileges has generally focused on populace command over advancing individual independence and eliminating primary obstacles to reproductive health administrations. "This has excused the focus from far reaching induction to early end and contraception and other SRHR drives and toward showing up at progressive populace control targets."[114]

"Further, according to a country evaluation on sexual and reproductive health and prosperity embraced for the National Human Rights Commission, notwithstanding global mandates and deep rooted wellbeing repercussions, Gender Based Violence has stayed an underestimated issue inside India's public health system, where it is essentially seen as a rule of law and order issue."[115]

"In India, there is neglected revenue for safe early termination administrations because of high paces of unwanted fertility and maternal deaths. Consistently, 13 women in the nation bite the dust because of perilous fetus removal related causes, making it the third driving explanation of maternal demise."[116]

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[111] Opinion | Looking Beyond the Legality of Abortion, available at: https://www.livemint.com/Opinion/yCN9cRSjS4a6r5FKjcGoTM/Opinion--Looking-beyond-the-legality-of-abortion.html (visited on May 11, 2022).
[112] Ibid.
[113] Adolescent Sexual and Reproductive Health, available at https://www.unfpa.org/resources/adolescent-sexual-and-reproductive-health (visited on May 11, 2022).
[114] Supra Note 3.
[115] Ibid.
[116] Supra Note 3.

LEGISLATIONS AVAILING REPRODUCTIVE RIGHTS

- **THE CONSTITUTION OF INDIA**

Regenerative Rights don't in essence partake in the honor of being a Fundamental Right in India but, The Constitution perceives a considerable lot of these conceptive privileges as major freedoms that the Government has a commitment to maintain. Articles under Part III[117] of the Constitution, for example, "Articles 14 &15 (Right to Equality and Non-Discrimination) and Article 21 (Right to Life and Personal Liberty)" are perceived to incorporate privileges to wellbeing, protection, pride and independence from torment and abuse, through Jurisprudence.

1. Articles 14 & 15

There have been several Judgments given by the Indian Judiciary that consider the violation of any reproductive right as a violation of fundamental rights given under the Constitution of India. Article 14 of the Constitution obligates the government to implement "reproductive rights" without denying anyone equality before the law or equal protection under the law in India.

Where Article 15(1) "prohibits the State from discriminating against any citizen on grounds of religion, race, caste, sex, place of birth, or any of them; Articles 15 (2) and 15 (3) also permit the State to make special provisions for women & children, and for socially and educationally backward classes of citizens or for Scheduled Classes and Scheduled Tribes."

These two Articles clearly protect the right of equality and right against discrimination of every individual within the territory of India and in turn protecting every woman's reproductive right.

2. Article 21

Numerous court rulings have established that "reproductive rights" are an integral aspect of the "Right to Life and Personal Liberty guaranteed by the Constitution". According to Article 21, nobody can be made to give up their right to life or freedom without going through a proper legal process. Consequently, the freedom to make reproductive decisions is within the scope of this Article.

[117] Fundamental Rights: Part III of the Constitution of India.

In important landmark judgments, such as, **Justice K.S. Puttaswamy v. UOI**[118], the SC perceived the Constitutional right of women to make reproductive choices as a part of personal liberty under Article 21 of the Constitution. It was held that the "reproductive rights" include a woman's entitlement to carry a pregnancy to its full term, to give birth, and to subsequently raise children; and that these rights form part of a woman's right to privacy, dignity and bodily integrity.[119]

In the landmark joint decisions of the Delhi High Court in the cases of **Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors.**[120] **and Jaitun v. Maternity Home, MCD, Jangpura &Ors**[121]**.** The Court ruled in the case involving the denial of maternity care to two women who were living below the federal poverty level, "these petitions focus on two inalienable survival rights that form part of the right to life: the right to health (which would include the right to access and receive a minimum standard of treatment and care in public health facilities) and in particular the reproductive rights of the mother."

3. Article 39 (a)

Article 39 (a)[122] ensures that justice is not denied to any citizen in view of any reason. Ensuring the implementation of "reproductive rights" and provision of bodily autonomy inevitably falls under the ambit of Article 39 (a) of the Constitution.

- **INTERNATIONAL LAWS AND TREATIES**

Article 51 (c): As per the provisions of Article 51 (c), India endeavors to respect International laws and treaties such as:

- **Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)**[123]

The CEDAW prioritizes women's right to be free from discrimination and isolation and also defines rules to defend this right. Women's reproductive autonomy is guaranteed for 1st time

[118] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[119] Ibid.
[120] Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors., W.P. (C) 8853/2008.
[121] Jaitun v. Maternity Home, MCD, Jangpura & Ors., W.P. (C) 10700/2009.
[122] Certain Principles of Policy to be followed by the State: Article 39 (a) of The Constitution of India, 1949.
[123] Adopted in 1979 by the United Nations General Assembly.

in any human rights instrument with CEDAW. It ensures that women are able to obtain the education and tools they need to make autonomous decisions about the number and composition of their families.

India is also a signatory to various international treaties, instruments and conventions that provide for the implementation of "reproductive rights":

- "International Covenant on Civil and Political Rights (ICCPR)[124]
- International Covenant on Economic, Social and Cultural Rights (ICESCR)[125]
- Convention on the Rights of the Child (CRC)[126]
- International Conference on Population and Development, 1994 (ICPD)[127]
- Fourth World Conference on Women (Beijing, 1995)"[128]

- **The Medical Termination of Pregnancy Act, 1971**

The Act of 1971[129] legitimized the practice of abortion in India in a more secure and helpful way by professional medical personnel and has now relaxed the abortion law.

However, abortion was illegal under Section 312 of the IPC before this legislation was passed, making it impossible to obtain an abortion in the country prior to 1971[130]. The Section reads,

"Whoever voluntarily tries to cause the miscarriage to a woman except in the good faith or where the woman's life is in danger shall be liable for imprisonment which may extend to three years and shall also be liable to fine".

- Important provisions of the Act:

Section 2(d)[131] of Act of 1971 characterizes "Registered Medical Practitioner". As per it, " 'a Registered Medical Practitioner' signifies any clinical specialist who has required clinical capabilities which is characterized in Section 2 of the Indian Medical Council Act 1956[132] and

[124] Adopted on December 16, 1966 by the United Nations General Assembly Resolution 2200 A (XXI).
[125] Ibid.
[126] Adopted on Novermber 20, 1989.
[127] Coordinated by the United Nations in Cairo, Egypt on September 5-13, 1994.
[128] Convened by the United Nations during September 4-15, 1995 in Beijing, China.
[129] Came into force in 1971, Amended in 2003.
[130] Causing Miscarriage: Section 312 of the Indian Penal Code, 1860.
[131] Registered Medical Practitioner: Section 2 9d0 of the Medical Termination of Pregnancy Act, 1971.
[132] Repealed on September 25, 2020.

whose name has been enrolled in the state medical register and who have required medical abilities in gynecology and obstetrics which are recommended under the said act."

According to Section 3[133] of the Act of 1971:

Provisions of Section 312 of the IPC prescribed abortion as a criminal act and were repealed with the coming into force of the "Medical Termination of Pregnancy Act". According to the Act's Section 3, an abortion performed by a licensed physician in accordance with the Principal Act is legal and the physician who performs the abortion is immune from legal repercussions. The Section states, "a Registered Medical Practitioner who performs an abortion should not be held guilty of any offence mentioned in the IPC or any other law during the time of the termination of pregnancy by him according to the provisions of the law."

This Act brought focus on the extension of the gestation period, within which a woman is eligible to get an abortion as per the provisions of this act. The immunity provided to the said Medical Practitioners has certain restrictions depending on the number of weeks the woman seeking abortion has been pregnant for.

According to the recent Amendments, an abortion may be performed when the gestational age of the mother is less than twenty weeks or when it is greater than twenty weeks but less than twenty-four weeks if, in the view of not less than 2 medical practitioners constituted in good faith, the gestational age of the mother has not reached an abnormal:

(i) "the continuance of pregnancy would involve a risk to the life of a pregnant woman or involve a grave risk to her physical or mental health ; and

(ii) the likelihood of the kid being born with a significant physical or mental defect is high."

The act also includes a crucial provision that makes parental or guardian agreement essential for the termination of a pregnancy in the case of a minor girl or a girl over the age of 18 who is mad or a lunatic.[134]

[133] When Pregnancies may be Terminated by Registered Medical Practitioners: Section 3 of the Medical Termination of Pregnancy Act, 1971.
[134] The Medical Termination of Pregnancy Act, 1971 Bare Act

- **The Surrogacy (Regulation) Bill, 2019**

The Bill and the Assisted Reproductive Technology (ATR) were once a combined regulation managing regenerative clinical practices. In 2017, a one hundred second report by the Rajya Sabha proposed moderate changes to the old regulation, making ready for the Surrogacy (Regulation) Bill, 2019. These movements consolidated a push of even more significant freedom for ladies, including the choice to partake in business surrogacy as well as pay for the surrogate.

The Surrogacy (Regulation) Bill, 2020 proposes to spread out a National Surrogacy Board drew in with policymaking at the focal level, and state surrogacy sheets and proper specialists going about as leader bodies in states and Union domains.

While this new piece of guideline has not been made available in the public space yet, the 2019 bill had made sense of upon the capability rules for the surrogate and the 'couple' selecting the technique.[135]

CONCLUSION

The concept of “reproductive rights” encompasses everything, including the legal right to contraception, access to information about one's reproductive body, the right not only to have an abortion but also the right to know everything about it, information about fertility treatments, and information about reproductive health. Additionally, “reproductive rights” include the right to access information regarding one's reproductive health. In addition to the right to obtain information on one's reproductive health, “reproductive rights” encompass the right to access such information. When using the word “reproductive rights”, it is intended to allude to the broader idea of "human rights" that includes topics related to sexual and reproductive health. On numerous times, the purpose of the Indian Judiciary has been to safeguard the inherent dignity of the individual by recognizing “reproductive rights” as human rights. In addition, “reproductive rights” play a crucial role in achieving population, health, and overall development objectives.

[135] Explained | The Surrogacy Regulation Bill: What Will Change? available at: https://www.thequint.com/news/india/explained-the-surrogacy-regulation-bill-why-it-took-years-to-be-enacted#read-more (visited on May 22, 2022).

"Violation of reproductive rights disproportionately harm women due to their capacity to become Pregnant and legal protection of these rights as human rights is critical to enable gender justice and the equality of women."[136]

The Legislations that are meant to safeguard these rights of women have a very restricted women based point of view. As far as these legislations are concerned, these rights provided under various statutes and even under the Constitution of India need to include autonomy of women in a much more progressive way. Even though the recent changes made in the Medical Termination of Pregnancy Act, 1976 can be said to broaden the scope for women to have an easy access to abortion, the ideal layout of these Sexual and "reproductive rights" is a long road ahead.

It is important to understand that women are not just an interest group; they are mothers, daughters, sisters and wives[137] ; but above all, they are human beings who need to have just as much control over the decisions about their body as any other living being has. The understanding of this fact at a recognizable level has been a work in progress for more years than this country has been Independent for.

[136] Reproductive Rights of Women in India, available at https://legalserviceindia.com/legal/article-3372-reproductive-rights-for-women-in-india.html (visited on May 20, 2022).
[137] Quoted the Ex-President of The United States of America, Mr. Barack Obama

CHAPTER 9

ENVIRONMENT LAWS AND THEIR IMPLICATIONS IN INDIAN LEGAL SYSTEM

Author: Aman Shakya[138]

ABSTRACT

In the world environment play a very important role in the human life, living beings, orgasms, insects, etc. But due to the not proper format of policy and laws the environment suffers with many causes which are harmful for our body and for all living beings. At the time of arrival of Britishers in India the deforestation is at its peak because at that time there is no law for the protection of the forests, trees and environment. After some years in India the formation of policy and laws are conducted by organizing the meetings and formed the committees for the protection of the environment, with the help of Germany first inspector general of forest should be appointed, and give the task to protect the forest and establish the rights of the state on the forest. The production through the laboratories causes the air and water pollution which affects the health of the human as well as the health of the living beings. Poverty is also the cause of environment pollution. This paper deals with the environment laws in India and their implications in Indian Legal System. And contains the environment policy in India and environment pollution and environmental pollutants etc.

INTRODUCTION

Environment law means the laws which control the effect of human activities on the environment. It includes different types of activities which affect the air, water, land, and other material also. They work for the protection of the animals and plants. The need for conservation and protection of the and sustainable use of natural resources is reflected in India's constitutional framework and also in India's international commitments.

[138] BA.LLB, Unity PG and Law college

In our constitution of India under the part IVA (Article 51-A fundamental duties) is that every citizen of India has the duty to protect & improve the natural environment.[139] Part IVA (Article 48-A of DPSPs[140]) Said that the state to protect and improve the environment and to safeguard the forests and wildlife of the country.[141]

Before the independence there are several environmental laws existed previously in India. The real time to implement a well-developed framework which was came only after the United Nations conference on the Human Environment which was held in Stockholm, 1972. In India the laws relating to pollution control is more than 100 years old.

Under the environment there are relations between air, water, land, and water and land and land and air and as if between living beings and plant wealth between the creation.

ENVIRONMENT POLLUTION

Any material in the form of solid or in the form of liquid or may be in the form of gaseous, substance which are present in the large amount in environment and dangerous for the environment or may be harm the environment. And if those not present in the environment at the large quantity then they not considered as environment pollutants.

In our constitution under section 3 of the environment protection act, 1986 states that the central government has the power to redressal, control and to take measures to control the pollution[142]. The government only measures to control the pollution in the country/state. The government should set up the environmental laboratories or institutions to comply with the obligations given to them or to recognize some institutions. Collect the information related to environment pollution and put on to advertise the information by which the people get the all information.

Section 4 of the environment act states that the appointment of the officers and their powers and jurisdiction related to protection of environment[143]. The central government under the section 4 if this act has the power to give some special powers to the officers if the government thinks this power is good for the environment or the officers need such other powers.

[139] Part IV A of the Indian Constitution
[140] Directive principles of state policy
[141] Part IV A of the Indian Constitution under DPSPs
[142] Section 3 of the Environment Act, 1986
[143] Section 4 of the Environment Act. 1986

Section 5 of the environment act states that this section gives power to direction. This section gives the power to central government that the government should give instructions to any officers, and these instructions should be written form.[144] If the instructions are not followed by the officers or he/she fail to perform the instructions is a crime in itself, and the punishment for this misconduct is defined or mentioned U/S- 9 of the environment act.

U/S - 6 the central government has the power for make the rules. Central government make the rules in the two ways (1) U/S- 3 and (2) U/S- 6. one is for the normal subjects which makes under the section 3 of the environment act and second one is for specific subjects which makes under the section 6 of the environment act.

Under Section 6(1) the central government has the power to make laws. Under Section 6(2) of environment act there is mention some specific subjects on which the central should make the powers. Determined standard of the soil, water, air, etc. for various areas and laboratories. Determined the limits for the various environmental pollutions.

ENVIRONMENTAL POLICY IN INDIA

Environment pollution is not the problem of the mother of nature. This problem arises due to human. Human is responsible for the environment pollution. For the entertainment and comfort the human is not responsible for only human problem but also responsible for environment, vegetation, Plants, Trees and other living orgasms. In the beginning of 19th Century machines introduced in the field due to which the employment is decreased but the production is increased. In first phase of 19th century around 1828 the laboratory production of the urea changes the thinking of the human that the availability of the natural product is not only by the nature but also produce through the laboratories. The product which are produce in the laboratories are harmful for the human beings because they prepare by using different types of chemicals and other substances. Uncontrolled emissions produced the problems related to air and water pollution. Due to the deforestation the environment should unbalanced and produced the dangerous problems. But the human beings should alert about the environment pollution.

When cutting the old trees or plants there should be a provision to plant new trees.

For sell of the trees and plants not cut the green, flowery, fruits plants.

[144] Section 5 of the Environment Act, 1986

Who cut the green plants should be punishable.

The plants or trees on which the flowers and fruits are seem if someone cut these trees or plants should be punishable by different punishments.

Arrival of the Britishers in India during the year 1853 starting the cutting of the trees for the development of railway track. At that in India there is no law in India for the protection of environment. At the end of the 19th century the destruction of the forests should be continuous because of there is no laws and have no policy about the protection of the forests. In 1864 in India the State Forest Department should be established. The establishment of forest department was with the help of Germany. The chief botanist Dietrich Brandis[145] of the German University should be appointed as the inspector general of forest. To stop the deforestation that has going on for the decades this greatest task should be given to Dietrich Brandis. The first task of the officer was to make forest safe and state security effective on forests with the help of the legal system. The need of this time is that to make a law by which to prevent the rural people from reaching the forests. This was the difficult task because at that time the farmers and rural people have the right on the forests. In 1865 the forest act should be introduced. In which seems to be an attempt to establish the rights of the states over the forests. Through this the government start focusing on the forests and start the one forest policy. In this way the 1952 forest policy is the important step. In 1952 the government has got the exclusive right on safety, production, and management right on the forests. The important changes in the environment policy of India should be in the year 1972. On date 14th November 1972 the first time United Nations conference held in Stockholm for the protection of the environment. In which 113 countries participated. In this conference poverty also considered as part of environment pollution. In 1971 the member of the planning commission Pitambara Pant formed a committee to report on environment, by may 1971 this committee prepared three reports on environment. With the help of these report, we tested the explosion of population or know the present condition of the environment problems.

In the beginning of the 1972 feel the importance for the establishment of national development by which the establishment of middle coincidence between the environment policy and plans. On 12th April 1972 constituted the NCEPC[146] (National Committee of Environment Planning and Coordination). In this committee 14 members appointed who have direct connection with

[145] was a German-British botanist and forest academic and administrator
[146] The government of India set up for attend long term national requirements

the environment, later in 1977 it increases by 24, in 1979 they are 35. In 1976 after the amendment the article 51-A(G) and article 48-A should be added in the act.

There are some important laws who related to the Environment -

- In 1974, the water prevention & pollution act introduced in India.
- In 1956 the river boards act came in India.
- In 1986 the protection of environment act introduced in India.
- Factories act, 1948
- Noise pollution act, 2000
- In 1980 the conservation and protection of forest act came into existence in India.
- In 1972 the protection of wildlife act came in India.
- In 1897 the protection and prevention of India's fishes act came and introduced in India.

SOME LAWS RELATED TO ENVIRONMENT IN INDIA

Part IVA (Article 51-A fundamental duties) of the constitution of India states that it is the duty of every citizen of India to protect and to improve the naturally gifted environment for a good life and to keep the environment clean and fresh for take fresh breath and live happy life.

Part IVA (Article 48-A directive principles of state policy) of the constitution of India states that the state should to protect and improve the quality of the environment by planting trees & other flowering and fruits plants etc. and to safeguard the wildlife life & forests of the state.

In India who violates the environment laws will be punishable through the Imprisonment of 5 years otherwise through the fine of Rs.1 lakh or through both.[147]

In case of the continuation of the violation of these laws, an extra fine will be charged which is Rs.5000/- for per day during the such failures continuous after the such conviction for first such failure.

In India if the violation continues above a period of 01 year after the date of conviction, the culprit shall be punishable through the imprisonment for time which may be extend to 07 years.[148]

[147] section 15 of the environment act, 1986
[148] section 15 of the environment act, 1986

CONCLUSION

Environment pollution is very dangerous issue for the society and due to no laws in the society, state, country the deforestation is at its peak and the forests are cutting for the comfort and entertainment of the human beings. For the living beings every type of pollution has a negative impact on human life or living beings. It is the duty of the human to protect the environment and take various steps or initiative for the protection of the environment. We need to fight and makes the better tomorrow. The government should take the many steps towards the environment protection such as electric vehicle launch, solar plants established at fastest rate. In India there is some laws for the protection of the environment and make the environment better. After the Stockholm conference we see the changes in the country towards the environment. Now there is various types of punishments are there for the person who violates the laws relating to environment and those who harm the environment in any ways. Now the India should try to take various initiatives and make the environment better.

CHAPTER 10

REGULATORY FRAMEWORK FOR FDI IN INDIA

Author: Bhawna[149], Dr. Namah Datta[150]

ABSTRACT

Early in the 1990s, India began economic reforms that improved the country's overall investment climate through the implementation of market-oriented legislation. Since the LPG Policy in 1991, India's regulatory environment has gradually shifted from being restrictive to being more enabling for investors. India has unquestionably become a stunning location for international investments as a result of the liberalisation, privatisation, and globalisation (LPG) reforms. To meet India's enormous needs, however, there is still not enough investment. We are unable to fully harness the potential of FDI due to a number of obstacles, including bureaucratic delays in company licences, a plethora of regulations and rules, policy and legal restrictions, and structural limitations. An investor still needs to go through numerous complex and time-consuming procedures, which discourages him from investing in Indian markets. The article will conduct a thorough analysis of the rules and procedures necessary for an investment in India and prolong the system's gaps. It'll also suggest steps for improving its performance in problematic areas which in turn will benefit India in fetching more and more of FDI as this policy framework of Foreign Direct Investment Outflows in India revealed the government's intentions to nurture and support the event of Indian companies" investments abroad by creation of Foreign Investment Facilitation Portal to minimize the hurdles and maximizing the benefits of FDI.

Keywords: Economic reforms, FDI, LPG reforms, investments, policies

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INTRODUCTION

Foreign Investment[151] in Asian nation and in other developing nations like India has been the direct results of policies undertaken and enforced by consecutive governments and of the liberal trade practices which countries are adopting. The relaxation programs of the government have results in a harmonious integration with the world economy besides effecting a fast and substantial growth of the country's economy. In India, foreign investments have several positive impacts on the country in terms of employment generation and up the essential infrastructure along with the technology up gradation of the country [1]. There are also some uncertainties yet that the investors may face; but native governments now provide a wonderful chance for international players to speculate within the market and invest in them[152]. Most of them have already endowed in India and others are looking to invest in our market. In today's world businesses and economic process is currently gaining a notable momentum worldwide and rather using terms domestic or global separately the companies and world has come up with a new term which is Glocal – which is a perfect combination of world and native. The wave of privatization and globalization has reached and penetrated at such grade within the world that creating business go globally and benefit each other. According to the recent UNCTAD World Investment Report 2018, the world foreign direct investment (FDI) flows fell by twenty three per cent in 2017 compared to 2016. FDI that accounted for $1.87 trillion in 2016 fell to $1.43 trillion in 2017. Anyway the inverse political economy markers like GDP and exchange, showed a superior picture of development [2]. India remained at the 11th situation among the most elevated twenty FDI beneficiary economies. The factsheet furthermore features that the areas worried in most ODI are the Manufacturing area.

An assessment of the new examples in FDI streams [153] at the world level and across region/nations proposes that Asian countries/India has, by and large, in higher FDI streams and proceeding to remain among the top connecting with grumblings for overall financial allies according to its relentless development of the FDI framework as a piece of the mindful capital record development process. In 2017-18, the inflows beat $60 billion and thusly the Department of Promotion of business and Internal Trade (DPIIT) place FDI improvement at

[151] https://www.business-standard.com/about/what-is-fdi

[152] https://economictimes.indiatimes.com/news/economy/finance/india-remains-attractive-for-fdi-investors/articleshow/91648995.cms

[153] https://economictimes.indiatimes.com/news/economy/finance/india-remains-attractive-for-fdi-investors/articleshow/91648995.cms

14% in 2019-20, the main in four years. In 2021, the absolute FDI inflow in 2020-21 was $81.7 billion, up 10% over the past monetary. The FDI inside the FY 2021-22 has reached a "by and large raised ever" figure of $83.57 billion[154]. Corporate beasts like Silver Lake, Google, and Face book, Foxconn, Saudi Arabia's PIF, General Atlantic Singapore, Hitachi, Walmart and Catterton should place billions of dollars in the Indian economy subsequent to seeing the capability of it. Looking into varied researches from past and present, the main factors for India's OFDI selections may be assumed to be scope of growth, huge market availability, and acquisition of recent technical ability, regulatory frame work changes, ease of doing business policies and such other initiatives by governments which enhance the interest of a foreign investor to invest in Indian Market.

MARKET POTENTIAL FOR FDI IN INDIA

World's fifth-largest economy India is [155] and is among the various markets within the world that provides a high prospect of growth and earning in all sectors of the economy. One issue that ensures a decent come back on the investments of foreign investors in any economy is the availability of skilled workforce. Foreign investors always estimate and calculate the opportunities[156] and as well as the risks that the Indian markets offer and the ease of doing business environment along with the policy frame work of that host country before they invest in that particular market. If all these fundamentals are strong then India is going to attract more and more FDI in near future which will have many fold benefits for India in numerous fields.

EVOLUTION OF FDI REGULATION IN INDIA OVER A PERIOD OF TIME

FDI has taken into account as a serious supply of non-debt money resource for the economic development. FDI flows into India have grown[157] systematically since LPG reforms [3] measures were taken as a crucial element of foreign capital since FDI

[154] https://www.drishtiias.com/daily-updates/daily-news-editorials/sustaining-fdi-inflows
[155] https://theprint.in/economy/india-fifth-largest-recipient-of-inflows-in-world-with-64-billion-fdi-in-2020-says-un/681611/
[156] https://www2.deloitte.com/content/dam/Deloitte/in/Documents/finance/in-fa-India's-FDI-Opportunity-Deloitte-survey-report-noexp.pdf
[157] https://rbidocs.rbi.org.in/rdocs/Bulletin/PDFs/04AR_170120224C4EA119542B4E3EB758150A28AF1D72.PDF

infuses a long term capital and economic benefits within the economy and contributes towards innovation move, improvement of vital areas, bigger advancement, rivalry and business creation among various edges. Consequently, it's the purpose and objective of

the Government of India to attract and elevate FDI to enhance homegrown

capital, innovation and abilities for sped up financial cycle and advancement. FDI, as

recognized from Foreign Portfolio Investment, has the implication of making a

'enduring revenue' and long haul interest in any country, subsequently it should be provide food in a productive manner.

Strategy system[158] is one in every FDI seeking country is one of the key variables driving speculation stream. So, FDI primarily depends upon the policy regime that a nation follows which will determine. whether it advances or controls the unfamiliar speculation streams. This segment embraces a survey of India's FDI strategy system and its development over the timeframe. We will try to divide this evolution in two parts one is before 1991 LPG reform and other is post 1991 era.

1. **Pre 1991 reform Era**

After being ruled by foreign power for so many years, historically our country had followed a very careful and selective approach whereas formulating policies concerning any field and same is the case with FDI policy[159] too and headways in this fields were made chance to time by ordering various strategies and act [4]. The regulative procedure was combined via the setup of Foreign Exchange Regulation Act (FERA), 1973 by which unfamiliar worth bearing in a joint steps was allowed exclusively up to 40 % and afterward after various exceptions were stretched out to unfamiliar firms who were leaned toward send out organizations, top of the line innovation alongside some high need districts allowing esteem assets of north of 40%. In addition, drawing from wins of numerous different nations all over the planet country and their encounters, Government of India not exclusively settled exceptional financial zones (SEZs) just anyway furthermore planned liberal strategy furthermore, gave spurring powers to progressing FDI in these zones with a fantasy about extending exchanges. From that point on, the statements of Current Policy (1980 and 1982) and Technology Policy (1983) obliged a liberal perspective towards new interests concerning shifts in strategy direction. The strategy

[158] https://thesciencepolicyforum.org/articles/research/foreign-direct-investments-in-rd-trends-and-policies-in-india/

[159] https://www.ijhssi.org/papers/v2(2)/version-4/A220111.pdf

was depicted by de-allowing of a piece of the cutting edge rules and headway of Indian making conveys as well as underlining on progress of endeavors through changed imports of thing and progress. This was kept up with by calling headway which was obligation decline and moving of gigantic extent of things from import allowing to Open General Licensing (OGL).Indeed, even in the wake of doing such headway we witness the BOP emergencies of 1991 and from that point the need was felt for LPG change which expanded our association with outside world in genuine and more extensive terms and thus prepared for additional FDI and unfamiliar interests in India [5].

2. Post 1991 reform Era

As examined before a significant shift happened in our country once our country set out upon monetary mitigation and changes program in 1991 which was wanting to lift its improvement potential and getting together with the world economy. Present day technique changes progressively wiped out restrictions on adventure and business improvement from one perspective and allowed extended permission to new advancement and sponsoring on the reverse. A couple of moves made to help the movement of new pursuit included:

1) Introduction of twin course of support of FDI in our country which are - RBI‟s customized course and Government's underwriting course.

2) Automatic assent for development plans in significant need endeavors and removal of impediment of FDI in low development locales correspondingly as headway of advancement imports.

3) Permission to Non-tenant Indians (NRIs) and Overseas association Bodies (OCBs) to estimate up to 100% in high requirements regions.

4) Hike inside the unfamiliar value interest limits to51 percent for existing firms and progression of the usage of unfamiliar brands name.

5) Last however not the least, marking the Convention to safeguard the unfamiliar ventures under MIGA for example multilateral speculation surety office.

These undertakings were upheld by the request for Foreign Exchange Management Act (FEMA), 1999 which was more forward in its methodology then the FERA demonstration of 1973. In 1997, Indian Government permitted 100% FDI in cash and convey discount and FDI in single brand promoting was permitted 51% in 2006. After a drawn out conversation, extra change was made in December, 2012 that amended the FDI to 100% in single brand retailing

and 51 percent in various brand marketing. An Indian organization could get Foreign Direct Investment underneath the 2 courses made sense of beneath:

AUTOMATIC ROUTE/RBI ROUTE

FDI beneath the automated route [160] needn't bother with any past support either by the Government or the public bank for instance RBI. The monetary sponsor solely expected to tell the intricate common office of RBI inside a time span of thirty days of receipt of inward repayments and record the vital reports there in something like 30 days of issuance of offers to new monetary supporters.

GOVERNMENT ROUTE

Beneath this Route [161], FDI endorsement is framed by 3 foundations, viz., the Foreign Investment Implementation Authority (FIIA), the Foreign Investment Promotion Board (FIPB), and the Secretariat for Industrial Assistance (SIA) (FIIA). The FIPB considers the recommendations under the endorsement course in a profoundly time-bound and open way. Based on the FIPB's proposals, composite applications including unfamiliar specialized help and unfamiliar speculation are endorsed.

Various standards/arrangements to control FDI in India are:

1. Companies Act of 2013
2. SEBI Act, 1992 and SEBI Regulation
3. Foreign Trade (Development And Regulation) Act,1992
4. FEMA demonstration (Foreign Exchange Management Act), 1999
5. Civil Procedure Code, 1908
6. Indian Contract Act,1872
7. Arbitration and Conciliation Act, 1996
8. Competition Act 2002
9. Income Tax Act,1961
10. Foreign Investment Policy (Current Policy 2020-2021)

[160] https://www.indianeconomy.net/splclassroom/what-is-automatic-route-and-approval-route-in-fdi/
[161] https://www.makeinindia.com/policy/foreign-direct-investment

SOME RECENT ADVANCEMENTS IN LAWS CONCERNING FDI

Though there exists multiple laws which regulate FDI in India in different prospects, however government time to time make some changes as well in order to look after its national interest first. Therefore, government has introduced its new FDI policy [7] in 2020-2021[162]. According the policy following changes would be made in FDI sector.

Insurance Sector: In new FDI policy under the automated technique, the government inflated the allowable FDI ceiling [163] in insurance corporations from 49% 74%, permitting foreign possession and management with protections which will facilitate India's insurance sector flourish by facilitating the flow of long term capital, a world class technology, processes, and international best practices.
Foreign investment up to 100% through the automated route in circumstances wherever the government has given "in-principle" clearance for strategic sectors which is petroleum and natural gas sector.
Foreign investment within the telecommunication services sector is also allowed up to 100% beneath the automated route. These all measures will surly help India in increasing its economy and creation of more job opportunities as well.

As per the new FDI strategy, a substance from a country that shares a land line with India, or on the other hand assuming the concerned proprietor of interest in India was a subject of such a nation, will exclusively contribute through the public authority course as it were.

Government consent is moreover required for an exchange of ownership in a FDI understanding that put to utilize benefit any country that imparts a boundary to India.

As opposed to mentioning past approval from the applicable segment, financial backers from nations not referenced by the new policy[164] should merely inform the RBI. In all industries, the previous FDI policy solely allowed Bangladesh and Pakistan to take a position through the government route/technique but now corporations from as well subject to the government's route filter as a result of the amended rule so as to protect our national interests.

[162] https://www.drishtiias.com/daily-updates/daily-news-analysis/new-fdi-rule
[163] https://www.fdi.finance/fdi-policy
[164] https://www.india-briefing.com/news/indias-consolidated-fdi-policy-2020-key-aspects-21067.html/

ANOTHER MEASURE TO PROMOTE FDI IN INDIA

Apart from the rules and regulation to ease FDI in India government has taken different steps and new trends in FDI in India which directly or indirectly attract more FDI. To entice unfamiliar speculation, government drives like the creation connected motivation (PLI)[165] theme for gadgets creation 2020 have been broadcasted.

In 2019, the govt. remedied its FDI Policy 2017 to permit 100% FDI under the mechanized procedure in coal mining activities to assemble FDI stream. Moreover, the govt. has permitted 26% FDI inside the computerized area of India to diminish the advanced gap and increment the advanced network across country. The Foreign Investment Facilitation Portal (FIFP) is organization of India's on-line single inspiration driving contact with monetary sponsor to work with FDI and is managed by the Ministry of Commerce and Industry's Department for Internal Trade and Industry Promotion. Unfamiliar financial backers have communicated interest inside the public authority's arrangements which morose will expand the FDI inflows in India. In addition to this, valuable sectors like manufacturing of defence items, government have increased the automated route FDI ceiling from forty ninth to seventy four percentages in 2020, this area unit projected to draw huge investments within the future.

CONCLUSION AND SUGGESTIONS

It is reasonable to infer that unfamiliar direct venture is answer for any country's monetary devastations and subsequently it is important to go to various market-arranged lengths to help our economy. Also, the Indian economy has as of late been set to compete inside the worldwide market, any place unfamiliar financial backers recognize the opportunity for indispensable returns, as seen by the unfamiliar direct venture examples of overcoming adversity that have previously been accomplished. In rising nations, FDI has become increasingly essential. FDI is actually smart for overall growth of any country. The economy gains vastly from FDI, and also the correct FDI method identifies important economic areas that deliver the most effective come back on investment. By transferrable superior merchandise and services to plug, this investment will increase firm aggressiveness, stimulates innovation and potency, and raises the standard of living of the people in that particular country. Currently, a number of the highest recipients of the FDI flow just like the America and China are reeling underneath the

[165] https://www.meity.gov.in/esdm/pli

various pressures like trade tensions and COVID like natural events. Taking advantage of this case, other Asian nation or specifically India can attract a lot of FDI inflows by addressing the problems of land acquisitions, taxation and other problems associated with FDI.

CHAPTER 11

PATENT RIGHT IN LEGAL SYSTEM

Author: Animesh Nagvanshi[166]

ABSTRACT

The Intellectual Property Rights is a legal right available to every inventor to safeguard their creation. It is a legal right which help inventor to protect his invention, product, creation, design, etc. from using or copying them for a specified period of time. Intellectual Property Rights gives an exclusive right to inventor of using his invention without any disturbance from anyone. There are various other IPR such as Trademark, Copyright, Patent and Geographical Indication. In this article we will talk about a branch of Intellectual Property Right which is patent. This article will give a brief overview about the history of patent, its meaning and various other law and sections related to patent.

Keywords: Patent, invention, application, Controller

HISTORY

The Beginning of Patent Process in India was marked by[167] . This Act was revoked by Act IX of 1857 because it was passed without the consent of the Britishers. Additionally, exclusive rights legislation was passed in 1859. These systems modified the prior legislation by increasing the substantial period from six months to twelve months and offering exclusive rights to only significant exploration. The 1859's Act revised in 1872 to provide design preservation. The Act of 1872 was modified again in 1883 and 1888 in order to guarantee the originality of inventions disclosed in the Indian Exhibition before applying for protection. All earlier statutes were repealed by the Indian Patent and Design Act 1911. After Independence the Indian Patent and Design Act was amendment in the year 1950. A committee was appointed by Government headed by Justice N. Rajagopala Ayyangar in 1957 to examine the potential

[166] BA.LLB (Hons), ICFAI, Dehradun
[167] Patent Act VI of 1856

for amending the renowned Patent Law and provide advice to the Government. The Patent legislation was ultimately created in 1970 after two failed attempts to alter it in 1965 and 1967, and majority of their provision went into effect on April 20, 1972, with the publication of Patent Rules, 1972. The second Amendment of the 1970 Act was made in 2002 by the Patent Modification Act (Act 38 of 2002). This Act went into force on May 20, 2003 following the adaption of new Patent Rules, 2003, which replaced the previous Patent Rules Act, 1972. The last amendment was made in 2005 were Section 3(d) was added to stop Patent from getting enduring. The introduction of pre-grant depiction was a crucial component in addition to the prevalent post-grant opposition procedure.

MEANING

A patent is an unassailable privilege bestowed by the government on an invention, which might be an item or a method that, in general, gives a fresh approach to a problem or a new scientific theory to explain it. Additionally, a patent is allowed for enhancements to their prior invention. By giving investors absolute right over their innovations, the major goal of patent law is to motivate them to make greater contribution to their respective fields. The word “patent” today typically refers to the privilege bestowed to an investor for the creation of any novels, innovative, non-obvious procedure, machine, manufactured goods, or material composition. The English term "patent" initially emerged in the Latin word "patere," which meant "to lay open" or "to make available for public inquiry."

REQUISITE FOR PATENTABILITY IN INDIA

The omission on what can be patented in India were explicitly stated in [168] Indian Patents Act, 1970. To secure a patent an India a number of requirements have to be meet.

Novelty: Innovation is a crucial factor in determining patent feasible of an invention. Under [169]Patent Act, 1970, any innovation or technique that hasn't been utilized in the nation or anywhere else in the globe prior to the date of filing a patent application with a comprehensive specification is considered a novelty or new invention. For an invention, granting of patent is

[168] Section 2 and 4 of The Patent Act, 1970
[169] Section 2(1) of The Patent Act, 1970

only successful if it complies with the norm that it should contain one or more component that are new, failing the requirement will not qualify for patenting.

Non-Obviousness: Under [170] Patent Act, 1970, Under [171] Patent Act, 1970, an innovative step is described as "the quality of an invention that incorporates scientific development or is of economic importance or both, as contrasted to existing knowledge, and invention not obvious to a person competent in the art". The invention must be must be original as well as innovative. In other words, the invention must not be simple and clear to anyone with knowledge in the respective field.

Industrial Application: Under [172]Patent Act, 1970, an industrial application means Process or innovation embodiments must be capable of being used in an industry and have commercial market in order to be considered anything other than utility model.

PERSON QUALIFIED TO APPLY FOR PATENT

[173] Patent Act, 1970 specifies the persons who are qualified to make an application for a patent for an invention. Any of the following individuals may submit an application for a patent for an invention, subject to the provisions as defined in[174]:

1- An application may be submitted by anyone who is true and original inventor of the product.
2- It may be submitted by anybody who has been granted the permission to do so by the person claiming to be the actual and original investor.
3- It may also be submitted by the executor of any decedent who, at the time of his death, had the right to submit such an application.

PROCEDURE TO APPLY FOR PATENT

- Step 1- Write about your invention in brief
  The first and the foremost step is to gather all information about your invention. It is very essential to gather all information about your invention. The information about

[170] Section 2(ja) of The Patent Act, 1970
[171] Section 2(ja) of The Patent Act, 1970
[172] Section 2(ac) of Patent Act, 1970
[173] Section 6 of Patent Act, 1970
[174] Section 134 of Patent Act, 1970

invention must contain the field of invention, how does it work and what are its advantages and how it will in solving the existing problem in the field.

- Step 2- The application must include schematic, drawing or visual representation of the invention

  To properly describe the task, schematics, drawings, and visual representations should be created. These minute elements have a significant impact on patent applications.

- Step 3- Determine whether the innovation qualifies for a patent.

  The invention must not fall within the ambit of[175] Patent Act, 1970 which includes subjects which are not patentable.

- Step 4- Patent Discovery

  The next important step is to find whether the invention fits in the criteria as set out in Patent Act-

  - The creation must be brand new.
  - The invention has to be original.
  - An industrial application for the invention is required.

- Step 5- Filling the Patent Application

  If you are a novice in the field of research, you can submit a provisional application, which provides the following benefits:

  - Filling Date
  - Twelve months to submit a full application

Once you have finished your study and submitted the necessary paperwork within 12 months you can prove your invention and can apply for full specification. Filing the provisional specification is not mandatory as it only filed when the inventor is not sure or have complete knowledge about his invention. The inventor can proceed with full specification if he has complete knowledge about his invention.

- Step6- Publication of the Application

  The application is published once 18 months have passed since the date of filing after the entire specification has been completed. An initial publishing request can be issued with the required money if the inventor wants to publish his idea before the allotted 18 months have passed. The application is typically released one month after the request for an early application.

[175] Section 3 of Patent Act, 1970

- Step 7- Review of application

  After publication of application, a request for examination of patent is made within 48 months from the date of priority or initial filing of application. After receiving request for examination, the comptroller will give your parent application to patent examiner to scrutinize whether the patent application complies with eligibility criteria or not. Once the examination of patent application is done, the first examination report is issued and applicant is given time to raise objections against the report.
- Step 8- Address the criticism

  The examination report will raise some sort of issue with regard to the majority of patent applications. The best course of action is to talk with patent experts about examination report issues as you assess it. The creator has the option to provide a test report to demonstrate that his innovation is brand-new, original, and useful in industry.
- Step 9- Eliminations of Objections

  The Controller and the inventor should ensure that all issues or objections raised regarding invention and application is resolved.
- Step 10- Grant of Patent

  The application will be submitted for patent after all requirements are met. The Patent Journal, which is continuously published, will announce the patent grant.

TERM OF PATENT

Once the inventor is granted patent for his invention his product, procedure, or design can only be protected by a patent for a specified period of time that is for 20 years after which anyone in the world can use the innovation without permission and without infringement on the patent. The basis of patent system is what is known as quid pro quo sys

OPPOSITION TO GRANT OF PATENT

Under[176] Patent Act, 1970 deals with the opposition of Patent. There are basically two types of opposition.

[176] Section 25 of Patent Act, 1970

- Pre-grant Opposition- Under[177] of the Act deals with the pre-grant opposition. These objections can be challenged after application is made but before patent is granted. Any person in writing can raise his objection against the grant of Patent to the Controller.
- Post-grant Opposition- Under [178] of the Act deals with post-grant opposition. By providing a notice of opposition to the Controller, these concerns may be raised prior to the passing of a year after the date of publication of grant of a patent.

GROUNDS FOR OPPOSITION

Pre-grant opposition may be brought on the grounds indicated in [179], while post-grant may be brought on the grounds listed in[180].

- The person who applied for patent has wrongfully obtained the invention or any part of it.
- The invention was anticipated prior publication.
- Prior to the priority date of that claim, the invention was widely known or employed in India.
- The invention is plainly and not creative in any way.
- The invention claim does not qualify as an invention under this Act, or is ineligible for patent protection under this Act.
- The invention or the process through which it is to be used are not properly and clearly described by the inventor.
- The patentee has failed to provide the Controller with the information that was necessary to be disclose or provided information that, to his knowledge, was false in some.
- If the patent was issued based on a convention application, the application for original convention was not submitted within a year.
- The source and geographic origin of the biological material employed in the invention are not disclosed or are incorrectly stated in the application.
- The innovation was foreseen based solely on information that was available to any local or indigenous group in India or abroad, but not on any other basis.

[177] Section 25(1) of Patent Act, 1970
[178] Section 25(2) of Patent Act, 1970
[179] Section 25(1)(a) to (k) of Patent Act, 1970
[180] Section 25(2)(a) to (k) of Patent Act, 1970

PATENT INFRINGEMENT

The breach of a patent holder's exclusive rights is known as a patent infringement. As was previously discussed above, a patent is a license that grants the inventor an exclusive right or title for a predetermined amount of time to stop someone from creating, using, or commercializing an invention. Patent infringement is the breach of the patent's holder exclusive rights or title of ownership. It encompasses actions like infringing on another person's patent by producing, selling, or offering to sell their invention without their permission. The following two kinds of patent violation are listed:

- Direct Infringement- Direct infringement is committed when a product is exactly same as the patented product and is used commercially without prior permission of the owner.
- Indirect infringement- Indirect infringement is committed when a person accidentally or without any motive of coping the product or invention of the owner commits infringement.

REMEDIES FOR PATENT INFRINGEMENT

According to[181] Patent Act, 1970, the reliefs that a court may issue in any infringement complaint include an injunction subject to whatever restrictions the court deems appropriate and, at the plaintiff's discretion or option, either damages or an account of profits. In addition, the court has the authority to order the seizure, forfeiture, or destruction, without payment of damages, of any items that are deemed to be infringing as well as materials and tools that are primarily used in the manufacture of such goods.

CONCLUSION

When it comes to the investment made in the development of new technology, patents may offer both people and businesses significant value and higher profits. The search for how, where, and when to patent should be conducted with an intelligent approach that balances commercial interests in using the technology with a wide variety of possibilities. For instance, a corporation may be able to save a lot of money and enhance the rights obtained through patents by concentrating on international issues and local laws in certain natio

[181] Section 108 of Patent Act, 1970

CHAPTER 12

REGULATIONS CONCERNING TO INTELLECTUAL PROPERTY RIGHTS IN THE DIGITAL WORLD: AN ANALYSIS

Author: Divjot Arora[182], Dr. Namah Dutta[183]

ABSTRACT

Since law is a reaction to social problems, which change through time, it is a subject that is constantly changing. Technology is one such sector where the law desires to be updated frequently. Technology is one of the most amazing gifts that the human mind has given to the human race, and digital technology is the fresh development that is being made on a global basis.

Without a doubt, digitalization has changed the world for the better, but when technology is misused, it also breeds anarchy and crime. The copyright is the intellectual property right that is most impacted. In the digital age, copyright protection has emerged as a major concern.

"Digital Intellectual Property Rights (DIPR)" has become a latest buzzword in the digitalization era around the world, especially in India. India has already made significant progress in the area of digital intellectual property rights (DIPR). Creators can use Digital Intellectual Property Rights to safeguard their digital intellectual property, whether it's a produce or a facility. Except for the Information Technology (IT) Act of 2000, which is specifically applicable to IT intellectual property, digital IPR are ruled by acts and guidelines enacted for overall Intellectual Property Rights. A close examination of various legislations which demonstrates their limitations in terms of digital IPR. It is critical to frame digital property-centric rules and regulations in order to protect digital intellectual property rights.

The term 'digital' mentions to the usage of computer know- how to utilize or store any facts or knowledge that is represented by digital signals. Artificial intelligence (AI), block chain applications, quantum computers, virtual and amplified realism peer-to-peer ("P2P") file

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sharing software, blogging, podcasting, and coursing new methods to distribute material are all part of it.

Purpose and findings: The main determination of this research paper is to trace the growth of digital intellectual property rights in India, historical background of digital intellectual property rights, and why there is an essential for intellectual property rights. This paper brings out the analysis of major developments which occurred in recent times of digital intellectual property rights and recent laws regarding it with recent cases in India.

Originality: View of digital intellectual property rights and laws in India using an educational, institutional, and chronological outlook.

KEYWORDS: Intellectual Property Rights; Digital; Law; Creation; Design; Trademark; Patent; Copyright; Cyberspace.

INTRODUCTION

Cyberspace, considered as a computer generated area, or the Internet and the World Wide Web (WWW), generally referred to as the Web, are examples of digital world components. It integrates global document search engines and numerous services (e.g., e-mail, remote logging, file allocations, discussion groups, etc.). Digital IP books for a sizable share of the world's growing economy.

With just a single click of a mouse, digital intellectual property creators may protect their work against piracy and give their business access to limitless information, allowing them to attain higher levels of innovation, creativity, and secure and unfettered advancement in the digital world. Because digital content is easily copied, a copyright, patent, and trademark paradigm is required in the digital situation. Various domestic and international regulations acknowledge the necessity of protecting digital IPR

DEFINITION OF INTELLECTUAL PROPERTY RIGHTS

Intellectual property (IP) is a sort of estate that incorporates intangible intellectual formations. Intellectual property derives in numerous methods, and some countries identify more than others[184].

The term "intellectual property rights" (IPR) refers to “the ownership of works of literature, art, and science as well as execution artists' performances, phonographs, broadcast media, creations in all area of humanoid endeavor, scientific innovations, industrial designs, trademarks, service marks, and business names and descriptions, as well as all other creations resultant from intellectual activity in the fields of production, knowledge, fiction, and the skills.”

HISTORICAL BACKGROUND OF DIGITAL INTELLECTUAL PROPERTY RIGHTS

Copyrights, patents, trademarks, and trade secrets are the utmost renowned kinds. In the 17th and 18th eras, England founded the present idea of intellectual property. Even though the expression "intellectual property" was invented in the nineteenth era, it was not till the late twentieth era that it became broadly acknowledged in the mainstream of the globe’s lawful structures.

In 1485, the first system of intellectual property protection was established in the form of a Venetian Ordinance. It was followed in England in 1623 by the Statute of Monopolies, which prolonged patent privileges for Skill Discoveries. “Patent laws were first presented in the United States in 1760.” Most European countries created patent laws between 1880 and 1889. In 1856, the Indian Patent Act was passed, which remained in result for more than 50 years before being restructured and retitled as "The Indian Patents and Designs Act, 1911." Following independence in 1970, the "Patents Act, 1970" was passed as a whole bill on patent privileges.

Certain statutes safeguarded just guaranteed types of intellectual work; until lately, only four types of intellectual output were protected. Designs, patents, trademarks, and copyrights were all used to provide protection. Copyrights were governed by the Copyright Act of 1957,

[184] “World Intellectual Property Organization (WIPO) (2016)-Understanding Intellectual Property” doi:10.34667/tind.36288. ISBN 978280525939- last visited on 20-04-2022.

trademarks by the Trade and Merchandise Marks Act of 1958, patents by the Patents Act of 1970, and designs by the Designs Act of 1911 in India.

NEED FOR DIGITAL INTELLECTUAL PROPERTY RIGHTS

- The utmost important, and in many times the only, motivation for man's tireless toil, innovation, and ingenuity is monetary reward.
- With the advancement of technology, one of the issues that has arisen is the legal classification of the invention.
- It was established to safeguard individuals' rights to enjoy their own creativity and inventions.
- Designed to safeguard consumers from unfair trade practices.
- To ensure that the world receives a steady stream of useful, instructive, and intellectual works.
- To encourage IPR owners to continue to be innovative and creative.

CONFIDENTIAL INFORMATION ON DIGITAL PLATFORM

Information that is capable of being legally protected as confidential might be characterized as information that, by virtue of its secrecy, benefits the owner's business. Trade secrets and confidential information are synonymous terms.

Confidential knowledge is one type of IP, though, that is still not covered by any laws. A few Indian and British judicial precedents offer guidelines for protecting sensitive information. It is possible to place restrictions on how confidential information is used or disclosed, and anytime those restrictions are broken, the business has a legal basis for seeking redress. Non-disclosure agreements can also be used to protect the private information (NDAs)[185].

As a safeguard, the company must designate emails and internet communications with the words "confidential" or "commercial in confidence." Indian law provides for an injunction, the return of all proprietary and confidential information, as well as compensation or damages, as legal remedies for a breach of confidence. The offending party may also be ordered by the court

[185]"Available at- https://blog.ipleaders.in/analysis-laws-regulations and-pertaining-digital-intellectual-property-rights/#:~:text=Digital%20IPR%20empowers%20the%20creators,a%20single%20click%20of%20button-" last visited on 10-05-2022.

to "deliver-up" such information. The Information Technology Act of 2000 provides for criminal penalties in the event that secured access to any information has been violated and revealed without the person in question's consent.

PROBLEM FORMULATION

- **Digital Intellectual Property Rights: Major Developments in India**

With the existing state of affairs, it was essential to defend the privileges of intellectual property possessors, because without protecting the inventive work that a person has spent his time on, there would be no advancement of discovery and originality, and without such expansion, it would be unbearable to suppose the market to grow beyond a limited range.

Expansion can only continue if the privileges of the manufacturers and those sweating over the creation are secured. Deprived of uniqueness, the market would imitate each other, there would be no excellence indication, and it would be problematic for both sellers and purchasers in the marketplace to choice high- grade goods.

With liberalization, the challenge became greater than before, because not only did the product need to be protected in the Indian market, but also the intellectual property rights needed to be protected in the international marketplace in order to achieve exclusivity over the production and distribution of the product.

By proving India's commitment to the “World Trade Organization” (WTO) under the “Trade Related Intellectual Property Rights Agreement” (TRIPS), the administration was able to ensure that India's position on intellectual property laws was acceptable on an international level.

Meanwhile India's arrival to the WTO, the government has taken every determination to safeguard that Indian regulations connecting to intellectual property rights are renowned at a global level.

The following are some of the recent developments:

On March 30, 2021, the Government of India published the Copyright (Amendment) Rules, 2021, which alter the Copyright Rules of 2013. Although, in 2019, a draft of this modification

was made available for public comment. In many ways, the measure resembles the draft. The most notable change is the replacement of the term "copyright board" with "appellate board." The revisions, which are identical to the proposal and are based on the functioning of copyright organizations in India, have received a lot of attention. This covers rules relating to the establishment of traceable methods for royalties collecting and distribution, the mechanism for dealing with royalties for works whose creators cannot be discovered or identified, and the ability to search a copyright society's database.

The revisions make a number of procedural adjustments, such as replacing the Official Gazette with the Copyright Journal for the publication of notices and recognizing electronic means of operation.

RECENT LAWS GOVERNING IPR IN INDIA

In the digital environment, digital IPR stands for Intellectual Property Rights. The WIPO Convention describes "intellectual property" as “the privileges to: – fictional, creative, and technical works; – performances of performing artists, phonograms, and broadcasts; – creations in all fields of human endeavor; – scientific innovations; – industrial designs, trademarks, service marks, and commercial names and designations; – safeguard in contradiction of partial rivalry; and all other privileges arising from intellectual action in the industry.” Intellectual Property Rights (IPR) is legal privileges approved to the originator that allow them to safeguard their creation for an inadequate time. In other words, these rights make it illegal for anyone else to use the Intellectual Property for commercial reasons without the IP rights possessor’s permission.

There are seven classes of Intellectual Property Rights:

i. Copyright and Linked Rights,
ii. Trademarks, Trade names and Service marks,
iii. Geographical Suggestions,
iv. Industrial Designs,
v. Patents,
vi. Designs of Integrated Circuits,
vii. Unrevealed data.

In accumulation to the exclusive rights fortification provided to the creator of the database in contradiction of the removal or repurposing of the database's matters, there is a distinct Sui

Generis (of its own kind) database privilege. The database and software developers have 15 years to exercise this entitlement. It is important to remember that “John Richardson v. Flanders” determined that, in the context of computer programs, there is no copyright contravention if a person:

a) Creates backup program copies.
b) By utilizing one of the copyrights, prosper interoperable items.
c) Utilizes to fix mistakes so that innovative software runs deprived of problems.
d) Imitations in order to verify computer software safety trying.

The digital economy opens up more possibilities for both legal and illegal trademark use. The problem of monitoring domain zones and protecting one's domain names is unique to the owner of a trademark. From a commercial standpoint, the area is necessary for products to marketplace and sells their facilities internationally. Through cybersquatting, typosquatting, registration by rival businesses with competing interests, parody, and reverse domain name hijacking, trademarks are violated in domain names.

SIGNIFICANCE OF INTELLECTUAL PROPERTY RIGHTS IN DIGITAL WORLD

All rules relating to intellectual property fortification were drafted eras before, when expertise had not yet brushed us off our feet. Even progressive inventions such as block chain and artificial intelligence are available. Block chain could still be in its infancy. We must not, however, overlook its probable to transform the sphere of intellectual property. It can help decentralize and hence simplify the patent/copyright registering request procedure. Today, particularly in the aftermath of the epidemic lockdown, it is fair to say that all human activities, from commerce to education, have transferred to the digital realm. As a result, it's important to consider how the necessity for intellectual property protection has evolved throughout time. Earlier to that, it is necessary to comprehend the relationship amongst intellectual property and financial gains by studying intellectual property theories. The following are some of them:

- Utilitarian Theory: The notion of "the greatest good for the largest number" underpins utilitarian theory. The intellectual works produced have a positive impact on society. As a result, it is critical to keep the innovators motivated to continue working on their innovations and contribute to the advancement of industry. Monopoly rights encourage people to create and modernize.

- Lockean Approach: Natural Rights Theory asserts that everyone has the right to the fruits of their own knowledgeable activity. The mechanism he creates is one-of-a-kind. As a result, the proprietor is granted monopoly so that he can enjoy restricted rights to his formations. Though, there is an exclusion in circumstances where giving up his monopolistic rights is in the best interests of society. The vaccines for Covid-19 are the greatest example.

- Personhood Theory: The finished product is ultimately a mirror of the artist. As a result, it must be safeguarded[186].

RECENT CASE LAWS REGARDING DIGITAL IPR

In **Jagran Prakashan Ltd. vs. Telegram FZ LLC &Ors, (2020)[187],** the free distribution of electronic papers via virtual chat systems was deemed an exclusive right violation. OTT platforms have grown in popularity in recent years. The pandemic's confinement has expedited its spread. Movies are being delivered directly to OTT platforms as movie theaters lose their allure owing to the possibility of infection. Film copyrights have existed for decades. However, due to a shift in the mechanism of distribution, copyright infringement must now be addressed severely.

Similarly, with the direct distribution of videocassettes, artistic presentation, imaginative policies, and developments to streaming platforms, preventing the movement of illegal copies of creative works posted online becomes a difficult issue. Furthermore, internet shopping companies have their own websites that offer both aesthetic and technical aspects to entice potential clients. Because these are public, there is a considerable risk of the website's design or contents being copied or misappropriated. As a result, unlike in previous decades, protecting intellectual property in the digital era has become critical.

In **Sony Pictures Network India Pvt. Ltd vs. www.sportsala.tv and others, 2021[188]** Sony Pictures sued a number of defendants in this action with the main goal of obtaining a permanent

[186]Elizabeth Varkey, "The Intellectual Property Rights And Practice, (EBC 2015)" last visited on 22-04-2022.
[187] PankajTyagi- "The glance of JagranPrakashan Ltd. vs. Telegram FZ LLC &Ors" available at- "https://corpbiz.io/glance-of-jagran-prakashan-ltd-vs-telegram-llc-ors/" last visited on 22-04-2022.
[188] Available at "https://www.bananaip.com/ip-news-center/indian-orders-and-thejudgments-intellectual-property-law-2021-2/" last visited on- 20-05-2022.

injunction banning the reproduction, availability, distribution, broadcasting, and other uses of the cricket matches among India's tours of England and Sri Lanka. Sony Pictures pleaded for an interim injunction while the lawsuit was pending and requested roughly equivalent reliefs.

The court granted Sony Pictures an injunction against websites, including their alpha-numeric, mirror, and redirect variants. Rogue websites that might copy, transmission, create accessible, convey to the community, or disseminate the cricket matches have also been subject to a dynamic injunction.
The Court also issued a directive ordering ISPs to prohibit the aforementioned and other malicious websites, as well as requesting the Government of India to issue the necessary instructions to stop any infringement on Sony Pictures' copyrights in the matches.

MSOs and cable operators were also subject to the temporary injunction, and local commissioners were allotted to keep an eye out for and take appropriate action when the court's instructions were broken. The Court's orders principally deal with Sony Pictures' copyright, which implies that non-infringing and fair uses of the content related to the cricket matches between India and England/Sri Lanka are permitted.

CONCLUSION

Examining various laws and regulations relating to digital IPs and IPRs uncovers gaps in their statutory language and application. IP in the digital realm is not adequately protected by current legislation. These omit to mention the extent of sui generis, the trademark restriction period in trade-related domain names, the lack of specific legislation protecting sensitive information, etc. Information that is released into the public domain loses its protection at that moment.

Surprisingly, the issue of domain name disputes and cybersquatting is not addressed by the “Information Technology Act, 2000” (IT Act), which covers several cybercrimes. There is still much that needs to be done by the legislative authorities to create clear digital policies that are backed by rules and regulations that protect digital IPR. Since it has taken so long, the lack of comprehensive regulation regarding digital IP has been of concern to those who create intellectual property.

To summarize, the multiple adjustments and amendments to earlier Intellectual Property Laws show India's progress toward a new IPR framework in order to prepare for global trade competitiveness

CHAPTER 13

IPR AND COMPETITION LAW

Author: Dr. Sapna Desai[189]

ABSTRACT

Competition law and Intellectual Property Right the evolution has been seen during the past times. these two laws governs the area of market and promote the competition and innovation. These two are two separate laws which overlaps in some provisions, thus, it creates some conflicts between these two laws. Intellectual property laws offers the right to the inventor for his invention for the specified period of time and during that time intellectual property laws safeguards the work done by the creator so, that it cannot be misused by any other individual. Competition law regulates the competition and the anti-competitive agreements in the competition and helps in maintaining the effective competition environment in the competitive business environment. In this paper, the concept of the intellectual property right and competition law will be discussed. Along with the conflicts between both the laws with the help of the decided cases.

KEYWORDS: Intellectual Property Rights, Competition, Rights, TRIPS, Innovation, Section.

INTRODUCTION

In the recent times, it has been noticed that there exist a strong connection seen between the **Competition law and Intellectual Property Law (IPR).** This has now become one of the contemporary issues. Competition law deals with the anti-competitive agreements, it regulated the mergers and the acquisitions and it restricts the use of the dominant position in the market. Competition law ensures the fair competition in the market. On the other hand, Intellectual Property Law (IPR) deals with providing the protection to the work that is unique in nature.

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It maintains the balance between the owner's right and the social interest. Intellectual Property Rights provides the exclusive right to the owner of the work and ensures that their work will not be misused by any individual. Intellectual Property Law and Competition law both are the main areas that governs the transfer of the technology, governs market and promote the consumer welfare. The relationship that exists between the intellectual property law and competition law plays a important role to ensure that the proper maintenance of competitive and dynamic market is done. Intellectual property law and competition law both have many similar feature and they are also considered as the two sides of same coin.

So, it is clear from the above written statements that there exist a nexus between the intellectual property law and competition law. Intellectual property law provides the exclusive rights to the owner of the creative work and monopoly over that work to which the policies of the competition law disagree. The main aim of the intellectual property law is to motivate the morale of the inventor, both on the other hand, competition law controls the competition on the market.

So, if one provides the protection then the other law lays down the policies to control the anti-competitive agreements, this creates conflicts between both the laws. In the upcoming paragraphs the contradiction between both of the laws will be discussed in detail.

COMPETITION LAW

Competition law in India mandates the regulation of market practices. Competition Act came into force in 2002 but later on after the amendments was done in the act this act was amended by the [190]**Competition (Amendment) Act, 2007** and later on it came into force on **20 May, 2009**. The main aim of competition law is to ensure the fair practices in the market. The competition act regulates the three different types of the conduct which are: anti- competitive agreements, abuse of the dominant position and combinations which includes the mergers, acquisitions and amalgamations. Competition law is a body which helps in promoting the market by conducting the fair competition. Competition law regulates the business by monitoring the anti-competition agreements on part of the business and it regulates the same on the business. Some of the anti-competitive practices which include the following:

[190] The Competition (Amendment) Act, 2007

a. Predatory Price

b. price fixing

c. Big Rigging

d. Dumping

Thus competition law has a very important role when it comes to securing the risk free and fair trade market.

INTELLECTUAL PROPERTY RIGHTS

Innovations, artistic work, images, literary work, technical, scientific creation, designs and symbols these all are the creation of individual mind and these should be protected at any cost so that there cannot be any infringement of one's creation. Intellectual property rights (IPR) helps to protect the innovative work done by the individual. In the IPR the right is given to the person for a specific period of time so that the inventor of any inventions can utilize his or her legal right of the invention or the creation that they have done.

In the modern times IPR plays a very well pivotal role. The innovation and creativity can flourish in the environment by striking a balance between the right of the inventor and use of the such innovation. Thus, IPR provides the incentive to the public at large that they can make the use of the other person creativity by ensuring that there cannot be any unfair use of the creation or work. IPR is a great tool to protect the time, money and efforts made by the person that he invested to do something innovative. Apart from this, IPR also provides the remedy if the work done by the individual gets stolen or is inappropriately used by the other person. The innovator has the right that they can sue the person who has made the unfair use of the work.

Intellectual Property Rights are classified as follows:

- Copyright
- Trademarks
- Design
- Patents

- Geographical Indications

RELATIONSHIP BETWEEN COMPETITION LAW AND INTELLECTUAL PROPERTY LAW

It is seen that both the laws operate against each other i.e. Competition law and Intellectual Property Law. In the intellectual property law the monopoly is given to the inventor over the unique work done by him, whereas the competition law discourages the monopoly. In the first instance it is readily noticeable that both the laws operate against each other they are also like fire and water.

Competition law discourages the practice of creating the monopoly in the market, on the other hand intellectual property right encroaches the individual to come up with new ideas and goals to promote the consumer welfare. Thus, it creates the conflict between both of the laws.

As, it was already discussed above the meaning of both the laws when the exclusive right under the intellectual property right is given to the owner over some work, then the competition law comes into the picture to check that whether there any anti-completive agreement exists. The Competition Act deals with the conflicts which are related to the intellectual property law. **Section 3** of the act lays down about the protection under the anti-competitive agreements and it is only regarded as the intended protection.

Also, intellectual property right ensures that there exists a competition in the competitive business environment. This promotes in creating the new opportunities and creating new policies in the business. Competition law on the other hand regulates the conduct of the business by safeguarding the competitive environment. So, it can be said that both the laws i.e. competition law and intellectual property laws ensures the competition in the competitive business environment.

[191]**Section 3** of the competition act talks about the anti-competitive agreements:

"No enterprise or association of an enterprise is allowed to make any agreement about production, distribution, supply, acquisition, storage, controls of goods or provision of services, which will have a significant adverse impact on competition within India[192]".

[191][191] The Competition Act 2002
[192] Section 3,The Competiton Act, 2002

In the other words, it can be said that it section 3 of the act restrains any kind of enterprise or the business to enter into any agreement which can cause hurt to the competition in India and which can give the adverse affect to the competition prevailing in the market.

[193]**Section 3(5)** of the act deals with the exception. It states that the completion law does not affect the rights given under the intellectual property right. But if we talk about the **Section 4** of the act then it can be seen that it also restrains the right that is given to the person under intellectual property right. It restrains the abuse of dominant position. It states that if the abuse of the dominant position will be done then the competition law will come into force.

From this it can be concluded that both of these laws are supplementary to each other rather than creating contradiction between them.

In the case of **Valle Peruman and Others vs. Godfrey Phillips India limited**[194], in this case the trademark owner misused the trademark by manipulating and distorting. This resulted into the unfair trade practices of the trademark. The court in this case held that the trademark owner has the right to use his trademark in the reasonable manner which is subjected to the conditions. The court also observed that the rights given under the intellectual property right has the potential to infringe the policies of competition. Thus, the competition law comes into picture to controls such infringement.

CONFLICTS BETWEEN THE INTELLECTUAL PROPERTY LAW AND COMPETITION LAW:

There are some anti-competitive practices where the use of both of the laws is done and that brings some differences between the Intellectual Property Right and Competition Law. These are as follows:

1. Abuse of dominant position: Section 4 of the act talks about the anti-competitive agreements it states that "no enterprise shall abuse its dominant position". The cases that relates

[193] Section 3(5), The Competition Act, 2002
[194] Valle Peruman and Others vs. Godfrey Phillips India limited, [1986] AIR 806

to the conflict that exist between the Intellectual property right and competition law these cases to be decided by the **Competition Commission of India (CCI**).

It was stated in the case of [195]**Aamir Khan Production Private Limited vs. Union of India** that the Competition Commission of India is having the jurisdiction to look into matter that is related to the completion an intellectual property law. This case was decided by the Bombay High Court.

2. Refusal to License: The concept of refusal of license is based on the complementary goals of both the laws i.e. competition law and intellectual property laws. The right which is given to the owner of the work through that right the right holder can prevent the other person for misusing the work for the certain period of time. But it does not give the right to the right holder for the further development of his work.

In the case of the [196]**Entertainment Network (India) Limited vs. Super Cassette Industries Ltd**., in this case the copyright was granted to the person and he can exercise the right over his work and he has the monopoly over his work. In this case the relationship between the intellectual property law and competition law was seen and discussed. In this case it was held that the copyright owner has the right to exercise the monopoly, but if it exceeds the unreasonable terms then it will be considered as the anti-competitive agreement. Here, the competition law comes into the picture.

3**. Excessive pricing**: the concept of excessive pricing and the predatory pricing closely related to the concept of refusal of license. Under **the Monopolies and Restrictive Trade Practice**[197]act the predatory pricing is considered as the restrictive trade practice. Setting the over price of any product in the market is considered as non-violative of the provisions related to competition law. Competition Commission of India after considering number of cases came to the conclusion that charging the different price for the same product is a common activity in the market. So. It becomes necessary to strike the balance between the protection provided

[195] Aamir Khan Productions vs. Union of India ,[2010] Bom 112
[196] Entertainment Network (India) Limited vs. Super Cassette Industries Ltd, [2008]
[197] Monopolies and Restrictive Trade Practices 1969

under the IPR and the policies related to the competition in any market for the upcoming future projects.

4. Trying Agreements: Section 3(4) of the act prohibits the trying agreements. Trying agreements means that when a seller aggress to sell the highly usable product or the service to the buyer only on one condition that if the buyer also purchases a product or service which is less important. Under this agreement the condition is laid down on the part of seller to the buyer to purchase the first mentioned products.

To conclude, trying agreements, the objectives may not go hand-in-hand related to patent and antitrust laws, the objectives of the both of the laws are complementary and both encourages the innovation and competition.

ROLE OF TRIPS AGREEMENT IN INTELLECTUAL PROPERTY LAW AND COMPETITION LAW

The agreement of Trade-Related Aspects of Intellectual Property Rights is a international agreement which was signed by all the countries of the World Trade Organization. The main aim of the [198]**Trade-Related Aspects of Intellectual Property Rights (TRIPS)** is to provide the extensive protection to the Intellectual Property related to the member of its country. Trade-Related Aspects of Intellectual Property Rights (TRIPS) it also regulated the unfair trade practices of the competition and also controls the relation of the rights provided under the Intellectual Property. [199]**Article 40** of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement talks about the licensing practice or the conditions that relates to the intellectual property rights that can have any severe affect on the practice of the trade and can act as a barrier when it comes to transferring the technology.

Also, [200] **Article 40(2) of the Trade-Related Aspects of Intellectual Property Rights (TRIPS)** agreement permits its member to specify any law which has the potential to cause the

[198] <https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm
[199] Article 40, TRIPS Agreement, 1st January, 1995
[200] Article 40(2) TRIPS Agreement, 1st January, 1995

abuse related to the IP rights and which can have the negative impact on the intellectual property right and they can prevent such abuse by taking preventive measures. This article gives the power to its members that they can take any preventive measures to prevent the unfair practice. However, the practice of taking the measure under the Article 40(2) is not exhaustive.

Preventive measures under Article 40(2): Two methods have been used to prevent the abuse for the intellectual property rights.

a. **Compulsory Licensing** it is a contract which is involuntary in nature and it is made between a willing buyer and a unwilling seller and it is enforced by the government.

b**. Parallel Imports**: Parallel Imports these are the goods that are imposed by the another country when goods are brought into the another country once they are placed in the some other market without the permission of the patent holder or the copyright holder.

[201] Article 31 of the [202] Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement provides the grant to the compulsory licenses under the following scenarios:

- in the interest of the public health
- in the case of the national emergency
- any anti-competitive practices

On the other hand, there are many inferences which are interlinked between the competition policy and the Intellectual property rights. Authorities that regulate the competition policy they should consider the each case which is related to the intellectual property rights and that case has to be considered with the reasonable approach.

[201] Article 30 TRIPS Agreement, 1st January, 1995
[202] TRIPS Agreement, 1st January 1995

COMPETENT AUTHORITY TO DETERMINE APPLICABILITY OF COMPETITION LAW TO IPR

The Competition Commission of India (CCI) was established under the Section 7 of the act. Competition Commission of India (CCI) is a quasi-judicial authority and it is competent authority for determining the applicability of the competition law and intellectual property rights. Any dispute or the conflict between both of the laws i.e. competition law and intellectual property rights will be handled by the Competition Commission of India (CCI).

The power given to the [203]**Competition Commission of India (CCI)** is not the special power but it exercises under the act and that act covers the treatment of the dispute related to the IPR and competition law. Competition Commission of India (CCI) also lays down that any reasonable condition will not be in the contravention under the Section 3 of the Act but any unreasonable condition will be held as the contravention under Section 3 of the act. Competition Commission of India (CCI) has the clear list of the practices that has the potential of being the contravention under Section 3 if the act. Some of those practices include:

a) **Patent Pooling**- if the person or the business who is a patent pooling and they refuse to give the license to the outside party then it will amount to the restrictive practice of trade.
b) **Tie-in-agreement**- if by any chance the patentee alone by himself supplies the goods or sell the goods to the third party, then it will amount to the restrictive trade of practice.
c) **Price fixing**- If any licensor fixes the price that is unreasonable at which he sells the products, then that will be considered as the restrictive practice.
d) **Royalty**- If the patent has expired and the agreement of paying the royalty is still in practice then that would amount to the restrictive practice.

RECOMMENDATIONS TO OVERCOME WITH THE CONFLICT OF INTELLECTUAL PROPERTY RIGHT AND COMPETITION LAW

The following are the some recommendations which can help in resolving the conflicts:

[203] https://www.mca.gov.in/content/mca/global/en/about-us/affiliated-offices/cci.html

a. defining the clear regimes and implications by assessing the markets

b. ensuring the proper co-ordination between the Competition law authorities and intellectual property right authorities

c. in the case of the refusal of deal the compulsory granting of the license needs to be done

CONCLUSION

After analysising the both the laws i.e. Intellectual Property Rights and Competition law it can be concluded that both the laws promotes the competition in the business environment. Where the Intellectual Property Rights provides the protection to the owner of the work for the innovative work done by him to promote the innovation, and on the other hand, competition law is a regulatory body which regulates the provisions related to the trade. Intellectual property right provides the exclusive benefit to the owner of the work to safeguard their work from any exploitation.

Conflict occurs when both the laws of intellectual property rights and competition laws works against each other. As it is states in the above mentioned paragraphs that when the unreasonable use of the freedom of monopoly given to the owner is done then the competition law comes into the picture.

It is appeared that both of the laws the contradicting o each other in nature. But through this paper it was find out that both are supplementary to each other. The other law comes into the picture when one is being misused. Competition law ensures that fair trade practice can be conducted that there should be a any kind of misuse done by the business. Competition law ensures to maximize the profit and offers the wide varieties to the consumers. Intellectual property right provides the reward to the owner of the work by giving them the rights and when these rights are exploited then the competition law comes into the working. Also, there are provisions under the competition law that bridges the gap between both the laws.

Apart from this the functioning of the Competition Commission of India (CCI) was also discussed that any dispute matter related to the intellectual property right and competition law will be heard by the Competition Commission of India (CCI) authority. Competition Commission of India (CCI) plays a very pivotal role in marinating the balance between both the laws. Furthermore, Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement also provides the right to its country members to take the preventive measures against the abuse of dominant position.

CHAPTER 14

CHALLENGES FACED BY THE INDIAN BANKING SYSTEM

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ABSTRACT

Debt repayment is a major problem that all developing nations confront, thus it's critical that they have solid system in place to manage their debts all in all and ensure that their debt recovery techniques are up to the task NPAs are a problem that affects not only banks but harms entire economy. In fact, quantity of Non Performing Loans in the Indian financial market is a measure of the Indian industry's health and the trade's health The commercial banks uses debt collection procedures, which consist of the DRT, LokAdalat, and the SARFAESI Act, 2002 to recover NPAs, which protects both the debtor and the creditor's interests The concern now is whether these laws are sufficient to meet all problems, and if not then, what revisions are required? This paper presents the challenges faced by the Indian Banking System during debt recovery and the legislations available for same.

KEYWORDS: Non-Performing Assets; SARFAESI Act; DRT; Bad Debts; Challenges; Debt Recovery; Indian Banking System; Debt Repayment.

INTRODUCTION

Due to the distinctive characteristics (geographic, social, and economic) of India, its banking system is very different from that of other nations of Asia. India is a large country with regard to its population and land area, with a wide range of cultures and income levels. India's financial sector is hampered by plenty of problems, one of which is the massive amount of non-

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performing assets on banks' balance sheets[206]. Numerous businesses in our nation, India, have closed their doors due to cash flow uncertainties. It might have an impact on the business climate as well as India's ranking and bracket in the "Ease of Doing Business Index," which is crucial for the country's influx of foreign investment. The delayed Indian court system forces banks and other financial organisations to use it as a last resort, which causes a significant delay in the final recovery, if it happens at all.[207] A thriving economy requires a healthy financial industry. The collapse of the banking industry might have repercussions across many different sectors. Non-performing assets are currently the main source of concern for the Indian banking system.[208] Bank profitability and net worth are negatively impacted by high NPA levels, which increases the probability of multiple loan defaults and diminishes the value of the bank's assets. The usage of provisions is required as a result of NPA growth, which lowers overall profitability and shareholder value.[209]

This article seeks to provide a general summary of India's present debt status, as well as the efforts being taken to ensure quick and efficient debt collection. In this regard, there are two main laws enacted: "(1) the SARFAESI Act of 2002, and (2) the RDDB & FI Act of 1993, commonly known as the DRT Act". This research pays special attention to examining the DRT's effectiveness and whether they are genuinely economically beneficial. The authors also give a succinct description of the previous two acts. The writers also go into detail on the RBI's role and the system's impact on debt recovery.

WHAT ARE THE BAD DEBTS?

When the borrower in on fault in repayment of a loan and the account stops making any interest for the bank for more than 90 days (i.e. when the borrower does not pay the amount borrowed + interest for more than 3 months), the account is then categorized as Bad Debt Account/ Non

[206] "Chitransh, (2022) 'Non-Processing Asset (NPA) and Debt Recovery Management in India' [online] https://www.legalserviceindia.com/legal/article-7030-non-processing-asset-npa-and-debt-recovery-management-in-india.html (Accessed 13 May 2022)"
[207] Mr. Deepak Singh and Mr. Samyak Sethi , (2018) 'Issues and challenges in the recovery of defaulting loans' Fast Forward Justice, Vol. 1 No. 1
[208] Vijay Shekhar Jha , (2018) 'Problems of NPA in Banking Sector in India & Debt Recovery Remedies' [online] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3380757 (Accessed 12 May 2022)"
[209] "Gopal, Sumathi, (2018)'NPA's-A Comparative Analysis on Banks & Financial Institutions and its Implications (Doctoral Thesis)' [online] http://www.dypatil.edu/schools/management/npas-a-comparative-analysis-on-banks-financial-institutions-and-its-implications/ (Accessed 13 May 2022)".

Performing Account**.**The interest bank charge on the loan is the income of the banks and the difference between the interest charged by the bank and the interest paid by the banks to the depositors is the profit earned by the banks, and hence, the interest rate charged is always more than the interest paid by the banks. Banks give the loans from the deposits in the banks and hence, it is important for the banks to get the loan amount back in time along with interest to pay it back to the depositors and also earn some profit for the running of the banks.

INDIA'S BANKING INDUSTRY AND DEBT CRISIS

Rising Number of bad debts have overburdened the Indian banking system. India has been labeled "Asia's other bad debt headache"[210]. The issue has come to the point where it's impacting the ability of the lender to extend fresh credit, affecting the entire banking system. To put this in context, NPAs in India constitute for approximately 8.6% of the GDP of the country.[211] A lot of trouble in collecting loans and enforcing securities charges against them is being faced by the banks and financial institutions. The process for recovering debts owed to banks and financial systems was sluggish, resulting in the freezing of a large percentage of the funds. The harsh reality is that DRTs, which are only available to banks, have a dismal success rate of less than 25%.[212]

The issue at hand is basically with regard to the contract enforcement. Consider the issues with oral contracts- they are really not actually written in any concrete form, leaving no documentation to follow up on and establish their validity in the event of a crisis. And the problem mainly exists in written contracts, when everything is clearly mentioned. The most crucial clause of the loan agreement is its terms and conditions, which many parties neglect to read or discuss. Banks and other financial institutions frequently enter into contracts with clients that are void and have no legal force from the outset of the client-banker relationship,

[210] "Una Galani, (2016) 'Breakdown: solving Asia's other bad debt problem' [online] https://www.reuters.com/article/idUS204543612620160630 (Accessed 12 May 2022)"
[211] "Tadit Kundu, (2016) 'India's big bad loan problem'[online] livemint.com (Accessed 11May 2022)"
[212] Nidhi Singh and Ritika Rishi, (2016) 'Debt recovery tribunal: an analysis' *Journal of Legal Studies and Research,* Vol. 2 No. 3

resulting in the dissolution of the entire arrangement and having left with little or no remedy with the banks[213].

There are many other problems being faced by the financial institutions pertaining to the DRTs and the jurisdiction which lead to the slow and inefficient debt recovery.

HOW DOES THE SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST (SARFAESI) ACT, 2002 HELP?

DRTs were developed to hasten the decision-making and debt collection processes. The DRTs have the power to arbitrate bank and financial institution claims totaling at least ten lakh rupees. A bank or other financial institution must file a claim against the defaulter with the tribunal in order to seek restitution under the law. As soon as a case has been decided, the DRT provides an order as well as a recovery certificate. A recovery certificate is then granted for tax recovery under the Income Tax Act of 1961's second schedule.[214]

The recovery of NPAs was portrayed by the RDDBFI Act as being straight forward,The typical civil court system necessitated an enormous expenditure of time, money and effort in comparisonas compared to the traditional method of civil litigation, which necessitated a significant commitment of one's time, resources, and energy. This offered the banking industry some hope. This, however, seemed to be a broken promise as banks and financial institutions battled liquidity issues and asset-liability mismatches. A legal framework is also lacking that would let the banks to acquire ownership of securities in order to safeguard their investments and enable financial assets to be restructured through securitization The healing process was not influenced by banks despite the formation of the DRT and they were unable to reach the desired level of recovery capabilities. Banks have not been able to recover their debts to the extent expected despite the creation of special tribunals such as debt recovery tribunals under the RDDBFI Act 1993. Despite these measures, the number of NPAs gathered in the country

[213] Mr. Deepak Singh and Mr. Samyak Sethi , (2018) 'Issues and challenges in the recovery of debt in India' *Fast Forward Justice,* Vol. 1 No. 1
[214] *Ibid.*

continued to rise. As a result, further modifications in the procedure were implemented, reducing adjudication time[215].

The SARFAESI Act was enacted by parliament in support of this. NPAs are defaulted debts that the financial institution can either remove from the defaulter's property or sell at auction.if the defaulter does not pay. However, the only assets that can be recovered are those that were either mortgaged or secured to pay off the obligation.[216]

The SARFAESI Act has a great effect on the situation of the debt recovery in India. The main modification made by the act is that it eliminates the lengthy judicial procedures required under Section 13.4 of the SARFAESI Act, allowing banks to seize accounts when they are discovered and classified as non-performing accounts. Secured creditors can either sell or lease the collateral they hold. kept against the loan amount, or nominate a receiver to handle the assets if they are listed as non-performing resources under the act.[217]

With the Chief Judicial Magistrate's consent, the bank may keep the asset for 60 days after serving the defaulter with the notification. SARFAESI allows the bank's authorised authority to commence the engagement if a credit account has been recognised as a non-performing resource (NPA). However, the bank can still ask for repayment in full even if a borrower has agreed to pay a late fee.[218]

WHAT IS THE BANKS AND FINANCIAL INSTITUTIONS DEBT RECOVERY ACT OF 1993?

In 1991, “the Narasimhan Committee agreed with the Tiwari Committee's findings and recommendations”. The Recovery of Debts to Banks and Financial Institutions Act was passed in 1993 in response to the Narasimhan Committee's recommendations. It's commonly referred to as the "RDB Act"). The RDB Act stated the duties of the Debt Recovery Tribunal. Article

[215] *Ibid.*
[216] *Ibid.*
[217] “Chitransh, (2022) ‘Non-Processing Asset (NPA) and Debt Recovery Management in India’ [online] https://www.legalserviceindia.com/legal/article-7030-non-processing-asset-npa-and-debt-recovery-management-in-india.html (Accessed 13 May 2022)”
[218] *Ibid.*

247 of the Indian Constitution allows for the establishment of the Tribunal by an Act of Parliament.[219]

Banks and financial institutions can recover debts over ten lakh rupees through DRTs under DRT legislation, whereas the SARFAESI operates as a framework for the recovery of secured debts without judicial action under the SARFAESI Act, which simply aids the recovery of secured debts.[220]

EXAMINATION OF THE DEBT COLLECTION SYSTEM AND JUDICIAL DECISIONS

The RDD & FI Act gives the DRTs and DRATs exclusive authority over cases involving the recovery of debts; However, the function of civil courts in the resolution of disputes cannot be completely ignored; the Supreme Court has determined that the DRTs' powers are solely confined to section 17, therefore this is the only area in which they can exercise their authority.[221] The DRTs success rates have been estimated to be below 25%, which is concerning. Moreover, DRTs were overburdened with government dues, workmen's dues, and claims regarding unsecured assets, and debtors slowed processes by filing civil lawsuits against lenders.

The case of **Union of India v. Delhi High Court Bar Assoc. &Ors., (2002)[222],** in which the legitimacy of the RDDB & FI Act 1993 was questioned, is a very important case law in terms of debt recovery. Despite the Delhi High Court's declaration that the law was unconstitutional, the Supreme Court upheld it and ordered some changes.

In the case of Mathew **Varghese v. M. Amritha Kumar, (2014)[223],** the court held that the notice to a defaulter before the sale of a secured asset is a mandatory provision under rules 8 & 9 of SARFAESI Act.

Moreover, the 39 debt recovery tribunals throughout India are poorly equipped to manage the number of cases. Although the legislature has recognized the problem and advocated the

[219] *Ibid.*
[220] "ARCIL v Kumar Metallurgical Corporation Limited, (2005) 10-A S.A (DRT, CHENNAI)"
[221] "Standard Chatered Bank v. Harminder Bhohi and Ors., (2013) 15 SCC 341 (India)"
[222] 2 SCR 450 (India)
[223] 5 SCC 610 (India)

establishment of new DRTs, little has happened. Even the DRTs that are already in place are understaffed, with numerous empty positions.

Credit information bureaus were established in accordance with the credit information bureau act of 2005 in response to recent fundamental advancements in debt management.[224] Credit information about credit worthiness and credit rating is essential in any financial enterprise. With the emergence of numerous credit rating firms, the practice of extending credit based on a rating is now becoming more commonplace.

It is concluded by the regulatory impact assessment that there are insufficient tools to resolve the problems with the DRTs, and that capacity building and transparency are required.

ISSUES ATTACHED WITH THE NPAS SUCH AS BLOCKAGE OF CASH FLOW IN THE ECONOMY WHICH WOULD FURTHER LEAD TO HUGE LOSSES TO BANKS BY REDUCING ITS LIQUIDITY WAS LEAD BY THE FAILURE OF THE DRTS. IMPACT ON BANKS

The bad debts of big public sector organizations have increased in recent years, and the RBI has taken notice. The Reserve Bank of India (RBI) has identified three categories for non-performing assets (NPAs), often known as bad loans. These categories are "Substandard," "Doubtful," and "Loss Assets." The RBI has also provided advice for dealing with this issue through Asset Reconstruction Companies.[225] As the recovery volume is 13 percent, banks are unable to lower rates and now they are forced to charge the firms a 6% as a credit risk premium, which raises total interest rates.

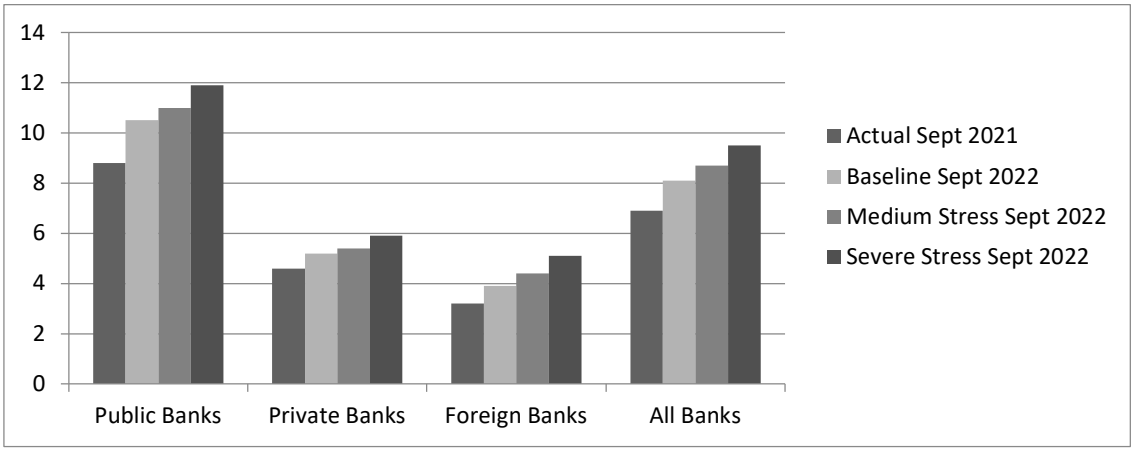
It should be underlined that DRTs often do not adhere to the deadlines, which lowers asset prices and renders banks bankrupt. From a business perspective, the DRTs are not concentrating on debt collection; instead, they are putting more of an emphasis on other aspects and veering away from the initial objective. The RBI conducted a routine and thorough analysis of the records of major banks in order to address NPAs in large banks. When it turned out that

[224] "Rakesh Mohan and Partha Ray, (2017)'Indian financial sector: structure, trends and turns, international monetary fund' [online] https://www.imf.org/en/Publications/WP/Issues/2017/01/20/Indian-Financial-Sector-Structure-Trends-and-Turns-44554 (Accessed 12 May 2022)"

[225] Tanya Mehta, (2017) 'Non-performing loans: solutions available' [online] psalegal.com /issue-iii-non-performing-loans-solutions-available/ (Accessed 13 May 2022)

the volume of bad loans had been underestimated, RBI took action to get a more accurate estimate.

Projection of Bad Debts in Indian Banks (in %)



Source: RBI's Financial Stability Report

ARE THE DRTS ACTUALLY HELPING THE CAUSE?

According to industry perspectives, the recovery procedure is inefficient, and assets auctioned under DRTs[226] frequently see a lack of vigorous participation. Although the DRTs first succeeded in attaining their objective, their development was hindered when sizable and powerful debtors started utilizing evasive tactics. The main problem was a dispute of jurisdiction between the civil courts and the DRTs.

In **Indian Bank v. ABS Marine Products (2006)[227],** the plaintiff requested that the Calcutta High Court case involving the defendant be moved to the DRT. According to a decision handed down by the Supreme Court, "such an independent complaint initiated by a borrower could not be moved to the DRT without his assent" since it is impossible to take away a borrower's right to participate in a civil action. In the decision of **State Bank of India v. Ranjan Chemicals Ltd. (2007)[228],** which was decided just one year later, or in the year 2007, the Apex court

[226] "Mansai Phadnis and N. Prabhala, (2015) 'Debt recovery tribunals in India: a short note'[online] www.cafral.org.in (Accessed 14 May 2022)"
[227] 5 SCC 72 (India)
[228] 1 SCC 97 (India)

changed its outlook and stated that there was no requirement that the parties' consent be obtained before a suit could be transferred.

Workmen's remuneration, government remuneration, and unsecured creditors' remuneration would all come to a halt in the face of DRTs, summing to the already mounting cases before the DRT. Another problem with winding up procedures is the conflict of authority between DRT Recovery Officers and Official Liquidators appointed by the High Court.[229]

The DRTs were created as a countermeasure to inefficient and protracted debt resolution; however statistics suggest that they are no faster than regular courts at resolving disputes.[230] For banks, the functioning of the DRTs looks to inflict more harm than good.

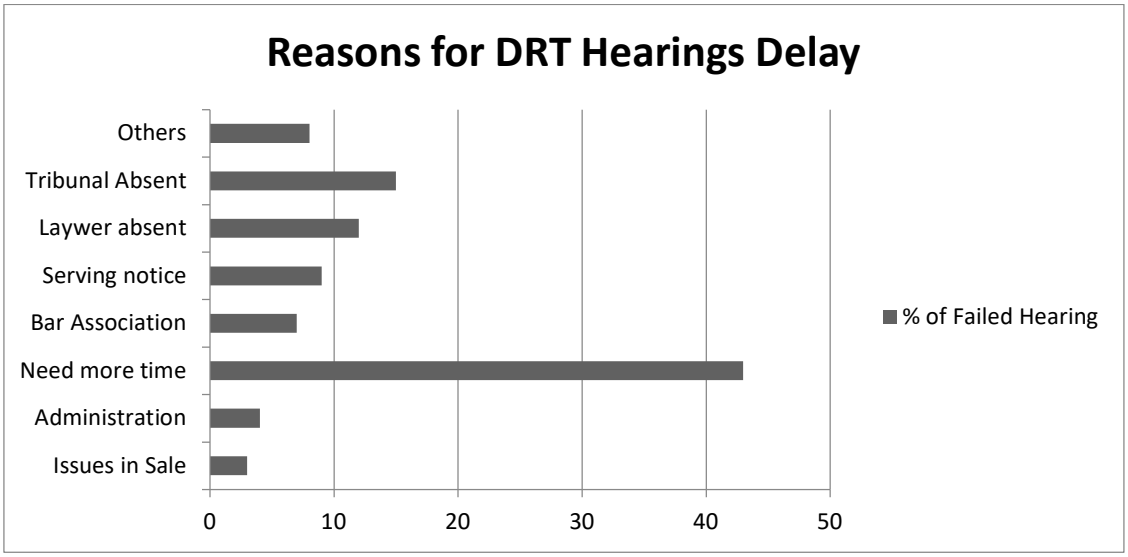
DRTs are also envisioned as adjudicating authorities for individuals and partnership firms under the Lok Sabha's insolvency and bankruptcy code, approved in May 2016. When they were first constituted, DRTs were expected to resolve disputes within 180 days. However through the statistics and experiences it is indicated that judicial inefficiencies are a problem in DRTs, just as they are in other types of courts. Aside from dealing with ordinary banking issues, the DRTs will have to deal with the added strain of insolvencies and liquidations.[231]

JUDICIAL DELAYS CAUSED IN THE DEBT RECOVERY TRIBUNALS

The current judicial statistics measurement system in India may emphasize the depth of the issue of judicial inefficiencies, but it appears to lack the facts that may assist court management on how to address the issue. We only track pending cases in India: which are based on the overall number of cases that remain unresolved at the end of the year. It is computed by summing the total number of new cases (in a year) to the previous year's pending cases and

[229] "Mr. Deepak Singh and Mr. Samyak Sethi , (2018) 'Issues and challenges in the recovery of debt in India' *Fast Forward Justice,* Vol. 1 No. 1"
[230] "Prasanth Regy et al, (2016) 'Understanding Judicial Delays In India: Evidence From Debt Recovery Tribunals' *The Leap Blog* [online] 18 May. https://blog.theleapjournal.org/2016/05/understanding-judicial-delays-in-india.html (Accessed 12 May 2022)"
[231] "Sayan Ghosal, (2016) 'India's debt recovery mechanism off to slow start, business standard' [online] www.rediff.com (Accessed 14 May 2022)"

removing the closed cases. When the number of cases pending increases, we can only assume that the courts are unable to keep up with their job.[232]



Source: blog.theleapjournal.org

Case files are what we actually have in India. These are the formal records of a court case that are retained in the court and with the parties involved. All documents submitted before the court or the tribunal by the parties to the lawsuit, as well as all documents obtained by the court/tribunal, are included in the case files. Interim orders are an important type of document in a court file. Every time a lawsuit is brought before a judge, interim orders are issued. This offers us an idea of what happened during the court session (also known as hearings). Even if no judicial activity is done as a result of the hearing, an interim order is still issued.[233]

CONCLUSION AND SUGGESTIONS

It is now clear that the problem of rising debts day by day is definitely harming the Indian economy. NPAs are rising rapidly and being undervalued by the banks. To ease the problem of debt recovery, the RDDB & FI Act was passed and for more ease the act of SARFAESI was passed.

[232] "Prasanth Regy and Shubho Roy, (2017) 'Understanding judicial delays in debt tribunals' *The Leap Blog* [online] 1 May. https://blog.theleapjournal.org/2017/05/understanding-judicial-delays-in-debt.html (Accessed 13 May 2022)"

[233] *Ibid.*

Given that DRTs have summary processes, it can now be said that their system is superior to that of civil courts and is hence faster but it should be noted that DRTs are incapable of dealing with the complex questions of law. The DRTs are overburdened with number of cases but are understaffed, lack of required tools and infrastructure to deal with the same.. The delay being caused has been badly affecting the banks.

The DRTs have failed to reach the objective for which it was contrasted initially, but yes, the system is somewhat better than the earlier time, that is the civil proceedings. The issue still rising can be resolved by increasing the number of DRTs. Also attempts have been made to address the issue of rising NPAs by the new Bankruptcy Code, hoping a successful implementation of the same for a better life of the Indian Banking sector and the Indian Economy.

CHAPTER 15

CLINICAL TRIALS OF A DRUG AND ITS IMPACT ON HUMAN RIGHTS

Author: Advocate Shruti P. Kale (Jadhav)[234]

ABSTRACT

To ensure the security and effectiveness of any recently developed treatment, clinical experimentation is a crucial component of the drug discovery process. “Clinical Trials”are the cornerstone of today's global scientific era for bringing new and improved medicines to market. Medical experimentation is generally beneficial and essential to curing diseases various chronic conditions. In its most basic form, clinical studies are intended to observe the results of experiments using human beings under the scientist.

In this study the researcher will explain the risks associated with administering novel medications to humans, However, access to the novel therapy and medical progress would not be possible without exposing individuals to such dangers. Participants in “Clinical trials”run the risk of suffering from potential “physical harm”, “psychological harm”, “social harm”, “economic harm”, as well as benefiting from the study. A balance between the potential for harm and the potential for advantage to the subjects needs to be proven before a trial can move forward. As it is obliged to follow the equilibrium for protection of Human Rights and social development for the betterment of society to serve humanity in much healthier way. This study also contributes to understand the relationship between Right to health and Human Rights as per International covenants.

INTRODUCTION

A “clinical trial” is a planned experiment that aims to address concerns about the best course of action for upcoming patients with a certain medical issue. Before new drugs, gadgets, vaccines, and therapies are approved for use in the general public, researchers test them on

[234] Gokhale Education Society’s Law College, Kharghar

volunteers in clinical trials. However, new medicines don't necessarily work better than older ones, and many of them have shown in “Clinical trials “to be harmful or unsuccessful.

Any experimental study in which individual humans or groups of individuals are prospectively assigned to one or more interventions pertaining to physical health in order to assess the effects on physical health outcomes is referred to as a “clinical trial”.[235]

Clinical trial participants are essential to the creation of a novel drug or device as well as to a better knowledge of how to treat sickness. The safety of the clinical trial participants is of utmost importance in this procedure.[236] However, the majority of therapeutic trials carried out in underdeveloped nations like India have ignored this factor. It is important to strike a balance between the safety of clinical trial participants and medical exploration. Safety of the subjects must always be guaranteed in clinical trials. There are several general guidelines for clinical trials that serve to maintain the appropriate balance between subject safety and the clinical experiment.

The studies on humans are conducted in five stages. Early stages of human “Clinical trials” typically concentrate on possible adverse effects of a specific treatment, whereas later stages seek to evaluate the effectiveness of the most recent treatment in comparison to available options for treatment. A human “clinical trial” may not be completed in its entirety if a putative treatment yields unexpected results.

From one trial phase to the next, the procedure's threat level may change. On the other hand, the clinical trial process is extremely important for the advancement of medical knowledge. Human experimentation is the practise of using living creatures as test subjects for scientific investigation. It is generally regarded to be the investigation of any material and how it affects human life.

Medical products, such as drugs or gadgets, surgeries, or adjustments to participants' behaviour, such as dietary modifications, are all examples of interventions. In clinical trials, the novel medical strategy can be contrasted with an established standard, with a setting devoid of any active substances, or with no treatment at all. Some “Clinical trials” contrast existing therapies against one another.

[235] Merkatz, Ruth B. "Inclusion of women in clinical trials: a historical overview of scientific ethical and legal issues." *Journal of Obstetric, Gynecologic & Neonatal Nursing* 27.1 (1998): 78-84.
[236] DeVito, Nicholas J., Seb Bacon, and Ben Goldacre. "Compliance with legal requirement to report clinical trial results on ClinicalTrials. gov: a cohort study." *The Lancet* 395.10221 (2020): 361-369.

When a novel medical treatment or method is being researched, it is frequently unclear whether it will be beneficial, harmful, or identical to currently available options (including no intervention). By measuring the outcome or selected outcomes in the participants, the principal investigators attempt to ensure the safety and effectiveness of the intervention. For instance, researchers may administer a medication or other treatment to patients with high blood pressure to determine if their blood pressure falls.[237]

As a result, every human experimental event contributes to the development of new scientific knowledge on a variety of areas of human existence. Such scientific information may be sought at various levels and with varying degrees of risk. For instance, the exploration of an established medical technique into a novel situation and the development of an entirely new medical technique involve distinct methodologies and levels of risk. Therefore, the former is known as therapeutic experimentation, whilst the latter is known as research experimentation. Both stages of testing put human life at risk and will cause significant moral and legal controversy.[238]

REASONS FOR CONDUCTING CLINICAL TRIALS

The international community is aware of the need to perform drug clinical studies. The scientific community must focus more on drug development due to the dangers posed to humanity by emerging diseases and changing lifestyles. Every medicine created in this way must undergo efficacy, quality, and toxicological testing. “Clinical trials” are, in a nutshell, what this process entails. Various degrees and stages of the drug's testing will take place. Animal trials commonly referred to as animal testing—will be conducted at the beginning to determine its toxicological effect, and the resulting report will be referred to as animal pharmacology.

Every medication must undergo extensive testing and be deemed safe for consumption by humans. Every year, a significant number of brand-new medications are developed and released onto the global market. All of these medications could be brand-new creations or innovative uses of well-established molecules for various medical conditions. Drugs are first

[237] Hartmann, Markus, and Florence Hartmann-Vareilles. "The clinical trials directive: how is it affecting Europe's noncommercial research." *PLoS clinical trials* 1.2 (2006): e13.
[238] Apostolaros, Maria, et al. "Legal, regulatory, and practical issues to consider when adopting decentralized clinical trials: recommendations from the clinical trials transformation initiative." *Therapeutic innovation & regulatory science* 54.4 (2020): 779-787.

tested on animals to determine their toxicity and therapeutic value before being tested on humans. It will be challenging to trace the development of human experimentation and its history.[239] There are two significant causes for this. In reality, it is important to acknowledge that medical science in general has evolved through a process of trial and error. This implies that every method and procedure in medical treatment was first novel and revolutionary. Therefore, the history of medical science is the history of human experimentation.

The ability to treat incurable diseases makes it clear that this treatment has great potential to revolutionise the healthcare industry. This demonstrates the necessity of "Clinical trials"and the requirement that they be lawfully regulated. The ultimate goal of every clinical research is to promote human welfare.[240]

It is intended to advance medical understanding of the diagnosis, treatment, and prevention of disease or other health issues. The following list includes some typical justifications for conducting clinical trials:

1. To evaluate one or more treatments for a disease, illness, or condition (such as medications, medical equipment, surgical techniques, or radiation therapy).
2. The process of figuring out how to stop the first onset or recurrence of a disease or illness. Among other strategies, these could consist of drugs, vaccinations, or lifestyle modifications.
3. Evaluating one or more treatments intended to detect or diagnose a specific disease or condition.
4. Examining novel diagnostic techniques for an illness or its risk factors.
5. examining and evaluating new techniques to increase the comfort and quality of life for someone with a chronic illness.

UNDERSTANDING THE CLINICAL TRIAL AS A CASE OF HUMAN EXPERIMENTATION AND EFFECTS ON HUMAN RIGHTS

The protocols are more similar to or on par with those used in human research. From one trial phase to the next, the procedure's threat level may change. On the other hand, the "clinical trial" process is extremely important for the advancement of medical knowledge. It is crucial

[239] Van Hout, Ben A., et al. "Costs, effects and C/E-ratios alongside a clinical trial." *Health economics* 3.5 (1994): 309-319.
[240] Masson, Judith. "The legal context." *Doing research with children and young people* (2004): 43-58.

to describe “Clinical trials” as a case of human experimentation in order to better appreciate the legal and ethical issues surrounding them.[241]

Such scientific information may be sought at various levels and with varying degrees of risk. For instance, the exploration of an established medical technique into a novel situation and the development of an entirely new medical technique involves distinct methodologies and levels of risk. Therefore, the former is known as therapeutic experimentation, whilst the later is known as research experimentation. Both stages of testing put human life at risk and will cause significant moral and legal controversies. Technically speaking, “Clinical trials” are a subset of medical research, which is in a form of human experimentation. Therefore, it's critical to understand what medical research and human experimentation means in this context.[242]

When we contemplate the distribution of HUMAN RIGHTS, which are created for human beings in a way that will ensure the greatest possible advancement of the human creed without upsetting the harmony between scientific advancement and peoples' actual existence. By itself, experimenting is a method with enough sway to cover a wide range of endeavours with unpredictable outcomes. When performed on human subjects, these actions have the potential to be lethal and raise ethical and legal questions. Human participants are used in the experiments, which can either be interventional or observational. Human subjects typically relate to living people, not to a dead body. Hence every time we have to make sure while initiating such Clinical trials as it is a threat to human being. It need not always be medical research when referring to human experimentation. Medical research is a type of human experimentation carried out on human subjects as part of medical care.

Human rights are universal regardless of who they are and where they belong to. Human rights treat all people as equal; it pays respect to variations in Human cultures and recognize that human being is different in race, caste, colour, sex, language, religion and political national or social origin. Nevertheless, concerning rights and dignity they are the same. Human rights protection should be provided to all, tailored to their requirement. **(1 pg. no 7)**

Every single human being has a claim on the society or government to which they belong, and this claim is based on their inherent rights rather than on whatever privileges or favours they may receive. The concepts of human rights embrace the most fundamental aspects of

[241] Pormeister, Kärt. "The logical fallacies of the legal bases for data processing in and beyond clinical trials." *International Data Privacy Law* 12.2 (2022): 132-142.
[242] Krleža-Jerić, Karmela. "Clinical trial registration: the differing views of industry, the WHO, and the Ottawa Group." *PLoS Medicine* 2.11 (2005): e378.

mankind.The protection of Human rights i.e. Right to health is very essential because the realisation of other rights is impossible if an individual cannot maintain his/her own health.[243] (Adv. Kamayani Bali Mahabal opinion). Therefore, in accordance with human rights, it is the responsibility of every nation to respect and advance the protection of human rights.

The regulatory system aims to guarantee effective and safe trials. Hence the guidance of legislation is always advantageous.When rules and regulations are framed then it will be followed in accordance to available guidelines.Some ethics are also followed as per Medical Council.These all-available remedies give us an idea and scope for trials. It also makes us vigilant about the stages of Clinical Trials. Many ethical and legal questions are raised when new medications are tested on patients and especially on healthy volunteers.

These worries include numerous human rights protections accorded to an individual by International Societies and International Covenants. The right to life as per Article 21 of our Constitution, Right to have dignified life, Right to privacy, and bodily autonomy of an individual are all included in the concept of a human rights. The State has a huge responsibility to protect everyone's individual rights as per our Constitution.[244]

Therefore, State legislation must adhere to international and constitutional standards for human rights. The worldwide legal framework on human testing will serve as a key tenet governing trial subjects' rights and predicting researcher obligations. The Nuremberg Code and the Universal Declaration on Bio-ethics are among the documents governing human experimentation. In addition to these particular legal documents, the international human rights treaties will serve as a strong argument for deciding trial subjects' rights in Clinical Trials.

A thorough examination of these papers is required in order to create a legislative framework that effectively addresses clinical trials. The state is also under numerous obligations to uphold these standards. The fundamental legal foundation consists of observing certain human rights norms and ethics established by International Law. The non-compliance is viewed as an ethical dilemma and considered to be in violation of these Ethics and later on adjudication begins to save such lives. The State can either make laws that are in line with or even go beyond the international legal framework.

[243] Caulfield, Timothy. "Legal and ethical issues associated with patient recruitment in clinical trials: the case of competitive enrolment." *Health L. Rev.* 13 (2004): 58.
[244] Horwich, Allan. "The Clinical Trial Research Participant as an Inside Trader: A Legal and Policy Analysis." *Journal of Health Law* 39.1 (2006): 09-39.

The adherence to internationally established norms for human testing is not the only area of legal and ethical concern. The type of relationship that exists between the researcher and trial subject also raises legal and ethical concerns. It might have to do with the patient-doctor interaction. In addition to the investigator, contract research organisations, and ethical review board, there are many other parties involved in the trial. These connections are all mixed in terms of law and ethics. Any flaw in how these organisations operate may spark ethical and legal questions.[245]

The typical doctor-patient interaction is inherently contentious. How closely the relationship can be to therapeutic care in the case of "Clinical trials is uncertain as results cannot be anticipated. Research will be done on these subjects as well. In the case of a clinical trial, a complete analysis of the doctor-patient relationship is required. The "clinical trial" system is made up of a variety of partnerships. This could be of a contractual, fiduciary, or business character.

Any such partnership will have some sort of legal support. It is crucial to analyse these relationships. This connection must be moral in nature. Even if the law is strict, an investigator or researcher in a trial may act unethically.

Another element that is critical in "Clinical trials"is informed consent. The only standard that seems to enable the recruitment of trial subjects possible is informed consent.

The only accepted standard for "Clinical trials"is informed consent. One of the widely accepted conventions governing the doctor-patient relationship in therapeutic care. Thus, the principle of informed consent plays a key role in establishing the legitimacy and morality of a trial. Different guidelines may be needed for the informed consent required in clinical trials. These requirements could differ from one nation to another. Once the standard format has been compared to other legal systems, it must be confirmed. It is also critical to remember that many legal systems have not yet fully developed the idea of informed consent.

Therefore, it is important to research whether the theory of informed consent may be used to control the entire "clinical trial" process. Determining the degree of interference with the persons' human rights depends equally on the doctrine. Furthermore, because clinical studies are different at different stages, it is particularly challenging to gain informed consent, which

[245] Lassman, Scott M., et al. "Clinical trial transparency: a reassessment of industry compliance with clinical trial registration and reporting requirements in the United States." *BMJ open* 7.9 (2017): e015110.

is a doctrine. All of these factors necessitate a thorough examination of the informed consent concept in relation to “clinical trial” legality.

Inherent rights include those of humans. It is part of what makes us human. Human rights are closely tied to beliefs in the sanctity of life and the value of life. A trial subject's exercise of his right to bodily autonomy led to his enrolment. The doctrine of the sanctity of life includes the right to physical autonomy. To better appreciate human rights in the context of clinical trials, the quality or sanctity of life must be described. The sanctity of human life also explains the moral objections to using human subjects in experiments.[246]

IMPACT OF CLINICAL TRIAL

Thousands of patients who voluntarily participated in “Clinical trials” are responsible for every prescription and intervention that people have ever taken, leading to countless advancements in illness prevention and treatment over the previous fifty years.

Many might have suffered if these people hadn't been willing to help. It's also critical to understand that clinical research isn't always focused on developing the next breakthrough drug. “Clinical trials” can also offer significant data on the advantages and security of currently available medications, giving doctors and patients trustworthy data to compare different therapy.

Risks are present in all clinical trials. Participants should take into account the likelihood and potential severity of injury. Every “clinical trial” must prioritise patient safety as its first priority. The protocols for each research study are examined by an expert group that is not directly involved in the experiment. Patient safety is ensured by this assessment process.

The subjects are not aware whether they are receiving the experimental medication or treatment, a medication or treatment that has already received approval, or even a placebo. Therefore, the patient has, at most, a 50% chance of receiving the therapy if his decision to enrol was motivated by his desire to attempt a medical procedure that has not yet been commercialised. There may be some unforeseen consequences or results. They might only be present for a brief period of time or they might have a lasting impact on the patient. Because the participants aren't actually receiving the experimental therapy**,** or because the treatment is ineffective for the participant, the experimental treatment may not have any positive effects.

Analyses and trials are crucial to the advancement of evidence-based medicine.

[246] Armitage, Jane, et al. "The impact of privacy and confidentiality laws on the conduct of clinical trials." *Clinical trials* 5.1 (2008): 70-74.

Overall survival or quality of life are examples of healthcare outcomes that are the consequence of complex interactions between the patient, their treatment, and the healthcare system. In the chain connecting current discoveries in human biology and the actual delivery of optimal physical health, “Clinical trials” play a crucial role. They are a crucial link because they are the sole reliable tool for determining whether a treatment is genuinely effective at obtaining good physical health and whether it is cost-effective.[247]

Additionally, through the impact of experimentation activities on staff, infrastructure, and the institutional culture, this process may have a less direct but nevertheless significant impact on those healthcare institutions and services offering their treatment in trials as well as in daily practise. Maintaining intellectual curiosity, constructively challenging procedures, and the pursuit of patient-centred excellence are made possible by healthcare organisations prioritising the experimentation agenda. Commercial organisations conduct clinical trials, and rightfully so, with the intention of making money. These analyses are frequently done to a high standard and give clinicians and policymakers helpful statistics.

Since a very long time, it has been nearly unanimously acknowledged that a variety of factors, including biological, social, and environmental variations, may influence or contribute to disease. Numerous other interactions have also been researched, including the influence of the environment on studies evaluating the effectiveness of treatments for patients with dry eye syndrome, the influence of diet on obesity and cardiovascular disease, and the influence of the environment on autoimmune diseases. To evaluate how the environment affects results, numerous "Clinical experiments" have been carried out.

RELATIONSHIP BETWEEN INFORMED CONSENT AND MEDICAL RECORDS AND CLINICAL TRIAL SUBJECT RIGHTS

For a good doctor-patient relationship, two safe norms have been established: “informed consent” and “access to medical records”. The two main objectives of informed consent and access to medical records are the respect for individual autonomy and trial transparency. It is suggested that a physician must bear a number of burdens as a result of autonomy.[248] The goal of full disclosure of trial-related information is to empower the subject to decide what is best

[247] Miller, Norman S., and Joseph A. Flaherty. "Effectiveness of coerced addiction treatment (alternative consequences): A review of the clinical research." *Journal of substance abuse treatment* 18.1 (2000): 9-16.

[248] Legal service India, http://www.legalservicesindia.com/article/678/Clinical-Trial-Regulation-In-India.html#:~:text=cause%20fatal%20result.-,Clinical%20trials%20are%20developed%20in%20such%20a%20way%20that%20it,efficacious%20before%20reaching%20the%20market.

for him. then it is the study subject's responsibility to receive or have access to the available treatments for the illness.[249]

The trial subject must see evidence of the investigator's respect for medical ethics. All of these are described as duties of the investigator and not as study participants. The privilege of the trial subject to give their informed consent to a “clinical trial” will be described in this type of presentation.

The idea of bodily autonomy is the foundation of “informed consent”. The choice of the patient to select a course of therapy is regarded as the autonomy itself. Rarely will this medical decision-making reflect bodily autonomy. The idea of paternalism in the process of making medical decisions is also evident in the idea of autonomy. Two different types of paternalism are claimed to exist within autonomy.

Strong and mild paternalism are contrasted with the idea that a doctor has complete knowledge of what is in the patient's best interests and a situation where the patient's capacity for making decisions is treated with common decency.

This proves that paternalism persists even under the informed consent framework. Strong informed consent can only refer to a choice made by the patient after considering the doctor's weak paternalism. The importance of this issue is that for the subject's rights to be protected in any way, informed consent needs to be a very strict regulation.

Medical records have a similar role in preserving the rights of trial participants. It has already been noted how access to medical records is important for therapeutic care. The only document that addresses the protection of patients' rights during “Clinical trials” will be their medical records. In addition, the clinical trial-related medical data will support the case for any adverse events that occurred during the trial. Adverse events may have occurred independently or as a result of the trial. The regulatory bodies will also use the documents for scrutiny in the same way. Numerous factors make medical records important for preserving trial participants' rights.

In short, proper adherence to national and international norms for informed consent and medical records are the two ways to preserve the rights of trial participants. The trial subjects' vital rights to autonomy, self-determination, and privacy will be protected by medical records and informed consent guidelines. According to the research above, both in the context of

[249] Kesselheim, Aaron S., and Michelle M. Mello. "Confidentiality laws and secrecy in medical research: improving public access to data on drug safety." *Health Affairs* 26.2 (2007): 483-491.

therapeutic care and clinical trials, the law regarding informed consent and medical records is quite lax.

The protection of the trial subjects' rights will be affected appropriately by this legal flaw. The judiciary is then the only source of hope. The Indian judiciary has not yet begun to aggressively intervene in cases involving harm or injuries resulting from clinical trials. The other judicial systems' attempts to protect subjects' rights regarding informed consent and medical records can be seen in a few examples.[250]

CONCLUSION

One of the most crucial elements of improving public physical health is innovation in medicine development. “Clinical trials” are the experimentation studies that examine if a medical technology, treatment, or strategy is risk-free and successful for people. Multiple supervisory authorities with various goals and tasks have jurisdiction over clinical trials, making it a tremendously complex endeavour that necessitates hundreds of steps, countless decision points, and multi-layered and iterative review processes.

The trials are not primarily designed to directly benefit the test subjects. Safety is tested first, followed by elements like optimum dose and side effects. Not every experiment subject in the trial receives the test treatment; some also receive an existing treatment or a placebo to allow for comparison.

The outcome of trials has a significant impact on the interests and efforts of the drug maker as well as the prognosis of disease. As a result, trials are crucial to the government, regulators, media, various advocacy groups, the ethical police, media, and the general public in addition to being significant to a pharmaceutical business and its patients. The concern for Human Rights cannot be neglected and it is more concerned with the rights of the trial subjects, and as a result, it is more connected to the international human rights documents as well as the Indian Constitution.

Drug and device testing begins with in-depth laboratory research that may take years and entail studies on animals and human cells. If the initial laboratory experiment is successful, researchers submit the findings to the organisation in charge of the “clinical trial” for approval to carry out further testing and experimenting on humans.

[250] Ibid at 15

The development of medical technology, the creation of new devices, and “Clinical trials” include many different actors. One of these participants in the “clinical trial” procedure is the physician investigator. The function of the doctor can be seen in both the clinical trial's success and failure.

The treatment of their human experimental subject is their top priority. Several research studies criticised the idea that doctors view these “Clinical trials” primarily as profitable economic ventures. At professional conferences, Fisher and Kalbaugh discovered that doctors who work as physician investigators frequently attend business-related rather than scientific panels.

Another group of players are contract research organisations (CROs), which support experimentation for the pharmaceutical, biotechnology, and medical device industries as well as for governmental organisations, foundations, and universities that are conducting clinical trials. Pharmaceutical businesses are turning more and more to outsource crucial tasks like manufacturing and research. CROs are being used to oversee “Clinical trials” and create the newest medications and medical equipment.

The government is in charge of regulating “clinical trial” supervision. It not only makes sure that the medications put on the market are secure and efficient, but it also makes sure that clinical studies are conducted in a way that safeguards the welfare and rights of test subjects. All standard trials must follow to certain requirements, including respect for subjects, a body of convincing evidence, independent committee oversight, and adherence to pertinent laws and regulations governing human experimentation, even though the laws and regulations governing trials differ from country to country

VIDHIKGYAN: THE KNOWLEDGE OF LAW

Volume - 2

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